

## **Municipalities and Ecommerce Law**

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### **Electronic Commerce Act, 2000 (Ontario)**

The Electronic Commerce Act (S.O. 2000 c.17 in force October 16, 2000) enables Municipalities to adopt technology that will streamline administrative practices in their dealings with residents, taxpayers, suppliers of goods and services and members of the general public.

#### **General Intent of the Act**

The Act gives to electronic transactions the same validity as paper transactions. Any legal requirement that writing be used, that form be available in a certain form, that a document be signed, or an original document provided or retained is satisfied if certain general criteria of consent, reliability, availability, and subsequent usability. The Act confers this status of electronic communications by eliminating any invalidity or unenforceability by reason only of the information or document being in electronic form.

#### **Position of Municipalities**

There are four provisions that are specifically applicable to municipalities and other public bodies

1. Section 14 deals with the criteria of "consent". A municipality gives consent 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.
2. Section 16 imposes additional conditions when electronic information or documents are provided to a public body, beyond the general requirements in the Act of consent, reliability, availability, and subsequent usability applicable to all electronic communications. Specifically the electronic information or document must meet the information technology standards, if any, of the public body, and the public body acknowledges receipt of the information or document in accordance with its own acknowledgment rules, if any.
3. Section 17 deals with electronic signatures provided to a municipality. The signature must meet the information standards of the public body, including requirements as to method and reliability of signature established by the public body.
4. Section 18 allows a municipality to specify the manner in which payments in electronic form may be made.

#### **Current State of Municipal Readiness for ECommerce**

Currently theorists talk about open and efficient government. Six months after the Act has been proclaimed in force there have been no public reports of pressure by the citizens of any Ontario municipality to make transactional services (such as the activities subject to the provisions of the Act) available "on-line". Payments to a municipality is a

notable exception, as Canadian banks have made available to municipalities payment their electronic payment facilities. As most municipalities provide information on line, it would not take much imagination to encourage at least some residents to adopt ecommerce procedures. The advantage is that the procedures established for initially a small group will be scaleable to meet the demand for such services that the future will bring.

### **Can Municipalities require residents and others to accept information in electronic form?**

These Section allow a municipality to use electronic means to deal with documents and information. Does a municipality require the consent of the persons to whom the information would be distributed under section 3 (1) before those persons would be bound by it? If the municipality were to distribute information electronically under sections, and send a notice or an order affecting someone, would the affected person not have to consent (expressly or implicitly) to accept the electronic communication?"

Section 3 (1) entitled "Use, etc. of electronic information or document not mandatory" reads:

Nothing in this Act requires a person who uses, provides or accepts information or a document to use, provide or accept it in an electronic form without the person's consent. Section 3. (1) should prevail over the power in the Sections referring to government entitites that ensure municipalites have the legal capacity to use electronic communications - no one can argue that its capacity was limited to documents on paper. However, that does not give the municipalities the power to make people take electronic documents.

Otherwise there would be some risk of unfairness. Why should the municipality be able to issue an order against someone in a form that the person was not capable of reading, or to deliver it by a channel of communications that the person did not know of or use?

This is a different question from one where the person to be the subject of the order is already dealing electronically in relevant ways with the municipality. In that case the consent to deal - implied by conduct if need be - would extend to incidental communications on the same subject. A person cannot tailor the consent to his or her convenience to that extent (though someone could agree to deal electronically on one subject and not on another.) Withdrawal of consent cannot in my view be strategic, i.e. aimed at particularly unwelcome communications only.

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