

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

A Joint Project of the

National Conference of Commissioners on Uniform State Laws
Uniform Law Conference of Canada
Mexican Center of Uniform Law

to Create a Harmonized Legal Framework for
Unincorporated Nonprofit Associations in North America

STATUS/PROGRESS REPORT

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Joint Project to Create a Harmonized Legal Framework for Unincorporated Nonprofit Associations in North America

Background

A defining feature of the Uniform Law Conference of Canada [ULCC] is its cordial relationship with other organizations having similar functions and aims. Its relationship with its American counterpart, the National Conference of Commissioners on Uniform State Laws [NCCUSL] goes back many years with representatives of each organization regularly attending each other's annual meetings. This pattern continues with the recently created Mexican Centre of Uniform Law [MCUL] which is now sending a representative to the two annual meetings. At the ULCC meeting held in St. John's in 2005 a decision was made by the three uniform law organizations that their relationship should move beyond this "observer" status and that they should explore the potential for joint projects that might involve harmonizing laws across the national boundaries.

One of the areas identified as a possible joint project concerned unincorporated associations. A suggestion that ULCC undertake a project on this topic had been brought forward by British Columbia. Coincidentally, NCCUSL was in the process of revisiting an older uniform act on unincorporated associations and had just created a drafting committee for this purpose. It was agreed by the officers of ULCC and NCCUSL that active steps be taken to explore its potential as a joint project. Arthur Close of the British Columbia delegation was requested by the Executive to take this in hand on behalf of ULCC.

Defining the Joint Project

The discussions that followed led to three important developments and understandings:

- ! The joint project would proceed. This topic would be treated as involving a clean slate with no predetermined point of departure. For NCCUSL this involved a departure from its usual approach, and original plan, which would have involved using its older uniform act on unincorporated associations as a starting point. Rather, the older NCCUSL uniform act would be a source to draw on in identifying issues and solutions but it would not define the project.
- ! It was agreed that the methodology of NCCUSL in the development of its uniform acts be adopted. This would involve the creation of a joint drafting committee that would hold a series of three day face-to-face meetings to move the project forward. NCCUSL generously agreed to defray the reasonable traveling expenses of the Canadian representatives who would be attending these meetings. This removed what would otherwise have been a significant barrier to ULCC participation.
- ! The Mexican MCUL formally indicated its wish to participate in the joint project.

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With these matters settled the Canadian members of the joint drafting committee (the “Canadian Team”) were assembled. They are:

- ! Arthur Close - (BC Law Institute) Team leader
- ! Kevin Zakreski - (BC Law Institute) Reporter to the Canadian Team
- ! Prof. Michelle Cumyn, (Faculté de droit Université Laval) Member
- ! Prof. Thomas Telfer (Faculty of Law, University of Western Ontario) Member

Assisting the Canadian Team as a resource person is Susan Manwaring of Miller Thomson LLP (Toronto office) whose practice is focused on non-profit entities.

On February 17 a meeting was held in Dallas/Fort Worth among representatives of the three uniform law organizations for more detailed discussion of the way in which the joint project was to be organized and to lay the groundwork for the first formal meeting of the joint drafting committee. Out of this meeting came an agenda for that meeting and a tentative workplan.¹

The Portland Meeting

The first meeting of the joint drafting committee² was held in Portland OR on March 17, 18 and 19. In preparation for this meeting memoranda were prepared by Kevin Zakreski (common law Canada) and Prof. Cumyn (Quebec) concerning the current law in relation to unincorporated associations. Both of these documents may be accessed at the NCCUSL website.³

Positions and principles, many of them highly tentative, emerged on the issues raised in the agenda. As the revised workplan⁴ indicates, they will be revisited at a meeting to be held sometime in the fall of 2006.

¹. The agenda may be found at the NCCUSL website at <http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=255> a copy is appended for convenient reference.

². For convenient reference a full list of the members of the joint drafting committee is appended.

³. Supra n. 1.

⁴. The latest version of the workplan may be found at the NCCUSL website, supra n. 1. A copy is appended to this Report for convenient reference.

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A notable feature of the Portland deliberations was the deference accorded to the way in which the law of Quebec approaches unincorporated associations. While common law Canada attempts to address the issues raised by them through an uneasy synthesis of contract, agency and trust law, they are the subject of express provisions in the Civil Code of Quebec. The joint drafting committee found useful guidance on many issues in the Quebec approach.

A significant indication of the importance NCCUSL attaches to the joint project was the active participation of its President, Howard J. Swibel, in the deliberations of the joint drafting committee (as an ex officio member). The Canadian Team gratefully acknowledges his contribution and the personal support he has given to proceeding with the project in a co-operative fashion.

Next Steps

The Workplan is quite clear about the steps involved in moving the project forward. The Reporter to the joint drafting committee (Harry Haynsworth of NCCUSL) is in the process of preparing an initial list of principles distilled from the Portland meeting. The initial list will be considered and refined at the second meeting of the joint committee from which will emerge the final list.

Once the principles are settled the work of the committee will move on to drafting. From the ULCC perspective the legislative drafters will be involved at a somewhat earlier stage of the process than is usual for our projects. From the NCCUSL perspective this will occur at a somewhat later stage since it is their usual procedure to work directly in the format of draft legislation rather than developing principles (or drafting instructions) as an intermediate step. The workplan contemplates that the Canadian and US drafters will be in communication in an attempt, so far as it is possible, to achieve common language. We hope that the drafting resources can be made available to the Canadian Team as soon as they are needed.

This topic constitutes something of a “test case” which will give the participating organizations an opportunity to develop strategies for achieving, so far as possible, cross-border harmony. We all have much to learn from each other. The challenges are formidable involving, as they do, a potential of four different legal traditions and three different languages. All participants are working hard to meet these challenges successfully to pave the way for further joint efforts.