

PARLIAMENT OFFICE
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Georgetown,
Guyana.

7th August, 2008

The following Bill which will be introduced in the National Assembly is published for general information.

S. E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 22 of 2008

EVIDENCE (AMENDMENT) BILL 2008

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of the Principal Act.

**A BILL
Intituled**

AN ACT to amend the Evidence Act.

A.D.2008

Enacted by the Parliament of Guyana:-

Short title.
Cap.5:03

1. This Act, which amends the Evidence Act, may be cited as the Evidence (Amendment) Act 2008.

Amendment of
the Principal
Act.

2. The Principal Act is amended –

(a) by the insertion immediately after section 73 of the following sections as sections 73A, 73B and 73C -

“Taking oral
evidence and
making
submissions
by audio visual
link.

73A. (1) Notwithstanding anything in this Act, the Court may, of its own motion or on the application of any party to any proceedings, whether civil or criminal, order that oral evidence be taken from, or submissions be made by, a person by audio visual link at a place outside the court room where the Court is sitting, whether that place be in or outside Guyana.

(2) An order made under subsection (1) may be made subject to such conditions and safeguards as the Court thinks fit, including but not limited to-

(a) the physical presence of a person specified, either generally or by specific order, by the Court at the place where the audio visual evidence is to be given to act as an observer; and

(b) the payment of expenses incurred in connection with taking the evidence or making submissions by using audio visual link facilities or providing the audio visual link facilities.

(3) The Court shall not make an order under subsection (1) unless the Court is satisfied that-

(a) the necessary audio visual link facilities are

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available or can reasonably be made available;

- (b) the evidence cannot be more conveniently taken in the court room where the Court is sitting; and
- (c) the order is required in the interests of justice.

(4) Any oral evidence given or submission made by a person from outside a court room by using audio visual link facilities pursuant to an order made under subsection (1) shall, for the purposes of this Act, be deemed to be the evidence given or submission made in the court room where the Court is sitting.

(5) Evidence shall not be taken by audio visual link unless the court room where the Court is sitting and the place where the evidence is to be given are, to the satisfaction of the Court, equipped with audio visual link facilities that enables-

- (a) persons who are in the court room where the Court is sitting to see and hear the person giving the evidence; and
- (b) persons who are at the place where the evidence is to be given to see and hear the persons at the court room where the Court is sitting.

(6) An oath or affirmation to be made by a person giving evidence by audio visual link may be administered either-

- (a) by means of the audio visual link, as nearly as practicable, in the same way as if the person were giving evidence in the court room where the Court is sitting; or
- (b) at the discretion of, or on behalf of, the Court at the place where the person is giving evidence by a person authorised by the Court.

(7) Where the proceedings before the Court involve a jury, and the evidence is taken by audio visual link, the

Court shall give the jury such directions as it thinks fit to ensure that the jury gives the same weight to such evidence as if the evidence had been taken in the court room where the Court is sitting.

(8) In this section-

(a) "audio visual link" means facilities, including closed-circuit television that enable video conferencing or audio and visual communication between persons at different places;

(b) "proceedings" includes-

- (i) any proceeding relating to bail;
- (ii) a committal proceeding;
- (iii) where a person has previously been remanded in custody, any subsequent proceeding with respect to the remand of the person in custody for the same offence;
- (iv) any interlocutory proceeding held in connection with any criminal proceeding;
- (v) a trial or a hearing of an appeal;

Legal
recognition of
use of audio
visual link
facilities in
civil and
criminal
proceedings.

73B. (1) A requirement by or under any written law that a person shall appear or be brought or be present before a Court is taken to be satisfied if the person appears before the Court by way of an audio visual link pursuant to an order made under section 73A (1).

(2) Any requirement of law for the presence of a person or entitlement of a person under any written law for a person to be present in proceedings before a Court concerning bail is taken to be satisfied if audio visual link is used in relation to the person pursuant to an order made under section 73A (1).

Cap.3:01

(3) Any entitlement of a person under section 24 of the Court of Appeal Act to be present in proceedings on the hearing of an appeal is taken to be satisfied if audio visual link approved by the Court of Appeal is used in relation to the person.

(4) A Court may allow a person in custody to be produced before the Court by way of audio visual link from the place of detention and such production shall be deemed to be a production or appearance of the person in custody before the Court as required under any law.

Use of audio visual link facilities for identification parades.

73C. Where a person is arrested on the suspicion of a charge of committing an offence and his identification by any other individual is considered necessary for the purpose of investigation of such offence, the Court having jurisdiction may, at the request of the officer in charge of a police station, direct the person so arrested to subject himself, along with at least three other persons as the investigating police officer may suggest, to line-up for identification by the individual in such manner as the Court may deem fit and the Court may permit audio visual link facility to be used for the purpose of the identification parade.”;

(b) by the insertion immediately after section 80, of the following sections as sections 80A and 80B-

“Questions by party who called the witness.

80A. The Court may, in its discretion, permit the party who called a witness to put any questions to that witness which might be put in cross-examination by the opposite party.

Admissibility of statement made by a witness under section 80A.

80B. A statement made by a witness under section 80A shall be admissible in any proceedings as evidence of the facts in issue or relevant thereto, or which may be proved, and it shall be a matter for the Court to determine which of the evidence tendered by the witness is true.”.

EXPLANATORY MEMORANDUM

Article 144 of the Constitution guarantees the persons charged with criminal offences a fair trial within a reasonable time by an independent and impartial court established by law. However, owing to practical difficulties, procedural requirements, lack of adequate time and heavy volume of work in courts, frequent adjournments and various other compelling reasons there has been considerable delay and arrears in courts needing urgent attention of the Government.

Hence it has become necessary to simplify the law of evidence and procedure and to introduce available modern techniques in court proceedings so that they can reduce delay and costs, ensure more effective use of manpower, court time, litigant's time and lawyers' time and make available less expensive and speedy justice to the common man.

As a part of the various reformatory measures being taken, this Bill proposes provisions for facilitating appearance of the detainees for obtaining bail, etc from the place of detention before the court by audio visual links, the taking of evidence by courts and making submissions before them by audio visual links from any place in Guyana or outside, subject to certain safeguards.

The use of audio visual technology will definitely reduce the risks of security involved in escorting, transporting and holding in custody persons who would otherwise be required to appear in court. The evidence of overseas witnesses and experts which is vital but cannot reasonably be made available in time would become available if audio visual link facilities are used in taking evidence or hearing submissions by courts. Necessary safeguards are also being put in place so that the right of a fair trial is in no way jeopardized.

In the Special Meeting of Conference of Heads of Governments on Security held in Trinidad and Tobago on 5th April 2008 it was, *inter alia*, decided that necessary enabling legislation will be made for introduction of video evidence in criminal proceedings and in identification parades of suspected persons.

The Bill also contains provisions to insert two new sections 80A and 80B in the Evidence Act so as to enable the Court to accept with due caution and care and in the light of other evidences on record the testimony of a witness who has been declared hostile by the party calling him.

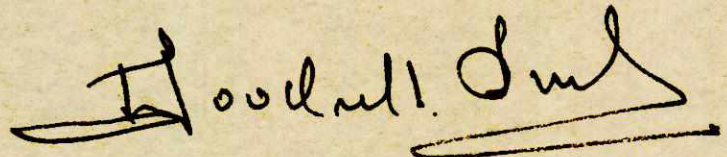
The proposed legislation seeks to achieve the above objectives.

Clause 1 of the Bill sets out the short title of the proposed legislation.

Clause 2 seeks to amend the Evidence Act (Cap. 5:03) so as to insert five new sections, namely sections 73A, 73B, 73C, 80A and 80B in the Principal Act.

Sub clause (a) seeks to insert new sections 73A, 73B and 73C in the principal Act. The proposed new section 73A seeks to give legal recognition to the taking of evidence by courts in Guyana from and out of Guyana by using audio visual links. The proposed new section 73B seeks to give legal recognition of use of audio visual link facilities in civil and criminal proceedings. The proposed new section 73C seeks to give legal recognition to the conduct of identification parades in identifying the suspected offender by using the audio visual link facilities.

Sub clause (b) seeks to insert new sections 80A and 80B relating to admissibility of evidence given by hostile witnesses at the discretion of the Court. These sections seek to empower the Court to permit the party who called a witness to put any questions to that witness which might be put in cross-examination by the opposite party and also to make provision regarding admissibility as evidence of the statement made by that witness.

A handwritten signature in black ink, appearing to read "Howard M. Smith", written over a horizontal line.

Attorney General and Minister of Legal Affairs.