

# Email as Evidence

## Canadian Case Law

1. *Eizenshtein v. Eizenshtein*, [2008] O.J. No. 2600 (S.C.J.) (QL). (email and waiver of privilege)
2. *Johnson v. Bell Canada* (2008), 299 D.L.R. (4th) 296 (FC). (PIPEDA application to “personal” work emails)
3. *Leoppky v. Meston*, [2008] A.J. No. 55 (Q.B.) (QL). (email and Statute of Frauds)
4. *Lethbridge College and Lethbridge College Faculty Association (Bird Grievance) (Re)*, [2007] A.G.A.A. No. 67 (Ponak) (QL). (balancing of interests approach applied in judging admissibility of emails from employees MS Hotmail account)
5. *National Bank Financial Ltd. v. Daniel Potter*, [2005] N.S.J. No. 186 (S.C.) (QL). (employer control of email and privilege waiver)
6. *Nad Business Solutions Inc. v. Inasec Inc.*, [2000] O.J. NO. 1585 (S.C.J.) (QL). (email as course of conduct)
7. *Ottawa (City) (Re)*, [2009] O.I.P.C. No. 51 (QL). (custody or control of “personal emails” under access to information legislation)
8. *Pacific Northwest Herb*, [1999] B.C.J. No. 2772 (S.C.) (QL). (employer control of email and privilege waiver)
9. *R. v. Bellingham*, 2002 ABPC 41 (CanLII). (no evidence of meaning or accuracy of printouts from Lottery Corp)
10. *R. v. Cole*, [2009] O.J. No. 1755. (S.C.J.) (expectation of privacy in information stored on employer’s computer system)
11. *R. v. McMullen*, (1979), 100 D.L.R. (3d) 671 (Ont. CA). (system reliability)
12. *University of Ottawa and Association of University Professors of the University of Ottawa (Re)* (19 September 2008, P. Chodos). (employer control of emails in the context of an access to information request)

## American Case Law

1. *Broccoli v. Echostar Communications Corp.*, 229 F.R.D. 506 (D. Md. 2005). (the perils of short email retention periods)

2. *In re Vinhee*, 336 B.R. 437 (9th Cir. 2005). (evidentiary foundation for admission of electronic records)
3. *Kerr v. Dillard Store Services, Inc.*, No. Civ. A. 07-2604-KHV, 2008 WL 2152046 (D. Kan. May 21, 2008). (consequences of poor systems reliability)
4. *Lewy v. Remington Arms Co.*, 826 F.2d 1104 (8<sup>th</sup> Cir. 1988). (there may be some types of records in which short litigation periods are risky)
5. *Lorraine v. Markel American Insurance Co.*, 241 F.R.D. 534 (D. Md. 2007). (general discussion of evidentiary issues associated with electronic information)
6. *In re Vioxx Products Liability Litigation*, 501 F.Supp.2d 789 (E.D.La. 2007). (privilege waiver and internal counsel emails)

### **Other Case Law**

1. *J. Pereira Fernandes SA v. Mehta* [2006] EWHC 813.
2. *S.M. Integrated Transware v. Schenker Singapore*, [2005] SGHC 58.