

**UNIFORM LAW CONFERENCE OF CANADA
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA**

**Minutes of the Opening Plenary Session
Held in Toronto, ON
On Sunday August 10, 2014 at 1:30pm**

Opening Remarks

The meeting was called to order at 1:40pm on Sunday August 10, 2014 at the Eaton Chelsea Hotel in Toronto, ON, with President Lynn Romeo as Chair and Marie Bordeleau as Secretary. The President welcomed the delegates and guests to the 96th Annual Meeting of the Uniform Law Conference of Canada, and noted that everyone always looks forward to this meeting, where we renew old acquaintances and forge new ones. L Romeo said that there is an exciting week ahead.

Introduction of the Executive Committee

ULCC President Lynn Romeo introduced herself and the members of the Executive Committee: Nancy Irving, Immediate Past President; Luc Labonté, Vice-President; Catherine Cooper, Chair of the Criminal Section; Manon Dostie, Chair of the Civil Section; Peter Lown, QC, Chair of the International Committee and the Advisory Committee on Program Development & Management; our Program Director, Clark Dalton, QC; and Marie Bordeleau, Executive Director. L Romeo also welcomed the new Criminal Section Secretary, Dorette Pollard.

Introduction of Commissioners

The Senior Commissioner from each jurisdiction introduced the members of his or her respective delegation. L Romeo noted that unfortunately, Dr Jorge Sánchez Cordero Dávila, President of the Mexican Uniform Law Centre, is unable to attend this year, as the Mexican Congress is in session and his presence is required in Mexico City. However, we will be joined later this week by Harriet Lansing, President of the Uniform Law Commission of the United States, Michael Houghton, Immediate Past President of the ULC, Bob Stein, a Past President and Chair of the International Legal Developments Committee and Commissioner David English from the US. We are also hopeful that Rich Cassidy, who is Chair of the Executive Committee, be able to join us. L Romeo said she looks forward to their participation in our meeting as always and encouraged delegates to extend them a warm welcome and get to know them a bit better, as we have a lot to learn from one another.

L Romeo also noted that although they are not currently present in the room, she knows that a few familiar faces from Ontario and Past Presidents John Twohig and John Gregory will be joining the group.

Welcome from Host Government & Overview of the Week to Come

John Lee welcomed the delegates to Toronto on behalf of the Ontario Ministry of the Attorney General and noted that the welcome reception tonight, which is being hosted by the Ontario Bar Association at its conference centre, will be held from 5:30pm to 7:30pm. Delegates are free for dinner on Monday. We will have our annual soft ball game at Kew Gardens followed by the BBQ on the hotel terrace, and

UNIFORM LAW CONFERENCE OF CANADA

CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

the gala dinner on Wednesday will also be held at the hotel. L Romeo announced that delegates wearing their delegate badge at the hotel's restaurants will receive a 10% discount on food.

President's Report

It's been an honour and a privilege to serve as President. As we approach our 100th anniversary, I think it's important to note that we remain committed to our original purpose, that is, to promote uniformity of legislation amongst provinces and territories and to provide recommendations to amendments to the Criminal Code. It is with this long tradition in mind that I welcome our new and newer delegates, and I encourage you to bring your knowledge, enthusiasm and perspective to the work of the Conference. While our purpose may be constant and some of us may be... a little long in the tooth, the nature of our projects and the ways and means by which we accomplish our goals are evolving. We have been developing tools to assist new delegates, including the orientation document prepared by our BC Commissioners a couple of years ago. All Civil Section delegates will benefit from the work of the ACPDM under the leadership of Peter Lown, QC. There will be a more fulsome discussion on this later this week, but work has been ongoing on tools to assist JRs in promoting the implementation of legislation in their own jurisdictions, as well as tools to assist in the preparation of project proposals, the review and assessment of those proposals, and to assist working groups and the Conference leadership in moving projects along in a timely and effective manner.

I note that Manon Dostie and Nolan Steed have shown a relentless devotion to the development of these tools, and I believe the Conference's work will benefit tremendously as they are introduced. Thank you to Peter and the hardworking members of the ACPMD Committee. I also note the ongoing work of the Publications Committee; under the leadership of Dean Sinclair our new website is operational, and Dean, along with Ian Rennie, Clark Dalton and John Gregory, continue to address issues, including ensuring information is posted in a timely manner. Completion and posting of the Conference Proceedings in both languages is a particular challenge, and the Executive Committee is developing a process to address this. I extend our thanks to Dean and his committee for their commitment and work, and also to Ian Rennie, who has the herculean task of managing the publication of our Proceedings. It makes my head spin when I think of it, so we appreciate your work and endeavours in that regard, Ian. Thanks also to Saskatchewan Queen's Printer for their work.

These are challenging economic times for governments and so I'm especially pleased to see that this year we have representatives from all of our federal, provincial and territorial jurisdictions attending the Annual Meeting. It's a pleasure to welcome Prince Edward Island back. Unfortunately several jurisdictions were not able to participate in both the Criminal and Civil Sections, and I expect that in these difficult times ahead it will continue to be a challenge to maintain support from the jurisdictions, both in attendance at the Annual Meeting and in payment of the annual contributions. But I do want to express my thanks to the federal, provincial and territorial governments for their continued financial support and for the services they provide in addition to supporting the participation and attendance of our delegates. I acknowledge in particular the continued annual grant from Canada; it is a critical component of our funding.

UNIFORM LAW CONFERENCE OF CANADA

CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

On the financial front, we continue to face challenges; a few jurisdictions are late in making their annual contributions, and we have seen a decline in the contributions to the Research fund. That being said, I never cease to be amazed by the diligence and resourcefulness of our volunteers, who contribute their time, expertise and ingenuity, not only in delivering the excellent work of the ULCC, but also in finding new ways to deliver that work in times of restraint. That ability and willingness to find new ways to address our financial challenges is critical to our ongoing success, and I have every confidence in our ability as an organization to succeed. I urge all Jurisdictional Representatives to continue to underscore the very good value that their governments receive from their relatively modest contributions to the Conference.

On the International front, Peter Lown and I had the pleasure of attending part of the annual meeting of the Uniform Law Commission of the United States in Seattle last month. As President I was invited to address their general meeting, and at that time I noted that our relationship had never been stronger. I note that this year we will complete work on our joint project on the Recognition of Substitute Decision-making Documents. Our American colleagues invited Darcy McGovern to attend as the Commission debated their work on an Act to recognize and enforce Canadian Domestic Violence Protection Orders. Our project on Fiduciary Access to Digital Assets will benefit greatly from the American project, and we will also be watching closely the developments on their Unclaimed Property project.

In January of this year, Peter, Clark and I attended a joint planning meeting with our American counterparts to review both current and future agendas with a view to identifying new opportunities for collaboration and partnership. From my perspective, the degree of cooperation and sharing of knowledge was a highlight of the exercise and reflective of the strength of our relationship. I believe we have every reason for optimism going forward.

Given that I have raised the of our financial challenges and our resourcefulness, I'll note that that joint meeting was organized on less than a shoestring budget; the meeting happily took place in Phoenix, AZ, where Peter takes up residence with his lovely wife Lorette for the month of January, so he was already there, and they were kind enough to welcome Clark and I into their lovely home and acted as our chauffeurs, so the costs to the ULCC were absolutely minimal. I urge the Conference to look for ways to continue to foster this very productive and beneficial relationship with our American and Mexican colleagues.

My tenure as President of the ULCC has been enjoyable and rewarding, in large part thanks to the culture of support and cooperation that defines this organization. My colleagues on the Executive Committee, Luc Labonté, Nancy Irving, Peter Lown, Cathy Cooper and, Manon Dostie were always available to provide support and good advice despite their busy schedules. I thank each of you for your dedication and wise counsel.

We will hear from Cathy and Manon shortly about the work of their Sections. I know they have put in tremendous efforts in organizing the Section meetings and I thank them. I've already mentioned the valuable service that Peter Lown provides in his role as Chair of ACPDM and as Chair of our International Committee. Thank you, Peter. I also express my appreciation for the excellent work done by our project

UNIFORM LAW CONFERENCE OF CANADA

CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

leaders, working group participants and our JRs over the year; you are the backbone of this organization and I commend and thank you for all your efforts throughout the year.

Nancy Irving, as our Immediate Past President, continued to provide her wisdom and advice, despite the fact that she retired from Justice Canada early in the year. Thank you, Nancy, for that incredible dedication. Clark Dalton, our Program Coordinator, continues to provide leadership to working groups and provides invaluable service to our Conference. His legal expertise, corporate memory and dedication to ULCC are unparalleled. Thank you, Clark. And on a personal note, thank you for always making time for me when I most needed your advice and guidance. I can also tell you calling Clark is always a pleasure because he generally answers his phone, which in this day and age is huge, but also, he has this wonderful bird, and whenever the bird hears a lady's voice, it whistles... and I have to tell you, I don't get whistled much, so it's always a delight.

To Dorette Pollard, the new Secretary of the Criminal Section, welcome, we are very much looking forward to working with you, and thank you for taking on this new challenge.

I'd also like to recognize the work for Marie Bordeleau, our Executive Director. I had the pleasure of working closely with Marie when Manitoba hosted the Annual Meeting in 2011. She's energetic, hardworking, and always willing to look at new ways of carrying out the work of the Conference. My work as President was made easier because of the support I received on a day-to-day basis. Thank you, Marie, for all you do for the Conference, and for doing it all so well.

And finally I'd like to acknowledge just a few individuals who can't be with us this year: long-time delegates Greg Steele, Arthur Close and Susan Amrud were not able to attend and we thank them for their ongoing contributions, not only throughout this year but many years. I also note our loss to the judiciary of Lane Wieggers, a long-time delegate from Saskatchewan; we thank Lane for his contributions and congratulate him on his appointment.

In closing I think I speak for all of us when I say that I'm looking forward to the week ahead, both our valuable work as Commissioners and the social activities our Ontario hosts have worked so hard to organize. And on that positive note we'll turn to consideration of our financial resolutions. I believe you've received the audited financial statements, and before introducing the resolutions I'll note that in the past several years we've not been submitting a budget to the Conference. This year a budget for fiscal 2014-2015 was circulated prior to this meeting and will be considered today. As you'll appreciate this is a work in progress and the Executive Committee will be authorized to make changes as the year unfolds.

Financial Resolutions

a. Approval of Audited Statements

MOVED by Nancy Irving, seconded by Darcy McGovern, **THAT** the Audited Statements for the fiscal period ending March 31, 2014 be approved as presented. Motion carried.

UNIFORM LAW CONFERENCE OF CANADA
CONFÉRENCE POUR L’HARMONISATION DES LOIS AU CANADA

L Romeo noted that there was an operational deficit of \$18,500, due in large part to the added expenses of hosting the Annual Meeting in Victoria, BC last year and translation.

b. Approval of the Auditors

MOVED by Luc Labonté, seconded by Gail Mildren, **THAT** the firm McCay Duff LLP Chartered Accountants, be appointed as Auditors for the Uniform Law Conference of Canada for the fiscal period from April 1, 2014 to March 31, 2015. Motion carried.

c. Banking Resolution

MOVED by Cathy Cooper, seconded by Elizabeth Strange, **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 purpose 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 2014-2015

MOVED by Manon Dostie, seconded by Russell Getz, **THAT** the budget for the fiscal period 2014-2015 be approved, subject to amendments if deemed necessary, following the meeting of the Executive Committee in November 2014. Motion carried.

L Romeo noted that we are budgeting for a small deficit of \$1,800 in this fiscal period, but that the next fiscal year will likely have a larger deficit due to the Annual Meeting being held in Yellowknife in 2015. Tom Ahlfors noted that the revenue from Nunavut does not reflect what the jurisdiction is invoiced every year and queried the deficiency. M Bordeleau stated that Nunavut did not pay for the Research portion of their usual contribution in the last fiscal year. The mistake was corrected but the funds will be accounted for in the 2014-2015 fiscal year.

Kathryn Sabo expressed concern over the deficit in the last fiscal year as well as the projected one in the coming year and asked whether a plan was in place to not have deficits. L Romeo said that we have been running at a deficit for a number of years. A new Budget and Finance Committee has been struck as per our Constitution’ parameters for doing so, and for continuity’s sake, the members will be the Immediate Past President, the President and the Vice-President, as well as other members who will be called as needed to address some of the challenges we have been facing, some of which include the loss of the support of some jurisdictions for the Research projects, as well as the ever-increasing costs of translation. L Romeo said that he Executive is looking at budgeting more correctly for those costs in the future, as well as ways in which we can do projects differently to address some of the ongoing issues related to our institutional deficits.

UNIFORM LAW CONFERENCE OF CANADA

CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

MOVED by Kathryn Sabo, seconded by Sébastien Bergeron-Guyard, THAT the Conference receive a report at next year's Annual Meeting on actions taken to address the budgetary and financial planning for the Conference.

Discussion: L Romeo said that the Executive Committee has agreed to develop a Strategic Plan that will encompass a number of issues facing the ULCC, over and above the concerns regarding the need to increase revenues as well as review how budgeting is done. K Sabo said that as a representative of the government that is the largest financial contributor to the Conference, her delegation has a responsibility to ensure that the record reflects that we are formally taking steps to demonstrate the responsibility of this organization for the funds that are accorded to it. L Labonté said that we have been doing business a certain way for nearly 100 years and that he feels it's time we change our way of doing business to address these issues. He noted that everyone does this work from the corner of their desks, and without a detailed map on how to move forward we're going to get into worse trouble. The Strategic Plan will address our revenue sources and identify where and how we spend money, but L Labonté said that we need to review the culture of the organization and how to change it so that we may be come sustainable.

Nolan Steed said he likes the Strategic Plan L Labonté has outlined and noted that since we only meet once per year, things are done slowly. N Steed suggested that there be a more regular contact with the Jurisdictional Representatives during the year to seek input on these issues, as consultation might result in new ideas coming back to the Executive. L Romeo said this is part of the larger picture of having policies and procedures to regulate budgeting through timelines and planning. L Romeo said this information will be shared and that feedback and input will be sought from the JRs.

Amendment: THAT the Conference receive a report from the Executive at next year's Annual Meeting on actions taken to address the budgetary, financial and strategic for the Conference.

Motion carried.

L Romeo thanked the Executive for their work with regard to the financial matters of the Uniform Law Conference of Canada.

Confirmation of the Nominating Committee

N Irving noted that our By-laws require that the Immediate Past President constitute a committee comprised of former presidents to formally nominate the next President and in-coming Vice-President. N Irving said that she has consulted with a number of Past Presidents and will continue discussions throughout the week.

Outline of the Business of the Week

a. Criminal Section

Cathy Cooper said it has been a real honour to be the Criminal Section Chair this year. Unlike the Civil Section, the bulk of the Criminal Section work takes place during this week's meeting and she is looking

UNIFORM LAW CONFERENCE OF CANADA
CONFÉRENCE POUR L’HARMONISATION DES LOIS AU CANADA

forward to it. C Cooper will be assisted by the Section’s Secretary, Dorette Pollard, who is new to the ULCC this year and who has been of tremendous assistance to the Chair already.

This year there are at least 32 delegates in the Criminal Section and nine delegations. As usual, amongst the delegates, we have representation from many sectors within the CJS, including prosecutors, criminal policy counsel, members of the defense bar and, this year, three members of the judiciary – this mix is one of the unique aspects of the ULCC Criminal Section, as compared with other FPT forums.

As many of you know, the bulk of our meeting is spent debating resolutions, most of which recommend specific reforms to the *Criminal Code* and other federal criminal legislation. These are put forward by the various delegations and almost always engender lively and thoughtful debate. This year, 24 resolutions were submitted. They include, just to give two examples:

- A recommendation by the PPSC that a legislative framework be developed for the litigation of informer privilege issues that arise in the course of a criminal trial; and
- A recommendation by Manitoba that the *Criminal Code* be amended to permit a subpoena to issue to a parent of a child witness requiring the parent to produce the child.

In addition to the debate of resolutions our meeting will feature:

- A status report from the Working Group on the Modernization of Notice Provisions;
- A discussion on the impact of the recent SCC decision in *Regina v. Spencer* which decided that law enforcement cannot have warrantless access to basic subscriber information from telecommunications service providers;
- A presentation by the federal delegation on the endorsement of warrants, orders and authorizations for inter-provincial execution; and
- And our Open Forum will be on Forensic Pathology in Ontario’s Criminal Justice System, featuring Ontario’s Chief Forensic Pathologist Dr. Michael Pollanen.

In closing, C Cooper echoed John Lee and Earl Fruchtmann’s welcome to Toronto and expressed the hope that all delegates will enjoy both the meeting and their time in Toronto.

b. Civil Section

Manon Dostie said she is delighted to give an overview of the Civil Sections’ work in the coming week.

At the outset, M. Dostie noted that two Uniform laws were adopted during the year. First, the *Interprovincial Subpoena Act* was adopted in November 2013. Second, the *Uniform International Commercial Arbitration Act* was completed in March 2014. M. Dostie thanked the Working Groups, as well as the respective Chairs, Greg Steele and Gerry Ghikas. It is expected that the four following projects will be concluding this year:

- The renewal of the Wills Act;
- The principles for drafting Uniform legislation giving force of law to international conventions;

UNIFORM LAW CONFERENCE OF CANADA

CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

- The Uniform Act on interjurisdictional recognition of substitute decision-making documents, which is a joint project with our American colleagues of the Uniform Law Commission; and
- The joint project with the Criminal Law Section on the Uniform Missing Persons' Act.

This week we will continue discussions on the Uniform Commercial Tenancies Act, Uniform Rules to implement The Hague Service Convention, and the Interpretation Act. A few subjects will be discussed for the first time, including elder financial abuse and powers of attorney legislation. We will also have a presentation on domestic arbitration, the renewal of the Vital Statistics Act, and our second joint project with our Criminal Law Section colleagues, the enforcement of extraprovincial search warrants.

We will as usual hear reports from the ACPDM and our international colleagues, as well as get a report on the activities in private international law from the Federal Department of Justice.

M Dostie took a moment to thank the working groups and their chairs, who have spent an enormous amount of hours preparing the reports and draft Acts, along with all those who answered her questions throughout the year: Marie Bordeleau, Peter Lown, Lynn Romeo, her federal colleagues, and Clark Dalton, who is really the glue of the Civil Section and works extremely hard all year, almost around the clock.

Report from the Chair of the Publications Committee

Dean Sinclair reported that the website is progressing in three main areas. The first is how Uniform Acts are organized and posted on the website. This area is supported by Ian Rennie of Northwest Territories and Genevieve Harvey of Nova Scotia, both of whom favour a list of the Uniform Acts by name. D Sinclair expressed the hope than progress on this can be made over the next few months so that the finished product of the ULCC can be displayed in a pleasing form and be useful. There is a question of whether we should continue to display supporting documents that show how certain Acts came about; this practice will be continued unless people are opposed to it.

The second area is the correction of obvious grammatical and typographical errors on the French section of the website, with which Stéphanie O'Connor of Justice Canada and Sébastien Bergeron-Guyard of Québec have assisted greatly. They reviewed countless pages of documents and drew up lists of corrections for Ian Rennie to implement. D Sinclair thanked both of them for their hard work. That does not mean that all mistakes have been corrected so if anyone notices an error, they are asked to contact Ian Rennie.

The third area is the development of a timeline by which Annual Meeting materials are due for delivery in French and English for posting on the website, and preparing the groundwork of the Proceedings' annual publication. A protocol is being developed to outline what is posted when and where.

D Sinclair said he would like to have a more esthetically pleasing website, but it's not a high priority right now and no work has gone into that yet, as the consolidation of Uniform Acts is much more urgent. D Sinclair asked delegates to contact him with any questions

UNIFORM LAW CONFERENCE OF CANADA
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

Report from the ACPDM & International Committee

Peter Lown thanked the members of the Committee, all of whom have worked very hard and put in a lot of thought into the meetings. The Committee meets on a monthly basis by conference call for an hour. These calls mean that people have to do their homework ahead of time, be concise in their comments and listen well to their colleagues, and that is a hallmark of how the Committee operates. This also means that there has been good consensus on the decisions that have been made.

The ACPDM has tried to document the process and the expectations of the participants in working groups, and the Committee has become more comfortable, both with the criteria for project selection and approval and with its management of the process as projects develop. There are challenges; leadership and subject matter expertise is one of them. If one is to manage projects on a volunteer basis, then a clear project scope, clear expectations and a gentle but persistent working group chair is essential. The Committee is working on that and making significant strides.

The other aspect is that the Committee is trying to work on the relevance of the choices and the eventual product throughout the project cycle, so that when a project is chosen or approved, it's because it's a needed, relevant project in the first place, and when we complete that project, hopefully two years later, it's still relevant to those who will consume it, and is still needed and wanted by those people. That particular challenge is not new to law reform but it's a challenge we have to make sure we meet, that speaks to earlier discussions today about a strategic plan. If the ULCC is to remain relevant, responsive and needed, and funded, we may have to show that this cycle is a reasonable one and produces excellent results.

There will be two presentations at the Civil Section this week, one on the area of fiduciary access to digital assets, a project which has already been approved. The community is raring to go and we will be able to take significant advantage of the experience of the US to date, as many of the decisions relevant to this topic are made in Northern California, where those large industry corporations have their head offices. The other will review the four-year project plan, a chart the ACPDM uses to monitor its ongoing activities. There are some proposals on it that are under review, some that are slightly on hold and others where tentative decisions have been made but as circumstances change, they may get re-evaluated. P Lown invited comments on Thursday morning after the review of the document so informed decisions can be made as to the projects of the ACPDM.

L Romeo said that as per the long standing tradition, delegates are invited to join her in her suite after the welcome reception tonight and after the BBQ on Tuesday night.

There being no other business, the meeting was adjourned at 2:50pm.