

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 1:30 p.m., on Sunday, August 10, 2003, at the Lord Beaverbrook Hotel in Fredericton, New Brunswick, with Glen Abbott, Q.C. as Chair and Claudette Racette as Secretary. The Chair welcomed the Commissioners and guests to the 85th Annual Conference.

Introduction of the Executive Committee

The Chair introduced members of the Executive Committee, Gregory Steele from British Columbia, Vice President, Daniel Grégoire from Québec, Chair of the Criminal Section, Chris Curran from Newfoundland, Chair of the Civil Section, Arthur Close from British Columbia, Immediate Past President and Claudette Racette, Executive Director of the Conference. He then introduced Jennifer Babe, Chair of the Steering Committee 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 Fred Miller, President of the NCCUSL. He reported that he and Chris Curran had attended the U.S. conference in Washington the previous week. They enjoyed very much the hospitality that was extended to them.

He expressed great regret that Jeremiah Marsh and his wife Marietta, who have been long standing guests of the Conference, were not with us this year. Jeremiah suffered a bout of ill health and was unable to attend. They will be truly missed.

Report on the Position of National Coordinator

The Chair reported that the Conference was seeking, and has advertised for, a new National Coordinator for the Commercial Law Strategy, with the departure of Hélène Yaremko-Jarvis as of early July of this year. The new Executive will move quickly to fill this position. He expressed words of praise for the work done by Hélène Yaremko-Jarvis. Her departure was on friendly terms, and he wished her the best in her new endeavors. In the first years of the Commercial

Law Strategy's initiation, Hélène worked successfully to make contacts and open doors in both the legal and business communities across Canada. That was for the purpose of endorsing or seeking approval for the Commercial Law Strategy and he thanked her for her efforts in that regard.

Word of Welcome from the Host Jurisdiction

On behalf of the New Brunswick government, the Chair welcomed everyone to New Brunswick, and particularly to Fredericton. He commented that this was the fifth time that the Conference has met in New Brunswick since the Conference first began its work in 1918. However, this is the first time that the Conference meets in the capital city of Fredericton. The Attorney General, the Honourable Brad Green and the Deputy Attorney General, Roger Bilodeau, were not able to attend the opening session. Both asked the Chair to express their regrets and to indicate to the Commissioners that they would both be present at the banquet dinner on Wednesday evening, at which time the Attorney General will address the Conference. He then asked Tim Rattenbury to provide a brief overview of the social activities for the week. Tim Rattenbury reviewed the social events for the delegates as well as the special program for guests.

The President's Report

The President presented the following report.

- It has been an interesting and active year and I want to thank the members of the Executive and Claudette Racette, the Executive Director, for their support. The Commercial Law Strategy has moved into the second year of its three-year funding agreement. The current funding agreement will expire March 31, 2005. The new Executive Committee will have to concern itself with the future funding of the Strategy. The Strategy is technically in its fourth year of its ten-year cycle. The new Executive will have to quickly find a replacement for the National Coordinator and as well, this year, will have to initiate more contacts with the Ministers and Deputies responsible for Justice, to deal with some funding issues that we will address as we go through my report and financial statements.

I would like to take this opportunity to thank the funders of the Commercial Law Strategy. Certainly by far the largest funders are Justice Canada and Industry Canada and certainly almost all, if not all provinces and territories, fund the Commercial Law Strategy. I want to recognize these contributions and thank all of the contributors. As well, I want to mention the tremendous in-kind support that we have received in the past year for the Uniform Law Conference of Canada. A large measure of that has come from Justice Canada and certainly all or most of the other provinces and territories have contributed by way of translating documents, providing time, drafting expertise, and the list goes on. Certainly that in-kind contribution is greatly appreciated by the Conference and without it, it would be a struggle to continue with our work.

I would also like to take a moment to thank Catherine Kane for her contribution as the Secretary for the Criminal Section. She is the nominated Chair for the Criminal Section and moving on to that position, will of course have to vacate the position of Secretary. The Criminal Section will want to address their minds to that issue during their deliberations.

The Executive has approved a new Organizational Chart. I ask all of you to take a look at it and if you have any issues please take them to your Jurisdictional Representatives, but I think that it is fairly straightforward. Copies are on the document table.

I want to take a few moments to talk about our Website and once again to thank the British Columbia Law Institute, as the organizing body, with Arthur Close's help, that runs our Website.

It is proving to be very useful. The Website is undergoing review and reorganization on a technical scale. As funds become available, the Conference is trying to improve the site to make it more user friendly. It is getting a lot of hits. We continue to add materials to it. In the last year, we have added 10 older Uniform Acts that had not previously been posted. It is our intention to have all the Uniform Acts on the site eventually.

In addition, we are in the process of adding earlier Proceedings to the Website, through the initiative and hard work of Clark Dalton, with the support of his Ministry. The only ones that had been on the Website were recent years, and of course our business began in 1918. It is increasingly difficult to obtain printed copies of the older Proceedings. Clark Dalton has taken on the task of optically scanning the older Proceedings and to start posting them on the Website, with Arthur's assistance and the B.C. Law Institute. If you go on the Website, you will be able to see, I believe, that they are posted from 1918 to 1921 and the work continues to bring that up-to-date. He thanked Clark Dalton for this initiative. [A round of applause followed.]

The printed Proceedings are under the guidance of Tim Rattenbury. The 2002 Proceedings will be ready this fall. He thanked Tim Rattenbury for his work in producing the printed Proceedings.

As I mentioned earlier, Chris Curran and I attended the American Conference. We saw how they did they work. Their Conference lasts seven or eight days. I believe that this year was one day shorter, seven days. They certainly have a full load of work. It is interesting how they went through it. They were also interested in Canada's work and many of the Commissioners to the American Conference commented to me on how they have actually gone to our Website, the contacts to Canadian members of our Conference, and have looked at our Uniform Acts and the work that we are carrying out. Particularly mentioned to me were the *PPSA* and *Secured Transactions* projects.

One thing that Chris and I noted is that the U.S. Conference is becoming increasingly interested in *Private International Law*. It is taking steps to increase its participation in this area. Last year when Arthur was President and travelled to the U.S. Conference, Jerry

Secolic, Secretary of UNCITRAL, which is the United Nations Conference on International Trade Law, was a guest and spoke at the U.S. Conference. This year the guest to the Conference was Sanchez Cordero, the Director of the newly formed Mexican Centre of Uniform Law.

With the support of Justice Canada, the ULCC has had on its own, some involvement in the *International Private Law* area. In fact, as you know, we have drafted many uniform acts that deal with Canada's treaty obligations and obligations under international conventions. We have worked as well with NCCUSL over the years on various joint projects. An opportunity has arisen with respect to UNCITRAL for the American and Canadian conferences to join together to form a joint non-government organization in an advisory capacity to appear at the UNCITRAL conferences, which they hold twice a year, one in this continent and one in Europe. The Executive has had ongoing discussions about this opportunity over the past year and the Executive supports this initiative and will work this week to raise the issue in discussions with Commissioners around the table and to circulate a document with the intent of bringing a resolution to the closing plenary that the ULCC join with NCCUSL to enter into a non-governmental organization at UNCITRAL. As well, we will want to form a new Joint Committee with NCCUSL for the purpose of advancing through the year, our international considerations. That Committee to be called the Joint Committee for the Development of International Commercial Law of the Uniform Law Conferences of Canada and the National Conference of Commissioners on Uniform State Laws. So I point out to you that that will be a matter for discussion at the closing plenary. Our involvement, if we do take this step, will be slow at first. Obviously, we do not have the financial resources. Perhaps other considerations will not allow us to step into this at full force, but we feel that it is a developing area and that this Conference's work is affected very much by what happens now on an international basis, that we should be there with our voice as much as possible.

Earlier I mentioned on another topic, the amount of work that we are facing and you will note that both the Criminal and Civil Sections have a tremendous amount of materials. Often these materials are distributed with very little time for delegates at this Conference to prepare in advance of our deliberations. It is a tremendous workload to read and absorb materials and to come here and to deal with them in a professional manner to best advance our interests.

The Executive has had discussions as to whether or not we should consider extending our conference for an extra day's duration. The workload last year was perhaps not as heavy as it had been in previous years. Generally speaking, the workload is such that we could probably use another day. If we did this, we would consider starting on Sunday as we are today and completing our work on Friday noon as opposed to Thursday noon. The Section Chairs will discuss the matter during their individual sessions during the week. The Jurisdictional Representatives will also have an opportunity to discuss this during the meeting for the Jurisdictional Representatives on Tuesday. The matter will be brought for discussion at the closing plenary. It may not take place in the year 2004 because arrangements may be finalized. If the motion receives favourable approval, it would take effect in the year 2005.

One final point that I would like to address is the passing of Mel Hoyt. Mel was a resident of Fredericton and a Past President of the ULCC in 1967-1968. I knew him for many years. He worked for our Department of Justice. He retired before I moved to the Centennial Building but I met him on social occasions. He was always humorous. He passed away in January of this year. I sent condolences to his widow on behalf of the Executive and the Conference.

The Chair then asked the Commissioners to join him in a moment of silence in respect to the memory of former President, Mel Hoyt.

Financial Resolutions

Approval of Audited Statements

The Chair stated that the Auditor who had been appointed at last year's annual meeting, Maurice Joseph, had suffered ill health and was unable to continue with our work. Maurice Joseph had been our Auditor for 10 years and has now resigned as an Auditor. For that reason the Conference had to seek a new Auditor. That is why there was a change in the name of the Auditor. He sought approval of the Audited Statements for the fiscal period 2002-2003.

MOVED by Frédérique Sabourin, seconded by Catherine Kane **THAT** the Audited Statements for the fiscal period ending March 31, 2003 be approved as presented. Motion carried.

Appointment of Auditor

MOVED by Catherine Kane, seconded by John Twohig, **THAT** the audit firm of Cloutier and Brisebois be appointed as Auditor for the Conference for the fiscal period 2003-2004 and further to authorize the Executive to fix the remuneration. Motion carried.

Banking Resolution

MOVED by Chris Curran, seconded by Arthur Close, **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

MOVED by Jennifer Babe, seconded by Arthur Close, **THAT** the budget for the fiscal period 2003-2004 be approved as presented. Motion carried.

Nominating Committee

The Chair stated that in accordance with the by-laws, the Nominating Committee will be chaired by the Immediate Past President. The Committee will be composed of four other members having in mind regional and other interests of the Conference. Arthur Close will Chair this year's Nominating Committee. He was asked to notify the Executive Director of the names of the other members of the Committee so that a notice could be posted on the bulletin board.

He commented that the other two nominating committees were in each section and the Sections are to nominate the new and the future Chairs of the Criminal and the Civil Sections. The committees will be chaired by the most Immediate Past Chair present at the annual conference.

Outline of the Business of the Week

Civil Section

The Chair of the Civil Section, Chris Curran, stated that it was a great pleasure for him to chair the 85th annual meeting of the Civil Section. He commented that although the work this week is the public expression of the Section's activity, it would not have been possible without all the work that was carried out by the members and by the Jurisdictional Representatives throughout the year. He thanked the Jurisdictional Representatives for all their work, and the many volunteers, who have given hours of their time to prepare the agenda.

He gave a brief overview of the Agenda for the week, stating that this was a very full agenda. It covers a wide variety of topics. The time allotted to some of these issues is very short given the breath of the issues that have to be addressed, but he trusts that with a little discipline the Section will be able to finish its work in good form.

He stated that following the closing of the plenary session, the Section would commence with a presentation on the Commercial Law Strategy. It will focus on the strategy in the Commercial Law Strategy – what the overall long-term objectives are, what has been achieved in the past year, and what we hope to achieve in the future. There will also be a short presentation on the possibilities that present themselves for the electronic work of the Strategy using the enhanced Website, under the care of the B.C. Law Institute. He stated that he was looking forward to this week.

Criminal Section

The Chair, Daniel Grégoire, stated that he was disappointed in recent years to realize that not all of the provinces were represented in the Criminal Section. Prince Edward Island has not been present for a few years. He was pleased to report that this year, all provinces would be

represented. He was also pleased to realize that the private Bar was also well represented this year by Le Barreau du Québec, the Canadian Bar Association, the Ontario Bar and the Canadian Association of Defence Lawyers. In addition, three members of the judiciary were in attendance. This meant that they would have very diverse points of views expressed during the deliberations to dispose of more than 50 resolutions in a relatively short period of time. The Section will also be discussing two working papers. One on Pre-Sentence Custody and the Determination of the Sentence, and another on Interlocutory and Third Party Appeals. This will be followed by the joint session mentioned by the Chair of the Civil Section. He commented that this is the third time that the Extra Territorial Powers of Police Officers is discussed during joint sessions. During this time he has had the impression that the Civil Section seemed to feel less concerned about this topic and he could understand this, since this is a subject that has a particular application to the disposition of the Criminal Code. Nevertheless, he wanted to mention how their contribution in the debate will be important because their expertise in the area of uniform laws. Therefore, their contribution will be much appreciated.

Translation Issues

The Chair commented that the Conference is producing a great volume of work and as such, is running into a bit of a financial crunch with respect to translation issues. The section Chairs will be discussing the translation issues and related costs within each section. The Executive is putting this issue before the delegates with a view to forming a committee to look into a long-term approach to the issues that would include financial options to make this fully functional.

New Table for the Uniform Acts in the Printed Annual Proceedings

This item was included as an information item only. Tim Rattenbury reported that he has been doing the Proceedings for the past couple of years, and that he found a number of problems with the table at the back of the Proceedings that indicates which provinces have enacted what Acts. It is a fairly long list. One of the problems is that it is very hard to follow. Another is that we have a problem with the dates. For the last 85 years they have been putting the last two digits and then of course, we got around to 01 again, we are coming pretty close to 18 which is where the numbers started. Probably, the biggest problem is that the table is not bilingual, which it certainly should be. Tim has designed a new table which the Executive has approved. He has been instructed to go ahead with the new table. He then referred the delegates to the new table. He plans to introduce the new format in the 2003 Proceedings. He stated that this new format will make it very clear who has and who has not enacted what Acts.

Tim has also suggested to the Executive that the Criminal Section might want to think about whether some sort of table that would provide a comparable representation of what the Conference has decided, and what happened subsequently, might be possible and serve any purpose on the Criminal side.

The Chair thanked Tim for his report. He also thanked him for the excellent work he is doing producing the annual proceedings. He then asked the delegates to join him in thanking Tim. A round of applause followed.

Other Business

The Chair stated that he was pleased to report that the Law Society of New Brunswick was co-hosting the Opening reception with the Department of Justice.