# ST. CHRISTOPHER AND NEVIS

# CHAPTER 3.12

# EVIDENCE ACT

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# CHAPTER 3.12

# EVIDENCE ACT

AN ACT TO MAKE PROVISION RELATING TO THE LAW OF EVIDENCE AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

## PART I

## PRELIMINARY MATTERS

**Short title.**

1. This Act may be cited as the Evidence Act.

**Interpretation.**

2. In this Act, unless the context otherwise requires—

"admission" means a previous representation made by a person who is, or becomes, a party to proceedings, being a representation that may or may not be adverse to the person's interest in the outcome of the proceedings;

"civil proceedings" includes, in addition to proceedings in a court other than criminal proceedings, proceedings before any other tribunal and an arbitration or reference, whether under an enactment or not, but does not include civil proceedings in relation to which the strict rules of evidence do not apply;

"confession" means an admission of guilt by a person charged with a criminal offence which is wholly or partly adverse to him;

"copy" includes, in relation to a document, any transcript or reproduction thereof in whatever form and an electronic record referred to under Part XVI;

"document" includes—

(a) anything on which there is writing;

(b) books, maps, plans, graphs, drawings and photographs;

(c) any disc, tape, soundtrack or other device in which sound or other data, not being visual images, are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; and

(d) any film, microfilm, negative, disc, tape or other device on which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;

"expert report" means a written report by a person dealing wholly or mainly with matters on which he or she is, or would if living, be qualified to give expert evidence;

"facts in issue" means—

(a) all facts which, by the form of the pleadings in any action or other civil proceeding, are affirmed on one side and denied on the other; and

(b) in actions or other proceedings in which there are no pleadings, or in which the form of the pleadings is such that distinct issues are not joined between the parties, all facts from the establishment of which the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied, in any such case would by law follow;

"identification evidence", in relation to criminal proceedings, means evidence that is—

(a) an assertion by a witness to the effect that at or about the time at which an offence was committed or an act was done that the accused or a person resembling the accused was present at, or near, a place where—

(i) the offence was committed; or

(ii) an act that is connected with that offence was done,

at or about the time at which the offence was committed or the act was done, being an assertion that is based wholly or partly on what the first-mentioned person saw, heard or otherwise noticed at that place and time; or

(b) a report, whether oral or in writing, of an assertion as mentioned in paragraph (a);

(c) the assertion in paragraph (a) shall be based wholly or partly on what the witness saw, heard or otherwise noticed at that place or time;

"leading question" means a question asked of a witness that—

(a) directly or indirectly suggests a particular answer to the question; or

(b) assumes the existence of a fact, the existence of which is in dispute in the proceedings and as to the existence of which the witness has not given evidence before the question is asked;

"Minister" means the Minister responsible for Justice;

"public document" means a document that—

(a) forms part of the records of—

(i) the Crown;

(ii) the government of a foreign country or jurisdiction; or

(iii) a person or body holding public office or exercising a power or function under the Saint Christopher and Nevis Constitution or of a law, whether of Saint Christopher and Nevis or a foreign country; or

(b) is being kept by or on behalf of the Crown or a Government, person or body referred to in paragraph (a)(ii) or (iii),

and includes the records of the proceedings of the Legislature of Saint Christopher and Nevis or the legislature of a foreign country.

**References to business.**

**3.** (1) A reference in this Act to a business includes a reference to—

(a) a profession, calling, occupation, trade or undertaking;

(b) a business activity engaged in or carried on by—

(i) the Crown; or

(ii) the government of a foreign country or jurisdiction; or

(c) a business activity engaged in or carried on by a person or body holding office or exercising power under or by virtue of the Laws of Saint Christopher and Nevis or a foreign jurisdiction being an activity engaged in or carried on in the performance of the duties of the office or in the exercise of the power.

(2) For the purposes of subsection (1), it does not matter whether or not—

(a) the business is engaged in or carried on, for profit; or

(b) the business is engaged in, or carried on, outside of Saint Christopher and Nevis.

**References to examination in chief, etc.**

**4.** (1) A reference in this Act to—

(a) examination of a witness in chief is a reference to the questioning of a witness by the party who called the witness to give evidence, which does not constitute re-examination;

(b) cross-examination of a witness is a reference to the questioning of a witness by a party other than the party who called the witness to give evidence;

(c) re-examination of a witness is a reference to the questioning of a witness by the party who called the witness to give evidence and is conducted after the cross-examination of the witness.

(2) Where a party recalls a witness who has already given evidence, the questioning of that witness by that party, before the witness is questioned by some other party, shall be considered a part of the examination in chief.

**Unavailability of persons.**

**5.** For the purposes of this Act, a person shall be taken not to be available to give evidence if—

(a) the person is dead;

(b) the person is not competent to give the evidence about the fact;

(c) it would not be lawful for the person to give evidence about the fact;

(d) the evidence may not be given under a provision of this Act;

(e) all reasonable steps have been taken to find the person or to secure his or her attendance, but without success; or

(f) all reasonable steps have been taken to compel the person to give the evidence, but without success.

## PART II

### APPLICATION

**Courts and proceedings to which Act applies.**

**6.** The provisions of this Act shall apply in relation to all proceedings in a court of Saint Christopher and Nevis, unless the contrary is in any case expressly provided.

**Act binds Crown.**

**7.** This Act binds the Crown.

## PART III

### COMPETENCY AND COMPELLABILITY OF WITNESSES TO GIVE EVIDENCE

**Competence and compellability.**

**8.** Except as otherwise provided in this Act—

(a) every person is competent to give evidence; and

(b) a person who is competent to give evidence about a fact is compellable to give that evidence.

**Lack of capacity.**

**9.** (1) Without prejudice to section 13, a person who is incapable of understanding that, in giving evidence, he is under an obligation to give truthful evidence is not competent to give sworn testimony.

(2) A person who is incapable of giving a rational reply to a question is not competent to give evidence in relation to that question, but may be competent to give evidence about other facts.

(3) A person is not competent to give evidence if—

(a) he or she is unfit by reason of his or her mental condition; or

(b) subject to section 30, the person is incapable of hearing or understanding, or of communicating a reply to a question about the fact and that incapacity cannot be overcome without undue cost or undue delay.

(4) Evidence that is given by a witness does not become inadmissible merely because, before the witness finishes giving evidence, he or she dies or ceases to be competent to give evidence.

(5) For the purpose of determining a question arising out of this section, the court may inform itself as it thinks fit.

**Reduced capacity.**

**10.** A person is not compellable to give evidence on a particular matter if the court is satisfied that—

(a) substantial cost or delay would be incurred in ensuring that the person would be capable of hearing or understanding, or of communicating replies to, questions on that matter; and

(b) adequate evidence on that matter has been given, or will be able to be given, from one or more other persons or sources.

**Persons not compellable.**

**11.** A foreign sovereign or the Head of State of a foreign country is not compellable to give evidence.

**Competence and compellability of judges and jurors.**

**12.** (1) Subject to subsection (2), a person who is a judge or a juror in a proceeding is not competent to give evidence in that proceeding.

(2) A juror is competent to give evidence in a proceeding about matters affecting the conduct of that proceeding.

(3) A person who is or was a judge in legal or administrative proceedings is not compellable to give evidence about the proceedings, unless the court gives leave.

**Competence of children under sixteen years of age.**

**13.** (1) Where a child who is under sixteen years is presented as a witness, the court shall conduct an inquiry to determine if the child is possessed of sufficient intelligence to justify the reception of the child's evidence, and to determine if the child is competent to know the nature and consequences of giving false evidence and to know that it is wrong to give false evidence, and if the court so finds, it shall permit the child to give evidence upon taking the affirmation or oath.

(2) Where a child who is under sixteen years is presented as a witness and does not qualify as a witness under subsection (1), the court shall conduct an inquiry to determine if the child is possessed of sufficient intelligence to justify the reception of the child's unsworn evidence, and if the child understands that he or she should tell the truth, and where the court so finds, it shall permit the child to give unsworn evidence upon the child stating that:

"I promise to tell the truth.".

(3) A person charged with an offence may be convicted upon evidence admitted under subsection (2) but in a trial by jury of a person so charged, the court shall warn the jury of the danger of acting on such evidence unless they find that the evidence is corroborated in some material particular by other evidence implicating that person.

(4) The evidence of a child who is under sixteen years, though not given upon oath, but otherwise taken and reduced in writing as a deposition, shall be deemed to be a deposition for all intents and purposes.

(5) Nothing in this section limits or affects any rule of law that prevents a person from being convicted of an offence upon uncorroborated evidence.

(6) Subject to subsection (9), a child who is under sixteen years may give evidence as provided in section 28(3) in respect of any case, whether or not the child is a victim in the case.

(7) Evidence given pursuant to subsection (6) shall be admissible as the child's evidence.

(8) A court may refuse to admit evidence given pursuant to subsection (6) where—

(a) the child is not available for cross-examination, either physically or through live video links or television links;

(b) rules governing disclosure of the circumstances in which the recording was made have not been complied with; or

(c) the court is satisfied that it is not in the interests of justice to admit the evidence.

(9) Subject to subsection (10), a child giving evidence pursuant to this section in respect of a sexual offence shall be cross-examined via video or television links or other technological means and the court may utilise whatever means it considers necessary, including technological means, to minimise the trauma that may be caused to the child in the circumstances.

(10) On the application of the prosecution, a video or television link or other technological means shall not be used when the court is satisfied that a child who is under sixteen years of age is able and wishes to give evidence in the presence of the accused, and the court thinks it is desirable to do so.

(11) Notwithstanding subsection (10), the court may on its own motion revert to video or television links or other technological means if the court thinks it is desirable to do so.

**Competence and compellability of accused persons in criminal proceedings.**

**14.** (1) This section applies only in a criminal proceeding.

(2) An accused is not competent to give evidence as a witness for the prosecution.

(3) A person who is being prosecuted for a related offence—

(a) is not compellable to give evidence; and

(b) except with the leave of the court, shall not give evidence as a witness for the prosecution.

(4) Where it appears to the court that a witness called by the prosecutor may be a person who is being prosecuted for a related offence, the court shall, in the absence of the jury if there is one, satisfy itself that the witness is aware of the effect of subsection (3).

(5) In determining whether to grant leave pursuant to subsection (3)(b), the matters that the court shall take into account include—

(a) whether the person has or appears to have a motive to misrepresent a matter as to which the person is to give evidence; and

(b) whether before the person gives evidence the completion or termination of the prosecution for the related offence is reasonably practicable.

(6) Notwithstanding any other law to the contrary, where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

**Person charged and wife or husband a competent witness.**

**15.** (1) Every person charged with an offence and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence, at

every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person.

(2) Notwithstanding subsection (1)—

(a) a person so charged shall not be called as a witness in pursuance of this Act except upon his or her own application;

(b) the failure of any person charged with an offence or of the wife, or husband, as the case may be, of the person so charged, to give evidence, shall not be made the subject of any comment by the prosecution;

(c) the wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act except upon the application of the person so charged;

(d) a person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him or her as to the offence charged;

(e) a person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer any question tending to show that he or she has committed, or been convicted of, or been charged with, any offence other than that wherewith he or she is then charged, or is of bad character, unless—

(i) the proof that he or she has committed or been convicted of such other offence is admissible evidence to show that he or she is guilty of the offence wherewith he or she is then charged; or

(ii) he or she has personally or by his or her advocate asked questions of the witnesses for the prosecution with a view to establish his or her own good character, or has given evidence of his or her good character or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

(iii) he or she has given evidence against any other person charged with the same offence;

(f) every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his or her evidence from the witness box or other place from which the other witnesses give their evidence.

**When wife or husband may be called without consent of person charged.**

**16.** (1) The wife or husband of a person charged with an offence under any enactment mentioned in the First Schedule may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(2) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

**A husband or wife not compelled to disclose communications made to each other.**

**17.** No husband shall be compelled to disclose any communication made to him by his wife during the marriage, nor shall any wife be compellable to disclose any communication made to her by her husband during the marriage.

**A witness in case of adultery not bound to answer criminating questions.**

**18.** No witness in any cause or other proceeding instituted in consequence of adultery, whether a party to the suit or not, shall be liable to be asked, or bound to answer, any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence, in the same proceeding, in disproof of his or her alleged adultery.

**Legal professional privilege and compellability of witnesses.**

**19.** (1) A legal practitioner and his or her client shall not be compelled to disclose any confidential communication, oral or written, which passed between them directly or indirectly through an agent of either, if such communication was made for the purpose of obtaining or giving legal advice.

(2) Subsection (1) does not apply unless the communication was made to or by the legal practitioner in his professional capacity or by the client while the relationship of client and legal practitioner subsisted, whether or not litigation was pending or contemplated.

(3) No claim of privilege shall be allowed if the communication between a client and his legal practitioner was made for the purpose of committing a fraud, crime or other wrongful act.

## PART IV

## WITNESS ANONYMITY

**Witness anonymity orders.**

**20.** (1) In this Part a "witness anonymity order" is an order made by a court that requires such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

(2) Notwithstanding the generality of subsection (1), the kinds of measures that may be required to be taken in relation to a witness include measures for securing one or more of the following—

(a) that the witness's name and other identifying details may be—

(i) withheld;

(ii) removed from materials disclosed to any party to the proceedings;

(b) that the witness may use a pseudonym;

(c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;

(d) that the witness is screened to any specified extent;

(e) that the witness's voice is subjected to modulation to any specified extent.

(3) Nothing in this section authorises the court to require—

(a) the witness to be screened to such an extent that the witness cannot be seen by—

(i) the judge or other members of the court (if any);

(ii) the jury (if there is one); or

(iii) any interpreter or other person appointed by the court to assist the witness;

(b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) to (iii).

**Applications.**

**21.** (1) An application for a witness anonymity order may be made to the court by the prosecutor or the defendant.

(2) Where an application is made by the prosecutor, the prosecutor—

(a) shall, unless the court directs otherwise, inform the court of the identity of the witness; but

(b) is not required to disclose in connection with the application—

(i) the identity of the witness; or

(ii) any information that might enable the witness to be identified,

to any other party to the proceedings or his or her legal representatives.

(3) Where an application is made by the defendant, the defendant—

(a) shall, unless the court directs otherwise, inform the court and the prosecutor of the identity of the witness;

(b) if there is more than one defendant, shall not disclose in connection with the application—

(i) the identity of the witness; or

(ii) any information that might enable the witness to be identified,

to any other defendant or his or her legal representatives.

(4) Where the prosecutor or the defendant proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—

(a) the identity of the witness; or

(b) any information that might enable the witness to be identified,

from being disclosed except as required by subsection (2)(a) or (3)(a).

(5) "Relevant material", referred to in subsection (4), means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(6) Subject to subsection (7), the court shall give every party to the proceedings the opportunity to be heard on an application under this section.

(7) Subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his or her legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(8) Nothing in this section is to be taken as restricting any power to make rules of court.

**Conditions for making order.**

**22.** (1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make an order, referred to in subsection (1), only if it is satisfied that Condition A, Condition B and Condition C are met.

(3) Condition A, referred to in subsection (2), is that the measures to be specified in the order are necessary—

(a) in order to protect the safety of the witness or another person or to prevent any serious damage to property; or

(b) in order to prevent real harm to the public interest; whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise.

(4) Condition B, referred to in subsection (2), is that having regard to all the circumstances, the taking of those measures would be consistent with the defendant receiving a fair trial.

(5) Condition C, referred to in subsection (2), is that it is necessary to make the order in the interests of justice by reason of the fact that it appears to the court that—

(a) it is important that the witness should testify; and

(b) the witness would not testify if the order were not made.

(6) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (3)(a), the court shall have regard (in particular) to any reasonable fear on the part of the witness—

(a) that the witness or another person would suffer death or injury; or

(b) that there would be serious damage to property,

if the witness were to be identified.

**Relevant considerations.**

**23.** (1) When deciding whether Conditions A, B and C in section 22 are met in the case of an application for a witness anonymity order, the court shall have regard to—

(a) the considerations mentioned in subsection (2); and

(b) such other matters as the court considers relevant.

(2) The considerations referred to in subsection (1) are—

(a) that a defendant in criminal proceedings should know the identity of a witness in the proceedings;

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;

(c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

(d) whether the witness's evidence could be properly tested, whether on grounds of credibility or otherwise, without his or her identity being disclosed;

(e) whether there is any reason to believe that the witness—

(i) has a tendency to be dishonest; or

(ii) has any motive to be dishonest in the circumstances of the case,

having regard, in particular, to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;

(f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

**Discharge or variation of order.**

**24.** (1) A court that has made a witness anonymity order in relation to any criminal proceedings may subsequently discharge or vary the order if it appears to the court to be appropriate to do so in view of the provisions of sections 22 and 23 that applied to the making of the order.

(2) The court may discharge or vary the order in accordance with subsection (1)—

(a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time; or

(b) on its own initiative.

(3) "The relevant time" means—

(a) the time when the order was made; or

(b) if a previous application has been made under subsection (2), the time when the application or the last application was made.

**Warning to jury.**

**25.** (1) Subsection (2) applies where, on a trial on indictment with a jury, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.

(2) The judge shall give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.

PART V

MANNER OF GIVING EVIDENCE

**Division 1**

*General Provisions*

**Power of parties to a proceeding to question witness.**

**26.** Except as otherwise provided in this Act, a party to a proceeding may question a witness.

**Order of examination in chief, cross-examination and re-examination of witness**

**27.** Unless the court otherwise directs, a witness in a proceeding shall first be examined in chief by the party who called him as a witness, then cross-examined by all other parties to the proceeding who wish to do so, then re-examined by the party who called him as a witness.

**Manner of giving evidence and questioning witness.**

**28.** (1) Evidence may be given in whole or in part in narrative form and the court may direct that it be so given.

(2) Evidence may be given in the form of charts, summaries or other explanatory material if it appears to the court that the material aids, or is likely to aid, the court's comprehension of the evidence before the court.

(3) The court may permit evidence to be given in any other manner, including by means of technology, such as a video or television link that permits the virtual presence of the witness before the court and that permits the court and the parties to the proceedings to hear, examine and cross-examine the witness, whether the witness is within or outside of Saint Christopher and Nevis.

(4) Evidence given under subsection (3) shall be given as though the witness was physically before the court and the law relating to contempt of court with respect to a refusal by the witness to answer a question or to produce a document applies to such evidence.

(5) Subject to this Part, or to a direction which may be given by a court in that behalf, a party to a proceeding may question a witness in any way the party thinks fit.

**Witness may give evidence through an interpreter.**

**29.** A witness may give evidence about a fact through an interpreter, unless the witness understands and speaks the English language sufficiently to enable him to understand fully the nature of the evidence he is giving and to make an adequate reply to questions that may be put to him in respect of such evidence.

**Deaf and mute witnesses.**

**30.** (1) A witness who cannot hear adequately may be questioned in any appropriate way including the use of a court interpreter for sign language.

(2) A witness who cannot speak adequately may give evidence by any appropriate means.

(3) The court may give directions concerning either or both of the following—

(a) the way in which a witness may be questioned under subsection (1);

(b) the means by which a witness may give evidence under subsection (2).

(4) This section does not affect the right of a witness to whom this section applies to give evidence about a fact through an interpreter under section 29.

**Attempts to refresh memory from a document while giving evidence.**

**31.** (1) A witness shall not, in the course of giving evidence, use a document to try to refresh his memory about a fact or opinion unless the court gives leave upon oral application by the witness, the party calling the witness or the party cross-examining the witness.

(2) Without limiting the matters that the court may consider in deciding whether to give leave, it is to consider—

(a) whether the witness will be able to recall the fact or opinion adequately without using the document; and

(b) whether so much of the document as the witness proposes to use is, or is a copy of, a document that—

(i) was written, made or verified by the witness when the facts recorded in it were fresh in his or her memory; or

(ii) was, at the time it was written, made, verified or found, by the witness, to be accurate.

(3) If a witness has, while giving evidence, used a document to try to refresh his memory about a fact or opinion, the witness may, with the leave of the court, read aloud, as part of his evidence, so much of the document as relates to that fact or opinion.

(4) Where the court grants leave pursuant to the provisions of subsection (1), the court shall, on the request of a party, give such directions to ensure that so much of the document as relates to the proceeding is produced to that party.

**Evidence given by police officers exception to section 31.**

**32.** (1) Notwithstanding the provisions of section 31, in any criminal proceeding, a police officer may give evidence in chief for the prosecution by reading or being led through a written statement previously made by the police officer.

(2) Evidence may be so given if—

(a) the statement was made by the police officer at the time of, or soon after, the occurrence of the events to which it refers;

(b) the police officer signed the statement when it was made; and

(c) a copy of the statement had been given to the person charged, or to his legal practitioner, a reasonable time before the hearing of the evidence for the prosecution.

(3) A reference in this section to a police officer includes a reference to a person who, at the time the statement concerned was made, was a police officer.

**Attempts to refresh memory out of court.**

**33.** (1) The court may, on the request of a party, give such directions as are appropriate to ensure that documents and things used by a witness to try to refresh his memory, otherwise than while giving evidence, are produced to the party for the purposes of the proceeding.

(2) The court may refuse to admit the evidence given by a witness referred to in subsection (1) so far as it concerns a fact as to which the witness tried to refresh his memory if, without reasonable excuse, the directions referred to in subsection (1), have not been complied with.

(3) Where, by virtue of legal professional privilege, evidence of the contents of a document may not be adduced, the court shall not give a direction under subsection (1) requiring the production of the document.

**Effect of calling for production of documents.**

**34.** (1) A party is not to be required to tender a document only because the party, whether under this Act or otherwise—

(a) called for the document to be produced to the party; or

(b) inspected it when it was so produced.

(2) The party who produces a document so called for is not entitled to tender it only because the party to whom it was produced, or who inspected it, fails to tender it.

## Division 2

*Examination in Chief and Re- Examination*

**Limitations of right of examination in chief.**

**35.** The examination in chief of a witness shall relate to facts in issue or relevant thereto, or which may be proved.

**Rules as to leading questions in examination in chief and re-examination.**

**36.** A question suggesting the answer which the person putting the question wishes or expects to receive, other than a question that relates to formal matters or to matters that are not in dispute, shall not be put to a witness in examination in chief or in re-examination unless the court gives leave.

**Limitations of right of re-examination.**

**37.** The re-examination of a witness shall be directed to matters referred to in cross-examination, and if a new matter is by permission of the court introduced in re-examination, the opposite party may further cross-examine the witness upon such new matter.

**How unfavourable witnesses dealt with.**

**38.** (1) Where a witness gives evidence that is unfavourable to the party who called the witness, that party may, with the leave of the court, question the witness about that evidence as though the party were cross-examining the witness.

(2) Where, in examination in chief, a witness appears to the court not to be making a genuine attempt to give evidence about a matter of which the witness may reasonably be supposed to have knowledge, the party who called the witness may, with the leave of the court, question the witness about that matter as though the party were cross-examining the witness.

(3) A party who is questioning a witness referred to in subsection (1) or (2) may also, with the leave of the court, question the witness about matters relevant only to the credibility of the witness, and such questioning shall be taken to be cross-examination for the purposes of this Act.

(4) Unless the court otherwise directs, questioning as mentioned in this section shall take place before the other parties cross-examine the witness.

(5) The matters that the court shall take into account in determining whether to give leave, or give a direction, under this section include—

(a) whether the party gave notice at the earliest opportunity of his intention to seek leave; and

(b) the matters on which, and the extent to which, the witness has been, or is likely to be, questioned by some other party.

## Division 3

*Cross-Examination*

**Right of cross-examination and limitations thereto.**

**39.** (1) The cross-examination of a witness by a party to a proceeding need not be confined to facts to which the witness had testified in his examination in chief.

(2) If a new matter is by permission of the court introduced in re-examination, the opposite party may further cross-examine the witness upon that matter.

(3) A party shall not cross-examine a witness who has been called in error by some other party and has not been questioned by that other party about a matter relevant to a question to be determined in the proceedings.

**Improper questions.**

**40.** (1) If a misleading question, or a question that is unduly annoying, harassing, intimidating, offensive, oppressive, scandalous, indecent or repetitive, or a question that is relevant but asked for an improper purpose, is put to a witness in cross-examination, the court may disallow the question or inform the witness that he need not answer the question.

(2) For the purposes of subsection (1), the matters that the court shall take into account include any relevant condition or characteristic of the witness, as well as—

(a) his age, personality and education; and

(b) any mental, intellectual or physical disability to which the witness is or appears to be subject.

**Leading questions in cross-examination.**

**41.** (1) A party may put a leading question to a witness in cross-examination but the court may disallow the question or direct the witness not to answer it.

(2) Subsection (1) does not limit the power of the court to control leading questions.

**Prior inconsistent statements of witness.**

**42.** (1) It is not necessary that complete particulars of a prior inconsistent statement alleged to have been made by a witness be given to the witness, or that a document that contains a record of the statement be shown to the witness, before the witness may be cross-examined about the statement.

(2) Where, in cross-examination, a witness does not admit that he has made a prior inconsistent statement, the party who cross-examined the witness shall not adduce evidence of the statement otherwise than from the witness unless, in the cross-examination, that party—

(a) gave the witness such particulars of the statement as are reasonably necessary to enable the witness to identify the statement; and

(b) drew the attention of the witness to so much of the statement as is inconsistent with the evidence of the witness.

(3) For the purposes of adducing evidence in accordance with subsection (2), the party may re-open his case.

**Hostile witnesses.**

[*]**43**. (1) Where a witness appears to the court to be a hostile witness, the party who called the witness may, with the leave of the court request the court to have the witness declared hostile.

(2) Where the witness is declared a hostile witness, the party who called the witness may—

(a) question the witness about his or her evidence as though the party were cross-examining the witness;

(b) contradict the witness by other evidence;

(c) pursuant to the provisions of section 42, prove that the witness has made, at other times, a statement inconsistent with his or her testimony;

(d) prove that the witness has made, at other times, a statement inconsistent with his or her testimony by leading other evidence to the contrary.

(3) Where in criminal proceedings—

(a) a witness gives evidence and he or she admits making a previous inconsistent statement;

(b) a witness gives evidence and a previous inconsistent statement made by him or her is proven by virtue of subsection (2)(c); or

(c) a witness gives evidence and the witness is declared a hostile witness pursuant to subsection (1),

an inconsistent statement made by the witness is admissible as evidence in the proceedings.

(4) A party who is questioning a witness referred to in subsection (1) may also, with the leave of the court, question the witness about matters relevant to the

[*] Inserted by Act 11 of 2015 as section 42A, renumbered as section 43 and the following sections renumbered.

credibility of the witness, and such questioning shall be taken to be cross-examination for the purposes of this Act.

(5) The matters that the court shall take into account in determining whether to have the witness declared hostile, under this section, include—

(a) whether the witness appears to the court, not to be making a genuine attempt to give evidence about a matter of which the witness may reasonably be supposed to have knowledge; or

(b) the matters on which, and the extent to which, the witness has been, or is likely to be, questioned by some other party.

*(Inserted by Act 11 of 2015)*

**Previous representations of other persons.**

**44.** (1) Subject to subsection (2), a cross-examiner shall not, in the cross-examination of a witness, use a previous representation alleged to have been made by a person other than the witness.

(2) Where evidence of such a representation, referred to in subsection (1), has been admitted or the court is satisfied that it will be admitted, the cross-examiner may question the witness about it and its contents.

(3) Where—

(a) a representation referred to in subsection (1) is recorded in a document; and

(b) evidence of the representation has not been admitted and the court is not satisfied that, if it were to be adduced, it would be admitted,

the document may only be used in the circumstances set out in subsection (4).

(4) The circumstances referred to in subsection (3) are—

(a) that the document may be produced to the witness;

(b) that the witness may be asked whether, having examined the contents of the document, he adheres to the evidence that he has given; and

(c) that neither the cross-examiner nor the witness shall identify the document or disclose its contents.

(5) A document used as mentioned in subsection (4) may be marked for identification.

**Cross-examination as to accuracy, impartiality, etc.**

**45.** When a witness is cross-examined, he may be asked any questions which tend—

(a) to test his accuracy, veracity or impartiality; or

(b) to test his credibility by impugning his character,

but the court has the right to exercise a discretion in those cases, and to refuse to compel the witness to answer any of those questions when the truth of the matter suggested would not in the court's opinion affect the accuracy, veracity, impartiality or credibility of the witness in respect of the matter as to which he is required to testify.

**Exclusion of evidence to contradict answer to question testing accuracy, previous conviction or impartiality.**

**46.** Where a witness under cross-examination has been asked and has answered any question referred to in section 45, no evidence can be given to contradict him, except in the following cases—

(a) if a witness is asked whether he has been previously convicted of any offence and he denies or does not admit it, or refuses to answer, evidence may be given of the previous conviction; and

(b) if a witness is asked any question tending to show that he is not impartial and answers it by denying the facts suggested, he may, by permission of the court, be contradicted by evidence of those facts.

**Restrictions on evidence at trials for rape, etc.**

**47.** (1) Where a person is prosecuted for rape or any other sexual offence or for an attempt to commit rape or any other sexual offence, then except with the leave of the court, no evidence and no question in cross-examination shall be adduced or asked at the trial, by or on behalf of any accused, about any sexual experience of a complainant with a person other than that accused.

(2) The court shall not give leave in pursuance of subsection (1) for any evidence or question except on an application made to it in the absence of the jury, if the trial is by jury, by or on behalf of an accused, and on such an application the court shall give leave only if the court thinks that such evidence is necessary for a fair trial of the accused.

(3) For the purposes of this section, "complainant" means a person in relation to whom, in a charge for rape or any other sexual offence, or for an attempt to commit rape or any other sexual offence, it is alleged that the rape or other sexual offence was committed or attempted.

(4) Nothing in this section authorises evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section.

(5) A complainant in a trial for rape or any other sexual offence may give evidence in the manner specified in section 28(3).

(6) A judge may order a trial for rape or any other sexual offence to be held in camera.

**Proof of matters in reference to declaration of deceased person or deposition.**

**48.** (1) Where any declaration or statement made by a deceased person which is admissible in evidence, or any deposition, is proved, all relevant evidence may be adduced in order to contradict it, or in order to impeach the credibility of the person by whom it was made which might have been proved if that person had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

(2) The evidence that may be brought pursuant to section (1), to rebut the declaration or statement or credibility of a deceased person shall be restricted to the kind of evidence that might have been brought if the deceased person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

**Production of documents.**

**49.** (1) Where a cross-examiner—

(a) is cross-examining or has cross-examined a witness about a prior inconsistent statement alleged to have been made by the witness; or

(b) in cross-examination of a witness, is using or has used a previous representation alleged to have been made by some other person,

being a statement or representation that is recorded in a document, the cross-examiner shall, if the court so orders or if some other party so requires, produce the document, or such evidence of the contents of the document as is available to the cross-examiner, to the court or to that other party.

(2) Where a document or evidence has been produced in accordance with subsection (1), the court may—

(a) examine it;

(b) give directions as to its use; or

(c) admit it notwithstanding that it has not been tendered by a party.

(3) A cross-examiner shall not, by reason only of having produced a document to a witness who is being cross-examined, be required to tender the document.

**Certain matters to be put to witness.**

**50.** Where a party adduces evidence—

(a) that contradicts evidence already given in examination in chief by a witness called by some other party; or

(b) about a matter as to which a witness who has already been called by some other party was able to give evidence in examination in chief,

and the evidence adduced has been admitted, the court may, if the first-mentioned party did not cross-examine the witness about the matter to which the evidence relates, give leave to the party who called the witness to re-call the witness to be questioned about the matter.

## Division 4

*Miscellaneous Provisions*

**Court may put questions to witness.**

**51.** A court may, on its own motion at any stage of the examination, cross-examination or re-examination of a witness, put any questions to the witness which the court thinks fit in the interests of justice, or recall a witness for further questioning.

**Court may discharge incompetent witness.**

**52.** If, in the course of any proceeding, a witness who was supposed to be competent appears to the court to be incompetent, the witness may be discharged by the court and, if he is discharged, his evidence shall be withdrawn by order of the court and the proceeding shall be left for decision independent of it.

**Witness dying, etc., in the middle of giving evidence.**

**53.** (1) If a witness dies, or becomes incapable of being further examined, at any stage of his examination the evidence given by him before he died or became

incapable shall not be rendered inadmissible by reason of his death or incapacity, unless, in the interest of justice, the court decides otherwise.

(2) A court may admit the evidence of a witness referred to in subsection (1) with an appropriate caution to the jury.

**Discretion of court to permit witness to be recalled.**

**54.** A court may, in the interest of justice, permit a witness to be recalled for further examination in chief or for further cross-examination.

**Person may be examined without subpoena or other process.**

**55.** (1) The court may order a person who—

(a) is present at the hearing of a proceeding; and

(b) is compellable to give evidence in the proceeding,

to give evidence and to provide documents or things even if a subpoena or other process requiring the person to attend for that purpose has not been duly served on the person.

(2) A person ordered under subsection (1) to give evidence or to produce documents or things is subject to the same penalties and liabilities as if the person had been duly served with such a subpoena or other process.

(3) A party who inspects a document or thing produced to the court pursuant to subsection (1), need not use the document in evidence.

## PART VI

### ADMISSION AND PROOF OF CERTAIN STATEMENTS IN DOCUMENTS

**Admissibility of documentary evidence as to facts in issue.**

**56.** (1) Subject to subsection (2), in any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if—

(a) the maker of the statement either had personal knowledge of the matters dealt with by the statement; or

(b) the document in question is or forms part of a record purporting to be a continuous record, and the maker of the statement made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be presumed to have had, personal knowledge of those matters; and

(c) the maker of the statement is called as a witness in the proceedings.

(2) The condition stipulated under subsection (l)(c) that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Saint Christopher and Nevis and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(3) In any civil proceedings, the court may, at any stage of the proceedings, if, having regard to all the circumstances of the case, it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence notwithstanding that—

(a) the maker of the statement is available but is not called as a witness;

(b) the original document is not produced, if in lieu thereof, there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve.

(4) Nothing in this section shall render admissible as evidence any statement made by a person who has an interest in a dispute as to any fact which the statement might tend to establish if the statement was made at a time when proceedings involving that dispute were pending or anticipated.

(5) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(6) The court may—

(a) for the purposes of deciding whether or not a statement is admissible as evidence by virtue of subsections (1) to (5), draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances;

(b) in deciding whether or not a person is fit to attend as a witness, act on a certificate of a registered medical practitioner; or

(c) where the proceedings are with a jury, reject a statement notwithstanding that the requirements of this section are satisfied with respect thereof, if for any reason it appears to it to be inexpedient in the interest of justice that the statement should be admitted.

**Microfilm copy.**

**57.** (1) In any civil or criminal proceedings, a microfilm copy of a record of any business is admissible evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that—

(a) the copy of the record containing the statement was produced in the course of an established practice in order to keep a permanent record thereof;

(b) the process of reproducing the copy of the record accurately reproduces and perpetuates the original record in sufficient detail and clarity; and

(c) the original record is destroyed by or in the presence of a person or of one or more employees or delivered to another person in the ordinary course of business, or lost.

(2) A copy of the microfilm record referred to in subsection (1) shall have the same probative value as the original record.

**Admissibility of business records in criminal proceedings.**

**58.** (1) In any criminal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as *prima facie* evidence of that fact if—

(a) the document is, or forms part of, a record relating to any trade, business, profession or occupation or relating to any paid or unpaid office and compiled or received in the course of that trade, business, profession or occupation or office from information supplied whether directly or indirectly by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; or

(b) the person who supplied the information recorded in the statement in question is dead, or outside of Saint Christopher and Nevis, or unfit by reason of his or her bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected, having regard to the time which has elapsed since he or she, supplied the information and to all the circumstances, to have any recollection of the matters dealt with in the information he supplied.

(2) Where the statement contained in a document is produced by a computer, that statement is admissible as evidence of any fact stated therein unless it is shown that—

(a) there are reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;

(b) at all material times the computer was not operating properly, or was out of operation such as to affect the production of the document or the accuracy of its contents; and

(c) any relevant conditions specified in Regulations made pursuant to the provisions of subsection (3) are not satisfied.

(3) Where it is desired to give a statement in evidence by virtue of this section, the information concerning the statement may be required in such form and at such times as may be prescribed.

(4) For the purposes of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate issued by a registered medical practitioner.

**Weight to be attached to evidence.**

**59.** In estimating the weight to be attached to a statement rendered admissible as evidence by virtue of this Part, regard shall be had to all the circumstances from which any inference may reasonably be drawn as to the accuracy or otherwise of the statement and in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.

**Written expert opinion evidence in criminal proceedings.**

**60.** (1) Subject to subsection (2), an expert report is admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.

(2) Where it is proposed that the person making an expert report shall not give oral evidence, the report may only be admitted in evidence with the leave of the court.

(3) For the purpose of determining whether to give leave for the admission in evidence of an expert report, the court shall consider—

(a) the contents of the report;

(b) the reasons why it is proposed that the person making the report shall not give oral evidence;

(c) any risk, in particular—

(i) the probability that statements in the report may be controverted if the person making the report does not attend to give oral evidence in the proceedings;

(ii) that its admission or exclusion would result in unfairness to the accused or, if there is more than one accused, to any of them; and

(d) any other circumstances that appear to the court to be relevant.

(4) An expert report, when admitted, shall be evidence of any fact or opinion of which the person making the report could have given oral evidence.

**Documentary labels, tags, etc.**

**61.** Where a documentary label, tag or other document has been attached to an object, or a writing has been placed on a document or object, being a document or writing that may reasonably be supposed to have been so attached or placed in the course of a business, the hearsay rule does not prevent the admission or use of the document or writing.

**Admissibility of documents relating to telecommunications.**

**62.** (1) Where a document has been—

(a) produced by a telecommunications installation; or

(b) received from an external telecommunications carrier,

being a document that records a message that has been transmitted by means of a telecommunications service, the hearsay rule does not prevent the admission or use of a representation in the document as to the matters specified in subsection (2).

(2) The matters referred to in subsection (1) are—

(a) the identity of the person from whom or on whose behalf the message was sent;

(b) the date on which, the time at which or the place from which the message was sent, or

the identity of the person to whom the message was addressed.

**Representations in documents.**

**63.** For the purposes of this Act, where a representation is contained in a document that—

(a) was written, made, dictated or otherwise produced by a person; or

(b) was recognised by a person as his representation by signing, initialling or otherwise marking the document,

the representation shall be taken to have been made by the person.

## PART VII

## RELEVANCE OF EVIDENCE

**Relevant evidence.**

**64.** (1) The evidence that is relevant in proceedings is evidence that, if it were accepted, could rationally affect, whether directly or indirectly, the assessment of the probability of the existence of a fact in issue in the proceedings.

(2) In particular, evidence is considered relevant even if it only relates to—

(a) the credibility of a party or a witness;

(b) the admissibility of other evidence; or

(c) a failure to adduce evidence.

**Relevant evidence is admissible.**

**65.** Evidence that is relevant to proceedings is admissible, and shall be admitted in the proceedings, and evidence that is not relevant to the proceedings is not admissible.

**Provisional relevance.**

**66.** (1) Where the determination of the question whether evidence adduced by a party is relevant depends on the court's making some other finding, including a finding that the evidence is what the party claims it to be, the court may find that the evidence is relevant—

(a) if it is reasonably open to make that finding; or

(b) subject to further evidence being admitted such that, at some later stage of the proceedings, it will be reasonably open to make that finding.

(2) Without limiting subsection (1), where the relevance of evidence of an act done by a person depends on the court making a finding that the person and one or more other persons had a common purpose to effect an unlawful conspiracy, the court may use the evidence itself in determining whether such a common purpose existed.

**Inferences as to relevance.**

**67.** (1) Where a question arises as to the relevance of a document or thing, the court may examine the document or thing and may draw any reasonable inference from it, including an inference as to its authenticity or identity.

(2) Subsection (1) does not limit the matters from which inferences may properly be drawn.

## PART VIII

## EXCEPTIONS TO THE RELEVANCE RULE

### Division 1

*Hearsay*

**Exclusion of hearsay evidence.**

**68.** (1) Subject to subsection (3), evidence of a previous representation is not admissible to prove the existence of a fact that the person who made the representation intended to assert by the representation.

(2) Where evidence of a previous representation is relevant otherwise than as mentioned in subsection (1), that subsection does not prevent the use of the evidence to prove the existence of an asserted fact.

(3) Subsection (1) does not apply to—

(a) evidence of a representation contained in a certificate or other document given or made under an enactment other than this Act to the extent to which the enactment provides that the certificate or other document has evidentiary effect;

(b) a statement made by a person, in a document or recording, of any fact of which direct oral evidence by him or her would be admissible in criminal proceedings and it is proved to the satisfaction of the Court that such person—

(i) is deceased;

(ii) is unfit, by reason of his bodily or mental condition, to attend as a witness;

(iii) is outside of Saint Christopher and Nevis and it is not reasonably practicable to secure his attendance;

(iv) cannot be found after all reasonable steps have been taken to find him or her;

(v) is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person; or

(vi) is fearful.

(4) Leave may be granted by the Court under subsection (3) only if the Court considers that the statement ought to be admitted in the interest of justice, having regard to—

(a) the contents of the statement;

(b) any risk that its admission or exclusion will result in unfairness to any party to the proceedings and in particular to how difficult it will be to challenge the statement if the person who made the statement does not give oral evidence; and

(c) any other relevant circumstance.

(5) The party intending to tender a statement in evidence under subsection (3) shall, at least twenty one days before the hearing at which the statement is to be tendered, notify every other party to the proceedings as to the statement to be tendered and as to the person who made the statement.

(6) Where the party intending to tender a statement in evidence under this section has called, as a witness in the proceedings, the person who made the statement, the statement may be admissible only with the leave of the Court.

(7) For the purposes of subsection (3), "fearful" is to be construed widely and includes fear of the death or injury of another person or of financial loss.

(8) The Court may exclude evidence under subsection (3) if, in the opinion of the Court, the prejudicial effect of the evidence outweighs its probative value.

**Restrictions on first hand hearsay.**

**69.** A reference in this Part to a previous representation is a reference to a previous representation that was made by a person whose knowledge of the asserted fact was or might reasonably be supposed to have been based on what the person saw, heard or otherwise noticed, other than a previous representation made by some other person about the asserted fact.

**Civil proceedings where maker not available.**

**70.** In civil proceedings, where the person who made a previous representation is not available to give evidence about an asserted fact, the hearsay rule does not apply in relation to—

(a) oral evidence of the representation that is given by a person who saw, heard or otherwise noticed the making of the representation; or

(b) a document so far as it contains the representation or some other representation to which it is reasonably necessary to refer in order to understand the representation.

**Civil proceedings where maker available.**

**71.** (1) This section applies in civil proceedings where the person who made a previous representation is available to give evidence about an asserted fact.

(2) Where it would cause undue expense or undue delay, or would not be reasonably practicable, to call the person referred to in subsection (1) to give evidence, the hearsay rule does not apply in relation to—

(a) oral evidence of the previous representation referred to in subsection (1) given by a person who saw, heard or otherwise noticed the making of the representation; or

(b) a document so far as it contains the previous representation or some other representation to which it is reasonably necessary to refer to understand the previous representation.

(3) Where the person referred to in subsection (1) has been or is to be called to give evidence, the hearsay rule does not apply in relation to evidence of the representation that is given by—

(a) that person; or

(b) a person who saw, heard or otherwise noticed the making of the representation,

if, at the time when the representation was made, the occurrence of the asserted fact was fresh in the memory of the person who made the representation.

(4) Where subsection (3) applies in relation to a representation, a document containing the representation shall not, unless the court gives leave, be tendered before the examination in chief of the person who made the representation has been concluded in relation to that representation.

**Criminal proceedings where maker not available.**

**72.** (1) This section and section 68(3) apply in criminal proceedings where the person who made a previous representation is not available to give evidence about an asserted fact.

(2) The hearsay rule does not apply in relation to evidence of a previous representation that is given by a witness who saw, heard or otherwise noticed the making of the representation, which is a representation that was—

(a) made under a duty to make that representation or to make representation of that kind;

(b) made at or shortly after the time when the asserted fact occurred and in circumstances that made it unlikely that the representation is a fabrication;

(c) made in the course of giving sworn evidence in a legal or administrative proceeding if the defendant, in that proceeding, cross-examined the person who made the representation, or had a reasonable opportunity to cross-examine that person, about it; or

(d) against the interests of the person who made it at the time when it was made.

(3) For the purposes of subsection (2)(c), a defendant who was not present at a time when the cross-examination of a person might have been conducted but could reasonably have been present at that time may be taken to have had a reasonable opportunity to cross-examine the person.

(4) If a representation tends—

(a) to damage the reputation of the person who made it;

(b) to show that the person who made it has committed an offence; or

(c) to show that the person who made it is liable in an action for damages,

then, for the purposes of subsection (2)(d), the representation shall be taken to be against the interests of the person who made it.

(5) The hearsay rule does not prevent the admission or use of evidence of a previous representation adduced by a defendant, being evidence that is given by a witness who saw, heard or otherwise noticed the making of the representation.

(6) Where evidence of a previous representation about a matter has been adduced by a defendant and has been admitted, the hearsay rule does not apply in relation to evidence of a previous representation about the matter adduced by some other party, being evidence given by a witness who saw, heard or otherwise noticed the making of the second-mentioned representation.

**Criminal proceedings where maker available.**

**73.** (1) Where the conditions specified in subsection (2) exist, then, in criminal proceedings, if the person who made a previous representation is available to give evidence about an asserted fact, the hearsay rule does not apply in relation to evidence of the previous representation that is given by—

(a) that person; or

(b) a person who saw, heard or otherwise noticed the representation being made.

(2) The conditions referred to in subsection (1) are—

(a) that at the time when the representation was made, the occurrence of the asserted fact was fresh in the memory of the person who made the representation; and

(b) that the person who made the representation has been or is to be called to give evidence in the proceeding.

(3) Subsections (1) and (2) do not apply in relation to evidence adduced by the prosecutor of a representation that was made for the purpose of indicating the evidence that the person who made it would be able to give evidence in legal or administrative proceedings.

(4) Where subsections (1) and (2) apply in relation to a representation, a document containing the representation shall not, unless the court gives leave, be tendered before the examination in chief of the person who made the representation has been concluded in relation to that representation.

**Notice to be given.**

**74.** (1) Subject to this section, sections 70, 71(2) and 72(2) and (5) do not apply in relation to evidence adduced by a party unless that party has given at least fourteen days' notice, in writing to any other party, of the intention to adduce the evidence.

(2) Where a notice required under subsection (1) has not been given or the period of notice specified has not been complied with, the court may, on the application of a party and subject to conditions, direct that one or more of the provisions mentioned in subsection (1) shall apply—

(a) notwithstanding the failure of the party to give such notice or to comply with the period of notice; or

(b) in relation to specified evidence with such modifications as the court specifies.

(3) In civil proceedings, where the writing by which notice is given discloses that it is not intended to call the person who made the previous representation concerned on a ground referred to in section 71(2), a party may, not later than seven days after notice has been given, by notice in writing given to each other party, object to the tender of the evidence, or of a specified part of the evidence.

(4) A notice pursuant to subsection (3), shall set out the grounds on which the objection is based.

(5) The court may determine the objection on the application of a party made at or before the hearing.

(6) If an objection made pursuant to subsection (3) is unreasonable, the court may order that the party objecting shall, in any event, bear the costs, ascertained on a legal practitioner and client basis, incurred by another party—

(a) in relation to the objection; and

(b) in calling the person who made the representation to give evidence.

**Reputation as to certain matters.**

**75.** (1) The hearsay rule shall not prevent the admission or use of evidence of reputation—

(a) that a man and a woman cohabiting at a particular time were married to each other at that time;

(b) as to family history or a family relationship;

(c) as to the existence, nature or extent of a public or general right.

(2) In criminal proceedings, subsection (1) does not apply in relation to evidence adduced by the prosecutor, but, where evidence as mentioned in subsection (1) has been admitted, this subsection does not prevent the admission or use of evidence that tends to contradict it.

**Interlocutory proceedings.**

**76.** The hearsay rule does not prevent the admission or use of evidence adduced in interlocutory proceedings if the party who adduces it also adduces evidence of its source.

## Division 2

*Opinion evidence*

**Exclusion of opinion evidence.**

**77.** (1) Subject to sections 78, 79 and 80, evidence of an opinion is not admissible to prove the existence of a fact as to the existence of which the opinion was expressed.

(2) Where evidence of an opinion is relevant otherwise than as mentioned in subsection (1), that subsection does not prevent the use of the evidence to prove the existence of a fact as to the existence of which the opinion was expressed.

**Lay opinions.**

**78.** Where—

(a) an opinion expressed by a person is based on what the person saw, heard or otherwise noticed about a matter or event; and

(b) evidence of the opinion is necessary to obtain an adequate account of the person's perception of the matter or event,

the opinion rule shall not prevent the admission or use of the evidence.

**Opinions based on specialised knowledge.**

**79.** Where a person has specialised knowledge based on the person's training, study or experience, the opinion rule shall not prevent the admission or use of evidence of an opinion of that person that is wholly or substantially based on that knowledge.

**Fact in issue and common knowledge rules abolished.**

**80.** Evidence of an opinion is not inadmissible by reason only that it is about—

(a) a fact in issue; or

(b) a matter of common knowledge.

## Division 3

*Admissions and Confessions*

**Interpretation of sound recordings.**

**81.** A reference in this Part to a "sound recording" includes a reference to a recording of visual images and sounds.

**Exceptions to hearsay and opinion rules in respect of admissions.**

**82.** (1) The hearsay rule and the opinion rule do not prevent the admission or use of—

(a) evidence of an admission; or

(b) evidence of a previous representation made in relation to an admission at the time when the admission was made or shortly before or shortly after that time, being a representation to which it is reasonably necessary to refer to, to understand the admission.

(2) Subject to subsection (3), where, by reason only of the operation of subsection (1), the hearsay rule and the opinion rule do not prevent the admission or use of evidence of an admission or of a previous representation as mentioned in subsection (1)(b), the evidence may, if admitted, be used only in relation to the case of the party who made the admission concerned and the case of the party who adduced the evidence.

(3) The evidence may be used in relation to the case of some other party if that other party consents but consent shall not be given in respect of only part of the evidence.

**Exclusion of admissions influenced by violence, etc.**

**83.** Evidence of an admission is not admissible unless the court is satisfied that the admission, and the making of the admission, were not influenced by violent, oppressive, inhumane or degrading conduct, whether towards the person who made the admission or towards some other person, or by a threat of conduct of that kind, or by any promise made to the person who made the admission or to any other person.

**Reliability of confession by accused in criminal proceedings.**

**84.** (1) In any proceedings, a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against the accused except in so far as the prosecution proves to the court beyond reasonable doubt that the confession, notwithstanding that it may be true, was not obtained as aforesaid.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence—

(a) of any facts discovered as a result of the confession; or

(b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of such of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies—

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

(b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part XIV of this Act shall prejudice the admissibility of a confession made by an accused person.

(8) In this section, "oppression" includes torture, inhumane or degrading treatment and the use or threat of violence, whether or not amounting to torture.

(9) Where the proceedings mentioned in subsection (1), are proceedings before a magistrate's court conducting a committal hearing, this section shall have effect with the omission of—

(a) in subsection (1), the words "and is not excluded by the court in pursuance of this section"; and

(b) subsections (2) to (6) and (8).

**Confessions by accused in criminal proceedings.**

**85.** (1) This section applies only—

(a) in criminal proceedings;

(b) in relation to evidence of a confession made by an accused person who, at the time when the confession is made, is or ought reasonably to have been suspected by an investigating official of having committed an offence; and

(c) where the confession is made in the course of official questioning.

(2) Evidence of a confession, referred to in subsection (1), is not admissible unless—

(a) the confession is made in circumstances where it is reasonably practicable to take a sound recording of the confession and the questioning of the person and everything said to and by the person during that questioning is recorded; or

(b) the questioning is conducted, and the confession made, in the presence of a person, not being an investigating official, who—

(i) is a legal practitioner acting for the person who made the confession; or

(ii) if no such legal practitioner is reasonably available or is chosen by that person, and a document prepared by or on behalf of the investigating official to prove the contents of the questions, representations and responses is signed, initialed or otherwise marked by the person making the confession and by the legal practitioner or other chosen person present, acknowledging that the document is a true record of the questions, representations and responses; or

(c) in any other case—

(i) at the time of the interview of the person or as soon as practicable afterwards, a record in writing was made, either in English or in another language used by the person in the interview, of the things said by or to the person in the course of the interview;

(ii) as soon as practicable after the record was made, it was read to the person in the language used by the person in the interview and a copy of the record was made available to the person;

(iii) the person was given the opportunity to interrupt the reading at any time for the purpose of drawing attention to any error or omission that he claimed had been made in or from the record and, at the end of the reading, the person was given the opportunity to state whether he claimed that there were any errors in or omissions from the record in addition to any to which he had drawn attention in the course of the reading;

(iv) a tape recording was made of the reading referred to in subparagraph (ii) and of everything said by or to the person as a result of compliance with subparagraph (iii) and the requirements of this subsection were observed in respect of that recording; and

(v) before the reading referred to in subparagraph (ii), an explanation, in accordance with the form in the Second Schedule, was given to

the person of the procedure that would be followed for the purposes of compliance with that subparagraph and subparagraphs (iii) and (iv).

(3) In subsection (2)(b), "document" does not include a sound recording or a transcript of a sound recording.

(4) If the questioning, confession or the confirmation of a confession of a person is recorded as required under this section, or if the question, representation or response is contained in a prepared document as required under this section, the investigating official shall, at no cost to the person making the confession—

(a) if the recording is an audio recording only or a video recording only, make the recording or a copy of it available to the person or his legal practitioner within seven days after the making of the recording;

(b) if both an audio recording and video recording were made, make the audio recording or a copy of it available to the person or his legal practitioner within seven days after the making of the recording, and notify the person or his legal practitioner that an opportunity shall be provided, on request, for viewing the video recording;

(c) if a transcript of the tape recording is prepared, make a copy of the transcript available to the person or his legal practitioner within seven days after the preparation of the transcript; and

(d) if a document is prepared, signed, initialled or otherwise marked as a true record of the question, representation and response, make a copy of the document available to the person or his legal practitioner within seven days of the preparation of the document.

(5) A court may admit evidence to which this section applies even if the requirements of this section have not been complied with, or there is insufficient evidence of compliance with those requirements, if, having regard to the nature of and the reasons for the non-compliance or insufficiency of evidence and any other relevant matters, the court is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice.

(6) A court may admit evidence to which this section applies even if a provision of subsection (2) has not been complied with if, having regard to the reasons for the non-compliance and any other relevant matters, the court is satisfied that it was not practicable to comply with that provision.

(7) If a court permits evidence to be given before a jury under subsection (5) or (6), the court shall inform the jury of the non-compliance with the requirements of this section, or of the absence of sufficient evidence of compliance with those requirements, and give the jury such warning about the evidence as the court thinks appropriate in the circumstances.

(8) The Minister may, by Order published in the *Gazette*, amend the Second Schedule.

**Exclusion of records or oral questioning.**

**86.** (1) Where an oral admission was made by an accused person to an investigating official in response to a question put or a representation made by the official, a document prepared by or on behalf of the official is not admissible in criminal proceedings to prove the contents of the question, representation or response unless the accused person and the investigating official have, by signing, initialling or

otherwise marking the document, acknowledged that the document is a true record of the question, representation or response.

(2) In subsection (1), "document" does not include a sound recording or a transcript of a sound recording.

**Admissions made with authority.**

**87.** (1) Where it is reasonably open to find that—

(a) at the time when a previous representation was made, the person who made it had authority to make statements on behalf of a party in relation to the matter with respect to which the representation was made;

(b) at the time when a previous representation was made, the person who made it—

(i) was an employee of a party and had authority to act for the party; or

(ii) had authority otherwise to act for a party, and the representation related to a matter within the scope of the person's employment or authority; or

(c) a previous representation was made by a person in furtherance of a common purpose, whether lawful or not, that the person had with a party or, with a party and one or more other persons,

the representation shall, for the purpose only of determining whether it is to be taken to be an admission, be taken to have been made by the party.

(2) For the purposes of the application of subsection (1), the hearsay rule does not prevent the admission or use of a previous representation made by a person that tends to prove—

(a) that the person—

(i) was an employee of a party; or

(ii) had authority to act for a party;

(b) the scope of the person's employment or authority,

or the existence at any time of a common purpose.

**Proof of making of admission.**

**88.** Where it is reasonably open to find that a particular person made a previous representation, the court shall, for the purpose of determining whether evidence of the representation is admissible, find that the person made the representation.

**Evidence of silence.**

**89.** (1) An inference unfavourable to a party shall not be drawn from evidence that the party or some other person failed or refused to answer a question, or to respond to a representation put or made to the person in the course of official questioning.

(2) Where evidence of the kind referred to in subsection (1) may only be used to draw an inference referred to in that subsection, it is not admissible.

(3) Subsection (1) does not prevent the use of the evidence to prove that that person failed or refused to answer the question or respond to the representation if the failure or refusal is a fact in issue in the proceedings.

**Discretion to exclude confessions.**

**90.** In criminal proceedings, where evidence of a confession is adduced by the prosecution and, having regard to the circumstances in which the confession was made, it would be unfair to an accused to use the evidence, the court may—

(a) refuse to admit the evidence; or

(b) refuse to admit the evidence to prove a particular fact.

## Division 4

*Evidence of Judgments and Convictions*

**Exclusion of evidence of judgments and convictions.**

**91.** (1) Subject to subsection (2) and sections 92 and 93, evidence of a decision in legal or administrative proceedings is not admissible to prove the existence of a fact that was in issue in the legal or administrative proceedings.

(2) Where evidence of a decision referred to in subsection (1) is relevant, otherwise than as mentioned in that subsection, it shall not be used for the purpose mentioned in that subsection.

**Exceptions.**

**92.** (1) Subject to section 93, section 91(1) does not prevent the admission or use of evidence of the grant of probate, letters of administration or like order of a court to prove—

(a) the death or date of death of the person concerned; or

(b) the due execution of the testamentary document concerned.

(2) Subject to section 92, in civil proceedings, section 90(1) does not prevent the admission or use of evidence that a party, or a person through or under whom a party claims, has been convicted of an offence, not being a conviction—

(a) in respect of which a review or appeal, however described, has been instituted but not finally determined;

(b) that has been quashed or set aside; or

(c) in respect of which a pardon has been given.

(3) Where, by virtue of subsection (1) or (2), section 91(1) does not prevent the admission or use of evidence, the hearsay rule and the opinion rule do not prevent the admission or use of that evidence.

**Savings.**

**93.** Subject to subsection (2), sections 91 and 92 do not affect the operation of—

(a) a law that relates to the admissibility or effect of evidence of a conviction tendered in proceedings, including criminal proceedings for defamation;

(b) a judgment in rem; or

(c) the law relating to res judicata or issue estoppel.

## Division 5

*Character, Conduct and Tendency Evidence*

**Application of Division 5.**

**94.** (1) This Division does not apply in relation to evidence that relates only to the credibility of a witness.

(2) This Division does not apply so far as proceedings relate to bail.

(3) This Division does not apply in relation to evidence of the character, reputation or conduct of a person, or in relation to evidence of a tendency that a person has or had, if that character, reputation, conduct or tendency, respectively, is a fact in issue.

**Use of evidence for other purposes.**

**95.** Where evidence which, under a provision of this Division, is not admissible to prove a particular matter is relevant otherwise than in that provision, the evidence shall not be used to prove that matter.

**Tendency evidence.**

**96.** Subject to section 97, evidence of the character, reputation or conduct of a person, or of a tendency that a person has had, is not admissible to prove that a person has or had a tendency, whether because of the person's character or otherwise, to act in a particular way or to have a particular state of mind.

**Exception to tendency evidence.**

**97.** Where there is a question whether a person did a particular act or had a particular state of mind and it is reasonably open to find that—

(a) the person did some other particular act or had some other particular state of mind respectively; and

(b) all the acts or states of mind, respectively, and the circumstances in which they were done or existed, are substantially and relevantly similar and relevant,

the tendency rule does not prevent the admission or use of evidence that the person did the other act or had the other state of mind, respectively.

**Exclusion of evidence of conduct to prove improbability of coincidence.**

**98.** Evidence that two or more events occurred is not admissible to prove that, because of the improbability of the events occurring coincidentally, a person did a particular act or had a particular state of mind unless it is reasonably open to find that—

(a) the events occurred and the person could have been responsible for them; and

(b) all the events, and the circumstances in which they occurred, are substantially relevant.

**Additional requirements to protect accused person.**

**99.** (1) This section applies in relation to evidence in criminal proceedings adduced by the prosecutor and so applies in addition to sections 97 and 98.

(2) Evidence that the accused did or could have done an act or had or could have had a particular state of mind, being an act or state of mind that is similar to an act or state of mind the doing or existence of which is a fact in issue, is not admissible unless—

(a) the existence of that fact in issue is substantially in dispute in the proceedings; and

(b) the evidence has substantial probative value.

(3) In determining whether evidence referred to in subsection (1) has substantial probative value, the court shall, among other things, consider—

(a) the nature and extent of the similarity;

(b) the extent to which the act or state of mind to which the evidence relates is unusual;

(c) in the case of evidence of a state of mind, the extent to which the state of mind is unusual or occurs infrequently; and

(d) in the case of evidence of an act—

(i) the likelihood that the defendant would have repeated the act;

(ii) the number of times on which similar acts have been done; and

(iii) the period that has elapsed between the time when the act was done and the time when the defendant is alleged to have done the act that the evidence is adduced to prove.

**Requirement of notice to be given.**

**100.** (1) Subject to subsection (2)—

(a) section 97 does not apply in relation to evidence adduced by a party; and

(b) evidence adduced by a party to which section 99 applies is not admissible,

unless that party has given notice in writing in a manner as may be prescribed or as the court considers appropriate, to each other party of the intention to adduce the evidence.

(2) The court may, on the application of a party and subject to conditions, direct that section 97 or 98, or both, shall apply—

(a) notwithstanding the failure of the party to give such notice; or

(b) in relation to specified evidence, with such modifications as the court determines.

**Character of accused in criminal proceedings.**

**101**. (1) This section applies in criminal proceedings.

(2) The hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence adduced by an accused that tends to prove that the accused is, either generally or in a particular respect, a person of good character.

(3) Where evidence that tends to prove that the accused is generally a person of good character has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not generally a person of good character.

(4) Where evidence that tends to prove that the accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not a person of good character.

**Cross-examination of accused in respect of matters provided in section 100 to be by leave only.**

**102.** An accused in criminal proceedings shall not be cross-examined as to matters arising out of evidence to which section 101 applies except with the leave of the court.

## Division 6

*Credibility Evidence*

**Exclusion of evidence relevant to credibility.**

**103**. (1) Evidence that relates to the credibility of a witness is not admissible to prove that the evidence of the witness should or should not be accepted.

(2) Where such evidence is relevant otherwise than as mentioned in subsection (1), that subsection does not prevent the use of the evidence to prove that the evidence of the witness should or should not be accepted.

**Evidence of character of accused.**

**104**. (1) This section applies in criminal proceedings.

(2) The hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence adduced by an accused that tends to prove that the accused is either generally or in a particular respect, a person of good character.

(3) Where evidence that tends to prove that the accused is generally a person of good character has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the accused is not generally a person of good character.

(4) Where evidence that tends to prove that the accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the accused is not a person of good character in that respect.

**Exception: cross-examination as to credibility.**

**105**. (1) The credibility rule does not prevent the admission or use of evidence that relates to the credibility of a witness and has been adduced in cross-examination of the witness.

(2) Evidence referred to in subsection (1) is not admissible if it—

(a) is relevant only to the credibility of the witness; and

(b) does not have substantial probative value as to the credibility of the witness.

(3) In determining whether the evidence referred to in subsection (1) has substantial probative value, the court shall, among other things, consider—

(a) whether the evidence tends to prove that the witness knowingly or recklessly made a false representation at a time when the witness was under an obligation to tell the truth; and

(b) the period that has elapsed since the acts or event to which the evidence relates were done or occurred.

**Further protections: cross-examination of accused.**

**106**. (1) This section only applies in criminal proceedings in addition to section 104.

(2) Subject to this section, an accused shall not be cross-examined as to a matter that is relevant only to his or her credibility unless the court gives leave.

(3) Leave shall not be given for cross-examination by the prosecutor as to any matter that is relevant only to the credibility of the accused unless—

(a) evidence has been adduced by the accused that tends to prove that the accused is, either generally or in a particular respect, a person of good character; or

(b) evidence has been admitted that—

(i) was given by the accused;

(ii) tends to prove that a witness called by the prosecutor has a tendency to be untruthful; and

(iii) was adduced solely or mainly to impugn the credibility of that witness.

(4) A reference in subsection (3) to evidence does not include a reference to evidence of conduct—

(a) in the events in relation to which; or

(b) in relation to the investigation of the offence for which,

the accused is being prosecuted.

(5) Leave shall not be given for cross-examination of the accused by the co-accused unless the evidence that has been given by the accused to be cross-examined includes evidence adverse to the co-accused and that evidence has been admitted.

**Exception: rebutting denials by other evidence.**

**107**. (1) Where evidence that a witness—

(a) is biased or has a motive to be untruthful;

(b) has been convicted of an offence, including an offence against the law of a foreign country; or

(c) made a prior inconsistent statement,

is adduced, otherwise than from the witness, himself or herself the credibility rule does not prevent the admission or use of the evidence if the witness had denied the substance of the evidence.

(2) Where evidence that a witness—

(a) is or was unable to be aware of matters to which his evidence relates; or

(b) knowingly or recklessly made a false representation while under an obligation imposed by or under a law, including a law of a foreign country, to tell the truth,

is adduced, otherwise than from the witness, the credibility rule does not prevent the admission or use of the evidence if the circumstances set out in subsection (3) exist.

(3) The circumstances referred to in subsection (2) are—

(a) that the witness has denied the substance of the evidence; and

(b) that the court has given leave to adduce the evidence.

**Exception: application of certain provisions to maker of representations.**

**108.** Where—

(a) by virtue of Part XII, the hearsay rule does not prevent the admission of evidence of a previous representation;

(b) evidence of the previous representation has been admitted; and

(c) the person who made the previous representation has not been called to give evidence,

the credibility rule does not prevent the admission or use of evidence about matters as to which the person could have been cross-examined if he had given evidence.

**Exception: re-establishing credibility.**

**109**. (1) The credibility rule does not prevent the admission or use of evidence adduced in re-examination of a witness.

(2) The credibility rule does not prevent the admission or use of evidence that explains or contradicts evidence adduced as mentioned in section 108, if the court gives leave to adduce that evidence.

(3) Without limiting subsection (1) or (2), where—

(a) evidence of a prior inconsistent statement of a witness has been admitted; or

(b) it is suggested, either expressly or by implication, that evidence given by the witness has been fabricated or reconstructed, whether deliberately or otherwise or is the result of a suggestion,

the credibility rule does not prevent the admission or use of evidence of a prior consistent statement of the witness if the court gives leave to adduce the evidence.

## Division 7

*Identification Evidence*

**Application of Division 7.**

**110.** This Division applies only in criminal proceedings.

**Exclusion of identification evidence.**

**111**. (1) Subject to subsection (2), identification evidence adduced by the prosecutor is not admissible unless—

(a) either an identification parade that included the accused was held before the identification was made and there is no evidence that the witness was intentionally influenced to identify any particular person in that parade; or

(b) identification was made in accordance with section 112.

(2) Without limiting subsection (1), the matters to be taken into account by a court in determining whether it was reasonable to hold an identification parade as mentioned in that subsection include—

(a) the kind of offence and the gravity of the offence;

(b) the importance of the evidence being sought;

(c) the practicality of holding such a parade having regard, among other things—

(i) to whether the accused refused to co-operate in the conduct of the parade, and to the manner and extent of, and the reason, if any, for the refusal; and

(ii) in any case, to whether the identification was made at or about the time of the commission of the relevant offence; and

(d) the appropriateness of holding such a parade having regard, among other things, to the relationship between the accused and the witness who made the identification.

(3) Where—

(a) the accused refused to co-operate in the conduct of an identification parade unless a legal practitioner acting for him was present while it was being held; and

(b) there were, at the time when the parade was to have been conducted, reasonable grounds to believe that it was not reasonably practicable for such legal practitioner to be present,

it shall be presumed that it would not have been reasonable to have held an identification parade at that time.

(4) In determining whether it was reasonable to have held an identification parade, the court shall not take into account the availability of pictures that could be used in making identifications.

**Exclusion of evidence of identification by pictures.**

**112**. (1) This section—

(a) applies in relation to identification evidence adduced by the prosecutor where the identification was made wholly or partly as a result of the examination of pictures, kept by the police for that purpose, by the person who makes the identification: and

(b) applies in addition to section 111.

(2) Where the accused is in the custody of a police officer in connection with the investigation of an offence at the time when the pictures are examined, the identification evidence is not admissible unless—

(a) the picture of the accused that was examined was made after the accused had been taken into that custody; or

(b) the pictures examined included a reasonable number of pictures of persons who were not, at the time when the pictures were made, in the custody of a police officer in connection with the investigation of an offence, and the identification was made without the person who made it having been intentionally influenced to make that identification.

(3) In any case other than that mentioned in subsection (2), the identification evidence is not admissible unless the pictures examined included a reasonable number of pictures of persons who were not, at the time when the pictures were made, in the custody of a police officer in connection with the investigation of an offence.

(4) Where the evidence concerning an identification of an accused that was made after examining a picture has been adduced by that accused, the preceding provisions of this section do not render inadmissible evidence adduced by the prosecutor, being evidence that contradicts or qualifies that evidence.

(5) In this section—

(a) "picture" includes a photograph; and

(b) a reference to the making of a picture, includes a reference to the taking of a photograph.

**Directions to jury.**

**113.** Where identification evidence has been admitted, the court shall—

(a) warn the jury of the special need for caution before convicting on that evidence;

(b) instruct the jury as to the reason for such need for caution;

(c) refer the jury to the fact that a mistaken witness can be a convincing witness, and that a number of witnesses can be mistaken;

(d) direct the jury to examine closely the circumstances in which each identification was made;

(e) remind the jury of any specific weaknesses in the identification evidence;

(f) where appropriate, remind the jury that mistaken recognition can occur even of close relatives and friends;

(g) identify to the jury the evidence capable of supporting the identification; and

(h) identify evidence which might appear to support the identification but which does not in fact have that quality.

## PART IX

## RULES OF PRIVILEGE

**Interpretation for Part IX.**

**114.** In this Part—

"client", in relation to a legal practitioner, includes—

(a) an employee or agent of a client;

(b) a person acting, for the time being as manager, committee or other person however described, under a law that relates to persons of unsound mind, if the client is of unsound mind and in respect of whose person, estate or property, the person is so acting; and

(c) if the client had died, a personal representative of the client,

and, in relation to a confidential communication made by a client in respect of property in which the client had an interest, also includes a successor in title to that interest;

"legal practitioner" includes an employee or agent of a legal practitioner;

"party" includes—

(a) an employee or agent of a party;

(b) a person acting, for the time being, as manager, committee or other person however described, under a law that relates to persons of unsound mind, if the client is of unsound mind and in respect of whose person, estate or property, the person is so acting; and

(c) if the party had died, a personal representative of the party,

and, in relation to a confidential communication made by a party in respect of property in which the party had an interest, also includes a successor in title to that interest.

**Legal professional privilege.**

**115**. (1) Where, on objection by a client, the court finds that the adducing of evidence would involve the disclosure of—

(a) a confidential communication made between—

(i) the client and his legal practitioner;

(ii) two or more legal practitioners for the client; or

(iii) employees or agents of such legal practitioners; or

(b) the contents of a document, whether delivered or not, that was prepared by the client or his legal practitioner, for the dominant purpose of the legal practitioner, or of one of the legal practitioners, providing legal advice to the client,

the court shall direct that the evidence not be adduced.

(2) Where, on objection by a client, the court finds that the adducing of evidence would result in the disclosure of—

(a) a confidential communication between—

(i) two or more of the persons mentioned in subsection (1);

(ii) a person referred to in subsection (1) and some other person; or

(iii) the employees or agents of the client; or

(b) the contents of a document, whether delivered or not, that was prepared by the client or his legal practitioner, that was made or prepared for the dominant purpose of providing or receiving professional legal services in relation to legal proceedings, or anticipated or pending legal proceedings, in which the client is or may be a party,

the court shall direct that the evidence not be adduced.

(3) Where, on objection by a party who is not represented in the proceedings by a legal practitioner, the court finds that the adducing of evidence will involve the disclosure of—

(a) a confidential communication made between that party and some other person; or

(b) the contents of a document, whether delivered or not, that has been prepared by that party or at the direction or request of the party,

for the dominant purpose of preparing for or conducting the proceedings, the court shall direct that the evidence not be adduced.

**Loss of legal professional privilege.**

**116**. (1) Section 115 does not prevent the adducing of evidence given with the consent of the client or party concerned.

(2) Section 115 does not prevent the adducing of evidence relevant to a question concerning the intentions or competence in law of a client or party who has died.

(3) Where, if the evidence were not adduced, the court would be prevented, or it could reasonably be expected that the court would be prevented from enforcing an order of a court, section 115 does not prevent the adducing of the evidence.

(4) In criminal proceedings, section 115 does not prevent an accused from adducing evidence other than evidence of—

(a) a confidential communication between a person who is being prosecuted for a related offence and a legal practitioner acting for that person in connection with that prosecution; or

(b) the contents of a document prepared by a person who is being prosecuted for a related offence or by a legal practitioner acting for that person in connection with that prosecution.

(5) Section 115 does not prevent the adducing of evidence of the making of a communication or document that affects a right of a person.

(6) Where a client or party has voluntarily disclosed the substance of evidence, not being a disclosure made—

(a) in the course of the making of the confidential communication or the preparation of the confidential document; or

(b) as a result of duress or deception,

section 115 does not prevent the adducing of the evidence.

(7) Where the communication or document was disclosed by a person who was, at the time, an employee or agent of a client or a legal practitioner, subsection (6) does not apply unless the employee or agent was authorised to make the disclosure.

(8) Where a confidential communication is contained in a document and a witness has used the document as mentioned in subsection (1), section 115 does not prevent the adducing of evidence of the document.

(9) Where the substance of evidence has been disclosed with the express or implied consent of the client or party, this section does not prevent the adducing of the evidence.

(10) A disclosure by a client of a legal practitioner to a person who is a client of the same legal practitioner is not a disclosure for the purposes of subsection (9) if the disclosure concerns a matter in relation to which the legal practitioner is providing or is to provide professional legal services to both of them.

(11) Where, in relation to a proceeding in connection with a matter, two or more of the parties have, before the commencement of the proceeding, jointly retained a legal practitioner in relation to the matter, this section does not prevent one of those parties who retained the legal practitioner adducing evidence of—

(a) a communication made by any one of them to the legal practitioner; or

(b) a document prepared by any one of them,

in connection with that matter.

(12) Section 115 does not prevent the adducing of evidence of—

(a) a communication made or a document prepared in furtherance of the commission of—

(i) an offence; or

(ii) an act that renders a person liable to a civil penalty; or

(b) a communication or a document that the client knew or ought reasonably to have known was made or prepared in furtherance of a deliberate abuse of a power conferred by or under an enactment.

(13) For the purposes of subsection (12), where—

(a) the commission of the offence or act, or the abuse of power, is a fact in issue; and

(b) there are reasonable grounds for finding that—

(i) the offence, act or the abuse of power, was committed; and

(ii) the communication was made or the document prepared in furtherance of the commission of the offence, act or the abuse of power, the court may find that the communication was so made or the document so prepared as the case may be.

(14) Where, by virtue of a provision of this section, section 115 does not prevent the adducing of evidence of a communication, that section does not prevent

the adducing of evidence of a communication that is reasonably necessary to enable a proper understanding of the first-mentioned communication.

**Privilege in respect of self-incrimination in other proceedings.**

**117**. (1) Where a witness objects to giving evidence on the ground that the evidence may tend to prove that the witness—

(a) has committed an offence against or arising under a law of, or in force in, Saint Christopher and Nevis or the law of a foreign jurisdiction; or

(b) is subject to a civil liability,

the court shall, if there are reasonable grounds for the objection, inform the witness of the matters contained in subsection (2).

(2) The matters referred to in subsection (1) are—

(a) that he need not give the evidence but that, if he gives the evidence, the court will give a certificate under this section; and

(b) that the court will explain the effect of the certificate.

(3) Where a witness referred to in subsection (1) declines to give evidence, the court shall not compel that witness to give evidence.

(4) Where a witness objects to giving evidence pursuant to subsection (1) and—

(a) the objection has been overruled; and

(b) after the evidence has been given, the court finds that there were reasonable grounds for the objection,

the court shall cause the witness to be given a certificate in respect of the evidence.

(5) Evidence in respect of which a certificate under this section has been given is not admissible against the person to whom the certificate was given in any legal or administrative proceedings, not being criminal proceedings in respect of the falsity of the evidence.

(6) Subject to section 159(4), in criminal proceedings, this section does not apply in relation to evidence that an accused—

(a) did an act the doing of which is a fact in issue; or

(b) had a state of mind the existence of which is a fact in issue.

## PART X

## EXCLUSION OF EVIDENCE ON GROUNDS OF POLICY IN THE PUBLIC INTEREST

**Exclusion of evidence of reasons for judicial, etc., decisions.**

**118**. (1) Evidence of the reasons for a decision made by a person—

(a) acting as judge, magistrate or other officer in legal or administrative proceedings; or

(b) acting as an arbitrator, umpire or referee in respect of a dispute that has been submitted to the person, or to the person and one or more other persons, for arbitration or reference, or the deliberations of a

person so acting in relation to such a decision, shall not be given by that person, or by a person who was under the direction or control of that person, in proceedings to which this Act applies that are not the legal or administrative proceedings concerned.

(2) Subsection (1) does not prevent the admission or use, in legal or administrative proceedings, of published reasons for a decision.

(3) Evidence of the reasons for a decision made by a member of a jury in legal or administrative proceedings, or of the deliberations of a member of a jury in relation to such a decision, shall not be given by any of the members of that jury in proceedings to which this Act applies that are not the legal or administrative proceedings concerned.

(4) Subsections (1), (2) and (3) do not apply in a proceeding that is—

(a) a prosecution for one or more of the following offences—

(i) attempting to pervert the course of justice, or perverting the course of justice; or

(ii) an offence connected with an offence mentioned in subparagraph (i), including an offence of conspiring to commit such an offence;

(b) in respect of a contempt of a court; or

(c) by way of appeal from a judgment, decree, order or sentence of a court.

**Exclusion of evidence of matters of State.**

**119**. (1) Where the public interest in admitting evidence that relates to matters of the National Security of Saint Christopher and Nevis is outweighed by the public interest in preserving secrecy or confidentiality in relation to the evidence, the court may, either of its own motion or on the application of the Attorney General, direct that the evidence not be adduced.

(2) For the purposes of subsection (1), evidence that relates to matters of the national security of Saint Christopher and Nevis includes evidence—

(a) that relates to—

(i) the security or defence of Saint Christopher and Nevis;

(ii) international relations; or

(iii) the prevention or detection of offences or contraventions of the law;

(b) which, if adduced—

(i) would disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of a law; or

(ii) would tend to prejudice the proper functioning of government.

(3) For the purposes of subsection (1), the court shall take into account, *inter alia*, the following matters—

(a) the importance of the evidence in the proceedings;

(b) if the proceedings are criminal proceedings, whether the evidence is adduced by the accused or by the prosecutor;

(c) the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceedings;

(d) the likely effect of the evidence being adduced and the means available to limit its publication; and

(e) whether the substance of the evidence has already been published.

(4) For the purposes of subsection (1), the court may inform itself in any manner the court thinks fit.

**Exclusion of evidence of settlement negotiations.**

**120**. (1) Evidence shall not be adduced of—

(a) a communication made—

(i) between parties to a dispute; or

(ii) between one or more parties to a dispute and a third party, being a communication made in connection with an attempt to negotiate a settlement of the dispute; or

(b) a document that has been prepared in connection with an attempt to negotiate a settlement of a dispute, whether or not the document has been delivered.

(2) Subsection (1) does not apply where—

(a) the parties to the dispute consent to the evidence being adduced or, if one of those parties has tendered the communication or document in evidence in some other legal proceedings and all the other parties so consent;

(b) the substance of the evidence has been disclosed with the express or implied consent of all the parties to the dispute;

(c) the communication or document—

(i) began or is part of an attempt to settle the dispute; and

(ii) included a statement to the effect that it was not to be treated as confidential;

(d) the communication or document relates to an issue in dispute and the dispute, so far as it relates to that issue, has been settled;

(e) the evidence tends to contradict or to qualify evidence that has already been admitted about the course of an attempt to settle the dispute;

(f) the making of the communication, or the preparation of the document, affects a right of a person;

(g) the communication was made, or the document prepared, in furtherance of the commission of—

(i) an offence; or

(ii) an act that renders a person subject to a civil liability; or

(h) a party to the dispute knew or ought reasonably to have known that the communication was made, or the document prepared, in furtherance of a deliberate abuse of a power conferred by or under an enactment.

(3) For the purposes of subsection (2)(g), where—

(a) the commission of the offence or act is a fact in issue; and

(b) there are reasonable grounds for finding that—

(i) the offence or act was committed; and

(ii) a communication was made or a document prepared in furtherance of the commission of the offence or act,

the court may find that the communication was so made or the document so prepared.

(4) For the purposes of subsection (2)(h), where—

(a) the abuse of power is a fact in issue; and

(b) there are reasonable grounds for finding that a communication was made or a document prepared in furtherance of that abuse,

the court may find that the communication was so made or the document so prepared.

(5) A reference in this section to—

(a) "a dispute" is a reference to a dispute of a kind in respect of which relief may be given in legal or administrative proceedings;

(b) "an attempt to negotiate the settlement of a dispute" does not include a reference to an attempt to negotiate the settlement of a criminal proceeding or anticipated criminal proceedings; and

(c) "a party to a dispute" includes a reference to an employee or agent of such a party;

## PART XI

## GENERAL PROVISIONS RELATING TO PARTS IX AND X

**Court to inform of rights, etc.**

**121.** Where it appears to the court that a witness or a party may have grounds for making an application or objection under a provision of Part IX or Part X, the court shall satisfy itself, if there is a jury, in the absence of the jury, that the witness or party is aware of the effect of that provision.

**Court may inspect, etc., documents.**

**122.** Where a question arises under Part IX or Part X in relation to a document, the court may order that the document be produced to it and may inspect the document for the purpose of determining the question.

**Certain evidence inadmissible.**

**123.** Evidence that, by or under a provision of Part IX or Part X, is not to be adduced or given in a proceeding is not admissible in the proceeding.

## PART XII

## EXCLUSION OF EVIDENCE IN EXERCISE OF A JUDICIAL DISCRETION

**General discretion to exclude.**

**124.** Where the probative value of evidence is outweighed by the danger of unfair prejudice or confusion, the court may refuse to admit the evidence.

**Criminal proceedings: discretion to exclude prejudicial evidence.**

**125.** In criminal proceedings, where the probative value of evidence adduced is outweighed by the danger of unfair prejudice to the accused, the court may refuse to admit the evidence.

**Discretion to exclude improperly obtained evidence.**

**126**. (1) Evidence that was obtained—

(a) improperly or in contravention of a law; or

(b) in consequence of an impropriety,

shall not be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained.

(2) Without limiting subsection (1), where—

(a) a confession was made during or in consequence of questioning; and

(b) the person conducting the questioning knew or ought reasonably to have known that—

(i) the doing or omission of an act was likely to impair substantially the ability of the person being questioned to respond rationally to the questioning; or

(ii) the making of a false statement was likely to cause the person who was being questioned to make a confession,

but nevertheless, in the course of that questioning, the person conducting the questioning did or omitted to do the act or made the false statement, evidence of the confession, and evidence obtained in consequence of the confession, shall be taken to have been obtained improperly.

(3) For the purposes of subsection (1), the court shall take into account, among other things, the following matters—

(a) the probative value of the evidence;

(b) the importance of the evidence in the proceeding;

(c) the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding;

(d) the gravity of the impropriety or contravention;

(e) whether the impropriety or contravention was deliberate or reckless;

(f) whether any other proceeding, whether or not in a court, has been or is likely to be taken in relation to the impropriety or contravention;

(g) the difficulty, if any, of obtaining the evidence without impropriety or contravention of law.

## PART XIII

## PROOF OF EVIDENCE: JUDICIAL NOTICE

**Matters of which judicial notice is to be taken.**

**127**. (1) Proof shall not be required about matters of law, including the provisions and coming into operation, in whole or in part, of—

(a) an Act;

(b) an instrument of a legislative character, including regulations, rules, notices, orders and by-laws, made or issued under or by authority of such an Act, being an instrument—

(i) that is required by or under an enactment to be published in the *Gazette*; or

(ii) the making or issuing of which is so required to be notified in the *Gazette*.

(2) The court may inform itself about matters referred to in subsection (1) in any manner that the court thinks fit.

**Matters of common knowledge, etc.**

**128**. (1) Proof shall not be required about knowledge that is not reasonably open to question and is—

(a) common knowledge; or

(b) capable of verification by reference to a document the authority of which cannot reasonably be questioned.

(2) The court may acquire knowledge of the kind referred to in subsection (1) in any manner that the court thinks fit.

(3) The court, including the jury if any, shall take knowledge of the kind referred to in subsection (1) into account.

(4) The court shall give a party such opportunity to make submissions, and to refer to relevant information, in relation to the acquiring or taking into account of knowledge of the kind referred to in subsection (1) as is necessary to ensure that the party is not unfairly prejudiced.

**Certain Crown certificates.**

**129.** This Part does not exclude the application of the principles and rules of the common law and of equity relating to the effect of a certificate given by or on behalf of the Crown with respect to a matter of international affairs.

**Documents interpretation.**

**130**. (1) A reference in this section, and sections 131 and 132 to a document in question is a reference to a document the contents of which it is sought to adduce as evidence.

(2) For the purposes of this section and sections 131 and 132, where a document is not an exact copy of the document in question but is identical to the document in question in all relevant respects, it may be taken to be a copy of the document in question.

(3) This section and sections 131 and 132 apply to "electronic records" referred to in Part XVI.

**Proof of contents of documents.**

**131**. (1) A party may adduce evidence of the contents of a document in question—

(a) by tendering the document in question;

(b) by adducing evidence of an admission made by some other party to the proceedings as to the contents of the document in question;

(c) by tendering a document that—

(i) is or purports to be a copy of the document in question; and

(ii) has been produced, or purports to have been produced, by a device that reproduces the contents of documents;

(d) if the document in question is an article or thing by which words are recorded electronically or in such a way as to be capable of being reproduced as sound, or by which words are recorded in a code, including shorthand writing, by tendering a document that is or purports to be a transcript of the words;

(e) if the document in question is an article or thing on or in which information is stored in such a manner that it cannot be used by the court unless a device is used to retrieve, produce or collate it, and a document is tendered that was or purports to have been produced by use of the device;

(f) by tendering a document that—

(i) forms part of the records of or is or was kept by a business whether or not the business is still in existence; and

(ii) purports to be a copy of, or an extract from or a summary of, the document in question, or is or purports to be a copy of such a document;

(g) if the document in question is a public document, by tendering a document that was or purports to have been printed—

(i) by the Government Printer; or

(ii) by the authority of the government of a foreign jurisdiction, and is or purports to be a copy of the document in question; or

(h) by tendering a document that was produced by a computer.

(2) Subsection (1) applies in relation to a document in question, whether the document in question is available to the party or not.

(3) A party may adduce evidence of the contents of a document in question that is unavailable—

(a) by tendering a document that is a copy of, or a faithful extract from or summary of, the document in question; or

(b) by adducing oral evidence of the contents of the document in question.

(4) For the purpose of determining under any rule of law whether an electronic record, referred to in Part XVI, is admissible, evidence may be presented in respect of any standard, procedure, usage or practice concerning the manner in which electronic records are to be recorded or stored, having regard to the type of business, enterprise or endeavour that used, recorded or stored the electronic record and the nature and purpose of the electronic record.

**Documents in foreign jurisdictions.**

**132.** Where the document in question is in a foreign jurisdiction, section 131(l)(b) (c), (d), (e) or (f) does not apply, unless—

(a) the party who adduces evidence of the contents of the document in question has, not less than fourteen days before the day on which the evidence is adduced, served on each other party a copy of the document proposed to be tendered; or

(b) the court directs that section 131(1)(b), (c), (d), (e) or (f) is to apply.

**Attestation of documents.**

**133.** It is not necessary to adduce the evidence of an attesting witness to a document, not being a testamentary document, to prove that the document was signed or attested as it purports to have been signed or attested.

**Banker's records.**

**134**. (1) Subject to subsections (2) to (9) of this section, a copy of any entry in any record kept in any financial institution shall, in legal or administrative proceedings be admitted in evidence as proof, in the absence of evidence to the contrary, of the entry and of the matters, transactions and accounts therein recorded.

(2) A copy of an entry referred to in subsection (1) shall not be admitted in evidence under this section unless it is first proved that—

(a) the record was, at the time of the making of the entry, one of the ordinary records of the financial institution;

(b) the entry was made in the usual and ordinary course of business;

(c) the record is in the custody or control of the financial institution; and

(d) the copy is a true copy thereof.

(3) The proof referred to in subsection (2) may be given by a manager, accountant or authorised officer of the financial institution and may be given orally or by affidavit sworn before the Registrar of the High Court.

(4) Where a cheque has been drawn on any financial institution by any person, an affidavit given by a manager, accountant or other authorised officer of the financial institution or branch, stating his position with the financial institution or branch—

(a) that he has made a careful examination and search of the records for the purpose of ascertaining whether or not that person has an account with the financial institution or branch; and

(b) that he has been unable to find such an account,

shall be admitted in evidence as proof, in the absence of evidence to the contrary, that that person has no account in the financial institution or branch.

(5) Where evidence is offered by affidavit pursuant to this section, it is not necessary to prove the signature or official character of the person making the affidavit if the official character of that person is set out in the body of the affidavit.

(6) A financial institution or officer of a financial institution is not, in any legal or administrative proceedings to which the financial institution is not a party, compellable to produce any record, the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded unless by order of the court made for sufficient cause.

(7) On the application of any party to legal or administrative proceedings, the court may order that that party be at liberty to inspect and take copies of any entries in the records of a financial institution for the purposes of the legal or administrative proceedings.

(8) The person whose account is to be inspected pursuant to subsection (7), shall be notified of the application at least two clear days before the hearing thereof and, if it is shown to the satisfaction of the court that he cannot be notified personally, the notice may be given by addressing it to the financial institution.

(9) Nothing in this section shall be construed as prohibiting any search of the premises of a financial institution under the authority of a warrant.

**Gazettes, etc.**

**135**. (1) It shall be presumed, unless the contrary is proved, that a document purporting—

(a) to be the *Official Gazette*; or

(b) to have been printed by authority of the government of a foreign jurisdiction,

is what it purports to be and was published on the day on which it purports to have been published.

(2) Where there is produced to a court—

(a) a copy of the *Official Gazette*; or

(b) a document that purports to have been printed by authority of the government of a foreign jurisdiction,

being a copy or document in which the doing of an act by the government, or by a person authorised or empowered by law to do the act is notified or published, it shall be presumed, unless the contrary is proved, that the act was duly done and, if the date on which the act was done appears in the copy or document, that it was done on that date.

**Seals and signatures.**

**136**. (1) The presumptions specified in subsection (2) apply where the imprint of a seal appears on a document and purports to be the imprint of—

(a) the Public Seal of Saint Christopher and Nevis;

(b) a seal of a foreign country; or

(c) the seal of a body, including a court or a tribunal, or a body corporate established by or under Royal Charter or by or under the Saint

Christopher and Nevis Constitution, or by the law of a foreign country or jurisdiction.

(2) The presumptions referred to in subsection (1) are—

(a) that the imprint is the imprint of the seal of which it purports to be the imprint; and

(b) that the document was duly sealed as it purports to have been sealed.

(3) The presumptions specified in subsection (4) apply where the imprint of a seal appears on a document and purports to be the imprint of the seal of—

(a) the Governor-General;

(b) a person holding office under the Saint Christopher and Nevis Constitution, or the law of a foreign jurisdiction.

(4) The presumptions referred to in subsection (3) are—

(a) that the imprint is the imprint of the seal of which it purports to be the imprint; and

(b) that the document was duly sealed by the person purporting to seal it acting in his or her official capacity.

(5) Where a document purports to have been signed by a person referred to in subsection (3)(a) or (b), it shall be presumed, unless the contrary is proved, that the document was duly signed by that person acting in his or her official capacity.

**Public documents.**

**137.** A document that purports—

(a) to be a copy of, or a faithful extract from or summary of, a public document; and

(b) to have been—

(i) sealed with the seal of a person who, or of a body that, might reasonably be supposed to have the custody of the public document; or

(ii) certified as such a copy, extract or summary by a person who might reasonably be supposed to have the custody of the public document,

shall be presumed, unless the contrary is proved, to be a copy of the public document, or a faithful extract from or summary of, the public document, as the case may be.

**Documents produced from proper custody.**

**138.** Where a document that is or purports to be more than twenty years old is produced from proper custody, it shall be presumed, unless the contrary is proved, that the document is the document that it purports to be and, where it purports to have been executed or attested by a person, that it was duly executed or attested by that person.

**Labels, etc.**

**139.** Where—

(a) a document has been attached to an object or a writing has been placed on a document or object; or

(b) the document or writing so attached or placed may reasonably be supposed to have been so attached or placed in the course of a business,

it shall be presumed, unless the contrary is proved, that the ownership or the origin of the object or document is as stated in the document or writing.

**Post and telecommunications.**

**140**. (1) It shall be presumed, unless the contrary is proved, that a postal article sent by prepaid post addressed to a person at a specified address in Saint Christopher and Nevis was received at that address in the ordinary course of post twenty-four hours after the day on which it was posted.

(2) Where a message has been—

(a) sent by means of a telecommunications apparatus; or

(b) delivered to an office of a national telecommunications provider for transmission by the carrier and any fee payable in respect of that transmission has been paid,

it shall be presumed, unless the contrary is proved, that the message was received by the person to whom it was addressed twenty-four hours after having been sent or delivered as the case may be.

(3) Where a document that has been—

(a) received from a national telecommunications provider; or

(b) produced by a telecommunications apparatus,

purports to contain a record of a message transmitted by means of a telecommunications apparatus, it shall be presumed, unless the contrary is proved, that the message was so transmitted and that it was sent by the person from whom or on whose behalf it purports to have been sent on the day on which, and at the time at which, and from the place from which, it purports to have been sent.

## PART XIV

## STANDARDS OF PROOF OF EVIDENCE IN CIVIL AND CRIMINAL PROCEEDINGS

**Civil proceedings: standard of proof.**

**141**. (1) In a civil proceeding, a court shall find the case of a party proved if it is satisfied that the case has been proved on the balance of probabilities.

(2) In determining whether it is satisfied as specified in subsection (1), the matters that the court shall take into account include the nature of the cause of action or defence, the nature of the subject-matter of the proceeding and the gravity of the matters alleged.

**Criminal proceedings: standard of proof.**

**142**. (1) In a criminal proceeding, the court shall not find the case of the prosecution proved unless it is satisfied that it has been proved beyond reasonable doubt.

(2) In a criminal proceeding where the burden of proof is on the accused, the court shall find the case of the accused proved if it is satisfied that the case has been proved on the balance of probabilities.

**Admissibility of evidence: standard of proof.**

**143**. (1) Subject to this Act, in any proceeding the court shall find that the facts necessary for determining—

(a) an issue whether evidence should be admitted or not admitted, whether in the exercise of a discretion or not; or

(b) any other issue arising under this Act,

have been proved if it is satisfied that they have been proved on the balance of probabilities.

(2) In determining whether it is satisfied as mentioned in subsection (1), the court shall take into account, among other things, the importance of the evidence in the proceedings.

## PART XV

## WARNING

**Unreliable evidence.**

**144**. (1) This section applies to evidence of the following kinds—

(a) hearsay evidence;

(b) identification evidence;

(c) evidence, the reliability of which may be affected by self interest, age or ill health, whether physical or mental;

(d) in criminal proceedings, oral evidence of the official questioning of a defendant, where the questioning is recorded in writing that has not been signed or otherwise acknowledged in writing by the defendant;

(e) in the case of proceedings against the estate of a deceased person, evidence adduced by or on behalf of a person seeking relief in the proceedings, being evidence about a matter about which the deceased person could, if he were alive, have given evidence.

(2) Where there is a jury, the court shall, unless there are good reasons for not doing so—

(a) warn the jury that the evidence may be unreliable;

(b) inform the jury of matters that may cause the evidence to be unreliable; and

(c) warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it.

(3) It is not necessary that a particular form of words be used in giving the warning or information.

(4) This section does not affect any other power of the court to give a warning to or to inform, the jury.

## PART XVI

## ELECTRONIC EVIDENCE

**Interpretation under Part XVI.**

**145**. (1) In this Part—

"data" means representations, in any form, of information or concepts;

"electronic record" means data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device. It includes a display, print out or other output of that data;

"electronic records system" includes the computer system or other similar device by or in which data is recorded or stored, and any procedures related to the recording and preservation of electronic records.

(2) The provisions of this Part shall be interpreted and enforced in light of the internationally accepted principles of technological neutrality and of functional equivalence.

**General admissibility.**

**146.** Nothing in the rules of evidence shall apply to deny the admissibility of an electronic record in evidence on the sole ground that it is an electronic record.

**Authentication.**

**147.** The person seeking to introduce an electronic record in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

**Application of Best Evidence Rule.**

**148**. (1) In any legal proceeding, subject to subsection (2), where the best evidence rule is applicable in respect of electronic records, the rule is satisfied on proof of the integrity of the electronic records system in or by which the data was recorded or stored.

(2) In any legal proceeding, where an electronic record in the form of a printout has been manifestly or consistently acted on, relied upon, or used as the record of the information recorded or stored on the printout, the printout is the record for the purposes of the best evidence rule.

**Presumption of integrity.**

**149.** In the absence of evidence to the contrary, the integrity of the electronic records system in which an electronic record is recorded or stored is presumed in any legal proceeding—

(a) where evidence is adduced that supports a finding that at all material times the computer system or other similar device was operating properly, or if not, that in any respect in which it was not operating properly or out of operation, the integrity of the record was not affected by such circumstances, and there are no other reasonable grounds to doubt the integrity of the record;

(b) where it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it; or

(c) where it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce the record.

**Standards.**

**150.** For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in respect of any standard, procedure, usage or practice on how electronic records are to be recorded or preserved, having regard to the type of business or endeavour that used, recorded or preserved the electronic record and the nature and purpose of the electronic record.

**Proof by affidavit.**

**151.** The matters referred to in sections 148, 149, and 150 may be established by an affidavit given to the best of the deponent's knowledge or belief.

**Cross-examination.**

**152.** A deponent of an affidavit referred to in section 151 that has been introduced in evidence may be cross-examined as of right by a party to the proceedings who is adverse in interest to the party who has introduced the affidavit or has caused the affidavit to be introduced.

**Agreement on admissibility of electronic records.**

**153**. (1) Unless otherwise provided in any other statute, an electronic record is admissible, subject to the discretion of the court, if the parties to the proceedings have expressly agreed at any time that its admissibility may not be disputed.

(2) Notwithstanding subsection (1), an agreement between the parties on admissibility of an electronic record does not render the record admissible in a criminal proceeding on behalf of the prosecution if at the time the agreement was made, the accused person or any of the persons accused in the proceeding was not represented by a solicitor.

**Admissibility of electronic signatures, electronic records from other countries, etc.**

**154**. (1) Where a rule of evidence requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law or avoids those consequences.

(2) An electronic signature may be proved in any manner, including by showing that a procedure exists by which it is necessary for a person, in order to proceed further with a transaction, to execute a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.

(3) Where electronic evidence originates from another jurisdiction, its admissibility is not impaired if the integrity of the computer associated with the relevant electronic evidence is proven or presumed in accordance with standards comparable to those provided for in section 149.

(4) In determining whether or not, or to what extent, information in electronic form is legally effective, no regard shall be had to the location where the information was created or used or to the place of business of its creation, provided the electronic record is located in Saint Christopher and Nevis.

(5) Where the electronic record referred to in subsection (4), is located in a foreign jurisdiction subsection (4) does not apply unless—

(a) the party who adduces evidence of the contents of the electronic record has, not less than fourteen days before the day on which the evidence is adduced, served on each other party a copy of the electronic record proposed to be tendered;

(b) the court directs that it is to apply; or

(c) there is an international treaty in effect establishing recognition of electronic records or of electronic signatures located in the foreign jurisdiction.

## PART XVII

## DNA EVIDENCE

**DNA test.**

**155.** (1) Subject to the provisions of this section, the Police shall, where there are reasonable grounds to suspect that material taken at the scene of the offence will tend to connect the accused person with the offence, request for an intimate sample to be taken from the accused person for the purpose of carrying out a DNA test on that person.

(2) An intimate sample may be taken from a person in police detention only if—

(a) a police officer of at least the rank of superintendent authorises it to be taken; and

(b) the appropriate consent is given by the person, which consent shall be in writing.

(3) An officer shall give the authorisation pursuant to the provisions of subsection (2) of this section only if he or she has reasonable grounds—

(a) for suspecting the involvement of the person from whom the sample is to be taken in a serious arrestable offence;

(b) for believing that the sample will tend to confirm or disprove the involvement of the person.

(4) An officer may give an authorisation under subsection (2) of this section orally or in writing, expect that if he or she gives it orally he or she shall confirm it in writing as soon as is practicable.

(5) Where an authorisation is given and it is proposed that an intimate sample shall be taken in pursuance of the authorisation, then the officer shall inform the

person from whom the sample is to be taken of the giving of the authorisation, and of the grounds for giving it.

(6) An intimate sample, other than a sample of urine or saliva, shall be taken by a medical practitioner.

(7) Where the appropriate consent to the taking of an intimate sample from a person is refused without good cause, in any proceedings against that person for an offence—

(a) the court, in determining—

(i) whether to commit that person for trial; or

(ii) whether there is a case to answer; and

(b) the court or jury, in determining whether that person is guilty of the offence charged,

may draw inferences from the refusal as may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against the person in relation to which the refusal is material, and the person refusing to give the consent shall accordingly be informed of the provisions of this section.

(8) The results of a DNA test shall not be admissible in evidence unless—

(a) the accused person was, as required by subsection (5) of this section, informed beforehand the reason why his or her sample was being taken;

(b) the scientist who carried out the DNA test adduces evidence of DNA comparisons together with calculations of the random occurrence ratio;

(c) the prosecution served on the defence sufficient details of how the calculations referred to in paragraph (b) of this subsection were based.

(9) Any sample taken from the accused person for a DNA test and any document containing the results of a DNA test of that person shall, as soon as practicable, be destroyed where the accused;—

(a) is acquitted;

(b) upon admission of the offence, is cautioned; or

(c) is not prosecuted;

(10) A person referred to in subsection (9) of this section shall, if he or she so wishes, be given an opportunity to witness the destruction of the sample taken from him or her and the documents containing the results of his or her DNA test.

(11) For the purposes of this section a "DNA test" means Deoxyribonucleic Acid test.

## PART XVIII

## MISCELLANEOUS PROVISIONS

**Inferences.**

**156.** Where a question arises as to the application of a provision of this Act in relation to a document or thing, a court may—

(a) examine the document or thing; and

(b) draw any reasonable inference from the document or thing as well as from other matters from which inferences may properly be drawn.

**Demonstration, etc., may be held.**

**157**. (1) A court may, on application, order that a demonstration, experiment or inspection be held.

(2) A court shall not make an order under subsection (1), unless it is satisfied that—

(a) the parties will be given a reasonable opportunity to be present; and

(b) the court and the jury, if any, will be present.

(3) In determining whether to make an order under subsection (1), the matters that a court shall take into account include, whether the parties will be present and the judicial discretion of the court to exclude evidence, and—

(a) in the case of a demonstration, the extent to which the demonstration will properly reproduce the conduct or event to be demonstrated; and

(b) in the case of an inspection, the extent to which the place or thing to be inspected has been materially altered.

(4) A court, including the jury if any, shall not itself conduct an experiment in the course of its deliberations.

(5) The preceding provisions of this section do not apply in relation to the inspection of an exhibit by a court or by a jury.

**Demonstration, etc., to be evidence.**

**158.** Subject to this Act, a court, including the jury if any, may draw any reasonable inference from what it sees, hears or otherwise notices during a demonstration, experiment or inspection.

***Voir dire.***

**159**. (1) Where the determination of a question whether—

(a) evidence should be admitted, whether in the exercise of a discretion or not; or

(b) a witness is competent or compellable,

depends on the court finding that a particular fact exists, the question whether that fact exists is, for the purposes of this section, a preliminary question.

(2) Where there is a jury—

(a) a preliminary question whether evidence of an admission or confession, or improperly obtained evidence, should be admitted, shall be heard and determined in the absence of the jury;

(b) the jury shall not be present at a hearing to determine any other preliminary question unless the court so orders.

(3) In determining whether to make an order as mentioned in subsection (2) (b), the court shall take into account, among other things, the following matters—

(a) whether the evidence concerned will be adduced in the course of the hearing to determine the preliminary question; and

(b) whether the evidence to be adduced in the course of that hearing would be admitted if adduced at some other stage of the hearing of the proceeding, other than—

(i) in some other hearing to determine a preliminary question; or

(ii) in a criminal proceeding, in relation to sentencing.

(4) Section 117(6) does not apply in a hearing to determine a preliminary question.

(5) Where there is a jury and the jury is not present at a hearing to determine a preliminary question, evidence shall not be adduced otherwise in the proceeding about evidence that a witness gave in that hearing, unless that evidence is inconsistent with evidence otherwise given by the witness in the proceeding.

**Leave, etc., may be given on terms.**

**160**. (1) Where, by virtue of a provision of this Act, a court may give any leave, permission or direction, the leave, permission or direction may be given on such terms as the court thinks fit.

(2) In determining whether to give the leave, permission or direction, the matters that the court shall take into account include—

(a) the extent to which to do so would be likely to add unduly to, or to shorten, the length of the hearing;

(b) the extent to which to do so would be unfair to a party or to a witness;

(c) the importance of the evidence in relation to which the leave or permission is sought;

(d) the nature of the proceeding; and

(e) the powers of the court to adjourn the hearing or to make some other order or to give a direction in relation to the evidence.

**Manner of execution and proof of certain documents.**

**161**. (1) Notwithstanding anything in this Act to the contrary, all deeds, wills and other writings and all declarations and affidavits purporting—

(a) to be executed, acknowledged, proved, declared or deposed to in any part of the Commonwealth and where declared or deposed to, then verified on oath before—

(i) a diplomatic or consular representative for Saint Christopher and Nevis;

(ii) a Judge of any superior court;

(iii) a Justice of the Peace or Commissioner for Oaths empowered to administer such oath or declaration; or

(iv) a Notary Public;

(b) to be executed, acknowledged, declared or deposed to in any foreign country or state and where declared or deposed to, then verified on oath before—

(i) a diplomatic or consular representative for Saint Christopher and Nevis;

(ii) a Judge of any superior court; or

(iii) a Notary Public;

(c) to be proved in any foreign country or state and verified on oath before—

(i) a diplomatic or consular representative for Saint Christopher and Nevis;

(ii) a Judge of any superior court; or

(iii) a Notary Public,

shall be deemed to have been sufficiently executed, acknowledged, proved, declared or deposed to and shall be received as evidence in any court and judicial notice shall be taken of such deeds, wills and other writings, declarations and affidavits and of any seal or signature, as the case may be, of any person mentioned in this subsection attached, appended or subscribed thereto.

(2) All deeds, wills and other writings and all declarations and affidavits executed, acknowledged, proved, declared, deposed to, verified on oath or certified before a diplomatic or consular representative for Saint Christopher and Nevis shall be deemed to have been properly executed, acknowledged, proved, declared, deposed to, verified on oath or certified.

**Section 161 not to limit admissibility of deeds, etc.**

**162.** Nothing in section 161 shall be taken to render inadmissible as evidence in any court any deed, writing, act or thing which, before the passing of this Act or by virtue of the provisions of any other enactment, would have been admissible or of which judicial notice would by law have been taken, or is admissible and of which judicial notice is by law taken.

**Comparison of a disputed writing with a genuine writing to be permitted in any trial.**

**163.** In any trial, civil or criminal, comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and where there is a jury, to the jury, as evidence of the genuineness or otherwise of the writing in dispute.

**Admissibility of medical certificates and reports.**

**164**. (1) Notwithstanding any enactment or law, and subject to the conditions specified in subsection (2), the following documents are admissible in evidence before a court in civil and criminal proceedings—

(a) the certificate or report of a registered medical practitioner in respect of any of the following—

(i) the medical condition of a person;

(ii) the nature and extent of any injuries to that person, including the probable effects of the injuries;

(iii) the cause of the medical condition or of any of the injuries;

(iv) the nature of the instrument, if any, with which any of the injuries were caused;

(v) the degree of force that was used; and

(vi) any other significant aspects of the injuries; and

(b) a certificate or report of an analyst or consultant in the field of bacteriology, pathology, radiology or toxicology in respect of his examination or analysis of any matter.

(2) The conditions to which subsection (1) refers are that—

(a) the document purports to be signed by the person who made it;

(b) the document contains a declaration by the person making it, declaring the facts set out therein to be true to the best of his knowledge and belief and the opinions expressed therein to be honestly held;

(c) before the hearing at which the document is to be tendered in evidence—

(i) a copy thereof is served by or on behalf of the party proposing to tender it on the other parties to the proceedings; and

(ii) none of the other parties to the proceedings have, within seven days from the service of the document, served on the party serving the document, a notice objecting to the document being tendered in evidence.

(3) Subsection (2)(c) does not apply if the parties to the proceedings agree, before or during the hearing, to the tendering of the document.

(4) Notwithstanding subsection (1), the court may, of its own motion or on application by any party to the proceedings, require a person who tendered a document in evidence under this section, to attend before the court and give evidence.

**Proof of written statement.**

**165**. (1) In any criminal proceedings, other than proceedings before an examining magistrate, a written statement by any person is, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions referred to in subsection (1) are—

(a) the statement is to be signed by the person who purports to have made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(d) none of the other parties or their legal practitioners, within seven days from the service of the copy of the statement, serves, on the party so proposing, a notice objecting to the statement being tendered in evidence under this section.

(3) The conditions mentioned in subsection (2)(c) and (d) do not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(4) The following provisions have effect in relation to any written statement tendered in evidence under this section—

(a) if the statement is made by a person under the age of eighteen, the person's age shall be stated;

(b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and

(c) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (2)(c) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(5) Notwithstanding that a written statement made by any person may be admissible as evidence under this section—

(a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

(b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(6) An application under subsection (5)(b) may be made to the court before the hearing.

(7) So much of any statement as is admitted in evidence under this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

(8) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it has been produced as an exhibit and identified in court by the maker of the statement.

**Statement of wages in evidence.**

**166.** A statement in writing to the effect that an amount has been paid to a person during any period in respect of his employment, purporting to be signed by or on behalf of his employer, shall be evidence of the facts therein stated in any proceedings taken before a court—

(a) for enforcing payment of a sum adjudged to be paid by conviction or order of the court by the person to whom the amount is stated to have been paid, or

(b) on any application made by or against that person for the making of a maintenance order or an order enforceable as a maintenance order, or for the variation, revocation, discharge or revival of such an order.

**Notice of alibi.**

**167.** (1) On a trial on indictment, the defendant shall not, without leave of the court—

(a) adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi; or

(b) call any person to give such evidence at the trial unless—

(i) the notice under paragraph (a) includes the name and address of the witness or, if the name and address is not known to the defendant at the time he gives notice, any information in his possession that might be of material assistance in finding the witness;

(ii) if the name or the address is not included in the notice referred to in subsection (1), the court is satisfied that the defendant, before giving the notice, took and thereafter continued to take all reasonable steps to ensure that the name or address would be ascertained;

(iii) if the name or the address is not included in the notice, but the defendant subsequently discovers the name or address or receives other information that might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information, as the case may be; or

(iv) if the defendant is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information that is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(2) The court shall not refuse leave under this section if it appears to the court that the examining magistrate did not inform the defendant of the requirements of this section.

(3) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(4) Any notice purporting to be given under this section on behalf of the defendant by his legal practitioner shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(5) A notice under subsection (1)(a) shall either be given in court during or at the end of the proceedings before the examining magistrate or be given in writing to the prosecutor within the prescribed period and a notice under subsection (1)(b)(iii) or (iv) shall be given in writing to the prosecutor.

(6) A notice required by this section to be given to the prosecutor may be given by delivering it to him, or by leaving it at his office, or by sending it in a registered letter addressed to him at his office.

(7) In this section—

"evidence in support of an alibi" means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission;

"prescribed period" means the period of seven days from the end of the proceedings before the examining magistrate.

**Examination of witnesses upon interrogatories or otherwise.**

**168**. (1) The High Court may, in every action before it and, upon the application of any of the parties to such suit—

(a) order the examination on oath, upon interrogatories or otherwise, before the Master, Registrar or other person or persons to be named in such order, of any witnesses within the jurisdiction of the High Court; or

(b) order a commission to issue for the examination of witnesses on oath at any place or places out of such jurisdiction by interrogatories or otherwise, and

by the same or any subsequent order, give all such directions touching the time, place and manner of such examination, and all matters and circumstances connected with such examination as may appear reasonable and just.

**Attendance of witnesses and production of documents.**

**169**. (1) Where any order is made for the examination of witnesses within the jurisdiction of the High Court by authority of this Act, the Court may, by the first order to be made in the matter or any subsequent order—

(a) command the attendance of any person named in such order for the purpose of being examined or for the production of any writings or other documents to be mentioned in such order; or

(b) direct the attendance of any such person to be at his own place of abode or elsewhere if necessary or convenient so to do.

(2) Wilful disobedience of an order made pursuant to subsection (1) shall be contempt of court, and proceedings may be therefore had by an attachment if, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, is served together with or after the service of such order.

(3) Every person whose attendance is required pursuant to this section shall be entitled to the like payment for expenses and loss of time as upon attendance at a trial.

(4) A person shall not be compelled to produce any writing or other document under an order pursuant to subsection (1) that he or she would not be compelled to produce at a trial of the cause.

**Admissibility of examinations at trial.**

**170**. (1) Subject to subsection (2), an examination or deposition taken by virtue of this Act shall not be read in evidence at any trial without the consent of the party against whom the same may be offered.

(2) Where it appears to the satisfaction of the Judge that the examinant or deponent is beyond the jurisdiction of the High Court or is dead or is unable from permanent sickness or other permanent infirmity to attend the trial, the examinations and depositions certified under the hand of the Commissioner, Registrar or other persons taking the same shall, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.

**Proof in actions for debt, account or relating to lands.**

**171**. (1) In any action or suit in any court for or relating to any debt or account or for or relating to any lands, tenements or hereditaments or other property situate, lying and being in Saint Christopher and Nevis, the plaintiff or defendant, or any witness residing in any part of the Commonwealth, who is to be examined or made use of in such action or suit, may verify or prove any matter or thing relating thereto by solemn declaration in writing in the form set out in the Third Schedule made before any Justice of the Peace, Notary Public or other officer authorised by the law of the part of the Commonwealth where such declaration is made to administer an oath, and certified and transmitted, subject to subsection (2), under the signature and seal of any such Justice of the Peace, Notary Public, or other officer.

(2) Any Justice of the Peace or such other officer who has no seal of office shall in writing either above or before his or her signature state that he or she has no seal of office.

(3) In every declaration made pursuant to this section there shall be expressed the address of the party making such declaration and the particular place of his abode.

**Debts to Crown may be proved in the same manner.**

**172.** In any action or suit in any court by or on behalf of the Crown for or relating to any debt or account, the Crown shall and may prove its debts and accounts and examine its witnesses by declaration in like manner as any person may do under section 170.

**Judges, etc., empowered to administer oath or affirmation.**

**173.** Every court, Judge, Master, Magistrate, officer, commissioner, or other person having by law or by consent of parties, authority to hear, receive and examine evidence, is hereby empowered to administer an oath or affirmation to all such witnesses as are legally called before them.

**Rules and Regulations.**

**174**. (1) The Minister may make Rules or Regulations prescribing matters—

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed,

for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), Rules or Regulations made under this section may provide for the laboratories and other facilities authorised to create DNA data banks.

(3) Rules or Regulations made under this section shall be subject to a negative resolution of the National Assembly.

**Power to amend Schedules.**

**175.** The Minister may, by Order published in the *Gazette*, amend the Schedules to this Act.

———————

## FIRST SCHEDULE

*(Section 16)*

List of Acts under which wife or husband may be called as a witness without the consent of the person charged

| Chapter | Title | Parts of Act referred to |
|---|---|---|
| 4.05 | Criminal Law Amendment Act | whole Act. |
| 4.21 | Offences against the Person Act | sections 26,40,41,46 to 50(inclusive), 51, 52 and 57 |
| 4.36 | Small Charges Act | sections 13(2), 14(1), 18(1) and 24 |
| 12.11 | Married Women's Property Act | sections 14 and 18 |
| 9.11 | Infant Life Preservation Act | whole Act. |

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## SECOND SCHEDULE

*(Section 85)*

FORM OF EXPLANATION

When you were interviewed by.....

I/we* made a record in writing of what you said, and what we said to you, in the interview. I/We* made the record at the time of the interview/ as soon as practicable after the interview*. It is in English/ the language that you used in the interview.* I/We* will give you a copy.

I am now going to read it to you in the.....language that you used in the interview.

You can interrupt the reading at any time if you think there is something wrong with the record. At the end of the reading you can tell me/us* about anything else you think is wrong with the record, as well as the things you mentioned during the reading.

I/We* will make a tape recording of reading the record and everything you say, or I/we* say to you, during the reading and at the end. I/We* will give you a copy of that tape recording and, if a transcript is made, a copy of that transcript.

*Delete whichever is not applicable.

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## THIRD SCHEDULE

*(Section 171)*

FORM OF DECLARATION

I,A.B., do solemnly and sincerely declare that; and I ..... make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Evidence Act.

(Signed)

Taken this day of, before me

(Justice of the Peace, Notary Public, Officer authorised by law to administer oaths, as the case may be).

_____