



1980

c 145 Evidence Act

Ontario

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CHAPTER 145

Evidence Act

1. In this Act,

Interpre-
tation

- (a) "action" includes an issue, matter, arbitration, reference, investigation, inquiry, a prosecution for an offence committed against a statute of Ontario or against a by-law or regulation made under any such statute and any other proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of Ontario;
- (b) "court" includes a judge, arbitrator, umpire, commissioner, justice of the peace or other officer or person having by law or by consent of parties authority to hear, receive and examine evidence. R.S.O. 1970, c. 151, s. 1.

2. This Act applies to all actions and other matters whatsoever respecting which the Legislature has jurisdiction. R.S.O. 1970, c. 151, s. 2. Application
of Act

3.—(1) Where by any Act of the Legislature or order of the Assembly an oath is authorized or directed to be administered, the oath may be administered by any person authorized to take affidavits in Ontario. Administra-
tion of
oaths

(2) Every court has power to administer or cause to be administered an oath to every witness who is called to give evidence before the court. R.S.O. 1970, c. 151, s. 3. by courts

4. Where an oath or declaration is directed to be made before a person, he has power and authority to administer it and to certify to its having been made. R.S.O. 1970, c. 151, s. 4. Certification

5.—(1) Notwithstanding any Act, regulation or the rules of court, a stenographic reporter, shorthand writer, stenographer or other person who is authorized to record evidence and proceedings in an action in a court or in a proceeding authorized by or under any Act may record the evidence and the proceedings by any form of shorthand or by any device for recording sound of a type approved by the Attorney General. Recording
of evidence,
etc.

Admissibility
of
transcripts

(2) Notwithstanding any Act, regulation or the rules of court, a transcript of the whole or a part of any evidence that has or proceedings that have been recorded in accordance with subsection (1) and that has or have been certified in accordance with the Act, regulation or rule of court, if any, applicable thereto and that is otherwise admissible by law is admissible in evidence whether or not the witness or any of the parties to the action or proceeding has approved the method used to record the evidence and the proceedings and whether or not he has read or signed the transcript. R.S.O. 1970, c. 151, s. 5; 1972, c. 1, s. 9 (7).

Witnesses,
not in-
capacitated
by crime,
etc.

6. No person offered as a witness in an action shall be excluded from giving evidence by reason of any alleged incapacity from crime or interest. R.S.O. 1970, c. 151, s. 6.

Admissi-
bility not-
withstanding
interest or
crime

7. Every person offered as a witness shall be admitted to give evidence notwithstanding that he has an interest in the matter in question or in the event of the action and notwithstanding that he has been previously convicted of a crime or offence. R.S.O. 1970, c. 151, s. 7.

Evidence
of parties

8.—(1) The parties to an action and the persons on whose behalf it is brought, instituted, opposed or defended are, except as hereinafter otherwise provided, competent and compellable to give evidence on behalf of themselves or of any of the parties, and the husbands and wives of such parties and persons are, except as hereinafter otherwise provided, competent and compellable to give evidence on behalf of any of the parties.

Evidence of
husband
and wife

(2) Without limiting the generality of subsection (1), a husband or a wife may in an action give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time or within any period of time before or during the marriage. R.S.O. 1970, c. 151, s. 8.

Witness not
excused from
answering
questions
tending to
criminate

9.—(1) A witness shall not be excused from answering any question upon the ground that the answer may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person or to a prosecution under any Act of the Legislature.

Answer not
to be used
in evidence
against him

(2) If, with respect to a question, a witness objects to answer upon any of the grounds mentioned in subsection (1) and if, but for this section or any Act of the Parliament of Canada, he would therefore be excused from answering such question, then, although he is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer, the answer so given shall not be used or receivable in evidence against him in any civil proceeding

or in any proceeding under any Act of the Legislature. R.S.O. 1970, c. 151, s. 9.

10. The parties to a proceeding instituted in consequence of adultery and the husbands and wives of such parties are competent to give evidence in such proceedings, but no witness in any such proceeding, whether a party to the suit or not, is liable to be asked or bound to answer any question tending to show that he or she is guilty of adultery, unless such witness has already given evidence in the same proceeding in disproof of his or her alleged adultery. R.S.O. 1970, c. 151, s. 10.

Evidence in proceedings in consequence of adultery

11. A husband is not compellable to disclose any communication made to him by his wife during the marriage, nor is a wife compellable to disclose any communication made to her by her husband during the marriage. R.S.O. 1970, c. 151, s. 11.

Communications made during marriage

12. Where it is intended by a party to examine as witnesses persons entitled, according to the law or practice, to give opinion evidence, not more than three of such witnesses may be called upon either side without the leave of the judge or other person presiding. R.S.O. 1970, c. 151, s. 12.

Expert evidence

13. In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment or decision on his own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence. R.S.O. 1970, c. 151, s. 14.

Actions by or against heirs, etc.

14. In an action by or against a mentally incompetent person so found, or a patient in a psychiatric facility, or a person who from unsoundness of mind is incapable of giving evidence, an opposite or interested party shall not obtain a verdict, judgment or decision on his own evidence, unless such evidence is corroborated by some other material evidence. R.S.O. 1970, c. 151, s. 15.

Actions by or against persons under disability

15. An examination for discovery, or any part thereof, of an officer or servant of a corporation made under the rules of court may be used as evidence at the trial by any party adverse in interest to the corporation, subject to such protection to the corporation as the rules of court provide. R.S.O. 1970, c. 151, s. 16.

Use of examination for discovery of officer or servant of corporation at trial

Mode of
administer-
ing oath

16. Where an oath may be lawfully taken, it may be administered to a person while such person holds in his hand a copy of the Old or New Testament without requiring him to kiss the same, or, when he objects to being sworn in this manner or declares that the oath so administered is not binding upon his conscience, then in such manner and form and with such ceremonies as he declares to be binding. R.S.O. 1970, c. 151, s. 17.

Affirmation
in lieu
of oath

17.—(1) Where a person objects to being sworn from conscientious scruples, or on the ground of his religious belief, or on the ground that the taking of an oath would have no binding effect on his conscience, he may, in lieu of taking an oath, make an affirmation or declaration that is of the same force and effect as if he had taken an oath in the usual form.

Certifying
affirmation

(2) Where the evidence is in the form of an affidavit or written deposition, the person before whom it is taken shall certify that the deponent satisfied him that he was a person entitled to affirm. R.S.O. 1970, c. 151, s. 18.

Evidence
of child

18.—(1) In any legal proceeding where a child of tender years is offered as a witness and the child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of the child may be received though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

Corrobor-
ation

(2) No case shall be decided upon such evidence unless it is corroborated by some other material evidence. R.S.O. 1970, c. 151, s. 19.

Attendance
of witnesses

19. A witness served in due time with a subpoena issued out of a court in Ontario, and paid his proper witness fees and conduct money, who makes default in obeying such subpoena, without any lawful and reasonable impediment, in addition to any penalty he may incur as for a contempt of court, is liable to an action on the part of the person by whom, or on whose behalf, he has been subpoenaed for any damage that such person may sustain or be put to by reason of such default. R.S.O. 1970, c. 151, s. 20.

[The following provisions were enacted by the Province of Canada as part of Chapter 9 of 1854. They were carried into the Consolidated Statutes of Canada, 1859 as sections 4-11 and 13 of Chapter 79. They have appeared in their present form in successive revisions since Confederation. See Rideout vs Rideout (1956) O.W.N. 644.]

4. If in any action or suit depending in any of Her Majesty's Superior Courts of Law or Equity in Canada, it appears to the Court, or when not sitting, it appears to any Judge of the Court that it is proper to compel the personal attendance at any trial or *enquête* or examination of witnesses, of any person who may not be within the jurisdiction of the Court in which the action or suit is pending, the Court or Judge, in their or his discretion, may order that a writ called a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue in special form, commanding such person to attend as a witness at such trial or *enquête* or examination of witnesses wherever he may be in Canada.

Courts may issue subpoenas to any part of Canada

5. The service of any such writ or process in any part of Canada, shall be valid and effectual to all intents and purposes, as if the same had been served within the jurisdiction of the Court from which it has issued, according to the practice of such Court.

Service thereof in any part of Canada to be good

6. No such writ shall be issued in any case in which an action is pending for the same cause of action, in that section of the Province, whether Upper or Lower Canada respectively, within which such witness or witnesses may reside.

When not to be issued

7. Every such writ shall have at the foot, or in the margin thereof, a statement or notice that the same is issued by the special order of the Court or Judge making such order, and no such writ shall issue without such special order.

Writs to be specially noted

8. In case any person so served does not appear according to the exigency of such writ or process, the Court out of which the same issued, may, upon proof made of the service thereof, and of such default to the satisfaction of such Court, transmit a certificate of such default, under the seal of the same Court, to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served may reside, being out of the jurisdiction of the Court transmitting such certificate, and the Court to which such certificate is sent, shall thereupon proceed against and punish such person so having made default, in like manner as they might have done if such person had neglected or refused to appear to a writ of subpoena or other similar process issued out of such last mentioned Court.

Consequences of disobedience

9. No such certificate of default shall be transmitted by any Court, nor shall any person be punished for neglect or refusal to attend any trial or *enquête* or examination of witnesses, in obedience to any such subpoena or other similar process, unless it be made to appear to the Court transmitting and also to the Court receiving such certificate, that a reasonable and sufficient sum of money, according to the rate *per diem* and per mile allowed to witnesses by the law and practice of the Superior Court of Law within the jurisdiction of which such person was found, to defray the expenses of coming and attending to give evidence and of returning from giving evidence, had been tendered to such person at the time when the writ of subpoena, or other similar process was served upon him.

If expenses paid or tendered

10. The service of such writs of subpoena or other similar process, in Lower Canada, shall be proved by the certificate of a Bailiff within the jurisdiction where the service has been made, under his oath of office, and such service in Upper Canada by the affidavit of service endorsed on or annexed to such writ by the person who served the same.

How service proved

11. The costs of the attendance of any such witness shall not be taxed against the adverse party to such suit, beyond the amount that would have been allowed on a commission *rogatoire*, or to examine witnesses unless the Court or Judge before whom such trial or *enquête* or examination of witnesses is had, so orders.

Costs of attendance provided for

Power to issue commissions to examine witnesses preserved

13. Nothing herein contained shall affect the power of any Court to issue a commission for the examination of witnesses out of its jurisdiction, nor affect the admissibility of any evidence at any trial or proceeding, where such evidence is now by law receivable, on the ground of any witness being beyond the jurisdiction of the Court.

Examination of witnesses, proof of contradictory written statements

20. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the matter in question, without the writing being shown to him, but, if it is intended to contradict him by the writing, his attention shall, before such contradictory proof is given, be called to those parts of the writing that are to be used for the purpose of so contradicting him, and the judge or other person presiding at any time during the trial or proceeding may require the production of the writing for his inspection, and may thereupon make such use of it for the purposes of the trial or proceeding as he thinks fit. R.S.O. 1970, c. 151, s. 21.

Proof of contradictory oral statements

21. If a witness upon cross-examination as to a former statement made by him relative to the matter in question and inconsistent with his present testimony does not distinctly admit that he did make such statement, proof may be given that he did in fact make it, but before such proof is given the circumstances of the supposed statement sufficient to designate the particular occasion shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. R.S.O. 1970, c. 151, s. 22.

Proof of previous conviction of a witness

22.—(1) A witness may be asked whether he has been convicted of any crime, and upon being so asked, if he either denies the fact or refuses to answer, the conviction may be proved, and a certificate containing the substance and effect only, omitting the formal part, of the charge and of the conviction, purporting to be signed by the officer having the custody of the records of the court at which the offender was convicted, or by the deputy of the officer, is, upon proof of the identity of the witness as such convict, sufficient evidence of the conviction, without proof of the signature or of the official character of the person appearing to have signed the certificate.

Fee

(2) For such certificate, a fee of \$1 and no more may be demanded or taken. R.S.O. 1970, c. 151, s. 23.

How far a party may discredit his own witness

23. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may contradict him by other evidence, or, if the witness in the opinion of the judge or other person presiding proves adverse, such party may, by leave of the judge or other person presiding, prove that the witness made at some other time a statement inconsistent with his present testi-

mony, but before such last-mentioned proof is given the circumstances of the proposed statement sufficient to designate the particular occasion shall be mentioned to the witness and he shall be asked whether or not he did make such statement. R.S.O. 1970, c. 151, s. 24.

24. Letters patent under the Great Seal of the United Kingdom, or of any other of Her Majesty's dominions, may be proved by the production of an exemplification thereof, or of the enrolment thereof, under the Great Seal under which such letters patent were issued, and such exemplification has the like force and effect for all purposes as the letters patent thereby exemplified or enrolled, as well against Her Majesty as against all other persons whomsoever. R.S.O. 1970, c. 151, s. 25. Letters patent

25.—(1) Copies of statutes, official gazettes, ordinances, regulations, proclamations, journals, orders, appointments to office, notices thereof and other public documents purporting to be printed by or under the authority of the Parliament of the United Kingdom, or of the Imperial Government or by or under the authority of the government or of any legislative body of any dominion, commonwealth, state, province, colony, territory or possession within the Queen's dominions, shall be admitted in evidence to prove the contents thereof. R.S.O. 1970, c. 151, s. 26. Copies of statutes, etc.

(2) Copies of the statutes of Ontario that are translated into the French language and that purport to be published by the Ministry of the Attorney General and printed by the Queen's Printer shall be admitted in evidence to prove the contents thereof but, in the event of a conflict between the version published under the *Statutes Act* and the French language translation, the version published under the *Statutes Act* shall prevail. 1979, c. 48, s. 1. Copies of French translation
R.S.O. 1980, c. 483

26. *Prima facie* evidence of a proclamation, order, regulation or appointment to office made or issued, Proclamations, orders, etc.

- (a) by the Governor General or the Governor General in Council, or other chief executive officer or administrator of the Government of Canada; or
- (b) by or under the authority of a minister or head of a department of the Government of Canada or of a provincial or territorial government in Canada; or
- (c) by a Lieutenant Governor or Lieutenant Governor in Council or other chief executive officer or administrator of Ontario or of any other province or territory in Canada,

may be given by the production of,

- (d) a copy of the *Canada Gazette* or of the official gazette for a province or territory purporting to contain a notice of such proclamation, order, regulation or appointment; or
- (e) a copy of such proclamation, order, regulation or appointment purporting to be printed by the Queen's Printer or by the government printer for the province or territory; or
- (f) a copy of or extract from such proclamation, order, regulation or appointment purporting to be certified to be a true copy by such minister or head of a department or by the clerk, or assistant or acting clerk of the executive council or by the head of a department of the Government of Canada or of a provincial or territorial government or by his deputy or-acting deputy. R.S.O. 1970, c. 151, s. 27.

Orders
signed by
Secretary
of State or
Provincial
Secretary

27. An order in writing purporting to be signed by the Secretary of State of Canada and to be written by command of the Governor General shall be received in evidence as the order of the Governor General and an order in writing purporting to be signed by a member of the Executive Council and to be written by command of the Lieutenant Governor shall be received in evidence as the order of the Lieutenant Governor. R.S.O. 1970, c. 151, s. 28, *revised*.

Notices in
Gazette

28. Copies of proclamations and of official and other documents, notices and advertisements printed in the *Canada Gazette*, or in *The Ontario Gazette*, or in the official gazette of any province or territory in Canada are *prima facie* evidence of the originals and of the contents thereof. R.S.O. 1970, c. 151, s. 29.

Public
or official
documents

29. Where the original record could be received in evidence, a copy of an official or public document in Ontario, purporting to be certified under the hand of the proper officer, or the person in whose custody such official or public document is placed, or of a document, by-law, rule, regulation or proceeding, or of an entry in a register or other book of a corporation, created by charter or statute in Ontario, purporting to be certified under the seal of the corporation and the hand of the presiding officer or secretary thereof, is receivable in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof. R.S.O. 1970, c. 151, s. 30.

Privilege in
case of
official
documents

30. Where a document is in the official possession, custody or power of a member of the Executive Council, or of the head of a ministry of the public service of Ontario, if the

deputy head or other officer of the ministry has the document in his personal possession, and is called as a witness, he is entitled, acting herein by the direction and on behalf of such member of the Executive Council or head of the ministry, to object to producing the document on the ground that it is privileged, and such objection may be taken by him in the same manner, and has the same effect, as if such member of the Executive Council or head of the ministry were personally present and made the objection. R.S.O. 1970, c. 151, s. 31; 1972, c.1, s. 2.

31. A copy of an entry in a book of account kept in a department of the Government of Canada or of Ontario shall be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded, if it is proved by the oath or affidavit of an officer of the department that such book was, at the time of the making of the entry, one of the ordinary books kept in the department, that the entry was apparently, and as the deponent believes, made in the usual and ordinary course of business of the department, and that such copy is a true copy thereof. R.S.O. 1970, c. 151, s. 32.

32.—(1) 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, a copy thereof or extract therefrom is admissible in evidence if it is proved that it is an examined copy or extract, or that it purports to be signed and certified as a true copy or extract by the officer to whose custody the original was entrusted.

(2) Such officer shall furnish the certified copy or extract to any person applying for it at a reasonable time, upon his paying therefor a sum not exceeding 10 cents for every folio of 100 words. R.S.O. 1970, c. 151, s. 33.

33.—(1) In this section, “bank” means a bank to which the *Bank Act* (Canada) applies or the Province of Ontario Savings Office, and includes a branch, agency or office of any of them.

(2) Subject to this section, a copy of an entry in a book or record kept in a bank is in any action to which the bank is not a party *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.

(3) A copy of an entry in such book or record shall not be received in evidence under this section unless it is first proved that the book or record was at the time of making the entry one of the ordinary books or records of the bank, that the entry was made in the usual and ordinary course of business, that the book of record is in the custody or control of the bank,

or its successor, and that such copy is a true copy thereof, and such proof may be given by the manager or accountant, or a former manager of the bank or its successor, and may be given orally or by affidavit.

Production of books to be required only under order

(4) A bank or officer of a bank is not, in an action to which the bank is not a party, compellable to produce any book or record the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court or a judge made for special cause.

Inspection of account

(5) On the application of a party to an action, the court or judge may order that such party be at liberty to inspect and take copies of any entries in the books or records of a bank for the purposes of such proceeding, but a person whose account is to be inspected shall be served with notice of the application at least two clear days before the hearing thereof, and, if it is shown to the satisfaction of the court or judge that such person cannot be notified personally, such notice may be given by addressing it to the bank.

Costs

(6) The costs of an application to a court or judge under or for the purposes of this section, and the costs of any thing done or to be done under an order of a court or judge made under or for the purposes of this section, are in the discretion of the court or judge who may order such costs or any part thereof to be paid to a party by the bank, where such costs have been occasioned by a default or delay on the part of the bank, and any such order against a bank may be enforced as if the bank were a party to the proceeding. R.S.O. 1970, c. 151, s. 34.

Interpretation

34.—(1) In this section,

(a) “person” includes,

- (i) the Government of Canada and of a province of Canada, and a department, commission, board or branch of any such government,
- (ii) a corporation, its successors and assigns, and
- (iii) the heirs, executors, administrators or other legal representatives of a person;

(b) “photographic film” includes any photographic plate, microphotographic film and photostatic negative, and “photograph” has a corresponding meaning.

Admissible in evidence

(2) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement, document, plan or a record or book or entry therein kept or held by a person,

- (a) is photographed in the course of an established practice of such person of photographing objects of the same or a similar class in order to keep a permanent record thereof; and
- (b) is destroyed by or in the presence of such person or of one or more of his employees or delivered to another person in the ordinary course of business or lost,

a print from the photographic film is admissible in evidence in all cases and for all purposes for which the object photographed would have been admissible.

(3) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement or other executed or signed document was so destroyed before the expiration of six years from, Court may refuse to admit in evidence

- (a) the date when in the ordinary course of business either the object or the matter to which it related ceased to be treated as current by the person having custody or control of the object ; or
- (b) the date of receipt by the person having custody or control of the object of notice in writing of a claim in respect of the object or matter prior to the destruction of the object,

whichever is the later date, the court may refuse to admit in evidence under this section a print from a photographic film of the object.

(4) Where the photographic print is tendered by a government or the Bank of Canada, subsection (3) does not apply. Exception

(5) Proof of compliance with the conditions prescribed by this section may be given by any person having knowledge of the facts either orally or by affidavit sworn before a notary public, and, unless the court otherwise orders, a notarial copy of any such affidavit is admissible in evidence in lieu of the original affidavit. R.S.O. 1970, c. 151, s. 35. Proof of compliance with conditions

35.—(1) In this section,

Interpretation

- (a) “business” includes every kind of business, profession, occupation, calling, operation or activity, whether carried on for profit or otherwise ;
- (b) “record” includes any information that is recorded or stored by means of any device.

Where
business
records
admissible

(2) Any writing or record made of any act, transaction, occurrence or event is admissible as evidence of such act, transaction, occurrence or event if made in the usual and ordinary course of any business and if it was in the usual and ordinary course of such business to make such writing or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter.

Notice and
production

(3) Subsection (2) does not apply unless the party tendering the writing or record has given at least seven days notice of his intention to all other parties in the action, and any party to the action is entitled to obtain from the person who has possession thereof production for inspection of the writing or record within five days after giving notice to produce the same.

Surrounding
circum-
stances

(4) The circumstances of the making of such a writing or record, including lack of personal knowledge by the maker, may be shown to affect its weight, but such circumstances do not affect its admissibility.

Previous
rules as
to admissi-
bility and
privileged
documents
not affected

(5) Nothing in this section affects the admissibility of any evidence that would be admissible apart from this section or makes admissible any writing or record that is privileged. R.S.O. 1970, c. 151, s. 36.

Judicial
notice to be
taken of
signatures of
judges, etc.

36.—(1) All courts, judges, justices, masters, clerks of courts, commissioners and other officers acting judicially, shall take judicial notice of the signature of any judge of any court in Canada, in Ontario and in every other province and territory in Canada, where his signature is appended or attached to a decree, order, certificate, affidavit, or judicial or official document.

Interpre-
tation

R.S.O. 1980,
cc. 285, 126

(2) The members of the Canadian Transport Commission and of the Ontario Municipal Board, the Mining and Lands Commissioner appointed under the *Ministry of Natural Resources Act* and a referee appointed under the *Drainage Act* shall be deemed judges for the purposes of this section. R.S.O. 1970, c. 151, s. 37; 1973, c. 105, s. 4.

Proof of
hand-
writing, when
not required

37. No proof is required of the handwriting or official position of a person certifying to the truth of a copy of or extract from any proclamation, order, regulation or appointment, or to any matter or thing as to which he is by law authorized or required to certify. R.S.O. 1970, c. 151, s. 38.

Foreign
judgments,
etc., how
proved

38. A judgment, decree or other judicial proceeding recovered, made, had or taken in the Supreme Court of Judicature or in any court of record in England or Ireland or in any of the superior courts of law, equity or bankruptcy in

Scotland, or in any court of record in Canada, or in any of the provinces or territories in Canada, or in any British colony or possession, or in any court of record of the United States of America, or of any state of the United States of America, may be proved by an exemplification of the same under the seal of the court without any proof of the authenticity of such seal or other proof whatever, in the same manner as a judgment, decree or other judicial proceeding of the Supreme Court in Ontario may be proved by an exemplification thereof. R.S.O. 1970, c. 151, s. 39.

39.—(1) A copy of a notarial act or instrument in writing made in Quebec before a notary and filed, enrolled or enregistered by such notary, certified by a notary or prothonotary to be a true copy of the original thereby certified to be in his possession as such notary or prothonotary, is receivable in evidence in the place and stead of the original, and has the same force and effect as the original would have if produced and proved. Copies of notarial acts in Quebec admissible

(2) The proof of such certified copy may be rebutted or set aside by proof that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may, by the law of Quebec, be taken before a notary, or be filed, enrolled or enregistered by a notary. R.S.O. 1970, c. 151, s. 40. How impeached

40. A protest of a bill of exchange or promissory note purporting to be under the hand of a notary public wherever made is *prima facie* evidence of the allegations and facts therein stated. R.S.O. 1970, c. 151, s. 41. Protests of bills and notes

41. Any note, memorandum or certificate purporting to be made by a notary public in Canada, in his own handwriting or to be signed by him at the foot of or embodied in any protest, or in a regular register of official acts purporting to be kept by him is *prima facie* evidence of the fact of notice of non-acceptance or non-payment of a bill of exchange or promissory note having been sent or delivered at the time and in the manner stated in such note, certificate or memorandum. R.S.O. 1970, c. 151, s. 42. Effect of certain certificates of notaries

42. In proving a title under a sheriff's conveyance based upon an execution issued from a small claims court, it is sufficient to prove the judgment recovered in the small claims court without proof of any prior proceedings. R.S.O. 1970, c. 151, s. 43. Proving titles under small claims court executions

Solemn
declaration

43. Any person authorized to take declarations in Ontario may receive the solemn declaration of any person in attestation of the truth of any fact or of any account rendered in writing and, subject to subsection (2), the declaration and any declaration authorized or required by any Act of the Legislature shall be in the following form:

I,, solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Declared before me
at the of
this day of , 19

A Commissioner, etc.

R.S.O. 1970, c. 151, s. 44 (1).

Oaths, etc.,
administered
by commis-
sioned
officers

44.—(1) An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made in or outside Ontario before a person who holds a commission as an officer in the Canadian Forces and is on full-time service is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made in Ontario before a commissioner for taking affidavits in Ontario.

Admissi-
bility

(2) A document that purports to be signed by a person mentioned in subsection (1) in testimony of an oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made before him and on which his rank and unit are shown below his signature is admissible in evidence without proof of his signature or of his rank or unit or that he is on full-time service. R.S.O. 1970, c. 151, s. 45.

Oaths, etc.,
administered
outside
Ontario

45.—(1) An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made outside Ontario before,

- (a) a judge;
- (b) a magistrate;
- (c) an officer of a court of justice;
- (d) a commissioner for taking affidavits or other competent authority of the like nature;

- (e) a notary public;
- (f) the head of a city, town, village, township or other municipality;
- (g) an officer of any of Her Majesty's diplomatic or consular services, including an ambassador, envoy, minister, charge d'affaires, counsellor, secretary, attache, consul-general, consul, vice-consul, pro-consul, consular agent, acting consul-general, acting consul, acting vice-consul and acting consular agent;
- (h) an officer of the Canadian diplomatic, consular or representative services, including, in addition to the diplomatic and consular officers mentioned in clause (g), a high commissioner, permanent delegate, acting high commissioner, acting permanent delegate, counsellor and secretary; or
- (i) a Canadian Government trade commissioner or assistant trade commissioner,

exercising his functions or having jurisdiction or authority as such in the place in which it is administered, sworn, affirmed or made, is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made in Ontario before a commissioner for taking affidavits in Ontario.

(2) An oath, affidavit, affirmation or statutory declaration ^{Idem} administered, sworn, affirmed or made outside Ontario before a notary public for Ontario or before a commissioner for taking affidavits in Ontario is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made in Ontario before a commissioner for taking affidavits in Ontario.

(3) A document that purports to be signed by a person ^{Admissibility} mentioned in subsection (1) or (2) in testimony of an oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made before him, and on which his office is shown below his signature, and

- (a) in the case of a notary public, that purports to have impressed thereon or attached thereto his official seal;
- (b) in the case of a person mentioned in clause (1) (f), that purports to have impressed thereon or attached thereto the seal of the municipality;

- (c) in the case of a person mentioned in clause (1) (g), (h) or (i), that purports to have impressed thereon or attached thereto his seal or the seal or stamp of his office or of the office to which he is attached,

is admissible in evidence without proof of his signature or of his office or official character or of the seal or stamp and without proof that he was exercising his functions or had jurisdiction or authority in the place in which the oath, affidavit, affirmation or statutory declaration was administered, sworn, affirmed or made. R.S.O. 1970, c. 151, s. 46.

Formal defects, when not to vitiate

R.S.O. 1980, c. 75

46. No informality in the heading or other formal requisites to any affidavit, declaration or affirmation made or taken before a commissioner or other person authorized to take affidavits under the *Commissioners for taking Affidavits Act*, or under this Act, is any objection to its reception in evidence if the court or judge before whom it is tendered thinks proper to receive it. R.S.O. 1970, c. 151, s. 47.

Affidavit sworn by solicitor for a party

47. An affidavit or declaration is not inadmissible or unusable in evidence in an action for the reason only that it is made before the solicitor of a party to the action or before the partner, associate, clerk or agent of such solicitor. 1976, c. 17, s. 1.

Admissibility of copies of depositions

48. Where an examination or deposition of a party or witness has been taken before a judge or other officer or person appointed to take it, copies of it, certified under the hand of the judge, officer or other person taking it, shall, without proof of the signature, be received and read in evidence, saving all just exceptions. R.S.O. 1970, c. 151, s. 48.

Effect of probate, etc., as evidence of will, etc.

49. In order to establish a devise or other testamentary disposition of or affecting real estate, probate of the will or letters of administration with the will annexed containing such devise or disposition, or a copy thereof, under the seal of the surrogate court granting the same, or under the seal of the Supreme Court, where the probate or letters of administration were granted by the former court of probate for Upper Canada, are *prima facie* evidence of the will and of its validity and contents. R.S.O. 1970, c. 151, s. 49.

Proof in the case of will of real estate filed in courts outside Ontario

50.—(1) Where a person dies in any of Her Majesty's possessions outside Ontario having made a will sufficient to pass real estate in Ontario, purporting to devise, charge or affect real estate in Ontario, the party desiring to establish any such disposition, after giving one month's notice to the opposite party to the proceeding of his intentions so to do,

may produce and file the probate of the will or letters of administration with the will annexed or a certified copy thereof under the seal of the court that granted the same with a certificate of the judge, registrar or clerk of such court that the original will is filed and remains in the court and purports to have been executed before two witnesses, and such probate or letters of administration or certified copy with such certificate is, unless the court otherwise orders, *prima facie* evidence of the will and of its validity and contents.

(2) The production of the certificate mentioned in subsection (1) is sufficient *prima facie* evidence of the facts therein stated and of the authority of the judge, registrar or clerk, without proof of his appointment, authority or signature. R.S.O. 1970, c. 151, s. 50. Effect of certificate

51. The production of a certificate, purporting to be signed by an authority authorized in that behalf by the *National Defence Act* or by regulations made thereunder, stating that the person named in the certificate died, or was deemed to have died, on a date set forth therein, is *prima facie* proof for any purpose to which the authority of the Legislature extends that the person so named died on that date, and also of the office, authority and signature of the person signing the certificate, without any proof of his appointment, authority or signature. R.S.O. 1970, c. 151, s. 51. Military records R.S.C. 1970, c. N-4

52.—(1) Any medical report obtained by or prepared for a party to an action and signed by a legally qualified medical practitioner licensed to practise in any part of Canada is, with the leave of the court and after at least seven days notice has been given to all other parties, admissible in evidence in the action. Medical reports

(2) Unless otherwise ordered by the court, a party to an action is entitled to obtain the production for inspection of any report of which notice has been given under subsection (1) within five days after giving notice to produce the report. Notice and production

(3) Except by leave of the judge presiding at the trial, a legally qualified medical practitioner who has medically examined any party to the action shall not give evidence at the trial touching upon such examination unless a report thereof has been given to all other parties in accordance with subsection (1). Report required

(4) Where a legally qualified medical practitioner has been required to give evidence *viva voce* in an action and the court is of opinion that the evidence could have been produced as effectively by way of a medical report, the court may order the Where doctor called unnecessarily

party that required the attendance of the medical practitioner to pay as costs therefor such sum as it considers appropriate. R.S.O. 1970, c. 151, s. 52.

Interpretation
R.S.O. 1980,
c. 445

53.—(1) In this section, “instrument” has the meaning assigned to it in section 1 of the *Registry Act*.

Registered
instrument
as evidence

(2) A copy of an instrument or memorial, certified under the hand and seal of office of the land registrar, in whose office it is deposited, filed, kept or registered, to be a true copy, is *prima facie* evidence of the original, except in the cases provided for in subsection (3).

Where certified
copies of registered
instruments
may be used

(3) Where it would be necessary to produce and prove an instrument or memorial that has been so deposited, filed, kept or registered in order to establish such instrument or memorial and the contents thereof, the party intending to prove it may give notice to the opposite party, at least ten days before the trial or other proceeding in which the proof is intended to be adduced, that he intends at the trial or other proceeding to give in evidence, as proof of the instrument or memorial, a copy thereof certified by the land registrar, under his hand and seal of office, and in every such case the copy so certified is sufficient evidence of the instrument or memorial and of its validity and contents unless the party receiving the notice, within four days after such receipt, gives notice that he disputes its validity, in which case the costs of producing and proving it may be ordered to be paid by any or either of the parties as is considered just. R.S.O. 1970, c. 151, s. 53.

Filing copies
of official
documents

54.—(1) Where a public officer produces upon a subpoena an original document, it shall not be deposited in court unless otherwise ordered, but, if the document or a copy is needed for subsequent reference or use, a copy thereof or of so much thereof as is considered necessary, certified under the hand of the officer producing the document or otherwise proved, shall be filed as an exhibit in the place of the original, and the officer is entitled to receive in addition to his ordinary fees the fees for any certified copy, to be paid to him before it is delivered or filed.

When
original to
be retained

(2) Where an order is made that the original be retained, the order shall be delivered to the public officer and the exhibit shall be retained in court and filed. R.S.O. 1970, c. 151, s. 54.

Proof of
certain
written
instruments

55.—(1) A party intending to prove the original of a telegram, letter, shipping bill, bill of lading, delivery order, receipt, account or other written instrument used in business or other transactions, may give notice to the opposite party,

ten days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends to give in evidence as proof of the contents a writing purporting to be a copy of the documents, and in the notice shall name some convenient time and place for the inspection thereof.

(2) Such copy may then be inspected by the opposite party, and is without further proof sufficient evidence of the contents of the original document, and shall be accepted and taken in lieu of the original, unless the party receiving the notice within four days after the time mentioned for such inspection gives notice that he intends to dispute the correctness or genuineness of the copy at the trial or proceeding, and to require proof of the original, and the costs attending any production or proof of the original document are in the discretion of the court. R.S.O. 1970, c. 151, s. 55. Inspection

56. It is not necessary to prove, by the attesting witness, an instrument to the validity of which attestation is not requisite. R.S.O. 1970, c. 151, s. 56. Where no attestation required

57. Comparison of a disputed writing with a writing proved to the satisfaction of the court to be genuine shall be permitted to be made by a witness, and such writings and the evidence of witnesses respecting them may be submitted to the court or jury as evidence of the genuineness or otherwise of the writing in dispute. R.S.O. 1970, c. 151, s. 57. Comparison of disputed writing with genuine

58. Where a document is received in evidence, the court admitting it may direct that it be impounded and kept in such custody for such period and subject to such conditions as seem proper, or until the further order of the court or of the Supreme Court or of a judge thereof or of a county or district court, as the case may be. R.S.O. 1970, c. 151, s. 58. Where instruments offered in evidence may be impounded

59. It is not necessary in an action to produce any evidence that, by section 1 of the *Vendors and Purchasers Act*, is dispensed with as between vendor and purchaser, and the evidence declared to be sufficient as between vendor and purchaser is *prima facie* sufficient for the purposes of the action. R.S.O. 1970, c. 151, s. 59. Evidence dispensed with under R.S.O. 1980, c. 520

60.—(1) Where it is made to appear to the Supreme Court or a judge thereof, or to a judge of a county or district court, that a court or tribunal of competent jurisdiction in a foreign country has duly authorized, by commission, order or other process, the obtaining of the testimony in or in relation to an action, suit or proceeding pending in or before such foreign court or tribunal, of a witness out of the jurisdiction thereof and within the jurisdiction of the court or judge so Evidence for foreign tribunals

applied to, such court or judge may order the examination of such witness before the person appointed, and in the manner and form directed by the commission, order or other process, and may, by the same or by a subsequent order, command the attendance of a person named therein for the purpose of being examined, or the production of a writing or other document or thing mentioned in the order, and may give all such directions as to the time and place of the examination, and all other matters connected therewith as seem proper, and the order may be enforced, and any disobedience thereto punished, in like manner as in the case of an order made by the same court or judge in an action pending in such court or before such judge.

Payment of
expenses of
witness

(2) A person whose attendance is so ordered is entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in the Supreme Court.

Right of
refusal to
answer
questions
and to
produce
documents

(3) A person examined under such commission, order or process has the like right to object to answer questions tending to criminate himself, and to refuse to answer any questions that, in an action pending in the court by which or by a judge whereof or before the judge by whom the order for examination was made, the witness would be entitled to object or to refuse to answer, and no person shall be compelled to produce at the examination any writing, document or thing that he could not be compelled to produce at the trial of such an action.

Administra-
tion of oath

(4) Where the commission, order or other process, or the instructions of the court accompanying the same, direct that the person to be examined shall be sworn or shall affirm, the person so appointed has authority to administer the oath to him or take his affirmation. R.S.O. 1970, c. 151, s. 60.