

ULCC | CHLC

UNIFORM LAW CONFERENCE OF CANADA

POLICY ON ADOPTION AND AMENDMENT OF CIVIL SECTION RULES OF PROCEDURE OR POLICY

Policy on Adoption and Amendment of Civil Section Rules of Procedure or Policy

Authority

34(1) Subject to subsection (2), the Steering Committee of a Section may adopt rules of procedure and policies concerning that Section from time to time and may amend existing rules of procedure and policies.

34(2) A rule of procedure or policy or an amendment to a rule of procedure or policy shall cease to have effect if it is not approved in accordance with the Section's rules of procedure or policy governing approvals, at the next annual meeting held after its adoption or amendment.

34(3) Each Section shall adopt a rule of procedure or policy governing approvals given under subsection (2).

1) Proposed Policy

- 2) A member of the Civil Section Steering Committee, seconded by another member of the Committee, may propose the adoption of a rule of procedure or policy to the Chairperson of the Committee.
 - a) The proposal must be to establish a new rule of procedure or policy or to amend or delete an existing one.
 - b) The proposed rule of procedure or policy must include a brief rationale.
- 3) The member shall provide the proposal to the Chairperson in writing, and the Chairperson must make the proposal available to members at least two weeks prior to the meeting of the Committee at which it is to be discussed and voted upon.
 - a) The proposal shall be made available in both English and French.
- 4) At the meeting, the proposal will be discussed and members will be asked to vote on whether to adopt the proposal.
 - a) If unable to attend the meeting, a member may vote by proxy (through a proxy of their choice).
 - b) A member who intends to vote by proxy must notify the Chairperson in writing prior to the meeting, and identify the proxy.
 - c) 50% of the members of the Civil Section Steering Committee must vote on the proposal either in-person at the meeting or by proxy.
- 5) A proposal is adopted if two-thirds of the members present at the meeting (including proxies) vote in favour of its adoption.

- 6) If the proposal is adopted by the Committee, the new or revised rule of procedure or policy shall be in effect until the next annual meeting. If the Committee accepts a proposal to delete an existing rule of procedure or policy, that rule of procedure or policy is of no force and effect until the next annual meeting.
- 7) Pursuant to section 34(2) of the bylaws, the Chairperson will present the new, revised or deleted rule of procedure or policy to the Civil Section at the next annual meeting for approval.
- 8) Approval at the annual meeting shall be done through voting by constituent jurisdictions whereby each constituent jurisdiction represented at the annual meeting shall be entitled to cast three votes. The result of any vote shall be determined by a majority of the votes cast.

Background

- Historically, the Civil Section has acted in accordance with customary practices and on a consensus basis.
- A subcommittee of the Civil Section Steering Committee was established in the Spring of 2021 to create and review written rules of procedure and policies for the Civil Section.
- The goal of establishing written procedural rules and policies is to improve transparency, accountability and to promote fair and efficient processes.
- The ULCC bylaws establish a two-step process for the adoption of rules of procedure and policies:
 - initial adoption by the Civil Section Steering Committee; then
 - formal adoption by the Civil Section at the next annual meeting.
- Once the initial adoption is completed and adopted by the Civil Section Steering Committee, the rule of procedure or policy shall be in effect until the next annual meeting.
- As a first step, Section 34(3) of the By-Laws requires the Civil Section to adopt a rule of procedure or policy that addresses the manner in which rules of procedure and policies are adopted and approved.

Subcommittee Discussion

Advance Notice Procedure

- How are Civil Section Steering Committee members notified of a proposed new rule of procedure or policy? Is notification by electronic means sufficient, or is verbal notification required at the previous Civil Section Steering Committee meeting?
 - The subcommittee preferred not to make the rule of procedure or policy approval process too formal. Notification by electronic means should be sufficient.
- What is the role of the Chairperson, once a proposal is received?

- The subcommittee discussed whether the Chairperson simply should pass the proposal on to members without comment, or whether the Chairperson is expected to take additional steps before doing so.
- For example, the Chairperson could advise the member who proposed the item of existing relevant rules of procedure or policies or previous discussions on the issue.
- The subcommittee concluded that the policy need not specifically address this issue. Realistically, it's unlikely that a proposal will be generated in a vacuum. More likely that it results from some ongoing confusion or discussions about a particular issue.
- Members will be able to flesh out more details during the lead up to the vote.
- That said, subcommittee members felt the policy should be clear that the Chairperson cannot veto a proposal or refuse to circulate it. This recommendation is reflected in the language "The Chairperson *must*..."
- What format should new proposed rules of procedure and policies take? Is a draft sufficient, or should the language be finalized and in both languages? Should Civil Section Steering Committee members have the opportunity to provide input before the policy is drafted for approval?
 - As noted above, subcommittee members preferred not to make the policy approval process too formal.
 - Members of the Civil Section Steering Committee can suggest changes and improvements to the proposed rule of procedure or policy. It can be clarified and enhanced during the discussion prior to adoption and, as such, the specific wording need not be finalized before the meeting.
 - The subcommittee discussed whether the policy should address how a proposed new rule or policy could be amended and fine-tuned during the period leading up to adoption. Ultimately, the subcommittee concluded that there would be no benefit in adding too much detail about this. The Chairperson and members will deal with such issues on a case by case basis.
 - The proposed rule of procedure or policy should be provided in both languages.
 - Subcommittee members noted that it would be helpful for a proposed rule of procedure or policy to include information about the reason for its proposal, its purpose, and relevant background materials. This additional material could provide value when assessing the ongoing relevance of the rule of procedure or policy. Subcommittee members agreed that at minimum, the proposed rule of procedure or policy should include a brief rationale.
- How much notice should be given for approval of a new proposed rule of procedure or policy? Does the notice period depend on the complexity of the proposed rule of procedure or policy?
 - How much advance notice should the Chairperson of the Civil Section Steering Committee provide to the membership that a rule of procedure or policy has been proposed for approval?

- Generally, it was felt that 2 weeks would be sufficient, although more time should be allowed if the proposed rule of procedure or policy is complex or controversial.
- Subcommittee Recommendations:
 - The Chairperson of the Civil Section Steering Committee must make the proposed rule of procedure or policy available to the members at least two weeks prior to the meeting at which its approval is sought.
 - The proposed rule of procedure or policy will be provided in both English and French.
 - Members will be asked to vote on the adoption of the proposed rule of procedure or policy as proposed or as amended.

Quorum

- How many people representing Steering Committee members must be present at the meeting where the proposed rule of procedure or policy is presented for adoption?
 - There is nothing in the rules about a quorum.
- Subcommittee Recommendation:
 - 50% of members must be present at the meeting for the proposed rule of procedure or policy to be received and discussed.

Proxy

- What happens if a member cannot attend the meeting where the proposed rule of procedure or policy is presented for adoption? Can that member designate a proxy to vote on their behalf?
- Subcommittee members believe that it is appropriate to allow a member to vote, even if they cannot personally attend the meeting.
- Subcommittee Recommendation:
 - Each member can decide if they want to send a proxy and who that proxy will be.
 - Generally, a member who sends a proxy is encouraged to ensure that their proxy is another member or a colleague who is familiar with the issue.
 - A member who intends to vote by proxy must inform the Chairperson in writing, prior to the meeting.

Adoption of the proposed rule of procedure or policy by the Steering Committee

- What level of approval is required to adopt a new rule of procedure or policy? Is it unanimous? Simple majority? 2/3 majority?

- It is important to get the support of most members of the Steering Committee, to ensure that formal approval at the next annual meeting is successful.
- Concerns or issues that arise with a new rule of procedure or policy can be addressed throughout the year, prior to the next annual meeting.
- Subcommittee Recommendation:
 - Two-thirds of the Steering Committee members present at the meeting (including proxy proxies) must vote in favor of the rule of procedure or policy for it to pass.

Next Steps

- If adopted by the Civil Section Steering Committee, the new or revised rule of procedure or policy shall be in effect until the next annual meeting. If the proposal was to delete an existing rule of procedure or policy, it is of no force and effect until the next annual meeting.
- Pursuant to Standing Rule 34(2), the Chairperson will present the new, revised or deleted rule of procedure or policy to the Civil Section at the next annual meeting for approval.
 - If approved at the annual meeting, the new or revised rule becomes an official and permanent rule of procedure or policy of the Civil Section.
 - If the matter for approval is a deletion of an existing rule of procedure or policy, that rule is deleted.
 - If not approved at the annual meeting, the new or revised rule of procedure or policy lapses and is no longer in effect.
 - If the matter for approval is a deletion of an existing rule of procedure or policy, the rule is not deleted.
- Approval at the annual meeting shall be done through voting by constituent jurisdictions whereby each constituent jurisdiction represented at the annual meeting shall be entitled to cast three votes. The result of any vote shall be determined by a majority of the votes cast.