

Personal Information Protection and Electronic Documents Act 2000

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PART 3

R.S., c. C-5;
R.S., c. 27
(1st
Supp.), c. 19
(3rd Supp.);
1992, cc. 1,
47; 1993, cc.
28, 34; 1994,
c. 44; 1995,
c.
28; 1997, c.
18; 1998, c. 9

AMENDMENTS TO THE CANADA
EVIDENCE ACT

52. Section 19 of the *Canada Evidence Act* is replaced by the following:

Copies by
Queen's
Printer

19. Every copy of any Act of Parliament, public or private, published by the Queen's Printer, is evidence of that Act and of its contents, and every copy purporting to be published by the Queen's Printer shall be deemed to be so published, unless the contrary is shown.

53. Paragraph 20(c) of the Act is replaced by the following:

- (c) by the production of a copy of them purporting to be published by the Queen's Printer.

54. Paragraphs 21(b) and (c) of the Act are replaced by the following:

- (b) by the production of a copy of the proclamation, order, regulation or appointment, purporting to be published by the Queen's Printer;
- (c) by the production of a copy of the treaty purporting to be published by the Queen's Printer;

55. Paragraph 22(1)(b) of the Act is replaced by the following:

- (b) by the production of a copy of the proclamation, order, regulation or appointment purporting to be published by the government or Queen's Printer for the province; and

56. The Act is amended by adding the following after section 31:

Authenti-
cation of
electronic
documents

31.1 Any person seeking to admit an electronic document as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic document is that which it is purported to be.

Application of
best evidence
rule -
electronic
documents

31.2 (1) The best evidence rule in respect of an electronic document is satisfied

- (a) on proof of the integrity of the electronic documents system by or in which the electronic document was recorded or stored; or
- (b) if an evidentiary presumption established under section 31.4 applies.

Printouts

(2) Despite subsection (1), in the absence of evidence to the contrary,

an electronic document in the form of a printout satisfies the best evidence rule if the printout has been manifestly or consistently acted on, relied on or used as a record of the information recorded or stored in the printout.

Presumption of integrity

31.3 For the purposes of subsection 31.2(1), in the absence of evidence to the contrary, the integrity of an electronic documents system by or in which an electronic document is recorded or stored is proven

- (a) by evidence capable of supporting a finding that at all material times the computer system or other similar device used by the electronic documents system was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic document and there are no other reasonable grounds to doubt the integrity of the electronic documents system;
- (b) if it is established that the electronic document was recorded or stored by a party who is adverse in interest to the party seeking to introduce it; or
- (c) if it is established that the electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party and who did not record or store it under the control of the party seeking to introduce it.

Presumptions regarding secure electronic signatures

31.4 The Governor in Council may make regulations establishing evidentiary presumptions in relation to electronic documents signed with secure electronic signatures, including regulations respecting

- (a) the association of secure electronic signatures with persons; and
- (b) the integrity of information contained in electronic documents signed with secure electronic signatures.

**Standards
may be
considered**

31.5 For the purpose of determining under any rule of law whether an electronic document is admissible, evidence may be presented in respect of any standard, procedure, usage or practice concerning the manner in which electronic documents are to be recorded or stored, having regard to the type of business, enterprise or endeavour that used, recorded or stored the electronic document and the nature and purpose of the electronic document.

**Proof by
affidavit**

31.6 (1) The matters referred to in subsection 31.2(2) and sections 31.3 and 31.5 and in regulations made under section 31.4 may be established by affidavit.

**Cross-
examination**

(2) A party may cross-examine a deponent of an affidavit referred to in subsection (1) that has been introduced in evidence

- (a) as of right, if the deponent is an adverse party or is under the control of an adverse party; and
- (b) with leave of the court, in the case of any other deponent.

Application

31.7 Sections 31.1 to 31.4 do not affect any rule of law relating to the admissibility of evidence, except the rules relating to authentication and best evidence.

Definitions

31.8 The definitions in this section apply in sections 31.1 to 31.6.

**"computer
system"
« système**

"computer system" means a device that, or a group of interconnected or related devices one or more of which,

informatique»

- (a) contains computer programs or other data; and
- (b) pursuant to computer programs, performs logic and control, and may perform any other function.

"data"
« *données* »

"data" means representations of information or of concepts, in any form.

"electronic document"
« *document électronique* »

"electronic document" means data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device. It includes a display, printout or other output of that data.

"electronic documents system"
« *système d'archivage électronique* »

"electronic documents system" includes a computer system or other similar device by or in which data is recorded or stored and any procedures related to the recording or storage of electronic documents.

"secure electronic signature"
« *signature électronique sécurisée* »

"secure electronic signature" means a secure electronic signature as defined in subsection 31(1) of the *Personal Information Protection and Electronic Documents Act*.

57. Subsection 32(2) of the Act is replaced by the following:

Copies
published in
Canada Gazette

(2) All copies of official and other notices, advertisements and documents published in the *Canada Gazette* are admissible in evidence as proof, in the absence of evidence to the contrary, of the originals and of their contents.