

## **1997 Whitehorse, YK**

### **OPENING PLENARY SESSION MINUTES**

#### **Opening of Meeting**

The meeting opened at 1:30 p.m., on Sunday, August 17, 1997, at the High Country Inn in Whitehorse, with Richard Mosley, Q.C. as Chair and Claudette Racette as Secretary.

The Chair welcomed the delegates and guests to the 79th Annual Conference.

On behalf of the Yukon Department of Justice, Howard Kushner, Director of Legal Services, welcomed the delegates to the Yukon. He wished delegates great success in the meeting. He encouraged everyone to take advantage of their visit to Whitehorse to see the cities and surrounding areas, stating that those individuals attending the Conference from the Yukon would be more than happy to give delegates ideas of places to go and things to do in the Yukon.

He then expressed a special word of thanks to Denise Roy, who did all the work organizing, and making all of the arrangements for this year's Conference. Denise has done an outstanding job which no doubt will be reflected in the Conference in the next three or four days. He was pleased to say that the Minister of Justice would be attending the banquet on Wednesday evening and that the Deputy Minister would be attending some of the sessions as well as the banquet on Wednesday evening.

The Chair thanked Mr. Kushner.

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

The Chair introduced Members of the Executive Committee: himself, Richard Mosley of the Department of Justice Canada in Ottawa, John Gregory, Past President from Ontario, Douglas Moen, Vice President, from Saskatchewan, Jeffrey Schnoor, Chair of the Civil Section, from Manitoba, Earl Fruchtman, Chair of the Criminal Section, from Ontario and the Executive Director, Claudette Racette.

#### **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 welcomed U.S. guests from the National Conference of Commissioners on Uniform State Laws, Gene Lebrun, the President, from Rapid City, South Dakota, and Jeremiah Marsh, the Chair of the Cooperation Committee between the ULCC and the NCCUSL. He also welcomed Mrs. Marsh who accompanied Mr. Marsh at the Conference.

### **Report from the President**

The President presented the following report.

"It has been a particular pleasure for me to have the opportunity during the course of the past year to serve as President. In part this is because it is a function which is not often performed by someone from the Criminal Section of the Conference. So I join a select few who have had the honour in the past.

I must say that that role was made much easier for me because of the work that has been done by my predecessors, particularly in years where there was a great deal of effort that went into the restructuring of the Conference and the conclusion of the Constitution that was adopted. Other members of the Executive, of course, have also contributed to those efforts to shape the structure of the Conference. I am grateful that we did not face any fundamental change over the past year.

My role was also made easier by the support I received from the members of the Executive Committee. They, as you know, have been responsible for supervising the actual continuing substantive work of the Conference since the last annual meeting. Our agenda this week reflects the results of their efforts and I am sure that you will agree with me that it is an impressive agenda and that a great deal of time and effort has gone into the production of the materials that will be discussed this week.

I would especially like to acknowledge John Gregory's contribution. As Past President he has been a source of wise counsel during the past year. In

addition to that, he has continued to be actively involved in several of the major projects of the Conference and has done a great deal of work in producing the Up-dates to the Consolidation and the publication of the 1996 Proceedings. He has also supervised the addition of material to our Web Site. I must note that I think his work was increased in that regard due to the fact that we continue to fail to submit the documents in the approved format, which makes it that much more difficult to have them reproduced in the published materials. So I would encourage all of you who will be submitting materials at this meeting to try to ensure that those standards are observed.

The past year has also impressed upon me the importance of the role of the Executive Director and how admirably Claudette Racette performs that function. Aside from being responsible for the myriad of details that arise in the course of the operation of an organization of this nature, Claudette is constantly looking for

ways to advance the interest of the Conference. As you will see further along in the agenda, our administrative affairs are in good order. Let me give you one illustration of that. I was particularly pleased with myself this past year when I persuaded another Federal Department to make a financial contribution to our coffers. Having made a few calls to make that arrangement, I thought the work was done and I turned it over to Claudette to collect the money. Well, let me tell you, I think it was an exceedingly difficult task and one which gave her many headaches over the following months but she persevered and we have the money and for that, we are particularly grateful.

With regard to our financial health, it helps of course if jurisdictions make their annual contributions in a timely fashion. I would like to thank those jurisdictions which have responded promptly to the letters which I sent out this Spring and I would encourage the rest to ensure that it is done early this Fall. I think that we are not doing too badly, but there are still some contributions outstanding.

Your Executive met periodically over the course of the year by teleconference, which proved effective when we could organize the time

to get together. But we met much more frequently by E-mail, which I think is a medium which serves the needs of an organization of this nature effectively, we were frequently exchanging messages about things which needed to be done. This works particularly well with an Executive which is scattered across the country.

In the past year, several of the Uniform Statutes developed by this Conference have been adopted by jurisdictions: Arbitrations by Manitoba, Enforcement of Canadian Judgements and Court Jurisdictions by Saskatchewan, International Wills by New Brunswick, and I understand here in the Yukon, the Hague Convention on Adoption is being introduced in the Territorial Assembly.

Implementation of the output of the Conference is of course a continuing matter of concern to the Executive. We will be revisiting that issue with the Jurisdictional Representatives at our meeting on Tuesday. It is an ongoing challenge which requires concerted action during the course of the year between meetings. For an organization which is comprised to a considerable extent by public servants, it is a particular challenge when in effect we are urging our own Ministers to act on the results of our work. So it is a challenge that we need to continue to seek means to address.

Another challenge we are facing is the diminishing support for law reform activities across the country as governments are faced with unpalatable choices about the use of public funds. The challenge of course, is for us to find other means to do the research and analysis that this Conference prides itself upon and which contributes to quality products. I think in the coming years, given that trend, we will have to begin to search out other sources or other resources in order to continue that work.

I am delighted of course that the Federal Government this year chose to act upon the commitment made in 1993 to establish a new Canada Law Commission. I will be calling upon Nathalie Des Rosiers shortly to comment on the steps that have been taken to set up the Commission.

As you know, this past year the Executive decided to impose a registration fee for this Conference. That was due to the particularly high cost we were facing in having the Conference in this location. This is not a comment in

any way on the location other than it is somewhat distant from the locations where we can readily find technical services and qualified interpreters. So, those costs were, for this year, considerable. The Executive was authorized to impose a registration fee for special cases by motion adopted at last year's Conference. At this point in time, we are not anticipating the need for a registration fee for next year, but the discretion to impose such a fee remains with the Executive and will be invoked when the need presents itself. This will also be discussed with the Jurisdictional Representatives on Tuesday.

One matter I wanted to address at this meeting, perhaps just to present for your consideration. If you wish we could have some discussion about it this afternoon, but perhaps it may need to be addressed more thoroughly in the coming months by the new Executive. It has to do with public interest in the work and the workings of the Conference.

One thing I have noted over the course of the past year is that as a recipient of the distributions made to the U.S. Commissioners, I have been impressed at the volume of mailings from special interest groups, lobby groups and Washington based law firms that wish to advance a point of view on behalf of a particular interest. That has not been a feature of our work, at least not to my knowledge, over the past years. We are not accustomed to that experience, but I think there are some signs that it may change.

This year for example, we have been approached by three organizations. One which you may be familiar with is PEN which represents the interest of authors and is particularly concerned with the item on our agenda for consideration relating to the Criminals' Exploitation of Crime. We were approached by another organization that wished to comment on the issue of public nudity which the Criminal Section will be considering. That organization, through the auspices of a Member of Parliament, wanted the names of all the delegates who would be attending the Conference. We chose not to provide your names, but of course, they will be public when the Proceedings are published. I assume that your names could be obtained from each jurisdiction should they wish to write to the Minister responsible for the composition of each delegation.

This interest in our work stems in part from statements by Ministers, where they have publicly referred to the fact that particular issues have been sent to the Conference for careful consideration of the legal and public policy issues concerned. Our profile has also been raised through contacts with the media. We have had several during the course of the past year. Earl Fruchtman was telling us this afternoon that the public nudity item has attracted the attention of a number of journalists in Ontario.

It is also raised through our Internet Site. The work of the Conference which in Canada has been largely obscure, other than to the initiated or those in the profession who were familiar with our work, is now accessible to anyone who can define a search through the World Wide Web. I think that the inevitable consequence of that is that there will be considerably more interest in our work, and how we go about doing our work. That may then lead to targeted lobbying to influence the process and the outcome. We can expect that interest, for example, as the Conference performs its work, notably on matters of pressing public interest such as the appearance of female breasts in the Province of Ontario.

That leads me to the point that I wish to make. That is that we will have to consider how we deal with this increased interest, and in particular, how we deal with the prospect of being identified as participants, and how we respond to the inevitable efforts to influence the results."

Addressing the American guests the President commented that the American Conference seems to deal with this issue by making everything completely public, that anyone can attend, anyone can get the list of the names of the Commissioners and that the U.S. accepts and expects that lobbying will take place on matters of interest to individual and groups outside the community it normally deals with. He then indicated to the American guests that we would welcome any words of wisdom they might have on the subject when this topic is addressed by the delegates later on in the week.

**The New Federal Law Reform Commission and the ULCC**

The Chair asked Prof. Nathalie Des Rosiers, Vice-President of the new Federal Law Reform Commission to say a few words on the status of the Law Reform Commission. She presented the following report.

"Monsieur le président, Mesdames et Messieurs les délégués, dear friends of law reform. Je suis très contente d'avoir été invitée et je suis particulièrement contente de rencontrer et d'avoir l'occasion de remercier les gens qui ont contribué à l'établissement de la Commission du droit du Canada. Particulièrement, je dois souligner à cet égard le travail de votre président, Me Mosley dans la poursuite de l'établissement de la Commission.

C'est ma première fonction officielle en tant que vice-présidente de la Commission et je suis particulièrement contente qu'elle soit à Whitehorse, Yukon au lieu d'Ottawa. Je n'avais pas eu l'occasion de visiter le Yukon et je suis particulièrement contente d'avoir été invitée ici.

Comme vous le savez, la Commission a été annoncée au mois d'avril de cette année. Elle a été mise sur pied le 1er juillet 1997. Les commissaires sont: Professor Stephen Owen, Q.C. from the University of Victoria, B.C., Ms. Gwen Boniface from Ontario, Mr. Alan Buchanan from Prince Edward Island and the President is Professor Rod MacDonald from McGill University. Moi, je viens de l'Ontario et j'enseigne à l'Université de Western Ontario.

Le mandat de la Commission est des plus excitants et des plus ambitieux. Il est marqué par les critères suivants dans la législation. Les critères d'innovation tant au niveau des concepts qu'au niveau de la publicité. Aussi une approche multidisciplinaire nous est recommandée et imposée. C'est une approche qui doit se faire dans un but de consultation, et qui doit s'harmoniser avec le respect du bilinguisme et du bijuridisme canadiens.

There is another part to this mandate, and that explains my particular interest in coming to meet with you. It is the interest in partnership that is imposed by the legislation. Our mandate is not to duplicate work that is being done successfully and competently elsewhere, but to look to what an independent, multidisciplinary, national in focus Commission can bring

as value added to the reform process. It is in that context that I am addressing you today.

The Commission just started as of July 1. It completed its second meeting of Commissioners yesterday. The logistics of getting started are going quite rapidly and quite nicely. An Executive Director is now in place. The consultation process about the strategic agenda and the formation of the Advisory Council has begun. In that context, she commended that if the delegates have not already been contacted, they will be for their views and comments about the strategic agenda and for names and suggestions about the Advisory Council.

J'espère bien que nous allons pouvoir compter sur votre collaboration et que nous allons pouvoir continuer de travailler ensemble. So, in short, my message, Mr. President is we admire you, we support you and we would like to hear from you."

The Chair thanked Professor Des Rosiers.

## **Financial Resolutions**

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

On motion by John Gregory, seconded by Arthur Close, THAT the Audited Financial Statements for the financial period ending March 31, 1997 be approved as presented. Motion Carried. (see Appendix A on page 131 in English and 137 in French).

### **Appointment of Auditor**

MOVED by John Gregory, seconded by Carol Snell, THAT Maurice Vance be appointed as the Conference's auditor for the fiscal period 1997-98, on the same terms as his prior appointment. Motion carried.

### **Approval of 1997-98 Budget**

The Executive Director presented the budget for approval. Three items were highlighted for the delegates: Revenues in the operating budget are slightly higher due to the fact that a portion of the contribution received last year for the publications was transferred to this fiscal period; expenses are higher than normal this year due to the higher cost



associated with hosting the Conference in the north; this year we have added funds under "publishing" for the Web Site, as a result, this budget item is slightly higher.

MOVED by Earl Fruchtman, seconded by Arthur Close, THAT the budget for the fiscal period 1997-98 be approved as presented. Motion carried.

### **Banking Resolution**

**MOVED** by Doug Moen, seconded by John Gregory, the following 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 account to the general account and visa versa, the signature of the Executive Director alone will suffice.

### **Appointment of Committees**

#### **The Resolutions Committee**

Carol Snell agreed to head the Resolutions Committee. Other members to be added during the week. Their report will be presented at the Closing Plenary.

#### **The Nominating Committee**

The Nominating Committee will be Chaired by the Immediate Past President, John Gregory. Other members to be added during the week. Their report will be presented at the Closing Plenary.

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

Earl Fruchtman, Chair of the Criminal Section advised that the Criminal Section would be dealing with 46 Resolutions that have been put forward by seven of the jurisdictions participating in the Conference. It will also be examining a paper prepared by a Working Group dealing with **Representation by Agents in the Criminal Courts**. The Section will

be joining the Civil Section in order to look at two papers relating to **Financial Exploitation of Crime** and **Electronic Evidence**.

Jeffrey Schnoor, président de la Section civile, mentionne qu'il s'attend à une réunion très intéressante, chargée et fructueuse. La Section recevra 15 rapports touchant sur toute une gamme de sujets. Les membres adopteront 3 à 6 rapports et discuteront de nouveaux projets potentiels.