

Chapter 8

AN ACT TO AMEND THE EVIDENCE ACT

(Assented to December 1, 2004)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. **The *Evidence Act* is amended by this Act.**
2. **Section 31 is amended by striking out "37" and substituting "37.1".**
3. **The following is added after section 37:**

ELECTRONIC RECORDS

Definitions

37.1. (1) In this section,

"data" means representations, in any form, of information or concepts; (*données*)

"electronic record"

- (a) 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, and
- (b) includes a display, printout or other output of that data, other than a printout referred to in subsection (6); (*document électronique*)

"electronic records system" includes the computer system or other similar device in or by which data is recorded or stored, and any procedures related to the recording and storage of electronic records. (*système d'archivage électronique*)

Application

(2) This section does not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

Power of court to consider electronic evidence

(3) A court may have regard to evidence adduced under this section in applying any common law or statutory rule relating to the admissibility of records.

Authentication of electronic record

(4) The person seeking to introduce an electronic record in any proceeding must prove its authenticity by presenting evidence capable of supporting a finding that the electronic record is what the person claims it to be.

Application of best evidence rule

(5) Subject to subsection (6), in any proceeding where the best evidence rule is applicable in respect of an electronic record, the rule is satisfied on proof of the integrity of the electronic records system in or by which the data was recorded or stored.

What constitutes record

(6) In any proceeding, an electronic record in the form of a printout that has been manifestly or consistently acted on, relied on or used as the record of the information recorded or stored on the printout, is the record for the purposes of the best evidence rule.

Proving integrity of electronic records system

(7) In the absence of evidence to the contrary, the integrity of the electronic records system in or by which an electronic record is recorded or stored is proven if

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

Standards may be considered

(8) For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in any proceeding in respect of any standard, procedure, usage or practice regarding how electronic records are to be recorded or stored, having regard to the type of business or endeavour that used, recorded or stored the electronic record and the nature and purpose of the electronic record.

Proof by affidavit

(9) The matters referred to in subsections (6), (7) and (8) may be established by an affidavit given to the best of the deponent's knowledge or belief.

Cross-examination

(10) A party may cross-examine the deponent of an affidavit that was introduced in evidence under subsection (9)

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

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