

# Ce que les lois nous disent au sujet de l'utilisation des signatures électroniques

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## Aperçu

Le présent document résume ce que disent les lois actuelles au sujet de l'utilisation des signatures électroniques (aussi appelées les signatures numériques ou informatiques) pour remplacer les signatures manuscrites « à l'encre fraîche ». L'analyse que nous vous présentons ici porte uniquement sur les lois fédérales ainsi que les lois des provinces suivantes : Colombie-Britannique, Alberta, Ontario et Québec. Allez ci-dessous pour voir un tableau présentant les principales dispositions des lois applicables.

Le présent document et le tableau qui l'accompagne ont été créés afin d'aider les professionnels de Dentons à déterminer s'ils peuvent faire signer ou non des documents au moyen de techniques électroniques dans une situation donnée. Lorsqu'il est question de contrats et de transactions électroniques, vous devez tenir compte d'un certain nombre de facteurs : l'accord doit-il être consigné par écrit? une signature est-elle requise par la loi pour que l'accord soit exécutoire? l'entente sera-t-elle valide en vertu d'autres règles ou de la common law si elle a été signée électroniquement? etc. Nous ne traitons pas dans les pages qui suivent des questions juridiques découlant du commerce électronique de manière générale et vous ne devez vous servir du présent document et de ceux qui y sont liés que pour déterminer si une signature électronique sera effective et autorisée dans un cas donné.

Enfin, vous trouverez dans la présente note certaines des meilleures pratiques à appliquer relativement à l'utilisation d'un logiciel de signature électronique tel que DocuSign.

## Lois applicables

Le commerce électronique et les contrats relèvent de la compétence des provinces. En vertu des lois provinciales, les signatures électroniques sont généralement autorisées pour satisfaire à l'exigence de signature, à quelques exceptions près (les exceptions sont indiquées dans le tableau présentant les dispositions législatives applicables). Lorsqu'une signature est requise en vertu de la législation provinciale, une signature électronique sera traitée comme équivalente au plan fonctionnel<sup>1</sup>.

Bien que les questions de droit des contrats relèvent de la compétence législative des provinces, certaines lois fédérales envisagent et exigent des signatures, comme la *Loi canadienne sur les sociétés par actions*<sup>2</sup>. Lorsque l'exigence de signature découle de la législation fédérale, une analyse distincte doit être faite. En règle générale, les exigences fédérales en matière de signature électronique sont plus restrictives que les exigences provinciales en la matière.

La *Loi sur la protection des renseignements personnels et les documents électroniques* (LPRPDE)<sup>3</sup> s'applique aux documents ou aux activités qui relèvent de la compétence fédérale et définit le régime de signature électronique pour ces activités. La LPRPDE prévoit que lorsqu'une signature est requise en vertu d'une disposition d'une loi fédérale qui prévoit

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<sup>1</sup> Voir l'*Electronic Transactions Act*, S.B.C. 2001, c. 10 (BC ETA), article 11 (Colombie-Britannique); l'*Electronic Transactions Act*, SA 2001, c. E-5.5 (Alberta ETA), article 16(1) (Alberta); la *Loi de 2000 sur le commerce électronique*, L.O. 2000, chap. 17 (LCE de l'Ontario), article 11 (Ontario); et la *Loi concernant le cadre juridique des technologies de l'information*, RLRQ c C-1.1, article 5 (Québec).

<sup>2</sup> LCSA, L.R.C. (1985), ch. C-44.

<sup>3</sup> LPRPDE, L.C. 2000, ch. 5.

L'utilisation d'un support papier pour enregistrer ou communiquer de l'information ou des transactions, l'exigence de signature est satisfaite par l'utilisation de moyens électroniques, uniquement si le texte législatif figure dans l'Annexe 2 ou l'Annexe 3 de la LPRPDE et si la signature est conforme aux règlements applicables en vertu de la LPRPDE (le cas échéant)<sup>4</sup>. Toutefois, lorsque le document nécessitant une signature est une déclaration sous serment ou une affirmation solennelle, une déclaration attestant la véracité de son contenu ou un document nécessitant la signature d'un témoin, la signature électronique doit également être « sécurisée », ce qui nécessite l'utilisation de systèmes de chiffrement, de fonctions de hachage et d'autres dispositifs de sécurité<sup>5</sup>.

Bien que la règle générale en vertu des lois fédérales est plus restrictive que celle des lois provinciales, certaines lois fédérales (ou leurs règlements) peuvent expressément envisager l'utilisation de signatures électroniques ou prescrire certaines exigences pour l'apposition de signatures électroniques sur les documents devant être préparés en vertu de ces lois<sup>6</sup>.

Pour plus de détails sur la législation applicable dans chaque territoire de compétence, veuillez consulter le tableau présentant les dispositions législatives applicables.

## Qu'est-ce qui constitue une « signature électronique »?

Le terme « signature électronique » est largement défini dans la législation sur le commerce électronique de chaque province du Canada. Par exemple, la définition en Colombie-Britannique, en Alberta et en Ontario<sup>7</sup>, qui est essentiellement la même, se divise en quatre éléments :

- Renseignements électroniques...
- ... qu'une personne crée ou adopte...
- ... en vue de signer un document...
- ... et qui sont dans le document ou qui y sont joints ou associés.

Les définitions de l'Alberta et de l'Ontario n'ont pas été examinées par les tribunaux, mais la Cour suprême de la Colombie-Britannique a déterminé qu'un courriel contenant une signature électronique satisfaisait aux exigences d'une « signature électronique » aux fins de la législation de la Colombie-Britannique<sup>8</sup>.

Au Québec, la Cour supérieure a également accepté que le nom d'une personne à la fin des échanges de courriels soit suffisant pour indiquer son consentement<sup>9</sup>.

<sup>4</sup> Voir les articles 32 et 43 de la LPRPDE. Les textes législatifs qui figurent dans l'Annexe 2 de la LPRPDE sont la *Loi sur les immeubles fédéraux et les biens réels fédéraux*, L.C. 1991, ch. 50 (Articles 3, 5 à 7, 11 et 16) ainsi que le *Code canadien du travail*, L.R.C. (1985), ch. L-2, (article 254(1)) et celui qui figurent dans l'Annexe 3 est le *Règlement concernant les immeubles fédéraux (DORS/92-502)* (Articles 9 et 11).

<sup>5</sup> Voir les articles 44 à 46 de la LPRPDE et le *Règlement sur les signatures électroniques sécurisées (DORS/2005-30)* en vertu de la LPRPDE pour savoir ce qui constitue une « signature électronique ».

<sup>6</sup> Voir par exemple l'article 252.7 de la CBCA, l'article 1002 de la *Bank Act*, S.C. 1991, c. 46, and section 539.11 of the *Trust and Loan Companies Act*, S.C. 1991, c. 45.

<sup>7</sup> BC ETA, article 1; Alberta ETA, article 1; LCE de l'Ontario, article 1.

<sup>8</sup> *Johal v Nordio*, 2017 BCSC 1129.

<sup>9</sup> *Hebert c. Bernard*, 2016 QCCS 3485. Voir aussi *Syndicat des Employées et Employés de la SOGEECOM (SEESOG) / Alliance de la Fonction publique du Canada et Société générale des Étudiantes et Étudiants du Collège Maisonneuve*, 2013 QCCRT 184, para 32-40.

En outre, il existe une jurisprudence en Saskatchewan et au Nouveau-Brunswick (qui ne sont pas inclus dans le champ d'application de cette note, mais qui ont adopté des lois sur le commerce électronique dans lesquelles la définition de « signature électronique » est similaire à celles de la Colombie-Britannique, de l'Alberta et de l'Ontario) en vertu de laquelle la définition de « signature électronique » englobe également :

- les lettres portant la signature électronique d'une personne qui a été numériquement apposée sur la lettre, y compris une image de la signature manuscrite de la personne<sup>10</sup>; et
- le fait de cliquer sur un bouton « J'accepte » lors de la signature d'une renonciation<sup>11</sup>.

La question de savoir si une signature DocuSign entre ou non dans la définition de « signature électronique » que l'on trouve dans les lois sur le commerce électronique au Canada n'a pas été examinée par les tribunaux. Toutefois, étant donné le vaste champ couvert par ces définitions, elle finira probablement par l'être.

En outre, sur la base de la jurisprudence à ce jour, il est probable que toute image ou autre reproduction numérique de signature manuscrite sera considérée comme une « signature électronique » aux fins des lois sur le commerce électronique.

## Contextes où les signatures électroniques ne peuvent pas être utilisées

En vertu de la législation provinciale, certains types d'accords et d'autres documents doivent être signés manuellement pour être exécutoires et ne doivent donc jamais être signés au moyen de techniques électroniques. Ces ententes et documents, tels que les testaments et les codicilles (sous réserve de certaines nuances au Québec), et les instruments négociables, doivent toujours être signés manuellement pour être considérés comme étant correctement exécutés.

Pour connaître les types d'ententes et autres documents exclus de la législation sur le commerce électronique, consultez le tableau présentant les dispositions législatives applicables.

Dans le cas de documents ou d'activités relevant de la compétence fédérale, il faut examiner les lois pertinentes afin de déterminer si elles autorisent ou interdisent spécifiquement l'utilisation des signatures électroniques. Par exemple, comme indiqué dans le tableau présentant les dispositions législatives applicables, les billets à ordre au Canada sont soumis à la *Loi fédérale sur les lettres de change* (LLC)<sup>12</sup>, qui exige que les billets à ordre soient signés pour être exécutoires. Comme la LLC ne figure pas dans l'Annexe 2 ou l'Annexe 3 de la LPRPDE – voir plus haut – et qu'elle ne contient aucune disposition expresse autorisant les signatures électroniques, une signature électronique ne satisferait pas à l'exigence de signature d'un billet à ordre<sup>13</sup>.

## Le consentement comme exigence pour les signatures électroniques

Bien que la législation provinciale et la LPRPDE envisagent et autorisent les signatures électroniques, rien dans ces textes législatifs ne rend obligatoire l'utilisation de documents électroniques ou de signatures électroniques.

<sup>10</sup> *I.D.H. Diamonds NV v Embee Diamond Technologies Inc.*, 2017 SKQB 79.

<sup>11</sup> *Quilichini v Wilson's Greenhouse*, 2017 SKQB 10.

<sup>12</sup> *Loi sur les lettres de change*, L.R.C. (1985), ch. B-4.

<sup>13</sup> Certaines transactions pourraient impliquer des billets à ordre signés électroniquement à des fins commerciales.

En vertu de la législation provinciale, une partie n'est pas tenue d'utiliser, de fournir ou d'accepter un document sous forme électronique sans le consentement de la personne<sup>14</sup>, bien que le consentement puisse être déduit de la conduite de la personne en question<sup>15</sup>. Cela suggère que, pour les documents ou les activités relevant de la compétence provinciale, une partie qui s'engage activement dans une transaction électronique sans s'y objecter peut être considérée comme y ayant consenti (en l'absence de toute contrainte). La législation de l'Alberta et de l'Ontario ne permet pas aux organismes publics de donner un consentement implicite<sup>16</sup>.

En vertu de la LPRPDE, lorsqu'une disposition d'une loi fédérale exige qu'une personne fournisse à une autre personne un document ou une information, les deux personnes doivent avoir accepté que ce document ou cette information soit fourni(e) sous forme électronique<sup>17</sup>.

Cette exigence de consentement est la base sur laquelle certaines parties institutionnelles et autres continuent d'exiger des signatures manuscrites sur certains documents. Par exemple, voir les exigences relatives aux institutions financières dans la section québécoise du tableau présentant les dispositions législatives applicables, et les exigences relatives au registre des sociétés dans la section sur l'Alberta.

## Forme de la signature

Dans les provinces de common law, il n'est pas nécessaire qu'une signature électronique ressemble à une signature en caractères cursifs ou prenne un format particulier<sup>18</sup>. En vertu de la législation québécoise, une signature doit être le nom du signataire ou une marque qui lui est personnelle et qu'il (elle) utilise de façon courante pour manifester son consentement<sup>19</sup>.

## Avis juridiques et signatures électroniques

L'exécution et l'émission d'avis (et la diligence à cet égard) nécessitent un examen du droit des signatures électroniques en ce qui concerne le ou les documents spécifiques qui font l'objet de l'avis (par exemple un accord commercial, une garantie ou un instrument négociable). Une fois que le contrôle diligent requis est terminé et qu'il est établi que le document peut être signé en utilisant des techniques électroniques en vertu de la législation applicable, il ne devrait pas être nécessaire d'ajouter des réserves et des hypothèses au-delà de l'hypothèse habituelle concernant l'authenticité des signatures.

En ce qui concerne les contrats, les principales exigences du droit des contrats sont que la partie ait accepté les conditions auxquelles elle est liée et que l'accord soit remis sans condition à l'autre partie, indiquant l'acceptation des conditions par la partie et son intention d'être liée.

La question de savoir si l'assentiment, exprimé par une signature sur un document, liera une partie dépend : (1) de l'autorité de la personne qui signe (lorsqu'une personne ne signe pas en son nom propre); et (2) de la volonté de l'autre partie d'accepter la forme sous laquelle l'assentiment est exprimé (une partie peut toujours préciser ce que l'autre doit

<sup>14</sup> Voir par exemple BC ETA, article 4(1); Alberta ETA, article 8(1); LCE de l'Ontario, article 3(1); la *Loi concernant le cadre juridique des technologies de l'information*, RLRQ c C-1.1, article 29.

<sup>15</sup> BC ETA, article 4(2); Alberta ETA, article 8(2); LCE de l'Ontario, article 3(2). En Alberta et en Ontario, il doit également y avoir des motifs raisonnables de croire que le consentement est authentique et pertain par rapport à l'information ou au document en question.

<sup>16</sup> Alberta ETA, article 19; LCE de l'Ontario, article 14.

<sup>17</sup> LPRPDE, article 40.

<sup>18</sup> Dans la LCE de l'Ontario, par exemple, on entend par signature électronique des « renseignements électroniques qu'une personne crée ou adopte en vue de signer un document et qui sont dans le document ou qui y sont joints ou associés ».

<sup>19</sup> *Code civil du Québec*, CCQ-1991, article 2827.

faire pour accepter une offre ou indiquer son assentiment). La livraison est effectuée tant que le débiteur ou le promettant a indiqué qu'il a l'intention d'être lié par l'accord qu'il a signé, ce qui est éclairé par la jurisprudence.

## Le logiciel de signature électronique DocuSign

DocuSign est une application Web permettant à ceux et celles qui possèdent une licence d'utilisation d'envoyer des exemplaires de documents à des clients ou autres pour demander à ces derniers de les signer de manière électronique (la personne qui signe le document n'a pas besoin de posséder une licence). Cette application élimine plusieurs étapes, car autrement vous devriez envoyer les documents par courriel et la personne devant les signer devrait les imprimer, les signer, les numériser puis vous retourner les documents numérisés par courriel.

DocuSign et les autres applications du même type simplifient et accélèrent le processus de signature, mais vous devez quand même prendre plusieurs mesures pour préparer les documents. Pour en savoir plus, consultez le document [Pratico-pratique sur DocuSign](#).

DocuSign permet de savoir quand un document a été envoyé et à quel moment il a été vu et signé par chaque partie, ainsi que de connaître l'adresse IP de l'ordinateur sur lequel le courriel et le document ont été ouverts. Cela permet d'établir, par exemple, que le signataire est un représentant autorisé d'une partie plutôt qu'un employé non autorisé, comme cela a déjà été le cas dans une affaire aux États-Unis<sup>20</sup>. Nous ne sommes pas au courant d'autres cas similaires au Canada.

## Pratiques exemplaires – Rédaction d'ententes

Dans le cas des documents qui peuvent être signés électroniquement en vertu de la loi, vous n'avez aucun texte spécial à inclure dans le document.

Quoi qu'il en soit, lorsque vous rédigez une entente qui sera signée de manière électronique, nous vous recommandons d'inclure dans l'accord une clause similaire à ce qui suit afin de réduire le risque qu'une partie prétende qu'elle n'a jamais consenti à ce qu'on utilise un logiciel comme DocuSign :

### **Signature, exemplaires et livraison**

Cette entente peut être signée électroniquement, entre autres par le biais de DocuSign et d'autres logiciels similaires. Cette entente peut être signée en n'importe quel nombre d'exemplaires (y compris des exemplaires numérisés ou avec signatures électroniques) et chaque exemplaire sera considéré comme un document original; ensemble, tous les exemplaires seront considérés comme constituant un seul et même instrument. La livraison d'un exemplaire imprimé (que celui-ci ait été signé électroniquement ou pas) et la livraison électronique (y compris la transmission par courriel ou la transmission par une plateforme de signature électronique) d'un exemplaire de cette entente signé sont aussi valides, exécutoires et contraignantes que si les signatures se trouvaient dans le même instrument et avaient été livrées en personne.

Nous vous recommandons également de passer en revue la clause concernant le droit applicable. L'un des avantages de DocuSign, c'est que l'application peut être utilisée n'importe où, même lorsque la personne qui l'utilise est en déplacement. Or, si une personne qui signe une entente devant relever du droit ontarien, par exemple, se trouve à

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<sup>20</sup> *IO Moonwalkers, Inc. v. Banc of America*, 814 S.E.2d 583 (2018).



l'extérieur de l'Ontario au moment de signer l'entente (ou habite à l'extérieur de l'Ontario), cela soulève des questions à savoir si les lois du territoire de compétence où elle se trouve s'appliquent à l'entente.

Par conséquent, si une partie devant signer une entente risque de se trouver, au moment de la signature, à l'extérieur du territoire de compétence dont les lois régissent l'entente, nous vous recommandons d'inclure dans l'entente une clause concernant le droit applicable similaire à celle qui suit afin de prévenir l'application des lois du territoire où le signataire se trouve :

## **Droit applicable**

Cette entente sera interprétée et appliquée conformément aux lois [du/de la/des province] et des lois fédérales applicables. Les lois [du/de la/des province] régissent l'exécution de la présente entente quel que soit le lieu où se trouve la partie au moment de la conclusion de l'entente.

## Pratiques exemplaires : Envoi de documents aux fins de leur signature électronique

Les lignes directrices qui suivent ont été préparées par des avocats et parajuristes de Dentons qui se servent de DocuSign, mais elles peuvent être suivies dans toute situation où une signature électronique est requise.

### **Avisez le client et les autres personnes concernées de votre intention d'utiliser des signatures électroniques**

Abordez le sujet le plus tôt possible avec le client. Expliquez-lui comment ça fonctionne et au besoin, faites un test avec lui pour vous assurer que tout se déroulera bien lorsque le moment de signer sera venu. Faites de même avec toutes les parties qui signeront des documents. Le fait de communiquer votre intention de vous servir des signatures électroniques aide à prouver qu'il y a eu consentement.

### **Respectez la volonté d'un client de signer les documents sur un support papier**

Si la personne devant signer un document s'oppose à le signer électroniquement, exprime le souhait de signer ou de recevoir des documents sur un support papier ou se comporte d'une telle manière qui pousse à croire qu'elle n'accorde pas son consentement, respectez sa volonté et oubliez les signatures électroniques.

### **Lorsque c'est possible, envoyez les documents entiers plutôt que seulement les pages à signer**

L'un des avantages d'utiliser DocuSign, c'est que vous pouvez envoyer un ou plusieurs documents à une personne pour qu'elle les signe et que la personne pourra passer rapidement (d'un simple clic) de l'endroit où elle doit signer dans un document à l'endroit où elle doit signer dans le document suivant. Pour prouver que l'entente avec le signataire est exécutoire, il faut qu'il soit clair que le signataire sait exactement ce qu'il signe, ce qui fait qu'il est toujours préférable d'envoyer des versions complètes et finales des documents aux personnes qui doivent les signer électroniquement. Si vous n'avez pas le choix d'envoyer seulement les pages à signer, assurez-vous que le client a vu les documents en entier et qu'il a eu la chance de les examiner et indiquez clairement dans quels documents les pages qu'il doit signer seront insérées.

### **Un peu avant d'envoyer les documents, avisez les destinataires qu'ils recevront un courriel de DocuSign**

Lorsqu'un utilisateur de DocuSign envoie des documents pour recueillir des signatures, les destinataires reçoivent un message de DocuSign et de Dentons contenant des liens vers les documents à signer. L'objet du message contient alors le nom de l'utilisateur de DocuSign. Avisez les destinataires qu'ils recevront un courriel DocuSign de l'expéditeur des documents (peut-être que le nom de la personne qui apparaîtra en tant qu'expéditeur du message ne leur dira rien) et si possible, décrivez-leur les documents qu'on leur demandera de signer. Enfin, enregistrez le courriel dans l'espace de travail du dossier-client dans DeskSite.

Pensez à inclure un formulaire d'attestation et de consentement lorsque vous envoyez des documents, particulièrement lorsque vous devez envoyer des séries de pages à signer

Lorsque vous envoyez des documents pour recueillir des signatures, pensez à inclure le formulaire d'attestation et de consentement suivant (ou un formulaire similaire) dans la communication qui accompagne les documents (et/ou dans le courriel où vous avisez les destinataires qu'ils recevront un message de DocuSign – voir ci-dessus) :

Monsieur/Madame [nom],

Nous vous faisons parvenir ci-joint des documents à examiner et à signer pour [objet].

En signant ces documents OU les pages de signatures liées aux documents qui vous ont déjà été fournis, vous attestez et convenez que :

- (i) Les pages de signature que vous avez signées pourraient être combinées avec des pages de signature d'autres exemplaires des mêmes documents et qu'ensemble, tous les exemplaires d'un document constituent un instrument;
- (ii) des changements coutumiers mineurs pourraient être apportés aux documents sans être soumis à votre attention ou à votre autorisation; et
- (iii) les documents seront exécutoires à compter de la date indiquée dans les versions finales signées de ceux-ci.

**Enregistrez le document signé et le certificat dans DeskSite**

Une fois que toutes les signatures requises ont été recueillies pour un document, DocuSign crée un certificat.

Téléchargez le document signé et le certificat et enregistrez-les dans l'espace de travail du dossier dans DeskSite.

# Electronic Signatures

## tableau

This Legislative Table is an Appendix to a memorandum on the Law and Practice of Electronic Signatures, and should be used in conjunction with that memorandum.

If you require more information regarding the legality of using electronic signatures, or would like to be set up for a DocuSign account, email the Practice Support team at [practicesupport.canada@dentons.com](mailto:practicesupport.canada@dentons.com).

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**I. FEDERAL**

Applicable Legislation	Key Definitions	Exclusions	What is allowed	Additional requirements	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
Personal Information Protection and Electronic Documents Act (SC 2000, c. 5) (“ <b>PIPEDA</b> ”)	<p><b>PIPEDA</b>  <b>“Electronic signature:</b> a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document (PIPEDA, s.31(1)).</p> <p><b>“Secure electronic signature”:</b> an electronic signature that results from the application of a technology or process prescribed by regulations made under subsection 48(1) of PIPEDA (see “What is allowed” column for a description of the requirements under the <b>Secure Electronic</b></p>	<p><b>PIPEDA</b>  PIPEDA permits documents to be signed in electronic form provided that the requirements in the column “What is allowed?” are followed. However, all other applicable legislation (or, in the case of a body corporate, the constating documents) should be consulted for any restrictions.</p>	<p><b>PIPEDA</b>  Where required by federal law and: (1) the federal law or provision is listed in <b>Schedule 2</b> or <b>Schedule 3</b> of PIPEDA (see “Other Notes” column); and (2) the specific federal law satisfies the regulations that apply to this section, which include the regulations applicable to <b>Schedule 2</b> or <b>Schedule 3</b> (see “Other Notes” column), any other responsible authority in respect of a federal law that would apply (PIPEDA, s.51), and the <b>Secure Electronic Signature Regulations</b> (PIPEDA, s.43.)</p> <p>A <b>secure electronic signature</b> is produced according to the <b>Secure</b></p>	<p><b>All federal legislation permitting electronic signatures:</b>  It should be noted (either formally or informally by email) that both parties agree to electronic signatures.</p> <p><b>Sample language from Practical Law Canada is as follows:</b>  “Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.  Electronic signature means any electronic sound, symbol, or process attached to or logically associated</p>	<p><b>PIPEDA</b>  <i>Witness signatures</i> may be signed electronically if: (1) each signatory and witness signs with their respective secure electronic signatures; (2) the federal law is in <b>Schedule 2</b> or <b>Schedule 3</b>; and (3) the <b>Secure Electronic Signature Regulations</b> are complied with (s.46).  <i>Documents required to be in original form</i> may be signed electronically if: (1) the federal law is listed in <b>Schedule 2</b> or <b>Schedule 3</b>; (2) the electronic signature can be linked with an electronic document that</p>	<p><b>PIPEDA</b>  <i>Witness signatures</i> may be signed electronically if: (1) each signatory and witness signs with their respective secure electronic signatures; (2) the federal law is in <b>Schedule 2</b> or <b>Schedule 3</b>; and (3) the <b>Secure Electronic Signature Regulations</b> are complied with (s.46).  <i>Documents required to be in original form</i> may be signed electronically if: (1) the federal law is listed in <b>Schedule 2</b> or <b>Schedule 3</b>; (2) the electronic signature can be linked with an electronic document that can be used to verify</p>	<p><b>PIPEDA</b>  <i>Seals</i> may be signed by secure electronic signature if the federal law is listed in <b>Schedule 2</b> or <b>Schedule 3</b> (s.39).  <i>Witness signatures</i> may be signed electronically if: (1) each signatory and witness signs with their respective secure electronic signatures; (2) the federal law is in <b>Schedule 2</b> or <b>Schedule 3</b>; and (3) the <b>Secure Electronic Signature Regulations</b> are complied with (s.46).  <i>Documents required to be in original form</i> may be signed electronically if: (1) the federal law</p>	<p><b>PIPEDA</b>  <i>Statements required to be made under oath or solemn affirmation</i> may be signed electronically if: (1) each signatory signs with its respective secure electronic signature; (2) the person before whom the statement is made and who is authorized to take statements under oath or solemn affirmation signs with that person’s secure electronic signature; (3) the federal law is listed in <b>Schedule 2</b> or <b>Schedule 3</b>; and (4) the <b>regulations</b> respecting this section are complied with (s.44).</p>	<p><b>PIPEDA - Schedule 2 (listed federal laws and provisions):</b></p> <p>1) <b>Federal Real Property and Federal Immovables Act</b> with respect to (1) the authorization of officials (s.3);; (2) letters patent, instruments or grants of concessions, leases, licenses and transfers or conveyances of federal real property or immovables for a public purpose (s.5-7); (3) an instrument transferring administration and control of federal real property or vesting such control in real property to Canada (s.11); and any authorization made under the Governor</p>

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	Signature Regulations).		Electronic Signature Regulations where the digital signature is produced from: (1) application of hash function to data to generate a message; (2) application of a private key to encrypt the message; (3) association with the electronic document of the encrypted message; (4) transmission of the encrypted message together with a digital signature certificate or a means of access to one; and (5) a method that decrypts and verifies the validity of the electronic signature after receipt.	with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, Delivery of an executed copy of this Agreement by facsimile or electronic transmission constitutes valid and effective delivery.”  Another clause to consider including, commonly used in Dentons precedents, is: <b>“This Agreement</b> may be executed in counterparts and delivered by means of facsimile, portable document format (PDF) or other means of electronic transmission, including through DocuSign or similar applications, each of which when so executed and delivered shall be an original, but all such	can be used to verify that the electronic document was in final form at the time of signing; and (3) the <b>Secure Electronic Signature Regulations</b> (PIPEDA, sections 48-51) respecting this section are complied with (PIPEDA, s. 48(2)).	that the electronic document was in final form at the time of signing; and (3) the <b>Secure Electronic Signature Regulations</b> are complied with (PIPEDA, s. 48(2)).  Documents required to be signed pursuant to the <b>Electronic Alternatives Regulations for the Purposes of the Federal Real Property and Immovables Act (“EARFRP”)</b> may be signed electronically if they are (1) in respect of a Crown grant (EARFRP s.5, 7); (2) in respect of a license (EARFRP, s.6); and (3) in respect of an instrument transferring administration and control of federal	is listed in <b>Schedule 2 or Schedule 3</b> ; (2) the electronic signature can be linked with an electronic document that can be used to verify that the electronic document was in final form at the time of signing; and (3) the <b>Secure Electronic Signature Regulations</b> are complied with (PIPEDA, s. 48(2)).		in Council with respect to the foregoing (s.16) .  2) <b>Canada Labour Code (s.254(1))</b> with respect to paystubs.  3) <b>Canada Lands Surveys Act</b> with respect to management of surveys by the Surveyor General (s 3(2)).  <b>PIPEDA - Schedule 3 (listed federal laws and provisions):</b>  1) <b>Federal Real Property Regulations</b> with respect to dispositions of Crown grants referred to the Minister of Justice (s.9) and with respect to transfers of administration and control of federal real property (s.11).

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				counterparts shall together constitute one and the same instrument and, notwithstanding the date of execution of any counterpart, shall be deemed passed as of the effective date first written above.”		real property (EARFRP, s.11).			
Canada Business Corporations Act (RSC 1985, c. C-44) (“ <b>CBCA</b> ”)	<p><b>CBCA</b> “<b>Electronic document</b>” is any form of representation of information or of concepts fixed in any medium in or by electronic, optical or other similar means and that can be read or perceived by a person or by any means (s.252.1).</p> <p>Electronic signature and secure electronic signature have the same meanings as under PIPEDA (CBCA s.252.6(2)).</p>	<p><b>CBCA</b> Notices, documents and other information to be sent to or issued by the Director shall not be signed electronically (s.252.2).</p> <p>Statutory declarations or affidavits shall not be signed electronically (s.252.6(1)).</p> <p>Certain financial statements must be signed by wet-ink (s.158(1)).</p>	<b>CBCA</b>	Documents required or permitted under the CBCA, including resolutions, shareholders agreements, meeting circulars and proxies may be signed electronically if: (1) the electronic signature is unique to the person; (2) the technology or process is used by a person to incorporate, attach or associate the person’s signature; and (3) the technology or process can be used to identify the person signing the document (s.252.7).			<b>CBCA</b> In practice, filings made to the Director (Corporations Canada) are signed by electronic signature. The administrative policy of the Director is not to accept such filings signed by DocuSign and similar applications. While these filings are often signed by such applications for record-keeping and the signed documents are not submitted to the		

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			The articles and by-laws of the corporation should always be checked to confirm there are no restrictions on electronic signatures.				Director, wherever possible, the document should be signed by an electronic signature (for example, a PDF copy). In most cases, all other documents required under the CBCA can be signed electronically, including proxies, board and shareholder resolutions, provided that (1) the articles and by-laws of that corporation are complied with; and (2) any applicable regulations have been complied with (s.252.4).		
Bank Act (SC. 1991, c. 46) (“ <b>Bank Act</b> ”)	<b>Bank Act</b> “ <b>Electronic document</b> ”: any form of representation of information or concepts that is fixed in any medium in or by	<b>Bank Act</b> Notices, documents and other information that is to be sent to or issued by the Minister, the Superintendent, the Commissioner	<b>Bank Act</b> Electronic documents with respect to notices, documents and other information are permitted if: (1) the person receiving the document		<b>Bank Act</b> <i>Board approvals</i> of resident Canadian directors unable to attend meetings of the bank holding company may				<b>Bank Act:</b> The “prescribed requirements” address any requirements or regulations under the Bank Act requiring notice, documents, or

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	<p>electronic, optical or other similar means and that can be read or perceived by a person or by any means (s.992).</p> <p><b>“Information system”</b>: a system used to generate, send, receive, store or otherwise process an electronic document (s.992).</p> <p>With respect to statutory declarations and affidavits, <b>electronic signature</b> and <b>secure electronic signature</b> have the same meanings as under PIPEDA (Bank Act, s.1001(2)).</p>	<p>or the Bank of Canada or any prescribed notice, document or information (s.993).</p> <p>Where a document is required to be sent by registered mail (s.1000).</p>	<p>consents and designates an information system for receipt of the document; (2) the electronic document is provided to the designated information system; and (3) the prescribed requirements are complied with (see the “Other Notes” column for further information (s.995(1))).</p>		<p>approve by electronic means the business to be transacted at the meeting (s.772(1)).</p> <p><i>Statutory declarations and affidavits</i> may be signed electronically if:</p> <p>(1) the person making the declaration or affidavit signs with their secure electronic signature; (2) the authorized person taking the declaration or affidavit signs with their secure electronic signature; and (3) the requirements of sections 994-1000 are complied with (s.1001(1)).</p>				<p>other information to be provided, and in satisfying the above, an electronic document is used. Therefore, the applicable requirements will vary depending on the specific notice/consent provision referenced in the Bank Act. Additionally, the Bank Act provides that the foregoing requirements may provide that the consent referred to in s.995 (1)(a) and any notice related to that consent may be provided in electronic form.</p>
<p>Bills of Exchange Act (RSC 1985, c. B-4) (“<b>BOE Act</b>”)</p>	<p><b>BOE Act</b> “<b>Signature</b>” is not defined in the BOE Act, but it is provided that any instrument or</p>	<p><b>BOE Act:</b> Most documents governed by the BOE Act should be signed by wet-ink (as per a 2018</p>	<p><b>BOE Act:</b> The BOE Act does not identify any document that may be signed by electronic signature.</p>	<p><b>BOE Act:</b> See “Other Notes” column before using <i>this language</i>: “This [instrument] may be signed</p>			<p><b>BOE Act:</b> Documents governed by the BOE Act should not be electronically</p>		<p><b>BOE Act:</b> In certain circumstances, documents to which the BOE Act applies are signed</p>

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	writing required to be signed a person <i>need not sign it with that person's own hand</i> , and it is otherwise sufficient if the signature is written thereon by some other person by or under that person's authority (s.4). It is accepted practice that documents governed by the BOE Act should be signed in wet-ink (see "Exclusions" column).	Report by the Toronto Opinions Group – please see Document 45510829 in iManage).	However, in certain circumstances, practitioners may choose to execute documents electronically and send wet-ink copies at a later date (see "What clauses do you need to add" and "Other Notes".	electronically, including through DocuSign and similar electronic signature applications. Delivery of a printed counterpart (whether or not the counterpart was signed electronically) and electronic delivery (including by email transmission or transmission over an electronic signature platform) of an executed counterpart of this [instrument] are each as valid, enforceable and binding as if the signatures were upon the same instrument and delivered in person. Notwithstanding the foregoing, upon request of the Lender the undersigned shall execute and deliver to the Lender an ink signed copy of this [instrument] at the			signed, subject to the comments in the "Other Notes" column.		electronically, including by DocuSign and similar applications. <b>This practice</b> is common in certain practice areas, such as venture financing deals, <b>however</b> , it should be carefully considered whether to accept electronic signatures. Best practice is to obtain a wet-ink signature prior to closing. <b>In the event that a transaction involving a promissory note or debenture is closed on electronic signatures</b> , the instrument should include a further assurances clause that provides for a wet-ink signature to be delivered at a later date or upon request of the holder (see "What clauses do you need to add"



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				address noted above (or at such other address as the Lender shall notify the Borrower) within five business days of delivery of the request.” (see <b>column Other Notes for further details</b> ).					<i>column.)</i>
Trust and Loan Companies Act (SC 1991, C.45) (“TLCA”)	<b>TLCA</b> “ <b>Electronic signature</b> ” has the same meaning as in s.31(1) of PIPEDA: a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document (PIPEDA, s.31(1))  “ <b>Secure electronic signature</b> ” has the same meaning as in s.31(1) of PIPEDA: an electronic	<b>TLCA</b> Any notice, document, or other information in writing required under the TLCA may be signed electronically. Statutory declarations and affidavits must be signed by secure electronic signature (s.539.1(1))	<b>TLCA</b> Any notice, document or other information that is sent to the Minister, Superintendent, the Commissioner or the Bank of Canada (s.539.02)).		<b>TLCA</b> The addressee to the electronic document must consent and designate an information system (s.539.04(1)).				

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	signature that results from the application of a technology or process prescribed by regulations made under subsection 48(1) of PIPEDA								

**II. ONTARIO**

Applicable Legislation	Key Definitions	Exclusions	What is allowed?	What clauses do you need to add?	Banking	Real Estate	Corporate/ Commercial	Litigation/ Advocacy	Other Notes
Electronic Commerce Act, 2000, SO 2000, c 17 (“ <b>ECA</b> ”)	<b>ECA</b> “ <b>Electronic signature</b> ”: electronic information that a person creates or adopts in order to sign a document and that is attached to or associated with the document. (s.1(1)).	<b>ECA</b> Wills and codicils Trusts created by wills or codicils Negotiable instruments Powers of attorney with respect to property or personal care Documents belonging to a prescribed class Documents with respect to title, other than with respect to carriage of goods (s.31(1)(2)).	<b>ECA</b> In any document not listed in the Exclusions column or otherwise subject to laws, rules or constating documents restricting the use of electronic signature, an electronic signature satisfies the legal requirement that a document be signed (s.11(1)) or endorsed (s.11(2)), provided that, at the time the signature is made, it: (1) identifies the person; (2) reliably associates the electronic signature with the relevant electronic document; (3) the electronic signature meets the prescribed requirements as to method of signing, if any exist according to the ancillary statute to the document ; and (4) the electronic signature meets the prescribed	<b>All provincial legislation permitting electronic signatures:</b>  Both parties should consent to the use of electronic signatures (s.3(1)).  <b>Sample language from Practical Law Canada is as follows:</b> “Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign		<b>ECA</b> In Ontario, it is permissible for parties to use an electronic signature to sign agreements of purchase and sale and other documents that create or transfer an interest in land (e.g., mortgages).	<b>ECA</b> A legal requirement that anything done in connection with a contract for the carriage of goods be done in writing is satisfied if the act is done electronically. Contract for the carriage of goods includes, but is not limited to, (i) furnishing the marks, number, quantity or weight of goods; (ii) stating or declaring the nature or value of goods; (iii) issuing a receipt of goods; (iv) confirming that goods have been loaded; (v) giving instructions to a carrier of goods; (vi) claiming delivery of goods; (vii) authorizing release of goods; (viii) giving notice of loss of , or damage, to goods; (ix) undertaking to deliver goods to a named person or a person authorized to claim delivery; (x) granting,		<b>ECA</b> For signatures to be provided to public bodies, electronic signatures are permissible only if the electronic signature meets: (1) any information technology standards of the public body (please see note below) and (2) any requirements as to method and reliability of the signature to the public body.  Public bodies are defined as the following in the ECA: “(a) any ministry, agency, board, commission or other body of the Government of Ontario, (b) a municipality or its local board, or (c) an entity that is designated as a

Applicable Legislation	Key Definitions	Exclusions	What is allowed?	What clauses do you need to add?	Banking	Real Estate	Corporate/ Commercial	Litigation/ Advocacy	Other Notes
			<p>information technology standards (s.11(3)(4)).</p>	<p>such record, including facsimile or email electronic signatures, Delivery of an executed copy of this Agreement by facsimile or electronic transmission constitutes valid and effective delivery.”</p> <p>Another clause to consider including, commonly used in Dentons precedents, is:“This Agreement may be executed in counterparts and delivered by means of facsimile, portable document format (PDF) or other means of electronic transmission, including through DocuSign or similar applications, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument and, notwithstanding the date of execution of</p>			<p>acquiring, renouncing, surrendering, transferring or negotiating rights in goods; (xi) notifying a person of terms and conditions of a contract of carriage of goods; (xii) giving a notice or statement in connection with the performance of a contract of carriage of goods; and (xiii) acquiring or transferring rights and obligations under a contract of carriage of goods.</p>		<p>public body by a regulation made under clause 32 (a).” (s.1(1)). Please consult the rules and administrative policies of the applicable public body before submitting electronic signatures.</p>

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				any counterpart, shall be deemed passed as of the effective date first written above.”					
International Electronic Communications Convention Act, 2017, S.O. 2017, c. 2, Sched. 6 (“IECC”)	<b>IECC</b> “ <b>Electronic communication</b> ”: any communication the parties make by means of data messages (Article 4).	<b>IECC</b> Contracts entered into for personal, family or household purposes Transactions on a regulated exchange, including inter-bank payment systems and agreements, clearance and settlement system relating to securities or other instruments (Article 2).	<b>IECC</b> The requirement that a document be signed is met if the method used: (1) identifies the party and indicates that party’s intention in respect of the electronic communication; and (2) is either reliable as appropriate for the circumstances and purpose the electronic communication as generated or communicated, including any relevant agreement, or is proven in fact to fulfill those functions (Article 9, s.3).  Specific documents permitted to be signed electronically under the IECC include: Bills of exchange Promissory notes				<b>IECC</b> Provided that the agreement is not listed under Exclusions, and subject to any other laws, rules or constating documents, electronic signatures, including DocuSign and similar applications, can be applied.		

Applicable Legislation	Key Definitions	Exclusions	What is allowed?	What clauses do you need to add?	Banking	Real Estate	Corporate/ Commercial	Litigation/ Advocacy	Other Notes
			Consignment notes Bills of lading Warehouse receipts Transferable documents and instruments that entitle the bearer to claim the delivery of goods (Article 2).						
Statute of Frauds, RSO 1990, c S.19 (“ <b>Statute of Frauds</b> ”)	<b>Statute of Frauds</b> The Statute of Frauds does not define document in “writing”, however, “writing” as used in this act means a wet-ink signature.	<b>Statute of Frauds</b> Writing required to create estates or interests of freehold or in messuages, lands, tenements and hereditaments. Deeds. Contracts for sale of lands, tenements and hereditaments and any interest concerning them. (s.1-2, 4). Contracts by a minor person to pay a debt upon or after reaching the age of majority (s.7). Representations concerning the character, conduct, credit, ability, trade or dealings of any other person (s.8). Declarations of trusts in land (s.9).	<b>Statute of Frauds</b> Leases not exceeding three years (s.3). Guarantees for debt, default and miscarriage (s.6).			<b>Statute of Frauds</b> Please refer to documents listed under Exclusions. Most documents required in real estate practice (for example, contracts for sale of lands) are not permitted to be signed by electronic signature.	<b>Statute of Frauds</b> Provided that the agreement is not listed under Exclusions, and subject to any other laws, rules or constating documents, electronic signatures, including DocuSign and similar applications, can be applied. Representations as to character, credit, ability, trade and dealings should be signed in writing pursuant (s.1-2,4).		



Applicable Legislation	Key Definitions	Exclusions	What is allowed?	What clauses do you need to add?	Banking	Real Estate	Corporate/ Commercial	Litigation/ Advocacy	Other Notes
		Assignment of trusts (s.11).							
Business Corporations Act (Ontario), RSO 1990, c B.16 (“ <b>OBCA</b> ”)	<b>OBCA</b> “Electronic signature”: an identifying mark or process that is (1) created or communicated using telephonic or electronic means; (2) is attached to or associated with a document or other information; and (3) capable of associating the person who makes the electronic signature with the document (s.1(1)).	<b>OBCA</b> Documents required to be submitted to the Ministry of Government and Consumer Services. These documents must be submitted in duplicate with wet-ink signatures. Please see Other Notes for discussion (s.273.1).	<b>OBCA</b> Proxies (s.109). Though proxies are the only document specifically named in the OBCA, corporations organized under this act can sign corporate documents by DocuSign and similar applications, including resolutions and shareholder agreements.				<b>OBCA</b> Provided that the document is not to be submitted to the Ministry of Government and Consumer Services, or otherwise subject to any other laws, rules or constating documents, electronic signatures, including DocuSign and similar applications, can be applied.		<b>OBCA</b> <b>At the time of preparing this, Service Ontario locations are currently closed, there may be some changing of the rules around submitting electronic signatures to the Ministry of Ontario.</b> However, presently the requirement remains for documents to be submitted in duplicate wet-ink signatures.
Securities Act (Ontario) RSO 1990, C. s.5 (“ <b>Securities Act</b> ”)	<b>Securities Act</b> The Securities Act does not define an electronic signature.	<b>Securities Act</b> There are no specific exclusions.	<b>Securities Act</b> The Minister is permitted to make rules governing the use of electronic signatures (s.143(1)(46)). In Dentons’ internal practice, documents required to be signed under the Securities				<b>Securities Act</b> For practitioners advising dealers, the Investment Industry Regulatory Organization of Canada (“IIROC”) published rules confirming that dealers may use electronic signatures		

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			Act are typically signed electronically, including by DocuSign and similar applications.				in the execution of agreements and contracts with clients and consents and notifications to clients.		
Personal Property Security Act, RSO 1990, c. P.10 (“PPSA”)	<b>PPSA</b> The PPSA does not define signature or electronic signature.	<b>PPSA</b> All documents creating a security interest, other than uncertificated or certificated securities (s.11).	<b>PPSA</b> Uncertificated or certificated securities (s.11(2)(b)(c)).		<b>PPSA</b> Unless listed under Exclusions, documents governed by the PPSA should be signed in wet-ink.		<b>PPSA</b> Unless listed under Exclusions, documents governed by the PPSA should be signed in wet-ink.	<b>PPSA</b> Unless listed under Exclusions, documents governed by the PPSA should be signed in wet-ink.	
R.R.O. 1990, Reg. 194: Rules of Civil Procedure (“Rules”)	<b>Rules</b> The rules do not define electronic signatures.	<b>Rules</b> Agreements requiring notarization or commissioning (Rule 4.06(1)(e)).	<b>Rules</b> Expert Reports Factums Lawyer Certificates Mediation Agreements Releases Settlement Agreements Trial Records All other court forms requiring signature (as per a 2018 Report by the Toronto Opinions Group – please see Document 45510829 in iManage).				<b>Rules</b> Unless listed under the Exclusions column, documents governed by the Rules should be signed in wet-ink.	<b>Rules</b> Unless listed under the Exclusions column, documents governed by the Rules should be signed in wet-ink.	

III. ALBERTA

Applicable Legislation	Key Definitions	Exclusions	What is allowed	Additional requirements	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
<p><b>Electronic Transactions Act</b>, SA 2001, c E-5.5 [<b>ETA</b>]</p> <p><i>Electronic Transactions Act General Regulation</i>, <i>Alta Reg 34/2003</i>, which until February 2020 contained further exclusions;</p> <p><i>Electronic Transactions Act Designation Regulation</i>, <i>Alta Reg 35/2003</i> [<b>ETADR</b>], which identifies the public bodies to which the <i>ETA</i> applies (subject to consent).</p>	<p><b>s 1(c)</b> “electronic signature” means electronic information that a person creates or adopts in order to sign a record and that is in, attached to or associated with the record;</p> <p><b>s 1(f)</b> “person” includes a public body;</p> <p>Examples of an electronic signature therefore include the following:                      (a) signatures that are handwritten and transmitted electronically;                      (b) the click of an “I accept” button on an e-commerce site; and</p>	<p><b>s 7</b> This Act does not apply to:</p> <ul style="list-style-type: none"> <li>• wills and codicils;</li> <li>• trusts created by wills or codicils;</li> <li>• enduring powers of attorney under the <i>Powers of Attorney Act</i>;</li> <li>• personal directives under the <i>Personal Directives Act</i>;</li> <li>• records that create or transfer interests in land, including interests in mines and minerals;</li> <li>• guarantees under the <i>Guarantees Acknowledgment Act</i>;</li> <li>• negotiable instruments (promissory notes excluded at the Federal level);</li> <li>• records that are prescribed, or that belong to a class that is prescribed, as records or a class of records to which the <i>ETA</i> does not apply; and</li> <li>• documents of title (except in respect of activities relating</li> </ul>	<p>The <i>ETA</i> creates functional equivalency between electronic documents and documents required to be in writing and electronic signatures and “wet” signatures:</p> <p><b>s 11</b> “A legal requirement that information or a record be in writing is satisfied if the information or record is (a) in electronic form, and (b) accessible so as to be usable for subsequent reference.”</p> <p><b>s 16(1)</b> “...a legal requirement that a record be signed is</p>	<p><u>Consent</u></p> <p>Parties are not required to accept or use electronic signatures, but consent may be implied (except for public bodies):</p> <p><b>s 8 (1)</b> “Nothing in this Act requires a person to use, provide or accept information or a record in electronic form without the person’s consent.”</p> <p><b>s 8(2)</b> Consent may be inferred from conduct “if there are reasonable grounds to believe that the consent is genuine and relevant to the information or record”</p> <p><b>s 19</b> “the consent</p>	<p><u>Key ETA exclusions:</u></p> <ul style="list-style-type: none"> <li>• Guarantees under the <i>Guarantees Acknowledgment Act</i> [<i>GAA</i>]</li> <li>• Negotiable instruments</li> </ul> <p>As the <i>GAA</i> only applies to guarantees by individuals, guarantees from corporations are not likely excluded by the <i>ETA</i> and, therefore, may be signed electronically.</p> <p>Documents governed by the <i>Bills of Exchange Act</i> and other Federal legislation will be outside the scope of the <i>ETA</i> and Alberta law.</p>	<p><u>Key ETA exclusions:</u></p> <ul style="list-style-type: none"> <li>• records that create or transfer interests in land, including interests in mines and minerals;</li> </ul> <p>The <i>Land Titles Act</i> was amended in 2015 to allow the LTO to accept electronic documents using “digital signatures” and is currently being tested through a pilot project (see <b>s 56.11 of LTA</b>). This operates outside of the <i>ETA</i> framework. The amendment gives the LTO Registrar discretion to</p>	<p>[See Banking]</p> <p>The Corporate Registry has not expressly consented to receipt of documents with electronic signatures. However, <b>s. 20 of the Corporate Registry Document Handling Procedures Regulation</b> deems the inserted name of an authorized representative, in a <b>designated document</b> (and any attachments), as having “the same force as if the authorized representative had signed the document.” Documents otherwise required to be signed and delivered to the Corporate Registry will require an original signature.</p>	<p><u>Documents filed with the Courts:</u></p> <p>Alberta Courts accept the electronic signatures of counsel. The proviso that a form may be approved by counsel “by facsimile or electronic signature” is not necessary: <i>Thompson Brothers (Construction) Ltd. v Alberta (Appeals Commission for Alberta Workers’ Compensation)</i>, <b>2012 ABCA 150</b> [<i>Thompson Brothers</i>] at para 7.</p> <p>The Rules of Court generally do not contemplate original signatures apart from affidavits,</p>	<p>Unlike B.C., Alberta and Ontario distinguish between consent from public bodies (must be express and may involve further conditions) and consent from other “persons” (which may be implied).</p> <p>In Alberta, the <i>ETA</i> does not ‘occupy the field’ for permitting electronic signatures. In other words, there may be situations not captured by the <i>ETA</i> (or excluded by it) where electronic/digital signatures are still legally effective. See for example:</p> <ol style="list-style-type: none"> <li>1. <i>Land Titles Act</i> amendments (<b>s 56.11</b>) permitting “digital signatures” (pilot project)</li> <li>2. See also <i>1353141 Alberta Ltd v Roswell</i></li> </ol>

Applicable Legislation	Key Definitions	Exclusions	What is allowed	Additional requirements	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
	(c) a typed name at the end of an email <sup>21</sup>	<p>to contracts for the carriage of goods).</p> <p>Biometric information (e.g. a fingerprint) is not an electronic signature for the purposes of the <i>ETA</i> (s 5).</p> <p><u>Recent update:</u> Sections 2 and 3 of the <i>Electronic Transactions Act General Regulation</i> were repealed on Feb 29, 2020, which previously identified further exclusions like records arising from the <i>Alcohol and Drug Abuse Act</i>, <i>Mental Health Act</i>, <i>Public Health Act</i>, <i>Residential Tenancies Act</i>, records arising from an employment relationship (s 2) and records arising from court proceedings (s 3)</p>	<p>satisfied by an electronic signature.”</p> <p><u>Note:</u> An electronic signature does not require the use of an encryption measure; nor is the signor required to personally apply it herself to be legally effective; an assistant or colleague may apply the signature so long as it is adopted by the signor.</p> <p><u>Public bodies:</u> Any party seeking to sign a document electronically to be submitted to a public body (see the <i>ETADR</i>) must confirm that</p>	<p>of a public body is given only by an explicit communication that is accessible to the persons likely to seek to communicate with the public body about the matter or purpose in question.”</p> <p><u>Express language:</u> Agreements should state that the parties expressly consent to using, providing or accepting information or records arising from [the Agreement] in an electronic form as the case may be and including electronic signatures as defined by the <i>ETA</i>.</p>		<p>accept digital signatures, which enables the pilot project.</p>	<p>s. 255, <i>ABCA</i> - A notice or document required to be sent/delivered under ss 255 to 257 of the <i>ABCA</i> (<i>documents to shareholders or directors, notice to corporation, notice to commission</i>) may be sent electronically in accordance with the <i>ETA</i>, including sending the consent of a person entitled to waive or abridge the notice or time for the notice or the document (s 258).</p> <p>s. 48(5), <i>ABCA</i> – Signatures on security certificates may be printed or mechanically reproduced;</p> <p>s. 267(4), s 268(2), <i>ABCA</i> – Certificates issued by the Registrar for required filings may</p>	<p>which require “actual signatures”: Rule 13.19(1)(f); <i>Thompson Brothers</i> at para 7.</p> <p><u>Evidence legislation:</u> The <i>Federal Secure Electronic Signature Regulations</i> promulgated under the <i>Canada Evidence Act</i> and <i>PIPEDA</i> creates a presumption about the identity of a signor when certain processes are followed. The <i>Alberta Evidence Act</i> does not address electronic signatures specifically but “electronic records” generally vis-à-vis the best evidence rule (see s 41.4 of <i>Alberta Evidence</i></p>	<p><i>Group Inc</i>, 2019 ABQB 559, where electronic signature transferring condominium was effective through operation of <i>Interpretation Act</i> and common law</p> <p><u>Law Society requirements Code of Conduct 6.1-3</u> Restricts delegation of signing authority to lawyers for legal opinions or correspondence, unless it is of a routine administrative nature, the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer, the fact the person is a non-lawyer is disclosed, and the capacity in which the person signs the</p>

<sup>21</sup> Examples from “Electronic signatures” (2020) by Jay Krushell.

Applicable Legislation	Key Definitions	Exclusions	What is allowed	Additional requirements	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
			body has expressly consented to accepting electronic signatures. E.g. The Corporate Registry has not expressly consented to receipt of documents with electronic signatures.				also use mechanically reproduced signatures	<i>Act</i> ).	correspondence is indicated [3] In all matters using a system for the electronic submission or registration of documents, whether or not the system contains the electronic signature of the lawyer, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document.



**IV. BRITISH COLUMBIA**

Applicable Legislation	Key Definitions	Exclusions	What is allowed	What clauses do you need to add?	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
<p><i>Electronic Transactions Act</i> [SBC 2001] CHAPTER 10. (ETA)</p>	<p><u>ETA</u></p> <p>"<b>electronic signature</b>" means information in electronic form that a person has created or adopted in order to sign a record and that is in, attached to or associated with the record.</p> <p>"<b>electronic</b>" means created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic or optical means or by any other similar</p>	<p>The ETA does not intend to override other laws which already address the use of electronic forms including signatures.</p> <p><u>ETA Section 2(1):</u></p> <p>This Act does not limit the operation of a law that</p> <p>(a) expressly authorizes, prohibits or regulates the use of information or records in electronic form, or</p> <p>(b) requires information or a record to be posted, displayed or delivered in a specific manner.</p> <p><u>ETA Section 2(4):</u></p> <p>This Act does not apply to:</p> <p>(a) wills,</p> <p>(b) trusts created by wills,</p>	<p>Subject to the noted exclusions, the ETA provides that where there is a requirement under law for the signature of a person, that requirement is satisfied by an electronic signature.</p> <p><u>ETA Section 11(1):</u></p> <p>If there is a requirement under law for the signature of a person, that requirement is satisfied by an electronic signature.</p> <p><u>ETA Section 5:</u></p> <p>A requirement under law that a record be in writing is satisfied if the record is</p> <p>(i) in electronic form, and</p>	<p>The ETA does not require a person to use electronic forms without the person's consent, however, consent may be inferred from the person's conduct.</p> <p><u>ETA Section 4:</u></p> <p>(1) Nothing in this Act requires a person to provide, receive or retain information or a record in electronic form without the person's consent.</p> <p>(2) Consent by a person</p>	<p><i>Credit Union Incorporation Act</i> [RSBC 1996] CHAPTER 82 (CUIA)</p> <p>Documents governed by the <i>Bills of Exchange Act</i> (Canada) and other Federal legislation will be outside the scope of the <i>ETA</i> and British Columbia law. (See Federal Law table)</p> <p><u>ETA</u></p> <p>Key ETA exclusions include negotiable instruments and document of title.</p> <p><u>ETA Section 2(5):</u></p> <p>Parts 2 and 3 do not apply to negotiable instruments or documents of title.</p> <p><u>ETA Sections 2(2) and (3):</u></p> <p>(2) For the purpose of</p>	<p>(2) An action must not be brought on the agreement or assignment referred to in subsection (1) by a person who fails to comply with this section.</p> <p><b>Transferor to provide registrable description</b></p> <p><b>7</b> (1) In this section, "transferor" includes a landlord obliged to deliver an instrument under section 5.</p> <p>(2) A transferor, in an instrument executed by the transferor, or on the transferor's behalf, must describe the parcel of land intended to be transferred or otherwise dealt with, so that the title to the parcel is</p>	<p><i>Business Corporations Act</i> [SBC2002] CHAPTER 57. (BCBCA)</p> <p><u>ETA</u></p> <p>Key ETA exclusions include negotiable instruments and document of title.</p> <p><u>ETA Section 2(5):</u></p> <p>Parts 2 and 3 do not apply to negotiable instruments or documents of title.</p> <p><u>ETA Sections 2(2) and (3):</u></p> <p>(2) For the purpose of subsection (1), the use of "in writing" and "signature" and other similar words and expressions does not by itself prohibit the use of information or records in electronic form.</p>	<p><u>Court filings</u></p> <p>British Columbia Courts have implemented the <u>Court Services Online (CSO)</u> system for the electronic filing of documents.</p> <p>The various British Columbia Court Rules specify the documents that are permitted to be filed electronically (see, for example, Rule 23-3 of the <i>Supreme Court Civil Rules</i> and Rule 54.1 of the <i>Court of Appeal Rules</i>).</p> <p>There is no restriction imposed by the CSO or the various Court Rules on filing documents electronically which contain electronic signatures, however it is not possible to use electronic signatures for either:</p> <ol style="list-style-type: none"> <li>1. affidavits, or</li> <li>2. other signed documents (which include, for example,</li> </ol>	<p><u>Electronic signatures</u></p> <p>The definition of "electronic signature" in the ETA has been adopted by the BC Supreme Court to expand the definition of a written and signed acknowledgment to include an email containing an e-mail signature (<i>Johal v Nordio, 2017 BCSC 1129</i>).</p> <p><u>LTSA Guidance on Covid-19</u></p> <p>The LTSA is responsible for administering the land title and survey systems in BC and has useful references on its website at <a href="http://ltsa.ca">ltsa.ca</a>. On March 17 and LTSA issued guidance pertaining to the execution and witnessing</p>



Applicable Legislation	Key Definitions	Exclusions	What is allowed	What clauses do you need to add?	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
	means.	<p>(c) powers of attorney, to the extent that they concern the financial affairs or personal care of an individual,</p> <p>(d) documents that create or transfer interests in land and that require registration to be effective against third parties, or</p> <p>(e) other provisions, requirements, information or records prescribed in the regulations. (2(4))</p> <p>*Note that no regulations have been implemented under the ETA as yet.</p> <p>The Act's general statements that the use of 'in writing' and 'signature' in an operation of law or its requirements allow for electronic forms of documents or signature expressly do not apply to negotiable instruments or documents of title.</p>	(ii) accessible in a manner usable for subsequent reference.	to provide, receive or retain information or a record in electronic form may be inferred from the person's conduct.	<p>subsection (1), the use of "in writing" and "signature" and other similar words and expressions does not by itself prohibit the use of information or records in electronic form.</p> <p>(3) The provisions of this Act relating to the satisfaction of a requirement of a law apply whether or not the law creates an obligation or provides consequences</p> <p><u>CUIA</u> Section 61.2 of the CUIA provides that a share certificate of a credit union must be signed manually by at least one officer or director of the credit union.</p> <p><u>CUIA Section</u></p>	<p>registrable under the Land Title Act.</p> <p>(3) A transferor must also provide and deposit any further conveyance, other instrument or plan that is required by the registrar.</p> <p>Such land title instruments include Form A – Freehold Transfer, Form B – Mortgage, and Form C – General Instrument – Charge, among others.</p> <p>For these instruments, Part 5 of the LTA speaks to the attestation and witnessing of instruments, including requirements for affidavits of execution or execution under seal that</p>	<p>(3) The provisions of this Act relating to the satisfaction of a requirement of a law apply whether or not the law creates an obligation or provides consequences</p> <p><u>BCCBA</u> BCBCA Section 15 provides that an incorporation application and the articles of a company being formed require “an original signature”.</p> <p><u>BCCBA Section 15:</u> (1) A completing party must,</p> <ul style="list-style-type: none"> <li>before an incorporation application is submitted to the registrar for filing to incorporate a company,</li> <li>examine the articles and</li> </ul>	<p>court orders).</p> <p>Affidavits and other signed documents still require an original to be prepared with an “original signature”, that original must be retained by the party filing it and, if requested, must be made available for inspection by the other parties as well as the Court.</p> <p>For example, Rule 23-3(6) of the <i>Supreme Court Civil Rules</i> reads as follows: An affidavit or other signed document that is being filed for evidentiary purposes, if submitted for filing electronically, must clearly identify the signatory and must be accompanied by a statement, in Form 119, of the lawyer acting for the person on whose behalf the document is submitted for filing or, if that person is unrepresented, by a statement of that person, in Form 119, indicating that</p>	<p>requirements under the Land Title Act during the COVID-19 situation (including relaxing the rules regarding affidavits to permit witnessing via teleconference). Further, on March 26, 2020, the LTSA updated the list of supporting documents for which a true copy may be used in place of the original document.</p> <p>The Law Society of BC and other legal groups have been active in pursuing guidance from the LTSA and other governmental authorities to address issues as the COVID-19 situation continues, and it will be important to stay up to date to any applicable guidance as it is issued.</p>

Applicable Legislation	Key Definitions	Exclusions	What is allowed	What clauses do you need to add?	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
		<p><u>ETA Section 2(5):</u></p> <p>Parts 2 and 3 do not apply to negotiable instruments or documents of title.</p> <p>ETA Sections 2(2) and (3):</p> <p>(2) For the purpose of subsection (1), the use of "in writing" and "signature" and other similar words and expressions does not by itself prohibit the use of information or records in electronic form.</p> <p>(3) The provisions of this Act relating to the satisfaction of a requirement of a law apply whether or not the law creates an obligation or provides consequences.</p>			<p><u>61.2:</u></p> <p>A share certificate of a credit union must be signed manually by at least one officer or director of the credit union, or by or on behalf of a registrar, branch registrar, transfer agent or branch transfer agent of the credit union, and any additional signatures may be printed or otherwise mechanically reproduced and, in that event, a certificate so signed is as valid as if signed manually.</p>	<p>effectively preclude the use of electronic signatures for instruments tendered for registration.</p> <p><u>LTA Part 5 Section 42:</u></p> <p><b>Witnessing and execution</b></p> <p><b>42(1)</b> The execution by a transferor of an instrument must be witnessed by an officer who is not a party to the instrument.</p> <p>(2) Subsection (1) does not apply to</p> <p>(a) a Crown grant,</p> <p>(b) an order in council,</p> <p>(c) a court order, or</p> <p>(d) an instrument or an</p>	<p>incorporation agreement to ensure that both are endorsed within the meaning of subsection (2),</p> <ul style="list-style-type: none"> <li>designate as incorporators, in the incorporation application, all of those persons who have endorsed both the articles and the incorporation agreement and no other persons, and</li> <li>complete the completing party statement in the incorporation application, and</li> <li>after the company is incorporated,</li> </ul>	<p>1. the original paper version of the document appears to bear an original signature of the person identified as the signatory and the person making the Form 119 statement has no reason to believe that the signature placed on the document is not the signature of the identified signatory, and</p> <p>2. the version of the document that is being submitted for filing electronically appears to be a true copy of the original paper version of the document and the person making the Form 119 statement has no reason to believe that it is not a true copy of the original paper version.</p> <p><u>Evidence legislation</u> The British Columbia <i>Evidence Act</i> addresses</p>	

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						<p>instrument that is of a class of instrument that is prescribed for the purposes of this section.</p> <p>(3) An affidavit necessary for the purposes of this Act may be taken or made inside or outside British Columbia by and before a person before whom an affidavit may be sworn under the <i>Evidence Act</i>.</p> <p>(4) The signature of a transferor on an instrument is proof, in the absence of evidence to the contrary, that the transferor</p> <ul style="list-style-type: none"> <li>knows the contents of the instrument</li> </ul>	<p>deliver to the delivery address of the company's records office, or mail by registered mail to the mailing address of the company's records office, the originally signed articles and incorporation agreement examined by the completing party.</p> <p>(2) For the purposes of subsection (1), a record is endorsed if</p> <ul style="list-style-type: none"> <li>the record contains a signature line for each signatory with the name of that signatory set out legibly under the signature line,</li> </ul>	<p>secure electronic signatures, only in respect of "electronic records" signed by prescribed persons (which, except in the case of criminal convictions, is limited to officers and employees of the Court). <u><i>Electronic Court Documents Regulation Section 3:</i></u></p> <p>(1) A record contained within an electronic court system and signed electronically by a person described in subsection (2) is a prescribed electronic record for the purpose of section 41.3 of the Act.</p> <p>(2) The persons who may electronically sign a record for the purpose of subsection (1) are the following:</p> <ol style="list-style-type: none"> <li>a person who exercises an adjudicative function in a court, if the record being signed relates to a matter in which the person has acted as adjudicator;</li> <li>a clerk of a court, if</li> </ol>	

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						<p>and has signed it voluntarily, and</p> <ul style="list-style-type: none"> <li>has the legal capacity to execute the instrument and intends to be bound by it.</li> </ul> <p>The LTA does not preclude, however, individuals from using electronic signatures to execute commercial agreements related to land, such as purchase and sale agreements, leases, or licenses to use land, to which the ETA would apply.</p> <p>Lawyers and paralegals who have obtained a digital certificate from Juricert often sign electronic</p>	<ul style="list-style-type: none"> <li>an original signature has been placed on each of those signature lines, and</li> <li>the completing party has no reason to believe that the signature placed on a signature line is not the signature of the person whose name is set out under that signature line.</li> </ul> <p>BCBCA Section 110 speaks to the manual execution of share certificates.  <u>BCBCA Section 110:</u>  (1) A share certificate must be signed manually</p> <ol style="list-style-type: none"> <li>by a director or officer of the company,</li> </ol>	<p>he or she is acting in the capacity of clerk in relation to the record being signed;</p> <ol style="list-style-type: none"> <li>a peace officer or a person acting in an enforcement capacity under any enactment, if the peace officer or person is acting in their official capacity in relation to the record being signed;</li> <li>a person accused or convicted of an offence under any enactment, or the person's representative, if the record being signed relates to the person accused or convicted;</li> <li>a person who is an employee of the government of any jurisdiction, or who is working on contract for or on behalf of the government of any jurisdiction, if the person is acting in their official capacity in relation to the record being signed.</li> </ol>	

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						<p>forms as 'designates' under the LTA to register instruments on title using the Land Title Surveying Authority (LTSA) e-filing system. In doing so, they are certifying that an execution copy of the document has been executed and witnessed in writing if required, and that the execution copy, or a true copy, is in their possession.</p> <p><u>LTA Section 168.41(3 and 4):</u></p> <p>(3) A document is certified under this section by a designate if the document</p> <ul style="list-style-type: none"> <li>includes a statement that the document is certified under this</li> </ul>	<p>or</p> <p>2. by or on behalf of a registrar, branch registrar, transfer agent or branch transfer agent of the company.</p> <p>(2) Any additional signatures required on a share certificate may be printed or otherwise mechanically reproduced on the certificate.</p> <p>(3) If a share certificate contains a printed or mechanically reproduced signature of an individual, the company may issue the certificate even though the individual has ceased to be a director or an</p>		

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						<p>section by the designate, and</p> <ul style="list-style-type: none"> <li>is signed electronically by the designate.</li> </ul> <p>(4) The electronic signature of a designate on a document described in subsection (3) is a certification by the designate that</p> <ul style="list-style-type: none"> <li>an execution copy of the document has been executed and witnessed in writing if and as required, and</li> <li>the execution copy referred to in paragraph (a), or a true copy of that execution copy, is in the possession of the designate.</li> </ul>	<p>officer of the company, and the certificate is as valid as if the individual were a director or an officer on the date of the issue of the certificate.</p>		



Applicable Legislation	Key Definitions	Exclusions	What is allowed	What clauses do you need to add?	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
						<p>Certain other provisions of the LTA expressly permit electronic signatures. For example, Section 168.3 provides that a plan submitted electronically must be signed electronically by a BC land surveyor.</p> <p><u>LTA Section 168.3:</u></p> <p>(1) A plan that is submitted electronically must be signed electronically by a British Columbia land surveyor.</p>			

**V. QUEBEC**

Applicable Legislation	Key Definitions	Exclusions	What is allowed	What clauses do you need to add?	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
<p><i>Act to establish a legal framework for information technology</i>, CQLR c C-1.1 (<b>AELFIT</b>)</p> <p><i>Civil Code of Quebec</i>, RLRQ c CCQ 1991 (<b>CCQ</b>)</p> <p><i>Notaries Act</i>, CQLR c N-3</p> <p><i>Règlement sur la tenue des dossiers et des études des notaires</i>, CQLR c N-3, r. 17</p>	<p><b>AELFIT</b>: s. 39 (electronic signature)</p> <p>The link between a person and a document, whatever the medium used, may be established by means of the person's signature. A person's signature may be affixed to the document by means of any process that meets the requirements of article 2827 of the Civil Code.</p> <p>A person's signature affixed to a technology-based document may be set up against that person if the integrity of the document is ensured and the link between the signature and the document was established at the time of signing and has since been maintained.</p>	<p>Electronic signatures are permitted insofar that the "medium or technology chosen is in <u>compliance with legal rules</u>, in particular those contained in the Civil Code" (emphasis added, s. 2).</p> <p>Specific exclusions as per the CCQ are:</p> <ul style="list-style-type: none"> <li>• immovable hypothecs,</li> <li>• hypothec in favour of a hypothecary representative,</li> <li>• declaration of co-ownership (or amendments),</li> <li>• trust-related deeds,</li> <li>• gift or donation,</li> <li>• any deed made in the</li> </ul>	<p>AELFIT provides for a functional equivalence between a "wet" signature and one applied by way of a technology-based medium (s. 5).</p> <p><u>Key requirements (AELFIT)</u>:</p> <ul style="list-style-type: none"> <li>• Confirmation of the person's identity (e.g.: use of a password, personal identification number, biometric data, subject to privacy and data protection legislation etc.) (s.38.1)</li> <li>• Identification of the document (s.38.2)</li> <li>• Established link between the person and the document (e.g.: "distinctive" mark) (s.38)</li> <li>• Ensured integrity of the document</li> </ul>	<p>There is some debate as to the minimal standards required to satisfy AELFIT conditions.<sup>ii</sup></p> <p>Care should be given to ensure that the measures taken to satisfy AELFIT requirements are proportional to the circumstances at hand.<sup>iii</sup></p>	<p>No specific provincial legislation prohibits the use of electronic signatures. However, notarized documents are required to be on paper format and, as such, electronic signatures will not be available.</p> <p>Banks <u>customarily</u> require the following material documents to be signed with "wet" ink (note that items 6-9 <u>must</u> be provided with original "wet" signature):<sup>iv</sup></p> <ol style="list-style-type: none"> <li>(a) Credit agreement;</li> <li>(b) Security documents (general security agreements, hypothecs, subordination agreement, cessions of</li> </ol>	<p>Documents to be registered at the Land Registry that create or transfer interests in land or give rise to the registration of a right in or the removal of a right from the land register, or the reduction of an entry (e.g.: notice of commercial lease, deed of sale, hypothecs, servitudes, mainlevée, cancellations)</p> <p><b>(Documents)</b> must be, if not in notarial form, accompanied by a <u>certificate of a notary or an advocate</u> certifying they have verified the identity, quality and capacity of the parties and the validity of the act as to form, and that the document represents the will expressed by the parties (Art. 2991,</p>	<p><u>Potential exclusions</u>: Ensure that the bylaws and articles of any corporation have not excluded electronic signatures or the use of electronic documents.</p> <p><u>Key legislation</u>: <i>Business Corporations Act</i>, CQLR c S-31.1</p> <ul style="list-style-type: none"> <li>• Signatures affixed to share certificate may be by an automatic device or electronic process (s. 62)</li> <li>• Board approval of financial statements is evidenced by signature, regardless of the means used to sign</li> </ul>	<p>Electronic signatures are valid on pleadings as a general principle.</p> <ul style="list-style-type: none"> <li>• <i>Code of Civil Procedure</i>, CQLR c C-25.01 (s.99)<sup>v</sup> (<b>CCP</b>)</li> </ul> <p>No restrictions to this in:</p> <ul style="list-style-type: none"> <li>• <i>Regulation of the Court of Québec</i>, CQLR c C-25.01, r 9 (s. 11)</li> <li>• <i>Regulation of the Superior Court of Québec in civil matters</i>, CQLR c C-25.01, r 0.2.1 (s. 3)</li> <li>• <i>Civil Practice Regulation of the Quebec Court of Appeal</i>, CQLR c C-</li> </ul>	<p><b>COVID-19 developments</b></p> <p><u>Notarial Documents</u></p> <p>Please note that, given the ministerial order No 2020-010 of the Minister of Health and Social Services dated March 27, 2020, regarding COVID-19 and amending the schedule of the order 223-2020, a notary will now be authorized to receive, remotely, a notarize deed <i>en minute</i> on a technological support under certain conditions (videoconference and signature through a method that allows the parties to the deed, excluding the notary, to be identified and declare their consent).</p> <p><u>Litigation</u></p> <p>In response to Covid-19 on March 28, 2020, the Quebec Ministry of Justice announced measures by which</p>

Applicable Legislation	Key Definitions	Exclusions	What is allowed	What clauses do you need to add?	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
	<p><u>CCQ Division IV – Private Writings:</u> Art. 2827. A signature is the affixing by a person, to a writing, of his name or a mark distinctive to him which he regularly uses to signify his consent.</p> <p>Note that a “distinctive” mark could be biometric measurements, a specific piece of information known to the person (name, password, personal identification number, secret code, etc., depending on the situation or transaction at hand) or an object in the person's possession (smart card, digital signature, etc.).<sup>i</sup></p>	form of a notarial act <i>en minute</i> and other notarial acts (e.g. notarial will).	<p>(s.39.2)</p> <p><u>AELFIT:</u> s. 38. The link between a person and a technology-based document, or the link between such a document and an association, a partnership or the State, may be established by any process or combination of processes, to the extent that it allows</p> <p>(1) the identity of the person or the identification of the association, partnership or the State and, where applicable, their location, to be confirmed, and allows their link with the document to be confirmed ; and</p> <p>(2) the document to be identified and, if need be, allows its origin and destination at any given time to be determined.</p>		<p>rank, guarantee agreements);</p> <p>(c) Certificates of officer, resolutions and perfection certificates;</p> <p>(d) Compliance certificate and borrowing base certificate;</p> <p>(e) Drawdown notices, direction of payments and payout letters;</p> <p>(f) Original share certificate and signed stock transfer power, if share pledge is required as part of security package;</p> <p>(g) Bank Act security document – notice to Bank Act security registry, if required as part of security package;</p> <p>(h) Discharge (RV) form in respect of a registration made at</p>	<p>2993 CCQ). Note that <u>the Land Registry may impose restrictions</u> on the form of signature accepted.</p> <p>Individuals may use electronic signatures to execute commercial agreements related to land (e.g.: letters of intent, purchase and sale agreements, leases).</p> <p>Notaries and land surveyors may make applications for registration to the registrar by means of a technological signature process, including applications for registration of the Documents on the Land Registry (<i>Act Respecting Registry Offices chapter B-9</i>, s. 5.1; <i>Regulation respecting land registration chapter CCQ, r. 6</i>,</p>	<p>(s. 227)</p> <p>Silent: <i>Companies Act</i>, CQLR c C-381 <i>Securities Act</i>, CQLR c V-1.1</p> <p><u>Governmental authorities:</u> The <i>Registre des entreprises</i> and <i>Autorité des marchés financiers</i> (AMF) may set forth specific exceptions or requirements to the use of electronic signatures.</p> <p>Note that for on-line services, AMF uses digital signatures by way of public key infrastructure (PKI) in partnership with the certification authority Notarius and in accordance with AELFIT.</p>	<p>25.01, r 10 (absence of rules on signatures).</p> <ul style="list-style-type: none"> <li><i>Regulation of the Court of Appeal of Quebec in Penal Matters</i>, <b>CQLR c C-25.1, r. 0.1 (s. 17)</b></li> <li><i>Rules of the Court of Appeal of Quebec in Criminal matters</i>, SI/2018-96 (s.18)</li> </ul> <p><u>Exceptions:</u> Many pleadings must be supported by a sworn statement. <u>A sworn statement cannot be signed electronically, but in handwriting before a notary or a</u></p>	pleadings may be served through technological means (e.g. email, fax) in accordance with s. 133 CCP. These measures are temporary and will be in effect until the end of the current health emergency period.

Applicable Legislation	Key Definitions	Exclusions	What is allowed	What clauses do you need to add?	Banking	Real Estate	Corporate / Commercial	Litigation / Advocacy	Other notes
					<p>RPMRR;</p> <p>(i) Deed of mainlevée to discharge or partially reduce an immovable hypothec at the land register (such deed also needs to be certified and attested by a lawyer or notary).</p>	<p>schedule 6).</p> <p>Notaries who have obtained a digital certificate from Entrust (Notarius) often sign electronic applications for registration accompanying the Documents under the CCQ to register instruments on the title using the digital signature system. In doing so, they are certifying that an execution copy of the Document is in registrable form and that the original remains in their possession (in private writing: AELFIT s.17; Art. 2982.1 CCQ).</p>		<p><u>commissioner for oaths.</u></p> <p>Many proceedings are served (i.e. as opposed to notified) on the parties by bailiff (CPC. s. 116). <u>The bailiff's certificate of service is signed in handwriting and filed with the Court.</u></p> <p>Only the pleadings at the Small Claims Division of the Court of Quebec can be filed electronically. <u>An electronic signature is required at the end of the filing process.</u></p> <p>Court orders and judgments are signed in <u>handwriting</u> by the judge or the special clerk.</p> <p><u>Evidence:</u> Note that the</p>	

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								<p>admissibility of the means used to evidence an electronic signature depends on the integrity and the reliability of the medium used to do so (s. 5-8, 38-39 AELFIT).</p> <p><u>Arbitration:</u> An arbitration agreement can be signed electronically, insofar as such signatures are in accordance with the requirements of AELFIT, particularly, the consent of the parties.</p> <p><u>Transactions:</u> A transaction, having the legal standing as a contract, can be signed electronically, insofar as such signatures are in accordance with the requirements of AELFIT.</p>	

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<sup>i</sup> Annotations of s. 39 of the AELFIT by the Secretariat du Conseil du Trésor of Quebec.

<sup>ii</sup> *Bolduc c. Montréal (Ville de)*, 2011 QCCA 1827; *Syndicat du soutien scolaire du Pays-des-Bleuets (CSN) et Syndicat de soutien du Pays-des-Bleuets (FISA)*, 2019 QCTAT 5564.

<sup>iii</sup> See Chapter 5, part 2 of Trudel, P. *Introduction à la Loi concernant le cadre juridique des technologies de l'information*. (Québec: Éditions Yvons Blais, 2012). Fondation du Barreau du Québec, “Know Your Law: Guide Respecting the Management of Technology-Based Documents” (para 4.3, 2005). *Centre du camoin Gamache Inc. c. Bolduc*, 2000 CanLII 9581 (QC CQ).

<sup>iv</sup> List developed internally by Dentons Montreal as a practice note.

<sup>v</sup> *Roussel v Desjardins Sécurité financière, compagnie d'assurance vie*, 2012 QCCQ 3835.