

CLOSING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 11:00 a.m. on Thursday, August 11, 1994 with Peter Lown, Q.C. as Chair and Claudette N. Racette as Secretary.

President's Address

The President's address was presented at the Opening Plenary Session. During the week, several delegates raised questions in response to his request for comments. A number of the questions were addressed during the meeting with the Jurisdictional Representatives, on Wednesday August 10. Thanking the delegates for their contributions, the President indicated that the remaining comments would be addressed by the Executive Committee.

Amendment to the Statement of Renewal

Because of the vacancy on the Executive Committee which exists as a result of the appointment of the Vice-President, Anne Marie Trahan, to the Superior Court of Quebec in July, the Executive Committee had asked Graham Walker to review the Conference's constitutional document to determine how the Conference should deal with such vacancies.

He reported that under Part 2, Procedures and Policies, Section 22, (1):

" The Executive Committee may adopt Procedures and Statements of Policy concerning the Conference from time to time and may amend existing Procedures and Statements of Policies provided, however, that any such Procedure and Statement of Policy or amendment shall cease to have effect if it is not ratified at the next meeting of the Conference."

In Section 14 of the Procedures, there is a provision for the President, and if the President is not available, namely that the Vice-President serve. There is a provision where if there is no Vice-President who can serve as Vice-President,

CLOSING PLENARY SESSION

then the Executive may nominate or appoint a member of the Executive for the balance of the term.

In his opinion, it is important that every member of the Executive be elected. He believes that it would not be in accord with the spirit of the Conference and the spirit of the provisions dealing with the Executive if a person were appointed without confirmation from the Conference. He then presented a Motion to Amend Annex A of the procedure attached to the Renewal Document adopted on August 17, 1990.

"Part 7 - Unexpired Terms - Section 14.

Add immediately following subsection (2) thereof, the following subsection:

(2A) Where the Vice-President is unable for any reason to complete a term as Vice-President, the Executive Committee shall designate one of themselves to serve as a Vice-President for the balance of the unexpired term."

The motion was seconded by John Gregory and carried unanimously.

Proposal for the Creation of a New Law Reform Commission

The delegates reviewed a document relating to the consultation which has taken place on the proposal to create a new Federal Law Reform Commission. The study paper was circulated earlier this year by the Department of Justice, with a short response time. It is the opinion of the Executive Committee that the Conference should express an opinion on the creation of a new Federal Law Reform Commission and indicate its support and willingness to co-operate.

The President reported on the Prairie Region Consultation he had participated in last year and which was followed by a telephone conference call in June. He referred delegates to the Questionnaire and to the copy of the letter he forwarded to the Department of Justice on behalf of the Counsel of the Alberta Law Reform Institute. This letter was distributed to the delegates for three specific reasons:

UNIFORM LAW CONFERENCE OF CANADA

First, so delegates could understand that the President is also a participant in a law reform agency in a province, which gives him some experience base from which to make comments. Second, if that declares any bias, he wanted the delegates to be aware of that bias. The third, indicates what he believes is a shared frustration in terms of the consultation process. Because the questionnaire calls for "yes" "no" answers, it is rather difficult to answer those questions with any meaningful detail. As a result, a number of participants have declined to answer the questionnaire because it is impossible through the questionnaire to give the kind of detail and balance which is necessary.

Seeking authority from the delegates to respond to the consultation on behalf of the Conference, the President suggested the following response:

The Conference should indicate to the Department of Justice its supportive views of the need to establish a new Commission. This could be expressed along the following lines: That the Conference indicate that it sees a helpful and cooperative role with a new Commission and that it would seek to participate cooperatively and jointly as far as possible with any new Commission which is established. It is proposed that we do not go into further detail. However there may be some possibility of jointly funded projects. There is certainly the opportunity for sharing of research and activity. The response could begin with a preamble stating that the Conference sees a very cooperative and beneficial relationship between itself and the new Commission.

Since the consultative document breaks down into four general areas, he suggested the following general statements:

1. The first relates to an Independent Law Reform Commission. The Conference should endorse the creation of an independent Law Reform Commission having a broad mandate for the improvement of the law within the Federal domain and for the harmonization of Federal provincial/territorial interests.
2. Structure. How Should the Law Reform Commission be structured? The structure should be of a central core of expertise which is sufficient to carry on and manage the business of a Law Reform Agency.

CLOSING PLENARY SESSION

3. **Agenda Setting.** The agenda setting role of the Commission should be as broad as possible. It should be inclusive. It should be consultative and it should look to a broader community than perhaps traditionally was involved in setting the topics.
4. Perhaps the most important of all, the Reporting Mechanism. It was suggested that the Conference endorse a reporting mechanism either to a Standing Committee of Parliament or through the Minister to a Standing Committee of Parliament which involves a mandatory response of the Minister to the proposals.

In his opinion, the death knell for law reform proposals is that they go out and get no response whatsoever. Are they good? Are they bad? Are they indifferent? Who knows. One of the difficulties that could be cured by a reporting mechanism such as the one being suggested is that there would be immediate feedback on whether the proposals are good. If they are, that establishes a base for implementation or it certainly establishes a base for asking why not implementation. If they are bad, then the Agency knows of that immediately and if an agency produces consistently bad proposals, then it ought to see the writing on the wall or it ought to be able to amend its procedures and its activities accordingly. A reporting mechanism involving a mandatory response from the Minister would be a very beneficial kind of way of building communication between the Commission and its necessary related agencies. This is perhaps the most constructive way in which an independent Law Reform Commission could establish helpful and constructive lines of communications with departments.

Delegates were then given an opportunity to express their views on the President's proposed response. Considerable discussion followed. There was general agreement and support for the preamble and for the first three points. However, most of the delegates who expressed an opinion had some difficulty with or were opposed to the suggestion of a reporting mechanism to a Standing Committee of Parliament or through the Minister to a Standing Committee of Parliament. There was, however, general agreement that the President should mention some of the previous experience of the Federal Law Reform Commission and the need to build in a reporting mechanism, without setting out the details.

UNIFORM LAW CONFERENCE OF CANADA

The delegates were then asked to indicate their approval of mentioning the reporting mechanism, without setting out the details. Approve 12. Opposed 3.

The President will draft a letter which he will circulate to the Jurisdictional Representatives for comments.

Report from the Criminal Law Section

The Chairperson, Michael Allen, Q.C., reported on the work of the Section. The minutes of the Section are set out on page 62.

Paul Monty from Quebec was elected Chairperson of the Section for 1994-95.

Report from the Uniform Law Section

The Chairperson, John D. Gregory, reported on the work of the Section. The Minutes of the Uniform Law Section are set out on page 45.

Joint Sessions were held with the Criminal Law Section. The minutes of the joint sessions are set out on page 58.

Douglas Moen from Saskatchewan was elected as the new Chairperson of the Section.

The President welcomed the new Chairpersons of the Criminal Law and the Uniform Law Sections. He thanked the outgoing Chairs, Michael Allen and John Gregory for the work they undertook on behalf of the Conference.

Report from the Resolutions Committee

The Co-Chairs, Daniel Grégoire and Chris Curran, presented the following resolution:

Resolved that the Conference express its appreciation by way of a letter from the Executive Director to:

CLOSING PLENARY SESSION

1. The City of Charlottetown and Raymond Moore who welcomed delegates to the City on behalf of Ian "Tex" MacDonald Mayor of the City.
2. The province of Prince Edward Island and the Ministry of Provincial Affairs and Attorney General which hosted the 76th Meeting of the Conference which provided fruitful and stimulating intellectual discussions during which we enjoyed lively camaraderie and conviviality.
3. To the Organizing Committee of:

Raymond Moore, Richard Hubley, Linda Peters, Leona Nicholson, John Hennessey, Valerie Moore, Roger Langille and other staff members of the Department of Provincial Affairs and the Attorney General.
4. To the following Charlottetown law firms for their generous contribution toward the costs of the opening reception:

Stewart McKelvy Stirling Scales
Ross Hooley Douglas Murphy
Farmer MacLeod MacMillan Fortier
5. To The Honourable Marion Reid, Lt. Governor of Prince Edward Island, who graciously hosted tea for spouses and children at Government House on Tuesday afternoon.
6. To our umpire for his impartiality and patience.
7. Nous voudrions également adresser nos remerciements à M. Harry Holman, l'archiviste provincial pour nous avoir fait de façon humoristique l'historique judiciaire de l'Île-du-Prince-Édouard.
8. Nous voulons également adresser nos remerciements à nos collègues de la Conférence nationale américaine, le président sortant, M. Dwight Hamilton et son épouse, Mme Tiz Hamilton, ainsi que le président du comité de liaison M. Jeremiah Marsh et son épouse, Mme Marietta Marsh.

UNIFORM LAW CONFERENCE OF CANADA

9. Nous souhaitons tout particulièrement remercier les interprètes, Dorothy Charbonneau, Lucette Carpentier, René Plante, Helène Regimbald, Jean-Pierre Lessard et Cindy Runzer. Comme vous le savez, nos délibérations n'auraient pas été aussi fructueuses sans la collaboration de nos interprètes.
10. Nous voulons souligner aussi l'excellent travail fait par le personnel du Secrétariat des conférences intergouvernementales canadiennes et la grande disponibilité dont ils ont fait preuve pendant toute la semaine, M. Rick Millette, Carol Bourgeois, Pat Fagan et Nicole Henrie.
11. Nous voulons aussi souligner les excellentes contributions des présidents de nos Sections respectives, qui ont réussi à nous maintenir au travail et qui nous ont permis d'avoir des échanges fructueux.
12. Enfin, par la présente résolution nous tenons à témoigner une grande appréciation pour le travail effectué au cours de l'année par Madame Claudette Racette, notre Directrice exécutive qui participait pour la 2ième fois à notre session annuelle.

The President thanked the two Co-Chairs for their reports and stated that he would be sending the congratulatory letter to Claudette Racette. The report of the Resolutions Committee was approved unanimously.

1995 Conference - (Paul Monty, Member of the Organizing Committee)

La ville de Québec va être l'hôte de la prochaine conférence. La conférence se tiendra du 6 au 10 août 1995. Me Monty profite de l'occasion pour distribuer une pochette contenant de l'information touristique ainsi qu'un dépliant sur l'hôtel Loews le Concorde où se tiendra la conférence de 1995. Il aimerait que la plupart des participants profite de cette hôtel de manière à ce que plus nous aurons de nuitées, plus nous serons en mesure d'avoir les salles à un coût relativement bas.

Cent chambres ont été réservés pour notre conférence. Il souligne l'importance de faire les réservations le plus tôt possible. Québec est une destination populaire l'été et les chambres se font rares. Il compte sur la présence de tous et de chacun à Québec l'an prochain.

CLOSING PLENARY SESSION

Report from the Nominating Committee - (Howard Morton, Q.C., Chair)

This year's Nominating Committee consisted of Howard Morton, Chair, Christopher Curran, Sydney Horton, Richard Mosley and Michael Allen. In addition, the Committee consulted with Graham Walker, a Past President.

Given the elevation of Anne-Marie Trahan to the Bench, the Chair presented the following motion:

"That the Executive for the up-coming year consist of the following persons: President, Peter Lown, Vice-President, John Gregory, Chair of the Criminal Law Section, Paul Monty, Chair of the Uniform Law Section, Douglas Moen, Chair of the Drafting Section, Gordon Johnson, and Howard Morton, Immediate Past President."

The motion was seconded by Clark Dalton. Motion carried.

Adjournment

There being no further business, the meeting adjourned at 12:05 p.m.