

MINUTES - CIVIL SECTION

1. Eligibility of Future Income Security Plans

Presenter: Darcy McGovern (Saskatchewan)

In 1997 a discussion paper was tabled. It was resolved then that the Working Group return with an Issues Paper and, if possible a draft Act in 1998 following further consultations.

The basic options were more clearly articulated as being:

- (a) status quo
- (b) remove the protection from eligibility currently enjoyed by pension funds and insurance contracts
- (c) extend the protection from eligibility enjoyed by pensions to RRSPs.

Status quo could be best evaluated only following exploration of the other options. Option B was less viable and there was noted to be no public demand for the removal of this protection. Accordingly, the working group focused on option C.

A questionnaire, based on submissions and recommendations in the 1997 discussion paper, was prepared and sent out to the consultation group. The key substance of the questionnaire was best summarized in the 12th and final question which contained 6 components:

- (1) Extension of exemption to RRSPs and DPSPs (deferred profit sharing plans);
- (2) Maintenance of the status of funds as RRSPs or DPSPs under the Income Tax Act;

UNIFORM LAW CONFERENCE OF CANADA

- (3) Amendments to the Bankruptcy and Insolvency Act to require continuation of the required status of funds to maintain any discharge;
- (4) Application of the exemption to RRIF funds;
- (5) Eligibility of payments out of an RRIF; and
- (6) Application of the exemption to new debt only..

The responses of the consultation group to this last question formed the basis of the report of the working group. The report identified five central policy issues which were thought to be determinative in the ULC consideration of exempting RRSPs and DPSPs from eligibility:

- (a) Preference of debtor's retirement interests over immediate creditor's interests;
- (b) Dollar limits on exemptions;
- (c) Debtor abuse (both pre and post bankruptcy);
- (d) Exceptions the exemption (i.e. maintenance enforcement, victims of domestic violence etc.); and
- (e) Transition.

It was noted in the report that 90% of responses received supported the extension of the exemption from eligibility to RRSPs and DPSPs. Discussions among ULC conference members focused on the above topics and issues such as the general rational or exemptions and how that fits in with RRSPs and DPSPs, the need for uniformity, consistency in approaching RRSPs, DPSPs and other pension and insurance funds, impact on credit evaluations; and the acceptable scope of exceptions, a lack of uniformity of judgement enforcement and exemptions generally. Some were of the view that the preserving funds for the debtor's retirement should not be preferred over the immediate need of the creditor, especially small business creditors. Others felt that the small business creditor would not suffer unduly and would possibly benefit from having his own retirement fund exempt from eligibility.

CIVIL SECTION MINUTES

The issue of abuse was debated at length given that RRSPs may be withdrawn at the discretion of the debtor while pension and insurance funds are not so much within the debtor's control. Capping, simple use of Income Tax provisions (instead of creating a new bureaucracy to determine status of the funds) and the ability to monitor the status of the funds into the far future were all pondered by the Conference.

Consensus did not seem apparent on all issues.

DECISION:

The Working Group would prepare draft legislation, perhaps in the form of a model law, rather than a uniform law in consultation with the drafting group, with ongoing dialogue to be expanded to interested groups. A draft Act was to be tabled at the 1999 ULCC.

RESOLUTION - *Eligibility of Future Income Security Plans:*

- 1. That a draft *Uniform Future Income Security Plan Exemption Act* and commentaries be prepared in accordance with the discussions for consideration of the 1999 Conference, that would have the following constituent elements:**
 - (a) the extension of the exemption from eligibility of RPPs to RRSPs and DPSPs;**
 - (b) that funds held in RRSPs and DPSPs would enjoy the protection of this exemption only so long as they retain their status as RRSPs and DPSPs under the *Income Tax Act*;**
 - (c) that the exemption from eligibility be extended to an RRIF based on these exempt funds;**

- (d) that any payments out of an exempt RRIF would be subject to eligibility;
- (e) that the exemption would apply to “all debt and to all RRSPs and DPSPs” with the proclamation date for the legislation publicized well in advance; and
- (f) that the option of complementary amendments to the *Bankruptcy and Insolvency Act* be considered through the Bankruptcy and Insolvency Advisory Committee consultation process to provide that continued RRSP/DPSP status under the *Income Tax Act* is a statutory condition of discharge for any bankrupt who utilizes this exemption and that failure to comply with this condition would annul the order of discharge and re-establish the debt.

2. That the Working Group maintain an ongoing dialogue with the respondents to the questionnaire (and other groups recommended by commissioners) to ensure that the views expressed by these organizations on various issues may be more clearly defined in the drafting process.

3. That the report appear in the 1998 Proceedings [See Appendix F at page 254].

2. Commercial Law Strategy

Presenter: Doug Moen (Saskatchewan)

A report setting out a recommended framework for future uniform law projects was tabled. Components of the framework were identified and priority was given to Commercial law matters between private priorities (over enforcement law matters). This was estimated to be a ten year process with costs of approximately \$50,000.00 per year. The elements were expected to be debated over the next year and the support of the overall concept was requested.

CIVIL SECTION MINUTES

It was noted that it is necessary to be able to demonstrate that the private sector supports the commercial law strategy; the strategy will require a marketing framework; the project needs to be organized and ongoing before it is announced as a project and there will be a need to create strategic alliances with the private sector and the academic community.

RESOLUTION - *Commercial Law Strategy*:

- 1. That the Uniform Law Conference support the continued development of a commercial law framework for Canada.**
- 2. That the Uniform Law Conference endorse the elements of the framework outlined in the report [See Appendix J at page 456].**
- 3. That the Uniform Law Conference accept the responsibility for leading the project, which would include tasking work and securing funding.**

3. Draft Uniform Data Protection Act

Presenters: Heather Black, Stephanie Perrin

In accordance with resolutions in 1997, a draft uniform act dealing with private sector data protection was prepared and tabled. It was noted that the federal government was expected to table legislation in this area in September or October of 1998. It was hoped that the federal legislation would be as close as possible to any approved ULCC draft to aid in harmonization. It was also noted that industry and consumer groups supported uniform rules rather than diversity.

Many issues were raised in discussions that followed. Some of the main concerns included the scope of the exemption (some thought “personal and household use” was too broad, others thought it too narrow) and the relationship between the

UNIFORM LAW CONFERENCE OF CANADA

provisions of the draft and the CSA code. The use of language from the CSA Code gave rise to some general drafting concerns.

DECISION:

Drafting concerns were to be re-examined. A new draft was to be circulated and brought back to the ULCC.

RESOLUTION - *Draft Uniform Data Protection Act:*

- 1. That the Working Group consider the discussions and that a revised draft *Uniform Protection of Personal Information in the Private Sector Act* and commentaries be prepared for consideration of the 1999 Conference.**
- 2. That the Report appear in the 1998 Proceedings [See Appendix E at page 199].**

4. Uniform Electronic Commerce Act

Presenter: John Gregory

The draft Act, together with points for clarification by the ULCC were tabled and discussed. Issues such a requirement for agreement to use electronic commerce, exceptions in application (ie wills, constructive and resulting trusts), the opting in approach, general drafting issues and integration with existing acts such as Interpretation Acts were discussed.

Some preferred to see the Act returned with drafting changes next year. Others noted the fast pace in this area and were reluctant to put it over until next year. The possibility of an extended period for dissent was discussed. Possible 1999 deliverables discussed included delivery of a draft Electronic Contracting Act.

CIVIL SECTION MINUTES

DECISION:

As there were no serious concerns as to principle, it was proper to invoke the November 30 rule. The Act was approved in principle subject to the resolution listing acceptable areas of review and there would be a 60 day period to review this list. The 60 day period would run from the mailing of revisions.

RESOLUTION - *Uniform Electronic Commerce Act*:

- 1. That the draft *Uniform Electronic Commerce Act* be adopted in principle, subject to the Working Group reviewing the issues raised in the discussions with respect to sections 2, 4, 6, 10, 17, 18 and 19 as reflected in the minutes.**
 - 2. That a final draft Act and commentaries be completed and circulated to the jurisdictions as soon as possible. Unless two or more objections are received by the Executive Director of the Conference within 60 days after it is circulated, the draft Act should be taken as adopted as a Uniform Act and recommended to the jurisdictions for enactment.**
 - 3. That the Act appear in the Proceedings [See Appendix K at page 457].**
- 5. Uniform Enforcement of Foreign Judgements Act**

Presenter: Louise Lussier

The working group tabled a tentative preliminary draft for further discussion and the guidance of the ULCC on a number of specific issues. Those issues that were discussed included:

UNIFORM LAW CONFERENCE OF CANADA

- (a) Should the act cover non-money foreign judgements? Should the act also cover provisional , i.e., non-final orders?

A large majority supported a broader approach, rather than limiting the Act to monetary judgements only. As for extension to provisional orders, a more liberal approach was sensed and the issue was sent back to the working group for further consideration

- (b) Should the list of examples of real and substantial connections be considered exhaustive and definitive? If so, is their drafting too negative? Should these connections apply only in the cases of default foreign judgements?

On the first question, the answer was no, leaving the second question moot. As for the third question, the section voted yes.

- (c) Should the judgement debtor be given the opportunity to challenge the jurisdiction of the foreign court at the time of enforcement proceedings in Canada?

Some thought that making enforcement at the discretion of the court gave an “escape route”. The rationale for allowing the debtor to re-argue jurisdiction was questioned. Others were of the view that the debtor should have the chance to object to the taking of jurisdiction by the foreign court at the time of enforcement. A third view was that the ability to argue jurisdiction should be limited to situations where the bases of jurisdiction taken by the foreign court was the real and substantial connection test. In the end, there was no consensus on this issue. It was sent back to the working group for further consideration.

CIVIL SECTION MINUTES

- (d) Should the enforcement procedure through registration set out under Part 3 of the proposed uniform act be autonomous and not related to the *Uniform Enforcement of Canadian Judgements Act*?

There was little discussion on this point and the matter was returned to the working group.

DECISION:

The working group would continue their efforts toward addressing outstanding issues and return with a revised draft Act next year.

RESOLUTION - *Uniform Enforcement of Foreign Judgements Act*:

- 1. That a draft *Uniform Enforcement of Foreign Judgments Act* and commentaries be prepared for consideration of the 1999 Conference.**
- 2. That the report appear in the 1998 Proceedings [See Appendix G at page 296].**

6. Uniform Interprovincial Subpoenas Act

Presenter: Neil Ferguson

A Uniform Interprovincial Subpoenas Act was passed in 1974. Provincial enactments contained slight differences with the result that the legislation was not as uniform as originally intended. The Senate, in a journal extract of May 6, 1998, urged amendments to Provincial legislation to ensure that laws respecting the enforcement of interprovincial subpoenas clearly provide that they are applicable to commissions of inquiry as well as courts of law. The ULCC was asked to delete section 1(a) of the 1974 Act (which contained the definition of “court”) and replace it with:

UNIFORM LAW CONFERENCE OF CANADA

- (a) “court” means any court in a province and, where a board, commission, tribunal or other body or person in a province has the power to issue a subpoena, includes that board, commission, tribunal, body or person.

DECISION:

Without further discussion, it was decided to approve the above amendment.

RESOLUTION - *Uniform Interprovincial Subpoenas Act:*

1. **That the *Uniform Interprovincial Subpoena Amendment Act* and commentaries be adopted as a uniform Act and recommended to the jurisdictions for enactment.**
 2. **That the text appear in the 1998 Proceedings [See Appendix B at page 151].**
7. **Report of National Conference of Commissioners on Uniform State Laws**
Presenter: Gene Lebrun

Minutes from the July 1998 annual meeting of the United States Committee on Scope and Program held in Cleveland Ohio were tabled for review. Topics contained in the report were discussed and an update of legislative initiatives was given. Specifically, it was announced that first reading had been given to the Electronic Transactions Act, the Trust Act and the Disclaimer of Property Act. The commercial and social partnership between Canada and the United States was noted. For this reason, exchanges of information on the uniformity of laws was stated to be important. Joint projects between Canada and the United States include trans-boundary pollution and reciprocal enforcement initiatives. In particular, the enforcement of domestic violence orders across borders was noted as a key concern. Uniform enforcement

CIVIL SECTION MINUTES

measures between Canada and the United States would be very useful as the United States considers their Uniform Enforcement of Domestic Violence Orders Act. The Conference discussed exploring the possibility of joint meetings and working groups on this issue. John Gregory, a regular attendee at U.S. drafting committees on electronic commerce, also noted that uniformity in this area among our respective jurisdictions is important.

One delegate raised the point that the Canada/France Convention could serve as an example for integration and for working together with joint drafting groups for Uniform Laws.

The “highest priority” was improving communications. Inquiries between jurisdictions were encouraged. While joint meetings have not been established to date, commitment to communication was to remain key. To that end, an invitation was extended to all delegates to attend the 108th annual meeting to be held in Denver, Colorado on July 23rd to July 30, 1999.

8. Arbitration and Construction Liens

Presenter: Arthur Barry

A report of the National Construction Law Section of the Canadian Bar Association was considered in 1997. One of the concerns raised in that report was the potential effect of a rise in alternative dispute resolution on lien claims. At the 1997 Conference, the ULCC resolved that draft legislation for addition to existing lien statutes be prepared and approved the following recommendations:

- (a) To add a provision to lien legislation preventing a stay ordered to permit arbitration from operating so as to prohibit the taking of any step required to preserve a lien or to protect the land or money to which it attached.

UNIFORM LAW CONFERENCE OF CANADA

- (b) To add a provision to lien legislation to make it clear that lien actions taken by lien claimants not party to an arbitration agreement could proceed without reference to arbitration proceedings pending between other parties and relating to the same project.
- (c) To add a provision to lien legislation preventing the taking of a required step in a lien action from operating as a waiver of a lien claimant's right to arbitrate the claim.

Provisions were drafted and tabled for review at the 1998 Conference in response to the above recommendations. Since all provincial enactments were different in this area, any adoption would need to be done as a model law, rather than a uniform law. The proposed changes were customized to the Saskatchewan Builders Lien Act and would need to be customized for other provincial enactments.

General drafting concerns were raised. Some concerns went back to the wisdom of the recommendations approved in 1997. A few of the concerns raised were in relation to provincial differences in lien legislation that may not be compatible with the model proposed. Some suggested that the Conference should simply approve the principle, that being that arbitration should not result in a loss of lien rights. Others raised different issues such a need to link lien and arbitration legislation, how to deal with time limits where sunset clauses exist, (as in Alberta for example), and whether arbitration should be provided for directly within the lien legislation.

DECISION:

The working committee took the comments raised and will put forward a new draft. It was decided to adopt the draft provisions in principle, subject to the November 30th Rule and the passing of an appropriate resolution.

CIVIL SECTION MINUTES

RESOLUTION - *Arbitration and Construction Liens:*

- 1. That the draft sections respecting Constructions Liens and Arbitration be reviewed in light of the issues raised during the discussion. That revised draft provisions and commentaries be prepared and circulated to the jurisdictions as soon as possible. Unless two or more objections are received by the Executive Director of the Conference by November 30, 1998, the provisions should be taken as adopted as model provisions.**
- 2. That the text appear in the 1998 Proceedings [See Appendix D at page 188].**

9. Convention - Limitation Period in International Sale of Goods

Presenter: Philippe Lortie (Canada)

Certain drafting issues were discussed regarding the Uniform International Sales Conventions Act including the merger of the Amended Limitation Convention and the Limitation Convention into one schedule, use of the term "good faith" in section 2, lack of a transition period etc. The lack of a transition period raised concern that action that is statute barred under provincial 2 year limitation periods is revived by the 4 year limit under this Act and the conventions. Extensive discussion regarding potential conflict with provincial limitation periods occurred.

DECISION:

A transition period was not needed provided it is clear that the convention will not apply retroactively.

RESOLUTION - *Convention - Limitation Period on International Sale of Goods:*

- 1. That the draft *Uniform International Sales Conventions Act* and commentaries be adopted as a uniform Act and recommended to the jurisdictions for enactment.**

2. **That the text appear in the 1998 Proceedings [See Appendix L at page 458].**
3. **That the *Uniform International Sale of Goods Act* and the *Act to amend the Uniform Limitation of Actions Act* be withdrawn.**

10. Unclaimed Intangible Property

Presenter: Russell Getz

RESOLUTION - *Unclaimed Intangible Property*:

1. **That the Steering Committee be directed to establish a working group to recommend legislative options to deal with the issues identified in the paper presented by the British Columbia Commissioners.**
2. **That the report appear in the Proceedings [See Appendix I at page 434].**

11. Uniform Securities Transfer Act

Presenter: John Gregory for Eric Spink

RESOLUTION - *Uniform Securities Transfer Act*

1. **That the Canadian Securities Administrators and Mr. Eric Spink be requested to prepare a draft *Uniform Securities Transfer Act* and commentaries.**
2. **That the Act and commentaries be circulated broadly for comments, as a joint project of the Uniform Law Conference and the Canadian Securities Administrators.**
3. **That a draft Act and commentaries that reflect comments received in the consultations be submitted for consideration of the 1999 Conference.**

CIVIL SECTION MINUTES

12. Eurocurrency

A paper entitled *Report and Recommendation on the Need for Euro Legislation*, prepared by the Euro Legislation Working Group of the Canadian Bankers Association was considered.

RESOLUTION - Eurocurrency

1. **That the report on Eurocurrency be received.**

13. Uniform Civil Enforcement Act

Presenter: Peter J. M. Lown, Q.C.

- Paper entitled *Civil Enforcement Legislation in Canada*

Presenter: John R. Williamson and Christopher P. Curran

- Paper entitled *Judgment Enforcement and the PPSA: The Newfoundland Experience*

RESOLUTION - Uniform Civil Enforcement Act

1. **That the Steering Committee be directed to establish a working group to recommend legislative options to deal with the issues identified in the papers presented by the Alberta and Newfoundland Commissioners.**
2. **That the report appear in the 1998 Proceedings [See Appendix H on page 363].**