

## COMMUNIQUÉ

Spring 2020



### Report of the 2019 – 2020 ULCC President John Lee, ON

As I was preparing to write this update, I realized that it has been over two months since I started working from home and when the Covid-19 pandemic changed everything. The disease's spread has been devastating in so many ways and I hope that when you read this, you and your loved ones are well.

Having acted as President of the ULCC during Lee Kirkpatrick's absence last year, I had come to appreciate that the best-laid plans can't always guarantee the outcome that is expected. That being said, no one could have predicted the series of events that would lead us to the point where we are now planning our first virtual annual meeting. You'll find preliminary details of this meeting at the end of this Communiqué and we'll be providing further details as soon as they are available.

Our upcoming Annual Meeting would have been our first in Canada's newest territory - Nunavut. I had been looking forward to this historic meeting with great interest and excitement. Unfortunately, after learning that turnout for this meeting would have been significantly lower than past years, the Executive Committee made the very difficult decision to relocate it to Ottawa, with the Canadian government taking over as host instead. Because of the pandemic, that plan had to be changed too. I want to thank the governments of Nunavut and Canada for all their hard work in preparing to welcome us this year and for their understanding of the decisions that we have had to make.

While we have been extremely busy dealing with the Annual Meeting, my executive team and I have also been focused on a number of other important matters. I mentioned in the last Communiqué that one of my priorities as President was to improve engagement with the ULCC's delegates and those who are involved in our work.

In January, I invited over a dozen delegates to a two-day meeting in Ottawa to discuss strategies to do just that. Since then, we have started to provide mentorship for new Jurisdictional Representatives, and we'll be launching a much-improved, albeit much-delayed, ULCC website.

Further, we'll be establishing a recognition committee aimed at enhancing the ULCC's recognition of the valuable contributions that have been made, and will be made, by our members in furthering the ULCC's mission. Finally, I'll be putting forward resolutions at our Annual Meeting regarding diversity and inclusion, and the climate crisis.

While this year's Annual Meeting will be virtual and will be much shorter than Annual Meetings of the past, we will attempt to do as much as we can in the time that we have set aside. Also, it's my hope that a virtual meeting, given its ease of access, will attract larger delegations this year than in the past, which would lead ultimately to better quality products.

A small glimpse as to what to expect is provided by our two Section Chairs, Joanne Klineberg and Kathleen Cunningham, in their reports that follow.

I hope to see all of you this summer. Until then, stay safe!



## 2019 – 2020 Criminal Section Chair Report

### Joanne Klineberg, CA

Spring is here, and that means that summer, and our Annual Meeting, are fast approaching. The Criminal Section Steering Committee has been meeting regularly since the fall to prepare for this year's Annual Meeting and I would like to

start by thanking the members of the Steering Committee for all their assistance and support. We began our preparations with great anticipation of holding the ULCC's first ever meeting in Nunavut. It was with great sadness that the ULCC had to change its plans early this year. Not long after that, the coronavirus pandemic challenged us to shift our planning once again. We are now in high gear planning for a virtual meeting in August, so that we can advance the important work of the ULCC while ensuring we do our part to safeguard the health of all Canadians.

As always, we are looking forward to hearing reports from our Working Groups. They are undertaking longer-term work on three complex and important *Criminal Code* procedure issues, namely Section 487 of the *Criminal Code*, which provides for the basic search warrant power, telewarrants, and section 490 of the *Criminal Code*, which regulates the storage and disposal of items seized during the course of criminal investigations and proceedings.

We are particularly keen to hear from our Working Group on telewarrants, a matter of criminal law that has become more important as Covid-19 continues to affect police practices. We will also invite our delegates to participate in a wide-ranging discussion about the pandemic's impact on the criminal justice system, and best practices that have been explored in response.

While debate on resolutions is another core activity of the Criminal Section, with great disappointment we have concluded that we will not be able to give resolutions the consideration they deserve through a virtual platform. In the Criminal Section, we have a robust tradition of Section-wide debate and a high rate of resolution approval, frequently aided by small side discussions that take place at breaks or social events, often leading to multiple rounds of revisions that must be coordinated in both official languages.

Given the necessity for an abbreviated agenda to accommodate delegates in all time zones across the country, and the challenges of our usual processes, we have decided that, exceptionally, we will not consider resolutions this year.

I thank the Jurisdictional Representatives for all work undertaken in preparing resolutions before this decision was made. We encourage jurisdictions to hold on to resolutions that were finalized and ready to be submitted, so that we can consider them in 2021.

Other important work continues! At the 2019 Annual Meeting, a number of resolutions challenged our understanding of the kind of issues that are within the scope of our work. For instance, one resolution proposed amendments to a federal statute that, while not criminal in nature, imposes clear consequences for those convicted of offences, while another proposed changes to federal as well as provincial corrections laws.

Our greatest strength as a criminal law reform body is the participation of criminal law experts with a diverse roles and expertise, such as prosecutors, defence counsel, academics, policy counsel, and judges. The Criminal Section produces resolutions that continue to be adopted into law in large part because they are informed by so many different criminal justice perspectives.

At the same time, depending on the role they fulfill in the criminal justice system, our delegates may have different views of what that "system" includes, and consequently, what is the role of the Criminal Section of Uniform Law Conference of Canada. Delegates from the defense bar can represent the interests of their clients beyond conviction and sentence, including during any phase of incarceration and even beyond, such as the immigration-related consequences of conviction. For prosecutors, by contrast, many such issues are beyond the scope of their work and expertise. Judges and academics have their own unique perspectives, informed by their experience and the functions that they fulfill.

A sub-committee of the Steering Committee, which has been working diligently to gain a deeper appreciation of the scope of our Section's law reform function, will share their thoughts and perspectives in what is sure to stimulate a lively discussion.

We are all looking forward to continuing the important work of the Section at our (virtual!) Annual Meeting in August.



## 2019 - 2020 Civil Section Chair Report

### Kathleen Cunningham, BC

I am honoured to Chair the ULCC's Civil Section for the 2019-2020 year. As a relative newcomer to ULCC I thank John Lee for his encouragement and give a special shout out to Maria Markatos for her support

during our transition. A special thank you is due also to Clark Dalton QC, for his ongoing guidance and assistance.

My first ULCC Annual Meeting was in Yellowknife in 2015. The vast experience, knowledge, and perspectives of the jurisdiction representatives and delegation members has always impressed me. The value of the combined input from the provincial, territorial and federal participants is unique to the ULCC.

As chair of the Civil Section Steering Committee I chair the monthly meetings of the Civil Section Steering Committee. At our meetings, the civil section Jurisdictional Representatives monitor the status of projects, plan for the next Annual Meeting and discuss strategies to move ULCC uniform acts forward, I look forward to working closely with Clark Dalton QC, our project coordinator, and source of all ULCC history, to prepare for the 2020 meeting under our new reality of a virtual meeting. More below.

As Chair of the Civil Section, I am also a member of the Executive Committee, ACPDM, and Finance Committee. Having participated in the monthly meetings, and the leadership meeting led by our President John Lee in January, I am struck by the unique opportunity that the ULCC offers provincial, territorial and federal ministries to work together to modernize and make our laws work for all Canadians nationally and internationally.

The work of the ULCC during the year and at the Annual Meetings provides an opportunity for jurisdictions to share information and work towards improving the laws of provinces and territories for Canadians and implementing international conventions.

But we cannot do our work without the participation of the Jurisdictional Representatives and the volunteers from members of the Bar and the academic community.

As we prepare for our 2020 meeting and beyond, I suggest Jurisdictional Representatives reach out to their provincial Canadian Bar Associations and encourage

them to invite a member as part of your provincial delegation and, perhaps more importantly, to encourage contribution of ideas for areas of the law that could benefit from more uniformity and volunteering to participate on new projects.

Since our meeting in St. John's, Newfoundland & Labrador in August 2019 two reports were adopted under the November 30<sup>th</sup> rule:

- The ***Revised Uniform Testamentary Additions to Trusts Act (2019)***. We thank the Society of Trust and Estate Practitioners (STEP Canada) for bringing this project to our attention and the commitment of STEP members to help move the project forward so quickly. The revised act replaces ULCC's *Testamentary Additions to Trusts Act 1968*.
- The ***Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention***. Thank you to Valerie Simard for seeing this project to its conclusion. The following uniform Acts with commentaries are adopted and recommended for adoption by those jurisdictions who have not already enacted legislation in relation those Conventions:
  - (a) *Uniform Act to Implement the Convention on the Law Applicable to Trusts and on their Recognition (2019)*
  - (b) *Uniform Act to Implement Conventions on International Sales (2019);*
  - (c) *Uniform Act to Implement the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (2019);*
  - (d) *Uniform Act to Implement the Convention on the International Protection of Adults (2019);*
  - (e) *Uniform Act to Implement the United Nations Convention on the Assignment of Receivables in International Trade (2019);*
  - (f) *Uniform Act to Implement the Convention on Choice of Court Agreements (2019);* and
  - (g) *Uniform Act to Implement the United Nations Convention on the Use of Electronic Communications in Contracts (2019).*

At our March 2020 meeting, we noted implementation of ULCC products in 2 provinces:

- Saskatchewan: Two statutes passed 3<sup>rd</sup> reading March 3, 2020 and received Royal Assent on March 5, 2020:
  - *Fiduciaries Access to Digital Information Act (bill 176)*
  - *Marriage Amendment Act (bill 175)* (repealing revocation of a will upon marriage)
- British Columbia:
  - Bill 7, the *Arbitration Act* received royal assent on March 5<sup>th</sup>

Under Clark Dalton's meticulous record keeping, we will continue to update "Table 5" which tracks implementation of the ULCC's uniform acts.

Looking forward to our virtual meeting in August, given the limited time for each, our agenda will focus on reports for uniform acts and commentaries for important issues of the day. We will receive reports with draft acts and commentaries for discussion and approval on:

- **[Joint session] Non-consensual disclosure of intimate images:** This work will propose a tort that will provide victims to obtain what they most want – removal of the content from the internet. Thank you to Clark Dalton QC, Peter Lown QC and Candace Whitney for their work to ensure this important project moves forward. Thank you to BC for providing legislative drafting support.
- **Electronic wills:** Thank you to Peter Lown for his work in keeping this project on track and to the ongoing engaged contribution of the committee members.
- **Crowdfunding/Informal Public Appeals:** This project focuses on the many critical issues that are arising with the growth of online crowdfunding. The project committee will present a draft act and commentaries for approval. Thank you to Arthur Close QC (former Executive Director of the BCLI and past president of ULCC 2001/02) for his leadership on this project and to the committee members for their contributions to the discussions.

Project updates will also be presented and discussed. We look forward to the ***Review of the Uniform Court Jurisdiction and Proceedings Transfer Act*** and ***Uniform Enforcement of Canadian Judgments, Orders and Decrees Act***. Professor Emeritus Joost Blom QC of the Allard School of Law at UBC is leading this project.

## Reports and updates:

The 2020 meeting will also include a session with the ACDPM to seek jurisdictional input on potential future projects. The ACPDM has worked through a long list of project proposals and will be asking the Jurisdictional Representatives to come to the meeting with feedback on their jurisdiction's interest in seeing the ULCC to tackle each topic.

Prior to the Covid-19 pandemic we had planned a number of committee and project updates and discussions, including a report from the ***Civil Section Implementation Committee***. This topic and others will be added to the monthly meetings of the Civil Section Steering Committee or at the 2021 meeting.

While many of us are disappointed at not being able to participate in the 2020 in Nunavut, and then having to meet virtually in August, I look to find a silver lining .... While we need the in-person contact each year, perhaps this experience will open new ways to help engage volunteers and help our projects move forward. As a first step, we hope that the working group reports will now be able to include the full working group at the presentation. Remote technology also opens opportunities to increase participation in each jurisdiction's delegation, which will in turn, raise awareness of the ULCC work.

I look forward to our "meeting" in August 2020.

## Don't miss the 2020 Annual Meeting!

The Uniform Law Conference of Canada will hold its 102<sup>nd</sup> Annual Meeting from Monday, August 10<sup>th</sup> to Thursday, August 13<sup>th</sup> via videoconference.

We will be meeting on those days from 12:00 PM – 3:15 PM Eastern Time and we will share information about the platform and methodology to join the sessions by email as soon as they are available.

We look forward to seeing you online this August!