

**UNIFORM LAW CONFERENCE OF CANADA**

**CIVIL LAW SECTION**

**JURISDICTION AND CONSUMER PROTECTION  
IN ELECTRONIC COMMERCE PROJECT**

**REPORT OF THE WORKING GROUP**

**Regina, Saskatchewan  
August 22-26, 2004**



# **JURISDICTION AND CONSUMER PROTECTION IN ELECTRONIC COMMERCE**

## **Report of the Working Group**

**August 2004**

### **BACKGROUND**

[1] At its 2003 annual meeting in Fredericton, NB, the Conference considered the report of the ULC and Consumer Measures Committee (CMC) Joint Working Group and resolved that:

- the draft *Consumer Contracts – Uniform Jurisdiction and Choice of Law Act* presented be referred back to the ULC Working Group for review and to take into account modifications arising from the Conference's discussions and the deliberations of the Joint Working Group.
- the *Consumer Contracts – Uniform Jurisdiction and Choice of Law Act* be distributed to the Jurisdictional Representatives for adoption, subject to a December 31 rule.
- the ULC Working Group be directed to study the Alternative Dispute Resolution and enforcement issues raised by Ontario at the 2002 Annual Meeting in Yellowknife and provide a report on these issues for consideration at the 2004 Annual Meeting.

[2] The Jurisdictional Representatives adopted the *Consumer Contracts - Uniform Jurisdiction and Choice of Law Act* (the “*Consumer Jurisdiction Act*”) effective March 31, 2004.

### **OVERVIEW OF ACTIVITIES**

[3] The Joint Working Group Co-chairs participated in a number of conference calls and presented a paper outlining the work of the Joint Working Group and summarizing the *Consumer Jurisdiction Act* to the Federal, Provincial and Territorial Ministers Responsible for Consumer Affairs at their meeting in Winnipeg in January, 2004. The Ministers welcomed the *Consumer Jurisdiction Act* and asked CMC to provide a progress report in the fall of 2004 on the applicability of this legislation to jurisdictions' respective legislative framework. Ministers were aware of the strong opposition of certain business groups to the *Consumer Jurisdiction Act* and a few jurisdictions noted that implementation might be problematic.

[4] The attached paper, Enforcement of Judgments in the Consumer Context, has been prepared by the ULC Working Group for consideration at the 2004 Conference. The paper notes that the Conference has adopted uniform statutes governing the enforcement of judgments between Canadian provinces and territories. In summary, these statutes provide that a judgment granted anywhere in Canada may be registered in the enacting

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province or territory and, once registered the judgments are to be accorded the full faith and effect of judgments of the courts of the enacting province or territory.

[5] Subsequent to adoption of the enforcement statutes, concerns have been raised that the enforcement statutes do not adequately protect consumers from enforcement of default judgments obtained against them in another jurisdiction.

[6] The paper sets out three options for the Conference to consider with respect to the consumer enforcement issue.

[7] Option 1 is to amend the enforcement statutes to prohibit the registration and enforcement of a default judgment made outside the enacting province or territory against a consumer resident in the enacting province. This is the approach adopted in New Brunswick in its *Canadian Judgments Act*. The paper notes concerns respecting the constitutionality of this option and therefore does not recommend Option 1.

[8] Option 2 is to specifically exempt consumer contracts from the enforcement statutes. This approach would allow a defendant to challenge the jurisdiction of the original court when the judgment is being enforced in the enacting jurisdiction. Registration of an out-of-province judgment would not be automatically recognized in the enforcing jurisdiction, so that the courts of the enforcing jurisdiction would be in the position of supervising the courts of the deciding jurisdiction. The paper notes that this result might be advantageous to consumers as defendants, but not to consumers as plaintiffs.

[9] Option 2 is a variation of the approach adopted by British Columbia in its *Enforcement of Canadian Judgments Act* (unproclaimed) which excludes judgments for payments of amounts less than limits set out in the *Small Claims Act*. The paper notes that while Option 2 does not raise the constitutional concerns that are associated with Option 1, it does not embrace the full faith and credit approach and reflects a different policy choice. It complicates the enforcement process and appears to provide very little actual protection in the light of the adoption of the *Consumer Jurisdiction Act*.

[10] Option 3 is to maintain the status quo and confirm that the Conference supports the full faith and credit notion embodied in the existing enforcement statutes. The paper notes the advantages of this option. The primary disadvantage appears to be that jurisdictions may not enact the enforcement statutes if consumer groups remain opposed to the full faith and credit approach, despite the adoption of the *Consumer Jurisdiction Act*.

[11] The paper concludes with the recommendation that the Conference maintain the status quo by continuing to include consumer contracts under the enforcement statutes. The recommendation was not supported by all members of the ULC Working Group.

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[12] As to ADR, the Joint Working Group noted that during the consultation process respecting the *Consumer Jurisdiction Act*, business groups expressed a strong preference for ADR over a legislative solution to the determination of jurisdiction in cross border consumer transactions. Following analysis of the issues, the Joint Working Group recommended a legislative solution and the recommendation was accepted by the Conference and by the Ministers Responsible for Consumer Affairs. It is noted that the *Consumer Jurisdiction Act* does not prohibit the use of ADR mechanisms to resolve consumer disputes; on the contrary, the complementary role of ADR mechanisms is recognized by ULC and CMC.

[13] A number of initiatives are underway regarding ADR mechanisms and online dispute resolution (“ODR”) mechanisms. These initiatives and the legal issues raised by the initiatives are briefly reviewed in the attached Appendix.

[14] Based on the review of the initiatives, the ULC Working Group concluded that while ADR and ODR provide a practical way of resolving many online disputes, the initiatives are not sufficiently developed at this time to warrant further work by the Conference on defining a regulatory framework or model ADR/ODR legislation.

### **NEXT STEPS**

[15] As to the enforcement issues, the ULC Working Group recommends Option 3, that is, that the Conference maintain the status quo by continuing to include consumer contracts under the enforcement statutes. As previously noted, the recommendation was not supported by all members of the ULC Working Group. If the Conference decides that amendments to the enforcement statutes are in order, the ULC Working Group seeks direction from the Conference on whether draft amendments to the enforcement statutes are to be prepared for consideration at the 2005 Annual Meeting and if so, on what basis.