

THE EVIDENCE (AMENDMENT) ACT, 2009

Arrangement of Sections

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Second Session Ninth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 16 of 2009

[L.S.]

AN ACT to amend the Evidence Act, Chap. 7:02

[Assented to _____ *, 2009]*

WHEREAS it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And Whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And Whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:—
Short title	1. This Act may be cited as the Evidence (Amendment) Act, 2009.
Commencement	2. This Act shall come into force on a date to be fixed by the President by Proclamation.
Act inconsistent with Constitution	3. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
Interpretation Chap. 7:02	4. In this Act, “the Act” means the Evidence Act.
Section 13 amended	5. Section 13 of the Act is amended— (a) in subsection (2) by deleting the word “A” and substituting the words “Subject to section 15N, a”; and (b) by repealing subsection (3).
Section 15C amended	6. Section 15C of the Act is amended— (a) in subsection (1)— (i) in paragraph (d), by deleting the word “or”; (ii) in paragraph (e), by deleting the full stop and substituting the words “; or ”; and

(iii) by inserting after paragraph (e), the following paragraph:

“(f) is fearful and no reasonable steps can be taken to protect the person or others or to protect him or others from financial loss.”;

(b) in subsection (2), by deleting the words “subsection (1)(e)” and substituting the words “subsections (1)(a), (1)(e) and (1)(f)”; and

(c) by inserting after subsection (4) the following subsections:

“(5) For the purpose of subsection (1)(f) “fearful” is to be construed widely and includes fear of the death or injury of another person or of financial loss.

(6) A condition set out in any paragraph of subsection (1) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused—

(a) by the person in support of whose case it is sought to give the statement in evidence; or

(b) by a person acting on his behalf,

in order to prevent the person who made the statement giving oral evidence in the proceedings, whether at all or in connection with the subject matter of the statement.”.

Sections 15H, 15I, 15J,
15K, 15L, 15M, 15N,
15O, 15P, 15Q, 15R,
15S, 15T, 15U, 15V
and 15W inserted

7. The Act is amended by inserting after section 15G the following sections:

“Admissibility
of
inconsistent
statements

15H. (1) Where in criminal proceedings a person gives oral evidence and—

- (a) he admits making a previous inconsistent statement; or
- (b) a previous inconsistent statement made by him is proved by virtue of section 5, 6 or 7,

the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

(2) Where in criminal proceedings evidence of an inconsistent statement made by a person is given under section 15D(1)(c), the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

Admissibility
of evidence by
video
recording

15I. (1) This section applies where—

- (a) a person is called as a witness in proceedings for an indictable offence or for the summary trial of an indictable offence;
- (b) the witness claims or has at any time claimed to have witnessed whether visually or in any other way—
 - (i) events alleged by the prosecution to include conduct constituting the offence or part of the offence; or
 - (ii) events closely connected with the offence;

- (c) the witness has previously given a statement of the events in question, whether in response to questions asked or otherwise;
- (d) the statement was given at a time when those events were fresh in the witness's memory or would have been assuming the truth of the claim mentioned in paragraph (b);
- (e) a video recording was made of the statement;
- (f) the witness is a child and the video recording was made in the presence of an adult chosen by the witness;
- (g) the Court has made a direction that the video recording should be admitted as evidence in chief of the witness and the direction has not been rescinded; and
- (h) the video recording is played in proceedings in accordance with the direction.

(2) A direction under subsection (1)(g)—

- (a) may not be made in relation to a video recording given by the accused;
- (b) may be made only if it appears to the Court that—
 - (i) the witness's recollection of the events in question is likely to be significantly better in the video recording than it will be when he gives oral evidence in the proceedings; and

- (ii) it is in the interests of justice for the video recording to be admitted, having regard in particular to the matters mentioned in subsection (3).

(3) Those matters are—

- (a) the interval between the time of the events in question and the time when the video recording was made;
- (b) any other factors that might affect the reliability of what the witness said in the video recording;
- (c) the quality of the video recording; and
- (d) any views of the witness as to whether his evidence in chief should be given orally or by means of the video recording.

(4) Where, or to the extent that, the witness in his oral evidence in the proceedings asserts the truth of the statements made by him in the video recording, the statements shall be treated as if made by him in that evidence.

(5) The reference in subsection (1)(g) to the admission of a video recording includes a reference to the admission of any part of that recording.

(6) When considering whether or not any part of a video recording should be admitted under this section, the Court shall consider—

- (a) whether admitting that part of the recording would carry a risk of prejudice to the accused; and

(b) whether the interests of justice nevertheless requires that part of the recording to be admitted in view of the desirability of showing the whole, or substantially the whole, of the video recording.

(7) Where a video recording is admitted under this section, the witness may not give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the Court, has been dealt with adequately in the video recording.

(8) A statement made by a witness in a video recording may be admitted under this section whether or not the statement was made on oath.

(9) Nothing in this section shall affect the admissibility of any video recording which would be admissible apart from this section.

Definition of
certain terms
used

15J. In sections 15H and 15I—

“oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track.

Bad character 15K. (1) Reference to evidence of a person's bad character is to evidence of, or a disposition towards, misconduct on his part, other than evidence which—

(a) has to do with the alleged facts of the offence with which the accused is charged; or

(b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

(2) For the purpose of this section and sections 15L to 15W, "misconduct" includes the commission of an offence or other reprehensible behaviour.

Abolition of common law rules 15L. (1) The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.

(2) Subsection (1) is subject to any rule of law under which in criminal proceedings evidence of a person's reputation is admissible for the purpose of proving his bad character.

Non-accused's bad character 15M. (1) In criminal proceedings evidence of the bad character of a person, other than the accused, is admissible where—

(a) it is important explanatory evidence;

(b) it has substantial probative value in relation to a matter which—

(i) is in issue in the proceedings; and

(ii) is of substantial importance in the context of the case as a whole; or

(c) all parties to the proceedings agree to the evidence being admissible.

(2) For the purpose of subsection (1)(a), evidence is important explanatory evidence if—

(a) without it, the Court or jury would find it impossible or difficult to understand other evidence in the case; and

(b) its value in understanding the case as a whole is substantial.

(3) In assessing the probative value of evidence for the purpose of subsection (1)(b), the Court shall have regard, in particular, to the following factors—

(a) the nature and number of the events to which the evidence relates;

(b) when those events are alleged to have happened or existed;

(c) where—

(i) the evidence is evidence of a person's misconduct, and

(ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,

the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;

(d) where—

- (i) the evidence is evidence of a person's misconduct;
- (ii) it is suggested that that person is also responsible for the misconduct charged; and
- (iii) the identity of the person responsible for the misconduct charged is disputed,

the extent to which the evidence shows or tends to show that the same person was responsible each time.

(4) Except where subsection (1)(c) applies, evidence of the bad character of a person, other than the accused, must not be given without leave of the Court.

Accused
person's bad
character

15N. (1) In criminal proceedings evidence of the accused's bad character is admissible where—

- (a) all parties to the proceedings agree to the evidence being admissible;
- (b) the evidence is adduced by the accused himself or is given in answer to a question asked by him in cross-examination and intended to elicit it;
- (c) it is important explanatory evidence;
- (d) it is relevant to an important matter in issue between the accused and the prosecution;

- (e) it has substantial probative value in relation to an important matter in issue between the accused and a co-accused;
- (f) it is evidence to correct a false impression given by the accused; or
- (g) the accused has made an attack on another person's character.

(2) Sections 150 to 15S contain provisions supplementing subsection (1).

(3) The Court shall not admit evidence under subsection (1) if, on an application by the accused to exclude it, it appears to the Court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the Court ought not to admit it.

(4) On an application to exclude evidence under subsection (3) the Court shall have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.

Important
explanatory
evidence

150. For the purpose of section 15N(1)(c), evidence is important explanatory evidence if—

- (a) without it, the Court or jury would find it impossible or difficult to understand other evidence in the case; and
- (b) its value in understanding the case as a whole is substantial.

Important
matter in
issue
between the
accused and
the
prosecution

15P. (1) For the purpose of section 15N(1)(d), an important matter in issue between the accused and the prosecution includes—

(a) the question whether the accused has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;

(b) the question whether the accused has a propensity to be untruthful in any respect.

(2) Where subsection (1)(a) applies, an accused person's propensity to commit offences of the kind with which he is charged may, without prejudice to any other way of doing so, be established by evidence that he has been convicted of—

(a) an offence of the same description as the one with which he is charged; or

(b) an offence of the same category as the one with which he is charged.

(3) Subsection (2) does not apply in the case of a particular accused if the Court is satisfied, by reason of the length of time since his conviction or for any other reason that it would be unjust for the section to apply in his case.

(4) For the purpose of subsection (2)—

(a) two offences are of the same description as each other if the statement of the offence in a written charge or indictment would, in each case, be in the same terms;

(b) two offences are of the same category as each other if they belong to the same category of offences.

(5) Only prosecution evidence is admissible under section 15N(1)(d).

Important
matter in
issue between
the accused
and a
co-accused

15Q. (1) Evidence which is relevant to the question whether the accused has a propensity to be untruthful is admissible under section 15N(1)(e) only if the nature or conduct of the accused's defence is such as to undermine the co-accused's defence.

(2) Only evidence—

(a) which is to be, or has been, adduced by the co-accused; or

(b) which a witness is to be invited to give, or has given, in cross-examination by the co-accused,

is admissible under section 15N(1)(e).

Evidence to
correct a false
impression

15R. (1) For the purpose of section 15N(1)(f)—

(a) the accused gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the Court or jury a false or misleading impression about himself; and

(b) the evidence to correct such an impression is evidence which has probative value.

(2) An accused is treated as being responsible for the making of an assertion if—

(a) the assertion is made by the accused in the proceedings, whether or not in evidence given by him;

(b) the assertion was made by the accused—

(i) on being questioned under caution, before charge, about the offence with which he is charged; or

(ii) on being charged with the offence or officially informed that he may be prosecuted for it,

and evidence of the assertion is given in the proceedings;

(c) the assertion is made by a witness called by the accused;

(d) the assertion is made by a witness in cross-examination in response to a question asked by the accused that is intended to elicit the assertion, or is likely to do so; or

(e) the assertion was made by a person out of Court, and the accused adduces evidence of it in the proceedings.

(3) An accused who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he withdraws it or disassociates himself from it.

(4) Where it appears to the Court that an accused, by means of his conduct (other than the giving of evidence) in the proceedings, is seeking to give the Court or jury an impression about himself that is false or misleading, the Court may, if it appears just to do so, treat the accused as being responsible for the making of an assertion which is apt to give that impression.

(5) In subsection (4) “conduct” includes appearance or dress.

(6) Evidence is admissible under section 15N(1)(f) only if it goes no further than is necessary to correct the false impression.

(7) Only prosecution evidence is admissible under section 15N(1)(f).

Attack on
another
person's
character

15S. (1) For the purpose of section 15N(1)(g), an accused makes an attack on another person's character where—

- (a) he adduces evidence attacking the other person's character;
- (b) he, or by his attorney-at-law, asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so; or
- (c) evidence is given of an imputation about the other person which is made by the accused—
 - (i) on being questioned under caution, before charge, about the offence with which he is charged; or
 - (ii) on being charged with the offence or officially informed that he might be prosecuted for it.

(2) In subsection (1)—

“evidence attacking the other person's character” means evidence to the effect that the other person—

- (a) has committed an offence, (whether a different

offence from the one with which the accused is charged or the same one); or

(b) has behaved, or is disposed to behave, in a reprehensible way;

“imputation about the other person” means an assertion to that effect.

(3) Only prosecution evidence is admissible under section 15N(1)(g).

Stopping the case where evidence is contaminated

15T. (1) In criminal proceedings before a judge and jury where—

(a) evidence of an accused’s bad character has been admitted under section 15N(1)(c) to (g); and

(b) the Court is satisfied at any time after the close of the case for the prosecution that—

(i) the evidence is contaminated; and

(ii) the contamination is such that, considering the importance of the evidence to the case against the accused, his conviction of the offence would be unsafe,

the Court may either direct the jury to acquit the accused of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where—

(a) a jury is directed under subsection (1) to acquit an accused of an offence; and

(b) the circumstances are such that, apart from this subsection, the accused could if acquitted of that offence be found guilty of another offence, the accused may not be found guilty of that other offence if the Court is satisfied that the evidence is contaminated as mentioned in subsection (1)(b).

(3) Where—

- (a) a jury is required to determine under section 66 of the Criminal Procedure Act whether an accused Chap. 12:02 did the act charged;
- (b) evidence of the accused's bad character has been admitted under section 15N(1)(c) to (g); and
- (c) the Court is satisfied at any time after the close of the case for the prosecution that—
- (i) the evidence is contaminated; and
 - (ii) the contamination is such that, considering the importance of the evidence to the case against the accused, a finding that he did the act or made the omission would be unsafe,

the Court may either direct the jury to acquit the accused of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This section does not prejudice any other power a Court may have to direct a jury to acquit an accused of an offence or to discharge a jury.

(5) For the purpose of this section a person's evidence is contaminated where—

- (a) as a result of an agreement or understanding between that person and one or more persons; or
- (b) as a result of that person being aware of anything alleged by one or more persons whose evidence may be, or has been, given in the proceedings,

the evidence is false or misleading in any respect, or is different from what it would otherwise have been.

Offences
committed by
accused when
a child

15U. (1) In proceedings for an indictable offence or for the summary trial of an indictable offence, evidence of any previous conviction of the accused for an offence whilst under the age of eighteen is not admissible unless—

- (a) the conviction was in relation to an indictable offence or the summary trial of an indictable offence; and
- (b) the Court is satisfied that the interests of justice require the evidence to be admissible.

(2) Subsection (1) applies in addition to section 15N.

Assumption
of truth in
assessment of
relevance or
probative
value

15V. (1) Subject to subsection (2), a reference to the relevance or probative value of evidence is a reference to its relevance or probative value on the assumption that it is true.

(2) In assessing the relevance or probative value of an item of evidence a Court need not assume that the evidence is true if it appears on the basis of any material before the Court, including any evidence it decides to hear on the matter, that no Court or jury could reasonably find the evidence to be true.

Court's duty
to give
reasons for
rulings

15W. (1) Where the Court makes a relevant ruling—

- (a) it shall state in open Court, but in the absence of the jury, its reasons for the ruling; and
- (b) if it is a Magistrates' Court, it shall cause the ruling and the reasons for it to be entered in the register of the Court's proceedings.

(2) In this section "relevant ruling" means—

- (a) a ruling on whether an item of evidence is evidence of a person's bad character;
- (b) a ruling on whether an item of evidence is admissible under section 15M or 15N; or
- (c) a ruling under section 15T.

Transitional

8. This Act shall not apply to a—

(a) preliminary enquiry; or

(b) criminal trial,

which is in progress before the commencement of this Act.

Passed in the Senate this 2nd day of November , 2009.

Acting Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of 22 members of the Senate.

Acting Clerk of the Senate

Passed in the House of Representatives this 20th day of November, 2009.

Acting Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of 26 members of the House.

Acting Clerk of the House

House of Representatives amendments agreed to by the Senate on the 8th day of December, 2009.

Acting Clerk of the Senate

Senate amendments agreed to by the House of Representatives on the 9th day of December, 2009.

Acting Clerk of the House