STEP Canada
ADVISING FAMILIES ACROSS GENERATIONS

September 10, 2026

Ministry of the Attorney General
Policy Division
McMurtry-Scott Building
720 Bay Street, 3rd Floor
Toronto ON M7A 2S9

Via Email: MAGPolicy@Ontario.ca

RE: Consultation on the Uniform Access to Digital Assets by Fiduciaries Act (Ontario) (Reference #: M-2026-6219)

Through the work of the Public Policy Committee, STEP Canada is pleased to provide this submission to the Ministry of the Attorney General concerning the proposed implementation of the Uniform Access to Digital Assets by Fiduciaries Act (UADAFA) in Ontario. STEP Canada (together with STEP Toronto, STEP Ottawa, and STEP Southwestern Ontario) (herein collectively referred to as "STEP Canada") supports the enactment of UADAFA in Ontario, which would address a significant gap in the current legal framework governing fiduciary access to digital assets. The experience of Saskatchewan, Prince Edward Island, New Brunswick, and Yukon demonstrates that UADAFA provides a practical and effective framework that promotes certainty for account holders, fiduciaries, custodians, and courts.

STEP Canada supports the implementation of UADAFA with several targeted enhancements. In particular, we recommend that Ontario maintain substantial consistency with the existing Canadian framework while providing that formal legal instruments, such as wills, trusts, powers of attorney, and court orders, prevail over online directions. We also recommend adopting procedural safeguards similar to those enacted in New Brunswick—namely, ensuring that contractual choice of law and forum selection provisions cannot undermine statutory access rights; focusing the regime primarily on fiduciaries with authority over property and financial affairs; and permitting custodians to charge reasonable fees, subject to regulatory oversight. Collectively, these measures would promote efficient estate administration and substitute decision-making, protect testamentary autonomy, respect privacy interests, and provide greater certainty for fiduciaries and custodians alike.

We would like to acknowledge the contributions of the following subcommittee members for their assistance in preparing this submission: Amanda Doucette, Harmanjit Mavi, Adam Hofri-Winogradow, Ian Lebane, Laura Geddes, Leanne Storms, and Peter Meitanis.

We would be pleased to discuss this submission further or provide additional input as required. Kindly direct any inquiries to Michael Dodick, Chief Operating Officer, at mdodick@step.ca.

Yours truly,

Amanda Doucette

Richard Niedermayer, KC, TEP
Chair, STEP Canada

Amanda Doucette, LLB, LLM, TEP
Chair, STEP Canada Public Policy Committee

STEP Canada welcomes Ontario's review of the *Uniform Access to Digital Assets by Fiduciaries Act* (UADAFA) and the opportunity to contribute to this important consultation. Our comments respond to the questions raised in the consultation paper and are informed by the practical experience of trust and estate practitioners who regularly encounter challenges relating to digital assets in the administration of estates, trusts, and powers of attorney. In addition to responding to the issues identified by the Ministry, we have included several broader recommendations that we believe will promote certainty, improve administration, and support consistency with other Canadian jurisdictions.

Question 1: Should Ontario implement UADAFA?

Yes. STEP Canada supports the enactment of UADAFA in Ontario. Ontario currently lacks a clear and consistent statutory framework governing fiduciary access to digital assets, which creates uncertainty and administrative difficulties for estate trustees, attorneys for property, guardians of property, trustees, custodians, and service providers.
The experience in Saskatchewan, Prince Edward Island, New Brunswick, and Yukon demonstrates that UADAFA can be implemented successfully and provides greater certainty to account holders, fiduciaries, custodians, and courts.

Question 2: What are the benefits or concerns with implementing UADAFA?

The principal benefits of implementation include:

- providing a clear statutory framework governing fiduciary access to digital assets;
- reducing the need for court applications;
- enhancing precision in estate and incapacity planning;
- facilitating efficient estate administration and substitute decision-making;
- providing certainty to fiduciaries and custodians;
- improving consistency across Canadian jurisdictions; and
- protecting valuable digital property and important personal records.

STEP Canada's principal concern is ensuring that implementation appropriately balances fiduciary access with privacy and testamentary autonomy. In addition, because many digital service providers operate across multiple provinces and internationally, we encourage Ontario to adopt UADAFA in a manner that preserves national consistency. This would also benefit practitioners and fiduciaries who administer estates and trusts with connections to multiple jurisdictions. Ontario should avoid significant departures from the existing UADAFA framework unless there is a clear policy justification for doing so.

Question 3: Are there any alternatives to implementing UADAFA that should be considered?

STEP Canada believes that UADAFA provides the most comprehensive and practical solution currently available. That being said, we recommend that Ontario consider some amendments and modifications when implementing the UADAFA framework.

Specifically:

- We recommend that Ontario modify UADAFA to provide that instructions contained in formal legal instruments take priority over directions provided through a service provider's online tool. Estate plans are typically established through professionally prepared wills, trusts, powers of attorney, and court orders. These documents are subject to established legal safeguards and often form part of a comprehensive planning strategy. In contrast, while online account settings and legacy contact tools can serve useful purposes, they may be created casually, without legal advice, and without consideration of the broader estate plan. We therefore recommend that Ontario adopt the approach recommended by the Alberta Law Reform Institute by providing that formal legal instruments prevail over online directions and, where multiple formal instruments exist, the most recent instrument governs.
- We recommend that Ontario consider adopting procedural safeguards similar to those found in New Brunswick's legislation, including proof of the fiduciary's identity, original or certified copies of authority documents, and clearly differentiated documentary requirements for deceased and living account holders. These safeguards create a practical balance between fiduciary access and protection against unauthorized disclosure.
- We recommend that Ontario adopt New Brunswick's additional protection invalidating forum selection clauses that require fiduciaries to litigate access disputes outside Ontario. Without this protection, fiduciaries may continue to face significant delay and expense when dealing with multinational technology companies.

Question 4: Are the definitions of "custodian," "account holder," and "service agreement" sufficient?

Yes. The existing definitions are broad and technologically neutral and have functioned adequately in other Canadian jurisdictions. STEP Canada does not recommend material amendments, as preserving consistency across jurisdictions will assist custodians that operate nationally and internationally.

Question 5: Is the combined effect of UADAFA's definition of "digital asset" and implementing jurisdictions' definitions of "record" sufficiently broad?

Yes. The combination of UADAFA's definition of "digital asset" and the broad definition of "record" used in existing implementing jurisdictions appropriately captures evolving technologies while remaining technologically neutral. Ontario should adopt a similarly broad definition of "record" to ensure that future technological developments are captured without requiring legislative amendment.

Question 6: Should attorneys for personal care and guardians of the person be included as fiduciaries in an Ontario act?

No. In STEP Canada's view, attorneys for personal care and guardians of the person should not be included as fiduciaries in an Ontario act modelled on UADAFA at this time. UADAFA assumes that the "fiduciary" holds property, and accordingly imposes the duties "imposed by law on a fiduciary in relation to tangible personal property, including requirements on the performance of those duties" in relation to the digital assets of the account holder. Such duties will likely not be relevant to the performance of the duties of an attorney for personal care or a guardian of the person. If greater access to digital information is to be provided to an attorney for personal care or a guardian of the person, we believe that a more targeted amendment to the access-to-information provisions set out in section 59.1 of the *Substitute Decisions Act* (Ontario) would be a more appropriate mechanism. O Reg 100/96, *Accounts and Records of Attorneys and Guardians*, could also be amended to explicitly allow information relevant to personal care that is in the possession of an attorney for property or a guardian of property to be released to an attorney for personal care or a guardian of the person.

Question 7: Should additional fiduciaries be added to those listed in UADAFA?

No. STEP Canada does not currently recommend expanding the categories of fiduciaries beyond those contemplated by UADAFA. However, since Ontario uses the terms "attorney" and "guardian" in the context of both management of property and personal care, the relevant provisions in the definition of "fiduciary" in Ontario should be clear that only attorneys for property and guardians of property are included. For consistency, "personal representative" should have the meaning ascribed thereto in the *Estates Administration Act* (Ontario). We further recommend that Ontario clarify, as Saskatchewan has done in its legislation, that the Public Guardian and Trustee (when acting in one of the listed capacities) is included as a fiduciary.

Question 8: Should any UADAFA fiduciaries be excluded?

As noted in our response to question 6, above, we recommend that Ontario consider limiting attorneys and guardians to those exercising authority over property and financial affairs, consistent with the approach adopted in Saskatchewan and New Brunswick. We also recommend, consistent with New Brunswick's approach, that Ontario consider explicitly excluding trustees in bankruptcy.

Question 9: Are there any other considerations relevant to determining which fiduciaries should be included in an Ontario act?

The scope of access should always remain tied to the fiduciary's underlying authority. A fiduciary should not receive broader access to digital assets than would be legally permitted to the testator or the grantor of a power of attorney themselves.

Question 10: Should any changes be made to the list in section 3(2)?

No significant changes are recommended.

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?

No additional limitations are necessary beyond the limits imposed by the account holder and general fiduciary obligations. Existing fiduciary duties already provide important safeguards against misuse.

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?

As noted in our response to question 3, above, we recommend that Ontario modify UADAFA so that formal legal instruments prevail over online directions.

Instructions contained in wills, trusts, powers of attorney, court orders, and similar instruments are generally prepared within a broader legal planning framework and are subject to established legal safeguards. Online directions may be created casually and without legal advice.

STEP Canada therefore supports the approach recommended by the Alberta Law Reform Institute:

- formal legal instruments should prevail over online directions; and
- where more than one formal instrument exists, the most recent instrument should govern.

Question 13: Do you have any other input on the rights and duties of fiduciaries under UADAFA?

We believe the legislation should continue to recognize that fiduciaries are subject to the same duties when dealing with digital assets as they are when dealing with any other property.

Question 14: Do you have any input on the fiduciary's right to access as set out in s. 5 of UADAFA?

We support the framework contained in section 5. Fiduciaries should be deemed authorized users and deemed to have the account holder's consent where access is otherwise authorized under the legislation and the governing instrument.

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?

We support section 6 and agree that contractual provisions should not be permitted to undermine the statutory rights created by the legislation.

Question 16: Should Ontario legislation void forum selection provisions?

As noted in our response to question 3, above, we recommend that Ontario, consistent with New Brunswick's approach, invalidate forum selection provisions that require fiduciaries to litigate access disputes outside Ontario. Otherwise, fiduciaries may face significant delay and expense when dealing with multinational technology companies.

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?

As noted in our response to question 3, above, we recommend that Ontario consider adopting procedural safeguards similar to those used in New Brunswick, including:

- proof of the fiduciary's identity;
- original or certified copies of authority documents; and
- clearly differentiated documentary requirements for deceased and living account holders.

These measures appropriately balance accessibility and privacy protection.

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?

Thirty days is generally appropriate and consistent with other Canadian jurisdictions. However, Ontario may wish to consider a longer period in limited circumstances involving foreign custodians or exceptional technical complexity.

Question 19: Should the grounds for applying for direction be modified in any way?

STEP Canada does not recommend any modification. The existing provisions provide a useful mechanism for fiduciaries who encounter uncertainty and strike an appropriate balance between flexibility and judicial oversight.

Question 20: Should fees be prescribed for custodians to provide access?

Ontario should permit custodians to charge reasonable fees, subject to regulatory oversight.

Responding to access requests may require document verification, identity verification, technical retrieval processes, and compliance review. This approach is consistent with Saskatchewan and New Brunswick.

Question 21: Do you have any further input on sections 8-10 of UADAFA?

STEP Canada generally supports sections 8-10 and does not recommend substantive amendments.

Question 22: Are there any other provisions not included in UADAFA that you think would be beneficial for Ontario legislation?

As noted in our response to question 3, above, we recommend that Ontario should consider:

1. expressly providing that formal legal instruments prevail over online tools;
2. invalidating forum selection clauses that require disputes to be heard outside Ontario;
3. adopting New Brunswick's more detailed procedural requirements; and

4. clarifying that the legislation applies notwithstanding foreign choice of law provisions intended to restrict fiduciary access rights.

Conclusion

STEP Canada supports the implementation of UADAFA and encourages Ontario to maintain substantial consistency with the existing Canadian framework while making targeted amendments that promote certainty, respect testamentary autonomy, and facilitate practical estate and incapacity administration. In particular, Ontario should ensure that formal legal instruments prevail over online directions; adopt robust procedural safeguards; invalidate foreign forum selection clauses; and permit reasonable custodial fees, subject to regulatory oversight. These measures will help create a clear, practical, and nationally consistent framework for fiduciary access to digital assets.