REPORT TO THE UNIFORM LAW CONFERENCE OF CANADA

COMMERCIAL LAW STRATEGY PROJECT

The Desirability of a Revived ULCC Documents of Title Project

By

Jacob S. Ziegel, Professor of Law emeritus,
University of Toronto*

Fredericton, N.B.
August 10-14, 2003

I SUMMARY OF REPORT AND RECOMMENDATIONS

[1] At its annual meeting in 1995, the Conference approved the draft Uniform Documents of Title Act prepared by the Alberta Commissioners and asked that the draft Act be circulated to the jurisdictions. The resolution further provided that unless two or more objections were received by February 29, 1996, the draft Act should be deemed to be adopted as a uniform act. However, it appears the draft Act was withdrawn before it could be circulated because the Alberta Commissioners had learned that the sponsors of Article 7 of the American Uniform Commercial Code were contemplating revising Article 7 and incorporating in the revised version provisions for the use of electronic documents of title. A draft revised Article 7 was not in fact finalized by the Article 7 drafting Committee until February of this year and was approved by the Code's sponsors in May and June of this year.

[2] Given the US developments, it seems appropriate for the ULCC to reconsider its own position with respect to a revived Uniform Documents of Title project. My view is that the impulse leading to the earlier work of the Alberta Commissioners was completely sound. However, I also believe it was premature for the ULCC to consider adopting a uniform act because the draft act failed to take into account the federal and international components of documents of title and, most importantly, the views of the Canadian business community about the need for, and desirable contents of, such a uniform act.

[3] In my opinion, these remain very relevant factors and, accordingly, I recommend that before the project is revived a consultative committee be established comprising representatives of the federal and provincial governments and members of the business, legal and EDI communities to consider the issues and to recommend whether the ULCC should proceed with the UDOT project and if so, how.

II DETAILED REPORT

1. History of UDOTA Project

[4] Prof. R.J. Wood presented an excellent report to the ULCC meeting in 1991[1] in which he set forth the case for the adoption of a Uniform Act and enunciated a series of proposals involving the structure and principal concepts of a putative Uniform Act. The arguments favouring the adoption of a new uniform act to replace the existing Uniform Warehouse Receipts Act were the following. First, it was anomalous that there should be detailed provisions governing one type of document of title, warehouse receipts, while there were no uniform provisions governing the other major type of documents of title, bills of lading, whose commercial role is at least as important as are warehouse receipts. The anomaly was all the greater because none of the common law provinces has any comprehensive legislation covering bills of lading even though bills of lading are referred to in the provincial sale of goods legislation and documents of title are referred to generically in the provincial personal property security acts as an important form of collateral.

[5] The other reason advanced by Professor Wood in favour of a UDOTA was that it would enhance the harmonization of Canadian commercial law with the American Uniform Commercial Code. This was especially true given the fact that the provincial personal property security acts were largely based on Article 9 of the Code and that the Uniform Sale of Goods previously approved by the ULCC was also much influenced by Article 2 of the Code. However, it is also important to note that Prof. Wood was not asked to consult members of the business community about their views on the desirability of a UDOTA or to consult with federal officials about the federal role with respect to the regulation of warehouse receipts and bills of lading, and he did not do so.

[6] Prof. Wood's report was approved by the Conference and the Alberta Commissioners were invited to prepare a draft UDOTA based on Prof. Wood's proposals. The draft Act was presented by Clark Dalton at the 1995 annual meeting.[2] The draft Act followed closely the structure and content of then Article 7 of the Uniform Commercial Code. Again, I understand, no contact was made with the federal

government or members of the business community to ascertain their views about the draft Act.

[7] The Civil Law Section approved the principles set out in the draft act and resolved[3] that the draft act be circulated to the jurisdictions after the standard drafting review had been completed. The resolution also provided that the draft be deemed to have been adopted as a uniform act and be recommended for adoption unless two or more objections were received by February 29, 1996. However, a bracketed editorial note in the 1995 Proceedings indicates that the draft act was not available for circulation and was not adopted. It is not clear who made the decision not to circulate the draft act. However, Arthur Close and Clark Dalton had been received that the sponsors of the Uniform Commercial Code intended to prepare a revised Article 7 and that the revised Article would include provisions dealing with electronic documents of title.

2. Revised Article 7 of the UCC

[8] In fact, it appears that there was considerable opposition on the US side to proceeding with work on a revised Article 7 at that time. Two principal reasons were given by the critics.[4] The first was that documents of title fell mainly under US federal jurisdiction and that a revised Article 7 would therefore have little practical impact. The second reason was that it was premature to draft provisions dealing with electronic documents of title because too many of the technical issues remained unresolved. Nevertheless, the Code's sponsors did ultimately decide to proceed with preparation of a revised documents of title, although a drafting committee was not struck until 2000.[5] The drafting committee presented its final draft in February 2003[6] and revised Article 7 was approved by the American Law Institute at its annual meeting in May 2003. It is expected to be approved by NCCUSL at its annual meeting in Washington, D.C, in August of this year.

[9] The draft prefatory note to revised Article 7 explains that the genesis of the project was twofold: "to provide a framework for the further development of electronic

documents of title and to update the article for modern times in light of state, federal and international developments."[7] We are also told that each section of old Article 7 was reviewed to determine its suitability given modern practice, the need for medium and gender neutrality, and modern statutory drafting. Seemingly, the Committee accepted as axiomatic the need to provide for an electronic document of title to reflect both current and future commercial needs and practices. The key to the integration of the electronic document of title scheme in the revised Article is the concept of "control", which is defined in Section 7-106. This definition is adapted from the Uniform Electronic Transactions Act § 16 on Transferable Records and from Uniform Commercial Code § 9-105 concerning control of electronic chattel paper. The revised Article also recognizes that parties may desire to substitute an electronic document of title for an already-issued paper document and vice versa. So far as possible, the rules for electronic documents of title are the same or as similar as possible to the rules for tangible documents of title. Conforming changes have also been made to the definitions in Article 1, including the definitions of "bearer", "bill of lading", "delivery", "document of title", "holder", and "warehouse receipt".

[10] Revised Article 7 also contains the following changes:[8]

> "1. New definitions of "carrier," "good faith," "record", "sign" and "shipper" in Section 7-102.
>
> 2. Deletion of references to tariffs or filed classifications given the deregulation of the affected industries. See e.g. section 7-103 and 7-309,
>
> 3. Clarifying the rules regarding when a document is nonnegotiable. Section 7-104.
>
> 4. Making clear when rules apply just to warehouse receipts or bills of lading, thus eliminating the need for former section 7-105.
>
> 5. Clarifying that particular terms need not be included in order to have a valid warehouse receipt. Section 7-202.

6. Broadening the ability of the warehouse to make an effective limitation of liability in its warehouse receipt or storage agreement in accord with commercial practice. Section 7-204.

7. Allowing a warehouse to have a lien on goods covered by a storage agreement and clarifying the priority rules regarding the claim of a warehouse lien as against other interests. Section 7-209.

8. Conforming language usage to modern shipping practice. Sections 7-301 and 7-302.

9. Clarifying the extent of the carrier's lien. Section 7-307.

10. Adding references to Article 2A when appropriate. See e.g. Sections 7-503, 7-504, 7-509."

11. Clarifying that the warranty made by negotiation or delivery of a document of title should apply only in the case of a voluntary transfer of possession or control. Section 7-507.

12. Providing greater flexibility to a court regarding adequate protection against loss when ordering delivery of the goods or issuance of a substitute document. Section 7-601.

13. Providing conforming amendments to the other Articles of the Uniform Commercial Code to accommodate electronic documents of title."

3. General Observations on Electronic Documents of Title

[11] There is now a very substantial body of North American literature,[9] mainly American, dealing with electronic documents of title, electronic chattel paper, electronic realty mortgages, and other electronic forms of transferable value previously embodied in written form. As a neophyte in this area, my difficulty has been to establish how much of these developments are prospective and how much of it reflects actual practice. So far as

I have been able to ascertain in the limited time at my disposal, the current position appears to be as follows:

a. There is a strong consensus that electronic documents embodying entitlements to financial assets (defined as "records") have great advantages over their paper based counterparts in terms of speed, security, efficiency, and handling costs.

b. It is also agreed that the goal of legislation in this area should be to create the electronic counterparts to possessory documents of title etc in paper based form and the status that such possession, or transfer of possession with any necessary endorsement, confers on the holder.

c. The legal concepts used to establish these rights in electronic form ("record", "transferable record", "control" and "authoritative copy") are now well established in the Uniform Electronic Transactions Act (UETA), which has now been adopted in 36 American states and the District of Columbia, in Articles 7 and 9 of the Uniform Commercial Code, and in the federally enacted Electronic Signatures in Global and National Commerce Act (E-SIGN).[10] At the international level, UNCITRAL's Model Law on Electronic Commerce also recognizes the prospective role of electronic records of financial assets. There is some doubt however how easy it will be to satisfy in practice the statutory tests of a "single authoritative copy" in UCC 7-106(b) and its requirements of a document that is unique, identifiable and, except as expressly provided, unalterable.

d. It is generally agreed that the statutory definitions should be technologically neutral and should not preclude the development of new technologies (e.g., with respect to encryptions, private and public keys, digitalization etc.) to satisfy the definitions.

[12] My main difficulty has been to determine how far electronic documents of title and other transferable records have been adopted in North American commerce in practice and what the obstacles are to their practical implementation. So far as the US is concerned, the US Department of Agriculture established as early as 1993 an electronic

warehouse receipt for cotton bales stored in US regulated warehouses.[11] I have also been told that electronic documents of title are being used in the oil and railway industries, but I have not been able to confirm this with other sources. Outside documents of title, revised Article 9 of the Uniform Commercial Code (now in force in all the US states) explicitly recognizes electronic chattel paper.[12] I have been advised that secured parties in the US are making use of this facility (especially in relation to chattel leases) but I have not been able to establish how widely.

[13] So far as Canada is concerned, all of the provinces and one territory have adopted electronic commerce acts to facilitate cyberspace transactions and give them legal validity.[13] However, the individuals I have consulted[14] are not aware of any pressure to establish electronic documents of title or chattel paper legislatively in Canada or to do so by private agreement. On the other hand, I have been advised by Justice officials in Ottawa that the federal Department of Transport is reviewing the federal *Bills of Lading Act*[15] as part of a wider review of federal transportation legislation and that the electronic aspects are included in the review. I have also been told that a discussion paper on these issues is expected to be released later this year.

[14] At the international level, there appears to be no multilateral convention or governmental agreement on the recognition and enforcement of electronic documents of title. However, the UNCITRAL has embarked on an ambitious project for a comprehensive Instrument covering carriage of goods by sea.[16] Chapter 2 of the draft Instrument deals with electronic communications and appears to envisage the establishment of electronic documents of title by agreement among the parties. The UNCITRAL Working Group on Electronic Commerce had previously initiated a study of electronic transferable records though it appears that it has now largely ceded this field to the Transport Law Working Group.[17]

[15] An important private initiative, based on contractual principles, has also been established by Bolero.net, the trading name of Bolero International Ltd. Bolero.net claims to have a large membership among leading banks and exporters and importers and was created in the 1990s to facilitate paperless electronic transfers of business data between organizations involved in cross-border trade.[18] The Bolero Rulebook supplements

members' private contracts with a central contract governing the electronic aspects of the parties' relationship. The Rulebook provides that it shall be governed by English law and that English courts shall have jurisdiction over Rulebook issues, but not others. However, some international trade law experts have serious doubts[19] about the enforceability and priority of Bolero electronic documents of title under domestic law in the absence of supportive municipal legislation.

4. Constitutional and International Aspects

[16] It is appropriate to turn now from the new world of electronic documents of title to two more traditional aspects of documents of title that are of particular importance in the Canadian context in determining whether the ULCC should proceed with revival of the ODOT project.

(a) Constitutional Aspects

[17] The federal government has very extensive jurisdiction to regulate documents of title under at least the following heads of the Constitution Act: trade and commerce (s.91(2)), navigation and shipping (s.91(10)), banks and banking (s.91(15)), interprovincial works and undertakings, including ships and railways (s.92(10(a)), lines of steamships between provinces and any British or foreign country (s.92(10)(b)), and agriculture (s.95).

[18] In fact, the federal government has exercised its jurisdiction very sparingly and appears only to have exercised its powers in the following areas. The Bills of Lading Act (BOLA),[20] a very old piece of legislation, is a copy of the British Bills of Lading Act 1855 and is badly dated.[21] It only has four sections and, very significantly, does not establish the negotiability or distinguish between negotiable and non-negotiable bills of lading. The Act also only applies to bills of lading issued by railways and vessels. As previously indicated, the BOLA is one of the transportation acts currently under review

by the Department of Transport. In terms of its modernity, the Canada Grain Act[22] is much more significant. The Act recognizes an "elevator receipt" as a negotiable document of title (ss.2, 11(1)) except where the receipt is marked non-negotiable (s.11(2)). So far as I have been able to establish in the time at my disposal, the former Railway Act[23] contained no provisions governing the issuance or transferability of bills of lading. On the other hand, since the earliest days of Confederation the federal Bank Act[24] has authorized chartered banks to take a security interest in warehouse receipts and bills of lading (see s.435).[25] Bills of lading and warehouse receipts are very broadly defined in s.425(1) and the definitions appear to go much further than the definition of document of title in the provincial personal property security acts.

(b) International Aspects

[19] The earlier recital of the sources of federal jurisdiction should make it clear that the federal reach includes the capacity to enter into international agreements and conventions governing the carriage and warehousing of goods and the issuance, transferability, and legal character of documents of title in international trade. It appears that international agreements have so far focussed on the liability of carriers for goods entrusted to their care and not on the character of the documents of title issued by the carriers. For example, the earlier Carriage of Goods by Water Act[26] incorporated the Hague rules on the carrier's liability for lost or damaged goods. The Act has now been superseded by the Marine Liability Act[27] which, in Part 5, incorporates the Hague-Visby rules and the Hamburg rules, although the Hamburg rules still await proclamation. As a harbinger of future developments, the Hamburg rules, arts. 14-15, deal with the issuance of bills of lading by the carrier and require minimum particulars in the bills of lading. Similarly, the Carriage by Air Act[28] gives effect to the Convention for the Unification of Rules relating to air carriers' liability for baggage and cargo carried by air.

[20] As previously explained (*supra* para.14), UNCITRAL is currently engaged on a much more ambitious project involving carriage of goods by sea and the current draft includes provisions governing paper based and electronic documents of title and their

negotiation.[29] Obviously, if Canada were to adopt this Instrument or another like it, its provisions could come into conflict with an Article 7 type UDOTA sponsored by the ULCC. This squarely raises the question how far the Uniform Act should accommodate the federal jurisdiction and legislation adopted pursuant to it. This critical issue is addressed in the next section.

5. How Should the ULCC proceed from here?

[21] This report suggested earlier that the impulse leading to the 1991 proposals for a UDOTA were eminently sound. It seems to this writer that the arguments supporting the project are even stronger today than they were then. This is because the percentage of Canada's trade with the US continues to grow exponentially. For example, in 1999 the US accounted for 85.7% of Canada's total exports. Canada, in turn, imported 76.3% of its total imports from the US.[30] Given the fact that much of this trade involves the shipment of goods and commodities represented by documents of title, it is very much in Canada's interest to harmonize its documents of title legislation with the US legislation (and, prospectively, with the Mexican legislation as well as part of a wider NAFTA project.) An equally persuasive argument favouring this harmonization is the pressing need for a common protocol governing electronic documents of title. Even minor differences in Canadian and US legislation covering such key terms are "record", "transferable record", "control" and "authoritative copy" could cause major headaches for traders on either side of the border and for financers concerned about the safety of their security and the soundness of their title.

[22] Despite these powerful reasons for resuming the DOTA project, the arguments are just as persuasive in favour of proceeding cautiously. The arguments involve: (a) The Scope of the Federal Jurisdiction; (b) The Absence of Pressure for a UDOTA from the commercial community; and (c) The Need for Practical Input from the relevant constituencies about the scope and content of a future UDOTA.

(a) Impact of Federal Jurisdiction

[23] My sense is that federal jurisdiction in the documents of title area has so far had a very limited impact at the domestic level and in crossborder road transportation between Canada and the US. This could easily change if the federal government decides it should play a more proactive role. One solution for addressing the overlap between federal and provincial legislation would be that adopted in Section 7-103(a) of revised Article 7, but it strikes me as unsatisfactory so far as the federal component is concerned. Subsection (a) provides that "This article is subject to any treaty or statute of the United States … to the extent the treaty, statute … is applicable." The objections are that such a provision could create much uncertainty where the UDOTA and the federal legislation appear to overlap and would encourage the development of two documents of title systems, one provincially inspired and the other of federal origin. A much superior solution would be so far as possible for Transport Canada and the ULCC to work closely together in the formulation of a UDOTA to serve the needs of all Canadian constituencies.

(**b) Absence of Pressure from the Commercial Community**

[24] As far as time permitted, I have consulted a diverse group of practitioners, government officials, and academic colleagues. None of them expressed concerns about the absence of a UDOTA or indicated strong support for such a project. There was no hostility to such a project; neutrality or lack of familiarity with the role of documents of title, would more accurately capture the flavour of the reactions. One colleague suggested that the existing regimes, for all their shortcomings and obvious inelegance, seemed to work tolerably well. His impression is supported by the paucity of recent Canadian case law in the area.[31] That same colleague also suggested domestic bills of lading were not important financial vehicles in Canada because the shipment period was too short. It is instructive to compare these reactions with the enthusiasm with which the legal profession in Ontario greeted the Catzman Committee's draft proposals in the early 1960s for the reform of Ontario's personal property security law and the adoption of an Article 9 type law. This favourable reaction was grounded in deep dissatisfaction with

Ontario's existing chattel security regime. These observations are related not in order to oppose sensible law reform but to suggest that even if it is adopted by the ULCC the provinces may be in no hurry to adopt the UDOTA unless the project also receives the active support of the commercial community.

(c) Need for Practical Input

[25] In an area of commercial law as practically oriented as documents of title, the need for input from those most likely to be affected by a UDOTA requires no justification. Rather, the input should be a sine qua non to ensure that the Uniform Act accurately reflects current best practices and to resolve ambiguities and uncertainties in the current law. High quality technical advice will be particularly important with respect to the adoption of electronic documents of title concepts in the Uniform Act. To the extent that the UDOTA is meant to mirror revised Article 7, the practical input would be expected to draw attention to any significant differences between Canadian and US practices and the inappropriateness of any Article 7 provisions in the Canadian context. As examples of the latter type, Arthur Close has queried[32] the need for the UDOTA to deal with non-negotiable documents of title. He has also suggested omitting the lien provisions in Article 7 because of the ULCC's own recently adopted Uniform Liens Act.

[26] I would suggest, indeed, that ensuring that there is sufficient support for a Uniform Act to make the project worthwhile *and* creating a channel for receiving advice on the structure and contents of the Act could be usefully combined. The project would therefore proceed as follows. *First,* a consultative group would be established to advise the ULCC whether the UDOTA project should be revived. *Second,* if the answer is yes, a working group would be established, with whatever overlap with the consultative group seems appropriate, and the working group would be invited to make recommendations with respect to the contents and structure of the revived Uniform Act. A *third* step would be to circulate a questionnaire among the relevant constituencies seeking information about current practices and suggestions for desirable provisions in the Uniform Act. The questionnaire route was followed last year with respect to the revision of the Model

Uniform PPSA and, after some initial teething problems, seems to have generated very useful results.

Respectfully Submitted.

Jacob Ziegel

June 25, 2003.

∗ Grateful appreciation to James T. McClary, JD II, University of Toronto, Faculty of Law, for excellent research assistance and to Arthur Close and John Gregory for reviewing a draft version of this report and making helpful suggestions and correcting some errors. Time did not permit examination of the Quebec codal and other provisions on documents of title although I have included an endnote reference updating information in Prof. Wood's 1991 report to the ULCC.

[1] ULCC Proceedings 1991, Append. I.

[2] ULCC Proceedings 1995, p. 2 and http://www.law.ualberta.ca/alri/ulc.

[3] *Ibid.*

[4] See Drew L. Kershen, , "Report of the ABA Task Force on Recommended Revisions to UCC Article 7" (1994) 48 Cons. Fin. L.Q. Rep 204, citing E. Bergsten, Bills of Lading: Article 7 of the Uniform Commercial Code and the Federal Bills of Lading Act. Report to the Permanent Editorial Board (Sept. 7, 1993), and Christina L. Kunz, "Electronic Data Interchange", report prepared for the ABA Task Force.

[5] Information supplied to me by Michael Greenwald, associate director, American Law Institute (ALI).

[6] NCCUSL and ALI, Proposed Revision to Uniform Commercial Code, Article 7-Documents of Title, Feb. 2003 Draft.

[7] What follows is an edited version of the balance of the "Proposed Prefatory Note".

[8] *Ibid.* at 1-2.

[9] See Appendix for a selection of the literature.

[10] 15 USC §700 et seq. (June 2000) ("E-SIGN"). See Candace M. Jones, "Going Paperless: Transferable Records and Electronic Chattel Paper" (2002) 48 No. 5 Prac. Law. 37. According to Ms Jones, E-SIGN overlaps considerably with UETA but the two are not identical. She also notes that E-SIGN, by its terms, does not preempt UETA in states where UETA was adopted as proposed by NCCUSL but that non-uniform changes may be pre-empted by E-SIGN. *Ibid*. at 38.

[11] See Donald B. Pedersen, "Electronic Data Interchange as Documents of Title for Fungible Agricultural Commodities" (1995) 31 Idaho L. Rev. 719.

[12] UCC 9-102(31).

[13] For the details, see John D. Gregory, "Canadian Electronic Commerce Legislation" (2002) 17 BFLR 277. The common law jurisdictions adopted the UECA as more or less amended. Quebec enacted its own legislation. The federal government enacted a version of the UECA, 1998 version, with additions involving the security of electronic signatures. (I am indebted to John Gregory for this information.)

[14] E.g., Bradley Crawford, Jennifer Babe David Denomme, John Gregory, Peter Jones, Richard Owens, and William E. Tetley.

[15] R.S.C. 1985, c.B-5.

[16] See Preliminary Draft Instrument on the Carriage of Goods by Sea, UNCITRAL, Working Group III (Transport Law), 9th Sess., Annex, Agenda Item I, UN Doc. A/CN.9/WG.III/WP.21 (2002).

[17] I am indebted to John Gregory for this information.

[18] See *Bolero Bills of Lading under U.S. Trade and Commercial Law*, Bolero International Ltd., online: bolero.net http://www.bolero.net/decision/legal/; *Digital Signatures in the Bolero System*, Bolero International Ltd., online: bolero.net http://www.bolero.net/decision/legal/; *Legal Aspects of a Bolero Bill of Lading*, Bolero International Ltd., online: bolero.net http://www.bolero.net/decision/legal/.

[19] E.g., Prof. Boris Kozolchyk, director of the National Law Center for InterAmerican Free Trade, Tucson, Arizona, in an email to the author.

[20] R.S.C. 1985, c.B-5.

[21] Ontario and Nova Scotia have also enacted the British Act and presumably did so before Confederation. Quebec had previously adopted a Bills of Lading Act, R.S.Q. 1979, c.C-53, am. S.Q. 1982, c.55, but this was repealed in 1992, S.Q., c.57, s.520. The new Civil Code, art. 2043 contains provisions concerning negotiable and non-negotiable bills of lading.

[22] R.S.C. 1985, c.G-10 as am.

[23] Now replaced by the Canada Transportation Act, S.C. 1996, c.10.

[24] S.C. 1991, c.46.

[25] The constitutionality of these provisions was upheld in *Tenant v. Union Bank* [1894] A.C. 31 (P.C.).

[26] S.C. 1993, c.21.

[27] S.C. 2001, c.6.

[28] R.S.C. 1985 c.C-26.

[29] However, not everyone is enthused about the UNCITRAL project and Prof. Tetley in particular has been a vociferous critic of its complexity and excessive ambitiousness. See William Tetley, "Reform of Carriage of Goods – The UNCITRAL Draft & Senate COGSA 99': 'Let's Have a Two-Track Approach'" (Paper presented to the Maritime Law Association, May 2, 2003) [unpublished], online: Tetley's Law and Other Nonsense http://tetley.law.mcgill.ca/maritime/uncitralcogsamay2003.pdf; and , "The UNCITRAL Draft Convention – Governing Means Choosing. Can One Draft the Details, Without First Agreeing on the Principles?" originally published as a Letter to the Editor, Fairplay Magazine (March 20, 2003) 28, online: Tetley's Law and Other Nonsense http://tetley.law.mcgill.ca/publications/fairplay.htm#UNCITRAL.

[30] Statscan CANSIM Database, Series D39449, D399518, D397990, and D398058.

[31] My student assistance located only a handful of cases on QuickLaw over the past five years. None of them involved documents of title issues but were concerned with alleged breaches of contract by the carrier or warehouseperson. The number of US Article 7 cases appears to be equally small although some of them involve disputes over competing rights to the underlying goods. See e.g., Drew L. Kershen, "Article 7: Documents of Title – 1998 Developments" (1999) 54 Bus. Law. 1911.

[32] In personal contact and e-mail communication with Prof. Patricia Brumfield Fry.

APPENDIX

Selected North American Articles on Electronic Records

ABA Cyberspace Committee Working Group on Transferable Records, "Emulating Documentary Tokens in an Electronic Environment: Practical Models for Control and Priority of Interests in Transferable Records and Electronic Chattel Paper", 3rd Discussion Draft (2003) [unpublished].

Fry, Patricia Brumfield, "Negotiating Bit by Bits: Introducing the Symposium on Negotiability in an Electronic Environment" (1995) 31 Idaho L. Rev. 679.

Gregory, John D., "Canadian Electronic Commerce Legislation" (2002) 17 BFLR 277.

Jones, Candace M., "Going Paperless: Transferable Records and Electronic Chattel Paper" (2002) 48 No. 5 Prac. Law. 37 (WL).

——— & Jane K. Winn, "It's Real – Here are the Details" *Business Law Today* 10:Apr (March/April 2001) 8 (WL).

Kershen, Drew L., "Article 7: Documents of Title – 1998 Developments" (1999) 54 Bus. Law. 1911.

———, "Report of the ABA Task Force on Recommended Revisions to UCC Article 7" (1994) 48 Cons. Fin. L.Q. Rep. 204.

Pedersen, Donald B., "Electronic Data Interchange as Documents of Title for Fungible Agricultural Commodities" (1995) 31 Idaho L. Rev. 719.

Onyshko, Tom, "Computerized registration to be introduced this year - Ontario prepares for electronic real estate system" *The Lawyers Weekly* 16:33 (January 17, 1997).

Penn, Susan, "Revised Article 9 – Controlling Electronic Assets and Chattel Paper" *E-commerce Law Report* 3:9 (July 2001) 13 (WL).

Springer, Melissa Bradford, "Perfecting a Security Interest in 'Electronic Chattel Paper' under Revised Article 9" (2001) U. Mem. L. Rev. 491.

Swartz, James M., "Electronic Commerce and Issues in Buying Chattel Paper" (1999) 53 Cons. Fin. L.Q. Rep. 91.

Whittaker, David R., "Letters of Credit and Electronic Commerce" (1995) 31 Idaho L. Rev. 699.

Williams, Stasia M., "Something Old, Something New: The Bill of Lading in the Days of EDI" (1991) 1 Transnat'l L. & Contemp. Probs. 555.

Winn, Jane Kaufman, "Electronic Chattel Paper under Revised Article 9: Updating the Concept of Embodied Rights for Electronic Commerce" (1999) 74 Chicago-Kent L. Rev. 1055.