

MEMORANDUM

TO: RULONA Drafting Committee, Advisers and Observers

FROM: Patricia B. Fry

DATE: October 19, 2009

SUBJECT: Summary of Transcript of Floor Debate
July 12, 2009

The following summary is drafted in the hope it will facilitate discussion of points made or discussed during the 2009 ULC Annual Meeting. Rather than attempt to characterize or outline the actual discussion, this is confined to bullet points extracted from the transcript of the floor discussion of the Annual Meeting draft. Items generally appear in the order discussed, with the exception of duplications.

1. Section 17. Does this describe the limit of sanctions for a notary's bad acts? Should there be a comment or text on prohibited acts or penalties?
2. Identification credential. Driver's licenses should be specifically mentioned. Also, mention should be made of any other credentials such as military IDs or passport cards, or the list should be limited. Why is it necessary that the credential include a signature?
3. Notarial officer. Does this include someone who performs the act as part of his or her official duty, such as a court clerk? Does this include a lawyer authorized by virtue of authority to practice law?
4. Having got rid of protests for the most part under UCC Article 3, they should not be given more importance under this act. Perhaps the comment should note their declining importance.
5. Does the notary have an obligation to determine the validity of the claimed authority of a signer or is it just a statement in the record that the signer has authority? Who determines whether or not they had proper authority?
6. Definitions should be coordinated with other acts, e.g. the Business Organizations Act with its lengthy list of participants, the definition of 'person,' the definition of 'state.'
7. In New York, affirmations are never made under oath; they are made under penalty of perjury. When would a notary notarize an affirmation?

8. The act should include disqualification from acting when the notary has a personal interest in the transaction.
9. The act should be clear that the signer must personally appear before the notary and preclude anyone from appearing via telephone or other remote media.
10. The act should be clearer about capacity for minors, who now have passports and other identification. Also, the act should deal directly with the other capacity issue, mental deficiency.
11. Should the act permit the notary to refuse to act if the record is fraudulent, or be required to refuse? Should the notary have a duty to report to a law enforcement agency? Should the officer be shielded from civil liability for having made such a report where there is a good faith belief that fraud was present? Should the ability to refuse be limited to problems with the identification documents, which would reduce the notary's problem. Is the correct standard the notary's reason to believe or should it be 'knows' or 'believes'? Should there be a definition of the standard?
12. Should the act clarify that a notary's employer may limit the persons who will be served by the notary? Should the act state that it does not create a duty for a notary to attest to the authenticity of a document, but simply the person who executes the document?
13. Elderly persons particularly often have out of date or expired identification credentials. The one year period is too restrictive. It might make sense in such a case to permit a third party who has a current identification credential to affirm identity.
14. A policy of impartiality or that the duties must be performed in a nondiscriminatory fashion should be expressed.
15. Consider adding an instruction that if someone has vouched for identification, the record should indicate who vouched for that person.
16. Where a third party signs for the witness, it should truly be a third party, not the notary. Why not just say the individual may direct someone else to sign for him or her? There is a provision in the Probate Code that deals with having a will signed by someone other than the testator.
17. Is there a need to separately mention a "deputy clerk"? Shouldn't the reference be to someone authorized to act on behalf of the clerk?
18. Sections 6, 7 and 8 have identical provisions in subsection (b). Should this be repeated or should there be a collective section?

19. What is the policy justification for saying that notarizations performed in foreign jurisdictions will be accepted without adhering to the domestic limitations imposed to protect our own citizens? Esp. if the Hague Convention is not implicated? Should the act identify the essential elements that need to be met wherever the notarization occurs?
20. The provisions dealing with foreign notarizations need to be cleaned up; the concept of diplomatic relations is complicated.
21. At least in the comments, the relationship between this act and the Unsworn Foreign Declarations Act should be referenced.
22. What is the effect on an instrument where notarization is required but the notary omits some of the requirements?
23. Section 3 should clearly state which items are authority and which requirements.
24. In Section 11(c), is there an obligation to destroy an expired stamp?
25. In the provision on control of the notary's stamp, would it be acceptable to have an employee or subordinate safeguard the stamp?
26. Lawyers would find it burdensome and problematic to be required to keep a journal, whether the lawyer's authority is derived from his or her status as members of the bar or by virtue of the issuance of a notary's commission.
27. Is 10 years an appropriate period – or too long – for requiring the notary to keep the journal? Does failure to keep the journal affect the validity of the record?
28. Does a guardian or other representative have an obligation to retain the journal?