

# THE UNIFORM LAW CONFERENCE OF CANADA

Elizabeth Strange  
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# History and Overview

- The Uniform Law Conference of Canada (ULCC) is Canada's oldest and most well-established law reform organization and has just celebrated its 100<sup>th</sup> Anniversary.
- The ULCC was founded in 1918 with a goal of improving and harmonizing laws across Canada.
- In 1944, the ULCC was expanded to include a Criminal Section to make recommendations for the reform and improvement of criminal law.
- The ULCC is uniquely positioned in Canada to consider civil and criminal law issues and reform from a broad national, bijural, bilingual, operational and policy perspective.

# History and Overview

- The usefulness of the ULCC's work has been demonstrated and recognized in many ways including references to its resolutions, reports and uniform acts and commentaries in the judgments and decisions of every level of court, including the Supreme Court of Canada, as well as in the decisions of administrative tribunals throughout the country and reports of parliamentary committees.
- ULCC projects serve as a source of inspiration for work by international private law organizations and uniform law bodies in other countries. One example is the ULCC's work on civil protection orders, which has led to a proposal by Canada to the Hague Conference on Private International Law and to similar work being done by the US Uniform Law Commission (US ULC).
- The ULCC also has a close relationship with the US ULC and collaborates on projects of joint interest.
- The cornerstone of the ULCC is the annual meeting where both sections meet in plenary and joint sessions as well as independently. The work done throughout the year concludes with the presentations of resolutions, interim and final reports and uniform acts.

# The Criminal Section

- The Criminal Section is primarily made up of prosecutors, defence counsel, members of the judiciary and criminal policy counsel.
- Resolutions form the basis of the work of the Criminal Section. Resolutions are put forward by delegations proposing changes to the *Criminal Code* or other related federal statutes. The Section also forms working groups to examine and prepare detailed reports on a wide range of criminal law issues.
- The composition of the Section makes it an invaluable venue for the federal Department of Justice to conduct consultations on law reform proposals, thus allowing policymakers to obtain a national perspective from those on the “front lines” of the justice system. One such example was the consultation on the Victims Bill of Rights.

# The Civil Section

- ◉ The Civil Section consists of government lawyers, private practitioners, legislative counsel, law reformers and academics.
- ◉ The Civil Section's primary responsibility is to produce, adopt and recommend uniform acts in areas of the law that would benefit from harmonization and modernization.
- ◉ The uniform acts are produced in both official languages for enactment in all relevant jurisdictions in Canada.
- ◉ The Section also drafts uniform acts to assist provinces and territories in implementing private international law conventions.
- ◉ On occasion, the Section works with government bodies at their request. One recent example is work with Vital Statistics Registrars on the *Uniform Vital Statistics Act*.
- ◉ In some of the emerging areas of the law, work is being carried out by joint working groups with members from both sections. One example is the working group responsible for the *Uniform Missing Persons Act*.

# Relevance of Uniformity

- The enactment of uniform laws recognizes the very mobile nature of the Canadian population and seeks to ensure that where uniformity is desirable there is a uniform act available for adoption by jurisdictions.
- With frequent transactions spanning jurisdictional borders, uniform legislation can play an important role.
- The ULCC develops uniform acts in areas of common interest to jurisdictions with the objective that they can be quickly adopted by a jurisdiction.
- Where complete uniformity is not desirable and changes are required to account for jurisdictional differences, a uniform act can still be used as the basis and framework for the law.
- Uniform acts promote congruence in policy and legal effect.

# Projects: Project Selection

- ⦿ Project selection is of utmost importance in developing a uniform act.
- ⦿ In selecting projects, the key is that they lend themselves to harmonization across the country (including applicability in Quebec, if possible). This may include cross-border issues.
- ⦿ Some areas of the law appear to be more obvious targets for uniformity than others:
  - Commercial law
  - Areas of the law where mobility of citizens should be considered.
  - Areas of law that haven't yet been legislated (or in only a few jurisdictions). One recent example is the project on Police Record Checks.
  - Areas of law in need of modernization (for example, those based on centuries old English laws). One recent example is the project on Commercial Tenancies.

# Origin of Project Ideas

- Provincial and territorial governments (usually through a ULCC jurisdictional representative)
- Ministers of Justice and/or Attorneys General and Deputies
- Federal government: Implementing legislation for International Conventions
- Law reform commissions
- The Canadian Bar Association (CBA)
- Private sector entities
- Internally from reviewing:
  - laws being enacted in various Canadian jurisdictions
  - recent Canadian case law
  - US ULC work
  - law reform work in other countries
  - media clippings



# Project Criteria

- ⦿ Uniform legislation is desirable and timely
- ⦿ Current law needs modernizing or new law needed
- ⦿ Non-partisan issue
- ⦿ High likelihood of adoption
- ⦿ Undertaking the project would not duplicate work of another body

# Project Proposals

Anyone may submit a project proposal

## Step 1:

Project proposal is submitted

Project template submitted to ULCC's Advisory Committee on Project Development and Management (ACPDM)

## Step 2:

Project proposal is reviewed by the ACPDM

Based on project criteria, as well as:

- probable timeframe for project completion
- Civil Section or joint working group
- co-leadership with another body (e.g. FPT entity)
- funding issues (internal and external funds: needed, available)
- obvious chair/co-chairs for the working group

## Step 3:

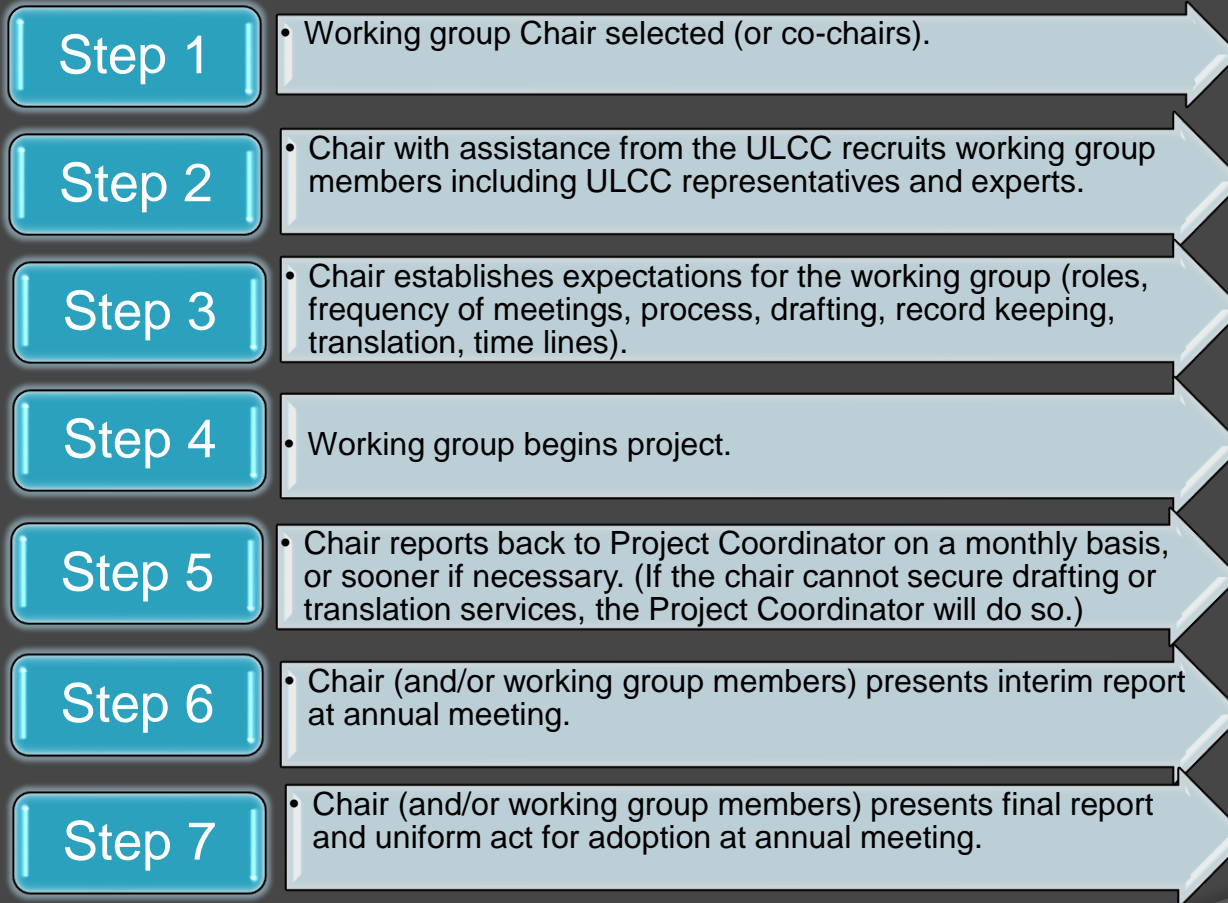
Project proposal is approved or rejected

## Step 4:

Project proposal submitter is notified of decision

# Project Cycle

After a project is approved, a process is followed:



# Project Time Frame

- The time frame for most projects is 3-4 years depending how soon after an annual meeting the project begins.
  - Year 1: Overview of project/issues/possible solutions is presented at the annual meeting.
  - Year 2-3: Explicit policy in an interim report is presented at the annual meeting. (Depending on the timing and/or scope of the project, makeup of the working group, etc., two annual interim reports may be necessary.)
  - Year 3-4: Final report and uniform act are presented for adoption at the annual meeting.
- If there is a significant portion of the year available to work on a new project and the policy recommendations can be ready for consideration at the next annual meeting, the overview phase of the project may not be necessary and the project could be completed in 2 years. Conversely, some projects take longer than 4 years because of a loss of leadership on the working group (or members), inability to secure drafting services, etc.

# Working Groups

- ULCC representation (required on all projects)
- Government representation (ULCC reps may also be government reps)
- Experts (e.g. from government, private bar, academia)
- Quebec representation (depending on the project)
- Federal representation (depending on the project)

# Drafting

- English and French versions of all ULCC documents are required.
- One or two jurisdictions may undertake the drafting of uniform acts. (For example, a jurisdiction that drafts in both English and French may offer to draft both versions, or a jurisdiction that only produces English legislation may offer to draft in English and a jurisdiction that produces French legislation may offer to draft in French.)
- Usually those drafting the legislation get involved at the end of the project and communicate directly with the Chair of the working group. In some instances, those drafting may get involved earlier in the project.
- Given that only a limited number of jurisdictions draft in French, it can be particularly challenging to secure French drafting services, so translation is an unfortunate option that is occasionally required.
- Translation: All working group reports are translated. Commentaries that accompany uniform acts are drafted by the working group (usually the Chair) and then translated. Jurisdictions are asked to assist with translation. If no jurisdiction can provide assistance, private translation services are used.
- Engaging jurisdictions and getting their participation and support for drafting and translation services are major challenges faced by the ULCC.

# Project Completion (Annual Meeting)

- At the completion of a project, a final report and the uniform act and commentaries are circulated to delegates for review before the annual meeting.
- The uniform act (along with the final report) is presented at the annual meeting.
- Vote – delegates will vote on whether to adopt a uniform act (as is or with minor tweaks). If a uniform act is adopted, a resolution is prepared that will adopt the uniform act and promote it to the jurisdictions for implementation.
  - Typical resolution:
    - THAT the report of the working group be accepted; and
    - THAT the Uniform (name) Act and commentaries be adopted and recommended to jurisdictions for enactment.
- “Nov. 30<sup>th</sup> Rule”: If concerns are raised about aspects of the uniform act, there can be a vote to delay the adoption with the understanding that the concerns will be considered and there may be amendments made.
  - Typical resolution when additional review is required:
    - THAT the draft Uniform (name) Act and commentaries be amended in accordance with the directions of the Conference and circulated to the jurisdictional representatives. Unless two or more objections are received by the Projects Coordinator of the Conference by November 30, 20xx, the revised Act should be taken as adopted as a Uniform Act and recommended to the jurisdictions for enactment.

# Implementation

- The implementation of uniform acts is one measure of success for the ULCC.
- The goal of the ULCC is that jurisdictions adopt uniform acts to provide harmonization of laws across the country through various forms of enactment:
  - as is (recognizing there may be changes related to drafting style)
  - with substantially the same wording
  - with modifications
  - in part
- The content of a uniform act (in whole or in part) may be absorbed into an existing act of a particular jurisdiction by amending the existing act.
- Obviously, the closer the jurisdiction adheres to the uniform act, the greater harmonization there will be among jurisdictions.
- The adoption of implementing legislation when dealing with international instruments ensures uniform and accurate application in all jurisdictions.
- The ULCC has recently established an implementation committee.



# Challenges facing the ULCC:

- ⦿ Ensuring governments understand and appreciate the benefits of supporting the ULCC.
- ⦿ Getting drafting support from governments.
- ⦿ Getting translation support from governments.
- ⦿ Getting uniform acts on legislative agendas.
- ⦿ Increasing numbers (e.g. attendees at the annual meeting, working group members) in the current fiscal climate.
- ⦿ Maintaining continuity (e.g. some jurisdictions change their representatives frequently).
- ⦿ Continuing to meet the highest of standards on a shoestring budget.

# Opportunities for the ULCC:

- In anticipation of its 100<sup>th</sup> Anniversary, the ULCC formed a Strategic Plan Oversight Committee (SPOC) to focus on taking the ULCC into its next 100 years.
- Subcommittees of SPOC have been established including a Constitution and By-laws Subcommittee. (The new Constitution and By-laws were adopted at the Annual Meeting in August.)
- The ULCC's policies and rules of procedure are currently being reviewed.
- A new website is being designed.
- Staffing considerations and funding needs are being reviewed.
- The ULCC is working on raising its profile with the jurisdictions and on renewing and strengthening relationships with the CBA, Deputy Ministers (Justice and/or Attorney General) and (Chief) Legislative Counsel. 😊

*Thank you!*