

Uniform Electronic Commerce Act

Commentary to s. 2 (Application), 2011

That clause 2(3)(d) of the Uniform Electronic Commerce Act be repealed.

Comment: The Act will apply to all legal rules within the authority of the enacting jurisdiction, whether in statute, regulation, order-in-council or common law. This section sets out a short list of exceptions, such as wills and some powers of attorney. The principle of exclusion is not that such documents should not be created electronically. Rather, they seem to require more detailed rules, or more safeguards for their users, than can be established by a general purpose statute like this one.

Until 2011 this section also excluded “documents that create or transfer interests in land and that require registration to be effective against third parties.” That provision was removed for several reasons: the law had become more accepting of electronic communications and increasingly gave them the effect of writing even without statutory direction; real estate documentation other than the actual transfer could be electronic; half the provinces did not have the exception in their e-commerce legislation; real estate transfers would benefit from the other facilitating provisions of the Uniform Act; and most people who transferred real estate did so with the assistance of licensed real estate agents who could advise on matters of form and registration. Any formal or writing requirements imposed by the applicable registration regime continue to apply, regardless of the Uniform Act. (See subsection (5) below.) More detail on this amendment can be found in the Civil Section documents for the 2011 Annual meeting.