



UNIFORM LAW CONFERENCE OF CANADA

JOINT VENTURES PROGRESS REPORT (2022)

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Summary

[1] On the 23rd of August 2021, during last year's ULCC annual meeting, a draft of the roadmap concerning a reform of the general partnership and joint ventures was presented and adopted by all the delegates.

[2] The document presented, at that time, focused primarily on the mandate of general partnership law reform. The document was divided in two parts: the first part presented a summary of the work undertaken in 2005 by the ULCC and the general issues around this theme. The second part of the document presented a project comprising the stages and deadlines around the work.

[3] In the same document, it was suggested to extend the mandate of the committee to also cover *Joint-Ventures* which are now very important in business, but still not based on clear and harmonized legislation, and there is a need to recognize and accommodate joint-ventures more appropriately. In this regard, the decision concerning this aspect was left to be made by the members of the Committee themselves.

[4] Since then, the extended mandate proposed was approved by members of the Committee. Also, many discussions with members of the committee have shown a preference for the prioritization of starting with the joint venture. From their side, Peter Lown, QC and Clark Dalton, QC had this recommendation approved by the ULCC to allow the Committee to focus on the joint ventures first.

[5] Note that the committee currently comprises the following members (in alphabetical order):

- Maya Cachecho - University of Montreal
- Clark Dalton – ULCC
- Michel Deschamps - McCarthy Tétrault, QUÉBEC
- Christopher Langton - McCarthy Tétrault, TORONTO
- Peter Lown – Alberta Law Reform Institute / ULCC
- Paul Martel - Blake, Cassels & Graydon S.E.N.C.R.L
- Rebecca Warner – Gov AB

Part 1- Overview of Previous Work: The Context for Harmonization and Rationale for Reform

[6] Concerning joint ventures. Fortunately, the committee is not starting from scratch, some important work has already been done, a few years ago, by the Uniform Law Conference of Canada (ULCC) and by Alberta Law Reform Institute (ALRI).

[7] Peter Lown, QC, which I thank very much, has shared with us all documents concerning the ALRI's paper works on joint ventures, including Consultation Memorandums which consider the problem and, in particular, some solutions.

[8] "Joint venture" is a collaboration agreement between two or more enterprises to carry out a specific project. It allows enterprises to combine their forces to carry out common operation, while sharing the risk associated with the project. The project is generally limited in time. These enterprises can operate by a simple contract (with no common legal vehicle). However, if the companies that are part of it agree to carry out a joint project in a spirit of collaboration, to contribute to it by providing assets, knowledge or activities and to share the resulting profits, there is a risk that a court concludes that there is a partnership. Therefore, the contract and the behavior of the parties must not suggest that there is an intention to associate (if this is the case, the companies could be held solitarily liable). There is no way for joint venturers to be sure that a specific joint venture will not be held to be a partnership. The resulting uncertainty and confusion are undesirable.

[9] The business consortium or joint venture is a subject that has been little explored in Quebec and the other Canadian provinces and territories due, on the one hand, to the absence of specific legislative provisions governing the contractual relationship between the parties and, on the other hand, to the fact that the doctrine and jurisprudence have dealt with it inconsistently.

[10] The Committee hold three work meetings, during the last four and decided to move forward on the following three fronts:

- Identify the main legal issues arising from the use of joint ventures,
- Test the water to see if there is an appetite in the legal community for a legislation that would establish a general legal framework for joint ventures, and if so, in which way.
- As the case may be, prepare a uniform act to be submitted to the provinces and territories.

Part 2 - Operational Planning: Strategies, Steps, Budget and Timing

[11] An update of the general issues related to this theme, and a list of the practical ones experienced in the different provinces and territories.

[12] This will lead to a reflection on possible legal solutions that could improve the law and facilitate the proper functioning of joint ventures across Canada.

[13] In our opinion, it would be relevant to rely on the ALRI's work to revisit the general issues around this theme. However, we believe that it would be necessary do due diligence to be sure if there is any development happened between 2012 and 2022 and whether there is any change in the both jurisprudence and practices with respect to joint venture (do the issues around this theme remain the same today? Do the difficulties of the rule of law or the drivers for reform and harmonization proposed in 2005 remain unchanged today?)

[14] To do again a somewhat limited consultation to obtain the input of experts, practitioners and clients.

[15] We have a very limited budget for this project allowed from the ULCC, which will be sufficient to do translations. M^e Martel, whom I thank very much, has asked a junior lawyer from his office to help us doing research and coordinating consultation.

3. Timetable and Deadlines over 2 years (2022-2024):

	Sept-dec. 22	Jan. – april 23	May-june 23	August 23	Sept.23 may 24	August 24
Research: caselaw and practices with respect to joint ventures Consultation: experts, practitioners and clients.						
<u>JOINT VENTURE</u> Analyzing Data; Statement of Canadian and Quebec issues; Identification of specific issues; Report <u>PARTNERSHIP</u> Continuing Research work						
Drafting of the Uniform Act - Joint Ventures Continuing Research work- Partnership						
Adopting the Uniform Act-Joint ventures						
Summary of current partnership law in provinces and territories A list of the difficulties and challenges experienced by the provinces and territories (liability vis-à-vis third parties and partners, tax implications). Analysis of all the data obtained, with a view to harmonization Drafting of the Uniform Act- Partnership						
Adopting Uniform Act- Partnership						