

## **OPENING PLENARY SESSION**

### **MINUTES**

#### **Opening of Meeting**

The meeting opened at 1:30 p.m. on Sunday, August 11, 1996, at the Government Conference Centre in Ottawa, with John Gregory as Chair and Claudette Racette as Secretary.

#### **Introduction of the Executive Committee**

The Chair introduced the Members of the Executive Committee: Peter Lown, Q.C., Immediate Past President, Richard G. Mosley, Q.C., Vice President, Douglas E. Moen, Q.C., Chair of the Uniform Law Section, David Winkler, Chair of the Criminal Law Section and Claudette N. Racette, Executive Director. Lionel Levert, Q.C., Chair of the Drafting Section was unable to attend.

#### **Introduction of Delegates**

The senior delegate from each jurisdiction introduced members of his/her delegation.

#### **Introduction of Guests and Delegates from the NCCUSL**

The Chair introduced: Graham Walker, who attends as a Past President; the American guests, Bion Gregory, President of the NCCUSL, accompanied by his wife Patty and Jeremiah Marsh, Chairman of the Liaison Committee of the NCCUSL with the ULC who was also accompanied by his wife, Marietta.

#### **Welcoming Address**

On behalf of the Department of Justice, Richard Mosley welcomed the delegates to Ottawa.

David Dunlop, a member of the Organizing Committee, gave a brief overview of the social program for the week.

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### Report from the President

John Gregory gave an overview of the Conference from his year-long perspective. In general he thought the Conference looked to be in very good shape. He judged that on several criteria:

- \* Quality of work: the quality could be seen from the material in the binders for both sections. The Conference rarely saw such consistently good work across the board.
- \* Harmonisation of laws: The Criminal Code had been amended several times in the past couple of years, with many proposals of the Conference included. The most recent example was Bill C-17, currently before Parliament. The Conference was expressly mentioned as a source in the explanatory notes to the Bill.

On the civil side, about ten uniform statutes had been adopted in the past year or so, in six jurisdictions. The Intercountry Adoption (Hague Convention) Act had several provinces on side, and the Arbitration Act was now in force in five provinces.

- \* Special projects: the judgments package was an impressive ensemble, with the Enforcement of Canadian judgments Act in 1992, the Court Jurisdiction and Proceedings Transfer Act in 1994, and work on both non-money judgments and foreign judgments on the table for 1996.

The work of the Conference on the disclosure of the cost of consumer credit was close to completion after many years. The federal-provincial-territorial deputy ministers responsible for consumer measures had endorsed the work of the Conference in 1991; the Agreement on Internal Trade engaged the jurisdictions to harmonize their law on this field, in part in reliance on the availability of the ULC work; in 1996 the Conference would complete its work.

- \* Recognition: Internally, the Conference and its work had been discussed by the federal-provincial-territorial deputies' meeting in December, 1995, and at the ministers' meetings in May 1996.

Externally, the Conference had developed its relations with the Canadian Bar

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Association, the press, whose coverage of ULC projects was increasing, and with the public through intensified consultations on a number of projects. Progress had been made in developing marketing documents for the work of the Conference aimed at all these target audiences.

Publications had been successful as well. The Consolidated Statutes had been updated for the first time in four years; the Proceedings had been widely circulated; and materials from the 1994 and 1995 annual meetings were on the ULC's World Wide Web site. More documents would appear before long to create a full and serious presence on the Web. (The Alberta Law Reform Institute was to be thanked for its generous hosting of the ULC: <http://www.law.ualberta.ca/alri/ulc>.)

- \* **Finances:** Serious progress had been made on finances too, thanks largely to the work of the Executive Director, Claudette Racette. The income had been steady over the past four years, but in that time the Conference had increased its publications (including the Web site), expanded its consultations, built back its reserve fund, contributed money to the research fund, and ensured a professional standard of administration in dealing with sponsoring governments and the public.

Despite the general good news, continued progress depended on meeting several challenges.

- # **Resources:** It was essential to the work of the Conference that the sponsoring jurisdictions maintained their contributions. This meant not only the small annual fee (unchanged since 1987) but helping with project work during the year and sending a strong delegation to the annual meeting. All in all, these contributions cost any jurisdiction less than, say half a research lawyer in a year, and the value of the work could be considerably greater.
- # **Focus:** The key to success was to focus resources on winning projects, and on seeing the Conference as a cost-effective way to deliver them. Marketing was a part of this exercise as well; the Conference was in its early days in knowing how best to do this.
- # **Quality work:** Both the research and the work methods had to meet scrutiny from inside and outside government, to support the credibility of the Conference.

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There would be opportunities during the week, formal and informal, to discuss how to maintain the strengths and meet these challenges to ensure a strong future for the Conference.

The President thanked the members of the Conference for their support during the year and for the next four days of his mandate. He looked forward to continuing the work of the Conference in other roles in the years to come.

The President noted the recent death of Gérard Bertrand, a past President of the Conference. Mr. Bertrand had been active in the Drafting Section and also helpful to many delegates finding their way in the affairs of the Conference.

### **Financial Resolutions**

#### **Approval of Audited Financial Statements**

On motion by Arthur Close, seconded by Fred Bobiasz, **THAT** the Audited Financial Statements for the financial period ending March 31, 1996 be approved as presented. Motion carried. (See Appendix A at page 131 in English and 137 in French.)

#### **Appointment of Auditor**

Delegates were informed that Maurice Vance was willing to continue to serve as Auditor. On motion by Peter Lown, seconded by Paul Monty, **THAT** Maurice Vance be appointed as the Conference's auditor for the financial period ending March 31, 1997. Motion carried.

#### **Banking Resolution**

On motion by John Gregory, seconded by Arthur Close, the following banking resolution was carried:

**THAT** any two members of the Executive or one member of the Executive and the Executive Director be given signing authority as officers for all banking matters of the Conference **AND THAT** for the purpose of purchasing G.I.C.'s and Term Deposits, and for the purpose of transferring funds from the research

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account to the general account and visa versa, the signature of the Executive Director alone will be sufficient.

### **Approval of 1996-97 Budget**

The President presented the 1996-97 budget for approval. Two budget items were highlighted:

A transfer of \$5,000 from the general fund to the research fund. The Conference is finally in a position where it can transfer funds from the general account to support its research activities. This comes at a good time, since Justice Canada's contributions to the research fund have been on the decline in the past three years.

The creation of a reserve fund for future conferences. There is a real need to establish such a reserve. Some of the smaller jurisdictions are now asking the Conference to assist them to host the ULC conferences. In addition, since the withdrawal of the Intergovernmental Conference Secretariat, the Conference must pay 100% of the simultaneous interpretation costs for its conferences. In some jurisdictions, this represents a substantial amount, more than double what the Conference was required to pay in the past.

MOVED by Peter Lown, seconded by Carol Snell, THAT the budget for the fiscal period 1996-97 be approved. Motion carried.

### **Appointment of Committees**

#### **The Resolutions Committee**

MOVED by Peter Lown, seconded by Doug Moen, THAT the Resolutions Committee consist of Yvan Roy as Chair, Neil Ferguson for the Uniform Law Section and Donald Sorochan for the Criminal Law Section. Motion carried. Their report was to be presented at the Closing Plenary Session.

#### **The Nominating Committee**

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MOVED by John Gregory, seconded by David Winkler, THAT the most Immediate Past President, Peter Lown, Q.C., shall act as Chair of the Nominating Committee. Other members will be added, taking into account regional representation. The Committee will submit its report at the Closing Plenary Session.

### **Resolutions to Amend the Constitution of the Conference.**

MOVED by John Gregory, seconded by David Winkler, THAT the following Resolutions be adopted. The motion carried.

1. THAT the Statement of Renewal of the Conference be renamed the Constitution of the Conference.
2. THAT the Procedure of the Conference be renamed the By-Law of the Conference
3. THAT the Statements of Policy keep their name.
4. THAT the names of the Sections be as follows:
  - Criminal Section - Section pénale
  - Civil Section - Section civile
  - Drafting Section - Section de rédaction

and THAT the Constitution, By-Law and Statements of Policy be amended accordingly.

5. THAT the By-Law and Statements of Policy be amended to remove the references to the Canadian Law Information Council.
6. THAT Section 16 be amended to provide that the Executive may, not shall, appoint a Budget and Finance Committee.
7. THAT the French title of the Executive Director become Directrice administrative.

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### **The Uniform Law Conference and the Press**

The Chair referred to a discussion paper that was distributed to the delegates prior to the meeting. He commented that in recent years both sections of the Conference have been consulting more broadly on their policy proposals than they used to in the past. This year the Uniform Law Section has received requests from members of the public to attend the annual meeting. In addition, journalists have asked for copies of our working papers before the meeting. As in the past, these requests have been refused. Attendance is open only to commissioners and invitees. Papers are distributed only to working groups until the meeting, after which they enter the public domain. He asked delegates to consider a series of questions outlined in the discussion paper including: Is this the right principle? Would discussions differ if outside observers (including the press) were present at the meeting? Would it decrease the candour of comments, increase their quality, inhibit the tentative delegate or encourage the brazen? Would the Criminal Section answer this question differently from the Civil Section?

Since some delegates felt that the response from the Criminal Section may well be different from that of the Uniform Section, the President asked each Section to consider these questions during their deliberations and to report back to the Conference during the Closing Plenary Session.

Delegates were interested to know how the U.S. Conference dealt with such issues. Bion Gregory, President of the National Conference of Commissioners on Uniform State Laws, said that NCCUSL annual meetings and meetings of the drafting committees were open to the public. However, speaking privileges were restricted at both kinds of meeting. Generally working documents were made available broadly when they were produced. In recent years documents were posted on the NCCUSL Web site as well. NCCUSL had found that this openness improved the quality of its consultations and also prevented unfounded suspicion that it was up to something undesirable behind closed doors. The openness had not caused perceptible reticence among Commissioners in discussions. (Few NCCUSL Commissioners were government lawyers, unlike the membership of the Canadian conference).

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### **Composition of the Delegations**

The Chair again referred delegates to the discussion paper. He stated that jurisdictions will always name their own delegates. However, delegates have traditionally spoken only for themselves and have not represented or engaged their governments. Is this the right principle? Should delegations be composed of people who expressly represent interests? What should the policy of the Conference be? He asked the delegates to consider the issues raised in the discussion paper during their deliberations at section meetings and to report back to the Conference during the Closing Plenary Session.

### **Outline of the Business of the Week**

#### **Criminal Section**

The Chair of the Criminal Section advised that there were in excess of fifty resolutions put forward by jurisdictions which would be the subject of discussion during the course of the meeting. In addition, it was anticipated that the paper produced by the Publications Ban Committee would be reviewed with discussion particularly directed towards the use that could be made of the paper. Reference was made to the participation of Criminal Section members in the joint session relating to computer generated evidence. It was noted that federal discussion papers concerning the possibility of codifying plea comprehension inquiries and the continued use of a religious oath in a pluralistic society were also on the agenda.

It was agreed that the Criminal Section would consider issues that had been put forward about membership in delegations, opening up the conference, and communicating the results of the conference, during the course of its sessions with a view towards resolving these issues at the closing plenary session.

#### **Civil Section**

The Chair of the Civil Section commented that the Section had a fairly full Agenda. A more detailed Agenda was distributed to the delegates.

There being no further business, the meeting adjourned at 2:55 pm.