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An Appropriate Formulation for the Genuineness of Signatures Assumption

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As electronic signatures are increasingly used, many lawyers wonder whether they can use the traditional genuineness assumption when contracting parties execute documents with electronic signatures.

At recent meetings of the Toronto Opinions Group, those attending agreed that an appropriate formulation of the genuineness assumption would be:

“With respect to all documents examined by us, the genuineness of all signatures, the legal capacity of individuals signing any documents, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as copies”

After considerable discussion, TOROG agreed that it would be appropriate to use this above formulation of the genuineness assumption as set out, without including any additional qualification for electronic signatures.

As a matter of general contract law, a signature is valid if applied by the signatory or by someone authorized by the signatory. Nothing in the case law discussed during the meetings suggested that the law differs when electronic signatures are involved.

As a matter of general business law practice, lawyers do not perform diligence when faced with handwritten signatures (other than perhaps getting specimen signatures on incumbency certificates). We could see no reasons for treating electronic signatures differently.

As U.S. commentary notes, the genuineness of a signature is a matter of fact, not a legal question, and so is not a matter for the expression of professional judgment in a transaction opinion. A transaction opinion is not intended to underwrite a risk of forgery. As with other factual matters addressed in assumptions, an opinion giver is entitled to rely on assumptions, unless the factual context indicates that those assumptions are incorrect.