

**ELECTRONIC RECORDS AS DOCUMENTARY  
EVIDENCE**

**WHAT THIS MEANS TO YOU AND  
YOUR ORGANIZATION**

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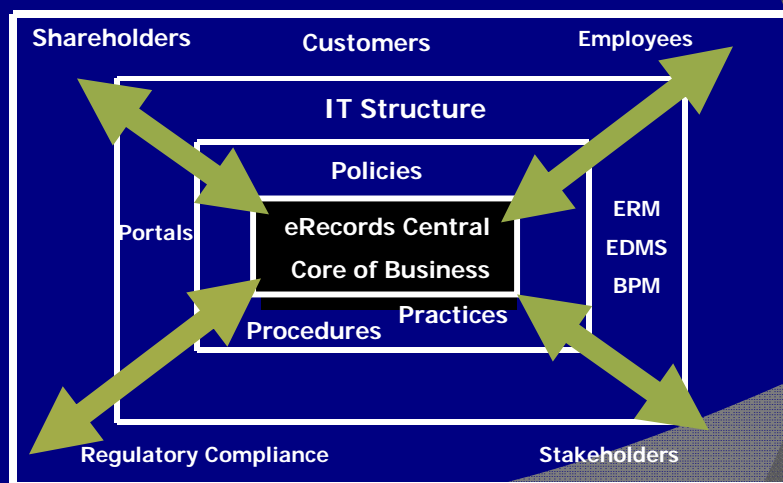
**Disclaimer**

- This Presentation should not be considered as legal advice and is only provided as a resource and starting reference point for further foundation to trustworthy records and research
- All cited references should be verified and updated with your own counsel

## AGENDA

- Understanding the Central Core of eCommerce
- Canada's Evidence Act on: Electronic Documents
- Impact of PIPED Act
- Regulations and Standards
- National Standards
- Main components of National Standards
- Application of Standards
- A Case Study Example
- IT System Integrity Issues
- Approaches to Standards Deployment

## eRecords – Central Core of eBusiness Foundation



## Confidence Level on Legal Submission of Electronic Records – A Troubling Stats for CEO/CFOs

Question: If legally challenged...can your business demonstrate that its electronic records are accurate, accessible, and trustworthy – many years after they are created?

Responses	2001	2003	2005	2007	2008
A. Very Confident	4%	5%	8%	9%	7%
B. Quite confident	5%	9%	17%	19%	19%
<b>A+B</b>	<b>9%</b>	<b>14%</b>	<b>25%</b>	<b>28%</b>	<b>26%</b>
C. Confident	19%	24%	26%	26%	23%
<b>A+B+C</b>	<b>28%</b>	<b>38%</b>	<b>51%</b>	<b>54%</b>	<b>49%</b>
D. Slightly Confident	33%	29%	28%	27%	33%
E. Not at all Confident	39%	33%	21%	20%	19%
<b>D+E</b>	<b>72%</b>	<b>62%</b>	<b>49%</b>	<b>47%</b>	<b>52%</b>

Source: AIIM Industry Watch

## Admissibility Issues of Electronic Records in Legal Proceedings

- Does Paper = Electronic Record ???



Admissible ???

Prove Integrity, Authenticity, Trust & Reliability of the Electronic Capture Systems and Records

### Notable Regulatory Compliances that Demands on Trustworthy Electronic Records Presentment

- **Personal Information Protection and Electronic Documents Act (PIPED Act) (Canada)**
- **Ontario: Red Tape Reduction Act, 1999, c,12 sch. B., in force Jun 30/2000**
- **Alberta Evidence Act, R.S.A 2000, Section 41.1 – 41.8**
- Sarbanes – Oxley Act
- HIPAA (Health Insurance Portability and Accountability Act )
- SEC 17 a-4 (17 CFR 240.17 a-4)
- FDA Part 11 (21 CFR Part 11)
- Electronic Signatures in Global and National Commerce Act (e-Sign Act)
- EU Data Protection Directive (Directive 95/46/EC)
- Data Protection Act (UK)

### Notable Standards on Management of Electronic Records

- **Australia** – VERS, Victoria Electronic Records Standard
- **Canada** – CAN/CGSB 72.11.00 Microfilm and Electronic Images as Documentary Evidence
- **Canada** – CAN/CGSB 72.34-2005 Electronic Records as Documentary Evidence
- **ISO 15489** – Records Management Standard
- **UK** - BSI DISC PD 0008 Code of Practice for Legal admissibility of Information Stored under EDMS
- **USA** – DoD 5015.2 Design Criteria For Electronic Records Management Software Application
- **USA** – **AIIM/ANSI TR 31** -2004 Legal Acceptance of Records Produced By Information Technology Systems

## What is Electronic Evidence ? “Definition of Record (Document)”

- A set of recorded information that is recorded or stored on any medium in or by a computer system or other similar device and that can be read, perceived or heard by a person or a computer system or other similar device. It includes a display, printout or other output of that data.

*Source: CAN/CGSB 72.34.2005 – Electronic Records as Admissible Evidence and Canada Evidence Act section 31.8*

## Legal Tests for Acceptable Records

1. “The integrity of the electronic records system;”
2. “Relied upon printouts” of electronic records;
3. “The usual and ordinary course of business;”
4. “The circumstances of the making of the record.”

## Two Important Assurances from the PIPED Act

1. **Electronic Records are accepted:**

Reliable Computer records including the electronic images (Document images) are equal in law to traditional paper records.

2. **Destruction of original paper records once captured in electronic form:**

Original paper records need not be retained once their electronic form is securely captured with **the exception of specialized laws that may continue to require the retention of original paper records (seek lawyers advice).**

## The Relevance of National Standards Sec 31.5 Standards

The following "Standards Rule" was added to the Canada Evidence Act (Sec 31.5) and to most provincial and territorial Evidence Acts:

"Standards may be considered ...for the purpose of determining under any rule of law whether an electronic document is admissible, evidence may be presented [in any legal proceeding] 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."

## Compliance Tests for the National Standard of Canada,

*Electronic Records As Documentary Evidence*  
CAN/CGSB-72.34-2005

- Using this national standard to show that a records system has the necessary "system integrity" required by the electronic records provisions of the Evidence Acts.
- Section 34.1(8) of the Ontario Evidence Act, and s. 31.5 of the Canada Evidence Act provide for the use of such standards.
- 12 principal groupings of the principles provided by this national standard.

## Why Standards Under the Act ?

- Standards makes the Courts consider the reliability of the record-keeping practice
- Adherence to STANDARDS means good record keeping practices are followed
- Widely recognized in the industry
- Compliance to Standards is obligatory - not essential
- For effective presentation of records - follow industry standards

## Why businesses need to comply with Electronic Records Standards

1. To maximize the probability of admissibility and weight given to electronic records
2. To stay out of legal trouble
  - Risk of Litigation/Embarrassment
  - Enron, Microsoft, DoD
3. To Prove Compliance with regulations
  - SEC, EPA, PIPEDA, FOIA, HIPAA
4. Because they are forced to
  - Government Mandates/Recommendations
  - USA (DoD), Canada (CAN/CGSB 72.34), UK (PRO), Australia (VERS), EU (MoREQ)
5. To Save \$\$\$
  - Downstream Cost Avoidance
  - Cost of litigation (discovery), cost of major mistakes
6. New opportunities to enhance corporate image

## Canada's National Standard on Electronic Images and Records

- CAN/CGSB 72.11.00: Microfilm and Electronic Images as Documentary Evidence (First released in 1993)
- CAN/CGSB 72.34.2005: Electronic Records as Documentary Evidence (New Standard released in 2006)



## Primary Goal and Objective of e-Evidence Standard

- Ensures the integrity of the computer system are reliable and trustworthy for all intended purposes
- Serve as a consolidated set of rules in support of admissibility of electronic records in accordance with federal and provincial evidentiary rules
- Maximizes the admissibility weight
- Defines best practices for Electronic Records Management (ERM) programs
- Provides guidance and framework for compliance
- Building trust on data integrity
- Building confidence and trust in the minds of customer that their records conform to industry standards
- Legal community reliance on established set of rules

## Example: CRA IC05-1 Circular

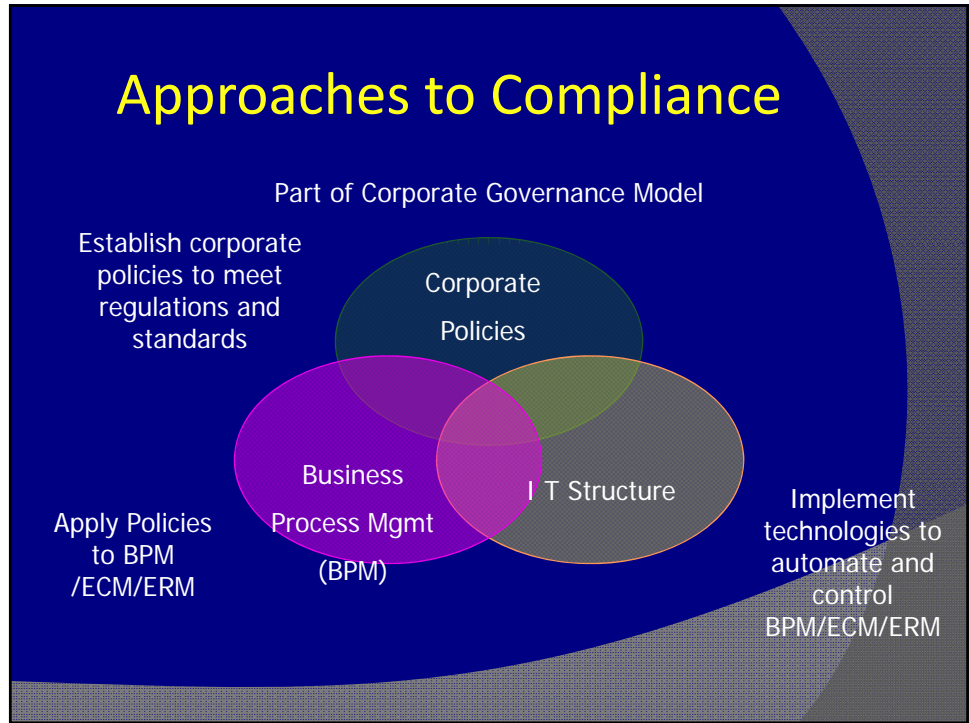
- Canada Revenue Agency Circular IC05-1 (June 2005), Electronic Record Keeping endorses the following standards:
  1. CAN/CGSB 72.11.00: Microfilm and Electronic Images as Documentary Evidence
  2. CAN/CGSB 72.34,2005: Electronic Records as Documentary Evidence

## Some Applications of National Standard

- Canada Revenue Agency – IC05-1 (2005 June)
  - Electronic Record Keeping circular makes references for the Taxpayer to prepare records in accordance with the National Standard titled: CAN/CGSB 72.34 2005, and CAN/CGSB 72.11.99
- GST Memorandum – IC05-1 (2005 June)
  - Electronic Record Keeping circular makes references to CAN/CGSB 72.34 2005 and CAN/CGSB 72.11.99 standards
- Federal Govt Agency - Under study of a Records Management program against the CAN/CGSB 72.34 Standard
- Commercial sectors: established users of CAN/CGSB 72.11.93 and just beginning to understand CAN/CGSB 72.34 -2005 standard

## Electronic Records Management Program

- Foundation for managing complex world of electronic records over their life cycle
- Assists in defining proper file classifications
- Controls records retention and destruction criteria
- Provides audit trails
- Provides litigation tool in validating electronic records change-of-evidence
- Must be made part of the business culture supported by policies and processes



## Summary

- e-Records need extra care and control
- Compliance is mandatory and in force
- Most of the Federal agencies and Provincial Govt have now enforced new regulation on treatment of electronic records
- Standard is needed by the User community to prove the authenticity, reliability and integrity of e-System and e-Records
- Severe penalties are now in force
- Seek opportunities to claim adherence to governance rules to enhance corporate image
- It is a GLOBAL requirement to act quickly to meet growing demands of e-Commerce

## Thank You

- Further information  
Electronic Records Management Survey
  - [www.aiim.org](http://www.aiim.org)
  - [www.arma.org](http://www.arma.org)
  - [www.cohasset.com](http://www.cohasset.com)
- Standard CAN/CGSB 72.34- 2005
  - [www.scc.ca](http://www.scc.ca)
  - [www.pwgsc.gc.ca/cgsb](http://www.pwgsc.gc.ca/cgsb)
  - [http://www.techstreet.com/cgi-bin/detail?product\\_id=1252845](http://www.techstreet.com/cgi-bin/detail?product_id=1252845)
  - Uniform Electronic Evidence Act
- [www.law.ualberta.ca/alri/ulc/current/eeeact.htm](http://www.law.ualberta.ca/alri/ulc/current/eeeact.htm)
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  - ([vgurushanta@evidagroup.com](mailto:vgurushanta@evidagroup.com))