

**ST. JOHN'S, Newfoundland and Labrador  
AUGUST 21-25, 2005**

**CIVIL SECTION MINUTES**

**REPORT OF THE COMMERCIAL LAW STRATEGY**

Presenters: Jennifer Babe, Miller Thomson LLP

Greg Steele, Steele, Urquhart, Payne

As of April 1, 2005 the Commercial Law Strategy (CLS) has been folded back into the Civil Section. There will no longer be a separate Chair of the CLS however the position of National Co-ordinator will continue. Clark Dalton, who was a long-time delegate from Alberta, was retained as the National Co-ordinator. Commercial law will continue to be a discrete area within the Civil Section and the emphasis will be on the enactment of the many statutes that have been produced. Jennifer Babe noted that the ULCC produces high quality work at a very reasonable cost.

The production of the CLS binder by Saskatchewan was noted. The binder is an impressive document that evidences the achievements in this area to date. The binder will be updated on an annual basis.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.

**FORMS OF BUSINESS ASSOCIATIONS IN CANADA**

Presenter: Wayne Gray, Partner, McMillan Binch

Mr. Gray spoke about the paper entitled "Forms of Business Association in Canada" that he co-authored with Professor Raymond Crête of Laval University. He identified two classes of business association forms that exist today in Canada: corporate and non-corporate forms. Non-corporate business forms are: sole proprietorship, corporate division, general partnership, limited partnership, limited liability partnership, joint venture, co-ownership, business trust. Corporate business forms are: business corporations, professional corporations and unlimited companies.

In their paper, they analyzed the commercial and tax features of each business form, identifying the differences in the way each business vehicle is treated in common law jurisdictions and Quebec. For example, a sole proprietorship or partnership is not a legal person at common law or in the Quebec civil system in contrast to a corporation which has a separate legal personality. Joint venture and co-ownership on the other hand have uncertain legal status in common law jurisdictions, although there are specific rules in the *Civil Code of Quebec* dealing with co-ownership.

Non-corporate forms of business associations fall under provincial and territorial jurisdiction, though the presenter pointed out that it is unclear whether exclusive jurisdiction exercised by the provinces is derived from their authority in respect of property and civil rights under section 92 of the *Constitution Act, 1867*. Sole proprietorship is not governed by legislation in Canada; however, there are provincial and territorial laws providing for general partnerships and limited partnerships. Also, there are provincial and territorial laws on business names, though they vary widely.

With respect to corporate forms, there is the *Canadian Business Corporations Act* in addition to provincial and territorial laws on business corporations.

Mr. Gray discussed reform in this area of the law, recommending that the ULCC should consider implementing the following projects: uniform legislation for business trusts, limited partnerships, limited liability companies and extra-provincial licenses. According to him, developing uniform legislation on business trusts should be a priority.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** a Working Group be established to prepare a report in accordance with the direction given by the Conference with recommendations for a draft Uniform Act for consideration at the 2006 meeting.

***UNIFORM FRANCHISES ACT***

Presenters: John Sotos, Sotos Associates, Toronto

Frank Zaid, Osler, Hoskin & Harcourt, Toronto

Messrs Sotos and Zaid, co-chairs, reported on the *Uniform Franchises Act* and associated regulations developed by their working group. The working group presented a draft *Uniform Franchises Act* at the 2004 ULCC, which was approved in principle. A resolution was passed at the Conference directing the working group to finalize the legislation and prepare regulations to be adopted at the 2005 ULCC.

The approach of the working group was to use the Ontario legislation as a working model, comparing it with the Alberta legislation, and making appropriate changes and modifications to ensure that the provisions of the proposed uniform law are clear and consistent. In addition, new provisions are included in the *Uniform Franchises Act* to make it comprehensive and in line with the realities of today's franchise industry.

The *Uniform Franchises Act* sets out a regulatory regime for the operation of franchises in Canada. It provides for the rights and obligations of franchisors and franchisees and other interested parties to a franchise. The proposed legislation also provides for dispute resolution, which includes mediation, and regulation-making authority for government.

The presenters noted that a change has been made to section 11(2) of the earlier version of the *Uniform Franchises Act* sent to ULCC delegates. The revised section allows provisions of a franchise agreement with respect to jurisdiction or venue to apply to a claim that has started in the court prior to the legislation coming into force in a particular province or territory.

The presenters also asked the ULCC to decide whether to exempt large franchisors from the requirement to include financial statements in disclosure documents for prospective franchisees. Although Alberta and Ontario statutes allow this exemption, the working group was of the view that there was no justifiable rationale, other than being consistent with the two provincial laws, to treat large franchisors differently from small ones and decided against it. As a result of renewed calls by some large franchisors for such exemption, the matter was referred to the ULCC for

guidance. The ULCC adopted the position of the working group not to grant large franchisors an exemption.

The *Regulation on Disclosure Documents* deals with information that is required in a disclosure document such as costs of establishing a franchise, earnings projection, financing, training, manuals and purchase and sale restrictions. It prescribes schedules that are required including those of current franchisees, businesses and franchise and business closure information. The Regulation also prescribes financial statements to include in a disclosure document and provides for certificates to be issued by a franchisor.

The *Regulation on Mediation* provides for the appointment of a mediator and the conduct of mediation to resolve a dispute between parties to a franchise agreement. There are rules for two types of mediation: pre-litigation and post-litigation. The Regulation also prescribes forms to be used in mediation. The Regulation represents a significant and positive development in connection with the resolution of franchise disputes in the interest of all stakeholders.

#### **RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the *Uniform Franchises Act* and the uniform regulations be adopted and recommended to the jurisdictions for enactment.

#### **INTER-JURISDICTIONAL CLASS ACTIONS**

Presenter: Rodney L. Hayley, Lawson Lundell LLP

Mr. Hayley reported on the work completed by the working group over the last year. While many options were explored, these having been discussed in the paper, the key recommendations of the working group is for the preparation of a uniform act to allow courts to certify, on an opt-out basis, a class that includes class members residing outside the jurisdiction. In support of this recommendation, it was also recommended that current rules governing jurisdiction should be changed to resolve conflicts between competing class actions and that a central class action

registry be developed. Mr. Hayley reviewed the reasons why legislation in this area is necessary although he emphasized that there may be constitutional concerns, which have not been fully reviewed, regarding the enactment of legislation in this area.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** a Working Group continue and consider the policy issues raised by the Conference and in the paper.

***UNIFORM LIMITATIONS ACT***

Presenter: John Lee, Ontario Ministry of the Attorney General

Mr. Lee reported on the work completed by the working group over the last year. The legislation in Alberta, Saskatchewan and Ontario were used primarily as models for the draft Act. The draft Act is not the product of consensus, but is a work based on compromises that were made during the development of the Act. Mr. Lee emphasized that given the amount of time the working group had to develop this legislation, and the nature and scope of the project, it was not possible to review every issue and every limitation period for every conceivable claim. In particular, real property limitation periods were not examined and Mr. Lee suggested that the May 2003 report of the Alberta Law Reform Institute on Adverse Possession and Lasting Improvements be referred to if a jurisdiction wishes to reform real property limitations law while implementing the uniform act.

Mr. Lee gave a description of the draft Act and noted that decisions need to be made by the Civil Section on the appropriate rule for contracting out of the Act and for the appropriate conflict of laws rule. In addition to the two options set out in the Report regarding contracting out of the Act, Mr. Lee noted that the working group also wished to present a third option at the meeting of the Conference. This third option would allow parties to agree to extend a limitation period, but only parties acting for business purposes would be permitted to extend or shorten a limitation period. The Conference decided that limitation periods set out in the Act may be extended, but not shortened, by agreement. The Conference also decided

that, for the purpose of applying rules regarding conflict of laws, limitations law should be considered substantive.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the *Uniform Limitations Act* be adopted and recommended to the jurisdictions for enactment.

**INSURANCE ACT**

Presenter: Peter Lown, Alberta Law Reform Institute

Mr. Lown presented a brief summary of the late Professor Jim Rendall's paper outlining the reasons pro and con for developing specific limitations rules for actions under the Insurance Act. Professor Rendall supported a two-year period for insurance claims, but suggested that time should run in insurance cases only after notice by the insurer is given to the claimant that identifies the limitation period, that identifies the consequence of a failure to meet the limitation period and that advises the claimant to seek legal advice. Denial of a claim was considered too ambiguous for serving as the commencement point for the limitation period. Mr. Lown suggested that further work may be needed especially in light of the adoption of the regime set out in the Uniform Limitations Act as discussed in Mr. Lee's presentation.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the Civil Section Steering Committee continue to work with the Canadian Council of Insurance Regulators to address the issues raised in the Report and other issues that may arise.

**THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND THE MEXICAN UNIFORM LAW CENTRE**

Presenters: Howard Swibel, President of NCCUSL

Jorge Cordero, President of MULC

The President of the National Conference of Commissioners on Uniform State Laws (NCCUSL), Mr. Howard Swibel, stressed the close links between the respective agendas of the ULCC and the NCCUSL. He spoke of the origins and purpose of NCCUSL and the current structure of working of the American Conference. 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 assignment of rents and common interest ownership. In business law, an Act on mergers, conversions and transfers and another on agricultural cooperatives have been adopted. Current projects include the misuse of genetic information, the discovery of electronic records, interstate depositions, international child abduction, limited liability companies and the management of institutional funds.

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. There was a discussion focused on the involvement of Native organizations in the NCCUSL.

Mr. Swibel spoke of the growing desire of NCCUSL to involve itself in international issues. He saw a natural link between the Mexican, Canadian and U.S. uniform conferences. As an example he 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, President of the Mexican Uniform Law Centre, said there is a growing awareness of the need for uniformity of laws within the Mexican border. This becomes critical as Mexico turns its attention to the international arena. He said that harmonized law represents a fusion of good ideas that can take advantage of opportunities. The law should respond to economic needs while respecting cultural identity. The time is

past when lawmakers can think that they can pass laws in isolation that are intended to last forever.

Like the Americans Mexico is very interested in working with the ULCC to develop legal products that can be used in all three countries. In light of the developments in Europe, North America risks being left behind unless this sort of approach is considered.

**RESOLVED:**

1. **THAT** the Reports be received.
2. **THAT** a summary of the Reports appear in the 2005 proceedings.
3. **THAT** the Uniform Law Conference of Canada express its thanks to Mr. Howard W. Swibel, President of the National Conference of Commissioners on Uniform State Laws, and to Dr. Jorge Cordero, President of the Mexican Uniform Law Centre, for their informative presentations.

***UNIFORM CHARITABLE FUNDRAISING ACT***

Presenters: Professor Albert Oosterhoff, University of Western Ontario  
Ken Goodman, Ontario Ministry of the Attorney General

At the 2004 meeting of the conference a study paper was presented that outlined the issues concerning charitable fundraising in Canada. Some provinces have already begun to legislate in this area. The conference directed that a working group be assembled to prepare a Uniform Act and commentaries.

Professor Oosterhoff and Ken Goodman outlined the work of the project and reviewed the draft Uniform Act that had been prepared. The draft Act applies only to charities and not to other voluntary organizations. Registration under the *Income Tax Act* is sufficient for provincial purposes and additional registration at the provincial level is not required. The proposed legislation includes a broad definition of 'fundraising business' and includes a number of provisions detailing how solicitation may take place.



While the draft Act regulates both fundraising businesses and charities it was noted that a province might wish to limit their legislation to fundraising businesses only. The proposed draft Act can be readily adapted to cover both fundraising businesses and charities or to regulate fundraising businesses only.

On behalf of the working group Professor Oosterhoff and Ken Goodman recommended adoption of the draft Uniform Act to the conference.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the *Uniform Charitable Fundraising Act* be adopted and recommended to the jurisdictions for enactment.

***UNIFORM TRADE SECRETS ACT***

Presenters: Tony Hoffman, former National Coordinator, Commercial Law Strategy

Clark Dalton, National Coordinator, Commercial Law Strategy

Mr. Dalton presented a paper entitled "A review of the Uniform Trade Secrets Act" authored by Mr. Hoffman, who participated in the discussion by teleconference. The *Uniform Trade Secrets Act* (UTSA), which was adopted by the ULCC in 1987, is yet to be enacted by a single Canadian jurisdiction.

The presenters reviewed the UTSA against the backdrop of the American law and the move toward the harmonization of international legal régimes as well as advances in information technology and the current business reality of the importance of knowledge and information. The review noted the difference in the way American and Canadian laws have dealt with trade secret issues. For instance, the law on trade secrets is codified in the US while it is based on common law in Canada. Also, US courts tend to adopt a property-rights-based analysis in determining the nature of a trade secret whereas Canadian courts tend to focus on the nature of the relationship between parties and whether such relationship could create a trade secret.

They noted that the UTSA remains relevant, although a few provisions are in need of reform. Suggested areas of improvement include the definition of trade secret, the exclusionary provision relating to knowledge acquired in the course of work, what constitutes 'improper means' in the context of trade secret and defences. The presenters urged the ULCC to canvass Canadian jurisdictions on their interest in enacting the UTSA before embarking on reform of the legislation.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** a review of the *Uniform Trade Secrets Act* be undertaken and a Report with recommendations be prepared for consideration at the 2006 meeting.

**ARBITRATING FAMILY DISPUTES**

Presenters: John Gregory, Ontario Ministry of the Attorney General

Anne Marie Predko, Ontario Ministry of the Attorney General

Mr. Gregory gave a brief overview of arbitration legislation across the country. It was noted that application of the *Arbitration Act* to family disputes has become controversial in Ontario. This controversy stems from whether family disputes should continue to be arbitrable and enforceable if the parties have chosen to have them arbitrated according to religious law. Faith-based family arbitration appears to be legally valid under the arbitration laws of all the common law provinces. Former Ontario Attorney General Marion Boyd, in a 2004 report to the Ontario government, took the position that family disputes should be arbitrable based on religious law if certain safeguards are implemented. Mr. Gregory discussed a number of options that the Conference may wish to consider if the *Uniform Arbitration Act* is to be amended to increase protections for parties to family arbitrations or to exclude such arbitrations entirely.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.

3. **THAT** the Chairperson of the Civil Section organize a Working Group to review the *Uniform Arbitration Act* in the context of Faith Based Family Arbitration, to coordinate/collaborate with the Coordinating Committee of Senior Officials Family Law and to report back to the Conference in 2006.

### **ARTIST COMPENSATION AND THE CANADIAN COPYRIGHT RÉGIME**

Presenter: J.F. Debeer, Professor, University of Ottawa

Professor Debeer's paper deals with the current state of artist compensation, taking a bird's eye view of recent legal developments, policy initiatives and general proposals designed to support Canadian cultural industries.

In analyzing the issue of artist compensation, he discussed three ways that Canadian cultural industries are currently supported: (1) granting proprietary rights, namely exclusive copyrights, to artists and intermediaries, (2) establishing non-proprietary rights of remuneration such as imposing levies on third party proxies - manufacturers and providers of related goods or services, e.g. Internet service providers and blank CD makers, and (3) providing public funding to creators of cultural products. His analysis also took into account the two broad categories of cultural players in the Canadian market: (1) artists, e.g. authors and performers and (2) corporate intermediaries, e.g. producers and intermediaries.

Professor Debeer concluded that Canadian copyright law does not need radical reform but some tweaking, although there are unjustifiable barriers to efficient use of cultural products. According to him, there is no reason to impose liability on third-party proxies - Internet service providers or digital equipment manufacturers, for example - in order to deal with perceived market failures. What is necessary is to reduce dependence on copyright royalties and levy revenues as primary means to support Canadian cultural players and products.

#### **RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.

## **ENFORCEMENT OF ORDERS AND JUDGMENTS RELATING TO MINIMUM EMPLOYMENTS STANDARDS**

Presenter: Frédérique Sabourin

Ms. Sabourin noted that all provinces and territories except Quebec mutually recognize and enforce each other's orders and judgments related to employment standards. The *Uniform Enforcement of Canadian Judgments Act*, the *Uniform Enforcement of Foreign Judgments Act* and the *Uniform Enforcement of Canadian Judgments and Decrees Act* do not expressly exclude such orders and judgments from their scope. Ms. Sabourin recommends that the statutes be amended to exclude orders and judgments relating to minimum employment standards. This is because reciprocity should continue to be the basis for the enforcement of these orders and judgments, as costs for representing employees in the system is borne by individual jurisdictions. Ms. Sabourin also suggested that it may be appropriate for a review of the law related to employment standards with the goal of harmonizing this area of the law.

### **RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the Civil Section Steering Committee assess whether orders and judgments relating to minimum employment standards should be expressly excluded from ULCC enforcements Acts and the advisability of enhancing and harmonizing the current legislation in this field in consultation with the authorities responsible for administering minimum employment standards in Canada.

## **RECIPROCAL ENFORCEMENT OF TAX JUDGMENTS**

Presenter: Frederique Sabourin

Ms. Sabourin noted that the *Uniform Enforcement of Canadian Judgments Act* (UECJA) and the *Uniform Enforcement of Canadian Judgments and Decrees Act* (UECJDA) do not expressly exclude tax judgments and orders. The *Civil Code of Quebec* allows for the enforcement of tax judgments from other Canadian provinces and territories only if those provinces and

territories recognize and enforce Quebec judgments. However, other provincial and territorial tax statutes do not contain specific provisions dealing with reciprocal enforcement of tax judgments and orders. Ms. Sabourin suggested that, in her view, tax judgments and orders do not fall within the scope of the Uniform Acts and should be explicitly excluded. Ms. Sabourin suggested that the *Uniform Reciprocal Enforcement of Tax Judgments Act*, which was repealed by the Conference in 1980, be revived although the UECJA and UECJDA could also be amended to include tax judgments.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the Civil Section Steering Committee assess the status of tax orders and judgments in ULCC uniform statutes and to canvass with the appropriate authorities whether the current legislation in this field would benefit from uniformity and harmonization.

**ULCC ACTS AND THE QUEBEC CIVIL CODE**

Presenter: Frédérique Sabourin

Ms. Sabourin gave an overview of the Uniform Acts that have and that have not been enacted in Quebec. This was a difficult exercise, because of the amount of work and the differences between the civil law and the common law. Ms. Sabourin stated that it would be helpful if more explanatory material were included with the uniform statutes.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the Uniform Law Conference of Canada express its thanks to Frédérique Sabourin for her informative and helpful presentation.

***UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS AND DECREES  
AMENDMENT ACT (INTERJURISDICTIONAL CIVIL PROTECTION ORDERS)***

Presenter: Darcy McGovern, Saskatchewan Justice

Mr. McGovern reported on the work of the working group. The working group had the mandate to work with the Coordinating Committee of Senior Officials - Family Law to determine how to facilitate interjurisdictional recognition and enforcement of Canadian civil protection orders. The working group was faced with a choice of developing stand-alone legislation in this area or amending the *Uniform Enforcement of Canadian Judgments and Decrees Act* (UECJDA). The working group decided upon the latter approach.

Mr. McGovern reviewed the report and the recommendations. The key recommendation was for the establishment of a new Part III to the UECJDA that would define Canadian civil protection orders, deem these orders to be orders of the superior court in the enforcing jurisdiction, expressly provide that the orders can be enforced without having first been registered and protect law enforcement agencies from liability in enforcing such orders in good faith. A discussion followed focusing particularly on whether there needs to be a reference to a "purported civil protection order" in the liability provision.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the amendments to the *Uniform Enforcement of Canadian Judgments and Decrees Act* be redrafted in accordance with the direction of the Conference and 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 November 30, 2005, the amendments to the uniform act should be taken as adopted and recommended to the jurisdictions for enactment.

**FEDERAL SECURITY INTERESTS ON RESERVES**

Presenter: Rod Wood, Professor, University of Alberta

Professor Wood, who is also a member of the Law Commission of Canada (LCC), told the ULCC about the LCC's project on federal security interests on reserves. According to him, the research project on security interests

and money judgments against First Nations property, which is still at the preliminary stage, is the third initiative by the LCC in the area of secured property law. The two other earlier initiatives focused on security interests in intellectual property and the *Bank Act* security.

He said the study was being undertaken as a result of significant effects that provisions of the *Indian Act* have on security held in respect of property on reserves. He noted that in general, with some exceptions, any legal process to enforce money judgments on property located on reserves is unenforceable, citing section 89 of the *Indian Act* that deals with restrictions on mortgage and seizure of property on reserves. The result is that conventional lending is largely frustrated by the legal régime created under the *Indian Act*.

The presenter said that in a bid to get around the protectionist provisions of the *Indian Act*, financing bodies have developed a number of creative financing methods in respect of property on reserves. He said the LCC would hope through the study to get a better understanding of how these financing methods work by assessing their viability and efficiency. The LCC will report on the progress of the project at the 2006 ULCC.

- RESOLVED:** 1. **THAT** the Report be received.  
2. **THAT** the Report appear in the 2005 proceedings.

### **PERSONAL PROPERTY SECURITY ACT**

Presenter: Rod Wood, Professor, University of Alberta

On the issue of reform of the personal property security legislation, Professor Wood called on the federal government, provinces and territories to act on the recommendations contained in the 2002-03 Report of the Working Group on Reform of Canadian Secured Transactions Law that dealt with five areas: the bank security régime, harmonization of conflict of laws rules, purchase money security interests, anti-assignment clauses affecting accounts and chattel paper and security interests in licenses.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings

***UN CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE: PRE-IMPLEMENTATION REPORT***

Presenters: J. Michel Deschamps, Partner, McCarthy Tetrault, Montreal  
Catherine Walsh, Professor, McGill University

Mr. Deschamps and Professor Walsh reviewed the UN *Convention on the Assignment of Receivables in International Trade* (2001), produced by the UN Commission on International Trade, to determine what approach Canadian jurisdictions should take in implementing the Convention and possible modifications that may need to be made to domestic laws.

The Convention seeks to eliminate the prevailing uncertainties in the legal effectiveness of international receivables financing transactions through the establishment of a set of uniform rules. The Convention applies to most types of contract-generated receivables, although certain types of assignments (such as "financial receivables") are excluded. The presenters analyzed the articles of the Convention and discussed possible amendments to the *Personal Property Security Acts* (PPSAs) of common law provinces and three territories and the *Civil Code of Quebec* (Civil Code).

To implement the Convention, the presenters recommended that the PPSAs and the Civil Code be amended to bring them in line with the Convention rule on anti-assignment clauses. In particular, the Ontario PPSA should be amended to recognize the effectiveness of an assignment of receivables as against the debtor, notwithstanding the presence of an anti-assignment clause in the original contract giving rise to the receivable.

They also recommended that the PPSAs and the Civil Code be amended to bring them in line with the choice of law régime in the Convention. According to them, these legislative changes are needed before the federal government can introduce implementing legislation.



The presenters concluded in their report that Canada and its provinces and territories are in a position to implement promptly and easily the Convention because the rules of the Convention are generally compatible with the assignment laws of Canada's legal systems.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** a Working Group be established and directed to prepare a uniform implementing Act and commentaries for consideration at the 2006 meeting.

**2002 HAGUE CONVENTION on the law applicable to certain rights in respect of securities held with an intermediary (HAGUE SECURITIES CONVENTION)**

Presenter: Manon Dostie, Justice Canada

Ms. Dostie spoke about efforts to establish a working group to draft legislation implementing the Hague *Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary*.

The Convention, which was adopted in 2002, will enable financial market participants in the global market to ascertain readily and unequivocally which law will govern the proprietary aspects of transfers and pledges of interests in respect of securities held through indirect holding systems. The Convention is intended to provide certainty on a limited but crucial aspect of such transactions.

According to Ms. Dostie, the working group, which will include members of the USTA Working Group, CSA Task Force, members of the Canadian delegation and FPT representatives, will begin deliberations in October with a view of producing a draft uniform statute for discussion and adoption at the 2006 or 2007 annual meeting of the ULCC.

An inter-provincial government group is currently working through the *Uniform Securities Transfer Act (USTA)* with the assistance of Eric Spink on behalf of the CSA Task Force. The following provinces are represented in the group: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario,

Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador. The group is undertaking a detailed review of the draft USTA to identify and address any drafting issues that might be obstacles to uniform implementation.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the Working Group continue and, if possible, prepare a uniform implementing act and commentaries for consideration at the 2006 meeting.

***UNIFORM INTERNATIONAL COMMERCIAL MEDIATION ACT***

Presenters: Manon Dostie, Justice Canada

Peter Noonan, Justice Canada

Ms. Dostie gave an overview of the UNCITRAL Model Law on International Commercial Conciliation and the work of the working group. Ms. Dostie reviewed the Uniform Act and highlighted certain aspects of the Uniform Act that varied from the Model Law. Each jurisdiction, in enacting the Uniform Act will have to decide a number of issues including: whether to include a purpose clause; whether the Act should apply to domestic conciliation; and whether specific mediation systems should be exempted.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.
3. **THAT** the *Uniform International Commercial Mediation Act* be adopted and recommended to the jurisdictions for enactment.

**PRIVATE INTERNATIONAL LAW**

Presenter: Kathryn Sabo, Justice Canada

Ms. Sabo, who reviewed the activities of the Department of Justice in private international law, highlighted a number of priority areas for the federal government.

One of the priorities is Canada's adoption of the World Bank *Convention on the Settlement of Investment Disputes between States and Nationals of other States* (ICSID Convention). Although 142 States have ratified the ICSID Convention including a majority of Canada's trading partners, only Ontario has passed legislation implementing the legislation. Canada is yet to ratify the Convention.

The federal government has been working to obtain the agreement of all provinces and territories to implement the ICSID Convention. It is hoped that if all Canadian jurisdictions could pass implementing legislation soon, Canada might be able to announce its ratification of the Convention at the May 2006 International Council for Commercial Arbitration Congress in Montreal. The ULCC adopted in 1997 a Uniform Act for the implementation of the ICSID Convention.

Other priorities include the *Unidroit Convention on International Interests in Mobile Equipment and Aircraft Protocol* and the *Hague Convention on the Choice of Court Agreements*. With respect to the former, the ULCC adopted a uniform implementing act in 2002. The federal government will continue to urge provinces and territories to consider adopting legislation to implement the Convention and the Aircraft Protocol. Legislation implementing the Convention and the Aircraft Protocol has been adopted at the federal level and in Nova Scotia and Ontario.

The *Convention on the Choice of Court Agreements* sets rules for when a court must take jurisdiction or refuse to do so where commercial parties have entered into an exclusive choice of court agreement. Ms. Sabo pointed out that although it is limited in scope, the frequency of choice of court agreements in commercial matters could make the Convention a useful tool for commercial parties doing business across borders.

According to her, the federal government would prepare a pre-implementation report, determine interest in Canada and consider preparation of uniform implementing legislation.

**RESOLVED:**

1. **THAT** the Report be received.
2. **THAT** the Report appear in the 2005 proceedings.

## **DNA MISSING PERSONS INDEX**

Presenter: Michael Zigayer, Justice Canada

A joint session of the ULCC Civil and Criminal Sections was held in which Mr. Zigayer spoke about the public consultation paper on DNA Missing Persons Index (MPI) issued by the federal government in March 2005. The government had announced that consultations are intended to help determine whether there is a will among Canadians to create such a system, and if so, to gather expertise and points of view on such complex issues as privacy of personal information, legal and constitutional jurisdiction, technical matters relating to DNA and financial implications.

The purpose of an MPI would be to identify anonymous human remains and help law enforcement personnel to connect unidentified remains with a person who has been reported missing. According to RCMP estimates, there are about 4,800 long-term missing persons cases in Canada and an average of 270 new long-term cases recorded each year.

The consultation paper poses 15 questions that touch on various aspects of a regulatory scheme for identifying human remains and cross-matching DNA samples of unidentified remains with those of missing persons for positive match. Members of the public and stakeholders were asked to provide comments by June 30, 2005.

### **RESOLVED:**

1. **THAT** the report on the DNA Missing Persons Index (MPI) Public Consultation Paper be received.
2. **THAT** copies of the public discussion paper entitled DNA Missing Persons Index (MPI) - a Public Consultation Paper appear in the minutes of proceedings of the Civil Section and the Criminal Section. <