

**UNIFORM LAW CONFERENCE OF CANADA**

**CIVIL LAW SECTION**

**A JOINT PROJECT WITH THE LAW REFORM COMMISSION OF  
SASKATCHEWAN**

**UNIFORM COMMERCIAL TENANCIES ACT**

**PROGRESS REPORT**

**REPORT OF THE WORKING GROUP**

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**Whitehorse, Yukon  
August 2012**

# UNIFORM COMMERCIAL TENANCIES ACT – PROGRESS REPORT

**August 2012**

## **Background**

[1] The law of Canadian jurisdictions dealing with commercial tenancies is fragmented, outdated and, in some respects, obsolete. While law reform agencies in a few jurisdictions have issued reports recommending modernization of aspects of this area of the law, no provincial legislature has enacted legislation that can be a modern precedent for reform.

[2] At its Annual Meeting in 2011, the ULCC accepted the Law Reform Commission of Saskatchewan's proposal for a project on commercial tenancies, and resolved that a Working Group be formed to undertake the project and prepare a detailed progress report for the 2012 Annual Meeting.

## **Working Group**

[3] The Working Group was formed in the fall of 2011, and is composed of: Reché McKeague (Law Reform Commission of Saskatchewan), Brennan Carroll (Borden Ladner Gervais), Elizabeth Hall (Ontario Bar Association), James Leal (Nelligan O'Brien Payne), Michael Milani, Q.C. (McDougall Gauley), and Catherine Skinner (Manitoba Law Reform Commission). Richard Olson (McKechnie & Company), who chaired the British Columbia Law Institute (BCLI) Commercial Tenancy Act Reform Project Committee until April 2009, will join the Working Group at the end of June 2012.

## **Activities**

[4] The Working Group had two conference calls prior to the drafting of this report, with another expected in late July, before the 2012 Annual Meeting. The Working Group elected to proceed with its work on the understanding that the end result will be a Uniform Commercial Tenancies Act. However, the group recognizes that this end result may change depending on the results of its work.

[5] Through its discussions, the Working Group has agreed that a modern commercial tenancies act is desirable in order to better serve unsophisticated parties to commercial leases, generally smaller tenants. The current commercial tenancy legislation is frequently so outdated as to be irrelevant, and is so scattered that it may be difficult to

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access. A modern commercial tenancies act could address contemporary issues in commercial leasing, all in one place.

[6] A uniform commercial tenancies act is desirable to better serve the national organizations that have commercial leases in multiple Canadian jurisdictions. While this will frequently be landlords, there are also several national retail stores that will be tenants across the country. Uniformity allows for greater ease in working within the legislation. Further, uniformity will, when the legislation is litigated, result in case law that may be applicable across Canada rather than in just one jurisdiction.

[7] The Working Group began its analysis by reviewing the BCLI 2009 *Report on Proposals for a New Commercial Tenancy Act*. There are six major themes presented in the report:

1. Implied provisions for commercial leases
2. Landlord's consent to an assignment or sublease
3. Application of contractual principles to leases (e.g. fundamental breach, frustration, mitigation)
4. Creation of a summary dispute resolution process
5. Bankruptcy of the tenant
6. Repeal of obsolete provisions

BCLI provided the Working Group with the committee memos that were used in the preparation of the 2009 report. This is an impressive resource, with thanks to BCLI for their generosity and spirit of sharing.

[8] In addition to the six themes from the BCLI report, the Working Group will consider the thirteen items listed in the *Proposal for a Project on Commercial Tenancy Law*, presented at the 2011 ULCC Annual Meeting. Further, it will consider the many matters raised in the numerous law reform publications on the subject through the past thirty-five years. Naturally, there will be overlap among these topics.

[9] The Working Group is currently considering whether implied terms should appear in a uniform commercial tenancies act, and if so, whether they should be mandatory or default, and what they should be. Any intersection and overlap with the short form legislation in most jurisdictions is also being explored.

**UNIFORM COMMERCIAL TENANCIES ACT – PROGRESS REPORT****Next steps**

[10] The Working Group will continue to meet on a near-monthly basis by conference call to discuss the topics noted in paragraph 8, with a further progress report expected for the ULCC Annual Meeting in 2013.