

The Evidence Act

being

Chapter E-11.2* of the *Statutes of Saskatchewan, 2006* (effective September 1, 2006) as amended by the *Statutes of Saskatchewan, 2007, c.24; 2009, c.4; 2010, c.28; 2012, c.C-43.101 and c.5; and 2014, c.11.*

***NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

NOTE:

This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER E-11.2

An Act respecting Evidence and Witnesses, making consequential amendments to other Acts and repealing *The Recording of Evidence by Sound Recording Machine Act*

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Evidence Act*.

Interpretation

2 In this Act, unless otherwise provided:

“**action**” means:

- (a) a civil proceeding commenced by statement of claim or in any other manner authorized or required by statute or rules of court; or
- (b) any other original proceeding between a plaintiff and a defendant; (« *action* »)

“**court**” includes any person or body that is authorized pursuant to any Act to hear witnesses, take evidence, make any order, decree, finding, decision or report or exercise any judicial or quasi-judicial function; (« *tribunal* »)

“**department**” means a department, secretariat or other similar agency of the executive government of a jurisdiction; (« *ministère* »)

“**jurisdiction**” includes any kingdom, empire, dominion, republic, commonwealth, state, province, territory, colony, possession or protectorate and, in a federal jurisdiction, includes the federal state and each constituent state; (« *entité politique* »)

“**legislature**” includes any legislative body or authority competent to make laws for a jurisdiction; (« *législature* »)

“**matter**”, in relation to proceedings in a court, means every civil proceeding that is not an action; (« *affaire* »)

“**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned; (« *ministre* »)

“**spouse**” means:

- (a) the legally married spouse of a person; or
- (b) a person who is cohabiting and has cohabited with another person in a spousal relationship continuously for a period of not less than two years. (« *conjoint* »)

c. E-11.2**EVIDENCE****Application**

3 Unless otherwise provided in any other Act, this Act applies to all proceedings within the jurisdiction of the Legislature of Saskatchewan.

2006, c.E-11.2, s.3.

Determination of laws

4(1) In all cases, the determination of any law in question is the function of a judge and not of a jury.

(2) Foreign law shall be determined by a judge as a question of fact.

(3) In determining a law of a jurisdiction outside of Canada, a judge shall consider only the evidence adduced by qualified expert witnesses, whether legal practitioners or not, except if the parties agree otherwise.

(4) In an action or matter, if a foreign law is not proved, it shall be presumed to be identical to the law of Saskatchewan.

2006, c.E-11.2, s.4.

PART II**Evidence of Witnesses****DIVISION 1****Competence, Compellability, Privilege****General rule**

5 Subject to this Act and any other law, every person is:

- (a)** competent to give evidence on his or her behalf in a proceeding; and
- (b)** competent and compellable to give evidence on behalf of any of the parties to a proceeding.

2006, c.E-11.2, s.5.

Evidence of defendant and spouse in prosecution

6(1) No person is compellable, in a prosecution against the person pursuant to any Act, to give evidence against himself or herself.

(2) Notwithstanding the provisions of any Act imposing penalties, where the evidence of the defendant or the spouse of the defendant is taken at the instance of the adverse party, no sentence of imprisonment shall be pronounced except for non-compliance with an order other than an order for payment of a fine or penalty.

2006, c.E-11.2, s.6.

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Communications during spousal relationship

7(1) Subject to subsections (2) and (3), a spouse who is a witness may refuse to disclose a communication made to him or her by the other spouse during the spousal relationship.

(2) Notwithstanding any Act or law, if an action is brought by a spouse against his or her spouse, either spouse is compellable to disclose a communication made to the other during the spousal relationship.

(3) Notwithstanding any Act or law, if an action is brought by or on behalf of a child of a spousal relationship against one or both of the spouses, either spouse is compellable to disclose a communication made to the other during the spousal relationship.

2006, c.E-11.2, s.7.

Failure to testify

8 In a prosecution, the failure of an accused person to testify or the refusal of the spouse of an accused person to disclose a communication made by one spouse to the other during the spousal relationship shall not be made the subject of comment by the court or by the prosecutor.

2006, c.E-11.2, s.8.

Incriminating answers

9(1) No witness shall be excused from answering any question on the ground that the answer to the question may tend to incriminate the witness or may tend to establish the witness's liability in a proceeding.

(2) If a witness objects to answer a question on the ground that his or her answer may tend to incriminate him or her or may tend to establish his or her liability in a proceeding:

(a) the witness must answer the question; but

(b) the answer given by the witness must not be used, and is not receivable in evidence against the witness, in any other proceeding.

(3) If, pursuant to any statute of Canada or any other province or territory of Canada, a witness has been required to answer a question after objecting to answer the question on the ground that his or her answer may tend to incriminate him or her or may tend to establish his or her liability in a proceeding, the answer given by the witness must not be used, and is not receivable in evidence against the witness, in any proceeding to which this Act applies.

2006, c.E-11.2, s.9.

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Evidence before quality improvement committees privileged**10(1)** In this section:

“committee” means a committee designated as a quality improvement committee by a health services agency to carry out a quality improvement activity the purpose of which is to examine and evaluate the provision of health services for the purpose of:

- (a) educating persons who provide health services; or
- (b) improving the care, practice or services provided to patients by the health services agency; (« *comité* »)

“health services agency” means:

- (a) a regional health authority as defined in *The Regional Health Services Act*;
- (b) a health care organization as defined in *The Regional Health Services Act*;
- (c) the operator of a facility as defined in *The Mental Health Services Act*;
- (d) the Saskatchewan Cancer Agency continued by *The Cancer Agency Act*; or
- (e) the Athabasca Health Authority Inc.; (« *organisme de services de santé* »)

“legal proceeding” means any civil proceeding or inquiry in which evidence is or may be given, and includes a proceeding for the imposition of punishment by way of fine, penalty or imprisonment to enforce an Act or a regulation made pursuant to an Act. (« *instance judiciaire* »)

(2) Subject to subsection (4), a witness in any legal proceeding, whether a party to it or not:

- (a) is not liable to be asked any question, and is not permitted to answer any question or to make any statement, with respect to any proceeding before a committee; and
- (b) is not liable to be asked to produce, and is not permitted to produce, any report, statement, memorandum, recommendation, document, information, data or record that:
 - (i) is prepared exclusively for the use of or made by a committee; or
 - (ii) is used exclusively in the course of, or arises out of, any investigation, study or program carried on by a committee.

(3) Subject to subsection (4), no report, statement, memorandum, recommendation, document, information, data or record mentioned in clause (2)(b) is admissible as evidence in any legal proceeding.

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- (4) The privileges set out in subsections (2) and (3) do not apply:
- (a) with respect to records that are:
 - (i) prepared for the purpose of providing a health service to an individual;
 - (ii) prepared as a result of an incident that occurred in a facility operated by a health services agency or in the provision of a health service by a health services agency, unless the facts relating to that incident are also fully recorded on a record described in subclause (i); or
 - (iii) required by law to be kept by the health services agency;
 - (b) to legal proceedings founded on defamation, inducing breach of contract or civil conspiracy that are based directly on any proceeding before a committee or any report, statement, memorandum, recommendation, document, information, data or record mentioned in clause (2)(b); or
 - (c) to disciplinary proceedings where the impugned conduct is a disclosure or submission to a committee.
- (5) When made in good faith:
- (a) the disclosure of any information or document or anything in it to a committee for the purpose of its being used in the course of any investigation, research, study or program carried on by the committee does not raise or create any liability on the part of the person making the disclosure;
 - (b) the submission of any report, statement, memorandum, recommendation, document, information, data or record to a committee for the purpose of its being used in the course of any investigation, research, study or program carried on by the committee does not raise or create any liability on the part of the person making the submission; and
 - (c) the disclosure of any information or document or anything in it that arises out of any investigation, research, study or program described in clause (a) or (b) does not raise or create any liability on the part of the person making the disclosure.
- (6) No action lies against the members of a committee for any of the following that occur in the course of any investigation, research, study or program carried on by the committee:
- (a) disclosure of any information or document or anything in it made in good faith;
 - (b) submission of any report, statement, memorandum, recommendation, document, information, data or record made in good faith; or
 - (c) proceedings taken in good faith.

c. E-11.2**EVIDENCE****Witness fees**

11 If, in a proceeding, a person is entitled by law to receive fees for attendance or necessary travel as a witness, the person is not obliged to attend or give evidence unless the person is first tendered those fees.

2006, c.E-11.2, s.11.

DIVISION 2
Evidence of Vulnerable Persons

Age or mental capacity

12(1) If a proposed witness is a person under 14 years of age or a person whose mental capacity is challenged, the court, before permitting the person to give evidence, shall conduct an inquiry to determine whether the person:

- (a) understands the nature of an oath or an affirmation; and
- (b) is able to communicate the evidence.

(2) A person mentioned in subsection (1) who understands the nature of an oath or an affirmation and is able to communicate the evidence shall testify under oath or affirmation.

(3) A person mentioned in subsection (1) who does not understand the nature of an oath or an affirmation but who is able to communicate the evidence shall testify on promising to tell the truth.

(4) A person mentioned in subsection (1) who does not understand the nature of an oath or an affirmation and is not able to communicate the evidence shall not testify.

(5) A party who challenges the mental capacity of a proposed witness of 14 years of age or more has the burden of satisfying the court that there is an issue as to the capacity of the proposed witness to testify under oath or affirmation.

2006, c.E-11.2, s.12.

Persons with disabilities

13(1) If a witness has difficulty communicating evidence because of a mental or physical disability, the court may permit the witness to testify by any means that enables the evidence to be intelligible.

(2) The court may conduct an inquiry to determine if the means by which a witness may be permitted to testify pursuant to subsection (1) is necessary and reliable.

2006, c.E-11.2, s.13.

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Testimony outside court room

14(1) Subject to subsection (2), the court may order that a witness testify outside the court room or behind a screen or other device that would allow the witness not to see the parties if:

- (a) the witness is under 18 years of age or has difficulty communicating evidence because of a mental or physical disability; and
- (b) in the opinion of the presiding judge, the exclusion of the witness would assist in obtaining a full and candid account from the witness.

(2) A witness shall not testify outside the court room pursuant to subsection (1) unless:

- (a) arrangements are made for the parties, the judge and the jury, if any, to watch the testimony of the witness by means of closed-circuit television or any other means that allows the parties, the judge and the jury to watch the testimony of the witness; and
- (b) the parties are permitted to communicate with counsel while watching the testimony of the witness.

2006, c.E-11.2, s.14.

Video recording of evidence

15(1) This section applies to a witness who:

- (a) was under 18 years of age at the time the events occurred about which he or she is testifying;
- (b) has a disability that may affect his or her memory or ability to recall the events about which the witness is testifying; or
- (c) has difficulty communicating evidence because of a mental or physical disability.

(2) In any proceeding in which a witness described in subsection (1) is testifying, a video recording that is made within a reasonable time after the events occurred and in which the witness describes the events is admissible in evidence if the witness adopts the contents of the video recording while testifying.

2006, c.E-11.2, s.15.

Support person

16(1) This section applies to a witness who:

- (a) is under 14 years of age; or
- (b) has difficulty communicating evidence because of a mental or physical disability.

c. E-11.2**EVIDENCE**

(2) In any proceeding in which a witness described in subsection (1) is testifying, the court may permit a support person chosen by the witness to be present and to be close to the witness while the witness is testifying if the court is of the opinion that the proper administration of justice requires it.

(3) The court may order a witness and his or her support person not to communicate with each other during the testimony of the witness.

2006, c.E-11.2, s.16.

Non-disclosure of identity

17(1) With respect to a witness under 18 years of age, the court:

(a) on its own motion, may make an order directing that the identity of the witness and any information that could disclose the identity of the witness shall not be published in any document or broadcast in any way; or

(b) on an application made by a party or by the witness, shall make an order directing that the identity of the witness and any information that could disclose the identity of the witness shall not be published in any document or broadcast in any way.

(2) At the first reasonable opportunity, the court shall inform every witness under 18 years of age of the right to apply for an order pursuant to subsection (1).

2006, c.E-11.2, s.17.

DIVISION 3
Credibility

Previous conviction of witness

18(1) A witness may be asked whether he or she has been convicted of any offence and, if the witness denies the fact or refuses to answer, the opposite party may prove the conviction.

(2) A certificate that sets out the substance and effect only, omitting the formal part, of the charge and conviction for the offence and that purports to be signed by the registrar of the court or other officer having custody of the records of the court in which the witness was convicted is, on proof of the identity of the witness as the convicted person, sufficient evidence of the conviction without proof of the signature or official character of the person appearing to have signed the certificate.

2006, c.E-11.2, s.18.

Impeaching credibility of witness

19(1) Subject to subsections (2) to (8), a witness may be cross-examined as to previous statements made by the witness with respect to the subject-matter of the proceeding.

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(2) Subject to subsection (8), if, on a cross-examination described in subsection (1), the witness does not admit that he or she made a previous statement with respect to the subject-matter of the proceeding, proof may be given that he or she did in fact make it.

(3) Subject to subsections (4) and (5), if a previous statement mentioned in subsection (1) is in writing or reduced into writing, the witness may be cross-examined as to the previous statement without the writing being shown to the witness.

(4) If it is intended to contradict a witness by a writing described in subsection (3), the witness's attention must be called to the parts of the writing that are to be used for the purpose of contradicting the witness before contradictory proof can be given.

(5) At any time during a proceeding, the court may require the production of a writing described in subsection (3) for the court's inspection and may make any use of it for the purposes of the proceeding that the court considers appropriate.

(6) A party producing a witness shall not be allowed to impeach the witness's credibility by general evidence of bad character.

(7) If a court declares a witness to be adverse to a party, the party may:

(a) contradict the witness by other evidence; or

(b) subject to subsection (8), with leave of the court, prove that the witness has at other times made a statement inconsistent with his or her present testimony.

(8) Before the proof mentioned in subsection (2) or clause (7)(b) can be given, circumstances of the supposed statement that are sufficient to designate the particular occasion must be mentioned to the witness, and the witness must be asked whether or not he or she made that statement.

2006, c.E-11.2, s.19.

DIVISION 4
Particular Matters

Identification of individual

20 A witness may testify as to the identity of an individual whom the witness is able to identify, whether the identification is made by visual means or by any other sensory means.

2006, c.E-11.2, s.20.

Right to call expert witnesses

21(1) Where any of the parties to a proceeding intend to examine as witnesses professional or other experts who are entitled according to the law or practice to give opinion evidence, not more than five of those witnesses may be called on either side without leave of the court.

(2) The leave required by subsection (1) must be applied for before any of the experts who may be examined without leave are examined.

2006, c.E-11.2, s.21.

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Evidence of professionals

22(1) With leave of the court, a professional report purporting to be signed by a physician, chiropractor, dentist, psychologist, physical therapist or occupational therapist authorized pursuant to a statute to practise in any part of Canada is admissible in evidence in any proceeding without proof of the person's signature, qualifications or authority to practise.

(2) If a member of a profession mentioned in subsection (1) has been required to give evidence orally in a proceeding and the court is of the opinion that the evidence could have been produced as effectively by a professional report in writing, the court may order the party that required the attendance of the professional practitioner to pay costs in any amount that the court considers appropriate.

2006, c.E-11.2, s.22.

Comparison of disputed writing with genuine

23(1) A court may permit witnesses to make a comparison of a disputed writing with a writing that is proved to the satisfaction of the court to be genuine.

(2) A court may consider a writing that is proved to be genuine and the evidence of witnesses respecting it as evidence of the genuineness or otherwise of the writing in dispute.

(3) In a jury trial:

(a) it is the function of the judge to determine whether or not a writing proposed to be used for the purposes of comparison with a disputed writing is genuine; and

(b) it is the function of the jury to make a comparison of a disputed writing with a writing that the judge has determined to be genuine.

2006, c.E-11.2, s.23.

Effect of apology on liability

23.1(1) In this section, "**apology**" means an expression of sympathy or regret, a statement that one is sorry or any other words or acts indicating contrition or commiseration, whether or not the words or acts admit or imply an admission of fault in connection with the event or occurrence to which the words or acts relate.

(2) An apology made by or on behalf of a person in connection with any event or occurrence:

(a) does not constitute an express or implied admission of fault or liability by the person in connection with that event or occurrence;

(b) does not constitute an acknowledgment of the existence of a claim in relation to that event or occurrence for the purposes of section 11 of *The Limitations Act*;

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- (c) notwithstanding any wording to the contrary in any contract of insurance and notwithstanding any other Act or law, does not void, impair or otherwise affect any insurance coverage that is available to the person or would be available to the person in connection with that event or occurrence but for the apology; and
- (d) must not be taken into account in any determination of fault or liability in connection with that event or occurrence.
- (3) Notwithstanding any other Act or law, evidence of an apology made by or on behalf of a person in connection with any event or occurrence is not admissible in any action or matter in any court as evidence of the fault or liability of the person in connection with that event or occurrence.

2007, c.24, s.2.

DIVISION 5

Oaths, Affirmations, Affidavits and Statutory Declarations**Who may administer oaths, affirmations**

- 24(1)** Every court or person having, by law or by consent of the parties, authority to hear, receive and examine evidence may administer an oath to, or take an affirmation from, any witness who is legally called before that court or person.
- (2) Every registrar, local registrar or clerk of a court may administer an oath to, or take an affirmation from, any witness who is legally called before that court.

2006, c.E-11.2, s.24.

Swearing oath, making affirmation

- 25(1)** A person who is called or desires to give evidence may:
- (a) swear an oath; or
- (b) 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".
- (2) The evidence of a person who makes an affirmation in accordance with clause (1)(b) shall be taken and have the same effect as if taken under oath.

2006, c.E-11.2, s.25.

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Statutory declarations

26 A person authorized to take affidavits may receive the solemn declaration of any person making the declaration before him or her, in the following form or in the form set out in the *Canada Evidence Act*, in attestation of the execution of any writing, deed or instrument, of the truth of any fact or of any account rendered in writing:

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

Declared before me at _____, this ____ day of _____, _____.

2006, c.E-11.2, s.26.

Oaths, etc., made outside Saskatchewan

27(1) Oaths sworn, affidavits sworn or affirmed, and affirmations and declarations made, in a jurisdiction other than Saskatchewan before one of the persons set out in subsection (2) are as valid and have the same effect as if they had been sworn, affirmed or made in Saskatchewan before a commissioner for oaths or other competent authority.

(2) Subsection (1) applies to oaths sworn, affidavits sworn or affirmed and affirmations and declarations made before:

- (a) a Commissioner for Oaths for Saskatchewan pursuant to *The Commissioners for Oaths Act, 2012*;
- (b) a notary public;
- (c) a commissioner or other official authorized by the laws of the other jurisdiction to administer oaths;
- (d) a judge, a magistrate, a justice of the peace or an officer of a court of justice;
- (e) the mayor or other head of a municipal or regional government;
- (f) an officer of any of the Canadian diplomatic or consular services, including ambassadors, high commissioners, permanent delegates, envoys, ministers, chargés d'affaires, counsellors, secretaries, attachés, consuls-general, consuls, vice-consuls, pro-consuls and consular agents;
- (g) a Canadian Government Trade Commissioner or an Assistant Canadian Government Trade Commissioner;
- (h) an officer of the Canadian Forces; or
- (i) an officer of any of Her Majesty's diplomatic or consular services, including ambassadors, high commissioners, permanent delegates, envoys, ministers, chargés d'affaires, counsellors, secretaries, attachés, consuls-general, consuls, vice-consuls, pro-consuls and consular agents.

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(3) In the absence of evidence to the contrary, a document purporting to have been made in testimony of an oath having been sworn, an affidavit having been sworn or affirmed or an affirmation or declaration made, and purporting to have been signed by a person mentioned in subsection (2), or purporting to have been signed by a person mentioned in subsection (2) and sealed with the official seal of the person or the official entity of which the person is a representative, shall be admitted in evidence without proof of the signature, seal or official character of the person.

2006, c.E-11.2, s.27; 2012, c.5, s.2.

DIVISION 6
Recording of Evidence

Interpretation and application of Division

28(1) In this Division:

“**court**” includes any person authorized by agreement or otherwise to hear witnesses, take evidence, make any order, decree, finding, decision or report or exercise any quasi-judicial function; (« *tribunal* »)

“**court transcriber**” means a court transcriber appointed pursuant to *The Court Officials Act, 2012*; (« *transcripteur judiciaire* »)

“**evidence**” includes the opinion, decision and judgment of the judge or of the court in a proceeding. (« *preuve* »)

(2) Sections 33 to 37 apply only to:

- (a) the Court of Appeal for Saskatchewan;
- (b) Her Majesty’s Court of Queen’s Bench for Saskatchewan;
- (c) the Provincial Court of Saskatchewan; and
- (d) The Traffic Safety Court of Saskatchewan.

2006, c.E-11.2, s.28; 2013, c.C-43.101, s.28.

Authority to make recording of evidence

29(1) Notwithstanding anything in any other Act:

- (a) the evidence in any proceeding, or any portion of that evidence, may be recorded by a sound recording device; and
- (b) a court may order that the evidence in any proceeding, or any portion of that evidence, shall be recorded by a sound recording device.

(2) Notwithstanding any other Act, if a witness in a proceeding is permitted pursuant to section 13 to testify by a means that does not produce sound, the court may order that the testimony of the witness shall be recorded by means of a recording device of a type that is appropriate to the means of giving testimony used by the witness.

2006, c.E-11.2, s.29.

c. E-11.2**EVIDENCE****Certification of recording**

30(1) A recording made pursuant to section 29 shall be certified by a registrar, local registrar or clerk of the court who was present when the recording was made or otherwise by the person in charge of the recording device during the proceeding as being the record made of the evidence or portion of the evidence, as the case may be, in the proceeding.

(2) Every certificate made pursuant to subsection (1) shall, without proof of the signature or official character of the person who made the certificate, be proof, in the absence of evidence to the contrary, that the recording is the record of the evidence or portion of the evidence, as the case may be, in the proceeding.

2006, c.E-11.2, s.30.

Transcripts

31(1) A court transcriber may produce a transcript of the whole or any part of a recording made pursuant to section 29 and certified pursuant to section 30.

(2) A court transcriber who prepares a transcript pursuant to subsection (1) shall attach to the transcript his or her affidavit stating that it is a true and correct transcription of the recording or part of the recording.

(3) A transcript prepared in accordance with this section has the same effect as the original evidence.

2006, c.E-11.2, s.31; 2012, c.C-43.101, s.28.

Playing of recordings in court

32(1) The evidence recorded on a recording made pursuant to section 29 may be reproduced in a court by playing the recording by means of an appropriate device.

(2) The contents of a recording played in court in accordance with subsection (1) have the same effect as the original evidence.

2006, c.E-11.2, s.32.

Filing, transfer and removal of recordings

33(1) Recordings made pursuant to section 29 shall be filed with the person having custody of the records of the court.

(2) Subject to section 34, no recording made pursuant to section 29 shall be removed from the custody of the person mentioned in subsection (1) except pursuant to an Act, a rule of court or an order of a court of competent jurisdiction.

(3) Subject to section 34, a recording removed pursuant to subsection (2) from the custody of the person mentioned in subsection (1) shall be returned to the custody of that person as soon as is reasonably practicable after it has been used for the purpose for which its removal was authorized.

2006, c.E-11.2, s.33.

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Destruction of recordings

34 Subject to an order made pursuant to subsection 35(2) or 36(1), the person having custody of a recording made pursuant to section 29, or any other person under his or her direction, may erase the recording or otherwise destroy it:

- (a) after the expiration of 90 days from the day on which a transcript of the recording is completed pursuant to section 31 and filed with the person; or
- (b) pursuant to an order of the minister, after the expiration of the period specified in the order, which is to be not less than 90 days from the day on which the recording was made, whether the order was made before or after the making of the recording.

2006, c.E-11.2, s.34.

Court order to preserve recording

35(1) Any interested person may, without notice to any other person, apply to a judge of the court in which a recording was made pursuant to section 29 for an order providing for the preservation of the recording for a specified period.

(2) The judge hearing an application pursuant to subsection (1) may make any order that the judge considers just in the circumstances.

(3) If an order is made pursuant to subsection (2), the applicant shall file the order with the person having custody of the recording affected by the order.

2006, c.E-11.2, s.35.

Minister's order to preserve recording

36(1) Whether or not an order pursuant to subsection 35(2) has been made, the minister may, by order:

- (a) provide for the preservation of any recording made pursuant to section 29; or
- (b) extend the period fixed for the preservation of any recording.

(2) An order made pursuant to subsection (1) shall be filed with the person having custody of the recording affected by the order.

2006, c.E-11.2, s.36.

Non-application of *The Archives Act, 2004* to recordings

37 Recordings made pursuant to section 29 are deemed not to be court records within the meaning of *The Archives Act, 2004*.

2006, c.E-11.2, s.37.

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PART III
Proof of Documents and Records

DIVISION 1
General

Interpretation of Part

38(1) The provisions of this Part are in addition to, and not in derogation of, any powers of proving documents given by any law.

(2) Nothing in this Part makes admissible any record that is privileged.

2006, c.E-11.2, s.38.

Certified copies

39(1) Subject to subsection (2), a certified copy of a document that is received in evidence pursuant to this Act or any other statutory authority has the same effect as the original would have if produced and proved.

(2) Proof of a document by a certified copy may be rebutted:

(a) by proof that:

(i) there is no original of the copy;

(ii) the copy is not a true copy of the original in some material particular;

(iii) the original is not an instrument of a nature that may be proved by a certified copy; or

(iv) the certificate is false; or

(b) by any other evidence that the court considers sufficient.

2006, c.E-11.2, s.39.

DIVISION 2
Official Documents

Judicial notice

40(1) Judicial notice shall be taken of any statute or ordinance enacted by:

(a) the legislature of any province or territory of Canada, including any former dominion, colony, province or territory that forms part of Canada;

(b) the Parliament of Canada; or

(c) the Parliament of the United Kingdom of Great Britain and Northern Ireland or any former kingdom that included England.

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- (2) Judicial notice shall be taken of any regulation or statutory instrument enacted pursuant to statutory authority and published in the official gazette or journal of:
- (a) any province or territory of Canada, including any former dominion, colony, province or territory that forms part of Canada; or
 - (b) Canada.
- (3) Judicial notice shall be taken of:
- (a) any proclamation or order of:
 - (i) the Lieutenant Governor, Lieutenant Governor in Council, Commissioner or Commissioner in Council of any province or territory of Canada, including any former dominion, colony, province or territory that forms part of Canada; or
 - (ii) the Governor General or Governor in Council of Canada; and
 - (b) any publication of a proclamation or order mentioned in clause (a) that is published in the official gazette or journal of the enacting jurisdiction.
- (4) Judicial notice shall be taken of any constitutional statute or document published in Appendix II to the *Revised Statutes of Canada, 1985*.
- (5) Judicial notice shall be taken of any international treaty that:
- (a) is binding on Canada or a province or territory of Canada, including any former dominion, colony, province or territory that forms part of Canada; and
 - (b) is published by the Queen's Printer or official printer of a jurisdiction mentioned in clause (a).
- (6) Judicial notice shall be taken of any treaty with one or more of the Aboriginal peoples of Canada that:
- (a) has been entered into by:
 - (i) Canada;
 - (ii) any former dominion, colony, province or territory that forms part of Canada; or
 - (iii) the United Kingdom of Great Britain and Northern Ireland or any former kingdom that included England; and
 - (b) is published by the Queen's Printer of the Government of Canada.

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Documents of state

41(1) In this section and section 44, “**document of state**” includes:

- (a) a statute or ordinance;
 - (b) a treaty;
 - (c) a regulation, order, rule, proclamation, notice, warrant, licence, permit, certificate, letters patent, official record or other instrument enacted, made or issued, or purporting to have been enacted, made or issued:
 - (i) by the Lieutenant Governor, Lieutenant Governor in Council, Commissioner or Commissioner in Council of any province or territory of Canada, including any former dominion, colony, province or territory that forms part of Canada;
 - (ii) by the Governor General or Governor in Council of Canada;
 - (iii) in the case of a jurisdiction outside of Canada, by the chief executive officer or administrator of the jurisdiction; or
 - (iv) by the minister or head, or the deputy minister or administrative head, of any department of the government of a jurisdiction;
 - (d) an official gazette, journal or other record or act of state issued by a legislature or pursuant to statutory authority.
- (2) This section applies to the documents of state of:
- (a) the provinces and territories of Canada, including any former dominion, colony, province or territory that forms part of Canada;
 - (b) Canada; and
 - (c) the United Kingdom of Great Britain and Northern Ireland, including any former kingdom that included England.
- (3) The existence and the whole or any part of the contents of a document of state may be proved by the production of:
- (a) a copy of the official gazette or a volume of the statutes of the jurisdiction purporting to contain a copy of the document of state, an extract from it or a notice of it;
 - (b) a copy of the document of state or an extract from it purporting to be printed or published by, for or by authority of the Queen’s Printer or other official printer of the jurisdiction;
 - (c) a copy of the document of state or an extract from it purporting to be certified as a true copy or extract by the minister or head, or the deputy minister or administrative head, of any department of the government of the jurisdiction, or purporting to be an exemplification of it under the Great Seal of the jurisdiction; or

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- (d) a copy of the document of state or an extract from it purporting to be certified as a true copy or extract by the custodian of the original document or the public records from which the copy or extract purports to be made.
- (4) When a copy or extract of a document of state is tendered in evidence, it is not necessary:
- (a) to prove the signature or official position of the person certifying the copy or extract; or
 - (b) to prove that the original document or the public records from which the copy or extract is made were deposited with or kept in the custody of the person certifying the copy or extract.
- (5) When a document of state, or a copy or extract of a document of state, that purports to be printed or published by, for or by authority of a legislature or government or the Queen's Printer or other official printer of a jurisdiction is tendered in evidence, it is not necessary to prove the authority, status or official position of the legislature, government, Queen's Printer or other official printer.

2006, c.E-11.2, s.41.

Order by Lieutenant Governor, Commissioner, Governor General

- 42(1) An order in writing signed by the keeper of the Great Seal or equivalent official of any province or territory of Canada and purporting to be written by command of the Lieutenant Governor of the province or Commissioner of the territory shall be received in evidence as the order of the Lieutenant Governor or Commissioner.
- (2) An order in writing signed by the Secretary of State of Canada or the Registrar General of Canada and purporting to be written by command of the Governor General shall be received in evidence as the order of the Governor General.

2006, c.E-11.2, s.42; 2014, c.11, s.4.

Notices, etc., in Gazette

- 43 Copies of official and other documents, notices and advertisements printed in *The Saskatchewan Gazette*, the official gazette of any other province or territory of Canada or the *Canada Gazette* are proof, in the absence of evidence to the contrary, of the originals and of their contents.

2006, c.E-11.2, s.43.

Other official records

- 44(1) This section applies to:
- (a) grants, maps, plans, reports, letters and any official or public documents, other than documents of state, that belong to or are deposited with a department of the government of a province or territory of Canada or of the Government of Canada; and

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(b) documents, bylaws, rules and proceedings and entries in registers and other records of municipal corporations, Crown corporations and other corporations created by the government of a province or territory of Canada or of the Government of Canada for the carrying out of a public purpose.

(2) Where the original record could be received in evidence, a copy of a record mentioned in clause (1)(a) purporting to be certified by the custodian of the record or a copy of a record mentioned in clause (1)(b) purporting to be certified under the seal of the corporation and the hand of the presiding officer, clerk or secretary of the corporation shall be received in evidence without proof of the official character of the person appearing to have signed it, without proof of the seal of the corporation and without any further proof.

2006, c.E-11.2, s.44.

Entries in government records

45(1) A copy of an entry in a record kept by a department of a province or territory of Canada or the Government of Canada shall be received as evidence of the entry and of the matters, transactions and accounts recorded in it if it is proved, by the affidavit of an officer of the department, that:

- (a) at the time of the making of the entry, the record was one of the ordinary records kept by the department;
- (b) the entry was made in the usual and ordinary course of business of the department; and
- (c) the copy is a true copy.

(2) Where a record 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 that renders its contents provable by means of a copy, a copy of it or an extract from it is admissible if it is proved that it is a copy or extract purporting to be certified to be true by the custodian of the original record.

2006, c.E-11.2, s.45.

Canada Grain Act records

46(1) A document purporting to be a certificate or duplicate certificate of an inspector pursuant to the *Canada Grain Act* that specifies the grade of any grain that has been inspected by the inspector is proof, in the absence of evidence to the contrary, of the grade of the grain without proof of the authenticity of the inspector's signature.

(2) A document purporting to be an extract from the record kept by the chief grain inspector for Canada or by an inspector pursuant to the *Canada Grain Act* and to be certified by the chief grain inspector, inspector or a person acting on behalf of either of them, is proof, in the absence of evidence to the contrary, of the facts set out in the extract without proof of the signature of the chief grain inspector, inspector or other person or any other proof.

2006, c.E-11.2, s.46.

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Court records

47(1) In this section, “**court**” means:

- (a) with respect to Canada or any province or territory of Canada:
 - (i) a court of record; or
 - (ii) a justice of the peace or coroner; and
 - (b) with respect to any other jurisdiction:
 - (i) a court of record, if the judicial system of the jurisdiction is based on the common law; or
 - (ii) a court having a status equivalent to a court of record, if the judicial system of the jurisdiction is not based on the common law.
- (2) A copy of a court record or document is admissible in evidence to the same extent as the original if it is certified:
- (a) by the official of that court who is the proper custodian of the court records; or
 - (b) in any case to which subclause (1)(a)(ii) applies, by the justice of the peace or coroner.

2006, c.E-11.2, s.47.

Notarial acts

48(1) A document purporting to be a copy of a notarial act or instrument made, deposited or registered in Quebec is receivable in evidence in place of the original if it purports:

- (a) to be certified by a notary to be a true copy of the original in his or her possession as a notary; or
 - (b) to be certified by a person or body authorized by statute as a custodian of notarial records to be a true copy of the original in the possession of that person or body as a custodian of notarial records.
- (2) A certified copy received in evidence pursuant to subsection (1) has the same effect as the original would have if produced and proved.
- (3) In addition to the grounds set out in subsection 39(2), proof by a certified copy may be rebutted by proof that the original is not an instrument of a nature that, by the law of Quebec, may be:
- (a) made before a notary; or
 - (b) deposited with or registered by a notary.

2006, c.E-11.2, s.48.

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EVIDENCE

DIVISION 3
Business Records

Interpretation of Division**49** In this Division:

“**business**” includes every kind of business, profession, occupation, calling, operation or undertaking, whether carried on for profit or otherwise or whether carried on by a person or entity in the private sector or in the public sector; (« *entreprise* »)

“**document**” means a record in any tangible form that is capable of being photographed; (« *document* »)

“**financial institution**” means an institution incorporated in Canada that accepts deposits of money from the public or from its members; (« *établissement financier* »)

“**photograph**” means a photograph taken digitally or by the use of photographic film and includes:

- (a) a print, including an enlargement or a reduction, prepared from a digital photograph or from a film negative;
- (b) a photographic plate or film;
- (c) a microphotographic film;
- (d) a photocopy, including an enlargement or a reduction;
- (e) an image created by the electronic scanning of a document; and
- (f) a print, including an enlargement or a reduction, prepared from an image created by the electronic scanning of a document; (« *photographie* »)

“**record**” includes any information that is recorded or stored by means of any device or electronic means. (« *enregistrement* »)

2006, c.E-11.2, s.49.

Original business records

50(1) Any record made of any act, transaction, occurrence or event is admissible in any proceeding as evidence of the act, transaction, occurrence or event if:

- (a) it was made in the usual and ordinary course of a business; and
- (b) it was in the usual and ordinary course of the business to make the record at the time of the act, transaction, occurrence or event or within a reasonable time after the act, transaction, occurrence or event.

(2) The circumstances of the making of a record mentioned in subsection (1), including the time of making the record in relation to the time of the act, transaction, occurrence or event and lack of personal knowledge by the maker, may be shown to affect its weight, but those circumstances do not affect its admissibility.

2006, c.E-11.2, s.50.

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Photographs as permanent records

51(1) In the absence of evidence indicating that the photograph is not genuine, a photograph of a document kept or held by a business is admissible in evidence in all cases and for all purposes for which the original document would have been admissible if:

(a) the document was photographed in the course of an established practice of that business of photographing documents in order to keep a permanent record of them; and

(b) the document:

(i) has been destroyed by or in the presence of one or more of the officers or employees of the business;

(ii) has been delivered to another person in the ordinary course of business; or

(iii) is lost.

(2) Proof of compliance with the conditions set out in this section may be given by any person having knowledge of the facts, either orally or by affidavit sworn or affirmed before a person authorized by law to administer oaths.

(3) Unless a court otherwise orders, a notarial copy of an affidavit mentioned in subsection (2) is admissible in evidence in place of the original affidavit.

2006, c.E-11.2, s.51.

Copies of business records

52(1) Subject to this section, a copy of an entry in a record kept by a business is admissible in any proceeding as proof, in the absence of evidence to the contrary, of the entry, and of the acts, transactions, occurrences and events recorded in the entry.

(2) A copy of an entry in a record kept by a business shall not be received in evidence pursuant to this section unless it is first proved that:

(a) the record was, at the time of the making of the entry, one of the ordinary records of the business;

(b) the entry was made in the usual and ordinary course of business;

(c) the record is in the custody or control of the business or its successor; and

(d) the copy is a true copy.

(3) The proof described in subsection (2) may be given by the manager or accountant of the business or by any person employed by the business who has knowledge of the record, and may be given orally or by affidavit.

2006, c.E-11.2, s.52.

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Compelling production of records of financial institutions

53(1) Unless ordered to do so by a court for special cause, a financial institution that is not a party to a proceeding, or an officer of a financial institution that is not a party to a proceeding, is not compellable:

- (a) to produce a record the contents of which can be proved pursuant to this section; or
- (b) to appear as a witness to prove the acts, transactions, occurrences and events recorded in a record.

(2) A party to a proceeding may apply to a court for an order directing a financial institution that is not a party to the proceeding to allow the party to inspect and take copies of any entries in the records of the financial institution for the purposes of that proceeding.

(3) If an application pursuant to subsection (2) relates to an account of a person who is not a party to the proceeding, the applicant must notify the person whose account is to be inspected of the application at least five clear days before the hearing unless the court directs a shorter period.

(4) If it is shown to the satisfaction of the court that the person whose account is to be inspected cannot be notified personally, the notice may be given by addressing it to the financial institution.

(5) The costs of an application pursuant to subsection (2), and the costs of anything done or to be done pursuant to an order made pursuant to subsection (2), are in the discretion of the court.

2006, c.E-11.2, s.53.

DIVISION 4 Electronic Documents

Interpretation and application of Division

54(1) In this Division:

“data” means representations, in any form, of information or concepts;
(« *données* »)

“electronic record” means data that:

- (a) is recorded or stored on any medium in or by a computer or other similar device; and
- (b) can be read or perceived by a person or a computer or other similar device;

and includes a display, printout or other output of that data, other than a printout mentioned in subsection 56(2); (« *enregistrement électronique* »)

“electronic records system” includes a computer system or other similar device by or in which an electronic record is recorded or stored and includes any procedures related to the recording or storing of an electronic record.
(« *système d’archivage électronique* »)

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(2) Nothing in this Division modifies any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

(3) A court may consider evidence admitted pursuant to this Division in applying any common law or statutory rule relating to the admissibility of records.

2006, c.E-11.2, s.54.

Authentication of electronic record

55 A person seeking to enter an electronic record must prove its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

2006, c.E-11.2, s.55.

Application of best evidence rule

56(1) Subject to subsection (2), where the best evidence rule applies to an electronic record, the rule is satisfied on proof of the integrity of the electronic records system in or by which the electronic record was recorded or stored.

(2) An electronic record in the form of a printout that has been manifestly or consistently acted on, relied on or used is the record for the purposes of the best evidence rule.

2006, c.E-11.2, s.56.

Proving integrity of electronic records system

57 In the absence of evidence to the contrary, the integrity of the electronic records system in or by which an electronic record is recorded or stored is proven for the purposes of subsection 56(1):

(a) by evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic record and there are no reasonable grounds to doubt the integrity of the electronic records system;

(b) if it is established that the electronic record was recorded or stored by a party to the proceeding who is adverse in interest to the party seeking to introduce it; or

(c) if it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceeding and who did not record or store it under the control of the party seeking to introduce the record.

2006, c.E-11.2, s.57.

c. E-11.2**EVIDENCE****Standards**

58 For the purposes of determining under any rule of law whether an electronic record is admissible, evidence may be presented respecting any standard, procedure, usage or practice on how electronic records are to be recorded or stored, having regard to the type of business or endeavour that used, recorded or stored the electronic record and the nature and purpose of the electronic record.

2006, c.E-11.2, s.58.

Affidavit may be used

59(1) An affidavit may be used respecting the matters mentioned in subsection 56(2) and sections 57 and 58 given to the best of the deponent's knowledge or belief.

(2) A deponent of an affidavit mentioned in subsection (1) that has been introduced in evidence may be cross-examined as of right by a party to the proceeding who is adverse in interest to the party who has introduced the affidavit or has caused the affidavit to be introduced.

(3) Any party to the proceeding may, with leave of the court, cross-examine a person mentioned in clause 57(c).

2006, c.E-11.2, s.59.

PART IV
Proof of Particular Matters

Non-issue of licence, etc.

60(1) This section applies where an Act or regulation provides for the issue of a licence or other document by a department or Crown corporation of the Government of Saskatchewan and an officer of the department or Crown corporation has searched its records and has been unable to find that a licence or other document was issued in a given case.

(2) An affidavit of an officer described in subsection (1) shall be received as proof, in the absence of evidence to the contrary, that no licence or other document has been issued, if the affidavit sets out that the officer:

- (a) has charge of the appropriate records; and
- (b) after careful examination and search of the records, has been unable to find that a licence or other document has been issued in the case in question.

2006, c.E-11.2, s.60.

Wills

61(1) If a will has been duly entered in the records of a court, any of the following shall be received as evidence of the original will:

- (a) the probate of the will;
- (b) a copy of the will that is certified under the hand of the registrar of the court in which probate has been granted;

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- (c) letters of administration with the will annexed;
 - (d) a copy of letters of administration with the will annexed that is certified under the hand of the registrar of the court in which the letters of administration have been granted;
 - (e) a copy of the will that is proved to be a true copy of the original will.
- (2) Where due cause is shown on affidavit, a court may order the production of the original will or may direct any other proof of the original will that appears necessary or reasonable for testing the authenticity of the alleged original will and its unaltered condition and the correctness of the prepared copy.
- (3) This section applies to a will deposited with a court outside Saskatchewan and the probate and copy of a will proved outside Saskatchewan if the original will has been deposited with, and the probate and copy have been granted by, a court having jurisdiction over the custody and proof of wills and the administration of the estates of intestates.

2006, c.E-11.2, s.61.

Proof of adultery by certificate re conviction

62 In any action or matter in which adultery is in issue, a certificate that sets out with reasonable particularity the conviction, after marriage, of a spouse for an offence against the *Criminal Code* for which proof of sexual intercourse is required, is admissible in evidence as proof, in the absence of evidence to the contrary, of adultery by the convicted spouse if the certificate purports to be signed by:

- (a) the person who made the conviction; or
- (b) the local registrar or other custodian of the records of the court in which the spouse was convicted or by the deputy of that local registrar or custodian.

2006, c.E-11.2, s.62.

Death of member of military

63 The production of a certificate signed or purporting to be signed by the Minister of National Defence or an authority designated by the Minister of National Defence, stating that the person named in the certificate was an officer or non-commissioned member of any of the Canadian Forces, and that the person has been officially reported as dead or is presumed to be dead, is sufficient proof of the death of that person and of all facts stated in the certificate for any purpose, and also of the office, authority and signature of the person signing the certificate, without any proof of the person's appointment, authority or signature.

2006, c.E-11.2, s.63.

64 Repealed. 2010, c.28, s.10.

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PART V
General**Commissions from foreign courts**

65 Where a court or tribunal of competent jurisdiction in a foreign country issues or authorizes a commission or order for obtaining the testimony of a person who is within Saskatchewan or the production of papers within Saskatchewan, the Court of Queen's Bench, if satisfied of the authenticity of the commission or order and the propriety of the examination or production, may order the examination of the person, and the production of the papers when required:

- (a) in the manner set out in the commission or order or in any other manner; and
- (b) before any person and with any notice that the Court of Queen's Bench directs.

2006, c.E-11.2, s.65.

PART VI

Repeal, Transitional, Consequential Amendments and Coming into Force**R.S.S. 1978, c.R-6 repealed**

66 *The Recording of Evidence by Sound Recording Machine Act* is repealed.

2006, c.E-11.2, s.66.

R.S.S. 1978, c.S-16 repealed

67 *The Saskatchewan Evidence Act* is repealed.

2006, c.E-11.2, s.67.

Transitional

68 The reference in Rule 663 of *The Queen's Bench Rules* to *The Recording of Evidence by Sound Recording Machine Act* is deemed to be a reference to Division 6 of Part II of this Act.

2006, c.E-11.2, s.68.

69 to 70 **Dispensed.** These sections make consequential amendments to other Acts. The amendments have been incorporated into the corresponding Acts.

Coming into force

71 This Act comes into force on September 1, 2006.

2006, c.E-11.2, s.71.