

# Electronic commerce law

# Guide 3

## Electronic Commerce Law

### Executive Summary

Electronic Commerce Laws in Canada are generally governed by provincial **legislation**. The purpose of such **legislation** is to outline requirements that must be met to ensure that on-line transactions and contracts will be as legally enforceable as ordinary transactions in person or contracts on paper.

Words highlighted in purple are defined in the Glossary at the end of this guide.

### IS THIS GUIDE RIGHT FOR YOU?

#### Your Questions Answered

- Do electronic commerce laws vary across provinces?
- How was electronic commerce **legislation** in Canada developed?
- What is covered under the electronic commerce laws?
- What is the purpose of electronic commerce **legislation**?
- How will my on-line transactions and contracts be the same as paper-based transactions and contracts?
- How do I sign on-line transactions and contracts?
- When will electronic transactions and contracts not be enforceable?
- Can I use electronic information and documents for all my transactions and contracts?
- Why do some websites end in ".ca"?

### Introduction

In Canada, it is generally considered that electronic commerce **legislation** is a matter of provincial **jurisdiction**. There is federal **legislation** dealing with **electronic documents** and related **electronic filings**, however, these generally apply to matters dealing with the federal government. Although there are certain central features of electronic commerce **legislation**, there are some differences between the provincial **statutes**, and it is therefore necessary to refer to the **legislation** of the province in which one is doing business in order to learn about the specific requirements applicable in that province.

### Canadian E-Commerce Legislation

In an attempt to resolve the legal uncertainties that surround many aspects of electronic commerce, the *Uniform Electronic Commerce Act* (Canada) was developed by the Uniform Law Conference of Canada (ULCC) and, in

September of 1999, the ULCC recommended it for adoption by provincial legislatures. The *Uniform Electronic Commerce Act* was modeled on the United Nations (UN) Model Law on Electronic Commerce.

## *Uniform Electronic Commerce Act*

The *Uniform Electronic Commerce Act* attempts to expand some of the basic rules of law to cover documentation and transactions that exist or occur in electronic form. As the UN's Model Law on Electronic Commerce served as a guide for the *Uniform Electronic Commerce Act*, the *Uniform Electronic Commerce Act* has served as its own helpful guide for corresponding provincial **legislation**. As a result, electronic commerce **legislation** in Canada is similar in each province and territory, with the exception of Quebec's *An Act to Establish a Legal Framework for Information Technology*, which is considerably different than the *Uniform Electronic Commerce Act*.

## Central Features of E-Commerce Legislation

A central feature of the e-commerce **legislation** is the principle of "**Electronic Equivalence**". E-commerce **legislation** aims to provide both businesses and consumers with peace of mind that on-line transactions and contracts will be as legally enforceable as ordinary transactions in person or contracts on paper, provided that specific requirements are met.

### 1. **Functional Equivalency Rules**

The e-commerce **legislation** establishes several rules that provide the means by which electronic information and documentation will be considered **functionally equivalent** to their respective paper counterparts:

- (a) Legal recognition of electronic information and documents: information or documents, including contracts, in electronic format are valid and enforceable
- (b) Legal requirement that information or documents are in writing: this requirement will be satisfied when the information or document in electronic format is accessible, referable, and is capable of being retained by a person reading the information or document
- (c) Legal requirement to provide information or document in specified non-electronic form: this requirement will be satisfied when the display of the information in an **electronic document** is recognizable as being the form required by law
- (d) Legal requirement to provide original documents: this requirement will be satisfied when there is a reliable assurance as to the integrity of the information. This means that the information contained in the **electronic document** is complete and unaltered
- (e) Legal requirement of original signature: this requirement will be satisfied if at the time an electronic signature is attached to an **electronic document**, it is reliable to identify the person making it and there is a reliable association between the electronic signature and the **electronic document**. In certain provinces, there are additional requirements if the document is to be presented to a **public body**.

### 2. **Formation and Operation of Contracts and the Use of Electronic Agents**

E-commerce **legislation** confirms that valid contracts can be formed using electronic information or **electronic documents** and actions, such as clicking or touching a computer icon, to communicate intention to contract. **Electronic agents** are permitted to form contracts with individuals; however, such transactions will be unenforceable against the individual if:

- (a) the individual makes a material error in the **electronic document** or information used in the transaction;
- (b) the **electronic agent** does not give the individual an opportunity to prevent or correct that error;

- (c) the individual promptly notifies the other person on becoming aware of the error; and
- (d) where **consideration** is received as a result of the error, the individual takes reasonable steps to return such **consideration** or destroy the **consideration** (if so instructed), and the individual has not used or received any material benefit or value from the **consideration**.

An electronic contract does not have to be in writing or be signed by pen in order to enforce the contract against the other party. However, the traditional requirements for enforceable contracts (e.g. offer, acceptance, **consideration**) will have to be satisfied and, in particular, it will be necessary to ensure that the terms of the contract are clear and unambiguous (and unaltered), and that the signatures are reliable to identify the parties and to indicate a clear intention to be bound to the contract.

### 3. ***Sending and Receiving Electronic Information***

Electronic information or documents are considered sent when they enter an **information system** outside the sender's control, or if the sender and receiver use the same **information system**, then the information is sent when it becomes capable of being retrieved and processed by the receiver. Electronic information or documents are presumed to be received by a receiver when:

- (a) the information or documents enter the receiver's **information system** (used to receive the type of information or documents sent) and they are capable of being retrieved and possessed by the receiver; or
- (b) the receiver does not have such a system, but becomes aware of the information or documents in his or her **information system**, and it becomes capable of being retrieved and possessed by the receiver.

### 4. ***Exclusions***

It is important to note that in some provinces certain documents and contracts cannot be formed electronically, such as wills.

## **.ca Domain Names**

Canada's country code top level **domain** is ".ca". Registrations for .ca **domain** names are administered by the Canadian Internet Registration Authority (CIRA). In order to secure the registration of a .ca **domain**, the Canadian Presence Requirements established by CIRA must be satisfied. Only certain specified individuals and entities are permitted to apply to CIRA (through a CIRA certified registrar) for the registration of, and to hold and maintain the registration of, a .ca **domain** name.

These specified individuals and entities include: a Canadian citizen or permanent resident (or legal representative); a corporation **incorporated** under the laws of Canada or any province or territory of Canada; a **partnership** registered under the laws of any province or territory of Canada, certain associations, trade unions and political parties; and the owner of a **trade-mark** registered in Canada (in this case, registration is limited to a .ca **domain** name consisting of, or including, the exact word component of the registered **trade-mark**).

In June 2008, CIRA released the CIRA Domain Name Dispute Resolution Policy (CDRP) which has been updated as recently as August, 2011. The policy provides for mandatory **arbitration** of disputes relating to .ca **domain** name registrations. It is intended to be a relatively low-cost and quick administrative process for cases where apparently **bad faith** .ca **domain** name registrations can be adjudicated. The process is not binding upon the courts and recourse to formal legal proceedings remains available for **bad faith** registration and other **domain** name related disputes. While the spirit of the CDRP is the same as the Uniform Dispute Resolution Policy (UDRP) which governs .com, .net, .org and other **top-level domain** disputes, there are several procedural and substantive differences between the CDRP and the UDRP.

Other top level **domains** such as .com, .net, .org and .biz are available as well to Canadian businesses. Registration of those **domain** names must be done through the appropriate registrar or registration authority.<sup>i</sup>

# Glossary

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**Arbitration:** settling of disputes between two parties by an impartial third party, whose decision the contending parties agree to accept.

**Bad faith:** intentionally dishonest act.

**Consideration:** payment; compensation.

**Domain:** a group of networked computers that share a common communications address.

**Electronic agent:** a computer program or any other electronic means used to initiate an act or to respond to electronic documents or acts, in whole or in part, without review by an individual at the time of the response or act.

**Electronic document:** information recorded in a manner that requires a computer or other electronic device to display, interpret, and process it.

**Electronic equivalence:** the idea that on-line transactions and contracts will be equivalent to ordinary transactions in person or contracts on paper.

**Electronic filing:** the process of using a computer program to transmit information electronically to another party.

**Functionally equivalent:** where one thing is different from something else, but can perform the same functions.

**Incorporated:** formed or organized as a legal corporation.

**Information system:** a computer system or set of components for collecting, creating, storing, processing, and distributing information.

**Jurisdiction:** power; authority; control.

**Legislation:** a law or a body of laws enacted.

**Partnership:** a business or firm owned and run by two or more partners.

**Public body:** an organization that delivers a public service.

**Statute:** a law or a rule.

**Top-level domain:** the last segment of a domain name representing the purpose and type of domain.

**Trade-mark:** a name, symbol, letter, or words that uniquely identifies a business' goods or services.

# ADDITIONAL RESOURCES

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An Act to Establish a Legal Framework for Information Technology - <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-1.1>

Uniform Electronic Commerce Act - <http://www.ulcc.ca/en/1999-winnipeg-mb/359-civil-section-documents/1138-1999-electronic-commerce-act-annotated>

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<sup>i</sup> The purpose of this guide has been to present a general overview of some of the e-commerce issues facing businesses wishing to establish themselves in Canada. It is beyond the scope of such a summary to review such legislation in depth, or to provide particulars of the legal and other considerations which should be reviewed when dealing with a particular industry. This publication does not constitute legal or tax advice to any person. Persons contemplating business activity in Canada should consult with their professional advisers to ensure that their endeavours are structured in compliance with local laws and to ensure maximum benefit.

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