

**Uniform Law Conference of Canada
Minutes of the Opening Plenary Session
Held in Winnipeg, MB
On Sunday August 7, 2011 at 1:30pm**

Opening Remarks

The meeting was called to order at 1:40pm on Sunday August 7, 2011 at the Fairmont Hotel Winnipeg in Winnipeg, MB with President Michel Breton as Chair and Marie Bordeleau as Secretary. The President welcomed the delegates and guests to the home of the Jets and to the 93rd Annual Meeting of the Uniform Law Conference of Canada, particularly those attending for the first time.

Introduction of the Executive Committee

Michel Breton introduced the members of the Executive Committee: himself; Russell Getz, Immediate Past President; Darcy McGovern, Vice-President; Josh Hawkes, QC, Chair of the Criminal Section; Abiodun Lewis, Chair of the Civil Section; Executive Director, Marie Bordeleau. Mr. Breton also introduced the Chair of the International Committee and Advisory Committee on Program Development & Management, Peter Lown, QC, and our Program Director, Clark Dalton, QC 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.

M Breton noted that as of Tuesday, we will be joined by Dr Jorge Sánchez Cordero Dávila, President of the Mexican Centre of Uniform Law, Michael Houghton, President of the Uniform Law Commission of the United States, and Robert Stein, Past President of the Uniform Law Commission of the United States. We look forward to their participation in our deliberations, and M Breton invited all delegates to get to know our foreign delegates better.

Welcome from Host Government

M Breton noted that we are honoured to have the Deputy Minister of Justice and Deputy Attorney General of Manitoba, Mr. Jeffrey Schnoor, QC with us today. Mr Schnoor was called to the bar in 1978; he first acted in private practice and became a partner in a large law firm in Winnipeg for several years before joining the provincial government in 1986 in various capacities. He was the Executive Director of the Manitoba Law Reform Commission, the Director of Prosecutions and Criminal Justice Policy, the Executive Director of Policy, Development and Analysis for Manitoba Justice, Assistant Deputy Minister (Courts Division), and finally in 2008 he was named Deputy Minister of Justice and Deputy Attorney General of Manitoba. Mr Schnoor has always been very active in this community and has received community service awards from various organizations. He has served on the Boards of various institutions and was President of the Federation of Law Reform Agencies of Canada.

Jeff is a long-time friend of the Uniform Law Conference of Canada and one of the strongest supporters of the work of the ULCC; he was one of the rare delegates to be active in both Civil and Criminal Sections, and we were honoured to have him as President (1999-2000).

Mr Schnoor thanked Mr Breton for his kind introduction and welcomed everyone to Winnipeg. Mr Schnoor noted that he attended his first ULCC meeting in 1986, has worked on all aspects of the Conference since then. Mr Schnoor said that the value of the ULCC cannot be understated, and it is his hope to drop into both sections' meetings throughout the week. The organizing committee has done an outstanding job and thanked them for all their hard work. Mr Schnoor wished the delegates a successful conference.

For quite some time, members of the organizing committee have been planning social events to produce a program that is both agreeable and busy. M Breton invited Lynn Romeo to give an overview. Ms Romeo, Chair of the Organizing Committee, introduced her committee members and noted that a conference-at-a-glance card has been inserted at the back of everyone's name tag. The Opening Reception is being co-hosted by Manitoba Hydro, the Manitoba Bar Association and the Law Society of Manitoba. The event will be held at Manitoba Hydro, an award-winning building that is a great example of sustainable development. Downtown Biz staff will be available to escort delegates for the short walk to the Manitoba Hydro building for the reception. Please sign up for a tour of the building – names must be provided for security reasons. Ms Romeo requested that delegates arrive at Manitoba Hydro no later than 6pm, as the Minister of Justice is cutting personal time short to welcome them to Manitoba at 6:30pm.

The traditional east-west softball game will be held on Tuesday at 6pm at the Norwood Community Centre – buses will be provided and dinner will be at a pizza parlour near the park. Buses will be provided from the hotel for people not going to the ball game but joining the group for dinner. The closing banquet on Wednesday evening will be held at the Manitoba Legislative building. The Hermetic Code tour will be held in lieu of a guest speaker. The businesses on the concourse level of the hotel will be open tomorrow. Ms Romeo noted that this is the most wonderful weather in Winnipeg in decades and said that there are hardly any mosquitoes, so it is enjoyable to be outside.

President's Report

It was an honour to be selected to preside over the Uniform Law Conference of Canada and it has been a privilege to be able to serve in that capacity over the past year. Eleven years ago, I was pleased when Quebec appointed me to the Criminal Section of the Uniform Law Conference of Canada, which was held in Toronto that year. The same honour was conferred on me since and year after year. I have been able to discover a wonderful world in it. In fact, I was able to meet many criminal law practitioners, be it prosecutors, like me, members of the judiciary, defence counsel, professors or public servants, who were all able to impress me with their competence, open attitude, level of commitment and common desire to collaborate in advancing criminal law in Canada. In the context of that work, I got to know people who were warm, generous with their time and knowledge and who, for some, honoured me with their friendship, which was much appreciated.

I have, however, learned much more in the last twelve months. I have truly come to appreciate the levels of commitment and dedication from the Commissioners, the members of the Executive Committee, and the staff of the ULCC, by seeing firsthand all that is done, and all that has to be done year after year, to ensure the continuing success of our Conference. Since 1918 the Uniform Law

Conference of Canada has made important contributions to the reform and harmonisation of Canadian laws. This is now well recognized. As a delegate and Jurisdictional Representative of the Criminal Section, I know from experience that resolutions adopted by the Conference are often enacted into law by the Parliament of Canada, and especially so during the last few years. The Criminal Code now contains numerous substantive and procedural provisions that were first suggested by the commissioners of this Conference. As delegates, we are in a position to see the results of our discussions materialize into changes in our criminal law. As all of you delegates to the Civil or Criminal sections of the Conference, you will during this week consider, debate and decide on dozens of important legal issues, and your work will have an impact on the Canadian legal system. You are performing a service of tremendous value to the jurisdiction you represent and to the Canadian legal system in general. For all of this, you deserve our thanks and you should be commended.

Over the course of the last year, members of the Executive have worked to keep you and other interested persons informed about the on-going activities of the Conference, and this mainly through our Fall and Spring Communiqués. You may have noticed that the changes in the format of these documents, as well as the fact that this information is now being transmitted electronically to all interested parties. All of this is the result of the work of our new Executive Director, Mme Marie Bordeleau. The Executive Committee feels that this is a worthwhile improvement and we seek your comments on the matter as well as any suggestions you may have that you think might benefit the work of the ULCC.

Soon after our last conference in Halifax last year we were sadly informed that the Honourable Justice David Orr of the Newfoundland Provincial Courts could no longer attend our conference as representative of the Canadian Association of Provincial Court Judges. A letter was sent to him, thanking him for his precious contributions and his continued strong support of the ULCC.

The conference held in Halifax last August also marked an important step for our organization. It was, in fact, the last conference for which we could count on the presence of someone who has been, for so many years, the heart and soul and memory of the conference, Claudette Racette, the outgoing Executive Director. In fact, Claudette Racette, who prefers to be called “Claudette”, who personified the conference from 1992 to 2010 with her dedication and who, for all of us, was the face of the conference and an element of such importance for the conference, was leaving us for a well-deserved retirement. Her last day of work was September 30, 2010, a day marked by a touching “goodbye” on her part and many messages of thanks and appreciation from those who had worked with her. That day also marked the official change over to the new Executive Director, Marie Bordeleau. I have since come to a greater appreciation of the competence, dedication, sense of humour . . . in fact, all of the qualities that ensure that the Conference matters are always in good hands. My successors to the presidency will be able to observe and appreciate those qualities very quickly.

During the course of the past year, various communications were exchanged between members of the Executive Committee, as well as conference calls conducted on November 16, 2010 and March 29, 2011. The following matters, among others, were then discussed at the Executive Committee level:

- a) Banking issues: due to problems in the handling of our accounts with the Bank of Montreal, the decision was made in October to transfer all of our banking matters to the CIBC in Ottawa.
- b) Our website: a report was made on the posting of all the documentation from the conference in Halifax.

- c) Minutes of the Halifax Conference: a report was also made as to the completion and translation of the minutes of the opening and closing sessions of the conference and posted on the website
- d) Priority conflict under Bank Act: A report was made by the President that following the Supreme Court of Canada decision of the Bank of Montreal vs. Innovation Credit Union, a letter was sent under the signature of the President recommending to the Federal Government that some sections of the Bank Act be repealed, in accordance with prior work done in the past by the ULCC.
- e) Project on informal public appeals: A letter of warmest congratulations was sent to Professor Michèle Cumin, member of one of our working groups, for winning a prize from the Québec Bar Foundation for an article she submitted to the *Revue générale de droit* of the University of Ottawa.
- f) Assisted human reproduction: Following an article on assisted human reproduction with a call for reform, but with no mention of the work done by the ULCC on the topic, a letter was sent to the editor asking for a correction or at least for an emphasis on the work done by the ULCC in that regard.
- g) Commercial Law Strategy binders: Thanks again to the work by Susan Amrud, QC, Executive Director of the Public Law Division of the Ministry of Justice and Attorney General of Saskatchewan, our Commercial Law Strategy binders, together with a cover letter from the President were sent to more than 160 stakeholders in that matter.

One particular event needs to be brought to your attention. On May 10, 2011, we received a request to participate in the evaluation of the Justice Partnership and Innovation Program of the Department of Justice Canada. For your information, this is the program from which the ULCC receives \$50,000 per year in funding. A consulting firm had been engaged by the Department of Justice Canada to conduct an audit of the program and to collect the data needed for that evaluation. Being the best qualified to answer these questions on behalf of the ULCC, Mme Claudette Racette was asked to come out of retirement for a few hours, which she gladly did. Clark Dalton and Peter Lown were also identified as individuals to be contacted on behalf of the ULCC in order to answer questions on the subject. The interview with Claudette was supposed to take place over the phone. However, she requested a face-to-face meeting, as she said she wanted to see the reaction to her comments, and have a better chance to show what the ULCC does. It was reported that the interview went very well. In the words of Claudette, and I quote, they could not believe how much we do with so little and really could not see any reason why they would reduce the funding. Nevertheless, they did mention that the Treasury Board had the final say in the matter. I am pleased to report that after that interview, a few weeks later the full funding of \$50,000 was received by our Executive Director, a very glad Executive Director at that point.

This by no means signifies that our funding problems are over – far from it! The jurisdictions that support the Conference have been forced to confront and respond to a severe economic recession. Reduced funding by various jurisdictions was feared but did not materialize this year. However, a new trend seems to result from the difficult situation. Three weeks before the start of this conference, six different jurisdictions had confirmed that they would not have representation in this year's Criminal Section. The intervention and arm-twisting by the Chair of the Criminal Section has resulted in one of these jurisdictions changing its decision and sending a delegate. When jurisdictions do not attend the meeting of the conference, they are unable to participate in the most essential part of the work to be done, especially in the Criminal Section; that is, to create a debate that provides an opportunity for discussion on issues and perspective from across the country. These discussions cannot be effective when jurisdictions do not participate. This lack of participation is only the tip of the iceberg. Next year,

as you are aware, we are meeting in the Yukon. The Executive will have to pay close attention to this situation and the collaboration of everyone will be required in order to intervene and convince the decision-makers of your jurisdiction to provide a full representation in both sections of the Conference.

As I have mentioned before, I want to extend, even though our foreign guests have not arrived yet, a warm welcome to Dr Jorge Sánchez Cordero Dávila, the Director of the Mexican Centre of Uniform Law, as well as to Michael Houghton, newly-elected President of the Uniform Law Commission of the United States, and Robert Stein, its Past President, our American friends who will join us later this week. Our Conference is very proud of the close relationship with the Uniform Law Commission of the United States and the Mexican Centre of Uniform Law. In the last several years we have worked with these partners to develop common principles which have served as a basis for Uniform Acts that were passed by the American and the Canadian Conferences. Our Advisory Committee on Program Development continues its work with its American counterpart, the Scope & Program Committee in order to determine more topics of cooperation. Only last month, early in July, Peter Lown and I attended the annual meeting of the Uniform Law Commission of the United States in Vail, CO. Again, our hosts, led by Robert Stein, its President at that time, were most gracious. Besides attending various sessions of the Uniform Law Commission, we participated in a meeting to identify potential projects that our respective organizations might be able to collaborate on. These discussions of course will continue this week.

The last year has been very fulfilling for me; it could not have been so without the help and assistance of all members of our Executive Committee. Many thanks to our Immediate Past President, Russell Getz, and to our Vice President, Darcy McGovern, for all their advice and support. I also want to thank Josh Hawkes and Abiodun Lewis, the current Chairs of the Criminal and Civil Sections for all the work they did in organizing this year's annual meeting. Clark Dalton and Peter Lown have again proven to be an invaluable source of information. Thanks to both of you, especially you, Peter, for making my trip to Colorado so pleasant and enriching. Thanks also go to Joanne Dompierre for her excellent job as Secretary of the Criminal Section and the countless hours she has to put into performing that function. Thanks to Saskatchewan for the all work done by their Queen's Printer to format the Annual Proceedings and to produce the update to our Commercial Law Strategy binder. I also want to express my deep appreciation for the excellent work done by project leaders and working group participants in the last twelve months. Special thanks to Ian Rennie for the editing of the Annual Proceedings and all the work done in collaboration with John Gregory and Dean Sinclair on our website. I also want to thank all the Jurisdictional Representatives for their time and effort during the last year. The work done by them to promote the Conference in their own jurisdictions is significant and priceless. I look forward to the meeting we will all have with them on Tuesday at noon. Special thanks and consideration go to all federal, provincial and territorial jurisdictions for their continued support of the Conference even in these difficult times. Without their continued effort and the presence of people like Mr Jeffrey Schnoor to continuously defend and promote the interests of the Conference, we would cease to exist and so much would be lost.

Last but not least, Marie Bordeleau deserves my gratitude and compliments. The work of the President of this Conference could not be carried out without the dedication, competence and loyalty of a person like Marie Bordeleau. In her first year working for the conference, Marie has continued to impress me with her enthusiasm and the speed with which she assimilates her multitude of responsibilities. She has quickly proved indispensable, and my successors will see the true value in her contribution. Thanks a million; merci.

We will now move to the financial resolutions; we have financial matters to attend to and the first one is to approve the audited financial statements. I believe the statements were distributed. Marie has some comments to make.

Marie Bordeleau reported that, thanks to former Executive Director Claudette Racette's hard work and excellent planning, the projected deficit of more than \$16,000 was actually a \$20,000 surplus, which has been invested for the conference. This took a great deal of work in cutting down expenses, but it also speaks to the generosity of each and every volunteer who put their hand up to take on work that would cost the conference so very much money otherwise. Marie Bordeleau thanked the members who donate their time and effort to support the conference.

Financial Resolutions

a. Approval of Audited Statements

MOVED by Josh Hawkes, seconded by Lynn Romeo, **THAT** the Audited Statements for the fiscal period 2010-2011 be approved as presented. Motion carried.

b. Approval of the Auditors

MOVED by Abiodun Lewis, seconded by Sébastien Bergeron-Guyard, **THAT** the firm Stephen H. Saslove, be appointed as Auditors for the Uniform Law Conference of Canada for the fiscal period 2011-2012. Motion carried.

Mr. MacRury noted that the ULCC might consider going to a non-audit, since the organization is not federally incorporated. Michel Breton thanked Mr. MacRury and said that this will be considered.

c. Banking Resolution

MOVED by Russell Getz, seconded by Lee Kirkpatrick, **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 2010-2011

MOVED by Darcy McGovern, seconded by Arthur Close, **THAT** the budget for the fiscal period 2011-2012 be approved, subject to modification if necessary following the meeting of the Executive Committee in November 2011. Motion carried.

Confirmation of the Nominating Committee

Russell Getz noted that the Immediate Past President chairs the Nominating Committee for the purpose of nominating the next President and Vice-President. Mr. Getz will constitute a committee of past presidents and long-term delegates to the Conference and will report on their discussions at the Closing Session.

Outline of the Business of the Week

a. Criminal Section

Josh Hawkes reported that the Criminal Section has a wide range of resolutions that will propose amendments to the criminal code and related legislation, some of which are expected generate lively debate. One of the striking features of the deliberations of the criminal section is the high calibre and non-partisan nature of the debate and discussion by practitioners of both sides of the aisle (crown and defense), policy experts, and members of the judiciary. This concentration of expertise, coupled with the varied perspectives represented that reflect both regional and local differences in the practice of criminal law across the country is singularly unique and valuable. Over the years, resolutions adopted by the section have either been reflected directly in legislative amendments or have informed the development or the reform of criminal law in important ways. In addition to the deliberation of these resolutions, we will be considering changes to the rules of procedure in the section, designed to update those rules, which were last amended in 2005. Significantly and much more interestingly, we will have the opportunity consult with representatives from Justice Canada on ongoing FPT policy work in two very important areas. That consultation is, in my submission, one of the most important and valuable activities that can occur in the criminal section. Given the unique composition of the section, those consultations and the feedback received provide an invaluable for policy makers to gain a national perspective from those who practice on the front lines of the criminal justice system. In addition, we are attempting this year to be a little innovative by providing representatives from the defence bar and other non-governmental agencies with the opportunity to have a more free-flowing, open discussion, and a fair portion of time has been set aside for this to happen. We hope that this will provide an opportunity for wide-ranging debate and discussion on these issues. It's been my pleasure to serve as Chair this year and it will now be the burden of the members of the section to endure the final days of that tenure as we have our deliberations, but in my opinion, the deliberations of the criminal section represent more than the mere consideration and debate of the proposals for reform; rather they represent a collective and compelling manifestation of a sense of collective responsibility and stewardship that practitioners, policy experts and the judiciary have for the system in which we work. I believe that that expression of responsibility and stewardship is the most important and lasting contribution of the criminal section. I have every confidence that it will be on prominent display in our work this year. I can't conclude without thanking both Marie and Joanne who have ably assisted me in all aspects of my responsibility this year and have precluded me from driving the section off the road, so many thanks to both of you.

b. Civil Section

Abiodun Lewis reported that in the last twelve months, the Civil Section has worked on numerous projects covering a variety of areas of law. They include commercial law, the law of trust, electoral law, public law and private international law. In previous years, our law reform exercise involved a variety of legal topics and issues. This year is no exception, as reflected in the agenda for the Winnipeg conference. Four draft uniform laws will be presented for adoption. They are: the Uniform Informal Public Appeals Act; what is really two in one, the Uniform Enforcement of Canadian Judgement Act and Decrees Amendment Act and the Uniform Enforcement of Foreign Judgements Amendment Act; the Uniform Electronic Communications Convention Implementation Act; the Uniform and Simplified Trust Indenture legislation, which has proposed a few amendments to the Canadian Business Corporations Act. There is a supplementary report to the final report on Transactions at Undervalue and Fraudulent Transactions presented at the Halifax Conference that will be tabled at this conference. The working

group on Undervalue and Fraudulent Transactions is also presenting the final report on provincial payments. Both reports represent a substantial body of work on the application of law to these two areas to preserve the right to unsecured creditors. The result is that the working group is now ready to draft a Uniform Reviewable Transactions Act. Drafting is well underway for two other projects: The Uniform Trustees Act and the Uniform Independent Guarantees and Letters of Credit Act. The working group on Voter Residency and Identification Requirements and Absentee Military Voting is hopeful of producing uniform legislation next year. Also the working group on the Renewal of the Uniform Wills Act has taken another significant step through the production of a workbook of materials, in scoping issues that will eventually form the basis of amendments to the uniform legislation. There is a paper on whether the Uniform Electronics Act ought to apply to real estate transactions; currently, the uniform legislation excludes real estate transactions from its scope of application. Also, a pre-implementation report will be tabled on The Hague Securities Convention, an international treaty that virtually all the common-law jurisdictions and Québec have already enacted and implemented in domestic legislation. There will be a discussion of two project proposals: Commercial Tenancies and Interprovincial Subpoena Act Amendments. As you know, many law societies are now requiring that lawyers obtain a certain number of hours of professional development in relation to ethics. Though issues relating to professional development don't fit nicely or fall into the category of work traditionally undertaken by the ULCC, there will be a presentation to gauge the level of interest in presenting an AFIC model at ULCC conferences. We look forward to having a fruitful discussion in Winnipeg over the next few days, and to partake of the hospitality of our hosts, the Government of Manitoba and the City of Winnipeg.

Report from the Chair of the Publications Committee

Ian Rennie spoke to the Report from the Publication Committee in the absence of W Dean Sinclair. Mr Rennie reported that he has been working with Mr Sinclair and John Gregory, as well as Thistle Design for the website and Lesia Edwards of the Saskatchewan Queen's Printer for the Proceedings. Mr Rennie reported that the 2010 Proceedings were not ready for publication in time for the annual meeting due to translation issues and editorial concerns over some of the revisions, and expressed regret that the volumes were not available for delegates. There will be significant changes to the Proceedings to simplify the appendices, integrating them into a table that will form a single appendix, with documents identified according to a new naming convention that will be implemented next year. A bilingual approach for next year will see the French and English side by side rather than one after the other. This will reduce the size of the annual volume by about 20 pages. Mr Rennie noted that the new website is still being developed and that it will be dynamic, user-friendly and completely searchable. The website will be in both official languages and documents will all be .pdf's rather than HTML. The search engine is still under development, but Mr Rennie noted that he will set up a laptop with the program on it so delegates can take a look at it. Mr Rennie said that the website is close to being launched and that the project is much further advanced than last year.

Other Business

There being no other business, the meeting was adjourned at 2:55pm.