# Uniform Law Conference of Canada
# Halifax, Nova Scotia
# August 22-26, 2010

# Civil Section Minutes

## OPENING PLENARY

**GENERAL RESOLUTION respecting Appearance of Reports in the Proceedings**

It is the practice of the Civil Section to resolve that all written reports, and summaries of all oral reports, appear in the annual Proceedings. The purpose of a general resolution to this effect is to clarify the distinction between the formal resolution and the substantive action resolutions respecting each individual part.

**RESOLVED:**

**That** the written reports presented to the Civil Section and to the joint session of the Civil and Criminal Sections appear in the 2010 Proceedings; and

**That** a summary of the oral reports presented to the Civil Section and to the joint session of the Civil and Criminal Sections appear in the 2010 Proceedings**.**

**VOTER RESIDENCY, IDENTIFICATION REQUIREMENTS AND ABSENTEE MILITARY VOTING - Report**

Presenter: David Nurse, Department of Justice, Nova Scotia

David Nurse presented the report of the working group, which was formed in 2009 and had its first teleconference meeting in March 2010. The working group has identified three primary areas related to voter residency issues that may benefit from uniformity. The project is specifically aimed at provincial/territorial election legislation, and the working group plans to address three main issues and propose uniform provisions to address them:

1. basic voter residency requirements: how long must individuals be resident in a jurisdiction before they are eligible to vote? Currently, the requirement ranges across Canadian jurisdictions, from no residency requirement to 1 year as a resident.
2. voter identification requirements: voter identification requirements are relevant in two circumstances: first, when an individual is seeking to be placed on the voters list, and second, when a voter arrives at a poll to vote. Generally speaking, jurisdictions have attempted to balance two factors: the need to have a secure and precise vote, and the need to ensure the voting process is as easy as possible.
3. residency rules and absentee voting procedures for members of the Canadian Forces: members of the Canadian Forces may have the right to vote in their home jurisdiction, but exercising that right can be problematic given the short time frames of Canadian elections. Some provinces provide specific rules for members of the Canadian Forces, while legislation in other provinces is silent.

In answer to questions from the Civil Section, Mr. Nurse clarified that addressing issues related to electronic voting, municipal elections, and improving voting processes for disabled persons was outside the scope of this project. However, the working group will consider whether it has the capacity to investigate issues related to the validity of identification that does not contain a photo of the individual.

The Uniform Law Commission (United States) passed the *Uniform Military and Overseas Voters Act* at its meeting in July 2010. That Act simplifies the process of absentee voting for United States military and overseas civilians by making the process more uniform, convenient, secure and efficient. The Act covers all military personnel or their dependants, as well as U.S. citizens residing outside the United States who are unable to vote in person. The Act applies to all statewide and local elections, as well as to all federal elections, both primary and general.

It was agreed that for the purposes of future ULCC meetings, the name of this project will be shortened to "Voter Residency Issues".

**RESOLVED:** That having received the views and direction of the Civil Section, the working group be directed to continue to consider the issues raised in the Report and prepare *Uniform Election Act* residency provisions and commentaries for consideration at the 2011 meeting.

**HAGUE CONVENTION ON CHOICE OF COURTS AGREEMENTS - Report**

Presenter: Kathryn Sabo, Justice Canada

Kathryn Sabo presented a brief report on the draft *Uniform Choice of Court Agreements Convention Act.* The Convention is designed to set rules to determine court jurisdiction where parties to a commercial contract have adopted an exclusive choice of court agreement. The uniform Act had been considered in 2009 but adoption postponed to allow the text to be reviewed by legislative drafters.

As a result of that review, two minor changes were made to the commentary to the uniform Act. The first notes that the drafters would prefer the Convention to be reproduced in the Act itself, rather than incorporating it in a Schedule. The second recommends that the legislation come into force on proclamation, rather than on Royal Assent.

The United States has signed the Convention, but not yet ratified it. Generally speaking, once the American President has signed a Convention, the Senate is asked to ratify it and each state then passes a law to implement it. The question remains, is the country able to certify that it has implemented a treaty or convention, when not all of the states have adopted it.

**RESOLVED:** That the uniform implementing Act and commentaries be approved and recommended to the jurisdictions for enactment.

**ABUSE OF PROCESS - Uniform Act and Commentaries**

Presenter: Nolan Steed, Q.C., Justice and Attorney General, Alberta

Nolan Steed presented the *Uniform Prevention of Abuse of Process Act* and commentaries for discussion, reminding delegates that at last year's Conference, the English version of the Act and commentaries were approved in principle. Although the intention was to finalize both English and French versions by January 31, 2010, circumstances prevented that from occurring. An extension for approval was given, and the uniform Act and commentaries were subsequently circulated to jurisdictional representatives and approved by April 30, 2010. As such, the matter

was brought forward to the 2010 Conference to remind jurisdictions that the uniform Act and commentaries have been adopted.

The objective of the uniform Act is to promote access to justice by all citizens and to prevent the improper use of a court to limit public participation in debate. It includes measures to reinforce existing remedies and to encourage the courts to intervene more often to deter abuse of the judicial process.

Among other things, the uniform Act adds the rule of proportionality to the general rules of procedure. Pleadings and means of proof must be proportionate, in terms of cost and time, to the nature and ultimate purpose of the action or application, to the complexity of the matter and to the financial position of each party. The uniform Act also recognizes that a proceeding may be abusive even if the plaintiff has a reasonable expectation of success, if the court believes the proceeding was principally brought to deplete or exhaust the resources of the defendant or to dissuade the defendant or other persons from engaging in public participation.

Additional rules regarding defamation actions, included in last year's version of the Uniform Act, have been removed on the advice of the 2009 Conference.

This item was presented for information only.

**INTEREST ACT REVIEW - Report**

Presenter: Professor Tom Telfer, University of Western Ontario

Prof. Telfer presented the report on behalf of the working group. In 2009 the working group presented a preliminary report on its findings regarding whether the federal *Interest Act* had continuing relevance, and recommended that a consultation process be undertaken. Over the last year, a consultation letter was circulated to banking organizations, financial institutions, the Canadian Bar Association, consumer groups, credit counseling organizations and government ministries. Only three responses were received.

The working group's paper includes proposed amendments to specific sections of the federal *Interest Act.* Their recommendations include:

- the default rate of interest in section 3 should be tied to market rates and expressly indicate that the default rate is to be calculated as simple interest;
- clarify in section 4 that the nominal rate of interest must be disclosed;
- that sections 6 and 7 of the Act apply only to those mortgages with blended payments, and that the penalty for violation of the disclosure requirements in section 6 is that the lender be restricted to interest at the annual rate equivalent to that stated in the mortgage;
- exclude commercial mortgage transactions from the application of section 8, which prevents a lender from increasing the rate of interest on a mortgage on default.
- that all unproclaimed amendments to the *Interest Act* be repealed.

Prof. Telfer advised that after the working group's paper was distributed to delegates, the federal government announced a consultation taking place on section 10(2) of the *Interest Act* (exemption of corporations from prepayment rights). While the working group had not recommended any amendments to section 10(2), Prof. Telfer offered on behalf of the working group to review the consultation documents and provide comments, if any, to the federal government.

The working group's recommendations regarding sections 6 and 7 were the subject of considerable discussion among delegates. After discussion, the working group revised its original recommendation and recommended repeal of those two provisions.

**RESOLVED:**
That the final report of the working group and its proposals for amendments to the *Interest Act* (Canada) are adopted subject to:

- the commentary to the proposed amendments to current section 4 being revised to recommend a policy of compliance with a single disclosure regime, *i.e.* where the lender has complied with a more specific applicable federal, provincial or territorial cost of borrowing regime, section 4 would not apply; and
- the report and the model amending Act attached as Appendix "A" to the report being revised to recommend the repeal of current sections 6 and 7 with new commentary outlining the consequence that there would be classes of mortgages not subject to current provincial or territorial cost of borrowing disclosure regimes (principally commercial mortgages) to which no legislatively mandated cost of borrowing regime would apply.

That the working group consider subsection 2 of section 10 of the *Interest Act* in the context of the recent federal consultation paper on that provision and if they have comments on that provision to provide them to the Chair of the Civil Section by way of a supplement to their report so that the Chair can circulate such supplemental report to the jurisdictional representatives by October 1, 2010. If there are no objections to the supplemental report after circulation to the jurisdictional representatives, it will be forwarded to the Government of Canada for consideration on or before October 15, 2010.

**TRANSACTIONS AT UNDERVALUE AND PREFERENTIAL TRANSFERS - Report**
Presenter: Professor Tamara Buckwold, Faculty of Law, University of Alberta

This project has two parts. Professor Buckwold presented the report of the working group and its final recommendations on Part 1: Fraudulent Transactions/Transfers at Undervalue.

The law in this area is designed to allow unsecured creditors to recover property that would have been available to satisfy their claims had it not been transferred away by the debtor. It has two policies at its root: deterring conduct intentionally designed to deprive creditors of their rights of recovery, and redressing creditors' loss when this conduct occurs.

In the view of the working group, the law should be based on the premise that actual interference with creditors' rights of recovery is wrong, except to the extent that countervailing considerations require the protection of other legitimate interests. If a transfer affects a debtor's ability to pay his or her creditors, the creditors should be entitled to recover.

Ultimately, the working group proposed three causes of action designed both to redress loss to creditors and to deter debtors and those who deal with them from entering into transactions that defeat or obstruct creditors' rights of recovery. The recommended causes of action are:

1. The debtor is or becomes insolvent, and there has been conspicuously inadequate consideration or the transaction results in the debtor depleting his or her assets;
2. The debtor had an intention to hinder creditors' enforcement rights, and there has been conspicuously inadequate consideration or the transaction results in the debtor depleting his or her assets.

3. Both the debtor and the transferee shared an intention to hinder creditors' enforcement rights.

The working group has recommended a non-exhaustive list of factors that may be considered by the court when an order for relief is sought. None of the factors are intended to be decisive of the issue, however; the court will have to make its finding based on consideration of the totality of evidence presented.

Efforts have been made to ensure the recommendations are consistent with the recently amended federal *Bankruptcy and Insolvency Act* (BIA), and will align with provincial exemptions law, wherever possible. The proposed provisions would make inter-spousal transactions effected by a separation agreement or court order subject to challenge only under where both the debtor and his or her spouse enter into the transaction for the primary purpose of hindering creditors.

The working group made a conscious decision not to make special rules for transactions which convert non-exempt property into exempt property in the debtor's hands. This kind of transaction should be dealt with in exemptions law, not in fraudulent conveyances and preferences law. Similarly, no special rules will be created to address the interface between the reformed Act and creditors' relief law.

With respect to remedies, the working group recommends allowing the court to fashion a remedy to restore the property or value transferred to qualifying creditors, taking into account any consideration given and other investments made by the transferee in reliance on the transaction. A non-inclusive list of forms of order should be included in the uniform legislation. The court order should be formulated in such a way as to feed the proceeds of a judgment into provincial creditors' relief legislation.

The working group has recommended a limitation period of 1 year from the date of the transaction, subject to concealment by the transferee. The "date of transaction" is the date the property or benefit is transferred, created or conferred. Where a transaction is the provision of services over time or a series of closely related events, the date of transaction would be the date the services or events are substantially completed. If the transferee conceals the transaction, the limitation period becomes 1 year from the date the claimant knew or ought reasonably to have known of the transaction, but not later than 5 years from the date of transaction.

There was considerable discussion among delegates regarding the choice of limitation period, given it varies from the provincial standard of 2 years. Prof. Buckwold indicated that the limitation period is consistent with that in the *Bankruptcy and Insolvency Act,* and that the policy encourages creditors to be diligent in pursuing their legal rights. The working group chose a unique limitation period for these transactions in order to allow some assurance or certainty that a transaction won't be upset a long time after it occurred. However, some delegates argued that the ULCC has long supported the policy of having all limitation periods in one Act, unless a strong case can be made for an exception. Prof. Buckwold agreed to take the matter back to the working group for further discussion.

The working group will resume meeting in the Fall of 2010 to work on recommendations relating to Part II: Preferential Transfers. It anticipates that the final recommendations on Part II will be presented to the Conference at its 2011 annual meeting. The working group also plans to have a draft *Uniform Reviewable Transactions Act* ready for presentation to the Conference at its 2012 meeting.

**RESOLVED:**
That the report of the working group on Part 1: Transactions at Undervalue and Fraudulent Transactions is accepted;

1. That the working group is directed to report to the Conference at the annual meeting of 2011 regarding comments and suggestions received in relation to the report on Part 1;
2. That the working group is directed to develop recommendations on Part 2: Preferential Transfers, and to deliver a report to the Conference at the annual meeting of 2011; and
3. That the working group is directed to initiate work on the drafting of a *Uniform Reviewable Transactions Act*, and in so doing may take into account comments received in relation to the report on Part 1.

## UNIFORM CHILD STATUS ACT- Report

Presenter: Elizabeth Strange, Office of the Attorney General, New Brunswick
Lisa Hitch, Coordinating Committee of Senior Officials (Family)

Elizabeth Strange and Lisa Hitch presented the report of the joint ULCC and CCSO working group, which included a draft *Uniform Child Status Act.* Advances in reproductive technology have resulted in increasing instances of legal uncertainty of parents and children. As existing legislation varies across the country, couples and individuals wishing to be legal parents have had to resort to filing court challenges, and the result is that the law is developing in an inconsistent *ad hoc* way. The working group's goal is to modernize and replace the *Uniform Child Status Act* of 1992.

The approach taken in the new *Uniform Child Status Act* is to recognize the birth mother link, to equalize the natural and assisted reproduction models so that the two processes are treated the same as much as possible, and to consider the intentions of those who wish to parent. A court process remains for persons who are left out of the determination of parentage at birth but who seek to be named as parents after birth.

The following principles were used by the working group to guide the preparation of the uniform Act:

1. respect Canada's obligation under the *UN Convention on the Rights of the Child*, including
   - recognizing the best interests of the child as a primary consideration
   - protecting the child from discrimination
   - ensuring the status of the parent-child relationship is protected from birth;
2. promote equality of treatment of children, regardless of the means of their conception;
3. avoid the commodification of children and reproductive abilities;
4. recognize that women and men perform distinct roles in reproduction, which may merit distinct treatment for the woman who gives birth;
5. recognize that, while generally a child has a maximum of two legal parents, there are specific limited situations where it is appropriate to recognize additional legal parents; and
6. promote clarity and certainty of parent-child status at the earliest possible time in the child's life.

The working group noted that other areas of law may require review and adjustment as a consequence of adopting this legislation, including laws relating to human tissue, intestate succession, dependants' relief, wills and estates, and vital statistics.

Delegates expressed some concern about the interplay of sections 18 and 19 of the draft uniform Act, which relate to the identification of parents on birth certificates. Ms. Hitch clarified that section 18 was included in the draft uniform Act for greater certainty, as there is no need to clarify by way of a declaratory order if there is a birth certificate. Some delegates felt that the inclusion of section 18 confused the issue and may not be necessary. The working group will revisit this issue.

Sections 12 and 13, dealing with extra-provincial declaratory orders, were also identified as provisions that needed to be reviewed and possibly reworded for better clarity.

The Supreme Court of Canada has heard a matter related to Assisted Human Reproduction, but it is not expected to issue a ruling in the near future. In light of this, delegates debated whether the approved policy in this area should take the form of a Model Act, which is provided as information to the jurisdictions, rather than a uniform Act which is recommended to jurisdictions for enactment. Concerns were raised with timeliness, as some jurisdictions are moving on AHR legislation now. Further, Ms. Hitch indicated that the commentaries to the uniform legislation can be supplemented to highlight areas of concern.

**RESOLVED:**
That the report of the working group be accepted; and
That the directions of the Conference be incorporated into the uniform Act and commentaries and circulated to jurisdictional representatives. Unless two or more objections are received by the Executive Director of the Conference by November 30, 2010 the draft Act should be taken as adopted as a uniform Act and recommended to the jurisdictions for enactment.

## UNIFORM TRUSTEE ACT - Report

Presenter: Russell J. Getz, British Columbia Ministry of the Attorney General
Peter Lown, Q.C., Alberta Law Reform Institute

Russell Getz presented the report on the Uniform Trustee Act project, which is aimed at creating new legislation to replace existing trustee statutes. The working group received direction from Civil Section delegates at the 2009 Conference, and as such the principal activity of the working group over the last year has been the ongoing drafting of the uniform Act, which will be informed by the work of British Columbia Law Institute's Committee on the Modernization of the Trustee Act, as well as by Saskatchewan's *Trustee Act, 2008.*

The national Canadian Bar Association trusts law section has been kept apprised of this project. The working group will continue its drafting and revisions over the remainder of 2010.

**RESOLVED:** That the working group be directed to continue to prepare the *Uniform Trustee Act* and commentaries for consideration at the 2011 meeting.

## CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS

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

John Lee presented a report written by John Gregory (Ontario) regarding whether Canada should accede to the Convention on the use of Electronic Communications in International Contracts, and if so, what uniform legislation could be prepared to implement it.

The report concludes that Canada should accede to the Convention, at least for international contracts. The Convention will help establish consistent rules around the world for using e-communications in international contracts. As there is no guarantee that the law applicable to an international contract would be our own domestic law, the Convention may be preferable to both the uncertainty about the use of the electronic medium, and to the application of even less desirable rules found in the domestic law of the other party.

The Convention is largely compatible with existing Canadian law. The general language of application is satisfactory, without need for special declarations limiting its applicability. However, the Convention should be applied to international contracts only and not to domestic contracts, given that our domestic law has some minor yet notable differences. A dual regime avoids the problem of having to harmonize provincial legislation.

Canada could accede to the Convention and bring it into force in the provinces and territories that choose to implement it. While concerns have been expressed in previous years regarding applicability in Quebec, Quebec could choose not to implement the Convention without preventing those common law jurisdictions that wish to benefit from the Convention from doing so.

A short implementation statute was included in the report.

Delegates to the Conference recommended expanding the commentary to the uniform Act, and suggested a working group be established to ensure there is a full policy discussion of the options made available by some of the special declarations.

**RESOLVED:**
That the report and recommendations be accepted.
That consideration be given to the implementation of international conventions, including the work done by any other working group, and that a uniform Act and commentaries be presented to the Conference in 2011.

***Joint Session of the Civil and Criminal Sections***
**UNIFORM *PROSECUTION RECORDS PRODUCTION ACT* - Report**
Presenter: Greg Steele, Q.C., Steele, Urquhart Payne, Vancouver, BC

Greg Steele presented the report, draft uniform *Prosecution Records Production Act* and commentaries for consideration of the Conference (formerly known as the "Collateral Use of Crown Brief Disclosure" project). The uniform Act is aimed at codifying principles set out in the Ontario Court of Appeal decision in *D.P*. v. *Wagg* (2004), 71 O.R. (3d) 229.

There is an ever-increasing number of applications seeking production of records in the possession of the Crown or police as a result of an investigation or prosecution. Often, such requests are handled informally. The uniform Act is not intended to interfere with such informal arrangements; instead, it is intended to address those instances where the informal regime breaks down and the Attorney General or police refuse to consent to production. A court application would then follow.

In the absence of special circumstances, the working group supports the general rule that production of a prosecution record should be delayed until the prosecution or investigation to which it relates is completed. Child protection proceedings would receive different treatment, however, because of the urgency that generally surrounds such proceedings. Where the well-

being of the child is at stake, serious harm could occur if proceedings were delayed, and as such there is no requirement to wait for the prosecution or investigation to be completed before applying to court.

Under the uniform Act, when an application is made to court for production of records, and the court must balance the public interest in promoting the administration of justice by providing full access to the prosecution record, against the public interest in preventing or limiting access to or use of the prosecution record. The uniform Act lists factors that a court is to consider, in exercising its discretion, however no order can be made requiring the production of a prosecution record without the consent of the Attorney General or relevant police force.

Discussion at the meeting further clarified that the uniform provisions were not intended to apply to fatality inquiries or public inquiries, as those processes are generally carried out by or in cooperation with the Crown. Any disputes regarding records would be handled through the Crown's own internal processes. Further, public inquiries normally have terms of reference which would determine the scope of records that could be obtained.

Additional questions were raised regarding section 6 of the draft Act presented by the working group, which says that the Act does not bind the Crown. Some delegates were unclear as to the intent and effect of such a provision, wondering if it would offer the Crown the alternative of refusing to participate in a court action for production. Mr. Steele clarified that this was not the intent of the section, but that the working group would add to the commentary to clarify the point.

**RESOLVED:**
That the report of the working group and the draft *Uniform Prosecution Records Production Act* be accepted; and
That the directions of the Conference be incorporated into the uniform Act and commentaries, and circulated to both Civil and Criminal jurisdictional representatives. Unless two or more objections are received by the Executive Director of the Conference by November 30, 2010, the draft Act should be taken as adopted as a uniform Act and recommended to the jurisdictions for enactment.

***Joint Session of the Civil and Criminal Sections***
**MALICIOUS PROSECUTION- Report**

Presenter: W. Dean Sinclair, Saskatchewan Justice

Dean Sinclair presented the report of the working group, which had been established in 2006 to address whether there was a need for uniform legislation to respond to concerns about the common law evolution of the tort of malicious prosecution.

The working group's approach was to follow a Supreme Court of Canada decision in *Nelles* v. *Ontario* [1989] S.C.R. 601. Specifically, four elements must be shown to establish liability for malicious prosecution

(1) proceeding was initiated by defendant,
(2) prosecution was terminated in favour of the plaintiff,
(3) absence of reasonable and probable cause, and
(4) there was malice or that the primary purpose of the prosecution was other than that of carrying the law into effect.

In 2008, the working group became aware of an important case, *Kvello Estate* v. *Miazga*, which was winding its way through the courts. The issue at the heart of *Miazga* was the same issue that most concerned the working group: were the courts conflating the third and fourth criteria from *Nelles,* such that proof of actual malice or improper purpose was no longer required.

The Supreme Court of Canada issued its judgment in the *Miazga* appeal ([2009] SCC 51). In a unanimous decision, the Court held that the tort of malicious prosecution requires proof that a prosecutor was impelled to act for an improper purpose inconsistent with the office of a Crown attorney. The absence of reasonable and probable grounds to prosecute, standing alone, is not a sufficient basis to infer malice. Additionally, the Court concluded that there can be no finding of malice if a prosecutor initiates or continues a prosecution based on an honest, albeit mistaken, professional belief that reasonable and probable cause exists.

The working group has concluded that the decision of the Supreme Court of Canada in *Miazga* has eliminated the need to codify essential elements of the tort of malicious prosecution. As such, it recommends that the Malicious Prosecution project be concluded.

**RESOLVED:** That as a result of the decision of the Supreme Court of Canada in the *Miazga* case, the report of the Joint Civil/Criminal Section Working Group be accepted as the conclusion of this project.

***Joint Session of the Civil and Criminal Sections***
**INTERPROVINCIAL SERVICE OF OFFENCE NOTICES – Report**

Presenter: Lee Kirkpatrick, Yukon Department of Justice

Lee Kirkpatrick presented the report of the working group, which was established to examine how provincial offence notices are served on accused persons located outside the province/territory, and develop a consistent statutory approach for consideration by all jurisdictions.

The working group collected information regarding existing practices in Quebec, Yukon and Alberta, and concluded the while the legislation differed between those jurisdictions, the legislation in place in each jurisdiction best served its own particular needs. After the 2009 Conference, an invitation was extended to other Canadian jurisdictions to provide input in order to determine what practices might form the basis for a common approach, however no other jurisdiction expressed an interest. As a result, the working group has concluded that there is currently no need or benefit to be gained through the formulation of a consistent statutory approach to extra-provincial service of provincial offence notices.

**RESOLVED:** That the report by the Joint Civil/Criminal Section working group be accepted as the conclusion of this project.

***Joint Session of the Civil and Criminal Sections***
**COMPLEMENTARY PROVINCIAL LEGISLATION - Report**

Presenter: Josh Hawkes, Q.C., Justice and Attorney General, Alberta

Josh Hawkes presented the report of the working group, which was established as a result of a 2009 Criminal Law Section resolution recommending that a group be formed “to examine provincial legislative initiatives with a criminal law impact, such as civil forfeiture regimes, safe communities and neighbourhoods legislation, or witness protection programs, to share best practices, and to determine if model legislation in any of these areas should be recommended”.

The working group examined eleven areas of provincial legislation in five provinces. It concluded that it would not be appropriate to recommend uniform legislation to any of the eleven areas reviewed, but that rather, it would be more appropriate to establish coordinating mechanisms whereby Jurisdictional Representatives would provide a yearly update of provincial legislation in these areas. This would be useful to all jurisdictions contemplating development of legislation or requiring easy and quick access to a list of existing provincial or territorial legislation.

The report contains detailed information on legislation reviewed as well as an easy-to-use chart containing information on the jurisdictions and their legislation.

**RESOLVED:**
That the report of the working group be accepted;
That the working group receive information from all jurisdictions to update their legislative chart, and circulate the updated chart prior to the 2011 annual meeting; and
That the chart be reviewed for possible projects on uniform legislation.

***Joint Session of the Civil and Criminal Sections***

**POTENTIAL JOINT CIVIL AND CRIMINAL SECTION PROJECTS- Oral Report**

Presenters: Nolan Steed, Q.C., Justice and Attorney General, Alberta
Luc J. Labonté**,** Office of the Attorney General, New Brunswick

Nolan Steed and Luc Labonté led a brainstorming session to generate new ideas for consideration as future joint civil and criminal section projects. Currently, there are no joint civil and criminal section projects underway; while there is no requirement that joint projects be done, if there are any opportunities to be examined, there is currently a capacity to do so. Project ideas would be presented to the Advisory Committee for consideration in more depth.

Delegates were advised that the criminal section has been considering a proposal to amend *Criminal Code* provisions regarding restitution orders to cover investigation or accounting costs that are often borne by victims of white collar crime before charges are laid. Expenses such as forensic audits are often necessary and can be very expensive. One delegate suggested that consideration could be given to expanding this to become a joint project to consider if there are other civil law approaches that could assist these victims of white collar crime.

Any other suggestions that arise may be provided to any member of the Advisory Committee.

**TRUST INDENTURE PROVISIONS - Report**

Presenter: Philippe Tardif, Borden Lander Gervais LLP, Toronto, Ontario

Philippe Tardif presented the report of the working group, which was established after the 2009 Conference approved a project to study and report on the trust indenture provisions found in certain corporate statutes across Canada.

Trust indentures are used in commercial financing to simplify the issue and administration of debt instruments involving numerous investors. The trust indenture is a deed indenture or similar document wherein the issuer or guarantor of debt obligations appoints a second person to act as the trustee for the holders of those debt obligations. The trustee becomes the single point of contact with the borrower for the bondholders. Trust indentures permit large-scale debt issues to

raise large amounts of capital by borrowing relatively small amounts on identical terms from large numbers of investors.

In Canada, trust indentures are currently subject to aspects of corporate law, securities law, trust law and contract law. There are significant differences between relevant federal and provincial laws, sometimes leading to overlap and other times to outright legislative conflict. For Canadian issuers, it is often also necessary to consider applicable U.S. law and practice because Canadian bonds may be traded in U.S. capital markets.

The report reviews the history of American trust indenture legislation, as well as existing Canadian legislation. Canadian legislation is largely modeled on the American *Trust Indenture Act of 1939*, although it is not as expansive in scope. The working group has recommended that trust indentures in Canada should continue to be regulated as long as they are regulated in the U.S., and that the law should be uniform or substantially harmonized across the country. Further recommendations include

- the provisions should apply to all trust indentures, irrespective of the domicile of the issuer or the nature of the issuer;
- the provisions should be located in securities legislation, rather than corporate statutes;
- the CSA should develop a uniform national instrument outlining the minimum requirements of trust indenture, and an issuer would be deemed to be in compliance with the law if they are compliant with the national instrument;
- a uniform and reciprocal scheme of exemptions should apply, such that issuers would only be subject to one statutory legislative scheme governing trust indentures;
- Canadian securities regulators should be able to grant relief on a case by case basis; and
- compliance with the regulatory requirements should be required once a prospectus has been filed.

The working group noted that there should not be an explicit exemption from trust indenture regimes for small issuers. Instead, the small issuers would need to apply for an exemption.

Some questions were raised about the working group's recommendation that a trustee must be a trust company incorporated under Canadian or American law: specifically, whether there was a solid policy reason for automatically recognizing American trust companies, but not companies incorporated in other nations. Mr. Tardif indicated that traditionally there has been a high level of reciprocity with the United States in this area; however consideration could be given to using a more flexible approach as long as we retained regulatory certainty within the country.

**RESOLVED:** That the working group be directed to continue to consider the issues raised in the Report and the direction of the Civil Section and that the working group prepare uniform trust indenture legislation and commentaries for consideration at the 2011 meeting.

## INFORMAL PUBLIC APPEALS - Report

Presenter: Arthur Close, Q.C., British Columbia

The working group was established in the Fall of 2009 pursuant to direction from the ULCC Advisory Committee on Program Development. Arthur Close presented the report of the working group, which outlined the approach taken to address spontaneous public appeals for donations, either for a charitable or non-charitable purpose.

Informal public appeals often seek donations in response to a natural disaster or to a news story of an individual or family is distress. Ultimately, however, the fundraisers may be left with

surplus funds, without a clear idea of how those funds may be handled. Differences exist between funds that, according to law, have a charitable purpose and those without. Ultimately, the working group recommended that a stand-alone *Uniform Informal Public Appeals Act* (UIPAA), based on the extensive work of the BC Law Reform Commission, be created.

The legislation would not apply to a fund raised by a body that is registered as a charitable organization, as there already is legislation in place governing charitable fundraising. For other fundraising, however, the working group has identified a number of key features of possible uniform legislation. Those who direct the public appeal are trustees of the donated money, although the savings institution where the funds are collected is not. A model trust document would be included in a Schedule to the UIPAA and its provisions would be deemed to apply, as long as they do not conflict with other governing documents of the trust.

UIPAA would authorize a court to approve a scheme to distribute the surplus, and in certain circumstances an application could be made to court to have the surplus of a non-charitable trust distributed *pro rata* among those who donated over a certain threshold amount.

UIPAA legislation would be primarily recommended for implementation in the common law jurisdictions of Canada. While the principles would be suitable for adoption in Quebec, the working group recommends that a Quebec-specific statute would be more appropriate than a French language translation of the UIPAA.

The working group is currently conducting a consultation and anticipates presenting a final draft UIPAA to the Conference at its 2011 meeting.

Some discussion was generated regarding whether the provisions relating to public appeal funds could be incorporated into existing trustee legislation. Mr. Close indicated that the necessary provisions are too detailed and specific to be a good fit with our *Uniform Trustee Act.* However, the two pieces of legislation would not operate in isolation from each other.

Some concerns were voiced regarding section 5(8) of the draft UIPAA, which states that a surplus of less than $10,000 may be distributed among bodies that are identified by regulation. This would require the government to pick and choose among charities, which could be politically unpalatable. Mr. Close indicated that the working group would welcome alternative suggestions on this point.

**RESOLVED:** That the working group be directed to continue to consider the issues raised in the Status Report and the comments which will be received on the Consultation Paper, and prepare a *Uniform Informal Public Appeals Act* and commentaries for consideration at the 2011 meeting.

**UNIFORM INTERPRETATION ACT- Report**

Presenter: Clark Dalton, Uniform Law Conference

Clark Dalton presented a short report outlining a proposal to create a new model *Interpretation Act.* There are currently three uniform Acts related to principles of interpretation on the ULCC website: the *Uniform Statutes Act,* the *Uniform Regulations Act,* and the *Uniform Interpretation Act,* however they have not been reviewed in a number of years and some thought is being given to whether they could be consolidated or improved. A two-tier working group is currently being established, comprised of a core group to scope out a manageable range of issues and develop a work plan, and a broader group of individuals who will be asked to provide their views. Two drafters will be involved, one of whom who will be able to provide comments on the French

version. As the project may require considerable discussion and consultation, it is anticipated this will be a multi-year project.

**RESOLVED:** That a working group be established and directed to report back to the Conference in 2011.

**WILLS AND SUCCESSION CONFLICT PROVISIONS - Report**

Presenter: Peter Lown, Q.C., Alberta Law Reform Institute

Peter Lown presented a report of the working group on Wills and Succession Conflict Provisions. The task of the working group was to review Professor Gerald Robertson's 2009 study paper, which had set out recommendations on three primary subjects: testate succession, intestate succession and matrimonial property rights on death.

(1) The working group agrees that those jurisdictions which have not implemented the choice of law rules contained in the 1966 revisions to the *Uniform Wills Act* should give active consideration to doing so.
(2) The working group agrees that section 40 of the *Uniform Wills Act* should be amended to include the law of the testator's nationality and habitual residence at the time of death in the list of legal systems which determine the formal validity of a will in respect of moveables.
(3) The working group agrees that section 40 of the *Uniform Wills Act* should be amended to include the law of the place where the property is situated in the list of legal systems which determine the formal validity of a will in respect of moveables.
(4) The working group agrees that section 40 of the *Uniform Wills Act* should be extended to include wills relating to immoveable property.
(5) The doctrine of renvoi should not be abolished, but its operation should be restricted (covered by recommendation 1).
(6) The working group recommends that the *Uniform Wills Act* should be amended to include a codification of the common law rules relating to capacity to make a will in respect of moveables and immoveables. While the law in the common law provinces differs from the law in Quebec on this point, the working group is to unify the common law in a way that also harmonizes with the civil law approach.
(7) The working group believes it should be left to the courts to determine which juridical category applies to the issue (for example, matrimonial law or succession law), so as then to be able to select the applicable choice of law rule.
(8) The working group does not recommend a wholesale adoption of the unitary approach underlying the 1989 Hague Convention, but a few changes should be made that are consistent with that Convention.
(9) The working group recommends that the *Uniform Intestate Succession Act* be amended to prevent a surviving spouse from claiming multiple preferred shares on intestacy and from circumventing the restrictions on "double dipping".
(10) The working group does not recommend that intestate succession legislation be amended to include choice of law provisions to determine issues of status.
(11) The working group agrees that those jurisdictions which have not implemented the *Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings Act (1997)* should give active consideration to doing so.
(12) The working group does not recommend that uniform legislation include provisions addressing the issue of how the division of matrimonial property upon death should be characterized for choice of law purposes.

The Civil Section is currently working on a *Uniform Wills* Act, and Prof. Lown noted that the above recommendations could be incorporated into that project.

**RESOLVED:** That the report of the working group be adopted as guiding policy with respect to conflict of laws issues arising in succession.

**UNIFORM WILLS ACT- Report**

Presenters: Peter Lown, Q.C., Alberta Law Reform Institute
Sandra Petersson, Alberta Law Reform Institute

Ms. Petersson provided a brief history of the existing *Uniform Wills Act*, which was first advanced in 1929 and reflected much of the English *Wills Act* of 1835. The *Uniform Wills Act* was revised in 1953, and subsequently has been adopted in nine Canadian jurisdictions. Over the years, however, the ULCC has undertaken a number of projects and recommended policy changes to the *Uniform Wills Act.* Similarly, legislative reforms have taken place across Canada and the Commonwealth. Modern Canadians may no longer be well-served by legislation that reflects pre-Victorian principles. As such, instead of simply revising the existing Act, it is time to draft a new and modern *Uniform Wills Act* from scratch.

Prof. Lown identified four main planks that could form the starting point of a review.

1. How to make a will (formal validity, authentication, corroboration, etc.)
2. How to change a will, by alteration or revocation. Address the question of what kind of changes in circumstances automatically revoke a will.
3. How to deal with changes in property or beneficiaries. Address issues related to the failure of a gift, such as lapse, disclaimer, forfeiture, renunciation, etc.
4. How to ascertain the testator's intention.

A chart was provided to delegates which identifies a number of issues that may be ripe for review, including

- whether rules regarding the testamentary capacity of minors should be revised;
- whether the law should provide for statutory wills for those who lack testamentary capacity;
- whether oral wills should be recognized, and in what circumstances;
- whether electronic wills should be recognized in their own right, or under a statutory dispensing power;
- whether holograph wills should be recognized, and in what circumstances;
- whether pre-printed will forms are valid wills;
- whether a will is valid if the testator's signature is located somewhere other than at the end of the document;
- how many witnesses are required and must all witnesses be concurrently present with the testator at the time of signing;
- whether a will must be published in order to be valid;
- whether the rules regarding incompetence of witnesses should be revised;
- whether a disposition to a person who was a witness to the will be void.

Delegates suggested that the working group also review issues related to the use of new media in the making of wills, as well as the importance of portability of wills to reflect today's highly mobile society. Also, the materials put together by the Civil Section working group on Wills and Succession Conflict Provisions would be incorporated into this project.

Prof. Lown proposed that the next step in this project would be to develop briefing materials and conduct a consultation, with the goal of developing a more formal policy statement for approval by the Conference.

**RESOLVED:** That a working group be formed to prepare a new *Uniform Wills Act* in accordance with the direction of the Conference, and report back to the Conference at its 2011 meeting.

**IDENTITY THEFT- BREACH NOTIFICATION- Report**

Presenter: Gail Mildren, Manitoba Justice

Gail Mildren presented the report of the working group on Identity Theft: Breach Notification. Over the last year, the working group consulted with almost all of Canada's independent privacy review bodies, as well as with legal and privacy groups and business representatives, and has prepared uniform legislation on breach notification that is intended to fit into privacy legislation across the country.

The draft uniform Act is presented in the form of a bill to amend privacy statutes already in existence in each jurisdiction. It imposes a duty on entities that hold personal information to notify individuals the information is about when there has been a compromise of security of that information. Where a person with control of personal information has reason to believe that the information has been accessed in a manner not authorized by the privacy legislation, and that access presents a real risk of significant harm to the people to whom the information relates, the holder must notify them of the breach of privacy.

As well, in the case of a material breach of privacy, the holder must notify the oversight authority. The working group believes that the primary duty to notify affected individuals should lie with the person with control of the information, that is, the person responsible for its security. This rule minimizes delay and puts the responsibility on the person responsible for the situation. It also reduces the workload on the privacy authority's office.

Regulations may prescribe the contents of the notice. The working group accepts that matters of detail can be left to regulations, because the privacy authorities across the country have a practice of close collaboration in setting standards and practices.

Discussion among Civil Section delegates resulted in the following directions being given to the working group, in response to the report's drafting notes:

1. The primary duty to notify affected individuals should lie on the person with control of the information (not custody and control).
2. The list of factors relevant to determining whether a breach is material should not specifically include likelihood of harm.
3. Stating that the notice of a breach that is given to an individual must be "conspicuous" is sufficient.
4. No time limit is necessary regarding when a privacy authority must act, in response to notification of a breach.
5. A note should be added to the uniform Act indicating that in jurisdictions where a privacy authority does not have order-making powers, the provision relating to directions to an organization may not be necessary.
6. Given the existing provision that states no individual shall be convicted of an offence if (s)he establishes that (s)he acted reasonably in the circumstances, there is no need for a

further provision indicating that individual directors have the onus to prove that they took reasonable care to prevent their organization from committing the offence.
7. The working group raised the possibility of having a traditional "mens rea" exposure to penalties for failure to follow the form or content requirements that require little judgment, but a due diligence defence to charges that involve failure of judgment of materiality of a breach, the reality of a risk or the significance of harm. However, delegates to the Conference agreed that the due diligence defence is appropriate for all prosecutions for non-compliance.
8. No specific provision is necessary to address issues of civil liability. The common law is clear on this point.
9. The French translation of the draft Act should be reviewed for accuracy.

The uniform Act does not provide civil remedies for data breaches, nor does it provide for statutory damages. However, it contains a provision ensuring that a holder who fails to give notice of a breach may have the fact of the breach and the identity of the holder made public.

Delegates

**RESOLVED:** That the directions of the Conference be incorporated into the uniform Act and commentaries, and circulated to jurisdictional representatives. Unless two or more objections are received by the Executive Director of the Conference by November 30, 2010, the draft Act should be taken as adopted as a uniform Act and recommended to the jurisdictions for enactment.

**AMERICAN UNIFORM LAW COMMISSION- Oral Report**

Presenter: Robert A. Stein, Uniform Law Commission (United States)

In his address to the Conference, Mr. Stein provided some information about the ULC (United States) annual meeting in July 2010. There were eleven Acts and one report put forward for final approval, which made it a very busy session. Included in this year's agenda were the *Collaborative Law Act, Collateral Consequences of Conviction Act, Military and Overseas Voters Act, Protection of Genetic Information in Employment Act, Revised Uniform Law on Notarial Acts*, and the *Revised Model State Administrative Procedure Act.* Final action has also been taken on the UN Convention on Independent Guarantees and Stand-By Letters of Credit as well as on the e-commerce convention.

Mr. Stein some new projects that the Commission is considering, in areas including *Mareva* injunctions, marital and premarital agreements, manufactured housing, and the *Hague Convention on the Protection of Children.* On behalf of the Uniform Law Commission, Mr. Stein expressed interest in future joint projects with ULCC to address areas of shared values and common principles, and identified the implementation of international treaties as a particular area of interest.

**RESOLVED:** That the ULCC express its thanks to Robert Stein, President of the Uniform Law Commission, and Michael Houghton, Chair of the Executive Committee of the Uniform Law Commission, for their interesting and informative presentations.

**MEXICAN UNIFORM LAW CENTRE- Oral Report**

Presenter: Dr. Jorge Sánchez Cordero, Mexican Center of Uniform Law

Dr. Jorge Sánchez Cordero was unable to attend the meeting, and sent his regrets along with a written report.

**RESOLVED:** That the ULCC express its regret that Dr. Jorge Sánchez Cordero, Director of the Mexican Uniform Law Centre, was unable to attend the meeting, and express its thanks to him for forwarding his informative written presentation.

## PRIVATE INTERNATIONAL LAW- Status Report

Presenter: Kathryn Sabo, Justice Canada

Ms. Sabo provided an overview of activities and priorities of the Federal Department of Justice in International Private Law. A draft written report was also provided to delegates which outlines the Department's work in International Commercial Law, Judicial Cooperation and Enforcement of Judgments, Family Law, and Protection of Property. The final version of this document will be made available on the ULCC website.

Some highlights of the last year include:

- In October 2009, the Department of Justice hosted a free seminar on harmonization of private law at the international level.
- International Commercial Law:
    - UNCITRAL:
        - finished the supplement on Security Rights in Intellectual Property, and publication is expected in the upcoming year.
        - the review of arbitration rules has now been completed. A new project will follow regarding transparency issues in treaty-based investor dispute arbitration.
        - currently working on issues related to online dispute resolution.
    - UNIDROIT:
        - finished the project on harmonized substantive rules regarding indirectly held securities.
        - will release a new edition of its governing principles sometime in 2011.
        - still working on issues regarding the regulation of satellites under the *Convention on International Interests in Mobile Equipment and Aircraft Protocol.*
        - possibly undertaking a new project related to dealing with damage caused by satellites.
- Judicial Cooperation and Enforcement of Rights
    - The Hague Conference has put together an informal working group to look at choice of law in international contracts.
    - Commonwealth Law Ministers are looking at legislation on recognition and enforcement of foreign judgments, and may put together a draft Commonwealth model law that moves away from the principle of reciprocity.
- Family Law
    - The Hague Conference is doing preliminary work in the area of kinship.
    - The Department of Justice will be working on the *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*

Ms. Sabo reminded delegates that the Private International Law group of the Department of Justice is always happy to answer questions and provide information on any of the conventions

and treaties. Currently, the Department of Justice is focusing on implementation of the following conventions:

- *Convention on the Law Applicable to Trusts and their Recognition* (The Hague)
- *Convention Providing a Uniform Law on the Form of an International Will* (Unidroit)
- *ICSID Convention* (World Bank)
- *International Interests in Mobile Equipment Convention* and its *Aircraft Protocol* (Unidroit/ICAO)
- *Convention on the Protection of Adults* (The Hague)
- *Convention on the Protection of Children* (The Hague)
- *Convention Abolishing the Requirement of Legalization for Foreign Public Documents* (The Hague)
- *Convention on Choice of Court Agreements* (The Hague)

## UNIFORM LEGISLATION FOR THE IMPLEMENTATION OF INTERNATIONAL CONVENTIONS - Report

Presenter: Kathryn Sabo, Justice Canada

Kathryn Sabo provided a status report on the implementation of international conventions. In 2009, Frederique Sabourin prepared a brief report outlining the numerous differences that could be found among the various French versions of uniform implementation statutes, and at that time Conference resolved to investigate the possibility of drafting uniform implementation legislation.

Over the last year, the federal Department of Justice has examined differences among various English uniform implementation statutes, as well as inconsistencies between English and French versions. Enough issues have been identified to justify the creation of a working group, with the objective of preparing a *Uniform Implementation of International Conventions Act* and commentaries.

**RESOLVED:** That a working group be established and directed to report back to the Conference in 2011.

## HAGUE SECURITIES CONVENTION, IMPLEMENTATION - Report

Presenter: Kathryn Sabo, Justice Canada

Kathryn Sabo provided a status report on the implementation of the Hague Securities Convention, noting that the project has not progressed in the last year. However, experts are now available to review the *Uniform Securities Transfer Act* and its provincial equivalents, and compare them with the Convention to ensure the Hague's principles are reflected.

Ms. Sabo anticipates the creation of a working group in the new year, to review the experts' conclusions and make recommendations for the consideration of the Conference.

**RESOLVED:** That a working group be established and directed to report back to the Conference in 2011.

## UN CONVENTION ON INDEPENDENT GUARANTEES AND STAND-BY LETTERS OF CREDIT - Report

Presenter: Clark Dalton, Uniform Law Conference

Clark Dalton presented the interim report of the working group.

At the 2009 meeting, the Conference recommended that the working group continue its work of preparing uniform legislation to implement the *1995 United Nations Convention on Independent Guarantees and Stand-by Letters of Credit*. A draft uniform Act has now been completed, with Part 1 establishing domestic rules in the area of independent guarantees and letters of credit, as well as aspects of international transactions not covered by the Convention. It will eventually include commentaries. Part 2 implements the Convention in Canada, and commentaries have been included.

The working group consulted with various stakeholders, and reports that the Canadian Bar Association supports the project. However, other key stakeholders such as Canadian banks and the Canadian Bankers Association have not provided any input to the working group regarding the project.

The working group has established the underlying policies, and will now work on drafting uniform legislation.

**RESOLVED:** That the working group be directed to continue to prepare a final report and uniform Act and commentaries for consideration at the 2011 meeting.

## UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS AND DECREES ACT- FOREIGN CIVIL PROTECTION ORDERS - Report

Presenter: Darcy McGovern, Ministry of Justice and Attorney General, Saskatchewan

Darcy McGovern presented the report of the joint ULCC/CCSO working group, which contemplates whether the *Uniform Enforcement of Canadian Judgments Act* should be amended to extend the application of Canadian civil protection orders to similar foreign judgments.

Civil protection orders are based on the recognition of the need to provide a tool for enforcement agencies to separate at-risk individuals from potentially violent partners or family members. Earlier amendments were made to the *Uniform Enforcement of Canadian Judgments Act* to promote immediate protection of victims of violence that have crossed provincial or territorial boundaries. The ease of international cross-border travel combined with the severe risk to an individual who cannot obtain immediate recognition and enforcement of a foreign protection order by policing agencies leads the working group to conclude that foreign recognition is a valuable tool. Further, there are no final financial or property ownership consequences that stem from such enforcement, as an order may be challenged substantively very quickly.

The report explored three options regarding foreign recognition:

1. recognize all foreign protection orders,
2. recognize only American protection orders, or
3. recognize foreign states for recognition through regulation.

While the last option was viewed as the most flexible option, the working group sought the input of attendees at the 2010 Conference. The working group concluded that generally speaking, recognizing a foreign protection order until and unless it is effectively challenged is a preferable policy to challenging the order as the first step, given that safety and protection of threatened individuals are at stake. However, Canada has yet to recognize the full faith and credit principle for orders made within the country, so it may be unrealistic to expect the principle to be embraced in with respect to foreign orders.

Alternatively, prescribing recognized foreign states through regulation would allow each jurisdiction to use its own discretion to choose which orders to recognize, perhaps based on the unique demands experienced by the local populations.

Delegates engaged in a discussion of the policy principles, and generally indicated a preference for option 1: recognizing all foreign protection orders. It was felt that there is no harm in providing protection first, and allowing a court challenge to happen second. Further, option 2 which allows each province/territory to pick and choose which orders to recognize would lead to a lack of uniformity across the country. This could become increasingly problematic in the modern mobile society.

The practical problems with recognizing foreign orders were generally recognized. For example, a police officer may be presented with a foreign protection order written in a different language: what should that officer do? Delegates concluded that education of officers needs to be ongoing in this area.

Finally, the working group was asked to consider whether the proposed policy amendments should be inserted into the *Uniform Enforcement of Foreign Judgments Act*, rather than the *Uniform Enforcement of Canadian Judgments and Decrees Act.*

**RESOLVED:** That having received the views and direction of the Civil Section, the working group be directed to prepare uniform legislation and commentaries for consideration at the 2011 meeting.

## ADVISORY COMMITTEE REPORT AND NEW PROJECTS REPORT
## REPORT OF THE INTERNATIONAL COMMITTEE

Presenters: Peter Lown, Q.C., Alberta Law Reform Institute
Clark Dalton, Uniform Law Conference

Peter Lown presented the Advisory Committee's Report on program development and management. The objective of the Advisory Committee is to transfer the learning and expertise gained through the Commercial Law Strategy to the medium- and long-term planning for the ULCC. Mr. Lown noted that the Advisory Committee met monthly over the last year, and held a two day face-to-face meeting in October where it reviewed projects then before the Conference and project proposals. It also made up a to-do list and discussed the issue of implementation of uniform Acts.

One of the primary topics of discussion over the course of the year was funding for the Conference. This year, Justice Canada indicated it would increase its current statutory grant to $50,000, which will allow the Advisory Committee to plan with more certainty on budget items in the future. Funding has been set aside to renew the ULCC website, and the Committee also looked at potential funding for specific projects that might be of interest to the various Law Foundations. Work on these projects is ongoing.

The Advisory Committee identified four issues for input from delegates. First, how do we attract experts to lead our projects? What should they be paid, if anything, and what expectations are reasonable? Second, is the conventional three-year cycle for project completion a reasonable one? Third, what do jurisdictions need, in addition to uniform legislation and commentaries, to promote implementation? Finally, is there interest in the new possible projects that have been identified, and what priority should be assigned to the various topics?

Delegates made numerous suggestions on the above questions, such as

- promote ULCC and raise its profile among legal practitioners in Canada. The CBA was identified as a body that has experience in engaging volunteers; perhaps some lessons could be learned from them.
- ensure that the topics chosen are seen as important and valuable. Many of ULCC's projects in the past relate to public law, but private practitioners would be more likely to volunteer on projects relating to private law matters.
- consider engaging long-time academics who are more likely to have tenure and would consider volunteering out of interest.
- consider simplifying the process to allow papers prepared for ULCC to be published in professional journals.
- include information regarding volunteer positions on the ULCC website.

Professor Lown asked all jurisdictional representatives to review the current list of upcoming and ongoing projects, and identify their relevance to the jurisdiction and the likelihood of implementation in the jurisdiction. This information should be provided to Clark Dalton.

**RESOLVED:** That the Conference accepts the report of the Advisory Committee and the direction undertaken by the Advisory Committee and the Steering Committee of the Civil Section.