

**UNIFORM LAW CONFERENCE OF CANADA
CIVIL LAW SECTION**

**UNIFORM TRUSTEE ACT
Progress Report**

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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 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.

**Halifax,
Nova Scotia
August 2010**

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Report on the Uniform Trustee Act Project

[1] The purpose herein is to provide a brief report on the status and development of the Uniform Trustee Act Project.

[2] The current statutes are very outdated, increasingly problematic and costly, and hence badly in need of reform. Given the commonality of the principles of trust law and the patchwork nature of the existing statutes, harmonization would be both appropriate and beneficial.

[3] It was proposed that a uniform act should be capable of national enactment and without provisions specific to any individual jurisdiction; adapted to modern usage and needs; and based on the most recent comprehensive and critical examination of the law of trusts: the seven year study of the British Columbia Law Institute (BCLI) Committee on the Modernization of the Trustee Act, which resulted in the Report of 2004, entitled *A Modern Trustee Act for British Columbia*.

[4] It would also be informed by Saskatchewan's new *Trustee Act, 2008* and by the 2007 Symposium of the Society of Trust and Estate Practitioners of Canada entitled 'Trust Law Reform in Canada', which recommended that uniform trustee legislation be prepared on the basis of the British Columbia Law Institute Report.

[5] The Civil Section resolved that a working group be established and be so directed.

[6] The working group was established with the following members: Greg Blue of the BCLI, Arthur Close QC, Executive Director Emeritus of the BCLI, Rod Fehr of the BC Ministry of Attorney General, Russell Getz of the BC Ministry of Attorney General, John

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Gregory of the Ontario Ministry of the Attorney General, Joanna Knowlton, Public Trustee of Manitoba, Peter Lown QC, of the Alberta Law Reform Institute, Tim Rattenbury of the New Brunswick Department of Justice, Philip Renaud QC, of Duncan and Craig LLP, Edmonton, Alberta, Madeleine Robertson of Saskatchewan Justice, and Donovan Waters QC, of Horne Coupar, Victoria, BC.

[7] The working group has met a number of times by telephone conference. It has completed its review and analysis of the recommended provisions and commentary in the Proposed Trustee Act in the BCLI Report. A drafting sub-group comprised of Arthur Close, Greg Blue, Russell Getz and Rod Fehr as legislative counsel has begun the preparation of a draft.

[8] In 2009, the working group identified several issues of policy which it brought forward in order to obtain direction from the Conference. Following discussion and consideration, the Conference confirmed the tentative recommendations of the working group. The description, analysis and recommendations of those issues are set out in the 2009 Uniform Trustee Act Report in the 2009 Proceedings.

[9] The recommendations of the British Columbia Law Institute were confirmed with respect to the ability of trustees to act by majority; variation and termination of trusts and the Rule in *Saunders v. Vautier*; and charitable trusts and non-charitable purpose trusts. In addition, the conference confirmed the working group's recommendation that the rules against perpetuities and accumulations be abolished.

[10] The principal activity in the past year has been the on-going drafting of the Uniform Act. The drafting committee is composed of Arthur Close, Q.C., Greg Blue, Q.C., Russell Getz, and Rod Fehr, as drafter. The drafting committee met a number of times beginning in September of 2009, until Rod Fehr was required by his duties as a British Columbia legislative counsel to devote his entire schedule to the preparation of legislation for the Spring, 2010 Session of the British Columbia Legislative Assembly. Drafting and review thereof by the full working group will continue in the autumn.

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[11] Through the good offices of Valerie Perry of Manitoba, Chair of the Uniform Law Conference Drafting Section, the Ontario Ministry of the Attorney General has graciously agreed to provide French language drafting.