

**Uniform Law Conference of Canada
Minutes of the Opening Plenary Session
Held in Halifax, NS
On Sunday August 22, 2010 at 1:45pm**

Opening Remarks

The meeting was called to order at 1:45pm on Sunday August 22, 2010 at the Halifax Westin Nova Scotian in Halifax, NS with President Russell Getz as Chair and Marie Bordeleau as Secretary. The President welcomed the delegates and guests to the 92nd Annual Meeting of the Uniform Law Conference of Canada, particularly those attending for the first time.

Introduction of the Executive Committee

Russell Getz introduced the members of the Executive Committee: himself; W. Dean Sinclair, Immediate Past President; Michel Breton, Vice-President; Luc Labonté, Chair of the Criminal Section; Nolan Steed, Chair of the Civil Section; outgoing Executive Director Claudette Racette; the incoming Executive Director, Marie Bordeleau. Mr. Getz also introduced the Chair of the International Committee and Advisory Committee on Program Development & Management, Peter Lown, and our Program Director, Clark Dalton as well as the Criminal Section Secretary, Joanne Dompierre.

Introduction of Commissioners

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

Introduction of Foreign Guests

The President extended a warm welcome to all guests and to our American guests, Robert A. Stein, President of the United States Uniform Law Commission (ULC), and Michael Houghton, Chair, Executive Committee of the ULC. Mr. Stein said that the US conference, held last month in Chicago, was a complete success and one of the best attended in the organization's 120 year history. Mr. Getz said that he hoped that our hospitality would approach the kindness which was extended to him and Peter Lown when they attended the US conference in Chicago in July.

The President noted with regret that Jorge Sánchez Cordero Dávila, President of the Mexican Uniform Law Centre, was unable to attend due to health issues, and that Amanda Davies of the Office of the Attorney General of Australia was also unable to attend. They had both sent their regrets and best regards to the delegates. The President also indicated that Jeff Schnoor, Deputy Minister of Justice for Manitoba, would join the Conference the following day.

Welcome from Host Government

On behalf of the Nova Scotia Department of Justice, David Nurse welcomed the delegates to Nova Scotia for the 2010 Conference. David Nurse gave a brief outline of the social program for the week and noted that the Secretariat for the Conference was in the Maritime Room and was fully staffed for the delegates' for the duration of the Conference. Ron McDonald announced that the softball game would

begin at 5:30pm on Tuesday afternoon, pitting the East against the West as usual. A captain had to be appointed for each team. Ron McDonald volunteered to be the umpire at the game. The BBQ would be held at the hotel at 7:30pm following the game.

President's Report

Bonjour et bienvenue a notre Conférence annuelle de deux mille dix. It is a pleasure to be here in Halifax for our 92nd year. It has been an honour to serve as President of the Uniform Law Conference of Canada. It has also been a true pleasure because of the willingness and generosity with which so many people commit themselves to the work of the Conference.

Accomplishments and Activities of the Past Year

This year has been one of both challenges and accomplishment. The members of the Executive, together with the Civil and Criminal Steering Committees, the Advisory Committee on Program Development and Management, other committees and working groups, as well as our Executive Director and Projects Co-ordinator, have addressed themselves to the tasks at hand and have worked over the course of the past year to ensure that the ULCC is well positioned to meet the challenges and opportunities of the future.

The Advisory Committee on Program Development and Management held a productive face to face meeting in Ottawa in October, 2009 to plan for future projects, and will be making a report of potential future projects on Thursday of this week. I would like to thank the chair, Peter Lown, and the members of the committee for their fine work.

The drafting of uniform acts is an essential element of the work of the ULCC. Valerie Perry, Chief Legislative Counsel of Manitoba and Chair of our Drafting Section, has the responsibility of identifying legislative drafters across the country. This is by no means an easy task, as drafters are limited in number and are very busy. Also, the ULCC is of course committed to bi-lingual drafting. I would like to thank Valerie and express the appreciation of the ULCC to those jurisdictions which come forward to take up this important task. I have had the opportunity of discussing the challenges and possibilities with Valerie and the other members of the Executive. This subject will be on the agenda of the meeting of the Association of Legislative and Parliamentary Counsel at their annual meeting in Ottawa next month. We will also be discussing these matters with the Jurisdictional Representatives at our meeting on Tuesday. It is important that Jurisdictional Representatives convey to their ministries the importance of jurisdictions taking turns in making drafters available for uniform law projects. I would anticipate that this will also be mentioned in the fall letter to deputy ministers. Although drafters no longer meet in their section at our annual meetings, it is most welcome when individual legislative counsel are able to attend as members of their jurisdictions' delegations.

Last fall, Tim Rattenbury stepped down as editor of the Annual Proceedings, both English and French editions, after many years. I had the honour of formally thanking Tim on behalf of the ULCC for his remarkable dedication and contribution. We were confronted with the challenge of finding a successor to Tim, and I am very pleased to advise that Ian Rennie has most generously stepped forward to become our new editor. I would like to express our great appreciation to Ian.

If we are to make the work and products of the ULCC known so that they may be available and useful to Canadians, nothing is more crucial than our website. This afternoon we shall hear a report from Dean

Sinclair, our Immediate Past President and Chair of the Publications Committee with respect to the important work being done to modernize and improve our website. Our website records an average of over 1,200 sessions per day and has become essential to developing and ensuring the relevance of the ULCC to the Canadian legal and public policy communities. I would like to thank Dean and the committee for undertaking this vital task.

International Co-Operation

It is with great pleasure that, on behalf of the ULCC, I welcome Mr. Robert Stein, President of the US Uniform Law Commission and Mr. Michael Houghton, Chair of the US ULC Executive Committee.

In the past year we have continued our relationship of co-operation with our international colleagues. As agreed last year, following the fall planning meeting of the Advisory Committee on Program Development and Management, I wrote to President Stein, suggesting potential subjects for co-operation. Following exchange of correspondence, two areas of immediate mutual interest were identified: Mareva injunctions, and the cross-border recognition and enforcement of civil protection orders. Peter Lown is advising a US ULC study group on the law of Mareva injunctions in Canada. We will be considering an initial report this week on recognition and enforcement of cross-border civil protection orders, and the US ULC has indicated that it would welcome a joint consideration of the potential scope for co-operation on this subject.

In July, Peter Lown, as chair of our International Committee, and I, together with Jorge Sánchez Cordero Dávila, President of the Mexican Uniform Law Centre, were guests of our American colleagues, at the annual meeting of the US Uniform Law Commission in Chicago. As all of our colleagues who have preceded us will know, we were welcomed most graciously. I had the opportunity to address the general meeting with respect to the nature and current work of the ULCC, and Peter and I, together with Jorge Sánchez Cordero Dávila, participated in a free ranging discussion with the members of the US ULC Committee on International Co-Operation. Based on the strong platform of past success it is evident that there are several avenues of co-operation, including the sharing of information and ideas; developing common approaches to matters of mutual interest, as we have done with the international conventions on the Assignment of Receivables and on Independent Guarantees and Stand-by Letters of Credit; developing specific projects on a principle-based approach, such as the project on Unincorporated Non-profit Associations; and the resolution of inter-jurisdictional recognition and enforcement issues in areas of mutually benefit. We look forward to continuing this process with our guests at the meeting of our International Committee later this afternoon.

I regret that Jorge Sánchez Cordero Dávila is unable to join us this year due to illness. I have conveyed to him our best wishes for his speedy recovery. Dr. Cordero has kindly provided us with the text of his intended address. For the last several years we have had the pleasure of welcoming Amanda Davies of the Office of the Attorney General of the Commonwealth of Australia. Unfortunately, Amanda has advised that she regrets that neither she nor any of her colleagues will be able to attend our conference this year. Amanda did convey her very best regards to the members of our conference, and expressed the hope that they will be able to join us again in the future. I believe that there is real scope for future collaboration between the Canadian and Australian conferences.

As everyone assuredly knows, our incomparable Executive Director, Claudette Racette will be retiring in September. We know that this is a wonderful thing for Claudette, but it is of course a rather melancholy

event for the rest of us. Fortunately we shall have the opportunity this week to convey, however inadequately, our gratitude and high regard for Claudette.

This has of course occasioned the need to seek a successor to Claudette. Indeed this was one of the most important tasks facing the Executive this year. Accordingly, in September, 2009, the Executive convened a Search Committee for a new Executive Director consisting of myself as chair, and including Michel Breton, Catherine Kane, Peter Lown and Claudette Racette. After a thorough and extensive process in which a number of well qualified candidates were considered and interviewed, I am very pleased to advise that the Executive has secured the services of Ms. Marie Bordeleau. We are most fortunate to have in Marie someone of excellent experience, knowledge and who is so highly recommended. On behalf of all of us, I extend an enthusiastic welcome to Marie. We look forward to a long and happy association.

An important part of the work of the Executive is communicating with the governments of the jurisdictions, and given the challenging financial circumstances of jurisdictions, the Executive has devoted particular attention this year to our communications and relations with the jurisdictions.

I had the opportunity to prepare a report for the October, 2009 meeting of the FPT Ministers Responsible for Justice on the current work of the ULCC. And, in January of this year, I appeared before the meeting of the FPT Deputy Ministers Responsible for Justice. This was an opportunity to speak of the accomplishments and value of the ULCC and to both thank the jurisdictions for their continuing commitment to the ULCC and to stress how necessary is their financial support for the Conference to be able to continue to do its valuable work on behalf of Canadian jurisdictions, the importance of sending delegates to both sections, and of assisting with project work and drafting.

Several deputies expressed their appreciation for the Conference and its work. I extended a personal invitation to each of the deputies to attend the annual meeting; and I had the opportunity to speak to several deputies individually. I would like to express on behalf of the Conference, my deep appreciation to Jeff Schnoor, Deputy Minister of Justice of Manitoba, who spoke eloquently to his colleagues of the value of the Conference. I will be very pleased to welcome Jeff to the annual meeting, when he joins us tomorrow. As many of you will know, Jeff is a past president of the ULCC, and our liaison with his colleagues. We have had the benefit of Jeff's advice this year, and we thank him for his invaluable work on behalf of the ULCC.

From the foregoing, the ULCC's vigour, relevance and the esteem in which it is held are evident. However, adequate resources are an element of this success, and, in light of current economic circumstances, the ULCC faces financial pressures.

Current Financial Situation

As we all know, the Uniform Law Conference manages its finances with great care. However, the ULCC does not have guaranteed ongoing funding. We share the pressures that everyone experiences. Due to general economic conditions and financial pressures on the jurisdictions, our revenues have been affected, and this year, due to a decrease in revenues, even after paring back expenditures to a minimum, we have an operating deficit.

The good news is that we anticipated this shortfall and are able to deal with it. You will see this in the budget. The federal contribution has been restructured to become an outright grant available to us at

the beginning of the fiscal year. This will be of great value to our ability to plan our operations and programs. However, at least for the foreseeable future, the total annual amount has been reduced by \$18,170. Fortunately, this will be addressed by the application of funds held in reserve for such eventualities. The ULCC, in 2001, through the foresight of the Executive and the Executive Director established this reserve. This fund has been made possible by savings realized from the reduction of expenditures wherever possible, from savings achieved through volunteer work on projects, and from the provision of translation services by individual jurisdictions. On the expenditure side, there is the prospect of increased costs associated with some of our future annual meetings. In particular, in 2012, the ULCC annual meeting is scheduled to be held in Whitehorse, Yukon, which will present significant financial challenges. The most recent information on the cost of simultaneous interpretation for that venue is \$45,963. (The typical annual cost of simultaneous interpretation is in the order of \$20,000.) The ULCC Executive has approached the federal Deputy Minister of Justice with a view to exploring the possibility of federal assistance with respect to the costs of simultaneous interpretation in Whitehorse. Unfortunately, we have recently been advised that such assistance will not be possible. The cost of annual meetings will be a topic at the meeting of the Executive and the Jurisdictional Representatives on Tuesday, as indeed will jurisdictional support generally.

Fiscal 2010-11 is the last year of the current three year period of commitment for the jurisdictions' contributions to the Commercial Law Strategy. It is essential for the ULCC's research activities that these contributions continue in fiscal 2011-12 and beyond, to ensure the ULCC's ability to maintain its program of research and development, including the position of Projects Co-ordinator. Accordingly, I have written to all those jurisdictions that currently contribute to the CLS to request that they continue to make those contributions. I have also written to the Jurisdictional Representatives of those jurisdictions to stress the importance of this initiative and their crucial role in securing these needed contributions. In my letter, I noted that the CLS has been so successful that it has been integrated into the Civil Section so that its multi-year forward planning, research and development methodology may be applied to civil law projects and initiatives generally.

In most instances, the ULCC has been most fortunate in its ability to attract expert advice on a completely pro bono basis. However, we ought reasonably to expect that it may generally be necessary to provide remuneration in the future. In the longer term there is also a need to endeavour to secure contributions from those jurisdictions that do not presently do so. It will also be necessary to increase future revenues. General contributions to the ULCC have not, with the exception of Ontario, increased since the early 1990s. Accordingly the ULCC Executive has concluded that in view of the anticipated increasing expenditure pressures, it will be appropriate, and indeed necessary, as fiscal stability returns to Canadian jurisdictions, to seek increases in the general annual contributions from jurisdictions. We have to stress that in difficult economic times, the ULCC can be of even more crucial value, and can make an especially important contribution to Canadian governments, businesses and citizens in responding to our fiscal and economic reality.

The record of nine decades of achievement and contribution to Canadian law continues to grow: there have been 11 uniform enactments since August of 2009. The Criminal Code of Canada contains many provisions originating in resolutions of the Criminal Section, which provides a unique national forum for developing reforms to the criminal law of Canada. The recognition of the work of the ULCC continues to grow. Since 2000, there have been some 84 judicial references to uniform statutes, with 16 in 2009 and 2010. Also since 2000, the ULCC or uniform acts have been referenced in over 206 monographs, articles and papers.

By marshalling the knowledge and experience of public lawyers, members of the private bar, representatives of law reform agencies, law professors and judges, the ULCC is able to provide independent, expert analysis and recommendations to Canadian governments in a timely and immensely cost effective fashion that would not otherwise be available to any single jurisdiction.

We can say, I believe, that the ULCC is a quintessentially Canadian success story, in that Canadians have made the challenge and imperative - that is, our need to co-operate, into a source of strength – the creative harnessing of diverse talents and perspectives that would not have been achieved without the spur of that challenge.

Acknowledgments

In addition to those individuals whom I have had the opportunity to thank in connection with the subjects that have been discussed, I would like to express my gratitude to the following people:

- I want to thank all the members of the Executive Committee who have assisted me throughout the year. I have had the benefit of the wise counsel of our Immediate Past President, Dean Sinclair and our Vice-President, Michel Breton. Dean and Michel have always been more than willing and able to do whatever was needed. I want to thank Nolan Steed and Luc Labonté, the Chairs of the Civil and Criminal Sections for all the work they have done in preparing and leading the work of their sections throughout the year. I'd also like to acknowledge the contributions of the incoming chairs, Josh Hawkes and Abi Lewis.
- Clark Dalton, our Projects Co-ordinator, has been invaluable to me, the Executive and the Advisory Committee. Thank you so much, Clark.
- Last fall, Stephanie O'Connor stepped down as Secretary of the Criminal Section, at which time the Executive formally expressed to her the gratitude of the Conference for all her fine work. I would also like to thank Stephanie's successor, Joanne Dompierre, for her work this year, in which she has been ably assisted by Karin Molzahn.
- I want to thank the Jurisdictional Representatives who constitute the ultimate core of the ULCC. It is the Jurisdictional Representatives who build the delegations, staff the Section Steering Committees, and most crucially, are the embodiment of the ULCC to their respective jurisdictions. As such, they explain and promote uniform statutes and recommendations, and ensure that the value of the ULCC is understood. I am looking forward to the meeting of the Executive and JRs. In speaking of Jurisdictional Representatives, I would note with regret the absence of Daniel Grégoire. Daniel is someone who truly embodies the spirit of the ULCC. I would like to say how much we miss his sparkling presence, although the Western baseball team will experience at least some mixed feelings of relief!
- On behalf of the Conference, I want to thank the project leaders and working group members for their excellent work throughout the year. I also want to thank the people at the Saskatchewan's Queen's Printer for their work on the Annual Proceedings and Commercial Law Strategy binder up-dates. Thanks also to Tim Young, for his work as our webmaster.

- My last person to thank is our Executive Director, Claudette Racette. Claudette has been at the centre of the ULCC since 1992. Her accomplishments on our behalf are known to us all. As president I have had the opportunity as have all my predecessors, to see clearly the scope and nature of her untiring dedication. I simply cannot thank her enough for all she does and has done.
- I want finally to thank all the federal, provincial and territorial jurisdictions for their continued support in these difficult economic times. But more than financial support, their appointment of conscientious people is of seminal importance.

I began by speaking of the generosity and dedication of so many people, and I would simply conclude by saying that the achievements of the ULCC are the sum of all your contributions.

Financial Resolutions

a. Approval of Audited Statements

MOVED by Luc Labonté, seconded by Lynn Romeo, **THAT** the Audited Statements for the fiscal period 2009-2101 be approved as presented. Motion carried.

b. Approval of the Auditors

MOVED by Nolan Steed, seconded by Catherine Kane, **THAT** the firm Stephen H. Saslove, be appointed as Auditors for the Uniform Law Conference of Canada for the fiscal period 2010-2011. Motion carried.

c. Banking Resolution

MOVED by Michel Breton, seconded by Arthur Close, **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 purposed 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 2010-2011

MOVED by W. Dean Sinclair, seconded by Susan Amrud **THAT** the budget for the fiscal period 2010-2011 be approved, subject to modification if necessary following the meeting of the Executive Committee in November 2010. Motion carried.

Confirmation of the Nominating Committee

W. Dean Sinclair noted that the Immediate Past President chairs the Nominating Committee for the purpose of nominating the next President and Vice-President. Mr. Sinclair asked four long-term delegates to the Conference, Catherine Kane, Earl Fruchtmann, Peter Lown and Greg Steele to serve, and noted that the Committee has representation from across the country as well as the Civil and Criminal Sections. Mr. Sinclair will report on their discussions at the Closing Session.

Outline of the Business of the Week

a. Criminal Section

Luc Labonté noted that there are 27 resolutions to address in the Criminal Section this week. Even though there are fewer resolutions than usual, the quality of those resolutions is high, and there should be interesting and solid debates throughout the Conference. Subjects addressed will include criminal harassment, the Corrections Act and restitution.

b. Civil Section

Nolan Steed, Chair, reported that there are 23 separate subject matters, including four to be considered jointly with the Criminal Section. Nolan Steed said it will be proposed during the Civil Section session that the group accept Draft, Uniform or Model legislation on such things as the *Hague Convention on Choice of Court Agreements*, the *Uniform Child Status Act*, and the *Convention on the use of Electronic Communications in International Contracts*. Mr. Steed thanked the working groups who brought these projects to fruition. The Civil Section will receive status reports and substantive reports on a number of on-going projects such as the *Voting Provisions* and the *Uniform Trustee Act*. The Civil Section is also expecting four proposals to begin new projects. Mr. Nolan thanked Clark Dalton for his invaluable support, as well as Claudette Racette.

Report from the Chair of the Publications Committee

W Dean Sinclair noted that the Publications Committee was constituted last year to find a replacement for Tim Rattenbury, who retired as the Editor of the hard copy Proceedings after many years of service. W Dean Sinclair said he was delighted that Ian Rennie has agreed to serve as the new Editor and thanked him for volunteering.

The other pressing issue facing the Committee is whether the Proceedings should continue to be published in hard copy or be published solely in electronic format on our website. Significant improvements must be made to our website if we are to dispense with the hard copy of the proceedings. The Committee has retained the services of a design firm to create a new, fully searchable website for ULCC, and W Dean Sinclair stated that Phase I is now complete. W Dean Sinclair thanked Justice Canada for allowing the ULCC to use unallocated monies for this purpose. There remains a lot of work to be done before the updated website can go live and Mr Sinclair noted that the proposed website he will show the delegates is very much a work in progress. W Dean Sinclair noted that a debate rages on as to the logo for the website and ULCC in general and that the logo on the shadow website is not the final one.

Ian Rennie spoke to the 2009 copy of the Proceedings and noted that most of the documents contained therein are already on our existing website. The new site will be managed by a CSM, which uses a database behind the scenes to manage the information. The proposed website has tabs, a private search engine and is platform independent. It will also be able to navigate between French and English pages easily, and be capable of generating .pdf files

Other Business

There being no other business, the meeting was adjourned at 3pm.