

DocuSign®

Court support for electronic signatures in Canada

A DocuSign White Paper

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NOTE:

This document is meant to help the reader understand general principles of electronic signatures. This document is for educational purposes only and is not intended to serve as legal advice and should not be a substitute for the reader seeking legal advice from a licensed attorney in your jurisdiction.

Overview of applicable case law

Background: electronic signatures are well established as legally binding

Judicial opinions addressing a challenge to the legality of e-signatures in Canada are relatively rare. This is likely a function of the widespread adoption of electronic signatures, combined with the effectiveness of the Uniform Law Conference of Canada template legislation that effectively removed barriers to electronic contracting in the Uniform Electronic Evidence Act and the Uniform Electronic Commerce Act (“UECA”). All Canadian provinces and territories, except Quebec, have enacted legislation modeled after the UECA. In Quebec, the Act to Establish a Legal Framework for Information Technology and the Civil Code of Quebec note that for technology-based documents, a signature may be affixed by means of any process that links a person to the integrity of the document. In addition, the federal government has enacted the Personal Information Protection and Electronic Document Act, along with sector specific laws in the Canada Business Corporations Act, the Bank Act, the Insurance Companies Act, the Trust and Loan Companies Act, and the Electronic Document Regulations, which recognize the validity of electronic signatures in place of traditional “wet” signatures. Canada has also entered into two trade deals, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Canada – United States – Mexico Agreement, which further bolster the arguments surrounding the legal validity of electronic signatures.

For the vast majority of use cases, and in nearly all jurisdictions in Canada, a properly executed electronic signature carries the same legal effect as a “wet” signature as a result of this legislation.

Analysis of Canadian case law

Reported cases across Canada were surveyed (through May 2020) where the court indicated that the DocuSign eSignature service was used. In none of these rulings was DocuSign eSignature denied the same legal effect as a paper-and-ink signature for any use case.

Public court orders were surveyed that specified the use of DocuSign as an approved means of participating in certain kinds of legal proceedings; several such court orders have appeared from 2018 to 2019.

In effect, these cases and court orders fall into two categories:

- 1 Cases where a DocuSign eSignature was ruled legally binding in the face of a direct challenge by a signer**, underscoring the evidentiary value of the DocuSign eSignature audit trail, which effectively logs the who, what, when, and how of the electronic signing
- 2 Cases in which the court acknowledged that DocuSign eSignature was used to create a binding contract**, although the electronic signature was not central to the issues of enforceability for the underlying agreement in dispute

Below are brief summaries of these opinions and court orders, categorized as described above.

DocuSign eSignature audit trail relied upon as key evidence

In this opinion, the DocuSign eSignature audit trail was relied upon as evidence of a binding, enforceable agreement

In the Matter of the Real Estate Services Act, SBC 2004, c 42 as amended and In the Matter of Meaghan Halena Westie

(2019 CanLII 67650 (BC REC))

Consent Order to discipline a real estate agent that relied on evidence of contracts of purchase and sale that were signed with DocuSign eSignature

The Real Estate Council of British Columbia and the Consent Order Review Committee resolved to accept a consent order proposal by Meaghan Halena Westie. The disciplinary hearing involved the sale of real property to two potential buyers who had both submitted counter-offers to the broker, Ms. Westie. Ms. Westie accepted the first buyer's offer, despite receiving a higher counter-offer by a second buyer. In so doing, the court relied on the DocuSign eSignature audit trail showing that someone had accessed and signed the agreement at a specific time:

“AA signed and returned the Counter Offer via DocuSign at 5:05 pm on September 17, 2016. (DocuSign is a cloud service that provides electronic signature technology and digital transaction services for the electronic signing and exchange of documents.)”

The proposal and its contents were resolved by the Notice of Discipline Hearing in this matter. Ms. Westie faced disciplinary actions as a result of her conduct.

DocuSign eSignature technology acknowledged as legally binding

In these opinions, the use of DocuSign eSignature was not central to the dispute over enforceability of the contract terms but was acknowledged by the court as part of the facts surrounding the legal arguments.

Century 21 Dome Realty Inc. v Brittner

(2018 SKPC 24)

Dispute over whether a contract was signed by the defendants. Defendants claimed to use DocuSign eSignature to sign documents electronically, but no proof was offered. Use of DocuSign eSignature could have cleared up any discrepancies.

The Plaintiffs brought a legal action against the Defendants in Saskatchewan seeking payment for commissions owed to them on the purchase of a home while still under contract with the Plaintiffs. The Defendant denied signing the contract or owing any commissions to the Plaintiff, whom they felt did not do an adequate job. The Court relied on photocopied and scanned documents. The Defendants alleged that they used signing software such as DocuSign eSignature to sign documents electronically, although no electronic evidence of such use was ever put forward at trial. The Court ruled that based on the available evidence, the contract was legally valid and binding.

Kootenay Savings Credit Union and USW, Local 9705 (Job Evaluation, Re

(2018) 137 CLAS 33)

Employee's use of DocuSign eSignature to prepare documents, obtain signatures electronically, including preparing signing orders, signature tags, and in signing documents such as applications, disclosure statements, commitment letters, and interest discount agreements were assessed in employee dispute.

In a labour and employment dispute brought forward by a worker's union against an employer in British Columbia, an Arbitrator was tasked with reviewing job ratings under the Kootenay Savings Job Evaluation Plan by the employer. In reviewing employee job ratings under the Kootenay Savings Job Evaluation Plan, the arbitrator reviewed evidence submitted by employees regarding the employee's use of DocuSign eSignature as a key part of her job.

In ruling against the employer, the Arbitrator relied on evidence by the union that "the introduction of the new technology and that the use of OnBase and DocuSign have replaced printing". As a result, the union successfully argued for a change in employee job ratings under the Kootenay Savings Job Evaluation Plan.



Visit the DocuSign E-Signature Legality Guide to learn about current electronic signature laws, local legal systems, and technology preferences for countries around the world.

About DocuSign

DocuSign helps organizations connect and automate how they prepare, sign, act on, and manage agreements. As part of the DocuSign Agreement Cloud, DocuSign offers eSignature: the world's #1 way to sign electronically on practically any device, from almost anywhere, at any time. Today, more than 500,000 customers and hundreds of millions of users in over 180 countries use DocuSign to accelerate the process of doing business and to simplify people's lives.

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