



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

ACCESS TO DIGITAL ASSETS ACT

PLEASE NOTE

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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ACCESS TO DIGITAL ASSETS ACT

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CHAPTER A-1.1

ACCESS TO DIGITAL ASSETS ACT

PART 1 - INTERPRETATION AND APPLICATION

1. Definitions

In this Act,

- (a) “**account holder**” means a person who has entered into a service agreement with a custodian;
- (b) “**court**” means the Supreme Court;
- (c) “**custodian**” means a person who holds, maintains, processes, receives or stores a digital asset of an account holder;
- (d) “**digital asset**” means a record that is created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic or optical means or by other similar means;
- (e) “**fiduciary**”, in relation to an account holder, means
 - (i) a personal representative for a deceased account holder,
 - (ii) a trustee, other than a trustee in bankruptcy, for an account holder, appointed in accordance with an enactment,
 - (iii) an attorney appointed under a power of attorney made by an account holder,
 - (iv) a trustee appointed to hold in trust a digital asset or other property of an account holder, or
 - (v) a committee of the estate of an account holder;
- (f) “**personal representative**” means a personal representative as defined in the *Probate Act* R.S.P.E.I. 1988, Cap. P-21;
- (g) “**record**” means a record of information in any form;
- (h) “**service agreement**” means an agreement between an account holder and a custodian that relates to or deals with a digital asset of the account holder. *2021,c.27,s.1.*

2. Application of Act

- (1) This Act applies in relation to the following:
 - (a) a personal representative for a deceased account holder who died before, on or after the date this Act comes into force;
 - (b) a trustee, other than a trustee in bankruptcy, appointed for an account holder in accordance with an enactment, whether appointed before, on or after the date this Act comes into force;

- (c) an attorney appointed under a power of attorney made before, on or after the date this Act comes into force;
- (d) a trustee acting under a trust created before, on or after the date this Act comes into force;
- (e) a committee of the estate of an account holder, whether appointed before, on or after the date this Act comes into force;
- (f) a custodian of, or a person who may be a custodian of, a digital asset created, recorded, transmitted or stored before, on or after the date this Act comes into force.

Exception

- (2) For greater certainty, this Act does not apply to an employer's digital asset that is used by an employee in the ordinary course of the employer's business. *2021,c.27,s.2.*

PART 2 - ACCESS TO DIGITAL ASSETS

3. Fiduciary's right to access digital assets

- (1) Subject to subsections (2) to (4) and consistent with the source of authority in subsection 2(1), the fiduciary of an account holder has the right to access a digital asset of the account holder.

Right subject to will, etc.

- (2) Subject to subsection (4), the fiduciary's right of access under subsection (1) is subject to the terms of the following, as applicable, that give instructions in relation to the right of access:
 - (a) the will of the deceased account holder;
 - (b) a grant of administration of estate of the deceased account holder;
 - (c) a trusteeship order;
 - (d) the power of attorney;
 - (e) the trust;
 - (f) an order of the court.

Right subject to service agreement

- (3) Subject to subsection (4), the fiduciary's right of access under subsection (1) is subject to instructions in a provision in the service agreement that limits a fiduciary's access to a digital asset of the account holder if the account holder assents to the provision
 - (a) on or after the date this Act comes into force; and
 - (b) by an affirmative act separate from the account holder's assent to other provisions of the service agreement.

Right subject to most recent instruction

- (4) Where more than one instruction in relation to the fiduciary's right to access a digital asset has been given in an order or other document referred to in subsection (2) or given by assent described in subsection (3), the fiduciary's right to access the digital asset is subject to the most recent instruction.

Effect of access or use

- (5) For the purposes of this section, instructions under a provision of a service agreement may not be given or inferred to have been given by an account holder merely by reason of the account holder having accessed a digital asset or used an account. *2021,c.27,s.3.*



4. Fiduciary's duties in relation to digital assets

The duties imposed by law on a fiduciary in relation to tangible personal property, including requirements on the performance of those duties, also apply to the fiduciary in relation to the digital assets of the account holder. *2021,c.27,s.4.*

5. Fiduciary authority

- (1) A fiduciary who has the right under this Act to access a digital asset of an account holder
- (a) may, subject to any applicable law, take any action concerning the digital asset that could have been taken by the account holder if the account holder were alive and of full capacity;
 - (b) is deemed to have the consent of the account holder for the custodian to divulge the content of the digital asset to the fiduciary; and
 - (c) is deemed to be an authorized user of the digital asset.

Effect of service agreement

- (2) Unless an account holder assents, on or after the date this Act comes into force and by an affirmative act separate from the account holder's assent to other provisions of the service agreement, to a provision in the service agreement that limits a fiduciary's access to a digital asset of the account holder,
- (a) any provision in the service agreement that limits the fiduciary's access to the digital asset of the account holder is void; and
 - (b) the fiduciary's access under this Act to a digital asset, despite the service agreement, does not require the consent of any party to the service agreement and is not a breach of any provision of the service agreement.

Authority over tangible personal property

- (3) Where a fiduciary has authority over an account holder's tangible personal property that is capable of holding, maintaining, receiving, storing, processing or transmitting a digital asset, the fiduciary
- (a) has the right to access the property and any digital asset stored in it; and
 - (b) is deemed to be an authorized user of the property. *2021,c.27,s.5.*

6. Provision unenforceable if access limited

Despite any other applicable law or a choice of law provision in a service agreement, a provision in a service agreement is unenforceable against a fiduciary to the extent that the provision limits, contrary to this Act, a fiduciary's access to a digital asset. *2021,c.27,s.6.*

7. Request for access to digital asset

- (1) A fiduciary with a right under this Act to access a digital asset of an account holder may request access from the custodian of the digital asset by making the request in writing and by including with the request
- (a) the original order of the court or other document granting authority to the fiduciary; or
 - (b) a certified copy of the original order or other document granting authority to the fiduciary.

Duty of custodian

- (2) A custodian shall provide the fiduciary with access to the digital asset of the account holder within 30 days after receipt of the request made under subsection (1) and the applicable document. *2021,c.27,s.7.*

8. Fiduciary may apply to court for direction

- (1) A fiduciary may apply to the court for direction in relation to the fiduciary's right to access a digital asset of the account holder.

Effect of following direction of court

- (2) A fiduciary who follows the direction of the court is discharged with respect to the subject matter of the direction unless the fiduciary is guilty of fraud, wilful concealment or misrepresentation in obtaining the direction. *2021,c.27,s.8.*

9. Liability protection for custodian

A custodian who complies with this Act, the regulations or any order of the court made under this Act is not liable for a loss arising from anything done or omitted from being done, unless it was done or omitted from being done in bad faith. *2021,c.27,s.9.*

PART 3 - REGULATIONS, COMMENCEMENT

10. Regulations

The Lieutenant Governor in Council may make regulations

- (a) respecting the provision of information by a person, on the request of a fiduciary, as to whether a person is a custodian of a digital asset of another person for whom the fiduciary is acting;
- (b) respecting fees that may be charged by a custodian for the provision of access to a digital asset of an account holder by a fiduciary or by a person referred to in clause (a) who is responding to a request for information;
- (c) defining any term used but not defined in this Act;
- (d) prescribing anything referred to in this Act as being prescribed; and
- (e) respecting any matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purposes of this Act. *2021,c.27,s.10.*

