

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

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 1:30 p.m., on Sunday, August 21, 2005, at the Delta Hotel in St. John's, Newfoundland, with Christopher Curran as Chair, and Claudette Racette as Secretary. The Chair welcomed the Commissioners and guests to the 87th Annual Conference.

Introduction of the Executive Committee

The Chair introduced members of the Executive Committee: Gregory Steele from British Columbia, Immediate Past President, Rob Finlayson from Manitoba, Vice President, John Twohig, from Ontario, Chair of the Civil Section, Bart Rosborough, Q.C. from Alberta, Chair of the Criminal Section. He then introduced Clark Dalton, Q.C., the new National Coordinator for the Commercial Law Strategy and stated that the Conference was pleased to have retained Clark to lead us as we start the work of Phase 3 of the Commercial Law Strategy, Claudette Racette, the Executive Director of the ULCC and our special guest, the Deputy Minister of Justice for Newfoundland and Labrador, Mr. John Cummings, Q.C.

Introduction of Commissioners

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

Introduction of Foreign Delegates

The Chair welcomed Howard J. Swibel, President of the National Conference of Commissioners on Uniform State Laws (NCCUSL) who would be joined later on by Curtis R. Reitz, Chair of the International Legal Developments Committee of NCCUSL and Jorge Sanchez Cordero of the Mexican Conference of Commissioners on Uniform State Laws.

Word of Welcome from the Host Jurisdiction

Mr. John Cummings, Q.C., Deputy Minister of Justice for Newfoundland and Labrador stated that: He was pleased to be here to welcome delegates on behalf of his Government and the Minister of Justice, who would be attending the conference later on in the week to welcome delegates to the province. He was pleased to see so many delegates in St. John's. He was very interested in the list of presenters who will greatly enhance everyone's experience this week. He extended a special welcome to the guests from Mexico and the United States. Cooperation

amongst the three bodies is essential given the global and the North American nature of the community in which we find ourselves living these days. An interesting array of activities has been arranged to make everyone's stay enjoyable.

The work of the Uniform Law Conference of Canada (ULCC) in advancing and harmonizing the law in Canada is a very important work and an essential one that benefits everyone in the country. It is especially important for small provinces like Newfoundland and Labrador that do not have the resources needed to tackle in detail all of the important legal issues that we face. The ULCC is an invaluable tool that provides well thought out solutions that can easily be implemented in the Province of Newfoundland. They are especially interested in the Commercial Law Strategy that is turning out products that will positively impact the country and is something that Newfoundland would never be able to tackle on its own. Harmonizing business law will increase efficiency, enhance international competitiveness and reduce cost for everyone.

He congratulated all of the delegates for all of their efforts and for the many accomplishments they have achieved through the ULCC. He believes that every Deputy Minister of Justice in Canada appreciates the importance of the work, which seems to have an impact every time Deputy Ministers meet to discuss issues.

He thanked the local Organizing Committee for their superhuman efforts in preparing for this conference, because as usual, in Newfoundland, there are not many of them. He especially wanted to recognize Paul Nolan for all of his efforts. Paul is really the person who took charge, and of course Chris Curran. Chris deserves a lot of credit. He wished the delegates a productive and enjoyable week.

The Chair then asked Jennifer Nuberry to say a few words on behalf of the CBA Newfoundland Branch. She thanked Chris Curran for the invitation to speak at the annual conference. As President of the Newfoundland Branch of the CBA she offered a special welcome to St. John's, proudly one of the country's oldest and most distinguished cities. History stands as the evidence of the value of location as it does the value of organizations. It was more than 87 years ago that the CBA recommended that each provincial government provide for the appointment of Commissioners to attend the conferences for the purpose of promoting uniformity of legislation among the provinces. From that simple concept, the ULCC did grow. The Conference plays a vital role in shaping legislation in Canada through the activities of the Criminal and Civil Sections. I am pleased to see that there are several representatives from the CBA who are participating in the deliberations. Earlier this week, the CBA wound up another successful annual meeting in Vancouver and delegates confirmed that they would mark their calendars to return to the CLS here in 2006 to consider policy. Have a great conference.

The President's Report

The President presented the following report:

“Uniformity Commissioners, Special Guests from Mexico and the United States, friends and colleagues. At 87 the Uniform Law Conference of Canada must surely rank as one of the grand old dames, a venerable old dame as I like to think, of federal/provincial/territorial institutions.

Unlike most 87 year olds however, the Conference continues to be exceedingly active. As an institution we maintain a hectic pace and there is no sign of this senior slowing down. I believe we can say with confidence that this past year was no exception. The Conference continued to play a significant role in helping shape this Country's bilingual, bijural legal landscape.

For those of you who don't know, the work of each Conference year begins with the Executive meeting held on the Thursday afternoon following the closing plenary session of the Conference just completed. Last year in Regina one of the principal items on our agenda at that meeting was the completion of Phase 2 of the Commercial Law Strategy scheduled for March 31, 2005 and planning and preparation for commencement of the new Phase of this work. Most of you will know by now that the completion of Phase 2 of the Strategy was marked by publication of a complete compendium of the Conference work on the Strategy to that date in hard copy and in CD format. This was a huge accomplishment for which we owe Susan Amrud, Q.C. and the staff of the Saskatchewan Queen's Printer a sincere vote of thanks. All Jurisdictional Representatives on the Civil side of the Conference received a copy of this document. Our hope is that you have used it, and will continue to use it over the coming year, to promote the work of the Conference and to foster implementation of the Conference's work product in your home jurisdictions.

Planning and preparation for the next stage of this work necessitated finalization of a new organizational structure that would permit the Strategy to become part of the ongoing work of the Civil Section of the Conference and the confirmation of funding necessary to carry out the additional research work that will be required by the Section. The new organizational structure eventually agreed upon saw the position of National Coordinator come to an end and evolve into a part-time research coordinator/administrator position and the work of the Chair of the Strategy absorbed as part of the duties of the Chair of the Civil Section. The result was that Tony Hoffman left the Conference on March 31, 2005 on completion of his contract and Jennifer Babe completed her duties as Chair of the Strategy as at that date. The Conference is indebted to both of them, for their dedication, professionalism and good humor. In Jennifer's case she continues to be involved in the work of the Conference by virtue of her role with the CBAO Business Law Section and her ongoing role on a restructured Steering Committee for the Civil Section. Jennifer will be with us on the Civil Side throughout the coming week. Tony Hoffman will join us by teleconference for the paper on Trade Secrets from Toronto in the relative luxury of his office with the Ontario Securities Commission.

The confirmation of funding necessary to carry out the new research work is an ongoing odyssey. On January 21, 2005 Greg Steele and I, in conjunction with a meeting of the Conference Executive met with John Sims, Q.C. the new Federal Deputy Minister of Justice and Deputy Attorney General. Kathryn Sabo, General Counsel, International Private Law and Catherine Kane, Senior Counsel/Director, Policy Centre for Victim Issues, participants respectively on the Civil and Criminal sides of the Conference were also present. The meeting provided Greg and myself an opportunity to acquaint the new Deputy with the work of the Conference and with the unique role which the Conference is able to play in civil and criminal policy development at the local and national level in this country. The Deputy expressed a keen interest in the work of the Conference and undertook with his staff to explore ways in which he might support our ongoing work.

The upshot of this visit and subsequent discussions with Justice Canada and related departments is that \$81,830 in funding has been committed from federal sources to the Civil Section of the Conference for two years with possible extension for a third, if the federal budget stars align properly. This has allowed us to hire our new part-time Project Administrator, Clark Dalton, Q.C. who I would like to officially welcome today. Clark has been working diligently/frantically with the Executive Committee and with Claudette in her dealings with officials at Justice Canada over the past months to finalize the Conference New Project Proposal for the coming year and subsequent years. I would like to thank Karen Bron, Acting Director General, Program Branch, Kathryn Sabo and Marc Rozon for their assistance and for their creative suggestions in helping us navigate the often murky waters of the federal government's project proposal process. And, of course, in this, as in all things connected with the Conference the good offices of our Executive Director Claudette Racette have been called into play time and time again. In this regard I would like to especially acknowledge her commitment during the period immediately leading up to the activities of the coming week.

On the Criminal side of the Conference work has been steady throughout 2004-05. As Chair of the Section Bart Rosborough has put together a solid agenda with approximately 50 resolutions for consideration. I am pleased to be able to report that for the first time this year a mechanism has been put in place to allow provincial Legal Aid Commissions to participate in the work of the Criminal side of the Conference through their respective provincial/territorial delegations. This is an exciting new development and I want to congratulate Bart and the Steering Committee of the Section for facilitating this development. It comes at the specific request of the federal and provincial co-chairs of the Permanent Working Group on Legal Aid. The thinking was that the Legal Aid Commission in whose jurisdiction the Conference is held in a given year should participate and communicate to the PWG the resolutions considered in that year and seek input, where appropriate, from the PWG prior to the Conference so that the views of the Legal Aid defence Bar might be represented on the floor of the Conference during discussion of individual resolutions. I think this cannot but help enrich and enliven discussions.

I note that a concern that has in my view, justifiably been raised by a number of delegates in past years is that greater efforts should be made to ensure follow up with our federal partners on legislative action on the Criminal resolutions adopted at the Conference. I believe wider participation at the Conference is a useful step in this process. It should mobilize support for the resolutions and enhance their credibility in the legislative process which is our ultimate goal. I am cognizant that our incoming President, Rob Finlayson, who is a long-standing delegate on the Conference Criminal side will pursue the issue vigorously during his term. I am confident that this concern is one that will receive additional attention during his Presidency.

At the 2004 annual meeting in Regina the Conference confirmed by resolution its commitment to bilingualism and bijuralism in preparation of Conference work product. This is an essential, albeit costly, aspect of facilitating and promoting the harmonization of legislation throughout the country. I want to remind all jurisdictional representatives and all working group participants of this commitment and of the necessity of coordinating all drafting activity through the Chair of the Drafting Section, Mr. Brian Greer, Q.C. This helps ensure an even distribution of the work and an optimal utilization of our scarce resources. In situations where drafting does not occur

initially in both languages, and translation is necessary, timely receipt of work product allows us to manage translation costs most effectively. I want to take this opportunity to thank all the jurisdictions that have made special contributions to offsetting translation costs this past year and I want to remind all Working Group leaders that where possible study papers and other work product should not exceed 25 pages in length.

I want to congratulate John Twohig and Bart Rosborough for their ongoing efforts at generating participation in the work of the Conference throughout the year. The Conference succeeds best when it engages the efforts of all its members. I encourage all of our jurisdictional representatives to work with their respective Chairs in achieving the goals of their Sections throughout the year and in bringing to their attention issues of local concern that are appropriate subjects for national harmonization and uniformity. I also want to remind all jurisdictional representatives of their role in promoting adoption and implementation of the Conference work product in the local jurisdictions. We will say more about this at the meeting of Jurisdictional Representatives on Tuesday, but we should never forget that the *raison d'être* of the Conference is realization of the goal of harmonization through legislative action. We could take a lesson here from the work of our American friends who at their annual meeting set aside a number of early morning sessions for consideration of their implementation record.

It is appropriate in these opening remarks that I make special mention of Tim Rattenbury of New Brunswick for his tireless work on preparation of our annual Proceedings for publication. The Proceedings are the record which constitutes our face to the external world. Tim's attention to detail ensures that we are always presentable. I would ask Elizabeth Strange, the Jurisdictional Representative from New Brunswick this year, that she communicate to Tim our deep appreciation for his unstinting efforts on our behalf.

I noted above the presence of special guests from Mexico and the United States. In July, John Twohig and I attended the 126th annual meeting of the National Conference of Commissioners for Uniform State Laws held this year in Pittsburgh, Pennsylvania. The meetings were extremely productive. Among the issues we discussed was the possibility of inter-agency cooperation amongst our three organizations: the Canadian, Mexican and American Conferences. This was further to preliminary discussions throughout the year with Fred Miller, Immediate Past President of the American Conference and Jorge Sanchez Cordero, Director of the Mexican Conference of Commissioners on Uniform State Laws. You will recall last year there was concern expressed by a number of our jurisdictions that the Conference should not appear to be usurping the federal state role by dealing directly with foreign states on what might be federal international issues. This was discussed by the Conference Steering Committee during the year and it was agreed that, assuming funding issues for these kinds of projects could be resolved, the issue of trenching on turf not properly our own could be addressed by careful selection of a project agenda. The Conference Executive gave the green light to explore with NCCUSL and with MCCUSL the development of a process to identify short and long term strategies that might result in uniform law projects involving all three countries. Needless to say it was also agreed that avenues for the exchange of information on issues of mutual concern should be vigorously pursued. It was regarded as self evident that in the current environment cooperation of this nature might result in economies and efficiencies for all three organizations. In Pittsburgh John

and I indicated that we would be continuing talks along these lines here. My intentions is to do so throughout the week and to report back to the Conference at the Closing Plenary Session.

Finally I want to officially thank the efforts of this year's organizing team: Paul Nolan, Heather Jacobs, Carol Prosser, Debbie Mootrey and Meaghan Young. I want also to thank the Deputy Minister, John Cummings, Q.C. for his support in these times of limited financial resources.

The 2005 St. John's Organizing Committee has put together a full and exciting program of activities for this year's Conference. Anyone requiring any information about any activities planned should not hesitate to contact any of the representatives for Newfoundland and Labrador. The Committee wants to ensure that your visit to "the far east of the western world" is a memorable one. We look forward to speaking with you throughout the week. Work hard, but by all means, play hard too!"

Financial Resolutions

Approval of Audited Financial Statements

MOVED by Rob Finlayson, seconded by Kathryn Sabo, **THAT** the Audited Statements for the fiscal period ending March 31, 2005, be approved as presented. Motion carried. *[See Appendix A, p.xx.]*

Appointment of Auditors

MOVED by John Twohig, seconded by Vincent Pelletier, **THAT** the audit firm of Cloutier and Brisebois be appointed as Auditor for the ULCC for the fiscal period 2005-2006. Motion carried.

Banking Resolution

MOVED by Bart Rosborough, 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 commercial law strategy account to the general account, the signature of the Executive Director alone will suffice. Motion carried.

Approval of the Budget for 2005-2006

MOVED, by Gregory Steele, seconded by Earl Fruchtman, **THAT** the budget for the fiscal period 2005-2006 be approved subject to the amendment to the Commercial Law Strategy budget following the discussion of new projects on Thursday morning. Motion carried.

Confirmation of the Nominating Committee

The Chair reported that the Nominating Committees were now in place for the positions of Vice President, Chair of the Civil Section and Chair of the Criminal Section for the coming year. They will be reporting back to the delegates at the Closing Plenary.

Outline of the Business of the Week

Criminal Section

The Chair, Bart Rosborough, thanked all of the provinces who have sent delegates and welcomed those delegates. He was happy to announce that there were more than 30 delegates attending from nine provinces across Canada and that they would be considering: 44 Resolutions which have been submitted by those provinces for debate, two working papers that have been the subject of ongoing activities throughout the year and a report which members have received, dealing with collections by the defence on matters which are the subject of direct indictments and a second working paper on the continuation of probation orders for individuals who have been sentenced to terms of imprisonment in federal penitentiaries. In addition, in a joint session with the Civil Section, the Section will consider a *Missing Persons Index* submission that has been offered by Justice Canada for consideration. The Section will also be taking into account a discussion paper dealing with the area of *Spousal Competence, Compellability and Privilege in Criminal Proceedings*. The Section has a lot of work to do in the coming week. He was very much looking forward to working with the delegates and to completing the work by the deadline.

Civil Section

The Chair, John Twohig thanked the Organizing Committee and Claudette Racette for all of the hard work in organizing this conference. He stated that he enjoyed his year as Chair of the Civil Section, and appreciates the support that he has received from so many people. He looked forward to these meetings, to seeing old friends and to meeting new ones, and to bringing back to his Province the kind concepts and ideas that are generated at the conference.

This week, the Civil Section will be asked to adopt four new Uniform Acts in the areas of *Franchises, Limitations, Charitable Fundraising* and the *UNCITRAL Model Law on Conciliation*. In addition to this, there will be a proposal to adopt amendments to Uniform Acts dealing with the enforcement of various types of judgments. The Section will also be considering seven different study papers concerning a wide range of topics including: *Forms of Business Associations, Interjurisdictional Class Actions, Limitation Periods in Insurance Claims, Trade Secrets, Faith Based Family Arbitration, Copyright and the Assignments Convention*. In addition, the Section will also receive progress reports on the *Commercial Law* area, the *PPSA*, and the *Hague Securities Convention*, and of course, our report from Justice Canada on the activities of the *Private International Law* Team.

One novel aspect of this year's conference will include three video conference presentations on Tuesday afternoon. On Wednesday, there will be a joint session with the Criminal Section to receive a report and discuss the ongoing work by Justice Canada on the *D.N.A. Missing Persons Index*. In our last session of the program on Thursday, Russ Getz and Janice Brown will deliver their report on suggested new projects that might be pursued by the Conference.

He was happy to have our American and Mexican colleagues in attendance with us and indicated that they will report on the activities of their respective conferences during our meeting.

Throughout the year, the Jurisdictional Representatives had several teleconferences to discuss and develop this agenda. He thanked the Jurisdictional Representatives for all of their valuable assistance. Lastly, he was happy to acknowledge the appointment of Clark Dalton as the National Coordinator. With Clark on board, our future is bright indeed.

Just before closing, it was his sad duty to report that one of the Presenters, Professor Jim Rendall, who was to deliver a paper on *Limitation Periods in Insurance Claims*, passed away tragically and unexpectedly on August 11. Professor Rendall was a Law Professor at the University of Calgary School of Law. He had taught there for 27 years. He had retired in June and prior to his teaching duties in Calgary, he also taught at the University of Western Ontario and Dalhousie University. He then asked the President for permission to turn the floor over to Peter Lown who was a friend of Professor Rendall, and who had a few words to deliver to the delegates.

Peter Lown commented that when he last discussed the *Limitations Period* project with Jim Rendall in July, he was eagerly looking forward to attending the conference to present his paper. He was amending the written materials and was preparing a particular presentation for the benefit of the Section. In the meantime he was going to Ontario to enjoy some camping and spend some time at the Shaw Festival. It was with significant surprise that we learned of his death on August 11. There is in Calgary tomorrow a commemoration service entitled "A Celebration of the Life of Jim Rendall". He thought that it would be appropriate if the Conference were able to pass a Resolution that he would undertake to take to the Rendall family in time for tomorrow's service. He then proposed the following statement:

"The Conference regrets that it will not have the wisdom and participation of Professor Rendall in its deliberations in St. John's. The Conference expresses its sincere condolences to the Rendall family for this sad loss." The Resolution was seconded by Glen Abbot. The Resolution was passed.

The Future of the ULCC Publications

The Chair stated that this was an information item for the conference. One of the topics that the Executive has discussed in the past two months or so is the future of the ULCC publications. The printing cost of the Proceedings continues to escalate and to make a huge draw on our limited resources. One of the things that we will be doing this week is to discuss with a small committee comprised of Peter Lown, Arthur Close, himself, Clark Dalton and Claudette Racette, the possibility of looking at alternative delivery mechanism for our Proceedings. He urged those who have thoughts or suggestions on this, Saskatchewan, for instance which has been involved in the publication of the Proceedings, and New Brunswick, given Tim Rattenbury's long-standing work on the Proceedings, to get their comments to the Committee. The Committee will report back to the delegates during the Closing Plenary.

Timing of the 2007 Annual Conference

The Chair stated that the Conference likes to schedule the annual meetings two years in advance. The 2007 annual conference is scheduled to take place in Prince Edward Island. We have received a letter from the Acting Deputy Minister in Prince Edward Island indicating that P.E.I. is prepared to host the 2007 annual conference, but he asks that we give consideration to moving the conference timeframe from our traditional time in August to possibly either September or October, on a one-time basis, to accommodate scheduling and booking in the Charlottetown area.

He asked delegates to consider the request and indicated that the matter would be brought back for consideration at the Closing Plenary. He indicated that his own view is that we should strive to accommodate the request and we should do so the week following Labour Day weekend in September. He sought comments from the delegates. John Twohig commented that he was pleased to hear that Prince Edward Island is able to host the 2007 conference and on behalf of Ontario, he indicated that they were more than supportive of this and that they want to help in any way possible. The request seems reasonable. The week after Labour Day in September is something that Ontario will support.