

UNIFORM LAW CONFERENCE OF CANADA
ST. JOHN'S, NEWFOUNDLAND AND LABRADOR
AUGUST 21-25, 2005

CLOSING PLENARY SESSION

MINUTES

Opening of Meeting

The Chair, Chris Curran, welcomed everyone to the closing plenary.

Report from the Criminal Section

Bart Rosborough reported that 36 representatives from 9 provinces and the federal government attended the Criminal Section meeting. Also attending were the President of the U.S. National Conference of Commissioners on Uniform State Laws and the President of the Law Commission of Canada. The delegations included crown prosecutors, policy counsel, academics, judges, members of the criminal defence bar, representatives of the CBA National Criminal Justice Section, the Ontario Criminal Lawyers Association and the Canadian Council of Criminal Defence Lawyers.

Discussions focussed on resolutions, 2 Working Group Reports, a paper and presentation on the *Canada Evidence Act, s.4* and a joint presentation to the Civil and Criminal Sections on the proposed *DNA Missing Persons Index*. A total of 43 resolutions were presented, 35 were debated, 21 resolutions were carried, either as presented or as amended, 6 resolutions were defeated and 16 resolutions were withdrawn. The Working Group reports were received and resolutions adopted as a result.

The first Working group paper dealt with re-election rights for the accused after a direct indictment has been filed. The second paper consisted of continuing probation orders upon the imposition of a sentence or sentences accumulated to a term of imprisonment in a federal penitentiary. This working paper resulted in two resolutions that were debated and fully discussed at the conference and those two resolutions were passed as well.

A joint session was held with the Civil Section to deal with the *D.N.A. Missing Persons Index*. There was also a presentation of a paper on *Spousal Testimony in Criminal Cases*.

The Section had a significant agenda. As Chair he was in some trepidation that the section would be able to get through all of the resolutions and work it had. He was delighted to say that it did, and that in the opinion of the delegates, and certainly the Executive of the Section, their conference this year was a total success. The Chair thanked Bart Rosborough for his report.

Report from the Civil Section

The Chair, John Twohig, reported that the work of the Civil Section includes representation of the Federal government, provincial ministry officials, law reform representatives, members of the Bar, and of course our special guests from Mexico, the United States and the Law Commission of Canada.

The Section completed its work on and adopted four new Acts. The first is the *Uniform Franchise Act*. This was an exhaustive review of franchises, which took four years to complete. It included not only the Uniform Act, but also two Uniform Regulations. The second is the *Uniform Limitations Act*, and Criminal Section colleagues will recall that limitations deal with the time periods that are set for the commencement of civil proceedings. This Act was very challenging intellectually. It required a full breath of knowledge in different areas. This project was led by Ministry officials chiefly, who did a marvellous job pulling this project together in two years.

The third Act is the *Uniform Charitable Fundraising Act*. Four provinces have already brought in legislation on this topic and the section thought the time was right to get into the field and bring in some uniformity before other provinces thought about the project. This project brought together people from all walks of life, those involved in the charities as businesses, their lawyers, members of the Bar, Ministry officials, people from the Federal Government involved in taxation matters etc. That project was completed in two years.

The fourth is the *Uniform [International] Commercial Mediation Act*. This dealt with a convention the United Nations had prepared. The project was led by a Federal Government team of Mannon Dostie and her group. *Commercial Mediation* now joins *Commercial Arbitration* as sort of two bookends of the same area.

The Section also dealt with amendments to the *Uniform Enforcement of Judgments and Decrees Act* and the *Interjurisdictional Enforcement of Civil Protection Orders*. There is a bit of a cross over here for both the Civil and Criminal sections in terms of dealing with domestic violence. That project needs a little more work and we expect that before the year-end, the amendments will be completed and on the ULCC Web site.

He commented that there seems to be no end to the work that is available. There are other projects which are continuing. These include projects involving the *Forms of Business Associations*, the *Interjurisdictional Class Actions* issues, *Arbitration of Family Law Disputes*, *Trade Secrets*, *Enforcement of Minimum Employment Standards and Tax Judgments* among the provinces, the *UNCITRAL Assignments of Receivables* issue and the *Hague Securities Act*. There was a joint session on the *DNA Missing Persons Index*. In addition, there was a discussion of a number of other projects.

He concluded by saying that his task as Chair, was made immensely easy by the support he received from his colleagues from Ontario. John Lee and Abi Lewis were always

there to assist in any way possible and this was much appreciated. The Chair thanked John Twohig for his report.

The Future of the ULCC Publications

The Chair stated that this was a report arising out of the Opening Plenary Session. He reported that the Publications Committee had met on August 22. The Committee considered the issues as set out in the memoranda prepared by Tim Rattenbury, Arthur Close and Peter Lown. After wide ranging discussion, it was agreed that the question as to whether the ULCC should discontinue publication of the Proceedings in the interest of cost efficiency should be left open at this point in time. The initial preference of the Committee was that the Proceedings should continue to appear in hard copy as the official record of the ULCC activities and decision making processes and that the Proceedings should continue to set out the substance necessary to support that record.

However, there was general recognition that an effective policy statement was required on the format in which the Proceedings should be prepared and in which individual items might be presented for publication in this record.

There was also general agreement that the Web site should serve as the principal site for presentation of background information and research. There was also agreement that policy guidelines as to the preparation format for documents on the Web site should be as clear as possible and broadcast widely to researchers and others preparing documents for the ULCC. We will continue to work with Arthur and Marcus in making sure that there is greater consistency between the documents that appear in the Proceedings and the documents that appear on the Web site.

Finally, there was recognition that a great deal of work needed to be undertaken to bring the ULCC Consolidation of Uniform Acts up-to-date, in terms of both content and format. It was suggested that a protocol for dealing with amendments to Uniform Acts was required and that a list of statutes requiring amendment should be prepared.

This is an Item that Arthur Close raised on the floor of conference during the week and the Committee believes that this is an item that should be addressed quickly. It was thought that the list of outstanding items that need to be brought up-to-date might be primarily made up of non-commercial law strategy statutes as the CLS list was up-to-date as of the completion of Phase 2 of the Strategy. It was also agreed that the publication format of the Consolidation as currently configured was not as efficient as it might be and should be reviewed. There is some concern that even the size of the paper and the size of the binder are odd sizes by comparison to normal publishing formats, and that we could probably do something to make this more cost-effective.

The Committee agreed, in the interest of examining more cost-effective ways of doing the publications that:

1. Arthur Close prepare a Reference for Proposals for general distribution to legal publishers in Canada and the United States, seeking interest in the general carriage of all three ULCC publication vehicles. Arthur has already distributed to the group a Reference for Proposals, which will be sent out within the next few weeks. He will report back to the Conference at a later date.
2. Peter Lown agreed to provide a document on a revised formatting model for the Proceedings. Peter has already retrieved some work that was previously done on the Arbitration Act. This provides a very good model on how the decision making process might be tweaked in the Proceedings and how the volume of materials included in the Proceedings might also be adjusted to make that document more effective and less costly.
3. Susan Amrud and Chris Curran agreed to prepare a list of Acts requiring amendment before the September meeting of Legislative Counsels, set for Regina this year. Chris has agreed to consult with Tim Rattenbury, and with staff in his own Department, for assistance in up-dating the list. Susan will have a chat with Ian Brown, the Legislative Drafter from Saskatchewan who will be participating in the September meeting. Chris will also follow up by telephone call to Brian Greer, Chair of our Drafting Section.

Timing of the 2007 Annual Conference

This was a follow-up item from the Opening Plenary. The Chair sought input from the delegates on the timing of the 2007 annual conference in Prince Edward Island in order to respond to a request from the Acting Deputy Attorney General that the 2007 annual conference be held in September or October rather than August. He asked the delegates if their jurisdictions were willing to accommodate P.E.I. He commented that the date that has been discussed by the Executive Committee is the week following Labour Day. The response from the delegates was positive.

It was agreed that the new President, or the Immediate Past President, would write to Mr. Edison Shea, Acting Deputy Attorney General, indicating that the Conference is willing to accede to the request, for one occasion, and suggesting that the 2007 annual conference be held mid-September.

Report from the Nominating Committee

Bart Rosborough stated that he was pleased to announce that the Criminal Section had elected Dean Sinclair from Saskatchewan, as its Chair for 2005-2006 and it has selected Michel Breton from Quebec, as the nominated Chair for 2006-2007.

John Twohig was pleased to confirm that Russell Getz from British Columbia is the new Chair for the Civil Section and that Lynn Romeo, from Manitoba is the nominated Chair for 2006-2007.

Chris Curran reported that John Twohig from Ontario will be the Vice-President. A round of applause was given to the new members of the Executive Committee.

Comments from the Outgoing President

The Chair commented that this has been a very busy year for him. The Conference is alive and well and is extremely active. He was very pleased throughout the year with initiatives on cooperation with our American and Mexican friends. He feels as a result of the visit which he and John Twohig had in Pittsburgh and the discussions in the past week with Howard Swibel, Curtis Reiz and Jorge Sanchez Cordero, that this initiative is well under way. He is excited with the commitments that have been made for undertaking work over the next year. He is amazed that the conference continues to attract so much interest voluntarily from across the country, not only within government circles, but also from the private Bar and from industry. It is amazing that people are willing to participate in our work for very little remuneration. That speaks volumes to the esteem in which the Conference is held, not only in government circles, but also outside.

He was very pleased that in the past week, we were able to renew our contacts with the Law Commission of Canada and that Yves LeBouthillier was able to attend the conference. He was pleased to be able to report that discussions were initiated throughout the week with the Law Commission of Canada about ongoing projects with them. The Conference is looking forward to working with Yves LeBouthillier, Rod Wood and the Commission in the course of the coming years.

He commented that it wasn't an accident, when the Minister of Justice for Newfoundland and Labrador came to speak on Tuesday morning, that he indicated he was interested in our work and that he had had meetings at the national and international level, wherein the kinds of projects that we are working on are of interest. The Minister indicated he was prepared to speak to the Premier and to other Premiers about the work that the ULCC is engaged in. He believes that this speaks well for the work of the Conference.

He then thanked the members of the Executive Committee with whom he had the pleasure of working this year. John Twohig on the civil side and Bart Rosborough on the criminal side have made his job an easy one throughout the year. He commented that words are not enough, but he wanted to thank Claudette Racette for her scrupulous attention to detail. Stating that Claudette is always there, and so he could tell Rob Finlayson, as incoming President, that he can rest assured that he has constant and steady assistance from Claudette and that should be of great comfort to him as he embarks upon his year as President. He then thanked Claudette Racette. A round of applause followed.

He also thanked our funding partners, Justice Canada, the provinces and territories for their ongoing support of the Conference, and Industry Canada for its support of the Commercial Law Strategy.

He then thanked the members of his Organizing Committee: Paul Nolan, Heather Jacobs, John McDonald and Carol Prosser, his Executive Assistant, who has been worked in the

secretariat office throughout the week. He informed Rob Finlayson that his assistant will get to know Claudette Racette very well and will get to know the Chairs of the Sections. This is a big task. The goodwill from across the country makes it happen. He thanked Carol Prosser for her willingness to do the work over the past year, which required on many occasions, that she come in early and stay late. She did that without complaint and for that he was very grateful.

He then turned the meeting over to the new President.

Rob Finlayson stated that he was very pleased that his first task of responsibility was to offer to Chris Curran, Paul Nolan, Heather Jacobs, John McDonald and Carol Prosser the sincere appreciation of all of the delegates for having hosted the 2005 annual conference and for having done such a wonderful job. He then asked the delegates to join him in a round of applause for the Organizing Committee.

Having participated in the organization of one of these conferences, he knows the amount of work that went into it. Chris had dual responsibilities this year, being President and in charge of hosting the event. He thanked Chris on behalf of the delegates. A round of applause followed.

Ongoing Cooperative Efforts among the ULCC, NCCUSL and MCCUSL

The Chair asked Gregory Steele to speak to this issue. Greg was pleased to report that following discussions that took place this year, and during this week, with representatives of the NCCUSL and MCCUSL, he was pleased to bring forward the following Resolution.

MOVED THAT the Executive of the Conference be authorized to enter into discussions with the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the Mexican Conference of Commissioners on Uniform State Laws (MCCUSL), and if it deems appropriate to do so, to enter into a Memorandum of Understanding with them, pursuant to which the three organizations would agree to work together to develop and promote the implementation of harmonized legislation and the implementation of certain international treaties such as work to include the establishment of joint working groups to study agreed upon subjects and to prepare harmonized legislation and collaborative efforts to promote to their respective governments the implementation of such legislation and agreed upon international treaties. The motion was carried.

Remarks from the New President

Rob Finlayson stated that he sees his primary responsibility as ensuring that the excellent work of the Uniform Law Conference of Canada continues both on the criminal and civil sides. He stated that with respect to the Commercial Law Strategy, his ego is not so big as to interfere in the tremendous work that is going on as we now embark on Phase 3. He knows that they are very well supported in that. He hopes that he can ensure that that excellent work continues. Similarly with reference to the resolution that had just been

passed with respect to the work of Canadians, Americans and Mexicans, he will do everything he can to ensure that this excellent work continues.

He commented that the one nice thing about taking over as President of this Conference is the tremendous support that one enjoys from the Past Presidents, from the current Executive and from all the delegates. Not only does he know that he has that support, he also has a very strong team back home in Manitoba. The new Deputy Minister, Ron Perozzo, is a former delegate to the Uniform Law Conference. He knows that Manitoba will be a strong supporter of the work that he will do and the work that the Conference will continue to do.

He stated that we will hopefully focus on some Civil Section/Criminal Section joint projects over the next year or two. He thinks that the idea of the two Sections working in close cooperation on issues that cut across their jurisdictional lines is an excellent way of bringing the two Sections together. He knows that there is strong support on the criminal side for doing that and hopefully, the Executive Committee can ensure that that work continues. He will look forward to getting his COMMUNIQUÉ out along with input from the rest of the Executive; the first one is due in October. He knows that he can count on the tremendous support from Claudette Racette that Chris Curran has referred to. He encouraged the delegates to send him an e-mail if there are any issues that they would like to raise with him.

Report from the Host Jurisdiction for the 2006 Annual Conference

Nolan Steed stated that he and Peter Lown would be presenting the report. First of all, he wanted to thank the Newfoundland and Labrador Organizing Committee for the excellent standard that they have set for Alberta to follow as they organize for the Edmonton conference. Again, Newfoundland and Labrador has shown that they continue to be a friendly and generous host and he thank them for that. Alberta will be pleased to welcome delegates to Edmonton in 2006, from August 20 to 24.

He reported that they would be hosting the opening reception in the Winspear Performing Arts Centre, which is a fine centre in the middle of Edmonton. The barbecue will be at the Fort Edmonton Park, which is a recreation of historic Edmonton. There will also be a ball game. The banquet will be in the University of Alberta Faculty Club, which they chose because it is posed on the edge of the beautiful valley area in Edmonton.

Peter Lown then stated that in the package of material that delegates had before them, there was general information about Alberta, and if delegates want to build a vacation around the trip there, there are some wonderful spots across the province that they can visit. He believes that there is something there for everyone. There is also information about the city itself, including a number of areas that where social events will take place.

The Sutton Place Hotel will be the conference hotel. There is always the admonition, encouragement or plea from the conference organizers to use the host hotel. There is

always a target room night number to meet when one uses the host hotel. He could encourage delegates to do that for two reasons. One is that when Sutton Place took over what was formally the Hilton Hotel, they began a pretty aggressive renovation process which has produced a very comfortable and lovely hotel. The Committee has inspected the floors and the delegates will have all upgraded deluxe rooms. The second reason is that they have aggressively negotiated a very competitive \$121 per night room rate.

He encouraged delegates to take advantage of their time in Edmonton. He outlined a number of interesting sites to visit that are within walking distance from the hotel. Monday night will be a free evening since the Fringe Festival will be on at that time. There will be between 50 and 70 stages in the Strathcona area.

He encouraged delegates to attend. The Organizing Committee looks forward to seeing everyone next year and they hope that they can accommodate everyone in the style for which Paul and Chris and other people in Newfoundland have set the standard.

Report from the Host Jurisdiction for the 2007 Annual Conference

Madelyne Driscoll commented that barring anything unforeseen, Prince Edward Island looks forward to hosting the 2007 annual conference. For delegates who might know a little bit about the Island, it has a lot to offer in terms of social activities, although it will be somewhat difficult to follow Newfoundland's footsteps. She looks forward to working with others on the committee and to providing a good venue and a nice time for everyone who is able to come.

Other Business

Cooperation with the Law Commission of Canada

The Chair referred to a statement made by Chris Curran earlier about the meeting that was held with the Law Commission of Canada the previous day and advised delegates that minutes of that meeting were now available for circulation through Chris Curran. He was pleased with the interest that was demonstrated and hopes that we can forge a strong relationship with the Law Commission of Canada. He thanked Yves LeBouthillier, the President of the Law Commission of Canada.

Acknowledgements

Arthur Close, commented that we cannot let the occasion pass without noting that Gregory Steele, who has been a member of Conference Executive for the past three years will have completed his year as Immediate Past President. Arthur has been close to Greg, and knows the tremendous contribution that he has made, He wanted to move a Resolution which is sort of cumulative on the presentation that was made the previous night thanking Greg for all of his efforts in the past three years. The motion was seconded by Kathryn Sabo. Motion passed. A round of applause for Greg Steele followed.

Greg Steele stated that it was quite an honour to receive the certificate the previous evening. It was unexpected and Arthur's motion was unexpected as well. He commented that he has enjoyed his involvement with the Conference in the past 12 years, and the past three years on the Executive were doubly rewarding. Sometimes people say, "Why do you do it?" His response is that he enjoys it because it makes the practice of law interesting and there is something more to practising law than the billable work that they do. It makes the work more enjoyable, and he has gotten a lot of enjoyment out of it.

Daniel Grégoire stated that it has been the practice to thank the interpreters for the excellent work they did in both sections throughout the week. He commented that the interpreters have played an important part in the work during the deliberations over the years. He personally has benefited from their excellent work. He feels that in order for the delegates to understand each other and to have productive meetings, their contribution is vital. He wanted to stress their professionalism. He recommended that the President, or Executive Director send a letter to their supervisors to indicate the deep appreciation of the Conference for their excellent work. A round of applause followed this for the interpreters.