



EVIDENCE BILL 2009

(BILL NO. 12 OF 2009)



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A

BILL

Entitled

AN ACT to provide for the law of evidence for the courts and for related matters

ENACTED by the National Parliament of Solomon Islands

ARRANGEMENT OF CLAUSES

PART 1 – PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Preservation of common law
4. Application
5. Act binds the Crown
6. Abolition of UK statutes
7. Corroboration rules abrogated
8. Document rules abolished
9. Waiver of rules of evidence
10. General powers of a court

PART 2 – PROOF

11. Civil standard of proof
12. Criminal standard of proof
13. Standard of proof for admission of evidence
14. Judicial notice
15. Law and legislation
16. Judges' signatures
17. Common knowledge
18. Corroboration
19. Unreliable evidence

PART 3 – RELEVANT EVIDENCE ADMISSIBLE

20. Relevant evidence is admissible
21. Admission by agreement
22. Provisional relevance
23. Inference as to relevance

PART 4 – COMPETENCE AND COMPELLABILITY

24. General competence
25. Death or incompetence of witness
26. Witness with an interest or conviction
27. Examination without subpoena
28. Person producing a document is not a witness

29. Lack of capacity
30. Determination of competency
31. Unsworn evidence
32. Persons not compellable
33. Judicial persons not compellable without leave
34. Compellability of close relatives
35. Close relative of accused may be excused
36. Former spouse compellable
37. Accused not compellable
38. Questioning of accused about bad character or antecedents
39. Tendency evidence against co-accused
40. Circumstances when co-accused is compellable
41. Arrangements for vulnerable witnesses
42. Vulnerable witness cross-examined by accused

PART 5 – GENERAL RULES ABOUT GIVING EVIDENCE

43. Ordinary manner of giving evidence
44. Court to control questioning
45. Court may question witness
46. Parties may question witness
47. Giving evidence in narrative form
48. Use of charts and summaries
49. Reviving memory
50. Reviving memory on facts or opinion
51. Referring to copies of documents to refresh memory
52. Evidence by audio visual link
53. Rules may provide giving of evidence by audio visual link
54. Leading questions in examination-in-chief or re-examination
55. Leading questions in cross-examination
56. Court may prohibit leading questions in cross-examination
57. Contradictory evidence
58. Evidence in relation to sexual experience in offences against morality
59. Re-examination
60. Parties recalling witnesses
61. Court recalling witnesses
62. Witness to remain outside courtroom
63. Witnesses who hear evidence
64. Re-opening of case
65. Witness called in error
66. Improper questions
67. Police evidence
68. Communication assistance to accused
69. Communication assistance to witnesses
70. Hearing and speech impaired witnesses

- 71. Impartiality of interpreter
- 72. Viewing by the court
- 73. Court may make inference after viewing
- 74. Demonstration, experiment or inspection

PART 6 – EVIDENCE OF JUDGMENTS AND CONVICTIONS

- 75. Conviction is proof of commission of offence
- 76. Conviction as proof in defamation proceedings
- 77. Civil judgment and criminal proceedings
- 78. Certificate of conviction, acquittal, orders and judgments
- 79. Propensity evidence
- 80. Propensity evidence by prosecution

PART 7 – IDENTIFICATION EVIDENCE

- 81. Identification evidence
- 82. Identification procedure
- 83. Identification parades
- 84. Photo identification
- 85. Photo boards
- 86. Voice identification

PART 8 – DOCUMENTARY EVIDENCE

- 87. Reference to document
- 88. Use of document without witness
- 89. Evidence of contents of a document
- 90. Document made by a person
- 91. Document produced by device or process
- 92. Seals and signatures
- 93. Seals of body corporate established under Royal Charter or provincial law
- 94. Books, maps and charts
- 95. Summary of long or complex documents
- 96. Evidence of acts by a justice, notary public or legal practitioner
- 97. Attesting witness not required to give evidence
- 98. Older documents
- 99. Tender of documents
- 100. Impounding documents
- 101. Provincial government documents
- 102. Evidence of banker's records
- 103. Obtaining copies of banker's records
- 104. Gazettes and other official government documents

105. Evidence of Government public records
106. Documents relating to court processes
107. Official government statistics
108. Copies of public documents
109. Translated documents
110. Service or notification by post
111. Evidence of foreign law
112. Law reports of foreign countries
113. Documents sworn or verified in Commonwealth countries
114. Documents filed in foreign court or consulate
115. Published documents
116. Probate and letters of administration

PART 9 – HEARSAY

117. Hearsay
118. General admissibility of hearsay
119. Evidence of right or custom
120. Exception – business documents
121. Exception – tags, labels and writing
122. Exception – telecommunication
123. Exception – statements about the state of health or mind
124. Exception – evidence of personal history
125. Exception – public and general rights
126. Exception – interlocutory proceedings
127. Exception – evidence relevant for non-hearsay purpose
128. Opinion evidence
129. General admissibility of opinion
130. Expert evidence opinion
131. Opinion of handwriting
132. Court to examine and determine authenticity of document
133. Expert reports
134. Evidence of good character in civil proceedings
135. Evidence of bad character in civil proceedings

PART 10 – DISCRETION TO EXCLUDE EVIDENCE

136. Court discretion to exclude evidence
137. Court discretion to limit the use of evidence
138. Exclusion of prejudicial evidence
139. Exclusion of evidence in the public interest

PART 11 – COMMISSION TO EXAMINE WITNESSES

- 140. Evidence taken on commission
- 141. Adjournment for taking evidence on commission
- 142. Evidence on commission outside Solomon Islands

PART 12 – PRIVILEGE

- 143. Legal professional privilege for legal practitioners
- 144. Legal professional privilege for client
- 145. Legal professional privilege for unrepresented parties
- 146. Privilege against self-incrimination
- 147. No adverse inference against self-incrimination
- 148. Court discretion for incrimination under foreign law
- 149. Claiming privilege against self-incrimination
- 150. Self-incriminating information given in compliance with seizing order
- 151. No self-incrimination privilege for bodies corporate
- 152. Privileged religious confession
- 153. Parliamentary privilege
- 154. Confidential and communication for settling civil proceedings
- 155. Privilege for information disclosing identity of an informer
- 156. Waiver of privilege
- 157. Joint and successive interests in privileged material
- 158. Court may disallow claim of privilege
- 159. Party must be aware of rights relating to privilege
- 160. Court may inspect documents relating to privilege
- 161. Privileged evidence inadmissible

PART 13 – UNFAVOURABLE WITNESSES

- 162. Unfavourable witnesses
- 163. Prior inconsistent witness statements
- 164. Weight to be given to evidence under this Part
- 165. Use of document of another person
- 166. Production of a document

PART 14 – ADMISSIONS IN CRIMINAL PROCEEDINGS

- 167. Definition of confession
- 168. Admissions by accused in criminal proceedings
- 169. Court may refuse to admit confession
- 170. Exclusion of evidence obtained improperly or illegally
- 171. Cautioning of persons under arrest

- 172. Admissions by co-accused
- 173. Evidence of silence
- 174. Editing of inadmissible statements

PART 15 – PROOF OF BIRTH, DEATH AND MARRIAGE

- 175. Proof of age determined by the court
- 176. Proof of age by birth certificate
- 177. Presumption of age

PART 16 – MISCELLANEOUS

- 178. Proof of service
- 179. Proof of previous convictions
- 180. Court may inform itself about legislation
- 181. *Voir dire*
- 182. Contempt by publication
- 183. Advanced rulings
- 184. Leave, etc be subject to terms
- 185. Averment as to public place
- 186. Court may order the attendance of persons in custody
- 187. Evidence of Crown property
- 188. Regulations
- 189. Court rules
- 190. Savings and transitional

EVIDENCE BILL 2009

PART 1 – PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Evidence Act 2009.

(2) This Act commences on a date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. (1) In this Act, unless the context otherwise requires –

“affidavit” includes a sworn statement;

“child” includes an illegitimate child, adopted child, step child or a child living with the person as if the child were a member of the person’s family;

“communication assistance” includes an interpreter, sign language interpreter or other person or device which assists the court to understand the evidence given by the witness or the accused;

“country” includes a state or territory;

“*de-facto*” means a man and a woman living together as husband and wife on a genuine domestic basis although not married under law or custom;

“document” includes a reference to –

- (a) any part of the document; or
- (b) any copy, reproduction or duplicate of the document or of any part of the document; or
- (c) any part of such a copy, reproduction or duplicate;

“Government” includes a provincial government;

“investigating official” means a police officer, and includes a person authorised by any written law whose functions include the functions to prevent or investigate offences;

“offence against morality” means any offence set out in Part XVI of the Penal Code (Cap.26);

“Propensity evidence” –

means evidence that tends to show a person’s propensity to act in a particular way or to have a particular state of mind, being evidence of acts, omissions, events or circumstances with which a person is alleged to have been involved; but

does not include evidence of an act or omission that is –

- (a) one of the elements of the offence for which the person is being tried; or
- (b) the cause of action in the proceedings in question;

“public document” means a document that –

- (a) forms part of the records of the Crown in any of its capacities; or
- (b) forms part of the records of the government of another country;
- (c) forms part of the records of a person holding office or exercising a function under the Constitution or any other written law or a law of another country;
- (d) is being kept by or on behalf of the Crown or the Government;

“spouse” includes a person living as the husband or wife of another person and includes a *de facto* spouse and a person married under custom.

(2) In this Act, a reference to “business” includes a reference to the following –

- (a) a profession, calling, occupation, trade or undertaking;
- (b) an activity engaged in or carried on by the Crown or the Government;

- (c) an activity engaged in or carried on by the government of another country;
- (d) an activity engaged in or carried on by a person holding office or exercising power under the Constitution or written law of Solomon Islands or another country, being an activity engaged in or carried on in the performance of the function of the office or in the exercise of the power (other than in a private capacity);
- (e) the proceedings of Parliament or of a provincial assembly or of the legislature of another country and of any parliamentary committee or similar body;
- (f) the business that is not engaged in or carried on for profit;
- (g) the business engaged in or carried on outside Solomon Islands.

Preservation of
common law **3.** This Act shall not operate as a Code and the principles and rules of the common law in relation to evidence that are not inconsistent with this Act, are preserved.

Application **4.** (1) This Act applies to all proceedings in all courts, including proceedings that –

- (a) relate to bail; or
- (b) relate to any interlocutory proceedings or proceedings of a similar kind; or
- (c) are heard in chambers.

(2) If such a proceeding relates to sentencing –

- (a) this Act applies only if the court directs that the law of evidence applies in the proceeding; and
- (b) if the court specifies in the direction that the law of evidence applies only in relation to specified matters, the direction has effect accordingly.

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| 5. | This Act binds the Crown in all its capacities. | Act binds the Crown |
| 6. | On commencement of this Act, statutory law of England in relation to evidence that would otherwise apply by virtue of section 76 and Schedule 3 of the Constitution ceases to extend to Solomon Islands. | Abolition of UK statutes |
| 7. | Subject to this Act, the principles and rules of the common law that relate to the need for corroboration of certain evidence are abrogated. | Corroboration rules abrogated |
| 8. | The principles and rules of the common law that relate to the means of proving the contents of documents are abrogated. | Document rule abolished |
| 9. | A court may, at any stage of proceedings, if it is in the interest of justice to do so or with the consent of the parties, by order dispense with the application of any one or more of the provisions of this Act in relation to particular evidence or generally. | Waiver of rules of evidence |
| 10. | The power of a court to control the conduct of a proceeding consistent with this Act is preserved, including the power with respect to abuse of process in a proceeding. | General powers of a court |

PART 2 – PROOF

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| 11. | (1) In a civil proceeding the court is not to find the case of a party proved unless it is satisfied that it has been proved on the balance of probabilities. | Civil standard of proof |
| | (2) Without limiting the matters that the court may take into account in deciding whether it is so satisfied, it is to take into account – | |
| | (a) the nature of the cause of action or defence; and | |
| | (b) the nature of the subject-matter of the proceeding; and | |
| | (c) the gravity of the matters alleged. | |
| 12. | (1) In a criminal proceeding the court is not to find the case of the prosecution proved unless it is satisfied that it has been proved beyond reasonable doubt. | Criminal standard of proof |

(2) In a criminal proceeding where the onus of proof is on the accused, the court is to find the case of an accused proved if it is satisfied that the case has been proved on the balance of probabilities.

(3) Subsection (1) does not apply to proceedings relating to sentencing, bail, amnesty or where the standard of proof is set out in any other written law.

Standard of proof
for admission of
evidence

13. (1) In any proceeding, the court is to find that the facts necessary for deciding –

- (a) a question whether evidence should be admitted or not admitted, whether in the exercise of a discretion or not; or
- (b) any other question arising under this Act;

have been proved if it is satisfied that they have been proved on the balance of probabilities.

(2) In determining whether it is so satisfied, without limiting the matters that the court can consider, the matters that the court must take into account include –

- (a) the importance of the evidence in the proceeding; and
- (b) the gravity of the matters alleged in relation to the question.

Judicial notice

14. Any matter a court may take judicial notice of need not be proved.

Law and
legislation

15. (1) Proof is not required about the provisions and coming into operation (in whole or in part) of –

- (a) an Act passed either before or after the commencement of this Act; or
- (b) subsidiary legislation made, or purporting to be made, under such an Act either before or after the commencement of this Act; or

(c) 'existing laws' as provided for by section 2 of The Solomon Islands Independence Order 1978.

(2) A court may inform itself about those matters in any way that it thinks fit.

16. All courts and other judicial officers shall take judicial notice of the signature of any of the Court of Appeal or High Court judges, on any document signed in exercise of judicial functions.

Judges' signatures

17. (1) Proof is not required about knowledge that is not reasonably open to question and is –

Common knowledge

- (a) common knowledge in the locality in which the proceeding is being held or generally; or
- (b) capable of verification by reference to a document the authority of which cannot reasonably be questioned.

(2) The court may acquire such knowledge in any way the court thinks fit.

(3) The court is to take such knowledge into account.

(4) The court is to give a party such opportunity to make submissions, and to refer to relevant information, relating to the acquiring or taking into account of such knowledge or as is necessary to ensure that the party is not unfairly prejudiced.

(5) For the purposes of this section, matters of custom or customary law are not to be considered as common knowledge.

18. Subject to any other written law, it is not necessary that evidence on which a party relies be corroborated.

Corroboration

19. A court need not exercise caution before convicting an accused in reliance on the following evidence –

Unreliable evidence

- (a) evidence given by a child;
- (b) evidence given by a victim of an offence against morality; or

- (c) evidence in relation to an offence against morality where there was delay in reporting the crime.

PART 3 – RELEVANT EVIDENCE ADMISSIBLE

Relevant evidence is admissible

20. (1) All relevant evidence is admissible in a proceeding except evidence that is –

- (a) inadmissible under this Act or any other law; or
 (b) excluded in accordance with this Act or any other law.

(2) Evidence that is not relevant is not admissible in a proceeding.

(3) Evidence is relevant for the purposes of this Act if it has a tendency to prove or disprove anything as a result of the determination of a proceeding.

Admission by agreement

21. (1) In a proceeding, the court may –

- (a) with the consent of all parties, admit relevant evidence that is not otherwise admissible; and
 (b) admit evidence offered in any form or way agreed by all parties.

(2) In a criminal proceeding, an accused may admit any fact that is not in dispute so as to dispense with proof of that fact.

(3) In a criminal proceeding, the prosecution may admit any fact that is not in dispute so as to dispense with proof of that fact.

Provisional relevance

22. (1) If the determination of the question whether evidence adduced by a party is relevant depends on the court making another finding (including a finding that the evidence is what the party claims it to be), the court may find that the evidence is relevant –

- (a) if it is reasonably open to make that finding;
 or

(b) subject to further evidence being admitted at a later stage of the proceeding that will make it reasonably open to make that finding.

(2) Without limiting subsection (1), if the relevance of evidence of an act done by a person depends on the court making a finding that the person and one or more other persons had, or were acting in furtherance of, a common purpose (whether to effect an unlawful conspiracy or otherwise), the court may use the evidence itself in determining whether the common purpose existed.

23. (1) If a question arises as to the relevance of a document or thing, the court may examine it and may draw any reasonable inference from it, including an inference as to its authenticity or identity.

Inference as to
relevance

(2) Subsection (1) does not limit the matters from which inferences may properly be drawn.

PART 4 –COMPETENCE AND COMPELLABILITY

24. (1) A person is presumed to be competent to give evidence in all proceedings.

General
competence

(2) Subject to this Act, a person who is competent to give evidence about a fact is compellable to give evidence in all proceedings.

25. Evidence that has been given by a witness does not become inadmissible merely because, before the witness finishes giving evidence, he or she dies or ceases to be competent to give evidence.

Death or
incompetence of
witness

26. A person shall not be excused from giving evidence in any proceeding on the ground that the person –

Witness with an
interest or
conviction

(a) has or may have an interest in the matter in question;
or

(b) has or may have an interest in the result of the proceeding; or

(c) has previously been convicted of any offence.

27. (1) The court may order a person who –

Examination
without subpoena

- (a) is present at the hearing of a proceeding; and
- (b) is compellable to give evidence in the proceeding,

to give evidence and to produce documents or things even if a subpoena or other process requiring the person to attend for that purpose has not been duly served on the person.

(2) A person so ordered to give evidence or to produce documents or things is subject to the same penalties and liabilities as if the person has been served with such a subpoena or other processes.

(3) A party who inspects a document or thing produced to the court because of subsection (1) need not use the document in evidence.

Person producing
a document is not
a witness

28. A person summonsed to produce a document does not become a witness by the mere fact that the person produced it and cannot be cross-examined unless and until he or she is called as a witness.

Lack of capacity

29. (1) A person who is incapable of understanding that, in giving evidence, he or she is under an obligation to give truthful evidence is not competent to give sworn evidence but the person may be competent to give unsworn evidence.

(2) Prior to a person giving unsworn evidence, the court must inform the person of the importance of telling the truth.

(3) A person is not competent to give evidence (sworn or unsworn) about a fact if –

- (a) for any reason (including physical disability), the person lacks the capacity to understand or to give an answer that can be understood, to a question about the fact; and
- (b) that incapacity cannot be overcome,

except that the person may be competent to give evidence about other facts.

(4) For the purpose of determining a question arising under this section, the court may inform itself as it thinks fit, including by information from a person who has relevant

specialised knowledge based on the person's training, study or experience.

30. (1) Whenever the question arises as to whether a witness in criminal proceedings is competent to give evidence in the proceedings, whether raised by a party or the court, shall be determined by the court in accordance with this section.

Determination of competency

(2) Once a court accepts that the issue of competence is properly raised, it is for the party calling the witness to satisfy the court that, on the balance of probabilities, the witness is competent to give evidence in the proceedings.

(3) In determining competency, the court shall treat the witness as having the benefit of any of its directions that may be made in relation to the taking of his or her evidence.

(4) Any questioning of the witness in relation to competency shall be conducted by the court in the presence of the parties.

(5) For the purpose of determining a question arising under this section, the court may inform itself as it thinks fit, including by information from a person who has relevant specialised knowledge based on the person's training, study or experience.

31. (1) Unsworn evidence is admissible for all purposes.

Unsworn evidence

(2) The probative value of the evidence is not decreased only because –

- (a) the evidence is unsworn; and
- (b) a person charged with an offence may be convicted on the evidence; and
- (c) the person giving the evidence is liable to be convicted of perjury to the same extent as if the person had given the evidence on oath.

32. (1) None of the following persons is compellable to give evidence –

Persons not compellable

- (a) the Sovereign;
- (b) the Governor General while in office;

- (c) a foreign Sovereign or Head of State of another country while in office.

Judicial persons
not compellable
without leave

33. A person who is or was acting judicially in a proceeding in Solomon Islands or another country is not compellable to give evidence about that proceeding, unless the court in which the officer is or was acting judicially gives leave.

Compellability of
close relative

34. (1) In a criminal proceeding, a close relative of each person charged is compellable to give evidence on behalf of that person.

(2) For the purposes of this section and section 36, a close relative of an accused person means a spouse, parent or child and includes an adoptive parent or an adopted child.

(3) Nothing in this section shall make the close relative of a person charged –

(a) compellable to give evidence for the prosecution; or

(b) compellable to give evidence for the defence,

in a criminal proceeding in which that close relative is also charged.

Close relative of
accused may be
excused

35. (1) A person who is a close relative of an accused in a criminal proceeding may be excused by the court from giving evidence for the prosecution in that proceeding.

(2) In determining whether to excuse a close relative from giving evidence the court must consider whether the public interest in the evidence being given is outweighed by the public interest in preventing harm to the relationship resulting from the giving of that evidence.

(3) For the purpose of making the assessment required by subsection (2), the court must consider –

(a) the nature and gravity of the offence for which an accused is being prosecuted;

(b) the substance and importance of any evidence the close relative might give and the weight likely to be given to it by the court;

- (c) whether any other evidence concerning the matters which the person might give evidence about, is reasonably available to the prosecution;
- (d) the nature of the relationship between the accused and the close relative;
- (e) whether, in giving the evidence, the close relative would have to disclose matter that was received by the close relative in confidence from the accused.

(4) If any close relative is excused from giving evidence, the close relative must be treated as unavailable as a witness.

36. In any criminal proceeding (and at a stage of the proceeding), a former spouse of an accused shall be competent and compellable to give evidence on behalf of the prosecution, the accused or any person being tried jointly with the accused.

Former spouse
compellable

37. An accused in a criminal proceeding is not competent to give evidence as a witness for the prosecution and is not compellable as a witness for the defence in that proceeding.

Accused not
compellable

38. An accused called as a witness at his or her trial, shall not be asked or required to answer, without leave of the court, any question tending to show that the accused is of bad character or has committed, been charged with, or found guilty of any offence, other than that with which he or she is charged, unless –

Questioning of
accused about bad
character or
antecedents

- (a) proof that the accused has committed or been found guilty of that other offence is admissible to show that the accused is guilty of the offence with which he or she is charged; or
- (b) the accused or his or her legal practitioner asked questions of a witness for the prosecution with a view to establishing the accused's good character, or has given evidence of good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witness for the prosecution; or
- (c) the accused has given evidence against any other person charged with the same offence.

Tendency
evidence against
co-accused

39. (1) An accused in a criminal proceeding may offer propensity evidence against a co-accused only if that evidence is relevant to the defence raised or proposed to be raised by the accused.

(2) An accused in a criminal proceeding who proposes to offer propensity evidence about a co-accused must give notice in writing to that co-accused and another co-accused of the proposal to offer that evidence unless the requirement to give notice is waived –

- (a) by all of the co-accused persons; or
- (b) by the court in the interest of justice.

(3) A notice must –

- (a) include the contents of the proposed evidence; and
- (b) be given sufficient time before the hearing to provide all the co-accused persons with a fair opportunity to prepare to meet that evidence.

Circumstances
when co-accused
is compellable

40. (1) Where an accused is charged with an offence jointly with any other person, the accused shall be a competent and compellable witness for the prosecution against the other person, and without the consent of that other person or for the defence of the other person at a stage of the proceedings, if –

- (a) the proceedings against the accused have been stayed, or the information against the accused withdrawn or dismissed; or
- (b) the accused has been acquitted of the offence; or
- (c) the accused has pleaded guilty to the offence; or
- (d) the accused is being tried separately.

(2) When two or more persons are jointly charged with any offence, the evidence of any person called as a witness for the prosecution or the defence under this section may be received as evidence either for or against any of the persons so charged.

41. (1) Where a court considers that the capacity of a witness to give evidence satisfactorily may be limited and that limitation may be lessened by making special arrangements for the taking of that person's evidence, the court may make such special arrangements that it sees fit in the interest of justice.

(2) Without limiting the generality of subsection (1), special arrangements may be requested by –

- (a) victims of a crime against morality;
- (b) victims or witnesses in domestic violence proceedings;
- (c) persons under the age of 18 years; and
- (d) persons with a mental or physical disability, illness or impairment.

(3) The court must have regard to the following matters in determining what orders to make –

- (a) the desirability of minimising distress or trauma for the witness;
- (b) the witness must be treated with dignity, respect and compassion;
- (c) the possibility of the witness being intimidated when giving evidence;
- (d) the proceeding should be resolved as quickly as possible.

(4) Special arrangements that the court may make include the following –

- (a) closing of the court;
- (b) restriction on publication of evidence;
- (c) obscuring the witness from the view of the accused in a criminal trial;
- (d) remote audio visual taking of evidence;

- (e) allowing a support person to accompany the witness;
- (f) making an order under section 27.

Vulnerable witnesses cross-examined by accused

42. (1) A court may intervene where a witness's ability to testify under cross-examination may be adversely affected if the accused conducts the cross-examination.

(2) If the court considers it necessary in the interest of justice, it may appoint a person to ask the witness any questions that the accused requests the person to ask the witness.

(3) A person appointed under this section, when acting in the course of such appointment, must not give the accused or witness legal or other advice.

(4) A witness may consent to be cross-examined by the accused.

PART 5 – GENERAL RULES ABOUT GIVING EVIDENCE

Ordinary manner of giving evidence

43. The ordinary way for a witness to give evidence is –

- (a) in a criminal or civil proceeding, orally in a courtroom in the presence of –
 - (i) the court; and
 - (ii) the parties to the proceeding and their counsel; and
 - (iii) any member of the public who wishes to be present, unless excluded by order of the court; or
- (b) in a criminal proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if both the prosecution and an accused consent to the giving of evidence in this form; or
- (c) in a civil proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if –

- (i) rules of court permit or require the giving of evidence in this form; or
- (ii) both parties consent to the giving of evidence in this form.

44. The court may make such orders as it considers just in relation to –

Court to control questioning

- (a) the way in which witnesses are to be questioned; and
- (b) the production and use of documents and things in connection with the questioning of witnesses; and
- (c) the order in which parties may question a witness; and
- (d) the presence and behaviour of any person in connection with the questioning of witnesses.

45. (1) In any proceeding, the court may, in the interest of justice, ask a witness any question.

Court may question witness

- (2) If the court questions a witness –
 - (a) a party, other than the party who called the witness, may cross-examine the witness on any matter raised by the court's questions; and
 - (b) the party who called the witness may re-examine the witness.

46. (1) In any proceeding –

Parties may question witness

- (a) a witness first gives evidence-in-chief; and
 - (b) after giving evidence-in-chief, the witness may be cross-examined by all parties that wish to do so, other than the party calling the witness; and
 - (c) after all parties who wish to do so have cross-examined the witness, the witness may be re-examined.
- (2) If a witness gives evidence in an affidavit or by reading a written statement in a courtroom, it is to be treated for the purpose of this Act as evidence given in chief.

(3) The procedure for examining unfavourable witnesses is set out on Part 13.

Giving evidence
in narrative form

47. A court may, either of its own initiative or on application, direct that a witness give evidence-in-chief wholly or partly in narrative form.

Use of charts and
summaries

48. Evidence may be given in the form of charts, summaries or other explanatory material if it appears to the court that the material would be likely to aid its comprehension of other evidence that has been given or is to be given.

Reviving memory

49. (1) The court may, on the request of a party, give such directions as are appropriate to ensure that specified documents and things used by a witness otherwise than while giving evidence to try to revive his or her memory are produced to the party for the purposes of the proceeding.

(2) The court may refuse to admit the evidence given by the witness so far as it concerns a fact as to which the witness so tried to revive his or her memory if, without reasonable excuse, the directions have not been complied with.

Reviving memory
on facts or
opinion

50. (1) A witness must not, in the course of giving evidence, use a document to try to revive his or her memory about a fact or opinion unless the court gives leave.

(2) Without limiting the matters that the court may take into account in deciding whether to give leave, it is to take into account –

- (a) whether the witness will be able to recall the fact or opinion adequately without using the document; and
- (b) whether so much of the document as the witness proposes to use is, or is a copy of, a document, that –
 - (i) was written or made by the witness when the events recorded in it were fresh in his or her memory; or
 - (ii) was, at such a time, found by the witness to be accurate.

(3) If a witness has, while giving evidence, used a document to try to revive his or her memory about a fact or

opinion, the witness may, with the leave of the court, read aloud, as part of his or her evidence, so much of the document as relates to that fact or opinion.

(4) The court is, on the request of a party, to give such directions as the court thinks fit to ensure that so much of the document as relates to the proceeding is produced to that party.

51. Whenever a witness wishes to refresh his or her memory by reference to any document, the witness may with the permission of the court refer for such purpose to a copy of the document, provided that the court is satisfied that there is sufficient reason for the non-production of the original.

Referring to
copies of
documents to
refresh memory

52. (1) A court may permit evidence to be given from a place other than the courtroom by means of an audio visual link or other similar facilities that enable communication between that place and the courtroom, if it is in the interest of justice to do so.

Evidence by audio
visual link

(2) If a person is permitted to give evidence by means of an audio visual link or other similar facilities from a location outside a court, that location is taken to be part of the court in which the proceedings are being held.

(3) While a vulnerable person is giving evidence by means of an audio visual link or other similar facilities, only persons approved by the court may be present in the room with the vulnerable person.

(4) While a witness is giving evidence by means of an audio visual link or other similar facilities, the persons who have an interest in the proceedings must be able to see the witness (and any person present with the witness) on the same or another television monitor while the witness is giving evidence.

(5) A person who is permitted to give evidence by means of an audio visual link or other similar facilities may not give courtroom identification evidence by that means.

(6) If the court is not equipped with an audio visual link or other similar facilities, or it otherwise considers it appropriate to do so, the court may adjourn the proceedings or any part of the proceedings to a court or place that is equipped with such facilities to enable a witness to give evidence by such means.

(7) A court may permit evidence to be given from a place other than a courtroom by means of telephone or similar facilities that enable communication between that place and the courtroom if it is in the interest of justice to do so and if the parties consent.

Rules may provide giving of evidence by audio visual link

53. Rules of court may provide giving of evidence to the court by an audio visual link from a location outside of Solomon Islands.

Leading questions in examination-in-chief or re-examination

54. (1) A leading question must not be put to a witness in examination-in-chief or in re-examination unless –

- (a) the court gives leave; or
- (b) the question relates to a matter introductory to the witness's evidence; or
- (c) no objection is made to the question and (leaving aside the party conducting the examination-in-chief or re-examination) each other party to the proceeding is represented by a legal practitioner; or
- (d) the question relates to a matter that is not in dispute; or
- (e) if the witness has specialised knowledge based on the witness's training, study or experience, the question is asked for the purpose of obtaining the witness's opinion about a hypothetical statement of facts, being facts in respect of which evidence has been, or is intended to be given.

(2) Unless the court otherwise directs, subsection (1) does not apply to civil proceedings to a question that relates to an investigation, inspection or report that the witness made in the course of carrying out public or official duties.

(3) Subsection (1) does not prevent a court from exercising power under rules of court to allow a written statement or report to be tendered or treated as evidence in chief of its maker.

55. Leading questions may be asked in cross-examination, but the questions put must not assume that facts have been proved, or that particular answers have been given, if such is not the case.

Leading questions
in cross-
examination

56. The court may prohibit leading questions from being put in cross-examination to a witness who shows a strong interest or bias in favour of the cross-examining party.

Court may
prohibit leading
questions in cross-
examination

57. If a party fails to cross-examine a witness on substantial matters of the party's case that contradict the evidence of the witness if the witness is, or might be, in a position to give admissible evidence on such matters, the court may –

Contradictory
evidence

- (a) grant permission for the witness to be recalled and questioned about the contradictory evidence; or
- (b) admit the contradictory evidence on the basis that the weight to be given to it may be affected by the fact that the witness, who may have been able to explain the contradiction, was not questioned about the evidence; or
- (c) exclude the contradictory evidence; or
- (d) make any other order which the court considers just.

58. (1) In a case of an offence against morality, no evidence can be given and no question can be put to a witness relating directly or indirectly to the sexual experience of the complainant with any person other than the accused, except with the permission of the court.

Evidence in
relation to sexual
experience in
offences against
morality

(2) In a case of an offence against morality, no evidence can be given and no question can be put to a witness relating directly or indirectly to the sexual experience of the complainant with the accused unless the evidence or question –

- (a) relates directly to the acts, events, or circumstances which constitute the offence for which the accused is being tried; or
- (b) is of such direct relevance to facts in issue in the proceeding or the issue of the appropriate

sentence that it would be contrary to the interest of justice to exclude it.

(3) In a case of an offence against morality, no evidence can be given and no question can be put to a witness relating directly or indirectly to the reputation of the complainant in sexual matters –

- (a) for the purpose of supporting or challenging the truthfulness of the complainant; or
- (b) for the purpose of establishing the complainant's consent; or
- (c) for any other purpose except with the permission of the court.

Re-examination

59. (1) On re-examination, a witness –

- (a) may be questioned about matters arising out of evidence given by the witness in cross-examination, including any qualification in cross-examination of evidence given by the witness in examination-in-chief, but
- (b) may not be questioned about any other matter except with the permission of the court.

(2) If permission is given under subsection (1)(b), the court –

- (a) must allow other parties to cross-examine the witness on the additional evidence given; and
- (b) may allow further re-examination on matters arising out of that cross-examination.

Parties recalling witnesses

60. (1) The court may give leave to a party to recall a witness to give evidence about a matter raised by evidence adduced by another party, being a matter on which the witness was not cross-examined, if –

- (a) the evidence concerned has been admitted; and
- (b) it contradicts evidence about the matter given by the witness in examination-in-chief; and

(c) the witness could have given evidence about the matter in examination-in-chief.

(2) A reference in this section to a matter raised by evidence adduced by another party includes reference to an inference drawn from, or that the party intends to draw from, that evidence.

61. (1) The court may recall a witness who has given evidence in a proceeding if the court considers that it is in the interest of justice to do so.

Court recalling witnesses

(2) The court may recall a witness under this section at any time until judgment is delivered in the proceeding.

62. All witnesses as to fact in a criminal proceeding, other than an accused, should remain outside of the courtroom until required to give evidence.

Witness to remain outside courtroom

63. A court can not exclude a witness from giving evidence who has heard the evidence from another witness, but may take that into account when considering what weight the evidence of such a witness should be given.

Witnesses who hear evidence

64. (1) In any proceeding, a party may not offer further evidence after closing that party's case, except with the leave of the court.

Re-opening of case

(2) In a civil proceeding, the court may not grant leave under subsection (1) if any unfairness caused to any other party by the granting of leave cannot be remedied by an adjournment or an award of costs, or both.

(3) In a criminal proceeding, the court may grant leave to the prosecution under subsection (1) if –

- (a) further evidence relates to a purely formal matter; or
- (b) further evidence relates to a matter arising out of the conduct of the defence, the relevance of which could not reasonably have been foreseen; or
- (c) further evidence was not available or admissible before the prosecution's case was closed; or

- (d) for any other reason the interest of justice require the further evidence to be admitted.

(4) In a criminal proceeding, the court may grant permission to an accused under subsection (1) if the interest of justice require the further evidence to be admitted.

(5) The court may grant permission under subsection (1) at any time until judgment is delivered.

Witness called in error

65. A party is not to cross-examine a witness who has been called in error by another party and has not been questioned by that other party about a matter relevant to a question to be determined in the proceeding.

Improper questions

66. (1) A court may disallow a question, or inform the witness that it need not be answered, if the court considers the question put to a witness in cross-examination to be –

- (a) misleading or confusing; or
- (b) unduly annoying, harassing, intimidating, humiliating, offensive, oppressive or repetitive; or
- (c) put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate; or
- (d) without basis, other than a sexist, racial, cultural or ethnic stereotype.

(2) A question is not to be disallowed merely because –

- (a) the question challenges the truthfulness of the witness or the consistency or accuracy of a statement made by the witness; or
- (b) the question requires the witness to discuss a subject that could be considered to be distasteful or private.

(3) A party may object to a question under this section or the court may act on its own initiative.

(4) A person must not, without the express permission of a court, print or publish a question that the court has disallowed under this section.

67. (1) In any proceeding, a police officer may give evidence-in-chief by reading or being led through a written statement previously made by the police officer.

Police evidence

(2) Evidence may not be so given unless –

- (a) the statement was made by the police officer at the time of or soon after the occurrence of the events to which it refers; and
- (b) the police officer signed the statement when it was made; and
- (c) a copy of the statement had been given to the person charged or other party or to his or her legal practitioner a reasonable time before the hearing of the evidence.

(3) A reference in this section to a police officer includes a reference to a person who, at the time the statement concerned was made, was a police officer.

68. (1) A court may order communication assistance be provided to an accused in a criminal proceeding if needed to enable that accused to understand the proceeding and to give evidence if the accused elects to do so.

Communication
assistance to
accused

(2) Communication assistance may be provided to an accused in a criminal proceeding on the application of the accused in the proceeding or on the initiative of the court.

(3) A person who, whilst providing communication assistance to an accused, wilfully makes any false or misleading statement to the accused or to the court commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding twelve months.

69. (1) A court may order communication assistance be provided to a witness in a civil or criminal proceeding if needed to enable that witness to give evidence.

Communication
assistance to
witnesses

(2) Communication assistance may be provided to a witness on the application of the witness or any party to the proceeding or on the initiative of the court.

(3) A person who, whilst providing communication assistance to a witness, wilfully makes any false or misleading statement to the witness or to the court commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding twelve months.

Hearing and
speech impaired
witnesses

70. (1) A witness who cannot hear adequately may be questioned in any appropriate way.

(2) A witness who cannot speak adequately may give evidence by any appropriate means.

(3) This section does not affect the right of a witness to whom this section applies to give evidence about a fact through an interpreter.

Impartiality of
interpreter

71. If a party to a proceeding disputes the ability or impartiality of a person to act as an interpreter, the person may only act as an interpreter if the court is satisfied as to the person's ability and impartiality.

Viewing by the
court

72. (1) If, in any proceedings, the court considers that a view is in the interest of justice, the court may hold a view.

(2) A view may be held or ordered on the application of any party or on the court's own initiative.

(3) The court may hold a view at any time before judgment is delivered.

(4) Evidence obtained at a view may be used as though that information had been given in evidence.

(5) A party, including an accused in a criminal proceeding, and legal practitioner for the parties, are entitled to attend a view, but any party, or that party's legal practitioner, may waive that entitlement.

(6) In this section, "view" means an inspection by the court of a place or thing which is not in the courtroom.

73. The court may draw any reasonable inference from what it sees, hears or otherwise notices during a **view**, demonstration, experiment or inspection.

Court may make inference after viewing

74. (1) A court may, on application, order that a demonstration, experiment or inspection be held.

Demonstration, experiment or inspection

(2) A court is not to make an order unless satisfied that –

- (a) the parties will be given a reasonable opportunity to be present; and
- (b) the court will be present.

(3) Without limiting the matters that the court may take into account in deciding whether to make an order, the court is to take into account the following –

- (a) whether the parties will be present;
- (b) whether the demonstration, experiment or inspection will, in the court’s opinion, assist the court in resolving issues of fact or understanding the evidence;
- (c) the danger that the demonstration, experiment or inspection might be unfairly prejudicial, might be misleading or confusing or might cause or result in undue waste of time;
- (d) in the case of a demonstration, the extent to which the demonstration will properly reproduce the conduct or event to be demonstrated;
- (e) in the case of an inspection, the extent to which the place or thing to be inspected has materially altered.

(4) The court is not to conduct an experiment in the course of its deliberations.

(5) This section does not apply in relation to the inspection of an exhibit by the court.

PART 6 – EVIDENCE OF JUDGMENTS AND CONVICTIONS

Conviction is
proof of
commission of
offence

75. (1) When the fact that a person has committed an offence is relevant to an issue in a civil proceeding, proof that the person has been convicted of that offence is conclusive proof that the person committed the offence.

(2) Despite subsection (1), if the conviction of a person is proved under that subsection, the court may, in exceptional circumstances –

- (a) permit a party to the proceeding to offer evidence tending to prove that the person convicted did not commit the offence for which the person was convicted; and
- (b) if satisfied that it is appropriate to do so, direct that the issue whether the person committed the offence be determined without reference to subsection (1).

(3) This section applies –

- (a) whether or not the person convicted is a party to the proceeding; and
- (b) whether or not the person was convicted on a guilty plea.

(4) A party to a criminal proceeding who wishes to offer evidence of the fact that a person has been convicted of an offence must first inform the court of the purpose for which the evidence is to be offered.

Conviction as
proof in
defamation
proceedings

76. In a proceeding for defamation that is based on a statement made to the effect that a person has committed an offence, proof that the person has been convicted of the offence is conclusive proof that the person committed the offence if the conviction –

- (a) subsisted at the time that the statement was made; or
- (b) subsists at the time of the proceeding.

77. (1) Evidence of a judgment or a finding of fact in a civil proceeding is not admissible in a criminal proceeding or another civil proceeding to prove the existence of a fact that was in issue in the proceeding in which the judgment was given.

(2) This section does not affect the operation of -

- (a) a judgment *in rem*; or
- (b) the law relating to *res judicata* or issue estoppel.

78. (1) Evidence of the following facts, if admissible, may be proved, in addition to any other mode provided by any law, by a certificate purporting to be signed by a court, a registrar or other officers having custody of the relevant court records –

- (a) the conviction or acquittal of a person charged with an offence and the particulars of the offence and of the person, and the name and date and place of incorporation of the person if the person is a body corporate;
- (b) the sentencing by a court of a person to any penalty or other disposition of the case following a plea or finding of guilt, and the particulars of the offence for which that person was sentenced or otherwise dealt with and of the person, and the name and date and place of incorporation of the person if the person is a body corporate;
- (c) an order or judgment of a court and the nature, parties and particulars of the proceeding to which the order or judgment relates;
- (d) the existence of a criminal or civil proceeding, whether or not the proceeding has been concluded, and the nature of the proceeding.

(2) The certificate referred to in subsection (1)(a) and (b) must include the name and date of birth if the person is an individual.

(3) A certificate under this section is sufficient evidence of the facts stated in it without proof of the signature or office of the person appearing to have signed the certificate.

(4) Subsection (5) applies if –

- (a) a certificate under this section is offered in evidence in a proceeding for the purpose of proving the conviction or acquittal of a person, or the sentence by a court of a person to a penalty, or an order made by a court concerning a person; and
- (b) the name of the person stated in the certificate is substantially similar to the name of the person concerning whom the evidence is offered.

(5) If this subsection applies, it is presumed, in the absence of evidence to the contrary, that the person whose name is stated in the certificate is the person concerning whom the evidence is offered.

Propensity
evidence

79. (1) A party may offer propensity evidence in civil or criminal proceedings about any person.

(2) However, propensity evidence about –

- (a) an accused in a criminal proceeding may be offered only in accordance with section 39 or 80, whichever section is applicable; and
- (b) a victim of an offence against morality may be offered only in accordance with section 58.

Propensity evidence
by the prosecution

80. (1) The prosecution may offer propensity evidence about an accused in a criminal proceeding only if the evidence has a probative value in relation to an issue in dispute in the proceeding which outweighs the risk that the evidence may have an unfairly prejudicial effect on an accused.

- (2) When assessing the probative value of propensity evidence, the court must take into account the nature of the issue in dispute.
- (3) When assessing the probative value of propensity evidence, the court may consider, among other matters, the following –

- (a) the frequency with which the acts, omissions, events or circumstances which are the subject of the evidence have occurred;
 - (b) the connection in time between the acts, omissions, events or circumstances which are the subject of the evidence and the acts, omissions, events or circumstances which constitute the offence for which an accused is being tried;
 - (c) the extent of the similarity between the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which an accused is being tried;
 - (d) the number of persons making allegations against an accused is the same as, or similar to, the subject of the offence for which an accused is being tried;
 - (e) whether the allegations described in paragraph (d) may be the result of collusion or suggestibility;
 - (f) the extent to which the acts, omissions, events or circumstances which are the subject of the evidence and the acts, omissions, events or circumstances which constitute the offence for which an accused is being tried are unusual.
- (4) When assessing the prejudicial effect of evidence on an accused, the court must consider, among any other matters –
- (a) whether the evidence is likely to unfairly predispose the fact-finder against an accused; and
 - (b) whether the fact-finder will tend to give disproportionate weight, in reaching a verdict, to evidence of other acts or omissions.

(5) An accused in a criminal proceeding may offer tendency evidence about himself or herself.

(6) Notwithstanding the requirements of this section, if an accused offers tendency evidence about himself or herself, the prosecution or another party may, with the permission of the court, offer propensity evidence about that accused.

PART 7 – IDENTIFICATION EVIDENCE

Identification
evidence

81. (1) A police officer may use one or more of the following procedures to help gather evidence of the identity of a person suspected of having committed an offence –

- (a) an identification parade;
- (b) a photo board containing at least 12 photos of people of similar appearance, 1 of whom is the person suspected of having committed the offence;
- (c) videotape;
- (d) computer generated images.

(2) The police officer must comply with any procedures established for the taking of identification evidence.

(3) The police officer may ask a person to take part in an identification parade.

(4) The person may refuse to take part in the parade.

(5) This section does not limit the procedures a police officer may use to help gather evidence of the identity of a person suspected of having committed an offence.

Identification
procedure

82. (1) The way an identification procedure is conducted must allow only one witness involved in the procedure to see or hear the procedure at a time.

(2) After a witness has taken part in the procedure, the witness must, as far as reasonably practicable, be prevented from speaking about the procedure to any other witness until the procedure ends.

(3) The way a witness identifies a person during an identification procedure may be electronically recorded if facilities are available and it is reasonably practicable to do so.

(4) A police officer must not stop a person being present during the procedure to support the witness unless –

- (a) the other person is a witness involved in the procedure; or
- (b) the officer suspects the person will influence the witness's decision or disrupt the procedure.

(5) If a police officer stops someone being present during the procedure to support a witness, the police officer must –

- (a) give to the witness the reasons for stopping the person being present; and
- (b) advise the witness he or she may arrange for someone else to be present to support the witness; and
- (c) if asked, allow someone else to be present.

83. (1) This section applies if a police officer conducts an identification parade that includes a person reasonably suspected of having committed an offence (the “suspect”).

Identification
parades

(2) If reasonably practicable and if facilities are available, a police officer must cause the behaviour and position of each person in an identification parade to be photographed or otherwise electronically recorded.

(3) A police officer must explain the procedure for an identification parade to a suspect before conducting the identification parade.

(4) The explanation must include the police officer telling the suspect the following –

- (a) the identification parade can not be conducted unless the suspect agrees;

- (b) the suspect may have a friend, relative or legal practitioner present at the identification parade if that person can attend within a reasonable time;
- (c) anyone present may not interfere with the procedure in any way;
- (d) the suspect may choose a position in the parade and change position in the parade after each witness has viewed the parade;
- (e) the suspect's identity will not be given to a witness unless the witness identifies the person and a proceeding is started against the person.

(5) A police officer conducting an identification parade must, as far as reasonably practicable, replicate the conditions, described by the witness, when the witness saw a person involved in the offence, including –

- (a) changing the lighting in the room; or
- (b) varying the distance from which the witness views the identification parade; or
- (c) concealing aspects of the participants in the identification parade.

(6) Each witness must view the identification parade separately.

(7) The police officer conducting the identification parade must ask the witness to carefully view the parade and to state whether the witness recognises anyone in the parade.

(8) The police officer must ask the question in a way that does not suggest the identity of any participant in the identification parade.

(9) If the witness indicates he or she recognises a person in the identification parade, the police officer conducting the parade must ask the witness to clearly identify the person recognised, such as, by stating the number of the person identified or describing his or her position in the parade.

84. In a photo identification, to avoid directing the attention of the witness to a particular photograph, the police officer must ensure nothing is marked on any photograph or the backing board on which the photograph is mounted.

85. (1) A police officer showing witnesses a photo board must show the photo board to each witness separately.

(2) The police officer must ask the witness to carefully view the photo board and to state whether the witness recognises anyone whose photo is on the photo board and must ask the question in a way that does not suggest the identity of a person whose photograph is on the photo board.

(3) If the witness indicates he or she recognises a person in a photo on the photo board the police officer must ask the witness to –

- (a) clearly state the number of the photograph the witness has identified as being that of the person alleged to be responsible for committing the relevant offence; and
- (b) write the photograph number and the date the photo board was shown to the witness –
 - (i) on the front of an unmarked photocopy of the photo board; or
 - (ii) on the back of the photo board or the selected photograph; and
- (c) sign the photo board, photocopy or photograph where the person has written on it.

86. Voice identification evidence offered by the prosecution in a criminal proceeding is inadmissible unless the prosecution proves on the balance of probabilities that the circumstances in which the identification was made were likely to have produced a reliable identification.

PART 8 – DOCUMENTARY EVIDENCE

87. (1) A reference in this Part to a document in question is a reference to a document as to the contents of which it is sought to adduce evidence.

(2) A reference in this Part to a copy of a document in question includes a reference to a document that is not an exact copy of the document in question but that is identical to the document in question in all relevant respects.

(3) Section 8 abolishes the original document rule.

Use of evidence
without witness

88. (1) A party must give notice in writing to any other party that it proposes to offer a document (whether or not a public document), a copy of which is attached to the notice, as evidence in the proceeding without calling a witness to produce the document.

(2) A party who on receiving a notice wishes to object to the authenticity of the document to which the notice refers, or to the fact that it is to be offered in evidence without being produced by a witness, must give a notice of objection in writing to party giving the notice.

(3) If no party objects to a proposal to offer a document as evidence without calling a witness to produce it, or if the court dismisses an objection to the proposal –

- (a) the document, if otherwise admissible, may be admitted in evidence; and
- (b) it will be presumed, in the absence of evidence to the contrary, that the nature, origin, and contents of the document are as shown on its face.

(4) A party who proposes to offer a document without calling a witness to produce it must give notice of the proposal –

- (a) in sufficient time before the hearing to provide all the other parties with a fair opportunity to consider the proposal; or
- (b) within the time, whether before or after the commencement of the hearing, that the court allows and subject to any conditions that the court imposes.

(5) A party must give notice of objection to a proposal to offer a document without calling a witness to produce it –

- (a) in sufficient time before the hearing to provide all the other parties with a fair opportunity to consider the notice; or
 - (b) within the time, whether before or after the commencement of the hearing, as the court allows and subject to any conditions that the court imposes.
- (6) The court may in the interest of justice, dispense with the requirement to give notice under subsection (1) or subsection (2) subject to any conditions as the court imposes.

89. (1) A party may adduce evidence of the contents of a document in question by tendering the document in question or by any one or more of the following methods –

Evidence of
contents of a
document

- (a) adducing evidence of an admission made by another party to the proceeding as to the contents of the document in question;
- (b) tendering a document that –
 - (i) is or purports to be a copy of the document in question; and
 - (ii) has been produced, or purports to have been produced, by a device that reproduces the contents of documents;
- (c) if the document in question is an article or thing by which words are recorded in such a way as to be capable of being reproduced as sound, or in which words are recorded in a code (including shorthand writing), tendering a document that is or purports to be a transcript of the words;
- (d) if the document in question is an article or thing on or in which information is stored in such a way that it cannot be used by the court unless a device is used to retrieve, produce or collate it, tendering a document that was or purports to have been produced by use of the device;

- (e) tendering a document that –
 - (i) forms part of the records of or kept by a business (whether or not the business is still in existence); and
 - (ii) is or purports to be a copy of, or an extract from or a summary of, the document in question, or is or purports to be a copy of such an extract or summary;
- (f) if the document in question is a public document, tendering a document that is or purports to be a copy of the document in question and that is or purports to have been printed:
 - (i) by authority of the Government, or of another country; or
 - (ii) by authority of the Parliament, a provincial assembly or a committee of the Parliament or a provincial assembly.

(2) Subsection (1) applies to a document in question whether the document in question is available to the party or not.

(3) If the party adduces evidence of the contents of a document under paragraph (1)(a), the evidence may only be used –

- (a) in respect of the party's case against the other party who made the admission concerned; or
- (b) in respect of the other party's case against the party who adduced the evidence in that way.

(4) A party may adduce evidence of the contents of a document in question that is not available to the party, or the existence and contents of which are not in issue in the proceeding, by –

- (a) tendering a document that is a copy of, or an extract from or summary of, the document in question; or
- (b) adducing from a witness evidence of the contents of the document in question.

90. For the purposes of this Act, a representation contained in a document is taken to have been made by a person if –

Document made
by a person

- (a) the document was written, made or otherwise produced by the person; or
- (b) the representation was recognised by the person as his or her representation by signing, initialling or otherwise marking the document.

91. (1) If a party offers evidence that was produced wholly or partly by a machine, device, or technical process and the machine, device, or technical process is of a kind that ordinarily does what a party asserts it to have done, it is presumed that on a particular occasion the machine, device, or technical process did what that party asserts it to have done, in the absence of evidence to the contrary.

Document
produced by
device or process

- (2) If information or other matter is stored in such a way that it cannot be used by the court unless a machine, device, or technical process is used to display, retrieve, produce or collate it, a party may offer a document that was or purports to have been displayed, retrieved, or collated by use of the machine, device, or technical process.

92. (1) If the imprint of a seal appears on a document and purports to be the imprint of –

Seals and
signatures

- (a) the National Seal of Solomon Islands; or
- (b) another seal of the Government; or
- (c) a seal of another country; or
- (d) the seal of a body (including a court or a tribunal), or a body corporate, established by a law of Solomon Islands or another country,

it is presumed, unless the contrary is proved, that the imprint is the imprint of that seal, and the document was duly sealed as it purports to have been sealed.

(2) If the imprint of a seal appears on a document and purports to be the imprint of the seal of an office holder, it is presumed, unless the contrary is proved, that –

- (a) the imprint is the imprint of that seal; and
- (b) the document was duly sealed by the office holder acting in his or her official capacity; and
- (c) the office holder held the relevant office when the document was sealed.

(3) If a document purports to have been signed by an office holder in his or her official capacity, it is presumed, unless the contrary is proved, that –

- (a) the document was signed by the office holder acting in that capacity; and
- (b) the office holder held the relevant office when the document was signed.

(4) In this section, ‘office holder’ means –

- (a) the Sovereign; or
- (b) the Governor-General; or
- (c) a person holding any other office under the Constitution or law of Solomon Islands or another country.

(5) This section extends to documents sealed, and documents signed, before the commencement of this section.

Seal of body
corporate
established under
Royal Charter or
provincial law

93. (1) If the imprint of a seal appears on a document and purports to be the imprint of the seal of a body (other than a court or a tribunal), or a body corporate, established by Royal Charter or a law of a Province, it is presumed, unless the contrary is proved, that –

- (a) the imprint is the imprint of that seal; and
- (b) the document was duly sealed as it purports to have been sealed.

(2) This section extends to documents sealed before the commencement of this section.

94. The court may presume, until the contrary is shown, that any book to which it may refer for information on matters of public or general interest and that any published map or chart, which is produced for its inspection, was written and published by the person and the time and place by whom or at which it purports to have been written or published.

Books, maps and charts

95. (1) The court may direct that a party may adduce evidence of the contents of one or more documents in question in the form of a summary if –

Summary of long or complex documents

- (a) application is made to it by the party before the hearing concerned; and
- (b) it is satisfied that it would not otherwise be possible conveniently to examine the evidence because of the volume or complexity of the documents in question.

(2) The court may only make a direction if the party seeking to adduce the evidence in the form of a summary has:

- (a) served on each other party a copy of the summary that discloses the name and address of the person who prepared the summary; and
- (b) given each other party a reasonable opportunity to examine or copy the documents in question.

(3) The opinion rule (evidence about an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed) does not apply to evidence adduced in accordance with a direction under this section.

96. It is presumed, unless the contrary is proved, that a document was attested or verified by, or signed or acknowledged before, a justice of the peace, legal practitioner, Commissioner of Oaths or notary public, if –

Evidence of acts by justice, notary public or legal practitioner

- (a) a law requires, authorises or permits it to be attested, verified, signed or acknowledged by a justice of the peace, a legal practitioner or a notary public; and

- (b) it purports to have been so attested, verified or acknowledged.

Attesting witness
not required to give
evidence

97. It is not necessary to adduce the evidence of an attesting witness to a document (not being a testamentary document) to prove that the document was signed or attested as it purports to have been signed or attested.

Older documents

98. If a document that is or purports to be more than 20 years old is produced from proper custody, it is presumed, unless the contrary is proved, that –

- (a) the document is the document that it purports to be;
and
- (b) if it purports to have been executed or attested by a person, it was duly executed or attested by that person.

Tender of
documents

99. (1) A party is not to be required to tender a document only because the party, whether under this Act or otherwise –

- (a) called for the document to be produced to it;
or
- (b) inspected it when it was so produced.

(2) The party who produces a document so called for is not entitled to tender it only because the party to whom it was produced, or who inspected, fails to tender it.

Impounding
documents

100. The court may direct that a document that has been tendered or produced before the court (whether or not it is admitted in evidence) is to be impounded and kept in the custody of an officer of the court or of another person for such period, and subject to such conditions, as the court thinks fit.

Provincial
government records

101. All public acts and records of any provincial government that are proved or authenticated in accordance with this Act are to be given in a court and in any other public office in Solomon Islands, such faith and credit as they have by law or usage in the public offices of that province.

Evidence of
banker's record

102. (1) A bank or officer of a bank shall not, in any proceeding other than proceedings instituted by or against the bank, be compelled to produce any banker's record the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions or accounts in such record except –

- (a) in civil proceedings, by order of a court made for special cause;
 - (b) in criminal proceedings, by order of the court of trial.
- (2) In any proceeding, the matters referred to in subsection (1)(a) and (b) in relation to a banker's record may be proved, orally or by affidavit, by an officer of the bank.
- (3) Any affidavit in subsection (2) shall, on its production without further proof, be admitted in evidence and may include –
- (a) an explanation of the contents of the copy of any entry or matter recorded in such banker's record which is tendered in evidence; or
 - (b) any abbreviations, symbols or other markings appearing in such copy that may be relevant in the proceeding; and
 - (c) a description of the banker's record, its nature and use, and the procedures followed in keeping it.
- (4) Any matter to be stated in an affidavit under this section may be made to the best of the knowledge and belief of the person making the affidavit.

103. (1) On the application of any party to any proceedings the court or a judge may order that such party be at liberty to inspect and take copies of any entries in banker's record for any of the purposes of such proceedings.

- (2) An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank five clear days before the same is to be obeyed, unless the court or judge otherwise directs.
- (3) The costs of any application to the court or judge under or for the purposes of this section, and the costs of anything done or to be done under an order of the court or judge made under or for purposes of this section, shall be in the discretion of the court or judge, who may order the same

or any part thereof to be paid to any party by the bank, where the same have been occasioned by default or delay on the part of the bank.

(4) Any such order against a bank may be enforced as if the bank were a party to the proceeding.

Gazettes and other
official Government
documents

- 104.** (1) Subsection (2) applies to a document that purports –
- (a) to have been printed in the *Gazette*; or
 - (b) to have been printed or published by authority of the Government; or
 - (c) to have been printed or published by the authority of the government of another country; or
 - (d) to have been printed or published under the authority of the Parliament.
- (2) If this subsection applies, the document is presumed, unless the contrary is proved, to be what it purports to be and to have been so printed and published and to have been published on the date on which it purports to have been published.
- (3) Subsection (4) applies to a document that purports –
- (a) to have been printed or published in a government or official gazette (by whatever name called) of another country; or
 - (b) to have been printed or published by the government or official printer of another country; or
 - (c) to have been printed or published by the authority of the legislative, executive, or judicial branch of the government of another country; or
 - (d) to have been printed or published by an international organisation.

(4) If this subsection applies, the document is presumed, unless the contrary is proved, to be what it purports to be and to have been so printed or published in the manner provided in subsection (3) and to have been published on the date on which it purports to have been published

105. (1) Evidence of a record or of a public record of the Government may be adduced by producing a document that –

Evidence of
Government
public records

- (a) purports to be such a record and to be signed or sealed by –
 - (i) a Permanent Secretary, or a Provincial Secretary, as the case requires; or
 - (ii) a person who might reasonably be supposed to have custody of the record; or
- (b) purports to be a copy of or extract from the record that is certified to be a true copy or extract by –
 - (i) a Permanent Secretary, or a Provincial Secretary, as the case requires; or
 - (ii) a person who might reasonably be supposed to have custody of the record.

(2) If such a document is produced, it is presumed, unless evidence that is sufficient to raise doubt about the presumption is adduced, that –

- (a) the document is the record, copy or extract that it purports to be; and
- (b) the Permanent Secretary, Provincial Secretary or person –
 - (i) signed or sealed the record; or
 - (ii) certified the copy or extract as a true copy or extract

Documents relating
to court processes

106. Evidence of a public document that is a judgment, act or other process of a Solomon Islands court or a foreign court, or that is a document lodged with a Solomon Islands court or a foreign court, may be adduced by producing a document that purports to be a copy of the public document and that –

- (a) it proved to be an extracted copy; or
- (b) purports to be sealed with the seal of that court; or
- (c) purports to be signed by a judge, magistrate, registrar or other proper officer of that court.

Official
Government
statistics

107. A document that purports –

- (a) to be published by the Government Statistician or Census Commissioner; and
- (b) to contain statistics or abstracts compiled and analysed by the Government Statistician or Census Commissioner;

is evidence that those statistics or abstracts were compiled and analysed by the Government Statistician under the Statistics Act (Cap. 54) or by the Census Commissioner under the Census Act (Cap. 53) or under any other law.

Copies of public
documents

108. (1) Subsection (2) applies to a document that purports to be a public document, or a copy of or extract from or a summary of a public document, and to have been –

- (a) sealed with the seal of a person or a body that might reasonably be supposed to have the custody of that public document; or
- (b) certified to be such a copy, extract or summary by a person who might reasonably be supposed to have the custody of that public document.

(2) If this subsection applies, the document is presumed, unless the contrary is proved, to be a public document or a copy of the public document or an extract from or summary of the public document, and may be offered in evidence to prove the truth of its contents.

109. (1) A party may offer a document that purports to be a translation into English of a document in a language other than English if notice is given to all other parties in sufficient time before the hearing to provide those other parties with a fair opportunity to scrutinise the translation and the original document.

(2) The translation is presumed to be an accurate translation, in the absence of evidence to the contrary.

(3) A party, if notice is given to all other parties in sufficient time before the hearing to provide those other parties with a fair opportunity to scrutinise the transcript, may offer a document that purports to be a transcript of information or other matter that is recorded –

- (a) in a code (including shorthand writing or programming code); or
- (b) in a way that is capable of being reproduced as sound or script.

(4) A party who offers a transcript of information or other matter in a sound recording under subsection (3) must play all or part of the sound recording in court during the hearing if -

- (a) the sound recording is available; and
- (b) the court so directs, either on the application of another party or on the court's own initiative.

110. (1) Where a document is authorised or required to be served, or any notice is authorised or required to be given, by post or by registered post, a certificate purporting –

- (a) to certify –
 - (i) that a specified document or notice, addressed to a person named in the certificate, was addressed to that person at a specified address;
 - (ii) that the appropriate postage on the document or notice was prepaid; and

- (iii) that the document or notice was dispatched by post or by registered post at a time and place specified in the certificate; and
- (b) to be signed at the time and place specified in the certificate by the person who –
 - (i) ensured that the appropriate postage on the document or notice was prepaid; and
 - (ii) dispatched the document or notice by post or by registered post as the specified time and place,

shall be admitted in any proceeding before any court on its production without further proof.

(2) On the production of a certificate under subsection

(1) –

- (a) the court before which it is produced shall, until the contrary is proved, presume -
 - (i) that the facts stated in it relating to the posting of the document or notice specified in it are true;
 - (ii) that the certificate was signed at the time and place specified in it by the person who posted the specified document or notice; and
- (b) the certificate shall be *prima facie* evidence of all of the matters stated.

Evidence of foreign
law

111. (1) A party may offer as evidence of a written law, treaty, or act of state, of another country –

- (a) evidence given by an expert; or
- (b) a copy of a written law, treaty, or act of state that is certified as a true copy by a person who might reasonably be supposed to have the custody of the written law, treaty, or act of state; or

- (c) any document containing the written law, treaty, or act of state that purports to have been issued by the government or official printer of the country or by authority of the government or administration of the country; or
- (d) any document containing the written law, treaty, or act of State that appears to the court to be a reliable source of information.

(2) A party who wishes to adduce evidence under subsection (1)(b) or (d) of the contents of the document in question must, not less than twenty-eight days (or such other period as may be prescribed by the regulations or by rules of court) before the day on which the evidence is adduced, serve on each other party a copy of the document proposed to be tendered unless the court otherwise directs.

(3) In addition, or as an alternative, to the evidence of an expert, a party may offer as evidence of the unwritten or common law of another country or as evidence of the interpretation of a written law of another country a document –

- (a) containing reports of judgments of the courts of the country; and
- (b) that appears to the court to be a reliable source of information about the law of that country.

(4) A party may offer as evidence of a written law of another country or of the unwritten or common law of another country any publication –

- (a) that describes or explains the law of that country; and
- (b) that appears to the court to be a reliable source of information about the law of that country.

(5) A court is not bound to accept or act on a statement in any document as evidence of the law of another country.

(6) A reference in this section to “written law” of another country includes a reference to a proclamation, regulation,

rule, by-law or other instrument of subordinate legislation of the country.

Law reports of
foreign countries

112. (1) Evidence of the unwritten or common law of another country may be adduced by producing a book containing reports of judgments of courts of the country if the book is or would be used in the courts of the country to inform the courts about the unwritten or common law of the country.

(2) Evidence of the interpretation of a statute of another country may be adduced by producing a book containing reports of judgments of courts of another country if the book is or would be used in the courts of the another country to inform them about the interpretation of the statute.

Documents sworn
or verified in
Commonwealth
countries

113. (1) All documents required to be sworn or affirmed or verified in causes or matters pending in any court, shall and may be sworn or affirmed or verified in any Commonwealth country before any court, judge, notary public or person lawfully authorised to administer oaths in such country, or a consular officer in that Commonwealth country.

(2) The judges and officers of any court shall take judicial notice of the seal for signature, as the case may be, of any such court, judge, notary public, or consular officer attached, appended, or subscribed to any such document as aforesaid.

Documents filed in
foreign court or
consulate

114. (1) All documents legally and properly filed or recorded in any foreign court or consulate according to the law and practice of such court or consulate, and all copies of such documents, shall be admissible in evidence in any proceedings on being proved in like manner as any documents filed or recorded in any foreign court are provable under this or any other written law.

(2) All documents whatsoever so filed or recorded in any foreign court or consulate, and all copies of such documents, shall, when so proved and admitted, be held authentic and effectual for all purposes of evidence as the same would be held in such foreign court or consulate.

Published
documents

115. A court may, in matters relating to public history, literature, science, or art, admit as evidence any published documents as the court considers to be reliable sources of information on the subjects to which they respectively relate.

116. (1) The probate of a will or codicil or letters of administration with the will or codicil annexed shall be evidence of the original will or codicil.

(2) A probate of any will or codicil or letters of administration with the will or codicil annexed shall in all cases be prima facie evidence of the death and the date of the testator or intestate.

(3) In this section, 'probate of a will or codicil or letters of administration with the will or codicil annexed' includes –

- (a) an exemplification of probate or of letters of administration; and
- (b) any document accepted as sufficient in place of such exemplification by the High Court.

PART 9 – HEARSAY

117. A hearsay statement is not admissible except as provided by this Act or other law.

Hearsay

118. (1) A hearsay statement is admissible in any proceeding if –

General
admissibility of
hearsay

- (a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and
- (b) either –
 - (i) the maker of the statement is unavailable as a witness; or
 - (ii) in any case where the court considers that undue expense and delay would be caused if the maker of the statement were required to be a witness.

(2) In a criminal proceeding, no hearsay statement may be offered in evidence unless –

- (a) the party proposing to offer the statement has given reasonable notice of the intention to rely on the statement; or
- (b) a other party has waived the requirement for notice; or
- (c) the court dispenses with the requirement for notice in the interest of justice.

(3) If an accused in a criminal proceeding does not give evidence, the accused may not offer his or her hearsay statement as evidence in the proceeding.

(4) In this section, 'circumstances', in relation to the statement by a person who is not a witness, includes –

- (a) the nature of the statement; and
- (b) the contents of the statement; and
- (c) the circumstances that relate to the making of the statement; and
- (d) the circumstances that relate to the truthfulness of the person; and
- (e) any circumstances that relate to the accuracy of the observation of the person.

(5) For the purposes of this section, a person is unavailable as a witness in a proceeding if the person –

- (a) is dead; or
- (b) is outside Solomon Islands and it is not reasonably practicable for him or her to be a witness; or
- (c) is unfit to be a witness because of age or physical or mental condition; or
- (d) cannot with reasonable diligence be identified or found; or
- (e) is not compellable to give evidence.

(6) Subsection (1) does not apply to a person whose statement is sought to be offered in evidence by a party who has caused the person to be unavailable in order to prevent the person from attending or giving evidence.

119. (1) When the court has to form an opinion as to the existence of any general custom or right, evidence may be given of general reputation with reference to such custom or right among persons who would be likely to know of its existence.

Evidence of right
or customs

(2) Where in any proceeding a question arises as to the existence of any right or custom evidence may be given of –

- (a) any transaction by which the right or custom in question was created, modified, recognised, asserted or denied or which was inconsistent with its existence;
- (b) particular instances in which the right or custom was claimed, recognised, or asserted, or in which its exercise was disputed, asserted, or departed from.

(3) The hearsay rule does not apply to a previous representation about the existence or non-existence, or the content, of the traditional laws and customs of a Solomon Islander tribal group.

(4) The opinion rule does not apply to evidence of an opinion expressed by a member of a tribal group about the existence or non-existence, or the content, of the traditional laws and customs of the group

120. (1) This section applies to a document that –

- (a) either –
 - (i) is or forms part of the records belonging to or kept by a person, body or organisation in the course of, or for the purposes of, a business; or
 - (ii) at any time, was or formed part of such a record; and

Exception –
Business
documents

- (b) contains a previous representation made or recorded in the document in the course of, or for the purposes of, the business.
- (2) The hearsay rule does not apply to the document (so far as it contains the representation) if the representation was made –
 - (a) by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact; or
 - (b) on the basis of information directly or indirectly supplied by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact.
- (3) Subsection (2) does not apply if the representation –
 - (a) was prepared or obtained for the purpose of conducting, or for or in contemplation of or in connection with, a proceeding in Solomon Islands or another country; or
 - (b) was made in connection with an investigation relating or leading to a criminal proceeding.
- (4) The hearsay rule does not apply to evidence that tends to prove that there is no record kept, in accordance with a system, or the occurrence of an event, if –
 - (a) the occurrence of the event of a particular kind is in question; and
 - (b) in the course of a business, the system has been followed of making and keeping a record of the occurrence of all events of that kind.
- (5) For the purposes of this section, a person is taken to have had personal knowledge of a fact if the person's knowledge of the fact was or might reasonably be supposed to have been based on what the person saw, heard or otherwise perceived (other than a previous representation made by a person about the fact).

121. The hearsay rule does not apply to a tag or label attached to, or writing placed on, an object (including a document) if the tag or label or writing may reasonably be supposed to have been so attached or placed –

Exception – tags, labels and writing

- (a) in the course of a business; and
- (b) for the purpose of describing or stating the identity, nature, ownership, destination, origin or weight of the object, or of the contents (if any) of the object.

122. (1) The hearsay rule does not apply to a representation contained in a document recording a message that has been transmitted by electronic mail or by a fax, telegram, letter gram or telex so far as the representation is a representation as to –

Exception - telecommunication

- (a) the identity of the person from whom or on whose behalf the message was sent; or
- (b) the date on which or the time at which the message was sent; or
- (c) the message's destination or the identity of the person to whom the message was addressed.

(2) Before relying on evidence of such a representation, the court must take into account the possibility of such a representation being false, whether deliberately or not.

123. The hearsay rule does not apply to evidence of a representation made by a person that was a contemporaneous representation about the person's health, feelings, sensations, intention, knowledge or state of mind.

Exception – statements about the state of health or mind

124. (1) The hearsay rule does not apply to evidence of reputation concerning –

Exception – Evidence of personal history

- (a) whether a person was, at a particular time or at any time, a married person; or
- (b) whether a man and a woman cohabitating at a particular time were married to each other at that time; or
- (c) a person's age; or
- (d) family history or a family relationship; or

(e) tribal affiliation of a person.

(2) In a criminal proceeding, subsection (1) does not apply to evidence adduced by an accused unless –

(a) it tends to contradict evidence of a kind referred to in subsection (1) that has been admitted; or

(b) an accused has given reasonable notice in writing to each other party of the accused's intention to adduce the evidence.

(3) In a criminal proceeding, subsection (1) does not apply to evidence adduced by the prosecutor unless it tends to contradict evidence of a kind referred to in subsection (1) that has been admitted.

Exception – public and general rights

125. (1) The hearsay rule does not apply to evidence of reputation concerning the existence, nature or extent of a public or general right.

(2) In a criminal proceeding, subsection (1) does not apply to evidence adduced by the prosecutor unless it tends to contradict evidence of a kind referred to in section (1) that has been admitted.

Exception – interlocutory proceedings

126. In an interlocutory proceeding, the hearsay rule does not apply to evidence if the party who adduces it also adduces evidence of its source.

Exception – Evidence relevant for non-hearsay purpose

127. The hearsay rule does not apply to evidence of a previous representation that is admitted because it is relevant for a purpose other than proof of the fact intended to be asserted by the representation.

Opinion evidence

128. A statement of an opinion is not admissible in a proceeding, except as provided by this Act.

General admissibility of opinion

129. A witness may state an opinion in evidence in a proceeding if that opinion is necessary to enable the witness to communicate, or the fact-finder to understand, what the witness saw, heard or otherwise perceived.

Expert evidence opinion

130. (1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

(2) An opinion by an expert is not inadmissible simply because it is about –

- (a) an ultimate issue to be determined in a proceeding; or
- (b) a matter of common knowledge.

(3) Subject to subsection (4), if an opinion by an expert is based on a fact that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that fact is or will be proved or judicially noticed in the proceeding.

(4) If expert evidence that includes an opinion about the sanity of a person also includes a statement that the person made to the expert about the state of mind of the person, then –

- (a) the statement of the person is admissible to establish the facts on which the expert's opinion is based; and
- (b) neither the hearsay rule nor the prior inconsistent statements rule applies to evidence of the statement made by the person.

131. (1) Where the court has to form an opinion as to the person by whom any document was written or signed, any person acquainted with the handwriting of the person by whom such document is alleged to have been written or signed may give evidence that in his or her opinion it was or was not written or signed by that person.

Opinion of
handwriting

(2) A person shall be deemed to be acquainted with the handwriting of another person, when–

- (a) he has seen that person write; or
- (b) he or she has received documents purporting to be written by that other person in reply to documents written by himself or herself or by his or her direction and addressed to that other person; or
- (c) in the ordinary course of business documents purporting to contain that other person's

handwriting have habitually come under his or her notice.

Court to examine and determine authenticity of document

132. (1) If a question arises as to the relevance of a document or thing, the court may examine it and may draw any reasonable inference from it, including an inference as to its authenticity or identity.

(2) Subsection (1) does not limit the matters from which inferences may properly be drawn.

(3) A court may compare a disputed writing with any writing that is genuine and act upon its own conclusions.

Expert reports

133. (1) Evidence of a person's opinion may be adduced by tendering a report signed by the person that –

- (a) states the person's name;
- (b) states that the person has specialised knowledge based on his or her training, study or experience, as specified in the report; and
- (c) sets out an opinion that the person holds and that is expressed to be wholly or substantially based on that knowledge.

(2) Subsection (1) does not apply unless the party seeking to tender the report has served on each other party a copy of the report –

- (a) not later than twenty-eight days before the hearing; or
- (b) not later than a period ordered by the court, if, on application by the party before or after service, the court substitutes a different period, the beginning of that period.

(3) When such a report is so used, the court may, if it thinks fit, summon the expert, as the case may be, and examine him as to the subject-matter of such report.

Evidence of good character in civil proceedings

134. In civil proceedings, evidence may not be given that a party to the proceedings bears a good character in any respect unless –

- (a) the character of such party in that respect is a fact in issue; or

- (b) evidence has already been given to show that such party bears a bad character in that respect.

135. In civil proceedings, evidence may not be given that a party to the proceedings bears a bad character in any respect unless –

Evidence of bad character in civil proceedings

- (a) the character of such party in that respect is in issue; or
- (b) damages are claimed for any wrong done to or in connection with such person and the evidence is tendered with a view to the reduction of such damages.

PART 10 – DISCRETION TO EXCLUDE EVIDENCE

136. The court may refuse to admit evidence if its probative value is substantially outweighed by the danger that the evidence might –

Court discretion to exclude evidence

- (a) be unfairly prejudicial to a party; or
- (b) be misleading or confusing; or
- (c) cause or result in undue waste of time.

137. The court may limit the use to be made of evidence if there is a danger that a particular use of the evidence might –

Court discretion to limit the use of evidence

- (a) be unfairly prejudicial to a party; or
- (b) be misleading or confusing.

138. In a criminal proceeding, the court must refuse to admit evidence adduced by the prosecutor if its probative value is outweighed by the danger of unfair prejudice to an accused.

Exclusion of prejudicial evidence

139. (1) If the public interest in admitting into evidence information or a document that relates to matters of the state is outweighed by the public interest in preserving secrecy or confidentiality in relation to the information or document, the court may direct that the information or document not be adduced as evidence

Exclusion of evidence in the public interest

- (2) The court may give such a direction either on its own initiative or on the application of any person (whether or not the person is a party).

(3) In deciding whether to give such a direction, the court may inform itself in any way it thinks fit.

(4) Without limiting the circumstances in which information or a document may be taken to relate to matters of the state for the purposes of subsection (1), the information or document is taken for the purposes of that subsection to relate to matters of the state if adducing it as evidence would –

- (a) prejudice the security, defence or international relations of Solomon Islands; or
- (b) damage relations between the Government and a provincial government or between two or more provinces; or
- (c) prejudice the prevention, investigation or prosecution of an offence; or
- (d) prejudice the prevention or investigation of, or the conduct of proceedings for recovery of civil penalties brought with respect to, other contraventions of the law; or
- (e) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information relating to the enforcement or administration of a law of Solomon Islands; or
- (f) prejudice the proper functioning of the Government.

(5) Without limiting the matters that the court may take into account for the purposes of subsection (1), it is to take into account the following matters –

- (a) the importance of the information or the document in the proceeding;
- (b) the nature of the offence, cause of action or defence to which the information or document relates, and the nature of the subject matter of the proceeding;

- (c) the likely effect of adducing evidence of the information or document, and the means available to limit its publication;
- (d) whether the substance of the information or document has already been published.

(6) In this section and sections 144 and 145, a person is taken to be liable to a civil penalty if, in a proceeding in Solomon Islands or another country (other than a criminal proceeding), the person would be liable to a penalty arising under the law of Solomon Islands or that other country.

PART 11 – COMMISSION TO EXAMINE WITNESSES

140. (1) If, in the course of any proceeding, the court is satisfied that –

Evidence taken on
commission

- (a) the examination of a witness is necessary in the interest of justice; and
- (b) that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable,

the court may issue a commission to a Magistrate or legal practitioner, to take the evidence of such witness.

(2) The Magistrate or legal practitioner to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him or her, and shall take down his or her evidence in the same manner, and may for this purpose exercise the same powers, as in the case of a trial.

(3) The parties to any proceeding in which a commission is issued may respectively forward any interrogatories in writing which the court or Magistrate directing the commission may think relevant to the issue, and the Magistrate or legal practitioner to whom the commission is directed shall examine the witness upon such interrogatories.

(4) Any such party may, by a legal practitioner or in person, appear before the Magistrate or legal practitioner, and may examine, cross-examine or re-examine (as the case may be) the witness.

(5) After any commission issued has been duly executed it shall be returned, together with the deposition of the witness examined, to the High Court or to the Magistrate (as the case may be), and the commission, the return, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(6) Any deposition so taken may also be received in evidence at any subsequent stage of the case before another court.

Adjournment for taking evidence on commission

141. In a case in which a commission is issued for taking the evidence of a witness, the proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Evidence on commission outside Solomon Islands

142. Where a court is satisfied that the witness is unable to give evidence in Solomon Islands and it is in the interest of justice to do so, the court may order that a commission be issued to allow a witness to be examined at a location outside Solomon Islands.

PART 12 –PRIVILEGE

Legal professional privilege for legal practitioners

143. No person shall be compelled to disclose to the court any confidential communication which has taken place between the person and his or her legal practitioner.

Legal professional privilege for client

144. (1) Except with the express consent of his or her client, no legal practitioner shall at any time be permitted to disclose, during the course of evidence given by that legal practitioner –

- (a) any communication made to the legal practitioner by or on behalf of the legal practitioner's client in the course and for the purpose of acting for the client; or
- (b) the contents of any document with which the legal practitioner has become acquainted in

the course and for the purpose of acting for the client; or

- (c) any advice given by the legal practitioner to the legal practitioner client in the course and for the purpose of acting for the client.
- (2) This section does not protect from disclosure –
- (a) anything done, or any communication made or document prepared in furtherance of the commission of a fraudulent or corrupt act, or a criminal offence, or an act that renders a person liable to a civil penalty, or of an act which constitutes an abuse of office; or
 - (b) any fact observed by any legal practitioner in the course of the legal practitioner's acting for the client as such showing that any crime of fraud has been committed since the legal practitioner commenced acting for the client.

145. (1) Evidence is not to be adduced if, on objection by a party who is not represented in the proceeding by a legal practitioner, the court finds that adducing the evidence would result in disclosure of –

Legal professional privilege for unrepresented parties

- (a) a confidential communication between the party and another person; or
- (b) the contents of a confidential document (whether delivered or not) that was prepared, either by or at the direction or request of, the party;

for the dominant purpose of preparing for or conducting the proceeding.

- (2) This section does not protect from disclosure anything done, or any communication made or document prepared in furtherance of the commission of a fraudulent or corrupt act, or a criminal offence, or an act that renders a person liable to a civil penalty.

146. (1) This section applies if –

- (a) a person is (apart from this section) required to provide specific information –

Privilege against self-incrimination

- (i) in the course of a proceeding; or
 - (ii) by a person exercising a statutory power or duty; or
 - (iii) by a police officer or other person holding a public office in the course of an investigation into a criminal offence or a possible criminal offence; and
 - (b) the information would, if so provided, tend to incriminate the person under an offence punishable by a fine or imprisonment.
- (2) A person –
- (a) has a privilege in respect of the information and cannot be required to provide it; and
 - (b) cannot be prosecuted or penalised for refusing or failing to provide the information, whether or not the person claimed the privilege when the person refused or failed to provide the information.
- (3) Subsection (2) has effect –
- (a) unless a written law explicitly removes the privilege against self-incrimination either expressly or by necessary implication; and
 - (b) to the extent that a written law does not explicitly or by necessary implication, remove the privilege against self-incrimination.
- (4) Subsection (2) does not enable a claim of privilege to be made –
- (a) on behalf of a body corporate; or
 - (b) on behalf of any person other than the person required to provide the information (except by a legal practitioner on behalf of a client who is so required); or

- (c) by an accused in a criminal proceeding in relation to information about a matter for which an accused is being tried.

147. No adverse inference is to be drawn because a person exercises the privilege against self incrimination.

No adverse inference against self-incrimination

148. (1) This section applies to any specific information –

Court discretion for incrimination under foreign law

- (a) that a person is (apart from this section) required to provide –
 - (i) in the course of a proceeding; or
 - (ii) by a person exercising a statutory power or duty; or
 - (iii) by a police officer or other person holding a public office in the course of an investigation into a criminal offence or a possible criminal offence; or
- (b) that would, if so provided, tend to incriminate the person under any foreign law for an offence punishable by –
 - (i) capital punishment; or
 - (ii) corporal punishment or imprisonment, or both.

(2) A court may direct that the person cannot be required to provide the information if the court, after having regard to the likelihood of extradition and other relevant matters, thinks that it would be unreasonable to require the person to incriminate himself or herself by providing the information.

(3) Subsection (2) does not enable the court to give a direction in respect of –

- (a) a body corporate; or
- (b) any person other than the person required to provide the information (except by a legal adviser on behalf of a client who is so required); or

- (c) an accused in a criminal proceeding when giving evidence about the matter for which an accused is being tried.

Claiming privilege
against self-
incrimination

149. (1) If, in any court proceeding, it appears to the court that a party or witness may have grounds to claim a privilege against self-incrimination in respect of specific information required to be provided by that person, the court must be satisfied that the person is aware of the privilege and its effect.

(2) A person who claims a privilege against self-incrimination in a court proceeding must offer sufficient evidence to enable the court to assess whether self-incrimination is reasonably likely if the person provides the required information.

Self-incriminating
information given
in compliance
with seizing order

150. (1) This section applies if a party to a civil proceeding objects to giving particular information in compliance with a seizing order on the ground that the information may tend to incriminate that person under an offence punishable by a fine or imprisonment.

(2) A party who is required to provide particular information in a civil proceeding in compliance with a seizing order must comply with the terms of the order.

(3) However, if satisfied that there is a tendency to self-incriminate if the party provides the particular information, the court must order that the information is not to be used in any criminal proceeding against the party who provides the information.

(4) The party must offer sufficient evidence to enable the court to assess whether there is a tendency for self-incrimination to occur if the party provides the required information.

(5) Information given by a person in respect of which an order under subsection (3) has been made, and evidence of any information, document, or thing obtained directly or indirectly as a result of the person having given that information, cannot be used against the person in any criminal proceeding in Solomon Islands, except in a criminal proceeding that concerns the falsity of the information.

(6) In this section, “seizing order” means an order made by a court under the Civil Procedure Rules or any other written law in a civil proceeding that includes a direction that a party permits another party or its representatives –

- (a) to enter any premises in order to establish the presence of certain items and, if warranted, to remove them for safekeeping; and
- (b) to disclose information or documents, or both, that would not necessarily be found solely by the entry described in paragraph (a).

151. A body corporate is not entitled to claim privilege against self incrimination.

No self-incrimination privilege for body corporate

152. (1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or divulge the contents of a religious confession made to the person when a member of the clergy.

Privilege religious confession

(2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose.

(3) This section applies even if a written law provides –

- (a) that the rules of evidence do not apply or that a person or body is not bound by the rules of evidence; or
- (b) that a person is not excused from answering any question or producing any document or other thing on the ground of privilege or any other ground.

(4) In this section, ‘religious confession’ means a confession made by a person to a member of the clergy in the member’s professional capacity according to the ritual of the church or religious denomination concerned.

153. This Act does not affect the law relating to the privileges of Parliament or a provincial assembly.

Parliamentary privilege

154. (1) A person who is a party to a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of

Confidential and communication for settling civil proceedings

any communication between that person and any other person who is a party to the dispute if the communication was –

- (a) intended to be confidential; and
- (b) made in connection with an attempt to settle the dispute between the persons.

(2) A person who is a party to a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of a confidential document that the person has prepared, or caused to be prepared, in connection with an attempt to negotiate a settlement of the dispute.

(3) This section does not apply –

- (a) if an agreement settling the dispute has been concluded; or
- (b) in a proceeding in which the conclusion of such an agreement is in issue.

Privilege for
information
disclosing identity
of an informer

155. (1) An informer has a privilege in respect of information that would disclose, or is likely to disclose, the informer's identity.

(2) A person is an informer for the purposes of this section if the person –

- (a) has supplied, gratuitously or for reward, information to an enforcement agency, or to a representative of an enforcement agency, concerning the possible or actual commission of an offence in circumstances in which the person has a reasonable expectation that his or her identity will not be disclosed; and
- (b) is not called as a witness by the prosecution to give evidence relating to that information.

(3) An informer may be a police officer working undercover.

Waiver of
privilege

156. (1) A person who has a privilege conferred under this Part may waive that privilege either expressly or impliedly.

(2) A person who has a privilege waives the privilege if that person, or anyone with the authority of that person,

voluntarily produces or discloses, or consents to the production or disclosure of, any significant part of the privileged communication, information, opinion, or document in circumstances that are inconsistent with a claim of confidentiality.

(3) A person who has a privilege waives the privilege if the person –

- (a) acts so as to put the privileged communication, information, opinion, or document in issue in a proceeding; or
- (b) institutes a civil proceeding against a person who is in possession of the privileged communication, information, opinion, or document the effect of which is to put the privileged matter in issue in the proceeding.

(4) A person who has a privilege in respect of a communication, information, opinion, or document that has been disclosed to another person does not waive the privilege if the disclosure occurred involuntarily or mistakenly or otherwise without the consent of the person who has the privilege.

(5) The privilege conferred in relation to settlement negotiations may be waived only by all the persons who have that privilege.

157. (1) A person who jointly with some other person or persons has a privilege conferred under this Part in respect of a communication, information, opinion, or document –

- (a) is entitled to assert the privilege against third parties; and
- (b) is not restricted from having access or seeking access to the privileged matter; and
- (c) may, on the application of another holder of the privilege who wishes the privilege to be maintained, be ordered by a court not to disclose the privileged matter in a proceeding.

Joint and successive interest in privilege material

- (2) A person who jointly has a privilege conferred with some other person or persons may waive the privilege with the consent of the other privilege holders or by order of the court.
- (3) If a person is entitled to legal professional privilege in respect of a communication, information, opinion or document, the personal representative of the person or other successor in title to property of the person –
- (a) is entitled to assert the privilege against third parties; and
 - (b) is not restricted from having access or seeking access to the privileged matter.

(4) However, subsection (3) applies only to the extent that a court is satisfied that the personal representative or other successor in title to property has a justifiable interest in the communication, information, opinion, or document.

(5) A personal representative of a deceased person who has a privilege conferred by this Part in respect of a communication, information, opinion, or document and any other successor in title to property of a person who has such a privilege may, on the application of another holder of the privilege who wishes the privilege to be maintained, be ordered by a court not to disclose the privileged matter in a proceeding.

Court may disallow claim of privilege

158. (1) A court may disallow a claim of privilege conferred under this Part in respect of a communication or information if the court is of the view that evidence of the communication or information is necessary to enable an accused in a criminal proceeding to present an effective defence.

(2) Any communication or information disclosed as the result of the disallowance of a claim of privilege under subsection (1) and any information derived from that disclosure cannot be used on that basis alone against the holder of the privilege in another proceeding.

Party must be aware of rights relating to privilege

159. If it appears to the court that a witness or a party may have grounds for making a claim, application or objection under a provision of this Part, the court must satisfy itself that the witness or party is aware of the effect of that provision.

160. If a question arises under this Part in relation to a document, the court may order that the document be produced to it and may inspect the document for the purpose of determining the question.

Court may inspect documents relating to privilege

161. Evidence that, because of this Part, must not be adduced or given in a proceeding is not admissible in the proceeding.

Privilege evidence inadmissible

PART 13 – UNFAVOURABLE WITNESSES

162. (1) A party who called a witness may, with the leave of the court, question the witness, as though the party were cross-examining the witness, about –

Unfavourable witnesses

- (a) evidence given by the witness that is unfavourable to the party; or
- (b) a matter of which the witness may reasonably be supposed to have knowledge and about which it appears to the court the witness is not, in examination-in-chief, making a genuine attempt to give evidence; or
- (c) whether the witness has, at any time, made a prior inconsistent statement; or
- (d) matters relating to the credit of the witness.

(2) Questioning a witness under this section is taken to be cross-examination.

(3) Questioning under this section is to take place before the other parties cross-examine the witness, unless the court otherwise directs.

163. (1) A witness may be cross-examined about a prior inconsistent statement alleged to have been made by the witness whether or not –

Prior inconsistent witness statements

- (a) complete particulars of the statement have been given to the witness; or
- (b) a document containing a record of the statement has been shown to the witness.

(2) If, in cross-examination, a witness does not admit that he or she has made a prior inconsistent statement, the cross-examiner is not to adduce evidence of the statement otherwise than from the witness unless, in the cross-examination, the cross-examiner –

- (a) informed the witness of enough of the circumstances of the making of the statement to enable the witness to identify the statement; and
- (b) drew the witness's attention to so much of the statement as is inconsistent with the witness's evidence.

(3) For the purpose of adducing evidence of the statement, a party may re-open the party's case with the leave of the court.

Weight to be given to evidence under this Part

164. In estimating the weight (if any) to be attached to a statement rendered admissible as evidence under this Part, regard shall be had to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the statement, including –

- (a) the question whether or not the statement was made, or the information recorded in it was supplied, contemporaneously with the occurrence or existence of the facts to which the statement or information relates; and
- (b) the question whether or not the maker of the statement or the supplier of the information recorded in it, had any incentive to conceal or misrepresent the facts.

Use of document of another person

165. (1) Except as provided by this section, a cross-examiner must not question a witness about a previous representation alleged to have been made by a person other than the witness.

(2) A cross-examiner may, with leave of the court, question a witness about the representation and its contents if –

- (a) evidence of the representation has been admitted; or
- (b) the court is satisfied that it will be admitted.

(3) If the representation is contained in a document that has not been admitted, or a document that the court cannot be satisfied will be admitted, the document may be used to question a witness as follows –

- (a) the document must be produced to the witness;
- (b) if the document is a tape recording, or any other kind of document from which sounds are reproduced, the witness must be provided with the means, such as headphones, to listen to the contents of the document without other persons present at the cross-examination hearing those contents;
- (c) the witness must be asked whether, having examined (or heard) the contents of the document, the witness stands by the evidence that he or she has given;
- (d) neither the cross-examiner nor the witness is to identify the document or disclose any of its contents.

(4) A document that is so used may be marked for identification.

166. (1) This section applies if a party is cross-examining or has cross-examined a witness about – Production of a document

- (a) a prior inconsistent statement alleged to have been made by the witness that is recorded in a document; or
- (b) a previous representation alleged to have been made by another person that is recorded in a document.

(2) If the court so orders or if another party so requires, the party must produce to the court or to that other party –

- (a) the document; or
- (b) such evidence of the contents of the document as is available to the party.

- (3) The court may –
- (a) examine a document or evidence that has been so produced; and
 - (b) give directions as to its use; and
 - (c) admit it even if it has not been tendered by a party.
- (4) Subsection (3) does not permit the court to admit a document or evidence that is not admissible.
- (5) The mere production of a document to a witness who is being cross-examined does not give rise to a requirement that the cross-examiner tender the document.

PART 14 – ADMISSIONS IN CRIMINAL PROCEEDINGS

Definition of confession

167. A confession is an admission made at any time by a person accused of an offence stating or suggesting that the person committed the offence.

Admissions by accused in criminal proceedings

- 168.** (1) This section applies only to a criminal proceeding and only to evidence of a confession made by an accused –
- (a) to or in the presence of an investigating official who was at the time performing functions in connection with the investigation of the commission or possible commission of an offence; or
 - (b) as a result of an act of another person who is capable of influencing the decision whether a prosecution of an accused should be brought or should be continued.
- (2) Evidence of the confession is not admissible unless the court is satisfied beyond reasonable doubt that the admission was voluntary.
- (3) Without limiting the matters that the court may take into account for the purposes of subsection (2), it is to take into account –

- (a) any relevant condition or characteristic of the person who made the confession, including age, personality, language and education and any mental, intellectual or physical disability to which the person is or appears to be subject; and
- (b) if the confession was made in response to questioning –
 - (i) the nature of the questions and the manner in which they were put; and
 - (ii) the nature of any threat, promise or other inducement made to the person questioned.

169. In a criminal proceeding, the court may refuse to admit evidence of a confession, or refuse to admit the evidence to prove a particular fact, if –

Court may refuse to admit confession

- (a) the evidence is adduced by the prosecution; and
- (b) having regard to the circumstances in which the admission was made, it would be unfair to an accused to use the evidence.

170. (1) Evidence that was obtained –

Exclusion of evidence obtained improperly or illegally

- (a) improperly or in contravention of any law; or
- (b) in consequence of an impropriety or of a contravention of any law;

is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained.

(2) Without limiting subsection (1), evidence of a confession that was made during or in consequence of questioning, and evidence obtained in consequence of the admission, is taken to have been obtained improperly if the person conducting the questioning –

- (a) did, or omitted to do, an act in the course of the questioning even though he or she knew or ought reasonably to have known that the act or omission was likely to impair substantially the ability of the person being

questioned to respond rationally to the questioning; or

- (b) made a false statement in the course of the questioning even though he or she knew or ought reasonably to have known that the statement was false and that making the false statement was likely to cause the person who was being questioned to make an admission; or
- (c) engaged in conduct, or threatened to engage in conduct that was violent, oppressive or degrading towards any person.

(3) Without limiting the matters that the court may take into account under subsection (1), it is to take into account –

- (a) whether the impropriety or contravention was contrary to or inconsistent with a right of a person; and
- (b) the probative value of the evidence; and
- (c) the importance of the evidence in the proceeding; and
- (d) the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding; and
- (e) whether the impropriety or contravention was deliberate or reckless; and
- (f) the gravity of the impropriety or contravention; and
- (g) whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention; and
- (h) the difficulty (if any) of obtaining the evidence without impropriety or contravention of any law.

171. (1) For the purposes of this Part, evidence of a statement made or an act done by a person during questioning is taken to have been obtained improperly if –

- (a) the person was under arrest for an offence at the time; and
- (b) the questioning was conducted by an investigating official who was at the time empowered, because of the office that he or she held, to arrest the person; and
- (c) before starting the questioning the investigating official did not caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence.

(2) Evidence of a statement made or an act done by a person during official questioning is taken to have been obtained improperly if –

- (a) the questioning was conducted by an investigating official who did not have the power to arrest the person; and
- (b) the statement was made, or the act was done, after the investigating official formed a belief that there was sufficient evidence to establish that the person has committed an offence; and
- (c) the investigating official did not, before the statement was made or the act was done, caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence.

(3) The caution must be given in, or translated into, a language in which the person is able to communicate with reasonable fluency, but need not be given in writing unless the person cannot hear adequately.

(4) Subsections (1), (2) and (3) do not apply so far as any law requires the person to answer questions put by, or do things required by, the investigating official.

(5) A reference in subsection (1) to a person who is under arrest includes a reference to a person who is in company of an investigating official for the purpose of being questioned if –

- (a) the official believes that there is sufficient evidence that the person has committed an offence that is to be the subject of the questioning; or
- (b) the official would not allow the person to leave if the person wished to do so; or
- (c) the official has given the person reasonable grounds for believing that the person would not be allowed to leave if he or she wished to do so.

(6) A person is not treated as being under arrest only because of subsection (5) if –

- (a) the official is performing functions in relation to persons or goods entering or leaving Solomon Islands and the official does not believe the person has committed an offence against a law of Solomon Islands;
- (b) the official is exercising a power under any written law to detain and search the person or to require the person to provide information or to answer questions.

Admissions by
co-accused

172. The common law relating to the admissibility of a confession by one accused against another should prevail.

Evidence of
silence

173. (1) In a criminal proceeding, an inference unfavourable to a party must not be drawn from evidence that the party or another person failed or refused –

- (a) to answer one or more questions; or
- (b) to respond to a representation;

put or made to the party or other person by an investigating official who was at the time performing functions in connection with the investigation of the commission or possible commission of an offence.

- (2) Evidence of that kind is not admissible if it can only be used to draw such an inference.
- (3) Subsection (1) does not prevent use of the evidence to prove that the party or other person failed or refused to answer the question or to respond to the representation if the failure or refusal is a fact in issue in the proceeding.
- (4) In this section, “inference” includes –
- (a) an inference of consciousness of guilt; or
 - (b) an inference relevant to a party’s credibility.

174. (1) If part of a statement is determined by the court to be inadmissible, the court may direct that a party who wishes to use an admissible part of the statement edit the statement to exclude the inadmissible part.

Editing of
inadmissible
statements

- (2) A party may not edit a statement under subsection (1) unless, in the opinion of the court, the inadmissible parts of the statement can be excluded without obscuring or confusing the meaning of the admissible part of the statement.

PART 15 – PROOF OF BIRTH, ADOPTION, DEATH AND MARRIAGE

175. In any proceeding if the court does not consider that there is evidence or sufficient evidence to determine the age of a person, that court having seen that person, may itself determine the question.

Proof of age
determined by the
court

176. An official document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, adoption, death or marriage alleged to have taken place whether in Solomon Islands or elsewhere is evidence in a proceeding of the facts stated in the document.

Proof of age by
birth certificate

177. (1) If the age of a person is relevant to proceedings before a court and –

Presumption of
age

- (a) a document appears to be a certified copy of, or extract from, the register of births and deaths under the Births and Deaths (Registration) Act (Cap. 168), or a register of births kept under the law of the country in

which the person was born, is produced to the court; and

- (b) the name of the person to whom the document relates is the name or a former name of the person whose age is to be considered,

it will be presumed, in the absence of evidence to the contrary, that the person whose age is to be established is the person named in the document produced to the court and that the date of his or her birth is the date of birth shown on that document.

PART 16 – MISCELLANEOUS

Proof of service

178. Service for the purposes of this Act may be proved by affidavit or the oral evidence of a witness in court.

Proof of previous convictions

179. (1) In any inquiry, trial or proceeding, a previous conviction may be proved, in addition to any other mode provided by any law –

- (a) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction was had, to be a copy of the sentence or order; or
- (b) by a certificate by the officer-in-charge of the a correctional centre or prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered; or
- (c) by production of the officer having the custody thereof of the appropriate court register recording such conviction or an extract from such register certified under the hand of such officer to be a copy thereof,

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted.

- (2) A certificate given under the hand of an officer appointed by the Commissioner of Police in that behalf, who shall have compared the fingerprints of an accused person

with the fingerprints of a person previously convicted, shall be prima facie evidence of the matters stated in the certificate.

(3) A previous conviction in any place outside Solomon Islands may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order, and a copy of the fingerprint record, or a photograph of the person so convicted, together with evidence that the fingerprint record or photograph is of the accused person.

(4) Such a certificate as aforesaid shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

180. (1) A court or tribunal may inform itself about a written law in any way it considers appropriate, such as using an electronic version of any written law as available on the internet or on a CD-ROM.

Court may inform
itself about
legislation

(2) However, the court or tribunal must consider whether the document or source it intends to consult appears to be a reliable source of information.

(3) Subsection (1) does not limit any law providing for a way in which a court or tribunal may be informed about a written law, including any other provision of this Act.

181. (1) If the determination of a question whether –

Voir dire

- (a) evidence should be admitted (whether in the exercise of a discretion or not); or
- (b) evidence can be used against a person; or
- (c) a witness is competent or compellable;

depends on the court finding that a particular fact exists, the question whether that fact exists is, for the purposes of this section, a preliminary question.

(2) In the hearing of a preliminary question about whether an accused's admission should be admitted into evidence (whether in the exercise of a discretion or not) in a criminal proceeding, the issue of the admission's truth or

untruth is to be disregarded unless the issue is introduced by the accused.

(3) In a hearing to determine a preliminary question of fact, the facts in issue are taken to include the fact to which the hearing relates.

Contempt by
publication

182. A person commits a contempt of court who prints or publishes –

- (a) without the express permission of the court, any question that is disallowed by the court, or any evidence given in response to such a question; or
- (b) any question, or any evidence given in response to a question, that the court has informed a witness he or she is not obliged to answer and has ordered must not be published.

Advanced rulings

183. Where a question arises in a proceeding, being a question about –

- (a) the admissibility of evidence proposed to be adduced; or
- (b) the operation of a provision of this Act or another law in relation to evidence proposed to be adduced;

the court may, if it thinks appropriate, give a ruling or make a finding in relation to the question before the evidence is adduced.

Leave, etc., be
subject to terms

184. (1) If, because of this Act, a court may give any leave, permission or direction, the leave, permission or direction may be given on such terms as the court thinks fit.

- (2) Without limiting the matters that the court may take into account in deciding whether or not to give the leave, permission or direction, it is to take into account –
 - (a) the extent to which to do so would be likely to add unduly to, or to shorten the length or cost of the hearing; and
 - (b) the extent to which to do so would be unfair to a party or to a witness; and

- (c) the importance of the evidence in relation to which the leave, permission or direction is sought; and
- (d) the nature of the proceeding; and
- (e) the power (if any) of the court to adjourn the hearing or to make another order or to give a direction in relation to the evidence.

185. (1) Whenever in any proceedings before the court, in respect of any offence, it is an essential ingredient of the offence that the place (where any fact or matter occurred or was done) should be a public place, an allegation, in the complaint or information, that the place (specified as that in which the fact or matter charged occurred or was done) was a public place, shall be *prima facie* evidence that the place was a public place.

Averment as to public place

(2) The court may, if it thinks fit, and at any stage of the proceeding, permit evidence to be called with respect to the question whether the place was a public place.

186. Any court may, on application or on its own initiative, issue a warrant or order for bringing up any person in lawful custody before any court to enable such person to be prosecuted or to pursue or defend or be examined as a witness in, any proceedings, either criminal or civil, before such court

Court may order attendance of persons in custody

187. In a criminal proceeding, an allegation or statement, in a complaint or another initiating process, or in a pleading or affidavit, that stated property is the property of the Crown or the Government is *prima facie* evidence of this.

Evidence of Crown property

188. The Minister may make regulations to give effect to and for the purposes of this Act and in particular to make regulations on matters required to be prescribed under this Act.

Regulations

189. Subject to any regulations made under this Act, the Chief Justice may make rules or practice directions for the purpose of giving effect to any matter under this Act.

Court rules

190. (1) This Act applies to all proceedings commenced before, on, or after the commencement of this Act except –

Savings and transitional

- (a) the continuation of a hearing that commenced before the commencement of this Act;

(b) any appeal or review arising out of such a hearing; and

(c) any re-trial.

(2) Notwithstanding subsection (1), the provisions relating to arrest and cautioning only apply to arrests made and cautions administered from the date of commencement.

(3) For the purposes of this section, criminal proceedings commence when the information is laid or the summons filed.

(4) Notwithstanding subsection (1), in respect of any proceedings commenced before the commencement of this Act, the court may give leave to admit evidence that was adduced prior to the commencement of this Act.

EVIDENCE BILL 2009

OBJECTS AND REASONS

The object of the Evidence Bill 2008 is to provide a modern, comprehensive statement of the law of evidence to be applied in Solomon Island courts. The Bill codifies many aspects of the evidence law and imposes structure, consistency and predictability.

Previously, the law of evidence was a large collection of rules developed over the centuries by the courts in common law jurisdictions on a case by case basis. The Bill reduces this huge mosaic of common law into one, plain language document making it easier to find and simpler to understand, leading to a more consistent and predictable application of the rules by the courts.

The Bill provides the legal framework which enables the court to determine how evidence may be offered, whether it will be taken into account and how to decide the factual issues on the evidence. The Bill provides a mechanism for these purposes which carefully balances the interests and needs of individual litigants, the society, investigating agencies, prosecuting authorities and the courts.

The Bill is not an exhaustive code and it preserves the common law and other statutory provisions where it is appropriate or where those areas are clear and settled. The Bill is structured so that the provisions are logically set out in the order in which matters would be expected to emerge in a trial. The Bill makes the law of evidence as clear, simple and accessibly as possible to facilitate the fair, just and timely resolution of disputes.

The Bill reforms some aspects the common law rules of evidence to recognize new technology and provides practical means to present evidence in documentary form or from outside the jurisdiction. It reforms the law of evidence to conform with international obligations relating to human rights, and the rights of women and children. It provides a means to protect vulnerable witnesses. It codifies and clarifies rules of evidence relating to competence, compellability, identification, hearsay, confessions, unfavourable witnesses and privilege.

Explanatory Note

Part 1 contains the title of the Bill and the meaning of the common terms. It preserves the common law that is not inconsistent with the provisions and applies the Bill to all proceedings. It abolishes the applicable United Kingdom statutes and abrogates the common law rules relating to documents and corroboration. It preserves the general powers of the court and sets out circumstances when the rules of evidence can be dispensed with or waived by the court.

Part 2 sets out the standard of proof that is required in criminal and civil proceedings. It provides that proof is not required for matters of common knowledge, judicial notice, judges' signatures or the provisions contained in other legislation. It provides that corroboration is not necessary. It lists what may be considered as unreliable evidence and requires the exercise of caution before convicting an accused in reliance upon it. It provides that the evidence of children and victims of offences against morality should not be considered inherently unreliable.

Part 3 provides that all relevant evidence that is capable of proving or disproving anything that is of consequence to the proceedings is admissible. It provides that facts can be admitted and evidence can be admitted with the consent and agreement of the parties.

Part 4 deals with the issues relating to competence and compellability of witnesses. It provides that all persons are generally competent and compellable unless the contrary is proved. It provides that a person is not competent to give sworn evidence if they do not understand that they have an obligation to tell the truth. However, it allows the person to give unsworn evidence if the court has advised them of the importance of telling the truth. Unsworn evidence has probative value and the person giving it can be convicted if they commit perjury. Close relatives of an accused person in a criminal trial are compellable but may be excused from giving evidence if the public interest in preventing harm to the relationship outweighs the public interest in the evidence being given. Former spouses are compellable. The accused is not competent to give evidence for the prosecution and not compellable by the prosecution or the defence. It provides protection for the accused in relation to questioning about bad character. It sets out the

circumstances where tendency evidence can be given against a co-accused, and when a co-accused is competent and compellable. It allows the court to make special arrangements for vulnerable witnesses including non-publication orders, using remote witness facilities, screening the witness from the view of the accused or having a support person.

Part 5 provides for the manner of giving evidence. It requires the court to control the way evidence is adduced and allows the court to question witnesses. It regulates the order and manner of questioning by parties and permits the use of charts and summaries where this will aid in the comprehension of the evidence. It regulates the process of refreshing and reviving memory by the use of documents and allows evidence to be given by audio-visual link. Rules relating to cross-examination are set out, including restrictions on the evidence that can be given, and the questions that can be put to a witness in relation to sexual experience or reputation. It contains specific rules about re-examination and recalling witnesses. It provides directions for communication assistance and the use of interpreters. It allows the court to visit and view places that are of relevance to the case and also allows demonstrations, experiments and inspections in defined circumstances

Part 6 sets out the rules for proving the existence of court judgments and convictions in criminal, civil and defamation proceedings. It defines tendency evidence and sets out the circumstances when it may be offered about an accused in criminal proceedings.

Part 7 sets out the method of obtaining and admitting identification evidence. It provides guidance for the procedures to be used by police when obtaining identification evidence from witnesses and conducting identification parades. It provides guidance and directions for the use of photographs for identification and limits the use that can be made of voice identification evidence.

Part 8 defines the term 'document' and provides guidance for the use of documentary evidence. It sets out the processes for using documents without witnesses. It creates a rebuttable presumption about the authenticity of seals, signatures, published materials, government documents, official public records and purported acts by attesting parties. It provides the method for presenting evidence about, and obtaining copies of banking records. It provides rules for the use of translated documents, sound recordings or coded transcripts. It prescribes the method of adducing evidence of foreign

laws, treaties and proclamations, including evidence of common law and unwritten law.

Part 9 provides general rules in relation to the admissibility of hearsay evidence and sets out the exceptions to the general rule. The exceptions include business documents, tags and labels, telecommunication, personal history evidence, public or general rights and evidence adduced in interlocutory proceedings. It sets out the circumstances which allow expert evidence, expert reports and hand writing opinion evidence to be admitted. It provides strict rules for giving evidence of good character and bad character in civil proceedings.

Part 10 provides guidance to the court for exercising its discretion to exclude evidence. It also allows the court to limit the use of evidence that may be prejudicial or misleading. It provides that, in criminal proceedings, the court must refuse to admit evidence if its probative value is outweighed by the danger of unfair prejudice to an accused. It provides guidance to the court in admitting evidence or excluding evidence in the public interest.

Part 11 sets out the method for taking evidence on commission when the court is satisfied that the attendance of the witness cannot be reasonably procured. It allows a Magistrate to take a deposition and allows for cross examination by other parties or the provision of interrogatories to the Magistrate to conduct the cross examination.

Part 12 deals with privilege. It provides for the confidentiality of certain communications made to, or by legal professionals. It extends this protection to unrepresented parties for communications made for the dominant purpose of conducting the proceeding. It provides for a privilege against self incrimination to be claimed in certain circumstances. It provides that religious confessions and information that would disclose an informer's identity are also privileged.

Part 13 provides the mechanism for the courts and parties to deal with unfavourable witnesses. It provides guidance about the cross-examination of a person about a prior inconsistent statement and the weight to be given to that evidence. It sets out the circumstances when a witness can be questioned about a document made by another person and the procedure for marking the document for identification.

Part 14 defines confession and sets out the way such material can be used in criminal proceedings. It requires the court to be satisfied that confessions are

voluntary. It allows the court to refuse to admit an admission adduced by the prosecution if it would be unfair to the accused. It limits the use of confessions that were obtained improperly or unlawfully and provides a list of conduct which is to be considered improper. It preserves the right to remain silent by stating that an unfavourable inference must not be drawn from an accused's failure to answer questions or to respond to a representation.

Part 15 sets out the proof required to provide evidence of births, adoptions, deaths and marriages. It provides that an original document or certified copy of a certificate or entry is evidence of the facts stated in the document.

Part 16 contains miscellaneous provisions including transitional provisions, regulation and rule making powers. It sets out how service of documents, previous convictions, legislation, evidence of a public place and evidence of crown property may be adduced. It provides for the conduct of a voir dire and for the giving of an advanced ruling. It sets out the parameters of contempt by publication and allows the court to issue a warrant for the attendance of any person who is in custody.

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MINISTER FOR JUSTICE AND LEGAL AFFAIRS