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UNIFORM LAW CONFERENCE OF CANADA

**CIVIL SECTION RULES OF PROCEDURE
PROGRESS REPORT**

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[1] I am pleased to present this Progress Report on behalf of the Working Group for the Civil Section Rules of Procedure.

Introduction

[2] Following the annual meeting of the Section in 2018, a working group was formed consisting of Clark Dalton Q.C. as Chair with Christine Badcock of the Yukon, Ian Rennie of the Northwest Territories and Sarah Dafoe of Alberta as working group members. The Chair formulated a working paper with associated supporting documents and most of the working group was able to meet by teleconference in early July 2019.

[3] This report reflects the substance of the discussions with a view to obtaining the approval of the Section to move forward substantively in the coming year and years thereafter if required.

[4] After review, the working group proposes that the Civil Section produce a comprehensive document that addresses the procedural rules that have been developed and adopted over time. This document would need to be reviewed regularly for currency.”

The Current Parameters within which Rules might be made

[5] Setting aside the current rules, the parameters within which we now operate are the Constitution and more particularly the By-laws just adopted last year.

[6] The Mandate as expressed in the Constitution is important:

Mandate

The mandate of the Uniform Law Conference of Canada is to develop uniform and model acts, statements of legal principles and other documents and to recommend them to the constituent jurisdictions for their consideration...

Structure

The Uniform Law Conference of Canada consists of the Civil Section and the Criminal Section that shall serve the Mandate of the Conference]

[7] Subsection 2(2) reinforces the mandate:

2(2) The Civil Section shall carry out the mandate of the Conference in relation to matters of civil law.

The Current Rules

[8] As to the current Rules, a copy of which is attached as Appendix A, they were adopted in 1983 with an amendment in 1985. The Rules pre-dated both a “Statement of Renewal of the Conference” adopted in 1990 which would later in 1996 be renamed the “Constitution of the Conference” and the 1990 “Procedure of the Conference” which would be renamed the “By-Law of the Conference”. A revision of the Constitution and the By-laws occurred last year in 2018.

[9] In light of the Constitution and By-laws, it is not immediately clear how much of the 1983 Rules should be kept.

[10] Section 1 likely is unnecessary as it predates the last set of By-laws adopted in 1990 and the current By-laws.

[11] At the annual meeting of the Section in 2018, there was some feeling that section 2 didn't really belong in the rules. The provision may have a use somewhere but perhaps they should be part of the Advisory Committee on Program Development and Management (ACPDM) process of project selection and it was suggested that section 2 could be expanded to show the richness of the product we can develop.

[12] Sections 3 and 4 again predate the By-laws and do not seem necessary. Section 4, though, has some matters we might want to consider as adjuncts to the rules.

[13] Section 5 reflects the old voting procedure of the Section and the jurisdictional votes.

[14] It is not clear whether section 6 has any value today because its purpose is not evident other than at one time it was part of the process that one jurisdiction would, for example, commence work on a project and during the next year a different jurisdiction would work on the next stage of a project. The Section hasn't used this process for a number of years now.

[15] Section 7 is an interesting one that allows concurrent meetings of the Section at an annual meeting. It was likely devised because the agenda at one time was so long that the Section couldn't finish its business without rushing matters along with the consequence that it was felt the Section was not dealing with matters in a proper fashion. So, there could be two concurrent sessions at once of the Section. The Proceedings don't reveal if this procedure has been used very much or if at all.

[16] Section 8 seems to be something that should be in the By-laws. It likely contemplates additional meetings to the annual meeting of the Section to carry out business that would normally be conducted at an annual meeting. This again may again have been a product of crowded agendas and was designed to give the Section

flexibility. It actually happened that the Section met separately on an urgent matter brought forward by the Attorneys General that was resolved by that separate meeting between the normal annual meetings. But there appears to be no other occasion where this type of process was used.

[17] Section 9 is probably something that can be carried out in whatever the Section wants to do with regards to the format of reports. Section 9(2) was drafted in response to a problem that arose because the acts were usually only to be found in the annual proceedings and the annual proceedings came out many months later. The Section wanted to have a way to send adopted acts to Deputies as soon as possible.

A Proposal to move ahead

[18] It is proposed that the Civil Section move towards producing a comprehensive set of “rules” that would add to or supplement the provisions of the By-laws of the Conference. A working title might be “A Manual of Rules and Procedures of the Civil Section”. To address the desire to have all the normative and non-normative rules of the Section together, the manual would bring them all under one roof so to speak. Some of the topics below may already be addressed in separate documents or in resolutions of the Executive or the Section but these could be updated and brought altogether.

[19] One observation would be that in conjunction with the production of the manual, there be a process for review and renewal on a regular basis maybe by a standing committee under the auspices of the Civil Section Steering Committee. It is critical to keep this a living document that is produced and not dealt with again or for a very long time as may have happened in the past.

Possible Topic Areas

The incoming Civil Section Chair

[20] As indicated earlier, the selection of an Incoming Chair of the Civil Section seems to be covered off, but the Section has developed some practices and procedures for the Incoming Chair, and it seems that these might be usefully included in the Civil Section rules of procedure process. The By-laws provide for the Incoming Chair to be the Secretary of the Section but nothing more is said on that point.

The Chair of the Civil Section

[21] Only the term of the Chair has been dealt with in the By-laws. It may be useful to investigate what our current practices are with respect to the Chair and set them out.

[22] Once a person has finished the term of office for the Chair, their duties do not stop there.

[23] The immediate past Chair of the Civil Section, or the most recent past Chair of the Civil Section who is a member of the Conference shall establish and serve as Chair of a Selection Committee for the purpose of selecting an incoming Chair of the Civil Section. (By-laws Section 3(1))

[24] In addition, we have established some practices for having the past Chair report to the next meeting of the Conference on what transpired with Civil Section business since the previous session. Indeed, there seems to be a practice that the past Chair take charge of any civil projects that have a November 30th Rule associated with them and any outstanding joint projects that will extend beyond the session for which that person is Chair. Do we need to provide for this in rules?

[25] There is a Roles and Responsibilities document on the office of Chair that may need renewal. Are there any other practices that the past Chair may have to follow?

The Civil Section Steering Committee

[26] Powers of the Steering Committee are enumerated but details such as membership (all the Jurisdictions' Jurisdictional Representatives as now for example); frequency of meetings; who is responsible for the call-in numbers; agendas; possible standing committees etc. might be useful to explore.

Project selection

[27] This issue was raised last year. It appears that the By-laws in section 27(3) provide that the mandate of the Advisory Committee on Project Development and Management is to identify appropriate topics, to evaluate and recommend projects to the Conference and to manage the Conference's medium and long-term projects.

[28] In that connection, the ACPDM has developed criteria and an application form, It also developed a tracking form for progress to be set out on each topic.

[29] What remains to be done includes incorporating these into the manual and at the same time delving into what are the respective roles and responsibilities of the ACPDM is as to the Civil Section Steering Committee. Included in this process might be a mechanism to initiate new projects in a coordinated fashion for the Section.

The conduct of the annual meeting of the Civil Section

[30] We don't totally deal with this now except for the jurisdictional votes. One might usefully detail how the meeting should be conducted. For example, over the years we have gradually moved to a consensus form of adoption and occasionally a show of hands.

[31] Does *Robert's Rules of Order* apply? How should order generally be controlled? It would be useful to have some form of documentation of how the meeting is conducted given that typically the Chair only serves one term.

[32] At the Civil Section meeting in 2018, there were concerns raised about the November 30th Rule and “Uniform” vs. “Model” Acts. These are issues that the delegates brought up very often. Sample resolutions are the subject of a separate document and it may be useful to revisit them and consider bringing them under this umbrella.

[33] Should the Section address relationships with the CBA National and local CBA groups and with other agencies such as law reform agencies? If so, are there any others? It used to be, for example, that the Conference as a whole had a formal report every year to the CBA on the activities of the two Sections.

[34] A resolution of the Executive governs the production and timing of the Minutes of both the Criminal and Civil Section minutes. This should be examined to see if they can be reflected in some manner in the manual.

Civil Section Working Groups

[35] It is very important for Working Group Chairs and members to know exactly what is expected of them before or while a working group is carrying out its work.

[36] There have been some vague practices, but nothing firmly set out. Critical to the working group process is the need for enough time to have reports and acts translated in time for delegates to have ample time to read them.

[37] Formats for reports are governed by a Roles and Responsibilities document but a few years ago the format was changed without a renewal of the roles and responsibilities document. This needs to be dealt with.

[38] Another consideration is whether there should be a Quebec only version of a Uniform Act. In recent years this kind of approach has been more frequent. In addition, a Roles and Responsibilities document stresses the importance of giving due consideration to the bilingual and bijural character of Canada.

The relationship between the Civil Section Steering Committee and the ACPDM and the Projects Co-ordinator

[39] Again, there are somewhat vague practices but there appears to be no clear delineation of responsibilities.

Joint Civil Section and Criminal Section Projects

[40] Joint projects are frequently on the agenda and there have been questions over the years about what the process should be for dealing with joint projects. It may be advisable to leave the process for these projects until the last once the framework for the Civil Section process has been developed and then join with the Criminal Section to develop a process for these projects.

[41] The By-laws in section 14 provide that the Civil Section and the Criminal Section shall jointly carry out the mandate of the Conference in relation to matters of mixed civil law and criminal law. But the only other guidance given is that joint sessions are to be jointly chaired by the Chairs of the Civil Section and the Criminal Section.

[42] Some work has been done in the past on a protocol for joint session minutes but there may be other avenues for review.

Proposed Process

[43] It is proposed that during the next year there be time set aside under the agenda of the Steering Committee to deal with this topic. The Steering Committee can decide what process it would like to follow but a suggestion is that there be a paper presented on the topics the Committee would like to deal with and then there could be discussion and ultimately decisions on those topics. In the end all the various decisions on topics could be gathered together into the manual or other such document as proposed earlier.

[44] As to what priorities could be set, the Steering Committee can decide that. But one priority that stands out it seems is that the Section needs to set out a firm policy on dates for production of reports and the form of reports so that working groups are aware of the parameters in which they need to work.

[45] It is envisaged that this work would go over several annual meetings and should be viewed as a medium-term project.

[46] In the result the following resolution is proposed:

RESOLVED:

That the report be accepted; and

That the working group continue to consider this topic in conjunction with the Civil Section Steering Committee and to report back to the Conference at the 2020 Meeting.

Appendix A

**RULES OF PROCEDURE OF THE UNIFORM LAW SECTION
(as adopted 1983; amended 1985)**

1. In these rules "jurisdiction" means the Commissioners and representatives from,

- (a) a province of Canada;
- (b) a territory of Canada; or
- (c) the Government of Canada.

(1983)

2. In the case of any matter undertaken by the Section, consideration shall be given to the form and method most appropriate to accomplish uniformity, taking into consideration the following methods or any combination thereof;

- (a) the adoption of a statement of principle;
- (b) a draft of operative provisions only of a Uniform Act;
- (c) a draft Uniform Act;
- (d) the recognition by one province of acts done in another province if valid under the laws of that other province;
- (e) uniform provisions in alternative form.

(1983)

3. (1) The chairman of the Section shall be elected by the Section for a term of two years and is eligible for re-election.

(2) In the event that the office of chairman is vacant, the Executive of the Conference shall appoint another person as chairman for the remainder of the former chairman's term or until the end of the next annual meeting whichever is earlier.

(3) A meeting of the Section shall be presided over by the chairman, a person designated by the chairman or a person elected at the meeting for the purpose.

(1983)

4. (1) There shall be a Steering Committee consisting of the chairman of the Section, who shall be the chairman of the Steering Committee, and two members appointed by the chairman.

(2) The Steering Committee shall have the general management of the agenda of the Section, subject to the decisions of the Section, and in particular shall, throughout the year,

- (a) receive and decide upon proposals for new items of business and assign jurisdictions to prepare reports;
- (b) refer matters directly to the Legislative Drafting Section as the committee thinks appropriate;
- (c) within two months after the close of a meeting of the Section, distribute the text of the resolutions of the meeting;
- (d) inform itself on the progress of working committees;
- (e) set deadlines for the distribution of reports of working committees;
- (f) advise working committees on the form of reports;
- (g) settle and distribute, at least two months before a meeting of the Section, the agenda for the meeting showing the items that are ready to be dealt with in substance, and allot the times and determine the priorities, if any, for their consideration;
- (h) report its activities to the annual meeting of the Section.

- (3) The Steering Committee shall have the assistance of the Executive Secretary. (1983)
5. (1) Except as provided in this section, a motion at a meeting of the Section shall be carried by the affirmative votes of the majority of those persons voting on the motion.
- (2) A motion shall be decided by way of a poll of the jurisdictions
· where,
- (a) the chairman declares that the motion shall be so decided; or
 - (b) any jurisdiction requests that the motion shall be so decided, whether or not the motion has been previously decided by a vote conducted in accordance with subsection (1).
- (3) Where a motion is voted upon by way of a poll of the jurisdictions,
- (a) each jurisdiction is entitled to cast three votes;
 - (b) the three votes cast by a jurisdiction may be cast in any combination,
 - (i) for the motion,
 - (ii) against the motion, or
 - (iii) as an abstention;
 - (c) the votes of a jurisdiction may be cast only by one of the members of the jurisdiction who shall be selected beforehand by the members of that jurisdiction;
 - (d) any votes not actually cast shall be counted as abstentions;
 - (e) the motion is carried if the number of votes cast for the motion exceeds the number cast against it;
 - (f) the minutes of the proceedings shall show only where the motion was carried or defeated.
- (1983)
6. Where, after considering a report, the Section refers it again for a further report incorporating the decisions or policy directions of the meeting, the working committee to which it is referred shall prepare a summary of the decisions or policy directions and file it with the Executive Secretary within two months after the meeting, for distribution. (1983)
7. A general meeting of the Section may authorize the formation of committees to sit concurrently with each other for the purpose of discussing the content of reports or proposed reports, but no such committee shall be convened during the conduct of business by the Section sitting as a whole. (1983)
8. The Steering Committee may convene such additional general meetings of the Section as the Committee considers necessary in the circumstances. (1983)
- 9.-(1) Each draft uniform Act that is presented to the Section for final adoption shall be accompanied by commentaries explaining in simple terms the general intent and background of the Act and the more particular intent and background of the substantive provisions.
- (2) A uniform Act adopted by the Section shall be printed and distributed in a separate publication containing the commentaries immediately after its adoption. (1985)