KOFFMAN KALEF LLP
BUSINESS LAWYERS

MEMORANDUM

TO: British Columbia Association of School Business Officials

FROM: Koffman Kalef LLP

RE: Electronic Signatures

DATE: November 26, 2025

1. INTRODUCTION

This memorandum discusses the use of electronic signatures, such as DocuSign, to execute contracts. This is an emerging area of the law, as electronic signatures are becoming more and more common, particularly in the post-pandemic era. In our practice, we regularly use electronic signatures for commercial agreements, as it is much easier than collecting wet ink signatures, or having to meet in person to sign, particularly where there are multiple parties involved in the transaction. I am sure many of you have also seen contracts that are signed by electronic signature, or signed a contract yourself by electronic means.

2. WRITTEN OR ORAL CONTRACTS

First, it is worth noting that a contract does not necessarily need to be in writing to be enforceable, a contract may be oral. There are exceptions where the contract must be in writing, including in the context of real estate, trusts, powers of attorney, estate matters, and negotiable instruments, including promissory notes, which need to be in writing and may need to be originally executed as well.

From a practical perspective, while an oral contract may be enforceable, it is usually much better to have a written agreement, to ensure that the terms are clear, and that it is clear the parties accepted the contract. If a contract is written down and signed by the parties, then it becomes more difficult for a party to later claim that the contract terms are not correct or that it was not agreed to.

3. *ELECTRONIC TRANSACTIONS ACT*

a. General rule - Electronic signatures are allowed

In British Columbia, the law regarding the use of electronic signatures is governed by the common law and also by legislation.

The relevant legislation regarding electronic signatures is the *Electronic Transactions Act.* Section 11 of the *Electronic Transactions Act* states that "If there is a requirement under law for the signature of a person, that requirement is satisfied by an electronic signature."

So, based on the legislation, an electronic signature may be used. The next question then becomes what constitutes an "electronic signature". The *Electronic Transactions Act* provides a definition in section 1. An ""electronic signature" means information in electronic form that a person has created or adopted in order to sign a record and that is in, attached to or associated with the record."

This definition is quite broad. The use of the words " information in electronic form" would arguably include all kinds of things, not just signatures attached via DocuSign or other similar platforms. Further, the adopted signature does not necessarily need to be in or attached to the record itself, it just needs to be "associated with" the record. To fall under this definition, there would need to be some kind of "information" (a signature or a mark of some kind) that signifies acceptance of the agreement, which could be done in a variety of ways. For instance, it may include a typed out name that the party intended to act as a signature at the bottom of the contract.

b. Exceptions to general rule

However, the *Electronic Transactions Act* does not apply to certain documents, including:

(a) wills;
(b) trusts created by wills;
(c) powers of attorney, to the extent that they concern the financial affairs or personal care of an individual;
(d) documents that create or transfer interests in land and that require registration to be effective against third parties, or
(e) other provisions, requirements, information or records prescribed in the regulations.

So certain agreements will still require an original signature, including a will, power of attorney or a transfer of land or a mortgage.

In the context of agreements that relate to land, a lease agreement or a purchase agreement relating to the purchase and sale of land could be signed electronically, but the actual transfer itself that is registered at land titles should be signed in wet ink. Documents that are filed at land titles also need to be signed in front of a lawyer or notary public who will provide an officer certification.

In the context of a will or a power of attorney, those documents require original signatures and require two witnesses. This is due to the importance of the document and the fact that the person signing the document is often unavailable or incapacitated once the document is being enforced by the executor or the attorney.

4. WITNESSES

Having a witness further reduces the risk of a party claiming they were not the person actually signing or affixing a mark. With no witness there is a risk that a party could later claim they had not attached or authorized the attachment of the electronic signature to the document.

Most commercial contracts do not require a witness in order to be enforceable, so in most cases it is fine to have no witness. Having a witness provides some evidence verifying that the correct person signed the document. However, having no witness does not invalidate the contract.

I have recently had a few instances where the form of agreement sent out had a witness line, but the agreement was sent out via DocuSign and only the signing party signs, and the witness line was left blank. In each instance there was discussion as to whether the witness line needed to be filled in as well, even though the individual had signed electronically. So, I have started to pay more attention to witness lines and remove them where they will not be filled in when sending agreements out via DocuSign.

It is worth considering whether a witness is require for the specific contract, and if no witness is required, but there is a witness line, whether that witness line should be removed prior to sending the agreement to be electronically signed, as a clean up matter and to avoid any confusion.

5. COUNTERPARTS AND ELECTRONIC DELIVERY CLAUSE

You will often find a counterpart and electronic delivery clause near the end of a contract. There are different variations on this clause, but it generally provides that each party does not need to sign the same copy of the agreement, and that the agreement may be executed and delivered electronically via email.

This clause prevents a party from claiming that the contract is invalid because there is no one original copy of the document with all of the parties' signatures. It also provides evidence that all parties consented to the use of electronic signatures and electronic delivery. So it is advisable to include this provision in most commercial agreements where originals are not otherwise required.

However, if the language is not included, it does not necessarily mean that the contract is invalid if it is signed electronically or in counterparts, it just provides evidence as to the intentions of the parties.