

UNIFORM LAW CONFERENCE OF CANADA

JOINT SESSION OF THE CIVIL AND CRIMINAL SECTIONS

1996 MINUTES

Computer-generated Evidence

Presenters: John Gregory, Joan Remsu, Hamish Stewart

The meeting received from the Ontario and Federal Commissioners two reports. The purpose of the first paper, prepared by Professor Hamish Stewart, was to stimulate further discussion of the policy issues surrounding computer-generated evidence by restating the basic problems and presenting two hypothetical fact situations. The second paper set out the major considerations in drafting a statute to deal with electronic evidence.

Recommendation #1: Do not make a special rule on authenticating electronic records to admit them.

Agreed.

Recommendation #2: An intelligible display of an electronic record may be admissible evidence. The best evidence rule should not apply to these records.

The destruction of an original paper version of an electronic image in the normal course of business does not affect the admissibility of that record.

Agreed. However, it was noted that some statutes have requirements for writing or signatures that we do not want to tamper with, e.g. consumer legislation.

Recommendation #3: Do not make any special provisions for the hearsay character of electronic records.

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Agreed. These amendments will not unify business records rules across the country; these rules can be superimposed on the various Evidence Acts even though they are not uniform. Evidence Acts do not generally address weight so we do not need to do so here; that issue is best assessed by the courts.

Recommendation #4: Do not legislate factors going to the weight of electronic records as evidence.

Provide that reliability of a record may be judged by reliability of the system that produced it.

Agreed. The National Standard on Microfilm and Electronic Images as Documentary Evidence sets a very high standard, too high for businesses that do not have systems departments. The prevailing trend internationally is to reduce the hurdles to admissibility and consider reliability at the weight stage.

RESOLVED:

1. That a draft *Uniform Electronic Evidence Act* and commentaries be prepared for consideration of the 1997 Conference.
2. That the report appear in the Proceedings. See Appendix B at page 143. [The consultation paper was released in 1997; see <http://www.law.ualberta.ca/alri/ulc>, in *Current Civil Matters*. - Ed.]

Financial Exploitation of Crime

Presenters: Donald Bur, Mark Spakowski

The meeting received from the Ontario Commissioners a report that reviewed the following issues with respect to financial exploitation of crime:

- ▶ who should be covered by the legislation
- ▶ what offences should be covered

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- ▶ the description of the crime
- ▶ methods for effecting legislative purpose
- ▶ anti-avoidance
- ▶ victims in other jurisdictions.

RESOLVED:

1. That the Report be tabled.
2. That a request be made to the Deputy Attorneys General for further instructions respecting:
 - (a) the priority to be given to this project; and
 - (b) the objectives of the legislation.

[Later in 1996, the Deputy Ministers affirmed their interest in the project. The report presented to the 1996 meeting may be found as Appendix K at <http://www.law.ualberta.ca/alri/ulc>. - Ed.]