

2016 ULCC Annual Conference

Report on:
Uniform Vital Statistics Act Renewal Project
August 2016

UNIFORM LAW CONFERENCE OF CANADA
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA



Agenda

- Project Description
- Project Structure
- Status
- Recommendations
- Next Steps

Project Description

- Considers the current state of Vital Statistics legislation
- Develop a modern, uniform *Vital Statistics Act* which would:
 - Incorporate advances in collection and use of information
 - Reflect changes in society and family structures
 - Conform with developments in family law legislation
 - Bring uniformity to information collection procedures across Canada

Project Structure

- British Columbia Law Institute retained to:
 - Conduct legal research of vital statistics issues
 - Prepare legal memoranda setting out the issues and research for review by committees
 - Record the tentative recommendations adopted by the committees
 - Produce final report

Project Structure

- Supported by Vital Statistics Agencies from across Canada
- Financial support from many provinces and Statistics Canada
- In kind support from provincial ministries (see: committee lists)
- Two committees:
 - ULCC Working Group
 - Vital Statistics Group

Project Structure

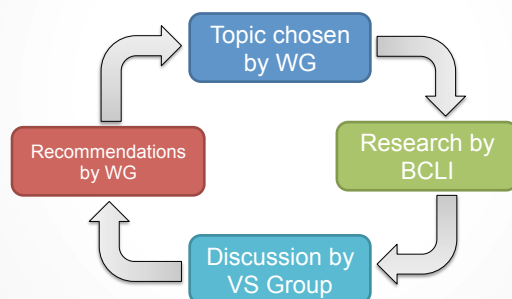
- ULCC Working Group
 - Composed of legislative counsel from ministries of justice and registrars from most Canadian jurisdictions
 - Tasked with finalizing policies and recommendations for the *Uniform Vital Statistics Act*
 - 25 meetings since April 2014
 - Chair: Kathleen Cunningham (Executive Director, BCLI)

Project Structure

- Vital Statistics Group
 - Composed of representatives from vital statistics registries from across Canada and Stats Canada
 - Tasked with providing information about potential policies and recommendations, based on practical knowledge and experience
 - 23 meetings since April 2014
 - Co-chairs:
 - Krista Dewey (Director / Deputy Registrar General, Nova Scotia)
 - Josée Dubé (Director and Registrar General, New Brunswick)

Project Structure

- Monthly meetings of both the ULCC Working Group and the Vital Statistics Group.



Project Status

- As of August 2016, the project is substantially completed:
 - Change of sex designation – **complete (ULCC 2015)**
 - Privacy and Information Security – **complete (ULCC 2015)**
 - Assisted Human Reproduction – **complete (ULCC 2015)**
 - Adoptions – **complete**
 - Changes of name – **complete**
 - Other miscellaneous issues – **complete**
- Draft report and recommendations – **complete**
- Drafting – **2016-2017**

Project Status

Goal: Create a new *Uniform Vital Statistics Act* that builds upon the 1987 *Uniform Vital Statistics Act* because:

- A whole Act would be better received by legislators
- Much of the 1987 Act remains relevant, only needing drafting modernization
- Update and translate the 1987 Act for future revisions
 - A French Act would persuade adoption in jurisdictions which require French drafting

Appendix C compares the status of provincial legislation with the 1987 Act

Issue 1: Change of Sex Designation

- Many provinces have adopted new policies or legislation to remove the discriminatory surgery requirement, replacing it with less intrusive procedures.
- There remains a significant lack of uniformity between jurisdictions in how each province and territory handles change of sex designation applications, including:
 - Applicability to minors
 - Required evidence for a successful application
 - Inclusion of evidence from third parties

Issue 1: Change of Sex Designation

▫ **Draft Recommendations: Sex designation at birth**

1

Where there is certainty as to the anatomical sex of the infant, as determined by the medical professional who attended the birth, the Registrar will make a record of the birth which includes a designation of the male or female sex of the child.

2

Where there is uncertainty as to the anatomical sex of the infant, as determined by the medical professional who attended the birth, the Registrar will make a record of the birth as “undetermined” until such time that a sex designation can be determined and the registration is amended to reflect the updated information. Once the sex is confirmed, a birth certificate may then be issued.

The evidence required to update the registration of the sex of the infant should be determined by regulation.

Issue 1: Change of Sex Designation

• Draft Recommendations: Sex designation on birth certificates

3

The Act should provide that the Registrar should make available an optional “short form” birth certificate which does not display the sex field. The Registrar will clearly warn (on the application form or on the certificate itself) that such a certificate may not be an acceptable form of identification by third parties.

Issue 1: Change of Sex Designation

• Draft Recommendations: Change of sex designation applications

4

An individual may apply for a change of sex designation on a birth registration if the individual is:

- an adult;
- a minor with the capacity to make decisions about their vital records; or
- a parent or guardian applying on behalf of a minor who does not have the capacity to make decisions about their vital records.

5

The Registrar should not make inquiries as to the capacity of adult applicants for a change of sex designation on a birth registration. Capacity should be assumed unless there is a genuine reason to believe otherwise.

Issue 1: Change of Sex Designation

▪ Draft Recommendations: Change of sex designation applications

The evidence sufficient for the Registrar to accept an application for a change of sex designation on a birth registration should include:

- a statement by the applicant that they:
 - are currently identifying as their desired sex designation; and
 - intend to live full-time as their desired sex designation; and
- a statement by a guarantor/supporter stating that they:
 - have known the applicant for a certain period of time ;
 - have an honest belief that the applicant identifies as their desired sex designation; and
 - have an honest belief that the application is made in good faith.

6

Issue 2: Privacy and Information Protection

▪ Draft Recommendations: Disclosure principles

The *Uniform Vital Statistics Act* should include a guiding principle that requires the Registrar to be satisfied that the proposed use of the information justifies the disclosure of the information.

7

Issue 2: Privacy and Information Protection

- Vital statistics legislation lacks uniformity in determining who may apply to receive private information, and in what circumstances information can be disclosed to third parties.
- The *Uniform Vital Statistics Act* aims to establish a uniform framework for information sharing between agencies which require bulk and ongoing disclosure, as well as between individuals seeking information closely related to them.
- The *Act* also aims to curb access to registration documents, as those documents are held by Registrars to be private in nature.

Issue 2: Privacy and Information Protection

▫ Draft Recommendations: Information Sharing Agreements (ISAs)

8

Unless otherwise required by regulation, the *Uniform Vital Statistics Act* should provide the Registrar with discretion to decide whether or not to enter into an ISA.

9

The *Uniform Vital Statistics Act* should set out categories of prescribed recipients with whom information may only be shared subject to an ISA.

10

The Registrar should have the discretion to set the information disclosure terms before entering into an ISA with a prescribed recipient.

11

The Minister in charge of vital statistics should have the ability to add or modify categories of prescribed recipients in order to provide for ongoing or bulk disclosure, as well as disclosure to support pilot or research projects.

Issue 2: Privacy and Information Protection

• Draft Recommendations: Information Sharing Agreements (ISAs)

12

The *Uniform Vital Statistics Act* should make compliance with the legislative requirement to use an ISA mandatory. Agencies included under the legislated list of authorized recipients must enter into an ISA with the Registrar before information can be obtained from the vital statistics agency.

13

The *Uniform Vital Statistics Act* should include a purpose-based discretionary provision that allows the Registrar to enter into ISAs with any other agency or organization, subject to the Registrar's approval of the purpose and use of information being requested.

Issue 2: Privacy and Information Protection

• Draft Recommendations: Prescribed Recipients - Certificates

14

15

16

Some prescribed recipients would be eligible (but not automatically entitled – the Registrar would have final discretion) to obtain certificates to which they have a close connection – such as their own birth or marriage certificates, or a parent requesting their minor child's birth certificate.

(See page 10 of the report for full list.)

Issue 2: Privacy and Information Protection

• Draft Recommendations: Prescribed Recipients - Registrations

17

The Uniform Vital Statistics Act should distinguish between certificates and registrations. The access provisions of the Uniform Vital Statistics Act's should permit the following people to request a copy or extract of a birth, death, or marriage registration:

- a person who requires it for a stated reason that, in the opinion of the Registrar, justifies the issuance of the certified copy or extract;
- an officer of Her Majesty in the right of Canada who requires it for use in the discharge of official duties of the officer;
- a person with a court order; or
- any other person, as defined by regulation.

Issue 2: Privacy and Information Protection

• Draft Recommendations: Residual Discretion

18

Discretionary powers should be preserved for the Registrar, along with language to help guide the registry staff in exercising that discretion. This discretion would allow for both registry staff as well as the Registrar to make appropriate disclosure decisions in accordance with the "information use principle".

Issue 2: Privacy and Information Protection

▪ Draft Recommendations: Conflicts of Law

19

If a provision of the *Uniform Vital Statistics Act* is inconsistent or in conflict with a provision of provincial or federal privacy legislation, that provision of the *Uniform Vital Statistics Act* should prevail.

Issue 3: Assisted Human Reproduction (AHR)

- AHR was addressed in the 2010 *Uniform Child Status Act*
- ULCC 2015: Project committee was asked to obtain feedback on the recommendations from the Coordinating Committee of Senior Counsel (Family Justice Council) from the *Uniform Child Status Act Project*
- In response to the feedback, the Working Group of the *Uniform Vital Statistics Act Renewal Project* developed the following approach to respect the feedback submitted by the CCSO Family Justice Council.

Issue 3: Assisted Human Reproduction (AHR)

1. The *Uniform Vital Statistics Act* would not encroach on family law legislation if that legislation addresses AHR.
2. The *Uniform Vital Statistics Act* will focus on its mandate of registering the birth information of children
3. The *Uniform Vital Statistics Act* should defer issues of parentage to family law legislation, rather than unwittingly creating a system which provides a parallel way of determining parentage based on the registration process.

Issue 3: Assisted Human Reproduction (AHR)

▪ Draft Recommendations: Default approach to registering births conceived with AHR

20

The *Uniform Vital Statistics Act* should include a provision which defers to the jurisdiction's family law legislation definitions and principles governing births conceived using AHR.

Issue 3: Assisted Human Reproduction (AHR)

Where there is no existing legislation regulating AHR, a gap remains which places Registrars in the difficult position of having no direction as to how to register the births.

Registrars require legislative guidance on issues such as:

- Surrogacy agreements
- Registration of the various parties involved in a surrogacy arrangement
- Dispute resolution
- Potential discrimination

Issue 3: Assisted Human Reproduction (AHR)

The Working Group proposes the following set of recommendations, subject to ULCC approval, that would provide legislative guidance in the *Uniform Vital Statistics Act* for registrars in the absence of any other legislation regulating AHR.

Where any legislation regulating AHR exists, the following sections of the Uniform Vital Statistics Act would not apply (as per Recommendation 20)

Issue 3: Assisted Human Reproduction (AHR)

If the following set of recommendations (21 to 21.6) is not approved, only Recommendation 20 would remain in the *Uniform Vital Statistics Act*.

In such a case, the Act would propose no recommendations on AHR, beyond the provision which defers to family law determinations of parentage for the purposes of registration.

Issue 3: Assisted Human Reproduction (AHR)

▪ Draft Recommendations: Interim approach in the absence of other legislation

21

Where a jurisdiction lacks definitions and principles relating to births originating from AHR in their family law legislation, the *Uniform Vital Statistics Act* provisions should apply until such a time as such legislation is adopted.

Issue 3: Assisted Human Reproduction (AHR)

• Draft Recommendations: Interim approach in the absence of other legislation

21.1

Prior to conception, the birth parent/surrogate and the intended parent(s) should complete sworn affidavits which include:

- Basic information about the parties (names, addresses, intended parents' date of marriage/marriage-like relationship if applicable)
- Date of the surrogacy agreement, though the registrar does not view or collect a copy of this agreement.
- Affidavits from the parties that confirm:
 - o That the surrogacy agreement was completed before conception;
 - o That the surrogate will not be a parent of the child;
 - o That the intended parent(s) will be the parent(s) of the child;
 - o That prior to the conception, no party to the surrogacy agreement withdrew from the agreement or died; and
 - o That after the birth of the child, the surrogate gave written consent to surrender custody of the child to the intended parents.

Issue 3: Assisted Human Reproduction (AHR)

• Draft Recommendations: Interim approach in the absence of other legislation

21.2

The birth parent/surrogate will initially be registered as the parent of the child.

21.3

The intended parent(s) will apply to the registrar to amend the birth registration with their parental information on it in place of the birth parent/surrogate. They will provide the affidavits completed before conception as evidentiary support for this application.

21.4

There will be no distinction between intended parents with or without genetic links to the child.

Issue 3: Assisted Human Reproduction (AHR)

- **Draft Recommendations: Interim approach in the absence of other legislation**

21.5 Any disputes will be dealt with by a hearing in a court of competent jurisdiction.

21.6 A party who contests the surrogacy agreement will bear the burden of proving that the surrogacy agreement ought to be changed.

Issue 3: Assisted Human Reproduction (AHR)

- **Draft Recommendations: Privacy of the birth parent/surrogate**

22 Information about the birth parent/surrogate in a surrogacy arrangement will be handled according to the privacy provisions in that jurisdiction's adoption, family, or child status legislation.

Issue 4: Adoptions

- Vital statistics legislation lacks uniformity in determining how adoption information is accessed and shared between jurisdictions.
- “Open” and “Closed” adoption jurisdictions result in complications where information held in conflicting jurisdictions is not being shared.
- Vital statistics agencies would prefer to only register adoptions, as providing adoption information to clients is often outside their mandate. Post-adoption services agencies should be responsible for distributing such information to applicants.

Issue 4: Adoptions

▫ **Draft Recommendations: Privacy and disclosure of adoption information**

23

Vital statistics agencies, upon receipt of an adoption order, should amend the birth registration of the adopted child to reflect the names of the adoptive parents.

24

Adoption orders in the possession of vital statistics agencies should be considered evidence of the registration process and should be treated with the same level of scrutiny and confidentiality as all other evidentiary documents used in other vital statistics applications.

Issue 4: Adoptions

• Draft Recommendations: Privacy and disclosure of adoption information

25

Subject to applicable restrictions on disclosure contained in legislation governing adoptions, the original birth registration should only be released by vital statistics agencies to the agency responsible for providing post-adoption services once:

- a) An application by a party to the adoption has been made to the agency responsible for providing post-adoption services, and
- b) A request for the original birth registration is relayed from that agency to the vital statistics agency possessing such records.

26

Where there is no agency responsible for providing post-adoption services, or where vital statistics agencies have traditionally fulfilled that purpose, additional regulations should be implemented to ensure that the information is properly disclosed.

Issue 4: Adoptions

• Draft Recommendations: Information sharing

27

The *Uniform Vital Statistics Act* should include a provision that will ensure the unimpeded sharing of adoption information between vital statistics agencies and agencies providing post-adoption services, but should not mandate the mechanics of the information sharing process. The Act should ensure that vital statistics agencies are free to communicate with post-adoption agencies and disclose the original birth registration of an adopted child or their biological parent(s) making an application for disclosure.

Issue 4: Adoptions

• Draft Recommendations: Disclosure vetoes and contact preferences

28

The *Uniform Vital Statistics Act* should ensure that a vital statistics agency can inquire about, and disclose the existence of, a veto or other contact preferences to the vital statistics or post-adoption agencies in the jurisdiction where a disclosure application has, or had the opportunity to have been made.

Issue 4: Adoptions

• Draft Recommendations: Aboriginal customary adoptions

29

“Aboriginal customary adoption” should be defined as: “an adoption performed in accordance with the customary traditions of an Aboriginal group in Canada to which some or all of the parties of the adoption (birth parents, adoptive parents, adopted child) are members.”

30

The *Uniform Vital Statistics Act* should include the following provision for recognizing and registering Aboriginal customary adoptions:

(see page 18 for full recommendation)

Issue 5: Naming Conventions

- The *Uniform Vital Statistics Act Renewal Project* provides the ULCC and vital statistics agencies with an opportunity to reflect the recommendation on the reclamation of names in the *Truth and Reconciliation Commission Report*.
- Two aspects of name reclamation, single names and Aboriginal characters, can be addressed in the legislation to ensure compliance with the recommendation.

Issue 5: Naming Conventions

- **Draft Recommendations: Single names**

31

In response to the Truth and Reconciliation Commission Report recommendations, the *Uniform Vital Statistics Act* should include a provision which allows Aboriginal applicants to register their child's name with single name at the time of birth.

Issue 5: Naming Conventions

▪ Draft Recommendations: Aboriginal characters and syllabics

32

In response to the Truth and Reconciliation Commission Report recommendations, the *Uniform Vital Statistics Act* should include a provision which allows Aboriginal applicants to register their child's name with Aboriginal characters and syllabics at the time of birth.

Issue 6: Remaining Administrative Issues

- A few administrative issues required reform but did not fall neatly into the defined categories:
 - Parental signatures on birth registrations
 - Uniformity of delayed registrations
 - Responsibility for certifying deaths

These remaining administrative issues aim to update discrete sections of the 1987 *Uniform Vital Statistics Act* to align them with modern practices and standards.

Issue 6: Remaining Administrative Issues

▪ Draft Recommendations: Parental signatures on birth registrations

Issue: Standards for parental signature requirements lack uniformity. Jurisdictions differ on the process to register births, and in what circumstances a birth mother can name a birth parent without them present. Different approaches across Canada vary based on policies regarding sex, gender, and marital status.

33

The *Uniform Vital Statistics Act* should include a provision governing parental signatures on birth registrations which provides for the following:

(see page 21 for full recommendation)

Issue 6: Remaining Administrative Issues

▪ Draft Recommendations: Uniform standards for delayed registrations

Issue: Registrations which are filed after a certain period of time are considered “delayed”, and are subject to additional screening by the Registrar. Across Canada, standards for the length of time before a registration is delayed lacked uniformity.

34

The *Uniform Vital Statistics Act* should define a “delayed” registration as a registration that occurs after one year of the event having taken place. An applicant submitting a delayed registration should be required to provide the Registrar with satisfactory evidence that the registration should be completed.

Issue 6: Remaining Administrative Issues

▪ Draft Recommendations: Responsibility for certifying deaths

Issue: The responsibility for certifying deaths varies per jurisdiction. Most vital statistics legislation provides that only the attending physician can certify the death of a person, but some jurisdictions have added additional roles. The *Uniform Vital Statistics Act* should reflect a broader approach that allows for additional professionals to certify deaths.

35

The responsibility for certifying deaths should be delegated to the medical practitioner last in attendance of the person before their death, or any other prescribed person as provided by regulation.

Drafting a Renewed *Vital Statistics Act*

- The Working Group of the *Uniform Vital Statistics Act Renewal Project* discussed options for a renewed *Uniform Vital Statistics Act*.
- The Working Group members reviewed the 1987 Act and agreed that the sections of the Act not subject to the recommendations continue to be appropriate, but would require an update to modern language and drafting conventions, as well as a French translation.
- The Working Group believed that an entirely new Act should be drafted, working closely with the 1987 Act to preserve the sections which are not in need of reform.

Drafting a Renewed *Vital Statistics Act*

- **Draft Recommendations: Drafting a renewed *Vital Statistics Act***

36

The recommendations in this report should be incorporated into the 1987 Act and the language of the 1987 Act should be modernized to reflect modern drafting styles.

Next Steps

- **Drafting**
 - English drafter confirmed
 - Planning for French drafting of the legislation is ongoing
- **Final report and approval of draft legislation:** Summer 2017

Questions and comments

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