

**Legal Considerations Regarding the
Use of Electronic Contracts and Signatures**

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Provincial and Federal Legislation

The Ontario *Electronic Commerce Act*, 2000 ("ECA") governs the formation, use and enforceability of most electronic commerce-oriented contracts entered into in Ontario.¹ The ECA is based upon the United Nations *Model Law on Electronic Commerce* which in turn spawned the *Uniform Electronic Commerce Act* (Canada) as developed by the Uniform Law Conference of Canada ("UECA" and "ULCC" respectively). In September of 1999, the ULCC recommended the UECA for adoption by the various provincial legislatures. Subsequently, all of the provinces did in fact enact legislation based upon the UECA template.

It is important to note that nothing in the *ECA* hinders the application of any other Ontario laws or regulations that expressly authorize, prohibit or regulate the use of electronic information or electronic documents.² For instance, the *Land Registration Reform Act* implements requirements specific to electronic format documentation relating to the transfer of land and therefore the *ECA* requirements do not apply to such documentation.³

At the federal level, the e-commerce facilitating provisions of Part II of the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") apply to those statutes listed on Schedule 2 and Schedule 3 of PIPEDA.⁴ However, in the sixteen years since *PIPEDA* came into force the only laws and regulations listed under those Schedules are the following:

1. *Federal Real Property and Federal Immovables Act*, sections 3, 5 to 7, 11 and 16;
2. *Canada Labour Code*, subsection 254(1)
 - (a) Employers are required to provide pay statements to unionize employees and s.254(1) sets out requirements for content;
3. *Federal Real Property Regulations*, sections 9 and 11 [SOR/2005-407]; and
4. *Federal Real Property Regulations*, sections 9 and 11 [SOR/2004-309, s. 2]

Consequently, the better view is that for many types of documents regulated at the federal level (eg., bills of exchange and copyright assignments), traditional printed and executed documents are still required to be used.

¹ S.O. 2000, c. 17. [*ECA*]

² *Ibid* at s. 26(1).

³ RSO 1990, c L.4. see Part III of the *Land Registration Reform Act*.

⁴ S.C. 2000, c. 5.

General Description of the ECA

Within the limitations described above, the ECA provides that where any rule of law requires a document to be in writing or a notice to be in writing or requires documents to be signed or in original form, that requirement can be satisfied electronically.

The ECA provides the following benefits:

1. use of an electronic document will satisfy an "in writing" requirement;
2. permits documents to be signed electronically;
3. use of an electronic document as an "original";
4. retention of electronic records to satisfy document retention requirements; and
5. permits consenting parties to enter into contracts electronically.

The ECA defines “electronic” to include “things created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means”.

In terms of the classic contractual requirements of an offer and an acceptance, the ECA provides as follows:

- 19.** (1) An offer, the acceptance of an offer or any other matter that is material to the formation or operation of a contract may be expressed,
- (a) by means of electronic information or an electronic document; or
 - (b) by an act that is intended to result in electronic communication, such as,
 - (i) touching or clicking on an appropriate icon or other place on a computer screen, or
 - (ii) speaking.

Legal Requirement to Provide Information or Document in Writing

Section 6(1) of the ECA provides that a requirement to provide information or a document in writing may be satisfied electronically where it is:

- (a) accessible by the other person so as to be usable for subsequent reference; and

- (b) capable of being retained by the other person.⁵

An electronic document or information is specifically stated to not be capable of being retained if the person providing the information or document prevents or does anything to hinder its printing or storage by the recipient.⁶ Similarly, the requirement to "provide" information or a document will not be met where the electronic document or information is merely made available on a website.⁷

Electronic Signatures

The ECA defines an "electronic signature" to mean "electronic information that a person creates or adopts in order to sign a document and that is in, attached to or associated with the document." The ECA further provides that where there is a legal requirement that a document be signed or endorsed, that requirement is satisfied by an electronic signature, so long as the electronic signature is reliable for the purpose of identifying the person signing the document, it is reliable to associate the electronic signature with the relevant electronic document, and any additional requirements that may be prescribed for specific documents are satisfied.⁸

In a number of cases decided prior to the promulgation of the ECA, courts had adopted a purposive approach to a signature requirement. For instance, the majority of the English Court of Appeal recognising that automated systems and business processes can be trustworthy, found that solicitors could sign their accounts by stamping them in addition to signing them by hand.⁹

Exceptions:

The ECA is explicitly drafted to not apply to the following:

31(1):

1. Wills and codicils.
2. Trusts created by wills or codicils.
3. Powers of attorney, to the extent that they are in respect of an affairs or personal care;
4. Documents, including agreements of purchase and sale, that create or transfer interests in land and require registration to be effective against third parties.
5. Documents that are prescribed or belong to a prescribed class. 2000, c. 17, s. 31(1).
6. Except for section 23 (contracts for carriage of goods), the ECA does not apply to documents of title.

⁵ ECA at s. 6(1).

⁶ ECA at s. 9.

⁷ ECA at s. 10(1).

⁸ ECA s. 11(3) and (4)

⁹ *Goodman v. J. Eban, Ltd.*, [1954]1A11E.R. 763 (CA).

The courts have yet to interpret the scope of the exceptions set out in s.31(1), leaving some residual ambiguity, for example, as to what documents would be covered by the wills and trust exceptions. Courts have held that a document made outside a will that designates a beneficiary to a profit sharing fund is a testamentary document.¹⁰

Interesting to note that a Bill had been put forward which would have stricken paragraph 4 of section 31(1). Bill 28,¹¹ an Act to amend the *ECA* was carried at second reading and referred to the Standing Committee on General Government on March 21, 2013 where it still resides. The purpose of the Bill is to facilitate the use of electronic signatures in real estate transactions by removing the exception in the Act which prohibits land transfer documents from being signed by an electronically generated signature. The promoters of the Bill accept that such documents would still be subject to the requirements of section 11(3) of the Act relating to the reliability of any electronic signatures utilized.

Consumer Protection Act

The *Ontario Consumer Protection Act* ("CPA") provides an additional layer of regulation for electronic contracts entered into with consumers.¹² Seven other Canadian provinces (Quebec, Alberta, Manitoba, Nova Scotia, Saskatchewan, British Columbia and Newfoundland) also have consumer protection legislation in place which explicitly address "internet agreements". Where an internet agreement is not deployed in accordance with the applicable CPA requirements (ss. 37-40), it is potentially cancellable by the consumer.

The CPA applies to the following four categories of agreements:

1. consumer agreements;
2. future performance agreements;
3. time share agreements; and
4. internet agreements.

The last category, "Internet Agreements" is defined as a consumer agreement formed by text-based internet communications.¹³ So, for example, where Voice-over-Internet Protocol (VoIP) technology is used to have a phone conversation with a customer via the internet, the communication is not text-based, so the internet agreement rules of the CPA will not apply; rather, the remote agreement rules will apply. On the other hand, generally, where an internet agreement meets the criteria of more than one type of agreement to which the CPA applies, the agreement shall comply with the provisions of the CPA and of the regulations that apply to each type of agreement.¹⁴

¹⁰ *MacInnes v. MacInnes*, 1934 CanLII 16 (SCC), [1935] SCR 200

¹¹ http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2745&detailPage=bills_detail_the_bill

¹² S.O. 2002, c. 30, Sched. A. [*CPA*]

¹³ *Ibid.* at s. 20(1).

¹⁴ *Ibid.* at s. 4.

EXCEPTION: In the following situations, compliance with the internet agreement provisions is not required (O.Reg. 17/05, ss. 11-19):

- Credit Agreement (other than a supplier credit agreement)
- Lease
- Agreement for work on or repair to vehicle
- Agreement for loan brokering or credit repair
- Time share agreement
- Personal development services agreement
- Direct Agreement

For example, internet agreement CPA provisions (ss. 37-40) do not apply to an agreement for repairs to a vehicle that is entered into via text-based communications over the internet.

The CPA defines a "consumer" as: "an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes".¹⁵

Vendors need to keep in mind the fact that any ambiguous language in a consumer contract will be interpreted by courts in favour of the consumer and thus all such contractual language must be "clear, comprehensible and prominent". While it is generally well known that the CPA prevents the waiver by Ontario consumers of implied conditions in that goods will be of merchantable quality and fit for their intended purpose, it is also the case that the CPA introduces the principle that services supplied under a consumer agreement are deemed to be of "reasonably acceptable quality", so the option of selling services to Ontario consumers via internet agreements on "as-is" and "as available" basis does not exist. This may have an impact on the pricing of such services in Ontario.

Statutory Exceptions

The CPA lists several exceptions to the applicability of the internet agreement provisions of the statute, including:

- (a) consumer transactions regulated under the *Securities Act*;
- (b) financial services related to investment products or income securities;
- (c) financial products or services regulated under the *Insurance Act*, the *Credit Unions and Caisses Populaires Act, 1994*, the *Loan and Trust Corporations Act* or the *Mortgage Brokerages, Lenders and Administrators Act, 2006*;
- (d) consumer transactions regulated under the *Commodity Futures Act*;
- (e) prescribed professional services that are regulated under a statute of Ontario;

¹⁵ CPA, *supra* note 12 at s. 1.

- (f) consumer transactions for the purchase, sale or lease of real property, except transactions with respect to time share agreements as defined in section 20; and
- (g) consumer transactions regulated under the *Residential Tenancies Act, 2006*.¹⁶

Statutory Requirements

For the internet agreement related provisions of the CPA to apply, the following basic requirements must be met:

1. Either the vendor or the consumer must be located in Ontario when the transaction takes place.¹⁷
2. Excluding the cost of borrowing, there must be a \$50 minimum consumer total potential payment obligation under the agreement.¹⁸

In such circumstances, the vendor must provide the consumer with an express opportunity to:

- (a) accept or decline agreement¹⁹; and
- (b) correct errors immediately before entering into agreement.²⁰

Information Disclosure Requirements

Before a consumer enters into an internet agreement, the vendor must disclose the following information (CPA, s. 38(1)/O. Reg. 17/05 s. 32):

1. The name of the supplier and, if different, the name under which the supplier carries on business.
2. The telephone number of the supplier, the address of the premises from which the supplier conducts business, and information respecting other ways, if any, in which the supplier can be contacted by the consumer, such as the fax number and e-mail address of the supplier.
3. A fair and accurate description of the goods and services proposed to be supplied to the consumer, including the technical requirements, if any, related to the use of the goods or services.
4. An itemized list of the prices at which the goods and services are proposed to be supplied to the consumer, including taxes and shipping charges.

¹⁶ *Ibid* at s.2(2).

¹⁷ *Ibid* at s. 2(1).

¹⁸ *Ibid* at s. 37; see also O. Reg. 17/05, s. 31

¹⁹ *Ibid* at s. 38(2); see also O. Reg. 17/05, ss. 41-43

²⁰ O. Reg. 17/05, ss. 41-43 provides a comprehensive list of rules and guidelines as to how these amendments can occur.

5. A description of each additional charge that applies or may apply, such as customs duties or brokerage fees, and the amount of the charge if the supplier can reasonably determine it.
6. The total amount that the supplier knows would be payable by the consumer under the agreement, including amounts that are required to be disclosed under paragraph 5, or, if the goods and services are proposed to be supplied during an indefinite period, the amount and frequency of periodic payments.
7. The terms and methods of payment.
8. As applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance would occur.
9. For goods and services that would be delivered,
 - i. the place to which they would be delivered, and
 - ii. if the supplier holds out a specific manner of delivery and intends to charge the consumer for delivery, the manner in which the goods and services would be delivered, including the name of the carrier, if any, and including the method of transportation that would be used.
10. For services that would be performed, the place where they would be performed, the person for whom they would be performed, the supplier's method of performing them and, if the supplier holds out that a specific person other than the supplier would perform any of the services on the supplier's behalf, the name of that person.
11. The rights, if any, that the supplier agrees the consumer will have in addition to the rights under the Act and the obligations, if any, by which the supplier agrees to be bound in addition to the obligations under the Act, in relation to cancellations, returns, exchanges and refunds.
12. If the agreement is to include a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.
13. The currency in which amounts are expressed, if it is not Canadian currency.
14. Any other restrictions, limitations and conditions that would be imposed by the supplier.

Note: The requirements for disclosure under the CPA will not be weakened where both the ECA and CPA apply, see *Wright v. UPS Ltd* (“Wright”).²¹

In *Wright*, plaintiffs in class action brought a claim against UPS on the basis that the fees they would be charged had not been disclosed to them. UPS attempted to argue that it had met the

²¹ *Wright v. United Parcel Service Canada Ltd.*, 2011 ONSC 5044 (CanLII).

disclosure requirements by posting the information on its website. However, s.10 of the ECA states that information will not be deemed to have been disclosed where it is simply made available to the consumer, for example through a website. The CPA specifically requires that the information relating to fees be disclosed to the consumer in a form that can be retained by the consumer. The court further held that in any event, the ECA did not assist UPS as the information did not meet the standard of "clear, comprehensible and prominent" as it was essentially hidden on both the website and the waybill provided to the consumer.²²

Cancellation of Agreement

Section 40(1) of the CPA provides that a consumer may cancel an internet agreement at any time from the date the agreement is entered into until seven days after the consumer receives a copy of the agreement if,

- (a) the supplier did not disclose to the consumer the information required under subsection 38(1); or
- (b) the supplier did not provide to the consumer an express opportunity to accept or decline the agreement or to correct errors immediately before entering into it. 2002, c. 30, Sched. A, s. 40(1).

There is a second "window" period starting on the date the agreement is entered into and ending 30 days later during which the consumer may cancel an internet agreement if the supplier has not provided consumer with a copy of the agreement in accordance with the consumer copy requirements set out below.²³

Manner of Information Disclosure

In addition to being clear, comprehensible and prominent,²⁴ the CPA further requires that information disclosure must also be accessible and available in a manner that ensures that the:

1. consumer has accessed the information; and
2. consumer is able to retain and print the information.²⁵

Consumer Copy Requirement

A consumer must be provided with a copy of the internet agreement in writing within 15 days after the consumer enters into an agreement (CPA, ss. 37, 38(1), 39(1), 39(2)/0. Reg.17/05 ss. 31, 32, 33(1), 33(2)). The copy must include:

²² *Ibid* at paras 605-612.

²³ CPA, ss. 37, 39(1), 39(2), 40(2); see also O. Reg. 17105, ss. 31, 32, 33(1), 33(2).

²⁴ CPA s. 5(1); see also: Delivery of Information (*Ibid.* at s.5(2)) where it is noted that if delivering information to consumer, information must also be delivered in a form in which it can be retained by the consumer.

²⁵ CPA at s. 38(3).

- the above-noted information disclosure requirements;
- the name of the consumer; and
- the date on which agreement is entered into.

Consumer Copy Delivery Methods

Vendors must ensure that the customer receives a copy of the internet agreement that they are able to retain. A vendor will be considered to have properly delivered a copy of the internet agreement to the consumer if the copy is delivered in any one of the following manners:

- *Email*: Transmitting it in a manner that ensures that the consumer is able to retain, print and access it for future reference, such as sending it by e-mail to an e-mail address that the consumer had given the supplier for providing information related to the agreement.
- *Fax*: Transmitting it by fax to the fax number that the consumer had given the supplier for providing information related to the agreement.
- *Mail*: Mailing or delivering it to an address that the consumer has given the supplier for providing information related to the agreement.
- *Other*: Providing it to the consumer in any other manner that allows the supplier to prove that the consumer has received it.²⁶

Consumer Obligations on Cancellation of "Internet Agreements"

- The exact means by which a consumer is to effect cancellation (i.e. returning /destroying goods, etc.) is detailed at length under O. Reg. 17/05, ss. 81-82 as follows:

"81(1) This section applies with respect to subsection 96(2) of the Act, if the consumer agreement that has been cancelled is one of the following:

1. An internet agreement to which sections 38 to 40 of the Act apply....

(2) A consumer who has not received a written direction to destroy the goods under subsection (5) shall return the goods to the supplier's address, by any method that provides the consumer with confirmation of delivery, and shall do so within 15 days after the later of,

(a) the day the consumer gives notice to the supplier in accordance with section 92 of the Act that the consumer is cancelling the consumer agreement; and

(b) the day the goods come into the consumer's possession. O. Reg. 17/05, s. 81(2).

²⁶ CPA, s. 39(3); see also O. Reg. 17/05, s. 33(3).

(3) Goods that are returned under subsection (2) other than by personal delivery shall be deemed to have been returned when sent by the consumer to the supplier. O. Reg. 17/05, s. 81(3).

(4) The supplier shall be deemed to consent to a return of goods under subsection (2) and is responsible for the reasonable cost of returning the goods. O. Reg. 17/05, s. 81(4).

(5) In the case of goods that are created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means, a consumer who receives from the supplier a written direction to destroy the goods shall destroy the goods forthwith in accordance with such instructions as may be set out in the direction. O. Reg. 17/05, s. 81(5).

Period of reasonable care

82. For the purpose of subsection 96(3) of the Act, the period for which a consumer who cancels a consumer agreement shall take reasonable care of the goods that came into the possession of the consumer under the agreement or a related agreement begins when the consumer gives notice to the supplier in accordance with section 92 of the Act that the consumer is cancelling the consumer agreement and ends at the earliest of the following:

1. The time the goods are destroyed under subsection 80(3) or 81(5).
2. The time the goods are returned under clause 80(2)(b) or subsection 80(5) or 81(2).
3. The time the goods are repossessed, in the case of a consumer agreement to which section 80 applies.
4. The end of the 21st day after the day the consumer gives notice to the supplier in accordance with section 92 of the Act that the consumer is cancelling the consumer agreement if, in the case of a consumer agreement to which section 80 applies,
 - i. the consumer has received from the supplier a written request for repossession of the goods, has provided the reasonable opportunity to repossess required by clause 80(2)(a), and the goods have not been repossessed, or
 - ii. the consumer has not received from the supplier a written request for repossession of the goods. O. Reg. 17/05, s. 82. " (emphasis added)

Current Status of Internet Agreement Consumer Protection Legislation across Canada

The following eight provinces have implemented consumer protection legislation that explicitly address internet agreements:

- Ontario

- Manitoba²⁷
- Nova Scotia²⁸
- Saskatchewan²⁹
- Alberta³⁰
- Quebec³¹
- British Columbia³²
- Newfoundland³³

Comparison of Internet Agreement Consumer Protection Provisions among the Eight Applicable Provinces

Similarities:

- Internet agreement consumer protection legislation is fairly well-harmonized in accordance with the *Internet Sales Contract Harmonization Template* [29 May 2001] with respect to the following:
 - Disclosure of information; copy of internet sales contract; and cancellation of internet sales contract.
 - *NOTE:* Alberta and Saskatchewan have applied the template in an almost identical manner.

²⁷ *Consumer Protection Act*, C.C.S.M., 2000, c. C200, ss. 127-135 [*CPA Manitoba*]; see also Man. Reg. 176/2000; Man. Reg. 58/2007 [*Manitoba Regulation*].

²⁸ *Consumer Protection Act*, R.S.N.S. 1989, c. 92, as am. 1994, C. 16; 1998, c. 8, ss. 22-25; 1999, c. 4, ss. 3-9; 2001, c. 40, ss. 21V-21AF [*CPA Nova Scotia*]; see also N.S. Reg. 91/2002 [*Nova Scotia Regulation*].

²⁹ *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2 [*CPA Saskatchewan*]; see also RRS c C-30.2 Reg 1 [*Sask. Regulation*].

³⁰ *Fair Trading Act*, R.S.A., 2000, c. F-2, s. 42, as am. by R.S.A. 2005, c. 9, s. 17 [*Fair Trading Alberta*].

³¹ *Consumer Protection Act*, CQLR c P-40.1, ss.54.1-54.16 [*CPA Quebec*]; see also R.Q. c. P-40.1, r.1, ss. 6.1-6.4 [*Quebec Regulation*].

³² *Business Practices and Consumer Protection Act*, SBC 2015 c 6 [*CPA British Columbia*].

³³ *Consumer Protection and Business Practices Act*, SNL 2009 Chapter C-31.1 [*CPA Newfoundland*].

Differences:

COMPARISON CHART	Alberta	Manitoba	Nova Scotia	Ontario	Quebec	Saskatchewan	British Columbia	Newfoundland
\$50 Minimum Consideration	YES ³⁴	NO ³⁵	YES ("total costs payable" to supplier) ³⁶	YES ("excludes cost of borrowing)	NO ³⁷	YES ³⁸	NO	NO ³⁹
Definitions	"Internet Sales Contract" 5,39 means a consumer transaction that is a contract in which: (i) the consideration for the goods or services exceeds the prescribed amount (\$50); and (ii) the contract is	Internet Agreement ⁴⁰ means retail sale or retail hire-purchase agreements formed by Internet communications	"Internet Sales Contract" ⁴¹ means a consumer transaction formed by text-based internet communications	"Internet Agreement" ⁴² means a consumer agreement formed by text-based internet communications	"Distance Contract" ⁴³ means a contract entered into without the merchant and the consumer being in one another's presence and precede by an offer by the merchant to enter into such a contract	"Internet Sales Contract" ⁴⁴ means a consumer transaction that is a contract in which the contract is formed over the internet.	"Distance Sales Contract" ⁴⁵ means a contract for the supply of goods or services between a supplier and a consumer that is not entered into in person and, with respect to goods, for which the consumer does not have the opportunity to inspect the goods that are the subject of	"Distant Sales Contract" ⁴⁶ means a contract for the supply of goods or services between supplier and a consumer that is not entered into in person and, with respect to goods, for which the consumer does not have the opportunity to inspect the goods that are the subject of

³⁴ Alta Reg 81/2001 at s. 1(d)(i) [*Alberta Regulation*].

³⁵ Confirmed by telephone call [May 28, 2007] to Manitoba consumers Bureau: (204) 945-3800: "Neither the legislation nor the regulations stipulate a minimum amount. We defer to the definitions in the agreement and thereafter the disclosure requirements. But, there is nothing that specifies a minimal amount." The Act and Regulations apply so long as the internet contract conforms to the explicit legislative requirements (Confirmed by telephone call on October 14, 2011).

³⁶ *Nova Scotia Regulation, supra* note 28 at s. 2.

³⁷ Confirmed by telephone call [June 17, 2009] with the Quebec Consumer Protection Office: 1 (888) 672-2556. the official had never heard of a \$50 minimum, and confirmed by checking the laws herself. She also reviewed a French language publication the Government sent to merchants detailing the new changes and did not find anything about a \$50 minimum (Confirmed by telephone call on October 14, 2011).

³⁸ *Sask Regulation, supra* note 29 at s. 3(2).

³⁹ Confirmed by telephone call [October 14, 2011] to Newfoundland Consumer Affairs Office: (709) 729-2600. The official confirmed there is no \$50 minimum consideration for distant sales contracts.

⁴⁰ *CPA Manitoba, supra* note 27 at s. 128.

⁴¹ *CPA Nova Scotia, supra* note 28 at s. 21V(d).

⁴² *CPA, supra* note 12 at s. .37 and 20(1).

⁴³ *CPA Quebec, supra* note 31 at s. 54.1.

⁴⁴ *CPA Saskatchewan, supra* note 29 at s. 44(f).

⁴⁵ *CPA British Columbia, supra* note 32 at s. 17.

⁴⁶ *CPA Newfoundland, supra* note 33 at s. 28.

COMPARISON CHART	Alberta	Manitoba	Nova Scotia	Ontario	Quebec	Saskatchewan	British Columbia	Newfoundland
	formed by text-based Internet communications						does not have the opportunity to inspect the goods that are the subject of the contract is entered into, but does not include a prepaid purchase card.	the contract before the contract is entered into, but does not include a prepaid purchase card.
Credit Card recourse provisions directly within internet agreement provisions	Yes ⁴⁷	Yes ⁴⁸	Yes ⁴⁹	No	Yes ⁵⁰	Yes ⁵¹	Yes ⁵²	Yes ⁵³
Responsibilities on cancellation provisions directly within internet agreement provisions	Yes ⁵⁴	Yes ⁵⁵	Yes ⁵⁶	Yes ⁵⁷	Yes ⁵⁸	Yes ⁵⁹	Yes ⁶⁰	Yes ⁶¹

⁴⁷ *Alberta Regulation supra* note 34 at s. 12.

⁴⁸ *CPA Manitoba, supra* note 27 at s. 134.

⁴⁹ *CPA Nova Scotia, supra* note 28 at s. 21AF.

⁵⁰ *CPA Quebec, supra* note 31 at s. 54.14.

⁵¹ *CPA Saskatchewan, supra* note 29 at s. 3-14(5).

⁵² *CPA British Columbia, supra* note 32 at s. 52.

⁵³ *CPA Newfoundland, supra* note 33 at s. 35.

⁵⁴ *Alberta Regulation, supra* note 34 at s. 6(1).

⁵⁵ *CPA Manitoba, supra* note 27 at s. 133.

⁵⁶ *CPA Nova Scotia, supra* note 28 at s. 21AC.

⁵⁷ *CPA, supra* note 21 at ss. 37 and 40(1).

⁵⁸ *CPA Quebec, supra* note 16 at s. 54.8.

⁵⁹ *CPA Saskatchewan, supra* note 29 at s. 3-14.

⁶⁰ *CPA British Columbia, supra* note 32 at s. 33-34.

⁶¹ *CPA Newfoundland, supra* note 33 at s. 33-34.

The following is a list of consumer protection legislation that does not explicitly address internet agreements:

PEI⁶²

New Brunswick⁶³

Yukon⁶⁴

Northwest Territories⁶⁵

Nunavut⁶⁶

Mobile Contracts

Increasingly, consumers are making online purchases via their tablets and smartphones — leaving aside use of the newer hybrid category of so-called "phablets". Due to the relatively small screen size deployed in smartphones, use of this mobile commerce channel raises particular challenges for vendors seeking to implement effective and enforceable electronic contracting programs.

Here are some potential best practices that may assist such vendors selling goods and services on-line to smartphone users:

1. In order to meet contract terms disclosure requirements, including all CPA prescribed information, layer the information by putting important details upfront (fee information, health and safety information, onerous terms) and embedding links to less integral details;
2. Consumers' attention to required disclosures can be enhanced using size, font and colour to distinguish such required information from other on screen text;
3. Required disclosures should be viewable within the "same screen" as the claim they qualify without excessive scrolling or linking to other locations. If scrolling is necessary to view disclosures, the disclosures should be rendered unavoidable;
4. Websites should be optimised for mobile devices to minimize the need for consumers to scroll and zoom in and out;

⁶² *Consumer Protection Act*, R.S.P.E.I., 1988, Cap. Q-1.

⁶³ *Consumer Product Warranty and Liability Act*, R.S.N.B. 1978, c. C. 18.1.

⁶⁴ *Consumers Protection Act*, R.S.Y. 2002, c.40. Y.O.I.C. 1972/400; Y.O.I.C. 1978/235.

⁶⁵ *Consumer Protection Act*, R.S.N.W.T. 1988, c. C-17, as am. by R.S.N.W.T. 2003, c. 2.

⁶⁶ *Consumer Protection Act*. R.S.N.W.T. 1980, c. C-17, as am. by S.N.W.T. 1995, c. 11; S.N.W.T. 1998, c. 21;

5. Require a password or unique identification information to be entered before a transaction may be completed to avoid the generation of so-called "accidental agreements";
6. Again, layer information about the company's privacy policy by putting important information upfront and embedding links to other secondary details;
7. Consider providing a privacy dashboard with a tool that allows users to intuitively adjust their displayed privacy settings; and
8. Use graphics, colours or sounds to draw the attention of consumers when a privacy issue is triggered, such as when they are about to transmit sensitive personal information.