

The Evidence Act

The Evidence Act replaces *The Saskatchewan Evidence Act* and *The Recording of Evidence by Sound Recording Machine Act*. *The Evidence Act* applies to all matters over which the province has jurisdiction, including civil litigation, family law, and provincial offences. *The Canada Evidence Act* applies to all criminal proceedings and to other matters over which the Parliament of Canada has jurisdiction.

Saskatchewan's Act:

- Authorizes the court to order the examination of a witness or the production of a document, or both, for use in a trial;
- Provides rules for the proof and admissibility of evidence;
- Provides rules for the capacity of witnesses to give evidence, including the administering of oaths and affidavits; and
- Includes special rules for determining the authenticity of certain documents, such as photographic film, financial institutions' books or records, and reports by medical practitioners.

The Act states that documents prepared for hospital quality assurance committees, which deal with the care provided to patients in hospitals as well as the proceedings of those committees, are privileged and not compellable. However, patient records and any incident report relating to a patient are not privileged.

The Act provides that an apology does not constitute an admission of fault and is not admissible as evidence in a court proceeding.

There is a general duty to give evidence on one's own behalf or on behalf of any party to a proceeding. Exemption from that duty is exceptional.

The court may find a witness who refuses to testify, to produce a document, or to answer a question to be in contempt and that person may be punished by imprisonment.

An exception is that a spouse is not compellable to disclose any communication made by the other spouse during their spousal relationship except where a civil action is brought by one spouse against the other spouse, or brought on behalf of a child of a spousal relationship against one or both of the spouses.

The general rule, though, is that a witness is not excused from answering questions on the ground the answer may incriminate the witness. Persistent refusal to answer questions may constitute contempt of court. However, there is a limited protection in that if the witness discloses incriminating information its use is prohibited against him or her in another proceeding, either federally or under the law of any province or territory, including Saskatchewan.

The Act simplifies the participation of vulnerable persons in the civil justice system. Saskatchewan's provisions respecting the giving of evidence by children and persons with a disability are similar to those in the *Criminal Code* and the *Canada Evidence Act*.

For example, a judge may allow a witness who is under 18 years old or who has difficulty communicating due to an intellectual or physical disability to testify from behind a screen, outside the courtroom, by videotape, or by any means that makes the evidence understandable.

The court may allow a vulnerable adult or a child to have a support person with them when they testify and may make an order banning publication of information identifying child witnesses.

At the court's discretion, a witness who has difficulty communicating may testify in sign language, in writing, or through an interpreter, and the court may order that the testimony be recorded by a recording device appropriate to the means of giving testimony used by the witness. The judge may also allow witnesses to identify persons visually or by other sensory means.

The Act provides that a witness may testify under oath, or under solemn affirmation, at the choice of the witness. A person under age 14 or a person with an intellectual disability can testify under oath or affirmation if the court is satisfied that the person understands the nature of an oath or affirmation. If a person under age 14 or a person with an intellectual disability does not understand the nature of an oath or affirmation, the court can allow the person to testify if the person promises to tell the truth. If the person does not understand the nature of an oath or affirmation and cannot communicate evidence, the person cannot testify.

The Act provides that proceedings before a court or tribunal or other person authorized to take evidence may be recorded by a sound recording machine. The Act sets out procedures for transcription, preservation and destruction of the records.

The legal rules regarding the admissibility and reliability of records recorded and stored by electronic means are modeled on the Uniform Law Conference of Canada's Uniform Electronic Evidence Act.

These rules are as follows:

- Provide a standard for computer records to be admitted in legal proceedings;
- Allow for electronic records to take the place of an original record if the electronic system reliably stored and reproduced the record;
- Allow for industry practices and standards for record keeping and storage to be used in determining if such records should be admitted; and
- Allow for the use of affidavits to demonstrate the reliability of record keeping systems.