

ULCC | CHLC

UNIFORM LAW CONFERENCE OF CANADA

MINUTES OF THE CIVIL SECTION, 2021

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REPORT OF THE PAST CHAIR OF THE CIVIL SECTION

Oral Report

Presenter: Kathleen Cunningham, British Columbia

Ms. Cunningham presented an oral report on business completed since the 2020 annual meeting of the ULCC.

Ms. Cunningham noted that in 2020, the ULCC adopted three uniform acts, subject to those necessary follow-ups directed by the Conference at the 2020 annual meeting:

The *Non-Consensual Disclosure of Intimate Images Act* was adopted on January 1, 2021, and is available on the ULCC website;

The *Uniform Benevolent and Community Crowdfunding Act* was adopted subject to minor editing of commentaries on the French language version and is available on the ULCC website. Work on a civil law version of the uniform act is expected to commence soon;

The *Amendments to the Uniform Wills Act (2015) Regarding Electronic Wills (2020 Amendments)* was adopted on February 16, 2021 and is expected to be available soon on the ULCC website.

RESOLVED:

THAT the report of the past chair of the Civil Section be accepted.

TRIBUTE TO ARTHUR L. CLOSE QC

Oral Report

Presenters: Clark Dalton, Alberta

Peter J.M. Lown QC, Alberta

Mr. Dalton advised delegates of Mr. Close's recent passing and noted the enormous contribution made by Mr. Close to law reform and harmonization.

Mr. Dalton outlined Mr. Close's many significant professional achievements and his long and distinguished involvement with the ULCC. Mr. Close first joined the ULCC in 1978, was chair of the Civil section (1998-2000) and President of the ULCC (2001-2002). Mr. Close became a member of the Advisory Committee on Program Development and Management (ACPDM) in 2002 and remained an active member until his death, for a total of 43 years of service to the ULCC.

Among his many notable contributions to the ULCC, Mr. Dalton noted Mr. Close's work on projects including pre-judgement interest, vital statistics, enforcement of Canadian judgements, court jurisdiction and proceedings (both the initial project in 1994 and the current renewal project underway today), uniform contracts, uniform trusts and the crowdfunding project that was completed in 2020.

Mr. Lown recalled meeting Mr. Close in 1988, with their friendship developing as fellow 'law reformers'. Mr. Lown noted Mr. Close's invaluable contributions to law reform, including his significant contribution to the creation of the British Columbia Law Institute (BCLI) as well as his work on international ULCC projects. He said that Mr. Close brought a rigorous and intensive analysis to projects, was sincere in his approach and was empathetic.

The chair welcomed meeting participants to share their tributes to Mr. Close.

Ms. Karen Campbell, Executive Director, BCLI thanked Mr. Dalton and Mr. Clark for their tributes and said that the BCLI is committed to continuing Mr. Close's legacy.

Mr. Robert Stein, Past President of the American Uniform Law Commission (ULC) noted how important Mr. Close was to the relationship between the ULC and ULCC and said that he will be missed by his US colleagues.

Mr. Greg Blue QC, British Columbia, remembered Mr. Close as larger than life for those who worked with him and as the face of law reform in British Columbia for three decades. He noted Mr. Close's vast knowledge of both the law and legal history, and how much of an inspiration he was to others.

Mr. Darcy McGovern QC, Saskatchewan, thanked the other speakers for their comments and said that Mr. Close would be proud of the honours shown to him by his friends as shared today.

Mr. Abi Lewis, Ontario remembered Mr. Close's humility and how much Mr. Close cherished the personal relationships built with ULCC delegates.

The Chair closed the tribute by thanking those who had shared memories of Mr. Close.

REPORT OF THE IMPLEMENTATION COMMITTEE

Oral Report

Presenters: Sarah Dafoe, Alberta

Darcy McGovern QC, Saskatchewan

Ms. Dafoe advised that in the absence of Mr. Russell Getz, British Columbia, chair of the Committee, she and Mr. McGovern would present the report of the Implementation Committee.

Ms. Dafoe introduced the members of the Committee (Mr. Russell Getz, British Columbia; Laurence Bergeron, Quebec; John Lee, Ontario; Tyler Nyvall, British Columbia, Maria Markatos, Saskatchewan (on leave), Clark Dalton QC and Peter Lown, QC).

By way of background, Ms. Dafoe explained that the Committee was formed in 2019 to promote the adoption of uniform acts produced by the ULCC and to track their implementation. The committee has focused on developing implementation packages containing information and (non-partisan) endorsements for jurisdictional representatives to use in their jurisdictions.

Ms. Dafoe advised that implementation of the *Uniform Police Record Checks Act (2018)* was the first project adopted by the Committee.

Mr. McGovern then provided an overview of the Uniform Act, which was developed as a joint project of the ULCC's civil and criminal sections, noting that record checks are ubiquitous but look very different depending on where in Canada the check is conducted. Differences between jurisdictions include the types of non-conviction information released and differences in appealing a record and making corrections to it.

The purpose of the uniform act is to balance privacy and the public interest. Privacy is protected by limiting the disclosure of non-conviction information to circumstances where disclosure is necessary, such as where the check is being conducted in the context of obtaining employment working with vulnerable people. The uniform act does not interfere with record checks for law enforcement purposes.

Ms. Dafoe advised that the Committee has not decided on its next project and welcomed suggestions from delegates. She also noted that the Committee is re-evaluating its role and noted it will work with the Communications Committee to leverage off the ULCC's new website. Ms. Dafoe invited comments from delegates and welcomed any volunteers who may wish to join the Committee.

RESOLVED:

THAT the report of the Implementation Committee be accepted.

REFORM OF GENERAL PARTNERSHIP LAW 2006/JOINT VENTURES

Progress Report

Presenter: Dr. Maya Cachecho, Director General, Quebec Law Reform Institute

Professor Cachecho, the chair of the working group, presented a progress report which she called a draft 'roadmap' for the project. She advised that since the project proposal was adopted by the Civil Section at last year's meeting, a review of work completed to date has been undertaken with a focus on the report of Professor Heavin that was presented to the ULCC in 2006.

Professor Heavin's report compared US / UK and Canadian approaches to partnership law. Several issues that had been identified in his report were discussed. The first being the consequence of a change in the composition of a partnership (such as through the death or retirement of one of the partners) triggering the disappearance of the partnership, either through its liquidation or by it being replaced by a new partnership. The second issue considered was the consequence of a partnership having no separate legal identity and thus being unable to hold property and other assets.

Professor Cachecho said that she believes uniformity across the country would be valuable given the importance of partnership law in private international law as well as the potential for greater economic investments.

The working group has also been forward looking, by considering what the group would like the project to achieve and how best to get there.

Moving forward, the working group will focus on identifying the main issues, objectives and proposing solutions.

Professor Cachecho reported that the working group is currently small in number and that additional members will be needed as work progresses, as well as drafters eventually.

RESOLVED:

THAT the report of the working group be accepted; and

THAT the working group continue its work and report back at the 2022 annual meeting.

UNIFORM COURT JURISDICTION AND PROCEEDINGS TRANSFER ACT (UCJPTA) 2021
and UNIFORM ENFORCEMENT OF CANADIAN JUDGEMENTS AND DECREES ACT
PROJECT (UECJDA)

Final Report (UCJPTA) and Progress Report (UECJDA)

Presenters: Peter J.M. Lown QC, Alberta

Professor Joost Blom QC, British Columbia

Uniform Court Jurisdiction and Proceedings Transfer Act 2021 (UCJPTA)

Mr. Lown updated delegates on the work undertaken since the presentation of the interim report to the 2020 annual meeting. Mr. Lown thanked the members of the working group and the drafter for their efforts.

Professor Blom commenced his presentation by providing a recap of the project's origins and explained that the aim of the draft uniform act was to be compatible with the current law. He noted that the working group undertook a review of jurisprudence since the *Morguard Investments* decision and adoption of the *Court Jurisdiction and Proceedings Transfer Act* in 1994 (1994 Uniform Act) and came to the view that, overall, the 1994 Uniform Act has held up well in the years since.

As such, the working group has proposed to retain the structure of the 1994 Uniform Act. Also, the working group has not proposed to remove any jurisdictional grounds, although it has proposed to narrow the presumption of substantial connection, by limiting it to the defendant's connection.

Professor Blom reported that the working group considered territorial competence and noted that Quebec and case law in the United States is moving toward narrowing the definition. It was decided to retain the broad definition, where 'doing business' is sufficient, to retain harmony with the common law as has recently been reaffirmed by the Supreme Court of Canada.

Section 3 of the 1994 Uniform Act was reconsidered as some commentary has discussed consent to jurisdiction. The working group considered the 'real and substantial connection' test and concluded that it has worked well and was adopted by the Supreme Court of Canada in the *Van Breda* case.

The *Van Breda* case raised a potential issue of whether the triggering of the presumption of a real and substantial connection in respect of one claim in a proceeding then brings in all claims. The Supreme Court resolved this in *Van Breda*, finding that if a real and substantial connection is found in a factual and legal situation then the court has jurisdiction over all the claims in the case. This is consistent with the 1994 Uniform Act which relates to a 'proceeding' and not an individual

claim. As such, no change to the 1994 Uniform Act is proposed, but commentary has been added at section 10 to reflect the *Van Breda* decision.

Next, the working group considered the transfer provisions (part 3) of the 1994 Uniform Act and noted that the provisions have not yet been much used in jurisdictions that have enacted the 1994 Uniform Act but that it does seem that litigants are starting to see the advantages of the transfer mechanism and are now starting to use them more.

Professor Blom then turned to the changes that are being proposed by the working group.

The addition of paragraph 3(d.1) is proposed to fill a narrow gap that the working group identified that arises where a necessary party has no other basis of territorial competence by which to be captured by section 3. Adding the new ground to establish territorial competence by necessity ensures that a party that is necessarily a party to the proceedings is included even where the party does not meet the test of residency, consent or a 'real and substantial connection'.

In section 10, paragraph 10(h) is amended to clarify that it is the defendant's business that is carried on in the jurisdiction. The working group believes this is necessary as some courts have toyed with the idea that it may be the plaintiff's business that is carried on in the jurisdiction and that was not the intent of the 1994 Uniform Act.

Professor Blom explained that the purpose of section 10 is to provide guidance on the 'real and substantial connection' test and advised that the presumptions of connection cover much of the field, meaning that there is little jurisprudence on the issue. However, in the absence of any of the presumptions included in the Act, courts have taken different approaches to finding a real and substantial connection. Significant new commentary has been added to the draft act to reflect that it is for the courts to decide how to assess whether a real or substantial connection has been established and also to urge consistency with the deliberate drafting choices made in section 10.

Members of the working group were then invited to comment and Professor Geneviève Saumier noted that the working group had held lengthy discussions and debate, and that the consensus arrived at by the working group was well reflected in the draft act and commentary.

A delegate reported that Saskatchewan had adopted the 1994 Uniform Act and that it had held up well in the intervening period. The delegate was of the view that it provides clarity to litigants and has helped to limit litigation over jurisdiction.

Professor Blom turned to section 11, which he said took a great deal of the working group's time and effort. The provision, at subsections (1) and (2) concerns the doctrine of *forum non conveniens* which the Supreme Court of Canada in *Teck* found to be a codification of the doctrine.

The working group chose to expand the 1994 Uniform Act to address forum selection agreements. Non-exclusive forum selection agreements are addressed in paragraph 11(b.1) of the draft Uniform Act as a circumstance that the Court must consider when deciding its discretion as to the exercise of its territorial competence.

Exclusive forum selection agreements are addressed in subsections (3) and (4) which are intended to codify the Supreme Court of Canada decision in *Z.I. Pompey Industrie* that such agreements are only unenforceable if "strong cause" is established.

Subsection (5) reflects the working group's decision to intervene and 'carve out' employment and consumer contracts from the presumption that exclusive forum selection agreements are enforceable except where "strong cause" is established. Distinguishing employment and consumer contracts recognises that such contracts are different because the bargaining power of the parties is typically unequal. The Supreme Court of Canada, in *Douez*, relied on "strong cause" to recognise the circumstances of a consumer contract, but the working group decided to clearly distinguish between employment and consumer contracts and commercial contracts by adding subsection (5).

As well as rebutting the presumption that exclusive forum selection agreements are enforceable in employment and consumer contracts, subsection (5) also creates an option to deem the agreement as a non-exclusive forum selection agreement and bring the agreement under subsection (2). As such, the agreement would then be considered as a circumstance in deciding forum, rather than the agreement itself being determinative.

The working group considered whether a definition of "strong cause" should be included, and eventually settled on not doing so, rather choosing to allow the jurisprudence to develop.

It was also noted that definitions of both 'consumer contract' and 'employment contract' have been added to section 1 to aid in the application of subsection (5). The definition of employment contract excludes collective employment agreements and is limited to contracts of individual employment.

Professor Blom next pointed out that as the 1994 Uniform Act does not address exclusive jurisdiction agreements, the working group has added commentary to make clear that the new provisions are concerned only with judicial forum and not arbitral forum (which are a matter for arbitration statutes).

A delegate asked whether, in respect of section 3(d.1) that establishes territorial competence over 'mandatory parties', there was any concern that the provision could be broadly interpreted as 'mandatory' party' is not defined.

Mr. Lown answered that it is expected to be rarely used and as such the working group chose to use 'mandatory party' rather than 'necessary and proper party'. The working group was of the view that 'necessary and proper party' is too broad and has the potential to be abused. The working group has not proposed to define 'mandatory party' but has added commentary to address the distinction between 'mandatory party' and 'necessary and proper party'.

Mr. Lown advised that the working group did grapple with whether to include a definition of 'mandatory party' but ultimately elected not to. A working group member said that at one point the working group had actually proposed a definition but decided that it likely would not stop the push from any plaintiff who wished to rely on it, noting that 'necessary and proper party' has evolved into 'necessary or proper' and that 'necessary' has been subsumed into 'proper'. Professor Blom was of the view that a definition of 'mandatory party' may cause more difficulties than it would solve. Ultimately, the working group decided not to include a definition and instead wait to see what results when the courts consider who is a 'mandatory party'.

Mr. Lown discussed the addition of Part 2.1 to the draft act to address subject matter competence. The House of Lords' decision in *Moçambique* is reflected in 12.2(1) which establishes that a court lacks subject matter competence where property is located outside the jurisdiction. An exception to the rule is established in 12.2(3). A working group member said that the working group took the opportunity to clarify the law with respect to subject matter competence and the *Moçambique* rule by adding Part 2.1 which had not previously been addressed in the 1994 Uniform Act.

A working group member said that two 'gaps' in the 1994 Uniform Act, being choice of forum and *Moçambique*, have been addressed in the draft Uniform Act which helps to ensure that the draft act better covers the field.

A working group member said that the proposed amendments at section 11 are crucial for putting to rest confusion on the issue which has been heavily litigated and which the 1994 Uniform Act did not address.

Professor Blom turned to section 12 which addresses conflict or inconsistency with other acts and explained that the 1994 Uniform Act had provided jurisdictions with the option to replace the section with a specific list of statutes that prevail. In the draft Uniform Act, section 12 is set as the default, with the working group being of the view that this is the preferred approach.

Professor Blom also drew delegates attention to a change in paragraph 14(1)(b) to align the clause with the new section 11 and noted that the commentary had also been updated to reflect the new section 11.

Members of the working group were invited to comment, and a working group member noted that subsection 11(5) reflected a public policy choice by the working group. She then noted that section 12 doesn't limit provinces and territories from going a different way if they chose and pointed to the non-application of mandatory arbitration clauses to consumers in Ontario, Alberta and Saskatchewan as an example. A working group member emphasized that it is very important to recognise that jurisdictions have options when implementing the Uniform Act.

Mr. Lown thanked the members of the working group, particularly Professor Blom for their hard work to prepare the draft Uniform Act.

Uniform Enforcement of Canadian Judgements and Decrees Act Project

Mr. Lown noted that the 1994 project had three parts, the *Uniform Court Jurisdiction and Proceedings Transfer Act*, the *Uniform Enforcement of Canadian Judgements and Decrees Act* and the *Enforcement of Foreign Judgements Act*. Mr. Lown advised that a review of the *Uniform Enforcement of Foreign Judgements Act* is on hold until the impact of the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters can be assessed.

With respect to the *Uniform Enforcement of Canadian Judgements and Decrees Act*, Mr. Lown advised that the working group would be looking to engage subject matter experts in 2022. The working group hopes that a final report and draft uniform act can be presented to the 2022 annual meeting.

The chair thanked the working group and the presenters for the comprehensive presentation on the draft CJPTA.

Prior to the adoption of the resolution on the CJPTA, a delegate advocated in favour of postponing voting on the adoption of the uniform act until the 2022 annual meeting to allow more time for consultations. Arising from the Section's thorough discussion on this issue, a proposal was made to adopt the uniform act subject to the November 30th Rule and to include in the resolution a timeline for consultations in the period between the conclusion of the annual meeting and November 30.

RESOLVED:

THAT the report of the working group be accepted;

THAT the *Uniform Court Jurisdictions and Proceedings Transfer Act (August 2021 Consolidation)* and the *Uniform Court Jurisdiction and Proceedings Transfer Amendment Act (2021)* be adopted subject to the November 30th Rule provided that: (a) the delegates be invited to submit comments in writing to the working group by October 7th; (b) the comments be shared with jurisdictional representatives; (c) a meeting between jurisdictional representatives, the working group and appropriate consultees occur in October if required; and (d) any amended version of the Consolidated and Amendment Acts be supplied to jurisdictional representatives for review.

THAT upon adoption,

the *Court Jurisdiction and Proceeding Transfer Act (1995 amendments)* and the *Court Jurisdiction and Proceeding Transfer Act (1994)* be withdrawn; and

THAT the working group prepare uniform legislation and commentaries on the enforcement of Canadian judgments and decrees and report back to the ULCC at the 2022 meeting.

CHARITABLE ORGANIZATIONS

Progress Report

Presenter: Peter J.M. Lown QC, Alberta

Mr. Lown reported that arising from the decision at the annual meeting of 2020, the ULCC is proceeding with this project in concert with the Canadian Bar Association (CBA).

Mr. Lown noted that the CBA's national charity section has prepared a very comprehensive proposal and has assembled a group of members, led by Ms. Yvonne Chenier, to participate in the working group. Mr. Lown reported on the CBA's deliberations on this project at its midwinter meeting and at a specially convened meeting on May 25 and noted the CBA's enthusiasm to participate in conducting background research and issue spotting. To assist the CBA in undertaking an 'issue spotting' exercise an issues template has been created.

Mr. Lown reported that a number of issues have already been identified, and reported on them under three broad categories:

- Substantive legal issues, including
Uncertainty that arises where charitable activities occur, but where it is not clear if the activities are 'charitable' for the purposes of federal legislation, for example when an estate gifts to a charity or when a business is used for charitable purposes.
- Charitable vehicles, including
Whether charitable vehicles need customization for matters regarding charitable purposes, including a consideration of charitable purpose trusts.
- Regulation of charities, including
How best to regulate charities, regulation of which has typically defaulted to the courts, noting however that provinces are stepping into fundraising, for example through lottery administration. There is also a need to consider national charities who operate in multiple regulatory systems and to consider investment principles charities should follow in the event that proceeds are not distributed immediately.

Mr. Lown then explained that after scoping is complete, a prioritization exercise will need to be undertaken before a work plan can be developed.

Delegates were advised that this is a multi-faceted project, and a disciplined process will need to be followed, with steps of prioritization, consultation, policy development and finally drafting.

Mr. Lown said that he expects that issue spotting will take the remainder of the year and that in the new year, priorities will be chosen and working groups assigned.

A delegate asked about the interplay with elements of the *Uniform Trustee Act*, such as the doctrine of *cy pres* and Mr. Lown agreed that the *Uniform Trustee Act* provides a starting point, and further advised that the aim is for the uniform charity act to compliment that Uniform Act.

Another delegate reminded the Section that the Quebec charity statute of the late 1990s may be a useful resource. Mr. Lown said that the working group would look to the Quebec act for impacts and that the project would include both civil and common law input.

Ms. Elizabeth Moxham, the incoming chair of the CBA's Charities and not-for-profit Law section reported that the section was happy to review issues and comment on legal issues. Mr. Lown thanked Ms. Moxham and the CBA for their support and said that the CBA will be a crucial participant in the project.

Mr. Lown closed his report by reminding delegates that working group members are needed.

RESOLVED

THAT the 2021 report of the working group be accepted;

THAT the working group continue its work in accordance with the general directions described in the report and the directions of the ULCC; and

THAT the working group report back to the Conference at the 2022 meeting.

INTERNATIONAL LAW SESSION

Presenters: Carl Lisman, Immediate Past President of the ULC

Professor Christiane Wendehorst, President, European Law Institute

Mr. Lisman, presenting on behalf of ULC President, Mr. Dan Robbins, provided an update on ULC activities including the ULC's recent annual meeting.

The ULC 2021 meeting approved seven uniform acts: the *Uniform College Athlete Name, Image or Likeness Act*, the *Uniform Personal Data Protection Act*, the *Uniform Restrictive Employment Agreement Act*, the *Uniform Cohabitants' Economic Remedies Act*, the *Uniform Community Property Disposition Act*, the *Uniform Unregulated Child Custody Transfer Act* (including unregulated child custody and intra-family custody) and amendments to the *Uniform Common Interest Ownership Act*.

Mr. Lisman also reported that the ULC is currently looking to increase its focus on the adoption of uniform acts and is considering increasing resourcing dedicated to encouraging more jurisdictions to enact ULC acts.

Mr. Lisman advised that a further six acts are nearing completion including on consumer sales, digital assets, remote meetings for state and local governments, and unincorporated associations.

Even more projects are being started, with new committees struck to consider topics including determination of death, healthcare directives (surrogacy), public health emergency and restrictive covenants in titles.

Finally, studies are commencing related to topics including cybercrime, recurring subscription charges, and the redaction of personal information in public records.

Professor Wendehorst noted that this is the first time since the European Law Institute was founded in 2011 that an update had been provided to the ULCC. Professor Wendehorst advised that the Institute is currently working on twelve projects, and that the Institute has three focus areas, being the rule of law in the 21st century, sustainability and governance in the digital age.

Professor Wendehorst provided an overview of the Institute's work with respect to the digital assets project which had been approved in 2019, and which she said was inspired by the ULCC and ULC uniform acts. She explained that because of the size of the project it was being undertaken in installments, with the first installment respecting the use of digital assets as collateral now being presented to the Institute and a connected project being the transactional aspects of blockchain.

The Institute is currently voting on whether to work on a joint project with the American Law Institute, which the American Law Institute has already approved, concerning data as an asset. Professor Wendehorst identified various data rights issues being considered as part of the project, including access rights, ownership of data and the protection of third-party data.

A delegate asked both speakers whether public consultation is undertaken on their respective projects.

Professor Wendehorst replied that recently the Institute has been holding webinars to engage a broader public audience and to encourage citizen involvement.

Mr. Lisman replied that the ULC reaches out to stakeholder groups on a project-by-project basis.

RESOLVED:

THAT the ULCC expressed its thanks to Mr. Carl Lisman of the Uniform Law Commission for his presentation; and

THAT the ULCC expresses its thanks to Professor Christiane Wendehorst of the European Law Institute, for her presentation.

ONLINE DEFAMATION PROJECT

Progress Report

Presenter: Peter J.M. Lown QC, Alberta

Mr. Lown, as chair of the ACPDM, reported that since the resolution of the ULCC at its annual meeting last year to initiate the project, work to commence the project has been undertaken. Mr. Lown thanked Susan Gratton and the Law Commission of Ontario for preparing the Summary Issues Paper.

Mr. Lown pointed to the written report that has been distributed, and said three primary issues that the project will need to address have been identified, namely:

- Defining 'publication';
- The role of internet intermediaries; and
- Remedies, including "takedown".

Mr. Lown identified a number of issues that the ULCC will need to consider, including:

- The scope of the project, specifically whether to propose amendments to the current uniform act or an entirely new act;
- Whether to address the three primary issues that have been identified or to first address some smaller issues that may lend themselves to being more easily resolved. These smaller issues are being characterised as the 'low-hanging fruit';
- The very real challenge of balancing divergent perspectives on the issues. Much of the area is fiercely contested, particularly between media interests and user interests. Media interests are typically concerned with protecting freedom of speech and qualified privilege while users, who are most often litigants, have different interests. The ULCC will need to be mindful of balancing these conflicting interests;
- How best to address new paradigms in defamation, given that defamation law is traditionally grounded in print media, including the rise of anonymous information on web platforms that are hosted, but not monitored, by an intermediary;
- Are rapid takedown remedies necessary; and
- How to resolve the issue of intermediary versus publisher.

A delegate advised that the Ontario Bar Association and the Ontario Government are studying this issue and hoped that this work could be of assistance to the ULCC. Mr. Lown said that he hopes to get further information on the project and that it will be helpful.

Another delegate asked if the working group was considering the 'right to review' provisions that can be found in some consumer legislation. Mr. Lown advised that there is awareness of these types of provisions, and that protection of 'genuine views' will be considered as part of this project.

Mr. Lown reported that a working group leader is being sought for the project as well as working group members. In the absence of a leader for the working group, delegates discussed whether the lack of engagement from jurisdictions was indicative of a lack of sufficient interest to proceed

with the project. The general view of delegates was that this is an important topic that should proceed.

RESOLVED:

THAT the report of the Chair of the Advisory Committee on Program Development and Management be accepted;

THAT the working group conduct its work in accordance with the general direction stated in the report; and

THAT the working group report back to the Conference at the 2022 meeting.

PRIVATE INTERNATIONAL LAW SESSION

Presenter: Ms. Kathryn Sabo, Justice Canada

Ms. Sabo noted that as there was no report to last year's annual meeting, this report covers highlights of the past two years.

Ms. Sabo gave a detailed overview of the work of three organizations:

- The Hague Conference on Private International Law - work includes rules of jurisdiction of tribunals and protection of children;
- International Institute for the Unification of Private Law (UNIDROIT) - works on the harmonization of rules of private law (such as the Cape Convention, international wills and commercial law); and
- United Nations Commission on International Trade Law (UNCITRAL) - works on the harmonisation of commercial laws such as secured transactions, and digital commerce.

Ms. Sabo explained the work of the Department of Justice to ready Canada's legislative framework for the adoption of international instruments. Ms. Sabo noted that most of the subject matters fall under provincial and territorial areas of responsibility, which requires close collaboration between the Department of Justice and the provinces and territories.

Ms. Sabo highlighted recently adopted work on Expedited Arbitration (UNCITRAL), limited liability enterprises (UNCITRAL) and the Mining, Agricultural and Construction Equipment (MAC Protocol) to the *Convention on International Interests in Mobile Equipment Protocol* (UNIDROIT). She noted that the MAC Protocol is not yet in force.

The recent work of all three organizations to create a tri-partite legal guide to international commercial contracts was also noted. The guide is designed to assist practitioners in

understanding how the instruments of the three different organizations work together with respect to commercial contracts.

Next, Ms. Sabo reported on current projects of each organization. The Hague Conference is working on jurisdiction and the status of children. UNCITRAL is continuing its work with respect to access to credit for micro, small and medium-sized enterprises and dispute resolution. UNIDROIT is working on a model law on factoring. Additionally, Ms. Sabo noted that all three bodies are focussed on issues related to the digital economy and cross-border commerce.

The Chair thanked Ms. Sabo for her presentation.

REPORT OF THE ADVISORY COMMITTEE ON PROGRAM DEVELOPMENT AND MANAGEMENT

Presenter: Peter J.M. Lown, QC, Alberta

Mr. Lown commenced by thanking the members of the ACPDM for their assistance over the past year. Mr. Lown particularly thanked Mr. Dalton for his hard work, including the preparation of the Committee's minutes.

Mr. Lown provided an overview of ongoing projects and projects that are at the 'scoping' stage. He also advised that the ACPDM has decided not to proceed with a project on oaths and affirmations after research showed that all but three jurisdictions have already amended their legislation, meaning that there is already almost uniformity on this topic.

Mr. Lown advised that more projects are needed for the ULCC to work on to ensure that workflow is maintained, pointing to the heavy project loads of both the ULC and the European Law Institute. He said that in the past potential, project ideas were often generated at the annual meeting. This year, the ACPDM sought input from jurisdictional representatives to identify potential projects ahead of the annual meeting hoping to generate more ideas. However only one potential project, 'Clare's Law', was identified ahead of the meeting.

Mr. Lown said that the ACPDM recognises the need to be more pro-active in outreach to generate potential project ideas. To this end, the ACPDM will be conducting out-reach to law reform agencies, including reviewing products such as the Alberta Law Reform Institute's Law Reform Digest. It is hoped that such resources may help to identify potential project ideas.

With respect to the online defamation project, Mr. Lown noted that useful suggestions on moving the project forward have been made at the meeting, and that he will be following up on those leads after the annual meeting.

Finally, Mr. Lown advised that the ACPDM would look at reviewing its membership to ensure that there are no gaps to be filled and with an aim of ensuring a good mix of members.

RESOLVED:

THAT the report of the Chair of the Advisory Committee on Program Development and Management and the direction undertaken by the Advisory Committee be accepted.