

Bill No. 33 of 1947.

A BILL TO AMEND THE ALBERTA EVIDENCE ACT

NOTE.

The amendments proposed by this Bill have been adopted by the Conference of Commissioners on Uniformity of Legislation.

Section 1 of the Bill introduces a new section 6a authorizing a husband or wife to give evidence in legal proceedings, particularly in divorce actions that he or she did or did not have sexual intercourse with the other at any specified period. Such evidence has long been held by the courts to be incompetent, resulting often in injustices.

Section 2 of the Bill strikes out section 8 and enacts a new section 8. The immunity given by the section now in force was limited to the parties to an action instituted in consequence of adultery and their husbands and wives. The new section extends the immunity to all witnesses in any action whether parties or not.

Section 3 of the Bill strikes out section 37 of the Act and enacts a new section 37. This section deals with the admissibility in evidence of photostatic copies of records. The section now in force was enacted in 1943 and was in the form at that time adopted by the Uniformity Commission. It was limited in its application to banks, railway, express, telegraph and telephone companies, insurance companies, trust companies and loan companies. The new section since adopted by the Uniformity Commission applies to all corporations (as well as government departments) where documents, etc., are photographed in the course of an established practice in order to make a permanent record thereof, and the original is subsequently destroyed. In such cases a print from the photographic film is admissible in evidence. The new section has an additional safeguard by providing that where the document is destroyed within six years after the date when it, or the matter to which it related, in the ordinary course of business ceased to be treated as current, or within six years after the person having custody of the document receives notice in writing of a claim with respect to it, the Court may refuse to admit in evidence a print from the film. This last provision, however, does not apply to the Government of Canada or any Province, or to boards, etc., of any such Government or to the Bank of Canada.

W. S. GRAY,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 33 of 1947.

An Act to amend The Alberta Evidence Act.

(Assented to . . . , 1947).

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Alberta Evidence Act*, being chapter 106 of the Revised Statutes of Alberta, 1942, is hereby amended by adding immediately after section 6 thereof the following new section:

"6a. Without limiting the generality of section 6, a husband or wife may, in an action, give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time or within any period of time before or during the marriage."

2. The said Act is further amended as to section 8 thereof by striking out the same and by substituting therefor the following:

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

3. The said Act is further amended as to section 37 thereof by striking out the same and by substituting therefor the following:

"37.—(1) In this section,—

"(a) 'person' includes,—

"(i) the government of Canada and of any province of Canada and any department, commission, board or branch of any such government;

"(ii) a corporation; and

"(iii) the heirs, executors, administrators or other legal representatives of a person; and

"(b) 'photographic film' includes any photographic plate, micro-photographic film and photostatic negative, and 'photograph' shall have a corresponding meaning.

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

“(a) is photographed in the course of an established practice of such person of photographing objects of the same or a similar class in order to keep a permanent record thereof; and

“(b) is destroyed by or in the presence of the person or of one or more of his employees or delivered to another person in the ordinary course of business or lost,

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

“(3) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement or other executed or signed document was so destroyed before the expiration of six years from,—

“(a) the date when in the ordinary course of business either the object or the matter to which it related ceased to be treated as current by the person having custody or control of the object; or

“(b) the date of receipt by the person having custody or control of the object of notice in writing of any claim in respect of the object or matter prior to the destruction of the object,

whichever is the later date, the court may refuse to admit in evidence under this section a print from a photographic film of the object.

“(4) Where the photographic print is tendered by a government or the Bank of Canada, subsection (3) shall not apply.

“(5) Proof of compliance with the conditions prescribed by this section may be given by any person having knowledge of the facts either orally or by affidavit sworn before a notary public and unless the court otherwise orders, a notarial copy of any such affidavit shall be admissible in evidence in lieu of the original affidavit.”

4. This Act shall come into force on the day upon which it is assented to.

No. 33

FOURTH SESSION
TENTH LEGISLATURE

11 GEORGE VI

1947

BILL

An Act to amend The Alberta
Evidence Act.

Received and read the

First time

Second time

Third time

HON. MR. MAYNARD.

EDMONTON:
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