



Fraudulent Conveyances and Fraudulent Preferences Report 2008

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UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

REFORM OF

FRAUDULENT CONVEYANCES AND FRAUDULENT PREFERENCES LAW

(Transactions at Undervalue and Preferential Transfers)

Progress Report

Submitted by Tamara M. Buckwold, Faculty of Law, University of Alberta, Edmonton, Alberta

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, may not have not been adopted by the Uniform Law Conference of Canada. They may not necessarily reflect the views of the Conference and its Delegates. Please consult the Resolutions on this topic as adopted by the

Conference at the Annual meeting.

Quebec City, August, 2008

PROGRESS REPORT 2008

[1] This update is submitted to inform the Conference of the current status of the project on Reform of Fraudulent Conveyances and Fraudulent Preferences Law by way of follow-up to the progress report delivered to the 2007 Charlottetown annual meeting. That report concluded by identifying three “next steps” to be taken in the project. Developments in relation to each of the identified points are as follows:

(a) Part II of the Report: Preferential Transfers

[2] Although Part II of the report was not completed by the end of 2007 as had been hoped it is currently in progress with completion anticipated by the end of August, 2008.

(b) Report on Quebec law

[3] Professor Élise Charpentier of the Faculté de droit, Université de Montréal has agreed to provide an ancillary report addressing Quebec law, completion of which is expected by the end of 2008. Professor Charpentier is very well qualified in this area and has agreed in addition to offer her expertise to the project as a member of the working group.

(c) The Working Group

[4] The membership of the working group has been established and an introductory conference call meeting was held in late May. Substantive meetings will begin in the fall of this year. Given the current budget for the project, it is expected that meetings will be conducted entirely by way of conference call. Any additional resources that might be allocated to the project would be used to hold one or more extended in-person meetings.

[5] The members of the working group are:

- Tamara M. Buckwold (Chair)
Faculty of Law, University of Alberta
- Thomas G. Anderson, Q.C.
Anderson Pension Consulting, Vancouver
- Élise Charpentier, Faculté de droit,
Université de Montréal
- Sarah J. Dafoe
Alberta Justice, Legislative Reform
- Anthony (Tony) Duggan
Faculty of Law, University of Toronto
- Tim Rattenbury
Office of the Attorney General, Government of New Brunswick

- Thomas (Tom) Telfer
University of Western Ontario, Faculty of Law

[6] The group has expressed a collective interest in recruiting a member representing the federal department responsible for reform of the *Bankruptcy and Insolvency Act*, which includes provisions addressing transactions at undervalue and preferences. Although this would entail further enlargement of the working group it may facilitate harmonization of federal and provincial law in this area and will be explored.

[7] The initial phase of the group's work will be the articulation of policy recommendations on an issue-by-issue basis, drawing in particular on the background study papers. This work will provide the basis for preparation of draft legislation in the second phase of the group's work.

Consultation

[8] The collective view of the working group is that an extended consultation process is not feasible or necessary. Several of the members have participated in law reform projects through the ULCC. Thomas Anderson worked as Counsel to the Law Reform Commission of British Columbia on its report on Fraudulent Conveyances and Preferences. Some members have made submissions in the federal bankruptcy law reform process. Our joint experience is that it is very difficult to identify informed and responsive target groups and individuals for purposes of consultation in relation to commercial law reform of this kind. Possible exceptions in relation to the subject under study are the Insolvency Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals (CAIRP), both of which have participated actively in bankruptcy reform consultations, including in relation to reform of the transactions at undervalue and preferences provisions of the *Bankruptcy and Insolvency Act*. We would note further that work done previously in this area and with which the group's members are familiar reflects a comprehensive range of views.

[9] In this light, the provisional plan of the working group is to submit its initial policy recommendations to the two associations identified above for response but not otherwise embark on a formal consultation process. Input will, of course, be sought and received informally by group members individually through our respective contacts. Should this not meet with the approval of the Conference we would seek your instruction and advice.

Timeline

[10] It is anticipated that the preparation of the policy recommendations will be accomplished during 2008-09 and reported to the 2009 annual meeting of the Conference. The drafting of the uniform Act will take place in 2009-10.

MOTION REQUESTED

[11] That the Working Group proceed with the preparation of policy recommendations preliminary to the preparation of a Draft Act utilizing the summary consultation process advanced in the report submitted to this meeting, and report further progress to the 2009 meeting.

Respectfully submitted,

Tamara M. Buckwold

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Conférence pour l'harmonisation des lois au
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