

**UNIFORM LAW CONFERENCE OF CANADA
CIVIL LAW SECTION**

**UNIFORM TRUSTEE ACT
Progress Report**

Report of the Working Group

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, may not have been adopted by the Uniform Law Conference of Canada. They may not necessarily reflect the views of the Conference and its Delegates. Please consult the Resolutions on this topic as adopted by the Conference at the Annual meeting.

**Winnipeg, MB
August 7-11, 2011**

UNIFORM LAW CONFERENCE OF CANADA

UNIFORM TRUSTEE ACT

Report on the Uniform Trustee Act Project

[1] The purpose herein is to provide a brief report on the activities of the Uniform Trustee Act Project Working Group in 2010-2011

[2] The members of the Working Group are: Greg Blue, Q.C. of the BCLI, Arthur Close, Q.C., former Executive Director of the BCLI, Rod Fehr of the BC Ministry of Attorney General, Russell Getz of the BC Ministry of Attorney General, John Gregory of the Ontario Ministry of the Attorney General, Joanna Knowlton, Public Trustee of Manitoba, Peter Lown, Q.C., of the Alberta Law Reform Institute, Tim Rattenbury of the New Brunswick Department of Justice, Philip Renaud, Q.C., of Duncan and Craig LLP, Edmonton, Alberta, and Donovan Waters, Q.C., of Horne Coupar, Victoria, BC, and, until her retirement in 2010, Madeleine Robertson of Saskatchewan Justice.

[3] There is also a Drafting Committee comprised of Arthur Close, Q.C., Greg Blue, Q.C., Rod Fehr as legislative counsel and Russell Getz.

[4] The purpose and goal of the Project is a uniform act based on the British Columbia Law Institute Report, entitled *A Modern Trustee Act for British Columbia*. It is also informed by the Saskatchewan *Trustee Act* of 2008 and the 2007 Symposium of the Society of Trust and Estate Practitioners of Canada, entitled 'Trust Law Reform in Canada', which recommended the preparation of uniform trustee legislation based on the British Columbia Law Institute Report.

[5] In addition, the Working Group has proceeded on the direction received from the Uniform Law Conference of Canada Civil Section in 2009 on several issues of policy brought forward by the Working Group. Following discussion and consideration, the Conference confirmed the tentative recommendations of the Working Group. The

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description, analysis and recommendations of those issues are set out in the 2009 Uniform Trustee Act Report in the 2009 Proceedings. The recommendations of the British Columbia Law Institute were confirmed with respect to the ability of trustees to act by majority; variation and termination of trusts and the Rule in *Saunders v. Vautier*; and charitable trusts and non-charitable purpose trusts. In addition, the Conference confirmed the Working Group's recommendation that the rules against perpetuities and accumulations be abolished.

[6] The Drafting Committee met almost every week, from the fall of 2010 through to July of this year.

[7] The draft Act is arranged in the following parts: Part 1 - Definitions and Application; Part 2 - Appointment and Discharge of Trustees; Part 3 – Vesting; Part 4 - Duties and Powers of Trustees; Part 5 - Variation and Termination of Trusts and Powers of the Court; Part 6 - Trustee Compensation and Accounts; Part 7 - Charitable Trusts and Non-Charitable Purpose Trusts; Part 8 – Perpetuities and Accumulations; Part 9 – General Provisions; and Part 10 – Transitional Provisions and Consequential Amendments.

[8] By far, the provisions addressing the duties and powers of trustees are the most extensive and challenging. They include the duties of integrity and care, conflicts of interest and duty, and the duty to provide information, administrative powers, investment powers, dispositive powers, delegation, powers of new trustees and the ability of trustees to act by majority.

[9] The full Working Group met by telephone conference four times to consider the drafts, and has thus far completed its consideration of Parts 1 to 5.

[10] Through the good offices of Valerie Perry of Manitoba, Chair of the Uniform Law Conference Drafting Section, French language drafting is graciously being provided by the Office of Legislative Counsel of the Ontario Ministry of the Attorney General.

[11] The aim of the working Group is to complete the English and French language versions of the proposed uniform Act for presentation at the 2012 annual meeting of the Uniform Law Conference.