

Closing Plenary Session Minutes 2006

Edmonton AB Aug. 20-24, 2006

Opening of Meeting

The President, Robin Finlayson, called the meeting to order.

Report from the Criminal Section

The Chair, Dean Sinclair, stated that the Criminal Section had a very productive week. On Sunday afternoon, the Section was presented with a report by the Senior Justice Canada delegate outlining the Criminal Law initiatives undertaken by the Federal Government in the last year. The Federal delegate focused on the work of the Uniform Law Conference that has made its way into legislative form in Criminal Law amendments. We heard that in *Bill C-23* that has received first reading in the House of Commons, there are approximately 20 Criminal Law amendments that had been suggested by previous Uniform Law Conference resolutions of the Criminal Section. This was quite good to hear. In addition, the Section received presentations on a number of Criminal Law amendments that are in the planning stage dealing with *Hybridization of Criminal Code Offences*, and for many years, there have been various resolutions put forward by the Criminal Section suggesting changes in the *Hybridization of Criminal Code Offences*. So much of our work is continuing to be the focus efforts by Justice Canada officials.

Over the course of the week, jurisdictions presented 31 resolutions suggesting amendments to Criminal Law Statutes. They considered and debated all except one. Of the resolutions that were presented, 29 were carried, one was defeated and one was withdrawn after discussion. One was withdrawn before discussion.

There was a joint meeting with the Civil Section dealing with the *Collateral Use of Crown Brief Disclosure*, and a resolution flowing out of the discussion will be presented by the Chair of the Civil Section later on in the morning. On the criminal side, he has identified a number of people who are interested in working on that particular project. He will provide the names to the Executive Committee later.

The Working Group on *Strangulation* presented its report to the Criminal Section. This Working Group was concerned about whether there is a need to amend the Criminal Law to address that particular life-threatening form of assault, a form of assault that often arises in the context of family violence cases. The Criminal Section considered the report and recommended that it be forwarded to the heads of prosecution for their consideration of the Working Group's recommendation to further train and to educate prosecutors on the issues surrounding that form of assault.

He was pleased to report that Michel Breton will be the Criminal Section Chair for the year 2006-2007 in Prince Edward Island. He commented that Michel Breton has

been coming to the Criminal Section meetings for a number of years. His interventions are always very well thought out and that it was a real pleasure to have him as the next leader of the Criminal Section. The Nominating Committee for the Criminal Section selected unanimously that Nancy Irving, Senior Counsel with Justice Canada be the Nominated Chair for 2007-2008. He stated that, again, this was a great choice. Nancy has been attending the conference for many years and her contributions to the Section are first class.

In closing, he thanked Russell Getz, John Twohig, Robin Finlayson, Claudette Racette, Chris Curran and the other members of the Executive Committee for all their assistance during the past year in helping him to fulfil his responsibilities as Chair of the Criminal Section. He also thanked members of the Criminal Section Steering Committee for their advice and support. He expressed special thanks to Josh Hawks for all of the work he did on the Strangulation Working Group and in the course of the deliberations this week. Finally, he wanted to acknowledge the hard work of the Secretary to the Section, Stéphanie O'Connor from Justice Canada. Stéphanie goes above and beyond in making sure that the proceedings of the Criminal Section advance in a very efficient and effective manner. He also thanked senior delegates Catherine Kane, Earl Fruchtmann and Daniel Grégoire who made his job very easy.

Report from the Civil Section

The Chair, Russell Getz, reported that the Civil Section had a fine week of work. There was participation from provincial, territorial and federal justice departments, law reform bodies and members of the practising Bar and academia. There were some 21 presentations on a variety of subjects. There were amendments to the *Uniform Class Proceedings Act* that were adopted which will address the ability of the Courts to certify the Class that includes Class members residing outside the jurisdiction and provide for principles for the resolution on conflicts between potentially competing Class Actions. The report's recommendation respecting the development of a *Canadian Class Proceedings Registry* was also adopted and endorsed.

Several of the projects are the subjects of international cooperation. As a result of our deliberations, it is anticipated that the ULCC will be able to adopt the *Uniform Assignment of Receivables in International Trade* by the end of the year. As well, the joint American, Mexican and Canadian joint project on *Unincorporated Associations* will continue its work. Working Groups will be established on several important new projects including the law of *Partnership* and *Fraudulent Conveyances and Preferences*. Work will also continue on a number of subjects including *Income Trusts*, the *UN Convention on Independent Guarantees and Stand-by Letters of Credit*, *Limitation Periods* and other issues respecting

Insurance Statutes, Inter-jurisdiction Enforcement of Tax Judgments and the *Hague Convention on the Law Applicable to Securities*. The ULCC will also continue to have under consideration the *Faith Based Family Arbitration* and *First Nations and Commercial Law*. There was also a lively discussion of potential new projects.

In conjunction with the Criminal Section, work will continue on the *Collateral Use of Crown Brief Disclosure*.

He then thanked those who made work this week so pleasurable and so straightforward, our Alberta hosts, members of the Executive, members of the Civil Section Steering Committee, throughout the year and members of the Commercial Law Strategy Supervisory Committee have all contributed to make the work of the session this year a very productive one and one which continues well for next year. The new Chair for the Civil Section is Lynn Romeo of Manitoba and the Nominating Committee has chosen Darcy McGovern of Saskatchewan to be the Nominated Chair for the year 2007-2008.

He presented the following resolution, seconded by Catherine Kane:

MOVED THAT a joint Working Group be established to consider the issues raised in the Report and, in accordance with any directions of the Conference, report and make any recommendations to the Conference in 2007 respecting the desirability and feasibility of legislative or non-legislative initiatives to promote uniformity in the use of Crown Brief material in collateral proceedings.

Motion carried.

Report from the Publications Committee

Chris Curran stated that hard copies of his report were distributed to the delegates earlier in the week. He asked for comments or questions on the report. In the absence of comments and questions, he presented the following resolution:

MOVED

THAT the report of the Publications Committee be received.

THAT the Conference continue to publish a hard copy of the Proceedings of the Conference in the present format containing a cumulative record of discussion, including the Uniform Acts and Commentaries and the background reports on which the Uniform Acts are based.

THAT the hard copy version of the Consolidation of Uniform Acts be discontinued once the Consolidation is added to the Website and

THAT a letter be sent, advising the subscribers to the Consolidation of this fact and providing them with information as to where they can find the Consolidation on the ULCC Website site and thanking them for their continued interest in our work.

The resolution was seconded by Arthur Close. Motion carried.

Report of the Nominating Committee

Chris Curran commented that historically, the practice has been to alternate between a Civil and a Criminal Section President and that this practice has served the ULCC very well. The practice was supported by the two and one year term respectively of the Civil and Criminal Section Chairs of the ULCC. This practice was changed four or five years ago when the ULCC initiated a new practice of one year Civil Section Chairs and a recognition that from time to time needs might arise that would require that the ULCC be flexible in meeting new challenges and special requirements. With this in mind, he has consulted with Past Presidents attending this year's conference. There was recognition amongst all Past Presidents that we are entering an exciting period of growth in our involvement on the international front with our American and Mexican colleagues and that in 2008 the conference will be hosted in Quebec City during its 400th anniversary year. The latter, it was agreed by all, accentuates the desirability of having a completely bilingual President that year. He was pleased to announce that the decision of the Committee is that the incoming Vice-President will be our esteemed colleague Kathryn Sabo from the federal delegation. He thanked Kathryn Sabo for agreeing to take on this task. He knows that she and John Twohig will be a great team for the 2007 conference in Prince Edward Island, and that Kathryn will then be in line to assume the President's chair in 2008 in Quebec City.

He then reported that Brian Greer would be stepping down as Chair of the Drafting Section in 2007. He is taking a sabbatical and will do some travel. Brian Greer indicated that he was able to provide a new Chair for the Drafting Section, and that the new Chair will be Valerie Perry, Senior Legislative Counsel for Manitoba. He thanked Brian Greer for his 20 year commitment to the Conference and said that we are looking forward to working with Valerie Perry and colleagues in Manitoba in having the Conference's needs on the drafting side addressed.

Comments from the Outgoing President

The Chair commented that his remarks would be in the form of a resolution expressing appreciation. He then presented the following resolution:

RESOLVED that the Conference express its appreciation by way of letter from the Executive Director to:

1. The Province of Alberta as represented by the Honorable Ron Stevens Q.C., Minister of Justice and Attorney General which hosted the 88th annual meeting of the Conference.

2. The Alberta Law Reform Institute for its many contributions to the annual meeting.
3. The organizing committee of: Nolan Steed, Peter Lown, Carol Fowlie, Bart Rosborough, Peter Pagano, Clark Dalton, Sandra Lane and Betty Mac.
4. Kimberly Groome who volunteered to assist at the registration desk.
5. Those who assisted in setting up and operating the conference secretariat: Charlene Scharf, Jenny Koziar, Betty Mac, Ilze Hobin and Gregg Dearborn.
6. Printer World International Inc., and Toshiba Canada for their contributions to the successful operation of the conference secretariat.
7. The following law firms who generously supported the cost of our nutrition breaks: Bennett Jones LLP (Calgary), Burnet Duckworth & Palmer LLP (Calgary), Duncan & Craig LLP (Edmonton), Fraser Milner Casgrain LLP (Edmonton), Gowling Lafleur Henderson LLP (Calgary), Macleod Dixon LLP (Calgary), Miller Thomson LLP (Edmonton).
8. The Law Society of Alberta and the Canadian Bar Association, Alberta Branch, for their generous contribution to the cost of the opening reception.
9. Our colleagues from the National Conference of Commissioners on Uniform State Laws, Howard J. Swibel and K. King Burnett and from the Mexican Conference of Commissioners on Uniform State Laws, Jorge Sanchez Cordero for their Participation in our annual Meeting.
10. Mark Cooper and David Dear of Alberta Justice, Communications, for assisting in the preparation of a conference news release.
11. Carol Fowlie for risking life limb and employment by umpiring the traditional East vs West softball game.
12. The Alberta Justice Civil Law softball team for providing the equipment for our traditional East vs West softball game.
13. The able and patient interpreters: Clair Caldwell, Dorothy Charbonneau, Marie-Eve Racette, Teresa Beauregard-Timms, Emmanuelle Dubois and Jean-Pierre Lessard.
14. Our proficient technicians, Craig Wesley and Jesse Day.
15. The Section Chairpersons whose leadership contributed to our efficient and successful discussions.
16. Richard Wong, General Manager, and staff at the Sutton Place Hotel for their superb service.

AND BE IT RESOLVED THAT the Conference expresses its appreciation to the Executive Director, Claudette Racette for ensuring that everything comes together for another successful annual meeting and who attended her first annual meeting 13 years

ago in Edmonton.

The motion was seconded by John Twohig. Motion carried.

In closing Robin Finlayson commented that he wanted to express his appreciation to the incomparable Claudette Racette for all of her support, to his Executive for their assistance throughout the course of the year, and to the delegates for their hard work, cooperation and assistance.

Comments from the Incoming President

John Twohig said that it was certainly an honour to take on this role and that he was encouraged and comforted as he looked around the room and saw the faces of the Past Presidents who have already been great sources of inspiration to him. He looks forward to doing the best that he can and to not only maintain the great tradition of the ULCC, but to improve it in any way possible. He believes that those who have been with the Conference even more than two or three years can see the rapid change in growth in new activities that we have been involved in, the latest of which of course have been our involvement with Mexico and the United States.

He could not let this opportunity pass without recognizing the contributions and efforts of our outgoing Past President, Chris Curran. Chris now leaves the Executive. Everyone will know the great energy and enthusiasm that Chris brought to bear during his time on the Executive. Chris pulled off that rare double of not only being President, but also being the host of the jurisdiction last year, which is a very difficult task and one which Chris accomplished with great ease. We do appreciate all that he has done over the years. Chris has promised to continue his association with the ULCC and as Deputy Minister, he will join another illustrious Past President, Doug Moen, at the table of Deputy Ministers. Having those two strong voices there is extremely important to the ULCC.

He then wanted to say a few words about Rob Finlayson. He was of course delighted and somewhat on edge when he heard that Rob had been appointed to the Bench in January. He assumed that there was a very good chance that this would require him to resign as President of the ULCC. It is something that he could have done and nobody would have thought otherwise about it because it is certainly a significant change in duties. But Rob, being reliable and dutiful, stuck with it with some adjustments and we are certainly appreciative of him doing that. He commented that it was a great privilege to have served with Rob as President. Looking back on Rob's tenure, he looks towards his efforts of having joint projects between the Criminal Section and the Civil Section. Rob provided great inspiration for the development of joint projects. In addition to this Rob wanted to see that the cooperation with the United States and Mexico was enhanced. Rob was always that calm and balanced presence and John thinks that Rob helped things flourish in all of the things that he undertook. In concluding, he repeated the thanks already given to those who made this year's

meeting such a success.

Report from the Host Jurisdiction for the 2007 Annual Conference

On behalf of Prince Edward Island, Katharine Tummon stated that she would like to welcome all of the delegates to Prince Edward Island in 2007. The conference in 2007 is not going to be in August. August is an extremely busy time on the Island. The ULCC kindly agreed to move it to September. The dates are September 9 to September

13. The rooms have been blocked for the 8th because it is difficult to get on the Island particularly from the West. She encouraged delegates to arrive on the Saturday. There are direct flights both from Toronto and Montreal.

The conference will be held in the Rodd Charlottetown, the old railway hotel in downtown Charlottetown. Since the Rodd could not provide the sufficient number of rooms, there will also be bookings at a number of Inns in Charlottetown. They have booked 20 rooms at the Inn on Great George. These are beautiful rooms. They line the street that John A. and Cartier walked up from the harbour to Province House to initiate the discussions on Confederation. They have also booked a block of rooms at the Dundee Arms, which is another lovely inn. It is immediately adjacent to the Rodd Charlottetown. The rooms at the inns and at the Rodd are almost the same price. The room rates on the Island are fairly high until you reach October. They will be approximately \$195, but the inns are B&Bs so you will get breakfast at the inns. The Dundee Arms is quite a bit less. It is a nice hotel. It is not something that you have to worry about. It is about \$140.00. It is immediately adjacent to the Rodd Charlottetown.

She believes that delegates will find Charlottetown a lovely city to be in. It is very relaxed, it is easy to walk around and it is very safe. Delegates will find that they can just enjoy their time doing walking tours and dropping into the little shops and restaurants. There are lots of lovely small restaurants. One point that the Executive Director asked that she emphasize is that when delegates receive the hotel reservation forms, they should book as soon as possible since this is a bit trickier than the usual hotel bookings because of the different locations and because it is a very busy time for hotels and inns on the Island.

September on the Island is one of the most beautiful months of the year. It is a warm month. Delegates should consider extending their visit. There are a number of golf courses on the Island that you can take advantage of. Kayaking will still be going on and there are marvellous biking tours. When the bridge was put in the Island and the railway was taken up, all the railway lines were made up into bicycling trails. You can bike from Charlottetown to each end of the Island without ever hitting a road. It is a lovely way to see the Island.

She then thanked everyone who offered help for next year. In particular, she thanked the Alberta crew for putting on such a perfect show so that she could see how to do it and try to emulate it. She wanted to thank the two real islanders who offered to assist, Janice Brown and Kendra Wright. She looks forward to seeing everyone next year.

Other Business Acknowledgment

The Chair stated that Arthur Close is currently the Executive Director of the British Columbia Law Institute. Arthur has let it be known that his current intention is that in March he will step down from that position. That being the case, he will no longer be at the ULCC as a delegate from the B.C. Law Institute. But, Arthur has also indicated that he fully expects to be here as a Presenter and perhaps in some other role and we will hold him to that should he go ahead with his plans to step down.

The ULCC is 88 years old. For 28 or those years, since 1978, Arthur has graced us with his presence, his knowledge and his ability. He told Arthur that he was not leaving until he could say a few things about him.

Arthur graduated from the British Columbia University Law School, and it won't come as any surprise to those that know him, that he was the Gold Medalist. After a short stint in private practice, he joined what was then the Law Reform Commission of British Columbia in 1972 and he was with the Law Reform Commission from 1972 until 1997 when that organization was disbanded. He served the Commission as Counsel, as Commissioner and lastly as Chair. I am told that he was the principal author of at least 41 reports in addition to working papers and other study papers.

In 1997 Arthur led the charge and formed the British Columbia Law Institute, which has carried on the great work of the B.C. Law Commission. That is a brief summary of Arthur the scholar, and Arthur the lawyer. He believes that to all who know him, it is Arthur the person that they hold in the highest regard. He has great integrity, he is reliable, he is honest and trustworthy and you can count on Arthur to get anything done. So Arthur, if you decide to step down as you say you might, please take with you our deepest respect, our profound admiration and our ongoing best wishes for your future. He thanked Arthur. There followed a round of applause for Arthur Close.

Arthur Close responded that he was very touched by those words and was most appreciative. As indicated, his links with the Law Institute may be dissolved in the way they are now, but certainly he has a great affection for the ULCC, and if there is any way that he can maintain the attachment to it, in one capacity or another, he will be here in person, and if he cannot make it in person, certainly his heart will be here.

The Chair thanked Arthur and commented that we will happily hold him to that commitment.

Adjournment

There being no further business, the Chair declared that this annual meeting of the Uniform Law Conference of Canada stands adjourned. He thanked all of the delegates for their participation, their help and stated that the strength of the Conference is the people involved and that he looked forward to their continued contributions. He looks forward to seeing everyone in Prince Edward Island in 2007.