

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 1:30 p.m., on Sunday, August 13, 2000, at the Laurel Point Inn in Victoria, British Columbia, with Jeffrey Schnoor, Q.C. as Chair and Claudette Racette as Secretary. The Chair welcomed the Commissioners and guests to the 82nd Annual Conference.

Introduction of the Executive Committee

The Chair introduced members of the Executive Committee: Jeffrey Schnoor from Manitoba, Paul Monty, Immediate Past President, from Quebec, Earl Fruchtmann, Vice President, from Ontario, Arthur Close, Chair of the Civil Section, from British Columbia, Lee Kirkpatrick, Chair of the Criminal Section, from Yukon, and the Executive Director, Claudette Racette. He then introduced Catherine Kane, Secretary to the Criminal Section stating that Catherine plays a vital role in the work of the Criminal Section, and then H el ene Yaremko-Jarvis, National Coordinator for the Commercial Law Strategy.

Introduction of Commissioners

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

Introduction of Delegates from the NCCUSL

The Chair welcomed the American guests from the National Conference of Commissioners on Uniform State Laws, John McClaugherty, President of the NCCUSL, and Jeremiah Marsh, Chair of the Cooperation Committee between the ULCC and the NCCUSL.

Word of Welcome from the Host Jurisdiction

The Deputy Attorney General for British Columbia, Ms Gillian Wallace, stated that it was her pleasure, on behalf of the government of British Columbia, and in particular the Ministry of the Attorney General, to welcome the Commissioners, presenters and guests of the ULCC to Victoria for its annual conference. She extended a warm welcome to the representatives from the NCCUSL.

She went on to say: "It is an honour for British Columbia to host the Uniform Law Conference, and especially gratifying to be able to reciprocate the hospitality which has been so warmly extended to our delegates in past years by our sister provinces, the territories and by the government of Canada.

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I am certain that all Canadian jurisdictions would join me in recognizing the invaluable contributions the ULCC has made to Canadian law since 1919 and in expressing our admiration for, and appreciation of the Conference's distinguished record of leadership and accomplishment both in criminal law reform and civil law harmonization and reform. This year's agenda illustrates more than ever that the Conference is a vital and necessary forum for addressing present and future challenges in the development of Canadian law.

"I would like to thank the Conference's Executive, the Executive Director, the Organizing Committee and all those who worked so hard to make this year's conference a success.

"I hope that you will have time to enjoy the area that we are so proud. Please get out and enjoy and take full advantage of being here during this very nice time of the year. My very best wishes for a challenging and enjoyable and fruitful conference. Thank you."

Ruth Rogers, a member of the Organizing Committee presented a brief overview of the social program for the week.

The President's Report

The President presented the following report.

"As I recently said in correspondence to Deputy Ministers of Justice and Deputy Attorneys General, these are exciting times for the Uniform Law Conference of Canada. Our Conference continues to grow in statute, strength and scope. The need for harmonizing laws has never been greater and governments and others are increasingly recognizing the central role that the Conference plays in that crucial work.

"Attendance at our Annual Meeting continues to grow in both numbers and diversity. We had more delegates at last year's meeting in Winnipeg than we had had in many years and I believe that attendance this year in Victoria is even better. Although there is still room for improvement, we are attracting increasing numbers of private practitioners, judges and academics. Our meeting last year attracted significant interest from the legal media. As I noted in my Report in the most recent COMMUNIQUÉ, the popularity of our website continues to grow, indicating considerable interest in our work, not only here in Canada, but around the world. Individuals and organizations have been approaching us to gauge our interest in undertaking new projects. Most importantly, the Conference continues to be an important source of amendments to the *Criminal Code* and of legislation in the provinces and territories. I look forward to discussing this with the Jurisdictional Representatives on Tuesday.

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“Le fait marquant de l’année dernière a certainement été le lancement de la Stratégie du droit commercial. Comme vous le savez, l’objectif de cette stratégie est de moderniser et d’harmoniser le droit commercial au Canada. Il s’agit d’un effort à long terme en vue d’établir une infrastructure modernisée en matière de droit commercial qui répond aux besoins dans les domaines suivants : la prévisibilité, l’efficacité, la réactivité, l’amélioration de la concurrentialité, et la réduction des coûts et de la complexité.

“A considerable amount of my time and the time of others in the Conference was spent over the last year on making the Commercial Law Strategy a reality. At the October 1999 meeting of federal-provincial-territorial Deputy Ministers responsible for Justice, Doug Moen made a submission on the Conference’s plans for the Strategy which resulted in a grant to the Conference of \$300,000 over two years from Justice Canada and Industry Canada and a further \$44,000 over two years from the provinces. I do not have to tell you that this is a very substantial sum of money for an organization that has annual revenues of around \$70,000 for its operations. This is clearly a strong vote of confidence in the Conference and in the Commercial Law Strategy.

“As a result of these grants, we have been able to engage a National Co-ordinator to lead the Strategy. Following a national search involving many members of the Conference and, of course, the Executive Director, Claudette Racette, we were able to engage Héléne Yaremko-Jarvis. As most of you will already know, Héléne was Assistant Vice President and Counsel of Confederation Life Insurance Company from 1981 – 1990 and was Director of Legal Services for Hudson’s Bay Company from 1990 – 1999. Héléne is fluent in both English and French and is familiar with the bilingual reality of Canada’s legal system. In addition, Ken Morlock, long-time Commissioner from Ontario and private practitioner specializing in commercial law, has agreed to succeed Doug Moen as chair of the Steering Committee of the Commercial Law Strategy.

“Au début de juin, un petit groupe de commissaires a rencontré Héléne afin de déterminer les priorités concernant la Stratégie et d’établir un plan de travail. Héléne donnera plus de détails à la section civile plus tard cette semaine.

“La Stratégie du droit commercial peut réellement avoir un effet important sur les lois commerciales du Canada et améliorer du même coup le droit au pays. Elle peut également rehausser l’image de la Conférence pour l’harmonisation des lois au Canada. Nous avons accompli de grands progrès au cours de l’année dernière vers la réalisation de ce rêve.

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“I would like to take the opportunity to publicly thank those who participated in the work of the Commercial Law Strategy over the last year. My thanks in particular, on behalf of the Conference, to Doug Moen, Arthur Close, Peter Lown, John Gregory, Ken Morlock, Frédérique Sabourin, Elizabeth Sanderson, Philippe Lortie, Kathryn Sabo and Bradley Crawford and my apologies to anyone whose name I’ve inadvertently omitted. I’d also like to single out Doug Moen for special thanks and praise.

Although Doug would be the first to say that the development of the Commercial Law Strategy has been a group effort, the fact remains that he, more than anyone else, is responsible for taking the Strategy the very considerable distance it has already gone. I’d ask you to join me in expressing the Conference’s appreciation to Doug for his very important efforts.

“Notre organisation est très forte. Comme vous le verrez pendant cette séance plénière, notre situation financière est très bonne. Toutes les provinces et territoires et le fédéral paient leurs droits. Notre directrice administrative, Mme Claudette Racette, dont la loyauté et le dévouement envers la Conférence sont sans égal, continue de faire un excellent travail. Et comme je l’ai déjà mentionné, la participation est importante, et l’intérêt que suscite la Conférence, continue de croître. “Our challenge is to build on our successes. We must continue to provide our governments with well-considered, useful proposals for harmonization and reform of law where they are needed and important. Our work ultimately better the lives of all Canadians and it is with pride and purpose that we embark on our Annual Meeting today.”

ULCC Communications Policy

The Chair stated that he had asked Susan Amrud to chair a task force on dealing with inquiries from the press and on a general communications policy for the ULCC. He asked Susan Amrud to report on the work of the Task Force.

Susan Amrud referred the Commissioners to the Communications Policy document that was circulated to them in advance of the meeting. She stated that the Communications Committee consisted of four individuals: Catherine Kane, Arthur Close, Earl Fruchtman and herself as Chair.

The Committee started with the last written document that talked about a Communications Policy. This was a document prepared by John Gregory when he was the President in 1996. The document was distributed at the Opening Plenary, discussed in the Sections during the week, and it was confirmed at the Closing Plenary. This document was discussed at the November 1999 meeting of the Executive Committee and the Jurisdictional Representatives. Modifications were made and incorporated comments received. A draft was distributed to the Communications Committee, the Executive Committee and the Past Presidents for comments. Further discussions took place and a new version was prepared, which is what you have before you today.

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(The English version of the Communications Policy appears on page 40 and the French version on page 41.)

The Chair thanked Susan Amrud and the Communications Committee for their work and then opened the floor to any comments about the policy.

A question was raised with respect to the reference of some documents being maintained as confidential in certain circumstances and how this would impact on the various freedoms of information types of legislation across the country.

The Chair of the Communications Committee indicated that the Committee did consider this issue and the decision was made that this was something that the various commissioners were going to face as part of their work, and if a commissioner has a document prior to the conference and received a request, they would have to deal with it under their own Freedom of Information legislation.

The ULCC Chair stated that in the end, the Conference can make a policy but to the extent that the Freedom of Information Laws in various jurisdictions may have a different effect, but of course, the ULCC can't do anything about that. The Conference can have rules that it can attempt to follow, subject to any overriding legislation.

MOVED by Susan Amrud, seconded by John Gregory **THAT** the Communications Policy as presented be adopted. Motion carried.

Financial Resolutions

Stabilization Fund

The Chair reported that the Conference's finances were in good shape. He wanted to raise the issue of a stabilization fund and wanted to get the commissioners' reaction to such a fund. He stated that the ULCC has gone part way towards this, but that there is a case to be made for formally setting up a stabilization fund for a couple of purposes. The first would be to act as a reserve against the highly variable cost of simultaneous interpretation at annual meetings. He pointed out that the cost of providing simultaneous interpretation services at the annual conferences is extremely high in some jurisdictions and much lower in others. The second, to act as a reserve in the event that there is an unexpected, large reduction in the revenues of the Conference.

He then referred to the Audited Financial Statements and more specifically to the funds that have been set aside for future expenditures. The first for the publication and distribution of the 1998 and 1999 Proceedings, and the 1998 and 1999 Updates to the Consolidation of Uniform Acts. The second, to cover some of the expenses that will be incurred to cover simultaneous interpretation services in the Northwest Territories for the annual conference in 2002.

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There seemed to be general agreement that it would be very useful to have a stabilization fund. Some suggested that an amount equivalent to one year's operation would seem appropriate for such a fund. However, it was agreed that the Conference should seek advice, through the appropriate authorities, on what is considered an acceptable level for a stabilization fund for a non-profit organization such as the Conference.

Approval of the Audited Statements

The Executive Director reviewed the Audited Statements stating that the only thing that was different this year was the setting aside of \$42,500 for future expenditures. The explanation for the reserve is included in the Notes to Financial Statements. The Conference has set aside \$22,500 to cover the printing and distribution costs for the 1998 and 1999 Proceedings and the 1998 and 1999 Updates to the Consolidation of Uniform Acts. An amount of \$20,000 has also been set aside for future conferences and this is with a view to covering some of the expenses of providing simultaneous interpretation services at the 2002 conference in the N.W.T. These costs are expected to run between \$25,000 and \$30,000. These funds were set aside for specific expenditures that will take place over the next year with respect to the publications and in the next two years with respect to future conferences. A question was raised as to whether the Conference should continue to produce the Proceedings in hard copy or whether it should publish everything on the ULCC website.

This question has been raised on numerous occasions and the decision has always been that since a number of libraries and organizations will continue to request the hard copies, the Conference would continue to produce the hard copy. John Gregory commented that if a decision were reached to discontinue the hard copy and to have everything on the website over an extended period of time, this would create a good deal of interesting electronic storage problems. He suggested that the Conference should keep printing the hard copy for the time being. This question will be raised at a meeting of the new Executive.

MOVED by Earl Fruchtmann, seconded by Elizabeth Sanderson **THAT** the Audited Statements for the financial period ending March 31, 2000 be approved as presented. Motion carried.

Banking Resolution

MOVED by Ralph Armstrong, seconded by Earl Fruchtmann, **THAT** any two members of the Executive Committee, or one member of the Executive Committee and the Executive Director, be given signing authority as officers for all banking matters of the Conference, **AND THAT** for the purposes of purchasing G.I.Cs and term deposits, and for the purposes of transferring funds from the research account to the general account and vice versa, and from the commercial Law Strategy account to the research account and vice versa, the signature of the Executive Director alone will suffice. Motion carried.

Approval of the Budget for the Fiscal Period 2000-2001

The Chair presented the 2000-2001 budget for approval. Philippe Lortie requested an amendment on page 5, revenue, for the Commercial Law Strategy should read Justice Canada and Industry Canada and not simply Justice Canada.

MOVED by Bart Rosborough, seconded by Paul Monty, **THAT**, the budget for the fiscal period 2000-2001 be approved subject to the addition of Industry Canada on page 5. Motion carried.

Appointment of Committees

The Resolutions Committee

MOVED Lee Kirkpatrick, seconded by David Winkler, **THAT** the Resolutions Committee be composed of Frédérique Sabourin and Chris Curran and such other persons as they deem appropriate. Motion Carried.

Nominating Committee

The Chair stated that in accordance with the By-laws, the Nominating Committee will be composed of the Immediate Past President, Paul, Monty, and the other Past Presidents in attendance at this year's conference. These are John Gregory, Doug Moen, Peter Lown and Rick Mosley, and such other person as they see appropriate to add on.

Outline of the Business of the Week

For the benefit of those attending their first ULCC conference, the Chair gave a brief outline of what the Conference is and what it does. He described the Conference as the premier, independent, non-partisan organization in Canada that works to harmonize civil law and reform criminal law. The Conference is truly a unique forum that brings together government lawyers, private practitioners, academics and judges, to bring together their knowledge, their expertise and their best judgments in an independent atmosphere that is relatively free of politics.

Criminal Section

The Chair of the Criminal Section stated that the Section has 50 Resolutions to consider. These Resolutions touch not only on the *Criminal Code* legislation, but also on other pieces of legislation, including the *Corrections and Conditional Release Act*, *Mutual Legal Assistance Treaties*, the *Criminal Records Act* and the *Canada Shipping Act*. They include such things as reverse onus in bail situations, measures to increase the protection of children and vulnerable persons, including Internet luring and exploitation of children. The new technology results in new ways of committing crimes and a need for reforms. The Section will also address *Spousal Competency and Compellability*.

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Civil Section

The Chair of the Civil Section reported that a substantial portion of the Agenda would be devoted to the *Commercial Law Strategy*. There will also be major presentations on particular elements of the Strategy and on carrying those forward. Substantial progress has been made and no doubt everyone is looking forward to the details.

The Section hopes to finalize two pieces of legislation: The first is a carryover from last year, the *Model Limited Liability Partnership Act*, which was never formally approved through our process. The second is the *Uniform Liens Amendment Act*, which will take the Uniform Liens Act that was finalized in 1996 and do some needed fine-tuning to it. There are a number of other projects on which the Section will be making very substantial progress during the week.

Other Business

In Memoriam

Arthur Close commented on the passing of Dr. H. Allan Leal last fall. He stated that Allan Leal was one of those larger than life people who came to the Conference to participate in its work. Apart from the Conference, he served as Deputy Attorney General in Ontario and chaired the Ontario Law Reform Commission. He served as Chair of the ULCC Civil Law Section and as president of the Conference in 1977 to 1978 and continued his association with the Conference into the 1980s. He is certainly very fondly remembered by those who were part of the Conference during the years he was active.