

ULCC | CHLC

UNIFORM LAW CONFERENCE OF CANADA

**REPORT # 2 OF THE CIVIL SECTION STEERING COMMITTEE
SUB-COMMITTEE ON RULES OF PROCEDURE AND POLICIES**

**Presented by
The Civil Section Steering Committee Sub-committee on Rules of Procedure and Policies**

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 not 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 Minutes and the Resolutions on this topic as adopted by the Conference at the Annual meeting.

August, 2023

This document is a publication of
the Uniform Law Conference of Canada.
For more information, please contact
info@ulcc-chlc.ca

Report of the Civil Section Steering Committee Sub-committee 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 Section. At the 2019 annual 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 Uniform Law Conference of Canada (“ULCC”). The Section resolved that the working group should continue to consider the topic with the Section Steering Committee (the “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 – Government of Yukon

Sarah Dafoe – Government of Alberta

John Lee – Government of Ontario

Laurence Bergeron – Gouvernement du Québec

Elizabeth Strange – Government of New Brunswick

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

[3] In August 2022, the Section approved the *Policy on Adoption and Amendment of Civil Section Rules of Procedure or Policy* under By-law 34(2).¹ The sub-committee developed two further policies under this first policy: the *Policy on the Distribution of Materials to the Civil Section for its Annual Meeting* (Policy on Distribution) and the *Policy on Reports Presented to the Civil Section Annual Meeting* (Policy on Reports).

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

[4] The sub-committee presented the Policy on Distribution to the Section in 2022 for discussion purposes. The Steering Committee readopted the policy under By-law 34(1) when it reconvened in the fall with the understanding that Jurisdictional Representatives could propose amendments to the policy until spring 2023 and that final policy would be presented to the Civil Section for adoption at its annual meeting in 2023.²

[5] The Policy on Distribution has been in place for over a year and was well received by the Steering Committee and working groups. In 2022, the working group that prepared the *Uniform Benevolent and Community Crowdfunding Act* sought and received an extension from the Steering Committee under the Policy for the distribution of its report and draft uniform act.

[6] The Policy on Distribution Annex A) is now being submitted to the Section for approval under By-law 34(2).

¹ By-law 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.”

² By-law 34(1) : “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.”

Policy on Reports Presented to the Civil Section Annual Meeting

[7] The sub-committee has met monthly since August 2022 and prepared the Policy on Reports. The policy is attached as Annex B for discussion. The Steering Committee has agreed to consider adopting 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 2024 and decide whether to amend it or present it for approval by the Section under By-law 34(2).

November 30th Rule

[8] The sub-committee also examined whether a policy is needed for resolutions adopted from time to time by the Section and that generally take the form known by the Section as the “November 30th Rule.”

[9] The November 30th Rule has never been formalized in writing. It is applied to defer the adoption of a uniform act presented to the Section at its annual meeting to November 30th under conditions set out in the resolution. A cursory review of recent uses of the November 30th Rule shows that the conditions set out in the resolution vary from project to project but the resolutions always conclude with a paragraph stating that unless two or more objections are received from jurisdictional representatives by the ULCC Project Coordinator by November 30, the uniform act is be deemed adopted and recommended for enactment.

[10] The sub-committee agreed that the November 30th Rule serves a useful purpose as it allows a uniform act to be adopted after the annual meeting at which it was submitted for adoption when certain conditions are met, rather than deferring the adoption of the uniform act to the next annual meeting.

[11] The sub-committee reviewed recent applications of the November 30th Rule as well as the document *Renewing Consensus for Harmonization of Laws in Canada* discussed by the ULCC at its annual meeting in 1990 and found three different circumstances in which the Rule is applied:

1. to request that a working group implement a discrete drafting or policy decision concerning a uniform act as directed by the Section in the resolution;³
2. to allow jurisdictional representatives more time to consider a uniform act;⁴
3. to allow more time for jurisdictional representatives to provide comments on a uniform act to a working group, allow the working group to consider the need to amend the uniform act in light of such comments and if any amendments are proposed, to provide for a meeting between jurisdictional representatives and the working group to discuss the proposed amendments.⁵

³ See e.g. the Civil Section’s resolution in August 2022 on the Final Report of the Working Group on the *Uniform Gratuitous Crowdfunding Act*.

⁴ See “November 30th Rule”, *Renewing Consensus for Harmonization of Laws in Canada*, Discussion Document Prepared under the Authority of the Executive Committee of the ULC to be debated at the ULC’s annual meeting in 1990, p.17.

⁵ See e.g. the Civil Section’s resolution in August 2021 on the *Final Report of the Uniform Court Jurisdiction and Proceedings Transfer Act (2021)*.

[12] The sub-committee considered that the first circumstance listed above is an appropriate use of the November 30th Rule. However sub-committee members stressed the importance of ensuring that the resolution contain specific and unambiguous directions for the working group. In addition, it was noted that the resolution should not direct the working group to propose new policy but should only be directed by the Section to implement policy that the Section has specifically adopted.

[13] The sub-committee considered that the second and third circumstances described above were problematic and that the November 30th Rule should not be used to cure the late distribution of a draft uniform act to the Section.

[14] After much discussion, the sub-committee decided to recommend against the preparation of a policy on the November 30th Rule. Sub-committee members were of the view that a policy may be too rigid and not capture all acceptable uses of the November 30th Rule. They believed that the Policy on the Distribution that is being submitted for adoption by to the Section with this report would help eliminate instances where the November 30th Rule would otherwise be used. The Policy on the Distribution provides that reports presenting uniform acts for adoption by the Section at its annual meeting need to be circulated to jurisdictional representatives at least two months before the annual meeting. One goal of the policy is to give jurisdictional representatives sufficient time to consider draft uniform acts and provide input to the working group to assist in resolving issues before the annual meeting. The sub-committee agreed to monitor the use of the November 30th Rule to determine if this approach needs to be reconsidered in the future.

[15] The following resolution is proposed:

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 the Distribution of Materials to the Civil Section for its Annual Meeting* annexed to the Report be adopted by the Civil Section; and

That the sub-committee continue to consider rules of procedure and policies of the Civil Section and report back to the ULCC at its 2024 Meeting.