

## **UNIFORM LAW SECTION MINUTES 1995**

### ***Attendance***

37 delegates attended the meeting of the Uniform Law Section. For details, see the list of delegates on page 6.

### ***Sessions***

Eight sessions were held from Sunday through Thursday including two joint sessions with the Criminal Law Section as well as two formal plenary sessions.

### ***Distinguished Visitors***

The Section was honoured by the participation of:

- (a) Mr. Bion Gregory, President, National Conference of Commissioners on Uniform State Laws;
- (b) Mr. Jeremiah Marsh - Chairman of the Committee on Liaison with Canada and International Organizations, and Co-chairman of the Joint Committee on Co-operation with the Uniform Law Conference of Canada and the National Conference of Commissioners on Uniform State Laws;
- (c) The Honourable Madam Justice Georgina Jackson of the Saskatchewan Court of Appeal, representing the Canadian Judges Conference, and a Past President of the Uniform Law Conference of Canada;
- (d) Mr. Graham Walker, Q.C. - a Past President of the Uniform Law Conference of Canada.

### ***Presidence***

The sessions were chaired by Mr. Douglas E. Moen.

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### *Uniform Arbitration Act*

Presenter: Peter Lown

The Section received from the Alberta Commissioners a report recommending amendments to the *Uniform Arbitration Act* dealing with stays and appeals. The recommendations result from an evaluation of the implementation and interpretation of the *Uniform Arbitration Act* in the four jurisdictions that have enacted it.

Recommendation 1: Change the wording of section 6 to that used in the Alberta, Ontario and Saskatchewan legislation.

Agreed; the expanded wording confirms that judicial intervention in arbitration should be limited to very narrow circumstances. The new wording more clearly explains that there are two tests to be met: judicial intervention is allowed only if the Act allows it, and the Act only allows it in the four enumerated circumstances

Recommendation #2: Change the wording of section 7(2)(c) to provide more clarity as to when a refusal to grant a stay is warranted based on the subject matter of the dispute.

It was agreed that option (i) should be adopted: "The subject matter of the dispute is not capable of being the subject of arbitration under the law of [enacting jurisdiction] even if the parties expressly agree to submit the dispute to arbitration".

Recommendation #3: Change the order of the wording of section 45(1), (2) and (3) to emphasize that parties can agree what may or may not be appealed.

Agreed.

### RESOLVED:

1. That the Section prepare draft amendments to sections 6, 7 and 45 of the *Uniform Arbitration Act* consistent with the recommendations

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outlined in the report of the Alberta Commissioners as modified by the discussion.

2. That the draft amendments be circulated to the jurisdictions as soon as possible, and that unless two or more objections are received by the Executive Director of the Conference by November 30, 1995, the draft amendments be taken as adopted and recommended to the jurisdictions for enactment and the text appear in the 1995 Proceedings. (See Appendix B at page 130 and Appendix K at <http://www.law.ualberta.ca/alri/ulc>.)

### ***Builders/Mechanics Lien Acts: Interaction with Arbitration Procedures***

**Presenter:** William W. McNamara (Paper written by Arthur Barry)

The Section received a report from Mr. William W. McNamara, Chair of the Construction Law Section of the Canadian Bar Association recommending that certain amendments be prepared to builders'/mechanics' lien legislation to rectify difficulties in using an arbitration procedure in resolving builders' and mechanics' liens disputes.

#### **Issues:**

- (a) interaction between the arbitration process and lien procedures;
- (b) unnecessary court processes and uncertainty of law;
- (c) unnecessary cost of commencing legal action then applying for a stay.

In the discussion it was suggested that the first step of registering a lien would not change. What is needed is a process that would "stop the clock". Three suggested options to explore were: a stay process in lien legislation; an amendment to the *Uniform Arbitration Act*; and model wording for an arbitration reference that would accomplish the same result.

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### RESOLVED:

1. That the Steering Committee be directed to establish a working group to recommend legislative options to deal with the problems identified in the Canadian Bar Association report.
2. That the report be printed in the Proceedings. (See Appendix C at page 134)

### *Class Actions*

Presenters: Ruth Rogers, Susan Amrud (The Working Group also included Clark Dalton of Alberta, Larry Fox of Ontario, Louise Ducharme of Quebec, Ian Donahoe of Canada, Gordon Johnson of Nova Scotia, Chris Curran of Newfoundland, and Marvin Huberman of CBA-O)

The Section received from the British Columbia and Saskatchewan Commissioners a report recommending preparation of a Uniform Class Actions Act for the 1996 Conference. In Part A of the paper, the work of the Uniform Law Conference on class action reform was reviewed and the need for uniformity examined. In Part B, the advisability of a certification procedure was reviewed. Part C considered criteria for certification. The rules relating to hearings are covered in Part D.

Recommendations approved: 1, 2, 4, 6, 7, 10, 11, 12, 13, 14, 15, 17, 20, 22

Recommendations amended: 3, 5, 8, 9, 16, 18, 19

Recommendations tabled: 21

### RESOLVED:

1. That a Uniform Class Actions Act and commentaries be prepared for consideration of the 1996 Conference.
2. That the report be printed in the Proceedings. (See Appendix O at <http://www.law.ualberta.ca/alri.ulc>.)

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### *Cost of Credit Disclosure Act*

Presenter: Richard Bowes

The Section received from the Alberta Commissioners, with Mr. Richard Bowes as principal researcher, the draft *Uniform Cost of Credit Disclosure Act* with commentaries and supporting documents. (See Appendix L at <http://www.law.ualberta.ca/alri/ulc.>) Mr. Bowes distributed for discussion a document prepared by the Federal/Provincial Cost of Credit Disclosure Working Group of the Agreement on Internal Trade (AIT) Consumer Measures Committee entitled "Proposals for Harmonization of Cost of Credit Disclosure Laws in Canada". He also provided a commentary on that report.

The AIT Working Group sent out its consultation document in early July 1995, and will be receiving feedback into September 1995. It was agreed, therefore, that it would be premature for the ULS to adopt the draft Act as a uniform Act. It is essential that the product produced by the ULS reflect the final decisions made in the AIT process.

However, it was also agreed that ULS support for the Annual Interest Rate (AIR) approach be confirmed to the AIT Working Group. It is a simpler calculation that leads to more consistency, simpler enforcement, is more flexible, equal in disclosure to APR, more express and more transparent.

An issue that was raised for consideration by the AIT Working Group was whether the title of the Act accurately reflected its contents. Two alternatives suggested were Disclosure of Cost of Credit Act or just Cost of Credit Act.

### RESOLVED:

1. That the Uniform Law Conference's position on the outstanding substantive issues be communicated to the CMC working group by the President.
2. That the proposed draft be referred to the Drafting Section.
3. That the ULS Steering Committee delegate a committee to communicate with the CMC and to finalize the text of the draft act by January 15, 1996.

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4. That the draft act implement the final agreement of the parties to the Agreement on Internal Trade.
5. That the draft act be circulated to all jurisdictions as soon as possible after January 15, 1996. Unless two or more objections are received by the Executive Director of the Conference by February 29, 1996, the draft should be taken as adopted as a uniform act and recommended to the jurisdictions for enactment and the text appear in the 1995 Proceedings.
6. That during the next six months, the ULS committee will consult with jurisdictions to keep them current with what is occurring and give them an opportunity to participate.

### *Uniform Court Jurisdiction and Proceedings Transfer Act*

Presenter: Peter Lown

The Section received from the Alberta Commissioners correspondence directed to Professor Peter Lown from the Honourable Madam Justice Marion J. Allan, Chair, Rules Revision Committee of the Supreme Court of British Columbia. The Committee suggested that amendments be made to the *Uniform Court Jurisdiction and Proceedings Transfer Act* relating to *in rem* jurisdiction in a proceeding brought against a vessel. The Committee stated that the existing rule as to *in rem* jurisdiction is that it is service on the vessel within the territory and not presence of the vessel within the territory at any particular time that establishes jurisdiction.

It was agreed that there was no intention to change this rule. If a possible interpretation of the Uniform Act is that it changes the rule, then the language should be clarified.

### RESOLVED:

1. That the draft amendments to section 5 of the *Uniform Court Jurisdiction and Proceedings Transfer Act* as approved by the meeting be adopted and recommended for enactment as a uniform amending act.

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2. That the uniform amending act be published in the *Proceedings*. (See Appendix D at page 155)

### *Uniform Documents of Title Act*

Presenter: Clark Dalton

The Section received from the Alberta Commissioners a draft *Uniform Documents of Title Act* and commentaries to modernize, rationalize and codify the law relating to documents of title. Part I of the Act sets out special provisions for warehouse receipts. Part 2 sets out special provisions for bills of lading. Part 3 provides general obligations that apply to both warehouse receipts and bills of lading. Part 4 includes provisions respecting the negotiation and transfer of warehouse receipts and bills of lading. Part 5 contains miscellaneous provisions.

### RESOLVED:

1. That the Section approve the principles as set out in the draft act. (See Appendix P at <http://www.law.ualberta.ca/alri/ulc>.)
2. That a drafting review be undertaken to be completed by January 30, 1996.
3. That the draft act be circulated to the jurisdictions as soon as possible thereafter and that unless two or more objections are received by the Executive Director of the Conference by February 29, 1996, the draft act should be taken as adopted as a uniform act and recommended to the jurisdictions for enactment and the text appear in the 1995 *Proceedings*.  
[NOTE: the draft Act was not available for circulation and was not adopted. - Ed.]
4. That, should the drafting review raise issues of policy, these issues be addressed at the next available time for Section review.

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### *Uniform Liens Act*

Presenters: Georgina Jackson, Arthur Close (The Working Group for this project also included Gérald Tremblay, Q.C. and Professor Ron Cuming, Q.C.; Professor Rod Wood has also acted as an ad hoc reviewer for the Group).

The Section received from the Saskatchewan Commissioners a draft *Uniform Liens Act* and commentaries providing for a statutory lien for repairers, storers and carriers. The Act includes provisions dealing with:

- the nature and extent of the lien;
- perfection and priority of the lien;
- enforcement; and
- general application of the *Personal Property Security Act*.

A number of suggestions for improvements to the draft Act that were received from the floor, from the Working Group and in a letter from Professor Ron Cuming, were approved by the ULS.

### RESOLVED:

1. That the draft act be amended in accordance with the discussion. (See Appendix Q at <http://www.law.ualberta.ca/alri/ulc>.)
2. That the draft act should be circulated to the jurisdictions as soon as possible. Unless two or more objections are received by the Executive Director of the Conference by a date to be determined by the Steering Committee but no later than February 29, 1996, the draft act should be taken as adopted as a uniform act and recommended to the jurisdictions for enactment and the text appear in the 1995 Proceedings. [NOTE: the draft Act was not available for circulation and was not adopted. - Ed.]



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### *Personal Information and the Protection of Privacy*

Presenter: Denis Kratchanov (The Working Group also included Gerald Tegart and Doug Moen of Saskatchewan, Colin McNairn of CBA-O, John Gregory of Ontario, Tom Onyshko of Ontario and Jacques Dufresne of Quebec)

The Section received from the Federal Commissioners a report on personal information and protection of privacy. The report suggested the value of adopting common principles and possibly legislation governing data protection. It reviewed the historical background of the development of privacy law and discussed the legal context in which privacy now evolves. It suggested that, given the extensive work that has been done in this area, the challenge for the ULC lies not in agreeing on principles upon which to base legislation, but in determining how those principles should be implemented.

#### RESOLVED:

1. That the Steering Committee of the Section create a Task Force to develop proposals for a Uniform Personal Information Protection Act which will include a statement of principles and options for implementation.
2. That the report be published in the Proceedings. (See Appendix M at <http://www.law.ualberta.ca/alri/ulc>.)

### *Prudent Investment by Trustees*

Presenter: Peter Lown

The Section received from the Alberta Commissioners a report respecting issues that arise in the regulation of trustee investment. The report reviewed the history of the legal list approach, and problems that result from the use of that approach. A number of reform options are considered in light of reform activities in Canada and the United States.

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### RESOLVED:

1. That a working group be established to revise the *Uniform Prudent Investor Act*.
2. That the Uniform Law Section endorse the "Prudent Investor" approach and the Uniform Law Section use the guide of the 1994 NCCUSL model to review the following issues:
  - a) Standard of care for professional and non-professional fiduciaries;
  - b) Portfolio management and strategy;
  - c) Review of inception assets; and
  - d) Delegation of decision making powers.
3. That the report be printed in the Proceedings. (See Appendix I at page 220)

### *Transfers of Investment Securities*

Presenter: John Gregory (The report was prepared by Eric Spink of the Alberta Law Reform Institute who also participated in the Working Group as principal researcher.)

The Section received from the Alberta Commissioners a report on this project, which was adopted by the Section in 1993. The report reviewed the history and background of the project. It then discussed the fact that little progress was made during the course of the last year because of a lack of active support from industry. Industry issues and implementation issues were also briefly discussed.

With respect to future steps, it was reported that industry has recently promised to provide additional support to this project. The original objective was to produce a detailed statement of principles for uniform/harmonized legislation to be presented to the Uniform Law Conference for approval in August of 1995. While this was not possible, the Commissioners believe that a statement of principles can be prepared in time for the 1996 meeting with drafting to follow thereafter.

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### RESOLVED:

1. That the report on Transfer of Investment Securities be received.
2. That the Section direct the Steering Committee by January 31, 1996, to review industry demand for the product and the continued viability of the project.

***Uniform Act Respecting the Unidroit Convention on International Factoring***  
***Uniform Act Respecting the Unidroit Convention on International Financial Leasing***

Presenter: Graham Walker (The Working Group also included Christiane Verdon of Canada and John Gregory of Ontario.)

The Section received from Mr. Graham Walker, Q.C., draft Acts implementing the above noted conventions. It was agreed that minor amendments were required to the draft Acts to ensure that they provided clear direction to jurisdictions respecting the reservations that the Conventions allow. With respect to International Financial Leasing, it was agreed that it would be useful to also include a note drawing the attention of the jurisdictions to the interaction between the Convention and the *Personal Property Security Act*.

### RESOLVED:

1. That the English drafts of the *Uniform International Factoring (Unidroit Convention) Act* and the *Uniform International Financial Leasing (Unidroit Convention) Act*, as approved by the meetings be adopted and recommended for enactment as uniform acts.
2. That the French drafts of the same uniform statutes be circulated to the jurisdictions as soon as possible and that unless two or more objections are received by the Executive Director of the Conference by November 30, 1995 the French versions of the draft acts will be taken as adopted as uniform acts and recommended to the jurisdictions for enactment.
3. That the Uniform Acts be published in the Proceedings. (See Appendix E - Factoring - at page 156 and Appendix F - Leasing - at page 160)

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### ***Canada - US Liaison Committee's Report***

The Liaison Committee met at the Conference of the National Conference of Commissioners on Uniform State Laws in Kansas City, Missouri. Jeremiah Marsh of the US Conference reviewed the recent meeting of the NCCUSL and the current work of that body.

### ***Report of the Advisory Group on Private International Law***

Presenter: Christiane Verdon

The Section received from the Government of Canada a report on the activities of the Department of Justice in Private International Law matters. The Department also reported on a study and consultation project it had undertaken respecting the law on recognition and enforcement of foreign judgments in Canada.

### **RESOLVED:**

That the report on the activities of the Department of Justice be published in the Proceedings. (See Appendix J at page 256)

### ***Adoption of Uniform Acts***

It was agreed that there should be more follow up work done through persons who influence the legislative agenda and through stakeholders to help to ensure that the products of the Conference are being adopted.

It was agreed that explanatory notes (point form summaries) should be written up for each project, that jurisdictional representatives can use to explain the background and purpose of the project. Each jurisdiction would be expected to develop a list of target enactments and to report at every annual meeting on the work they have done over the past year to advance the work of the Conference.

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It was agreed that an implementation group should be formed to develop an implementation strategy and assist jurisdictions in implementing that strategy. The CBA is a natural participant in this process; they are already an organized lobby group, at national and provincial levels.

### *New Projects*

The following topics were raised as possibilities for new projects for the 1996 Conference:

- (a) uniform choice of law rules for family property disputes;
- (b) revocation of testamentary documents;
- (c) exigibility of RRSPs;
- (d) certification of questions;
- (e) cross-border enforcement of non-money judgments.