

UNEDITED

The Evidence Act

being

Chapter 60 of *The Revised Statutes of Saskatchewan, 1909*
(effective March 15, 1911).

FOR HISTORICAL REFERENCE ONLY

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER 60

An Act respecting Witnesses and Evidence

SHORT TITLE

Short title

- 1 This Act may be cited as “*The Evidence Act*”.

1907, c.12, s.1; R.S.S. 1909, c.60, s.1.

APPLICATION OF ACT

Application

- 2 This Act shall apply to all proceedings and matters whatsoever respecting which the Legislature of Saskatchewan has jurisdiction in this behalf.

1907, c.12, s.2; R.S.S. 1909, c.60, s.2.

STATUTES AND ORDINANCES

Statutes of Imperial Parliament, of the Parliament of Canada, and of the Provincial Legislature, etc., printed by the King's or government printer of the place made evidence

- 3 In any proceedings or matters whenever it becomes necessary or expedient to prove or give in evidence any Statute of the Imperial Parliament, any Statute or Ordinance of Canada, of this province or of the late province of Canada or of the North-West Territories or of any province or territory forming part of Canada whether such Statute or Ordinance was passed before or after the passing of *The British North America Act 1867*, any copy of any such Statute or Ordinance purporting to be printed and published by the King's printer or the government printer for Great Britain or Canada or for such province or territory shall be receivable and received in evidence to prove the contents thereof in every court or tribunal having cognizance of such proceedings.

1901, c.12, s.3; R.S.S. 1909, c.60, s.3.

PUBLIC DOCUMENTS

How imperial proclamations, Orders in Council, etc., may be proved

- 4 Imperial proclamations, orders in council, treaties, orders, warrants, licenses, certificates, rules, regulations or other imperial official records, Acts or documents may be proved

- (a) In the same manner as the same are from time to time provable in any court in England; or
- (b) By the production of a copy of *The Canada Gazette* or a volume of the Acts of the Parliament of Canada purporting to contain a copy of the same or a notice thereof; or
- (c) By the production of a copy thereof purporting to be printed by the King's printer for Canada or by the government printer for Saskatchewan.

1907, c.12, s.4; R.S.S. 1909, c.60, s.4.

How proclamations, Orders in Council, etc., of the Governor General, etc., may be proved

5 Evidence of any proclamation, order, regulation or appointment made or issued by the Governor General or by the Governor in Council or other chief executive officer or administrator for the time being of the Government of Canada or by or under the authority of any minister or head of any department of the Government of Canada may be given in all or any of the modes hereinafter mentioned, that is to say:

- (a) By the production of a copy of *The Canada Gazette* or a volume of the Acts of the Parliament of Canada purporting to contain a copy of such proclamation, order, regulation or appointment or a notice thereof;
- (b) By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the King's printer for Canada; or
- (c) By the production in the case of any proclamation, order, regulation or appointment made or issued by the Governor General or by the Governor in Council or other chief executive officer or administrator as aforesaid of a copy or extract purporting to be certified to be a true copy by the clerk or assistant or acting clerk of the King's Privy Council for Canada; and in the case of any order, regulation or appointment made or issued by or under the authority of any such minister or head of any department by the production of a copy or extract purporting to be certified to be true by the minister or by his deputy or acting deputy or by the secretary or acting secretary of the department over which he presides.

1907, c.12, s.5; R.S.S. 1909, c.60, s.5.

Publications in the gazette deemed to be authentic

6 Publications in *The Saskatchewan Gazette* and all copies of the Statutes of the province, the journals of the Legislative Assembly, sessional papers and all other documents printed or purporting to be printed by the government printer shall be deemed to be authentic and make proof of their contents without any other evidence; and all publications and copies of Statutes and all and singular other the premises so purporting to be printed as aforesaid shall be taken *prima facie* to be authentic copies of the originals thereof respectively and shall in all courts and proceedings be admitted in evidence without proof as the originals might be.

1908, c.38, s.30; R.S.S. 1909, c.60, s.6.

How proclamations, Orders in Council, etc., of the Lieutenant Governor, etc., may be proved

7 Evidence of any proclamation, order, regulation or appointment made or issued by the Lieutenant Governor or Lieutenant Governor in Council of this or of any other of the provinces or territories of Canada or other chief executive officer or administrator for the time being of the government of the province or territory or by or under the authority of any member of the Executive Council being the head of any department of the government of such province or territory may be given in all or any of the modes hereinafter mentioned, that is to say:

- (a) By the production of a copy of the official gazette for the province or territory purporting to contain a copy of such proclamation order, regulation or appointment or a notice thereof;
- (b) By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the government printer for Saskatchewan or by the King's or government printer for the province or territory;

(c) By the production of a copy or extract of such proclamation, order, regulation or appointment certified to be a true copy by the clerk or assistant clerk or acting clerk of the Executive Council or by the head of any department of the provincial or territorial government or by his deputy or acting deputy, as the case may be.

1907, c.12, s.6; R.S.S. 1909, c.60, s.7.

Order signed by secretary of state

8 Any order in writing signed by the secretary of state for Canada and purporting to be written by command of the Governor General shall be received in evidence as the order of the Governor General.

1907, c.12, s.7; R.S.S. 1909, c.60, s.8.

Order signed by provincial secretary

9 Any order in writing signed by the provincial secretary and purporting to be written by command of the Lieutenant Governor shall be received in evidence as the order of the Lieutenant Governor.

1907, c.12, s.8; R.S.S. 1909, c.60, s.9.

OFFICIAL AND COURT DOCUMENTS

Notices, advertisements, etc., in Canada Gazette, or Saskatchewan Gazette evidence of originals

10 All copies of official and other notices, advertisements and documents printed in *The Canada Gazette* or in *The Saskatchewan Gazette* or in the official gazette of any other province or territory of Canada shall be *prima facie* evidence of the originals and of the contents thereof.

1907, c.12, s.9; R.S.S. 1909, c.60, s.10.

Grant, map, plan, report, letter, etc., department of Dominion or Provincial Government copy certified by official having custody to be evidence

11 In every case in which the original record could be received in evidence a copy of any grant, map, plan, report, letter or of any official or public document belonging to or deposited in any department of the Government of Canada, of this province or of any province or territory of Canada purporting to be certified under the hand of any officer or person in whose custody such grant, map, plan, report, letter or official or public document is placed or a copy of a document, bylaw, rule, regulation or proceeding or of any entry in any register or other book of any municipal or other corporation created by charter or Statute of Canada or by charter or Ordinance of the North-West Territories or by charter or Statute of Saskatchewan or of any province or territory of Canada purporting to be certified under the seal of the corporation and the hand of the presiding officer, clerk or secretary thereof shall be received 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.

1907, c.12, s.10; R.S.S. 1909, c.60, s.11.

Copies of entries in books of government departments

12 A copy of any entry in any book kept in any department of the Government of Canada or of Saskatchewan or of any other province or territory of Canada shall be received as 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 such department that such book was at the time of the making of the entry one of the ordinary books kept in such department, that the entry was made in the usual and ordinary course of business of such department and that such copy is a true copy thereof.

1907, c.12, s.11; R.S.S. 1909, c.60, s.12.

Copies of public books or documents admissible in evidence

13 Where a book or document is of so public a nature as to be admissible in evidence on its mere production from the proper custody and no other Statute exists which renders its contents provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any court of justice or before a person having by law or by consent of parties authority to hear, receive and examine evidence provided it is proved that it is a copy or extract purporting to be certified to be true by the officer to whose custody the original has been entrusted.

1907, c.12, s.12; R.S.S. 1909, c.60, s.13.

Proof of notarial Acts in Quebec

14 Any document purporting to be a copy of a notarial Act or instrument made, filed or enregistered in the province of Quebec and to be certified by a notary or prothonotary to be a true copy of the original in his possession as such notary or prothonotary shall be received in evidence in the place and stead of the original; and shall have the same force and effect as the original would have if produced and proved:

Provided that it may be proved in rebuttal 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 the province of Quebec be taken before a notary or be filed, enrolled or enregistered by a notary in the said province.

1907, c.12, s.13; R.S.S. 1909, c.60, s.14.

Document in court of the province certified copy to be evidence

15 A copy of any writ, record, pleading or of any other document, writing or proceeding filed in any court of this province when certified by the clerk of the court wherein the same is filed shall be admissible in evidence in all causes and matters and between all persons or parties to the same extent as the original would be admissible.

1907, c.12, s.14; R.S.S. 1909, c.60, s.15.

Proof of judicial proceedings of courts outside the province may be made by exemplification or certified copy

16 Evidence of any proceeding or record whatsoever of, in or before any court in the United Kingdom or the supreme or exchequer courts of Canada or any court in any province of Canada or before any justice of the peace or any coroner in any province of Canada or any court in any British colony or possession or any court of record of the United States of America or of any state of the United States of America or of any other foreign country may be made in any action or proceeding by an exemplification or certified copy thereof purporting to be under the seal of such court or under the hand or seal of such justice or coroner, as the case may be, without any proof of the authenticity of such seal or of the signature of such justice or coroner or other proof whatever; and if any such court, justice or coroner has no seal or so certifies then by a copy purporting to be certified under the signature of a judge or presiding magistrate of such court or of such justice or coroner without any proof of the authenticity of such signature or other proof whatsoever.

1907, c.12, s.15; R.S.S. 1909, c.60, s.16.

Certified copy of instrument from land titles office prima facie evidence

17 A copy of any instrument (as the term “instrument” is defined in *The Land Titles Act*) filed or registered in any land registration district of the province when certified to be a true copy by the registrar in charge of the land titles office in which the original is filed or registered shall be received as *prima facie* evidence of such instrument and of the contents thereof.

1907, c.12, s.16; R.S.S. 1909, c.60, s.17.

Protests of bills or notes prima facie evidence

18 All protests of bills of exchange and promissory notes shall be received as *prima facie* evidence of the allegations of facts therein contained.

1907, c.12, s.17; R.S.S. 1909, c.60, s.18.

Production of protest to be prima facie evidence of making of protest

19 The production of any protest of a bill of exchange or promissory note purporting to be under the hand and seal of any notary public shall be *prima facie* evidence of the making of such protest without proof of such seal and signature being the seal and signature of the person whose seal and signature the same purports to be or of the official character of such person.

1907, c.12, s.18; R.S.S. 1909, c.60, s.19.

Notarial certificate prima facie evidence of certain facts

20 Any note, memorandum or certificate at any time made by a notary or firm of notaries in Canada in the hand writing of such notary or a member of such firm, signed by such notary or firm at the foot of or embodied in any protest or in a regular register of official acts kept by such notary or firm shall be *prima facie* evidence in Saskatchewan of the fact of notice of nonacceptance or nonpayment 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.

1907, c.12, s.19; R.S.S. 1909, c.60, s.20.

Method of proving wills

21 The probate of a will or a copy thereof certified under the hand of the clerk of the court in which probate has been granted or proved to be a true copy of the original will when such will has been duly entered in the record of the court shall be received as evidence of the original will; but the court may upon due cause shown upon affidavit order the original will to be produced in evidence or may direct such other proof of the original will as under the circumstances appears necessary or reasonable for testing the authenticity of the alleged original will and its unaltered condition and the correctness of the prepared copy.

(2) This section shall apply to wills and the probate and copies of wills proved elsewhere than in this province provided that the original wills have been deposited and the probate and copies granted in courts having jurisdiction over the proof of wills and administration of the estates of intestates or the custody of wills.

1907, c.12, s.20; R.S.S. 1909, c.60, s.21.

TELEGRAPH MESSAGES AND MERCANTILE DOCUMENTS

Proof of telegraph messages, mercantile papers, etc., notice necessary to make copies evidence

22 In any action, suit or proceeding in the case of telegraphic messages, letters, shipping bills, bills of lading, delivery orders, receipts, accounts and other written instruments used in business and other transactions when, according to the existing rules of law exclusive of the provisions contained in this Act it would be necessary to produce and prove the original document, the party intending to establish in proof the contents of such original document may give notice to the opposite party ten days at least before the trial or other proceeding in which the said proof is intended to be adduced that he intends at the said trial or other proceeding to give in evidence as proof of such contents an instrument purporting to be a copy of such document.

(2) Such copy may then be inspected by the opposite party at some convenient time and place; and in every such case such copy shall without further proof be sufficient evidence of the contents of such original document and be accepted and taken in lieu of such original unless the party receiving such notice within four days after the time mentioned therein for such inspection gives notice that he intends to dispute the correctness or genuineness of such copy at the said trial or proceeding and to require proof of the original; and the court or judge before whom such question is raised may direct by which of the parties the costs which may thereupon attend any production or proof of the original document according to the rules of evidence heretofore existing shall be paid.

1907, c.12, s.21; R.S.S. 1909, c.60, s.22.

PROOF OF HANDWRITING

Proof of handwriting, etc., not requisite

23 No proof shall be required of the handwriting or official position of any person certifying in pursuance of this Act to the truth of any copy of or extract from any proclamation, order, regulation, appointment, book, grant, map, plan, instrument or other document; and any such copy or extract may be in print or in writing or partly in print and partly in writing.

1907, c.12, s.22; R.S.S. 1909, c.60, s.23.

WITNESSES

No incompetency from crime or interest

24 A person shall not be incompetent to give evidence by reason of interest or crime.

1907, c.12, s.23; R.S.S. 1909, c.60, s.24.

Parties to actions, etc., competent witnesses

25 On the trial of any action, matter or proceeding in any court the parties thereto and the persons in whose behalf any such action, matter or proceeding is brought or instituted or opposed or defended and the husbands and wives of such parties and persons shall save as hereinafter excepted be competent and compellable to give evidence according to the practice of the court on behalf of either or any of the parties to the action, matter or proceeding.

1907, c.12, s.24; R.S.S. 1909, c.60, s.25.

Communications between husband and wife during the marriage privileged

26 Nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage or a wife compellable to disclose any communication made to her by her husband during the marriage.

1907, c.12, s.25; R.S.S. 1909, c.60, s.26.

Incriminating answers

27 No witness shall be excused from answering any question upon the ground that the answer to such question 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:

Provided however that if with respect to any question the witness objects to answer upon the ground that his 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 and if but for this section the witness would have therefore been excused from answering such question then although the witness shall be compelled to answer yet the answer so given shall not be used or receivable in evidence against him in any trial or other proceeding against him thereafter taking place other than a prosecution for perjury in giving such evidence.

1907, c.12, s.26; R.S.S. 1909, c.60, s.27.

Party producing witness not to give evidence of his bad character but may contradict him by other evidence, etc.

28 A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may in case the witness in the opinion of the judge proves adverse contradict him by other evidence or by leave of the judge prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be 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 made such statement.

1907, c.12, s.27; R.S.S. 1909, c.60, s.28.

Evidence of statement of witness inconsistent with cross examination may be given after occasion when he uttered it is mentioned and he is asked if he made it

29 If a witness upon cross examination as to a former statement made by him relative to the subject matter of a cause, action or proceeding and inconsistent with his present testimony does not distinctly admit that he made such statement proof may be given that he did in fact make it; but before such proof can be 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 made such statement.

1907, c.12, s.28; R.S.S. 1909, c.60, s.29.

Examination of witness as to previous statement in writing, and production thereof

30 A witness may be cross examined as to previous statements made by him in writing or reduced into writing relative to the subject matter of the cause, action or proceeding without such writing being shown to him; but if it is intended to contradict such witness by the writing his attention shall before such contradictory proof can be given be called to those parts of the writing which are to be used for the purpose of so contradicting him:

Provided always that it shall be competent for the judge at any time during the trial to require the production of the writing for his inspection and he may thereupon make such use of it for the purposes of the trial as he thinks fit.

1907, c.12, s.29; R.S.S. 1909, c.60, s.30.

Examination of witness relative to his conviction for crime

31 A witness in any action, cause or proceeding may be questioned as to whether he has been convicted of any offence; and upon being so questioned if he either denies the fact or refuses to answer the opposite party may prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the offence purporting to be signed by the clerk of the court or other officer having the custody of the records of the court in which the witness was convicted or by the deputy of such clerk or officer shall upon proof of the identity of the person be sufficient evidence of the conviction without proof of the signature or official character of the person appearing to have signed the same.

1907, c.12, s.30; R.S.S. 1909, c.60, s.31.

CORROBORATION

32 In any action, cause or proceeding where a child of tender years is tendered as a witness and such child does not in the opinion of the judge, justice or other presiding officer understand the nature of an oath the evidence of such 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, such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

Corroboration required

(2) But no case shall be decided upon such evidence alone and such evidence must be corroborated by some other material evidence.

1907, c.12, s.31; R.S.S. 1909, c.60, s.32.

Parties in action for breach of promise of marriage Corroboration required

33 No plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

1907, c.12, s.32; R.S.S. 1909, c.60, s.33.

GENERAL PROVISIONS**Evidence of a mute person**

34 A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible.

1907, c.12, s.33; R.S.S. 1909, c.60, s.34.

Who may administer a oath

35 Every court, judge, police magistrate, justice of the peace, arbitrator or other person now or hereafter having by law or by consent of parties authority to hear, receive and examine evidence may administer an oath to any witness who is legally called before such court, judge, police magistrate, justice of the peace, arbitrator or other person respectively.

1907, c.12, s.34; R.S.S. 1909, c.60, s.35.

Affirmation of witness instead of oath

36 If a person called or desiring to give evidence objects on grounds of conscientious scruples to take an oath or is objected to as incompetent to take an oath such person may make the following affirmation: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth;" and upon the person making such solemn affirmation his evidence shall be taken and have the same effect as if taken under oath.

1907, c.12, s.35; R.S.S. 1909, c.60, s.36.

Comparison of disputed writing with genuine

37 Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses and such writing and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

1907, c.12, s.36; R.S.S. 1909, c.60, s.37.

Right to call expert witnesses

38 Where on the trial of any action, matter or proceeding to which the provisions of this Act extend it is intended by any of the parties thereto to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence not more than five of such witnesses may be called upon either side without the leave of the court or judge presiding such leave to be applied for before the examination of any of the experts who may be examined without such leave..

1907, c.12, s.37; R.S.S. 1909, c.60, s.38.

Witness not obliged to attend until legal fees are tendered

39 No person shall be obliged to attend or give evidence in any action, matter or proceeding to which the provisions of this Act extend unless he is first tendered his legal fees for such attendance and necessary travel.

1907, c.12, s.38; R.S.S. 1909, c.60, s.39.

Oaths, etc., may be made abroad before the persons enumerated

40 Oaths, affidavits, affirmations or declarations administered, sworn, affirmed or made out of the province before some one of the following persons:

- (a) A commissioner for oaths without Saskatchewan;
- (b) A commissioner authorised to administer oaths in the supreme court of judicature in England or Ireland;
- (c) A judge of the supreme court of judicature in England or Ireland;
- (d) A judge of the court of sessions or the justiciary court in Scotland;
- (e) A judge of any of the county courts of Great Britain or Ireland;
- (f) A judge of any court of record or of supreme jurisdiction in any colony or possession belonging to the Crown of Great Britain or any dependency thereof or in any foreign country;
- (g) The mayor or chief magistrate of any city, borough or town corporate in Great Britain or Ireland or in any colony of his Majesty or in any foreign country and certified under the common seal of such city, borough or town corporate;
- (h) If made in the British possessions of India any magistrate or collector certified to be such under the hand of the governor of any such possession;
- (i) If made in Quebec a judge or prothonotary of the superior court or clerk of the circuit court;
- (j) A consul general, consul, vice consul, proconsul or consular agent of his Majesty exercising his functions in any foreign place or any person acting as such;
- (k) A notary public and certified under his hand and official seal wherever made;

shall for the purposes of and in or concerning any cause, matter or thing depending or to be had in any court in the province be as valid and effectual and shall be of like force and effect to all intents and purposes as if such oath, affidavit, affirmation or declaration had been administered, sworn, affirmed or made in this province before a commissioner for oaths or other competent authority of the like nature.

(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto:

- (a) The signature of any such commissioner;
- (b) The signature of such judge and a seal of the court of which he is a member;
- (c) The seal of the corporation and the signature of such mayor;
- (d) The signature of such chief magistrate or governor as aforesaid;

(e) The official seal and signature of such prothonotary, clerk, consul, vice consul, consular agent or notary public the testimony of such oath, affidavit, affirmation or declaration having been administered, sworn, affirmed or made by or before him or for any other purpose authorised by this Act;

shall be admitted in evidence without proof of such signature or seal and signature being the signature or the seal and signature which they respectively purport to be or of the official character of such person.

1907, c.12, s.39; R.S.S. 1909, c.60, s.40.

COMMISSIONS ISSUED ABROAD

Supreme court may order examination of witnesses under commissions from courts abroad

41 Where a court or tribunal of competent jurisdiction in any part of his Majesty's dominions or in any foreign country in some proceeding before it issues or authorises a commission or order for obtaining the testimony of some person being within this province or the production of papers therein it shall be lawful for the supreme court or a judge if satisfied of the authenticity of the commission or order and the propriety of the examination or production by order to direct the examination of the persons whom it is desired to examine and the production of papers when required in the manner prescribed in the commission or order for examination or in such other manner and before such person and with such notice as the court or a judge directs.

1907, c.12, s.40; R.S.S. 1909, c.60, s.41.

Construction of this Act

42 The provisions of this Act shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any existing Statute or existing at law.

1907, c.12, s.41; R.S.S. 1909, c.60, s.42.

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