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Hon. Mr McLay

EVIDENCE AMENDMENT

ANALYSIS

Title	23. Discretion to allow action to be tried by Judge alone
1. Short Title, commencement, and application	24. Repeals
PART I	
ADMISSIBILITY OF HEARSAY EVIDENCE	
2. Interpretation	
3. Admissibility of documentary hearsay evidence	
4. Admissibility of oral hearsay evidence in civil proceeding without a jury	
5. Conditions for admissibility of oral hearsay evidence under sections 6 to 11	
6. Statement against interest	
7. Statement in course of duty	
8. Pedigree statement	
9. Post-testamentary statement	
10. Statement relating to public or general rights, or Maori custom	
11. Dying statement	
12. Admissibility of oral and documentary hearsay evidence by consent	
13. Proof of document admissible under this Part	
14. Court may draw inference, etc.	
15. Weight to be attached to hearsay evidence	
16. Court may reject unduly prejudicial evidence	
17. Admissibility of previous statement by witness	
18. Hearsay evidence not corroboration in certain cases	
19. Procedure in civil proceeding	
20. Procedure in criminal proceeding	
21. Power of Court hearing appeal	
22. Savings	
	PART II
	CONVICTIONS, ETC., AS EVIDENCE IN CIVIL PROCEEDINGS
	25. Interpretation
	26. Conviction as evidence in civil proceeding
	27. Procedure for admission of conviction
	28. Conviction conclusive evidence in defamation action
	29. Finding of adultery as evidence in civil proceeding
	30. Procedure for admission of finding of adultery
	31. Finding of paternity as evidence in civil proceeding
	32. Copy of document admissible in cases under this Part
	33. Proof of conviction
	34. Other statutory provisions preserved
	35. Repeals
	PART III
	PRIVILEGE OF WITNESSES
	36. Communication during marriage
	37. Evidence of non-access
	38. Communication to clergyman
	39. Disclosure in civil proceeding of communication to medical practitioner

40. Disclosure in criminal proceeding of communication to medical practitioner
 41. Communication to or by a patent attorney, etc.
 42. Discretion of Court to excuse witness from giving any particular evidence
 43. Repeals and amendment

PART IV

EXAMINATION OF WITNESSES
OVERSEAS OR ON BEHALF OF OVERSEAS
COURT

44. Interpretation
 45. Taking of evidence on request from a corresponding Court of a prescribed country
 46. Summons to witness
 47. Examination of witness
 48. Protection of witness
 49. Deposition to be signed

50. Power of New Zealand Court to request corresponding Court in prescribed country to take evidence for use in New Zealand Court
 51. Power of New Zealand Court to transmit request to other place
 52. Alternative procedure for taking evidence outside New Zealand in civil proceeding in Supreme Court
 53. Rules and regulations
 54. Saving
 55. Certain provisions of principal Act not to apply to corresponding Court in prescribed country

PART V

PROOF OF PHOTOGRAPHIC COPIES OF
DOCUMENTS

56. Proof of photographic copies of documents
 57. Further amendments of Evidence Amendment Act 1952
 58. *Repeal*

A BILL INTITULED

An Act to amend the Evidence Act 1908

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

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1. Short Title, commencement, and application—(1) This Act may be cited as the Evidence Amendment Act (1979,) 1980, and shall be read together with and deemed part of the Evidence Act 1908* (hereinafter referred to as the principal Act).

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(2) This Act shall come into force on the (1st day of April 1980.) 1st day of January 1981.

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

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*Reprinted, 1965, Vol. 3, p. 1387
 Amendments: 1966, No. 24; 1972, No. 57; 1973, No. 61; 1974, No. 84;
 1976, No. 89; 1977, No. 13

PART I

ADMISSIBILITY OF HEARSAY EVIDENCE

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

5 “Business” means any business, profession, trade, manufacture, occupation, or calling of any kind; and includes the activities of any Department of State, local authority, public body, body corporate, (*corporation sole*), organisation, or society:

10 “Business record” means a document made—

(a) Pursuant to a duty; or

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

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

25 “Document” means a document in any form (*whatever*), whether signed or initialled or otherwise authenticated by its maker or not; and includes—

(a) Any writing on any material (*whatever*):

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

35 (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
 40 (*therefrom*):

“Duty” includes any duty imposed by law or arising under any contract, and any duty recognised in carrying on any business practice (*(of which the Court may take judicial notice)*):

“Party” includes the prosecutor or the informant in any criminal (*proceedings*) proceeding:

“Proceeding” includes, in addition to the matters referred to in section 2 of the principal Act, any arbitration or reference (; and “Court” has a corresponding *meaning*) : 5

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

(2) For the purposes of sections 3 to 5 of this Act, a person 10 is unavailable to give evidence in any proceeding if, but only if, he—

(a) Is dead; or

(b) Is outside New Zealand and it is not reasonably practicable to (*secure his attendance*) obtain his 15 evidence; or

(c) Is unfit by reason of old age or his bodily or mental condition to attend; or

(d) Cannot with reasonable diligence be found.

Documentary Hearsay Evidence 20

3. Admissibility of documentary hearsay evidence—

(1) Subject to subsection (2) of this section, and to sections 3A and 3B of this Act, in any proceeding where direct oral evidence of a fact or an opinion would be admissible, any statement made by a person in a document and tending to 25 establish that fact or opinion shall be admissible as evidence of that fact or opinion if—

(a) The maker of the statement had personal knowledge of the matters dealt with in the statement, and is unavailable to give evidence; or 30

(b) The document is a business record, and the person who supplied the information for the composition of the record—

(i) Cannot with reasonable diligence be identified; or 35

(ii) Is unavailable to give evidence; or

(iii) Cannot reasonably be expected (having regard to the time that has elapsed since he supplied

the information and to all the other circumstances of the case) to recollect the matters dealt with in the information he supplied; or

(c) In civil proceedings only,—

5 (i) The maker of the statement had personal knowledge of the matters dealt with in the statement; and

(ii) Undue delay or expense would be caused by *(requiring him to attend.)* obtaining his evidence.

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(2) Nothing in subsection (1) of this section shall render admissible in any criminal proceeding any statement in a document that records the oral statement of any person made when the criminal proceeding was known by him, or should reasonably have been known by him, to be contemplated if the statement is otherwise inadmissible in the proceeding.

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New

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

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

(b) Is otherwise inadmissible in the proceeding.

25 **3A. Admissibility of previous statement by witness—**

(1) Nothing in section 3 (1) (b) of this Act shall render admissible a statement previously made by a person who is called as a witness in any proceeding and gives evidence relating to the matters contained in that statement, unless

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

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New

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

3c. Proof of document admissible under this Part—
 A statement in a document that is admissible as evidence under this Part of this Act may be proved by the production of—

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

Oral Hearsay Evidence in Civil Proceedings

4. Admissibility of oral hearsay evidence in civil proceeding without a jury—In any civil proceeding (*without a jury*) where direct oral evidence of a fact would be admissible, any oral statement made by a person and tending to establish that fact shall be admissible as evidence of that fact if the maker of the statement had personal knowledge of the matters dealt with in the statement, and is unavailable to give evidence.

Oral Hearsay Evidence in Criminal Proceedings

5. Conditions for admissibility of oral hearsay evidence under sections 6 to 11—(1) *The rules enacted by this section and sections 6 to 11 of this Act shall have effect, in place of the rules of the common law, to define certain other circumstances in which oral evidence may be admitted in any proceeding.)*

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

- 5 (a) The maker of the statement had personal knowledge of the matters dealt with in the statement, and is unavailable to give evidence; and
(b) The statement qualifies for admission under any of sections 6 to 11 of this Act.

10 **6. Statement against interest**—(1) Subject to section 5 of this Act, a statement (*shall be admissible under this section*) qualifies under this section for admission if the maker of the statement knew or believed, or may reasonably be supposed by the Court to have known or believed, that the
15 statement was, in whole or in part, against his interest at the time he made it.

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

7. Statement in course of duty—(1) Subject to section 5 of this Act, a statement (*shall be admissible under this section*) qualifies under this section for admission if the maker of the statement made it in the performance of any duty,
25 and had no motive to conceal or misrepresent (*the facts.*) any fact or opinion recorded in the statement.

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

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

8. Pedigree statement—Subject to section 5 of this Act, a statement (*shall be admissible under this section*) qualifies under this section for admission if—
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- (a) The statement relates to the existence or nature of family relationship or descent; and

- (b) The maker of the statement was directly or indirectly related by birth or adoption or by or through marriage to the person whose family relationship to or descent from any other person is in issue in any proceeding; and 5
- (c) The maker of the statement made it before any dispute about the matters dealt with in the statement arose.

9. Post-testamentary statement—(1) Subject to section 5 of this Act, and to subsection (2) of this section, a statement (*shall be admissible under this section*) qualifies under this section for admission if the maker of the statement had previously made a will or other testamentary writing, and the statement relates to the contents of that will or testamentary writing (*, as the case may be.*) 10

(2) No such statement shall be admissible to prove that the requirements of the Wills Act 1837 of the United Kingdom Parliament (*or its amendments*) have been satisfied. 15

10. Statement relating to public or general rights, or Maori custom—Subject to section 5 of this Act, a statement (*shall be admissible under this section*) qualifies under this section for admission if the statement relates to the existence of a public or general right or of Maori custom. 20

11. Dying statement—(1) Subject to section 5 of this Act, a statement (*shall be admissible under this section*) qualifies under this section for admission if— 25

- (a) The maker of the statement is dead; and
- (b) He knew or believed, or may reasonably be supposed by the Court to have known or believed, that his death was imminent; and
- (c) He would, if he were not dead, be a competent witness for the party who wishes to adduce the statement as evidence under this section. 30

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

- (a) The maker of the statement entertained any hope of recovery; 35
- (b) The statement related to the cause of its maker's injury or illness;
- (c) The statement was complete.

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11A. **Order for admission of evidence before indictment presented**—(1) Where in any criminal proceeding on indictment, the prosecutor or the accused wishes to adduce
5 evidence at the trial that he claims is admissible under this Part of this Act he may at any time after the accused has been committed for trial apply to a Judge of the Court by or before which the indictment is to be tried, for an order to the effect that the evidence is admissible under this Part
10 of this Act.

(2) The Judge shall give each party an opportunity to be heard in respect of the application before deciding whether or not to make the order.

(3) Nothing in this section shall affect the right of any
15 party to a criminal proceeding on indictment to seek to adduce evidence that he claims is admissible under this Part of this Act during the trial.

Provisions of General Application

12. **Admissibility of oral and documentary hearsay evidence by consent**—In any proceeding where direct oral
20 evidence of a fact or an opinion would be admissible, any statement, whether oral or in a document, made by a person and tending to establish that fact or opinion shall be admissible as evidence of that fact or opinion, (*if both parties to the*
25 *proceeding consent to the statement being admitted in evidence, or, where there are more than 2 parties to the proceeding, all those parties so consent*) with the consent of all the parties to the proceeding.

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30 13. **Proof of document admissible under this Part**—A statement in a document that is admissible as evidence by virtue of this Part of this Act may be proved by the production of—
(a) The original document or of the material part of the document in which the statement is contained; or
35 (b) A copy of the original document, or of the material part of the document in which the statement is contained, certified to be a true copy in such manner as the Court may approve.

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

15. Weight to be attached to hearsay evidence—In determining the weight, if any, to be attached to a statement that is admissible as evidence (*by virtue of any of sections 3 to 12*) under this Part of this Act, the Court shall have regard to all the circumstances from which any inference can reasonably be drawn relating to the accuracy or otherwise of the statement, and, in particular, to—

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

16. Court may reject unduly prejudicial evidence—Notwithstanding (*anything in sections 3 to 11*) sections 3 to 5 of this Act, where the proceeding is with a jury, the Court may, in its discretion, reject any statement that would be admissible in the proceeding (*by virtue of*) under any of those sections, if the prejudicial effect of the admission of the statement would outweigh its probative value, or if, for any other reason (*whatever*), the Court is satisfied that it (*would be inexpedient*) is not necessary or expedient in the interests of justice to admit the statement.

*Struck Out***17. Admissibility of previous statement by witness—**

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

(2) If the Court is of that opinion, the statement previously made by the witness shall be admitted at the conclusion of the evidence-in-chief of that witness or during his cross-examination, but not otherwise.

15 18. Hearsay evidence not corroboration in certain cases—

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

25 19. Procedure in civil proceeding—(1) Subject to sub-section (4) of this section, where in any civil proceeding any

party intends to adduce as evidence any statement that is admissible as evidence by virtue of any of sections 3 to 11 of this Act, he shall, before trial, apply to the Court or a Judge
30 in chambers for an order that the statement be admitted at the trial.

(2) If the Court or Judge considers it expedient and proper to do so, having regard to the facts proved in support of or in opposition to the application and to all the other
35 circumstances of the case, the Court or Judge shall make an order, with or without conditions, that the statement may be admitted as evidence at the trial; and thereupon, subject to section 16 of this Act, the party on whose application the order was made shall be entitled to have the statement
40 admitted as evidence at the trial.

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(3) If the Court or a Judge refuses to make such an order, then, notwithstanding anything in any of sections 3 to 11 of this Act, the statement shall not be admitted as evidence at the trial. 5

(4) In any civil proceeding, a statement that is admissible as evidence by virtue of any of sections 3 to 11 of this Act shall, subject to section 16 of this Act, be admitted, notwithstanding that an order for its admission has not been made under this section, if the Court is satisfied— 10

(a) That it was not reasonably practicable to apply for such an order before trial; or

(b) That the party seeking to adduce the statement was justified, having regard to the nature of the statement and all the other circumstances of the case, in 15 not applying for such an order before trial.

20. Procedure in criminal proceeding—(1) In any criminal proceeding dealt with summarily under the Summary Proceedings Act 1957, a party shall be entitled to have any statement that is admissible as evidence in a criminal proceeding 20 by virtue of any of sections 3 to 11 of this Act admitted as evidence at the hearing, if he proves that the statement is admissible as evidence by virtue of any of those sections.

(2) In any criminal proceeding for an offence to be tried on indictment, the following procedure shall apply, namely: 25

(a) At the preliminary hearing of the information, the prosecutor shall, and the defendant may, adduce in evidence any statement that he claims is admissible as evidence by virtue of any of sections 3 to 11 of this Act, and the party adducing the state- 30 ment shall also adduce evidence that he claims is sufficient to show that the statement is admissible as evidence by virtue of any of those sections:

(b) All evidence adduced at the preliminary hearing pursuant to paragraph (a) of this subsection shall form 35 part of the depositions:

(c) Where any statement is adduced in evidence at the preliminary hearing pursuant to paragraph (a) of this subsection, the Court before which the preliminary hearing is conducted shall, if requested by either 40 party or if the defendant is not represented, and may of its own motion if it is of opinion that the interests

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of justice so require, make an order forbidding the publication of the statement or any part of the statement before the evidence is adduced at the trial:

5 (d) Where any party has adduced any statement in evidence at the preliminary hearing pursuant to paragraph (a) of this subsection,—

10 (i) He shall, before trial, apply to the Supreme Court or a Judge in chambers for an order that the statement be admitted at the trial; and

15 (ii) If the Court or Judge considers it expedient and proper to do so, having regard to the evidence adduced at the preliminary hearing and to any facts proved in support of or in opposition to the application and to all the other circumstances of the case, the Court or Judge shall make an order, with or without conditions, that the statement may be admitted as evidence at the trial, or, notwithstanding anything in sections 3 to 11 of this Act, an order that the statement be refused admission as evidence at the trial; and thereupon, the statement shall be admitted, subject to the provisions of section 16 of this Act, or, as the case may be, refused admission accordingly:

20 (e) If any party intends to adduce as evidence any statement that is admissible as evidence by virtue of any of sections 3 to 11 of this Act but that he did not adduce at the preliminary hearing,—

30 (i) He shall, a reasonable time before trial, apply to the Supreme Court or a Judge in chambers for an order that the statement be admitted at the trial; and

35 (ii) If the Court or Judge considers it expedient and proper to do so, having regard to the evidence adduced at the preliminary hearing and to any facts proved in support of or in opposition to the application and to all the other circumstances of the case, the Court or Judge shall make an order, with or without conditions, that the statement may be admitted as evidence at the trial; and thereupon, subject to the provisions of section 16 of this Act, the applicant shall be entitled to have the statement admitted as evidence at the trial. If the Court or

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Judge refuses to make such an order, then, notwithstanding anything in sections 3 to 11 of this Act, the statement shall not be admitted as evidence at the trial: 5

- (f) A statement that is admissible as evidence by virtue of any of sections 3 to 11 of this Act shall, subject to section 16 of this Act, be admitted as evidence at the trial, notwithstanding that an order for its admission has not been made under paragraph (d) or paragraph (e) of this subsection, if the Court is satisfied— 10

(i) That it was not reasonably practicable to apply for such an order before trial; or

(ii) That the party seeking to adduce the statement was justified, having regard to the nature of the statement and all the other circumstances of the case, in not applying for such an order before trial. 15

- (3) Every person commits a contempt of Court who acts in breach of any order made under subsection (2) (c) of this section or evades or attempts to evade any such order. 20

21. Power of Court hearing appeal—In an appeal from any order made by a Court or by a Judge under this Part of this Act or from any determination of a Court to admit or reject evidence under section 16 of this Act, the Court hearing the 25

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appeal shall have the same power to draw inferences as the Court or Judge whose decision is appealed from, and may substitute its own discretion for any discretion exercised by that Court or Judge. 30

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appeal may draw its own inferences, and may substitute its own discretion for any discretion exercised by the Court or Judge whose decision is appealed from. 35

Miscellaneous Provisions

22. Savings—(1) (Subject to section 5 (1) of this Act,) Nothing in this Part of this Act shall prejudice the admissibility of any evidence that would be admissible apart from the provisions of this Part of this Act.

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

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

- 10 (a) Section 10 of the principal Act (relating to proof of inconsistent statements of witnesses) or section 11 of the principal Act (relating to cross-examination as to previous statements in writing):
- 15 (b) The rules of the common law relating to the admissibility of evidence as to complaints:
- (c) The rules of the common law or the provisions of any Act relating to the admissibility of confessions and admissions of the parties:
- 20 (d) The rules of the common law relating to evidence of character:
- (e) The rules of the common law or the provisions of any Act relating to the reading in evidence of depositions taken in a preliminary hearing in a trial on indictment.

25 23. Discretion to allow action to be tried by Judge alone—
Section 19A of the Judicature Act 1908 (as inserted by section 9 (1) of the Judicature Amendment Act 1977) is hereby amended by (adding to paragraph (b) of subsection (5)) omitting from paragraph (b) of subsection (5) the expression
30 “, —”, and substituting the word “; or”, and by inserting in that subsection, after paragraph (b), the following paragraph:

35 “(c) That evidence would be admissible under Part I of the Evidence Amendment Act (1979) 1980 which would be inadmissible if the action were tried before a jury, and it is necessary or expedient in the interests of justice to admit that evidence at the trial of the action,—”.

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

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

- (b) Section 2 (2), 3, and 4 of the Evidence Amendment Act 1945:
- (c) Section 2 of the Evidence Amendment Act 1966.
- (2) Section 2 (1) of the Evidence Amendment Act 1945 is hereby amended by repealing the definition of the term "statement". 5

PART II

CONVICTIONS, ETC., AS EVIDENCE IN CIVIL PROCEEDINGS

25. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,— 10

"Court-martial" means a Court Martial constituted under the New Zealand Army Act 1950 or the Royal New Zealand Air Force Act 1950 or a court-martial constituted under the Armed Forces Discipline Act 15

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1971; and includes a court-martial and a disciplinary court constituted under the Naval Discipline Act 1957 of the United Kingdom Parliament (as applied to the New Zealand Naval Forces by section 15 of the Navy Act 1954): 20

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1971 or the Naval Discipline Act 1957 of the United Kingdom Parliament (as applied to the New Zealand Naval Forces by section 15 of the Navy Act 1954); and includes a disciplinary court constituted under the said Naval Discipline Act 1957: 25

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"Conviction",—

(a) In relation to a Court Martial constituted under the New Zealand Army Act 1950 or the Royal New Zealand Air Force Act 1950 or the Armed Forces Discipline Act 1971, means a finding of guilty that is, or falls to be treated as, a finding of the Court duly confirmed; and 30 35

(b) In relation to a court-martial or a disciplinary court constituted under the Naval Discipline Act 1957 of the United Kingdom Parliament (as applied aforesaid), means a finding of guilty; and includes a substituted finding that falls to be treated as a finding of the court-martial; and 40

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- (c) In relation to a court-martial constituted under the Armed Forces Discipline Act 1971, means a finding of guilty; and includes a substituted finding that falls to be treated as a finding of the court-martial;—
 5 and “convicted” has a corresponding meaning:
 “Matrimonial proceeding” means any matrimonial proceeding in the Supreme Court; and includes any appeal arising out of any such proceeding.
- 10 (2) For the purposes of sections 27 and 30 of this Act, a person is unavailable to give evidence in any proceeding if, but only if, he—
- (a) Is dead; or
 - 15 (b) Is outside New Zealand and it is not reasonably practicable to secure his attendance; or
 - (c) Is unfit by reason of old age or his bodily or mental condition to attend; or
 - (d) Cannot with reasonable diligence be found; or
 - 20 (e) Undue delay or expense would be caused by requiring him to attend.

New

- “Conviction”,—
- 25 (a) In relation to a Court Martial constituted under the New Zealand Army Act 1950 or the Royal New Zealand Air Force Act 1950, means a finding of guilty that is duly confirmed; and includes a substituted finding of guilty that falls to be treated as a finding of the Court duly confirmed; and
 - 30 (b) In relation to a court-martial or a disciplinary court constituted under the Naval Discipline Act 1957 of the United Kingdom Parliament (as applied aforesaid), means a finding of guilty; and includes a substituted finding of guilty that falls to be treated as a finding of the court-martial; and
 - 35 (c) In relation to a court-martial constituted under the Armed Forces Discipline Act 1971, means a finding of guilty; and includes a substituted finding of guilty that falls to be treated as a finding of the court-martial:
- 40 (2) For the purposes of section 27 of this Act, a person is unavailable to give evidence in any proceeding if, but only if,—
- (a) He is dead; or

New

- (b) He is outside New Zealand and it is not reasonably practicable to obtain his evidence; or
 (c) He is unfit by reason of old age or his bodily or mental condition to attend; or
 (d) He cannot with reasonable diligence be found; or
 (e) Undue delay or expense would be caused by obtaining his evidence.

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26. Conviction as evidence in civil proceeding—(1) In any civil proceeding, the fact that a person has been convicted of an offence by or before any Court in New Zealand, or by a court-martial in New Zealand or elsewhere, (*shall, subject to section 27 of this Act, be admissible in*) shall be admissible as evidence for the purpose of proving that he committed that offence, where to do so is relevant to any issue in the civil proceeding.

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(2) (*The provisions of*) This section shall apply—

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

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

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

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(3) In any civil proceeding in which, by virtue of this section, a person is proved to have been convicted of an offence,—

(3) Where any evidence is admitted under this section,—

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(a) Any party to the (*civil*) proceeding may nevertheless adduce evidence tending to prove that that person did not commit the offence of which he was convicted:

(b) Without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document that is admissible as evidence of the conviction, and the contents of the information, complaint, indictment, or charge-sheet on

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which the person in question was convicted, shall be admissible in evidence for the purpose of identifying those facts.

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- 5 (4) Nothing in this section shall limit or affect any other enactment whereby a conviction or a finding of fact in any criminal proceeding is, for the purposes of any other proceeding, made conclusive evidence of any fact.

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10 **27. Procedure for admission of conviction—**(1) A conviction shall not be admissible in evidence in any civil proceeding pursuant to section 26 of this Act, except—

- (a) Where the defendant pleaded guilty to the offence;
or
15 (b) In any other case, with the consent of the Court before which the civil proceeding is to be tried, given before trial.

(2) The Court shall not grant such leave unless a person who was a witness in the criminal proceeding in which the
20 defendant was convicted is unavailable to give evidence in the civil proceeding.

(3) For the purpose of determining an application under subsection (1) (b) of this section for leave to admit a conviction in evidence, the Court shall have regard to the following matters:

- 25 (a) The importance of the fact that the conviction, if admitted, would tend to prove; and
(b) The availability of any other witness to the same fact; and
30 (c) When the trial of the civil proceeding will be before a jury, the likely prejudicial effect of the conviction on the jury weighed against its probative value; and
(d) All such other circumstances of any kind as the Court
35 considers relevant.

28. Conviction conclusive evidence in defamation action—
(1) In any action for (*libel or slander*) defamation based on a statement made by any person to the effect that any other person has committed an offence, proof that, at the time when
40 the statement was made, that other person had been con-

victed of the offence by or before any Court in New Zealand, or by any court-martial in New Zealand or elsewhere, shall, subject to subsection (2) (b) of this section, be **(conclusive evidence)** sufficient evidence in the absence of proof to the contrary that he committed the offence, and the conviction shall be admissible in evidence accordingly. 05

(2) *(The provisions of)* This section shall apply—

(a) Whether the person in question was convicted of the offence before or after the commencement of this Act: 10

(b) If, but only if, the conviction was subsisting at the time when the statement in question was made.

(3) *(In any action to which this section applies in which, by virtue of this section, a person is proved to have been convicted of an offence,)* Where, in any proceeding in which evidence is admitted under this section, any person is shown to have been convicted of an offence, then, without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document that is admissible as evidence of the conviction, and the contents of the information, complaint, indictment, or charge-sheet on which that person was convicted, shall *(, without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based,)* be admissible in evidence for the purpose of identifying those facts. 15 20 25

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29. Finding of adultery as evidence in civil proceeding—

(1) In any civil proceeding (including any matrimonial proceeding), the fact that a person has been found guilty of adultery in any matrimonial proceeding shall, subject to section 30 of this Act, be admissible in evidence for the purpose of proving that he committed the adultery to which the finding relates, where to do so is relevant to any issue in the civil proceeding. 30 35

(2) The provisions of this section shall apply—

(a) Whether the finding of adultery was made before or after the commencement of this Act; and

(b) Whether or not the person in question offered any defence to the allegation of adultery; and 40

Struck Out

(c) Whether or not that person is a party to the civil proceeding.

5 (3) In any civil proceeding in which, by virtue of this section, a person is proved to have been found guilty of adultery,—

(a) Any party to the civil proceeding may nevertheless adduce evidence tending to prove that that person did not commit the adultery of which he was found
10 guilty:

(b) Without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the finding was based, the contents of any document that was before the Court, or that
15 contains any pronouncement of the Court, in the matrimonial proceeding in question shall be admissible in evidence for the purpose of identifying those facts.

20 **30. Procedure for admission of finding of adultery—**(1) A finding of adultery against any person shall not be admissible in any civil proceeding by virtue of section 29 of this Act, except—

(a) Where that person admitted the act of adultery in the matrimonial proceeding in which the finding was
25 made; or

(b) In any other case, with the consent of the Court before which the civil proceeding is to be tried, given before trial.

30 (2) The Court shall not grant such leave unless a person who was a witness in the matrimonial proceeding in which the finding of adultery was made is unavailable to give evidence in the civil proceeding.

(3) For the purpose of determining an application under subsection (1) (b) of this section for leave to admit a finding
35 of adultery in evidence, the Court shall have regard to the following matters:

(a) The importance of the fact that the finding of adultery, if admitted, would tend to prove; and

(b) The availability of any other witness to the same fact;
40 and

Struck Out

- (c) When the trial of the civil proceeding will be before a jury, the likely prejudicial effect of the finding of adultery on the jury weighed against its probative value; and
- (d) All such other circumstances of any kind as the Court considers relevant.

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

32. Copy of document admissible in cases under this Part— Where in any civil proceeding the contents of any document are admissible in evidence (*by virtue of any of sections 26, 28, and 29*) under section 26 or section 28 of this Act, a copy of that document, or of the material part of the document, purporting to be certified or otherwise authenticated by or on behalf of the Court or authority having custody of that document, shall be admissible (*in*) as evidence and shall be taken to be a true copy of that document or part, unless the contrary is shown.

33. Proof of conviction—(1) Where in any proceeding it is necessary to prove the conviction of any person of an offence, a certificate containing the substance of the conviction for the offence, purporting to be signed by the Registrar or other officer having the custody of the records of the Court by or (*in*) before which the offender was convicted, shall, upon proof of the identity of the person, be sufficient evidence of the conviction without proof of the signature or official character of the person appearing to have signed the certificate.

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

Struck Out

34. **Other statutory provisions preserved**—Nothing in section 26 or section 29 of this Act shall limit or affect any other enactment whereby a conviction or a finding of fact in any criminal proceeding or matrimonial proceeding is, for the purposes of any other proceeding, made conclusive evidence of any fact.

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

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PART III

PRIVILEGE OF WITNESSES

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

37. **Evidence of non-access**—In any proceeding, either of two spouses may give evidence proving or tending to prove that the spouses did not have sexual relations with each other at any particular time, notwithstanding that the evidence would tend to show that any child born to the wife during the marriage was not the child of the husband.

Struck Out

25 (2) Nothing in this section shall limit or affect the provisions of section 36 of this Act or of section 69 of the Matrimonial Proceedings Act 1963.

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

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

39. **Disclosure in civil proceeding of communication to medical practitioner**—(1) Subject to (subsections (2) to (4)) subsection (2) of this section, a registered medical practi-

tioner shall not disclose in any civil proceeding any protected communication (*made to him by a patient*), except with the consent of the patient or, if he is dead, the consent of his personal representative.

Struck Out

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(2) This section shall not apply in respect of any proceeding in which the sanity or testamentary capacity or other legal capacity of the patient is the matter in dispute.

(3) This section shall not apply to the disclosure of any communication made to a registered medical practitioner in or about the effecting by any person of an insurance on the life of himself or any other person.

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

New

15

(2) This section shall not apply—

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

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

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

25

(5) In this section—

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

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

35

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

(1A) This section shall not apply to any communication made for any criminal purpose.

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

(a) Drug dependency; or

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

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

(3) In subsection (2) of this section—

“Controlled drug” means a controlled drug within the meaning of section 2 (1) of the Misuse of Drugs Act 1975:

“Drug dependency” means the state of periodic or chronic intoxication, produced by the repeated consumption, smoking, or other use of a controlled drug detrimental to the *(person in relation to whom the word is used)* user, and involving a compulsive desire to continue consuming, smoking, or otherwise using the drug or a tendency to increase the dose of the drug:

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

(4) This section does not apply to any communication made for any criminal purpose.)

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

(2) A person shall not disclose in any proceeding any communication between himself and another person made for the purpose of obtaining or giving any protected information or advice sought by that other person for submission to a registered patent attorney in his professional character, except with the consent of that other person or, if he is dead, the consent of his personal representative. 5

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

(4) In this section "protected information or advice" means information or advice relating to any patent, design, or trademark, or to any application in respect of a patent, design, or trademark, whether or not the information or advice relates to a question of law. 10

42. Discretion of Court to excuse witness from giving any particular evidence—(1) In any proceeding before any Court, the Court may, in its discretion, excuse any witness (including a party) from answering any question or producing any document that he would otherwise be compellable to answer or produce, on the ground that to supply the information or produce the document would be a breach by the witness of a confidence that, having regard to the special relationship existing between him and the person from whom he obtained the information or document and to the matters specified in subsection (2) of this section, the witness should not be compelled to breach. 15 20 25

Struck Out

(2) Without limiting the matters that the Court may take into account, the Court, in deciding any application for the exercise of its discretion under subsection (1) of this section, shall have regard to the following matters: 30

New

(2) In deciding any application for the exercise of its discretion under subsection (1) of this section, the Court shall consider whether or not the public interest in having the evidence disclosed to the Court is outweighed, in the particular case, by the public interest in the preservation of confidences between persons in the relative positions of the confidant and the witness and the encouragement of free communication between such persons, having regard to the following matters: 35 40

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

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- (d) Whether or not the disclosure would be in the public interest:
- 10 (e) The desirability of respecting confidences between persons in the relative positions towards each other of the confidant and the witness, including the importance of encouraging free communication between such persons.

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

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

- (5) In this section "Court" includes—
- 25 (a) Any tribunal or authority constituted by or pursuant to any Act and having power to compel the attendance of witnesses; and
 - (b) Any other person acting judicially.

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

- (a) Sections 6 and 8 of the principal Act:
 - (b) Section 15 of the Evidence Amendment Act 1945:
 - (c) Section 89 (1) of the Matrimonial Proceedings Act 1963.
- 35 (2) The Status of Children Act 1969 is hereby consequentially amended by repealing so much of the Schedule as relates to section 15 (1) of the Evidence Amendment Act 1945.

PART IV

(EXAMINATION OF WITNESSES) TAKING OF EVIDENCE OVERSEAS OR ON BEHALF OF OVERSEAS COURT

- 44. Interpretation**—(1) In this Part of this Act,—
- “Attendance order” means an order made by any Court (*pursuant to*) under section 45 of this Act for the examination of a witness or the production of any specified document by a designated person, or for both such examination and production: 5
- “Corresponding Court”,— 10
- (a) In relation to any Court in a prescribed country, means the Court in New Zealand that is declared by the Minister of Justice, by notice in the *Gazette*, to be the Court in New Zealand that corresponds to that (*first-mentioned Court*) Court in the prescribed country: 15
- (b) In relation to a Court in New Zealand, means the Court in a prescribed country that is declared by the Minister of Justice, by notice in the *Gazette*, to be the Court in that country that corresponds to that Court in New Zealand: 20
- “Examiner” means—
- (a) Any Judge (*or Magistrate*):
- (b) Any Registrar or Deputy Registrar of the (*Supreme Court or of a Magistrate’s Court*) High Court or of a District Court: 25
- (c) Any specified tribunal:
- “Prescribed country” means any State, territory, or country declared by the Minister, by notice in the *Gazette*, to be a prescribed country for the purposes of this Part of this Act: 30
- “Specified tribunal” means a tribunal specified by the Minister in any notice in the *Gazette*, given for the purposes of and (*pursuant to subsection (2) of this section*) under section 44A (2) of this Act. 35

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(2) The Minister of Justice may, by notice in the *Gazette*, declare that this Part of this Act shall apply with respect to any specified tribunal in a prescribed country and to any specified tribunal in New Zealand as if they were Courts; and the provisions of this Part shall thereupon, as far as they are applicable and with the necessary modifications, apply with respect to those tribunals accordingly. 40

New

44A. Powers of Minister of Justice—(1) The Minister of Justice may, by notice in the *Gazette*, declare—

- 5 (a) Any State, territory, or country to be a prescribed country for the purposes of this Part of this Act:
- (b) Any specified Court in New Zealand to be the Court that corresponds to any specified Court in any specified prescribed country:
- 10 (c) Any specified Court in any specified prescribed country to be the Court that corresponds with any specified Court in New Zealand:
- (d) Any specified tribunal in New Zealand and any specified tribunal in any specified prescribed country to be tribunals to which this Part of this Act applies.
- 15 (2) This Part of this Act, with any necessary modifications, shall apply to any tribunals specified in any notice given under subsection (1) (d) of this section as if the tribunals were Courts.

20 **45. Taking of evidence on request from a corresponding Court of a prescribed country—**(1) Where, by or under any Act or law of a prescribed country, provision is made for the evidence of any person that is required in connection with any proceeding to be taken otherwise than at the hearing of the proceeding by a Court, a Court in New Zealand that is

25 a corresponding Court to the Court in the prescribed country before which the proceeding is being held may, upon receipt of a request in writing from that Court in the prescribed country, make an order for the examination of a witness or the production of any specified document by (a) any design-

30 ated person, or both for such examination and production, before an examiner named in the order at a time and place specified in the order.

(2) The order shall require reasonable notice to be given by post to each party to the proceeding at his address as shown

35 in the request of the time when and the place where the examination is to take place or the document is to be produced.

46. Summons to witness—(1) Upon service on a person of an attendance order, together with the payment or tender of a reasonable sum for expenses, the person shall attend at

40 the time and place appointed, and shall have and be subject to the same rights and liabilities as if he were summoned before the Court by which the order was made.

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

47. Examination of witness—(1) Subject to any directions 5
contained in the attendance order,—

- (a) Any person ordered to be examined before the examiner may be cross-examined and re-examined; and
- (b) The examination, cross-examination, and re-examination of persons before the examiner shall be con- 10
ducted in the same manner as they would have been conducted before the Court that made the order.

(2) The examiner may put any question to any person examined before him relating to the meaning of any answer made by that person or relating to any matter arising in the 15
course of the examination.

(3) An examiner shall have and may exercise such of the powers of the Court by which he was appointed as are necessary for the proper exercise of his functions under this Part of this Act, and may administer oaths and adjourn 20
the examination from time to time as he thinks fit.

48. Protection of witness—(1) A person shall not be compelled by virtue of an attendance order to give any evidence that he could not be compelled to give in any proceeding in New Zealand. 25

(2) Any person who is required by virtue of an attendance order to give any evidence may object to that requirement on the ground that, for any stated reason, he could not be compelled to give that evidence in the proceeding in the prescribed country. 30

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

(a) The examiner shall—

- (i) Record the nature of the evidence, and the 35
reasons stated by the person in support of his contention that he could not be compelled to give the evidence in the proceeding in the prescribed country; and

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

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

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

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

25 **49. Deposition to be signed**—(1) Where, pursuant to an attendance order,—

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

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

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

50. Power of New Zealand Court to request corresponding Court in prescribed country to take evidence for use in New Zealand Court—(1) Subject to subsection (2) of this section, a Court in New Zealand may, on the application of a party to any proceeding before the Court, request a corresponding Court in a prescribed country to make an order for the examination of a witness or the production of any specified document by a person, or for both such examination and production. 5

(2) Such a request may be made in a criminal proceeding if, but only if,— 10

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

(b) Where the application is made by the prosecution, the accused consents. 15

(3) Any deposition received from a corresponding Court that purports to have been signed by the deponent and the examiner or to have been certified as a correct record by the examiner may, subject to *(all just exceptions)* the rules of law relating to the admission of evidence, be put in as evidence at the hearing of the proceeding. 20

(4) Any document received from a corresponding Court may, subject to *(all just exceptions)* the rules of law relating to the admission of evidence, be put in at the hearing as if produced at the hearing by the person who produced the document pursuant to the order of the corresponding Court. 25

(5) A Court shall take judicial notice of the seal of a corresponding Court and of the signature of any examiner appointed by a corresponding Court. 30

51. Power of New Zealand Court to transmit request to other place—Where a Court in New Zealand receives a request from a corresponding Court for the examination of a witness or the production of any specified document by a person, and it appears to the New Zealand Court that the witness or person is not in New Zealand and is not proceeding to New Zealand but is in or proceeding to another country that is a prescribed country under the law of the country of the corresponding Court, the New Zealand Court— 35

(a) May transmit the request to a corresponding Court in that other prescribed country, together with such information as it or he possesses concerning the whereabouts and intended movements of the person: 40

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

52. Alternative procedure for taking evidence outside New Zealand in civil proceeding in Supreme Court—(1) (*Subject to any other Act,*) at any stage of any civil proceeding in the *(Supreme Court where it appears necessary for the purposes)* High Court where it appears necessary or expedient in the interests of justice, the *(Supreme)* High Court or a Judge may order that—

10 (a) Any (*witness or*) person named in the order be examined upon oath, upon interrogatories or otherwise, at any place outside New Zealand before any officer of the Court, any overseas representative, or
15 any other person named in the order by name or designation; and

(b) Any deposition so taken be filed in Court; and

(c) Any party to the proceeding be empowered to give that deposition in evidence in the proceeding, on such
20 terms (if any) as the Court or Judge may direct.

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

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

35 *Struck Out*

(4) The foregoing provisions of this section are in addition to and not in derogation of any of the provisions of sections 44 to 51 of this Act.

New

40 (4) Subsections (1) to (3) of this section are in addition to and not in derogation from sections 44 to 51 of this Act.

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

53. Rules and regulations—(1) Without limiting the power to make rules of procedure conferred by the Judicature Act 1908 and the (*Magistrates'*) District Courts Act 1947, rules may be made under those Acts prescribing anything that is required (*or necessary to be prescribed*) to be prescribed or necessary for carrying this Part of this Act into effect. 10

(2) The Governor-General may, by Order in Council, make regulations fixing, and requiring the payment of, fees and expenses for or incurred in taking evidence under this Part of this Act. 15

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

55. Certain provisions of principal Act not to apply to corresponding Court in prescribed country—Sections 48A to 48E of the principal Act (as enacted by section 4 of the Evidence Amendment Act 1962) shall not apply to any Court in a prescribed country in respect of which a corresponding Court has been declared in New Zealand. 20
25

PART V

PROOF OF PHOTOGRAPHIC COPIES OF DOCUMENTS

56. Proof of photographic copies of documents—(1) Section 5 of the Evidence Amendment Act 1952 is hereby amended by repealing subsection (1), and substituting the following subsection: 30

“(1) A print, whether enlarged or not, from a film taken (*after the commencement of this section*) of any document kept or held by the Government or any person shall be admissible in evidence in all cases in which and for all purposes for which the document would have been admissible, upon proof that— 35

“(a) The document was in the custody or control of the person who photographed it or caused it to be photographed; and 40

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

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

10 (2) The said section 5 is hereby further amended by omitting from subsection (4A) (as inserted by section 4 of the Evidence Amendment Act 1958) the words “is on the same film or roll of film as the photographic copy of that document”, and substituting the words “is sufficiently identified with the document to which it relates”.

15 *Struck Out*

20 (3) Notwithstanding anything in subsection (1) of this section, any document that would have been admissible in evidence under section 5 (1) of the Evidence Amendment Act 1952 (as in force before the commencement of this section) shall be admissible in evidence as if the said section 5 (1) had continued in force.

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

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

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

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

35 *Struck Out*

(a) By repealing the definition of the term “authorised person” in section 3:

New

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

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

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