

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 1:30 p.m., on Sunday, August 22, 2004, at the Hotel Saskatchewan in Regina, Saskatchewan, with Gregory Steele, Q.C. as Chair and Claudette Racette as Secretary. The Chair welcomed the Commissioners and guests to the 86th Annual Conference of the Uniform Law Conference of Canada. He expressed a warm welcome to those who were attending the conference for the first time.

Introduction of the Executive Committee

The Chair introduced members of the Executive Committee, himself, Gregory Steele, Q.C., President of the Conference, Christopher Curran, Vice President, Glen Abbott, Q.C., Immediate Past President, Frédérique Sabourin, Chair of the Civil Section, Catherine Kane, Chair of the Criminal Section, Claudette Racette, Executive Director of the ULCC and one member who was not present, Brian Greer, Q.C., Chair of the Drafting Section.

He then introduced Jennifer Babe, the Chair of the Commercial Law Strategy Steering Committee, Anthony Hoffman, National Coordinator for the Commercial Law Strategy and Stephanie O'Connor, Secretary to the Criminal Section.

Introduction of Commissioners

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

Introduction of Presenter

The Chair introduced Erik Spink, a Presenter for the *Uniform Securities Transfer Act*.

Introduction of the Delegates from the NCCUSL

The Chair introduced Fred Miller, President of the National Conference of Commissioners on Uniform State Laws (NCCUSL). Joining him later on in the day will be King Burnett, the former President. He reported that NCCUSL held its annual conference just prior to this conference. He, Frédérique Sabourin and Tony Hoffmann attended on behalf of the ULCC. They were warmly received as guests of NCCUSL. He expressed sincere thanks for the warm hospitality that was extended to them.

He then mentioned the passing of Jeremiah Marsh this past year, stating that: Jerry attended many of our conferences with his wife, Marietta. Jerry was as much a member of this conference as any of the delegates from the various governments. We will miss him very much. He never hesitated to make contributions to our work and he was a very special individual to us.

Introduction of the Delegate from Mexico

The Chair introduced Dr. Jorge Sanchez Cordero of the Mexican Centre for Uniform Law. He stated that we would hear more from Dr. Cordero later on about the steps that are being taken in Mexico to promote uniformity of law. There are 31 Federal States plus the Federal District of Mexico, and they are facing the same problems we are facing in dealing with the need for uniform legislation both on the civil and criminal side.

Words of Welcome from the Host Jurisdiction

On behalf of the Government of Saskatchewan, Susan Amrud welcomed the delegates and their guests to Saskatchewan. She was pleased to see so many delegates at the Conference. She thanked the delegates for staying at the Conference hotel as this does have an impact on the overall costs for the host jurisdiction. She reviewed the social program for the week, stating that the Law Society of Saskatchewan was hosting the opening reception at the Danbry Restaurant.

She then stated that if there was anything that the host jurisdiction could do to assist in making everyone's visit more enjoyable, to please ask any member of the Saskatchewan delegation. This year's Organizing Committee consisted of Doug Moen, Gerald Tegart, Dean Sinclair, Darcy McGovern, Karen Pflanzner, Carol Snell, Merrilee Rasmussen, Daryn Rayner and herself. She then introduced Glenna Hamilton, a member of the Organizing Committee, who has done a considerable amount of work during the planning process.

The Chair thanked Susan for her kind words and thanked Saskatchewan for hosting the annual conference.

The President's Report

The President presented the following report:

“My year as President has been an interesting one and a very busy one. Shortly before assuming the office I had occasion to be in Ottawa on other business and took advantage of that opportunity to meet with Claudette. She graciously took the time to give me an overview of what my duties would entail. I guess I was not listening very well, because I seem to remember her saying something along the lines of “don't worry, it will be a breeze, just sign a few letters and turn up at the annual meeting.” There have certainly been more than few letters to sign and although it may not have been a breeze, it has been a very enjoyable time.

As I come to the end of my term, I can reflect back on just how enjoyable an experience it really was. This was in no small part due to the tremendous support I have received throughout the year from those who have been associated with the Conference. Time does not allow me to mention all of them by name, but I would like to, at the risk of offending some by not mentioning their name, to note just a few. First, I do want to express my gratitude to Claudette. There is no doubt in my mind that the success of our Conference is as much due to her work behind the scenes as it is to the substantive work of the delegates and of the working groups. Although her position is apparently a part-time position, she seems to be working at it twenty-four hours a day. I would

also like to thank members of my Executive, with whom I have had the privilege of working. I would particularly like to thank Chris Curran who served as my Vice-President. He took on the task of renewing our relationship with the Legislative Services Branch of Justice Canada to help meet our drafting needs. Thank you very much Chris.

The Jurisdictional Representatives of course play a vital role in carrying out the work of the Conference between the annual conferences and in coordinating their delegations. I would particularly like to thank those who took the time to respond to Claudette's request for comments on the work of the Conference, which she included in her report to Justice Canada.

The Commercial Law Strategy of course was the focus of much of our attention. Jennifer Babe continued as Chair of the Commercial Law Strategy. She put in many long hours in coordinating the efforts of various project leaders and working groups. I know that many others have said on many occasions that when working with lawyers on these types of projects it is somewhat like trying to herd cats. Jennifer, thank you for your efforts in that regard. Tony Hoffman was hired as the new National Coordinator this year. It was a formidable challenge, I am sure, for Tony to be dropped into our work and picking it up as he did, working primarily on his own with guidance being given by long distance telephone calls from different parts of Canada. The members of the Steering Committee of course contributed greatly to the work of the Strategy as well. They met several times by telephone throughout the year and we had actually three meetings in person in Ottawa. This involved a tremendous commitment of time, and I would like to take the opportunity to express my gratitude to those who did serve on the Steering Committee of the Commercial Law Strategy.

I would also like to take this opportunity to recognize the governments who have funded the work of the Strategy, particularly Justice Canada and Industry Canada who have provided the greatest financial contribution. This year we submitted a comprehensive progress report to the Deputy Ministers of Justice at their January meeting. I wish to thank Doug Moen who presented the report on behalf of the Conference for doing so, but particularly for his on-going support for the Conference. I would also like to thank Susan Amrud who also devoted a considerable amount of time to finalizing that report and making it available for presentation at the meeting of the Deputies. I know that she put great effort on that because I was receiving e-mails from her home during the Christmas holidays. She was trying to put the final touches to it.

The Section Chairs, Frédérique Sabourin, Chair of the Civil Section and Catherine Kane, Chair of the Criminal Section, worked hard throughout the year preparing for this year's meeting. That preparation had to start the day following the conclusion of the Fredericton meeting and I suspect did not let up anytime since then. They were undoubtedly assisted in their work by their incoming Chairs, Bart Rosborough on the criminal side and John Twohig on the civil side, as well as by Stephanie O'Connor who served as Secretary of the criminal section.

Various governments provided assistance in drafting and other services. A particular thanks is due to Ontario, New Brunswick which undertook the French version of the Civil Enforcement Statute, Industry Canada, Justice Canada, Saskatchewan, Quebec, Nunavut and Northwest Territories who provided French versions of research papers and Uniform Acts this year, and particularly to Justice Canada who translated all of the criminal section Resolutions. Again, Tim

Rattenbury has prepared the printed Proceedings in his usual super fashion. Thank you very much Tim.

Those who I have mentioned collectively have done a tremendous job of assisting the Conference in getting its work done. That assistance would be meaningless however, if it were not for the even more tremendous job by the people who carried out the more substantive work of the Conference. The numerous volunteers who have served as project leaders, researchers and most importantly, Working Group members, deserve the highest thanks. Without them, nothing would have been accomplished. And it is with some trepidation that I mention three of them by name. Because to mention some, as I have already said, risks diminishing the contribution of those not mentioned. That of course is not intended, but I do feel that special mention is appropriate. First, I wish to thank Lyman Robinson for his work as Leader of the Civil Enforcement Project. As the volume of the materials generated in that project suggests, it was a mammoth undertaking and could not have been completed without tremendous effort from all concerned, but particularly from the Chair of that Working Group.

Second, I wish to mention John Sotos and Frank Zaid. John and Frank guided the Franchise Project over the last three years or so through waters which must have seemed foreign to them. For two busy Toronto lawyers with no previous experience with the Conference and its workings, I am sure that it has been a trying exercise at times requiring much more of their time than we led them to believe when they took this on.

Now, I would like to take a few moments to make some comments about the activities of the last year. I will be brief because much of what I will have to say will find its way onto to the agenda later on today or during the week.

Last year, the meeting resolved to strike a committee to consider translation issues facing the Conference. That Committee was chaired by Chris Curran. They met by conference call on three occasions during the year and as a result of its deliberations, a resolution will be brought forward for consideration later during this Plenary Session. Chris was also instrumental in engaging the Council of Legislative Drafters. They have affirmed their support for the work of the Conference and we are hopeful that in the future, we will be able to enlist their assistance to meet our drafting needs. It is through Daniel Ricard's efforts that we were able to arrange for the drafting of the French version of the *Uniform Public Inquiries Act* and the *Uniform Illegal Contracts Act*.

During the course of this year, it became apparent that funding for the Commercial Law Strategy from the Federal Government, at its existing level and perhaps even at all, after March 2005 is unlikely. The Steering Committee has had several discussions about where the Strategy goes from here. As you can see from the agenda, this is a matter to which we will be returning to this afternoon.

As a result of a number of resolutions passed at last year's meeting, I wrote several letters to various Ministers to pass on recommendations of the Conference concerning amendments to the *Bank Act*, Secured Transactions Legislation and the *Criminal Code*. I was quite heartened by several of the responses I received. Not only did they express a genuine interest in considering the recommendations; they also expressed great support for the work of the Conference.

As I mentioned a moment ago, I had the privilege of attending the American Conference in Portland during the first week of August, along with Frédérique Sabourin and Tony Hoffman. Unfortunately although that meeting ran from Friday morning to the following Friday afternoon, we were only able to be present from Saturday to Wednesday. Nonetheless, it was an extremely satisfying experience. Although the manner in which NCCUSL carries out its work is quite different from the way in which we carry out ours, I noted a remarkable similarity in the issues which the two Conferences are confronting.

In March, Chris Curran and I, along with King Burnett and Charles Troost of NCCUSL were asked to appear before a special committee of the Mexican Senate regarding the formation of the Mexican Centre for Uniform Law. This was at the invitation of Senator Jiménez Gonzalez. As well as addressing a Senate Committee, on our work and on the work of our respective Conferences, we met with a number of Mexican judges, lawyers and representatives of other organizations, including a breakfast meeting with representatives of the Supreme Court of Mexico. It was a very full and exhaustive schedule, which demonstrates the commitment of government officials and the Mexican Senate to the promotion of uniform laws within the both the Mexican Federal State and the much larger North American context. Chris and I were very grateful for the warmth and Mexican hospitality that were extended to us.

At last year's meeting a resolution was considered regarding joint participation by the Conference with NCCUSL at UNCITRAL. After consulting with the jurisdictions, it was determined that such joint representation was not appropriate, and I so advised the American Conference. In doing so, I reaffirmed our commitment to working with NCCUSL on both international and domestic matters as much as possible. I am convinced that the benefits of working together are well worth the effort. It is a matter which I have discussed with our American and Mexican colleagues when I attended the NCCUSL conference and it is something that I intend to take the time to discuss with both of them this week. I would be pleased to talk with any of you during the week if you want to ask me about any of the activities that we have undertaken during the past year."

Financial Resolutions

Approval of Audited Statements

MOVED by Chris Curran, seconded by Frédérique Sabourin, **THAT** the Audited Statements for the fiscal period ending March 31, 2004 be approved as presented. Motion carried.

Appointment of Auditor

MOVED by Glen Abbott, seconded by John Twohig **THAT** the firm of Cloutier & Brisebois be appointed as Auditors for the Conference for the fiscal period 2004-2005. Motion carried.

Banking Resolution

MOVED by John Towhig, seconded by Frédérique Sabourin, **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 purpose 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 2004-2005

The Executive Director reported that before leaving Ottawa she was informed that New Brunswick's contribution to the general activities this year would be \$5,000 and not the \$6,000 included in the budget. She was also informed that because of budget cuts in Prince Edward Island, its contribution has been reduced from \$3,000 to \$2,700. This means that the total revenues for the General Account will now be \$68,700 rather than \$70,000.

MOVED, by Bart Rosborough, seconded by Catherine Kane **THAT** the budget for the fiscal period 2004-2005 as amended, be approved subject to modification if necessary following the discussion of the work plan and the budget for the Commercial Law Strategy later on in this conference. Motion carried.

Nominating Committee

The Chair reported that in accordance with the By-Laws, the Nominating Committee is to be chaired by the Immediate Past President, Glen Abbott, along with four other members bearing in mind regional and other interests of the Conference. He asked Glen Abbott to constitute that Committee and to notify the Executive Director of the names of the other members so that a notice could be posted on the bulletin board. The report of the Committee will be considered at the closing plenary.

Outline of the Business of the Week

Criminal Section

The Chair, Catherine Kane, reported that the Criminal Section has before it 54 Resolutions to date. Sometimes resolutions are received from the floor, and sometimes those resolutions are split into two. The Section has a very busy agenda. The 54 Resolutions have been submitted by nine jurisdictions. The Section also has two discussion papers. One on *Disclosure in Criminal Proceedings*, and the other on the *Right to Counsel*. It is anticipated that both those papers will generate interesting discussion. She will have more to report at the end of the Conference and anticipates as usual that the Section will have a very good and productive week.

Civil Section

The Chair, Frédérique Sabourin, stated that it was a great honour to Chair the Civil Section this year. The Section has a busy week ahead. Several projects which have been going on for a number of years will come to an end this year. If everything proceeds as anticipated, the Civil Section of the ULCC will be asked to adopt five Uniform Acts this week. With respect to the Uniform Act on the Civil Enforcement of Judgements, since the French version was not available in time for this conference the Uniform Act will therefore not be adopted until sometime in the fall at the earliest.

She then reviewed the agenda for the week, stating that: The five Uniform Acts to be adopted are the following : The *Uniform Franchise Act*, the *Uniform Securities Transfer Act*; the *Uniform Public Inquiries Act*, *Uniform Mandatory Testing and Disclosure Act* and the *Uniform Illegal Contracts Act*. Delegates are familiar with these projects since they have been going on for a number of years.

In addition, the Section will consider recommendations for up-dating of both the *Uniform Enforcement of Canadian Judgments Act* and the *Uniform Enforcement of Canadian Judgments and Decrees Act* with respect to an amendment concerning restitution orders that will be presented also for adoption, a report on *Electronic Consumer Contracts – Enforcement and ADR*, and a report on *Limitations*, The Section will also be receiving the report of Justice Canada on *Private International Law* activities and a report from the NCCUSL.

For the first time this year, the Section will have the benefit of having a representative of the Mexican Uniform Law Centre. Also among the new faces this year, are the new National Coordinator of the CLS, Anthony Hoffman, Prof. Michelle Cumyn of Laval University for the *Illegal Contracts* report, Prof. Telfer of the University of Western Ontario on *Personal Exemptions from Seizure*, Prof. Dunlop on *Fraudulent Conveyances and Preferences*, Prof. Oosterhoff, University of Western Ontario on *Charitable Fundraising*. She thanked all of the above and the Jurisdictional Representatives and all the others who have made her job easier throughout the year. She looks forward to the discussions throughout the week.

Consideration of the ULCC Translation Policy

The Chair referred to the draft resolution that was distributed to the commissioners and asked Chris Curran to lead the discussion.

Chris Curran referred to the resolution and opened the discussion. It was suggested that the resolution should be expanded to specify that the translation policy applies to both the Civil Section and the Criminal Section. Chris Curran indicated that this was a good suggestion as the intent is to be as clear as possible that this resolution does apply to both Sections. The first and final paragraph in the recitals were amended accordingly. In addition, the words ‘where appropriate’ in the first paragraph of the recitals was changed to ‘as appropriate’.

The ULCC Translation Policy as amended was approved. A copy of the Translation Policy is attached as Appendix “A” to these minutes.

Commercial Law Strategy Beyond March 2005

The Chair commented that it is unlikely that funding from the Federal government will be available after March 2005, at least in the amount that it has provided in the past. The Steering Committee has developed a plan of action that would allow the ULCC to continue Commercial Law Strategy projects beyond March 2005, but at a lower scale and with commercial law matters moved into the general ULCC research activities. He stated that before proceeding further, the approval of the annual meeting was required.

The plan of action includes asking the provincial and territorial governments to continue to contribute the annual proportionate amounts they were contributing to the Commercial Law Strategy and that these funds would become part of the regular ULCC research funds. This would allow the ULCC to continue to work on certain commercial law projects and to undertake manageable and achievable new projects, at a reduced level without the larger working groups that are now in place. It would also involve going directly to Industry Canada to request funding beyond March 2005 and to attempt to secure funding from other government departments with a mandate in commercial law. Law Foundations and any other potential funding sources will also be approached.

The organizational structure will therefore need to be changed. It is unlikely that a full-time National Coordinator will be required. A part-time National Coordinator is more likely if funding can be secured. The report today was to include an Organizational Chart which unfortunately is not available at the moment. The essence of the Chart was to incorporate the activities of the CLS under the activities of the Chair of the Civil Section. The Chart will be distributed to the Commissioners as soon as it is received.

The Steering Committee has developed the following plan of action for this year. It has identified several new projects with timelines that would ensure that budget funds for 2004-2005 would be used up by March 31. The projects would be completed by March 31, or they would be able to be carried forward within the ULCC research budget if sufficient funds can be secured. Some preparatory work has already been done in identifying possible project leaders and approaching them to see if they would be willing to do the work. This means that if and when approval is given, work can proceed immediately.

The Chair then sought general agreement of the Resolution for the Action Plan. He suggested that formal approval would be sought at the Closing Plenary once the Commissioners have the opportunity of reviewing the Organizational Chart. The proposal, seconded by Chris Curran, was carried.

A copy of the Resolution for the Action Plan is attached as Appendix "B" to these minutes.

Adjournment

There being no further business, the meeting was adjourned.

**THE UNIFORM LAW CONFERENCE OF CANADA
BILINGUALISM AND BIJURALISM POLICY**

WHEREAS the Uniform Law Conference of Canada (hereinafter the “Conference”) is comprised of three sections, a Civil Section, a Criminal Section and a Drafting Section and was established for purposes of facilitating and promoting the harmonization of legislation throughout Canada;

AND WHEREAS Canada is a Country with two official languages and two legal traditions;

AND WHEREAS in the Statement of Policy made pursuant and subject to the Conference Constitution and approved by the constituent jurisdictions as of August 1990, the importance of giving due consideration to the bilingual and bijural character of Canada was recognized;

AND WHEREAS it is desirable to set out the practical steps to be taken in the Civil, Criminal and Drafting Sections of the Conference to ensure that the Conference’s 1990 Policy is given effect in constituting project Working Groups and in preparing Conference work products, including Uniform Acts, Model Acts and other legislative vehicles;

NOW THEREFORE BE IT RESOLVED THAT:

In establishing Working Groups, subject matter experts in both civil law and common law will either be consulted or form part of the project team from the outset as appropriate;

Where it is determined that Conference work is to be expressed in legislative form, the form of legislative vehicle utilized be designed to facilitate the attainment of harmonization and it is desirable that drafting takes place in both official languages; and

All Conference work products, or in exceptional cases an Executive Summary of that product, be available in both official languages.

**RESOLUTION REGARDING THE FUTURE OF THE COMMERCIAL LAW
STRATEGY**

WHEREAS:

- A. Funding for the Commercial Law Strategy under the current contribution agreement between the Uniform Law Conference of Canada and Justice Canada and Industry Canada will terminate on March 31, 2005 and funding from the federal government at a comparable level is unlikely to be obtained; and
- B. The objectives of the Commercial Law Strategy have not yet been achieved but it is believed that the remaining work may be effectively carried out as an integral part of the Civil Section of the Uniform Law Conference of Canada rather than as a separate entity, provided sufficient funding can be secured.

BE IT RESOLVED THAT:

- 1. The Commercial Law Strategy be incorporated as in integral part of the Civil Section of the Uniform Law Conference of Canada in accordance with the discussions and the organizational chart presented at the 2004 meeting as may be amended from time to time by the Executive of the Conference;
- 2. The Executive be authorized to seek funding from the federal and provincial governments and agencies, foundations and other sources the Executive considers appropriate to finance carrying out the work of the Commercial Law Strategy;
- 3. The Commercial Law Strategy adopt a work plan for the year 2004/05 that would bring all projects either to conclusion or to a stage of development such that any work in progress would be capable of being preserved and the projects be capable of being resumed in subsequent years as part of the normal work of the Civil Section as funding was available;
- 4. The work of the Commercial Law Strategy be carried out under the auspices of the Steering Committee of the Civil Section, or such subcommittee of the Steering Committee of the Civil Section as the Executive considers appropriate; and
- 5. If sufficient funds can be found, the Executive be authorized to retain a person to serve as National Coordinator of the Commercial Law Strategy upon the conclusion of the contract of the current National Coordinator on such terms and conditions as the Executive considers appropriate.