

E-commerce in Canada: How international businesses can sell online

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This article is part of a practical series written for international companies looking to establish, launch, operate or invest in a business in Canada. Each article covers a major area of law in Canada – everything from employment laws to taxes. Access all the articles on the [“Doing business in Canada: A practical guide from ‘Eh’ to ‘Zed’”](#) page.

Electronic commerce has created significant opportunities for foreign investors in Canada. However, it also presents a host of legal issues. Included among these issues are:

- the validity of electronic documents;
- the formation and enforceability of electronic contracts;
- the protection of copyrighted works and trademarks;
- the security and cross-border export of information;
- consumer protection, privacy and the sending of commercial electronic messages;
- the admissibility of electronic evidence in court;
- compliance with advertising and competition laws; and
- the application and enforcement of both domestic and foreign tax legislation.

Canada has enacted laws to specifically address some of these issues, while other issues may be dealt with through other generally applicable legislation, in private contract and with insurance. The following are some general highlights concerning the law relating to formation of electronic contracts and the validity of electronic documents in Canada.

E-commerce legislation in Canada

The federal government and most provinces (except Québec) have modelled their e-commerce legislation after the Model Law on Electronic Commerce developed by the United Nations Commission on International Trade Law, and the Uniform Electronic Commerce Act developed by the Uniform Law Conference of Canada. The legislation defines “electronic” to mean created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic or optical means or by any similar means. While the legislation covers a broad range of electronic contracts and documents, it does not

apply to certain other documents, such as wills, powers of attorney and documents creating or transferring interests in land. Québec has taken a different approach in its legislation, although it is broadly similar to the legislation adopted in other provinces.

The validity of electronic documents

Existing e-commerce legislation generally provides that:

- an electronic record will not be denied legal effect solely because it is in electronic form;
- a record that is in electronic form and is accessible for future reference will satisfy a legal requirement that the record be in writing;
- a legal requirement for an original record is satisfied by providing an electronic record,
- as long as the record is organized in substantially the same manner and can be accessed and retained by the addressee for future reference;
- **an electronic signature satisfies a legal requirement for a person's signature (although some provinces, such as Québec, have stipulated that electronic signatures must satisfy particular standards); and**
- the use of electronic records is not mandatory, although consent to use electronic documents may be inferred from past conduct.

Certain legal documents and contracts, such as wills and contracts that transfer interests in land, cannot be made electronically.

Contract formation and contract enforceability

E-commerce legislation confirms that a valid contract can be formed electronically using electronic information or electronic documents and through actions that communicate **the parties' intentions (such as clicking or touching an icon on a website)**. It also regulates the formation and enforceability of contracts made electronically. For example, absent a contrary agreement between the parties, an offer or acceptance, or any other matter that is material to a contract's formation or operation, may be expressed in electronic form.

A contract will not be invalid or unenforceable solely because an electronic record was used to form the contract.

Provided that certain rules are observed, a contract also may be formed by electronic agents. The legislation defines "electronic agent" as a computer program or some other electronic means used to initiate an activity or to respond to electronic information, records or activities, in whole or in part, without review by an individual at the time of the response or activity.

Sending and receiving electronic records

An electronic record is considered sent when it enters an information system that is outside the sender's control. If the sender and the addressee are in the same

information system, the electronic record is deemed sent when the addressee can retrieve and process the record.

An electronic record is deemed received by an addressee when the record enters the **addressee's information system**. If the addressee has not designated or does not use an information system to receive electronic records, the legislation deems the addressee to have received the record on becoming aware that the record is in the addressee's information system.

Electronic records are deemed to be sent from the originator's place of business and to be received at the recipient's place of business. If there are multiple places of business, the relevant "place of business" is generally the place of business with the closest relationship to the underlying transaction.

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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