

Table of Sections on Electronic Records in Evidence Acts in Canadian Jurisdictions (June 2011)

<i>Jurisdiction</i>	<i>Act</i>	<i>Authentication</i>	<i>Best Evidence</i>	<i>Presumption of Integrity</i>
Federal	Canada Evidence Act	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.	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.	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.
B.C.	Evidence Act			
Alberta	Evidence Act	41.3 A person seeking to introduce an electronic record as evidence 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.	41.4(1) Subject to subsection (3), where the best evidence rule is applicable in respect of an electronic record, it is satisfied on proof of the integrity of the electronic records system. (2) The integrity of an electronic record may be proved by evidence of the integrity of the electronic records system by or in which the information was recorded or stored,	41.5 For the purposes of section 41.4(1), 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 proved (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,

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			<p>or by evidence that reliable encryption techniques were used to support the integrity of the electronic record.</p> <p>(3) 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.</p>	<p>(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</p> <p>(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 it.</p>
Saskatchewan	The Evidence Act	55 A person seeking to enter an electronic record must prove its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.	<p>56(1) Subject to subsection (2), where the best evidence rule applies to an electronic record, the rule is satisfied on proof of the integrity of the electronic records system in or by which the electronic record was recorded or stored.</p> <p>(2) An electronic record in the form of a printout that has been manifestly or consistently acted on, relied on or used is the record for the purposes of the best evidence rule.</p>	<p>57 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 for the purposes of subsection 56(1):</p> <p>(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 reasonable grounds to doubt the integrity of the electronic records system;</p> <p>(b) if 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</p> <p>(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 proceeding and who did not record or store it under the control of the party seeking to introduce the record.</p>
Manitoba	The Manitoba Evidence Act	51.2 Any person seeking to admit an	51.3(1) The best evidence rule in respect of an electronic document is	51.4 For the purposes of subsection 51.3(1), in the absence of evidence to the contrary, the integrity of an

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		<p>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.</p>	<p>satisfied</p> <p>(a) on proof of the integrity of the electronic documents system by or in which the electronic document was recorded or stored; or</p> <p>(b) if an evidentiary presumption established under section 51.5 applies.</p>	<p>electronic documents system by or in which an electronic document is recorded or stored is proven</p> <p>(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;</p> <p>(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</p> <p>(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.</p>
Ontario	Evidence Act	<p>34.1 (4) The person seeking to introduce an electronic record 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. 1999, c. 12, Sched. B, s. 7 (2).</p>	<p>34.1 (5) Subject to subsection (6), where the best evidence rule is applicable in respect of an electronic record, it is satisfied on proof of the integrity of the electronic record. 2000, c. 26, Sched. A, s. 7 (1).</p>	<p>34.1 (7) In the absence of evidence to the contrary, the integrity of the electronic records system by or in which an electronic record is recorded or stored is proved for the purposes of subsection (5),</p> <p>(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;</p> <p>(b) if 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</p>

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				(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 proceeding and who did not record or store it under the control of the party seeking to introduce the record. 1999, c. 12, Sched. B, s. 7 (2).
Quebec	<u>An Act to Establish a Legal Framework for Information Technology</u>		See Chapter II Division III – Equivalence of Documents used for the same Functions	See Chapter II Division II – Legal Value and Integrity of Documents (Section 5) See Also Chapter II Division IV – Maintenance of Integrity of Documents throughout Life Cycle (Section 17 and on)
	<u>Civil Code of Québec</u> – Book Seven	Title Two Division VII Chapter V 2855. Title Three Chapter III 2874		Title Two Division VI 2838. In addition to meeting all other legal requirements, the integrity of a copy of a statute, an authentic writing, a semi-authentic writing or a private writing drawn up in a medium based on information technology must be ensured for it to be used to adduce proof in the same way as a writing of the same kind drawn up as a paper document. 2839. The integrity of a document is ensured if it is possible to verify that the information it contains has not been altered and has been maintained in its entirety, and that the medium used provides stability and the required perennity to the information. Where the medium or technology used does not allow the integrity of the document to be confirmed or denied, the document may, depending on the circumstances, be admitted as testimonial evidence or real evidence and serve as commencement of proof. 2840. It is not necessary to prove that the medium of a document or that the processes, systems or technology

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				used to communicate by means of a document ensure its integrity, unless the person contesting the admission of the document establishes, upon a preponderance of evidence, that the integrity of the document has been affected.
Nova Scotia	Evidence Act	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. <i>2002, c. 17, s. 2.</i>	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. <i>2002, c. 17, s. 2.</i>	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. <i>2002, c. 17, s. 2.</i>
New Brunswick	Evidence Act – See 47.1 and 47.2			
P.E.I.	Evidence Act			
Newfoundland & Labrador	Evidence Act			

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NWT	Evidence Act			
Yukon	Evidence Act			
Nunavut	Evidence Act			

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