

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

UNIFORM ENDURING POWERS OF ATTORNEY ACT

**Yellowknife, Northwest Territories
August 2015**

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[1] I am pleased to present this report from the working group and drafters of the project on a Uniform Enduring Powers of Attorney Act.

[2] This is expected to be the final review of the topic of Uniform Enduring Powers of Attorney and Financial Elder Abuse. The materials take the form of an annotated Uniform Act, updating existing legislation and adding provisions specifically from the perspective of addressing, to the extent possible, the phenomenon of elder financial abuse. It would be the ultimate irony if the very instrument which is intended to assist the adult at the time of need, when they are no longer able to manage their affairs, becomes the means by which the abuse is perpetrated.

[3] There are many individuals and organizations who must be thanked for their interest, contribution and hard work.

[4] This Project commenced as a result of a letter received by the then President of the Uniform Law Conference of Canada, Nancy Irving, from the Honourable Alice Wong P.C., M.P., Minister of State (Seniors). In that letter, it was recommended to the ULCC that it take a comparative review of the powers of attorney in the various jurisdictions and identify possible gaps and explore the need for harmonization in this area. It was noted that there was a commitment of the Government of Canada to eliminate elder abuse in all its forms and that it was becoming particularly important to support financial decision-making in older age and increase ways to safeguard seniors against financial abuse. Particular reference was made to work of the Western Canada Law Reform Agencies, which included a recommendation to have uniform safeguards against the misuse of enduring powers of attorney.

[5] The Advisory Committee on Program Development and Management of the ULCC carefully reviewed the scope of the project. This is Phase 1 of a much broader initiative. In Phase 1, ULCC does what it has always done and what it does well – prepare uniform legislation in an area of need. Phase 1 will lay the groundwork for many other activities in Phase 2, including rollout and implementation of the legislation; publicity and messaging around the topic; engagement of financial institutions and other agencies to develop protocols and educational materials; development of educational materials to explain the various remedies where potential elder financial abuse is suspected. The lead role in Phase 2 is a crucial element, to address this vital and emerging topic.

[6] The preparatory work in authoring the general issues paper and the legislative database was carried out by Kim Nayyer, who reported to the Conference in August 2014. At that time the Conference approved broad general principles for the preparation of draft legislation. This discussion emphasized that while there may be other areas of

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law which regulate theft and fraud, a significant contribution could be made by reinforcing the safeguards around powers of attorney, and doing so in a harmonized manner across the country.

[7] The heavy lifting then fell to the working group whose members are:

- Genevieve Harvey, Department of Justice, Nova Scotia
- Audrey Turmel, Ministère de la Justice du Québec
- Maria Markatos, Saskatchewan Justice
- Clara Cerminara, Alberta Justice
- Clark Dalton, ULCC Projects Coordinator
- Peter Lown, QC, Alberta Law Reform Institute

This group was chaired by Clark Dalton and Peter Lown.

[8] Within the general framework, the group developed four areas of concentration, all of which, when viewed through the lens of preventing abuse, would be significant improvements. Each topic was reviewed within the overarching goal of harmonizing the different approaches across the country. The four topics were: formalities and recognition; notices and validation; statement of duties; remedies. In each area a lengthy list of specific policy questions was prepared. The differing approaches across jurisdictions were reviewed and final policy statements prepared. The group met for seven two-hour intensive meetings. The preparatory work, the underlying documentation, and the meeting minutes record a comprehensive and thorough review of the issues. (The whole compendium of the meeting documentation was included in a progress report to ESDC as of March 31, 2015.)

[9] The next stage in the process is one of the most important parts of law reform – how to bridge the policy decisions to the eventual implementing legislation. Drafting instructions are a work of art in the process. They must be true to the policy decisions, but must inform and equip the legislative drafter to create legislative language. Inadequate drafting instructions delay the process and make life intolerable for the drafter. Good drafting instructions enable the drafter and set the stage for constructive dialogue.

[10] We were fortunate that we had two experienced people in this process. Clark Dalton prepared the instructions, which were then approved and reviewed by the working group. Again, the comprehensive working group process greatly assisted in crosschecking and revising the drafting instructions. Second, we had an experienced drafter in Brian Greer, with both lengthy Provincial experience and a relationship with ULCC.

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[11] The annotations were prepared by Clark Dalton and Peter Lown, to assist the statute reader in understanding the act. They are a brief introduction, summarizing a very small portion of the working group thinking and discussion.

[12] Finally, the French version of the legislation was prepared in New Brunswick by Dominique Maubert. The French translation of the commentaries and this report was prepared by ESDC.

[13] All of the participants, in particular the drafters, worked under extremely tight timelines and their assiduous work is acknowledged. To all of those who have worked so hard to get this product to completion, I express the gratitude of the Conference.

[14] The draft acts and commentaries are to be reviewed this August at the Conference's meeting in Yellowknife. The input and analysis of ULCC delegates is an important part of bringing this work to a conclusion. The policy positions often represent a delicate balance, where difficult choices have been made. A new Uniform Enduring Powers of Attorney Act can bring much-needed harmony to the laws across jurisdictions and lay the foundation for a concerted effort to control and reduce financial elder abuse.