

## Electronic Signatures and Document Management

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### Quebec's Bill 161

On November 17, 2000, the Minister for the Information Highway and Government Services (the "Minister") introduced Bill 161 entitled *An Act to establish a legal framework for information technology*.

In contrast to the situation which existed up to now, the Bill henceforth recognizes the legal value of technology-based documents (databases and information transcribed on a medium, whether electronic, magnetic or optical) in the same manner as paper documents. From now on, everyone will be free to choose the medium for a document in order to communicate and deal with others, provided one complies with the provisions set forth in the Bill to guarantee the authenticity or validity thereof. Technology-based documents and paper documents will be subject to the same rules of evidence.

The Bill provides specific rules regarding the transfer, retention, consultation and transmission of documents in order to maintain their integrity throughout

their life cycle. For example, it will now be possible to destroy a source document (original) after having transferred the information contained therein to a medium based on another technology. In such a case, no rule of evidence may be raised to contest the admissibility of the document resulting from a transfer effected in accordance with the requirements provided for in the Bill.

A person's electronic signature which has been affixed to a document will not require any proof of authenticity (presumption of integrity) if it is possible to establish a link between them by means of a process (namely, certificates and directories managed by independent third parties) which complies with the requirements set forth in the Bill. A person's signature, including an electronic signature, which is affixed to a technology-based document may be set up against that person if the integrity of the link and the document (no changes) have been ensured on a continuous basis.

The Bill amends several articles of the Civil Code and certain specific acts.

### The Ontario Act

On October 16, 2000, Ontario's Bill 88, better known as the *Electronic Commerce Act, 2000*, received Royal Assent. In so doing, Ontario became the third Canadian province, after Saskatchewan and Manitoba, to legislate a legal framework for electronic commerce.

This Act, whose application is not mandatory, establishes functional equivalency rules regarding the legal recognition of electronic information and documents and their integrity and reliability with respect to such information and documents in their traditional form. Thus, the Act stipulates that the provision, retention or examination of an original document satisfies these rules to the extent that certain conditions regarding reliability and integrity of the information have been met. The Act also contains specific provisions which deal with electronic signatures as well as the formation, sending and receipt of electronic contracts; it also sets forth the effects of electronic contracts.



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Finally, the Act provides specific exceptions to its application, such as for wills, codicils, certain trusts and certain transactions which must be registered in order to be effective against third parties.

### **The American Act**

Since October 1, 2000, the *Electronic Signatures in Global and National Business Act* has offered Americans some protection as regards signatures and contracts in electronic format. The non-mandatory nature of the Act is strictly limited to certain types of transactions, namely, those relating to consumers.

The American Act provides that any technological change which may have an

influence on a consumer's consent to the use of electronic documents must be disclosed to the consumer so that the consumer may once again consent to such use.

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