



ANALYSIS

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1980, No. 27

An Act to amend the Evidence Act 1908

[4 October 1980]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title, commencement, and application—(1) This Act may be cited as the Evidence Amendment Act (No. 2) 1980, and shall be read together with and deemed part of the Evidence Act 1908 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1981.

(3) This Act shall apply for the purposes of any proceeding commenced on or after the 1st day of January 1981, but shall not apply for the purposes of any proceeding commenced before that date or any appeal, review, or other proceeding relating to the determination of any such proceeding.

PART I

ADMISSIBILITY OF HEARSAY EVIDENCE

2. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“Business” means any business, profession, trade, manufacture, occupation, or calling of any kind; and

includes the activities of any Department of State, local authority, public body, body corporate, organisation, or society:

“Business record” means a document made—

(a) Pursuant to a duty; or

(b) In the course of, and as a record or part of a record relating to, any business,—
from information supplied directly or indirectly by any person who had, or may reasonably be supposed by the Court to have had, personal knowledge of the matters dealt with in the information he supplied:

“Court” includes, in addition to the Courts referred to in section 2 of the principal Act, an arbitrator or other person to whom any submission to arbitration is referred:

“Document” means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes—

(a) Any writing on any material:

(b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:

(c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(d) Any book, map, plan, graph, or drawing:

(e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

“Duty” includes any duty imposed by law or arising under any contract, and any duty recognised in carrying on any business practice:

“Party” includes the prosecutor or the informant in any criminal proceeding:

“Proceeding” includes, in addition to the matters referred to in section 2 of the principal Act, any arbitration or reference:

“Statement” means any representation of fact or opinion, whether made in words or otherwise; and includes a statement made by a witness in any proceeding.

(2) For the purposes of sections 3 to 8 of this Act, a person is unavailable to give evidence in any proceeding if, but only if, he—

- (a) Is dead; or
- (b) Is outside New Zealand and it is not reasonably practicable to obtain his evidence; or
- (c) Is unfit by reason of old age or his bodily or mental condition to attend; or
- (d) Cannot with reasonable diligence be found.

Documentary Hearsay Evidence

3. Admissibility of documentary hearsay evidence—

(1) Subject to subsection (2) of this section, and to sections 4 and 5 of this Act, in any proceeding where direct oral evidence of a fact or an opinion would be admissible, any statement made by a person in a document and tending to establish that fact or opinion shall be admissible as evidence of that fact or opinion if—

- (a) The maker of the statement had personal knowledge of the matters dealt with in the statement, and is unavailable to give evidence; or
- (b) The document is a business record, and the person who supplied the information for the composition of the record—
 - (i) Cannot with reasonable diligence be identified; or
 - (ii) Is unavailable to give evidence; or
 - (iii) Cannot reasonably be expected (having regard to the time that has elapsed since he supplied the information and to all the other circumstances of the case) to recollect the matters dealt with in the information he supplied; or
- (c) In civil proceedings only,—
 - (i) The maker of the statement had personal knowledge of the matters dealt with in the statement; and
 - (ii) Undue delay or expense would be caused by obtaining his evidence.

(2) Nothing in subsection (1) of this section shall render admissible in any criminal proceeding any statement in a document that—

- (a) Records the oral statement of any person made when the criminal proceeding was, or should reasonably have been, known by him to be contemplated; and
- (b) Is otherwise inadmissible in the proceeding.

4. Admissibility of previous statement by witness—
(1) Nothing in section 3 (1) (b) of this Act shall render admissible a statement previously made by a person who is called as a witness in any proceeding and gives evidence relating to the matters contained in that statement, unless the Court is of the opinion that its probative value outweighs or may outweigh the probative value of the evidence given by the witness in relation to those matters (whether the statement is consistent or inconsistent with that evidence).

(2) If the Court is of the opinion that the probative value of the previous statement outweighs or may outweigh the probative value of the witness's evidence, the previous statement shall be admitted at the conclusion of the evidence-in-chief of that witness or during his cross-examination, but not otherwise.

5. Hearsay evidence not corroboration in certain cases—
For the purpose of any rule of the common law or of practice or the provisions of any Act requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement that is admissible by virtue of section 3 (1) (b) of this Act shall not be treated as corroboration of evidence given at the trial of the proceeding by the maker of the statement other than direct evidence in relation to any matter contained in the statement of which the maker of the statement had personal knowledge.

6. Proof of document admissible under this Part—
A statement in a document that is admissible as evidence under this Part of this Act may be proved by the production of—

- (a) The original document or of the material part of the document in which the statement is contained; or
- (b) A copy of the original document, or of the material part of the document in which the statement is contained, certified to be a true copy in such manner as the Court may approve.

Oral Hearsay Evidence in Civil Proceedings

7. Admissibility of oral hearsay evidence in civil proceeding—In any civil proceeding where direct oral evidence of a fact would be admissible, any oral statement made by a person and tending to establish that fact shall be admissible as evi-

dence of that fact if the maker of the statement had personal knowledge of the matters dealt with in the statement, and is unavailable to give evidence.

Oral Hearsay Evidence in Criminal Proceedings

8. Conditions for admissibility of oral hearsay evidence—In any criminal proceeding where direct oral evidence of a fact would be admissible, any oral statement made by a person and tending to establish that fact shall be admissible as evidence of that fact, if—

- (a) The maker of the statement had personal knowledge of the matters dealt with in the statement, and is unavailable to give evidence; and
- (b) The statement qualifies for admission under any of sections 9 to 14 of this Act.

9. Statement against interest—(1) Subject to section 8 of this Act, a statement qualifies under this section for admission if the maker of the statement knew or believed, or may reasonably be supposed by the Court to have known or believed, that the statement was, in whole or in part, against his interest at the time he made it.

(2) In subsection (1) of this section, “interest” means any pecuniary or proprietary interest, and any interest in any proceeding pending or anticipated by the maker of the statement.

10. Statement in course of duty—(1) Subject to section 8 of this Act, a statement qualifies under this section for admission if the maker of the statement made it in the performance of any duty, and had no motive to conceal or misrepresent any fact or opinion relating to the subject matter of the statement.

(2) For the purposes of subsection (1) of this section, it shall be immaterial whether or not—

- (a) The matters dealt with in the statement relate to acts of the maker of the statement;
- (b) The statement was made contemporaneously with the matters dealt with in it.

11. Pedigree statement—Subject to section 8 of this Act, a statement qualifies under this section for admission if—

- (a) The statement relates to the existence or nature of family relationship or descent; and

- (b) The maker of the statement was directly or indirectly related by birth or adoption or by or through marriage to the person whose family relationship to or descent from any other person is in issue in any proceeding; and
- (c) The maker of the statement made it before any dispute about the matters dealt with in the statement arose.

12. Post-testamentary statement—(1) Subject to section 8 of this Act, and to subsection (2) of this section, a statement qualifies under this section for admission if the maker of the statement had previously made a will or other testamentary writing, and the statement relates to the contents of that will or testamentary writing.

(2) No such statement shall be admissible to prove that the requirements of the Wills Act 1837 of the United Kingdom Parliament have been satisfied.

13. Statement relating to public or general rights, or Maori custom—Subject to section 8 of this Act, a statement qualifies under this section for admission if the statement relates to the existence of a public or general right or of Maori custom.

14. Dying statement—(1) Subject to section 8 of this Act, a statement qualifies under this section for admission if—

- (a) The maker of the statement is dead; and
- (b) He knew or believed, or may reasonably be supposed by the Court to have known or believed, that his death was imminent; and
- (c) He would, if he were not dead, be a competent witness for the party who wishes to adduce the statement as evidence under this section.

(2) For the purpose of subsection (1) of this section, it shall be immaterial whether or not—

- (a) The maker of the statement entertained any hope of recovery;
- (b) The statement related to the cause of its maker's injury or illness;
- (c) The statement was complete.

Provisions of General Application

15. Admissibility of oral and documentary hearsay evidence by consent—In any proceeding where direct oral evidence of a fact or an opinion would be admissible, any

statement, whether oral or in a document, made by a person and tending to establish that fact or opinion shall be admissible as evidence of that fact or opinion, with the consent of all the parties to the proceeding.

16. Court may draw inference, etc.—For the purpose of deciding whether or not any statement is admissible as evidence under this Part of this Act, the Court may draw any reasonable inference from the circumstances in which the statement was made and, in the case of a statement in a document, from the form or contents of the document in which it is contained; and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a registered medical practitioner.

17. Weight to be attached to hearsay evidence—In determining the weight, if any, to be attached to a statement that is admissible as evidence under this Part of this Act, the Court shall have regard to all the circumstances from which any inference can reasonably be drawn relating to the accuracy or otherwise of the statement, and, in particular, to—

- (a) The time when the statement was made in relation to the occurrence or existence of the facts or opinions stated that the statement is tendered to prove; and
- (b) The question whether or not the maker of the statement, or any person by or through whom information was supplied to the maker of the statement, had any motive to conceal or misrepresent any fact or opinion relating to the subject matter of the statement.

18. Court may reject unduly prejudicial evidence—Notwithstanding sections 3 to 8 of this Act, where the proceeding is with a jury, the Court may, in its discretion, reject any statement that would be admissible in the proceeding under any of those sections, if the prejudicial effect of the admission of the statement would outweigh its probative value, or if, for any other reason the Court is satisfied that it is not necessary or expedient in the interests of justice to admit the statement.

19. Power of Court hearing appeal—In an appeal from any order made by a Court or by a Judge under this Part of this Act or from any determination of a Court to admit or reject

evidence under section 18 of this Act, the Court hearing the appeal may draw its own inferences, and may substitute its own discretion for any discretion exercised by the Court or Judge whose decision is appealed from.

Miscellaneous Provisions

20. Savings—(1) Nothing in this Part of this Act shall prejudice the admissibility of any evidence that would be admissible apart from the provisions of this Part of this Act.

(2) Nothing in this Part of this Act shall render admissible any evidence that is inadmissible under any other Act.

(3) Nothing in this Part of this Act shall derogate from—

(a) Section 10 of the principal Act (relating to proof of inconsistent statements of witnesses) or section 11 of the principal Act (relating to cross-examination as to previous statements in writing):

(b) The rules of the common law relating to the admissibility of evidence as to complaints:

(c) The rules of the common law or the provisions of any Act relating to the admissibility of confessions and admissions of the parties:

(d) The rules of the common law relating to evidence of character:

(e) The rules of the common law or the provisions of any Act relating to the reading in evidence of depositions taken in a preliminary hearing in a trial on indictment.

21. Repeals—(1) The following enactments are hereby repealed:

(a) Section 25A of the principal Act (as inserted by section 2 of the Evidence Amendment Act 1966):

(b) Sections 2 (2), 3, and 4 of the Evidence Amendment Act 1945:

(c) Section 2 of the Evidence Amendment Act 1966.

(2) Section 2 (1) of the Evidence Amendment Act 1945 is hereby amended by repealing the definition of the term “statement”.

PART II

CONVICTIONS, ETC., AS EVIDENCE IN CIVIL PROCEEDINGS

22. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Court-martial” means a Court Martial constituted under the New Zealand Army Act 1950 or the Royal New Zealand Air Force Act 1950 or a court-martial constituted under the Armed Forces Discipline Act 1971 or the Naval Discipline Act 1957 of the United Kingdom Parliament (as applied to the New Zealand Naval Forces by section 15 of the Navy Act 1954); and includes a disciplinary court constituted under the said Naval Discipline Act 1957 (as so applied):

“Conviction”,—

(a) In relation to a Court Martial constituted under the New Zealand Army Act 1950 or the Royal New Zealand Air Force Act 1950, means a finding of guilty that is duly confirmed; and includes a substituted finding of guilty that falls to be treated as a finding of the Court duly confirmed; and

(b) In relation to a court-martial or a disciplinary court constituted under the Naval Discipline Act 1957 of the United Kingdom Parliament (as so applied), means a finding of guilty; and includes a substituted finding of guilty that falls to be treated as a finding of the court-martial; and

(c) In relation to a court-martial constituted under the Armed Forces Discipline Act 1971, means a finding of guilty; and includes a substituted finding of guilty that falls to be treated as a finding of the court-martial.

23. Conviction as evidence in civil proceeding—(1) In any civil proceeding, the fact that a person has been convicted of an offence by or before any Court in New Zealand, or by a court-martial in New Zealand or elsewhere, shall be admissible as evidence for the purpose of proving that he committed that offence, where to do so is relevant to any issue in the civil proceeding.

(2) This section shall apply—

(a) Whether the person in question was convicted of the offence before or after the commencement of this Act; and

(b) Whether he was convicted on a plea of guilty or otherwise; and

(c) Whether or not he is a party to the civil proceeding;—but no conviction shall be admissible under this section unless it is a subsisting one.

- (3) Where any evidence is admitted under this section—
- (a) Any party to the proceeding may nevertheless adduce evidence tending to prove that that person did not commit the offence of which he was convicted:
 - (b) Without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document that is admissible as evidence of the conviction, and the contents of the information, complaint, indictment, or charge-sheet on which the person in question was convicted, shall be admissible in evidence for the purpose of identifying those facts.
- (4) Nothing in this section shall limit or affect any other enactment whereby a conviction or a finding of fact in any criminal proceeding is, for the purposes of any other proceeding, made conclusive evidence of any fact.

24. Conviction as evidence in defamation proceeding—

(1) In any action for defamation based on a statement made by any person to the effect that any other person has committed an offence, proof that, at the time when the statement was made, that other person had been convicted of the offence by or before any Court in New Zealand, or by any court-martial in New Zealand or elsewhere, shall, subject to subsection (2) (b) of this section, be sufficient evidence in the absence of proof to the contrary that he committed the offence, and the conviction shall be admissible in evidence accordingly.

(2) This section shall apply—

- (a) Whether the person in question was convicted of the offence before or after the commencement of this Act:
- (b) If, but only if, the conviction was subsisting at the time when the statement in question was made.

(3) Where, in any proceeding in which evidence is admitted under this section, any person is shown to have been convicted of an offence, then, without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document that is admissible as evidence of the conviction, and the contents of the information, complaint, indictment, or charge-sheet on which that person was convicted, shall be admissible in evidence for the purpose of identifying those facts.

25. Finding of paternity as evidence in civil proceeding—Section 8 (3) of the Status of Children Act 1969 is hereby amended by inserting, after the words “Domestic Proceedings Act 1968”, the words “(or an affiliation order under any corresponding former Act)”.

26. Copy of document admissible in cases under this Part—Where in any civil proceeding the contents of any document are admissible as evidence under section 23 or section 24 of this Act, a copy of that document, or of the material part of the document, purporting to be certified or otherwise authenticated by or on behalf of the Court or authority having custody of that document, shall be admissible as evidence and shall be taken to be a true copy of that document or part, unless the contrary is shown.

27. Proof of conviction—(1) Where in any proceeding it is necessary to prove the conviction of any person of an offence, a certificate containing the substance of the conviction for the offence, purporting to be signed by the Registrar or other officer having the custody of the records of the Court by or before which the offender was convicted, 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 certificate.

(2) The mode of proving a previous conviction authorised by this section shall be in addition to, and not in exclusion of, any other mode authorised by law.

28. Repeals—Sections 18 to 20 of the Statutes Amendment Act 1939 are hereby consequentially repealed.

PART III

PRIVILEGE OF WITNESSES

29. Communication during marriage—A husband shall not be compellable in any proceeding to disclose any communication made to him by his wife during the marriage, and a wife shall not be compellable in any proceeding to disclose any communication made to her by her husband during the marriage.

30. Evidence of non-access—In any proceeding, either of two spouses may give evidence proving or tending to prove that the spouses did not have sexual relations with

each other at any particular time, notwithstanding that the evidence would tend to show that any child born to the wife during the marriage was not the child of the husband.

31. Communication to minister—(1) A minister shall not disclose in any proceeding any confession made to him in his professional character, except with the consent of the person who made the confession.

(2) This section shall not apply to any communication made for any criminal purpose.

32. Disclosure in civil proceeding of communication to medical practitioner—(1) Subject to subsection (2) of this section, a registered medical practitioner shall not disclose in any civil proceeding any protected communication, except with the consent of the patient or, if he is dead, the consent of his personal representative.

(2) This section shall not apply—

(a) In respect of any proceeding in which the sanity or testamentary capacity or other legal capacity of the patient is the matter in dispute:

(b) To the disclosure of any communication made to a registered medical practitioner in or about the effecting by any person of an insurance on the life of himself or any other person:

(c) To any communication made for any criminal purpose.

(3) In this section—

“Protected communication” means a communication made to a registered medical practitioner by a patient who believes that the communication is necessary to enable the registered medical practitioner to examine, treat, or act for the patient:

“Registered medical practitioner” includes any person acting in his professional character on behalf of the registered medical practitioner in the course of the treatment of any patient by that practitioner.

33. Disclosure in criminal proceeding of communication to medical practitioner—(1) Subject to subsection (2) of this section, a registered medical practitioner shall not disclose in any criminal proceeding any protected communication made to him by a patient, being the defendant in the proceeding, except with the consent of the patient.

(2) This section shall not apply to any communication made for any criminal purpose.

(3) In subsection (1) of this section “protected communication” means a communication made to a registered medical practitioner by a patient who believes that the communication is necessary to enable the registered medical practitioner to examine, treat, or act for the patient for—

(a) Drug dependency; or

(b) Any other condition or behaviour that manifests itself in criminal conduct;—

but does not include any communication made to a registered medical practitioner by any person who has been required, by any order of a Court, or by any person having lawful authority to make such requirement, to submit himself to the medical practitioner for any examination, test, or other purpose.

(4) In subsection (3) of this section—

“Drug dependency” means the state of periodic or chronic intoxication, produced by the repeated consumption, smoking, or other use of a controlled drug (within the meaning of section 2 (1) of the Misuse of Drugs Act 1975) detrimental to the user, and involving a compulsive desire to continue consuming, smoking, or otherwise using the drug or a tendency to increase the dose of the drug:

“Registered medical practitioner” includes any person acting in his professional character on behalf of the registered medical practitioner in the course of the treatment of any patient by that practitioner.

34. Communication to or by patent attorney, etc.—(1) A registered patent attorney shall not disclose in any proceeding any communication between himself and a client or any other person acting on the client’s behalf made for the purpose of obtaining or giving any protected information or advice, except with the consent of the client or, if he is dead, the consent of his personal representative.

(2) A person shall not disclose in any proceeding any communication between himself and another person made for the purpose of obtaining or giving any protected information or advice sought by that other person for submission to a registered patent attorney in his professional character, except with the consent of that other person, or if he is dead, the consent of his personal representative.

(3) This section shall not apply to any communication made for any criminal purpose.

(4) In this section “protected information or advice” means information or advice relating to any patent, design, or trademark, or to any application in respect of a patent, design, or trademark, whether or not the information or advice relates to a question of law.

35. Discretion of Court to excuse witness from giving any particular evidence—(1) In any proceeding before any Court, the Court may, in its discretion, excuse any witness (including a party) from answering any question or producing any document that he would otherwise be compellable to answer or produce, on the ground that to supply the information or produce the document would be a breach by the witness of a confidence that, having regard to the special relationship existing between him and the person from whom he obtained the information or document and to the matters specified in subsection (2) of this section, the witness should not be compelled to breach.

(2) In deciding any application for the exercise of its discretion under subsection (1) of this section, the Court shall consider whether or not the public interest in having the evidence disclosed to the Court is outweighed, in the particular case, by the public interest in the preservation of confidences between persons in the relative positions of the confidant and the witness and the encouragement of free communication between such persons, having regard to the following matters:

- (a) The likely significance of the evidence to the resolution of the issues to be decided in the proceeding;
- (b) The nature of the confidence and of the special relationship between the confidant and the witness;
- (c) The likely effect of the disclosure on the confidant or any other person.

(3) An application to the Court for the exercise of its discretion under subsection (1) of this section may be made by any party to the proceeding, or by the witness concerned, at any time before the commencement of the hearing of the proceeding or at the hearing.

(4) Nothing in subsection (1) of this section shall derogate from any other privilege or from any discretion vested in the Court by any other provision of this Act or of any other enactment or rule of law.

(5) In this section “Court” includes—

- (a) Any tribunal or authority constituted by or under any Act and having power to compel the attendance of witnesses; and
- (b) Any other person acting judicially.

36. Repeals and amendment—(1) The following enactments are hereby consequentially repealed:

- (a) Sections 6 and 8 of the principal Act:
- (b) Section 15 of the Evidence Amendment Act 1945:
- (c) Section 89 (1) of the Matrimonial Proceedings Act 1963.

(2) The Status of Children Act 1969 is hereby consequentially amended by repealing so much of the Schedule as relates to section 15 (1) of the Evidence Amendment Act 1945.

PART IV

TAKING OF EVIDENCE OVERSEAS OR ON BEHALF OF OVERSEAS COURT

37. Interpretation—In this Part of this Act,—

“Attendance order” means an order made by any Court under section 39 of this Act for the examination of a witness or the production of any specified document by a designated person, or for both such examination and production:

“Corresponding Court”,—

(a) In relation to any Court in a prescribed country, means the Court in New Zealand that is declared by the Minister of Justice, by notice in the *Gazette*, to be the Court in New Zealand that corresponds to that Court in the prescribed country:

(b) In relation to a Court in New Zealand, means the Court in a prescribed country that is declared by the Minister of Justice, by notice in the *Gazette*, to be the Court in that country that corresponds to that Court in New Zealand:

“Examiner” means—

- (a) Any Judge:
- (b) Any Registrar or Deputy Registrar of the High Court or of a District Court:
- (c) Any specified tribunal:

“Prescribed country” means any State, territory, or country declared by the Minister of Justice, by notice in the *Gazette*, to be a prescribed country for the purposes of this Part of this Act:

“Specified tribunal” means a tribunal specified by the Minister of Justice by notice in the *Gazette* under section 38 (1) (d) of this Act.

38. Powers of Minister of Justice—(1) The Minister of Justice may, by notice in the *Gazette*, declare—

- (a) Any State, territory, or country to be a prescribed country for the purposes of this Part of this Act:
- (b) Any specified Court in New Zealand to be the Court that corresponds to any specified Court in any specified prescribed country:
- (c) Any specified Court in any specified prescribed country to be the Court that corresponds with any specified Court in New Zealand:
- (d) Any specified tribunal in New Zealand and any specified tribunal in any specified prescribed country to be tribunals to which this Part of this Act applies.

(2) This Part of this Act, with any necessary modifications, shall apply to any tribunals specified in any notice given under subsection (1) (d) of this section as if the tribunals were Courts.

39. Taking of evidence on request from corresponding Court of prescribed country—(1) Where, by or under any Act or law of a prescribed country, provision is made for the evidence of any person that is required in connection with any proceeding to be taken otherwise than at the hearing of the proceeding by a Court, a Court in New Zealand that is a corresponding Court to the Court in the prescribed country before which the proceeding is being held may, upon receipt of a request in writing from that Court in the prescribed country, make an order for the examination of a witness or the production of any specified document by any designated person, or both for such examination and production, before an examiner named in the order at a time and place specified in the order.

(2) The order shall require reasonable notice to be given by post to each party to the proceeding at his address as shown in the request of the time when and the place where the examination is to take place or the document is to be produced.

40. Summons to witness—(1) Upon service on a person of an attendance order, together with the payment or tender of a reasonable sum for expenses, the person shall attend at the time and place appointed, and shall have and be subject to the same rights and liabilities as if he were summoned before the Court by which the order was made.

(2) For the purposes of subsection (1) of this section, any attendance order made by a specified tribunal shall be deemed to have been made by a District Court.

41. Examination of witness—(1) Subject to any directions contained in the attendance order,—

- (a) Any person ordered to be examined before the examiner may be cross-examined and re-examined; and
- (b) The examination, cross-examination, and re-examination of persons before the examiner shall be conducted in the same manner as they would have been conducted before the Court that made the order.

(2) The examiner may put any question to any person examined before him relating to the meaning of any answer made by that person or relating to any matter arising in the course of the examination.

(3) An examiner shall have and may exercise such of the powers of the Court by which he was appointed as are necessary for the proper exercise of his functions under this Part of this Act, and may administer oaths and adjourn the examination from time to time as he thinks fit.

42. Protection of witness—(1) A person shall not be compelled by virtue of an attendance order to give any evidence that he could not be compelled to give in any proceeding in New Zealand.

(2) Any person who is required by virtue of an attendance order to give any evidence may object to that requirement on the ground that, for any stated reason, he could not be compelled to give that evidence in the proceeding in the prescribed country.

(3) In any case where the person who is subject to an attendance order raises such objection, the following provisions shall apply:

(a) The examiner shall—

- (i) Record the nature of the evidence, and the reasons stated by the person in support of his con-

tention that he could not be compelled to give the evidence in the proceeding in the prescribed country; and

(ii) Transmit that record to the corresponding Court with a request for advice on the question whether or not the person could be compelled to give the evidence in the proceeding in the prescribed country:

- (b) The person shall be required to give the evidence before the examiner, but the examiner shall not transmit that evidence to the corresponding Court unless that Court has advised the examiner that the person could be compelled to give the evidence in the proceeding in the prescribed country.

(4) Without limiting subsection (1) of this section, a person shall not be compelled by virtue of an attendance order to give any evidence if his doing so would be prejudicial to the security of New Zealand; and a certificate signed by or on behalf of the Attorney-General to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(5) In this section references to giving evidence include references to answering any question and to producing any document, and the reference in subsection (3) of this section to the transmission of evidence given by a person shall be construed accordingly.

43. Deposition to be signed—(1) Where, pursuant to an attendance order,—

- (a) A person has given evidence to the examiner, his deposition shall be signed by him and by the examiner, or, where the person refuses to sign or requires alterations that the examiner considers to be unjustified, the deposition shall be signed by the examiner, who shall certify that the deposition is a correct record and the reasons for it not being signed by the person:

- (b) A document has been produced to the examiner by a person not giving evidence, the examiner shall attach to that document a certificate signed by him stating the name of that person.

(2) Every deposition and document taken before or produced to the examiner pursuant to an attendance order shall be delivered by the examiner to the Court by which the order was made for transmission to the corresponding Court.

44. Power of New Zealand Court to request corresponding Court in prescribed country to take evidence for use in New Zealand Court—(1) Subject to subsection (2) of this section, a Court in New Zealand may, on the application of a party to any proceeding before the Court, request a corresponding Court in a prescribed country to make an order for the examination of a witness or the production of any specified document by a person, or for both such examination and production.

(2) Such a request may be made in a criminal proceeding if, but only if,—

(a) Where the application is made by the accused, the Court considers it necessary or expedient in the interests of justice:

(b) Where the application is made by the prosecution, the accused consents.

(3) Any deposition received from a corresponding Court that purports to have been signed by the deponent and the examiner or to have been certified as a correct record by the examiner may, subject to the rules of law relating to the admission of evidence, be put in as evidence at the hearing of the proceeding.

(4) Any document received from a corresponding Court may, subject to the rules of law relating to the admission of evidence, be put in at the hearing as if produced at the hearing by the person who produced the document pursuant to the order of the corresponding Court.

(5) A Court shall take judicial notice of the seal of a corresponding Court and of the signature of any examiner appointed by a corresponding Court.

45. Power of New Zealand Court to transmit request to other place—Where a Court in New Zealand receives a request from a corresponding Court for the examination of a witness or the production of any specified document by a person, and it appears to the New Zealand Court that the witness or person is not in New Zealand and is not proceeding to New Zealand but is in or proceeding to another country that is a prescribed country under the law of the country of the corresponding Court, the New Zealand Court—

(a) May transmit the request to a corresponding Court in that other prescribed country, together with such information as it or he possesses concerning the whereabouts and intended movements of the person:

- (b) Shall give notice to the corresponding Court from which it received the request that the documents have been so transmitted.

46. Alternative procedure for taking evidence outside New Zealand in civil proceeding in High Court—(1) At any stage of any civil proceeding in the High Court where it appears necessary or expedient in the interests of justice, the High Court or a Judge may order that—

- (a) Any person named in the order be examined upon oath, upon interrogatories or otherwise, at any place outside New Zealand before any officer of the Court, any overseas representative, or any other person named in the order by name or designation; and
- (b) Any deposition so taken be filed in Court; and
- (c) Any party to the proceeding be empowered to give that deposition in evidence in the proceeding, on such terms (if any) as the Court or Judge may direct.

(2) In any civil proceeding in the High Court, if the Court or a Judge thinks fit, instead of making an order for the examination of a witness or person under subsection (1) of this section, the Court or Judge may order that a Letter of Request be issued directed to any overseas Court of competent jurisdiction for the examination of a witness or person named in the order; and thereupon a Letter of Request shall be issued accordingly under the hand of a Judge or Registrar and the seal of the Court in such form as the Court or a Judge may approve or as may be prescribed by rules of Court.

(3) Letters of Request shall be transmitted to and from an overseas Court through such channels as may be prescribed by rules of Court.

(4) Subsections (1) to (3) of this section are in addition to and not in derogation from sections 37 to 45 of this Act.

(5) Rule 177 and rules 177A to 177F of the Code of Civil Procedure (as inserted by rule 8 of the Supreme Court (Miscellaneous) Amendment Rules 1939 (S.R. 1939/9)) are hereby declared to be and always to have been validly made under the powers conferred by section 3 of the Judicature Amendment Act 1930.

47. Rules and regulations—(1) Without limiting the power to make rules of procedure conferred by the Judicature Act 1908 and the District Courts Act 1947, rules may be made

under those Acts prescribing anything that is required to be prescribed or necessary for carrying this Part of this Act into effect.

(2) The Governor-General may, by Order in Council, make regulations fixing, and requiring the payment of, fees and expenses for or incurred in taking evidence under this Part of this Act.

48. Saving—Nothing in this Part of this Act shall limit or affect the power of a Court to require a witness to attend in person before the Court.

49. Certain provisions of principal Act not to apply to corresponding Court in prescribed country—Sections 48A to 48E of the principal Act (as enacted by section 4 of the Evidence Amendment Act 1962) shall not apply to any Court in a prescribed country in respect of which a corresponding Court has been declared in New Zealand.

PART V

PROOF OF PHOTOGRAPHIC COPIES OF DOCUMENTS

50. Proof of photographic copies of documents—(1) Section 5 of the Evidence Amendment Act 1952 is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) A print, whether enlarged or not, from a film taken of any document kept or held by the Government or any person shall be admissible in evidence in all cases in which and for all purposes for which the document would have been admissible, upon proof that—

“(a) The document was in the custody or control of the person who photographed it or caused it to be photographed; and

“(b) The film was taken in order to keep a permanent record of the document; and

“(c) The document photographed was subsequently destroyed, whether deliberately or otherwise, or was so damaged as to be wholly or partly indecipherable, or was lost, or passed out of the custody or control of the Government or, as the case may be, the person having its custody or control.”

(2) The said section 5 is hereby further amended by omitting from subsection (4A) (as inserted by section 4 of the

Evidence Amendment Act 1958) the words “is on the same film or roll of film as the photographic copy of that document”, and substituting the words “is sufficiently identified with the document to which it relates”.

51. Further amendments of Evidence Amendment Act 1952—(1) Section 3 of the Evidence Amendment Act 1952 is hereby amended by repealing the definition of the term “document”, and substituting the following definition:

“‘Document’ means a document in the nature of a business record; and includes any register, book, map, plan, drawing, or photograph of that nature; and also includes any part of any such document:”.

(2) The said section 3 is hereby further amended by inserting in the definition of the term “film”, after the word “microfilm”, the word “microfiche,”.

(3) The Evidence Amendment Act 1952 is hereby further amended—

(a) By omitting from section 3 the definition of the term “authorised person”:

(b) By omitting from section 5 (2) the words “authorised person”, and substituting the words “as the case may be, the person having the custody or control of the document or group of documents”:

(c) By repealing section 5 (5).

52. Repeal—The Evidence Amendment Act 1973 is hereby consequentially repealed.

This Act is administered in the Department of Justice.