

**MIDYEAR MEETING  
OF THE COMMITTEE ON SCOPE AND PROGRAM**

**UNIFORM LAW COMMISSION**

**Friday, January 19, 2018  
Miami, Florida**

**Minutes**

The meeting of the Committee on Scope and Program was convened at 9:00 am on Friday, January 19, 2018, at the Mondrian Hotel, in Miami, Florida, by Chair Dan Robbins. Committee members Thomas Hemmendinger, Lyle Hillyard, Lisa Jacobs, Kay Kindred, Ryan Leonard, Craig Stowers, Karen Washington, and Steven Willborn were present. Also present were Carl Lisman, Chair of the Executive Committee, Rich Cassidy, Immediate Past President, Steve Wilborn, Vice President, Liza Karsai, ULC Executive Director, Katie Robinson, ULC Legislative Program Director, and Elizabeth Cotton-Murphy, ULC Chief Administrative Officer. Attending for a portion of the meeting was Commissioner Gail Hagerty.

Chair Robbins welcomed the committee and discussed the agenda for the meeting. A motion was made and approved accepting the minutes of the Scope and Program Committee meeting held July 15 and 16, 2017.

**Study Committee Reports**

- Study Committee on **Declarations of Quarantine**  
(Pat Fry, Chair) Scope Liaison Craig Stowers

Commissioner Stowers reported on the progress of this study committee. The committee has recently engaged the services of a reporter, Prof. Mark Rothstein, and has met several times by conference call since the 2017 annual meeting. The committee recommends that a drafting committee be formed to draft legislation to deal with rights of individuals who are subject to quarantine orders, employment security for those individuals, access to social services, and incentives to encourage cooperation with quarantine orders.

After discussion, the Committee on Scope and Program did not approve the recommendation for a drafting committee. Instead, Scope requests that the study committee provide a more comprehensive report for consideration at the July 2018 meeting of Scope, specifically addressing the criteria for drafting new acts as well as narrowing the scope of drafting.

- Study Committee on **Identity Management in Electronic Commerce**  
(Henry Gabriel, Chair) Scope Liaison Steve Willborn

Commissioner Willborn reported on the progress of this study committee. The committee has met several times by conference call in the past year. The committee examined existing state and European law as well as possible international initiatives for identity management in electronic commerce. After extensive discussion of existing and potential legislation, the Study Committee has concluded that there is not a project now that warrants uniform state law. The committee requests that it be discharged.

After discussion, the Committee on Scope and Program recommended that the study committee be discharged and approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Identity Management in Electronic Commerce be discharged with a letter of thanks to the committee.**

*On January 20, 2018, the Executive Committee approved this resolution.*

- Study Committee on **Event Data Recorders in Cars**  
(Paul Chaiken, Chair) Scope Liaison Lisa Jacobs

Commissioner Jacobs reported on the progress of this study committee. The committee has met twice by conference call since the 2017 annual meeting. The committee requests that it be continued so that it has time to review and discuss additional material that the chair has compiled. It is expected that a final report and recommendation will be submitted for consideration at the July 2018 meeting of Scope and Program.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Unmarried Cohabitants**  
(Gail Hagerty, Chair) Scope Liaison Kay Kindred

Commissioner Kindred reported on the progress of this study committee. The committee has met twice by conference call since the 2017 annual meeting. The committee recommends that a drafting committee be appointed to develop an Economic Rights of Unmarried Cohabitants Act, giving due consideration to such issues as: (1) an “opt in” status for unmarried cohabitants who wish to share rights and resources while they cohabit; (2) remedies in express or implied contract for unmarried cohabitants when the cohabitation ceases because of dissolution or death, in the absence of an “opt-in” agreement; and (3) clarity on conflict of law issues which arise in a mobile population.

After discussion, the Committee on Scope and Program did not approve the recommendation for a drafting committee. Instead, Scope requests that the study committee provide additional information for consideration at the July 2018 meeting of Scope, specifically addressing the criteria for drafting new acts as well as clarification on the question of whether any act on this subject would create dissonance with rights and obligations found in existing state law.

- Study Committee on **Right of Publicity**  
(Harvey Perlman, Chair) Scope Liaison Ryan Leonard

Commissioner Leonard reported on the progress of this study committee. The right of publicity permits an individual to protect her name, likeness, and potentially other aspects of the individual's identity from use without permission. The committee has met twice by conference call since the 2017 annual meeting. The committee has identified the major issues for consideration, and contacted relevant stakeholders. Although there was no consensus from the stakeholder groups as to the ability to achieve consensus in this area, the committee members recommend that a drafting committee be appointed.

After discussion, the Committee on Scope and Program recommended that the study committee be discharged and approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Right of Publicity be discharged with a letter of thanks to the committee.**

*On January 20, 2018, the Executive Committee did not approve this resolution. Instead, the Executive Committee tabled the resolution until July 2018, and requests that the Scope and Program Committee provide an opportunity to the Committee Chair Harvey Perlman to answer questions regarding the committee's recommendation.*

- Study Committee to **Amend the Uniform Conservation Easement Act**  
(Steve Cawood, Chair) Scope Liaison Tom Hemmendinger

Commissioner Hemmendinger reported on the progress of this study committee. The committee has researched and reviewed state statutes on the subject, and has held numerous conference calls in 2017. After extensive discussions with relevant stakeholders, the Study Committee has concluded that there is not a project now that warrants amending the Uniform Conservation Easement Act. The committee requests that it be discharged.

After discussion, the Committee on Scope and Program recommended that the study committee be discharged and approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee to Amend the Uniform**

**Conservation Easement Act be discharged with a letter of thanks to the committee.**

*On January 20, 2018, the Executive Committee approved this resolution.*

- Study Committee on **Garnishment of Wages in Bank Accounts**  
(Anne McGihon, Chair) Scope Liaison Steve Willborn

Commissioner Willborn reported on the progress of this study committee. The committee has met by conference call three times since the 2017 annual meeting. The committee will continue its discussions with relevant stakeholders and will determine the scope of the project. It is expected that a final report and recommendation will be submitted for consideration at the July 2018 annual meeting of Scope. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Adverse Possession**  
(Anne Reigle, Chair) Scope Liaison Lyle Hillyard

Commissioner Hillyard reported on the progress of this study committee. The committee has met by conference call two times since the 2017 annual meeting. The committee will continue to review all aspects of adverse possession law and continue to reach out to potential stakeholders. It is expected that a final report and recommendation will be submitted for consideration at either the July 2018 annual meeting of Scope or the January 2019 midyear meeting of Scope. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Data Breach Notification**  
(Jim McKay and Nora Winkelman, Co-Chairs) Scope Liaison Karen Washington

Commissioner Washington reported on the progress of this study committee. The committee has met by conference call one time since the 2017 annual meeting. The committee plans to have a series of calls in 2018, to determine the essential components of a state data breach notification law and to determine the extent to which current state laws contain these components and the extent to which their approaches differ. The committee will also reach out to potential stakeholders. It is expected that a final report and recommendation will be submitted for consideration at either the July 2018 annual meeting of Scope or the January 2019 midyear meeting of Scope. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

### **Joint Editorial Board Written Reports and Recommendations**

- **JEB – Uniform Family Law**  
(Barbara Atwood, Chair) – Scope Liaison Kay Kindred

Commissioner Kindred reported on the report and the recommendations from the JEB. The first recommendation from the JEB concerns a proposal from Commissioner Gail Hagerty to appoint a study committee on pet custody which had been referred to the JEB for review and consideration. While the JEB members were sympathetic to the need for law reform in this area of growing concern when couples separate, the JEB members did not see the need for uniform law treatment. The JEB consensus was not to recommend the appointment of a study committee.

After discussion, the Committee on Scope and Program agreed with the recommendation from the JEB and concluded to take no action at this time.

The second recommendation from the JEB concerns a proposal from Commissioner Lyle Hillyard to appoint a study committee on the unregulated custody transfers of adopted children, often referred to as “rehoming”, which had been referred to the JEB for its review and consideration. Representatives from the State Department, Health and Human Services, Department of Justice, and other agencies have formed a working group to explore state legislation to prevent the custody transfers through monitoring and provision of services, and legislation to provide appropriate remedies after a transfer of custody. Seven states have enacted legislation addressing this phenomenon. Legislation recently enacted in Utah was identified by the State Department representatives as a promising model for uniform law treatment. The JEB discussed the proposal at length and voted to recommend to Scope and Program the appointment of a study committee to explore the feasibility of a uniform law to address the unregulated custody transfers of adopted children.

After discussion, the Committee on Scope and Program recommended that a study committee be appointed and approved the following resolution:

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee be formed to study the need for and feasibility of state legislation on unregulated custody transfers of adopted children, also known as “rehoming.”**

*On January 20, 2018, the Executive Committee approved this resolution.*

The third recommendation from the JEB concerns a proposal from Commissioner Carl Lisman for regulation of child marriage, which had been referred to the JEB for its review and

consideration. The JEB determined that it warrants further consideration in conjunction with an earlier proposal on forced marriage. The JEB will gather more information on both child marriage and forced marriage and hold a conference call in the spring to consider a recommendation for appointment of a study committee for legislation addressing both topics.

After discussion, the Committee on Scope and Program accepted this recommendation.

- **JEB – Uniform Trust and Estate Acts**  
(Tom Gallanis, Executive Director) – Scope Liaison Steven Willborn

There was no proposal from the JEB, and the report of the JEB was accepted.

- **JEB – Uniform Real Property Acts**  
(Wilson Freyermuth, Executive Director) – Scope Liaison Lyle Hillyard

Commissioner Hillyard reported on the recommendation from the JEB to appoint a drafting committee on easement relocation. The ULC previously appointed a study committee on relocation of easements, which recommended the appointment of a drafting committee in Spring 2012. While the JEB was supportive and Scope and Program recommended proceeding to drafting, the ULC Executive Committee decided not to appoint a drafting committee and instead voted to discharge the study committee. Nevertheless, the JEB/URPA remains of the view that a uniform act would be justified if it can provide a simple and beneficial solution which permits the more ready and efficient development of land affected by ancient, ambiguous access easements. At its meeting on November 17, 2017, the JEBURPA unanimously approved a motion to recommend that the ULC appoint a drafting committee to prepare a uniform act on the subject of easement relocation.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed and approved the following resolution:

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on Easement Relocation be formed.**

*On January 20, 2018, the Executive Committee approved this amended resolution:*

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on Relocation of Non-Utility Easements be formed.**

- **JEB – International Law**  
(Michael Houghton, Co-Chair) – Scope Liaison Ryan Leonard

There was no proposal from the JEB, and the report of the JEB was accepted.

- **JEB – Unincorporated Organization Acts**  
(Daniel Kleinberger, Director of Research) – Scope Liaison Lisa Jacobs

There was no proposal from the JEB, and the report of the JEB was accepted.

- **PEB – Uniform Commercial Code**  
(Neil Cohen, Director of Research) – Scope Liaison Tom Hemmendinger

There was no proposal from the PEB, and no new report of the PEB to be considered.

### **Monitoring Committees Reports and Recommendations**

- **Committee to Monitor Civil Litigation and Dispute Resolution**  
(Mike Getty, Chair) – Scope Liaison Karen Washington

There was no proposal from the Committee to Monitor Civil Litigation and Dispute Resolution, and the report of the Committee was accepted.

- **Committee to Monitor Healthcare Law**  
(Abbe Gluck, Chair) – Scope Liaison Lyle Hillyard

There was no proposal from the Committee to Monitor Healthcare Law, and no new report of the committee to be considered.

- **Technology Committee**  
(Tom Buiteweg, Chair) – Scope Liaison Tom Hemmendinger

There was no proposal from the Technology Committee, and the report of the Committee was accepted.

- **Committee on Criminal Justice Reform**  
(Gail Hagerty, Chair) – Scope Liaison Craig Stowers

Commissioner Stowers reported on the work of the Criminal Justice Reform Committee. The CJRC recommended to Scope and Program and the Executive committees at the ULC 2017

Annual Meeting that the ULC draft a uniform act relating to alternatives to bail. After discussion, the Scope and Program Committee concluded to take no action at that time, and instead referred the proposal back to the CJRC for further review, with the request that the committee return at the appropriate time with more information on potential state legislation on pretrial bail reform. The CJRC researched the kinds of provisions that may be incorporated in such an act. Based on this research, the CJRC again recommends the formation of a drafting committee on alternatives to bail.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed and approved the following resolution:

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on Alternatives to Bail be formed.**

*On January 20, 2018, the Executive Committee approved this resolution.*

### **New or Pending Proposals**

- **Virtual Representation**  
(Commissioner Tom Geu) Scope Liaison Lisa Jacobs

Commissioner Jacobs reported on this proposal to address the issue of proxy notification to trust beneficiaries, also known as “virtual representation.”

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the proposal to the Joint Editorial Board for Uniform Trust and Estate Acts for further review, with the request that the JEB report back its findings at the July 2018 meeting of the Scope and Program Committee.

- **Special Deposits**  
(Joseph Sommer, New York Federal Reserve, submitted on his own behalf)  
Scope Liaison Tom Hemmendinger

Commissioner Hemmendinger reported on this proposal to create a study committee to explore the possibility of codifying the law of special deposits. Special deposits resemble a prefunded letter of credit with three parties: a funder, a bank, and a beneficiary.

After discussion, the Committee on Scope and Program concluded to take no action at this time. However, the proposal will remain on the Scope agenda for further discussion at the July 2018 annual meeting of Scope.

## Potential Future Projects

The following topics were discussed and evaluated by Scope to determine if Scope should recommend further research or review on the particular topic.

- **Secondary Market for Life Settlements**  
(Commissioner David Clark) Scope Liaison Karen Washington

Commissioner Washington reported on this proposal to address the issue of secondary markets for life settlements.

After discussion, the Committee on Scope and Program requested that ULC staff further research the current status of state law on the subject, and report back any findings at the July 2018 meeting of the Scope and Program Committee.

- **“Rehoming” following international adoptions**  
(Commissioner Lyle Hillyard) Scope Liaison Ryan Leonard

Scope recommends the appointment of a study committee. See discussion above under the report of the JEB/Uniform Family Law.

- **DNA testing upon criminal conviction**  
(Commissioner Mary Gay Taylor-Jones) Scope Liaison Craig Stowers

Commissioner Stowers reported on this proposal to mandate DNA testing after arrest for a broad range of criminal offenses, including serious misdemeanors.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the proposal to the Criminal Justice Reform Committee for further review, with the request that the Criminal Justice Reform Committee report back its findings at the July 2018 meeting of the Scope and Program Committee.

- **Financial protection against aging out of foster care**  
(Sylvia Randolph) Scope Liaison Kay Kindred

Commissioner Kindred reported on this proposal to address the issue of financial support for young adults in foster care who have attained majority age and to determine the efficacy of a uniform or model law to address the financial support that is funded by states for youth services and foster care.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- **Apprenticeship Training Act**  
(Commissioner Charlie Trost) Scope Liaison Steve Willborn

Commissioner Willborn reported on this proposal to study the feasibility of a Uniform Apprenticeship Training Act.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- **Forced arbitration and standard form contracts**  
(Commissioner Carl Lisman) Scope Liaison Karen Washington

Commissioner Washington reported on this proposal regarding forced arbitration and standard form contracts, and to prohibit forced arbitration of consumer disputes.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the proposal to the Committee to Monitor Developments in Civil Litigation and Dispute Resolution for further review, with the request that the Monitoring Committee report back its findings at the July 2018 meeting of the Scope and Program Committee.

### **Discussion Items**

- **Naming convention of ULC Acts**

Katie Robinson reviewed for the committee the draft guidelines for the naming of ULC acts. Recommendations had been reviewed by the Committee on Legislative Attorneys, which has submitted its own recommendations.

Further discussion on the topic is deferred until July 2018 pending further review of the memos by the members of Scope and Program.

### **Other Business**

- **Use of blockchain**

Commissioner Lisman submitted a copy of a recently introduced bill from Vermont that would regulate the use of blockchain.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the proposal to the ULC Technology Committee for further review, with the request that the Technology Committee report back its findings at the July 2018 meeting of the Scope and Program Committee.

Having no further business, the Committee on Scope and Program was adjourned.