



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

EVIDENCE ACT

PLEASE NOTE

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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EVIDENCE ACT

Table of Contents

Section	Page
1. Definitions.....	5
1.1 Spouse.....	5
COMPETENCY OF WITNESSES	6
2. Competency of witnesses, persons with criminal record	6
3. Persons with an interest in the matter.....	6
4. Persons who are competent and compellable.....	6
4.1 Adultery proceedings	6
4.2 Communication during marriage, disclosure	6
4.3 Proceeding under enactment	6
5. Marital sexual intercourse evidence admissible.....	6
6. Incriminating evidence, witness not excused from	7
CORROBORATIVE EVIDENCE	7
7. Action for breach of promise of marriage	7
8. Adultery proceedings	7
9. Communication during marriage, disclosure	7
10. Proceedings under provincial statutes	7
11. Action by or against heirs or personal representatives.....	7
12. Action by or against person mentally incompetent	7
OATHS AND AFFIRMATIONS	8
12.1 Administration of oath	8
12.2 Form of oath - evidence	8
12.3 Belief does not affect validity	8
12.4 Evidence of child	8
13. Affirmation - evidence.....	9
14. Administer oaths, persons who may	9
EXAMINATION OF WITNESSES	9
15. General evidence of bad character not admissible	9
16. Inconsistent statement on cross-examination.....	10
17. Previous statement made in writing	10
18. Conviction of crimes, evidence as to	10
19. Attestation of instruments, proof of	10
20. Handwriting, proof.....	10
STATUTES AND STATE DOCUMENTS	11
21. Imperial Parliament defined.....	11
22. Definitions.....	11
23. Certificates of marriage, baptism or burial, <i>prima facie</i> proof.....	13
24. Certificate of death by Armed Forces of Canada	14
25. Exemplification of wills.....	14

26.	Register of British ships	14
27.	Documents of public nature, copies or extracts provable	15
28.	Vote, proceeding or resolution of Executive Council <i>re</i> land titles	15
29.	Documents, objection to produce	15
	BUSINESS DOCUMENTS, REPORTS, CERTIFICATES, ETC.	16
30.	Definitions	16
31.	Definitions	17
32.	Definitions	18
33.	Medical reports	18
34.	Certificate of Registrar of Motor Vehicles	19
35.	Protests of bills of exchange and promissory notes	19
36.	Certificate of notary public, prima facie proof of facts	19
37.	Same - protest	19
	REGISTERED INSTRUMENTS	19
38.	Deeds or mortgages, proof of	19
39.	Notice of producing copy of deed or mortgage	20
40.	Commissioner of Public Lands, deeds issued by	20
41.	Registration of plans, admissibility	20
42.	Certificate of registration endorsed on deeds	20
43.	Registration may be proved in court	20
44.	Execution of deed or mortgage, non-residents	21
45.	Duty stamp, absence of	21
	MERCANTILE DOCUMENTS	21
46.	Delivery of goods, payment of money etc., proof of signatures	21
47.	Production of books to negative transaction	21
48.	Contract or engagement entered by corporation, proof	21
	EXAMINATIONS, COPIES AND EXTRACTS, DEPOSITIONS	22
49.	Examination of party or witness, copies filed	22
50.	Examinations, admissibility without consent of opposite party	22
51.	Annexing to commission, requirement for	22
52.	Examination of absent or absconding debtor, proof of his writings	22
53.	Depositions of witnesses, read in evidence, how	22
	EVIDENCE IN JUDICIAL PROCEEDINGS	23
54.	Previous convictions, procedure in court, and proof: provincial offences	23
55.	Production of transcript	23
56.	Admissibility of secondary evidence of former trial	23
57.	“legal proceeding”, defined	23
	RECORDINGS, TRANSCRIPTS, ETC.	24
58.	Production of transcript	24



EVIDENCE ACT

CHAPTER E-11

1. Definitions

In this Act

- (a) **“action”** includes any civil proceeding, cause, suit, inquiry or arbitration and a prosecution for an offence committed under an enactment or a bylaw made under the authority of an enactment, and any other prosecution or proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of the province;
- (b) **“court”** means any court, person or tribunal in the province that has by law or consent of the parties the authority to receive oaths, affidavits or affirmations and to hear, receive and examine evidence;
- (c) **“deed”** means every deed or writing of any nature or kind relating to or affecting any interest in or title to land in the province, except a mortgage;
- (c.1) **“judge”** means a judge of the Provincial Court, the Supreme Court, or the Court of Appeal;
- (d) **“mortgage”** includes every mortgage, deed of further charge, assignment of mortgage, release of mortgage, certificate of satisfaction of mortgage, release of judgment lien, and any writing relating to or affecting any interest in or title to land in the province, in the nature of a mortgage or relating to that interest in or title to land;
- (e) **“spouse”** means a person who, in respect of another person,
 - (i) is married to the other person, or
 - (ii) has entered into a marriage with the other person that is voidable or void;
- (f) **“witness”** includes a person who
 - (i) in the course of an action is questioned orally in accordance with the Rules of Civil Procedure or is cross-examined on an affidavit made by the person,
 - (ii) makes answer by affidavit to written questions under Rule 35 of the Rules of Civil Procedure, and
 - (iii) makes an affidavit of records under Rule 30 of the Rules of Civil Procedure.
R.S.P.E.I. 1974, Cap. E-10, s.1; 2019,c.23,s.1.

1.1 Spouse

Repealed by 2019,c.23,s.2. 2008,c.8,s.9(2); 2019,c.23,s.2.

Competency of Witnesses

2. Competency of witnesses, persons with criminal record

No person offered as a witness shall be excluded, by reason of any alleged incapacity from crime or interest, from giving evidence according to the practice of the court on the trial of any action, issue or matter, or on any inquiry arising from any of them, in any court. *R.S.P.E.I. 1974, Cap. E-10, s.2; 2019, c.23, s.4.*

3. Persons with an interest in the matter

Every person offered as a witness shall be admitted to give evidence, notwithstanding that the person has an interest in the matter in question, or in the event of the trial of an action, issue or matter in which the person appears as a witness, and notwithstanding that the person may have been previously convicted of any crime or offence. *R.S.P.E.I. 1974, Cap. E-10, s.3; 2019, c.23, s.5.*

4. Persons who are competent and compellable

On the trial of any action, issue or matter, or an inquiry arising from any of them, in any court, the parties to the action and the persons on whose behalf an action is brought, instituted, imposed or defended, and the spouses of those parties and persons are competent and compellable, except as provided by this Act, to give evidence on their own behalf or on behalf of either or any of the parties to the action, issue or matter. *R.S.P.E.I. 1974, Cap. E-10, s.4; 2008, c.8, s.9(3); 2019, c.23, s.6.*

4.1 Adultery proceedings

The parties to a proceeding instituted in consequence of adultery and their spouses are competent to give evidence in the proceeding, but a spouse, if competent only pursuant to this Act, shall not be liable to be asked or compelled to answer any question tending to show that the spouse has been guilty of adultery, unless the spouse has already given evidence in the same proceeding to disprove the alleged adultery. *2019, c.23, s.6.*

4.2 Communication during marriage, disclosure

No spouse is compellable to disclose any communication made to him or her by his or her spouse during their marriage. *2019, c.23, s.6.*

4.3 Proceeding under enactment

On the trial of any action, issue or matter under any enactment, the party opposing or defending, or the spouse of the party, is competent and compellable to give evidence in the action, issue or matter. *2019, c.23, s.6.*

5. Marital sexual intercourse evidence admissible

Without limiting the generality of section 4, a spouse may, in any 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.P.E.I. 1974, Cap. E-10, s.5; 2008, c.8, s.9(4).*

6. Incriminating evidence, witness not excused from

- (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 to a penalty or a civil proceeding.

Answer not to be used in evidence

- (2) A witness who testifies in any action has the right not to have any self-incriminating evidence given by the witness used to incriminate that witness in any other action, except in a prosecution for perjury or the giving of contradictory evidence. *R.S.P.E.I. 1974, Cap. E-10, s.6; 2019, c.23, s.7.*

Corroborative Evidence**7. Action for breach of promise of marriage**

The parties to an action for breach of promise of marriage are competent to give evidence in the action, but the plaintiff in that action shall not recover a verdict unless his or her testimony is corroborated by some other material evidence in support of the promise. *R.S.P.E.I. 1974, Cap. E-10, s.7; 2019, c.23, s.9.*

8. Adultery proceedings

Repealed by 2019, c.23, s.10. *R.S.P.E.I. 1974, Cap. E-10, s.8; 2008, c.8, s.9(5); 2019, c.23, s.10.*

9. Communication during marriage, disclosure

Repealed by 2019, c.23, s.10. *R.S.P.E.I. 1974, Cap. E-10, s.9; 2008, c.8, s.9(6); 2019, c.23, s.10.*

10. Proceedings under provincial statutes

Repealed by 2019, c.23, s.10. *R.S.P.E.I. 1974, Cap. E-10, s.10; 2008, c.8, s.9(7); 2019, c.23, s.10.*

11. Action by or against heirs or personal representatives

In any action by or against the heirs, or personal representatives or their assigns of a deceased person, an opposite or interested party to the action shall not obtain a verdict, judgment or decision in the action on his or her own evidence in respect of any matter occurring before the death of the deceased person, unless the evidence is corroborated by some other material evidence. *R.S.P.E.I. 1974, Cap. E-10, s.11; 2019, c.23, s.11.*

12. Action by or against person mentally incompetent

In any action by or against a person found by inquisition to be a mentally incompetent person, an opposite or interested party shall not obtain a verdict, judgment or decision in the action on his or her own evidence, unless such evidence is corroborated by some other material evidence. *R.S.P.E.I. 1974, Cap. E-10, s.12; 2019, c.23, s.12.*

Oaths And Affirmations

12.1 Administration of oath

An oath may be administered to a person

- (a) while the person holds in the person's hand a copy of the Old or New Testament; or
- (b) in the manner and form and with the ceremonies that the person declares to be binding on the person's conscience. *2019,c.23,s.13.*

12.2 Form of oath - evidence

- (1) Subject to clause 12.1(b), where a person is about to give evidence, the oath may be in the following form or a form that is substantially similar to it:

"I swear that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth. So help me God."

Form of oath – affidavit, deposition

- (2) Subject to clause 12.1(b), where a person is about to swear an affidavit or deposition, the oath may be in the following form or a form that is substantially similar to it:

"I swear that the contents of this affidavit [*or* deposition] are true. So help me God."
2019,c.23,s.13.

12.3 Belief does not affect validity

Where an oath has been administered and taken, the fact that the person to whom it was administered and by whom it was taken did not at the time of taking the oath believe in the binding effect of the oath does not, for any purpose, affect the validity of the oath.
2019,c.23,s.13.

12.4 Evidence of child

- (1) In any action where a child under the age of 14 years is tendered as a witness, the court may admit the evidence of the child, if the child
 - (a) is able to communicate the evidence;
 - (b) understands the nature of an oath or solemn affirmation; and
 - (c) promises to tell the truth.

Where child unable to understand

- (2) The court may admit the evidence of a child under the age of 14 years if the child is able to communicate the evidence, even though the child does not understand the nature of an oath or solemn affirmation, if the child understands what it means to tell the truth and promises to tell the truth.

Discretion of court

- (3) Where the court is of the opinion that the evidence of a child under the age of 14 years is sufficiently reliable, the court may admit it, if the child is able to communicate the evidence, even if the child understands neither the nature of an oath or solemn affirmation nor what it means to tell the truth. *2019,c.23,s.13.*

13. Affirmation - evidence

- (1) A person about to give evidence may, instead of taking an oath, make an affirmation or declaration in the following words or words to the same effect:

“I solemnly affirm [*or* declare] that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth.”

Effect of affirmation

- (2) Where a person makes an affirmation, the person's evidence shall be taken and have the same effect as if taken under oath.

Affirmation - affidavit or deposition

- (3) A person making an affidavit or deposition in an action may make an affirmation or declaration in the following form or words to the same effect:

“I solemnly affirm [*or* declare] that the contents of this affidavit [*or* deposition] are true.”

Affirmation - other circumstances

- (4) A person may make an affirmation on an occasion where, or about a matter respecting which, an oath is required or is lawful, including on the taking of office, either
- (a) using the form of affirmation provided in the applicable enactment, if any; or
 - (b) in a form of affirmation that is similar to the substance of the oath, beginning with the words “I solemnly affirm”, without referring to an "oath" and without concluding with the expression “So help me God”. *R.S.P.E.I. 1974, Cap. E-10, s.13; 2019,c.23,s.14.*

14. Administer oaths, persons who may

All courts, judges, justices of the peace, officers, commissioners, arbitrators or other persons having by law or consent of parties authority to hear, receive and examine evidence, are hereby empowered to administer an oath, affirmation or declaration to any witness who is legally called before them respectively. *R.S.P.E.I. 1974, Cap. E-10,s.14; 2019,c.23,s.15; 2018,c.52,s.57(2).*

Examination of Witnesses

15. General evidence of bad character not admissible

- (1) A party shall not impeach the party's witness by general evidence of bad character.

Contradiction of witness

- (2) Notwithstanding subsection (1), a party may
- (a) contradict the party's witness by other evidence; or
 - (b) by leave of the judge, if the witness is an adverse witness, and subject to subsection (3), prove that the witness has previously made a statement inconsistent with the witness's present testimony.

Inconsistent statement, condition

- (3) For the purpose of clause (2)(b), the party intending to contradict the party's witness shall state to the witness the circumstances of the supposed inconsistent statement in sufficient detail to designate the particular occasion and the witness shall be asked whether the witness made that statement. *R.S.P.E.I. 1974, Cap. E-10, s.15; 2019,c.23,s.17.*

16. Inconsistent statement on cross-examination

- (1) Subject to subsection (2), if a witness, on cross-examination as to a former statement of the witness, relative to the subject matter of the action, that is inconsistent with the witness's present testimony, does not distinctly admit that the witness made the statement, proof may be given that the witness made it.

Inconsistent statement, condition

- (2) For the purpose of subsection (1), the person cross-examining the witness shall state to the witness the circumstances of the supposed inconsistent statement in sufficient detail to designate the particular occasion, and the witness shall be asked whether the witness made that statement. *R.S.P.E.I. 1974, Cap. E-10, s.16; 2019, c.23, s.18.*

17. Previous statement made in writing

- (1) Subject to subsection (2), a witness may be cross-examined as to a previous statement made by the witness in writing, relative to the subject matter of the action, without the written statement being shown to the witness.

Previous statement, condition

- (2) If the person cross-examining the witness intends to contradict the witness by the written statement, the witness shall be shown those parts of the written statement which are to be used for the purpose of contradicting the witness before the contradictory proof is given.

Provision of writing to judge

- (3) Notwithstanding subsection (1), the judge may at any time during the action require the production of the witness's written statement referred to in subsection (1) for the judge's inspection, and may make use of it for the purpose of the trial as the judge thinks fit. *R.S.P.E.I. 1974, Cap. E-10, s.17; 2019, c.23, s.19.*

18. Conviction of crimes, evidence as to

A witness in an action may be questioned as to whether the witness has been convicted of any crime and, if the witness denies the fact or refuses to answer, the opposite party may prove the 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 where the offender was convicted, or by the deputy of the 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. *R.S.P.E.I. 1974, Cap. E-10, s.18; 2012, c.10, s.5; 2019, c.23, s.20.*

19. Attestation of instruments, proof of

It is not necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, but any instrument may be proved by admission or otherwise as if there had been no attesting witness to it. *R.S.P.E.I. 1974, Cap. E-10, s.19; 2019, c.23, s.21.*

20. Handwriting, proof

Comparison of a disputed handwriting with any writing proved to the satisfaction of the judge to be genuine may be made by witnesses, and the writings 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. *R.S.P.E.I. 1974, Cap. E-10, s.20.*

Statutes and State Documents

21. Imperial Parliament defined

- (1) In this section, “Imperial Parliament” means the Parliament of the United Kingdom of Great Britain and Northern Ireland, as constituted on April 20, 1939, or any former kingdom, which included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise.

Judicial notice of statutes

- (2) Judicial notice shall be taken of
- (a) all Acts of the Imperial Parliament;
 - (b) all Acts of the Parliament of Canada;
 - (c) all ordinances made by the Governor in Council of the Government of Canada;
 - (d) all ordinances made by the Governor in Council, Lieutenant Governor in Council, or administrator, or Commissioner in Council of any province, colony, or territory which, or some portion of which, forms part of Canada, and all Acts and ordinances of the legislature of, or other legislative body or authority competent to make laws for, any province, colony or territory;
 - (e) all Acts and ordinances of the legislature of, or other legislative body or authority competent to make laws for, any dominion, empire, commonwealth, state, province, colony, territory, possession, or protectorate of the Sovereign.

Application of section

- (3) The provisions of this section apply with respect to dominions, empires, commonwealths, states, provinces, colonies, territories, possessions, and protectorates whether previously existing or subsequently constituted, as well as to those now existing, and applies in respect of ordinances and Acts made or enacted before as well as to those made or enacted after the enactment of this section.

Evidence of proclamation not required

- (4) No order, conviction or other proceeding made by any justice of the peace or provincial court judge shall be quashed or set aside, and no defendant shall be discharged, by reason of any objection that evidence has not been given of a proclamation or order of the Governor General in Council or of the Lieutenant Governor in Council, or of any rules, regulations, or bylaws made by the Governor General in Council in pursuance of a statute of Canada or by the Lieutenant Governor in Council in pursuance of a statute of Prince Edward Island, or of the publication of proclamations, orders, rules, regulations or bylaws in the Canada Gazette or in the Gazette, respectively, and every proclamation, order, rule, regulation and bylaw and the publication of it shall be judicially noticed. *R.S.P.E.I. 1974, Cap. E-10, s.21; 2019,c.23,s.23; 2018,c.52,s.57(3).*

22. Definitions

- (1) In this section
- (a) “**British possession**” means any dominion of the Sovereign exclusive of the United Kingdom of Great Britain and Northern Ireland and of Canada;
 - (b) “**dominion**” includes kingdom, empire, republic, commonwealth, state, province, territory, possession and protectorate and, where parts of a dominion are under both a central and a local legislature, includes both parts under the central legislature and each part under a local legislature;

- (c) “**federal**” as applied to state documents means of or pertaining to the Government of Canada;
- (d) “**foreign state**” includes every dominion other than the United Kingdom of Great Britain and Northern Ireland, Canada or a British possession;
- (e) “**imperial**”, as applied to state documents, means of or pertaining to the United Kingdom of Great Britain and Northern Ireland, as constituted on April 20, 1939, or any former kingdom which included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise;
- (f) “**legislature**” includes any legislative body or authority competent to make laws for a Dominion;
- (g) “**provincial**” as applied to state documents, means of or pertaining to any province, colony, or territory which, or some portion of which, forms part of Canada, and “**province**” when used in respect of federal or provincial state documents has a corresponding meaning;
- (h) “**Queen’s Printer**” includes government printer or other official printer;
- (i) “**state document**” includes any Act or ordinance enacted or made or purporting to have been enacted or made by a legislature, and any order, regulation, notice, appointment, warrant, license, certificate, letters patent, official record, rule of court, or other instrument issued or made or purporting to have been issued or made under the authority of any Act or ordinance so enacted or made, or purporting to have been enacted or made, and any official gazette, journal, proclamation, treaty, or other public document or act of state issued or made or purporting to have been issued or made.

Application of section

- (2) The definitions in subsection (1) apply in respect of dominions, kingdoms, empires, republics, commonwealths, states, provinces, territories, colonies, possessions, and protectorates whether previously existing or subsequently constituted as well as to those now existing and this section applies accordingly.

Proof of state documents

- (3) The existence and the whole or any part of the contents of any imperial state document may be proved in any of the following modes:
 - (a) in the same manner as the same may be provable in any court in England;
 - (b) by the production of a copy of the Canada Gazette or a volume of the Statutes of Canada purporting to contain a copy of or an extract from the same or a notice of it;
 - (c) by the production of a copy of the document or an extract from it purporting to be printed by, or for, or by authority of, the Canadian Government Printing Bureau or for any province of Canada;
 - (d) by the production of a copy of the document or an extract from it purporting to be certified as a true copy or extract by the minister or head, or by the deputy minister or deputy head, of any department of the Imperial Government or purporting to be an exemplification of it under the Imperial Great Seal;
 - (e) by the production of a copy of the document 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.

Proof of federal and provincial state documents

- (4) The existence and the whole or any part of the contents of any federal or provincial state document may be proved in any of the following modes:

- (a) by the production of a copy of the Canada Gazette or of the official gazette for any province or of a volume of the Statutes of Canada or of the legislature of any province purporting to contain a copy or extract of the state document or a notice of it;
- (b) by the production of a copy of the document or an extract from it purporting to be printed by, or for, or by authority of, the Queen's Printer for Canada or for any province;
- (c) by the production of a copy of the document or an extract from it, whether printed or not, purporting to be certified as a true copy or extract by the minister or head or the deputy minister or deputy head of any department of the Government of Canada or of any province, or by the custodian of the original document or the public records from which the copy or extract purports to be made, or purporting to be an exemplification of the state document under the Great Seal of Canada or of any province.

Proof of state documents of a British possession or foreign state

- (5) The existence and the whole or any part of the contents of any state document of a British possession or foreign state may be proved in any of the following modes:
 - (a) by the production of a copy of the document or an extract from it purporting to be printed by, or for, or by the authority of, the legislature, government, or Queen's Printer, of the British possession or of the foreign state;
 - (b) by the production of a copy of the document or an extract from it whether printed or not, purporting to be certified as a true copy or extract by the minister or head, or the deputy minister or deputy head, of any department of government of the British possession or of the foreign state, or by the custodian of the original document or the public records from which the copy or extract purports to be made, or purporting to be an exemplification of the state document under the Great Seal or other state seal of the British possession or of the foreign state.

Proof of signature and official position unnecessary

- (6) It is not necessary to prove the signature or official position of the person by whom any copy or extract that is tendered in evidence under this section purports to be certified, or to prove that the original document or the public records from which the copy or extract purports to be made were deposited or kept in the custody of the person so certifying; and where a copy or extract that is tendered in evidence under this section purports to be printed by, or for, or under the authority of a legislature or government, or of a Queen's Printer, it is not necessary to prove the authority, status, or official position of the legislature or government, or of the Queen's Printer. *R.S.P.E.I. 1974, Cap. E-10, s.22; 2019,c.23,s.24.*

23. Certificates of marriage, baptism or burial, *prima facie* proof

A certificate of the marriage of any person married, or of the baptism of any person baptized, or of the burial of any person interred outside of this province under the hand of the member of the clergy, priest, or minister who officiated at the marriage, baptism or burial, or of the provincial court judge or other public officer before whom the marriage was contracted or celebrated, or an extract from any register kept for the registration of any marriages, baptisms or burials certified by the member of the clergy, priest, minister or public officer, being the legal custodian of the register, whenever offered in any court in this province, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, shall be taken and received as *prima facie* evidence of the contents of the certificate or extract, as the case may be. *R.S.P.E.I. 1974, Cap. E-10, s.23; 2019,c.23,s.25.*

24. Certificate of death by Armed Forces of Canada

- (1) The production of a certificate in writing, signed or purporting to be signed
- (a) by the Adjutant General, Deputy Adjutant General or Officer in charge of Records, Department of National Defence, with respect to a member of the Armed Forces of Canada;
 - (b) by the Naval Secretary, Department of National Defence, with respect to a member of the Armed Forces of Canada;
 - (c) by the Chief of the Air Staff or the Director of Postings and Records, Department of National Defence, with respect to a member of the Armed Forces of Canada; or
 - (d) by any officer of the Armed Forces of Canada authorized so to sign, in the case of a member of any of the Armed Forces of Canada,

stating that the person named in the certificate was a member of any of said Forces, and that the person has been officially reported as dead, or presumed to be dead, shall, if it appears on the face of the certificate that the person signing is qualified as prescribed in clauses (a), (b), (c) or (d), as the case may be, be *prima facie* proof of the death of the person and of all facts stated in the certificate for any purpose to which the authority of the Legislature of Prince Edward Island extends, and also of the office, authority and signature of the person giving or making the certificate, without any proof of the person's appointment, authority or signature.

Payments, etc. made on basis of certificate, liability

- (2) Any act, omission or payment done or made in good faith upon any certificate fulfilling the requirements of subsection (1) shall be deemed to have been lawfully or properly done and made; any insurance company or other person making payment pursuant to a certificate shall be to such extent discharged from liability in respect to the payment. *R.S.P.E.I. 1974, Cap. E-10, s.24; 2019, c.23, s.26.*

25. Exemplification of wills

- (1) An exemplification of a will under the seal of any court whether in this province or elsewhere in the Sovereign's Dominions, or in any foreign country in which the original will may be of record, or under the signature of the judge, clerk or registrar of its court, or of the custodian of its will, or the probate of any will under the seal of any court of competent jurisdiction, shall be taken and received wherever offered in any court in this province, or before any person having by law or by consent of parties authority to hear, receive and examine evidence as *prima facie* evidence of the execution of the will, and of the contents of the will, and also of the death of the testator.

Proof of signature or authority on exemplification

- (2) It is not necessary to prove any seal or the signature or authority of any officer affixed to any exemplification, probate, certificate or extract which by subsection (1) is made *prima facie* evidence of the facts stated in it, but the production of a document purporting to be sealed with a seal and to be signed by the officer shall be *prima facie* evidence of the seal and signature and of the authority of the officer purporting to have affixed the seal to the document or to have signed it. *R.S.P.E.I. 1974, Cap. E-10, s.25; 2019, c.23, s.27.*

26. Register of British ships

Every register of or declaration made in respect of any British ship in pursuance of any of the Acts relating to the registry of British ships may be proved in any court in this province, or before any person having by law or by consent of parties authority to hear, receive and examine evidence either by production of the original or by an examined copy of the original,

or by a copy of the original purporting to be certified under the hand of the person having the charge of the original, and every register or copy of a register, and also every certificate of registry granted under any of the Acts relating to the registry of British ships, and purporting to be signed as required by law shall be received in evidence in any court in this province, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, as *prima facie* proof of all the matters contained or recited on the register, when the register or a copy of the register, is produced, and of all the matters contained or recited in or endorsed on the certificate of registry when the certificate is produced. *R.S.P.E.I. 1974, Cap. E-10, s.26; 2017,c.23,s.28.*

27. Documents of public nature, copies or extracts provable

Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy or extract of the book or document shall be admissible in evidence in any court in this province or before any person having by law or by consent of parties authority to hear, receive and examine evidence, if it is proven to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted without any proof of the signature or of the official character of the person appearing to have signed the same and without further proof of the signature, and the officer is hereby required to furnish a certified copy or extract to any person applying for it at a reasonable time. *R.S.P.E.I. 1974, Cap. E-10, s.27; 2019,c.23,s.29.*

28. Vote, proceeding or resolution of Executive Council *re* land titles

The transcript or copy of the record of any vote, resolution or proceeding of the Executive Council of this province relating to grants or titles to lands attested as a true copy or extract from such record, and purporting to be signed by the clerk of the council, shall be admitted and received in any court in this province, or before any person having by law or by consent of parties authority to hear, receive and examine evidence as *prima facie* evidence of the facts stated, and the clerk of the council shall upon application of any party or the party's attorney give a copy or extract of the record of any vote, resolution or proceedings of the council relating to lands attested and signed by the clerk of the council. *R.S.P.E.I. 1974, Cap. E-10, s.28; 2012,c.10,s.5; 2019,c.23,s.30.*

29. Documents, objection to produce

Where a document is in the official possession, custody or power of a member of the Executive Council, or the head of a department of the Government, if the deputy head or other officer of the department has the document in his or her personal possession and is called as a witness, he or she shall be entitled, if acting by the direction and on behalf of the member of the Executive Council or head of the department, to object to produce the document on the ground that it is privileged, and the objection may be taken in the same manner and shall have the same effect as if the member of the Executive Council or head of the department were personally present and making the objection. *R.S.P.E.I. 1974, Cap. E-10, s.29; 2019,c.23,s.31.*

Business Documents, Reports, Certificates, etc.

30. Definitions

- (1) In this section
- (a) “**bank**” includes any branch, agency or office of the bank;
 - (b) “**court**” means the court, judge, arbitrator or person before whom a legal proceeding is held or taken;
 - (c) “**legal proceeding**” means any civil proceeding or inquiry in which evidence is or may be given and includes an arbitration.

Bank records, proof

- (2) Subject to this section, a copy of an entry in any book or record kept in any bank, shall, in all legal proceedings, be received as *prima facie* evidence of the entry and of the matters, transactions and accounts recorded in it.

Preliminary proof required

- (3) A copy of an entry in a book or record referred to in subsection (2) shall not be received in evidence under this section unless proof is provided by the manager or accountant of the bank, orally or by affidavit, that
- (a) the book or record was, at the time the entry was made, one of the ordinary books or records of the bank;
 - (b) the entry was made in the usual and ordinary course of business;
 - (c) the book or record is in the custody or control of the bank; and
 - (d) the copy is a true copy of the entry in the book or record.

Legal proceedings where bank not party, records not compellable

- (4) A bank or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any book or record, the contents of which can be proven under this section, or to appear as a witness to prove the matters, transactions and accounts recorded in the book or record, unless by order of a court or judge.

Inspection of personal bank account

- (5) On the application of a party to a legal proceeding, the court or judge may order that the party may inspect and take copies of entries respecting a person's account in the books or records of a bank for the purposes of the proceeding.

Notice to account holder

- (5.1) A person whose account is to be inspected pursuant to subsection (5) shall be notified of the application at least two clear days before the hearing of the application and, if it is shown to the satisfaction of the court or judge that the person cannot be notified personally, the notice may be given by addressing it to the bank.

Costs of application

- (6) The costs of an application to a court under or for the purposes of this section, and the costs of anything done or to be done under an order of a court or judge made under or for the purposes of this section, shall be in the discretion of the court or judge, which may order the costs or any part of them that have been caused by a default or delay on the part of the bank to be paid by the bank to any party.

Performance of order

- (6.1) An order made against a bank under subsection (6) may be enforced as if the bank were a party to the proceeding. *R.S.P.E.I. 1974, Cap. E-10, s.30; 2019, c.23, s.33.*

31. Definitions

- (1) In this section

- (a) “**person**” includes
- (i) the government of Canada and of any province of Canada and any department, commission, board or branch of any of those governments,
 - (ii) a corporation, 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.

Prints of photographic film

- (2) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement, document, plan or a record or book or entry in a record or book kept or held by any person
- (a) is photographed in the course of an established practice of that person of photographing objects of the same or of a similar class in order to keep a permanent record of them; and
- (b) is destroyed by or in the presence of the person or of one or more of the person’s employees or delivered to another person in the ordinary course of business, or lost,

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

Limitation period on admissibility of film

- (3) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement or other executed or signed document was destroyed before the expiration of six years from
- (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 any 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.

Exception

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

Proof of compliance with section

- (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 affidavit is admissible in evidence in lieu of the original affidavit. *R.S.P.E.I. 1974, Cap. E-10, s.31; 2019, c.23, s.34.*

32. Definitions

- (1) In this section
- (a) “**business**” includes every kind of business, profession, occupation, calling, operation or activity, whether carried on for profit or otherwise, including any activity carried on by any government, board, commission or agency of any government;
- (b) “**record**” includes any information that is recorded or stored by means of any device.

Admissibility of business records

- (2) Any writing or record made of any act, transaction, occurrence or event is admissible as evidence of that act, transaction, occurrence or event if made in the usual and ordinary course of any business.

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 that party’s intention to all other parties in the proceeding, and any party to the proceeding is entitled to obtain from the person who has possession of the writing or record production for inspection of the writing or record within five days after giving notice to produce it.

Surrounding circumstances

- (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 do not affect its admissibility.

Common law rules as to admissibility and privilege 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.
1983, c.13, s.1; 2019, c.23, s.35.

33. Medical reports

- (1) Any medical report obtained by or prepared for a party to a proceeding 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 ten days’ notice has been given to all other parties, admissible in evidence in the proceeding.

Notice and production

- (2) Unless otherwise ordered by the court, a party to a proceeding 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.

Report required

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

Costs may be awarded where doctor called unnecessarily

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

attendance of the medical practitioner to pay as costs for it the amount it considers appropriate. *1983,c.13,s.1; 2019,c.23,s.36.*

34. Certificate of Registrar of Motor Vehicles

- (1) In a prosecution for an offence under an enactment or in any civil action, the following may be proved by a certificate purporting to be signed by the Registrar of Motor Vehicles appointed pursuant to the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5, without proof of the authenticity of the signature:
- (a) the registration or non-registration of a motor vehicle;
 - (b) the licensing of a driver or chauffeur;
 - (c) the fact that a license or permit is suspended or cancelled;
 - (d) any other fact that may be proved by the production of records kept in the Highway Safety Division of the Department of Transportation and Infrastructure under the provisions of the *Highway Traffic Act*.

Prima facie evidence

- (2) Where the name in the certificate referred to in subsection (1) is the same as that of a person charged with an offence, the certificate is prima facie evidence that that person is the person named in the certificate. *R.S.P.E.I. 1974, Cap. E-10, s.32; 1980,c.2,s.3; 2010,c.31,s.3; 2012,c.10,s.5; 2015,c.28,s.3; 2019,c.23,s.37; 2021,c.8,s.3.*

35. Protests of bills of exchange and promissory notes

All protests of bills of exchange and promissory notes shall be received in all courts and before all parties having by law or by consent of parties authority to hear, receive and examine evidence, as *prima facie* evidence of the allegations of fact stated in them. *R.S.P.E.I. 1974, Cap. E-10, s.33; 2019,c.23,s.38.*

36. Certificate of notary public, prima facie proof of facts

A note, memorandum or certificate made by a notary public in this province in the notary public's handwriting, signed by the notary public at the foot or embodied in a protest, or in a register of official Acts kept by the notary public, is prima facie evidence in this province of the fact of a notice of non-acceptance or non-payment of a promissory note or bill of exchange having been sent or delivered at the time and in the manner stated in the note, certificate or memorandum. *R.S.P.E.I. 1974, Cap. E-10, s.34; 2019,c.23,s.39.*

37. Same - protest

The production of a protest on a promissory note or bill of exchange under the hand and seal of a notary public is prima facie evidence of the making of that protest. *R.S.P.E.I. 1974, Cap. E-10, s.35; 2019,c.23,s.39.*

Registered Instruments

38. Deeds or mortgages, proof of

- (1) A copy of the registry of a deed or mortgage duly registered certified by a Registrar of Deeds may be received in any court in this province or before any person having by law or by consent of parties, authority to hear, receive and examine evidence, as *prima facie* evidence

of the contents of the original, but the party proposing to give the copy in evidence shall satisfy the court or person before whom it is produced, by affidavit, that the original deed or mortgage is not under the person's control, and that the person does not know where it may be found. *R.S.P.E.I. 1974, Cap. E-10, s.36; 2019.*

39. Notice of producing copy of deed or mortgage

Before a copy of a deed or mortgage is admitted in evidence, the party proposing to produce it shall give to the opposite party, and the party's attorney or agent at least seven days' notice in writing of his or her intention, and shall accompany the notice with a copy of the certified copy, and of the affidavit, and the due service of the notice and copies may be proved by affidavit. *R.S.P.E.I. 1974, Cap. E-10, s.37; 2019,c.23,s.42.*

40. Commissioner of Public Lands, deeds issued by

A copy of the duplicate of any deed executed by the Commissioner of Public Lands and deposited in his or her office certified by the Commissioner under his or her hand and seal, or certified by the assistant Commissioner of Public Lands under his or her hand and seal of the Commissioner of Public Lands, may be received as *prima facie* evidence of the due execution and of the contents of the original deed in all cases in which the original deed would be evidence, but before the copy shall be admitted in evidence, the party proposing to produce it shall comply with sections 38 and 39 as in the case of deeds or mortgages duly registered. *R.S.P.E.I. 1974, Cap. E-10, s.38; 2019,c.23,s.43.*

41. Registration of plans, admissibility

A copy of the registration of any plan annexed to or referred to in any deed or mortgage, duly registered, certified by a Registrar of Deeds, may be admitted in evidence in all cases in which a certified copy of the deed or mortgage may be given in evidence. *R.S.P.E.I. 1974, Cap. E-10, s.39; 2019,c.23,s.44.*

42. Certificate of registration endorsed on deeds

The certificate of registration endorsed on any deed or mortgage registered in an office for the registry of deeds for any county in this province, and purporting to be signed by the Registrar of Deeds for the county shall be taken and received in any court in this province, or before any person having by law or by consent of parties, authority to hear and receive evidence, as *prima facie* evidence of the facts stated, and of the signature of the person by whom it purports to be signed, and that the person was, at the time the certificate purports to have been signed, the Registrar of Deeds for that county. *R.S.P.E.I. 1974, Cap. E-10, s.40; 2019,c.23,s.45.*

43. Registration may be proved in court

- (1) A copy of any document filed or registered pursuant to an enactment may be proved in any court by the production of a copy of the document, certified under the hand of the person in whose office the document is filed.

Copy issued by Registrar

- (2) A copy issued by the Registrar's office pursuant to the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1, shall be sufficient proof of the document for the purposes of subsection (1).

Search results certified by Registrar

- (3) Printed search results certified in the office of the Registrar under the *Personal Property Security Act* shall be receivable as evidence of the registration in accordance with section 48 of the *Personal Property Security Act*. 1997,c.33, Schedule; 2019,c.23,s.46.

44. Execution of deed or mortgage, non-residents

A deed or mortgage executed, or purporting to be executed, by any or all of the parties to the deed or mortgage outside the province, and having endorsed on it, or annexed to it, the certificate and affidavits or proof required for the registration of the deed or mortgage, and having endorsed on it the Registrar's certificate of its due registration, shall be received in all courts in the province, and before all persons having by law or by consent of parties authority to hear, receive and examine evidence, as prima facie evidence of the due execution of the deed or mortgage by those parties who appear to have executed it outside the province. *R.S.P.E.I. 1974, Cap. E-10, s.42; 2019,c.23,s.47.*

45. Duty stamp, absence of

No deed or mortgage shall be inadmissible in evidence because it was not stamped for duty, according to the revenue laws of the place outside this province in which it was executed. *R.S.P.E.I. 1974, Cap. E-10, s.43.*

Mercantile Documents**46. Delivery of goods, payment of money etc., proof of signatures**

Proof of the handwriting of any clerk, employee or servant or other person, of any entry in any original book or entry, made in the ordinary course of business, stating the delivery of goods, the payment of money or the performance of labor, shall, in the absence from this province of the clerk, employee, servant or other person, be receivable as evidence of the delivery of the goods, the payment of the money and the performance of the labour, as if the clerk, employee, servant or other person were dead. *R.S.P.E.I. 1974, Cap. E-10, s.44; 2019,c.23,s.49.*

47. Production of books to negative transaction

Notwithstanding anything contained in this Act or in the general law of evidence, the books of any person may be produced in evidence to negate any transaction or payment alleged to have been carried out with or made to or by the person; and the evidence afforded by the production of the books, shall be given such weight as the court may think fit. *R.S.P.E.I. 1974, Cap. E-10, s.45.*

48. Contract or engagement entered by corporation, proof

Whenever it is necessary to prove a contract or engagement entered into by a corporation doing business in this province but not established or incorporated in the province, it is only necessary for the party seeking to prove the contract or engagement, or to put it in evidence, to prove that the contract or engagement has been duly signed or issued by the accredited agent or officer of the corporation in this province and upon such proof having been given, the contract or engagement shall be admitted in evidence and shall be considered as duly proved without any further or other evidence of its execution by the corporation. *R.S.P.E.I. 1974, Cap. E-10, s.46; 2019,c.23,s.50.*

Examinations, Copies and Extracts, Depositions

49. Examination of party or witness, copies filed

Where an examination of a party or witness has been taken before a judge or other officer or person appointed to take the same, copies of the examination and depositions certified under the hand of the judge, officer or other person taking the same or the officer with whom they are filed, shall without proof of the signature be received and read in evidence saving all just exceptions. *R.S.P.E.I. 1974, Cap. E-10, s.47.*

50. Examinations, admissibility without consent of opposite party

The examination of any witness taken within or outside the province by virtue of any commission or order issued or made for that purpose, shall not be read in evidence at any trial or hearing without the consent of the party against whom it may be offered, unless it appears to the satisfaction of the judge or other person before whom the trial or hearing is had, that the witness is beyond the jurisdiction of the court, or dead, or unable from permanent sickness or infirmity, or other sufficient cause to attend the trial, in any of those cases the examinations and depositions certified under the hand of the commissioner, Prothonotary, or other person taking them, shall and may without proof of the signature on the certificate be received and read in evidence, saving all just exceptions. *R.S.P.E.I. 1974, Cap. E-10, s.48; 2008,c.20,s.72(29).*

51. Annexing to commission, requirement for

It is not necessary to annex to any commission issued for the examination of witnesses outside the province, or to the depositions or evidence taken under the commission, or to return with the commission books of account, or books of original entries, but copies from the entries given in evidence, or extracts from the books certified by the commissioner as correct, are admissible and may be read in evidence on the trial without further proof, saving all just exceptions that might have been taken to the originals if produced and proved in the ordinary manner. *R.S.P.E.I. 1974, Cap. E-10, s.49; 2019,c.23,s.52.*

52. Examination of absent or absconding debtor, proof of his writings

Upon the examination of a witness in an action against an absent or absconding debtor, and on the trial of the action, copies of all letters and writings, written to the absent or absconding debtor or delivered to the debtor, are admissible in evidence, without notice to produce the originals, if it is proven to the satisfaction of the judge trying the cause by evidence taken under commission or otherwise, that the copies are true copies of the originals, that the originals were delivered to or received by the absent or absconding debtor, or mailed properly addressed to the debtor post-paid in time for the debtor to receive them in the ordinary course of the mail, before the debtor left the place to which the letters or writings were so addressed, if the original letters or writings would be receivable in evidence if produced and proved. *R.S.P.E.I. 1974, Cap. E-10, s.50; 2019,c.23,s.53.*

53. Depositions of witnesses, read in evidence, how

The depositions of any witness taken by virtue of any commission or order issued or made in an action against an absent or absconding debtor, may be read in evidence at the trial under the like conditions as in other cases, without the consent of the defendant, if the commission or order appears to have been executed and returned as required by the Act under which the same was issued or made. *R.S.P.E.I. 1974, Cap. E-10, s.51.*

Evidence in Judicial Proceedings

54. Previous convictions, procedure in court, and proof: provincial offences

- (1) The procedure in every court, and before every provincial court judge and judicial justice of the peace, with respect to previous convictions and the proof of conviction shall be as follows:
- (a) no information for an offence for which a greater punishment may be inflicted by reason of a previous conviction shall contain any reference to the previous conviction;
 - (b) upon the trial of any person for any such offence, if the accused is found guilty, the court, provincial court judge or justice shall then, and not before, if requested by the prosecutor or counsel for the Crown, ask the accused whether he or she was previously convicted, and if the accused does not admit that he or she was previously convicted, evidence may be adduced to prove the previous conviction;
 - (c) if upon the hearing of any information for any such offence the court, provincial court judge or justice proceeds to hear and determine the case in the absence of the accused, the evidence may be adduced notwithstanding the absence;
 - (d) a copy of any summary conviction purporting to be signed by the clerk of the court or other officer having the custody of the records of the court, provincial court judge or judicial justice of the peace by whom the conviction was made, or to which the summary conviction was returned, or by the deputy of the clerk or officer, shall, upon proof of the identity of the person convicted, be sufficient evidence of the conviction without proof of the signature or official character of the person appearing to have signed it.

Application of section

- (2) This section does not apply to criminal law and procedure, nor to any other matter within the competence of the Parliament of Canada. *R.S.P.E.I. 1974, Cap. E-10, s.52; 2019,c.23,s.55; 2018,c.52,s.57(4).*

55. Production of transcript

Repealed by 2019,c.23,s.56. *1992,c.22,s.1; 1993,c.29,s.4; 1995,c.32,s.4; 1997,c.20,s.3; 2000,c.5,s.3; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3; 2019,c.23,s.56.*

56. Admissibility of secondary evidence of former trial

Where, by reason of the death, absence or inability to attend from any other cause, of a witness, it is necessary to give secondary evidence of the testimony of the witness, given on a former trial between the same parties, a transcript of the evidence taken by a person referred to in subsection 58(1) and certified by that person may be received in such cases where a judge's notes of evidence might be admitted. *1992,c.22,s.1; 2019,c.23,s.57.*

57. "legal proceeding", defined

- (1) In this section, "**legal proceeding**" means an action or proceeding in the provincial court for the imposition of punishment by fine, penalty, or imprisonment to enforce an Act of the Legislature or to enforce a regulation made under an Act of the Legislature.

Disclosure under Supreme Court

- (2) In any legal proceeding, an appeal lies at the instance of the Minister of Justice and Public Safety and Attorney General, or counsel instructed by the Minister of Justice and Public Safety and Attorney General for that purpose, to a judge of the Supreme Court from an order for the disclosure of information made by a judge of the provincial court.

Application of subsection 2

- (3) An order for the disclosure of information referred to in subsection (2) includes
- (a) an order for the disclosure or production of documents; and
 - (b) an order for the preparation of an inventory of documents.

Limitation period

- (4) An appeal under subsection (2) must be brought within 10 days after the date of the order appealed from, or within such further time as a judge of the Supreme Court considers appropriate in the circumstances.

Appeal

- (5) An appeal lies to the Court of Appeal from an order of the Supreme Court made under this section.

Limitation period for appeal

- (6) An appeal under subsection (5) must be brought within 10 days after the date of the order appealed from or within such further time as the Court of Appeal considers appropriate in the circumstances.

Date of appeal may be expedited

- (7) When an appeal is brought under subsection (2) or (5), the Supreme Court or the Court of Appeal, as the case may be, may order that the date of the appeal be expedited. *2002, c.6, s.1; 2008, c.20, s.72(29); 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

Recordings, Transcripts, etc.**58. Production of transcript**

- (1) Notwithstanding any enactment or the rules of court, a court reporter, stenographer or other person authorized by a judge to record evidence, depositions and proceedings in an action may record them by any form of shorthand or by means of any device for recording sound of a type approved by the Minister of Justice and Public Safety and Attorney General.

Evidence

- (2) A transcript of the whole or any part of the evidence, depositions or proceedings recorded by a person referred to in subsection (1) and certified by that person or by another court reporter or stenographer is admissible in evidence as a correct record of the evidence, depositions or proceedings, subject to the correction of any errors certified by the presiding judge.

Admissibility of transcript prepared by party

- (3) Without prejudice to subsection (2), where
- (a) evidence, depositions or proceedings before a court have been recorded by a sound recording device of a type approved under subsection (1);

- (b) a transcript of the evidence, depositions or proceedings, certified as a correct record of them, has been prepared from that record for the purpose of an appeal by a party to the appeal;
- (c) the transcript has been endorsed as accurate by the other parties to the appeal; and
- (d) a copy of the transcript has been provided to the appeal court,

the transcript is admissible in evidence as a correct record of the evidence, depositions and proceedings, notwithstanding that the transcript was not prepared and certified by a person referred to in subsection (1).

Dispute re record

- (4) Where a dispute arises with respect to the content of a transcript prepared under subsection (2), a party may apply to the trial judge to resolve the dispute and make the record.

Filing

- (5) The records prepared pursuant to subsection (1) may be filed in the office of the registrar or other person having custody of the records of the court and shall not be removed except on the order of a judge.

Destruction or disposition of records

- (6) At any time after the expiry of two years from the making of a record prepared pursuant to subsection (1), a judge may, without notice to any person, order that the records be erased, cancelled, destroyed or otherwise disposed of as the judge may direct. *2019, c.23, s.58.*