ANTIGUA AND BARBUDA

THE EVIDENCE (SPECIAL PROVISIONS) ACT, 2009

No. 5 of 2009

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THE EVIDENCE (SPECIAL PROVISIONS) ACT, 2009

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[L.S.]

I Assent,

Louise Lake-Tack,
Governor-General.

6th February, 2009

ANTIGUA AND BARBUDA

THE EVIDENCE (SPECIAL PROVISIONS) ACT, 2009

No. 5 of 2009

AN ACT respecting witnesses and evidence and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

GENERAL

1. Short title and commencement

(1) This Act may be cited as the Evidence (Special Provisions) Act, 2009.

(2) This Act shall come into force on such day or days as the Minister for Legal Affairs may appoint by Notice in the *Gazette*.

(3) A Notice under subsection (2) may appoint different days for different provisions or for different purposes of the same provision.

2. Interpretation

In this Act—

"Criminal proceeding" means a prosecution for an offence and includes a proceeding to impose punishment for contempt of court.

3. Application

This Act applies to civil and criminal proceedings in every Court within Antigua and Barbuda except to all proceedings in the Industrial Court and to proceedings before the Property Valuation Appeal Board under the Property Tax and Valuation Act, 2006.

PART II

WITNESSES

4. Competency of witnesses

A person is not incompetent to give evidence by reason of interest or crime.

5. Accused and spouse

(1) Subject to this section, every person charged with an offence, and the person's wife or husband, are competent witnesses for the defence, whether the person charged is charged solely or jointly with any other person.

(2) The wife or husband of a person charged with an offence under an enactment mentioned in the Schedule is a competent and compellable witness for the prosecution or the defence without the consent of the person charged.

(3) No husband is compellable to disclose any communication made to him by his wife during their marriage, and no wife is compellable to disclose any communication made to her by her husband during their marriage.

(4) Nothing in this section affects 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.

(5) Neither the judge nor counsel for the prosecution shall comment on the failure to testify of the person charged, or of the wife or husband of that person.

6. Incriminating questions

(1) A witness is not excused from answering any question on the ground that the answer to the question may tend to—

(a) incriminate him;

(b) establish his liability to a civil proceeding at the instance of the Crown or of any person; or

(c) show that he is of bad character.

(2) Subject to subsection (3) the answer given by a witness who has objected on a ground referred to in subsection (1) is not to be used or admissible in evidence against him in a criminal proceeding if he would have been excused from answering the question but for this Act.

(3) An answer referred to in subsection (2) is admissible against the witness in a prosecution for perjury or giving contradictory evidence in which that answer is implicated.

(4) If a person charged in criminal proceedings, whether personally or by his advocate, has—

(a) asked questions of a witness for the prosecution with a view to establishing that person's own good character;

(b) given evidence of his good character;

(c) conducted his defence in such a manner as to denigrate the character of—

(i) the prosecutor;

(ii) a witness for the prosecution; or

(iii) a deceased victim of the crime with which the person has been charged; or

(d) given evidence against any other person charged in the same proceedings,

the prosecution may adduce evidence to show that the person has committed, been convicted of, or been charged with any offence other than that with which he has been charged in the proceedings.

7. Evidence of person with disability

(1) If a witness has difficulty communicating by reason of a physical disability, the court may order that the witness be permitted to give evidence by any means that enables the evidence to be intelligible.

(2) If a court determines under section 16 that a witness with a mental disability is capable of giving evidence but has difficulty communicating by reason of his disability, the court may order that the witness be permitted to give evidence by any means that enables the evidence to be intelligible.

(3) The court may conduct an inquiry to determine if the means by which a witness is permitted to give evidence under subsection (1) or (2) is necessary and reliable.

8. Identification of accused

A witness may give evidence as to the identity of an accused whom the witness is able to identify visually or in any other sensory manner.

9. Expert witness

A party may not without the leave of the court call more than five expert witnesses entitled according to law or practice to give expert opinion evidence.

10. Adverse witnesses

(1) A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character.

(2) If a witness, in the opinion of the court, proves adverse, the party producing the witness may contradict him by other evidence, or, by leave of the court, may prove that he had made at other times a statement inconsistent with the testimony being given.

(3) Before attempting to prove an inconsistency, the party attempting to prove it shall outline the circumstances of the inconsistent statement in sufficient detail to the witness, and the witness shall be given an opportunity to reply.

(4) Where the party producing a witness alleges that the witness made at another time a statement in writing, or a statement which has been reduced to writing, or recorded by a reliable means, that is inconsistent with the testimony being given by the witness, the court may, without proof that the witness is adverse, grant leave to that party to cross-examine the witness as to the statement and the court may consider the cross-examination in determining whether the witness is adverse.

11. Cross-examination as to previous statement

(1) A witness may be cross-examined as to a previous statement that the witness made in writing, or that has been reduced to writing or recorded by a reliable means, relative to the subject-matter of the case, without the writing being shown to the witness or the witness being given the opportunity to take cognizance of the statement, but the judge, at any time during the proceedings, may require the production of the writing or statement for inspection, and use it as the judge thinks fit.

(2) If a statement is intended to contradict the witness, the witness' attention shall, before the contradictory proof can be given, be called to those parts of the statement that are to be used for the purpose of contradicting the witness.

12. Cross-examination as to previous oral statement

(1) Where a witness, on cross-examination as to a statement that the witness made relative to the subject-matter of the case and inconsistent with testimony being given does not distinctly admit that he did make the statement, proof may be given that he did in fact make it.

(2) Before attempting to prove an inconsistency, the party attempting to prove it shall outline the circumstances of the inconsistent statement in sufficient detail to the witness, and the witness shall be given an opportunity to reply.

13. Examination as to previous convictions

(1) A witness may be questioned as to whether the witness has been convicted of an offence.

(2) If the witness either denies the fact or refuses to answer, the opposite party may prove the conviction by producing—

(a) a certificate purporting to be signed by an officer of the relevant court; and

(b) proof of identity.

14. Who administers oaths

Every court, and every person who, by consent or by law, has authority to hear and receive evidence, may administer an oath to a witness who is legally called to give evidence before him.

15. Solemn affirmation

(1) A person may make a solemn affirmation, which has the same effect as an oath with respect to the evidence given pursuant to it, in the following form:

> "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth.".

(2) A person making an affidavit or deposition may, instead of making an oath, make a solemn affirmation, which has the same effect as an oath with respect to the matter, in the following form:

"I, … do solemnly affirm, etc.".

(3) A witness whose evidence is admitted or who makes a solemn affirmation under this section is liable to commit perjury as though he had been sworn.

16. Witness whose capacity is in question

(1) If a proposed witness is a person of fourteen years of age or older whose mental capacity is challenged, the court shall, before permitting the person to give evidence, conduct an inquiry to determine—

(a) whether the person understands the nature of an oath or a solemn affirmation; and

(b) whether the person is able to communicate the evidence.

(2) A person referred to in subsection (1) who understands the nature of an oath or a solemn affirmation and is able to communicate the evidence shall testify under oath or solemn affirmation.

(3) A person referred to in subsection (1) who does not understand the nature of an oath or a solemn affirmation but is able to communicate the evidence may, notwithstanding any provision of any Act requiring an oath or a solemn affirmation, testify on promising to tell the truth.

(4) A person referred to in subsection (1) who neither understands the nature of an oath or a solemn affirmation nor is able to communicate the evidence shall not testify.

(5) A party who challenges the mental capacity of a proposed witness of fourteen years of age or more has the burden of satisfying the court that there is an issue as to the capacity of the proposed witness to testify under an oath or a solemn affirmation.

17. Person under fourteen years of age

(1) A person under fourteen years of age is presumed to have the capacity to testify.

(2) A proposed witness under fourteen years of age shall not take an oath or make a solemn affirmation despite a provision of any Act that requires an oath or a solemn affirmation.

(3) The evidence of a proposed witness under fourteen years of age shall be received if the proposed witness is able to understand and respond to questions.

(4) A party who challenges the capacity of a proposed witness under fourteen years of age has the burden of satisfying the court that there is an issue as to the capacity of the proposed witness to understand and respond to questions.

(5) If the court is satisfied that there is an issue as to the capacity of a proposed witness under fourteen years of age to understand and respond to questions, it shall, before permitting the proposed witness to give evidence, conduct an inquiry to determine whether he is able to understand and respond to questions.

(6) The court shall, before permitting a proposed witness under fourteen years of age to give evidence, require the proposed witness to promise to tell the truth.

(7) No proposed witness under fourteen years of age shall be asked any questions regarding his understanding of the nature of the promise to tell the truth for the purpose of determining whether his evidence is to be received by the court.

(8) If the evidence of a witness under fourteen years of age is received by the court, it shall have the same effect as if it were taken under oath.

PART III

WITNESS ANONYMITY ORDERS

18. New rules relating to anonymity of witnesses

(1) This Part provides for the making of witness anonymity orders in relation to witnesses in criminal proceedings.

(2) The common law rules relating to the power of a court to make an order for securing that the identity of a witness in criminal proceedings is withheld from the defendant (or, on a defence application, from other defendants) are abolished.

(3) Nothing in this Part shall affect the common law rules as to the withholding of information on the grounds of public interest immunity.

19. Witness anonymity orders

(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) The kinds of measures that may be required to be taken in relation to a witness include measures for securing—

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

(i) withheld; and

(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; and

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

(3) In this section "specified" means specified in the witness anonymity order concerned.

20. Applications

(1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings 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 legal representatives.

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

(a) shall inform the court and the prosecutor of the identity of the witness; but

(b) (if there is more than one defendant) 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 defendant or his legal representatives.

(4) Accordingly, 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) In this section "relevant material" 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 legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

21. Conditions for making order

(1) Where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings, the court may make such an order only if it is satisfied that—

(a) the measures to be specified in the order are necessary—

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

(ii) 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);

(b) having regard to all the circumstances, the taking of those measures would be consistent with the defendant receiving a fair trial; and

(c) it is necessary to make the order in the interests of justice by reason of the fact that it appears to the court that—

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

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

(2) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (1)*(a)*(i), 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.

22. Relevant considerations

(1) When deciding whether the conditions specified in section 21(1) 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)*(a)* are—

(a) the general right of a defendant in criminal proceedings to 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 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 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; and

(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.

23. Discharge or variation of order

(1) A court that has made a witness anonymity order in relation to any criminal proceedings may—

(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,

subsequently discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 21 and 22 that applied to the making of the order.

(2) In subsection (1), "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.

24. Warning to jury

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, 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.

25. Interpretation of Part III

In this Part—

"court" means the magistrates' court, the High Court or the Court of Appeal;

"the defendant", in relation to any criminal proceedings, means any person charged with an offence to which the proceedings relate (whether or not convicted);

"prosecutor" means an individual or body charged with duties to conduct criminal prosecutions; and

"witness", in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence at the trial or hearing in question.

PART IV

DOCUMENTARY EVIDENCE

26. Judicial notice

Every court shall take judicial notice of—

(a) all Acts of Parliament and all statutory instruments made thereunder;

(b) all public Acts of the Parliament of the United Kingdom;

(c) all orders of the Queen in Council and statutory instruments of the United Kingdom having effect in Antigua and Barbuda;

(d) the *Gazette;*

(e) the London *Gazette*; and

(f) all laws purporting to be printed or published by authority or by the Government Printer.

27. United Kingdom proclamations etc.

Proclamations, orders in council, treaties, orders, warrants, licences, certificates, rules, regulations or other official records, Acts or documents made by or on behalf of the Parliament or the Government of the United Kingdom may be proved—

(a) in the same manner as they may be provable in a court in England;

(b) by the production of a copy of the *Gazette*, or a volume of the Acts of Parliament purporting to contain a copy of them or a notice respecting them; or

(c) by the production of a copy of them purporting to be published by the Government Printer.

28. Proclamations, etc. by the Governor General or Minister

Evidence of a proclamation, order, regulation, statutory instrument or appointment, made or issued by the Governor General, or by or under the authority of a minister, and evidence of a treaty to which Antigua and Barbuda is a party, may be given by the production of—

(a) a copy of the *Gazette*, or a volume of the Acts of Parliament purporting to contain a copy of it, or a notice respecting it;

(b) a copy of the proclamation, order, regulation, appointment or treaty purporting to be published by the Government Printer; or

(c) a copy of the proclamation, order, regulation or appointment, certified to be true by the Clerk to the Senate.

29. Evidence of judicial proceedings, etc.

(1) Evidence of a proceeding or record of, in or before a court in Antigua and Barbuda, Great Britain, a British Overseas Territory or Dependency or a foreign country may be given in a proceeding by an exemplification or certified copy of the proceeding or record, purporting to be under the seal or hand of the court, without any proof of the authenticity of the seal or signature.

(2) If the court has no seal and so certifies, the evidence may be given by a copy purporting to be certified under the signature of a judge of the court, without any proof of the authenticity of the signature.

30. Certified copies

In a case in which an original record could be admitted in evidence—

(a) a copy of an official or public document of Antigua and Barbuda, purporting to be certified under the hand of the proper officer or person in whose custody the official or public document is placed; and

(b) a copy of a document, by-law, rule, regulation or proceeding, or a copy of an entry in a register or other book of a corporation, created by law, purporting to be certified under the seal of the corporation, and the hand of its presiding officer, clerk or secretary,

shall be admissible in evidence without proof of the seal of a company, or of the signature or official character of the person or persons appearing to have signed them.

31. Books and documents

Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other Act exists that renders its contents provable by means of a copy, a copy or extract of it is admissible in evidence in court, if it is proved that it is a copy or extract purporting to be certified to be true by the officer to whose custody the original was entrusted.

32. Government books and documents

A copy of an entry in a book kept in an office of the Government shall be admitted as evidence of that entry, and of the matters, transactions and accounts recorded in it, if it is proved by the oath or affidavit of an officer of the office that—

(a) the book was, at the time of the making of the entry, one of the ordinary books kept in the office;

(b) the entry was made in the usual and ordinary course of business of the office; and

(c) the copy is a true copy.

33. Proof of non-issue of document

An affidavit of an officer of an office of the Government shall be admitted in evidence as proof, in the absence of evidence to the contrary, that a licence or other document has not been issued in a particular case, if the affidavit sets out that—

(a) the office is the office that has the power by law to issue those licences or documents;

(b) the officer has charge of the appropriate records; and

(c) after careful examination and search of those records the officer has been unable to find that any such licence or document has been issued in the case.

34. Proof of mailing

An affidavit of a public officer shall be admitted in evidence as proof, in the absence of evidence to the contrary, that a request for information, notice or demand required by law has been sent in a particular case, if the affidavit—

(a) sets out that the office is the office that has the power by law to send those requests, notices or demands;

(b) sets out that the public officer has charge of the appropriate records;

(c) sets out that the public officer has knowledge of the facts of the case;

(d) sets out that the request, notice or demand was sent on a named date to the person or firm to whom it was addressed and indicating the address and how it was sent; and

(e) contains, as exhibits identified by the public officer, a true copy of the request notice of demand and a post office receipt.

35. Proof of official character

If an affidavit referred to in section 32, 33 or 34 sets out the official character of the person who made it, no further evidence is required of that official character.

36. Notice of production of book or document

No copy of a book or other document is to be admitted in evidence under the authority of any of sections 29 to 34 unless the party intending to produce the copy has given to the party against whom

it is intended to be produced such reasonable notice as the court may determine, which shall not be less than seven days.

37. Admissibility of first-hand hearsay statements in criminal proceedings

Subject to sections 42 and 43, a statement made by a person in a document including a witness statement tendered in committal proceedings shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if it is proved to the satisfaction of the court that such person—

(a) is dead;

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

(c) is outside of Antigua and Barbuda and it is not reasonably practicable to secure his attendance;

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

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

38 Admissibility of evidence as to credibility of maker of statement

(1) Where in any proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence pursuant to section 37 or section 42 and 43—

(a) any evidence which, if that person had been so called would have been admissible as relevant to his credibility as a witness, shall be admissible in the proceedings for that purpose;

(b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as witness, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the party cross-examining him; and

(c) evidence tending to prove that, whether before or after he made the statement, that person made (whether orally or in a document or otherwise) another statement inconsistent therewith, shall be admissible for the purpose of showing that the person has contradicted himself.

(2) References in subsection (1) to a person who made the statement and to his making the statement shall be construed respectively as including references to the person who supplied the

information from which the document containing the statement was derived and to his supplying that information.

39. Copies of entries in financial records

(1) Subject to this section, a copy of an entry in a book or record, whether in paper, electronic or any other form, kept in a financial institution shall be admitted in evidence as proof, in the absence of evidence to the contrary, of the entry and of the matters, transactions and accounts recorded in it.

(2) A copy shall not be admitted in evidence under this section unless it is first proved, by evidence given orally or by affidavit, by a person employed by the financial institution who has knowledge of the book or record, or the manager or accountant of the financial institution—

(a) that the book or record was, at the time of the making of the entry, one of the ordinary books or records of the financial institution;

(b) that the entry was made in the usual and ordinary course of business;

(c) that the book or record is in the custody or control of the financial institution; and

(d) that the copy is a true copy of it.

(3) Where a cheque has been drawn on a financial institution or branch of a financial institution, the affidavit of the manager or accountant of the financial institution or branch is to be admitted in evidence as proof, in the absence of evidence to the contrary, that the person purporting to have drawn the cheque has no account in the financial institution or branch, if the affidavit sets out that—

(a) the person is the manager or accountant;

(b) he has made a careful examination and search of the books and records for the purpose of ascertaining whether or not that person has an account with the financial institution or branch; and

(c) he has been unable to find such an account.

(4) If an affidavit referred to in this section sets out the official character of the person who made it, no further evidence is required of that official character.

(5) Unless the court orders otherwise for special cause, no financial institution or officer of a financial institution may be compelled to produce a book or record or appear as a witness to prove a matter, if the contents of the book or record are provable under this section and deal with the matter.

(6) The court in a legal proceeding may order that a party may inspect and take copies of an entry in the books or records of a financial institution if—

(a) the copy is required by the party to the proceeding;

(b) the party makes an application to the court; and

(c) the person whose account is to be inspected is notified of the application at least two clear days before it is to be heard—

(i) personally; or

(ii) if it is shown to the satisfaction of the court that personal notification is not feasible, by addressing it to the financial institution.

40. Business records

(1) Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record, whether in paper, electronic or any other form, made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding on production of the record.

(2) Where a record made in the usual and ordinary course of business does not contain information in respect of a matter the occurrence or existence of which might reasonably be expected to be recorded in that record, the court may, on production of the record, admit the record for the purpose of establishing that fact and may draw the inference that the matter did not occur or exist.

(3) Where it is not feasible to produce a record described in subsection (1) or (2), a copy of the record is admissible in evidence under this section as if it were the original of the record if it is accompanied by—

(a) an affidavit or a document made in conformity with the laws of a foreign State that has the force of an affidavit in that State, made by a person who states why it is not feasible to produce the record; and

(b) an affidavit or a document made in conformity with the laws of a foreign State that has the force of an affidavit in that State, made by the person who made the copy who sets out the source from which the copy was made and attests to the copy's authenticity.

(4) Where production of a record or copy described in subsection (1) or (2) would not convey to the court the information contained in the record by reason of its having been kept in a form that requires explanation, a transcript of the explanation of the record or copy is admissible in evidence under this section in the same manner as if it were the original of the record, if it is accompanied by an affidavit or a document made in conformity with the laws of a foreign State that has the force of an affidavit in that State, made by a person qualified to make the explanation—

(a) setting out the person's qualifications to make the explanation; and

(b) attesting to the accuracy of the explanation.

(5) Where part only of a record is produced under this section by a party, the court may examine any other part of the record and direct the party to produce the whole or another part of the record.

(6) The court may, for the purpose of determining whether this section applies, or for the purpose of determining the probative value to be given to information contained in a record admitted in evidence under this section, the court may—

(a) examine the record;

(b) admit any evidence in respect of the record given orally or by affidavit, including evidence as to the circumstances in which the information contained in the record was written, recorded, stored or reproduced; and

(c) draw any reasonable inference from the form or content of the record.

(7) Unless the court orders otherwise, no record or affidavit is to be admitted in evidence under this section unless the party producing the record or affidavit—

(a) gives notice of intention to produce it to each other party to the legal proceedings, at least seven days before its production; and

(b) produces it for inspection by a party who gives notice of inspection, no later than five days after receiving that notice.

(8) If an affidavit referred to in this section sets out the official character of the person who made it, no further evidence is required of that official character.

(9) Subject to section 5, any person who has or may reasonably be expected to have knowledge of the making or contents of any record produced or received in evidence under this section may, with leave of the court, be examined or cross-examined by any party to the legal proceeding.

(10) Nothing in this section renders admissible in evidence in any legal proceeding—

(a) a part of a record proven to be—

(i) a record made in the course of an investigation or inquiry;

(ii) a record made in the course of obtaining or giving legal advice or in contemplation of a legal proceeding;

(iii) a record in respect of the production of which any privilege exists and is claimed; or

(iv) a record of or alluding to a statement made by a person who is not, or if he were living and of sound mind would not be, competent and compellable to disclose in the legal proceeding a matter disclosed in the record;

(b) a record the production of which would be contrary to public policy; or

(c) a transcript or recording of evidence taken in the course of another legal proceeding.

(11) This section is in addition to and not in derogation of any other law respecting the admissibility in evidence of any record or the proof of any matter.

41. Photographic prints

(1) A print of a document or object referred to in subsection (2), whether enlarged or not, from a photographic film, shall be admissible in evidence for all purposes for which the object photographed would have been admitted, if—

(a) while the document or object was under the control of the Government or a company, the photographic film was taken of it in order to keep a permanent record of it; and

(b) the document or object photographed was subsequently destroyed by or in the presence of one or more of the employees of the Government or corporation.

(2) The documents and objects to which this section applies are—

(a) an entry in a book or record kept by the Government or a company and destroyed, lost or delivered to a customer after the photograph was taken;

(b) a bill of exchange, promissory note, cheque, receipt, instrument or document held by the Government or a company and destroyed, lost or delivered to a customer after the photograph was taken; or

(c) a record, document, plan, book or paper belonging to or deposited with the Government or a company.

(3) Evidence of compliance with the conditions prescribed by this section may be given orally or by affidavit by any one or more of the employees of the Government or company who have knowledge of the taking of the photographic film, of the destruction, loss or delivery to a customer, or of the making of the print.

42. Electronic documents

(1) A person seeking to admit an electronic document as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic document is that which it is purported to be.

(2) The best evidence rule in respect of an electronic document is satisfied—

(a) on proof of the integrity of the electronic documents system by or in which the electronic document was recorded or stored; or

(b) if an evidentiary presumption established under section 44 applies.

(3) Despite subsection (2), in the absence of evidence to the contrary, an electronic document in the form of a printout satisfies the best evidence rule if the printout has been manifestly or consistently acted on, relied on or used as a record of the information recorded or stored in the printout.

43. Presumption of integrity of electronic documents

For the purposes of section 42(2), in the absence of evidence to the contrary, the integrity of an electronic documents system by or in which an electronic document is recorded or stored shall be proved—

(a) by evidence capable of supporting a finding that at all material times the computer system or other device used by the electronic documents system was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic document and there are no other reasonable grounds to doubt the integrity of the electronic documents system;

(b) if it is established that the electronic document was recorded or stored by a party who is adverse in interest to the party seeking to introduce it; or

(c) if it is established that the electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party and who did not record or store it under the control of the party seeking to introduce it.

44. Presumption regarding secure electronic signatures

The Minister with responsibility for legal affairs may make regulations establishing evidentiary presumptions in relation to electronic documents signed with secure electronic signatures, including regulations respecting—

(a) the association of secure electronic signatures with persons; and

(b) the integrity of information contained in electronic documents signed with secure electronic signatures.

45. Standards may be considered

For the purpose of determining under any law whether an electronic document is admissible, evidence may be presented in respect of any standard, procedure, usage or practice concerning the manner in which electronic documents are to be recorded or stored, having regard to the type of endeavour that is used, recorded or stored the electronic document and the nature and purpose of the electronic document.

46. Proof by affidavit

(1) The matters referred to in and sections 42(3), 43 and 45 may be established by affidavit.

(2) A party may cross-examine a deponent of an affidavit referred to in subsection (1) that has been introduced in evidence—

(a) as of right, if the deponent is an adverse party or is under the control of an adverse party; and

(b) with leave of the court, in the case of any other deponent.

47. Application

Sections 42 to 44 do not affect any rule of law relating to the admissibility of evidence, except the rules relating to authentication and best evidence.

PART V

SENSITIVE INFORMATION

48. Government objection to disclosure of sensitive information

(1) The Attorney General may object to the disclosure of information before a court by certifying orally or in writing to the court that the information should not be disclosed on the grounds of a specified public interest.

(2) If an objection is made under subsection (1), the court shall ensure that the information is not disclosed other than in accordance with this Act.

(3) The High Court shall determine the objection and may conduct all or part of the determination in private if it is of the view that to do so is required by the public interest.

(4) In a case in which the court before which the information is to be produced is not the High Court, the application to hear the objection shall be made to the High Court within 10 days after the objection is made in that other court or within any further or lesser time that the High Court considers appropriate in the circumstances.

(5) Unless the High Court concludes that the disclosure of the information to which the objection was made under subsection (1) would encroach upon a specified public interest, the High Court may order the disclosure of the information.

(6) If the High Court concludes that the disclosure of the information to which the objection was made under subsection (1) would encroach upon a specified public interest, but that the public interest in disclosure outweighs in importance the specified public interest, the High Court may order, subject to any conditions that it considers appropriate for the limitation of the encroachment on the specified public interest, the disclosure of all of the information, a part or summary of the information, or a written admission of facts relating to the information.

(7) If the High Court does not order disclosure under subsection (5) or (6) it shall, by order, prohibit disclosure of the information.

(8) The High Court may receive anything into evidence that, in its opinion, is reliable and appropriate, even if it would not otherwise be admissible by law, and may base its decision on that evidence.

(9) An order of the High Court that authorises disclosure does not take effect until the expiry of the time provided or granted to appeal the order, or there is a judgment of the Court of Appeal that confirms the order.

(10) A person who wishes to introduce into evidence material the disclosure of which is authorised under this section, but who may not be able to do so by reason of the rules of admissibility that apply before the court before which the information is to be produced, may apply to the High Court for an order permitting the introduction into evidence of the material in a form or subject to any conditions fixed by the High Court, as long as the form and conditions comply with the disclosure order.

49. Appeal to Court of Appeal

(1) An appeal lies from a determination under section 48(5), (6) or (7) to the Court of Appeal.

(2) An appeal under subsection (1) shall be brought no later than 10 days after the date of the determination appealed from or within any further time that Court of Appeal considers appropriate in the circumstances.

(3) The Court of Appeal may conduct all or part of the appeal in private if it is of the view that to do so is required by the public interest.

50. Protection of right to fair trial

(1) A judge presiding at a criminal proceeding may make any order that he considers appropriate in the circumstances to protect the right of the accused to a fair trial, as long as that order complies with the terms of any order made section 48(5), (6) or (7) in relation to that proceeding or any judgment made on appeal of an order made under any of those subsections.

(2) The orders that may be made under subsection (1) include, but are not limited to—

(a) an order dismissing specified counts of the indictment or information, or permitting the indictment or information to proceed only in respect of a lesser or included offence;

(b) an order effecting a stay of the proceedings; and

(c) an order finding against any party on any issue relating to information the disclosure of which is prohibited.

51. Obligation when participants expect sensitive information to be disclosed

(1) A person who is asked to disclose information that the person suspects should not be disclosed on the grounds of a specified public interest, or who believes that such information is about to be disclosed, in a court proceeding, shall immediately request that the proceedings be stopped in order to permit the court to notify the Attorney General and permit him to make an objection under section 48.

(2) The court, on receiving a request under subsection (1), shall stop the proceedings and order that the Attorney General be immediately notified in writing.

(3) If the Attorney General does not make an objection under section 48 within fourteen clear days of the notification, the court may resume the proceedings.

(4) Nothing in this section disables the Attorney General from making an objection under section 48 at any time.

PART VI

EVIDENCE FOR ANOTHER JURISDICTION

52. Taking evidence for proceedings outside of Antigua and Barbuda

(1) If, on an application for that purpose, it is made to appear to the High Court that any court or tribunal outside Antigua and Barbuda before which a matter is pending, is desirous of obtaining the

testimony in relation to that matter of a party or witness within Antigua and Barbuda, a judge of the High Court may order the examination on oath on interrogatories, or otherwise, before any person named in the order, of that party or witness, and command the attendance of that party or witness for the purpose of being examined, and for the production of any writings or other documents mentioned in the order and of any other writings or documents relating to the matter in question that are in his possession or power.

(2) Testimony for the purposes of subsection (1) may be given by means of technology that permits the virtual presence of the party or witness before the court or tribunal outside Antigua and Barbuda or that permits that court or tribunal, and the parties, to hear and examine the party or witness.

(3) An order under subsection (1) may be enforced as if it were an order made by the High Court in a proceedings before it.

53. Right to refuse to testify, etc.

(1) A person examined under an order made under section 52 has the same rights to refuse to answer questions as a party or witness would have in proceedings before the High Court.

(2) Despite subsection (1), when a person gives evidence under section 52(2), the evidence is to be given as though the person were physically before the court or tribunal outside Antigua and Barbuda, for the purposes of the laws relating to evidence and procedure but only to the extent that giving the evidence would not disclose information otherwise protected by the law of non-disclosure of information or privilege of Antigua and Barbuda.

(3) When a person gives evidence under section 52(2), the law of Antigua and Barbuda relating to contempt of court applies with respect to a refusal by the person to answer a question or to produce a writing or document referred to in section 52(1).

(4) No person shall be compelled to produce, under an order made under section 52(1), any writing or other document that he could not be compelled to produce at a trial in Antigua and Barbuda.

54. Rules of court

In the absence of any Rules of Court or Orders in relation to the evidence to be produced in support of an application for an order for examination of persons under section 52, letters rogatory from a court or tribunal outside Antigua and Barbuda in which the matter is pending, are sufficient evidence in support of the application.

PART VII

EVIDENCE OBTAINED BY WARRANT, ORDER OR AUTHORISATION

55. Evidence admissible if obtained by warrant or authorisation

(1) All evidence seized pursuant to a warrant to search and seize things lawfully issued by a court in Antigua and Barbuda is admissible in evidence in a criminal proceeding.

(2) Evidence may also be collected under the provisions of an authorisation under this Part and if it is collected in accordance with the authorisation, it is admissible in evidence in a criminal proceeding in Antigua and Barbuda.

56. Authorisation

(1) A judge of the High Court may issue a warrant in writing authorising an officer of the Royal Police Force of Antigua and Barbuda, subject to this section, to use any device or investigative technique or procedure or do any thing described in the warrant that would, if not authorised, constitute an unreasonable search or seizure in respect of a person or a person's property if—

(a) the judge is satisfied by information on oath in writing that there are reasonable grounds to believe that an offence under a law has been or will be committed and that information concerning the offence will be obtained through the use of the technique, procedure or device or the doing of the thing;

(b) the judge is satisfied that it is in the best interests of the administration of justice to issue the warrant; and

(c) there is no other provision in this or any other Act that would provide for a warrant, authorisation or order permitting the technique, procedure or device to be used or the thing to be done.

(2) Nothing in subsection (1) permits interference with the bodily integrity of any person.

(3) An authorisation issued under subsection (1) shall contain the terms and conditions that the judge considers advisable to ensure that any search or seizure authorised is reasonable in the circumstances.

(4) An authorisation issued under subsection (1) that authorises an officer to observe, by means of a television camera or other similar electronic device, any person who is engaged in activity in circumstances in which any person might have a reasonable expectation of privacy shall contain such terms and conditions as the judge considers proportionate and necessary to ensure that the privacy of any person other than the person whom the officer is authorised to observe is respected as much as possible.

(5) Where before the passing of this Act an officer of the Royal Police Force of Antigua and Barbuda, special police constable or any other investigating officer who has been enlisted to assist Royal Police Force of Antigua and Barbuda has had reasonable grounds for believing that an offence had been committed and has used a device, investigative technique or procedure to obtain material evidence touching and concerning the commission of an offence, evidence obtained thereby shall be admissible in a court of law and the use of the device investigative technique or procedure shall be deemed to have been lawful.

(6) Subsection (5) shall have effect for the purposes of any criminal proceedings where the accused person has been charged before the coming into force of this Act.

57. Production of documents from electronic data

(1) For the purposes of this section—

"data" means information which is recorded for processing or is being processed by a computer system; and

"document" means a medium on which is recorded anything that is capable of being read or understood by a person, or a computer system or other device.

(2) A judge of the High Court or a magistrate may order a person other than a person under investigation for an offence under a law in force in Antigua and Barbuda—

(a) to produce documents, or copies of them certified by affidavit to be true copies, or to produce data; or

(b) to prepare a document based on documents or data already in existence and produce it.

(3) The order shall require the documents or data to be produced within the time, at the place and in the form specified and given to a police officer named in the order.

(4) Before making an order, the judge or magistrate shall be satisfied, on the basis of an *ex parte* application containing information on oath in writing, that there are reasonable grounds to believe that—

(a) an offence against a law in force in Antigua and Barbuda has been or is suspected to have been committed;

(b) the documents or data will afford evidence respecting the commission of the offence; and

(c) the person who is subject to the order has possession or control of the documents or data.

(5) The order may contain any terms or conditions that the judge or magistrate considers advisable in the circumstances, including terms and conditions to protect privileged communications between lawyers and clients.

(6) The judge or magistrate who made the order, or another High Court judge or magistrate with jurisdiction in the same place, may revoke, renew or vary the order on an ex parte application made by a police officer named in the order.

(7) Every copy of a document produced under this section, on proof by affidavit that it is a true copy, is admissible in evidence in proceedings under any law in force in Antigua and Barbuda and has the same probative force as the original document would have if it had been proved in the ordinary way.

(8) Copies of documents produced under this section need not be returned.

(9) No production order is necessary for a police officer enforcing or administering a law in force in Antigua and Barbuda to ask a person voluntarily to provide to the officer documents, data or information that the person is not prohibited by law from disclosing.

(10) Subject to subsection (12) a person named in an order made under this section may, before the period for compliance with the order expires, apply in writing to the judge or magistrate who made the order, or another High Court judge or magistrate with jurisdiction in the same place, for an exemption from the requirement to produce any document or data referred to in the order.

(11) The person may only make an application under subsection (10) if the person gives written notice to the police officer of the intention to do so, within 14 days after the order is made.

(12) An application under subsection (10) for an exemption from a requirement contained in an order made by a judge may not be made to a magistrate.

(13)The execution of a production order is suspended in respect of any document or data referred to in the application for exemption until a final decision is made in respect of the application.

(14) The judge or magistrate may grant the exemption if satisfied that—

(a) the document or data would disclose information that is privileged or otherwise protected from disclosure by law;

(b) it is unreasonable to require the applicant to produce the document or data; or

(c) the document or data is not in the possession or control of the applicant.

(15) No person is excused from complying with an order made under this section on the ground that the document or data referred to in the order may tend to incriminate that person or subject them to proceedings or a penalty.

(16) A person or entity who does not comply with a production order commits an offence and is liable on summary conviction to a fine of $100,000 or to imprisonment for a term of six months, or to both.

58. Forensic DNA analysis

(1) In this section—

"DNA" means deoxyribonucleic acid;

"forensic DNA analysis" means—

(a) in relation to a bodily substance that is taken from a person in execution of a warrant under this section, forensic DNA analysis of the bodily substance and the comparison of the results of that analysis with the results of the analysis of the DNA in the bodily substance referred to in paragraph (2)*(b)* and includes any incidental tests associated with that analysis, and

(b) in relation to a bodily substance that is provided voluntarily in the course of an investigation of an offence or is taken from a person under an order made under subsection (2) or (8) or an authorisation granted under subsection (4) or (5) or to a bodily substance referred to in paragraph (2)*(b)*, forensic DNA analysis of the bodily substance.

(2) A judge of the High Court or a magistrate may issue a warrant authorising the taking from a person, for the purpose of forensic DNA analysis, of the number of samples of one or more bodily substances required for that purpose, by means of the investigative techniques described in subsection (10) if the judge or magistrate is satisfied by information on oath, on an *ex parte* application, that it is in the best interests of the administration of justice to do so and if there are reasonable grounds to believe—

(a) that an offence has been committed;

(b) that a bodily substance has been found or obtained—

(i) at the place where the offence was committed;

(ii) on or within the body of the victim of the offence;

(iii) on anything worn or carried by the victim at the time when the offence was committed; or

(iv) on or within the body of any person or thing or at any place associated with the commission of the offence;

(c) that the person from whom the samples are to be taken was a party to the offence; and

(d) that forensic DNA analysis of a bodily substance from that person will provide evidence about whether the bodily substance referred to in paragraph *(b)* was from that person.

(3) In considering whether to issue the warrant, the judge or magistrate shall have regard to all relevant matters, including—

(a) the nature of the offence and the circumstances of its commission; and

(b) whether there is—

(i) a police officer who is able, by virtue of training or experience, to take samples of bodily substances from the person, by means of the investigative procedures described in subsection (10); or

(ii) another person who is able, by virtue of training or experience, to take, under the direction of a police officer, samples of bodily substances from the person, by means of those investigative procedures.

(4) The judge or magistrate shall make an order authorising the taking of the number of samples of bodily substances required for the purpose of forensic DNA analysis from a person who is convicted of an offence described in subsection (6) when the person is sentenced.

(5) The judge or magistrate may, on application by the prosecutor and if satisfied that it is in the best interests of the administration of justice to do so, make an order under subsection (4) in relation to a person found not criminally responsible on account of mental disorder of an offence described in subsection (6), after considering—

(a) the person's criminal record;

(b) the nature of the offence;

(c) whether the person has previously been found not criminally responsible on account of mental disorder of another offence described in subsection (6);

(d) the circumstances surrounding the commission of the offence; and

(e) the impact such an order would have on the person's privacy and security of the person.

(6) The offences for the purposes of subsections (4) and (5) are—

(a) any offence involving murder, manslaughter or homicide, or any attempt to commit such an offence;

(b) any offence involving a weapon or an explosive;

(c) kidnapping;

(d) robbery;

(e) extortion;

(f) any sexual offence or offence with respect to obscenity or obscene materials; and

(g) any offence involving, hijacking, piracy, or terrorism.

(7) Either the prosecutor or the offender may appeal from an order made under subsection (4) or (5).

(8) A magistrate may, on *ex parte* application, authorise the taking, for the purpose of forensic DNA analysis, of any number of samples of bodily substances required for that purpose, by means of the investigative procedures described in subsection (10), from a person who, on the date of the coming into force of this Act, is serving a sentence for an offence described in subsection (6), after considering—

(a) the person's criminal record;

(b) the nature of the offence;

(c) the circumstances surrounding the commission of the offence; and

(d) the impact such an order would have on the person's privacy and security of the person.

(9) Samples of bodily substances shall be taken—

(a) as soon as is practicable after the authorisation or the order is made, even if the order or authorisation to take the samples is appealed; and

(b) by a person referred to in paragraph (3)*(b)* or a person acting under the direction of such a person.

(10) The investigative techniques that are to be used in taking samples are—

(a) the plucking of individual hairs from the person, including the root sheath;

(b) the swabbing of the lips, tongue and inside cheeks of the mouth to collect epithelial cells; or

(c) the taking of blood by pricking the skin surface with a sterile lancet.

(11) The person who takes the samples shall ensure that the privacy of the person from whom the samples are being taken is respected in a manner that is reasonable in the circumstances.

(12) The person who takes the samples shall file a written report attesting to the way in which the samples were taken with the court that authorised or ordered that the samples be taken.

(13) A person who takes samples is not criminally or civilly liable for anything necessarily done with reasonable care and skill in the taking of the samples.

(14) No person shall use the results of forensic DNA analysis of a bodily substance taken under this section except in the course of an investigation of or a proceeding in respect of the offence for which the sample of the substance was taken or another offence described in subsection (6).

(15) Unless a judge of the High Court or a magistrate orders otherwise, on evidence that the bodily substance and forensic DNA analysis might reasonably be required in respect of investigation of another offence described in subsection (6), bodily substances taken pursuant to an order or authorisation under this section, and the results of forensic DNA analysis, shall be destroyed, or in the case of results in electronic form, rendered permanently inaccessible, without delay after—

(a) the results of that analysis establish that the bodily substance referred to in paragraph (2)*(b)* was not from the person from whom the sample was taken; or

(b) that person is finally acquitted of the offence and any other offence in respect of the same transaction, or is otherwise discharged.

(16) Bodily substances provided voluntarily by a person and the results of forensic DNA analysis shall be destroyed, or in the case of results in electronic form, rendered permanently inaccessible, without delay after the results of that analysis establish that the boldly substance referred to in paragraph (2)*(b)* was not from the person from whom the sample was taken.

(17) A judge of the High Court of a magistrate may, on *ex parte* application, authorise the taking from a person, for the purpose of forensic DNA analysis, of any number of additional samples of bodily substances required for that purpose, by means of the investigative procedures described in subsection (11) if—

(a) a DNA profile cannot be derived from the bodily substances already taken pursuant to an order or an authorisation under this section; or

(b) the information or bodily substances were lost.

(18) The results of a forensic DNA analysis of a sample taken under this section are admissible in evidence in proceedings under any law in force in Antigua and Barbuda.

59. Impression warrant

(1) A magistrate may issue a warrant in writing authorising a police officer to do any thing, or cause any thing to be done under the direction of the police officer, described in the warrant in order to obtain any handprint, fingerprint, footprint, foot impression, teeth impression or other print or impression of the body or any part of the body in respect of a person if the magistrate is satisfied by information on oath in writing—

(a) that there are reasonable grounds to believe that an offence against a law in force in Antigua and Barbuda has been committed and that information concerning the offence will be obtained by the print or impression; and

(b) that it is in the best interests of the administration of justice to issue the warrant.

(2) The impression obtained under this section is admissible in evidence in proceedings under any law in force in Antigua and Barbuda.

60. Authorisation to intercept telecommunications

(1) In this section—

"electro-magnetic, acoustic, mechanical or other device" means any device or apparatus that is used or is capable of being used to intercept a private communication, but does not include a hearing aid used to correct subnormal hearing of the user to not better than normal hearing;

"intercept" includes listen to, record or acquire a communication or acquire the substance, meaning or purport of a communication;

"private communication" means any oral communication, or any telecommunication, that is made by an originator who is in Antigua and Barbuda or is intended by the originator to be received by a person who is in Antigua and Barbuda and that is made under circumstances in which it is reasonable for the originator to expect that it will not be intercepted by any person other than the person intended by the originator to receive it, and includes any radio-based telephone communication that is treated electronically or otherwise for the purpose of prevent-

ing intelligible reception by any person other than the person intended by the originator to receive it; and

"radio-based telephone communication" means any radio communication that is made over apparatus that is used primarily for connection to a public switched telephone network.

(2) An application for an authorisation to be given under this section shall be made *ex parte* and in writing to a judge of the High Court and shall be signed by the Solicitor General or the Director of Public Prosecutions and shall be accompanied by an affidavit, which may be sworn on the information and belief of a police officer as to—

(a) the facts relied on to justify the belief that an authorisation should be given together with particulars of the offence;

(b) the type of private communication proposed to be intercepted;

(c) the names, addresses and occupations, if known, of all persons, the interception of whose private communications there are reasonable grounds to believe may assist the investigation of the offence, a general description of the nature and location of the place, if known, at which private communications are proposed to be intercepted and a general description of the manner of interception proposed to be used;

(d) the number of instances, if any, on which an application has been made under this section in relation to the offence on which the application was withdrawn or no authorisation was given, the date on which each application was made and the name of the judge to whom each application was made;

(e) the period for which the authorisation is requested; and

(f) unless the authorisation is with respect to an offence relating to terrorism, whether other investigative procedures have been tried and have failed or why it appears they are unlikely to succeed or that the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.

(3) An authorisation under this section may be given if the judge of the High Court to whom the application is made is satisfied—

(a) that it would be in the best interests of the administration of justice to do so;

(b) in the case of an investigation of an offence other than an offence related to terrorism, that other investigative procedures have been tried and have failed, other investigative proce-

dures are unlikely to succeed or the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures; and

(c) that the offence being investigated is not an offence under the Prevention of Terrorism Act, 2005.

(4) No authorisation may be given to intercept a private communication at the office or residence of an attorney-at-law, or at any other place ordinarily used by an attorney-at-law and by other attorneys-at-law for the purpose of consultation with clients, unless the judge to whom the application is made is satisfied that there are reasonable grounds to believe that the attorney-at-law, any other attorney-at-law practising with him, any person employed by him or any other such attorney-at-law or a member of the attorney-at-law's household has been or is about to become a party to an offence.

(5) Where an authorisation is given in relation to the interception of private communications at a place described in subsection (4), the judge by whom the authorisation is given shall include in it the terms and conditions considered advisable to protect privileged communications between attorneys-at-law and clients.

(6) An authorisation shall—

(a) state the offence in respect of which private communications may be intercepted;

(b) state the type of private communication that may be intercepted;

(c) state the identity of the persons, if known, whose private communications are to be intercepted, generally describe the place at which private communications may be intercepted, if a general description of that place can be given, and generally describe the manner of interception that may be used;

(d) contain the terms and conditions considered advisable in the public interest; and

(e) be valid for the period, not exceeding sixty days, set out in it.

(7) The Solicitor General or the Director of Public Prosecutions may designate a person or persons who may intercept private communications under authorisations.

(8) An authorisation that permits interception by means of an electro-magnetic, acoustic, mechanical or other device includes the authority to install, maintain or remove the device covertly.

(9) On an *ex parte* application, in writing, supported by affidavit, the judge who gave an authorisation referred to in subsection (8) or any other judge having jurisdiction to give such an

authorisation may give a further authorisation for the covert removal of the electro-magnetic, acoustic, mechanical or other device after the expiry of the original authorisation—

(a) under any terms or conditions that the judge considers advisable in the public interest; and

(b) during any specified period of not more than sixty days.

(10) Renewals of an authorisation may be given by a judge of the High Court on receipt of an *ex parte* application in writing signed by the Solicitor General or the Director of Public Prosecutions or a person specially designated, accompanied by an affidavit of police officer, deposing as to—

(a) the reason and period for which the renewal is required;

(b) full particulars, together with times and dates, when interceptions, if any, were made or attempted under the authorisation, and any information that has been obtained by any interception; and

(c) the number of instances, if any, on which, to the knowledge and belief of the deponent, an application has been made under this subsection in relation to the same authorisation and on which the application was withdrawn or no renewal was given, the date on which each application was made and the name of the judge to whom each application was made.

(11) A renewal of an authorisation may be given if the judge to whom the application is made is satisfied that any of the circumstances still obtain, but no renewal shall be for a period exceeding sixty days.

(12) An authorisation under this section may apply to private communications and radio-based telephone communications at the same time.

(13) All documents relating to an application made pursuant to this section shall be placed in a packet and sealed by the judge to whom the application is made immediately on determination of the application, and that packet shall be kept in the custody of the court in a place to which the public has no access or in such other place as the judge may authorise and shall not be dealt with except in accordance with subsections (14) to (17).

(14) The sealed packet may be opened and its contents removed for the purpose of dealing with an application for a further authorisation or with an application for renewal of an authorisation.

(15) A judge of the High Court may order that the sealed packet be opened and its contents removed for the purpose of copying and examining the documents contained in the packet.

(16) A judge or magistrate before whom a criminal trial is to be held may order that the sealed packet be opened and its contents removed for the purpose of copying and examining the documents contained in the packet if—

(a) a matter relevant to the authorisation or any evidence obtained pursuant to the authorisation is in issue in the trial; and

(b) the accused applies for such an order for the purpose of consulting the documents to prepare for trial.

(17) Where a sealed packet is opened, its contents shall not be destroyed except pursuant to an order of a judge of the High Court.

(18) Where proceedings have been commenced and an accused applies for an order for the copying and examination of documents pursuant to subsection (15) or (16), the judge or magistrate shall not, notwithstanding those subsections, provide any copy of any document to the accused until the prosecutor has deleted any part of the copy of the document that the prosecutor believes would be prejudicial to the public interest, including any part that the prosecutor believes could—

(a) compromise the identity of a confidential informant;

(b) compromise the nature and extent of ongoing investigations;

(c) endanger persons engaged in particular intelligence-gathering techniques and thereby prejudice future investigations in which similar techniques would be used; or

(d) prejudice the interests of innocent persons.

(19) After the prosecutor has deleted the parts of the copy of the document to be given to the accused under subsection (18), the accused shall be provided with an edited copy of the document.

(20) After the accused has received an edited copy of a document, the prosecutor shall keep a copy of the original document, and an edited copy of the document and the original document shall be returned to the packet and the packet resealed.

(21) An accused to whom an edited copy of a document has been provided pursuant to subsection (18) may request that the judge before whom the trial is to be held order that any part of the document deleted by the prosecutor be made available to the accused, and the judge shall order that a copy of any part that, in the opinion of the judge, is required in order for the accused to make full answer and defence and for which the provision of a judicial summary would not be sufficient, be made available to the accused.

61. Emergency authorisations

(1) If the urgency of the situation requires interception of private communications to commence before an authorisation could, with reasonable diligence, be obtained under section 60, an application

may be made *ex parte* to a judge of the High Court by the Solicitor General or the Director of Public Prosecutions.

(2) Where the judge is satisfied that the urgency of the situation requires that interception of private communications commence before an authorisation could, with reasonable diligence, be obtained under section 60, he may, on any terms and conditions considered advisable, give an authorisation in writing for a period of up to thirty-six hours.

62. Admissibility of intercepted private communications

(1) The contents of a private communication intercepted pursuant to an authorisation under this section are admissible in evidence in a proceeding if the party intending to adduce it has given to the accused reasonable notice of the intention together with—

(a) a transcript of the private communication, where it will be adduced in the form of a recording, or a statement setting out full particulars of the private communication, where evidence of the private communication will be given orally; and

(b) a statement respecting the time, place and date of the private communication and the parties to it, if known.

(2) Any information obtained by an interception that, but for the interception, would have been privileged remains privileged and inadmissible as evidence without the consent of the person enjoying the privilege.

PART VIII

MISCELLANEOUS

63. Application

This Act shall apply to—

(a) all civil cases where proceedings have been commenced; and

(b) all criminal prosecutions where the accused person has been charged,

before the coming into force of this Act.

64. Repeals

Sections 3, 5 – 9, 12 – 17 and 22 – 24 (all inclusive) and the Schedule of the Evidence Act (Cap. 155), and the whole of the Bankers' Books (Evidence) Act (Cap. 39) are repealed.

SCHEDULE

PARTICULAR ENACTMENTS

Section 5(2)

Chapter	Title	Parts of Act referred to
Cap. 116	Criminal Law Amendment Act	The whole Act.
Cap. 216	Infant Life Preservation Act	The whole Act.
Cap. 300	Offences against the Person Act	Sections 29, 43, 44, 49 to 53 (inclusive), 54, 55 and 60.
Cap. 405	Small Charges Act	Sections 13(2), 14(1), 16(1) and 25.
Cap. 267	Married Women's Property Act	Sections 14 and 18.

Passed the House of Representatives on the 27th day of January, 2009.

D. Gisele Isaac-Arrindell,
Speaker.

T. Thomas,
Acting Clerk to the House of Representatives.

Passed the Senate on the 30th day of January, 2009.

McKenzie Frank,
President.

T. Thomas,
Acting Clerk to the Senate.