



UNIFORM LAW CONFERENCE OF CANADA

**ADVISORY COMMITTEE ON PROJECT DEVELOPMENT AND
MANAGEMENT REPORT**

Presented by
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[1] I am pleased to present this report on behalf of the Advisory Committee.

[2] The Committee has been active throughout 2023/2024. We have met monthly, with the exception of January 2024. The membership of the Committee, set out as an appendix to this report is intended to provide the wisdom and experience of the ULCC as we work on determining which projects to adopt and monitor and guide their progress. Our membership consists of past presidents, section chairs, and senior members of the bar. We also have a broad geographic representation from jurisdictions. This combined wisdom and experience is invaluable to the operations of the Civil Section.

[3] I would like to thank the members of the Committee for their work and their respectful and collegial approach to our consensus decision-making. In particular, I have had the advantage of a very able vice-chair who has filled in when necessary during my absence and is an essential partner in the chairing of this Committee. My thanks to Christine Badcock, as she has done double duty as vice-chair of this Committee and chair of the Civil Section. Both of us have had the advantage of working with Christina Croteau as she has taken up her duties as Legal Project and Research Coordinator. She has picked up many of the administrative tasks of the Committee and the working groups, and it has been a pleasure to work with her.

[4] Let me give just a little history of the development of the Committee. This finds its origin in the Steering committee of the Commercial Law Strategy. Many of you will recall that the section determined to try to produce a virtual commercial code by updating and creating the various elements of such a code. The original strategy produced a number of elements, and, to a large extent, dominated the agenda of the civil section.

[5] At the beginning of the strategy, the late Arthur Close and I brought our law reform experience to the task of creating individual projects, working group membership, methodology, and implementation strategies. Much of the documentation that was created at that time has been carried forward through the Committee and as part of our policy today.

[6] When the commercial law strategy came to an end, and the specific funding, for it was exhausted, the work of the strategy morphed into the civil section. The Steering committee eventually became this Committee, assisted by the work of our part-time national projects coordinator. The roles of chair and coordinator were filled by myself and the late Clark Dalton, K.C. When President Gregg Steele asked me to take over the chairmanship of the steering committee, I had no idea how long-term a commitment that would turn out to be!

[7] The work of the Committee involves essentially two tasks – the first is to identify and assess potential projects and the second is to manage those ongoing projects once they are adopted.

[8] The purpose of the process of assessing potential projects is to ensure that the ULCC makes an informed decision according to the selection criteria which we have adopted. The project description form rounds out the nature of the project, its issues, those parties and organizations who are impacted, and any particular implementation issues. (Both the selection criteria and the project description form are attached as appendices to this report). To reach the

appropriate level of information and knowledge about a potential project we have often carried out background research to ensure that the criteria are met, and to ensure that the ULCC has a satisfactory level of information about the project. A preliminary task may well be a background landscape document which is necessary to understand the project proposals. A later document may well be more of a viability study, which will assist the Committee to determine the viability of adopting the project

[9] Once a project is approved, the next task becomes the challenge of finding project leadership and subject matter expertise, and then to populate the working group with knowledgeable members. Over the last few years, the section has been fortunate to have several excellent leaders, and the quality of their work has been demonstrated in the materials that have come to the section and the final products that they have produced. This year the annual meeting will also hear from several individuals whose skills and knowledge will guide the ULCC.

[10] The task of finding, attracting and supporting project leadership remains a major challenge. The timetable for working group meetings, the preparation of discussion materials, the homework for working group members, all demand a level of activity which is more than minor, passive attendance at a working group meeting. The ULCC is fortunate to have the participation of so many working group members and it is gratifying to hear the feedback from them as to the enjoyable experience of working with a knowledgeable and consensus building group. Despite some of the successes, we cannot neglect the task of attracting and nurturing our working group volunteers.

[11] The second task relates to the management of ongoing projects. This involves scheduling meetings, determining and approving the appropriate methodology, and managing the process to result in clear policy directions, and a comprehensively supported finished product. There is also the pressure of ensuring that materials which are to be considered at the August annual meeting are distributed well in advance, in both languages, so that delegates can have appropriate time to consider, consult and provide reliable responses to the working group. The section has gone to some lengths to articulate its policies in this area and working groups are beginning to get more comfortable with those requirements.

[12] In addition to these two primary responsibilities the Committee, of course, has ongoing administrative responsibilities. Of primary importance is the budget process. This year, the Committee took a much more pragmatic and less aspirational approach to its budget. Notwithstanding the ability over the last several years to under expend, and therefore contribute to any ULCC deficit, it became necessary to take a much more rigorous view of the Committee budget. We took the view that we should budget only for those activities which we were sure would occur. If other activities became necessary, then we would have to approach the Executive to seek additional funding for those other activities.

[13] The November /December/ January meetings have a particular concentration on budget, but that in turn means that the Committee must have a clear understanding of the status of the various projects underway. I want to mention that the Committee's input on this topic has made the task of the chair and the Legal Project and Research Coordinator in preparing draft budgets

more manageable. It is still a detailed task that takes several meetings among the primary parties. We are confident that this year's process has produced a much more reliable set of estimates.

[14] Of course, there is the ongoing task of project selection. The Committee tries to seek input on topics, and seeks suggestions from as broad a range as possible. The jurisdictional representatives are consulted specifically for their suggestions, and the chair of the Committee reports regularly to the civil section steering committee and to the Executive. This is another challenge that I should highlight for the civil section. It would be a wonderful if the Committee had a large pool of appropriately described and supported potential topics, but that has not been the case for the last few years. Despite requests and pleas there is not a large inventory of potential projects from which to draw. A further challenge for the Committee is how to proactively attract project suggestions.

[15] There are several specific recommendations of the committee that I would like to draw to your attention. One potential topic was the question of remote execution of documents. This came to light during the Covid-19 pandemic, and many jurisdictions created ad hoc provisions to deal with the challenge of people not being able to meet face-to-face. After the pandemic, it was suggested that we should bring together a model set of regulations as to how a jurisdiction would deal with the essential requirements of remote execution. However, some jurisdictions already have those provisions in place. There is a variety of approaches, and a variety of methods of implementation. Ultimately, the Committee is of the view that we should not pursue this topic since there was not a significant demand for it and achieving uniformity might be problematic.

[16] Last year, the section heard reports on three subsets of a major project on charities law. This was a project which had been suggested by the Canadian Bar Association, and which we undertook as a joint project. We devoted a significant amount of time developing issues descriptions for a number of projects and setting out a general methodology for working groups. Last year we whittled the number down to three projects. The section directed that we should proceed with Hybrid Organizations, not proceed with a home for Charities, and think carefully about a definition of Charity. Since that time the Canadian Bar Association is no longer participating in the project. We have also lost our expected subject matter expertise and leadership in one of the areas, and the area in which we were asked to think carefully about proceeding has generated lot of thought and analysis, but no major strategy for how we might move forward. I will report to the section in more detail on those topics.

[17] We have also had an ongoing project relating to the area of defamation, which we hoped to proceed with based on the excellent work of the Law Commission of Ontario. Unfortunately, our expected subject matter expertise became unavailable, and we were also met with the question of how the social media context was going to be regulated, and how the issue of defamation might fit into that overall regulation. So, we put the project on hold pending some clarification of social media regulation. That clarification has been slow to develop, so we are again beginning to look at whether changes ought to be made to the uniform defamation act to ensure that it can operate appropriately and efficiently in both a print media and an electronic context.

[18] We've also received a recent suggestion about updating the uniform legislation on contributory negligence. This uniform act is quite old, and we would be interested in the views of the section on whether this is a topic that we should address. The jurisdictional representatives have already been asked about this and their responses are beginning to come in.

[19] Finally, the Alberta Law Reform Institute has produced a final report relating to fiduciary access to digital assets. While no changes are necessary to the uniform act because of that review, the analysis of some of the approaches would be very helpful to any jurisdiction considering implementation. We are considering adding to the commentary a reference to the Alberta report so that it is available to anyone reviewing the act.

[20] This will be my last report as chair of the Advisory Committee on Program Development and Management. I have been involved with the Uniform Law Conference of Canada since 1988 in a number of capacities, but this responsibility has been, at the same time, the most challenging and the most rewarding. Participating in the working groups with members and subject matter experts is both intellectually and collegially rewarding. It has been a pleasure to be associated with so many colleagues.

[21] It has been a privilege to serve as chair of the advisory committee and I thank you for the honour of doing so.

Respectfully submitted,

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