

**CONSOLIDATION OF EVIDENCE ACT**  
R.S.N.W.T. 1988,c.E-8

*(Current to: October 8, 2012)*

**AS AMENDED BY NORTHWEST TERRITORIES STATUTES:**

R.S.N.W.T. 1988,c.8(Supp.)  
In force July 19, 1993: SI-008-93  
R.S.N.W.T. 1988,c.57(Supp.)  
S.N.W.T. 1994,c.28  
In force January 1, 1995: SI-020-94  
S.N.W.T. 1995,c.11  
S.N.W.T. 1997,c.12  
In force July 1, 1998: SI-009-98

**AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:**

S.N.W.T. 1998,c.34  
In force April 1, 1999  
S.N.W.T. 1998,c.37  
In force April 1, 1999  
S.N.W.T. 1998,c.38  
In force April 1, 1999

**AS AMENDED BY NUNAVUT STATUTES:**

S.Nu. 2003,c.17,s.20  
s.20 in force January 1, 2004  
S.Nu. 2004,c.8  
In force December 1, 2004  
S.Nu. 2007,c.8,s.5  
s.5 in force November 8, 2007  
S.Nu. 2008,c.18,s.58  
s.58 in force July 31, 2009: SI-003-2009  
S.Nu. 2010,c.25,s.33  
s.33 in force March 21, 2011: SI-001-2011  
S.Nu. 2011,c.10,s.7  
s.7 in force March 10, 2011  
S.Nu. 2011,c.25,s.7  
s.7 in force October 31, 2011  
S.Nu. 2011,c.27,s.17  
s.17 in force October 31, 2011  
S.Nu. 2012,c.17,s.9  
s.9 in force June 8, 2012

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988* (*Note: The Supplement is in three volumes*).
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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## EVIDENCE ACT

### INTERPRETATION

#### Definitions

**1.** In this Act,

"action" includes any civil proceeding, inquiry, arbitration and a prosecution for an offence committed under an Act or a by-law or regulation made under an Act, 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 Nunavut; (*action*)

"bank" includes a branch, agency and office of a bank; (*banque*)

"British possession" means any dominion of Her Majesty exclusive of the United Kingdom and of Canada; (*possession britannique*)

"Court" includes an arbitrator, umpire, commissioner, judge, justice of the peace and any other officer or person having by law or by consent of parties authority to hear, receive and examine evidence; (*tribunal*)

"document" includes book, map, plan, drawing and photograph; (*document*)

"dominion" includes kingdom, empire, republic, commonwealth, state, province, territory, colony, possession and protectorate and, where parts of a dominion are under both a central and a local legislature, includes all parts under the central legislature and each part under a local legislature; (*dominion*)

"federal" as applied to state documents, means of or pertaining to Canada; (*fédéral*)

"foreign state" includes every dominion other than the United Kingdom, Canada and a British possession; (*État étranger*)

"Imperial" as applied to state documents, means of or pertaining to the United Kingdom and includes any kingdom that included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise; (*impérial*)

"Imperial Parliament" means the Parliament of the United Kingdom and includes the Parliament of any kingdom that included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise; (*Parlement impérial*)

"legislature" includes any legislative body or authority competent to make laws for a dominion; (*législature*)

"Queen's Printer" includes any government printer or other official printer; (*imprimeur de la Reine*)

"state document" includes

- (a) any Act or ordinance enacted or made or purporting to have been enacted or made by a legislature,
- (b) any order, regulation, notice, appointment, warrant, licence, 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, and
- (c) 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; (*document d'État*)

"statement" includes any representation of fact, whether made in words or otherwise; (*déclaration*)

"statutory declaration" or "solemn declaration" means a solemn declaration in the form and manner provided in the *Canada Evidence Act*. (*déclaration solennelle ou affirmation solennelle*)

S.Nu. 2011,c.10,s.7(5).

## COMPETENCY OF WITNESSES AND PRIVILEGES

Crime or interest

2. A person is not incompetent to give evidence by reason of crime or interest.

Definition of "action"

3. (1) In this section, "action" means any civil proceedings or arbitration.

Evidence of parties

(2) Except as is otherwise provided in this Act, the parties to an action and the persons on whose behalf an action is brought, commenced, opposed or defended, and their spouses are competent and compellable to give evidence on behalf of themselves or of any of the parties. R.S.N.W.T. 1988,c.57(Supp.),s.1.

Husband and wife

4. Without limiting the generality of section 3 a husband or wife may, in an action, give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time or within any period of time before or during marriage.

Evidence as to adultery

5. No witness in an action, whether a party to the action or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same action in disproof of the alleged adultery.

Communication made during marriage

**6.** A spouse is not compellable to disclose a communication made to him or her by his or her spouse during the marriage. S.Nu. 2011,c.25,s.7.

Definition of "witness"

**7.** (1) In this section, "witness" includes a person who, in the course of an action, is examined orally on discovery or who is cross-examined on an affidavit made by the person, or who answers any interrogatories or makes an affidavit as to documents.

Incriminating questions

(2) A witness shall not be excused from answering a question or producing a document on the ground that the answer to the question or the production of the document may tend to incriminate the witness, or may tend to establish the liability of the witness to an action at the instance of the Crown or of any person.

Evidence not to be used

(3) A witness who gives evidence in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

## ATTENDANCE OF WITNESS

Witness fees and expenses

**8.** No person is obliged to attend or give evidence in an action unless he or she is tendered proper witness fees and necessary travelling expenses.

## EXPERT EVIDENCE

Number of expert witnesses

**9.** Where it is intended by any party to an action to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence, not more than three of such witnesses may be called by either side to give opinion evidence on any issue in the action without the leave of the Court.

Admission of report or finding by expert

**10.** A written report or finding of facts

- (a) prepared by an expert who is not a party to the action or an employee of a party, except for the purpose of making the report or finding, or financially interested in the result of the controversy, and
- (b) containing the conclusions resulting wholly or partly from written information provided by the co-operation of several persons acting for a common purpose,

is, insofar as it may be relevant, admissible when testified to by the person or one of the persons making the report or finding, without calling as witnesses the persons providing

the information and without producing the books or other writings on which the report or finding is based, if, in the opinion of the Court, no substantial injustice will be done to the adverse party.

#### Cross-examination

**11.** A person who has provided information on which a report or finding referred to in section 10 is based, may be cross-examined by the adverse party, but the fact that his or her testimony is not obtainable does not render the report or finding inadmissible unless the Court finds that substantial injustice would be done to the adverse party by its admission.

#### Requirement for notice of report or finding

**12.** (1) Except as provided in subsection (2), a report or finding referred to in section 10 is not admissible unless the party offering it

- (a) gives notice to the adverse party a reasonable time before trial of his or her intention to offer it together with a copy of the report or finding or so much of it as may relate to the controversy; and
- (b) provides the adverse party with
  - (i) a reasonable opportunity to inspect and copy any records or other documents in the possession or control of the offering party on which the report or finding was based, and
  - (ii) the names of all persons providing facts on which the report or finding was based.

#### Where Court may admit report or finding

(2) The report or finding may be admitted if the Court finds that no substantial injustice would result from the failure to give the notice referred to in paragraph (1)(a).

## EVIDENCE RESPECTING COMMITTEES

#### Definitions

**13.** In this section and in sections 14 and 15,

"committee" means

- (a) a committee established or designated by the Minister responsible for the *Medical Profession Act* that, for the purpose of improving medical or hospital care or medical practice in a hospital,
  - (i) carries out or is responsible for studying, investigating or evaluating the hospital practice or hospital care provided by health care professionals in the hospital, or
  - (ii) studies, investigates or carries on medical research or a program, or
- (b) a subcommittee of a committee referred to in paragraph (a); (*comité*)

"health care professional" means any person providing health care in Nunavut and includes a person who

- (a) is entitled to practise medicine in Nunavut under the *Medical Profession Act*,
- (b) is entitled to practise dentistry in Nunavut under the *Dental Profession Act*,
- (c) is entitled to practise as a psychologist in Nunavut under the *Psychologists Act*,
- (d) is entitled to practise nursing in Nunavut under the *Nursing Act*;
- (e) is licensed under the *Licensed Practical Nurses Act*,
- (f) is employed in Nunavut as a physiotherapist and is an active member of the Canadian Physiotherapy Association,
- (g) is employed in Nunavut as an occupational therapist and is an active member of the Canadian Association of Occupational Therapists,
- (h) is employed in Nunavut as a medical radiation technologist and is a member of the Canadian Association of Medical Radiation Technologists,
- (i) is employed in Nunavut as a laboratory technologist and is certified by and registered with the Canadian Society of Laboratory Technologists,
- (j) has successfully completed a Community Health Representative course offered by Nunavut Arctic College,
- (k) is entitled to practise as a pharmaceutical chemist in Nunavut under the *Pharmacy Act*, or
- (l) is entitled to practise midwifery under the *Midwifery Profession Act*; (*professionnel de la santé*)

"hospital" includes a nursing station, health centre, nursing home and co-ordinated home care program; (*hôpital*)

"legal proceedings" means an inquiry, arbitration, inquest or civil proceeding in which evidence is or may be given and includes a proceeding before a tribunal, board or commission, but does not include

- (a) **repealed, S.Nu. 2012,c.17,s.9(5).**
- (b) a hearing or appeal respecting the conduct or competence of a health care professional before
  - (i) a Board of Inquiry established by or under the *Medical Profession Act*, the *Midwifery Profession Act*, the *Dental Profession Act* or the *Pharmacy Act*, or a hearing panel established under the *Licensed Practical Nurses Act*, or
  - (ii) a board or body connected with the professional association of the profession to which the health care professional belongs, or

- (c) a proceeding before a court that is an appeal, review or trial *de novo* of any of the matters referred to in paragraph (a) or (b); (*procédure judiciaire*)

"professional association" means an association that represents members of a health care profession and includes

- (a) the Northwest Territories Medical Association,
- (b) the NWT/Nu Dental Association,
- (c) the Association of Psychologists of the Northwest Territories,
- (d) the Registered Nurses Association of the Northwest Territories and Nunavut,
- (e) the Canadian Physiotherapy Association,
- (f) the Canadian Association of Occupational Therapists,
- (g) the Canadian Association of Medical Radiation Technologists, and
- (h) the Canadian Society of Laboratory Technologists; (*association professionnelle*)

"witness" includes any person who, in the course of legal proceedings,

- (a) is examined orally for discovery,
- (b) is cross-examined on an affidavit made by that person,
- (c) answers any interrogatories,
- (d) makes a statement as to documents, or
- (e) is called on to answer any question or produce any document, whether under oath or not. (*témoign*)  
S.N.W.T. 1994,c.28,s.34; S.N.W.T. 1997,c.12,s.13;  
S.N.W.T. 1998,c.37,Sch.A,PartII,s.1; Sch.B,PartII,s.1;  
Sch.C,PartII,s.1; S.N.W.T. 1998,c.38,Sch.D,PartII,s.3;  
S.Nu. 2003,c.17,s.20; S.Nu. 2008,c.18,s.58;  
S.Nu. 2011,c.10,s.7(2); S.Nu. 2010,c.25,s.33;  
S.Nu. 2011,c.27,s.17; S.Nu. 2012,c.17,s.9(2),(3),(4),(5).

Questions and documents related to committee

- 14.** (1) A witness in legal proceedings, whether a party to them or not,
- (a) shall not be asked nor be permitted to answer, in the course of legal proceedings, a question as to a proceeding before a committee; and
  - (b) shall not be asked to produce nor be permitted to produce, in the course of legal proceedings, a document made by a committee that was prepared exclusively for the purpose of being used in the course of, or arising out of, any study, investigation, medical research or program, the dominant purpose of which is to improve medical or hospital care or medical practice in a hospital.

Hospital and medical records

- (2) Paragraph (1)(b) does not apply to records maintained by hospitals or medical records pertaining to a patient.

### Limitation on excusing witness

(3) Despite that a witness in legal proceedings is or has been a member of or has participated in the activities of, or has made a report, statement, memorandum or recommendation to, or has provided information to, a committee to which subsection (1) applies, he or she is not, subject to subsection (1), excused from answering any question or producing any document that he or she is otherwise bound to answer or produce. S.Nu. 2011,c.10,s.7(5).

### Liability

**15.** (1) No action or other proceeding for damages lies against a person who, in good faith, discloses information or submits a record to a committee for the purpose of the information or record being used in the course of research or a study, investigation, evaluation or program carried out by the committee.

### Disclosure

(2) No committee and no person on a committee shall disclose or publish a record of the committee or information submitted to or compiled for the committee, except

- (a) to the Minister, in the case of a committee established or designated by the Minister responsible for the *Medical Profession Act*;
- (b) **repealed, S.Nu. 2012,c.17,s.9(6)**;
- (c) to a professional association, in the discretion of the committee; or
- (d) for the purpose of advancing medical research or medical education.

### Confidentiality

(3) Where a committee discloses or publishes a record of the committee or information submitted to or compiled for the committee, the committee shall ensure that the manner of disclosure or publication does not permit the identification, in any manner, of the person whose condition or treatment has been studied, evaluated or investigated.

### Exemption

(4) No person who receives information from a committee or a record of a committee under subsection (2) shall publish or disclose the information or the record except for the purpose of advancing medical research or medical education and the disclosure or publication must be in accordance with subsection (3).

### Paramountcy

(5) This section prevails despite any conflict or inconsistency with the *Access to Information and Protection of Privacy Act*. S.Nu. 2007,c.8,s.5; S.Nu. 2012,c.17,s.9(6).

## CORROBORATIVE EVIDENCE

### Breach of promise of marriage

**16.** The plaintiff in an action for breach of promise of marriage shall not obtain a verdict or judgment unless his or her testimony is corroborated by some other material evidence in support of the promise.

### Deceased person

**17.** In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not on his or her own evidence obtain a verdict, judgment or decision, in respect of any matter occurring before the death of the deceased person, unless the evidence is corroborated by some other material evidence.

### Mentally disordered person

**18.** In an action by or against a person who

- (a) has been found to have a mental disorder under any law in force in Nunavut,
- (b) has a mental disorder and has been admitted to a hospital, or
- (c) suffers from unsoundness of mind and is incapable of giving evidence,

an opposite or interested party shall not obtain a verdict, judgment or decision on the evidence of a person referred to in paragraph (a), (b) or (c), unless the evidence is corroborated by some other material evidence. S.Nu. 2011,c.10,s.7(5); S.Nu. 2012,c.17,s.9(7).

### Child of tender years

**19.** No action shall be decided on the evidence of a child of tender years given under the authority of section 25 unless the evidence is corroborated by some other material evidence.

## OATHS AND AFFIRMATIONS

### Power of Court

**20.** (1) Every Court has power to administer or cause to be administered an oath or affirmation to every witness who is called to give evidence before the Court.

### Power of other persons

(2) Where an oath, affirmation or declaration is directed to be made before a person, he or she has full power and authority to administer it and to certify to its having been made.



### Manner of administering oath

- 21.** An oath may be administered to any person
- (a) while the person holds in his or her hand a copy of the Old or New Testament, without requiring the person to kiss it; or
  - (b) in the manner and form and with the ceremonies that the person declares to be binding on his or her conscience.

### Form of oath

- 22.** (1) Where a person is about to give evidence, the oath may be in the following form:

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

### Form of affidavit or deposition

- (2) Where a person is about to swear an affidavit or deposition, the oath may be in the following form:

I (you) swear that the contents of this affidavit (*or* deposition) are true. So help me (you) God.

### Form of affirmation

- 23.** (1) Where a person called or desiring to give evidence chooses to affirm or is objected to as incompetent to take an oath, the person may make the following affirmation:

I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth.

### Effect of affirmation

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

### Affirmations instead of affidavits

- (3) Where a person required or wishing to make an affidavit or deposition
- (a) in an action, or
  - (b) on an occasion where, or touching a matter respecting which, an oath is required or is lawful, whether on the taking of office or otherwise,

chooses to affirm, the Court, or other officer or person qualified to take affidavits or depositions, shall permit the person, instead of being sworn, to make his or her affirmation in the words "I solemnly affirm" and the expression "So help me God" shall be deemed to be deleted from the oath.

### Effect of affirmation

- (4) An affirmation made under subsection (3) is of the same force and effect as if the person had taken an oath in the usual form.

**Belief in binding effect of oath**

**24.** 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.

**Evidence of child of tender years**

**25.** In any action where

- (a) a child of tender years is tendered as a witness, and
- (b) the child does not, in the opinion of the Court, understand the nature of an oath,

the evidence of the child may be admitted, though not given on oath, if, in the opinion of the Court, the child

- (c) is possessed of sufficient intelligence to justify the reception of the evidence, and
- (d) understands the duty of speaking the truth.

**EXAMINATION AND EVIDENCE OF WITNESSES****Evidence of persons unable to speak**

**26.** A witness who is unable to speak may give evidence in any other manner in which the witness can make it intelligible.

**Proof of contradictory written statements**

**27.** (1) A witness may be cross-examined as to previous statements made by the witness in writing, or reduced into writing, relative to the matter in question, without the writing being shown to the witness but if it is intended to contradict the witness by the writing, the attention of the witness shall, before the contradictory proof is given, be called to those parts of the writing that are to be used for the purpose of contradicting the witness.

**Inspection by Court**

(2) The Court may require the production of the writing referred to in subsection (1) for the inspection of the Court, and upon that may make such use of it for the purposes of the trial or proceeding as the Court thinks fit.

**Proof of contradictory oral statements**

**28.** (1) Where a witness, on cross-examination as to a former statement made by the witness relative to the matter in question, and inconsistent with the previous evidence of the witness, does not distinctly admit that he or she did make the statement, proof may be given that the witness did in fact make the statement.

#### Question to witness

(2) Before the proof referred to in subsection (1) is given, the circumstances of the supposed statement sufficient to designate the particular occasion shall be mentioned to the witness, and the witness shall be asked whether or not the witness did make the statement.

#### Proof of previous conviction of witness

**29.** (1) A witness may be asked whether he or she has been convicted of any offence, and on being asked, if the witness either denies the fact or refuses to answer, the conviction may be proved.

#### Certificate of conviction

(2) A certificate containing the substance and effect only, omitting the formal part, of the charge and of the conviction, purporting to be signed by the officer having the custody of the records of the Court in which the offender was convicted, or by the deputy of the officer, is, on proof of the identity of the witness as the offender, sufficient evidence of the conviction, without proof of the signature or of the official character of the person appearing to have signed the certificate.

#### Discrediting one's own witness

**30.** (1) A party producing a witness shall not be allowed to impeach the credit of the witness by general evidence of bad character, but the party may contradict the witness by other evidence, or if the witness in the opinion of the Court proves adverse, the party may by leave of the Court cross-examine the witness and may prove that the witness made at some other time a statement inconsistent with the present testimony of the witness.

#### Question to witness

(2) Before the proof referred to in subsection (1) is given, the circumstances of the statement sufficient to designate the particular occasion shall be mentioned to the witness and the witness shall be asked whether or not the witness did make the statement.

## RECORDING OF EVIDENCE

#### Definitions

**31.** In this section and sections 32 to 37.1,

"court" means any court, judge, justice of the peace, arbitrator, umpire, commissioner or other person authorized by law or by order of a court or otherwise, to hear a witness or take evidence or to make an order, decree, finding, decision or report or to exercise any judicial or quasi-judicial function; (*tribunal*)

"evidence" includes judgments, decisions, opinions, speeches, reports and all other matters done or said by or before a court; (*preuve*)

"judge" includes any person lawfully presiding in a court; (*juge*)

"proceeding" means any civil case, prosecution under an Act or other matter to which the legislative authority of the Legislature extends that is before a court; (*instance*)

"record" means a record made in accordance with section 32; (*enregistrement*)

"reporter" means an official court reporter duly appointed in accordance with law or a stenographer or typist; (*sténographe*)

"sound recording apparatus" means any device, machine or system of a type approved by the Commissioner for the making of a record of voice or other sound. (*appareil d'enregistrement sonore*)

S.N.W.T. 1998,c.34,Sch.C,s.10(2); S.Nu. 2004,c.8,s.2.

#### Sound recording apparatus

**32.** Despite anything in this Act or any other Act, the evidence in any proceeding, or any part of the evidence, may be recorded by sound recording apparatus if the judge so directs. S.Nu. 2011,c.10,s.7(5).

#### Certification of record

**33.** (1) The judge or the court official in charge of the sound recording apparatus during the proceeding shall certify a record as being the record made of the evidence, or of part of the evidence, in the proceeding.

#### Proof of record

(2) A certificate made under subsection (1) is, without proof of the signature of the judge or person in charge of the sound recording apparatus or of his or her official character, admissible in evidence as proof, in the absence of evidence to the contrary, that the record is the record of the evidence, or of part of the evidence, in the proceeding.

#### Typewritten copies

**34.** A typewritten copy of the whole or a part of the contents of a record

- (a) reduced to writing by a reporter, and
- (b) certified by the reporter to be a true and faithful transcript of the contents of the record,

is admissible in evidence before a court to the same extent and with the same effect as a transcript of shorthand notes duly prepared by a reporter in accordance with law.

#### Playing of records in court

**35.** The sounds recorded on a record may be reproduced in a court by any appropriate machine or device and the reproduction shall be admitted by the court to the same extent and with the same effect as a typewritten copy prepared under section 34.

#### Filing of records

**36.** All records must be filed in the office of the Clerk of the Nunavut Court of Justice and shall not be removed, unless authorized by the Clerk for use in court or as required by an Act or one of the Rules of the Nunavut Court of Justice or on the order of a judge of the Nunavut Court of Justice. S.Nu. 2011,c.10,s.7(3).

#### Order for destruction of records

**37.** (1) Any time after two years from the making of a record a judge of the Nunavut Court of Justice may order the record destroyed or the recording on it erased, cancelled or otherwise destroyed.

#### General order

(2) An order made under subsection (1) may be a general order to apply to all or any records made before a date set out in the order. S.Nu. 2011,c.10,s.7(5).

### ELECTRONIC RECORDS

#### Definitions

**37.1.** (1) In this section,

"data" means representations, in any form, of information or concepts; (*données*)

"electronic record"

- (a) means data that is recorded or stored on any medium in or by a computer system or other similar device, and that can be read or perceived by a person or a computer system or other similar device, and
- (b) includes a display, printout or other output of that data, other than a printout referred to in subsection (6); (*document électronique*)

"electronic records system" includes the computer system or other similar device in or by which data is recorded or stored, and any procedures related to the recording and storage of electronic records. (*système d'archivage électronique*)

#### Application

(2) This section does not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

#### Power of court to consider electronic evidence

(3) A court may have regard to evidence adduced under this section in applying any common law or statutory rule relating to the admissibility of records.

#### Authentication of electronic record

(4) The person seeking to introduce an electronic record in any proceeding must prove its authenticity by presenting evidence capable of supporting a finding that the electronic record is what the person claims it to be.

### Application of best evidence rule

(5) Subject to subsection (6), in any proceeding where the best evidence rule is applicable in respect of an electronic record, the rule is satisfied on proof of the integrity of the electronic records system in or by which the data was recorded or stored.

### What constitutes record

(6) In any proceeding, an electronic record in the form of a printout that has been manifestly or consistently acted on, relied on or used as the record of the information recorded or stored on the printout, is the record for the purposes of the best evidence rule.

### Proving integrity of electronic records system

(7) 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 if

- (a) evidence is presented to support a finding that
  - (i) at all material times the computer system or other similar device was operating properly, or
  - (ii) the computer system or other similar device was not operating properly at all material times, but the fact of its not operating properly did not affect the integrity of the electronic record, and there are no other reasonable grounds to doubt the integrity of the electronic records system;
- (b) 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) 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.

### Standards may be considered

(8) For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in any proceeding in respect of any standard, procedure, usage or practice regarding 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.

### Proof by affidavit

(9) The matters referred to in subsections (6), (7) and (8) may be established by an affidavit given to the best of the deponent's knowledge or belief.

### Cross-examination

(10) A party may cross-examine the deponent of an affidavit that was introduced in evidence under subsection (9)

- (a) as of right, if the deponent is, or is under the control of, an adverse party; or
  - (b) with leave of the court, in the case of any other deponent.
- S.Nu. 2004,c.8,s.3.

## JUDICIAL NOTICE AND PROOF OF STATE DOCUMENTS

### Judicial notice of Acts and ordinances

**38.** Judicial notice shall be taken of

- (a) Acts of the Imperial Parliament;
  - (b) Acts of Canada;
  - (c) ordinances made by the Governor in Council;
  - (d) ordinances of the legislature of, or other legislative body or authority competent to make laws for, Nunavut, a province or territory; and
  - (e) Acts and ordinances of the legislature of, or other legislative body or authority competent to make laws for, any British possession.
- S.Nu. 2011,c.10,s.7(5).

### Proof of Imperial state document

**39.** (1) The existence and the whole or a part of the contents of an Imperial state document may be proved

- (a) in the same manner as it may from time to time be provable in any Court in England;
- (b) by the production of a copy of the *Canada Gazette* or a volume of the Acts of Canada purporting to contain a copy of it or an extract from it or a notice of it;
- (c) by the production of a copy of it or an extract from it purporting to be printed by or for or by authority of the Territorial Printer or of the Queen's Printer for Canada, a province or territory;
- (d) by the production of a copy of it 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 a department of the Imperial Government; or
- (e) by the production of a copy of it 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 territorial, federal or provincial state document

(2) The existence and the whole or a part of the contents of a state document of Nunavut, Canada or a province or territory may be proved by the production of

- (a) a copy of the *Nunavut Gazette*, the *Canada Gazette* or the official gazette of a province or territory or of a volume of the Acts of Nunavut, Canada, or a province or territory purporting to contain a copy of the state document or an extract from it or a notice of it;
- (b) a copy of it or an extract from it purporting to be printed by or for or by authority of the Territorial Printer, or of the Queen's Printer for Canada or a province or territory; or
- (c) a copy of it 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 a department of the Government of Nunavut, the Government of Canada or the government of a province or territory, 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 Seal of Nunavut, the Great Seal of Canada or the seal of a province or territory.

#### Proof of state document of British possession or foreign state

(3) The existence and the whole or a part of the contents of a state document of a British possession or foreign state may be proved

- (a) by the production of a copy of it 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; or
- (b) by the production of a copy of it 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 a 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 the foreign state.

#### Proof of signature of office

(4) 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 certifying.



### Official printer

(5) 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, government or Queen's Printer, it is not necessary to prove the authority, status or official position of the legislature, government or Queen's Printer. S.Nu. 2011,c.10,s.7(4),(5).

## EVIDENCE OF OTHER PUBLIC AND CORPORATION DOCUMENTS

### Copies of public books and documents

#### **40.** Where

- (a) a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and
- (b) no other Act exists that renders its contents provable by means of a copy, a copy of it or extract from it is admissible in evidence, if it is proved that it is a copy or extract or if it purports to be certified to be a true copy or extract by the officer to whose custody the original has been entrusted, without proof of the signature or of the official character of the person appearing to have signed it and without further proof of it.

### Proof of corporation documents

**41.** Where an original document, by-law, rule, regulation, or proceeding, or any entry in any register or other book, of a corporation created by charter or by or under an Act or ordinance of Nunavut, Canada, or a province or territory is of so public a nature as to be admissible in evidence, a copy of the document, by-law, rule, regulation or proceeding or of the entry purporting to be certified under the seal of the corporation and the signature of the presiding officer, clerk or secretary of the corporation, is admissible in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person appearing to have signed it, and without further proof of it. S.Nu. 2011,c.10,s.7(5).

### Proof of order of Governor General

**42.** An order in writing signed by the Secretary of State or the Registrar General of Canada, and purporting to be written by command of the Governor General is admissible in evidence as the order of the Governor General, without proof that the person signing it is the Secretary of State or the Registrar General of Canada or of the signature of that person, and without further proof of it.

### Proof of order of Lieutenant-Governor

**43.** An order in writing signed by a provincial secretary or other corresponding officer of Nunavut, a province or territory and purporting to be written by command of the Lieutenant-Governor or other person in whom the executive powers are vested is admissible in evidence as the order of the Lieutenant-Governor or such other person without any proof of the official position of the person signing it or of the signature of that person, and without further proof of it. S.Nu. 2011,c.10,s.7(5).

## Copies in official gazette

**44.** All copies of official and other notices, advertisements and documents printed in the *Nunavut Gazette*, *Canada Gazette* or the official gazette of a province or territory are, in the absence of evidence to the contrary, proof of the originals, and of the contents of the originals. S.Nu. 2011,c.10,s.7(5).

## Entries in departmental books

**45.** A copy of an entry, or a statement of the absence of an entry, in any document belonging to or deposited or kept

- (a) in any office or department of the Government of Nunavut, the Government of Canada or the government of a province or territory, or
- (b) in the office of any commission, board or other branch of the public service of Nunavut, Canada, or a province or territory,

is admissible as evidence of the entry, and of the matters, transactions and accounts recorded in the entry, or of the absence of the entry respectively, if it is proved by the oath or affidavit of an officer of the office or department or of the commission, board or other branch of the public service that

- (c) the document was at the time of the making of the entry, or during the time covered by the statement, one of the ordinary documents kept in that office or department, commission, board or other branch of the public service,
  - (d) the entry was made, or in the case of its absence would have been made, in the usual and ordinary course of business of that office or department, commission, board or branch, and
  - (e) the copy is a true copy of the entry or that the statement of absence is a true statement.
- S.Nu. 2011,c.10,s.7(5).

## Privilege in case of official documents

**46.** (1) Where a document is in the official possession, custody or power of

- (a) a member of the Executive Council of Nunavut, a province or territory,
- (b) the Commissioner, or
- (c) the head of a department of the public service of Nunavut, Canada, or a province or territory,

if the deputy head or other officer of the department or an officer in the public service has the record, document, plan, book or paper in his or her personal possession, and is called as a witness, he or she is entitled, acting in the matter by the direction and on behalf of the member of the Executive Council, the Commissioner or head of the department, to object to produce the record, document, plan, book or paper on the ground that it is privileged.

### Objection by witness

(2) The objection referred to in subsection (1) may be taken by the witness in the same manner, and shall have the same effect, as if the member of the Executive Council, the Commissioner or head of the department were personally present and made the objection. S.Nu. 2011,c.10,s.7(5).

### Definition of "business"

**47.** (1) In this section, "business" includes every kind of business, profession, occupation or calling, whether carried on for profit or not.

### Proof of record

(2) A record in a business of an act, condition or event, is, insofar as it is relevant, admissible in evidence if

- (a) the custodian of the record or other qualified person testifies to its identity and the mode of its preparation, and to its having been made in the usual and ordinary course of business, at or near the time of the act, condition or event; and
- (b) in the opinion of the Court, the sources of information, mode and time of preparation of the record were such as to justify its admission.

### Definitions

**48.** (1) In this section,

#### "person" includes

- (a) the Government of Nunavut, the Government of Canada and the government of a province or territory, and any department, commission, board or branch of any such government,
- (b) a corporation, and
- (c) the heirs, executors, administrators or other legal representatives of a person; (*personne*)

"photographic film" includes any photographic plate, microphotographic film and photostatic negative, and "photograph" has a corresponding meaning. (*pellicule photographique ou photographie*)

### Admissibility of photograph print

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

- (a) is photographed in the course of an established practice of the person of photographing objects of the same or 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 his or her employees or delivered to another person in the ordinary course of business or lost,

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

#### Power of Court to refuse to admit print

(3) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement or other executed or signed document was destroyed as described in paragraph (2)(b) 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 before 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.

#### Exemption

(4) Subsection (3) does not apply where the photographic print is tendered by a government or the Bank of Canada.

#### Proof of compliance with conditions

(5) Proof of compliance with the conditions imposed by this section may be given by any person having knowledge of the facts either orally or by affidavit sworn before a notary public and unless the Court otherwise orders, a notarial copy of any such affidavit is admissible in evidence in place of the original affidavit. S.Nu. 2011,c.10,s.7(5).

## EVIDENCE OF JUDICIAL PROCEEDINGS

#### Definition of "justice"

**49.** (1) In this section, "justice" means a judge, a justice of the peace, and includes two or more justices if two or more justices act or have jurisdiction.

#### Proof of proceedings in Court of record

(2) Evidence of any proceeding or record in, of or before

- (a) a Court of record in the United Kingdom,
- (b) the Supreme Court of Canada or the Federal Court of Canada,
- (c) a Court of record or a justice or coroner in Nunavut, a province or territory or in a British possession, or
- (d) a Court of record of a foreign state,

may be made in any action

- (e) by an exemplification or certified copy of it, purporting to be under the seal of the Court or under the signature and seal of the justice

- or coroner without any proof of the authenticity of the seal or of the signature of the justice or coroner, or other proof, or
- (f) if the Court, justice or coroner has no seal, and so certifies, by a copy purporting to be certified under the signature of a judge or presiding justice of the Court, or of the justice or coroner, without any proof of the authenticity of the signature or other proof.
- S.N.W.T. 1998,c.34,Sch.C,s.10(3); S.Nu. 2011,c.10,s.7(5).

## NOTARIAL DOCUMENTS OF QUEBEC

### Copies of notarial acts in Quebec

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

### Rebutting proof by certified copy

(2) The proof by the certified copy may be rebutted, or set aside by proof that there is no original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such a nature as may, by the law of the Province of Quebec, be taken before a notary, or be filed, enrolled or enregistered by a notary.

### Notice

(3) No copy of a notarial act or instrument, as provided in this section, shall be admitted in evidence on any trial unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice of that intention and the reasonableness of the notice shall be determined by the Court, but the notice shall not in any case be less than 10 days.

## BANK BOOKS

### Copy of bank book or record

**51.** (1) Subject to this section, a copy of an entry in any book or record kept in a bank shall in all actions to which the bank is not a party be, in the absence of evidence to the contrary, proof of the entry and of the matters, transactions and accounts recorded in the entry.

### Proof

(2) A copy of an entry in a book or record referred to in subsection (1) shall not be admitted in evidence under this section unless it is first proved that

- (a) the book or record was, at the time of the making of the entry, 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 or its successor, and  
(d) the copy is a true copy,  
and this proof may be given orally or by affidavit by the manager or accountant or a former manager or accountant of the bank or its successor.

#### Bank and officers where bank not party

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

#### Order for inspection

(4) On the application of a party to an action, the Court may order that the party be at liberty to inspect and take copies of any entries in the books or records of a bank for the purposes of the action.

#### Notice of inspection

(5) The person whose account is to be inspected under subsection (4) shall be notified of the application at least two days before the hearing of the application and, if it is shown to the satisfaction of the Court that the person cannot be notified personally, the notice may be given by addressing it to the bank.

#### Amount of costs

(6) The costs of an application to a Court under or for the purpose of this section, and the costs of anything done or to be done under an order of a Court made under or for the purposes of this section, are in the discretion of the Court.

#### Order against bank for costs

(7) The Court may order the costs referred to in subsection (6) or any part of those costs to be paid to any party by the bank where the costs have been occasioned by an act or omission of the bank and the order may be enforced as if the bank were a party to the action.

## WILLS

#### Application

**52.** (1) This section applies to letters probate of a will or letters of administration with a will annexed where the will is proved elsewhere than in Nunavut, if the original will has been deposited and the letters probate or letters of administration with a will annexed were granted in a Court having jurisdiction over the proof of wills and administration of the estates of intestates or the custody of wills.

### Method of proving wills

(2) Letters probate of a will, or letters of administration with a will annexed, or a copy of it certified under the seal of

- (a) the Nunavut Court of Justice, if the letters probate or letters of administration were granted in Nunavut, or
- (b) the Court of the province or territory in which the letters probate or letters of administration were granted,

are admissible as evidence of the original will and of the death of the testator without any proof of the authenticity of the seal of the Nunavut Court of Justice or Court or of the signature of the officer of the Nunavut Court of Justice or Court purporting to certify the letters probate or letters of administration but a Court may, on due cause shown on affidavit, order the original will to be produced in evidence or direct other proof of the original will that under the circumstances appears necessary or reasonable for testing the authenticity of the alleged original will and its unaltered condition and the correctness of the prepared copy.

### Notice of intention to produce letters probate or of administration

(3) Letters probate of a will, or letters of administration with a will annexed, or a copy of it certified as provided in subsection (2) shall not be admitted in evidence on any trial, without the leave of the Court, unless the party intending to produce the letters probate or letters of administration has, at least 10 days before the trial, given notice of that intention to the party against whom it is intended to be produced.

S.Nu. 2011,c.10,s.7(5).

## REGISTERED INSTRUMENTS

### Copies of registered instruments as evidence

**53.** (1) In an action where it would be necessary to produce and prove an original document that has been deposited, filed, kept or registered in a Court registry or in any public office or Court in Nunavut, in order to establish the document and the contents of the document, the party intending to prove the original document may give notice to the opposite party at least 10 days before the trial or other proceeding in which the proof is intended to be adduced, that he or she intends at the trial or other proceeding to give in evidence as proof of the original document, a copy of the original document certified by the registrar of the office where it is deposited, filed, kept or registered, under the signature and seal of office of the registrar.

### Sufficiency of copy as evidence of original

(2) A copy certified pursuant to subsection (1) is sufficient evidence of the original document and of its validity and contents, without proof of the signature or seal of office of the registrar, and without proof that the document was so deposited, filed, kept or registered, unless the party receiving the notice, within four days after its receipt, gives notice that he or she disputes the validity or contents of the original document.

### Costs

(3) The cost resulting from the production or proof of the original document is in the discretion of the Court. R.S.N.W.T. 1988,c.8(Supp.),s.207; S.Nu. 2011,c.10,s.7(5).

### Filing original document

**54.** (1) Where a public officer produces on a subpoena an original document, it shall not be deposited in Court unless otherwise ordered, but if a copy of the original document or of a part of it is needed for subsequent reference or use, the copy, certified under the signature of the officer producing the document or otherwise proved, shall be filed as an exhibit in the place of the original and the officer is entitled to receive in addition to his or her ordinary fees, the fee for any certified copy, to be paid to the officer before it is delivered or filed.

### Where original document retained by Court

(2) Where an order is made that the original document be retained, the order shall be delivered to the public officer and the exhibit shall be retained in Court and filed.

## MERCANTILE DOCUMENTS AND TELEGRAMS

### Proof of certain instruments

**55.** (1) A party wishing to give in evidence a telegram, letter, shipping bill, bill of lading, delivery order, receipt, account or other written instrument used in business or other transactions, may give notice to the opposite party, at least 10 days before the trial or other proceeding in which the proof is intended to be adduced, that he or she intends to give in evidence as proof of the contents of the original, a writing purporting to be a copy of the original and in the notice shall name a convenient time and place for the inspection of the copy.

### Inspection

(2) The copy referred to in subsection (1) may, after the giving of the notice referred to in subsection (1), be inspected by the opposite party, and shall without further proof be accepted and taken in place of the original as proof of the contents of the original unless the party receiving the notice, within four days after the time mentioned for the inspection, gives notice that he or she intends

- (a) to dispute the correctness or genuineness of the copy at the trial or proceeding; and
- (b) to require proof of the original.

### Costs

(3) The costs resulting from the production or proof of the original instrument are in the discretion of the Court.



## MISCELLANEOUS PROVISIONS AS TO DOCUMENTS AND EVIDENCE

### Production of newspaper as evidence of notice

**56.** The production of a printed copy of a newspaper in an action is, in the absence of evidence to the contrary, proof that any notice or advertisement contained in the newspaper was inserted, advertised and published in that newspaper by the person by whom, or in whose behalf, or in whose name, the notice or advertisement purports or appears to be inserted, advertised or published.

### Where no attestation required

**57.** It is not necessary to prove, by the attesting witness, an instrument to the validity of which attestation is not required.

### Comparison of disputed writing with genuine

**58.** A witness shall be permitted to make a comparison of a disputed writing with a writing proved to the satisfaction of the Court to be genuine and the writing and the evidence of witnesses respecting the writing may be submitted to the Court or jury as evidence of the genuineness or otherwise of the writing in dispute.

### Where instruments offered in evidence may be impounded

**59.** Where a document is admitted in evidence, the Court admitting the document may direct that it be impounded and kept in custody for the period and subject to the conditions that may seem proper or until the further order of the Court.

### Construction of this Act

**60.** The provisions of this Act shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any other law.

## HEARSAY EVIDENCE CONTAINED IN DOCUMENTS

### Documentary evidence

**61.** (1) Subject to subsections (2) and (3), in an action where direct oral evidence of a fact would be admissible, a statement made by a person in a document and tending to establish that fact is, on production of the original document, admissible as evidence of that fact if the following conditions are satisfied, namely,

- (a) if the maker of the statement
  - (i) had personal knowledge of the matters dealt with by the statement, or
  - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement, insofar as the matters dealt with by the statement are not within his or her personal knowledge, in the performance of a duty to record information supplied to him or her by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
- (b) if the maker of the statement is called as a witness in the action.

#### Non-compliance with subsection (1)

(2) The condition that the maker of the statement shall be called as a witness need not be satisfied if

- (a) the maker of the statement is dead or unfit by reason of his or her bodily or mental condition to attend as a witness;
- (b) it is not reasonably practicable to secure the attendance of the maker of the statement; or
- (c) all reasonable efforts to find the maker of the statement have been made without success.

#### Power to admit documentary evidence

(3) The Court may at any stage of an action, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that the statement mentioned in subsection (1) is admissible as evidence or may, without that order having been made, admit the statement in evidence

- (a) notwithstanding that the maker of the statement is available but is not called as a witness; and
- (b) notwithstanding that the original document is not produced, if in place of it, there is produced a copy of the original document or of the material part of it certified to be a true copy in the manner that may be specified in the order or as the Court may approve.

#### Statement by interested person

(4) Nothing in this section renders admissible as evidence a statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact that the statement might tend to establish.

#### Authentication of statement by maker

(5) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part of it was written, made or produced by the person with his or her own hand, or was signed or initialled by the person or otherwise recognized by the person in writing as one for the accuracy of which the person is responsible.

#### Discretion of Court respecting admissibility of statement

(6) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the Court may draw any reasonable inference from the form or content of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a qualified medical practitioner, and where the action is with a jury, the Court may, in its discretion, reject the statement notwithstanding that the requirements of this section are satisfied with respect to it, if for any reason it appears to the Court to be inexpedient in the interests of justice that the statement should be admitted.

### Construction

(7) Nothing in this section shall be construed to

- (a) prejudice the admissibility of any evidence that would apart from the provisions of this section be admissible; or
- (b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this section had not been passed.

### Weight to be attached to evidence

**62.** (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by section 61, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and in particular

- (a) to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated; and
- (b) to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

### Corroboration of evidence

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by section 61 shall not be treated as corroboration of evidence given by the maker of the statement.

### Proof of document where attestation required

**63.** In an action, an instrument to the validity of which attestation is required may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive but nothing in this section applies to the proof of wills or other testamentary documents.

### Documents not less than 20 years old

**64.** In any action, in the case of a document proved, or purporting, to be not less than 20 years old, there shall be made any presumption that, immediately before October 21, 1948, would have been made in the case of a document of like character proved, or purporting, to be not less than 30 years old.

## OATHS, AFFIDAVITS, AFFIRMATIONS AND STATUTORY DECLARATIONS

### Oaths, etc., for use in Nunavut

**65.** (1) An oath, affidavit, affirmation or statutory declaration for use in Nunavut may be administered, sworn, affirmed or made within Nunavut before

- (a) a judge or a justice of the peace within his or her jurisdiction;
- (b) the clerk or deputy clerk of the Court;
- (c) a commissioner for taking oaths within Nunavut;
- (d) a notary public appointed for Nunavut;

- (e) a barrister or solicitor duly admitted and entitled to practise as such in Nunavut;
- (f) the Sheriff appointed under the *Judicature Act*; or
- (g) a member of the Royal Canadian Mounted Police.

#### Designation of office

(2) Every person referred to in paragraphs (1)(a) to (g) shall designate his or her office below his or her signature to the jurat on an oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made before him or her.

S.N.W.T. 1998,c.34,Sch.C,s.10(4); S.Nu. 2011,c.10,s.7(5).

#### Oaths, etc., administered by commissioned officers

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

#### Admissibility

(2) A document that purports to be signed by a person referred to in subsection (1) in testimony of an oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made before that person and on which the rank and unit of that person are shown below his or her signature is admissible in evidence without proof of the signature or of the rank or unit of that person or that he or she is on full-time service. S.Nu. 2011,c.10,s.7(5).

#### Oaths, etc., made outside Nunavut

**67.** An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made outside Nunavut before

- (a) a judge, a magistrate or an officer of a Court of justice or a commissioner authorized to administer oaths in a Court of justice,
- (b) the mayor or chief magistrate of a city, borough or town corporate certified under the seal of the city, borough or town corporate,
- (c) officers of any of Her Majesty's diplomatic or consular services exercising their functions in any foreign country, including ambassadors, envoys, ministers, chargés d'affaires, counsellors, secretaries, attachés, consuls-general, consuls, vice-consuls, pro-consuls, consular agents, acting consuls-general, acting consuls, acting vice-consuls and acting consular agents,
- (d) officers of the Canadian diplomatic, consular and representative services exercising their functions in any foreign country or in any part of Her Majesty's dominions outside Canada, including, in addition to the diplomatic and consular officers mentioned in paragraph (c), high commissioners, permanent delegates, acting permanent delegates, counsellors and secretaries,

- (e) Canadian Government Trade Commissioners and Assistant Canadian Government Trade Commissioners exercising their functions in any foreign country or in any part of Her Majesty's dominions outside Canada,
- (f) a notary public and certified under his or her signature and official seal,
- (f.1) a person authorized under the laws of Quebec to administer oaths in that province, or
- (g) a commissioner authorized by the laws of Nunavut to take such affidavits,

are as valid and effectual and are of the same force and effect to all intents and purposes as if the oath, affidavit, affirmation or statutory declaration had been duly administered, sworn, affirmed or made in Nunavut before a commissioner for taking affidavits within Nunavut or other competent authority of the same nature. S.N.W.T. 1995,c.11,s.19; S.Nu. 2011,c.10,s.7(5).

Certain documents admitted in evidence without proof of signature, etc.

**68.** Any document purporting to be signed by a person referred to in section 67, and

- (a) in the case of a person referred to in paragraph 67(b) or (f), purporting to have impressed on it or attached to it the seal required by paragraph 67(b) or (f), or
- (b) in the case of a person referred to in paragraph 67(c), (d) or (e), purporting to have impressed on it or attached to it his or her seal of office, if any,

in testimony of the oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made by or before that person, shall be admitted in evidence without proof of the signature, or seal and signature, or of the official character of that person.

Formal defects

**69.** No defect, by misdescription of parties or otherwise, in the title or jurat of an affidavit, and no other irregularity in the form of an affidavit, affirmation or statutory declaration is an objection to its admission in evidence, if the Court before or to whom it is tendered thinks proper to admit it and the Court may direct a memorandum to be made on the document that it has been so admitted.

Who may administer oaths

**70.** Where, under any law, evidence under oath is authorized or required to be taken, or an oath is authorized or directed to be made, taken or administered, the oath may be administered and a certificate of its having been made, taken or administered may be given by anyone authorized by that law to take the evidence or by anyone authorized to take affidavits under this Act having authority or jurisdiction within the place where the oath is administered.

## Proof of death of person in Forces

- 71.** The production of a certificate signed or purporting to be signed
- (a) by the officer in charge of records, Department of National Defence, in the case of a member of the Canadian Forces, or
  - (b) by an officer of Her Majesty's Naval, Military or Air Forces, authorized so to sign, in the case of a member of Her Majesty's Forces who is not a member of the Canadian Forces,

stating that the person named in the certificate was a member of the Canadian Forces or Her Majesty's Armed Forces, and that the person has been officially reported as dead or presumed to be dead, if it appears on the face of the certificate that the person signing is qualified as set out in paragraph (a) or (b), is sufficient proof of the death of the person and of all the facts stated in the certificate for any purpose to which the legislative authority of the Legislature extends, and also the office, authority and signature of the person giving or making the certificate, without any proof of his or her appointment, authority or signature.

## POWERS UNDER FOREIGN COMMISSIONS

## Examinations of witnesses under foreign commissions

**72.** (1) Where, on application by motion for this purpose, it appears to a Court that any Court or tribunal of competent jurisdiction in

- (a) a province or territory,
- (b) the United Kingdom or any British dominion, or
- (c) a foreign state,

has duly authorized, by commission, order or other process, the obtaining of testimony in or in relation to any action pending in or before the foreign Court or tribunal of any witness out of the jurisdiction thereof and within the jurisdiction of the Court applied to, the Court may

- (d) order the examination of the witness accordingly, and in a manner and form directed by the commission, order or other process,
- (e) by the order referred to in paragraph (a) or a subsequent order, command the attendance of any person named in the order for the purpose of being examined, or the production of any writings or other documents mentioned in the order, and
- (f) give all directions as to the time, place and manner of the examination and all other matters connected with it that may appear reasonable and just.

## Enforcement of order

(2) An order made by the Court under subsection (1) may be enforced, and any disobedience of it punished, in the same manner as in the case of an order made by the same Court in an action pending in the Court.

**Payment of expenses of witness**

(3) Every person whose attendance is ordered under this section is entitled to the same conduct money and payment for expenses and loss of time as on attendance at a trial in the Court.

**Right of refusal to answer questions**

(4) Every person examined under a commission, order or other process under this section has the same right to refuse to answer questions that a witness would be entitled to refuse to answer in an action pending in the Court by which the order for examination was made.

**Production of documents**

(5) No person examined under a commission, order or other process under this section shall be compelled to produce at the examination any writing or document that he or she would not be compellable to produce at the trial of such an action.

**Power to administer oath, affirmation**

(6) Where the commission, order or other process directs, or the instructions of the Court accompanying it direct, that the persons to be examined shall be sworn or shall affirm before the commissioner or other person, the commissioner or other person has authority to administer an oath or affirmation to the person to be examined.

S.Nu. 2011,c.10,s.7(5).

## COMMISSIONERS FOR OATHS AND NOTARIES PUBLIC

### Commissioners for Oaths

**Appointments**

**73.** The Commissioner may, by one or more commissions, appoint as many persons as the Commissioner thinks fit and necessary to take and receive oaths, affidavits or affirmations either within or outside Nunavut for use within Nunavut.

S.Nu. 2011,c.10,s.7(5).

**Style "Commissioner for Oaths"**

**74.** A commissioner appointed under section 73 may be styled "A Commissioner for Oaths" but the absence of style or designation, or error or omission in it, does not affect the instrument.

**Powers of commissioner for oaths**

**75.** Every commissioner for oaths may take any affidavit in any manner concerning any legal proceeding in Nunavut or in which the commissioner for oaths is authorized by any law or Act, although the application or matter is not made or pending in any Court.

S.Nu. 2011,c.10,s.7(5).

#### Duration of commission

**76.** (1) Every commission issued to a commissioner for oaths under this Act expires three years after the date of its issue.

#### Special limitations

(2) Despite subsection (1), a commission issued under section 73 may be specially limited as to area, duration or purpose. S.Nu. 2011,c.10,s.7(5).

#### Renewal of commission

**77.** The Commissioner may renew the commission of a commissioner for oaths on application to the Commissioner before or within one year after its expiration.

#### Noting date of expiration of commission

**78.** (1) A commissioner for oaths whose commission is one that expires under this Act, shall write or stamp on every affidavit, declaration or certificate taken or given by the commissioner for oaths, the date on which his or her commission expires.

#### Offence and punishment

(2) Every commissioner for oaths who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10.

### Notaries Public

#### Appointment of notary public

**79.** (1) The Commissioner may, in the discretion of the Commissioner, by one or more commissions, appoint notaries public for Nunavut, but no person may be appointed as a notary public unless

- (a) he or she is a Canadian citizen or a permanent resident of Canada;
- (b) he or she resides in Nunavut;
- (c) he or she is entitled to practise as a barrister or solicitor in Nunavut or satisfies the Commissioner, pursuant to an examination that the Commissioner may impose, that he or she is qualified to act as a notary public; and
- (d) the Commissioner is satisfied that the appointment of a notary public is necessary for the public convenience
  - (i) in the place where the person to be appointed resides and intends to act as a notary public, or
  - (ii) where the person to be appointed is an officer, servant or employee of the Government of Canada, in the places where the duties of that person require him or her to be from time to time.



### Restrictions on commission

(2) Where a person, other than a barrister or solicitor, is appointed or reappointed as a notary public, special restrictions may be imposed in the commission limiting the area, duration or purpose for which the person may use and exercise his or her powers. S.Nu. 2011,c.10,s.7(5).

### Duration of commission

**80.** Every commission for a notary public expires

- (a) in the case of a person who is entitled to practise as a barrister or solicitor in Nunavut, when that person ceases to be so entitled; and
- (b) in the case of any other person, at the expiration of three years after the date of its issue.

S.Nu. 2011,c.10,s.7(5).

### Renewal of commission

**81.** The Commissioner may renew the commission of a notary public on application to the Commissioner before or within one year after its expiration.

### Noting date of expiration of commission

**82.** (1) A notary public whose commission is one that expires under this Act, shall write or stamp on every affidavit, declaration or certificate taken or given by the notary public, the date on which his or her commission expires.

### Offence and punishment

(2) Every notary public who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10.

### Powers of notary public

**83.** Every notary public shall have, use and exercise the power of administering oaths attested by his or her signature and seal, attesting commercial instruments brought before the notary public for public protestation and giving of notarial certificates of his or her acts, and may demand, receive and have all the rights, profits and emoluments rightfully appertaining and belonging to the exercise of these powers.

### Power of notary as commissioner for oaths

**84.** A notary public has and may exercise the powers of a commissioner for oaths and where the notary administers an oath or takes an affidavit or declaration within Nunavut, it is not necessary to its validity that the notary affix his or her seal to it.

S.Nu. 2011,c.10,s.7(5).

### Duties of notary public

**85.** Every oath or declaration shall be made in person by the deponent or declarant in the presence of the notary public administering the oath or declaration who shall satisfy himself or herself of the genuineness of the signature of the deponent or declarant, and shall administer the oath or declaration in the manner required by law before he or she signs the jurat or declaration.

## Revocation of Commissions

### Power to revoke

**86.** The Commissioner may revoke the commission of a commissioner for oaths or notary public on his or her conviction for an offence under section 138 of the *Criminal Code* or for any conduct that in the opinion of the Commissioner renders that person unfit to hold the commission.

## REGULATIONS

### Regulations

**87.** The Commissioner, on the recommendation of the Minister, may make regulations

- (a) for carrying out the purposes of sections 32 to 37; and
- (b) prescribing fees to be paid in respect of any commission or renewal of a commission for a commissioner for oaths or a notary public and providing for the waiver of payment of fees by any person or class of persons.  
S.Nu. 2011,c.10,s.7(5).