

BILL NO. 72

(as passed, with amendments)



*2nd Session, 58th General Assembly
Nova Scotia
51 Elizabeth II, 2002*

Government Bill

Evidence Act (amended)

CHAPTER 17 OF THE ACTS OF 2002

The Honourable Michael G. Baker, Q.C.
Minister of Justice

[First Reading](#): November 1, 2001 (LINK TO BILL AS INTRODUCED)

Second Reading: November 6, 2001

[Third Reading](#): May 9, 2002 (WITH COMMITTEE AMENDMENTS)

Royal Assent: May 30, 2002



An Act to Amend Chapter 154 of the Revised Statutes, 1989, the Evidence Act

Be it enacted by the Governor and Assembly as follows:

1 Subsections 22(3) and (4) of Chapter 154 of the Revised Statutes, 1989, the *Evidence Act*, are repealed.

2 Chapter 154 is further amended by adding immediately after Section 23 the following heading and Sections:

ELECTRONIC RECORDS

23A In this Section and Sections 23B to 23H,

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

(b) "electronic record" 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 includes a display, printout or other output of that data, other than a printout referred to in subsection 23D(2);

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

23B (1) Sections 23C to 23H do not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

(2) A court may have regard to evidence adduced under Sections 23C to 23H in applying any common law or statutory rule relating to the admissibility of records.

23C The person seeking to introduce an electronic record in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

23D (1) In any legal proceeding, subject to subsection (2), 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.

(2) In any legal proceeding, an electronic record in the form of a print-out that has been manifestly or consistently acted on, relied upon 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.

23E In the absence of evidence to the contrary, the integrity of the electronic records system in which an electronic record is recorded or stored is presumed in any legal proceeding

(a) by evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it was not, 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) if it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it; or

(c) if 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 proceedings and who did not record or store it under the control of the party seeking to introduce the record.

23F For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in any legal proceeding in respect of any standard, procedure, usage or practice on 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.

23G The matters referred to in subsection 23D(2) and Sections 23E and 23F may be established by an affidavit given to the best of the deponent's knowledge or belief.

23H (1) A deponent of an affidavit referred to in Section 23G that has been introduced in evidence may be cross-examined as of right by a party to the proceedings who is adverse in interest to the party who has introduced the affidavit or has caused the affidavit to be introduced.

(2) Any party to the proceedings may, with leave of the court, cross-examine a person referred to in clause 23E(c).



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