

UNIFORM LAW CONFERENCE OF CANADA
CHARLOTTETOWN, PRINCE EDWARD ISLAND

SEPTEMBER 9-13, 2007

OPENING PLENARY SESSION MINUTES

Opening of Meeting

The meeting opened at 1:30 p.m., on Sunday, September 9, 2007, at the Rodd Charlottetown Hotel, Charlottetown, Prince Edward Island, with John Twohig as Chair and Claudette Racette as Secretary. The Chair welcomed the Commissioners and guests to the 89th annual conference of the Uniform Law Conference of Canada.

Word of Welcome from the Host Government

The Chair was delighted to welcome and to introduce Mr. Gerard Greenan, Attorney General for the province of Prince Edward Island. He was pleased to ask Mr. Greenan to address the delegates on behalf of the Province of Prince Edward Island.

Mr. Gerard presented the following greetings:

“Good afternoon President John Twohig and distinguished delegates and guests of the Uniform Law Conference of Canada.

I am privileged to be here today to welcome you to Prince Edward Island on behalf of the Office of the Attorney General. We are delighted to be hosting the 2007 annual meeting of the Conference here in Charlottetown. I know my staff have been working very hard to make sure that you will have a most agreeable and productive meeting.

I understand this is the 89th annual meeting of the Conference, which had its first proceedings in Montreal in 1918. Prince Edward Island first hosted the Conference in 1970 and we were honoured to be hosts again in 1980 and in 1994. As with this year’s annual meeting, these past annual meetings were all held here in our capital city of Charlottetown. Perhaps when we next host in 2020 we can offer you hospitality in another of the many lovely venues in this province.

As you may know, Prince Edward Island held its provincial elections in May of this year. The election resulted in a change in government, and as a member of the new governing party, I was honoured when Premier Ghiz asked me to assume the responsibilities of Minister of Education and Attorney General.

Prior to entering politics I served for many years as an educator in the PEI school system. This provides me with a wealth of background to support me in my role as Minister of Education. Although I am not also a barrister and solicitor, it didn’t take me long in my role as Attorney

General to realize that I am surrounded by an experienced and dedicated staff who are quickly bringing me up to speed.

One of the first areas in which I was briefed when I took on this role was in relation to the legislative responsibilities of the portfolio. The Attorney General has ministerial responsibility for more than 100 of the statutes of this province. Of these 100 statutes at least 22 have their origin in or have been amended in accordance with Uniform Law Conference projects. Some of these statutes include the Child Status Act, the Contributory Negligence Act, the Defamation Act, the Electronic Commerce Act, the Interpretation Act, the Survival of Actions Act and the Variation of Trusts Act.

Clearly, the work of the Uniform Law Conference has had a significant impact on the legal framework of Prince Edward Island.

I would like to take particular note of a recent provincial legislative initiative which would not have been possible without the work of the Commercial Law Strategy of the Conference.

In July 2006 our province brought into force a new Franchises Act and Regulations. This legislation was brought forth to protect franchisees by requiring that the business selling the franchise provide full and timely disclosure of all relevant information to the franchisees before they enter into a franchise agreement and pay for the franchise.

By enacting this legislation, Prince Edward Island was able to take advantage of the extensive research and consultation work of the Uniform Law Conference Working Group on Franchises. We also benefited greatly from the drafting expertise provided by the Conference. With this behind us, our province was able to adopt a sophisticated and complex set of regulations to protect Island business operators. This would have been impossible without the work of the Conference.

Other projects of the Conference are also under consideration by our government. We are considering putting into place the limited liability partnership amendments to the Partnership Act, recommended by the Conference, and also are looking at enacting the Settlement of International Investment Disputes Act.

No doubt we will continue to benefit from the work of the Conference as we develop our legislative agenda into the future.

I understand that this Annual Meeting of the Conference is a working meeting which entails full time, if not overtime, work for the participants. At the same time, I hope you will find time to take advantage of your visit and see some of our sights and attractions.

The weather may not be quite as hot as July and August, but many Islanders will tell you this is their favourite time of year. Shopping, restaurants, cultural events and festivals are still abundant, and the fall harvest brings opportunities for outstanding culinary delights.

Prince Edward Island is compact enough that you can take little side trips – when your schedule allows – and visit some other regions of the province as well. In just one short drive, you can see rolling green fields, busy harbors, active farms, and famous beaches. Of course, I would be remiss if I didn't encourage you to visit Summerside, my home community. Our historic city features everything from Celtic concerts and great theatre, to beachcombing and nightly festivities.

Best wishes for an enjoyable and productive conference, and enjoy your visit in Prince Edward Island.”

The Chair thanked Mr. Greenan for his kind words and for taking the time from his busy schedule to address the delegates.

Introduction of the Executive Committee

The Chair introduced the members of the Executive Committee: himself; Michel Breton, Chair of the Criminal Section; Kathryn Sabo, Vice President; in the absence of the Chair of the Civil Section, Lynn Romeo, the two Co-Chairs of the Civil Section, Darcy McGovern and Russell Getz. He commented that that Lynn would dearly like to be here, but because of illness in the family she was unable to attend. Lynn did all of the work to prepare for the conference. He thanked Darcy and Russell for stepping in to co-chair the civil section meetings. He then introduced Claudette Racette, Executive Director of the ULCC.

The Chair reported that Rob Finlayson, the Immediate Past President, was sorry that he could not attend this year's conference. Rob did write to the President to express his regrets and to send his best wishes to everyone for a very successful conference.

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, Mexico and Australia

The Chair was delighted to introduce for the first time our guests from Australia, Ian Govey, Deputy Secretary, Civil Justice and Legal Services, Commonwealth Attorney General's Department and Laurie Glanfield, Director General, Attorney General's Department of New South Wales and Secretary of the Standing Committee of Attorneys General. He was also pleased to report that we would later be joined by Justice Martha Walters, President, Howard Swibel, Immediate Past President, and John Sebert, Executive Director of the National Conference of Commissioners on Uniform State Laws, and by Jorge Sánchez Cordero, President of the Mexican Conference of Commissioners on Uniform State Laws.

Summary of the Social Program for the Week

Katharine Tummon, a member of the organizing committee, gave a brief overview of the social events for the week. She commented that the organizing committee has been working hard to ensure that the conference runs smoothly and that it provides some pleasurable social events.

She referred to the registration package that included the list of the social events for the week and a map of the City. She gave a brief description of how things will evolve for the opening reception at the Art Gallery, the baseball game and B.B.Q., and the closing reception and banquet at the P.E.I. Preserve Company. She was pleased to say that since there was a very nice gift shop at the P.E.I. Preserve Company delegates did not have to worry about shopping during the week. She stated that the dress code for all of the social events was casual and hoped that everyone would enjoy their stay in P.E.I.

The President's Report

The President, John Twohig was pleased to present the following report:

“It has been my pleasure to serve as your President this past year. As President I have had a chance to witness first hand the great contributions that all of those associated with the conference make to the ongoing success of all of our endeavours. As we celebrate the 89th anniversary of the conference it is gratifying to stop and celebrate the great achievements that have occurred over the years. The work we do here matters – it is important work.

Having said that, however, the lesson I have learned during this past year is that we can never become complacent or assume that all those we encounter will be familiar with what we do. We need to keep reminding politicians, public officials, those in business and the media of the need for harmonization and the benefits that flow from the discussions that take place here at our annual meeting, and during the year, in the criminal and civil sections.

Activities and achievements during the past year.

I want to begin by briefly summarizing some of the events that took place this year with particular emphasis on activities that promoted and gave a profile to the ULCC.

- On October 25th Globe and Mail published an in depth story about income trusts that referred to the work of the Conference. I wrote to the editor and referenced the Conference work on income trusts and other important projects such as Electronic Commerce and Uniform Securities Transfer Act.
- On November 6th the Supreme Court of Canada released its decision in *Pro Swing v. Elta*. The decision included a reference to work done by the conference on extraprovincial enforcement of judgements.
- On January 31st the Globe published an extensive article about national class actions. The article prominently featured a reference to the project completed by the Conference in 2006. Key aspects of the project had been accepted by the judiciary in several provinces and were being implemented.

- On May 16th I wrote to the Ottawa Citizen and the Minister of Justice concerning identity theft. The Citizen had reported on the Minister's intention to begin work on identity theft. As you know the conference will discuss this issue at this year's meeting.
- On June 4th the Toronto Star ran a series of articles on problems in the charities sector. I contacted the reporter and referred him to the project concluded by the conference in 2005 involving Charitable Fundraising.

Last November Peter Lown and Clark Dalton and I travelled to Ottawa to meet with officials from Industry Canada. Industry Canada, along with the federal Department of Justice has been a key funder of our Commercial Law Strategy ("CLS"). Our meetings allowed us to remind the officials of the work that has been done and to discuss potential future projects. As I will note later I believe this meeting led to some positive results.

In addition to our October and March Communiqués, our CLS Newsletter, the President's fall report to the Deputies and our CLS Binder which can be found in most law libraries across the country there were three other important opportunities to talk about the work of the ULCC during this past year.

1. In January I attended the FPT Deputies meeting in Toronto to give an overview of the Conference with special emphasis on the work of the Commercial Law Strategy. The Deputies gave us a very positive endorsement.
2. In April I wrote to the federal minister to remind him of the work of the Conference and encourage future federal support for the Commercial Law Strategy. We were very encouraged to have five provincial Attorneys General write to the federal minister to echo their support for the Conference and the Strategy. This type of support is extremely gratifying.
3. The ULCC was again on the agenda of the FPT Deputies at their June meeting in Yellowknife. Chris Curran led the discussion at that meeting about the need for ongoing stable financial support. We are very grateful for Chris's leadership at this meeting and on many other occasions.

The net result of these efforts to garner support for the Commercial Law Strategy is that we have received confirmation of financial support from a majority of the provinces and territories for the period 2008 to 2011.

There remains a fund at the Department of Justice that can be accessed this year by the Conference and we have been invited to apply as we have in the past to receive funding. As for Industry Canada we received confirmation in August that they will honour their commitment to match the funding we receive from the Department of Justice through to March 31st, 2008 and will thereafter consider proposals on a project-by-project basis. The letter from Industry Canada also included a very complimentary acknowledgement of the activities undertaken by the Strategy.

International Cooperation

In this past year we continued with our two joint projects with the U.S. Uniform Conference and the Mexican Uniform Conference. These projects concern the UN Convention on the Assignment of Receivables and work on Unincorporated Associations. Two more projects have been proposed on the Hague Convention on Choice of Court Agreements and the UN Convention on Independent Guarantees and Standby Letters of Credit. Our North American colleagues have enthusiastically endorsed these joint projects. This summer Clark Dalton and I attended the US Annual Meeting in Pasadena California. We were given a warm reception by the Americans and heard first hand about their appreciation for our long and worthwhile association. Jorge Cordero, on behalf of Mexico, also expressed his appreciation for our joint efforts.

This year we are very pleased to welcome our commonwealth colleagues from Australia. Last October the Standing Committee of Attorneys General (SCAG) representing the state and federal Attorneys in New Zealand and Australia wrote to the ULCC to explore ways of working together on projects of common interest. We invited SCAG to send representatives to our annual meeting and I am pleased to welcome Ian Govey and Laurie Glanfield to their first annual meeting of the Conference. I hope it won't be their last. We now have a meeting that encompasses five countries, three languages and two legal traditions.

I want to acknowledge Darcy McGovern who willingly volunteered to coordinate the travel of our Australian guests not only while they are here in PEI but for a series of meetings as they worked their way across the country.

Ongoing Work of the Conference

- It is encouraging to see that each year more Uniform Acts are being adopted by the jurisdictions;
- We continue to be impressed by the fact that new delegates are taking on active roles in the ULCC. I want to take this opportunity to welcome first time delegates to the Conference and encourage you to feel comfortable and to participate fully. The level of involvement of new people to the Conference bodes well for the future of the ULCC;
- It is apparent from the activities undertaken during the year that our Jurisdictional Representatives are working more closely with each other. This is good for the ULCC and is beneficial for the jurisdictions;
- Lastly I am delighted with the closer working relationship that has developed between the Criminal Section and the Civil Section. This year we will have four joint sessions to consider some critically important issues.

Acknowledgements

I want to thank members of the Executive who have assisted me during the year. Robin Finlayson and Kathryn Sabo were always available to offer wise and helpful advice. Lynn Romeo and Michel Breton worked diligently to organize the work for this year's Conference. I know that Lynn and Michel were well supported by our nominated Chairs Nancy Irving and Darcy McGovern.

I want to acknowledge and thank Peter Lown who acted as our Chair of the CLS Steering Committee. I also want to thank Clark Dalton for all of his work with the CLS. Clark assisted me with numerous small and large tasks throughout the year and I want him to know how much I appreciated that.

Special thanks to Stéphanie O'Connor, Secretary to the Criminal Section, who diligently assists the Chair of the criminal section throughout the year and at the annual meeting.

I want to thank the Jurisdictional Representatives for their contribution of time and expertise and for being the key contact persons for the ULCC with their respective jurisdictions.

A big thanks to Tim Rattenbury for the excellent work he does in the production of our Annual Proceedings and to the good people with the Saskatchewan Queens' Printer for their work on the Proceedings.

And thanks to Marcus Patz for maintaining our very successful Website.

I want to thank the Federal/Provincial/Territorial governments for the continued financial support for the general activities of the ULCC and the for the CLS.

In particular I want to thank those jurisdictions that came to our aid by sending letters to the Minister of Justice Canada in support of continued financing for the CLS.

Lastly I want to acknowledge the tireless and outstanding work done by our Executive Director Claudette Racette. Claudette's dedication is critical to the success of the Conference. She knows the work that has to be done and gets after us until it is completed. If the devil is in the details then Claudette should be considered a divine exorcist.

I am gratified and amazed by the public service commitment of people we are able to attract to our Working Groups. I want to acknowledge our Project Leaders for the excellent products that are produced for the ULCC.

It is remarkable that the ULCC can achieve so much with so little in terms of human and financial resources. Without the tremendous volunteers who contribute both time and expertise, there is no way that the ULCC could survive.

It will be our ongoing challenge to continue to secure sufficient funding and contributions in kind to maintain and improve the excellent level of services that the ULCC has been able to do over the years. I believe we are up to the challenge."

Financial Resolutions

a. Approval of Audited Statements

MOVED by Michel Breton, seconded by Earl Fruchtmann, **THAT** the Audited Statements for the fiscal period 2006-2007, be approved as presented. Motion carried.

b. Appointment of Auditors

MOVED by Kathryn Sabo, seconded by Catherine Kane, **THAT** the Executive Director be authorized to seek a quotation from another firm as well as from our current auditors Cloutier Brisebois, **AND THAT** the Executive Committee be authorized to approve the selection of the auditors for the fiscal period 2007-2008. Motion carried.

c. Banking Resolution

MOVED by Darcy McGovern, seconded by Vincent Pelletier, **THAT** for amounts over \$5,000, two members of the Executive Committee or a member of the Executive Committee and the Executive Director be given signing authority as officers for all banking matters of the ULCC, **AND THAT** for amounts up to \$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.

d. Approval of the Budget for the Fiscal Period 2007-2008

MOVED by Russell Getz, seconded by Dean Sinclair, **THAT** the budget for the fiscal period 2007-2008 be approved subject to modifications following the discussion of the work plan and the budget for the Commercial Law Strategy at a meeting of the Advisory Committee on Monday, September 10 and the final responses from Justice Canada and Industry Canada with respect to funding for this fiscal period. Motion carried.

Confirmation of the Nominating Committee

The Chair reported that a Nominating Committee chaired by Chris Curran would be meeting during the week. They will be reporting back to the delegates at the Closing Plenary.

Outline of Business of the Week

a. Criminal Section

Michel Breton, Chair of the Criminal Section, stated that the Section has a fairly heavy agenda. In addition to the 24 Resolutions that will be voted on, there are four joint projects that will be considered with the Civil Section. On Monday, the Section will have the privilege of hearing from our guests from Australia, Mr. Laurie Glanfield and Mr. Ian Govey as well as from Justice Martha Walters from the U.S. All of this will ensure that the time allocated on the agenda will be fully used. He believes that the sessions will be very interesting and productive.

b. Civil Section

Russell Getz, one of the Co-Chairs for the Civil Section commented that Lynn Romeo had asked him to express her regrets for not being able to attend this year's annual conference. He stated that:

- It was a pleasure and an honour for him and Darcy McGovern to be able to assist in continuing the fine work that Lynn had done throughout the year. He thanked Claudette Racette, Katharine Tummon and the members of the organizing committee for all their hard work in organizing this year's conference.
- It is always a pleasure to attend the annual conferences because we can always count on three essential elements: Firstly, we have an ambitious agenda, populated with some interesting and challenging projects. Secondly, the host organizing committee invariably arranges a great slate of social activities. And thirdly, we have an opportunity to reunite with old friends and colleagues and to welcome new ones to keep the organization relevant and active. The tradition will continue this year and the Section can look forward to an interesting and productive week.
- The Section will be asked to adopt a Uniform Act on the *Assignment of Receivables in International Trade* and consider several new uniform acts, including the *Uniform Income Trust Act*, the *Uniform Apology Act* and potential amendments to the *Uniform Canadian Judgments and Decrees Act*.
- It will also consider a number of study papers on different subjects, including: The common and civil law aspects of the *Hague Convention on Choice of Court Agreements*; a review of the *Interest Act*; a paper on the *Personal Property Security Act* and the complex issues surrounding *Privity of Contract*. It will continue its work on *Fraudulent Conveyances and Preferences*, and receive interim reports on *Independent Guarantees and Stand-By Letters of Credit* and on the international project on *Unincorporated Associations*.
- The Section will also receive status reports on the *Limitation Periods and Other Issues in Insurance Statutes*; the *Presumptions of Advancement and Resulting Trust*; *Employment Standards Orders* and an up-date on the *Partnership* project. Justice Canada will present its annual report on *Private International Law*, including an update on the *Hague Convention on the Law Applicable to Securities*.
- During the past year there has been excellent collaboration between the Civil and Criminal Sections. These will be two joints sessions during the week. The first to discuss a report and recommendations respecting *Section 347 of the Criminal Code*. Then on Tuesday a half-day session on the *Collateral Use of Crown Brief Disclosure, Identity Theft and Malicious Prosecution*.
- He was delighted that representatives from the U.S., Mexico and Australia and New Zealand conferences will be speaking to the Civil Section delegates on the work of their respective organizations.
- As the President mentioned in his report, international co-operation and collaboration continues to be a most positive and exciting development for our organizations.
- On Thursday, the Civil Section will conclude with a discussion of potential new projects.

- In reviewing the plan for the Civil Section meetings, he could not help but to be struck by the tremendous amount of effort that goes into making the ULCC possible - our knowledgeable Lynn Romeo, our most dedicated Executive Director, Claudette Racette, the jurisdictional representatives, the members of the Civil Section Steering Committee, the members of the CLS Supervisory Committee chaired by Peter Lown and most ably managed by our National Coordinator, Clark Dalton - they have all devoted so much time, energy and expertise to the organization throughout the year.

In closing, he stated that Lynn Romeo had asked him to express her personal thanks to Claudette Racette, John Twohig, Gail Mildren and especially to Clark Dalton for their constant support and wise counsel during the year. She had also very kindly included Darcy and Russell in her acknowledgement.

Report on the Legal Status of the ULCC

The Chair stated that during last year's annual conference he had wondered what kind of organization the ULCC was. Was it a sub-committee of the Federal/provincial/territorial governments? Did it have a legal status? Related to this were other questions that came up about the way we do business. The last major review of the ULCC took place in 1990. As a result of these questions, he had asked Darcy McGovern and Kathryn Sabo if it was time to look at these issues. Darcy McGovern and Kathryn Sabo agreed and they undertook to look at these issues. He then asked Darcy McGovern to present a brief report on their findings.

Darcy stated that with respect to the legal status issue, a review of the ULCC reflects that this organization was originally convened as a result and at the request of the Canadian Bar Association with agreement by the governments to create an organization similar to the U.S. organization.

Membership and funding of the ULCC was established by executive action or by provincial statutes for setting up the delegations. The timeframe for the meetings were set to avoid conflict with the annual conference of the CBA.

In reviewing this historical process from 1918 forward, it appears that no specific step was ever taken to constitute the ULCC as a particular entity such as a corporation, a trust or a non-profit corporation. Therefore in reviewing the legal status of the ULCC against the critical elements of an unincorporated non-profit association, which conveniently had been brought together by Keven Zakreski and his on-going project regarding that very matter, it is apparent that the ULCC meets this criteria. Quoting from Kevin Zakreski's paper, he described an unincorporated non-profit association as two or more persons bound together for one or more common purposes not being business purposes, by mutual undertakings with each having duties and obligations in an organization which has rules governing the control of its funds and can be joined or left at will.

As the Zakreski article notes, the unincorporated association is essentially the default form of non-profit activity that applies if no other steps are taken to substitute another form like a trust or a corporation. It is like a partnership in this regard. He noted that the article on non-profit

association issues range from small scale charities, clubs, neighbourhood groups and athletic teams and associations to much larger bodies such as political parties, trade unions, religious organizations and professional sports leagues.

A unincorporated non-profit association creates a certain amount of legal issues, for instance, the ability to hold property, liability amongst the membership. He did not want to go into more details at the moment, but it is something that the ULCC will continue to look at in regard to whether liability insurance is appropriate for an organization such as the ULCC given that the vast majority of representation of the membership is from governmental representatives. They are appearing in their capacity as government representatives as opposed to their individual capacity and as such this would address most issues of liability.

With respect to the broader scope of review that John Twohig made reference to earlier, as to how we operate, Darcy and Kathryn have simply began to discuss some of the issues from the 1990 review of the constitution and therefore are not in a position yet to make any firm recommendations in terms of any changes in the way we operate.

He then asked Kathryn Sabo to say a few words on the more technical issues that were considered.

Kathryn stated that Darcy had essentially covered all of the major points. The only substantive point that she would add is that of course for non-profit organizations, we do have to consider the tax aspect. The ULCC does not meet the definition under the Tax Act for a non-profit organization.

There are a number of implications that arise from what they have been looking at. The Executive Committee will be looking at these issues over the coming year and it will report back at next year's annual conference.

The Chair thanked Darcy and Kathryn for their work in this area and for their report to the delegates.

He then commented that NCCUSL has set up a fund to which people can make donations and receive an income tax receipt. In four years, that fund has grown to approximately four million dollars. He wondered whether it would be possible to do the same thing in Canada. In the early 1990s the ULCC had actually approached Revenue Canada to ask that very question and it was told that it did not qualify. As noted the Executive will continue to work on the issue and deliver a further report at the next annual conference.

Adjournment

There being no other business, the meeting was adjourned.

