

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

THE COMMERCIAL LAW STRATEGY: MAKING IT LAW

Jennifer Babe

St. John's, Newfoundland and Labrador

August 2005

[1.] Well, congratulations! By the time this meeting ends, more of the pillars of the Commercial Law Strategy (“CLS”) will be accepted by the Uniform Law Conference of Canada (“ULCC”) and made part of the CLS as new uniform acts. The papers being adopted this August, are the last of the efforts funded by the three year funding agreement from Justice Canada and Industry Canada, which agreement terminated on March 31, 2005.

[2.] By way of the great work of Susan Amrud, her staff and the staff of the Saskatchewan’s Queen’s Printer, the CLS Steering Committee was able to produce 212 binders, containing copies of all of the products to March 31, 2005. There were also CD ROMs of the products, created and provided with the binders. Binders and CD-ROMs were sent to about 160 supporters of the CLS, law schools, law commissions, and governments in April 2005. A copy of the table of contents from these binders is attached as Schedule “A”. There are 40 entries in that table. The new papers and uniform acts adopted this year will form part of the annual update to that binder to be provided subsequently.

[3.] The CLS has also now had these products translated so that they are all on the updated ULCC website in both official languages.

[4.] This has ended the second phase of the CLS, with the first one being the concept and planning from the initial Moen – Gregory Report, and the second the period of intense work during the federal funding agreement. Now we enter the third phase.

[5.] As you know from last year’s meeting in Regina, as of April 1st the CLS, has been folded back into the Civil Section, as the ongoing new projects and maintenance work on existing products will be proceeding more slowly. This is because most of the components of the CLS have been created, and because the higher level of funding that the CLS used to enjoy, is gone.

[6.] Due to efforts spearheaded by Gregory Steele, funding has been obtained from various sources to allow for ongoing CLS work, albeit on a smaller scale. Great thanks is due to Greg for starting and pushing forward these funding efforts. Sufficient funds were garnered by April 2005 to allow the Civil Section to hire Clark Dalton to work for the Section part time, to help push forward the CLS’ ongoing work. We are very pleased to have Clark’s extensive ULCC experience on board.

[7.] So what is required for Phase 3? Well of course there will be new projects as issues develop or items put on a back burner become timely. Some of these new projects you may select this week. There will also be ‘fixes and patches’ needed to existing products where a court decision or change of technology result in a new need. However, the key focus from my perspective in Phase 3, is enactment.

THE COMMERCIAL LAW STRATEGY: MAKING IT LAW

[8.] To date many of these CLS products remain on the shelf as fine pieces of research and scholastic work. They have yet to be adopted by the provinces and territories and made law. The list of the enactment of the CLS products as contained in the end of phase 2 binder is attached as Schedule “B” and the chart of the updates reported by the jurisdictional representatives in March 2005, is attached in Schedule “C”.

[9.] Obviously, my view is that the having built these products, they need ULCC effort to push them through to enactment. The ULCC has done incredible work to get these products built. The problems arising from lack of enactment are multiple and include the following:

- (a) lack of interest by volunteers to work on projects that produce interesting papers and draft statutes, but no concrete result;
- (b) lack of credibility with governments and funders if the sole results are binders of legal research and drafts; and
- (c) lack of willingness of endorsers to go to bat for the CLS when it seems futile to do so.

[10.] We have largely done ULCC work thinking along the lines of: “if we build it they will come”. Regretfully, that has not been true. The CLS and the Civil Section have built it and enactment has not been happening. There are a number of reasons for this and some we cannot help.

[11.] My personal observation is that governments sit less than they used to, and some governments appear to have no or little interest in commercial law. The legislatures appear to spend time on health, education and the crisis of the day. The message that sound, modern, harmonious commercial law is of equal importance to a thriving Canadian economy as secure energy supplies and effective transportation and communications, is getting lost. We need to send this message loudly and clearly, and repeatedly. We can and should be “talking up” the CLS products.

[12.] This is my 8th ULCC annual meeting. I know that the ULCC does great work, and so cost effectively that I think it is undervalued. I am not sure how we get the word out more strongly that the ULCC has the products built and that they are needed by Canadians. But we need to work on that message and we need to push enactment of the products. Each of us has the capacity to be a salesperson for these products.

[13.] My term as Chair of the CLS ended on March 31st when the CLS was folded back into the Civil Section. I am very grateful for the experience in meeting so many volunteers, researchers, writers, and learning so much. I will be continuing on as the Canadian Bar Association representative and work where called upon to do so. I will be continuing to tell lawyers, businesses and trade groups, that they need to tell governments to enact the CLS products, and enact them uniformly. I ask you to do likewise.

SCHEDULE “A”
UNIFORM LAW CONFERENCE OF CANADA
TABLE OF CONTENTS

I Uniform Acts

1. *Uniform Arbitration Act*
2. *Uniform Cost of Credit Disclosure Act*
3. *Uniform Court Jurisdiction and Proceedings Transfer Act*
4. *Uniform Electronic Commerce Act*
5. *Uniform Enforcement of Canadian Judgments and Decrees Act*
6. *Uniform Enforcement of Foreign Judgments Act*
7. *Uniform Enforcement of Judgments Conventions Act*
8. *Uniform Foreign Money Claims Act*
9. *Uniform Illegal Contracts Act*
10. *Uniform International Commercial Arbitration Act*
11. *Uniform International Factoring (Unidroit Convention) Act*
12. *Uniform International Financial Leasing (Unidroit Convention) Act*
13. *Uniform International Interests in Mobile Equipment Act (Aircraft Equipment)*
14. *Uniform International Sale of Goods Act*
15. *Uniform International Sales Conventions Act*
16. *Uniform Jurisdiction and Choice of Law Rules for Consumer Contracts*
17. *Uniform Liens Act, 2000*
18. *Uniform Securities Transfer Act*
19. *Uniform Settlement of International Investment Disputes Act*

II Recommendations to the Government of Canada

- 20. *Criminal Code*, Section 347
- 21. Security Interests in Intellectual Property

III Ongoing Projects

- 22. Charitable Fundraising
- 23. Proposed amendments to the *Copyright Act* and liability of intermediaries for royalty fees
- 24. Forms of Business Organizations
- 25. Franchises
- 26. Fraudulent Conveyances and Preferences
- 27. Limitation Periods in Insurance Acts
- 28. Interjurisdictional (National) Class Action Certification
- 29. Limitations
- 30. Mortgage Discharges and Mortgage Fraud
- 31. Sale of Goods
- 32. Secured Transactions: PPSA and Civil Code reform and harmonization
- 33. Trade Secrets
- 34. UNCITRAL Convention on International Assignments of Receivables

IV Completed Projects

- 35. Civil Enforcement of Judgments
- 36. Leases
- 37. Licensing of Intellectual Property
- 38. Negotiable Instruments/Bills of Exchange
- 39. Personal Exemptions from Seizure
- 40. Documents of Title

THE COMMERCIAL LAW STRATEGY: MAKING IT LAW

	Uniform Act:	AB	BC	MB	NB	NL	NWT	NS	NU	ON	PEI	QC	SK	YT
12.	<i>International Financial Leasing (Unidroit Convention) Act</i>		UC											
13.	<i>International Interests in Mobile Equipment Act</i>	UC	UC					B		E(U)				
14.	<i>International Sale of Goods Act</i>	E	E	E	E	E	E	E	E	E	E	E	E	E
15.	<i>International Sales Conventions Act</i>		UC						E	UC		C		
16.	Jurisdiction and Choice of Law Rules for Consumer Contracts				UC									
17.	Liens Act, 2000	UC	UC		UC	UC		E(U)		C		C	E	
18.	Securities Transfer Act	UC	UC		UC					UC			UC	
19.	Settlement of International Investment Disputes Act		UC							E(U)				
32.	PPSA: anti.assignment clauses													
32.	PPSA: conflict of laws													
35.	Civil Enforcement of Judgments	C	UC		UC	C							UC	

SCHEDULE “C”

UNIFORM LAW CONFERENCE OF CANADA

PROGRESS REPORT ON THE IMPLEMENTATION OF ULCC UNIFORM ACTS SINCE AUGUST 2004

JURISDICTION	REPORT BY	STATUS
Alberta	Sarah Dafoe	<p><i>Liens Act</i> under consideration</p> <p><i>Cost of Credit Disclosure</i>: comparable legislation in place (Fair Trading Act. C. F-2)</p> <p><i>Enforcement of Canadian Judgments and Decrees, Court Jurisdiction and Proceedings Transfer, and Enforcement of Foreign Judgments Act</i>, under consideration.</p> <p><i>International Interests in Mobile Equipment Act</i>, under consideration.</p> <p><i>Arbitration Act</i>, legislation in place based on ULCC model law, with a few differences (c. A-43).</p> <p><i>International Commercial Arbitration Act</i>, legislation in place based on ULCC model law, with a few differences. (c. 1-5)</p> <p><i>Securities Transfer Act</i>, under consideration.</p>
British Columbia	Russell Getz	<p>There are no revisions to be made to B.C.’s information on the Chart.</p> <p><i>The International Sales Conventions Act</i> has been approved by the B.C. Government for enactment this year – probably in the Fall sitting of the legislature.</p> <p><i>The Uniform Securities Transfer Act</i> and the <i>Uniform Civil Enforcement of Money Judgments</i> are under consideration.</p>

THE COMMERCIAL LAW STRATEGY: MAKING IT LAW

Canada	Mounia Allouch	<p>Legislation based on the Uniform International Interests in Mobile Equipment Act has been enacted at the federal level (An Act to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, Statutes of Canada 2005, Chapter 3).</p> <p>Une loi basée sur la Loi uniformed relative aux garanties inernationales portant sur des matériels d'équipement mobiles (équipements Aéronautiques) a été adoptée au niveau fédéral (<i>Loi de mise en oeuvre de la convention relative aux garanties internationales portant sur des matériels d'équipement mobiles et du Protocole portant sur les questions spécifiques au matériels d'équipement aéronautiques à la Convention relative aux garanties internationales protant sur des matériels d'équipement mobile.</i>, Lois du Canada (2005), Chaprtre 3).</p>
Manitoba	Lynn Romeo	<p><i>Cost of Credit Disclosure</i>: comparable legislation enacted but not in force (June, 2005) by way of amendments to <i>The Consumer protection Act</i>.</p> <p><i>Foreign Money Claims Act</i>: amendments to <i>The Court of Queen's Bench Act</i> came into force on June 16, 2005. The provisions are similar in effect to those of the Uniform Act.</p>
New Brunswick	Tim Rattenbury	<p>In item 4 of last year's list, the "C" part of the New Brunswick entry is incorrect and should be deleted. Apart from that, no changes for New Brunswick.</p> <p><i>The Uniform Jurisdiction and Choice of Law Rules for Consumer Contracts Act</i>, the <i>Uniform Securities Transfer Act</i> and the <i>Uniform Civil Enforcement of Judgments Act</i> are under consideration in New Brunswick.</p>
Newfoundland	Paul Nolan	<p>Newfoundland and Labrador has no change to report from the last chart of enactment of uniform acts.</p>

UNIFORM LAW CONFERENCE OF CANADA

		<p><i>The Electronic Commerce Act</i> remains the only act which has been enacted and in force from December 13, 2001. Newfoundland's Mechanics' Lien Act is under consideration for possible amendments in the spring of this year.</p> <p><i>The Cost of Credit Disclosure Act</i> remains under consideration, but is lower on the present administration's legislative agenda.</p> <p><i>he Enforcement of Canadian Judgements Act</i> is still not proclaimed into law and I have not been advised of any planned proclamation date.</p> <p>Newfoundland still has the <i>International Commercial Arbitration Act</i> and the <i>International Sale of Goods Act</i> under the Older Uniform Acts section of the chart. Since 1993, Newfoundland also has enacted the <i>International Trusts Act</i> to give effect to the <i>Convention on the Law Applicable to Trusts</i> and on their Recognition.</p> <p>There had been a renewed emphasis upon implementation of the <i>Uniform Securities Transfer Act</i>. While the personnel resources available to review and analyse the Act from the provincial perspective are quite limited, an interdepartmental committee has been established and a target of Spring 2006 has been set for implementation of the Act.</p>
Northwest Territories	Rebecca Veinott	There has been no change to the Chart.
Nova Scotia	Janice Brown	<p>The only uniform statute Nova Scotia has enacted since the chart was done is the <i>International Interests in Mobile Equipment Act</i>. Their statute is called the <i>International Interests in Mobile Aircraft Equipment Act, SNS 2004, C.5</i></p> <p>Nova Scotia has enacted the Cross-Border Policing Act. It is expected to be proclaimed in force later this year.</p> <p>They are looking at several others for the coming year but no firm plans yet. It would</p>

THE COMMERCIAL LAW STRATEGY: MAKING IT LAW

		be fall at the earliest as they anticipate a short sitting this spring focussed on the budget.
Nunavut	Diane Buckland	<p>Under heading A, The Electronic Commerce Act was enacted late last year, and all others are under consideration..</p> <p>Under heading C, The International Sales Convention Act has been enacted, and all others are under consideration.</p> <p>Under heading C, their Arbitration Act could be considered comparable legislation although it is much older.</p> <p>The list of 2004 Uniform Acts are all under consideration.</p>
Ontario	John Lee	<p>The chart remains accurate as far as Ontario is concerned.</p> <p>Within the next year, they are studying the implementation of the following Acts: <i>The Uniform Securities Transfer Act, the International Sales Conventions Acts.</i></p>
P.E.I.	Katharine Tummon Consumer, Corporate and Insurance Services	<p>On June 7, 2005, the Franchises Act of Prince Edward Island (S.P.E.I. 2005, Cap. 36) received Royal Assent. This legislation is closely modeled on the Uniform Franchises Act of the Uniform Law Conference of Canada. It will be administered by staff of the PEI Office of the Attorney General who are in the process of developing the regulations required under the Act. It is expected that the Act will be proclaimed in force after consultation on the regulations is complete.</p>
Quebec	Frédérique Sabourin	No Uniform Acts have been implemented.
Saskatchewan	Darcy McGovern	<i>The Court Jurisdiction and Transfer of Proceedings Act, S.S. 1997, c.C-41.1</i> was proclaimed in force March 1, 2004.

UNIFORM LAW CONFERENCE OF CANADA

		<p>This year they have enacted <i>The Enforcement of Foreign Judgments Act</i> and <i>The International Protection of Adults Act</i>, <i>The Mandatory Testing and Disclosure (Bodily substances) Act</i>, and the <i>Uniform Cross-Border Policing Act (within The Police Amendments Act, 2005)</i>.</p>
Yukon	Sydney Horton	<p>Yukon had no activity on the commercial law strategy in the past year and no plans for the coming year to report.</p>