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### **CIVIL EVIDENCE HANDBOOK**

**Gordon D. Cudmore**

**Release No. 11, November 2021**

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in July 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the July 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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The Civil Evidence Handbook is a succinct reference to evidentiary matters. It includes the Evidence Acts from all common law provinces as well as the Canada Evidence Act and a concordance to these Acts. The topics covered are: Admissibility • Relevance • Burden of Proof • Presumption • Judicial Notice • Competence and Compellability • Pleadings • Interpreters • Examination-in-Chief • Impeaching Your Own Witness • Cross-Examination • Re-Examination • Reply Evidence • Experts (Opinion Evidence) • Parole Evidence Rule • Hearsay • Exceptions to the Hearsay Rule • Demonstrative Evidence.

This release contains updates annotations to the British Columbia *Evidence Act* and Ontario *Evidence Act*. It also updates a proof of fact, Intentional Spoliation of Evidence.

### Highlights

- **British Columbia Evidence Act — Section 42 Admissibility of Business Records** — Defendant sought to introduce several of plaintiff’s medical records for the truth of their contents, specifically as they related to what plaintiff was reporting to her medical practitioners after the subject motor vehicle collision. Plaintiff conceded that the basic procedural requirements of s. 42 of the *Evidence Act*, R.S.B.C. 1996, c. 124 were met in relation to these documents. Plaintiff also conceded that the documents could at least be admitted for the purpose of considering credibility. However, plaintiff argued that the documents should not be admitted for the truth of their contents because defendant could not establish that the statements relied upon were in fact made by plaintiff. Plaintiff did not agree that she made the statements and given this in addition to the testimony of one of the physicians, there was little support for the proposition that the statements were in fact made by plaintiff. Several of the records appeared to have been recorded well after the relevant appointment took place, while others appeared to have been recorded scant moments after the appointment commenced. For other records, the identity of the author is unclear. Each of these concerns casted further doubt on the accuracy of the alleged reports. Defendant could have taken steps to call the persons who created the records and confirmed with these witnesses whether plaintiff said the words noted in the records but failed to do so. Absent such evidence, there was insufficient information to conclude that plaintiff in fact said the comments noted in these records, and the records were accordingly not admitted for the truth of their contents. *Rab v. Prescott*, 2020 CarswellBC 2122, 2020 BCSC 1255, 323 A.C.W.S. (3d) 77.
- **Ontario Evidence Act — Section 32 Copies of Public Books or Documents** — Even if a Statistics Canada report was a public document within the meaning of s. 32 of the *Evidence Act*, R.S.O. 1990, c. E.23. where there was no evidence that the report was produced “from the proper custody” at trial as required by s. 32, defendant’s argument that the trial judge erred in failing to admit the report was rejected. *West v. Knowles*, 2021 CarswellOnt 6542, 2021 ONCA 296.

### ProView Developments

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- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
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