



Lancaster, Brooks & Welch LLP

BARRISTERS AND SOLICITORS

"The Paperless Contract"

By Michael A. Mann

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In order for an agreement to be enforceable, there must be an offer and an acceptance plus something "of value" provided by each party to the other. The offer must detail the rights and obligations of each of the parties; and then the acceptance should unconditionally agree to those terms without any changes, or else it will be deemed a counter-offer. In a typical contract, one party may provide services or products and the other may provide money.

It has long been established that an oral contract can be as binding as one that is on paper. In fact there are many agreements which continue to be "sealed" by a handshake. The potential problem with any verbal agreement is that determining the rights and responsibilities of each party can be difficult when there is little or nothing in writing. A dispute regarding interpretation of a verbal contract can quite easily become a "He said. She said" situation.

To complicate matters further, in our technologically advanced society, new forms of contracts have been established beyond the oral and paper-based versions. We are now inundated with "e-commerce". Faced with transactions negotiated using the world wide web and using email capacities, the Province of Ontario enacted the *Electronic Commerce Act* (the "ECA") in 2000. The ECA recognizes that people who are selling their services or wares are often not physically in the same location as their buyers. While written mail orders and hard copy catalogues are still in use, the ability to click on an item on a web page and then follow the steps as to method of payment has become much more efficient and is a widely used sales method.

The ESA therefore allows for an "electronic signature" to be affixed to a contract to signify its acceptance. This could be as simple as touching or clicking on an appropriate icon or other place on a computer screen. Although finalizing an agreement electronically cannot be forced upon one person by another, the reality is that the exchange of documents electronically is often the easiest way to function in a particular business or transaction. A fundamental aspect of the ESA is that the contracting party must be provided with the information or document in an electronic form which can be retained and then accessed for subsequent reference. This does not mean merely making the information available on a website.

The ESA is not applicable to certain transactions and documents such as the formation of wills or powers of attorney and transfers of land; however, the ESA is a very useful tool in today's electronic commerce world. Care must be taken when entering into agreements and completing documents in "cyberspace"; and in that regard it is prudent to get sound legal advice prior to electronically signing off on any contract which may be significant to you or your business.

**The foregoing information is provided to you for information purposes only.
We caution you to obtain legal advice specific to your situation in all circumstances**

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