

UNIFORM LAW CONFERENCE OF CANADA

OTTAWA,
AUGUST 9-13, 2009

CLOSING PLENARY SESSION

MINUTES

Opening of meeting

The President, W. Dean Sinclair, called the meeting to order.

Report from the Criminal Section

The Chair, Marvin Bloos, Q.C. reported that this year the Criminal Section dealt with 36 Resolutions relating to proposed amendments to the *Criminal Code* or the *Youth Criminal Justice Act*. While these figures are close they are not yet finalized. Approximately 30 were carried either as submitted or as amended. Five were withdrawn, 2 before discussion and 3 following debate and 3 Resolutions were defeated.

One Resolution called for the formation of a new working group to examine the development of existing provincial legislation and initiatives such as *Safe Communities Legislation* that have a criminal law intersection in order to share best practices and to determine whether model legislation in particular areas should be recommended.

A set of Resolutions from 2 separate constituencies, calling for a comprehensive review, up-dating and harmonization of the *Wiretap and Electronic Surveillance Provisions of the Criminal Code* were passed unanimously

A high point of the Criminal Section meeting this year was the receipt and study of the *Working Group Report on Taking into Account Pre-sentence Custody and Availability of Certain Sentencing Measures*. The Chair of the Working Group, Mr. Randall Richmond, Senior Crown Counsel from Montreal, treated the Criminal Section delegates to a very effective and interesting powerpoint presentation in both official languages that explained the anomalies and in some cases conflicts in Appellate and Supreme Court jurisprudence contributing to the difficulties in the current sentencing regime in Canada. He then outlined the proposed options and possible solutions that were set out in the paper.

Mr. Richmond and his committee of 11 other expert participants drawn from the defence Bar, Crown practice, policy branches and academia, demonstrated once again the high quality, thoroughness and the very informed work that is and has become the tradition of the Criminal Section working groups. This certainly helps our light to shine brightly

outside the confines of our meeting rooms, and within the constituencies and offices that are charged with the responsibility of effectively delivering the betterment of Canadian law. On behalf of the Criminal Section and all of the ULCC he thanked them for a job well done.

The Section had a number of other highlights. Normally the week begins very slowly because the first jurisdiction to bring resolutions faces a large battle getting anything passed. An hour or more can go by debating a single resolution. Alberta now enjoys a remarkable record. Its leader Josh Hawkes presented 3 Resolutions all of which passed unanimously, all of which had the highest vote count and all passed within half an hour.

Kathryn Kane, the Senior Justice Canada delegate, presented a report to the Criminal Section. In the report she identified a number of Resolutions that originated from the Criminal Section that have had their effect on criminal Bills and legislation that have gone through Parliament recently and are now awaiting proclamation or else are in the House of Commons or the Senate under debate. It was very encouraging for him to see in writing that the deliberations of the Criminal Section are being used to good effect and are being taken into account by those in the Department of Justice charged with the responsibility of creating Canadian criminal legislation.

Mr. Bloos referred to the Resolution that was before the delegates on Tuesday concerning the *Interprovincial Service of Offence Notices*. There was discussion at the time as to whether there was sufficient interest to carry the joint working group forward into next year. He made a request at the time for jurisdictions and delegates to make their interest known between Tuesday and now so that we might be able to determine whether the Resolution should be to simply receive the report as the final report or whether we should ask the working group to continue for another year.

He was pleased to report that there is good interest in the work of the joint working group. Saskatchewan, New Brunswick, the Ontario Law Reform Commission, Alberta and Quebec have indicated interest. Lee Kirkpatrick, the current Chair of the working group, has indicated that she is willing to continue as Chair. The following motion was presented:

MOVED by Marvin Bloos, seconded by Josh Hawkes, **THAT** the joint Civil/Criminal Section Working Group be directed to consider the issues raised in the report and the directions of the conference and report back to the 2010 annual conference. Motion carried.

The Chair was pleased to announce that the Chair of the Criminal Section for 2009-2010 is Luc Labonté from New Brunswick and that the Nominated Chair for 2010-11 is Josh Hawkes.

In closing he wanted to thank the Federal Department of Justice and the members of the Organizing Committee on behalf of all Commissions in the Criminal Section for their hospitality and for the arrangements of the excellent meeting facilities.

He then thanked Stéphanie O'Connor, Secretary of the Criminal Section, without whose assistance the Criminal Section meetings would surely falter. Stéphanie is tireless in organizing documents, making sure they are translated and distributed to the delegates. She was always there to assist him at every stage and because of her, his job as Chair was made easy. He commented that this is Stéphanie's last year as Secretary. She is to be replaced by Joanne Dompierre, who was with the Criminal Section all week. She is eager to be part of the Criminal Section. He believes that she is not only capable but will be able to fill the enormous shoes that are being left behind by Stephanie.

The President thanked Marvin Bloos for his report.

Report from the Civil Section

The Chair of the Civil Section, Elizabeth Strange presented the following report:

The Civil section has completed a long hard successful week of work. She expressed appreciation to all those who participated, representatives from federal, provincial and territorial governments, law reform bodies as well as members of the private Bar and academia. She acknowledged our special guests from Australia, Mexico and the United States.

This week the Civil Section adopted *Amendments to the Uniform Retirement Plan Beneficiaries Act*, as well as adopting in principle a *Uniform Act on Abuse of Process* and the *Uniform Implementing Act of the Hague Convention on Choice of Court Agreements*. It is hoped that these two Uniform Acts will be adopted on January 31, 2010. The Section anticipates a busy up-coming year and it should be provided with several Uniform Acts to consider at next year's conference on the following topics:

- *Assisted Human Reproduction*
- *U.N. Convention on Independent Guarantees and Stand-by Letters of Credit*
- *Trustees*
- *Identify Theft – Breach notification*

The Section received excellent reports and papers on the following projects:

- *Interest Act*
- *Personal Property Security Act*
- *Fraudulent Conveyances and Preferences*
- *Wills and Succession Conflicts Provisions*

Three joint projects were considered: *Collateral Use of Crown Brief Disclosure*, *Malicious Prosecutions* and *Interprovincial Service of Offence Notices*.

She commented that it is clear that the Section has accomplished a lot this year and that it had a lot to look forward to next year.

She thanked all of the delegates in the Civil Section for their hard work. She then expressed her thanks to some of the Criminal Section delegates who assisted her in the past year, in particular Marvin Bloos and Stéphanie O'Connor for their efforts in facilitating the joint projects, and Dean Sinclair for his support and encouragement throughout the year.

Elizabeth enjoyed her stay in Ottawa. She thanked the host jurisdiction for the wonderful time that everyone had this week. The highlight of the week for her was going to the Supreme Court of Canada.

She was pleased to announce that the new Chair of the Civil Section was Nolan Steed, Q.C., from Alberta and that the Nominated Chair for 2010-2011 was Abi Lewis from Ontario.

The Chair thanked Elizabeth for her report.

Report from the Nominating Committee

Kathryn Sabo, Chair of the Nominating Committee reported that during the week she had again consulted the other members of the Committee, those Past Presidents present at the annual conference, Greg Steele, John Gregory, Arthur Close, Peter Lown, John Twohig and Earl Frutchman. On behalf of the Committee she presented the following motion:

THAT Russell Getz, from British Columbia, currently the Vice President of the ULCC, be nominated for President. **THAT** Michel Breton from Quebec be nominated for Vice President of the ULCC. The motion was seconded by John Gregory. Motion carried unanimously.

Michel Breton stated that it was a great honour for him to be nominated and that this was a mark of appreciation being made to the Quebec delegation. He thanked the delegates for their vote of confidence. He then stated that he was well aware that he was being asked to perform a high wire act without a safety net since Madame Claudette Racette will not be there in 2011.

Comments from the President

The Chair stated that he was pleased to propose the following Resolution.

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

1. The Government of Canada as represented by the Minister of Justice and Attorney General, the Honourable Robert Nicholson which hosted the 91st annual conference

of the ULCC.

2. The Organizing Committee of: Catherine Kane, Kathryn Sabo, Stéphanie O'Connor, Nancy Irving, Manon Dostie, and Rose-Marie Racine and Karin Molzahn.
3. Our very competent secretariat staff Lise Thibert, Karin Molzahn, Julie DiLalla, who worked throughout the planning process and also assisted the delegates from both the Criminal and Civil sections.
4. Our colleagues from the U.S. Uniform Law Commission, Justice Martha Walters, Robert A. Stein; Jorge Sánchez Cordero from the Mexican Center of Uniform Law; and Amanda Davies our guest representing Australia and New Zealand, for their participation in our annual conference.
5. Catharine Brown, of the Department of Justice Canada, for assisting in the preparation of the Press Release.
6. Marvin Bloos, Q.C., Chair of the Criminal Section and Stéphanie O'Connor, Secretary to the Criminal Section.
7. Elizabeth Strange, Chair of the Civil Section.
8. Peter Lown, Q.C., Chair of the Advisory Committee on Program Development and Management.
9. Patricia Gougeon, Convention Services Manager at the Westin Hotel Ottawa for their excellent service.
10. The Supreme Court of Canada for allowing Justice Canada to host the opening reception in the Supreme Court Building.
11. The interpreters, Mathew Ball, Emmanuelle Dubois, Marie-Ève Racette, Dorothy Charbonneau, Olivier Beauchemin-Bonifacio, Mariam Bureau, for their competence and commitment.
12. Mr. Hans Lévesque of the Canadian Museum of Civilization for allowing us to visit the wonderful Canadian Exhibit before our banquet dinner.
13. The technicians in both meeting rooms for ensuring that everything ran smoothly.
14. Our umpire, François Giroux, who kept us honest.

The President then presented bouquets of flowers to Karin Molzahn, Julie DiLalla and Lise Thibert for the excellent work they did in the secretariat office throughout the week.

He presented the following motion. **THAT** the Conference express its gratitude and appreciation to the Executive Director, Claudette Racette who once again worked hard to ensure the success of our annual meeting. Motion carried.

He stated that Kathryn Sabo was leaving the Executive Committee this year. Kathryn's work to assist and promote the Conference has been of tremendous value not only to him personally as President, but also to the ULCC as a whole. He has relied heavily on her assistance in the past year and he knows how important her contributions have been in quality and in work in kind to the ULCC. Thankfully, although this might be Kathryn's last appearance as a member of the Executive Committee he anticipates that she will continue to provide strong leadership in her participation in the Civil Section Steering Committee and as a member of the Advisory Committee on Program Development and Management. He thanked Kathryn for all she has done to promote the ULCC.

He thanked the other members of the Executive Committee and Clark Dalton for the advice and assistance he received from each and every one of them during the year. He wanted to especially mention the contributions of Marvin Bloos and Elizabeth Strange. As Chair of the Criminal Section this year Marvin did an excellent job in keeping the delegates focussed on the task at hand. Although he had only a limited exposure to the Civil Section proceedings, he knows from talking with Civil Section delegates that Elizabeth has done an excellent job as Chair of the Civil Section. He thanked Elizabeth for all the assistance she provided in trying to make sure that he understood the workings of the Civil Section and the projects that were being undertaken. He thanked her for her contributions to the ULCC.

He then stated that it was his unfortunately task to report that Claudette Racette would be retiring as Executive Director of the ULCC after the annual conference next year. Madame Racette has been the Executive Director of the ULCC since 1992. She has worked tirelessly on behalf of the Uniform Law Conference of Canada since then. He knows that it will be difficult to find someone to fill her shoes. He thanked Claudette for all she has done for the ULCC.

He commented that he had presented a bouquet of flowers to Stéphanie O'Connor at the end of the Criminal Section meetings. Stéphanie will be retiring as the Secretary to the Criminal Section. She has been in that position since 2003. She has done an incredible amount of work for the Criminal Section in organizing and helping the Chair of the Section. He thanked Stéphanie for all her hard work.

Comments from the Incoming President

Russell Getz stated that it was a great honour and a privilege to be able to have the opportunity to serve as President of the ULCC which is of such immense value to Canadian law and to Canadian society. There is always a sense of both continuity and new beginnings as we finish the work of this annual meeting and bring it to a successful conclusion and start on the work of next year.

This year he has had the privilege of attending the Criminal Section meetings. It was a real pleasure to see such advocacy skills employed so incisively and with such civility in the service of criminal law reform. He looks forward to working with the Criminal Section this year. He also looks forward to working with all members of the Executive Committee in both Sections as well as with Clark Dalton and Claudette Racette. This is of course a time of challenge for the ULCC, certainly financially. But it is also a time of success and promise. Jurisdictions continue to implement our Uniform Acts and courts are referring more and more to our statutes. As Kathryn Sabo noted at the opening reception, the scope of our projects is broader than perhaps we would have considered several years ago. We are also working on continuing to develop our cooperation and collaboration with our international colleagues in the United States, Mexico and now Australia and New Zealand.

When he thinks of the challenges and opportunities he feels a great sense of responsibility to the ULCC and to its members to continue to build on the achievements of the ULCC. He is inspired by the presence of Past Presidents around the room and is comforted knowing that he will be able to call upon their wisdom. In particular in this regard, he wanted to say a few words about Dean Sinclair. It has been a real delight to work with Dean as President this year. He has had the opportunity of knowing Dean for many years. He knew that it was going to be a fine experience and it was. Dean is a real model for him to follow. Dean has always discharged his duties with enthusiasm, energy and graciousness and he looks forward to his wise counsel.

Lastly he expressed his thanks to all those who have done so much to make this annual meeting such a success, the host jurisdiction, Claudette Racette, Clark Dalton, the Chairs of the Criminal and Civil Sections and all of the Jurisdictional Representatives.

In closing he invited any one who wishes throughout the year to speak to him on any matter or to provide any ideas on how we can move things forward to do so.

Word from the Host Jurisdiction

The Chair asked Catherine Kane to say a few words on behalf of the host jurisdiction.

Catherine expressed her appreciation to all of the delegates for a wonderful conference stating that the success of the conference was due to all of the delegates who joined us and the excellent discussions that took place. She commented that at the Opening Plenary session she had mentioned how much fun the Organizing Committee had putting the conference together and that it was even more fun now that it has all gone so well. She thanked her colleagues from the Department of Justice who have once again made the conference a success. They are: Kathryn Sabo, Manon Dostie, Nancy Irving, Rose-Marie Racine who organized all of the logistics, the true professional that she is, they could not have done it without her, the people who worked in the secretariat, Lise Thibert, Karin Molzahn, Julie DiLala, Lise Goulet who participated a couple of times and

Romy Ochmann St-Jean who helped after joining the Department a few months ago. Everybody stepped in to do what needed to be done.

She particularly wanted to thank Stéphanie O'Connor. In addition to her work in coordinating all of the criminal Resolutions and as Secretary to the Criminal Section, she was the ideas person. She was the detail person. She looked at venues and would come back very enthusiastic. Stéphanie shared their goal in showing the delegates the best that the Capital has to offer.

She thanked all of her colleagues at Justice Canada who helped them prepare on the substantive side so that delegates could come prepared, they could engage in the discussions and could go back richer to carry on their work over the year.

She also wanted to mention Claudette Racette's guidance and support. Claudette shares office space with them from time to time, she is their friend and they are sad that she will be leaving but they know that they will have the benefit of her guidance for the next year or so.

Catherine hoped that everyone had a great time in Ottawa. She looks forward to seeing everyone in Halifax next year. In closing she offered to share information with the Organizing Committee for the Halifax conference.

Report from the Host Jurisdiction for the 2010 Annual Conference

David Nurse commented that he and his colleague on the criminal side, Ronald MacDonald, Q.C., were looking forward to hosting the 2010 annual conference in Halifax. The Organizing Committee has made considerable progress in getting ready. The conference will take place at the Westin in Halifax, the same hotel as the last ULCC conference in Halifax. He has received some positive comments from commissioners on this selection.

The location for the opening reception has not been confirmed, but he and Kathryn Pentz have visited Pier 21, Canada's Immigration Museum, as a possible location for the reception. It will be a fun week. They are looking forward to putting together a good programme for everyone. Ottawa will be a tough act to follow. They are looking forward to seeing everyone in Halifax next year.

The Organizing Committee will be distributing an information package by e-mail in due course.

Comments from the Host Jurisdiction for the 2011 Annual Conference

Lynn Romeo reported that Manitoba is excited about hosting the 2011 annual conference in Winnipeg. The dates are August 7-11. They are looking at three hotels in down town Winnipeg. The Committee is brainstorming about activities and venues that will keep delegates interested and showcase areas of interest in the Province of Manitoba. More detailed information will be given to the delegates at next year's annual conference.

Other Business

The President asked if there was any other business to discuss. Lee Kirkpatrick thanked Dean Sinclair and his wife for opening the President's suite to delegates this year. She hopes that this tradition will be carried on.

There being no further business, the meeting was adjourned.