



Implementing the Uniform Access to Digital Assets by Fiduciaries Act in Ontario

Submitted to: The Ministry of the
Attorney General

Submitted by: The Ontario Bar
Association

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Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide input to the Ministry of the Attorney General (“**MAG**”) on the Uniform Access to Digital Assets by Fiduciaries Act (UADAFa). The input will help MAG determine whether Ontario should implement UADAFa and if so, what changes should be made (if any).

Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared by members of the OBA Trust and Estates Law Section, in consultation with the OBA Business Law Section. These members bring extensive expertise across all facets of estate and trust law. Their experience spans estate planning and administration, complex litigation involving will challenges and dependent support claims, and navigating multi-jurisdictional issues. They are well-versed in emerging areas such as digital assets and incapacity planning and regularly advise clients on fiduciary obligations under Ontario statutes including the Succession Law Reform Act, Estates Act, and Trustee Act.



Comments & Recommendations

As previously put forward in the OBA's 2025 submission to MAG titled "Trust and Estates Proposals,"¹ we recommend that Ontario enacts UADFA to address the growing gap between traditional fiduciary authority and the realities of digital property.

Estate trustees, attorneys for property, and guardians increasingly encounter email accounts, cloud-stored documents, social-media profiles, online banking platforms, loyalty programs, and cryptocurrency wallets. These assets are often essential to administering an estate or managing the property of an incapable person.

Currently, Ontario has no statutory framework governing fiduciary access to digital assets. Existing legislation, including the Succession Law Reform Act, Substitute Decisions Act, 1992, and the Personal Information Protection and Electronic Documents Act (PIPEDA), do not provide the authority fiduciaries need, and technology companies frequently refuse access based on restrictive terms of service or foreign privacy laws. This can delay or even prevent the proper administration of estates and guardianships, leaving important financial, legal, and personal matters unresolved.

Uniformity is especially important as most digital service providers operate across borders. A consistent national approach makes compliance more straightforward and increases the likelihood that custodians will recognize and honour fiduciary requests. Saskatchewan, Yukon, New Brunswick, and Prince Edward Island have already adopted UADFA with minimal modification, demonstrating that the model is workable and adaptable.

In addition, given that Ontario is the largest jurisdiction in Canada by a number of different measures, Ontario's adoption of UADFA may inspire the remaining provinces and

¹ Ontario Bar Association, *Trust and Estates Proposals*, Submission to the Ministry of the Attorney General, (22 December 2025), online: <<https://oba.org/getmedia/c18850f8-707b-4aca-a6dd-672c7cf78a13/OBA-Submission-Trusts-Estates-Proposals-Dec-22-2025.pdf>>.



territories to do the same. The more jurisdictions that implement UADFA, the more likely it is that digital custodians will be compelled to implement processes to be compliant with the legislation.

Given the centrality of digital assets in modern life and the practical difficulties currently faced by fiduciaries, UADFA offers Ontario a timely, tested, and balanced solution. That said, the following modifications ought to be considered prior to its enactment.

Clarifying Definitions

UADFA defines “digital asset” as “a record that is created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic, or optical means or by any other similar means.” Notably, UADFA leaves the definition of “record” to each jurisdiction. All four Canadian jurisdictions that have implemented UADFA reference “information stored in any form”.

In certain non-Canadian jurisdictions, there has been a distinction between digital assets (e.g. digital photos) and electronic communications (e.g. email messages), and in such jurisdictions the legislation and jurisprudence provide separate legal treatment for these two categories. From an estate or incapacity administration perspective, it would be critical for fiduciaries to have access to electronic communications in particular as such communications may contain information about assets, liabilities and beneficiaries that may not otherwise be known. In order for UADFA to effectively serve its purpose, it should be clear to both custodians and individuals alike that it applies to electronic communications.

Thus, the Ontario definition of “digital asset” should expressly clarify that it includes electronic communications sent by or to the deceased or incapable individual or use similar language to remove any ambiguity. In addition, the Ministry should ensure that its definition of “record” captures emerging forms of digital assets, such as the “next NFT” supported by blockchains or the intellectual property of AI prompts.



Expanded Scope of Fiduciaries

While UADFA refers broadly to guardians and attorneys, there are questions on whether this should extend to fiduciaries responsible for personal care decisions or be limited to those with authority relating to property.

We recommend that the definition of “fiduciary” be expanded to include an agent of a fiduciary, such as a lawyer acting on behalf of the fiduciary, with clear parameters as to who falls within that definition (i.e., lawyers acting for the fiduciary in that capacity).

Moreover, we are of the view that attorneys for personal care and, separately, guardians of the person should be included as fiduciaries under Ontario legislation. We agree with Alberta’s approach, which acknowledges that attorneys for personal care may need to access the digital information of persons in their care (e.g., digital health information or online communications) where relevant to the exercise of their authority (e.g., in relation to the individual’s health care, living conditions, or social activities).

Fiduciaries’ Right to Access

Section 5 of UADFA sets out the fiduciary’s authority to take action (e.g., access, control, copy) regarding the digital asset. However, that authority is subject to an exception where a separate, permissive act allows or restricts fiduciary access. We recommend clarifying that this cannot simply be a click-through or sign-up requirement imposed by the service provider. Rather, the act should require an optional and informed choice. For example, when a user visits a website and is asked to accept cookies, they can generally still access the website without accepting those cookies.

Choice of Law Provision

Section 6 of UADFA addresses choice of law provisions. This type of provision generally requires that the law of a specific jurisdiction, which may not be Ontario, be applied in resolving matters relating to the agreement. Section 6 makes these provisions in a service agreement unenforceable where they limit a fiduciary’s right of access. New Brunswick’s



legislation expressly addresses forum selection, and we recommend that Ontario does the same.

MAG should therefore consider legislating a:

- (1) Choice of law provision; and
- (2) Forum selection provisions.

That said, forum selection provisions should be void to the extent that they would limit or interfere with a fiduciary's right of access. For example, service providers operating cryptocurrency exchanges might attempt to change the forum to their advantage.

PIPEDA

The legislation should also include an explicit reference to PIPEDA, which applies to Ontario and includes its own regime of when an organization can disclose personal information it has collected about an individual to third parties. Notably, PIPEDA can be read in a way where it prohibits organizations from disclosing personal information about individuals to their fiduciaries without express consent. For UADFA to be effective, it should include an explicit reference to the fact that it applies notwithstanding PIPEDA. This way, a custodian will not be able to rely on PIPEDA to shield itself from any obligations under UADFA. Potential language could include: "A fiduciary's exercise of a right of access under this Act does not contravene, and applies notwithstanding, any consent requirement under PIPEDA or other applicable privacy legislation."

That said, there may be pushback from custodians, citing invasion of privacy concerns if fiduciaries can access personal information and communications of deceased and incapable individuals. However, the global legislative and jurisprudential trend is to provide access, recognizing that in the digital age the lack of such access can seriously impair an estate or incapacity administration.



Prescribed Fees

Section 10 of UADFA provides authority to make regulations, including regulations for determining whether a person is a custodian as well as fees that custodians may charge for providing access.

We recommend Ontario take a similar approach to New Brunswick and Saskatchewan, which allow for reasonable fees subject to regulations. Prescribed fees would help ensure that the legislation is balanced and does not “favour” fiduciaries, encouraging greater adoption and support. Moreover, custodians may seek legal advice when responding to certain requests for access. Accordingly, reasonable fee structures could help custodians recover such costs.

Additional Modifications

In addition to the aforementioned comments, we recommend the Ministry consider the following modifications:

- 1) **Enforcement** – UADFA establishes timelines in which custodians must provide information to fiduciaries. However, the legislation does not provide a specific consequence or enforcement mechanism when a custodian fails to comply with these obligations.
 - We do not recommend creating a separate enforcement body to address instances of non-compliance. Rather, the Ministry should consider providing that, where a custodian fails to comply with the Act and a fiduciary brings an application to the Superior Court of Justice to obtain compliance, the custodian may be liable for the costs reasonably incurred by the fiduciary in doing so.²
- 2) **Scope** - UADFA should establish clear criteria governing access to digital assets. Where access is sought on the basis that an individual is unable to manage their own affairs, incapacity could be established through:

² *Wada Estate (Re)*, 2026 ABKB 309 (CanLII).



- i) A medical note, or
 - ii) A report from a capacity assessor³ designated under the SDA; and qualified under O. Reg. 460/05.
- Notably, the scope of management over property and personal care decisions is already set out in guardianship orders and in that case, the court has already found incapacity. Thus, the order should be sufficient on its face, as should the OPGT's statutory guardianship certificate. Access issues should be addressed in the guardianship order.
 - However, in cases where the grantor *remains* capable, the custodians should be able to rely on written confirmation from a lawyer, that the lawyer has advised the person acting/fiduciary as to the role and duties of such a fiduciary and has confirmed that the grantor is capable of instructing the fiduciary to act as agent under the power of attorney.
- 3) **Guidance Document** - The Ministry should consider developing a public-facing guidance document or “best practices” to support the enforcement and effectiveness of UADFA.
- Such document should encourage custodians to provide users with an option to designate, in advance, an individual who may manage or access their digital accounts following death or incapacity, where appropriate.⁴

Conclusion

We appreciate the opportunity to provide input and hope it will inform the Ministry's implementation of UADFA in Ontario. We would welcome the opportunity to continue this discussion and to share practical best practices for custodians that could help shape future guidance materials.

³ Notably, the capacity assessor roster is maintained by the Capacity Assessment Office. This is the same evidence the SDA already uses under ss. 9(3) and 16.

⁴ For instance, Facebook and LinkedIn's memorialization features or Google's "Inactive Account Manager" and Apple's "Legacy Contact" features. The public could also be encouraged to update their wills/POAs to set out whether they want digital information accessed. Consider an opt-out approach, rather than an opt-in.



The OBA would be pleased to discuss this further and answer any questions that you may have.