

UNIFORM LAW CONFERENCE OF CANADA

**QUEBEC CITY,
AUGUST 10-14, 2008**

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 1:30 p.m., on Sunday, August 10, 2008, at the Chateau Laurier Hotel in Quebec City, with Kathryn Sabo as Chair and Claudette Racette as Secretary. The Chair welcomed the Commissioners and guests to the 90th Annual Conference of the Uniform Law Conference of Canada.

Introduction of the Executive Committee

The Chair introduced the members of the Executive Committee: herself, Kathryn Sabo; Darcy McGovern, Chair of the Civil Section; John Twohig, Immediate Past President; W. Dean Sinclair, Vice-President; Nancy Irving, Chair of the Criminal Section; Claudette Racette, Executive Director; Clark Dalton, Projects Manager. The Chair also introduced Stéphanie O'Connor, Secretary to the Criminal Section.

Introduction of the Commissioners

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

Introduction of our Foreign Delegates

The Chair was pleased to introduce Ms Amanda Davies of the Standing Committee of Attorneys General of Australia and New Zealand. She commented that we would be joined during the week by Justice Martha Walters, President of the US Uniform Law Commission, Fred Miller, a former President of what was formerly NCCUSL and Dr, Jorge Sanchez Cordero, President of the Mexican Conference of Commissioners on Uniform State Laws. She commented that we were delighted to have the international participation in our meetings.

Word of Welcome from the Host Government

On behalf of the Government of Quebec, Sabin Ouellet welcomed delegates to the magnificent City of Quebec. He stated that: they were particularly proud to have the delegates in Quebec City this year because of the 400th anniversary of Quebec City. This is a very special event. For those who have an opportunity to discover the city, perhaps on Monday evening, and those who will be staying after the conference he would encourage them to attend two exceptional artistic events

that are going on in Quebec City, the Moulin à l'image, a work by a famous Artistic Director, Robert Lepage, that is taking place every evening around 10:00 p.m. and the Louvre Exhibit at the Musée National des Beaux Arts du Québec. He referred to the two documents that were handed out to the delegates at the registration desk, the first being the official tourist guide to Quebec City, that contains maps of Quebec City and a list of its restaurants, and commented that if anyone had questions with respect to the best restaurants in town, they could come to him or any member of the Organizing Committee. The second is a document on the Provincial Court of Quebec, the host of the opening reception at the Observatory. Also included in the information package was a pin of the flag of Quebec and one of the 400th anniversary.

He introduced the members of the Organizing Committee, Daniel Grégoire, Francine Lachance, Anna Jensen, Lise Pleau and his assistant, Guylaine Pelletier who worked on the organization of the conference during the year but unfortunately was unable to attend the annual conference.

He reviewed the social program for the week and was pleased to say that the keynote speaker at the banquet would be M. Michel Bouchard, the Deputy Minister of Justice and Deputy Attorney General.

He wished everyone a wonderful stay in Quebec City.

The Chair thanked Sabin Ouellet for his report and thanked members of the Organizing Committee for the work that has been done and the work that they will be undertaking during the annual conference. She commented that the delegates were extremely well received and that they were looking forward to a very busy and interesting week in Quebec City.

The President's Report

The President was pleased to present the following report:

“It is with great pleasure that I take this opportunity to present to delegates of the Conference the report of the President for this year, the 90th annual meeting of the ULCC.

While we're not in the same league as Quebec City, marking its 400th year, 90 years is in itself quite an accomplishment. We should be very proud of the work that the Conference has accomplished over 9 decades and the important role it plays in the development of modern, uniform law across Canada.

This year, serving as president, I have developed an even greater appreciation for what it takes to fulfill that role and continue to meet the very high standards set so early on.

My job as President was made relatively easy thanks to the efforts of a number of people, but in particular those of the other members of the Executive who shared the workload during the year. I am grateful to Dean Sinclair, Darcy McGovern and Nancy Irving who dealt with financial matters from time to time in addition to their other responsibilities. We will hear from Darcy and Nancy shortly on the work of their respective sections and I can assure you that over this last year they have worked hard making sure that our projects stay on track.

John Twohig, as Immediate Past President, was an invaluable source of wise advice and support over the year and, in addition to expressing my appreciation to him for his assistance this year, I would like to share with you a couple of examples of how highly John is regarded. First, in May the Association of Law Officers of the Crown awarded John the Carol Creighton Award in recognition of his outstanding service to the legal profession and the Ontario public service. Second, John has recently become General Counsel at the Ontario Ministry of the Attorney General. Congratulations John. Both are well-deserved.

My thanks also go to Clark Dalton, who does yeoman's service on both commercial law and research projects as well as a range of other matters, and Stephanie O'Connor, Secretary to the Criminal Section. Clark and Stephanie's work is often behind the scenes but keeps everything moving as it should and is much appreciated.

We will hear more about the Advisory Committee on Program Development and Management later on, but I do want to thank Peter Lown for his chairmanship of that Committee and the other Committee members for their contributions.

Finally, I cannot say enough about work of our Executive Director, Claudette Racette. Claudette and I met nearly every week through the year and it is her dedication, her attention to detail and her proactive approach that really hold this Conference together. My deepest thanks to you Claudette.

Over the course of the year, the Executive has taken up a number of matters. Claudette Racette and I met with the Canadian Intergovernmental Conference Secretariat to explore the possibility of having the annual meeting of the Conference added to the list of federal/provincial/territorial conferences that the Secretariat administers since this would reduce costs for the Conference and, unfortunately, the Secretariat concluded that at this time the ULCC does not meet the criteria, which relate to reporting structures. This is a matter that the Conference may wish to revisit at a later time.

The Executive, on the recommendation of the Chair of the Civil Section, decided to broaden the mandate of the Steering Committee that had been formed to oversee the activities of the Commercial Law Strategy. The Steering Committee is now known as the Advisory Committee on Program Development and Management, and has taken on the task of preparing and managing medium and long term plans for the Civil Section of the Conference. It will play an important role in strategic planning for the Civil Section in terms of resources and funding. Members of the Committee are appointed by the Executive. The Committee, chaired by Peter Lown, reports to the Chair of the Civil Section. I believe that the work of this Committee will allow the Conference to be more forward-looking and to use its resources even more carefully.

Work on the legal status of the Conference is ongoing and we will be hearing a brief report from Russell Getz who has taken on these issues. In addition, this year the Executive began considering issues related to information and record management within the Conference in order to ensure that we do not lose access to material over time. This work is at a preliminary stage and we should hear more about it as it develops.

Part of the work on information management relates to the Conference's website. The website has become a key tool for the Conference's work. Between April 2007 and March 2008 the website had well over 2 million hits. The pages most frequently consulted were the Uniform Statutes, and the proceedings of annual meetings, in both English and French. While the statistics do not allow us to determine origins in every case, we do know that the website had visitors from Canada, the US, China, Australia, Japan and several European countries.

Within Canada, the website had visits from every province and territory, with Ontario topping the list at somewhere between 14 and 24 thousand and Quebec coming in second at somewhere between 7 and 13 thousand. I would have to say that in this case Ontario had to have been assisted by the federal government because I know how often I am on the Conference website and so a good number of those Ontario visits must be from the federal government.

These numbers clearly serve to demonstrate the importance of the website and we must thank Marcus Patz who has been maintaining the site for quite some time. Marcus will be moving on at the end of this month to other responsibilities but we are very appreciative for all the work that he has done. Clark Dalton has been working with Marcus to have materials placed on the website and has been able to find us a new webmaster with the assistance of the Alberta Law Reform Institute. Tim Young from the Alberta Law Reform Institute has already started working on the website and I thank both Clark and the Institute for their help in setting this up.

While Tim Rattenbury of New Brunswick is not present at our meetings, he continues to produce the Proceedings every year and I would like to ask Elizabeth Strange to convey to our appreciation to Tim for the excellent work he is doing. It is a huge task and he does a terrific job.

I would also like to thank Saskatchewan for its assistance with the up-dates to the Commercial Law Strategy Binder. The Binder is a tangible, widely-distributed tool that demonstrates the work the Conference has done in the commercial law area. I would like to ask Susan Amrud to pass on our thanks to the Queen's Printer in Saskatchewan for the production of the Binder updates.

In terms of the substantive work of the Conference, I would like to highlight the cooperation that we are seeing between the Criminal and Civil Sections. This year we have 3 joint projects going on: Collateral Use of Crown Brief Disclosure, Malicious Prosecutions and Identify Theft. I think that these joint projects are an effective way to draw on the expertise of both sections where the subject matter requires it.

We also have joint projects ongoing with the US Uniform Law Commission and the Mexican Uniform Law Centre. Darcy McGovern, Arthur Close and I had the pleasure of attending part of the annual meeting of the US Uniform Law Commission a few weeks ago. We were very warmly received and Darcy and I had the opportunity to observe the workings of the US Commission while Arthur was put to work on the consideration of the US ULC's draft on unincorporated associations. With our US and Mexican colleagues we were able to have very productive discussions about the lessons learned from the joint work already done and exchange some preliminary ideas for future joint projects. My thanks to Darcy and Arthur for their

thoughtful contributions to those discussions. At the moment we have the work on the UN Convention on Independent Guarantees and Stand-by Letters of Credit ongoing and will be winding up our draft Uniform Act on unincorporated associations so we will be thinking about other projects we could undertake.

Arthur, Kevin Zakreski and the other members of the Canadian “team” have done a wonderful job in the context of that joint project and I would also like to thank all of those who participate in the different Working Groups and projects for their time and for the excellent work they are doing. I cannot name them all here because the list would simply be too long.

I will leave it to the Chairs of the Civil and Criminal Sections to update you on the work of their respective sections and to let you know what is in store for this week.

In terms of the work that jurisdictional representatives are doing, I am very pleased to note the number of Uniform Acts that have been adopted this year. It is very encouraging to see that each year more Uniform Acts are being adopted by the jurisdictions. I know that one of the areas the Advisory Committee on Program Development and Management will be working on is enactment issues. We do need to think about how we can improve the record. Are there better tools and processes that we can come up with that will make the jurisdictional representatives’ jobs easier? I cannot emphasize enough how much we value the efforts of all the jurisdictional representatives throughout the year and their participation in the annual meeting. I recognize that for many of you the work of the Conference is in addition to your other responsibilities and appreciate even more the time and expertise you contribute and the role you play as the key contact person for the ULCC within your respective jurisdictions. I would also like to thank your governments for enabling you to provide this kind of support to the Conference.

I am also very happy to see that more relatively new people are getting involved in the work of the ULCC. The strength of the Uniform Law Conference lies in the commitment and enthusiasm all of us bring to the table so it is wonderful to see the pool of talent expanding.

Of course it is not people alone who make the Conference. It requires funding in order for the work to continue. On that very important note I want to express my thanks to the federal, provincial and territorial governments for their continued financial support and services they provide, in addition to the “people” support they give.

In terms of the challenges ahead of us, it is remarkable that the ULCC can achieve so much with so little in terms of human and financial resources. Without the tremendous level of support from volunteers who contribute both time and expertise, there is no way that the ULCC could survive. I note with regret that Newfoundland and Labrador is not represented in the same way as in the past. I think that it is important for all governments to appreciate that every jurisdiction in Canada benefits from the work of the Conference but that this can only continue to the extent that all jurisdictions continue to support its work, not only financially, but by actively participating in it. We will need to work hard to continue to secure sufficient funding and contributions in kind to maintain and hopefully increase the excellent work that the ULCC has been able to do over the years.

I do think that we have much to be proud of – 90 years of collective work, an impressive body of Uniform Acts and a solid network of government officials, practitioners, academics and members of the judiciary working toward a common end. From that perspective, I look forward to celebrating the 100th anniversary of the Conference.

In closing, I would only mention that I have raised a fair number of matters in this report and would be happy to discuss any of them with you in greater detail over the next few days.”

Financial Resolutions

a. Approval of Audited Statements

The Executive Director reminded delegates that at the time of the annual conference last year, the ULCC was in search of a new auditor. For this reason the Executive Committee was authorized to appoint a new auditor for 2007-2008. Three accounting firms were interviewed. In November, the Executive Committee approved the appointment of the firm of Stephen H. Saslove as auditor for the 2007-2008 fiscal period.

MOVED by Darcy McGovern, seconded by Lynn Romeo, **THAT** the Audited Statements for the fiscal period ending March 31, 2008, be approved as presented. Motion carried.

b. Appointment of Auditors

MOVED by W. Dean Sinclair, seconded by Earl Frutchman, **THAT** the firm of Stephen H. Saslove be appointed as auditors for the Uniform Law Conference of Canada for the fiscal period 2008-2009. Motion carried.

c. Banking Resolution

MOVED by Nancy Irving, seconded by Peter Lown, **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 GICs 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 2008-09

MOVED by John Twohig, seconded by Russell Getz, **THAT** the budget for the fiscal period 2008-2009 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 the Immediate Past President, John Twohig will chair the Nominating Committee and that he will report back to the delegates at the Closing Plenary.

Outline of the Business of the Week

a. Criminal Section

Nancy Irving, Chair of the Criminal Section, was pleased to report that there were 35 delegates from 10 provinces and territories and from the Federal Government in the Criminal Section this year. These delegates include prosecutors, defence lawyers, policy experts in criminal law, and members of the judiciary. The Section will consider 37 Resolutions during the course of the week dealing with a variety of interesting and engaging criminal law issues including *Warrants for the Taking of D.N.A. Samples from Unconscious Victims*, *Court Order Disclosure of Encryption Keys* and the creation of new offences of *Possession of Kidnapping Instruments as Sexual Assault Tools*. She was confident that these topics would lead to the kind of lively debate that the Criminal Section usually enjoys. Work will begin with a report from the Senior Delegate from Justice Canada, Catherine Kane, highlighting the criminal law initiatives undertaken in the past year. The Section will also consider two working group reports on *Fines in Lieu of Forfeiture for Money Spent on Legal Fees* and *Section 347 of the Criminal Code, the Criminal Interest Rate Provision*.

In addition, the Criminal Section anticipates with pleasure the discussions with colleagues in the Civil Section of the reports on *Identity Theft*, *Malicious Prosecutions*, and *Collateral Use of Crown Brief Disclosure*. She looks forward to the meetings throughout the week and to discussing all of these issues.

b. Civil Section

Darcy McGovern, Chair of the Civil Section stated that first of all he wanted to express his appreciation to our Executive Director, Caudette Racette and her counterpart Sabin Ouellet and all the members of the Organizing Committee for all the hard work that they did in the preparation of the annual conference.

This year, the Civil Section can look forward to a challenging and productive week. The Section will be asked to adopt a *Uniform Act on Unincorporated Not for Profit Associations* and to finalize the *Uniform Income Trust Act and Commentaries*. The Section will receive a number of detailed study papers on various subjects including: *The Common Law and Civil Law Aspects of the Convention on Electronic Communication in International Contracts*; the ongoing review of the *Interest Act*; the complex issues surrounding *Privity of Contract*; a continuation of our project on *Fraudulent Conveyances and Preferences*; uniform implementing legislation for the *Convention on Choice of Court Agreements*; and they are hoping to finalize instructions for the preparation of a *Uniform Act Implementing the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit*. The Section will also consider reports on new projects including *Anti-SLAP Legislation*; *Conflict Provisions in Wills and Succession Legislation*; *Assisted Human Reproduction* and a proposal for a *Uniform Trusts Act*. The annual

report from Justice Canada on *Private International Law* will also be provided to the Commissioners.

He was pleased to report that during the past year we have seen a continuation of the collaboration between the Civil and Criminal Sections. As mentioned by Nancy Irving, there will again be a half day session on Tuesday to discuss reports on the *Collateral Use of Crown Brief Disclosure, Identify Theft* and *Malicious Prosecution*. Recent developments in these areas make these important and dynamic projects that bear careful attention by Commissioners in both Sections.

Finally, he was delighted to welcome representatives from the American, Mexican and Australian Conferences who will speak to us of the work of their respective organizations. International collaboration and cooperation continues to be a most positive and exciting development for our organizations.

While serving as Chair of the Civil Section in the past year he was struck by the tremendous amount of effort that goes into making the work of the ULCC possible. He acknowledged the critical efforts of Clark Dalton, Projects Manager, the Jurisdictional Representatives in their participation as members of the Civil Section Steering Committee, Karen Pflanzner for keeping the minutes of the Steering Committee and in the tougher task of keeping him on track as well as the members of the Advisory Committee on Program Development and Management, chaired by Peter Lown, all of whom have devoted so much time, energy and expertise to the organization over the year under the direction of our President, Kathryn Sabo.

The Legal Status of the ULCC

Russell Getz reported that the work commenced by the Executive and that was the subject of an initial report by Darcy McGovern last year is continuing. Several issues were identified relating to the legal status, structure and arrangements of the ULCC, including potential tort liability, contractual liability and financial and other arrangements as amplified by the issues we have heard from the reorganization of the Commercial Law Steering Committee. As well, there has been an awareness of the challenges relating to the needs respecting funding and the opportunities and potentially increasing scope of our obligations arising from our enhanced international cooperation activities as well as the fact that there has been no general review of the overall ULCC structures, arrangements and functions since the 1980s that culminated in the Renewal Statement of 1990 and the adoption of the Constitution and By-Laws.

Accordingly, Kathryn Sabo, on behalf of the Executive asked Arthur Close, John Twohig and him to form a committee to continue the general review. The Committee has done some background work including examining the earlier work done, published literature addressing the ULCC and the work of uniformity of laws in Canada generally and the US Uniform Law Commission. In carrying out this review, it may be that suggestions will change or be brought forward or alternatively that our present arrangements are optimal in the present circumstances and in this regard, we will be considering the next steps and we would invite any members who wish to do so to offer any observations, reflections or opinions they may have, to any member of the committee in the coming year.

Other Business

a. Support from the Quebec Bar

Sabin Ouellet expressed his deep appreciation to the Barreau du Quebec for its financial contribution in support for the ULCC annual conference.

Adjournment

There being no other business, the meeting was adjourned.