

Closing Plenary Session Minutes 2003



Fredericton, New Brunswick

August 10-14, 2003

CLOSING PLENARY SESSION - MINUTES

Opening of Meeting

The Chair, Glen Abbott, welcomed everyone to the closing plenary.

Report from the Criminal Section

The Chair, Daniel Grégoire reported that the Section had a very productive meeting. It examined approximately 60 Resolutions, 57 were retained. Of these, 31 were adopted, 8 were rejected and 18 were withdrawn, 10 because of lack of time. In addition, the Section considered two research papers: one on *Sentencing* and one on *Interlocutory Decisions*. The discussions were very diverse since all provinces and territories were represented this year. The Section also benefited from the important contributions of members of the judiciary.

He was pleased to report that Catherine Kane was elected as the new Chair of the Section and that Bart Rosborough is the nominated Chair for the following year. Stéphanie O'Connor who will assume the role of Secretary to the Section, will assist Catherine Kane. In closing, the Chair expressed his appreciation to the Criminal Section delegates for their important contributions.

Report from the Civil Section

The Chair, Chris Curran, stated that he was very pleased and heartened by the work of all of the members who participated in the work of the Section this year. He was also pleased to report that six separate items of the civil agenda were brought to completion. These included: *Section 347 of the Criminal Code*, *Uniform Jurisdiction and Consumer Protection Act*, *Uniform Enforcement of Foreign Judgements Act*, *Uniform Unclaimed Intangible Property Act*, *Uniform Wills Amendment Act* and *Uniform Cross-Border Policing Act*. He feels that this was an incredible record, given the complexity of these issues and it speaks, of course, to the preparation of all those who came to the Conference this week and to their dedication to this process.

In addition, the Commissioners endorsed as final two other pieces of work. The paper from the Law Commission of Canada on *Security Interests in Intellectual Property* and recommendations from the Secured Transactions Working Group in respect of what should befall the *Bank Act* dealing with secured transactions. It was agreed that the President of the Conference would be writing the appropriate Federal Ministers to endorse those two pieces. Those are items, which have been on the Conference agenda for some time in respect to the work of the Law Commission of Canada. It highlights the very fruitful and productive relationship between the two bodies. He thanked Nathalie Desrosiers and Rod Wood for their ongoing support for the work of the Conference, for their participation and very useful contribution to the work of the ULCC.

He was pleased to report on the 11 separate working groups constituted to carry forward work in other areas, across a full gamut of the Commercial Law Strategy. He stated that the 11 working groups and steering committees will require dedication from our Jurisdictional Representatives throughout the year, and that we were looking forward this year to on-going participation, on-going communication and on-going input from the Jurisdictional Representatives both in their working groups and with their work within their jurisdictions in terms of raising the profile of the Conference.

He thanked Kathryn Sabo of Justice Canada, who has, throughout the year, been very helpful to the work of the Conference in facilitating some of the challenges faced in terms of the Commercial Law Strategy, for being the motivating force behind the *Uniform Enforcement of Foreign Judgements Act* and for delivering French and English drafts.

He thanked the New Brunswick delegation that worked tirelessly to ensure that all Commissioners to the annual conference had a great stay in New Brunswick. Special thanks to Tim Rattenbury for his attention to detail and for looking after his guests so well, and Gisèle Girouard who worked in the secretariat and who was of great assistance in terms of the preparation of the resolutions.

He was pleased to report that Frédérique Sabourin from Quebec will be the new Chair of the Civil Section and that John Twohig from Ontario is the nominated Chair for the following year.

In conclusion, he thanked all the members of the two working groups that he chaired this year. It was a great pleasure for him this week to finally meet Wayne Renke and Alastair Lucas. He commented that part of the genius of the Uniform Law Conference of Canada is the contacts that one makes across the country, the sharing of information, and the wealth of expertise, which is made available to all jurisdictions across the country. This is truly the genius of this Conference, and he encouraged everyone to work harder to make this continue and prosper.

Translation Issues

Greg Steele reported that the issue of the production of the Conference's work in both official languages has been one that has occupied our attention for the past few weeks, and in particular, during the course of this conference. The increasing cost of translation, the increasing complexity of the work that we are doing and the increasing length of the papers that are being produced combine to present a challenge for addressing the need to get the work done in a timely fashion in both languages, both at the final stage and in the work leading up to that. The Conference recognizes that it is essential that we carry out our work in both languages so that it is available to both the members of the Conference and to other people who access Conference documents as they are being prepared.

In addition to discussing the issue with the Jurisdictional Representatives this week, he commented that some Commissioners were fortunate to meet with Roger Bilodeau, the Deputy Minister of Justice and Deputy Attorney General for New Brunswick, who is very supportive of the Conference and is very supportive of our goal in this matter. Out of these discussions have come two resolutions, which were now being put forward to the meeting. The first is one that he regards as an internal resolution.

THAT the Civil Section of the ULCC establish a committee to examine the issues of translating research papers and developing draft legislation in both official languages and the assignment of legislative drafters to the working groups and to make recommendations for the development of a policy with respect to the translation of research papers and draft legislation and for the means to be utilized for assignment of legislative drafters.

THAT the members of the committee shall be appointed by the President of the Conference and the Chair of the Civil Section.

THAT the committee be instructed to examine these issues and report to the 2004 meeting of the Conference.

Referring to the inclusion of the development of uniform legislation in both official languages, he commented that the Conference believes it is essential that rather than producing a product in one language and then translating it at a later date, that work should be developed in both languages at the same time.

The second resolution relates to the assignment of Legislative Drafters to the working groups. In the past, legislative counsel office representatives attended the annual conferences. That was very helpful to the work of the Conference. They have now essentially stopped attending, although on any particular year, we will have individuals present who are drafters, but they are not here specifically for that purpose. This resolution is one that he calls an external resolution.

THAT the Executive be instructed to consult with the Parliamentary Counsel Association of Canada to investigate means of increasing the attendance of legislative counsel at the meetings of the Conference and the participation of the Parliamentary Counsel Association of Canada in its work.

First Resolution - MOVED by Greg Steele, seconded by John Twohig **THAT** the Resolution as presented be approved. Motion carried.

Second Resolution - MOVED by Greg Steele, seconded by L'Honorable Louise Provost **THAT** the Resolution as presented be approved. Motion carried.

ULCC Participation in UNCITRAL

The Chair reported that the Conference received an invitation from the National Conference of Commissioners on Uniform State Laws to participate jointly with them in applying for NGO status as an advisory body at UNCITRAL. The Executive Committee considered this request and has prepared a resolution, which is now before the ULCC Commissioners for consideration. The resolution asks:

THAT the Executive be empowered first to consult with the jurisdictions on the advisability and appropriateness of the Conference making such joint application.

THAT if as a result of consultation, it is determined that the Conference would benefit from such joint application, that a suitable memorandum of understanding be developed with NCCUSL to apply jointly.

THAT the Executive investigate the merits of establishing a joint Committee with NCCUSL called the Joint Committee for the Development of International Law of the Uniform Law Conference of Canada and the National Conference of Commissioners on Uniform State Laws. (This committee would be separate and apart from the application for observer status at NCCUSL and would further the work both bodies are doing now in terms of commercial law initiatives.)

THAT if as a result of our consultation across the country, and with our colleagues at Justice Canada, it is determined that a joint committee would benefit the Conference, to establish such a committee on such terms as are mutually agreeable.

It was pointed out that the ULCC already has a vehicle for participation in working groups of particular interest at UNCITRAL. The ULCC can request that one of its members be named to Canada's delegation. This has been done in the past. The most recent example was last year, when Jennifer Babe, the Chair of the CLS Steering Committee attended a working group session of UNCITRAL on Security Interests. Representatives from different jurisdictions across Canada have also attended as part of Canadian delegations in the past.

A lengthy discussion on the pros and cons of a joint application followed. Justice Canada was pleased to hear that the ULCC is wanting to participate more directly in the work of UNCITRAL, but a number of questions were raised by Justice Canada as well as by a number of Commissioners from other jurisdictions across Canada, as to whether the proposed joint application with NCCUSL is the best way to proceed in terms of the interest of the conference and in the interest of Canada as a whole. The conclusion was that this item needs to be discussed and considered by the various jurisdictions and by Justice Canada in greater detail than is possible at this Conference before the Commissioners are in a position to make a final decision on the advisability and appropriateness of the proposed joint application. As a result, the resolution was amended and presented as follows:

MOVED by Greg Steele, seconded by Tom Burns:

THAT The Uniform Law Conference, through its Executive Committee, consider the invitation extended by NCCUSL to apply jointly to UNCITRAL for NGO status as an advisory body;

AND consult the jurisdictions as to the advisability and appropriateness of the Conference making such a joint application;

AND report to the Conference as to the results of those consultations.

Motion carried as amended.

Report from the Nominating Committee

Arthur Close, Chair of the Nominating Committee, reported that the candidates for the two senior positions on the Executive for the coming year were Gregory Steele, Q.C. for President, and Chris Curran, the outgoing Chair of the Civil Section, as Vice-President. The President asked if there were any nominations from the floor. There being none, Gregory Steele was declared President and Chris Curran was declared Vice-President. The Chair then confirmed that Brian Greer would continue as Chair of the Drafting Section.

Comments from the Outgoing President

Before turning the gavel to the new President, the Chair wanted to thank the Commissioners in both the Criminal and Civil Sections for the excellent job they did throughout the week.

He reported that after discussions with the Jurisdictional Representatives, the Executive Committee did not receive any clear instructions with respect to the possibility of extending the duration of future annual conferences. Therefore for next year, the Conference will proceed in the normal fashion and the new Executive can deal with the issue if it deems it worthy of further consideration.

He then proceeded to thank a number of individuals who assisted him during his term as President and those who contributed to the overall success of this year's Conference in Fredericton. More specifically, he thanked:

The members of the Executive who assisted him during the year: Arthur Close, the Immediate Past President. Arthur looks after the ULCC Website. He has been with the Conference for 25 years. Arthur was a tremendous help to him throughout the year. He will no doubt continue to be a help to the Executive. His Vice-President, the new President, Greg Steele whose support he very much appreciated. Chris Curran, Chair of the Civil Section who had a tremendously heavy load this year. Chris has done an admirable job to guide the deliberations of the Section throughout the week. As well, there was a tremendous workload in the Criminal Section. Daniel Grégoire for his work and skilful hands in guiding the work through the Criminal Section. Brian Greer for his participation on the Executive throughout the year. Jennifer Babe also deserves special mention as Chair of the Steering Committee of the Commercial Law Strategy.

Special thanks for Claudette Racette, who is a motivator. He commented that she had certainly kept him on his toes all through the year, as everyone can appreciate. She keeps everyone on their toes, and that is a good thing, as sometimes a little bit of motivation is needed.

The Commissioners and the Jurisdictional Representatives for their attendance, for their contribution to the discussion and for their thoughtful and wise guidance on all the issues. The Jurisdictional Representatives who attended the conference and who do so much work throughout the year to guide the work of the Conference and to guide it through the intervening time from session to session.

All of the volunteers and researchers, all those who participated in projects, in working groups and committees.

The organizing committee that did such a tremendous job, Tim, Elizabeth, Sandra and Claudette who also helped out very greatly in that, Christina and Gisèle and Bryan Whitfield from his Department who also assisted in the preparations for this conference.

The technicians, the interpreters who worked so hard over the last few days and encouraged us from time to time to slow down, Dorothy Charbonneau, Françoise Mackenzie, Jean-Guy Robichaud, Louise Béland, Annette Pelletier and Françoise Salesse.

The guest presenters who were invited to attend this conference and did such an admirable job presenting their materials and papers: Alastair Lucas, Lyman Robinson, Norman Siebrasse, John Sotos, Eric Spink, Catherine Walsh, Mary Anne Waldron, Frank Zaid, Jacob Ziegel, Wayne Renke. He also thanked those presenters who were also Commissioners. He then asked the Commissioners to join him in a hand for them. A round of applause followed.

The Law Society of New Brunswick for its co-hosting of the reception that everyone enjoyed on Sunday evening. The provincial Department of Justice and the Attorney General, the Honourable Brad Green, Deputy Minister, Roger Bilodeau. Also, the York-Sunbury Museum, the Lord Beaverbrook Hotel, Kings Landing, the City of Fredericton for the ball diamond. Matthew Keating for such an admirable job umpiring. Although upon reflection, being on the losing team from the East, he did have

some doubts about some of his calls now, but stated that he did such a great job. John White and members of the communications staff at Justice who helped with the press release.

He then commented that it had been an honour and a deep privilege to have served as President. There were a number of issues to deal with over the year and many decisions had to be made. With the help of the members of the Executive, they were made and he trusts that they were for the best interest of the Conference and will stand it in good stead as the years come. He thanked everyone for the privilege of serving as President. He then welcomed the new Executive Committee.

Comments from the New President

Greg Steele stated that he is looking forward to working with the Executive and with the Conference in preparing for next year's conference. He commented that the work for this year is finished, and that we were about to embark on the preparation for a round of informative and interesting discussions a year from now in Regina and that he was looking forward to that. He is also looking forward to the challenge of the issues which confront us in getting the work of the Conference done. He stated that a lot has been accomplished, in the Civil Section and in the Criminal Section. He had the pleasure and interesting experience of being at Criminal Section meeting this week.

The work of the Conference is to continue to be done in both official languages and he is looking forward to meeting that challenge. He then thanked those who worked very hard to make this event possible. He expressed special thanks to Tim Rattenbury and Glen Abbott.

In closing, he commented that if anyone had any ideas as to how we might go forward, to please let him know. He would be happy to hear from people throughout the course of the year.

Report from the Host Jurisdiction for the 2004 Conference

Doug Moen stated that he was very pleased to speak on behalf of the government of Saskatchewan. He commented that when the Conference meets in Saskatchewan, the Conference will be led by a lawyer from the private sector, which is the first time that has occurred in many years, and that is Greg Steele. On behalf of the government of Saskatchewan he wanted to welcome everyone to Saskatchewan and particularly to Regina for 2004. The Organization Committee has been in place for a period of time.

Susan Amrud leads the Committee. The hotel in Regina will be the Hotel Saskatchewan. The dates are the 22nd to the 26th of August. Material regarding Saskatchewan, particularly Regina and Moose Jaw, which is a city that is close by, was circulated to everyone this morning. He stated that they will do everything they can to make this an enjoyable stay in Regina and that it is a hard act to follow New Brunswick, but they will do everything they can to make this a very pleasant time.

Report from the Host Jurisdiction for the 2005 Conference

Chris Curran stated that Newfoundland looks forward to hosting the 2005 Conference. The last Conference in Newfoundland was in Corner Brook. It is too early to confirm whether the conference site will be the East or the West Coast. In any event he stated that whether it is one venue or the other, they promise a good time for all.