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UNIFORM LAW CONFERENCE OF CANADA

REPORT OF THE CIVIL SECTION STEERING COMMITTEE SUB-COMMITTEE ON RULES OF PROCEDURE AND POLICIES

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Report of the Civil Section Steering Committee Subcommittee on Rules of Procedure and Policies

[1] Following the annual meeting of the Civil Section (Section) in 2018, a working group was formed to examine issues linked to the procedures of the Civil Section. At the Section's 2019 meeting, the working group recommended the Section produce a comprehensive set of "rules" that would add to or supplement the provisions of the By-laws of the Conference. The Section resolved that the working group should continue to consider the topic with the Section's Steering Committee.

[2] In the Spring of 2021, the Steering Committee struck a sub-committee to prepare rules of procedure and policies for the Section. The sub-committee is chaired by Valérie Simard and its other members are:

Christine Badcock – Gov't of Yukon
Sarah Dafoe – Gov't of Alberta
John Lee – Gov't of Ontario
Laurence Bergeron – Gouv. du Québec
Elizabeth Strange – Gov't of New Brunswick

[3] The sub-committee has met monthly since Spring 2021 and has developed two policies for the Section: (1) *Policy on Adoption and Amendment of Civil Section Rules of Procedure or Policy* (Annex A), and (2) *Policy on the Distribution of Materials to the Civil Section for its Annual Meeting* (Annex B). The sub-committee is in the process of developing a policy on the types of documents presented to the Section.

[4] The two annexed policies were presented to the Steering Committee under By-law 34(1) which provides that "the Steering Committee of a Section may adopt rules of procedure and policies concerning that Section from time to time and may amend existing rules of procedure and policies." The Steering Committee adopted the two policies.

[5] The Steering Committee now submits the *Policy on Adoption and Amendment of Civil Section Rules of Procedure or Policy* to the Section for approval under By-law 34(2) which provides that "[a] rule of procedure or policy or an amendment to a rule of procedure or policy shall cease to have effect if it is not approved in accordance with the Section's rules of procedure or policy governing approvals, at the next annual meeting held after its adoption or amendment."

[6] The *Policy on the Distribution of Materials to the Civil Section for its Annual Meeting* shall cease to have effect after the annual meeting as provided by By-law 34(2). The Steering Committee has agreed that it will consider readopting the policy under By-law 34(1) when it reconvenes in the Fall. The Steering Committee has further agreed to review the policy in Spring 2023 and decide whether it will present it as is to the Section at its 2023 annual meeting for approval under By-law 34(2) or whether it should be amended before it is presented to the Section.

[7] The following resolution is proposed:

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RESOLVED:

That the report of the Steering Committee sub-committee on Rules of Procedure and Policies of the Civil Section be accepted;

That the *Policy on Adoption and Amendment of Civil Section Rules of Procedure or Policy* annexed to the Report be approved by the Civil Section; and

That the sub-committee continue to consider rules of procedure and policies of the Civil Section in conjunction with the Civil Section Steering Committee and report back to the Conference at its 2023 Meeting.

Policy on Adoption and Amendment of Civil Section Rules of Procedure or Policy

Authority

34(1) Subject to subsection (2), the Steering Committee of a Section may adopt rules of procedure and policies concerning that Section from time to time and may amend existing rules of procedure and policies.

34(2) A rule of procedure or policy or an amendment to a rule of procedure or policy shall cease to have effect if it is not approved in accordance with the Section's rules of procedure or policy governing approvals, at the next annual meeting held after its adoption or amendment.

34(3) Each Section shall adopt a rule of procedure or policy governing approvals given under subsection (2).

Proposed Policy

- A member of the Civil Section Steering Committee, seconded by another member of the Committee, may propose the adoption of a rule of procedure or policy to the Chairperson of the Committee.
 - The proposal must be to establish a new rule of procedure or policy or to amend or delete an existing one.
 - The proposed rule of procedure or policy must include a brief rationale.
- The member shall provide the proposal to the Chairperson in writing, and the Chairperson must make the proposal available to members at least two weeks prior to the meeting of the Committee at which it is to be discussed and voted upon.
 - The proposal shall be made available in both English and French.
- At the meeting, the proposal will be discussed and members will be asked to vote on whether to adopt the proposal.
 - If unable to attend the meeting, a member may vote by proxy (through a proxy of their choice).
 - A member who intends to vote by proxy must notify the Chairperson in writing prior to the meeting, and identify the proxy.
 - 50% of the members of the Civil Section Steering Committee must vote on the proposal either in-person at the meeting or by proxy.
- A proposal is adopted if two-thirds of the members present at the meeting (including proxies) vote in favour of its adoption.

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- If the proposal is adopted by the Committee, the new or revised rule of procedure or policy shall be in effect until the next annual meeting. If the Committee accepts a proposal to delete an existing rule of procedure or policy, that rule of procedure or policy is of no force and effect until the next annual meeting.
- Pursuant to section 34(2) of the bylaws, the Chairperson will present the new, revised or deleted rule of procedure or policy to the Civil Section at the next annual meeting for approval.
- Approval at the annual meeting shall be done through voting by constituent jurisdictions whereby each constituent jurisdiction represented at the annual meeting shall be entitled to cast three votes. The result of any vote shall be determined by a majority of the votes cast.

Background

- Historically, the Civil Section has acted in accordance with customary practices and on a consensus basis.
- A subcommittee of the Civil Section Steering Committee was established in the Spring of 2021 to create and review written rules of procedure and policies for the Civil Section.
- The goal of establishing written procedural rules and policies is to improve transparency, accountability and to promote fair and efficient processes.
- The ULCC bylaws establish a two-step process for the adoption of rules of procedure and policies:
 - initial adoption by the Civil Section Steering Committee; then
 - formal adoption by the Civil Section at the next annual meeting.
- Once the initial adoption is completed and adopted by the Civil Section Steering Committee, the rule of procedure or policy shall be in effect until the next annual meeting.
- As a first step, Section 34(3) of the By-Laws requires the Civil Section to adopt a rule of procedure or policy that addresses the manner in which rules of procedure and policies are adopted and approved.

Subcommittee Discussion

Advance Notice Procedure

- How are Civil Section Steering Committee members notified of a proposed new rule of procedure or policy? Is notification by electronic means sufficient, or is verbal notification required at the previous Civil Section Steering Committee meeting?
 - The subcommittee preferred not to make the rule of procedure or policy approval process too formal. Notification by electronic means should be sufficient.

- What is the role of the Chairperson, once a proposal is received?
 - The subcommittee discussed whether the Chairperson simply should pass the proposal on to members without comment, or whether the Chairperson is expected to take additional steps before doing so.
 - For example, the Chairperson could advise the member who proposed the item of existing relevant rules of procedure or policies or previous discussions on the issue.
 - The subcommittee concluded that the policy need not specifically address this issue. Realistically, it's unlikely that a proposal will be generated in a vacuum. More likely that it results from some ongoing confusion or discussions about a particular issue.
 - Members will be able to flesh out more details during the lead up to the vote.
 - That said, subcommittee members felt the policy should be clear that the Chairperson cannot veto a proposal or refuse to circulate it. This recommendation is reflected in the language "The Chairperson *must...*"
- What format should new proposed rules of procedure and policies take? Is a draft sufficient, or should the language be finalized and in both languages? Should Civil Section Steering Committee members have the opportunity to provide input before the policy is drafted for approval?
 - As noted above, subcommittee members preferred not to make the policy approval process too formal.
 - Members of the Civil Section Steering Committee can suggest changes and improvements to the proposed rule of procedure or policy. It can be clarified and enhanced during the discussion prior to adoption and, as such, the specific wording need not be finalized before the meeting.
 - The subcommittee discussed whether the policy should address how a proposed new rule or policy could be amended and fine-tuned during the period leading up to adoption. Ultimately, the subcommittee concluded that there would be no benefit in adding too much detail about this. The Chairperson and members will deal with such issues on a case by case basis.
 - The proposed rule of procedure or policy should be provided in both languages.
 - Subcommittee members noted that it would be helpful for a proposed rule of procedure or policy to include information about the reason for its proposal, its purpose, and relevant background materials. This additional material could provide value when assessing the ongoing relevance of the rule of procedure or policy. Subcommittee members agreed that at minimum, the proposed rule of procedure or policy should include a brief rationale.
- How much notice should be given for approval of a new proposed rule of procedure or policy? Does the notice period depend on the complexity of the proposed rule of procedure or policy?

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- How much advance notice should the Chairperson of the Civil Section Steering Committee provide to the membership that a rule of procedure or policy has been proposed for approval?
- Generally, it was felt that 2 weeks would be sufficient, although more time should be allowed if the proposed rule of procedure or policy is complex or controversial.
- Subcommittee Recommendations:
 - The Chairperson of the Civil Section Steering Committee must make the proposed rule of procedure or policy available to the members at least two weeks prior to the meeting at which its approval is sought.
 - The proposed rule of procedure or policy will be provided in both English and French.
 - Members will be asked to vote on the adoption of the proposed rule of procedure or policy as proposed or as amended.

Quorum

- How many people representing Steering Committee members must be present at the meeting where the proposed rule of procedure or policy is presented for adoption?
 - There is nothing in the rules about a quorum.
- Subcommittee Recommendation:
 - 50% of members must be present at the meeting for the proposed rule of procedure or policy to be received and discussed.

Proxy

- What happens if a member cannot attend the meeting where the proposed rule of procedure or policy is presented for adoption? Can that member designate a proxy to vote on their behalf?
- Subcommittee members believe that it is appropriate to allow a member to vote, even if they cannot personally attend the meeting.
- Subcommittee Recommendation:
 - Each member can decide if they want to send a proxy and who that proxy will be.
 - Generally, a member who sends a proxy is encouraged to ensure that their proxy is another member or a colleague who is familiar with the issue.
 - A member who intends to vote by proxy must inform the Chairperson in writing, prior to the meeting.

Adoption of the proposed rule of procedure or policy by the Steering Committee

- What level of approval is required to adopt a new rule of procedure or policy? Is it unanimous? Simple majority? 2/3 majority?
 - It is important to get the support of most members of the Steering Committee, to ensure that formal approval at the next annual meeting is successful.
 - Concerns or issues that arise with a new rule of procedure or policy can be addressed throughout the year, prior to the next annual meeting.
- Subcommittee Recommendation:
 - Two-thirds of the Steering Committee members present at the meeting (including proxy proxies) must vote in favor of the rule of procedure or policy for it to pass.

Next Steps

- If adopted by the Civil Section Steering Committee, the new or revised rule of procedure or policy shall be in effect until the next annual meeting. If the proposal was to delete an existing rule of procedure or policy, it is of no force and effect until the next annual meeting.
- Pursuant to Standing Rule 34(2), the Chairperson will present the new, revised or deleted rule of procedure or policy to the Civil Section at the next annual meeting for approval.
 - If approved at the annual meeting, the new or revised rule becomes an official and permanent rule of procedure or policy of the Civil Section.
 - If the matter for approval is a deletion of an existing rule of procedure or policy, that rule is deleted.
 - If not approved at the annual meeting, the new or revised rule of procedure or policy lapses and is no longer in effect.
 - If the matter for approval is a deletion of an existing rule of procedure or policy, the rule is not deleted.
- Approval at the annual meeting shall be done through voting by constituent jurisdictions whereby each constituent jurisdiction represented at the annual meeting shall be entitled to cast three votes. The result of any vote shall be determined by a majority of the votes cast.

Policy on the Distribution of Materials to the Civil Section for its Annual Meeting

Authority

Bylaws

34(1) Subject to subsection (2), the Steering Committee of a Section may adopt rules of procedure and policies concerning that Section from time to time and may amend existing rules of procedure and policies.

34(2) A rule of procedure or policy or an amendment to a rule of procedure or policy shall cease to have effect if it is not approved in accordance with the Section's rules of procedure or policy governing approvals, at the next annual meeting held after its adoption or amendment.

Proposed Policy

Purpose

Much work of the Civil Section is reflected in its review and debate of proposed policies, uniform acts and commentaries at its annual meeting. In order to effectively carry out this work, jurisdictional representatives and other delegates must have adequate time to digest, analyse and consult on materials to be presented at the annual meeting. This policy sets out a framework to achieve this purpose.

Application

In this policy

“materials” are:

documents submitted in English and French concurrently to the Civil Section in which working groups seek policy direction or approval including for uniform acts, uniform rules, and model acts.

Distribution of materials

- Materials to be presented to the Civil Section at its annual meeting must be distributed to jurisdictional representatives no later than two months before the first day of the annual meeting.

Approval required for late distribution of materials

- Despite section 1, and subject to section 4, materials may be distributed less than two months before the first day of the annual meeting only if distribution is approved by two-thirds of Civil Section jurisdictional representatives.

Process to approve late distribution of materials

- Where approval is sought under section 2, the following applies:
 - (a) no earlier than three months before the first day of the annual meeting the chair of a working group must notify the Chair of the Civil Section as soon as it is known that :
 - (i) materials will not be distributed by the deadline prescribed in section 1; and
 - (ii) the working group wishes to seek approval for the late distribution of materials under section 2;
 - (b) the Chair of the Civil Section must ensure that jurisdictional representatives have at least one week to consider whether to permit the distribution of materials in accordance with section 2;
 - (c) in considering a request made under section 2, jurisdictional representatives must, where applicable, consider the following factors :
 - (i) based on the length and complexity of the materials, will delegates have sufficient time to review the materials, consult on them, if required, and formulate a position on them in time for the annual meeting;
 - (ii) familiarity with the subject-matter of the materials (e.g. if the Civil Section has considered related materials at a prior annual meeting);
 - (iii) the nature of the decisions being sought at the annual meeting (e.g. a simple policy direction, multiple complex policy directions, adoption of a uniform act);
 - (iv) whether the materials part of a priority project (e.g. a project specifically requested by government); and
 - (v) any other relevant factor identified by the working group, Chair of the Civil Section or a jurisdictional representative;
 - (d) having considered the factors in 3(c) jurisdictional representatives must advise the Chair of the Civil Section in the manner requested by the Chair if they approve the late distribution of materials.

Materials not approved for late distribution

- Materials not distributed at least one month before the first day of the annual meeting may be distributed and presented at the annual meeting for information and discussion purposes only.

Background

- The ULCC website states on its “What we Do” page that “[a]t its annual conference, the main work of the Civil Section is reflected in its review and debate of proposed "uniform statutes", which if adopted are recommended for enactment by all relevant governments in Canada”.
- The Statement of Purpose in the Constitution provides that “[t]he Uniform Law Conference of Canada has been constituted by the federal, provincial and territorial governments of Canada to provide independent and informed analysis and recommendations for the harmonisation and reform of laws in Canada”.
- Timely distribution of materials for policy direction and adoption of uniform acts allow delegates to analyse the materials, and consult where required This in turn enables the Civil Section to have meaningful deliberations at the annual meeting which leads to informed recommendations for the harmonisation and reform of laws in Canada.
- As the chairs of working groups report to the Steering Committee - Civil Section throughout the year, this policy is complementary to that process.
- This policy is intended to assist the Chair in setting the agenda for the annual meeting, and ensure that the annual meeting creates opportunity for a thorough and productive discussion and debate.
- This policy is also intended to provide working groups with clarity on deadlines.

Discussion of Subcommittee on Rules of Procedures and Policies for the Civil Section

- The Subcommittee recognized that in order for delegates to effectively deliberate on materials at the annual meeting, they need to have sufficient time ahead of the annual meeting to consider the materials and to consult if required.
- The Subcommittee considered the various types of documents that are presented to the Civil Section and decided that the policy would only apply when policy direction or approval was sought from the Section. It would not apply to reports that are simply received by the Section such as the Private International Law Report.

The Subcommittee recognized that working group members are volunteers with competing priorities and that it may be challenging for working groups to have materials ready by a strict deadline, especially when drafting may only become available in June.

- The Subcommittee considered various deadlines ranging from four months to a few weeks before the annual meeting. It was of the view that a two months deadline accompanied with a mechanism for its waiver achieved the best balance.

- Subcommittee members thought that approvals under section 2 may be given during a meeting of the Steering Committee or by email.
- The Subcommittee thought it was important to set out objective criteria in the policy (paragraph 3(c)) to help guide Steering Committee members should they need to make a decision under section 2.
- The Subcommittee decided that the number of votes in favour of a waiver of the deadline under section 2 should be two thirds of jurisdictional representatives and not unanimity. A supermajority of votes would take into account minority views and avoid granting any individual JR a veto.
- The Subcommittee discussed the resolution known by the Civil Section as the “November 30th rule” and, with the addition of section 4, rejected it for materials that are not distributed at least one month before the first day of the annual meeting.
- The Subcommittee discussed next steps for materials that are presented to the Civil Section for information and discussion purposes only. The Subcommittee thought that following the presentation of the materials to the Civil Section, a working group may decide to amend them on the basis of the discussion at the annual meeting, of comments received outside of the annual meeting, to correct issues with the translation or other edits or to reflect recent developments with respect to the subject-matter of a draft uniform act.
- The Subcommittee thought that following the annual meeting, the chair of the working group would indicate to the Chair of the Civil Section whether the working group intended to present the materials as is to the Civil Section at its next annual meeting or if it would be amending them. The Chair would then advise the Steering Committee of the status of the materials. If the materials are not amended following the annual meeting, jurisdictional representatives would have a full year to consider them and consult on them prior to the next annual meeting. If the materials are amended, their distribution would be subject to the *Policy on the Distribution of Materials to the Civil Section for its Annual Meeting*. The Subcommittee is hopeful that with clear policy on deadlines for the circulation of materials will assist working groups in their project planning.