

Civil Section Minutes
2004
Regina, Saskatchewan
AUGUST 21-26, 2004

COMMERCIAL LAW STRATEGY

Presenters: Jennifer Babe, Chair,
Commercial Law Strategy Anthony
Hoffmann, National Coordinator

Discussion of Strategy

Strategy chair Jennifer Babe presented a report on the Strategy. She discussed the work accomplished so far, and pointed out that the funding received has mainly been used to organize meetings to allow the project to advance more rapidly. Unfortunately, funding from the federal government will cease on March 31, 2005, meaning that all projects undertaken this year will have to be completed by January 1, 2005 if they are to be translated by the March 31 deadline. Jennifer Babe reviewed the projects listed in Appendix 3 of the report, which details the work plan for the Strategy up to March 2005, and outlined the projects suggested by John Gregory's group in the area of Ecommerce. Last, she invited the participants to state their preferences concerning future projects, and to volunteer for the working groups.

Discussion of communications tools

National Coordinator Anthony Hoffmann continued the discussion on the Strategy, congratulating Arthur Close on the improvements made to the ULCC website and asking participants for suggestions for further improvements to the Conference's communications tools. Jennifer Babe provided data on use of the website, as published in the press release for the Commercial Law Strategy. Among other things, she mentioned that there are over 2 million hits per year, including 2,600 users in Japan, in other words almost 170 per day.

The discussion that followed focused on ways to persuade governments to adopt uniform laws. Experiences in the US attracted a lot of interest. A proposal was made to form a sub-committee to examine this specific question, and to post the results on the Conference website.

RESOLVED:

1. THAT the Reports be received.
2. THAT the Reports appear in the 2004 Proceedings.

DOCUMENTS OF TITLE

Presenter: Jennifer Babe, Chair, Commercial Law Strategy

Jennifer Babe noted that Professor Ziegel had reported to the Conference in 2003 on documents of title, and stated his opinion that before beginning the process to draft a new, uniform Documents of Title Act, the Conference should consult the commercial community, in particular, to gauge its interest in the project. A resolution in this regard was passed in 2003. The interested parties were consulted in January, 2004 and the conclusion that can be drawn from the exercise is that it is premature for the Conference to continue its work in this area. Although there are shortcomings in the existing Act, the players in the sector have developed approaches to deal with the difficulties; they are comfortable with these approaches and do not wish to change them. In addition, the current state of technology does not adequately provide for the security of electronic documents of title.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.
3. THAT this project be postponed for the moment.

UNIFORM FRANCHISES ACT

Presenters: Frank Zaid, Osler, Haskin and Harcourt, LLP John Sotos, Sotos Associates

Mr. Sotos outlined the history of this project, and reported on the work completed by the committee over the last year. The Ontario legislation was used as the model for the new Act, and changes were made to make it clearer and introduce a better balance between the interests of franchisor and franchisee. The changes, although minor, generated a lot of discussion before a consensus within the group was established. For example, the concept of good faith monopolized much of the discussion over the year. The minority opinions of some of the members of the Committee are given at certain points in the report.

Mr. Zaid described the main provisions of the draft Act. Those dealing with dispute resolution appear to be the only ones of their kind in the world; and the responsibility of a company that breaks the law will be limited to the people who signed the relevant documents. The legal community, and representatives of the public and private sectors, were consulted via a specialized list server that asked for comments on the draft legislation. One non-legal industry representative also sat on the committee.

Mr. Sotos and Mr. Zaid next gave a section-by-section description of the changes made to the Act. The working committee's in-depth report, submitted with the main report, contains detailed observations on the draft legislation and related questions.

The committee's objective is to present a draft Regulation, with commentary, in 2005. Changes may have to be made to the main Act as the regulation is drafted. During the discussion period, some members questioned the use of the concept of "clear and accurate" in the field of securities as being too subjective.

Other members also questioned the consequences, for the federal government, of being subject to the Act when acting as a franchisor, for example in connection with post offices. Given the widespread support for the new legislation within the industry, it is extremely important that it be enacted by the various governments concerned.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.
3. THAT the draft Uniform Franchises Act be approved in substance as a Uniform Act.
4. THAT the final adoption of the Act be deferred to the next annual meeting of the Conference.
5. THAT the Working Group be directed to continue the project and prepare draft uniform Regulations and commentaries for consideration at the 2005 meeting of the Conference.

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT - UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS AND DECREES ACT INTER-JURISDICTIONAL RESTITUTION ORDERS

Presenter: Arthur Close, Director, British Columbia Law Institute

Arthur Close presented a proposed legislative amendment to remedy a problem of concordance between the Criminal Code, the Uniform Enforcement of Canadian Judgments Act and the Uniform Enforcement of Canadian Judgments and Decrees Act. The latter two Acts contain a reference to sections of the Criminal Code that have been repealed.

The amendments are technical in nature, and the options put forward by Mr. Close offer various ways to remedy the problem. The first option involves inserting a new reference to the current provisions dealing with restitution orders, while the second involves a reference to the content of new provisions and the third the removal of the reference, which has no purpose.

After discussion, the Conference resolved to strike out the reference, since the orders are already enforceable

throughout Canada under the new wording of the Criminal Code provisions, without the assistance of the Uniform Acts.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.
3. THAT the amendment concerning Restitution Orders proposed in the Report as option 3, i.e. the suppression in the Uniform Enforcement of Canadian Judgments Act and in the Uniform Enforcement of Canadian Judgments and Decrees Act of the reference to restitution orders, be adopted.

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT - UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS AND DECREES ACT INTER-JURISDICTIONAL PROTECTION ORDERS

Presenter: Darcy McGovern, Saskatchewan Department of Justice

Mr. Darcy McGovern reported that the CCSO - Family Justice (Co-ordinating Committee of Senior Officials - Family Justice) set up a sub-committee that has recommended a number of changes to existing Uniform Acts concerning the enforcement of Canadian judgments and Canadian judgments and decrees in connection with protection orders. The changes appeared, at first sight, to be compatible with the existing legislation, but after examination it became clear that they were more far-reaching and called into question the previous orientation of the Uniform Acts. Basing its proposal on the uniform law in the US, the CCSO sub-committee has recommended that inter-jurisdictional protection orders need not be registered to make them enforceable by police officers, and that the penalties provided in the Criminal Code be applicable in cases of non-compliance. Given this situation, it was recommended that a working group examine the question and recommend the most appropriate solutions to the Conference.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.
3. THAT the chairperson of the Civil Section, with necessary consultation among interested participants, establish a working group with the mandate to work with the CCSO (Coordinating Committee of Senior Officials - Family Law) to provide for recommendations on either a new Uniform Act on Interjurisdictional Civil Protection Orders or modifications to the existing Uniform Enforcement of Canadian Decrees Act and the Uniform Enforcement of Canadian Judgments and Decrees Act and report back to the annual meeting of the Conference in August 2005.

CONSUMER PROTECTION IN ELECTRONIC COMMERCE - REPORT ON THE ENFORCEMENT OF JUDGMENTS AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Presenter: Lynn Romeo, Manitoba Department of Justice

Lynn Romeo presented the reports that she and Karen Pflanzner had prepared. With regard to alternative dispute resolution procedures, she indicated that many mechanisms were currently under development and that it would be premature to legislate in this area. Concerning the enforcement of judgments, she presented the three possibilities considered in the report, with their respective advantages and disadvantages. The new uniform rules on the jurisdiction of courts in the area of consumer contracts define the circumstances in which a real and substantial connection exists, which then allows the enforcement of trans-border judgements on the basis of the uniform laws, supposing that any contestation of the jurisdiction takes place in the province where the judgment originates. With the exception of New Brunswick, all the jurisdictions support the resolution.

RESOLVED:

1. THAT the Reports be received.
2. THAT the Reports appear in the 2004 proceedings.
3. THAT the Enforcement of Canadian Judgments Act and the Enforcement of Canadian Judgments and Decrees Act be left without being amended regarding Enforcement of Judgments in the Consumer Context as proposed in the Report as option 3.

PERSONAL PROPERTY SECURITY

Presenter: Rod Wood, Law Commission of Canada and Faculty of Law, University of Alberta

Rod Wood presented the work of the Law Commission of Canada concerning security interests in intellectual property. The Commission's final report has been approved and was distributed. The report has received a lot of attention in the legal community throughout Canada. With regard to the Bank Act, the report was not approved because of the elections, but should be approved shortly. The Law Commission of Canada has stated the advantage of working with the ULCC, especially in terms of access to expert opinion.

The working group focused almost exclusively this year on collateral amendments to personal property security legislation as a consequence of the Uniform Securities Transfer Act.

Mr. Wood stated that the work to identify the main conflicts between the various personal property security Acts in Canada and find solutions was completed last year with the filing of a report of over 100 pages.

Rather than drafting a new Uniform Act on personal property security to reconcile legislation in other provinces with the Ontario model, an objective that would be hard to achieve, the working group would like to draft a new uniform personal property security Act based on the model developed by the Canadian Conference on Personal Property Security Law, which is in fact the model used in the Western and Atlantic provinces and that already provides a reasonable level of uniformity. The work could take two or three years, but would not require the investment of large sums of money, since most discussion could take place by E-mail.

RESOLVED:

1. THAT the Reports be received.
2. THAT the Reports appear in the 2004 proceedings.
3. THAT the chairpersons of the Civil Section and of the Commercial Law Strategy, with the Executive of the ULCC, be entrusted with the decision as to whether a Working Group be directed to continue its assessment of the issues raised in the Cuming-Walsh Discussion Paper on Potential Changes to the Model Personal Property Security Act of the Canadian Conference on Personal Property Security Law presented to the ULCC in 2000.

FRAUDULENT CONVEYANCES AND PREFERENCES

Presenter: C.R.B. Dunlop, Professor, University of Alberta

According to Professor Dunlop, the common law in this area is outdated and a reform is necessary. This is a clearly delimited project; there are no opposing local interests and pan-Canadian uniformity is possible.

However, Professor Dunlop warned the Conference that it would take time to complete the project and that there appeared to be little government interest. The reform bodies that have looked at the question in the past have not had any success in attempting to modernize Canadian law in this area. The discussion that followed centred on the difficulties created by the lack of government interest, and the need to allocate the Conference's human and material resources as effectively as possible.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.

3. THAT the chairpersons of the Civil Section and of the Commercial Law Strategy, with the Executive of the ULCC, be entrusted with the decision as to whether a Working Group be directed to continue its assessment of the issues raised in the report.

EXEMPTIONS FROM SEIZURE

Presenter: Mr. Telfer, Professor, University of Western Ontario

Professor Telfer reported a wide range of local practices in this area, and described the current state of the law in the Canadian provinces and the various possible models for exempting certain property from seizure. He outlined the US uniform law, and proposed amendments to the federal Insolvency and Bankruptcy Act. A discussion began on the social consequences that could result if the provisions in the federal Act were different from those contained in provincial legislation, and on the fact that the creation of parallel federal legislation could constitute an incentive to declare insolvency. Some of the members pointed out that Professor Telfer's report is of great interest for provinces that wish to revise their laws dealing with exemptions from seizure. However, it does not appear that the Conference should move ahead and organize a working group to draft a uniform law, given the highly divergent local political interests at stake.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.

CIVIL ENFORCEMENT OF JUDGMENTS

Presenter: Lyman Robinson, Professor, University of Victoria

Since the French version of the draft Act could not be completed in time, the law will be distributed during the fall in both languages to the representatives of the various jurisdictions for final adoption. The changes needed as a result of the discussion will be incorporated. Professor Lyman Robinson thanked the members of the working group, Jennifer Babe who made premises available, and all the people consulted during the group's work.

During the detailed examination of the draft Act, Professor Robinson pointed out the key provisions, sections 28 and 35, that create a centralized electronic register of judgments. Entry in the register will be a pre-requisite for enforcement of the judgment, and will establish priority over subsequent creditors.

During the discussion period, several subjects were raised, including whether or not federal court judgments would be subject to the Act, the priorities set up between creditors under federal Acts depending on whether or not the judgments are registered under the uniform Act, and the difficulties created by a registration system based on the name of the debtor. It was also noted that the implementation of the uniform Act could be difficult in Québec, given that the draft Act requires that a judgment be registered before being enforced, whereas Québec legislation gives creditors the option of enforcing a judgment based on general rules. The possibility of seizing intellectual property attracted a lot of interest. It was agreed that the general orientation should be to allow seizure of intellectual property, while leaving room for adjustments following consultation with federal government representatives.

Concerning the possibility of seizing securities, several amendments were proposed following consultation. However, it appears difficult to effect a better balance between the divergent interests at play.

Last, concerning the exemption of automobiles from seizure, it was decided that the applicable criteria should depend on whether the automobile is exempt as such, or exempt as a "tool of trade".

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.
3. THAT the draft Uniform Civil Enforcement of Judgments Act, as amended following the discussions, be circulated to the jurisdictional representatives. 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 December 31,

2004, the draft Act should be taken as adopted as a uniform Act and recommended to the jurisdictions for enactment.

NCCUSL AND MEXICAN UNIFORM LAW CENTER

The President of the National Conference of Commissioners on Uniform State Laws (NCCUSL), Mr. Fred Miller, stressed the close links between the respective agendas of the ULCC and the NCCUSL. He reported on the various projects undertaken by the NCCUSL in the fields of family law, real estate law, business law and commercial law. Child representation and child abduction fall into the first category; and in the second category, laws on real property registers and mortgages were adopted recently. In business law, an act on mergers, conversions and transfers and another on agricultural cooperatives have been adopted, and in commercial law, a committee is looking at motor vehicle registration.

The NCCUSL has also looked at sales law, consumer contracts and fraudulent transfers, with limited success. Unlike the ULCC, the NCCUSL does not generally work in the field of criminal law. It is involved in the law applicable to electronic transfers, the funding of charitable organizations, Native law and international developments. Following the presentation, discussions focused on the involvement of Native organizations in the NCCUSL.

Mr. Miller expressed a wish to see a trans-border system established for the registration of personal property security. During the discussion, he stressed the links between this project and the Unidroit Convention on International Interests in Mobile Equipment.

Mr. Jorge Cordero, director of the Mexican Uniform Law Center, explained how his organization came to be created against the background of Mexico's political history. With nationalist fervor, each of the thirty-three Mexican states has adopted its own Civil Code and Commercial Code. The Codes differ from the law applicable to transactions involving two Mexican states, or to international transactions. In addition, they generally do not match actual practice. Mexico is establishing a new connection with the rest of the world, joining international organizations and signing international treaties, and the need to harmonize its laws and the resulting benefits are becoming more evident. To achieve this goal, it was felt necessary to bring together a group of leading figures who are influential, credible and independent of the government. The Centre was created for this purpose, and its members include academics, lawyers and judges.

RESOLVED:

1. THAT the Reports be received.
2. THAT the Reports appear in the 2004 proceedings.
3. THAT the Uniform Law Conference of Canada express to Mr. Fred Miller, President of the National Conference of Commissioners on Uniform State Laws, and to Mr. Jorge Cordero, Director of the Mexican Uniform Law Center, its thanks for their informative presentations.

ACTIVITIES AND PRIORITIES OF THE DEPARTMENT OF JUSTICE IN THE AREA OF PRIVATE INTERNATIONAL LAW

Presenters: Kathryn Sabo, Department
of Justice Canada Manon Dostie,
Department of Justice Canada

Oonagh Fitzgerald introduced Kathryn Sabo and described how the work of the private international law team reflects a context marked by the globalization of trade, as highlighted in the presentations of the previous two speakers. Kathryn Sabo spoke about the work of the Advisory Group on Private International Law and the members of the various Canadian delegations to international forums, as well as the signing by Canada of the Unidroit Convention on International Interests in Mobile Equipment. This is the first international instrument

signed by Canada in the last ten years. She then reviewed the priorities of the federal Department of Justice in the area of private international law, which include the Convention on the Settlement of Investment Disputes, the Convention on the Limitation Period in the International Sale of Goods, the UNCITRAL draft agreement on electronic commerce and the Hague convention on legalization.

Manon Dostie then described two projects to implement international conventions that the Conference should undertake: the UNCITRAL conciliation rules and the Hague convention on indirectly held securities, in the latter case in conjunction with the rules established under the Uniform Securities Transfer Act. The following discussion focused on the advisability of implementing the UNCITRAL convention and the advantages of having legislation to settle internal disputes, on the one hand, and legislation on international conciliation, on the other. These questions could be studied by a working group, if the Executive decides to establish one.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.

CHARITABLE FUNDRAISING

Presenter: Albert Oosterhoff, Professor, University of Western Ontario

Professor Albert Oosterhoff presented a report on charitable fundraising. He began by thanking the members of the working group. The fact that the information held by Revenue Canada cannot be shared with the provinces makes it difficult for them to regulate fund-raising campaigns by charities. The fact that the federal government allows charities to be registered does not solve all the problems.

Professor Oosterhoff presented the various types of legislation in force in Canada, Great Britain and the United States along with the reforms undertaken in this area, and concluded that provincial legislation would be preferable to the current situation, and that the legislation could be uniform. He suggested limiting coverage to charities, rather than extending it to all non-profit organizations, but said that the Alberta model in which prior authorization is required for fund-raising should not be followed. In his opinion, charities and any organizations that organize fund-raising campaigns should be subject to the law. Professor Oosterhoff outlined a work plan that would allow a draft Uniform Act to be presented for adoption at the next annual meeting, not with the objective of hindering activities in this area, but rather to better protect the public against the more flagrant types of abuse.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.
3. THAT the Working Group be directed to continue the project work and prepare a draft Uniform Act with commentaries for consideration at the 2005 meeting of the Conference.

UNIFORM MANDATORY TESTING AND DISCLOSURE ACT

Presenter: Wayne N. Renke, Professor, University of Alberta

Professor Wayne N. Renke began his presentation of the Uniform Act by discussing the most recent Supreme Court jurisprudence in this area and initiatives to present private bills at the federal level, in Ontario and Alberta that have led to the law currently in force. He pointed out that the objective was to ensure the constitutionality of the Uniform Act in cases involving the right to privacy. The Act complies with and even goes beyond the criteria that have been fixed by the courts to ensure constitutionality.

For example, the Act applies only to the victims of crime and to the providers of first-line (emergency) care: firefighters, police officers and Good Samaritans. A discussion began on the application of the Act, given the small number of actual situations it covers. Professor Renke pointed out that the Regulations can extend the scope of the Act.

The process is carefully structured. A person exposed to the bodily substances of an infected person must show that his or her fears are founded, that the information cannot be obtained otherwise and that disclosure may have a beneficial effect on his or her health, before an impartial and independent third party: a judge of the Superior Court rather than a physician or Justice of the Peace. The information must be used only by the exposed person, and cannot be used as the basis for a possible civil or criminal prosecution.

A discussion began concerning the individuals to whom the information should be made available. The infected person may have an interest in seeing the information, or may on the contrary not wish know the results from the sample analysis. The law is not intended to challenge the specific requirements for disclosure contained in the public health legislation. As a result of this discussion, it was agreed that changes will be made to sections 10 and 20 of the draft Uniform Act.

Another discussion then focused on the interest of governments in having this type of legislation on hand to prevent legal controversy caused by excess pressure from lobby groups, such as police officers. Questions were asked about the economic incentive for a prisoner who risks a fine for refusing to provide a sample. Professor Renke stressed that, in these cases, which are expected to be extremely infrequent, the Act will allow police officers to assist in the taking of a sample. A discussion began on the possibility of providing for prosecution for contempt of court at the criminal, rather than civil, level.

Last, the conservation of samples was discussed. The regulations will specify retention times, while retaining the degree of flexibility required in particular circumstances.

The Québec representatives informed the Conference that the draft Act cannot be adopted in Québec. The Québec government has recently amended the Public Health Act and opted for the opposite approach, in other words the protection of privacy and a prohibition on ordering testing and the disclosure of information in the areas covered by the Act. Except for blood transfusions and donations of human tissue, testing can only be carried out with the consent of the source individual.

RESOLVED:

1. THAT the Report be received.
- 2 THAT the Report appear in the 2004 proceedings.
4. THAT the draft Uniform Mandatory Testing and Disclosure Act, as modified by the discussions, be adopted as a Uniform Act and recommended to the jurisdictions for enactment.

UNIFORM PUBLIC INQUIRIES ACT

Presenter: Christopher P. Curran, Department of Justice, Newfoundland and Labrador

Christopher Curran presented the draft Act on behalf of Professor Alastair Lucas, who was on sabbatical. He pointed out that the draft Act recognizes the fact that a single model for a commission of inquiry does not match reality and actual needs. The draft Act, unlike the Acts currently in force in Canada, includes an educational component by recognizing various types of inquiry. The first part of the Act deals with the creation of classical commissions of inquiry, while the second part concerns the appointment of persons to conduct inquiries into any matter of public concern. The third part specifies the internal organization of commissions. In general, the draft Act balances the powers of the executive against the independence of the commissions of inquiry.

A discussion between the members of the working group on the basis of comments received led to a series of minor drafting changes, which were presented. Provisions dealing with constitutional rights have been added although, in the opinion of Mr. Curran, they are perhaps not necessary. Last, Mr. Curran pointed out that Professor Lucas, in his 2003 report, had included an appendix outlining the provisions currently in force in Canada.

During the discussion that followed, the members of the Conference mainly asked questions about the exclusion of the public from the commission of inquiry process. In practice, commissions of inquiry sometimes hold meetings behind closed doors for legitimate reasons, and since the draft Act borrows the criteria used by courts to order a closed-door session, there is no need for concern on this point.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.
3. THAT the draft Uniform Public Inquiries Act, as modified by the Working Group, be adopted as a Uniform Act and recommended to the jurisdictions for enactment.

UNIFORM ILLEGAL CONTRACTS ACT

Presenters: Michelle Cumyn, Professor, Université Laval Arthur Close, Director, British Columbia Law Institute

Professor Michelle Cumyn began the presentation by explaining how the provisions on nullity of contracts are applied in Québec civil law. She distinguished between the "directive" and "protective" concepts of public order, the first intended to protect the general interest and leading to absolute nullity, the second intended to protect the specific interests of a category of individuals and leading to relative nullity for their benefit. Ms. Cumyn focused mainly on two questions, a reduction of obligations and the restitution of benefits.

Concerning the reduction of obligations, Ms. Cumyn explained to the Conference that Québec law favours the upholding of contracts, but a reduction in their obligations depending on the circumstances. After a contract has been annulled, the restitution of benefits is the principle enshrined in the Code, but the courts can make exceptions in situations where one of the parties acted in bad faith.

In general, Ms. Cumyn concluded that the draft Act is consistent with Québec civil law. However, she suggested that certain provisions of the Civil Code would need to be clarified to better reflect the interpretation of the courts.

Arthur Close continued the presentation by describing the context in which the Act was drafted. He told the Conference that, despite the resolution of the previous year and given Ms. Waldron's lack of availability, he had proceeded alone, with the help of a drafting team, to prepare the Act and commentary. He also benefited from his discussions with Ms. Cumyn. After receiving various comments, Mr. Close tabled a supplementary note with some minor amendments.

During the ensuing discussion, several people mentioned their anxiety concerning the broad application of the Act, and regretted that more consultation had not taken place. However, given the highly technical nature of the draft Act, whose only effect is to modernize and make the common law in this area more coherent, its adoption should not lead to any problems. In fact, the draft Act only provides a range of reparatory measures and a series of criteria to help the courts choose the most appropriate solution.

RESOLVED:

1. THAT the Reports be received.
2. THAT the Reports appear in the 2004 proceedings.
3. THAT the draft Uniform Illegal Contracts Act, as modified by the supplementary note distributed at the meeting, be adopted as a Uniform Act and recommended to the jurisdictions for enactment.

LIMITATION OF ACTIONS

Presenter: John Lee, Ministry of the Attorney General of Ontario

John Lee began by stating the objectives of all legislation in this area: to ensure the effectiveness, efficiency and quality of the legal system, preserve public order, and ensure the conservation of evidence. He reviewed the historical aspects of the common law legislation.

Next, John Lee discussed the possible structure of a uniform Act on prescription in civil matters. Prescriptive time limits (2 or 3 years) and ultimate prescription should be specified; in the latter case, the range would be greater, from 10 to 30 years. Some exceptions must be specified to protect the victims of sexual assault or in the field of environmental law. Québec does not generally have an ultimate prescriptive limit, except in certain provisions of

the Code of Civil Procedure.

The ability of parties to waive a limitation period does not create a problem, but a more controversial question is the ability of the parties to derogate from the prescribed rules. The relationship between the Uniform Act and other legislation should be specified, either by listing the Acts concerned in a Schedule, or by providing for the Uniform Act to take precedence over other legislation. Last, provisions on conflicting legislation and transitional provisions would also be required.

A discussion began concerning the advisability of creating rules for adverse possession. The links between the Uniform Act and the implementation of the UNCITRAL Convention on the Limitation Period in the International Sale of Goods were also noted.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.
3. THAT the Working Group be directed to continue the project and prepare a draft Uniform Act and commentaries, for consideration at the 2005 meeting of the Conference.

DISCUSSION OF NEW PROJECTS

Presenter: Lynn Romeo, Manitoba Department of Justice

Lynn Romeo presented the report she prepared with Abi Lewis.

In light of a recent Supreme Court decision, Ms. Romeo suggested that the Conference look at the possibility of legislating in the area of provisional orders to cover the cost of legal proceedings, especially in cases involving the public interest. It would also be appropriate to reform the law on the protection of privacy, and on arbitration concerning family disputes and the protection of vulnerable individuals, especially in connection with religious tribunals. A report from Ontario is expected to be released this fall.

The Law Reform Commission of Nova Scotia has proposed a review of the principle of privity of contract (third party rights). Two other projects focus on the status of children and family violence; they are being developed in collaboration with the Co-ordinating Committee of Senior Officials - Family Justice.

All suggestions for new projects should be presented to the Executive of the Civil Section to allow it to make an appropriate selection.

UNIFORM SECURITIES TRANSFER ACT

Presenters: Eric T. Spink, lawyer,

Edmonton (Alberta) Maxime Paré,

Ontario Securities Commission

Mr. Spink began by outlining the history of the work and events leading up to the presentation of the draft Act and commentary at the 2004 Conference meeting. More work in the various jurisdictions will be required to standardize common law securities legislation in Canada and to ensure consistency with the US Commercial Code and with civil law in Québec. Amendments will have to be made to various federal Acts and provincial and territorial statutes, as well as to the Civil Code of Québec, to ensure that the objectives of the project are fully realized.

Mr. Spink and Mr. Paré went on to discuss the main objective and key points of the project. The draft Act and commentary are extremely important, and they cannot be studied in detail in just a few hours. First, Mr. Spink outlined the practical process for transferring securities, and explained the "indirect holding" process and the registers of intermediaries compared to the former holding of a "certificate" by the owner.

The two presenters explained to the Conference that the draft Act has a narrow focus, and applies only to transfers of securities. The basic rules concerning rights of ownership and the fundamental obligations of issuers,

intermediaries and purchasers have not changed. The main effect of the Act is to allow a process of "indirect holding" to replace the direct holding of a paper certificate by the purchaser.

During discussion of the draft Act and commentary, the representatives of several jurisdictions commented favourably on the project and underlined the enormous amount of work accomplished mainly by Mr. Spink in recent years to bring the project to fruition.

RESOLVED:

1. THAT the Report be received.
2. THAT the Report appear in the 2004 proceedings.
3. THAT the Uniform Securities Transfer Act be adopted as a Uniform Act and recommended to the jurisdictions for enactment.