

## Electronic Commerce Update 2000

### **Electronic Commerce**

[1] The Uniform Electronic Commerce Act was adopted by the Conference on September 30, 1999. It is available on line at . The Act has been well received. The Conference has received expressions of support from the Canadian Bankers' Association, the Information Technology Association of Canada, ARMA International (record managers and administrators), IBM Canada, Microsoft Canada, and all the leading writers on e-commerce law in English Canada.

### **Implementing the UECA**

[2] Saskatchewan passed legislation to implement the Uniform Act in June 2000. See *The Electronic Information and Documents Act, 2000* (Bill 38), at <http://www.legassembly.sk.ca/bills/HTML/bill038.htm>. Saskatchewan has placed the provisions about government in a separate part, based on its existing legislation, the *Electronic Filing of Documents Act, 1988*.

[3] Manitoba introduced its implementing legislation, *The Electronic Commerce and Information Act*, in June 2000. It has had first reading. See Bill 31 at . The Manitoba bill makes the functional equivalence provisions of the Uniform Act (sections 7 through 11) operate only on "designated" laws. It also adds material on consumer protection not found in the Uniform Act.

[4] Ontario introduced its implementing legislation, the *Electronic Commerce Act, 2000*, in June 2000. It has had second reading. See Bill 88 at . The Ontario bill puts its provisions in a different order from the Uniform Act but is consistent with its principles. It contains some additional material to meet concerns of the province's Information and Privacy Commission.

[5] British Columbia introduced its implementing legislation, the *Electronic Transactions Act*, in July 2000. It has had first reading. See Bill 32 at . British Columbia has dropped from the Uniform Act all references to government except the power to make and receive electronic payments.

[6] The government of Canada passed its *Personal Information Protection and Electronic Documents Act, S.C. 2000 c.5*. Part 2 on Electronic Documents resembles what was Part 2 of the Uniform Act at the 1998 meeting of the Conference. It is an opt-in statute, applying only to provisions of federal law that are designated under the Act. Regulations are to be made at the time of designation to specify the manner in which electronic documents may be used under each designated provision. See Bill C-6 at . Part 2 came into force on May 1, 2000, but as of late July, no provisions of law had been designated.

[7] Quebec has published a draft bill to implement the United Nations Model Law on Electronic Commerce but not the Uniform Act. It contains some provisions taken from the Uniform Act, in a different and more detailed legislative scheme. See the *Act respecting the legal normalization of new information technologies* at . Public consultations are scheduled for the late summer of 2000.

### **Consumer Protection**

[8] The federal-provincial-territorial Consumer Measures Committee (CMC), working with representatives of business and consumers, have adopted principles for consumer protection in electronic commerce. See . The Ministers responsible for consumer measures have also agreed on principles for legislation on consumer protection in this field. As noted earlier, Manitoba has introduced some consumer protection provisions in its electronic commerce bill. Other provinces are working on regulations.

[9] The legislation is supposed to build on the general framework of the Uniform Act. Has the Uniform Law Conference therefore a role to play in developing the legislation? A number of provinces want to enact rules in this field before the 2001 meeting of the Conference, so there is not a project that we could pick up and run with,

or help with, on our usual schedule. However, we can offer CMC what resources we have. Those are mainly access to our working group and mailing list (now about 200 members) for discussion of policy questions, drafts, etc. This does not therefore extend to the general expertise of the delegates to the Conference on the principles and practices of harmonizing legislation across the country. The Steering Committee of the Civil Section may want to explore ways to augment our collaboration with the CMC in the interests of making our Uniform Act work as well for consumers as for others.

### **Electronic Signatures**

[10] The United Nations Commission on International Trade Law (UNCITRAL) expects that its working group on electronic commerce will complete Uniform Rules on Electronic Signatures in its September 2000 meeting. The Uniform Rules will not however be formally adopted by UNCITRAL until next June or July in Vienna. The documents produced for the working group are found at . UNCITRAL was of course the source of the Model Law on Electronic Commerce, which our Uniform Act implements for Canada. It is however not clear that Canadian law needs the provisions of the Uniform Rules, at least as they appear in their draft form. We propose leaving this decision to the Steering Committee of the Civil Section, as advised by the Conference's working group on electronic commerce.

### **Electronic Evidence**

[11] The Conference adopted the Uniform Electronic Evidence Act in 1998. That Act is available on line at . It makes focused amendments to existing rules of evidence to ensure that the law on authentication and best evidence can be complied with for electronic records, and to underline that courts may have regard to applicable standards of record-keeping in evaluating the reliability of electronic records.

### **Implementing the UEEA**

[12] The government of Canada has implemented the Uniform Act in the Personal Information Protection and Electronic Documents Act, S.C. 2000 c.5. Part 3 on Electronic Evidence amends the Canada Evidence Act accordingly. See Bill C-6 at . Part 3 came into force on May 1, 2000.

[13] Ontario passed legislation to implement the Uniform Act in its *Red Tape Reduction Act, 1999*, S.O. 1999 c.12, Schedule B, section 7, which amended the provincial *Evidence Act*. See . It came into force on June 30, 2000.

[14] Saskatchewan introduced its implementing legislation, *The Saskatchewan Evidence Amendment Act*, in May 2000. It has had first reading. See Bill 34 at .

[15] Manitoba introduced its implementing legislation, *The Electronic Commerce and Information Act*, in June 2000. It has had first reading. See Bill 31 (part 7) at <http://www.gov.mb.ca/chc/statpub/free/pdf/b31-1s00.pdf>.

### **Evidentiary Presumptions**

[16] Both the federal statute and the Manitoba bill make provision for the creation of "evidentiary presumptions" of attribution and of integrity of an electronic document, based on the use of particular technology. The texts speak of "secure electronic signatures", described to some extent in section 48 of the federal Act. The technology that can create a secure electronic signature will be spelled out in regulations. No such regulations have yet been made by the federal government. Likewise, the presumptions are created only by regulation under the Act, and these regulations too have not been made.

[17] It appears to be the intention of these governments that secure electronic signatures will be those created by digital signatures (which involve the use of asymmetric encryption) certified by the governmental public key infrastructure or by another PKI cross-certified with the governmental PKI. The Government of Canada is well advanced in its creation of its GOC-PKI. Provincial PKIs are being developed by a number of provinces. It is

arguable that only electronic signatures that are as secure as those contemplated here should give rise to presumptions. Even then presumptions may be controversial, because they reverse the usual burden of risk of fraudulent signatures, from the recipient of the signature to the alleged maker.

[18] The UNCITRAL working group on electronic signatures decided not to create any presumptions of attribution or integrity as such. The only presumption (which is not called by that name) is a presumption that certain signatures meet the requirements of a handwritten signature. No word is spoken about changing the risk of fraud or alteration.

[19] It seems appropriate that the Uniform Law Conference should not at this time reopen its work on electronic evidence, nor on electronic commerce, to devise rules on attribution or on the integrity of electronic documents. Technology, market practices, and popular knowledge and expectations of electronic transactions should be allowed to evolve before such questions can be properly addressed. If the federal government or Manitoba do create the presumptions, then their operation in practice may serve a useful guide to future consideration by the Conference.

### **Other Work**

[20] The Commonwealth Secretariat is expected to publish in the fall of 2000 a report on law reform to support electronic commerce. It will address principally matters that the Uniform Law Conference has already dealt with - electronic commerce and evidence, and privacy. The working group and the Steering Committee may wish to review the document to decide if other work should arise from the Commonwealth proposals.

**[July 2000]**