

**UNIFORM LAW CONFERENCE OF CANADA
EDMONTON, ALBERTA
AUGUST 20-24, 2006**

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 1:30 p.m., on Sunday, August 20, 2006, at the Sutton Place Hotel, Edmonton, Alberta, with Robin Finlayson as Chair and Claudette Racette as Secretary. The Chair welcomed the Commissioners and guests to the 2006 Annual Conference of the Uniform Law Conference of Canada.

Introduction of the Executive Committee

The Chair introduced the members of the Executive Committee: himself; Chris Curran, Immediate Past President; Dean Sinclair, Chair of the Criminal Section; John Towhig, Vice President; Russell Getz, Chair of the Civil Section; Brian Greer, Chair, Drafting Section; and Claudette Racette, Executive Director of the ULCC.

Introduction of Commissioners

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

Introduction of the Delegates from the United States and from Mexico

The Chair was pleased to report that we would later be joined by Howard J. Swibel, President, and K. King Burnett, Chair, International Legal Development Committee, of the National Conference of Commissioners on Uniform State Laws and by Jorge Sanchez Cordero, President, of the Mexican Conference of Commissioners on Uniform State Laws.

Word of Welcome from the Host Government

On behalf of Alberta Justice, Peter Lown welcomed delegates to the eighty-eighth annual conference of the ULCC. On behalf of the Organizing Committee he wished delegates a pleasant and productive conference. He stated that the Hon. Ron Stevens, Minister of Justice and Attorney General would be extending a formal welcome to the delegates during a reception that evening. He reviewed the social program for the week and advised delegates that the calendar of events was included in their information package. He also

highlighted the activities that were taking place in and around Edmonton during the week.

He was pleased to report that the delegates may find that there will be some creativity during the week in terms of nutrition breaks. The Organizing Committee was fortunate in obtaining sponsors for the various events and the nutrition breaks. The opening reception is co-sponsored by The Law Society of Alberta and the CBA Alberta Branch. They have had significant assistance for nutrition breaks from a number of Alberta law firms who have subsidized or covered the cost: Bennett Jones LLP, Burnett Duckworth & Palmer LLP, Duncan and Craig LLP, Fraser Milner Casgrain LLP, Gowling Lafleur Henderson LLP, Macleod Dixon LLP and Miller Thompson LLP. Much of the equipment in the secretariat office has been provided free of charge by Printer World International Inc. and by Toshiba Canada. He encouraged delegates, if they had an opportunity to do so, to express their thanks to these firms and companies.

In closing he stated that they look forward to serving the conference this week. The ULCC has worked very hard preparing for this conference, and he hopes that their work will pay off and that everyone will have a pleasant and productive week.

The President thanked Peter Lown for his report. He commented that Peter Lown and Nolan Steed have done a considerable amount of work in preparation for this year's conference and that he was sure that the delegates would see the results of that hard work as the week progressed. He thanked them and the organizing committee on behalf of all of the delegates.

President's Report

The President was pleased to present the following report:

"I am very pleased to have the opportunity to present my President's Report to the delegates of the 2006 Uniform Law Conference of Canada. I am very satisfied that the Conference has continued to progress with our work and make some new inroads with some very exciting new projects and allegiances.

I was very mindful when I assumed the President's chair that not only was I joining a long and impressive list of prior Presidents but I was also joining a much smaller but just as impressive list of prior Presidents from my home Province of Manitoba. I am deeply honoured to have been able to serve in this capacity.

I have thoroughly enjoyed my year as President. This was due in large measure to the tremendous support of our Executive Director Claudette Racette. You know throughout the course of the year Claudette and I would speak on a weekly basis and on a few occasions when talking about a particular individual Claudette would make the comment – "Oh I don't know what we're going to do when so and so leaves" and I usually agreed with her. Although I must tell you that all the while, I was thinking - "what is the ULCC going to do when Claudette leaves?" Claudette is the glue that binds ULCC together

across this great big country of ours and she has been an invaluable support to me. Thank you, Claudette.

I would also like to acknowledge the support from my Executive team this year. It was particular gratifying to me first of all to know that when I did move from my position as Assistant Deputy Attorney General to the Provincial Court of Manitoba the Executive continued to support me in staying on as your President. With this support it was much easier for me to approach the Chief Judge and to obtain his approval to complete my term as President. But my new job meant that I would not be available to attend the NCCUSL Annual Conference in the United States and so I asked our Vice President John Twohig to take on this responsibility. It will not surprise any of you who know John to know that he willingly accepted this request. So John thank you very much for all the support you have provided to me.

I would also like to congratulate our past President Chris Curran who was recently appointed the Deputy Attorney General in the Province of Newfoundland. Chris is also completing his fourth and final year on the Executive of the ULC; having served as Chair of the Civil Section, Vice President, President and now Immediate Past President. So Chris, thank you very much.

I would also like to acknowledge the work of the Jurisdictional Representatives. The Jurisdictional Representatives perform a key role in liaising between the Executive of ULCC and the ULCC delegates between conferences. Both Claudette and I have noticed from the exchange of emails amongst the Jurisdictional Representatives that there has been a closer working relationship developed and this can only go to benefit the jurisdictions they represent.

At the same time I would also like to highlight what appears to be a closer working relationship between the Criminal and Civil Sections. This is evident by the joint project on *Wagg Applications* and I would like to thank both Crystal O'Donnell and David Marrott for all their hard work.

In the same vein I would also like to acknowledge those who in fact do the substantive work of the Conference. The numerous volunteers who have served as project leaders, researchers and more importantly working group members deserve the highest thanks.

One other trend that the Executive has identified and one that is also very encouraging is the number of relatively new people who are getting involved in the work of the ULCC. We have lost a number of senior delegates over the past few years for various reasons but it is re-assuring to know that the new delegates joining us are just as enthusiastic about the work of the ULCC as those who have gone before. It is also clear to me that you can easily tell the quality of people that we are attracting to the ULCC by examining the quality of the papers that are being presented to this year's conference. I am certain that you will agree with me that they are first class.

In terms of on-going projects our *Commercial Law Strategy* led by Clark Dalton continues to make progress. For those of you who are new to ULC the aim of the Commercial Law Strategy is to modernize and harmonize commercial law in Canada, with a view to creating a comprehensive framework of commercial statute law that will make it easier to do business in Canada, resulting in direct benefits to Canadians and the economy as a whole. The strategy was adopted in 1998 following extensive consultations. It was adopted by Deputy Ministers of Justice and Ministers of Justice in 1999. The strategy has proceeded in three phases: the planning and organization stage, the legislative development phase and now in the third phase – the focus is on the enactment of the Uniform Acts that have been adopted. Last year the *Commercial Law Strategy* was merged back into the Civil Section. However, it continues its work under the guidance of a supervisory committee.

I would like to extend the appreciation of the ULCC to Industry Canada and the Law Commission of Canada for their continued support for the *Commercial Law Strategy*. And I would like to extend our appreciation to all the governments who have provided both financial and moral support to the ULC as an entity.

I do wish to make a few remarks about the subject of inter-organizational co-operation between our country of Canada, the United States and Mexico. At last year's conference in St. John's one of the areas identified for a possible joint project between our countries concerned *Unincorporated Associations*. Arthur Close, one of our distinguished Past Presidents was asked to take the lead on behalf of the ULCC. After discussions between representatives from the three countries it was agreed that this joint project would proceed. It was also agreed that a series of face to face meetings of a joint drafting committee would be scheduled. The ULCC is extremely grateful to Howard Swibel and The National Conference of Commissions on Uniform State Law (NCCUSL) for covering the traveling expenses of our Canadian representatives and thereby allowing this matter to move forward. The first meeting of the joint drafting committee was held in March in Portland, Oregon and I am advised that a second meeting is planned for this fall. As Arthur advises in his report to the ULCC the challenges for this project are formidable as they involve the potential of four different legal traditions and three different languages. However, all participants are working hard to meet these challenges successfully to pave the way for future joint efforts.

In addition I am advised that NCCUSL has hosted two joint meetings on the *Assignment Convention Project* both of which were very productive. Once again we would like to extend out appreciation to Howard Swibel. Those on the Civil side will hear more when the working group reports and the draft Uniform Act is presented.

The work of the ULC continues all through the year. Our two Section Chairs – Mr. Russell Getz, Chair of the Civil Section and Mr. Dean Sinclair, Chair of the Criminal Section, have worked hard throughout the year preparing for this meeting. That work started soon after last year's conference in St. John's ended. Dean, I know, has been assisted by Ms. Stephanie O'Conner, Secretary on the Criminal side and I know that both Russell and Dean have been supported by their executive or advisory committees

comprised of representatives from various jurisdictions. Thank you to all of you for your very hard work.

I would like to say a special word of thanks to Mr. Tim Rattenbury who has printed the proceedings of the ULC proceedings for the last (5) number of years. And also a huge thank you to Arthur Close and Marcus Patz for maintaining our very successful website.

In closing I just wish to say that I believe there is much for the ULCC to celebrate. The excellent work of the past and present is no small feat and we have the right to feel very proud about our accomplishments. At the same time with so little in terms of human and financial resources it will be a challenge for us to maintain and increase the excellent level of work that ULCC has been able to accomplish over the years. However, as I said earlier, with the veteran leadership of our senior delegates and the level of involvement and enthusiasm of our newer delegates, the future of the ULCC looks to be very bright indeed.”

Financial Resolutions

Approval of Audited Statements

MOVED by Russell Getz, seconded by Sabin Ouellet, **THAT** the Audited Statements for the fiscal period ending March 31, 2006, be approved as presented. Motion carried.

Appointment of Auditors

MOVED by John Twohig, seconded by Lynn Romeo **THAT** the firm of Cloutier & Brisebois be appointed as Auditors for the ULCC for the fiscal period 2006-2007. Motion carried.

Banking Resolution

MOVED by Chris Curran, seconded by Arthur Close, **THAT** for amounts over \$5,000, two members of the Executive Committee or one member of the Executive Committee and the Executive Director be given signing authority as officers for all banking matters of the Conference, **AND THAT** for amounts under \$5,000 and for the 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, the signature of the Executive Director alone will suffice. Motion carried.

Approval of the Budget for the Fiscal Period 2006-2007

MOVED by Dean Sinclair, seconded by Michel Breton, **THAT** the budget for the fiscal period 2006-2007 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, he was asking the Immediate Past President, Chris Curran, to constitute a Nominating Committee of the Past Presidents of the ULCC, present at the annual conference, to nominate a person for the position of Vice-President for next year and to report back to the Conference during the Closing Plenary on Thursday. Chris Curran agreed.

The Chair then asked Chris Curran to do a short presentation on the review of the position of Member-at-Large.

Chris Curran commented that those who attended the Regina conference will recall that the position of Member-at-Large was created at that meeting. The Constitution as worded permits the creation of this position. The position enhances the flexibility of the Executive to have available to it the expertise required to meet the needs of the ULCC, as they arose. This position continues to be useful for balancing the dispersed interests that have to be satisfied. The reality is however, that the position of Member-at-Large will not always be required. It will not always be necessary that the position be filled, depending upon the make up of the Executive Committee and whether or not the Executive Committee is able to meet the needs of the ULCC from time to time. The view of the Executive, after much discussion was that the Member-at-Large position continue to be a standing annual item on the Executive agenda and that the Executive have the authority, which it currently has under the Constitution, to fill the position as required at the discretion of the Executive from time to time. He then presented the following resolution:

THAT the appointment of a Member-at-Large be a standing annual item on the Executive agenda so as to ensure that the Executive representation necessary to balance the ULCC needs is assessed and addressed as require each year. The resolution was seconded by Dean Sinclair. Motion carried.

Outline of Business of the Week

Criminal Section

Dean Sinclair, Chair of the Criminal Section, reminded the delegates that usually the Criminal Section delegates spend most of their time considering and debating resolutions put forward by each of the jurisdictions. These resolutions usually propose amendments to the Criminal Law. The Criminal Section will consider approximately 28 resolutions dealing with a variety of Criminal Law issues. Some of those issues are quite topical, for example, it will consider proposals for amendments to the sentencing provisions of the *Youth Criminal Justice Act*, the *Criminal Code Offence of Internet Luring* and *Home Invasion Murder Cases*, to name a few. The wide variety of topics considered always makes for interesting and lively debate in the Criminal Section and he expects that this year's meeting will be no different.

There are two reasons why he finds the meetings informative and interesting. First, as mentioned, the Criminal Section is made up of delegates from across the country. They bring regional perspectives to the national law of Criminal Law. Secondly, delegates to the Criminal Section include prosecutors, defence lawyers, policy people and judges. The varied experience and perspectives serve to inform the debate.

He was very pleased this year to see that at least five judges are participating in one fashion or another in the Criminal Section meetings, some as delegates, some as observers. He was pleased to see that one of them was a long time attendee to the annual conference, His Honor Judge Michael Allen.

The Criminal Section will begin its work with a report from the Senior Delegate for Justice Canada, highlighting the Criminal Law initiatives undertaken in the last year. The Section will also consider a report from a Working Group on *Strangulation*. It will also discuss a consultation paper prepared by Justice Canada concerning the *Hybridization of Criminal Code Offences*. The Section looks forward to a joint session with the Civil Section to consider a paper on the *Collateral Use of Crown Brief Disclosure*. He looks forward to the meetings throughout the week.

Civil Section

Russell Getz, Chair of the Civil Section thanked those who made possible the work of the Civil Section this year, the Jurisdictional Representatives, the members of the Civil Section Steering Committee, the members of the Commercial Law Supervisory Committee chaired by Peter Lown, Claudette Racette, Executive Director of the ULCC, Nolan Steed and members of the Organizing Committee who have done so much to make this an efficient and comfortable operation this year. He also wanted to thank John Twohig for his support and particularly Clark Dalton, the National Coordinator for the *Commercial Law Strategy*, for his constant support. The support and congeniality of all of these people has made his work as Chair most enjoyable.

During the forthcoming week, the Section will be asked to consider a new *Uniform Act on the Assignment of Receivables in International Trade*, amendments to the *Uniform Class Proceedings Act* and the *Uniform Canadian Judgments and Decrees Act*. There will also be a number of study papers to be considered including subjects such as the *Uniform Trade Secrets Act*, *Income Trusts*, the question of *Certificates of Title Systems for Motor Vehicles in Canada*, issues related to *Mortgage Fraud and Discharge of Mortgages*, *Partnership Law*, *United Nations Convention on Independent Guarantees and Stand-by Letters of Credit*, *First Nations and Commercial Law*, and a project proposal respecting *Fraudulent Conveyances and Preferences*.

The Section will also receive status reports on *Faith Based Family Arbitration*, *Limitation Periods and other issues in Insurance Statutes* and *Unincorporated Associations*. It will also receive an annual report from Justice Canada respecting activities in *Private International Law*. This year, he is also happy to have a presentation

by Brian Greer, Chair of the Drafting Section, who will speak about the work of that Section. There will be a joint session with the Criminal Section to discuss the report on *Collateral Use of Crown Brief Disclosure* and to receive a status report on a potential request that the ULCC prepare model legislation with respect to *Compensation for the Wrongfully Convicted*. Representatives from the American and Mexican Conferences will speak to us about the work of their respective organizations. The continuing development of international cooperation and collaboration merits particular note, and the President has mentioned this in his President's report. This includes work in respect to the consideration of International Conventions such as the two previously mentioned the *UN Convention on the Assignment of Receivables* and the *UN Convention on Independent Guarantees and Stand-by Letters of Credit*. Perhaps the most exciting development is the project on *Unincorporated Associations* led on our behalf by Arthur Close. On Thursday, the Section will conclude with a discussion of potential new projects.

Report from the Publications Committee

The Chair of the Publications Committee, Chris Curran, reported that on Tuesday, he would be distributing copies of his report for consideration by the delegates and that a resolution would be put to them during the closing plenary on Thursday. He then presented an overview of his report.

At the 2005 annual conference, the Publications Committee undertook to do a thorough review of the ULCC publications, the *Proceedings* of the Annual Conference, the *Consolidation of Uniform Acts* as well as the *ULCC Website* with a view to addressing problem areas and determining what improvements were necessary in order to ensure that we have the best possible distribution mechanisms at the best possible price. The Committee looked at the three mechanisms that we currently have, the Annual Proceedings, the Consolidation of Uniform Acts and the ULCC Website.

With respect to the *Annual Proceedings*, the Committee addressed the following issues: What should be in the Proceedings and what should go on the Web site? The Proceedings are a cumulative record of decisions, the minutes and the background information. The Proceedings should include Uniform Acts as well as the actual report on which the Act is based. Anything else, including the background material should go on the Website.

The Committee also looked at: The need to ensure consistency in content of the materials on the Website and the Proceedings. The question of how to reduce the duplication of work between the Proceedings and the updates to the Consolidation of Uniform Acts.

In an effort to reduce costs the Committee considered using letter size paper, a different paper weight, different binding and a different printing process. He wanted to thank the Queen's Printer from Saskatchewan who sent to the members of our Committee copies of a full mockup of a different printing format with a view to getting from the Committee an

assessment as to how this would meet our needs. It was originally felt that with the changes in different format and different paper weight and so on, that costs could be reduced substantially. However, following a detailed cost analysis, it was determined that there would in fact not be a substantial reduction in cost. As a result, the Committee and the Executive determined that the Proceedings should remain in their present format.

The Committee also considered outsourcing the publication of the Proceedings. Arthur Close was largely responsible for that exercise. A request for expressions of interest was sent to a number of publishers. We received only one expression of interest. In the end, what they seemed to want was electronic distribution rights, most likely exclusive, to both the Proceedings and the Consolidation. For this reason, the Committee discontinued its discussion with the company. Finally, the Committee considered whether we should continue to produce a hard copy of the Proceedings, given that everything is now on the Website. The conclusion was a resounding yes, since the Proceedings are a good marketing tool for the ULCC and they are also a hard copy record of the good work that we do.

In respect to the *Consolidation of Uniform Acts*, he stated that the last update was done in 2001. The Committee considered the following issues in respect to the Consolidation. Firstly, the backlog of Uniform Acts, there was some recognition that if we were to publish now, there would be approximately 800 additional pages of text required for the Consolidation. Secondly, how to deal with amendments to Uniform Acts? It was agreed that we should consolidate the amendments into the Acts.

The principal issue that the Committee came to with respect to the Consolidation was whether the Consolidation should be on the Website, and if it is, should we continue producing a hard copy? To the first question – should it be on the Web site – the decision was yes. In that regard we were assisted by the work that Saskatchewan has done and Saskatchewan has kindly offered to provide a copy of the Consolidation and annual updates that they have scanned for their own purposes and Tim Rattenbury will provide the material from 2001 and 2005.

The question was then, once the Consolidation is on the Website, do we need to produce a hard copy? The Committee is of the opinion that we do not and that we should spend our energies on making sure that the work on our Website is done in a timely fashion. However, we recognize that the decision as to whether or not we ought to continue with the hard copy should be a matter that we must bring to the Conference as a whole. I will distribute to you a record of our thinking on this matter on Tuesday. The matter will come back for final discussion at our Closing Plenary on Thursday. At that time a resolution will be presented to you for consideration and decision.

Finally, in respect to the ULCC Website, it came as a surprise to none of us that our Website is much utilized, not only by members of the Conference and by jurisdictions across Canada, but throughout the world. The Website has been a huge success story. However, there is always room for improvement. The Executive Director canvassed a wide range of users to seek input as to what improvements they would like us to

implement to make our Website more user-friendly, more comprehensive and more timely. A number of suggestions were received, and several have already been implemented. Others are current being addressed.

Because of the volume of the materials that is being added to the Website each year, and the ongoing need to monitor and update existing materials on the Website, it was determined that we need a Website Editor in addition to the work that Marcus Patz is doing. He was pleased to advise that Clark Dalton has agreed to take on the task of Editor, in consultation with others who play a huge role in the preparation of our proceedings. He mentioned Tim Rattenbury in particular, who is owed a huge vote of thanks for the work that he has done over the past many years in that regard.

He then took this opportunity to thank the members of the Publications Committee for the time and expertise they contributed throughout this exercise, Tim Rattenbury, Peter Lown, Susan Amrud, Claudette Racette, Clark Dalton and Arthur Close who sought expression of interest from publishers. He also thanked Lesia Edwards and Marilyn Lustig-McEwen of the Saskatchewan Queen's Printer for the important contributions that they made, and Marcus Patz for implementing some of the improvements so quickly and for participating in a number of conference calls to address issues relating to the ULCC Web site. The Committee has done a tremendous amount of work during the year, and he believes that those who have visited the Web site recently will see the benefits of the work they have done.

Other Business

Report from the Host Jurisdiction for the 2008 Annual Conference

The Chair confirmed that next year, the annual conference will be held in Prince Edward Island from September 9 to September 13. A report from the host jurisdiction will be presented at the Closing Plenary.

Since the spokesperson for the 2008 annual conference will be unable to attend the Closing Plenary, the Chair asked Sabin Ouellet to present a brief report on the 2008 conference.

Sabin Ouellet thanked the President. He stated the Attorney General and Minister of Justice for Quebec, is pleased to invite delegates to the magnificent City of Quebec, the second week of August 2008 for the annual conference of the ULCC. For those who remember, the last conference in Quebec took place in 1995. At that time the medieval festival was on. The delegates really appreciated their time outside the annual conference. He believes that they kept good memories of their stay. For those who were not there at that time and who want to come to Quebec, not only has this city been designated a UNESCO World Heritage Site, but 2008 will be the 400th anniversary of the foundation of the City of Quebec. There will be remarkable activities during the entire year. He believes that if the delegates wish to joint them for the 400th anniversary of the City of Quebec, this will be the place to be during the second week of August 2008.

Adjournment

There being no other business, the meeting was adjourned.