

ANNUAL
MEETINGS

Closing Plenary Session Minutes 2007

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Meeting**Sept. 9-13, 2007****Opening of Meeting**

The President, John Twohig, called the meeting to order. He noted that everyone had a copy of the Agenda for the meeting and a copy of the Resolutions that have been passed. Therefore there was no need to vote on the Resolutions again.

Report From the Criminal Section

The Chair of the Criminal Section, Michel Breton, reported that the Section considered 24 Resolutions, 16 were adopted, 6 were adopted as presented, 9 were adopted with modifications and one was divided into three sections and each section was adopted. Two of the 16 Resolutions that were adopted were adopted unanimously. Five Resolutions were withdrawn before discussion and four after discussion.

The Section considered joint projects with the Civil Sections. The Resolutions that followed resulted in the creation of five working groups for the Criminal Section. Three of the working groups will be joint working groups with the Civil Section. These include working groups on *Collateral Use of Crown Brief Disclosure*, *Identify Theft* and *Malicious Prosecution*. Two working groups for the Criminal Section only will deal with: *Section*

347 of the Criminal Code. Its recommendations suggested that the Criminal Section should continue this work and look at *Section 347 of the Criminal Code* in order to amend it to avoid the problems that arise from it. This resolution was debated within the Criminal Section and the Resolution was adopted.

The second working group emanates from a Resolution presented at the Criminal Section. A working group will be created to study the legal fees ordered relating to *Article 462.34 of the Criminal Code*.

He then stated that the Nominated Chair from last year, Nancy Irving, is the new Chair of the Criminal Section and that the Nominating Committee has nominated Marvin Bloos, a defence lawyer, as the Nominated Chair for this year.

He was pleased to report that the Section was able to consider all of the Resolutions that were submitted and that they completed all of the work within the allocated time.

Report on the Joint Projects

As an introduction to this topic, Michel Breton, Chair of the Criminal Section, reported that there was one Resolution from the joint session that was deferred to the Closing Plenary Session. This relates to the *Collateral Use of Crown Brief Disclosure* project. Delegates may recall that the Resolution stated that all of the recommendations in the paper be adopted and at that time this raised some problems. Recommendation No. 1 seemed to have the unanimous consent of the meeting, but there was a problem as to the other recommendation. He stated that the Co-chairs of the joint sessions had rephrased the Resolution. He asked Darcy McGovern to read the English version of the amended Resolution and that he would follow with the French version. Darcy McGovern presented the following motion:

MOVED

1. THAT Recommendation number 1 of the Report be adopted.
2. THAT the joint Civil and Criminal Working Group continue and it consider the issues raised in the report and the direction of the Conference and:
 - a) prepare model uniform rules of civil procedure to codify the *Wagg* screening process in those rules;
 - b) prepare uniform provisions to codify the *Wagg* screening process to govern production of Crown Brief materials in the child protection and administrative tribunal regimes; and
- c) prepare uniform access to information provisions governing access requests for Crown Brief materials;

for consideration at the 2008 annual meeting.

Michel Breton read the French version of the amended Resolution:

1. QUE la recommandation un du Rapport soit adoptée.
2. QUE le groupe de travail mixte de la section civile et de la section pénale poursuive ses travaux, examine les questions soulevées dans le Rapport tout en tenant compte des directives de la Conférence et, en vue de la réunion de 2008:
 - a) rédige des règles uniformes types en matière de procédure civile afin de codifier la procédure d'examen initial établie dans l'arrêt *Wagg*;
 - b) rédige des dispositions uniformes types afin de codifier cette procédure d'examen
 - initial pour que soit régie la production des dossiers de la Couronne dans les affaires de protection de l'enfance et dans celles portées devant les tribunaux administratifs;
 - c) rédige des dispositions uniformes types en matière d'accès à l'information pour que soient régies les demandes de communication des dossiers de la Couronne.

Motion seconded by Earl Fruchtmann.

The Chair asked for comments on the amended resolution. Nancy Irving spoke on behalf of the Working Group. She stated that when Michel Breton said that his sense was that there was unanimous support for Recommendation I, she generally agreed, but she recalled that there was one issue about the level of court that should have jurisdiction to set aside or vary the undertaking of confidentiality that applies to persons who receive Crown disclosure. The Working Group had recommended that it should be the superior court of the province. The Working Group would be prepared to change "on the part of a superior court of the province" to read "on the part of a court of competent jurisdiction of a province". That way when it comes time to amending the Criminal Code or the rules of Criminal Practice, there would be a little more leeway. She hoped that there would be support for this change.

The other point relates to Recommendation No. 2 c) of the Working Group's Report which recommended that the codified *Wagg* screening process in the rules of civil procedure should not circumscribe the use that the Crown and police services can make of Crown Brief materials to initiate or respond to legal proceedings such as defending against civil actions and responding to freedom of information requests.

The Chair commented that on the first point, it seems that primarily Nancy Irving was not asking the Chairs to amend their Resolution. What she was really seeking was an amendment to Recommendation I of the Working Group's Report.

Nancy Irving agreed that she was asking that Recommendation I, as modified, be adopted by the Resolution. The Chair then asked the Co-Chairs if they would be willing to amend Resolution to include the amendment of the Report as recommended by Nancy Irving. Darcy McGovern responded that with respect to the initial point made by Nancy Irving, the Co-Chairs were prepared to amend the initial Resolution to read that Recommendation No. 1 of the report *as amended* be adopted. The seconder of the original motion, Earl Fruchtmann, was asked if he would second the amendment. He did. As to the second point, the Chair asked if there were any comments. It was agreed that the second point would be addressed by the Working Group as part of its on-going work.

Report From the Civil Section

Darcy McGovern stated that:

- The Civil Section concluded another week of hard work.
- It was fortunate to have the participation from provincial, territorial and federal Justice Departments.
- It was privileged to be joined by our special guests from the United States, Mexico and Australia.
- The Section concluded its work on and adopted two new Acts. The first, the *Uniform Assignment of Receivables in International Trade* capped several years of work and cooperation with our American and Mexican counterparts. The second is the *Uniform Apology Act* that was led by government officials and was initiated and completed in one year.
- A third Act, the *Uniform Income Trust Act*, was presented to and debated by delegates. It was the third year of an ambitious project respecting forms and business associations and was most ably led by Wayne Gray. The commentaries on this Act need a bit more work but he fully expects that before the year end the Act will be completed and posted on the ULCC Website.
- The Section also considered a proposal to amend the *Canadian Enforcement of Judgements and Decrees Act* which will be subject to a December 31st Rule following consultation with tax administrators and jurisdictional representatives.
- Work will also be continuing on a number of excellent projects including the *Choice of Court Agreements*, the *United Nations Convention on Independent Guarantees and Stand-by Letters of Credit*, a review of the *Interest Act*, issues related to *Fraudulent Conveyances and Preferences*, our joint international project on *Unincorporated Associations*, *Personal Property Securities* issues, *Privity of Contract* issues and our project on *Partnership Law*.
- Work will also be continuing on the joint projects with the Criminal Section, being *Collateral Use of Crown Brief Disclosure*, *Identity Theft*, and *Malicious*

Prosecution.

He then commented that based on the discussion of new projects, we can look forward to a busy and interesting coming year. He will be serving as the new Chair of the Civil Section. The Nominating Committee of the Civil Section has chosen Elizabeth Strange of New Brunswick to be the Nominated Chair for the year 2008-2009.

As Co-Chair of the Civil Section, he thanked Russell Getz for his role as Co-Chair with him. On behalf of Russell Getz and himself, he thanked Lynn Romeo for making their task as simple as possible through all her hard work.

Report From the Nominating Committee

On behalf of the Nominating Committee, Earl Fruchtmann reported that the Committee was chaired by Chris Curran. Other members included all Past President attending this year's annual conference. The Nominating Committee made the following recommendation: THAT Kathryn Sabo, currently the Vice President of the ULCC, be nominated for President. THAT Dean Sinclair, the Criminal Section Jurisdictional Representative for Saskatchewan and a former Chair of the Criminal Section, be nominated for Vice President of the Conference. Motion seconded by Russ Getz. Motion carried unanimously.

Comments From the President

The Chair stated that it was his happy duty to propose the following Resolution.

BE IT RESOLVED THAT the Conference express its appreciation by way of letter from the Executive Director to:

1. The Province of Prince Edward Island as represented by the Honourable L. Gerard Greenan, Minister of Education and Attorney General which hosted the 89th annual meeting of the Conference.
2. The organizing committee of: Katharine Tummon, Deborah Gillespie and Barrie Grandy.
3. Sandra Furlotte, who organized and ran the registration process.
4. Nancy Cook, Beverly Legere and Rachel MacIntyre, who assisted in setting up and operating the conference secretariat.
5. The Law Foundation of Prince Edward Island who generously contributed to the opening reception and the barbecue.
6. Our colleagues from the National Conference of Commissioners on Uniform State Laws, Justice Martha Walters, Howard J. Swibel and John A. Sebert, and from the Mexican Conference of Commissioners on Uniform State Laws, Jorge Sàncchez Cordero,

for their participation in our annual meeting.

7. Our guests from Australia, Ian Govey of the Commonwealth Attorney General's Department of New South Wales and Laurie Glanfield of the Attorney General's Department of New South Wales who also brought New Zealand's spirit to the conference through the Standing Committee of the Attorneys General for Australia and New Zealand.
8. Connie MacNeil, of the Office of the Attorney General, for assisting in the preparation of a conference Press Release.
9. Edison Shea, for making everyone feel so welcome and for making our baseball game and barbecue a memorable experience even with the rain.
10. To Mr. and Mrs. Glenn Hawley, Sexton, at St. Peters Church for sheltering us from the rain for the barbecue.
11. Michel Breton, chair of the Criminal Section and Stéphanie O'Connor, Secretary to the Criminal Section.
12. Lynn Romeo, Chair of the Civil Section, who unfortunately was unable to join us, and who was greatly missed.
13. Russell Getz and Darcy McGovern, who graciously stepped in to act as co-chairs of the Civil Section.
14. Gary Craswell, General Manager, and staff of the Charlottetown Hotel for their excellent service.
15. The interpreters Dorothy Carbonneau, Annette Pelletier, Jean-Guy Robichaud, Matthew Ball, Émmanuelle Dubois and Nathalie Wilson for their competence and commitment.

AND BE IT RESOLVED that the Conference expresses its appreciation to the Executive Director, Claudette Racette, who once again ensured the success of our annual conference.

The Chair then asked Katharine Tummon, a member of the Organizing Committee to come forward to receive the appreciation of all of the delegates for the work that she had done throughout the year and during the annual conference. He presented her with a beautiful bouquet of flowers. There was a round of applause for Katharine Tummon who thanked the Chair for the presentation.

Katharine Tummon, presented Claudette Racette with a beautiful painting by Karen Gallant, a native of South Rustico, Prince Edward Island and a bottle of blueberry wine

from Prince Edward Island. She thanked the Executive Director for her assistance throughout the planning process and again during the annual conference. A round of applause for the Executive Director followed.

The Chair then commented that at the end of this meeting we would be saying good-bye to Rob Finlayson as a member of the Executive Committee. Rob has been an attendee of this Conference for many years. He had a distinguished career with the civil service of Manitoba before being appointed to the bench last year. He was a great friend of the ULCC.

The Chair wanted to acknowledge his service to the ULCC over the years as he leaves the Executive Committee.

The Chair thanked the members of the Executive Committee that he served with this year. They were an outstanding group. They were ably served by Claudette Racette and Clark Dalton who made valuable contributions to the Executive Committee. He also thanked his colleagues, John Lee and Abi Lewis who made his job as President so much easier.

He then commented that he had been speaking with one of his colleagues at the conference and they had agreed that one of the objects of being on the Executive Committee is that you would like to at least maintain the great tradition of the Conference, and if possible, make some improvements. He is confident that with the selection of his successor, he has made that improvement. He then turned the meeting over to the new President, Kathryn Sabo. There was a round of applause for the outgoing President.

Comments From the Incoming President

Kathryn Sabo stated that she was very honoured to have been chosen as President. She thanked John Twohig, Claudette Racette, Clark Dalton and all the members of the Executive Committee for the work they did over the past year. As Vice President she had the opportunity to appreciate the commitment and the energy of the other members of the Executive Committee. She looks forward to working with them and with the new members of the Executive Committee in the coming year. She is comforted to know that John Twohig will be around and that we can rely on his good counsel. She thought that he is far too modest in his comments about improving and assisting the Conference.

With the help of the Executive Committee, and as John mentioned, she will try to maintain and if possible to improve and help the Conference in the coming year. The ULCC is in good shape, as we have heard from the Chairs of the Civil and Criminal Sections. We have a lot of work to do but it is in good hands. The Executive Committee over the coming year will continue to look at the status of the Conference and at funding issues.

In 1989 Georgina Jackson and Basil Stapleton undertook work in that area. They prepared a paper and the paper appeared as an annex to the 1990 Proceedings. She encouraged the delegates to read the report which addresses the renewal of the Conference. She thinks that it is a very healthy task to sit back and review from time to time.

She stated that in his comments in presenting the report, Basil Stapleton noted that this was the first time this had been done in the 71 years of the Conference. Here we are heading into 2008. It is a good time to look at what we are doing, how we are doing it and to see if we need to make any changes. We will be reporting back to the Conference in 2008.

She is looking forward to the annual conference in Quebec City next year.

Report From the Host Jurisdiction for the 2008 Annual Conference

Michel Breton commented that in 2008, Quebec will have the pleasure and privilege of welcoming the delegates to the ULCC annual conference. The dates are August 10 to August 14. The location is the Chateau Laurier Hotel, which is located at the corner of the Grande Allée, in front of the Parliament Building and close to some of the best restaurants in Quebec City. The Organizing Committee has negotiated a very good room rate of \$165.00, plus tax, given that Quebec City will be celebrating its 400th anniversary and we will be in the middle of all of the festivities that will be offered at that time in 2008. The meeting rooms at the hotel are spacious and beautiful.

He invited everyone to bring their families. Those who wish to stay after the Conference will benefit from the special Conference rates.

The Organizing Committee is working on the location for the opening reception. They are hoping to host the opening reception in the officers' mess of the 22nd regiment, a remarkable room that is located next to the Chateau Laurier Hotel. The only event that they need to work on is to reserve the baseball field. They have been told that it is far too early to book the field for 2008.

Quebec is anxious to host the ULCC conference. They know that the delegates will enjoy their visit to Quebec City. For those who do not know Quebec City, this is an occasion that should not be missed.

Report From the Host Jurisdiction for the 2009 Annual Conference

Catherine Kane stated that they know that Quebec City will be a very tough act to follow. The Department of Justice will be pleased to host the annual ULCC conference on behalf of the Government of Canada in August 2009. The dates are August 9 to August 13.

A post card depicting the beauty of Ottawa and providing details of the date and location

of the annual conference was distributed to all of the delegates. The location will be The Westin Hotel facing the Rideau Canal. The hotel is close to everything in downtown Ottawa. The meeting rooms will be on the same level.

The National Capital has a great deal to offer in the summer. The Organizing Committee is hoping to plan activities that will allow people to see what Ottawa has to offer as well as the traditional activities. She is looking forward to welcoming every one to Ottawa in 2009.

Other Business

There being no other business, the meeting was adjourned.

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