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

Contents

Purpose of Consultation 2

Background 2

- Digital Assets 2
- Fiduciaries 3
- Current Legal Framework for Accessing Digital Assets 3
- Uniform Legislation 3
  - *The Uniform Access to Digital Assets by Fiduciaries Act* 3
  - *Other Jurisdictions* 3

How to Participate 4

Disclaimer 4

UADAFA Provisions and Consultation Questions 5

- Approach to Consultation Paper 5
- Defined Terms and Application 5
  - *Account Holder, Custodian, and Service Agreement* 5
  - *Digital Assets and Record* 6
  - *Fiduciary* 7
- Fiduciary's Right and Duties 8
- Fiduciary's Authority 9
- Access to Digital Assets 10
- Court Direction, Liability, and Regulations 11

Next Steps 12

Glossary 13

Purpose of Consultation

This consultation paper seeks input on implementing the *Uniform Access to Digital Assets by Fiduciaries Act* (UADAFA) in Ontario. The input will help the Ministry of the Attorney General determine whether Ontario should implement UADAFA and if so, what changes should be made (if any).

Background

Ontarians rely on online services for many aspects of their lives. Users of online services (e.g., email, social media, and cloud storage) often rely on providers of these services to preserve and control access to the contents of online accounts. When certain circumstances occur, such as the death or incapacity of the account holder, a number of challenges may prevent others from gaining access (e.g., account security measures and restrictions in the terms of service for the account). This is true even where those seeking access have a responsibility to do so on behalf of the account holder. For example, an estate trustee (also known as the executor of an estate) may need to access the email account of the deceased person whose estate they are administering. They may also need to access other digital assets that have financial value like revenue generating social media accounts, reward points, and digital currencies.

UADAFA seeks to address this by providing a clear means by which certain individuals can request and receive access to these "digital assets". UADAFA is uniform legislation that has been drafted so that it can be implemented with general consistency by Canadian provinces and territories. This uniform legislation provides a clear right for certain fiduciaries (e.g. estate trustees and attorneys / guardians for property) to access digital assets, a process by which they can request access, and a duty for the "custodians" holding those assets to provide access.

Digital Assets

Digital assets include a wide range of electronically stored or processed assets. These assets can hold financial value (e.g., cryptocurrency or reward points), personal value (e.g., family photos or documents stored online), or practical value (e.g., emails containing information identifying potential beneficiaries of an estate). However, they do not include the underlying tangible assets (i.e., an online bank account would be a digital asset but the money in that account would not be a digital asset).

Digital assets are often held by a service provider and are subject to a service agreement (i.e., terms of service) between the account holder and the service provider. When the account holder requires that someone else access the digital asset on their behalf (e.g., due to incapacity), there can be uncertainty around whether the service provider can provide that access. There can also be provisions in the service agreement that place limitations on access.

Fiduciaries

A fiduciary relationship involves the exercise of rights by a person in a position of trust, the fiduciary, for the benefit of another person. Many relationships in society can be considered fiduciary (e.g., lawyer and client, trustee and beneficiary); however, as will be seen later in this paper, UADAFA only applies to specific fiduciaries.

In some cases, a fiduciary may be responsible for accessing the digital assets of someone else. This may be due to the account holder being incapable of doing that themselves (as could be the case with an attorney for property under a continuing power of attorney) or being deceased (in the case of an executor appointed by a will). UADAFA seeks to address this kind of circumstance.

Current Legal Framework for Accessing Digital Assets

There is no clear and consistent mechanism in Ontario for fiduciaries to access digital assets on another's behalf. Access is often subject to the terms of the service agreement, which may include terms that limit access by any person other than the account holder. As a result, fiduciaries may be required to seek a court order, sometimes in another jurisdiction, in order to gain access.

Uniform Legislation

The Uniform Access to Digital Assets by Fiduciaries Act

The Uniform Law Conference of Canada (ULCC) is a law reform body that plays a key role in developing uniform legislation in civil and commercial matters. In 2016, the ULCC adopted UADAFA. Generally, this Act creates a right for certain fiduciaries to access digital assets along with a process for requesting access and requirement for service providers to provide that access. The fiduciary is then authorized to do anything the account holder could have done and contrary provisions in service agreements are void.

The full text of UADAFA can be found online, and further details are provided below.

Other Jurisdictions

Since being adopted by the ULCC in 2016, UADAFA has been implemented, largely unchanged, in four Canadian jurisdictions (Saskatchewan (2020), PEI (2022), New Brunswick (2022), and Yukon (2023)). In 2024, the Alberta Law Reform Institute (ALRI) released a report that recommended implementing UADAFA with some amendments, but Alberta has not implemented it to date.

The UADAFA itself followed the ULCC's American counterpart, the Uniform Law Commission's 2015 *Revised Uniform Fiduciaries Access to Digital Assets Act* (the American Act). While the American Act differs from UADAFA, it has been enacted in 49 states.

How to Participate

The Ministry of the Attorney General welcomes your responses to this paper. Responses can be submitted without a word limit.

You may download this paper and submit your completed responses by **September 11, 2026**. Responses can be submitted via email at MAGPolicy@ontario.ca.

Please include your name and contact information, including an email address, when submitting your response.

Thank you for taking the time to review this paper. If you have any questions about this consultation, please email MAGPolicy@ontario.ca.

Disclaimer

Please note that unless agreed otherwise by the Ministry of the Attorney General, all responses received from organizations in response to this consultation will be considered public information and may be used and disclosed by the government to promote transparency and to assist in evaluating law reform options. This may involve disclosing any response received to other interested parties.

An individual who provides a response and who indicates an affiliation with an organization will be considered to have submitted the response on behalf of that organization.

Responses received from individuals who do not indicate an affiliation with an organization will not be considered public information. Responses from individuals may be used and disclosed by the Ministry to promote transparency and to assist in evaluating law reform options. Any personal information such as an individual's name and contact information will be handled in accordance with the Freedom of Information and Protection of Privacy Act and will not be disclosed except in accordance with that Act or as may otherwise be required by law.

UADAFA Provisions and Consultation Questions

Approach to Consultation Paper

This consultation paper seeks input on the impacts of implementing UADAFA and on what changes may need to be made for application in Ontario, while recognizing that consistency across Canada may make it easier for companies that provide services across multiple jurisdictions to comply with the law.

The following sections describe and discuss the provisions of UADAFA and list associated consultation questions. Feedback in response to these questions and any other comments on UADAFA are welcomed.

Question 1: Should Ontario implement UADAFA?
Question 2: What are the benefits or concerns with implementing UADAFA?
Question 3: Are there any alternatives to implementing UADAFA that should be considered?

Defined Terms and Application

UADAFA includes definitions for a number of key terms. These are outlined below with related terms discussed together. The term “court” is not included under the headings below but is defined in UADAFA as the superior court of the province/ territory.

Account Holder, Custodian, and Service Agreement

UADAFA defines these terms as follows:

> *“account holder” means an individual who has entered into a service agreement with a custodian;*
>
> *“custodian” means a person who holds, maintains, processes, receives or stores a digital asset of an account holder;*
>
> *“service agreement” means an agreement between an account holder and a custodian.*

Section 2 of the Act addresses application and notes:

(1) This Act applies in relation to the following:

…

(e) a custodian of, or a person who may be a custodian of, a digital asset created, recorded, transmitted or stored before, on or after the date this Act comes into force.

ULCC commentary on this section notes that "account holder" is intended to include those who died after entering into an agreement. The commentary also notes that "service agreement" is intended to include any agreement controlling the account holder/custodian relationship regardless of whether agreement was express (e.g., clicking "I agree") or implied (e.g., using site after being made aware of terms). UADAFA applies regardless of whether the asset was created before or after the Act comes into force.

As a result, UADAFA applies where digital assets are subject to a service agreement with a custodian. While this would apply to many digital assets, there are others that would be excluded since they are non-custodial. For example, cryptocurrency that relies on decentralized blockchain and where the keys are not held by a third-party would not have a custodian and would therefore be outside the UADAFA framework.

Question 4: Are the definitions of "custodian", "account holder" and "service agreement" sufficient? Would you propose any changes to those definitions?

Digital Assets and Record

UADAFA provides the following definition for "digital asset":

"digital asset" means 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

UADAFA leaves the definition of "record" to each jurisdiction. All four Canadian jurisdictions that have implemented UADAFA rely on language that includes reference to "information stored in any form".

This definition captures a broad range of digital assets and aims to do so in a technologically neutral manner. This includes assets regardless of whether they hold monetary value.

As noted above, UADAFA is limited to custodial assets.

Subsection 2(2) of UADAFA further clarifies that an employer's digital assets used by employees in the ordinary course of business are excluded from the UADAFA framework.

Question 5: Is the combined effect of UADAFA's definition of "digital asset" and implementing jurisdictions' definitions of "record" sufficiently broad? Should any changes be made to expand or reduce what is captured by these definitions?

Fiduciary

UADAFA provides the following definition for "fiduciary" where the precise language is intended to be adapted to align with the legislative context of each jurisdiction:

> *"fiduciary", in relation to an account holder, means*
> > *(a) a personal representative for a deceased account holder,*
> > *(b) a guardian appointed for an account holder,*
> > *(c) an attorney appointed for an account holder who is the donor of the power of attorney, or*
> > *(d) a trustee appointed to hold in trust a digital asset or other property of an account holder*

Further, ss. 2(1)(a)-(d) of UADAFA state:

> *(1) This Act applies in relation to the following:*
> > *(a) a personal representative for a deceased account holder who died before, on or after the date this Act comes into force;*
> > *(b) a guardian appointed for an account holder, whether appointed before, on or after the date this Act comes into force;*
> > *(c) an attorney appointed under a power of attorney made before, on or after the date this Act comes into force;*
> > *(d) a trustee acting under a trust created before, on or after the date this Act comes into force...*

While the precise terms used in Ontario may differ, the general categories require consideration. The ULCC commentary notes that "guardian" is not intended to include guardians of living minors, and that "trustee" is not intended to include trustees in bankruptcy.

As can be seen in the excerpt from section 2 above, UADAFA is intended to apply regardless of whether the account holder died, or the fiduciary was appointed or acting, prior to the Act's coming into force.

While UADAFA refers broadly to guardians and attorneys, one question that arises is whether this should extend to fiduciaries responsible for personal care decisions or be limited to those with authority relating to property. Saskatchewan and New Brunswick have limited the relevant definitions of fiduciary in their jurisdictions to only apply to attorneys and guardians for property. However, in addition to attorneys and guardians that deal with property matters, ALRI has recommended including those that deal with personal matters as well as (Alberta's equivalent to attorneys for personal care in Ontario). In ALRI's view, Alberta's 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).

Question 6: Should attorneys for personal care and guardians of the person be included as fiduciaries in an Ontario act?
Question 7: Should any additional fiduciaries be added to those listed in UADAFA?
Question 8: Should any UADAFA fiduciaries be excluded in Ontario?
Question 9: Are there any other considerations relevant to determining which fiduciaries should be included in an Ontario act?

Fiduciary's Right and Duties

Section 3 of UADAFA establishes a right for the fiduciary to access the account holder's digital assets so long as this is consistent with the source of the fiduciary's authority. This right of access would, for example, not apply to an attorney for property where the power of attorney excludes authority over the relevant digital asset. The right of access is also subject to instructions in the following documents as set out in s. 3(2):

> *(a) the will of the deceased account holder;*
> *(b) [a grant of administration of estate as referred to in the enacting jurisdiction];*
> *(c) a guardianship order;*
> *(d) the power of attorney;*
> *(e) the trust;*
> *(f) an order of the court.*

The right of access can be limited by instructions in the service agreement. However, this applies only after UADAFA is in force and the account holder has agreed to the provision through an affirmative act separate from their consent to the rest of the service agreement. The account holder's agreement to any limitations on the right of access cannot be inferred from the account holder simply using the digital asset or account.

UADAFA relies on a presumed consent model that provides fiduciaries (acting within their authority) with a right of access unless the account holder has limited the authority through the terms of the authorizing instrument (e.g., the power of attorney or will) or by agreeing to a provision in a service agreement that limits access as noted above. The American Act, by contrast, generally requires an account holder's consent prior to granting access to a fiduciary. In this way, UADAFA has prioritized access for fiduciaries over an asset that some account holders may not have thought to expressly include in an authorizing instrument, while the American Act has prioritized the account holder's privacy.

When there are multiple documents with instructions regarding the same digital asset, it may be necessary to determine which instruction should govern. Various arrangements could be made that prioritize instructions based on whether they are general or specific; more or less recent; or included in a formal instrument or made using an online tool. UADAFA, and all implementing Canadian jurisdictions, give priority to the most recent instrument, regardless of its formality or specificity. The American Act prioritizes online tools over formal instruments. ALRI recommends the opposite in prioritizing formal instruments over online tools.

ALRI also recommended providing clearer flexibility for overlapping access rights. This would ensure that where there are multiple fiduciaries, they could access digital assets as required within the scope of their authority. This would provide clarity where, for example, an attorney for property and an attorney for personal care need to access the same digital asset.

UADAFA does not modify duties that already apply to fiduciaries in Ontario when dealing with non-digital property; section 4 of UADAFA clarifies that these duties also extend to digital assets.

Question 10: Should any changes be made to the list in s. 3(2)?
Question 11: Should the fiduciary's right of access be subject to any additional limitations beyond limits placed on fiduciary authority by the account holder?
Question 12: When there are multiple instructions regarding the same asset, should the most recent instruction apply, or should a different rule determine which instruction applies? Should a formal instrument prevail over an online tool?
Question 13: Do you have any other input on the rights and duties of fiduciaries under UADAFA?

Fiduciary's Authority

Section 5 generally sets out the fiduciary's authority to take action (e.g., access, control, copy) regarding the digital asset.

Specifically, subsection 5(1) permits fiduciaries to deal with the digital assets as the account holder would be able to if alive and capable. They are also deemed to be an authorized user of the asset and to have the account holder's consent for the asset's contents to be divulged to them.

Subsection 5(2) confirms that the fiduciary's access neither breaches the service agreement nor requires consent of another party to that agreement. Provisions in the service agreement that limit the fiduciary's access are also voided. The exception to this is where the account holder agrees to the relevant term by affirmative act separate from their consenting to other provisions in the service agreement and does so after UADAFA is in force.

Subsection 5(3) provides that where the fiduciary has authority over the account holder's tangible property "capable of holding, maintaining, receiving, storing, processing or transmitting a digital asset" (e.g., a phone or a computer), they have the right to access that property and the digital asset stored in it. They are also deemed to be an authorized user of the property.

Section 6 of UADAFA 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 voids provisions that require disputes about access to a digital asset to be heard outside of the province. This was also supported by ALRI, which recommended including provisions confirming that (1) the location of a digital asset has no impact on a provincial court's jurisdiction and (2) that UADAFA applies to out of province custodians when the account holder resided in the province at the time of death or incapacity.

Question 14: Do you have any input on the fiduciary's right to access as set out in s. 5 of UADAFA? Question 15: Do you have any input on how s. 6 makes choice of law provisions unenforceable where they limit a fiduciary's right of access? Question 16: Should Ontario legislation void forum selection provisions?

Access to Digital Assets

Section 7 sets out the process for fiduciaries to access digital assets. Authorized fiduciaries may request access from the custodian in writing and must include authenticated copies of relevant documents (e.g., a will appointing the executor together with a death certificate). Custodians then have 30 days to provide access.

Jurisdictions that have enacted UADAFA have established different requirements for establishing proof of a fiduciary's authority. Saskatchewan and PEI require the original certified copy of the order or other document authorizing the fiduciary. Yukon has similar requirements and has specific requirements if the fiduciary is the Public Guardian and Trustee. New Brunswick expressly allows for original or certified copies and determines which documents are required based on whether the account holder is living. If the account holder is alive the fiduciary must provide: the court order, power of attorney, trust document or prescribed document. If the account holder is deceased, the fiduciary must provide: the letters probate, letters of administration, or the will and death certificate (or other document providing proof of death). New Brunswick also requires that the fiduciary provide proof of their own identity. ALRI recommended following New Brunswick's approach in allowing documents to be original or certified copies and requiring proof of the fiduciary's identity.

All Canadian jurisdictions that enacted UADAFA have required that custodians provide access within 30 days of receiving a request as set out in UADAFA. ALRI has recommended increasing this to 60 days for custodians outside of Canada.

Question 17: Do you have any input on the process for requesting or receiving access to digital assets as set out in s. 7 of UADAFA?
Question 18: Is the 30-day timeline to provide access sufficient or should something different be considered? Are there specific circumstances that may require a different timeline?

Court Direction, Liability, and Regulations

Section 8 of UADAFA permits fiduciaries to apply to the court for direction regarding their access right and discharges a fiduciary to the extent they are following those directions. This does not apply where there is fraud, willful concealment or misrepresentation in following the directions.

Section 9 provides that custodians are not liable for loss arising from compliance with the Act, regulation, or orders made under the Act, except where done in bad faith.

Section 10 provides authority to make regulations, including regulations for determining whether a person is a custodian and determining fees that custodians may charge for providing access. New Brunswick and Saskatchewan allow for reasonable fees subject to regulations.

Question 19: Should the grounds for applying for direction be modified in any way?
Question 20: Should fees be prescribed for custodians to provide access?
Question 21: Do you have any further input on sections 8-10 of UADAFA?
Question 22: Are there any other provisions not included in UADAFA that you think would be beneficial for Ontario legislation?

Next Steps

Thank you in advance for any input you may provide. Your advice and input will help inform the Ministry's recommendations regarding whether and how to implement UADAFA in Ontario.

Glossary

Several terms have been defined below for reference. Note that these terms are defined as they are used in this paper and that terms with an asterisk have a specific definition in UADAFA (set out earlier in this paper) that should be referenced to understand precisely how the term would be interpreted under UADAFA.

Account holder* – Person who has entered into a service agreement with a custodian.

Attorney – Person who has been appointed under a power of attorney to act on behalf of another individual. Attorneys can be responsible for decisions related to property or personal care.

Custodial assets – Assets which are held by a custodian on behalf of an account holder.

Custodian* - Holds digital assets of an individual pursuant to a service agreement.

Digital asset* – Online accounts/records that can include, among other things, email and social media accounts, digital currency, reward points, and cloud-stored files and photos.

Estate trustee – Person responsible for administering the estate of a deceased individual. Sometimes referred to as the executor, administrator, or personal representative.

Fiduciary* – Person entrusted with rights and powers to be exercised for the benefit of another person. Examples include solicitor and client and trustee and beneficiary.

Grant of administration of estate – Court-issued authorization for person to administer an estate where there is no will-appointed executor available. Sometimes referred to as letters of administration.

Guardian - Person appointed by court or statute to make specific decisions on behalf of individual due to incapacity. Can be responsible for decisions relating to property or personal matters.

Letters of administration – Court-issued authorization for person to administer estate where there is no will-appointed executor available. Sometimes referred to as grant of administration.

Letters probate – Court-issued authorization for executor named in will to manage and distribute the estate in accordance with the will.

Online tools – Tools provided by custodians that allow account holders to designate someone to access their account in certain circumstances (e.g., when they die).

Personal representative – Person responsible for administering the estate of a deceased individual. Sometimes referred to as the executor, administrator, or estate trustee.

Power of attorney – A legal document granting authority for a person to act on the grantor's behalf in certain circumstances (e.g., upon incapacity). See also definition of attorney above.

Service agreement* - An agreement between a custodian and account holder establishing the terms of service relating to the account holder's use of the custodian's service.

Trust – A legal/fiduciary relationship where a person often referred to as a "grantor" gives property to a trustee to hold for the benefit of a beneficiary.

Trustee – Person who holds property in trust for a beneficiary.

Trustee in bankruptcy - Person who holds property of bankrupt person in trust to distribute to creditors.