

**EVIDENCE (PROCEEDINGS IN OTHER  
JURISDICTIONS) ACT**

**CHAPTER 5:07**

**Act  
3 of 1987**

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**Note  
on  
Subsidiary Legislation**

This Chapter contains no Subsidiary Legislation.

## CHAPTER 5:07

### EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT

#### ARRANGEMENT OF SECTIONS

##### SECTION

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**CHAPTER 5:07****EVIDENCE (PROCEEDINGS IN OTHER  
JURISDICTIONS) ACT**

3 of 1987. **AN ACT to make new provisions for enabling the High Court to assist in obtaining evidence required for the purposes of proceedings in other jurisdictions; to extend the powers of the High Court to issue process effective for securing the attendance of witnesses; and for matters connected therewith.**

Commencement.

[26th March 1987]

Short title.

1. This Act may be cited as the –

**EVIDENCE (PROCEEDINGS IN OTHER  
JURISDICTIONS) ACT.**

Interpretation.

2. (1) In this Act –

“civil proceedings”, in relation to the requesting court, means proceedings in any civil or commercial matter;

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“Court” means the High Court established under the Supreme Court Order;

“property” includes any land, chattel or other corporal property of any description;

“oath” includes an affirmation;

“request” includes any commission, order or other process issued by or on behalf of the requesting court;

“requesting court” has the meaning assigned to it by section 3.

(2) Nothing in this Act shall be construed as enabling the Court to make an order that is binding on the State or on any person in his capacity as an officer or servant of the State.

Application to  
assistance in  
obtaining  
evidence abroad.

3. Where an application is made to the Court for an order for evidence to be obtained in Dominica and the Court is satisfied that –

(a) the application is made in pursuance of a request issued by or on behalf of a court or tribunal (“the requesting court”) exercising jurisdiction in a country or territory

- (b) the evidence to which the application relates is to be obtained for the purpose of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated; and
- (c) that the legislature of the country in which the requesting court is situated has made reciprocal provisions for the grant in that country of a similar application provided for in this Act from a court or tribunal exercising jurisdiction in the Commonwealth of Dominica;

the Court shall have the powers conferred on it by the following provisions of this Act.

4. (1) Subject to the provisions of this section, the Court shall have power, on any such application as is mentioned in section 3, by order to make such provision for obtaining evidence in Dominica as may appear to the Court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the Court may consider appropriate for that purpose.

Power of Court to give effect to application for assistance.

(2) Without prejudice to the generality of subsection (1) but subject to the provisions of subsections (3), (4) and (5), an order under this section may, in particular, make provision –

- (a) for the examination of witnesses, either orally or in writing;
- (b) for the production of documents;
- (c) for the inspection, photographing, preservation, custody or detention of any property;
- (d) for the taking of samples of any property and the carrying out of experiments on or with any property;
- (e) for the medical examination of any person;
- (f) without prejudice to the generality of paragraph (e), for the taking and testing of samples of blood from one person.

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in

the Court (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony, either orally or in writing, otherwise than on oath where this is asked for by the requesting court.

(4) An order under this section shall not require a person –

- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or
- (b) to produce any documents other than particular documents specified in the order as being documents appearing to the Court to be, or to be likely to be, in his possession, custody or power.

(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on an attendance as a witness in civil proceedings before the Court.

(6) Any person who, without reasonable excuse, fails to comply with an order of the Court under this section is guilty of contempt of court and may be dealt with accordingly.

Privilege of  
witnesses.

5. (1) A person shall not be compelled by virtue of an order under section 4 to give any evidence which he could not be compelled to give –

- (a) in civil proceedings in Dominica; or
- (b) subject to subsection (2), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) shall not apply unless the claim of the person in question to be exempt from giving evidence is either –

- (a) supported by a statement contained in the request (whether it is supported unconditionally or subject to
- (b) conceded by the applicant for the order;

and where such a claim made by any person is not supported or conceded as aforesaid, he may (subject to the other provisions of this section) be required to give the evidence to which the claim relates but

that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(3) Without prejudice to subsection (1), a person shall not be compelled by virtue of an order under section 4 to give any evidence if his so doing would be prejudicial to the security of Dominica and a certificate signed by the Minister of External Affairs to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(4) In this section references to giving evidence include references to answering any question and to producing any document and the references in subsection (2) to the transmission of evidence given by a person shall be construed accordingly.

**6.** (1) The provisions of sections 3 to 5 shall have effect in relation to the obtaining of evidence for the purposes of criminal proceedings as they have in relation to the obtaining of evidence for the purposes of civil proceedings except that –

Power of Court to assist in obtaining evidence for criminal proceedings in overseas courts.

- (a) section 3 (b) shall apply only to proceedings which have been instituted; and
- (b) no order under section 4 shall make provision otherwise than for the examination of witnesses either orally or in writing, or for the production of documents.

(2) In its application by virtue of subsection (1), sections 3 and 5 shall have effect as if for the words “civil proceedings” there were substituted the words “criminal proceedings”.

**7.** (1) The President may by Order direct that, subject to such exceptions, adaptations or modifications as may be specified in the Order, the provisions of sections 3 to 5 shall have effect in relation to international proceedings of any description specified in the Order.

Power of Court to assist in obtaining evidence for international proceedings.

(2) In this section “international proceedings” means proceedings before the International Court of Justice or any other court, tribunal, commission, body or authority (whether consisting of one or more persons) which, in pursuance of any international agreement or any resolution of the General Assembly of the United Nations, exercises any jurisdiction or performs any function of a judicial nature or by way of arbitration, conciliation or inquiry or is appointed (whether permanently or temporarily) for the purposes of exercising any jurisdiction or performing any such functions

Rules of Court.  
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**8.** The power to make rules of court under section 17 of the Supreme Court Order shall include power to make rules of court –

- (a) as to the manner in which any such application as is mentioned in section 3 is to be made;
- (b) subject to the provisions of this Act, as to the circumstances in which an order under section 4 can be made; and
- (c) as to the manner in which any reference as is mentioned in section 5(2) is to be made;

and any such rules may include such incidental, supplementary and consequential provisions as the rule-making body may consider necessary or expedient.

Offences.

**9.** (1) Any person who, in giving testimony, either orally or in writing and whether on oath or not and whether in respect of an application of a court or tribunal in a country or territory outside Dominica or in respect of international proceedings, makes a statement –

- (a) which he knows to be false in a material particular; or
- (b) which is false in a material particular and which he does not believe to be true;

is liable to imprisonment for seven years.

(2) Without prejudice to the provisions of section 4(6), any person who, having been ordered to give testimony, whether on oath or not, without reasonable excuse –

- (a) fails to attend as so ordered;
- (b) refuses to take an oath if required to do so;
- (c) departs from the place where he is to give or is giving
- (d) refuses to answer any question asked of him which he may lawfully be required to answer;

is liable to imprisonment for six months.

**10. Nothing in this Act shall affect –** Savings.

- (a) any application to the Court which is pending at the coming into force of this Act;
  - (b) any certificate given for the purposes of any such application;
  - (c) any power to make an order on such an application;
  - (d) the operation or enforcement of any order made on such an application.
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