

Chapter 7

ELECTRONIC COMMERCE ACT

(Assented to December 1, 2004)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

DEFINITIONS AND INTERPRETATION

Definitions

1. (1) In this Act,

"electronic" includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic, optical or other similar means; (*électronique*)

"electronic agent" means a computer program or any other electronic means used to initiate an act or to respond to electronic documents or acts, in whole or in part, without review by an individual at the time of the response or act; (*agent électronique*)

"electronic signature" means a signature that consists of one or more characters or symbols in a digital form which are incorporated in, attached to or associated with the document; (*signature électronique*)

"public body" means one or more of the following:

- (a) the Government of Nunavut, and any department, agency or other body of the Government of Nunavut, including a territorial corporation specified in Schedule B or C of the *Financial Administration Act*;
- (b) a city, town, village, hamlet or settlement incorporated under a law of Nunavut;
- (c) any other entity or body designated as a public body. (*organisme public*)

Extended meaning of legal requirement

(2) The provisions of this Act relating to the satisfaction of a legal requirement apply whether the law creates an obligation or provides consequences for doing something or for not doing something.

Government bound

2. This Act binds the Government of Nunavut.

Application

3. (1) Subject to subsection (2), this Act applies in respect of the laws of Nunavut.

Legal requirements to which Act does not apply

(2) This Act does not apply to legal requirements that are prescribed.

Documents to which Act does not apply

(3) This Act does not apply to any of the following documents:

- (a) a will or a codicil;
- (b) a trust created by a will or by a codicil;
- (c) a power of attorney, to the extent that it is in respect of an individual's financial affairs;
- (d) a document that creates or transfers an interest in land and that requires registration to be effective against third parties;
- (e) except as provided for in Part 3, a negotiable instrument, including negotiable documents of title;
- (f) any other prescribed document.

Preservation of other laws re electronic documents

4. (1) Nothing in this Act limits the operation of any provision of law that expressly authorizes, prohibits or regulates the use of electronic information or electronic documents.

Other requirements continue to apply

(2) Nothing in this Act limits the operation of a legal requirement for information to be posted or displayed in a specified manner or for information or a document to be transmitted by a specified method.

Preservation of other laws re privacy, access to information

(3) Nothing in this Act limits the operation of the *Access to Information and Protection of Privacy Act*, or any other provision of law that is intended to

- (a) protect the privacy of individuals; or
- (b) provide rights of access to information held by public bodies.

No premature destruction of non-electronic documents

(4) Nothing in this Act authorizes a public body or similar entity to destroy a document whose retention is otherwise required by a provision of law or a schedule for the retention or destruction of documents, where the document

- (a) is in a non-electronic form; and
- (b) was first created by or on behalf of the body or entity, or communicated to it, in that non-electronic form.

PART 1

USE OF ELECTRONIC INFORMATION

Legal recognition of electronic information

5. (1) Information or a document to which this Act applies is not invalid or unenforceable solely because it is in electronic form.

Public bodies

(2) If a public body is authorized to create, collect, receive, store, transfer, distribute, publish or otherwise deal with information and documents, it may do so electronically.

Use of electronic information not prohibited

(3) The use in a legal requirement of words and expressions like "in writing" and "signature" and other similar words and expressions does not by itself prohibit the use of electronic documents.

Use of electronic information not mandatory

6. (1) Nothing in this Act requires a person to use, provide or accept information or a document in electronic form.

No power to require use of electronic information

(2) Nothing in this Act authorizes a public body to require other persons to use, provide or accept information or documents in electronic form without their consent.

Consent and implied consent

(3) A person may consent to use, provide or accept information or a document in electronic form, and the person's consent may be inferred from the person's conduct.

No implied consent respecting public bodies

(4) Despite subsection (3), the consent of a public body to accept information in electronic form may not be inferred, but instead must be expressed by explicit communication

- (a) to the person who provides the information; or
- (b) that is accessible to the public or to those persons likely to communicate with the public body about the matter or purpose in question.

Requirement for information to be in writing

7. A legal requirement that information or a document be in writing is satisfied by information or a document that is in electronic form if it is accessible so as to be usable for subsequent reference.

Providing information in writing

8. (1) A legal requirement that a person provide information in writing to another person is satisfied by the provision of the information in an electronic form that is accessible by the other person and capable of being retained by the other person so as to be usable for subsequent reference.

Additional rules, public bodies

(2) A legal requirement that a person provide information in writing to a public body is satisfied by the provision of the information in an electronic form if

- (a) the public body to which the information is to be provided has consented to accept electronic documents in satisfaction of the requirement;
- (b) the electronic document meets the information technology standards and acknowledgement rules established by the public body; and
- (c) the conditions in subsection (1), with such modifications as may be necessary in the circumstances, are satisfied.

Providing information in specific form

9. (1) A legal requirement that a person provide information to another person in a specified non-electronic form is satisfied by the provision of the information in an electronic form that is

- (a) organized in the same or substantially the same way as the specified non-electronic form; and
- (b) accessible by the other person and capable of being retained by the other person so as to be usable for subsequent reference.

Additional rules, public bodies

(2) A legal requirement that a person provide information to a public body in a specified non-electronic form is satisfied by the provision of the information in an electronic form if

- (a) the public body to which the information is to be provided has consented to accept electronic documents in satisfaction of the requirement;
- (b) the electronic document meets the information technology standards and acknowledgement rules established by the public body; and
- (c) the conditions in subsection (1), with such modifications as may be necessary in the circumstances, are satisfied.

Providing and examining originals

10. (1) A legal requirement that an original document be provided or examined is satisfied by the provision or examination of an electronic document if

- (a) there exists a reliable assurance as to the integrity of the information contained in the electronic document from the time it was first made in the final version, whether as a written document or as an electronic document; and
- (b) the electronic document is accessible by the person to whom it is provided and is capable of being retained by the person so as to be usable for subsequent reference.

Standard of integrity and reliability

(2) For the purposes of paragraph (1)(a),

- (a) the criterion for assessing integrity is whether the information has remained complete and unaltered, apart from the introduction of

- any changes that arise in the normal course of communication, storage and display; and
- (b) the reliability of an assurance is to be assessed in light of all the circumstances, including the purpose for which the document was created.

Additional rules, public bodies

(3) A legal requirement that an original document be provided to or examined by a public body is satisfied by the provision or examination of an electronic document if

- (a) the public body to which the information is to be provided has consented to accept electronic documents in satisfaction of the requirement;
- (b) the electronic document meets the information technology standards and acknowledgement rules established by the public body; and
- (c) the conditions in subsection (1), with such modifications as may be necessary in the circumstances, are satisfied.

Retaining written documents

11. (1) A legal requirement to retain a document is satisfied by the retention of an electronic document if

- (a) the electronic document is retained in the same format as the one in which the written document was created, sent or received, or in a format that does not materially change the information contained in the written document;
- (b) the information in the electronic document will be accessible so as to be usable for subsequent reference by any person who is entitled to have access to the written document or who is authorized to require its production; and
- (c) in a case where the electronic document was sent or received, information, if any existed, that identifies the origin and destination of the electronic document and the date and time when it was sent or received is also retained.

Retaining electronic documents

(2) A legal requirement to retain a document that is originally created, sent or received electronically is satisfied by the retention of an electronic document if

- (a) the electronic document is retained in the format in which it was created, sent or received, or in a format that accurately represents the information contained in the document that was originally created, sent or received;
- (b) the information in the electronic document will be accessible so as to be usable for subsequent reference by any person who is entitled to have access to the document that was originally created, sent or received, or who is authorized to require its production; and

- (c) in a case where the electronic document was sent or received, information, if any existed, that identifies its origin and destination and the date and time when it was sent or received is also retained.

Whether information is capable of being retained

12. (1) For the purposes of section 11, electronic information or an electronic document is not 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.

Whether information or document is provided

(2) For the purposes of sections 8, 9, and 10, electronic information or an electronic document is not provided to a person if it is made available merely for access by the person through any means including on a website.

Examples of providing information

(3) For greater certainty, the following are examples of actions that constitute providing electronic information or an electronic document to a person, if section 8, 9 or 10 is otherwise complied with:

- (a) sending the electronic information or electronic document to the person by electronic mail;
- (b) displaying it to the person in the course of a transaction that is being conducted electronically.

Signatures

13. (1) Subject to subsection (2), a legal requirement that a document be signed or endorsed is satisfied by an electronic signature.

Requirements for prescribed documents

(2) The legal requirement that a prescribed document be signed is satisfied by an electronic signature if, in light of all the circumstances, including any relevant agreement made at the time the electronic signature is created or the purpose for which the document is created,

- (a) the electronic signature is reliable for the purpose of identifying the person;
- (b) the association of the electronic signature with the relevant electronic document is reliable; and
- (c) the electronic signature meets
 - (i) the prescribed requirements regarding method, and
 - (ii) the prescribed information technology standards.

Seal

- (3) An electronic document is deemed to have been sealed if
 - (a) a legal requirement that the document be signed is satisfied in accordance with subsection (1) or (2), as the case may be; and
 - (b) the electronic document and electronic signature meet the prescribed seal equivalency requirements.

Additional conditions, public bodies

(4) A legal requirement that a document that is to be provided to a public body be signed, endorsed or sealed is satisfied by an electronic signature if

- (a) the public body has consented to accept electronic signatures;
- (b) the electronic signature meets the requirements as to method and as to reliability of the signature of the public body; and
- (c) the conditions in subsections (2) or (3), as the case may be, are satisfied.

Copies

14. If the use of electronic information or an electronic document is otherwise permitted, a legal requirement that one or more copies of a document be provided to the same person at the same time is satisfied by the provision of a single version in an electronic form.

Electronic payments

15. (1) A payment to which this Act applies is not invalid or unenforceable solely because it is made in electronic form.

Additional conditions, public bodies

(2) A payment that is authorized or required to be made to or by a public body may be made in electronic form in any manner specified by the public body.

PART 2

ELECTRONIC TRANSACTIONS

Formation and operation of electronic contracts

16. (1) Unless the parties agree otherwise, 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 action that is intended to result in electronic communication, such as touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter.

Legal recognition of electronic contracts

(2) A contract is not invalid or unenforceable solely because it is in electronic form or because an electronic document was used in its formation.

Involvement of electronic agents

17. A contract may be formed by the interaction of an electronic agent and an individual or by the interaction of electronic agents.

Errors when dealing with electronic agents

18. If an individual makes a material error in the course of an electronic transaction with an electronic agent belonging to another person, the electronic transaction is not enforceable by the other person if all the following conditions are met:

- (a) the electronic agent does not give the individual an opportunity to prevent or correct the error;
- (b) on becoming aware of the error, the individual promptly notifies the other person and indicates that he or she made an error in the transaction;
- (c) in a case where consideration is received as a result of the error, the individual
 - (i) returns or destroys the consideration in accordance with the other person's instructions or, if there are no instructions, deals with the consideration in a reasonable manner, and
 - (ii) does not benefit materially from receiving the consideration.

Time and place of sending and receipt of electronic documents

19. (1) Unless the parties agree otherwise, electronic information or an electronic document is sent when it enters an information system outside the sender's control or, if the sender and the addressee use the same information system, when it becomes capable of being retrieved and processed by the addressee.

Presumption, time of receipt

(2) Electronic information or an electronic document is presumed to be received by the addressee,

- (a) if the addressee has designated or uses an information system for the purpose of receiving electronic information or electronic documents of the type sent, when it enters that information system and becomes capable of being retrieved and processed by the addressee; or
- (b) if the addressee has not designated or does not use an information system for the purpose of receiving electronic information or electronic documents of the type sent, when the addressee becomes aware of the electronic information or electronic document in the addressee's information system and it becomes capable of being retrieved and processed by the addressee.

Places of sending and receipt

(3) Unless the parties agree otherwise, electronic information or an electronic document is deemed to be sent from the sender's place of business and received at the addressee's place of business.

Place of business

(4) If the sender or the addressee has more than one place of business, the place of business for the purposes of subsection (3) is the one with the closest relationship to the

underlying transaction to which the electronic information or document relates or, if there is no underlying transaction, the principal place of business of the sender or the addressee.

Habitual residence

(5) If the sender or the addressee does not have a place of business, the references to "place of business" in subsection (3) are to be read as references to "habitual residence".

PART 3

CARRIAGE OF GOODS CONTRACTS

Application to actions related to contracts for the carriage of goods

20. (1) This Part applies to any action done in connection with a contract for the carriage of goods, including, but not limited to the following:

- (a) furnishing the mark, number, quantity or weight of goods;
- (b) stating or declaring the nature or value of goods;
- (c) issuing a receipt for goods;
- (d) confirming that goods have been loaded;
- (e) giving instructions to a carrier of goods;
- (f) claiming delivery of goods;
- (g) authorizing release of goods;
- (h) giving notice of loss of, or damage to, goods;
- (i) undertaking to deliver goods to a named person or a person authorized to claim delivery;
- (j) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;
- (k) notifying a person of terms and conditions of a contract of carriage of goods;
- (l) giving a notice or statement in connection with the performance of a contract of carriage of goods;
- (m) acquiring or transferring rights and obligations under a contract of carriage of goods.

Use of electronic documents

(2) A legal requirement that an action referred to in subsection (1) be done in writing or by using a written document is satisfied by the use of electronic information or electronic documents if the parties consent.

Exception

(3) Despite subsection (2), if a right is to be granted to or an obligation is to be imposed on a particular person, and if there is a legal requirement that this be done by the transfer or use of a written document, the legal requirement is satisfied by the use of one or more electronic documents if they are created by a method that gives a reliable

assurance that the person using or relying on the electronic document is the particular person to whom or on whom the right or obligation has been granted or imposed.

Standard of reliability

(4) For the purposes of subsection (3), the reliability of an assurance is to be assessed in light of all the circumstances, including the purpose for which the right or obligation is conveyed, and any relevant agreement.

Reverting to writing

(5) If one or more electronic documents are used to do an action referred to in paragraph (1) (j) or (m), no written document used to do the same action with respect to the same goods is valid unless the use of electronic documents has been terminated, unilaterally or by agreement, and has been replaced by a written document that contains a statement of the termination.

Effect of reversion

(6) The replacement of electronic documents by written documents pursuant to subsection (5) does not affect the rights or obligations of the parties.

Legal requirements always applicable

(7) Legal requirements respecting contracts of carriage of goods are applicable regardless of whether the contracts are set out in or evidenced by written documents or electronic documents.

PART 4

REGULATIONS

Regulations

21. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) designating entities or bodies or classes of entities or bodies as public bodies for the purposes of paragraph (c) of the definition "public body" in subsection 1(1);
- (b) prescribing legal requirements or classes of legal requirements for the purposes of subsection 3(2);
- (c) prescribing any document or class of documents for the purposes of subsection 3(3);
- (d) prescribing, for the purposes of subsection 13(2),
 - (i) documents or classes of documents to which the subsection applies,
 - (ii) requirements regarding method that electronic signatures must meet, and
 - (iii) information technology standards that electronic signatures must meet;

- (e) prescribing seal equivalency requirements for electronic signatures for the purposes of subsection 13(3); and
- (f) respecting any other matter or thing that the Commissioner, on the recommendation of the Minister, considers necessary or advisable to carry out the intent of this Act.

PART 5

CONSEQUENTIAL AMENDMENTS

Interpretation Act

22. The *Interpretation Act* is amended by adding the following after section 26:

Authority to prescribe forms includes electronic forms

26.1. (1) Authority in an Act to prescribe, approve or provide a form includes authority to prescribe, approve or provide an electronic form and to prescribe requirements for its electronic signature.

Authority to prescribe manner of submitting form includes electronic means

(2) Authority in an Act to prescribe or approve the manner of submitting a form includes authority to prescribe or approve electronic means of submitting the form.

Communication of information

26.2. If a provision in an Act requires a person to communicate information otherwise than by means of a form, the Minister responsible for the Act has authority, under the relevant Act, to prescribe electronic means that may be used to communicate the information and to prescribe requirements for the electronic signature of the information.