

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 1:30 p.m., on Sunday, August 18, 2002, at the Explorer Hotel in Yellowknife, Northwest Territories, with Arthur L. Close, Q.C. as Chair and Claudette N. Racette as Secretary. The Chair welcomed the Commissioners and guests to the 84th Annual Conference of the Uniform Law Conference of Canada. He expressed a particularly warm greeting to those who were attending for the first time and commented that this was the third time that the ULCC has met in Yellowknife and it was a great pleasure to be here once again.

Introduction of the Executive Committee

The Chair introduced members of the Executive Committee, himself, Arthur Close, Q.C., President of the Conference, Glen Abbott, Q.C., Vice President, Earl Fruchtmann, Immediate Past President, Susan Amrud, Q.C., Chair Civil Section, Rob Finlayson, Chair, Criminal Section, Claudette Racette, Executive Director, and one member not present, Brian Greer, Q.C. Chair of the Drafting Section.

He then introduced Jennifer Babe, the new Chair of the Commercial Law Strategy Steering Committee and Hélène Yaremko-Jarvis, National Coordinator for the Commercial Law Strategy.

Introduction of Commissioners

The Senior Commission from each jurisdiction introduced members of his/her respective delegation.

Introduction of the delegates from the NCCUSL

The Chair introduced King Burnett, President of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and his wife, Esther. He thanked Mr. Burnett for the very splendid hospitality that he and Susan Amrud received during the American conference in Tucson. He then introduced Jeremiah Marsh, Co-chair of the Joint Committee on Cooperation between the ULCC and the NCCUSL, and his wife Marietta. The presence of Jeremiah and Marietta at the conference this year was of special significance since they have now been with the Conference for a full cycle of meetings.

Words of Welcome from the Host Jurisdiction

On behalf of the Government of the Northwest Territories, Margo Nightingale welcomed the delegates and their guests to Yellowknife. She stated that it was a great pleasure to welcome everyone and that the Organizing Committee had a lot of fun planning the conference. The Committee was looking forward to bringing to the delegates a conference that had some of the sites, sounds and taste of the North starting today with the Dettah Drummers for the opening ceremonies. They were very pleased to have been able to share some of that tradition with the delegates. She then reviewed the social program for the week, stressing the casual flair for all of the activities. She thanked the Department of Justice of the N.W.T., the Law Society of the N.W.T., as well as the Canadian Bar Association, N.W.T. Branch for their support for various social events.

Margo then expressed a special word of thanks to Dawn McGinnes, who has been absolutely essential in helping the Organizing Committee make all of the arrangements for this week. Dawn will be available throughout the Conference to assist the delegates in any way she can.

The Chair thanked Margo for her kind words. He also thanked Margo and the members of the Organizing Committee for the marvelous arrangements they put in place for the Conference.

The President's Report

The President presented the following report.

“It has been an interesting year for me. It has been what I perceived to be a very active and demanding one. Probably the single most important matter that I and the Conference as a whole had to deal with, was the matter of the renewal of funding for the Commercial Law Strategy. Those who have been with us for a while will recall that our initial funding was for a two year period that ended on March 31. Working toward a renewal of that funding started well over a year ago. It started on a note of high optimism and high expectation. Both the optimism and the expectation were dashed by the events of September 11 and the subsequent economic decline.

So it was during a period of great uncertainty that we developed our funding proposals for a renewal of the Commercial Law Strategy funding. A number of versions of our funding proposals were prepared and it was not until January that we were able to finalize this. During that period, support for the proposal and funding renewal was sought from Deputy Ministers of all participating governments. In this regard, I want to acknowledge and pay tribute to the central role that was played by Doug Moen, Q.C. in garnering support for a continuation of the Strategy. At the end of the day, virtually all of the participating governments increased their level of support for the Strategy and I think that is a compliment to the Strategy, but also a great compliment to Doug's efforts on our behalf.

The largest single contributor to the Strategy is the Government of Canada, with the burden being shared by Justice and Industry Canada. Finalizing the funding arrangements with the federal government turned out to be more time consuming than I or anyone else expected. In fact, we did not have a formal agreement signed, and money available under it, until a bit less than a month ago. That left us with a hiatus of about four months without the participation of our major funder. What really saved the Strategy during that period was the contributions of the provinces to the Strategy that came through in a timely fashion. That provided the bridge-funding that we needed to keep the Strategy going without a really serious loss of momentum. I thank the provinces and the territories for moving as quickly as they did. They did a really great job. My hat is off to everyone and to Justice Canada as well for coming through in the end. Things are now stable.

The next question is where are we with the Commercial Law Strategy. So far as funding goes, we have a three year commitment. That is going to take us to March 31, 2005. The income side of the funding arrangement contemplates cash contributions in each year from the Federal Government \$250,000, from the provinces and territories \$41,500, which will give us a total of approximately \$291,000 per year for the next three years of the Strategy. The arrangements also recognize that support in kind of a very significant value comes from the provinces, territories and other participating organizations such as law reform bodies. They bring the support in kind that includes drafting expertise and translation. Just as an aside, I should note that we had very increased assistance on translation for Conference documents this year. The support in kind we receive is very real and very tangible as is the support in kind from participating organizations who make their personnel available to work on the Strategy. All of this receives recognition in the funding agreement that has been entered into.

The expenditure side of the Commercial Law Strategy is based on a budget that formed part of our budget submission, and ultimately, the agreement with Ottawa. Expenditures are broken down into three groups. Group one is central activities, which is largely support for the Strategy Steering Committee and its work. Second group is the office of the National Coordinator that keeps H el ene's good work going. The third is project work, the work on actual projects. The project budget for each year contemplates support for six different projects. Some of those projects are already under way and have been identified in the funding arrangement. Others that are referred to as "undesignated projects" will be added later. Essentially, it will be the Steering Committee of the Strategy that, with wide consultation with the business community and others, will decide what the additional projects are that are brought within the Strategy.

Just a couple of words about the focus of the Strategy - during the first two years, it was seen as a priority to cultivate support in principle for the Strategy as a concept, bringing it to the attention of the business community and seeking endorsement of its aims. That job has now been largely completed. It's a tribute to H el ene's tireless efforts that we are now in a position to move forward in a way that places the focus on project work. I think that this new focus is very much in line with the concerns of our funders to see an emphasis on what are sometimes called "deliverables."

In summary, I think there is an exciting three years ahead for the Commercial Law Strategy, and I for one, am looking forward to it.

These comments have focussed mainly on the Commercial Law Strategy, which is a creature of the Civil Section, and I have not said much about the work of the Criminal Section. It is a tribute to the Section and the people who run it that it pretty much takes care of itself. It makes very few demands on the President to assist or intervene. I would just like to thank the people who run the Criminal Section who have made my life easy in that way.

Over the past year, there have been a number of developments in relation to our Website. Those of you who were here last year will recall that our Website had just opened for business to the public and I did a demonstration of it. In an edition of the COMMUNIQUÉ earlier this year, I set out some statistics on hits on the Website. We are very popular and the trend of increased usage continues. We have been continually enriching the Website over the past year. The number of Uniform Acts that are to be found on the Website has virtually doubled. We have been at work taking a lot of the older Uniform Acts, having them optically scanned, creating files which are then edited to create a good word processing version of the document (which never existed before), then using that as the basis for a Website version. So we have achieved a lot, and that process continues. Also we have implemented a search function on the Website so clicking on the right tab brings up a screen that invites you to put in your search parameters and it will call up everything of relevance on the Website that is a good match.

Most of the older Acts that have been brought on-line at the Website are available in English only, and a priority is to try to find the resources that will allow us to prepare French language versions of some of the older, more important, Uniform Acts so they can go on the Website as well.

In terms of the Conference publications, there are two developments here. The first is Tim Rattenbury assumed responsibility for editing and assembling our printed Proceedings. I would like to express our thanks to Tim for taking this on.

The second development concerns a Publication Distribution Policy and that really addresses the problem that we really don't have one. The way in which our printed Proceedings are proceeded just kind of grew by an *ad hoc* process. A few months ago, I asked Earl Fruchtman, our Immediate Past President, to take in hand bringing forward some suggestions for a distribution policy and that will turn up later on the Agenda.

That concludes my President's report."

Financial Resolutions

Approval of Audited Statements

MOVED by Susan Amrud, seconded by Earl Fruchtman **THAT** the audited Statements for the fiscal period ending March 31, 2002 be approved as presented. Motion carried.

Appointment of Auditor

MOVED by Earl Fruchtman, seconded by Glen Abbott **THAT** Maurice Joseph be appointed as Auditor for the Conference for the fiscal period 2002-2003. Motion carried.

Banking Resolution

MOVED by Rob Finlayson, seconded by Susan Amrud **THAT** for amounts over \$5,000, 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 amounts under \$5,000 and 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 research or general account to the commercial law strategy account or vice versa, the signature of the Executive Director alone will suffice. Motion carried.

Approval of the Budget for the Fiscal Period 2002-2003

The Chair presented the budget for approval. **MOVED** by Arthur Close, seconded by Rob Finlayson, **THAT** the budget for the fiscal period 2002-2003 be approved as presented. Motion carried.

Nominating Committee

The Chair offered a brief overview of the nomination process for those who were attending their first ULCC conference.

The nomination for the two senior elected executive positions, the Vice-President and the President are subject to the recommendations of a Nominating Committee. Our By-Laws provide that the Nominating Committee is headed by the most Immediate Past President who is Earl Fruchtman. He will constitute a committee of at least four members to advise him. The Committee will submit its report at the Closing Plenary.

There will have to be selected a Chair of the Criminal Section for 2002-2003 and a Chair of the Civil Section for 2003-2004. Because of the extreme demands of chairing the Civil Section, we adopted the practice of nominating the Chair a year in advance.

In the case of the sections, it is the most Immediate Past Chair of the section who heads up a Nominating Committee. The Committees will submit their reports at the Closing Plenary.

Outline of the Business of the Week

Criminal Section

The Chair of the Criminal Section reported that this year the Section has approximately 34 Resolutions for debate. The Section also has two papers for consideration. One on *Cross Examination by Self Represented Accused* and the second on *Interlocutory and Third Party Appeals in Criminal Proceedings*. In addition, there will be a joint session with the Civil Section. The purpose of the joint session is twofold this year. There is a paper to consider from our joint committee dealing with *Extraterritorial Jurisdiction of Police Officers*, as well as a paper on *Blood Samples*.

Civil Section

The Chair of the Civil Section reported that: The meetings will start with a report from the National Coordinator of the *Commercial Law Strategy*. She stated that once again, Hélène Yaremko-Jarvis has made tremendous strides in furthering the goals of the Strategy over the past year, and we look forward to hearing from her. In addition, this will also be the first official duty of our new Chair of the Steering Committee of the *Commercial Law Strategy*, Jennifer Babe. She wanted to take this opportunity to publicly thank Jennifer for taking on this role, and to welcome her to that role.

The Section will receive short up-dates respecting progress on the finalization of four Uniform Acts: *The Unclaimed Intangible Property Act*; *Enforcement of Foreign Judgments Act*; *Securities Transfer Act* and *Amendments to the Uniform Wills Act*.

It will receive progress reports respecting several projects: *Security Interests in Intellectual Property*; *Jurisdiction and Consumer protection in Electronic Commerce*; *Reform of Canadian Secured Transactions Law*, including the *Bank Act Security*; *Civil Enforcement of Judgments*; *Amendments to the Uniform Vital Statistics Act*; *Proposals for Reform of Section 347 of the Criminal Code*; and *Uniform Franchises Act*.

It will also receive our annual reports on *Private International Law* from Justice Canada and on the work of the National Conference of Commissioners on Uniform State Laws from its President, King Burnett.

As indicated by Rob Finlayson, the Section will join with the Criminal Section on Wednesday morning to discuss two topics: *Extra jurisdictional Authority of Provincially Appointed Police Officers* and the *Blood Samples Act*. And finally, the Section will receive a report on *The Role of the Uniform Law Conference in Relation to Aboriginal Laws*.

ULCC Publications Policy

The Chair asked Earl Fruchtman to report on the development of a Publications Policy for the ULCC. Earl gave an overview of the contents of the annual Proceedings and the distribution list. Approximately 300 copies are published each year. These are distributed around the world basically, Canada, the United States, Europe, England, Australia and some Africa Nations. They go to individuals, government officials, government libraries, law reform bodies, law societies, court affiliated libraries, university libraries, including law school libraries, various law-related organizations and to the delegates at the annual conferences.

The Conference has no formal policy with respect to distribution. Some recipients pay for the Proceedings at cost and a number receive them complimentary. The vast majority is actually sent for free. There is an expenditure that the Conference incurs as a result of the Proceedings.

Partly in response to the new and improved Website, the ULCC now has another way of ensuring that access to information about the Conference and its work is available to individuals. Of course not everything up until now is on the Website. This must be taken into consideration. The Committee also wants to control any unnecessary expenditures that we may have. In part, any money that can be freed resulting from a rationalization of the distribution of the Proceedings could be made available to the Website to add some materials from the past.

With this in mind, the Committee began to consider possible options with respect to developing a policy on publications, including the extreme option of getting out of the activity of publishing annual Proceedings altogether to continuing to publish the annual Proceedings, but to make the recipients pay for them. Another option would be to basically continue to provide free distribution, but to look very closely at who is receiving the free copies, and try to vet and rationalize the list.

He stated that these were the options that were being considered and that later during the week, he would be speaking with the Jurisdictional Representatives about these options and to try to seek their input. Further consultations will follow as well. He suggested that if any one had any ideas or suggestions concerning the distribution policy, they could speak with their Jurisdictional Representative before the meeting on Tuesday, otherwise, they could speak with him.

The President thanked Earl Fruchtman for his report.

Other Business

Acknowledgment

Jennifer Babe acknowledged the fine work and important contribution that Ken Morlock made to the Commercial Law Strategy over the past two years.

Adjournment

There being no further business, the meeting was adjourned.