

UNIFORM LAW CONFERENCE OF CANADA

**OTTAWA,
AUGUST 9-13, 2009**

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 1:30 p.m., on Sunday, August 9, 2009, at the Westin Hotel, Ottawa, Ontario, with W. Dean Sinclair as Chair and Claudette N. Racette as Secretary. The Chair welcomed the Commissioners and guests to the 91st annual conference of Uniform Law Conference of Canada.

Introduction of the Executive Committee

The Chair introduced the members of the Executive Committee: himself; Elizabeth Strange, Chair of the Civil Section; Nolan Steed, Nominated Chair of the Civil Section; Marvin Bloos, Chair of the Criminal Section; Luc Labonté, Nominated Chair of the Criminal Section; Kathryn Sabo, Immediate Past President and Russell Getz, Vice-President. He then introduced Claudette Racette, Executive Director of the ULCC and Clark Dalton Projects Coordinator.

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 our foreign guests present at the opening plenary session, Dr. Jorge Sánchez Cordero, President of the Mexican Center of Uniform Law and Amanda Davies, representing the Attorney General for the Commonwealth of Australia. He stated that we were pleased to welcome them back and look forward to receiving their reports.

The Chair stated that later on we would be joined by Justice Martha Walters, the Immediate Past President of the U.S. Uniform Law Commission and their new President, Robert Stein. He was looking forward to their participation. He commented that last month he, Elizabeth Strange and Clark Dalton attended the U.S. conference in Santa Fe, New Mexico. Justice Walters and Robert Stein were gracious, warm and hospitable. He encouraged everyone to try to get to know them during the week.

The Chair then introduced special guest, Doug Melville, Acting Ombudsman and CEO, Ombudsman for Banking Services and Investments in Ontario.

Word of Welcome from the Host Government

On behalf of the Department of Justice Canada, Catherine Kane welcomed everyone to the ULCC annual conference in Ottawa, our National Capital. She commented that members of the Organizing Committee have planned a social program that is both agreeable and very busy. They had a lot of fun organizing this week. It's been in the planning stage for about 2 years. They are pleased that delegates are here in Ottawa and are thrilled that the day has come when we are about to launch the 2009 ULCC annual conference. She gave a brief outline of the social events of the week stating that the Organizing Committee has tried to choose locations that showcase Ottawa's best assets. Details of the social program are listed on the conference badge. If anyone needs further information, they should speak with members of the Organizing Committee, Justice Canada delegates or people in the secretariat – "we are here to make sure that everyone has a good week and a productive conference".

The Chair thanked Catherine, stating that he knows that the Organizing Committee has worked very hard to develop the wonderful social program.

The President's Report

The President, W. Dean Sinclair, was pleased to present the following report:

Introduction

It has been an honour and a privilege to serve as the President of the Uniform Law Conference of Canada. I have had the pleasure of working closely with members of the Executive Committee, the Criminal and Civil Section Steering Committees and the Advisory Committee on Program Development and Management. I have learned much about the Uniform Law Conference of Canada in the last twelve months. Although I have been attending the annual meetings of the conference for eleven years now, and although I have always been impressed by the levels of commitment and the willingness of commissioners to undertake Conference projects, as President I have truly come to appreciate all that is done and all that has to be done to ensure the continuing success of our Conference.

Over the last nine decades, the Uniform Law Conference of Canada has made some important contributions to the reform and harmonization of Canadian laws. In recent years, our contributions have increasingly been noted in the media and our work is increasingly being cited in judicial decisions.

For example, earlier this year, in the case of *Lloyd's Underwriters v. Cominco*, the Supreme Court of Canada referred to Conference materials and used them as an aid to interpret a British Columbia statute that was modeled on the *Uniform Court Jurisdiction and Proceedings Transfer Act*. That Uniform Act was adopted by the Conference in 1994 and has been enacted into law in the Province of British Columbia and other jurisdictions. The Court was assisted by the work of

this Conference in its determination of a complex jurisdictional issue in a lawsuit worth several hundreds of millions of dollars.

In the last twelve months, the British Columbia, Saskatchewan and Prince Edward Island Courts of Appeal have made reference to Conference materials or Uniform Acts in three civil actions. In the Saskatchewan case, it was Madam Justice Jackson, a former President of this Conference, who referenced Conference materials in her decision. In the last twelve months, trial judges have referred to your work in approximately twenty other reported cases.

As a jurisdictional representative to the Criminal Section, I know from experience that Criminal Section resolutions adopted by the Conference are often enacted into law by the Parliament of Canada. The Criminal Code contains numerous substantive and procedural criminal law provisions that were first suggested by the commissioners of the Uniform Law Conference of Canada.

The message in all of this is simple. This week, you will consider, debate and decide dozens of important legal issues in furtherance of Conference objectives. Whether you are a member of the judiciary, a public official, a private practitioner or an academic, the work you will do this week and in the coming year as commissioners to the Uniform Law Conference of Canada will have an impact on the Canadian legal system. You are performing a service that has tremendous value to the jurisdictions you represent and I know you will perform your duties as commissioners with that fact in mind.

Activities and Achievements during the Last Year

Over the course of the last year, members of the Executive have worked to keep you and other interested persons informed about the ongoing activities of the Conference. The Conference distributed communiqués in November and March. I provided Deputy Ministers with a report about Conference projects last November. The Conference mailed out updates to the Commercial Law Strategy Binder. Those materials can be found in most law libraries in Canada. Recently, the Conference mailed out the Commercial Law Strategy Newsletter.

In January 2009, Darcy McGovern and I made a presentation to a meeting of Deputy Ministers. Our intent was to ensure that Deputies were fully informed about Conference projects and to emphasize that jurisdictions are getting good value for the modest contributions they make to support the Conference. I believe that our message was well received. Several Deputy Ministers, most notably the Deputy Ministers of Canada, Quebec, Manitoba and Saskatchewan expressed strong support for the Conference. I personally invited more than one Deputy Minister to attend our annual meeting and I hope that you repeat that invitation to the Deputy Ministers in your jurisdictions after this annual meeting.

Unfortunately, the jurisdictions which support this Conference have been forced to confront and respond to a severe economic recession. Despite the recession, contributions to the general activities and the Commercial Law Strategy have been received from the majority of jurisdictions. We are still waiting for a decision by the Province of Newfoundland and Labrador,

although I am pleased to report that Newfoundland has sent representatives to attend both the Civil and Criminal Sections of this annual meeting.

We are also awaiting word from the federal government about our application for funding to support the research activities of the Conference. As you know, the support that we receive from federal Justice is absolutely vital to our ability to undertake new projects. I am hopeful that the government will approve our application soon.

Approximately two weeks ago, we were informed by the Province of British Columbia that it will not be contributing funds to support the general operating budget of the Conference or the Commercial Law Strategy this year. For the first time in as many years as I have been attending this conference, British Columbia is not sending representatives to the Criminal Section of the Conference. This is a disappointing development. However, I have been assured by the British Columbia Assistant Deputy Minister that British Columbia values the contributions of the Conference and will hopefully be in a position to resume its full support of Conference projects next year.

In summary, this has been a challenging year. The events of the last twelve months make it clear to me that we need to work hard to demonstrate our continuing relevance to the jurisdictions that support us. In that endeavor, the Conference will be assisted by the efforts of all commissioners to remind politicians, public officials and the media of the valuable contributions this Conference has made and will continue to make if it is properly funded.

I want to specifically mention the work that has been done by the Advisory Committee on Program Development and Management under the leadership of Peter Lown, Q.C. I understand that Peter will give a detailed report about the activities of the Advisory Committee and so I will leave the details to him. However, I think it is important to acknowledge the Committee's efforts to undertake the management of the medium and long-term research agenda of the Conference. The Advisory Committee is doing excellent work. I believe that its efforts to identify research projects which are likely to be of interest to the jurisdictions that support us will be of invaluable assistance in persuading jurisdictions to maintain and enhance their support of the Conference. Thank you Peter, and thanks to all of the members of the Advisory Committee for the fine work you have done.

There is another reason to be optimistic about the future. In the last year, many jurisdictions have adopted or started the process of adopting several Uniform Acts. There is no better way to demonstrate the value of Conference work than to point to the willingness of jurisdictions to enact the Conference's Uniform Acts. It is clear to me that jurisdictions continue to value the work we are doing. It is also obvious that jurisdictions are getting good value for the amounts they invest in the Conference. It is our responsibility as commissioners to carry that message back home with us after this annual meeting concludes.

It is gratifying to see that there are many relatively new commissioners at this annual meeting who have volunteered their time and expertise to work on Conference projects. We rely heavily on those kinds of efforts. That is one of the reasons why Russell Getz, John Twohig, Claudette Racette and I hosted an orientation session with newly appointed jurisdictional representatives

from the Civil Section. This conference relies heavily on all the contributions of commissioners. Therefore, to the extent that the orientation session encouraged new commissioners to participate fully in all of the business and social events planned for this week, it was an extremely useful exercise.

I encourage all commissioners, new or experienced, to consider how they might be of assistance to the Conference after this annual meeting is over.

International Cooperation

I want to extend a warm welcome on behalf of the whole Conference to Justice Martha Walters, Robert Stein and Dr. Jorge Sánchez Cordero. Justice Walters is the past President of the American Uniform Law Commission. Robert Stein was elected to be President of that organization just last month. Dr. Jorge Sánchez Cordero is the General Director of the Mexican Center of Uniform Law.

In the last several years, our relationship with the Uniform Law Commission of the United States and the Mexican Center of Uniform Law has strengthened considerably. Last year, we worked with our American and Mexican partners to develop common principles concerning unincorporated non-profit associations. Those common principles served as a basis for the Uniform Acts which were passed by the American and Canadian conferences. In the last twelve months, we have been working with our North American partners on two other joint projects – the UN Convention on the Assignment of Receivables in International Trade and the UN Convention on Independent Guarantees and Stand-by Letters of Credit.

Last month, Elizabeth Strange, Clark Dalton and I attended the annual meeting of the American Uniform Law Commission in Santa Fe, New Mexico. Our American hosts, led by Justice Walters and Robert Stein, were most gracious. Besides attending various sessions of the Uniform Law Commission, we participated in a meeting of the International Legal Developments Committee to identify other potential projects that our respective organizations might be able to collaborate on. Those discussions will continue this afternoon.

I also must say a word or two about the close relationship between the Uniform Law Conference of Canada and the Mexican Center of Uniform Law. In October 2008, the Mexican Center of Uniform Law helped sponsor an international comparative law conference in Mexico City. Dr. Sánchez Cordero invited Russell Getz and Peter Lown to attend that conference as guests of the Mexican Center of Uniform Law. It was an extremely very generous gesture. I have spoken with Russell, Peter and Kathryn Sabo, who was representing the Canadian government, and all of them were very impressed with the meetings they attended and the hospitality they enjoyed. On behalf of the Uniform Law Conference of Canada, I want to say how much we appreciate Dr. Sánchez Cordero's kindness.

I am also very pleased to welcome Amanda Davies, representing the Attorney General for the Commonwealth of Australia. This week, Amanda will present a report from the Standing Committee of Attorneys General from Australia and New Zealand. She may mention that last year, the Australian Commonwealth held its first ever uniform law conference. At that

conference, the Australian Attorney General acknowledged the fine reputation of the Uniform Law Conference of Canada and made it clear that, to a large extent, our Conference served as a model for theirs.

International harmonization projects are likely going to occupy more of our time in the future. For that reason, the Executive Committee recognized that we needed to develop a more effective process to identify and manage joint international projects. The Executive Committee was aware of the Advisory Committee's efforts to develop rational project selection criteria. Accordingly, the Executive Committee asked the Chairperson of the Advisory Committee to chair our Conference's International Committee. Peter has graciously agreed to take on that important role in addition to his other responsibilities. I hope that this development will enhance cooperation and communication between our organization and our international partners.

Acknowledgments

I want to thank all the members of the Executive Committee who have assisted me in the performance of my duties over the last year. I relied on the advice and assistance of our past President, Kathryn Sabo, and our Vice President, Russell Getz, many times. Kathryn and Russell were always there when I needed them and I want to thank them both very much.

I want to thank Marvin Bloos and Elizabeth Strange, the current Chairs of the Criminal and Civil Sections for all of the work they did in organizing the work for this year's annual meeting. Thanks also to Nolan Steed and Luc Labonté, the incoming chairs for all of their advice and assistance.

Thanks also to Darcy McGovern for helping me with my report to the Deputies and for chairing the meetings of the Advisory Committee in Peter's absence.

Clark Dalton has answered dozens of my questions about the Commercial Law Strategy and other Civil Section projects. As the Projects Coordinator, Clark has proven to be an invaluable source of information for me. Thank you Clark.

Stéphanie O'Connor, the Secretary of the Criminal Section has once again done an excellent job in helping the Chair of the Criminal Section to organize the work that will be done by the Criminal Section. I know from experience that Stéphanie puts in countless hours in performing that function. This year she had to work extra hard as one of the members from Justice in organizing all of the events of this annual meeting. I want to express how grateful we are for her efforts.

I want to thank all of the Jurisdictional Representatives for their time and effort too. The Jurisdictional Representatives are our key contact people. We rely heavily on them to organize jurisdictional delegations, to communicate with us during the year about harmonization developments and to promote the Conference in the jurisdictions they represent. I look forward to the meeting of Jurisdictional Representatives which I will be chairing on Tuesday.

I want to express my deep appreciation for all of the excellent work done by project leaders and working group participants in the last twelve months.

I want to extend special thanks to Tim Rattenbury for all of the hard work he does in the production of the Annual Proceedings. Tim reviews and edits the entire proceedings, in both French and English before sending them to be printed. It is a huge job and he deserves our thanks for volunteering to do it.

I also want to thank the people at the Saskatchewan Queen's Printer for the work they do to format the Annual Proceedings and to produce the up-dates to the Commercial Law Strategy binder.

Thanks also to our new webmaster, Tim Young for the work he has done on our new web site.

There is one last person to thank. Most of you know that Claudette Racette is the Executive Director of the Conference. Most of you have heard past Presidents compliment Claudette about her tireless and dedicated efforts on behalf of the Uniform Law Conference of Canada. Most of you have heard past Presidents praise Claudette for her invaluable assistance and advice. I am here to say that none of those past Presidents were exaggerating. Madame Racette, I want to thank you from the bottom of my heart for your patience, wise counsel, unbelievable corporate memory and amazing devotion to this Conference.

Finally, I want to thank all of the federal, provincial and territorial jurisdictions for their continued support of the Conference even in these difficult economic times. It must be understood that jurisdictions offer more than just financial support. Jurisdictions support the Conference by appointing dedicated lawyers as Uniform Law Conference commissioners. Without that kind of support, nothing could be accomplished.

Financial Resolutions

a. Approval of Audited Statements

MOVED by Marvin Bloos, seconded by Catherine Kane, **THAT** the Audited Statements for the fiscal period 2008-2009, be approved as presented. Motion carried.

b. Approval of Auditors

MOVED by Elizabeth Strange, seconded by Nancy Irving **THAT** the firm of Stephen H. Saslove be appointed as Auditors for the Uniform Law Conference of Canada for the fiscal period 2009-2010. Motion carried.

c. Banking Resolution

MOVED by Nolan Steed, 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 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 2009-2010

MOVED by Russell Getz, seconded by Peter Lown, **THAT** the budget for the fiscal period 2009-2010 be approved subject to modification if necessary following the discussion of the work plan and the budget for the Research “B” activities later on in this conference and Justice Canada’s response to our funding application. Motion carried.

Confirmation of the Nominating Committee

Kathryn Sabo, Chair of the Nominating Committee, reported that she had had discussions with the Past Presidents and that she would be having further discussions with the Past Presidents present at this annual conference. She will be reporting back to the delegates at the closing plenary.

Outline of Business of the Week

a. Criminal Section

The Chair, Marvin Bloos, Q. C., was pleased to report that the Criminal Section had 36 delegates from 9 provinces and territories and the Federal Government. The delegates included members of the judiciary, prosecutors, defence counsel, and a number of people who can only be described as policy experts in criminal law.

Again this year the Criminal Section will begin the session with a report from the senior delegate from Justice Canada, Catherine Kane. She will review the initiatives taken over the past year that have originated from the Uniform Law Conference of Canada. The Section will then be considering 35 Resolutions encompassing a wide range of matters including *The Youth Criminal Justice Act* and a proposal to amend the *Criminal Code*’s impaired driving provisions. The Section will also be considering the working group report on *Taking into Account Pre-Sentence Custody and the Availability of Certain Sentencing Measures*.

The Criminal Section looks forward to meeting with colleagues from the Civil Section on Tuesday to consider several joint projects. The Chair looks forward to all of the Criminal Section meetings in the week ahead and to what he hopes will be a very interesting, informative and productive time for the delegates.

b. Civil Section

Before outlining the work plan for the week, Elizabeth Strange, Chair of the Civil Section wanted to thank Claudette Racette, Executive Director of the ULCC and Clark Dalton, Projects

Coordinator for all their help this year. She also wanted to recognize members of the Organizing Committee for their hard work in organizing the annual conference.

The Civil Section can look forward to an interesting and challenging week. The Civil Section is hoping to adopt *Amendments to the Uniform Retirement Plan Beneficiaries Act* and approve in principle the *Model Act on Abuse of Process* and the *Uniform Implementation Act for the Hague Convention on Choice of Court Agreements*.

Several reports will be received and papers will be presented on the following topics:

Interest Act Review, Personal Property Security Act, International Law Session, Fraudulent Conveyances and Preferences, UN Convention on Independent Guarantees and Stand-by Letters of Credit, Uniform Trustee Act, Identity Theft – Breach Notification and Wills and Succession Conflict Provisions.

The Section will be asked to consider potential projects on the *Convention on the Use of Electronic Communications in International Contracts, Substitute Health and Personal Care Decision Making and Trust Indenture Provisions in Corporate Statutes.*

She was pleased to report on the on-going collaboration between the Civil and Criminal Sections throughout the year. There will be a joint session on Tuesday to consider reports on *The Collateral Use of Crown Brief Disclosure, Malicious Prosecution and Interprovincial Service of Offence Notices*. A report from Justice Canada on *Private International Law* will also be presented.

She was honoured to welcome representatives from Mexico, the United States and Australia who will speak about their respective organizations and the work they have done over the past year. International collaboration and cooperation continues to be an exciting development. She believes that it will continue to expand over the next several years.

Finally, having already acknowledge the supreme efforts of Claudette and Clark for making the conference work, she also wanted to take this opportunity to cite individuals whose critical efforts have helped her get to this point. The members of the Advisory Committee on Program Development and Management chaired by Peter Lown, the Jurisdictional Representatives and their participation as members of the Civil Section Steering Committee, the Chairs of the working groups for their efforts to keep projects moving and the members of the working groups. She thanked Sarah Dafoe for agreeing to take the minutes of the Civil Section meetings, Nolan Steed, Marvin Bloos and Stéphanie O'Connor for their input on various issues that have come up over the past year, and lastly, Dean Sinclair, the President for his leadership and for all of his encouragement and support over the past year.

Adjournment

There being no other business, the meeting was adjourned.