



Report of ULCC President: John Lee, ON (2019-2021)

The last time I had written for the Communiqué, I was writing before the Covid-19 pandemic upended every aspect of our lives. That Communiqué now reflects a period of time so dramatically different from the present that it is difficult to look at what has happened without a deep sense of awe and humility.

The ULCC, along with the rest of Canadian society, has had to adapt quickly to this new world in which we find ourselves and I am extremely impressed by how our organization has managed and continues to respond throughout this difficult period. For the first time ever in our century-long history, we met virtually for our annual meeting instead of in-person as we had planned. In this way, we were able to continue to carry out our mandate to provide a national forum for thoughtful deliberations on reforming Canadian law and to produce uniform statutes and other materials for the benefit of everyone.

Given the novelty of the meeting format, the ULCC surveyed participants after the annual meeting and it is apparent that this meeting was an overall success given the circumstances. While there is no doubt that a virtual meeting has many shortcomings, including its inability to grow and nurture the network of relationships so crucial for a successful ongoing collective endeavour, this past annual meeting demonstrated that we can carry out a significant amount of our work without meeting in-person. Without the need for travel involved in a traditional annual meeting, our virtual meeting was able to attract a record 123 participants, including observers, Professor Christiane Wendehorst, President of the European Law Institute and Mr. Carl Lisman, President of the Uniform Law Commission, and many other individuals who had never previously been involved with the ULCC.

While planning for this past annual meeting attracted much of our attention as an organization and required us to set aside some of our original plans, I want to highlight two very important policy statements that were adopted at the annual meeting – one on diversity and inclusion and another on the environment and climate crisis. I encourage everyone to review them.

When I first proposed the idea of these two statements of policy earlier in the year, I was very pleased to find support from two small, but dedicated groups of ULCC members who took on the development of these policies with me and I am very proud of our organization for ultimately adopting them at the annual meeting. We are in a privileged position in society as lawyers and our new policies make clear our special responsibility to address these particular matters as they relate to the pursuit of our mandate. Two separate committees have now been established to provide ongoing advice to the Executive Committee on how we will carry out our work consistent with the statements of policy.¹

¹ See 2020 Annual Meeting plenary minutes for the resolutions. Stay tuned for updates from the working groups.

I am also very happy to report that our [new website](#) has finally been launched after years of effort and numerous setbacks. With our new website finally in place, the next task will be to continue to update it and keep it current and we will need to strike a committee dedicated to doing this.

By now, many of you may have already heard that we've decided to hold another virtual annual meeting next year. Typically, planning for our annual meeting takes place at least two years in advance, but the pandemic no longer affords us with the ability to see that far ahead. Change is an inherent part of what the ULCC does and we understand perhaps better than most that the way to manage change is to lay out a clear roadmap to the future. With that in mind, the ULCC Executive, following consultation with the Jurisdictional Representatives, decided early that holding another virtual annual meeting next year is the most prudent course of action.

Our upcoming annual meeting will be a little different from the last. Notably, we will be meeting a little later in the month of August compared to previous years in order to give everyone a few extra weeks to prepare. The Criminal Section will also be meeting for longer. This will allow the Criminal Section to deliberate on resolutions, which was not possible last year.

Before I conclude, I want to let you know that I fully appreciate your vote of confidence in my serving another year as your president. Nothing that was accomplished the previous year could have been accomplished without the collective effort of the ULCC's members and I want to thank all of you for your continued support of our organization.

I look forward to seeing you in August.



2019 – 2020 Criminal Section Past Chair Report: Joanne Klineberg, CA

Planning for the 2020 Annual Meeting was a great opportunity to practice patience and adaptability! What began with preparations for our first ever meeting in Nunavut transformed into plans to hold the meeting in Ottawa, and ultimately concluded with a different “first” for the ULCC, namely a virtual meeting, thanks to the Coronavirus pandemic that erupted in March 2020.

The pandemic-related necessity of holding a virtual meeting presented special challenges for the Criminal Section. Most importantly, early into the planning of the virtual meeting, the Criminal Section Steering Committee made the difficult choice to forego debate and voting on resolutions, one of our core activities. In the Criminal Section, we have a tradition of vigorous debate, refinement and revision of resolutions, including via small side discussions that take place at breaks and social events, all of which leads to a high rate of resolution approval. Given the need to

focus our energies on learning how to use the virtual platform, and to shorten our scheduled meetings to accommodate delegates participating across multiple time zones, we made the exceptional decision to proceed without consideration of resolutions for this one year.

We accomplished a great deal of important work despite our collective disappointment at not being able to consider resolutions. Our agenda included a detailed presentation of the Final Report from the Working Group on Telewarrants, a matter of increasing importance in the criminal justice system as Covid-19 continues to affect police and court practices. The Working Group Chair, Stephanie O'Connor, and member Norm Wong, set out an overview of the history of the telewarrant regime, their consultations with law enforcement agencies and members of the judiciary, and challenges within the existing telewarrant regime, before describing the Working Group's fifteen recommendations. Following debate and discussion, the report was adopted with overwhelming support.

This discussion dovetailed nicely with 2020's Earl Fruchtmann Seminar, which had a special focus in 2020, namely the pandemic's impact on the criminal justice system and reforms that are still needed. Representatives from Justice Canada participated in the discussion, which touched on a number of topics, including the use of technology for remote court appearances in procedural matters, such as for scheduling and adjournments, and potentially for virtual trials, and the possibility of creating a formal requirement for judicial pre-trials, where judges mediate and encourage early case resolution.

These discussions, and the work undertaken in relation with the Telewarrants report, contributed to the policy development behind Bill C-23, introduced in Parliament in February 2021, which proposes amendments to the *Criminal Code* to respond to the impacts of COVID-19 on criminal proceedings.

The Criminal Section also received and approved interim reports from the Working Group on Section 487 of the *Criminal Code*, which provides for the basic search warrant power, and the Working Group on Section 490 of the *Criminal Code*, which regulates the storage and disposal of items seized during the course of criminal investigations and proceedings.

Chloé Rousselle (Chair of the Criminal Section for 2021), who chairs the Working Group Examining the Scope of the Mandate of the Criminal Section (a sub-committee of the Steering Committee), presented the Working Group's Status Report. This Working Group was created following the 2019 Annual Meeting, in response to a number of resolutions that challenged our understanding of the scope of our mandate (such as resolutions pertaining to payment of prisoners for work and immigration consequences of a criminal conviction). The Working Group's work focuses on developing a framework for determining whether proposed resolutions would be considered by the Criminal Section, in cases where there is uncertainty. After an informative and thought-provoking discussion, the Status Report was unanimously adopted. The Working Group is expected to present a final report at the 2021 annual meeting.

The Criminal Section also received an update on the implementation of the *Uniform Police Record Checks Act (2018)*, a product of a joint Civil/Criminal Working Group. The project was selected to be the object of promotion by the ULCC's Implementation Committee, to encourage jurisdictions across Canada to enact the *Uniform Police Record Checks Act*. The Criminal Section applauds the work of the Implementation Committee on this very important matter!

Despite the many disadvantages of moving our meeting into the virtual world, we discovered that the virtual nature of the meeting did present at least one advantage. Thirty-nine delegates from eleven provincial, territorial and federal jurisdictions participated in the deliberations of the Criminal Section, which exceeded the level of participation for the 2019 meeting in terms of both jurisdictions and individual delegates. Delegates included policy counsel, Crown prosecutors, defence counsel, academics, as well as representatives of the Canadian Bar Association, the Indigenous Bar Association, the Criminal Lawyers' Association, and members of the judiciary. We were also easily able to accommodate seven observers.

At the end of the meeting, we discussed our level of satisfaction with the virtual platform. Criminal Section members agreed that technology facilitated our work in exceptional circumstances, but wished to emphasize the importance of in-person meetings, in particular for enabling the building of relationships which is vital to our success. And also falling under the theme of relationships, we bid adieu to our long-time colleague and friend Samantha Hulme, who made an enormous contribution to the ULCC, and many other aspects of her career in criminal law.

I would like to thank all the Working Group Chairs and members for their commitment throughout the year, year after year, which makes a successful annual meeting possible. I would also like to thank the delegates for their patience and understanding as we moved onto a virtual platform, and for their enthusiasm and willingness to share their thoughts in this strange, new place! I also express my deep gratitude to the members of the Criminal Section Steering Committee that helped with the planning and decision-making: Samantha Hulme, Matthew Hinshaw, Benson Cowan, Lucie Angers, Chloé Rousselle and Stephanie O'Connor, and Laura Pitcairn. My final thank you is for the outgoing Criminal Section Secretary, Caroline Quesnel, for her invaluable professionalism and competence; she keeps everything running smoothly and calmly, and always has a smile on her face.

While I know we are planning another virtual meeting for 2021, I am excited to see how much farther we can take our deliberations and demonstrate our ongoing commitment to improve the criminal justice system in the virtual world in August!



2019 – 2020 Civil Section Past Chair Report: Kathleen Cunningham, BC

It was an honour to Chair the ULCC Civil Section's first virtual meeting in August 2020. As others have written, the meeting format presented both opportunities and challenges. In the end, we completed much of our annual business – three uniform acts were presented for approval, an update on a new project was received, and a session on priorities for future projects was held. A very special thank you to Peter Lown, Q.C. Peter's commitment to our work is second to none. Without his efforts in 2020, we could not have accomplished as much as we did.

We also cannot do our work without the engagement of the ULCC Jurisdictional Representatives (JRs), government and private sector lawyers, academics, and other experts. Thank you to all who have contributed to this work. You contribute to the

reports and final draft uniform acts. In 2020, this commitment was exemplified in the post meeting work required to ensure the reports and draft acts were adopted. Working group chairs and group members; Civil Section Chair, Valérie Simard; Advisory Committee on Program Development & Management (ACPDM) Chair Peter Lown Q.C.; and Program Coordinator Clark Dalton, Q.C. rolled up their sleeves to ensure that the work presented would meet deadlines and could be posted. Your commitment to this work continues to inspire me! Your work has led to:

- The *Uniform Benevolent and Community Crowdfunding Act* (UBCCA): Under the leadership of Arthur Close Q.C., the working group's mandate was to revisit the Uniform Informal Public Appeals Act (2011) [UIPAA] promulgated by the ULCC in 2011. The changes mainly reflect the growth of internet-based fundraising ("crowdfunding"). Thank you to working group members: Prof. Michelle Cumyn, Gregory G. Blue, Q.C., Prof. Albert Oosterhoff, Cynthia (Tia) Spencer, Julie McDonald, Laura Buckingham, Jordyn Allan, Jane Chapco, and Clark Dalton, Q.C. (ULCC Project Coordinator).

This version of the UBCCA was developed in both official languages primarily for implementation in the common law provinces of Canada. The French language version of the Act will be helpful to those common law provinces that operate in both official languages. The report, final approved version of the Act and background documents are now available on the Uniform Acts page of the ULCC website. A project will soon begin to develop a statute drafted in a style more closely aligned with civil law concepts and the Civil Code of Québec. Thank you to Michelle Cumyn for agreeing to lead this work.

- The Electronic Wills Act project: Peter Lown, Q.C. presented the report on Draft Amendments to the (2015) *Regarding Uniform Wills Act Electronic Wills (2020 Amendments)*. The draft amending provisions relating to electronic wills were approved at the meeting subject to:
 - amendments to the draft provisions and the commentaries, and
 - consideration of comments in relation to the French language version, and consequential amendments to the English version.

The amendments were approved earlier this year. One objection was registered. Language issues are being worked out. The documents as presented at the August meeting can be found on the annual meeting page for 2020. The final approved amended versions will be added to the annual meeting and *the Uniform Wills Act* pages as soon as they are available.

The working group continued its work, as directed, and prepared amendments to the *Uniform Enduring Powers of Attorney Act (2015)*. The final approved versions will be posted on the *Uniform Enduring Powers of Attorney Act* page of the website as soon as they are available.

The section also approved an amendment to the *Uniform Electronic Commerce Act* (s. 2) confirming that the exception for wills and powers of attorney is maintained.

While the working group did not address electronic health care decision making documents specifically, the proposed amendments are intended to be model provisions for health care documents.

Many thanks to Dr. Margaret Hall for her early leadership on this project and Peter Lown Q.C. for his work in bringing the project to completion. Thank you to the working group members: Donna Molzan, QC; Sevgi Kelci; Tyler Nyvall; Elizabeth Strange; Valérie Simard; James Marton; Russell Getz; Charlaïne Bouchard; Darren Lund; Maria Markatos; Andrea Hill; and to Stephanie Weinhold from BC and Diane McInnis from NB for their assistance with the drafting.

- The *Uniform Non-consensual Disclosure of Intimate Images Act*: Working group Chair, Candace Whitney, along with Peter Lown Q.C. and Clark Dalton, Q.C., presented the final report and draft uniform act for this joint project. The work proposed a tort that will allow victims to obtain what they most want – removal of the content from the internet. The report and draft act were approved subject to the directions of the meeting. The Report and Act, as amended, was adopted as of January 1, 2021. Thank you to the working group members: Leslie Turner, Clara Cerminara, Sue Gratton, Geetha Selvan, Darcy McGovern Q.C. and drafter Kerri Sinclair from BC. Many thanks as well to Hilary Young of the University of New Brunswick, and Emily B. Laidlaw of the University of Calgary, for their research support to this project. The meeting materials can be found on the annual meeting page and the final act and background reports are found on the Uniform Acts page.

The Civil Section was also treated to an engaging update from Prof. Joost Blom Q.C. on the ULCC's most recent project – a review of the *Uniform Court Jurisdiction and Proceedings Transfer Act* and *Uniform Enforcement of Canadian Judgments, Orders and Decrees Act*. Professor Blom provided an engaging and succinct review of the law in this area, reviewed the history of the adoption of the earlier ULCC uniform legislation, and provided an update on the working group's progress to date.

The meeting closed with Peter Lown Q.C., in his role as Chair of the ACPDM, leading a discussion on potential future projects. The Zoom polling feature was of great assistance during this session.

I cannot close this contribution without noting that 2020 was also Russell Getz's last meeting as the Civil Section Jurisdictional Representative for BC. Russell retired in December 2020. He became BC's Civil Section Jurisdictional Representative in 1996. Since then, he has served in many roles, including Chair of the Civil Section (2005-2006) and President (2009-2010). He participated in many ULCC project working groups and contributed to the development of the new constitution and bylaws approved at the 2018 annual meeting. He will be missed. Russell continues as a member of the ACPDM for 2021 and is transitioning out of his role as Chair of the Implementation Committee. We appreciate his ongoing contributions. Russell's successor, Tyler Nyvall, has enthusiastically jumped into his new role and the Civil Section looks forward to his contributions.

Finally, to my law reform colleagues from the BC Law Institute (BCLI) and Alberta Law Reform Institute (ALRI), thank you for your assistance at our virtual meeting. Sandra Petersson, ALRI's Executive Director, monitored delegate sign-ins and the chat. ALRI counsel, Matthew Mazurek and Laura Buckingham, and BCLI's Greg Blue Q.C., took notes to assist Valérie Simard who graciously took on the role of minute taker for the meeting. Your support made our first virtual meeting all the more of a success. Thank you.



2020 – 2021 Criminal Section Chair's Report: Chloé Rousselle, CA

Preparations for the ULCC annual meeting are always exciting and demanding. This time we faced an additional challenge: a virtual meeting for the second consecutive year. As mentioned by Joanne Klineberg (Past Chair of the Criminal Section) in her report, it was unfortunately not possible to debate and vote on resolutions in 2020 as the Criminal Section normally does. Over this past year, most of us have had the opportunity, including as part of our professional practice, to become familiar with the various technological tools. It was decided to rely on these new skills and to resume the usual consideration of the resolutions. It goes without saying that this exercise is core to the Criminal Section's activities and every year gives rise to constructive exchanges on complex criminal law issues.

Of course, a virtual format brings its share of constraints and requires certain accommodations or adjustments. During in-person meetings, informal discussions outside of meetings are rather productive, especially when proposing amendments to resolutions and ensuring that they are consistent in both official languages. Virtual meetings also require adherence to a set schedule, primarily to allow delegates to participate at reasonable times of the day wherever they are throughout Canada.

The Criminal Section Steering Committee met several times since the fall of 2020 in order to find the best solutions to hold an effective and successful meeting while trying to ensure optimal participation from the various delegations. I would like to thank the Steering Committee members for their continued commitment and ingenuity in planning the upcoming meeting. It was decided that the Criminal Section would meet every day during the week of August 23 to 27, for four-and-a-half hours a day (including 30 minutes of break). This means that meetings can start as early as 8:30 a.m. for Western delegates and end as late as 6:00 p.m. for Eastern delegates. We opted for an alternating schedule, starting early some days and ending late on others. In addition, the Steering Committee has exceptionally tried to anticipate the number of resolutions to be presented at the annual meeting by asking Jurisdictional Representatives to provide the number of resolutions they plan to submit. In early March 2021, they were sent special instructions so that resolutions could be ordered by priority, bearing in mind that some of them might be shelved should we run out of time. Jurisdictional Representatives have submitted their resolutions and we cannot wait to discuss them!

This year's meeting does not focus solely on resolutions because the Criminal Section will receive status or final reports from the working group on search warrants (s. 487 *Criminal Code*), the working group on the detention of things seized (s. 490 *Criminal Code*), and the working group on the scope of the Criminal Section's mandate. I would like to thank all those who devoted time to the work of these groups.

I would like to take this opportunity to welcome back Dorette Pollard, who has rejoined the Criminal Law Policy Section of the Department of Justice Canada and will resume her duties as Secretary of the ULCC Criminal Section. Dorette held this position from 2014 to 2017 before being appointed to the Parole Board of Canada. I would also like to express my sincere gratitude to Caroline Quesnel for her skill and dedication in carrying out these duties over the past three years.

In conclusion, I would like to say how delighted and honoured I am to be chair of the Criminal Section this year. It is a wonderful forum to exchange with jurists throughout Canada, with a wealth of experience and diversified practices, on major issues in Canadian criminal law. I look forward to see you again or, as the case may be, to welcoming you for the first time.

In the meantime, do not hesitate to contact Dorette Pollard (dorette.pollard@justice.gc.ca) or myself (chloe.rousselle@justice.gc.ca) if you have any questions about the 2021 meeting.



2020-2021 Civil Section Chair Report

Valérie Simard, CA

I am honoured to Chair the ULCC's Civil Section for the period of 2020-2022 and to contribute to helping the ULCC continue to thrive during these challenging times. I was impressed last year at how quickly the ULCC and its members adapted to the new reality imposed by the pandemic to allow the ULCC to continue to carry on its important work. The ULCC's first annual meeting held virtually was organized in a few months and was attended by a record number of participants.

The success of the Civil Section's 2020 meeting would not have been possible without Kathleen Cunningham's able virtual chairwomanship. I am grateful for the excellent precedent that she set as I prepare to chair the ULCC's second virtual annual meeting. I would also like to take the occasion to thank Kathleen for the mentorship and support she provided to me since I have taken on this role. A sincere thank you also to Manon Dostie, Peter Lown, Q.C. and Clark Dalton, Q.C. for their guidance, encouragement and support throughout the past year.

The Civil Section conducts its work throughout the year, traditionally by way of conference calls and email exchanges. ULCC Committees, including the Section's Steering Committee now have access to video technology which allows us to meet face-to-face virtually and stay better connected until we can meet in person again. I would like to thank Committee members for contributing to our monthly meetings and to working group members for the time they dedicate to our valuable projects. Following Steering Committee meetings, Clark Dalton diligently updates Table 5 to track implementation by Canadian governments of uniform acts adopted by the ULCC. Since the last ULCC Communiqué was published in Spring 2020, eight uniform acts adopted by the ULCC have been enacted by three provinces:

- Ontario: Bill 161, *Smarter and Stronger Justice Act, 2020* which implements the *Uniform Class Proceedings Act* (amendment multi-jurisdictional), 2007 was assented to July 8, 2020
- Prince Edward Island: Bill No. 118, *Intimate Images Protection Act* was assented to July 14, 2020; Bill 57, *Children's Law Act* which implements the *Uniform Child Status Act*, 2010 was assented to December 4, 2020; Bill no. 12, *Missing Persons Act* which implements the *Uniform Missing Persons Act*, 2014, and Bill no. 17, *Interpretation Act* which implements the *Model Interpretation Act*, 2015, were assented to May 13, 2021;
- Québec: Bill 55, *An Act to amend the Civil Code, in particular to make civil actions for sexual aggression, violence suffered during childhood and spousal violence imprescriptible* which implements the *Uniform Apology Act*, 2007 was assented to June 12, 2020; Bill 32, *An Act mainly to promote the efficiency of penal justice and to establish the terms governing the intervention of the Court of Québec with respect to applications for appeal* which implements the *Uniform Inter-jurisdictional Subpoenas Act*, 2013 was assented to June 5, 2020.

ULCC uniform acts have also received positive attention in Canada and abroad:

- STEP Journal, Issue 4, 2020, *Logging In*, on Saskatchewan's enactment in 2020 of the *Uniform Access to Digital Assets by Fiduciaries Act*;
- The Scrivener, Fall 2020, Volume 29, Number 3, *Electronic Wills in BC*, refers to the ULCC's work on electronic wills;

- Canadian Lawyer, *University professors develop proposed legislation to strengthen provincial ‘revenge porn’ remedies*, on the *Uniform Non-Consensual Disclosure of Intimate Images Act*;
- the Law Council of Australia and Queensland Law Society suggested, in representations made last September to the Australian government’s Royal Commission into National Natural Disaster Arrangements, that the *Uniform Benevolent and Community Crowdfunding Act (2020)* may be a useful starting point for the Commission’s deliberations on online fundraising challenges.

At the ULCC’s annual meeting this August, the Civil Section will receive a final report and draft *Uniform Court Jurisdiction and Proceeding Act* and draft *Uniform Enforcement of Judgments and Decrees Act*. It will also receive a pre-implementation report on the *Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (2019)*. Updates will also be presented and discussed for the uniform charity act project; the defamation in the internet age project; the reform of general partnership law 2006/joint ventures project and the oaths and affirmations project.

I hope that the increased comfort and experience with virtual meetings gained by many over the past year will translate into record high attendance and participation in our up-coming virtual annual meeting.

I look forward to seeing you online this August.

A word from the Interim Executive Director, Kathleen Cunningham

As many know, following the 2020 annual meeting I stepped down as Executive Director of the BC Law Institute. However, I have had the great fortune of continuing my association with the ULCC as the ULCC’s interim executor director following Marie Bordeleau’s own departure as Executive Director after ten years of service. Marie will be missed. I thank her for her generosity of support as I stepped into this role. We hope to announce the next executive director in June.

As John Lee noted, our new website has been launched (<https://ulcc-chlc.ca/>). We hope you have had a chance to explore it. Please bear with us as we complete the posting of the historical documents over the coming months. Once again, we must recognize those who helped make it happen. They are:

- Genevieve Harvey, former Jurisdictional Representative from Nova Scotia who led the project in the early days;
- Elizabeth Strange (NB) who took on the leadership of the website committee and was ably assisted by Sarah Dafoe (AB), Caroline Quesnel (CA), Clark Dalton Q.C. and Marie Bordeleau.

And, finally, thank you to Ian Rennie (NWT) for his dedication to our former website for so many years. And thank you to Clark Dalton, Q.C. who continues the painstaking work to ensure that the documents ultimately posted on the website, are in fact, the final documents.

Mark your calendars for the 2021 Annual Meeting!

Jurisdictional Representatives will be forming their delegations for our August meeting in June 2021. As many know, a virtual meeting for 2021 could not be avoided. See Chloé Rousselle and Valérie Simard's contributions for details for the agendas and plans for each Section.

Your Jurisdiction Representatives will soon forward the registration form, draft agenda, and an information sheet on technology requirements.

We look forward to “meeting” in August. Dates and times are:

- **Civil Section:** August 23 - 26, 2021 inclusive from 12 noon to 3:15 pm ET
- **Criminal Section:** August 23 - 27, 2021 inclusive:
 - August 23 & 24: 12 noon to 4:30 pm ET
 - August 25 - 27: 11:30 am to 4 pm ET