

Evidence Act 1908

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This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

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**An Act to consolidate certain enactments of the Parliament of
New Zealand relating to the law of evidence**

The words “Parliament of New Zealand” were substituted for “General Assembly” as from 1 January 1987, pursuant to section 29(2) Constitution Act 1986 (1986 No 114).

1 Short Title, etc

- (1) The Short Title of this Act is the Evidence Act 1908.
- (2) This Act is a consolidation of the enactments mentioned in the Schedule hereto.
- (3) All matters and proceedings commenced under any of the said enactments and pending or in progress on the coming into operation of this Act may be continued, completed, and enforced under this Act.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

2 Interpretation

In this Act, if not inconsistent with the context,—

Act includes Ordinance

Court includes the Supreme Court, the Court of Appeal, the High Court, any District Court, and any Court of summary jurisdiction

Court: this definition was amended, as from 29 September 1925, by section 3 District Courts Abolition Act 1925 (1925 No 19) by omitting “any District Court”.

Court: this definition was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by inserting “the Supreme Court,” before “the Court of Appeal”. *See* sections 50 to 55 of that Act for the transitional and savings provisions.

Judge, means a Judge of the High Court, and includes a District Court Judge, and also includes any Justice or Justices

of the Peace or any Community Magistrate or Community Magistrates sitting in Court

Judge: this definition was amended, as from 29 September 1925, by section 3 District Courts Abolition Act 1925 (1925 No 19) by omitting “or of any District Court”.

Judge: this definition was amended, as from 30 June 1998, by section 7 District Courts Amendment Act 1998 (1998 No 76), by inserting “or any Community Magistrate or Community Magistrates” after “Peace”.

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

medical practitioner: this definition was inserted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). See sections 178 to 227 of that Act as to the transitional provisions.

Minister means a minister of religion, and, in relation to a religious body the constitution or tenets of which do not recognise the office of minister of religion, includes a person for the time being exercising functions analogous to those of a minister of religion

Minister: a reference to the Marriage Act 1955 was substituted, as from 1 April 1956, for a reference to the Marriage Act 1908 pursuant to section 67(1) Marriage Act 1955 (1955 No 92).

Minister: this definition was substituted, as from 1 January 1977, by section 12 Marriage Amendment Act 1976 (1976 No 8).

Person acting judicially means any person having in New Zealand by law authority to hear, receive, and examine evidence

Person acting judicially: this definition was amended, as from 1 July 1997, by section 17 Arbitration Act 1996 (1996 No 99) by omitting “or by consent of parties”.

Prisoner means any person confined in prison under any sentence, or commitment for trial, or otherwise

Proceeding includes any action, trial, inquiry, cause, or matter, whether civil or criminal, depending or to be inquired of or determined in any Court.

psychologist means a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence

Assurance Act 2003 as a practitioner of the profession of psychology

psychologist: this definition was inserted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

scope of practice has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003.

scope of practice: this definition was inserted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

Witness, in sections 13B to 13J, means a person (other than an undercover Police officer) who may be called to give evidence.

Witness: this definition was inserted, as from 11 December 1997, by section 2 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103).

Compare: 1905 No 16 s 2

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Competency of witnesses

3 Witness interested, or convicted of offence

No person shall be excluded from giving evidence in any proceeding on the ground that he has or may have an interest in the matter in question, or in the result of the proceeding, or on the ground that he has previously been convicted of any offence.

Compare: 1905 No 16 s 3

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

4 Evidence of party, or of wife, husband, or civil union partner of party, in civil cases

In any civil proceeding the parties thereto and the persons on whose behalf such proceedings is brought or defended, and the husbands, wives, or civil union partners of such parties or persons respectively, shall, subject to the provisions of this

Act, be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding:

Provided that nothing herein shall render any person compellable to answer any question tending to criminate himself.

Compare: 1905 No 16 s 4

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

The heading to section 4 was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting “, husband, or civil union partner” for “or husband”.

Section 4 was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting “, wives, or civil union partners” for “and wives”.

5 Evidence of accused and spouse in criminal cases

- (1) Except as provided by or under this or any other Act, neither the person charged with any offence nor that person’s spouse shall be a competent or compellable witness for the prosecution or defence in any proceeding in connection with the offence.
- (2) Subject to subsection (3) of this section, where any person is charged with an offence, whether solely or jointly with any other person,—
 - (a) The person charged shall be a competent witness for the defence; and
 - (b) That person’s spouse shall be a competent and compellable witness for the defence—
at every stage of the proceedings.
- (3) Neither the person charged nor that person’s spouse shall be called as a witness in pursuance of subsection (2) of this section except upon the application of the person charged.
- (4) A person charged and called as a witness in pursuance of subsection (2) of this section—
 - (a) May be asked any question in cross-examination notwithstanding that it would tend to incriminate that person as to the offence charged; and
 - (b) Is liable to be cross-examined like any other witness on any matter, though not arising out of that person’s examination in chief; but so far as the cross-examination re-

lates to any previous conviction of that person, or to that person's credit, the Court may limit the cross-examination as it thinks proper, although the cross-examination may be permissible in the case of any other witness.

- (5) Every person called as a witness in pursuance of subsection (2) of this section shall, unless otherwise ordered by the Court, give evidence from the witness box or other place from which the other witnesses give evidence.
- (6) The spouse of a person charged with an offence shall be a competent but not compellable witness for the prosecution, and without the consent of the person charged, at every stage of the proceedings.
- (7) Subject to subsection (8) of this section, where any person is charged with an offence jointly with any other person (hereafter in this section referred to as the co-accused), that person shall be a competent and compellable witness for the prosecution against the co-accused, and without the consent of the co-accused, or for the defence of the co-accused, at every stage of the proceedings, if—
 - (a) The proceedings against that person have been stayed, or in the case of an offence punishable on summary conviction, the information against that person has been withdrawn or dismissed; or
 - (b) That person has been acquitted of the offence; or
 - (c) That person has pleaded guilty to the offence; or
 - (d) That person is being tried separately from the co-accused.
- (8) The spouse of the co-accused shall not—
 - (a) Be called as a witness for the defence in pursuance of subsection (7) of this section except upon the application of the co-accused; and
 - (b) Be a compellable witness for the prosecution against the co-accused.
- (9) Where 2 or more persons are jointly charged with any offence, the evidence of any person called as a witness for the prosecution or the defence in pursuance of this section may be received as evidence either for or against any of the persons so charged.

- (10) The provisions of this section shall not affect the operation of any other provision of this Act or of any other enactment, but shall apply notwithstanding any rule of law to the contrary.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (1) was amended, as from 28 July 1926, by section 2 Evidence Amendment Act 1926 (1926 No 5) by substituting “in any proceeding in connection with” for “upon his trial for”, and the words “in such proceeding” for “upon such trial”.

Section 5 was substituted, as from 1 January 1953, by section 2(1) Evidence Amendment Act 1952 (1952 No 50).

Subsection (2) proviso, paragraph (f), was repealed, as from 1 January 1967, by section 5(2) Crimes Amendment Act 1966 (1966 No 98).

Subsection (3)(c) was amended, as from 5 December 1962, by section 2(2) Evidence Amendment Act 1962 (1962 No 34) by inserting “or”.

Subsection (3)(c) was amended, as from 1 February 1977, pursuant to section 57(1) Matrimonial Property Act 1976 (1976 No 166) by substituting “Matrimonial Property Act 1976” for “Married Women’s Property Act 1952”.

Subsection (3)(d) was inserted, as from 5 December 1962, by section 2(1) Evidence Amendment Act 1962 (1962 No 34).

Subsection (4) was amended, as from 18 September 1958, by section 2 Evidence Amendment Act 1958 (1958 No 17) by substituting “woman or girl” for “girl who was under the age of sixteen years at the time of the alleged offence and”.

Subsection (4) was amended, as from 1 January 1962, by section 411(1) Crimes Act 1961 (1961 No 43) by substituting “the provisions of sections 128 to 135 of the Crimes Act 1961” for “the following sections of the Crimes Act 1908 - that is to say, sections one hundred and fifty-five, two hundred and eight, two hundred and twelve, two hundred and thirteen, two hundred and fourteen, two hundred and fifteen, and two hundred and sixteen”.

Subsection (4) was substituted, as from 5 December 1962, by section 2(3) Evidence Amendment Act 1962 (1962 No 34).

Subsection (4)(a) was amended, as from 1 January 1970, by section 12(2) Status of Children Act 1969 (1969 No 18) by omitting “, whether the relationship is traced through lawful wedlock or not”.

Section 5 was substituted, as from 10 July 1987, by section 2(1) Evidence Amendment Act 1987 (1987 No 138).

5A Wife of person charged with certain offences to be competent witness for prosecution

[Repealed]

Section 5A was inserted, as from 29 September 1950, by section 2 Evidence Amendment Act 1950 (1950 No 29).

Section 5A was repealed, as from 1 January 1953, by section 2(1) of the Evidence Amendment Act 1952 (1952 No 50).

Privilege of witnesses

6 Communications during marriage

[Repealed]

Section 6 was repealed, as from 1 January 1981, by section 36(1)(a) Evidence Amendment Act (No 2) 1980 (1980 No 27).

7 Privilege in suits for adultery

[Repealed]

Section 7 was repealed, as from 1 January 1965, by section 90(1) Matrimonial Proceedings Act 1963 (1963 No 71).

8 Communications to clergyman and medical men

[Repealed]

Section 8 was repealed, as from 1 January 1981, by section 36(1)(a) Evidence Amendment Act (No 2) 1980 (1980 No 27).

8A Questions tending to establish a debt or civil liability

A witness shall not be excused from answering any question relevant to the proceedings on the sole ground that to answer the question may establish or tend to establish that the witness owes a debt, or otherwise subject the witness to any civil liability.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 8A was inserted, as from 1 January 1989, by section 2 Evidence Amendment Act 1988 (1988 No 116).

Impeaching credit of witnesses

9 How far witness may be discredited by the party producing him

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but may contradict him by other evidence.

Compare: 1905 No 16 s 9

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

10 Proof of contradictory statements of witness

Every witness under cross-examination, and every witness on his examination in chief (if the Judge, being of opinion that the witness is hostile, permits the question), may in any proceeding, civil or criminal, be asked whether he has made any former statement relative to the subject-matter of the proceeding, and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and, if he does not distinctly admit that he made such statement, proof may be given that he did in fact make it.

Compare: 1905 No 16 s 10

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

11 Cross-examinations as to previous statements in writing

- (1) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject-matter of the indictment or proceeding without such writing being shown to him; but if it is intended to contradict such witness by the writing his attention must, before such contradictory proof can be given, be called to those parts of the writing that are to be used for the purpose of so contradicting him.
- (2) The Judge may at any time during the trial require the writing to be produced for his inspection, and may thereupon make such use of it for the purposes of the trial as he thinks fit.

Compare: 1905 No 16 s 11

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

12 Proof of previous conviction of witness

- (1) A witness may be questioned as to whether he has been convicted of any indictable offence, and, upon being so ques-

tioned, if he either denies or does not admit the fact, or refuses to answer, the cross-examining party may prove such conviction.

(2)

(3)

Compare: 1905 No 16 s 12

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (2) was repealed, as from 7 October 1939, by section 20 Statutes Amendment Act 1939 (1939 No 39).

Subsection (3) was repealed, as from 7 October 1939, by section 20 Statutes Amendment Act 1939 (1939 No 39).

12A Proof of convictions by fingerprints

- (1) A conviction may be proved against any person in any civil or criminal proceedings by the production of such evidence as is mentioned in this section.
- (2) A certificate purporting to be signed by a fingerprint expert who is—
 - (a) A member of the Police; or
 - (b) A member of any police force in the United Kingdom; or
 - (c) A member of the police force of any State or Territory of the Commonwealth of Australia; or
 - (d) A member of any police force of Canada or of any Province or Territory of Canada,—to which is exhibited or on which are shown copies of the fingerprints of any person and certifying that those copies are copies of the fingerprints of a person who was convicted in that country of any offence of which particulars are given, shall be admissible in evidence for the purpose of proving the identity of any person alleged to have been convicted in that country of any such offence.
- (3) A certificate, purporting to be signed by a fingerprint expert who is a member of the Police, and certifying that the copies of the fingerprints which are exhibited to or shown on a certificate made under subsection (2) of this section and the fingerprints of the person in respect of whom a conviction is sought to be proved (a copy of which fingerprints is exhibited to or

shown on the certificate made under this subsection) are the fingerprints of the same person, shall be evidence that the person in respect of whom the conviction is sought to be proved was the person convicted of the offence of which particulars were given in the certificate made under subsection (2) of this section.

- (4) The Governor-General may from time to time by Order in Council declare that certificates purporting to be made by specified persons or classes of persons in any country outside New Zealand, the United Kingdom, Australia, or Canada and to the same effect, in respect of convictions for offences committed in that country, as certificates under subsection (2) of this section shall be evidence as if they had been made under the said subsection.
- (5) In this section the term **country** includes any State, territory, province, or part of a country.
- (6) The mode of proving a conviction authorised by this section shall be in addition to any other method of proving the conviction.

Compare: Evidence (Amendment) Act 1954, s 2(e) (NSW)

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 12A was inserted, as from 5 December 1962, by section 3 Evidence Amendment Act 1962 (1962 No 34).

Subsection (2)(c) was amended, as from 8 November 1974, by section 2(1) Evidence Amendment Act 1974 (1974 No 84) by inserting “or”.

Subsection (2)(d) was inserted, as from 8 November 1974, by section 2(1) Evidence Amendment Act 1974 (1974 No 84).

Subsection (4) was amended, as from 8 November 1974, by section 2(2) Evidence Amendment Act 1974 (1974 No 84) by substituting “Australia, or Canada” for “or Australia”.

12B Corroboration of evidence of accomplice not required

- (1) No corroboration of the evidence given by an accomplice of the accused shall be required for the accused to be convicted, and it shall not be necessary for the Judge to give any warning to the jury relating to the absence of corroboration.

- (2) Nothing in this section shall derogate from the provisions of section 75(1) (evidence of treason) or section 112 (evidence of perjury, false oath, or false statement) of the Crimes Act 1961.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 12B and 12C were inserted, as from 6 November 1986, by section 2 Evidence Amendment Act (No 2) 1986 (1986 No 87).

12C Witnesses having some purpose of their own to serve

Where in any criminal proceedings it appears to the Judge that a witness may have some purpose of his or her own to serve in giving evidence and that for that reason there is a risk that the witness may give false evidence that is prejudicial to the accused, the Judge shall consider whether or not it would be appropriate to instruct the jury on the need for special caution in considering the evidence given by the witness.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 12B and 12C were inserted, as from 6 November 1986, by section 2 Evidence Amendment Act (No 2) 1986 (1986 No 87).

Protection of witnesses

13 Cross-examination as to credit

- (1) If any question put to a witness upon cross-examination relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, it shall be the duty of the Court to decide whether or not the witness shall be compelled to answer it, and the Court may, if it thinks fit, warn the witness that he is not obliged to answer it.
- (2) In exercising this discretion the Court shall have regard to the following considerations:
- (a) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:
 - (b) Such questions are improper if the imputation they convey relates to matters so remote in time or of such a

character that the truth of the imputation would not affect, or would affect in a slight degree only, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

- (c) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.
- (3) Nothing herein shall be deemed to make any witness compellable to give evidence upon any matter he is now by law privileged from disclosing.

Compare: 1905 No 16 s 13

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

13A Undercover Police officers

- (1) This section applies in any case where a person is being or is to be proceeded against by indictment—
- (a) For any offence that is punishable by imprisonment for life or for a term of at least 7 years; or
 - (b) For any other offence against any of the provisions of the Misuse of Drugs Act 1975 except sections 7 and 13; or
 - (c) For conspiracy to commit, or for attempting to commit, an offence described in paragraph (a) or paragraph (b) of this subsection.
- (2) For the purposes of this section the term **undercover police officer**, in relation to any proceedings to which this section applies, means a member of the Police whose identity was concealed for the purposes of any investigation relevant to the proceedings.
- (3) Where, in any proceedings to which this section applies, it is intended to call an undercover Police officer as a witness for the prosecution, the Commissioner of Police may, at any time before an indictment is presented, file in the Court in which the proceedings are to be held a certificate given under the Commissioner's hand stating in respect of that witness the following particulars:

- (a) That during the period specified in the certificate the witness was a member of the Police and acted as an undercover Police officer:
 - (b) That the witness has not been convicted of any offence or (as the case may require) that the witness has not been convicted of any offence other than the offence or offences described in the certificate:
 - (c) That the witness has not been found guilty of an offence of misconduct or neglect of duty under the Police Act 1958 or (as the case may require) that the witness has not been found guilty of any such offence except the offence or offences described in the certificate.
- (4) If, to the knowledge of the Commissioner, the credibility of the witness in giving evidence in any other proceedings has been the subject of adverse comment by the Judge or other person before whom those proceedings were held, the Commissioner shall also include in the certificate a statement of the relevant particulars.
- (5) It shall be sufficient for the purposes of subsections (3) and (4) of this section if the certificate includes a statement of the nature of any offence or comment referred to in the certificate and the year in which the offence was committed or the comment was made; and it shall not be necessary to include the venue or precise date of the proceedings or any other particulars that might enable the true name or true address of the witness to be discovered.
- (6) If, in any proceedings to which this section applies, the Commissioner of Police files a certificate under subsection (3) of this section relating to any witness, the following provisions shall apply:
- (a) If a witness is subsequently called for the prosecution and attests that, during the period specified in the certificate, he or she was a member of the Police and acted as an undercover Police officer under the name specified in the certificate, it shall be presumed in the absence of proof to the contrary that the certificate has been given in respect of that witness:
 - (b) It shall be sufficient if the witness is identified by the name by which the witness was known while acting as

- an undercover Police officer, and, except where leave is given under paragraph (d) of this subsection, the witness shall not be required to state his or her true name or address or to give any particulars likely to lead to the discovery of that name or address:
- (c) Except where leave is given under paragraph (d) of this subsection, no barrister, solicitor, officer of the Court, or other person involved in the proceedings shall state in Court the true name or the address of the witness or give any particulars likely to lead to the discovery of that name or address:
 - (d) No evidence shall be given, and no question shall be put to the witness or to any other witness, relating directly or indirectly to the true name or the address of the witness, except by leave of the Judge:
 - (e) On an application for leave under paragraph (d) of this subsection, the certificate shall, in the absence of evidence to the contrary, be sufficient evidence of the particulars stated in it.
- (7) The Judge shall not grant leave under subsection (6)(d) of this section unless the Judge is satisfied—
- (a) That there is some evidence before the Judge that, if believed by the jury, could call into question the credibility of the witness; and
 - (b) That it is necessary in the interests of justice that the accused be enabled to test properly the credibility of the witness; and
 - (c) That it would be impracticable for the accused to test properly the credibility of the witness if the accused were not informed of the true name or the true address of the witness.
- (8) An application for leave under subsection (6)(d) of this section—
- (a) May be made from time to time and at any stage of the proceedings; and
 - (b) Shall, where practicable, be made and dealt with in chambers; and

- (c) Where the application is made during the trial before a jury, shall be dealt with and determined by the judge in the absence of the jury.
- (9) Where the Commissioner of Police gives a certificate under subsection (3) of this section in respect of any witness, the Commissioner shall serve on the accused or any solicitor or counsel acting for the accused, at least 14 days before the witness is to give evidence, a copy of the certificate.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 13A was inserted, as from 30 September 1986, by section 2 Evidence Amendment Act 1986 (1986 No 74).

13B Pre-trial witness anonymity order

- (1) This section applies if a person is charged with an offence and is to be proceeded against by indictment.
- (2) At any time after the person is charged, the prosecutor or defendant may apply to a Judge for an order—
 - (a) Excusing the applicant from disclosing to the other party prior to the preliminary hearing the name, address, and occupation of any witness, and (except with leave of the Judge) any other particulars likely to lead to the witness's identification; and
 - (b) Excusing the witness from stating at the preliminary hearing his or her name, address, and occupation, and (except with leave of the Judge) any other particulars likely to lead to the witness's identification.
- (3) The Judge must hear and determine the application in chambers, and—
 - (a) The Judge must give each party an opportunity to be heard on the application; and
 - (b) Neither the party supporting the application nor the witness need disclose any information that might disclose the witness's identity to any person (other than the Judge) before the application is dealt with.
- (4) The Judge may make the order if he or she believes on reasonable grounds that—

- (a) The safety of the witness or of any other person is likely to be endangered, or there is likely to be serious damage to property, if the witness's identity is disclosed prior to the trial; and
 - (b) Withholding the witness's identity until the trial would not be contrary to the interests of justice.
- (5) Without limiting subsection (4), in considering the application, the Judge must have regard to—
 - (a) The general right of an accused to know the identity of witnesses; and
 - (b) The principle that witness anonymity orders are justified only in exceptional circumstances; and
 - (c) The gravity of the offence; and
 - (d) The importance of the witness's evidence to the case of the party who wishes to call the witness; and
 - (e) Whether it is practical for the witness to be protected prior to the trial by any other means; and
 - (f) Whether there is other evidence which corroborates the witness's evidence.
- (6) If a pre-trial witness anonymity order is made under this section,—
 - (a) The party who applied for the order must give the Judge the name, address, and occupation of the witness; and
 - (b) During the course of the preliminary hearing, no counsel, solicitor, officer of the Court, or other person involved in the preliminary hearing may disclose the name, address, or occupation of the witness, or any other particulars likely to lead to the witness's identification; and
 - (c) During the course of the preliminary hearing,—
 - (i) No oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to the name, address, or occupation of the witness who is subject to the order; and
 - (ii) Except with leave of the Judge, no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to any other particulars likely to lead to the identifica-

tion of the witness who is subject to the order;
and

- (d) No person may publish, in any report or account relating to the proceeding, the name, address, or occupation of the witness, or any particulars likely to lead to the witness's identification.
- (7) A pre-trial witness anonymity order may be made by—
- (a) A District Court Judge who holds a warrant under the District Courts Act 1947 to conduct trials on indictment:
 - (b) If the preliminary hearing is held in a Youth Court, a Judge referred to in section 274(2)(a) of the Children, Young Persons, and Their Families Act 1989:
 - (c) A High Court Judge.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 13B to 13J were inserted, as from 11 December 1997, by section 3 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103). *See* section 4 of that Act as to the review of the operation of sections 13B to 13J, after the expiry of a period of 3 years from 11 December 1997, by the Ministry of Justice. *See* section 6 of that Act as to the application of sections 13B to 13J to proceedings in progress on 11 December 1997.

13C Witness anonymity order for purpose of High Court trial

- (1) This section applies if a person is charged with an indictable offence and either—
 - (a) Is committed to the High Court for trial; or
 - (b) Is committed to a District Court for trial and is the subject of an application under section 28J of the District Courts Act 1947 to transfer the proceeding to the High Court.
- (2) At any time after the person is committed for trial, the prosecutor or the accused may apply to a High Court Judge for a witness anonymity order under this section.
- (3) The Judge must hear and determine the application in chambers, and—
 - (a) The Judge must give each party an opportunity to be heard on the application; and
 - (b) Neither the party supporting the application nor the witness need disclose any information that might dis-

- close the witness's identity to any person (other than the Judge) before the application is dealt with.
- (4) The Judge may make a witness anonymity order if satisfied that—
- (a) The safety of the witness or of any other person is likely to be endangered, or there is likely to be serious damage to property, if the witness's identity is disclosed; and
 - (b) Either—
 - (i) There is no reason to believe that the witness has a motive or tendency to be untruthful, having regard (where applicable) to the witness's previous convictions or the witness's relationship with the accused or any associates of the accused; or
 - (ii) The witness's credibility can be tested properly without disclosure of the witness's identity; and
 - (c) The making of the order would not deprive the accused of a fair trial.
- (5) Without limiting subsection (4), in considering the application, the Judge must have regard to—
- (a) The general right of an accused to know the identity of witnesses; and
 - (b) The principle that witness anonymity orders are justified only in exceptional circumstances; and
 - (c) The gravity of the offence; and
 - (d) The importance of the witness's evidence to the case of the party who wishes to call the witness; and
 - (e) Whether it is practical for the witness to be protected by any means other than an anonymity order; and
 - (f) Whether there is other evidence which corroborates the witness's evidence.
- (6) If a witness anonymity order is made under this section,—
- (a) The party who applied for the order must give the Judge the name, address, and occupation of the witness; and
 - (b) The witness may not be required to state in Court his or her name, address, or occupation; and
 - (c) During the course of the trial, no counsel, solicitor, officer of the Court, or other person involved in the proceeding may disclose—

- (i) The name, address, or occupation of the witness;
or
- (ii) Except with leave of the Judge, any other particulars likely to lead to the witness's identification;
and
- (d) During the course of the trial,—
 - (i) No oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to the name, address, or occupation of the witness who is subject to the order;
and
 - (ii) Except with leave of the Judge, no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to any other particulars likely to lead to the identification of the witness who is subject to the order;
and
- (e) No person may publish, in any report or account relating to the proceeding, the name, address, or occupation of the witness, or any particulars likely to lead to the witness's identification.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 13B to 13J were inserted, as from 11 December 1997, by section 3 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103). *See* section 4 of that Act as to the review of the operation of sections 13B to 13J, after the expiry of a period of 3 years from 11 December 1997, by the Ministry of Justice. *See* section 6 of that Act as to the application of sections 13B to 13J to proceedings in progress on 11 December 1997.

13D Trial to be held in High Court if witness anonymity order made

- (1) If an application to transfer a proceeding to the High Court is made under section 28J of the District Courts Act 1947 and a witness anonymity order is made under section 13C in that case before the application is dealt with, the Judge considering the application must transfer the proceeding to the High Court.
- (2) In any other case where a witness who may be called to give evidence in a criminal trial is the subject of a witness

anonymity order made under section 13C, the trial must be held in the High Court.

- (3) This section has effect despite anything in sections 28A and 28J of the District Courts Act 1947.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 13B to 13J were inserted, as from 11 December 1997, by section 3 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103). *See* section 4 of that Act as to the review of the operation of sections 13B to 13J, after the expiry of a period of 3 years from 11 December 1997, by the Ministry of Justice. *See* section 6 of that Act as to the application of sections 13B to 13J to proceedings in progress on 11 December 1997.

13E Judge may appoint independent counsel to assist

- (1) For the purposes of considering an application for a witness anonymity order under section 13C, the Judge may appoint an independent counsel to assist the Judge and, without limiting the directions the Judge may give, the Judge may direct the independent counsel to—
- (a) Inquire into the matters referred to in paragraphs (a) and (b) of section 13C(4) and any other matters the Judge thinks relevant; and
 - (b) Report the counsel's findings to the Judge.
- (2) The party who applied for the witness anonymity order must make available to the independent counsel all information relating to the proceeding that is in that party's possession.
- (3) Fees for professional services provided by counsel appointed under this section, and reasonable expenses incurred,—
- (a) May be determined in accordance with regulations made under subsection (6); and
 - (b) Are payable from money appropriated by Parliament or the purpose.
- (4) The bill of costs rendered by a counsel appointed under this section must be given to the Registrar of the Court in which the proceeding was heard, and the Registrar may tax the bill of costs.
- (5) If the counsel is dissatisfied with the decision of the Registrar as to the amount of the bill, the counsel may, within 14 days after the date of the decision, apply to a Judge of the Court

to review the decision; and the Judge may make such order varying or confirming the decision as the Judge considers fair and reasonable.

- (6) The Governor-General may from to time, by Order in Council, make regulations making provision for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of professional services provided by counsel appointed under this section.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 13B to 13J were inserted, as from 11 December 1997, by section 3 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103). *See* section 4 of that Act as to the review of the operation of sections 13B to 13J, after the expiry of a period of 3 years from 11 December 1997, by the Ministry of Justice. *See* section 6 of that Act as to the application of sections 13B to 13J to proceedings in progress on 11 December 1997.

13F Directions to jury

In a trial to which a witness anonymity order applies, the Judge must, unless he or she considers it inappropriate, advise the jury to the effect that—

- (a) The jury is not to draw any adverse inference against the accused from the fact that the order has been made; and
- (b) If directions have been given under section 13G concerning the mode of giving evidence, the jury is not to draw any adverse inference against the accused from the fact that directions have been given.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 13B to 13J were inserted, as from 11 December 1997, by section 3 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103). *See* section 4 of that Act as to the review of the operation of sections 13B to 13J, after the expiry of a period of 3 years from 11 December 1997, by the Ministry of Justice. *See* section 6 of that Act as to the application of sections 13B to 13J to proceedings in progress on 11 December 1997.

13G Judge may make orders and give directions to preserve anonymity of witness

- (1) A Judge who makes an order under section 13B or section 13C may, for the purposes of the preliminary hearing or trial (as the case may be), also make such orders and give such directions as the Judge considers necessary to preserve the anonymity of the witness, including (without limitation) 1 or more of the following directions:
 - (a) That the Court be cleared of members of the public:
 - (b) That the witness be screened from the defendant:
 - (c) That the witness give evidence by closed-circuit television or by video link.
- (2) In considering whether to give directions concerning the mode in which the witness is to give his or her evidence at the preliminary hearing or trial, the Judge must have regard to the need to protect the witness while at the same time ensuring a fair hearing for the defendant.
- (3) This section does not limit—
 - (a) Section 206 of the Summary Proceedings Act 1957 (which confers powers to deal with contempt of Court);
or
 - (b) Section 138 of the Criminal Justice Act 1985 (which confers power to clear the Court); or
 - (c) Any power of the Court to direct that evidence be given, or to permit evidence to be given, by a particular mode.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 13B to 13J were inserted, as from 11 December 1997, by section 3 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103). *See* section 4 of that Act as to the review of the operation of sections 13B to 13J, after the expiry of a period of 3 years from 11 December 1997, by the Ministry of Justice. *See* section 6 of that Act as to the application of sections 13B to 13J to proceedings in progress on 11 December 1997.

13H Variation or discharge of witness anonymity order during trial

At any time before a witness gives evidence during a trial, a High Court Judge may, on his or her own motion or on the application of either party, vary or discharge a witness anonymity

order made for the purposes of the proceeding under section 13C.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 13B to 13J were inserted, as from 11 December 1997, by section 3 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103). *See* section 4 of that Act as to the review of the operation of sections 13B to 13J, after the expiry of a period of 3 years from 11 December 1997, by the Ministry of Justice. *See* section 6 of that Act as to the application of sections 13B to 13J to proceedings in progress on 11 December 1997.

13I Witnesses in Police witness protection programme

If, at any time after the events which are the subject of a charge, a witness under a Police witness protection programme assumes a new identity, the witness may not be required in any proceeding concerning the charge to disclose his or her assumed name or any particulars likely to disclose his or her new identity.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 13B to 13J were inserted, as from 11 December 1997, by section 3 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103). *See* section 4 of that Act as to the review of the operation of sections 13B to 13J, after the expiry of a period of 3 years from 11 December 1997, by the Ministry of Justice. *See* section 6 of that Act as to the application of sections 13B to 13J to proceedings in progress on 11 December 1997.

13J Offences

- (1) A person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 7 years who, with knowledge of a pre-trial witness anonymity order made under section 13B, intentionally contravenes paragraph (b) or paragraph (d) of subsection (6) of that section.
- (2) A person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 7 years who, with knowledge of a witness anonymity order made under section 13C, intentionally contravenes paragraph (c) or paragraph (e) of subsection (6) of that section.
- (3) If a person contravenes paragraph (b) or paragraph (d) of section 13B(6) or paragraph (c) or paragraph (e) of section

13C(6), and that contravention does not constitute an offence against subsection (1) or subsection (2) of this section, the person commits an offence and is liable on summary conviction,—

- (a) In the case of an individual, to a fine not exceeding \$2,000;
 - (b) In the case of a body corporate, to a fine not exceeding \$10,000.
- (4) Nothing in this section limits the power of any Court to punish any contempt of Court.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 13B to 13J were inserted, as from 11 December 1997, by section 3 Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103). *See* section 4 of that Act as to the review of the operation of sections 13B to 13J, after the expiry of a period of 3 years from 11 December 1997, by the Ministry of Justice. *See* section 6 of that Act as to the application of sections 13B to 13J to proceedings in progress on 11 December 1997.

14 Indecent or scandalous questions

The Court shall forbid any question it regards as—

- (a) Indecent or scandalous, although such question may have some bearing on the case before the Court, unless the question relates to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed; or
- (b) Intended to insult or annoy, or needlessly offensive in form, notwithstanding that such question may be proper in itself.

Compare: 1905 No 16 s 14

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

15 Prohibited questions not to be published

- (1) It shall not be lawful for any person to print or publish any question or inquiry or evidence given which the Court—
- (a) Has forbidden or disallowed under any provision of this Act; or

- (b) Has warned the witness he is not obliged to answer, and has ordered shall not be published.
- (2) Every person who prints or publishes any question or inquiry or evidence in breach of this section commits a contempt of Court.

Compare: 1905 No 16 s 15

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (1) was amended, as from 29 August 1977, by section 3(1)(a) Evidence Amendment Act 1977 (1977 No 13) by inserting “or evidence given”.

Subsection (1)(a) was amended, as from 29 August 1977, by section 3(1)(b) Evidence Amendment Act 1977 (1977 No 13) by inserting “under any provision of this Act”.

Subsection (2) was amended, as from 29 August 1977, by section 3(1)(c) Evidence Amendment Act 1977 (1977 No 13) by inserting “or inquiry or evidence”.

16 Witnesses in certain cases may be compelled to give evidence

- (1) In any proceedings in any Court, or before any Justices or the Community Magistrate or Community Magistrates, for the breach of any Act relating to—
 - (a)
 - (b) Stamp duties; or
 - (c) The public revenues; or
 - (d) The sale of intoxicating liquors; or
 - (e) Distillation; or
 - (f) Beer duty,—or in any proceeding brought by or on behalf of or against the Crown under or in pursuance of the provisions of any such Act, the Judge or the Justices or the Community Magistrate or Community Magistrates may require any person to be examined as a witness.
- (2) A person so required to be examined as aforesaid shall not be excused from being so examined, or from answering any question put to him touching any such breach as aforesaid, on the ground that this evidence will tend to incriminate him.
- (3) If any such person refuses to be examined, or to answer any such question as aforesaid, he shall be deemed to be a witness

appearing under subpoena and refusing without lawful cause or excuse to be sworn or to give evidence.

Compare: 1905 No 16 s 16

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (1) was amended, as from 30 June 1998, by section 7 District Courts Amendment Act 1998 (1998 No 76) by inserting “or the Community Magistrate or Community Magistrates” after “Justices”.

Subsection (1)(a) was repealed, as from 1 April 1914, by section 318 Customs Act 1913 (1913 No 63).

17 Witness making true discovery to be freed from all penalties

- (1) Every person required to be examined as aforesaid in any Court, or before Justices, or before any Community Magistrate or Community Magistrates, touching any such breach as aforesaid, who on such examination makes to the best of his knowledge true and faithful discovery of all matters whereon he is so examined touching such breach, and thereby gives evidence tending to incriminate himself, shall, on application, receive from the Judge or Justices or Community Magistrate or Community Magistrates before whom he is examined a certificate in writing under his or their hands that he has made such true and faithful discovery as aforesaid.
- (2) If such person receives such certificate (but not otherwise) he shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures, and punishments, to which he was liable for anything done before that time in respect of the matters touching which he is so examined.

Compare: 1905 No 16 s 17

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (1) was amended, as from 30 June 1998, by section 7 District Courts Amendment Act 1998 (1998 No 76) by inserting “or before any Community

Magistrate or Community Magistrates,” and “or Community Magistrate or Community Magistrates”.

General rules of evidence

18 Proof by attesting witnesses

- (1) It is not necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto.
- (2) In any District Court a deed may be proved and given in evidence in the same manner as a document that does not require attestation.

Compare: 1905 No 16 s 18

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (2) was amended, as from 29 September 1925, by section 3 District Courts Abolition Act 1925 (1925 No 19) by omitting “District Court”.

Subsection (2) was amended, as from 1 April 1980, by section 18(2) District Courts Amendment Act 1979 (1979 No 125) by substituting “District Court” for “Magistrates’ Court”.

Subsection (2) was amended, as from 1 April 1973, by section 245 Mining Act 1971 (1971 No 25) by omitting “or Warden’s Court”; *see* clause 2 Mining Act Commencement Order 1973 (SR 1973/80).

19 Comparison of disputed handwriting

Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine may be made by witnesses, and such writings and the testimony of witnesses respecting the same may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Compare: 1905 No 16 s 19

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

20 Confession after promise, threat, or other inducement

A confession tendered in evidence in any criminal proceeding shall not be rejected on the ground that a promise or threat or any other inducement (not being the exercise of violence

or force or other form of compulsion) has been held out to or exercised upon the person confessing, if the Judge or other presiding officer is satisfied that the means by which the confession was obtained were not in fact likely to cause an untrue admission of guilt to be made.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 20 was substituted, as from 29 September 1950, by section 3 Evidence Amendment Act 1950 (1950 No 29).

Rules in particular cases

21 Actions for breach of promise

[Repealed]

Sections 21 and 22 were repealed, as from 3 October 1975, by section 6(1) Domestic Actions Act 1975 (1975 No 53).

22 Actions for seduction

[Repealed]

Sections 21 and 22 were repealed, as from 3 October 1975, by section 6(1) Domestic Actions Act 1975 (1975 No 53).

22A Admissibility of previous description by identification witness

Notwithstanding the rule against the admissibility of previous consistent statements, where a witness for the prosecution gives evidence identifying the accused as a person whom he saw in the circumstances of the offence, any description of the offender given to the Police or the prosecutor by the witness before the witness's first identification of the accused shall be admissible as evidence tending to show that the witness's identification of the accused is consistent with his previous description of the offender.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 22A was inserted, as from 11 December 1982, by section 2 Evidence Amendment Act 1982 (1982 No 48).

23 Poisoning cases

Where in any criminal proceeding there is a question whether poison was administered or attempted to be administered by or by the procurement of the accused person, evidence tending to prove the administration or attempted administration by or by the procurement of the accused, whether to the same or to another person, and whether at the same time as the time when the offence charged was committed or at any other time or times, shall be deemed to be relevant to the general issue of **Guilty or Not guilty**, and shall be admissible at any stage of the proceedings, as well for the purpose of proving the administration or attempted administration by or by the procurement of the accused as for the purpose of proving the intent.

Compare: 1905 No 16 s 23

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

23A Evidence of complainant in cases involving sexual violation

- (1) For the purposes of this section, **cases of a sexual nature** means proceedings in which a person is charged with, or is to be sentenced for, any of the following offences:
 - (a) Any offence against any of the provisions of sections 128 to 142A of the Crimes Act 1961:
 - (aa) Any offence against section 144A of the Crimes Act 1961:
 - (b) Any other offence against the person of a sexual nature:
 - (c) Being a party to the commission of any offence referred to in paragraph (a) or paragraph (aa) or paragraph (b) of this subsection:
 - (d) Conspiring with any person to commit any such offence.
- (2) In any case of a sexual nature, no evidence shall be given, and no question shall be put to a witness, relating directly or indirectly to—
 - (a) The sexual experience of the complainant with any person other than the accused; or
 - (b) The reputation of the complainant in sexual matters,—except by leave of the Judge.

- (3) The Judge shall not grant leave under subsection (2) of this section unless the Judge is satisfied that the evidence to be given or the question to be put is of such direct relevance to—
- (a) Facts in issue in the proceeding; or
 - (b) The issue of the appropriate sentence,—
- as the case may require, that to exclude it would be contrary to the interests of justice:
- Provided that any such evidence or question shall not be regarded as being of such direct relevance by reason only of any inference it may raise as to the general disposition or propensity of the complainant in sexual matters.
- (4) Notwithstanding subsection (2) of this section, leave shall not be required—
- (a) To the giving of evidence or the putting of a question for the purpose of contradicting or rebutting evidence given by any witness, or given by any witness in answer to a question, relating directly or indirectly, in either case, to—
 - (i) The sexual experience of the complainant with any person other than the accused; or
 - (ii) The reputation of the complainant in sexual matters; or
 - (b) Where the accused is charged as a party, and cannot be convicted unless it is shown that a person other than the accused committed an offence referred to in subsection (1) of this section against the complainant, to the giving of evidence or the putting of a question relating directly or indirectly to the sexual experience of the complainant with that other person.
- (5) An application for leave under subsection (2) of this section—
- (a) May be made from time to time, whether before or after the commencement of the proceeding; and
 - (b) If made in the course of a proceeding before a jury, shall be made and dealt with in the absence of the jury; and
 - (c) If the accused or the accused's counsel so requests, shall be made and dealt with in the absence of the complainant.

- (6) Nothing in this section shall authorise evidence to be given or questions to be put that could not be given or put apart from this section.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 23A was inserted, as from 29 August 1977, by section 2 Evidence Amendment Act 1977 (1977 No 13).

Section 23A was substituted, as from 1 February 1986, by section 2 Evidence Amendment Act (No 2) 1985 (1985 No 161).

Subsection (1) was substituted, as from 1 January 1990, by section 2(1) Evidence Amendment Act 1989 (1989 No 104).

Subsection (1)(aa) was inserted, as from 1 September 1995, by section 8(1) Crimes Amendment Act 1995 (1995 No 49).

Subsection (1)(c) was amended, as from 1 September 1995, by section 8(2) Crimes Amendment Act 1995 (1995 No 49) by inserting “paragraph (aa) or”.

Subsection (2) was amended, as from 1 January 1990, by section 2(2) Evidence Amendment Act 1989 (1989 No 104) by substituting “case of a sexual nature” for “criminal proceeding in which a person is charged with a rape offence or is to be sentenced for a rape offence”.

23AA Address, and occupation of complainant not to be disclosed in open Court

- (1) This section applies to proceedings in which a person is charged with, or is to be sentenced for, any offence specified in section 23A(1) of this Act.
- (2) In any proceedings to which this section applies, the following provisions shall apply:
- (a) Except where leave is given under paragraph (c) of this subsection, the complainant shall not be required to state his or her address or occupation in Court:
 - (b) Except where leave is given under paragraph (c) of this subsection, no barrister, solicitor, officer of the Court, or other person involved in the proceedings shall state the address or occupation of the complainant in Court:
 - (c) No oral evidence shall be given, and no question shall be put to a witness, relating to the address or occupation of the complainant except by leave of the Judge.
- (3) The Judge shall not grant leave under subsection (2) of this section unless the Judge is satisfied that the evidence to be given or the question to be put is of such direct relevance to

facts in issue that to exclude it would be contrary to the interests of justice.

- (4) An application for leave under subsection (2) of this section—
- (a) May be made from time to time, whether before or after the commencement of any hearing or other proceeding; and
 - (b) Shall, where practicable, be made and dealt with in chambers.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 23AA was inserted, as from 1 February 1986, by section 2 Evidence Amendment Act (No 2) 1985 (1985 No 161).

Subsection (2)(c) was amended, as from 6 November 1986, by section 3 Evidence Amendment Act (No 2) 1986 (1986 No 87) by substituting “address” for “name, address,”.

23AB Corroboration in sexual cases

- (1) Where any person is tried for an offence against any of sections 128 to 144A of the Crimes Act 1961 or for any other offence against the person of a sexual nature, no corroboration of the complainant’s evidence shall be necessary for that person to be convicted; and in any such case the Judge shall not be required to give any warning to the jury relating to the absence of corroboration.
- (2) If, in any such case, the Judge decides to comment on the absence of any evidence tending to support any other evidence, no particular form of words shall be required.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 23AB and 23AC were inserted, as from 9 January 1986, by section 3 Evidence Amendment Act (No 2) 1985 (1985 No 161).

Subsection (1) was amended, as from 1 September 1995, by section 8(3) Crimes Amendment Act 1995 (1995 No 49) by substituting “144A” for “144”.

23AC Delay in making complaint in sexual cases

Where, during the trial of any person for an offence against any of sections 128 to 144A of the Crimes Act 1961 or for any other offence against the person of a sexual nature, evidence is given or a question is asked or a comment is made that tends

to suggest an absence of complaint in respect of the alleged offence by the person upon whom the offence is alleged to have been committed, or to suggest delay by that person in making any such complaint, the Judge may tell the jury that there may be good reasons why the victim of such an offence may refrain from or delay in making such a complaint.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 23AB and 23AC were inserted, as from 9 January 1986, by section 3 Evidence Amendment Act (No 2) 1985 (1985 No 161).

Section 23AC was amended, as from 1 September 1995, by section 8(4) Crimes Amendment Act 1995 (1995 No 49) by substituting “144A” for “144”.

23B Admissibility of evidence obtained by means of interception device in certain emergencies

- (1) Notwithstanding anything in section 25 of the Misuse of Drugs Amendment Act 1978, where any member of the Police intercepts any private communication by means of an interception device in proper reliance on section 216B(3) of the Crimes Act 1961, evidence so obtained of that communication, or of its substance, meaning, or purport, shall, subject to subsection (2) of this section, be admissible in evidence—
 - (a) In any criminal proceeding in which a charge is brought against any person involved in the emergency:
 - (b) In any civil proceeding in which the conduct of any member of the Police involved in the emergency is in issue:
 - (c) At any inquiry conducted by a Coroner in respect of the death of any person involved in the emergency:
 - (d) Before any inquiry conducted under the Police Act 1958 or the Commissions of Inquiry Act 1908 into the conduct of any member of the Police involved in the emergency.
- (2) Subsection (1) of this section shall not render admissible any evidence that is inadmissible by virtue of any enactment, other than the said section 25 of the Misuse of Drugs Amendment Act 1978, or of any rule of law.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 23B was inserted, as from 6 August 1979, by section 3 Crimes Amendment Act 1979 (1979 No 5).

The heading to section 23B was amended, as from 1 October 2003, by section 35 Crimes Amendment Act 2003 (2003 No 39) by substituting “interception device” for “listening device”.

Subsection (1) was amended, as from 1 October 2003, by section 35 Crimes Amendment Act 2003 (2003 No 39) by substituting “an interception device” for “a listening device”.

Section 23B(1)(c): amended, on 1 July 2007, by section 146 of the Coroners Act 2006 (2006 No 38).

Rules in cases involving child complainants

This heading was inserted, as from 1 January 1990, by section 3 Evidence Amendment Act 1989 (1989 No 104).

23C Application of sections 23D to 23I

Sections 23D to 23I of this Act apply to every case where—

- (a) A person is charged with—
 - (i) Any offence against any of the provisions of sections 128 to 142A of the Crimes Act 1961; or
 - (ia) Any offence against section 144A of the Crimes Act 1961; or
 - (ii) Any other offence against the person of a sexual nature; or
 - (iii) Being a party to the commission of any offence referred to in subparagraph (i) or subparagraph (ia) or subparagraph (ii) of this paragraph; or
 - (iv) Conspiring with any person to commit any such offence; and
- (b) Either—
 - (i) The complainant has not, at the commencement of the proceedings, attained the age of 17 years; or
 - (ii) The complainant is of or over the age of 17 years and is mentally handicapped.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 23C to 23I were inserted, as from 1 January 1990, by section 3 Evidence Amendment Act 1989 (1989 No 104).

Paragraph (a)(ia) was inserted, as from 1 September 1995, by section 8(5) Crimes Amendment Act 1995 (1995 No 49).

Paragraph (a)(iii) was amended, as from 1 September 1995, by section 8(6) Crimes Amendment Act 1995 (1995 No 49) by inserting “subparagraph (ia) or”.

Paragraph (b) was substituted, as from 1 September 1993, by section 28 Summary Proceedings Amendment Act 1993 (1993 No 47).

23D Directions as to mode by which complainant’s evidence is to be given

- (1) Where, in any case to which this section applies, the accused is committed for trial, the prosecutor shall, before the trial, apply to a Judge of the Court by or before which the indictment is to be tried for directions under section 23E of this Act as to the mode by which the complainant’s evidence is to be given at the trial.
- (2) The Judge shall hear and determine the application in chambers, and shall give each party an opportunity to be heard in respect of the application.
- (3) The Judge may call for and receive any reports from any persons whom the Judge considers to be qualified to advise on the effect on the complainant of giving evidence in person in the ordinary way or in any particular mode described in section 23E of this Act.
- (4) In considering what directions (if any) to give under section 23E of this Act, the Judge shall have regard to the need to minimise stress on the complainant while at the same time ensuring a fair trial for the accused.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 23C to 23I were inserted, as from 1 January 1990, by section 3 Evidence Amendment Act 1989 (1989 No 104).

23E Modes in which complainant’s evidence may be given

- (1) On an application under section 23D of this Act, the Judge may give any of the following directions in respect of the mode in which the complainant’s evidence is to be given at the trial:

- (a) Where a videotape of the complainant's evidence was shown at the preliminary hearing, a direction that the complainant's evidence be admitted in the form of that videotape, with such excisions (if any) as the Judge may order under subsection (2) of this section:
- (b) Where the Judge is satisfied that the necessary facilities and equipment are available, a direction that the complainant shall give his or her evidence outside the courtroom but within the Court precincts, the evidence being transmitted to the courtroom by means of closed circuit television:
- (c) A direction that, while the complainant is giving evidence or is being examined in respect of his or her evidence, a screen, or one-way glass, be so placed in relation to the complainant that—
 - (i) The complainant cannot see the accused; but
 - (ii) The Judge, the jury, and counsel for the accused can see the complainant:
- (d) Where the Judge is satisfied that the necessary facilities and equipment are available, a direction that, while the complainant is giving evidence or is being examined in respect of his or her evidence, the complainant be placed behind a wall or partition, constructed in such a manner and of such materials as to enable those in the courtroom to see the complainant while preventing the complainant from seeing them, the evidence of the complainant being given through an appropriate audio link:
- (e) Where the Judge is satisfied that the necessary facilities and equipment are available, a direction that—
 - (i) The complainant give his or her evidence at a location outside the Court precincts; and
 - (ii) That those present while the complainant is giving evidence include the Judge, the accused, counsel, and such other persons as the Judge thinks fit; and
 - (iii) That the giving of evidence by the complainant be recorded on videotape, and that the complainant's evidence be admitted in the form of

that videotape, with such excisions (if any) as the Judge may order under subsection (2) of this section.

- (2) Where a videotape of the complainant's evidence is to be shown at the trial, the Judge shall view the videotape before it is shown, and may order excised from the videotape any matters that, if the complainant's evidence were to be given in person in the ordinary way, would be excluded either—
 - (a) In accordance with any rule of law relating to the admissibility of evidence; or
 - (b) Pursuant to any discretion of a Judge to order the exclusion of any evidence.
- (3) Where a videotape of the complainant's evidence is to be shown at the trial, the Judge shall give such directions under this section as the Judge may think fit relating to the manner in which any cross-examination or re-examination of the complainant is to be conducted.
- (4) Where the complainant is to give his or her evidence in the mode described in paragraph (b) or paragraph (d) of subsection (1) of this section, the Judge may direct that any questions to be put to the complainant shall be given through an appropriate audio link to a person, approved by the Judge, placed next to the complainant, who shall repeat the question to the complainant.
- (5) Where the complainant is to give his or her evidence at a location outside the Court precincts, the Judge may also give any directions under paragraph (c) or paragraph (d) of subsection (1) of this section that the Judge thinks fit.
- (6) Where a direction is given under this section, the evidence of the complainant shall be given substantially in accordance with the terms of the direction; but no such evidence shall be challenged in any proceedings on the ground of any failure to observe strictly all the terms of the direction.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 23C to 23I were inserted, as from 1 January 1990, by section 3 Evidence Amendment Act 1989 (1989 No 104).

23F Cross-examination and questioning of accused

- (1) Notwithstanding section 354 of the Crimes Act 1961, but subject to the succeeding provisions of this section, the accused shall not be entitled in any case to which this section applies to cross-examine the complainant.
- (2) Nothing in subsection (1) of this section nor any direction given under section 23E of this Act shall affect the right of counsel for the accused to cross-examine the complainant.
- (3) Where the accused is not represented by counsel, the accused may put questions to the complainant (whether by means of an appropriate audio link or otherwise as the Judge may direct) by stating the questions to a person, approved by the Judge, who shall repeat the questions to the complainant.
- (4) No direction given under section 23E of this Act shall affect the right of the Judge to question the complainant.
- (5) Where the complainant is being cross-examined by counsel for the accused, or any questions are being put to the complainant by the accused, the Judge may disallow any question put to the complainant that the Judge considers is, having regard to the age of the complainant, intimidating or overbearing.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 23C to 23I were inserted, as from 1 January 1990, by section 3 Evidence Amendment Act 1989 (1989 No 104).

23G Expert witnesses

- (1) For the purposes of this section, a person is an expert witness if that person is—
 - (a) a medical practitioner whose scope of practice includes psychiatry, practising or having practised in the field of child psychiatry and with experience in the professional treatment of sexually abused children; or
 - (b) a psychologist practising or having practised in the field of child psychology and with experience in the professional treatment of sexually abused children.
- (2) In any case to which this section applies, an expert witness may give evidence on the following matters:

- (a) The intellectual attainment, mental capability, and emotional maturity of the complainant, the witness's assessment of the complainant being based on—
 - (i) Examination of the complainant before the complainant gives evidence; or
 - (ii) Observation of the complainant giving evidence, whether directly or on a videotape:
- (b) The general development level of children of the same age group as the complainant:
- (c) The question whether any evidence given during the proceedings by any person (other than the expert witness) relating to the complainant's behaviour is, from the expert witness's professional experience or from his or her knowledge of the professional literature, consistent or inconsistent with the behaviour of sexually abused children of the same age group as the complainant.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 23C to 23I were inserted, as from 1 January 1990, by section 3 Evidence Amendment Act 1989 (1989 No 104).

Subsection (1)(a) was substituted, as from 1 July 1996, by section 143(1) Medical Practitioners Act 1995 (1995 No 95).

Subsection (1) was substituted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

23H Directions to jury

Where a case to which this section applies is tried before a jury, the following provisions shall apply in respect of the Judge's directions to the jury:

- (a) Where the evidence of the complainant is given in any particular mode described in section 23E of this Act, the Judge shall advise the jury that the law makes special provision for the giving of evidence by child complainants in such cases, and that the jury is not to draw any adverse inference against the accused from the mode in which the complainant's evidence is given:
- (b) The Judge shall not give any warning to the jury relating to the absence of corroboration of the evidence of the

complainant if the Judge would not have given such a warning had the complainant been of full age:

- (c) The Judge shall not instruct the jury on the need to scrutinise the evidence of young children generally with special care nor suggest to the jury that young children generally have tendencies to invention or distortion:
- (d) Nothing in paragraph (b) or paragraph (c) of this section shall limit the discretion of the Judge to comment on—
 - (i) Specific matters raised in any evidence during the trial; or
 - (ii) Matters, whether of a general or specific nature, included in the evidence of any expert witness to whom section 23G of this Act applies.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 23C to 23I were inserted, as from 1 January 1990, by section 3 Evidence Amendment Act 1989 (1989 No 104).

23I Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the procedure to be followed, the type of equipment to be used, and the arrangements to be made, where the evidence of a complainant is to be given by videotape:
- (b) Providing for the approval of interviewers or classes of interviewers in such cases, providing for the proof of any such approval to be by production of a certificate and prescribing the form of that certificate, and prescribing the form of certificate by which the interviewer is to formally identify the videotape:
- (c) Providing for the consent of the complainant to being videotaped, and specifying who may give consent on behalf of the complainant:
- (d) Prescribing the uses to which any such videotapes may be put, and prohibiting their use for any other purposes:
- (e) Providing for the safe custody of any such videotapes:

- (f) Providing for such other matters as are contemplated by any of sections 23D to 23H of this Act or as may be necessary for the due administration of those provisions.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 23C to 23I were inserted, as from 1 January 1990, by section 3 Evidence Amendment Act 1989 (1989 No 104).

Evidence of witnesses in prison

24 Judge may order prisoner to be brought up as a witness

[Repealed]

Sections 24 and 25 were repealed, as from 1 January 1955, by section 49(1) Penal Institutions Act 1954 (1954 No 51).

25 Expenses of bringing up prisoner

[Repealed]

Sections 24 and 25 were repealed, as from 1 January 1955, by section 49(1) Penal Institutions Act 1954 (1954 No 51).

Documentary evidence in criminal proceedings

This heading was inserted, as from 16 September 1966, by section 2 Evidence Amendment Act 1966 (1966 No 24).

25A Admissibility of certain business records

[Repealed]

Section 25A was inserted, as from 16 September 1966, by section 2 Evidence Amendment Act 1966 (1966 No 24).

Section 25A was repealed, as from 1 January 1981, by section 21(1)(a) Evidence Amendment Act (No 2) 1980 (1980 No 27).

Proof of official documents, etc

26 Judicial notice of the Public Seal of New Zealand

[Repealed]

Section 26 was repealed, as from 28 February 1977, by section 8 Seal of New Zealand Act 1977 (1977 No 1).

27 Judicial notice of official seals, etc

Where by any Act any seal or stamp is authorised to be used by any Court, officer, body corporate, or any other person, judicial notice shall be taken of the impression of such seal or stamp without evidence of the same having been impressed or any other evidence relating thereto.

Compare: 1905 No 16 s 27

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

28 Judicial notice of Acts of Parliament

Judicial notice shall be taken by all Courts and persons acting judicially of all Acts of Parliament.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsections (2) and (3) were inserted, as from 20 October 1972, by section 2 Evidence Amendment Act 1972 (1972 No 57).

Section 28 was substituted, as from 19 December 1989, by section 23 Acts and Regulations Publication Act 1989 (1989 No 142).

28A Judicial notice of regulations

- (1) Judicial notice shall be taken by all Courts and persons acting judicially of all regulations.
- (2) In subsection (1) and sections 29(3) and 29A, the term **regulations**—
 - (a) Has the same meaning as in section 2 of the Acts and Regulations Publication Act 1989; and
 - (b) Includes any instrument that, under section 14 of that Act or section 6A of the Regulations Act 1936, has been printed and published as if it were a regulation.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 28A was inserted, as from 19 December 1989, by section 23 Acts and Regulations Publication Act 1989 (1989 No 142).

Subsection (2) was substituted, as from 1 January 2000, by section 6 Acts and Regulations Publication Amendment Act 1999 (1999 No 111).

29 Copy of Act of Parliament, Imperial legislation, and regulations printed as prescribed to be evidence

- (1) Every copy of any Act of Parliament or of any Imperial enactment or any Imperial subordinate legislation (as defined in section 2 of the Imperial Laws Application Act 1988), being a copy purporting to be printed or published (whether before or after the commencement of this section) under the authority of the New Zealand Government shall, unless the contrary is shown, be deemed—
 - (a) To be a correct copy of that Act of Parliament, enactment, or legislation; and
 - (b) To have been so printed or published.
- (2) Every copy of any Imperial enactment or Imperial subordinate legislation (as so defined), being a copy purporting to be printed (whether before or after the commencement of this section) by the Queen's or King's Printer or under the superintendence or authority of Her Majesty's Stationery Office in the United Kingdom, shall, unless the contrary is shown, be deemed—
 - (a) To be a correct copy of that enactment or legislation; and
 - (b) To have been so printed.
- (3) Every copy of any regulations (as defined in section 28A(2) of this Act) purporting to be printed whether before or after the commencement of this section under the authority of the New Zealand Government shall, unless the contrary is shown, be deemed—
 - (a) To be a correct copy of those regulations; and
 - (b) To have been so printed or published; and
 - (c) To be evidence that the regulations were notified in the *Gazette* on the date printed on that copy as the date of their notification in the *Gazette*.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (2) was inserted, as from 20 October 1972, by section 3(1) Evidence Amendment Act 1972 (1972 No 57).

Section 29 was substituted, as from 28 July 1988, by section 3 Evidence Amendment Act 1988 (1988 No 116).

Section 29 was substituted, as from 19 December 1989, by section 23 Acts and Regulations Publication Act 1989 (1988 No 116).

Subsections (1), (2) and (3) were amended, as from 3 June 1998, by section 2 Evidence Amendment Act 1998 (1998 No 42) by substituting “shown” for “proved”.

29A Copy of reprint of Act, Imperial legislation, or regulations to be evidence

- (1) This section applies to any copy of a reprint of any legislation, where that copy purports to be printed or published (whether before or after the commencement of this section) under the authority of the New Zealand Government.
- (2) Unless the contrary is shown, every copy of a reprint to which this section applies is to be taken—
 - (a) To be a copy of a reprint that correctly states, as at the date at which it is stated to be reprinted, the law enacted or made by the legislation reprinted and by the amendments (if any) to that legislation; and
 - (b) To have been printed or published under the authority of the New Zealand Government.
- (2A) To avoid any doubt, the presumption contained in subsection (2) applies to a copy of a reprint in which changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made.
- (3) The presumption contained in subsection (2) may be rebutted by the production of the official volume in which the relevant legislation or any amendment to that legislation, as the case requires, is contained.
- (4) Subsection (3) does not limit any other means of rebutting the presumption contained in subsection (2).
- (5) In this section, unless the context otherwise requires,—
 - (a) The terms **Imperial enactment** and **Imperial subordinate legislation** have the meaning given to them by section 2 of the Imperial Laws Application Act 1988:
 - (b) The term **legislation** means any Act, Imperial enactment, Imperial subordinate legislation, or regulations:
 - (c) The term **official volume** means any volume containing copies of legislation that are deemed, by any provision of section 29, to be correct copies of that legislation.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 29A was inserted, as from 19 December 1989, by section 23 Acts and Regulations Publication Act 1989 (1989 No 142).

Section 29A was substituted, as from 3 June 1998, by section 3 Evidence Amendment Act 1998 (1998 No 42).

Subsection (2A) was inserted, as from 1 January 2000, by section 7 Acts and Regulations Publication Amendment Act 1999 (1999 No 111).

30 Copies of Parliamentary Journals to be evidence

All copies of the Journals of the Legislative Council or the House of Representatives, purporting to be printed by the Government Printer or published by order of the House of Representatives, shall be admitted as evidence thereof by all Courts and persons acting judicially, without proof being given that such copies were so printed or published.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 30 was substituted, as from 19 December 1989, by section 23 Acts and Regulations Publication Act 1989 (1989 No 142).

31 Provincial Ordinances, etc

All copies of Acts or Ordinances made by the Superintendent and Provincial Council of any former province, and all copies of Proclamations and notifications under any Act or Ordinance of any Legislature made by the Superintendent of any such province, purporting to be printed under the authority of the Government of such province by the printer to such Government, shall be admitted by all Courts and persons acting judicially as evidence of such Acts, Ordinances, Proclamations, and notifications respectively, without proof being given that such copies were so printed.

Compare: 1905 No 16 s 31

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

32 Proclamations, Orders in Council, etc

Subject to section 29(3) of this Act, prima facie evidence of any Proclamation, Order in Council, order, regulation, or other instrument heretofore or hereafter made or issued by the Governor-General or by the Governor-General in Council, and of any order, regulation, or other instrument heretofore or hereafter made or issued by or under the authority of any responsible Minister of the Crown in New Zealand, being a member of the Executive Council, may be given in all Courts and in all legal proceedings in any of the following modes, that is to say:

- (a) By the production of a copy of the *Gazette* purporting to contain such Proclamation, Order in Council, order, regulation, or other instrument:
- (b) By the production of a copy of such Proclamation, Order in Council, order, regulation, or other instrument purporting to be printed by the Government Printer:
- (c) By the production, in the case of any Proclamation, Order in Council, order, regulation, or other instrument made or issued by the Governor-General or by the Governor-General in Council, of a written copy or extract purporting to be certified by the Clerk of the Executive Council, and, in the case of any order, regulation, or other instrument made or issued by or under the authority of any responsible Minister as aforesaid, of a copy or extract purporting to be certified by such Minister or by any other responsible Minister of the Crown in New Zealand.

Compare: 1905 No 16 s 32

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 32 was amended, as from 1 January 1989, by section 4 Evidence Amendment Act 1988 (1988 No 116) by substituting “Subject to section 29(3) of this Act” for “Subject to subsection (2) of section 29 of this Act”.

33 Proof of signature, etc, not required

No proof shall be required of the handwriting or official position of any person certifying in pursuance of the last preceding

section to the truth of any copy of or extract from any Proclamation, Order in Council, order, regulation, or other instrument.

Compare: 1905 No 16 s 33

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

34 Private Acts, etc, of Imperial Parliament

All copies of private and local and personal Acts of the Imperial Parliament, not being public Acts, purporting to be printed by the Queen's printers, and all copies of the Journals of either House of the Imperial Parliament, and of Royal Proclamations, purporting to be printed by the printers to the Crown, or by the printers to either House of the Imperial Parliament, or by any or either of them, shall be admitted as evidence thereof respectively by all Courts and persons acting judicially, without proof being given that such copies were so printed.

Compare: 1905 No 16 s 34

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

The reference to the Queen's printers has been updated for a reference to the King's printers.

35 Royal Proclamations, Orders of the Privy Council, etc

Prima facie evidence of any Royal Proclamation, Order of Her Majesty's Privy Council, order, regulation, dispatch, or any other instrument heretofore or hereafter made or issued by Her Majesty, or by Her Majesty's Privy Council, or by or under the authority of any of Her Majesty's Secretaries of State, or any Department of Her Majesty's Government in the United Kingdom, may be given in all Courts and in all legal proceedings by the production of a copy of the New Zealand Gazette purporting to contain a reprint of such Proclamation, Order of the Privy Council, order, regulation, dispatch, or other instrument, or by the production of a copy of such Proclamation, Order of the Privy Council, order, regulation, dispatch, or other instrument purporting to be printed by the Government Printer.

Compare: 1905 No 16 s 35

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 35 was amended, as from 1 January 1946, by section 14 Evidence Amendment Act 1945 (1945 No 16) by substituting “or by the production of a copy of such Proclamation, Order of the Privy Council, order, regulation, dispatch, or other instrument purporting to be printed by the Government Printer” for “as an extract from the London Gazette”.

36 Documents admissible in the United Kingdom to be admissible in New Zealand

[Repealed]

Section 36 was repealed, as from 1 January 1953, by section 8(1) Evidence Amendment Act 1952 (1952 No 50).

37 Manner of proving acts of State, etc, of any country

- (1) All Proclamations, treaties, and other acts of State of any country, and all judgments, decrees, orders, and other judicial proceedings of any Court of justice in any country, and all affidavits, pleadings, and other legal documents filed or deposited in any such Court, may be proved in any Court in New Zealand or before any person acting judicially, either by examined copies or by copies authenticated in manner following, that is to say:
- (a) If the document sought to be proved be a Proclamation, treaty, or other act of State, the copy must be sealed with the seal of the country to which the original document belongs; and
 - (b) If the document sought to be proved be a judgment, decree, order, or other judicial proceeding of any Court, or an affidavit, pleading, or other legal document filed or deposited in any Court, the copy must be sealed with the seal of the Court to which the original document belongs, or, in the event of such Court having no seal, must be signed by one of the Judges of the said Court, who shall attach to his signature a statement in writing on the said copy that the Court whereof he is a Judge has no seal.
- (2) Any copy purporting to be sealed or signed as in this section respectively directed shall be admitted in evidence in every case where the original document could have been so admitted,

without any proof of the seal where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

Compare: 1905 No 16 s 37

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (1) was amended, as from 1 January 1953, by section 8(2)(a) Evidence Amendment Act 1952 (1952 No 50) by substituting “of any country” for “of any foreign State, or of any British colony”.

Subsection (1) was amended, as from 1 January 1953, by section 8(2)(a) Evidence Amendment Act 1952 (1952 No 50) by substituting “in any country” for “in any Foreign State, or in any British colony”.

Subsection (1)(a) was amended, as from 1 January 1953, by section 8(2)(c) Evidence Amendment Act 1952 by substituting “country” for “foreign State or British colony”.

Subsection (1)(b) was amended, as from 1 January 1953, by section 8(2)(d) Evidence Amendment Act 1952 (1952 No 50) by omitting “foreign or colonial”.

Subsection (1)(b) was amended, as from 1 January 1953, by section 8(2)(e) Evidence Amendment Act 1952 (1952 No 50) by omitting “such”.

38 Proclamations, etc, receivable, although not proved by sealed copies

Proclamations, international treaties, Orders in Council, and Gazettes of any country, although not proved in the manner provided by the last preceding section, may nevertheless be received in evidence in any Court and by any person acting judicially if such Court or person considers the same to be authentic.

Compare: 1905 No 16 s 38

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

39 Statutes of any country published by authority

Books purporting to have been printed or published under the authority of the Government of any country, or by the printer to such Government and purporting to contain statutes, Ordinances, or other written laws in force in such country, shall on

production be admitted and received by all Courts and persons acting judicially as prima facie evidence of such laws.

Compare: 1905 No 16 s 39

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

- 40 Certain law books may be referred to as evidence of laws**
Printed books purporting to contain statutes, Ordinances, or other written laws in force in any country although not purporting to have been printed or published by authority as aforesaid, books purporting to contain reports of decisions of Courts or Judges in such country, and textbooks treating of the laws of such country, may be referred to by all Courts and persons acting judicially for the purpose of ascertaining the laws in force in such country; but such Courts or persons shall not be bound to accept or act on the statements in any such books as evidence of such laws.

Compare: 1905 No 16 s 40

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

- 41 Country defined**
In sections 37 to 40 of this Act **country** includes a State, territory, province, or other part of a country.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 41 was amended, as from 1 January 1953, by section 8(3) Evidence Amendment Act 1952 (1952 No 50) by substituting “37” for “38”.

Section 41 was substituted, as from 1 July 1990, by section 11 Evidence Amendment Act 1990 (1990 No 46).

- 42 Standard works in general literature**
All Courts and persons acting judicially may, in matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, maps, or charts as such Courts or persons consider to be of authority on the subjects to which they respectively relate.

Compare: 1905 No 16 s 42

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

43 Public documents made evidence by Act, how provable

Where by any Act any certificate, official or public document, or document or proceeding of any corporation or company, or any certified copy of any document, bylaw, entry in any register or other book, or any other proceeding, is admissible in evidence of any particular in any Court or before any person acting judicially, or before the House of Representatives, or any Committee of that House, or in any judicial proceeding, the same shall be admitted in evidence, provided they respectively purport to be sealed, or impressed with a stamp, or sealed and signed, or impressed with a stamp and signed, or signed only, as required by the Act rendering any such copy so receivable, without proof of the seal or stamp where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same.

Compare: 1905 No 16 s 43

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 43 was amended, as from 1 January 1951, by section 2(4) Legislative Council Abolition Act 1950 (1950 No 3) by substituting “the House of Representatives, or any Committee of that House” for “either House of Parliament, or any Committee of either House”.

44 Other public documents, how provable

- (1) Where any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, but no Act exists rendering its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any Court, or before any person acting judicially, if it be proved to be an examined copy or extract, or purport to be signed or certified as a true copy or extract by the officer to whose custody the original is entrusted.
- (2) Such officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same, upon pay-

ment of a reasonable sum for the same, not exceeding 3 1/3 cents for every folio of 90 words.

Compare: 1905 No 16 s 44

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (2) was amended, as from 3 November 1964, by section 7 Decimal Currency Act 1964 (1964 No 24) by substituting “3 1/3 cents” for “4 pence”.

44A Proof of public registers of other countries

- (1) The Governor-General may from time to time, by Order in Council, apply the provisions of this section to any country specified in the Order.
- (2) Where the provisions of this section are applied to any country, the registers of that country relating to births, deaths, marriages, and adoptions (by whatever name those registers are called), and such other registers or books of record as may be specified in the Order in Council, shall be deemed to be public registers kept under the law of that country and recognised by the Courts thereof as authentic records, and to be documents of such a public nature as to be admissible as evidence of the matters regularly recorded therein; and the following provisions of this section shall apply.
- (3) Subject to any conditions or restrictions specified in the Order, any certified copy of any entry in any such register or book, or any certified extract therefrom, or any certificate relating to any such entry, shall, in any Court or before any person acting judicially, be received—
 - (a) In the case of a register relating to births, deaths, marriages, or adoptions, as prima facie evidence of the birth, death, marriage, or adoption to which the copy, extract, or certificate relates:
 - (b) In the case of any other register or book, as prima facie evidence of the facts stated in the copy, extract, or certificate.
- (4) Subject to any conditions or restrictions specified in the Order, and to any requirements of rules of Court, any document purporting to be such a copy or extract or certificate as aforesaid, and purporting to be certified—

- (a) In the case of a register relating to births, deaths, marriages, or adoptions, by the seal or signature of an official of the country specified in the Order; or
- (b) In the case of any other register or book, in the manner specified in the Order—

shall, for the purposes of subsection (3) of this section, be received in evidence without proof of the seal or signature of the person certifying the document, and without proof of the official or other character of that person.

- (5) No document otherwise admissible under this section shall be inadmissible by reason only that it is not authenticated by the process known as legalisation.
- (6) In this section, the term **country** includes any State, territory, province, or other part of a country.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 44A was inserted, as from 29 September 1950, by section 4 Evidence Amendment Act 1950 (1950 No 29).

Section 44A was substituted, as from 18 September 1958, by section 3(1) Evidence Amendment Act 1958 (1958 No 17).

44B Proof that any country is a Commonwealth country

[Repealed]

Section 44B was inserted, as from 10 December 1976, by section 2 Evidence Amendment Act 1976 (1976 No 89).

Section 44B was repealed, as from 6 October 1977, by section 6(2) Commonwealth Countries Act 1977 (1977 No 31).

45 Judicial notice of signature of Governor-General, etc

[Repealed]

Section 45 was repealed, as from 1 January 1946, by section 11(2) Evidence Amendment Act 1945 (1945 No 16).

45A Foreign public documents: interpretation

In this section, and sections 45B and 45C,—

Convention means the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, done at The Hague on 5 October 1961, the English text of which is set out in the Schedule

Convention certificate means a certificate issued under the Convention in relation to a foreign public document by the competent authority of the State from which the foreign public document emanates

foreign public document means a public document that—

- (a) has to be produced in New Zealand; and
- (b) was executed in a foreign country that—
 - (i) is a contracting State under the Convention; and
 - (ii) did not raise an objection to New Zealand's accession to the Convention

legalisation means the formality by which New Zealand's diplomatic or consular agents certify, in relation to a public document that has to be produced in New Zealand and that was executed in a foreign country,—

- (a) the authenticity of the signature on the public document; and
- (b) the capacity in which the person signing the public document has acted; and
- (c) where appropriate, the identity of the stamp or seal that the public document bears

New Zealand authority means any person in New Zealand (including any Court, any person acting judicially, and any person exercising a power or performing a function under a New Zealand law) to whom a foreign public document has to be produced

public document—

- (a) includes any of the following documents:
 - (i) a document emanating from an authority or from an official connected with the Courts or tribunals of a State, including a document emanating from a public prosecutor, a clerk of a court, or a process server (*huissier de justice*); and
 - (ii) an administrative document (other than an administrative document dealing directly with commercial or customs operations); and
 - (iii) a notarial act; and
 - (iv) an official certificate which is placed on a document signed by a person in the person's private capacity (for example, an official certificate

recording the registration of a document or the fact that the document was in existence on a certain date, or an official or notarial authentication of a signature); but

- (b) does not include a document executed by a diplomatic or consular agent.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 45A to 45C were inserted, as from 22 November 2001, by section 3 Evidence Amendment Act 2000 (2000 No 62). *See* clause 2 Evidence Amendment Act Commencement Order 2001 (SR 2001/331).

45B Foreign public documents: certificates as to contracting States under Convention

A certificate purporting to be signed by the Secretary of Foreign Affairs and Trade, and stating that a country is a contracting State under the Convention that did not raise an objection to New Zealand's accession to the Convention, is sufficient evidence of those matters, unless the contrary is proved.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 45A to 45C were inserted, as from 22 November 2001, by section 3 Evidence Amendment Act 2000 (2000 No 62). *See* clause 2 Evidence Amendment Act Commencement Order 2001 (SR 2001/331).

45C Foreign public documents: Convention certificates sufficient authentication of certain matters

- (1) A Convention certificate placed on, or attached to, a foreign public document is the only formality that a New Zealand authority may require, in relation to the document, as evidence or certification of—
 - (a) the authenticity of the signature on the document; and
 - (b) the capacity in which the person signing the document has acted; and
 - (c) where appropriate, the identity of the seal or stamp that the document bears.
- (2) If a foreign public document is not subject to a requirement of legalisation, no New Zealand authority may require, in relation to the document, a Convention certificate as evidence or

certification of the matters referred to in subsection (1)(a) to (c).

- (3) A New Zealand authority must accept, in relation to a foreign public document, a Convention certificate placed on, or attached to, the document as sufficient evidence or certification of the matters referred to in subsection (1)(a) to (c), unless the contrary is proved.
- (4) Subsection (3) does not prevent a New Zealand authority from accepting, in relation to a foreign public document, a lesser formality than a Convention certificate placed on, or attached to, the document as evidence or certification of the matters referred to in subsection (1)(a) to (c).

Compare: Foreign Evidence Act 1994 (Australia) ss 37, 38, 39.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 45A to 45C were inserted, as from 22 November 2001, by section 3 Evidence Amendment Act 2000 (2000 No 62). See clause 2 Evidence Amendment Act Commencement Order 2001 (SR 2001/331).

46 *Gazette* notice to be evidence of act of State

Where by any Act the Governor-General, or the Governor-General in Council, or a responsible Minister of the Crown in New Zealand, being a member of the Executive Council, or any other person, is authorised or empowered to do, exercise, or perform any act, power, function, or duty, any *Gazette* purporting to contain a notice of the doing, exercise, or performance of any such act, power, function, or duty shall be prima facie evidence that the same was lawfully done, exercised, or performed.

Compare: 1905 No 16 s 46

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 46 was amended, as from 1 January 1946, by section 13 Evidence Amendment Act 1945 (1945 No 16) by inserting “or any other person”.

47 Documents may be impounded

Where any document has been received in evidence, the Court or person admitting the same may, on the request of any party

against whom the same is so received, direct that such document be impounded and kept in the custody of some officer of the Court, or other proper person, until further order.

Compare: 1905 No 16 s 47

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Evidence of banking records

This heading was inserted, as from 30 June 1995, by section 2 Evidence Amendment Act (No 2) 1995 (1995 No 33).

47A Interpretation

For the purposes of sections 47B and 47C of this Act, **bank** means—

- (a) A registered bank within the meaning of section 2 of the Reserve Bank of New Zealand Act 1989;
- (b) The Reserve Bank of New Zealand;
- (c) Any other person carrying on in New Zealand the business of banking.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 47A to 47C were inserted, as from 30 June 1995, by section 2 Evidence Amendment Act (No 2) 1995 (1995 No 33).

47B Proof of entries in banking records of banks

- (1) Subject to this section, a copy of any entry in the banking records of a bank is admissible as prima facie evidence of such entry and of the matters, transactions, and accounts recorded in those records.
- (2) No such copy shall be received in evidence under this section unless it is proved—
 - (a) That the record was, at the time of the making of the entry, one of the ordinary banking records of the bank; and
 - (b) That the entry was made in the usual and ordinary course of banking business; and
 - (c) That the record is in the custody or control of the bank; and

- (d) Where the record is of information that is not in written form and is recorded or stored by means of a computer or other electronic device or by other means, that the copy has been produced in the usual and ordinary course of producing such copies and is an accurate extract from the information so recorded or stored; and
 - (e) Where the record is of information recorded or stored in written form, that the copy has been compared with the original entry or with a copy made in accordance with section 156A(4) of the Reserve Bank of New Zealand Act 1989, as the case may be, and is correct.
- (3) A certificate purporting to be signed by an officer of the bank that the requirements of subsection (2) of this section have been complied with is prima facie evidence that those requirements have been complied with.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 47A to 47C were inserted, as from 30 June 1995, by section 2 Evidence Amendment Act (No 2) 1995 (1995 No 33).

47C Officer not compellable to produce banking records

Except pursuant to an order of a Court made for special cause, in any legal proceedings to which the bank is not a party, an officer of a bank is not compellable—

- (a) To produce any banking record of the bank the contents of which can be proved pursuant to section 47B of this Act; or
- (b) To appear as a witness to prove the matters, transactions, and accounts recorded in those records.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 47A to 47C were inserted, as from 30 June 1995, by section 2 Evidence Amendment Act (No 2) 1995 (1995 No 33).

Evidence for use in overseas proceedings

This heading was substituted, as from 5 December 1962, by section 4 Evidence Amendment Act 1962 (1962 No 34).

48 Interpretation

For the purposes of sections 48A to 48F of this Act—

Overseas Court means a Court or tribunal exercising jurisdiction in any country outside New Zealand

Overseas representative means any Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Charge d’Affaires, Head of Mission, Consular Officer, or Pro-consul of any country other than New Zealand exercising jurisdiction in New Zealand; and includes any person lawfully acting for any such officer and also includes any Diplomatic Secretary on the staff of any such Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Charge d’Affaires, or Head of Mission.

Overseas representative: this definition was amended, as from 16 September 1966, by section 3 Evidence Act 1966 (1966 No 24) by substituting “Consular Officer, or Pro-consul” for “or Consular Officer”.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 48 was substituted, as from 5 December 1962, by section 4 Evidence Amendment Act 1962 (1962 No 34).

48A Examination of witness at request of overseas Court

- (1) Where any civil or criminal proceedings (not being criminal proceedings of a political character) are pending before any overseas Court of competent jurisdiction, and that Court is desirous of obtaining the testimony in relation to those proceedings of any witness in New Zealand, the High Court or a Judge thereof may order the examination of the witness upon oath, upon interrogatories, or otherwise, before any person named in the order.
- (2) Such an order may be made upon the application, in accordance with the rules of the High Court of New Zealand, of the agents in New Zealand of the parties to the proceeding before the overseas Court or, subject to those rules, upon the application of the Solicitor-General.
- (3) The Court or Judge may by the same or any subsequent order, or any other Judge may by any subsequent order, require the attendance of any person named in the order for the purpose of being examined, or the production of any document men-

tioned in the order, and may give such directions as to the time, place, and manner of the examination, and all other matters connected therewith, as it or he thinks just.

- (4) Any order made under this section may be enforced in the same manner as if it were an order made by the Court or Judge in proceedings pending in the Court or before the Judge.

Compare: Foreign Tribunals Evidence Act 1856, s 1 (UK); Evidence by Commission Act 1859, s 1 (UK); Extradition Act 1870, s 24 (UK); Evidence by Commission Act 1885, ss 2, 3 (UK)

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48A to 48F were inserted, as from 5 December 1962, by section 4 Evidence Amendment Act 1962 (1962 No 34).

48B Powers of Court may be exercised by Registrar

- (1) The Judge usually exercising the jurisdiction of the Court in any place, or if there is more than one such Judge the Chief Justice or the senior Judge at that place, as the case may be, may authorise the Registrar of the Court in that place to exercise the powers of the Court under subsections (1) to (3) of section 48A of this Act, either generally or in respect of any particular case or class of case. Any such authorisation may be revoked at any time.
- (2) Where any matter in respect of which he has jurisdiction under any such authorisation appears to the Registrar to be one of special difficulty he may refer the matter to a Judge who may dispose of the matter or may refer it back to the Registrar with such directions as he thinks fit.
- (3) Nothing in this section shall prevent the exercise by any Judge of any jurisdiction or powers conferred on any Registrar under this section.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48A to 48F were inserted, as from 5 December 1962, by section 4 Evidence Amendment Act 1962 (1962 No 34).

48C Evidence in support of application

- (1) Evidence that any civil or criminal proceedings are pending in an overseas Court and that the Court is desirous of obtaining in

relation thereto the testimony of the witness to whom the application relates may be given by Letter of Request, commission rogatoire, or other document issued by that Court, or by the certificate of an overseas representative given in accordance with subsection (3) of this section, or by such other means as the High Court or a Judge thereof may accept.

- (2) Any Letter of Request, commission rogatoire, or other document purporting to be sealed with the seal of any overseas Court or signed by a Judge or other judicial officer or by a Registrar or other officer of the Court shall for the purposes of this section and section 48A of this Act be received in evidence without proof of the seal of the Court or of the signature of the Judge or other person, or of the judicial or official character of the Judge or other person.
- (3) A certificate purporting to be signed by an overseas representative to the effect that any matter in relation to which an application is made under section 48A of this Act is a civil or criminal proceeding pending in a Court having jurisdiction in the proceeding in the country of which he is a representative and that the Court is desirous of obtaining the testimony of the witness to whom the application relates, shall be sufficient evidence of the matters so certified.
- (4) A certificate made under subsection (3) of this section shall be received in evidence without proof of the signature of the person who signed the certificate and without proof of the official character of that person.

Compare: Foreign Tribunals Evidence Act 1856, s 2 (UK).

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48A to 48F were inserted, as from 5 December 1962, by section 4 Evidence Amendment Act 1962 (1962 No 34).

48D Protection of witnesses

- (1) Every person examined pursuant to an order made under section 48A of this Act shall have the same right to refuse to answer any question, whether on the ground that his answer might tend to incriminate him, or on the ground of privilege,

or on any other ground whatsoever, as if the proceedings were pending in the High Court.

- (2) No person examined pursuant to any such order shall be compelled to produce any document that he could not be compelled to produce if the proceedings were pending in the High Court.

Compare: Foreign Tribunals Evidence Act 1856, s 5 (UK); Evidence by Commission Act 1859, s 4 (UK).

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48A to 48F were inserted, as from 5 December 1962, by section 4 Evidence Amendment Act 1962 (1962 No 34).

48E Witnesses' expenses

Every witness required to attend for examination pursuant to an order made under section 48A of this Act shall be entitled to a sum for his allowances and travelling expenses and loss of time in accordance with the scale prescribed for the time being by regulations made under the Summary Proceedings Act 1957.

Compare: Foreign Tribunals Evidence Act 1856, s 4 (UK); Evidence by Commission Act 1859, s 3 (UK)

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48A to 48F were inserted, as from 5 December 1962, by section 4 Evidence Amendment Act 1962 (1962 No 34).

48F Solicitor may take affidavit or declaration

- (1) In this section—

Affidavit means any affidavit or affirmation made before a solicitor of the High Court of New Zealand

Declaration means any written statement declared by the maker thereof to be true in the presence of a solicitor of the High Court of New Zealand.

- (2) It shall be lawful for any solicitor of the High Court of New Zealand to take the affidavit or declaration of any person in relation to any proceedings, whether civil or criminal, which are certified in accordance with this section to be pending in any overseas Court.

- (3) Every such affidavit or declaration shall be intitled “In the matter of section 48F of the Evidence Act 1908”, and every such declaration shall be expressed to be made pursuant to the provisions of this section.
- (4) No such affidavit or declaration shall be taken unless the solicitor taking it has received a written certificate—
 - (a) From the overseas Court that the affidavit or declaration is required for the purpose of proceedings pending in the Court; or
 - (b) From an overseas representative of the country in which the overseas Court exercises jurisdiction that he believes the affidavit or declaration to be required for the purpose of proceedings pending in the overseas Court.
- (5) A certificate for the purposes of paragraph (a) of subsection (4) of this section may be given by any Judge or judicial officer of the overseas Court, or by any Registrar or other officer of that Court.
- (6) Where a certificate is given pursuant to paragraph (b) of subsection (4) of this section, the jurat or attestation of the affidavit or declaration shall state the name and official designation of the overseas representative on whose certificate the affidavit or declaration has been taken.
- (7) Every such affidavit or declaration shall be deemed to have been made in a judicial proceeding within the meaning of the Crimes Act 1961, and any person who falsely makes any such affidavit or declaration shall be guilty of perjury or of making a false declaration accordingly.
- (8) In any prosecution in respect of any such affidavit or declaration it shall be conclusively presumed that proceedings were actually pending in the overseas Court and that a certificate was given in accordance with subsection (4) of this section.

Compare: Evidence Act 1908, s 48

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48A to 48F were inserted, as from 5 December 1962, by section 4 Evidence Amendment Act 1962 (1962 No 34).

Restrictions on production of evidence for use in or by foreign authorities

This heading was inserted, as from 18 July 1980, by section 2 Evidence Amendment Act 1980 (1980 No 6).

48G Interpretation

In sections 48H and 48I of this Act, unless the context otherwise requires,—

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:

Foreign authority means any Court, tribunal, or authority of any country outside New Zealand; and includes any officer, examiner, or other person having authority to take or receive any evidence, whether on behalf of a Court or otherwise, or to direct that any evidence be taken or received; and also includes any intergovernmental organisation.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48G to 48J were inserted, as from 18 July 1980, by section 2 Evidence Amendment Act 1980 (1980 No 6).

48H Court not to order production of evidence if production would infringe jurisdiction or prejudice sovereignty, etc

Notwithstanding anything in this Act or any other Act or rule of law, no Court in New Zealand shall make an order giving effect to a request issued by or on behalf of a foreign authority for the production of any document or any evidence of the contents of any document if the Attorney-General certifies in writing that the request infringes the jurisdiction of New Zealand or is otherwise prejudicial to the sovereignty of New Zealand, or is likely to be prejudicial to the trading, commercial, or economic interests of New Zealand.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48G to 48J were inserted, as from 18 July 1980, by section 2 Evidence Amendment Act 1980 (1980 No 6).

48I Attorney-General may prohibit production of documents requested by foreign authority

- (1) This section applies in any case where the Attorney-General is satisfied that—
 - (a) A foreign authority is exercising or is proposing to exercise any jurisdiction or power of a kind or in a manner that infringes or is prejudicial to the sovereignty of New Zealand; or
 - (b) It is desirable for the purpose of protecting the trading, commercial, or economic interests of New Zealand that an order be made under subsection (2) of this section; or
 - (c) Any request or direction made by a foreign authority for the production of any document is for purposes other than those of any civil or criminal proceedings already instituted in any country outside New Zealand; or
 - (d) Any such request or direction is made wholly or principally for the purpose of the discovery of documents before the trial of any proceedings in any such country other than civil or criminal proceedings already instituted.
- (2) In any case to which this section applies, the Attorney-General may, by order in writing under his hand, prohibit—

- (a) The production in, or for the purposes of, a foreign authority of any document that, at the time of the making of the order or at any time while the order remains in force, is in New Zealand; or
- (b) The doing of any act in New Zealand, in relation to any document that, at the time of the making of the order or at any time while the order remains in force, is in New Zealand, with the intention that the act will result, or where there is reason to believe that the act will result, in the document, or evidence of the contents of the document, being produced or given in, or for the purposes of, a foreign authority; or
- (c) The giving by a person, at a time when he is a New Zealand citizen or is a resident of New Zealand, of evidence before a foreign authority in relation to, or to the contents of, any document that, at the time of the making of the order or at any time while the order is in force, is in New Zealand,—

except with the written consent of the Attorney-General or as is permitted in the order, and on such conditions as the Attorney-General may specify.

- (3) An order under this section may—
 - (a) Be directed to a particular person, or to a particular class of persons, or to persons generally;
 - (b) Relate to a particular foreign authority, or to a particular class of foreign authorities, or to foreign authorities generally;
 - (c) Relate to a particular document, or to a particular class of documents.
- (4) An order under this section—
 - (a) Shall be published in the *Gazette*; and
 - (b) If it is directed to a particular person, shall be served on that person in accordance with rules of Court.
- (5) Every order made under this section shall have effect according to its tenor notwithstanding anything in this Act or any other Act or rule of law.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48G to 48J were inserted, as from 18 July 1980, by section 2 Evidence Amendment Act 1980 (1980 No 6).

48J Offence

- (1) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply in any respect with an order made under section 48I of this Act.
- (2) Every person who commits an offence against this section is liable on summary conviction—
 - (a) In the case of an individual, to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000:
 - (b) In the case of a body corporate, to a fine not exceeding \$5,000:
- (3) A person who is neither a citizen of New Zealand nor a body corporate incorporated in New Zealand shall not be guilty of an offence under this section by reason of anything done outside New Zealand.
- (4) No proceedings for an offence against this section shall be instituted without the consent of the Attorney-General.

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Sections 48G to 48J were inserted, as from 18 July 1980, by section 2 Evidence Amendment Act 1980 (1980 No 6).

Mode of taking evidence

49 Witnesses may be sworn in Scotch form

[Repealed]

Sections 49 to 53 were repealed, as from 1 April 1958, by section 32(1) Oaths and Declarations Act 1957 (1957 No 88).

50 Affirmation in lieu of oath

[Repealed]

Sections 49 to 53 were repealed, as from 1 April 1958, by section 32(1) Oaths and Declarations Act 1957 (1957 No 88).

51 Who may administer oaths*[Repealed]*

Sections 49 to 53 were repealed, as from 1 April 1958, by section 32(1) Oaths and Declarations Act 1957 (1957 No 88).

52 Oath not affected by want of religious belief*[Repealed]*

Sections 49 to 53 were repealed, as from 1 April 1958, by section 32(1) Oaths and Declarations Act 1957 (1957 No 88).

53 Minors under twelve may make declaration*[Repealed]*

Sections 49 to 53 were repealed, as from 1 April 1958, by section 32(1) Oaths and Declarations Act 1957 (1957 No 88).

Schedule

Section 1(2)

Enactments consolidated

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

- 1905 No 16—The Evidence Act 1905
 - 1907 No 14—The Foreign Tribunals Evidence Act 1907
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Schedule 2

s 45A

**Hague Convention abolishing the
requirement of legalisation for foreign
public documents**

This Act was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

A new Schedule was inserted, as from 22 November 2001, by section 4 Evidence Amendment Act 2000 (2000 No 62).

Preamble

The States signatory to the present Convention,

Desiring to abolish the requirement of diplomatic or consular legalisation for foreign public documents,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

- a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process server (*huissier de justice*);
- b) administrative documents;
- c) notarial acts;
- d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, the present Convention shall not apply:

- a) to documents executed by diplomatic or consular agents;
- b) to administrative documents dealing directly with commercial or customs operations.

Article 2

Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the docu-

ment has acted and, where appropriate, the identity of the seal or stamp which it bears.

Article 3

The only formality that may be required in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, is the addition of the certificate described in Article 4, issued by the competent authority of the State from which the document emanates.

However, the formality mentioned in the preceding paragraph cannot be required when either the laws, regulations, or practice in force in the State where the document is produced or an agreement between two or more Contracting States have abolished or simplified it, or exempt the document itself from legalisation.

Article 4

The certificate referred to in the first paragraph of Article 3 shall be placed on the document itself or on an *allonge*, it shall be in the form of the model annexed to the present Convention. It may, however, be drawn up in the official language of the authority which issues it. The standard terms appearing therein may be in a second language also. The title “Apostille (Convention de La Haye du 5 octobre 1961)” shall be in the French language.

Article 5

The certificate shall be issued at the request of the person who has signed the document or of any bearer.

When properly filled in, it will certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which the document bears.

The signature, seal and stamp on the certificate are exempt from all certification.

Article 6

Each Contracting State shall designate by reference to their official function, the authorities who are competent to issue the certificate referred to in the first paragraph of Article 3.

It shall give notice of such designation to the Ministry of Foreign Affairs of the Netherlands at the time it deposits its instrument of ratification or of accession or its declaration of extension. It shall also give notice of any change in the designated authorities.

Article 7

Each of the authorities designated in accordance with Article 6 shall keep a register or card index in which it shall record the certificates issued, specifying:

- a) the number and date of the certificate,
- b) the name of the person signing the public document and the capacity in which he has acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp.

At the request of any interested person, the authority which has issued the certificate shall verify whether the particulars in the certificate correspond with those in the register or card index.

Article 8

When a treaty, convention or agreement between two or more Contracting States contains provisions which subject the certification of a signature, seal or stamp to certain formalities, the present Convention will only override such provisions if those formalities are more rigorous than the formality referred to in Articles 3 and 4.

Article 9

Each Contracting State shall take the necessary steps to prevent the performance of legalisations by its diplomatic or consular agents in cases where the present Convention provides for exemption.

Article 10

The present Convention shall be open for signature by the States represented at the Ninth Session of the Hague Conference on Private International Law and Iceland, Ireland, Liechtenstein and Turkey.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 11

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 10.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 12

Any State not referred to in Article 10 may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 11. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph (d) of Article 15. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force as between the acceding State and the States which have raised no objection to its accession on the sixtieth day after the expiry of the period of six months mentioned in the preceding paragraph.

Article 13

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is respon-

sible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

When the declaration of extension is made by a State which has signed and ratified, the Convention shall enter into force for the territories concerned in accordance with Article 11. When the declaration of extension is made by a State which has acceded, the Convention shall enter into force for the territories concerned in accordance with Article 12.

Article 14

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 11, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, the Convention shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation will only have effect as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 15

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 10, and to the States which have acceded in accordance with Article 12, of the following:

- a) the notifications referred to in the second paragraph of Article 6;
- b) the signatures and ratifications referred to in Article 10;

- c) the date on which the present Convention enters into force in accordance with the first paragraph of Article 11;
- d) the accessions and objections referred to in Article 12 and the date on which such accessions take effect;
- e) the extensions referred to in Article 13 and the date on which they take effect;
- f) the denunciations referred to in the third paragraph of Article 14.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague the 5th October 1961, in French and in English, the French text prevailing in case of divergence between the two texts, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Ninth Session of the Hague Conference on Private International Law and also to Iceland, Ireland, Liechtenstein and Turkey.
Signatures omitted

Annex to the Convention
Model of certificate

The certificate will be in the form of a square with sides at least 9 centimetres long

APOSTILLE (Convention de La Haye du 5 octobre 1961)	
1. Country:
This public document	
2. has been signed by
3. acting in the capacity of
4. bears the seal/stamp of
Certified	
5. at	6. the.....
7. by
8. No
9. Seal/stamp:	10. Signature:
.....]