



UNIFORM LAW CONFERENCE OF CANADA
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

COMMUNIQUÉ

Winter 2019



Report of the Outgoing ULCC President Manon Dostie, Canada

The ULCC concluded another productive year with its successful 100th Annual Meeting in Québec City, Québec from August 12 to 16, 2018. My focus this year was

continuing the work on the ULCC's strategic review and work in priority areas of renewal as well as preparing for the ULCC's 100th anniversary meeting. I must again thank the members of the Strategic Planning Oversight Committee for their support, dedication, tenacity and sense of humour. Highlights of the most notable accomplishments of the Strategic Review this year include:

- The successful modernization of the organization's Constitution and By-laws. The Strategic Planning Oversight Committee members worked tirelessly all year with the support of Elizabeth Strange and drafters from New Brunswick.
- The Communications and Publications Committee, under the direction of Genevieve Harvey, streamlined our Communiqué and continued to work on the migration of our many documents to the new website.
- The Budget and Finance Committee examined how the ULCC is financed and made adjustments to ensure relevancy and viability of the organization.
- The Roles Working Group, chaired by Sarah Dafoe, examined how best to structure roles in the organization to ensure that the ULCC continues to be administered in an efficient and sustainable manner.
- A mid-year conference call was held with all Jurisdictional Representatives with a focus on the revised draft of the Constitution and By-laws.

- The ULCC's relationship with the Uniform Law Commission has been solidified and new linkages created with the European Law Institute.

The 100th Annual Meeting attracted a high number of delegates. Participation was diverse and included prosecutors, lawyers and notaries from the governments and private practice, members of the judiciary, law professors, the Canadian Bar Association, the Barreau du Québec, the Chambre des notaires du Québec, Indigenous Bar Association, Aboriginal Legal Services and law reform institutes. This year's international guests included the Uniform Law Commission's current President Anita Ramasastry, Harriet Lansing – Past President, Robert Stein – Chair of the International Committee, Michael Houghton – Past President, Carl Lisman – Chair of the Executive Committee, Howard Swibel - Chair of the Uniform Law Foundation. It was an opportunity to follow up on discussions from my attendance to the ULC meeting in Louisville, Kentucky and exchange on current and upcoming projects.

Many prominent guests from the Québec legal community addressed delegates during the week, including Mme Stéphanie Vallée, Minister of Justice and Attorney General of Québec.

On behalf of all the participants, guests and their families, I would like to acknowledge the hard work of the Host Committee led by Frédérique Sabourin and Laurence Bergeron and its members: Isabelle Doray, Chloé Rousselle and Caroline Vachon as well as the 100th Anniversary Committee who worked tirelessly during the year to organize memorable events during the week from the opening reception and tour at the historic Morrin Centre; a thrilling baseball game (Go East Go! Is this two years in a row?), followed by a BBQ at the CANAC Municipal Stadium; with the week

culminating in the impressive closing banquet in the Parliament restaurant where the keynote speaker, longtime friend and former President of the ULCC – Justice Georgina Jackson – delivered unforgettable remarks. It was also the opportune time to recognize Dean Sinclair Q.C., Lee Kirkpatrick, Judge Josh Hawkes Q.C., and Darcy McGovern Q.C. for their 20 years of service and dedication to the ULCC.

It was a great honour to continue to serve as President for 2017-2018. A heartfelt thank-you to all the dedicated volunteers who were instrumental in the success this year. The strategic review work will continue this year so don't be shy to volunteer as many committees could use a hand!

I look forward to seeing you all in St. John's Newfoundland and Labrador in August 2019.

Report of the 2018 – 2019 ULCC President Lee Kirkpatrick, Yukon

It is a great honour to have been chosen as ULCC President for 2018/2019 and to be following the path of the redoubtable Josh Hawkes and the impressive and apparently indefatigable Manon Dostie, not to mention all those others fortunate to have wielded the mighty mallet of ULCC over the past 100 years.

I first attended ULCC in Whitehorse in the early 1990s as an observer on the civil side when I was working as legislative counsel for the Yukon Government, but with a background in criminal defence work, I drifted over to the prosecutions side when Yukon undertook its own prosecutions and attended my first Criminal Section meeting a few years later.

As the only Yukon representative over a number of years, I was often the Civil Section and Criminal Section delegate both, moving from one meeting to the next with such frequency that I sometimes forgot whether I was a criminal or a civilian. Thank goodness for joint sessions! I was fascinated and engaged in this hybrid participation but it was impossible to do justice to both. Fortunately, our government came to realize the hugely important role of ULCC to a jurisdiction even as small as ours and I was joined by my excellent Yukon colleagues in the Civil Section, most recently Christine Badcock, leaving me free to participate fully on the criminal side which I had the great good luck to chair back in 1999/2000.

Our 100th anniversary was a cause for considerable celebration and we were so fortunate to have been the guests of our warm and welcoming partners from Québec who have always excelled at adding the extra *joie à vivre* which is small wonder considering that their jurisdiction has been hosting parties for over 400 years.

Lest our advanced age as an organization evoke visions of stodgy codgers railing about unborn widows and the rule against perpetuities, you will know that we have

undertaken recent projects which are very much informed by the 'real world of technology', including Crowdfunding and police records checks. The results of these two projects alone have had and will have profound effects on both those for whom funds are raised and distributed and on those whose privacy interests can be adversely affected by the gathering and dissemination of inaccurate and irrelevant information by law enforcement agencies. The true impacts of both of these projects are newsworthy and they highlight the tradition of the ULCC in not simply reacting to legal and societal changes but in anticipating them and making the law more relevant to the needs of Canadians.

I am truly enjoying the wonderful collegiality of the Executive Committee members Manon Dostie, John Lee, Matthew Hinshaw, Thomas Ahlfors and Peter Lown, QC, Clark Dalton, QC, Genevieve Harvey, Caroline Quesnel and am grateful for their ongoing generous contributions to ULCC as well as for their anticipated additional support during my absence at the start of 2019. There is so much to be done, including website development, continuing with our strategic plan and developing new projects and resolutions while following up on others, all of which for all of us needs to be done while balancing other demanding workloads. The work of all committees is considerable and will carry over to our next meeting in Newfoundland & Labrador, increasing in frequency and intensity as the year progresses. Naturally, we love a good challenge and are absolutely up for it.

As always, Marie Bordeleau and Clark Dalton, QC (without whom we would be uncoordinated) deserve our sincere gratitude for their work over the past year and number of years and we appreciate the opportunity to continue working with them in years to come.

I look forward to my continuing collaboration with you all over the next year and thank you once again for this most excellent opportunity.



2017 – 2018 Criminal Section Chair Report

Samantha Hulme, British Columbia

It was an honour to Chair the Criminal Section in Québec City for the 100th Anniversary of ULCC. We had particularly strong delegates to the Criminal Section this year –

with Associate Chief Judge Danielle Côté of the Court of Québec, Associate Chief Judge Faith Finnestad from the Ontario Court of Justice and our old friend Judge Josh Hawkes from the Alberta Provincial Court. We had a great balance of long time ULCC delegates and new delegates, Defence Counsel, Crown Counsel and an especially strong senior delegation from the Federal Department of Justice. We were very fortunate to have two lawyers representing Indigenous associations joining us this year – Denise Lightning from Maskwacis, Alberta, representing the national Indigenous Bar Association, and Caitlin Kasper from Aboriginal Legal Services in Toronto. Their perspectives, representing both rural and urban practices, on the impacts of various criminal law and procedural issues on Indigenous people involved in the justice system, were invaluable.

The Criminal Section began the week with 29 resolutions, to which one floor resolution was added for a total of 30. We debated 29 resolutions (after the withdrawal of one duplicate) and voted on 27 resolutions, relating to youth criminal justice firearms, various aspects of criminal procedure including *Identification of Criminals Act* reform, bail, DNA and mandatory minimum penalties. Two resolutions were withdrawn after debate. In an exceptional display of collaboration and collegiality, many resolutions were stood down after an initial debate and delegates worked the breaks, evenings and early mornings to reach consensus on amended resolutions. We are very proud to say that all 27 resolutions we voted on were passed, with none defeated at our 2018 meeting!

The Criminal Section also received 3 working group reports; first, regarding telewarrant procedure, second, section 9 of the *Canada Evidence Act* regarding the ability of a party to confront and lead its own witness, and third, regarding reform to section 490 of the *Criminal Code*, the detention of seized property regime. At the Earl Fruchtmann memorial session we received a presentation from Joanne Marceau, Chief Prosecutor of

the Director's Office and Patrick Michel, Chief Prosecutor of the Legal Services' Office of Québec's Directeur des poursuites criminelles et pénales (DPCP) regarding the independence, accountability, discretionary power and professional autonomy of prosecutors.

I want to thank Fraser Kelly, an Ontario Crown Attorney, for his leadership of the working group on section 9 of the *Canada Evidence Act*. Unfortunately Fraser was not able to attend the meeting, but he was with us in spirit and the working group members presented the report together which triggered a thoughtful discussion. I also want to thank Stephanie O'Connor from DOJ for her leadership of the tele warrant working group, and Manon Lapointe from the Public Prosecution Service of Canada for chairing the s. 490 working group.

I also want to thank Tony Paisana for his passionate leadership of the Criminal Records Check working group. At our joint session of the Civil and Criminal Sections, a new *Uniform Police Record Checks Act* was adopted. The new Act standardizes the types of criminal record checks that may be provided, places limits on the disclosure of non-conviction information and creates procedural protections including appeal and reconsideration processes to correct inaccurate information and challenge irrelevant information disclosed in criminal record checks.

In conclusion, I'd like to thank all the delegates for their hard work. We had such a strong, energetic and passionate group of delegates this year - we are very proud of what we accomplished. I'd also like to thank the Criminal Section Steering Committee for assisting in the planning of the agenda and special thanks to Caroline Quesnel, from DOJ, who took over the Criminal Section Secretary role after we lost not one, but two Secretaries between December and May! Caroline is an exceptional person of tremendous skill. We were so fortunate for her to join us and it is my hope that the ULCC Criminal Section has the benefit of her talents for years to come.

Thank you once again to our wonderful hosts from Quebec, and we'll look very much forward to our meeting in Newfoundland next August under the leadership of Matthew Hinshaw as the new Criminal Section Chair and Lee Kirkpatrick as President.



2018 - 2019 Criminal Section Chair Report

Matthew Hinshaw, Alberta

It is a true honour to be serving as the Chair of the Criminal Section of the ULCC for 2018-2019, and I am looking forward to our upcoming meeting in

Newfoundland, where we again anticipate a busy week. In addition to debate on resolutions, we will be receiving interim or final working group reports on Telewarrants, and on Sections 487 and 490 of the *Criminal Code*. Thank you to all who are participating in the work of these groups.

The Criminal Section Steering Committee has been meeting regularly since November to plan the agenda for this year's meeting, including discussing potential topics for the Earl Fruchtmann Memorial Seminar. The Steering Committee has also been hard at work revising and updating a number of reference documents, which will be of assistance to both current and future delegates to the Conference. In addition to updating the reference documents, the Steering Committee has reviewed the Rules of the Criminal Section, and some potential amendments will be brought forward for consideration of the Section in August.

Lastly, and perhaps most importantly, the Steering Committee has discussed a potential change to the order of presentation of resolutions at this year's meeting. Further details in relation to this proposed change will be provided when the 2019 resolutions are distributed later this year.

The Call for Resolutions went out on January 22, 2019, and I anticipate that all jurisdictions are currently working to prepare their submissions. We are asking that all resolutions be submitted to the Secretary of the Criminal Section, if possible in both official languages, by Tuesday, April 30, 2019. We are also requesting working group reports be submitted as soon as possible, no later than by June 1, 2019. These deadlines are to facilitate translation and distribution of materials to delegates well in advance of summer holidays. If you have any questions or concerns in the meantime, don't hesitate to contact me at matthew.hinshaw@gov.ab.ca or 1-403-297-2047 or our Section's Secretary, Caroline Quesnel at caroline.quesnel@justice.gc.ca or 1-613-957-4688.

I look forward to seeing you all in St. John's in August!



2017 - 2019 Civil Section Chair Report

Maria Markatos, Saskatchewan

The Civil Section successfully concluded another year at our annual meeting in Québec City in August 2018. Participation in the Section included

delegates from provincial, territorial and federal justice departments, law reform bodies, and members of the practicing bar and academia.

We were fortunate for our 100th anniversary to be joined in our deliberations by two Past Presidents: Madam Justice Georgina Jackson and John Gregory. Finally, there was strong representation from our American colleagues, including the current President of the American Uniform Law Commission and four past Presidents.

The Civil Section adopted the *Uniform Commercial Tenancies Act* in principle subject to the direction and commentaries provided by delegates. This project was initiated in 2011 and sought to codify and modernize all aspects of commercial tenancies. In Québec City, delegates reviewed the Act in its entirety and participated in a lively all day debate on specific aspects of commercial tenancy law, including whether the Act should place a positive duty on landlords to repair leased property. This project also completes the Civil Section's work on the Commercial Law Strategy. The working group's revisions have been reviewed by jurisdictional representatives and the final *Uniform Commercial Tenancies Act* is now adopted and recommended to jurisdictions for enactment.

I would like to thank the working group for their continued dedication to this project and seeing it through to completion.

The Civil Section also adopted, in principle, the *Uniform Electronic Documents Rules*. These Rules will govern the production of electronic documents in civil and administrative proceedings and if enacted will have large scale application across a variety of practice areas. Crystal O'Donnell as Chair, and the rest of the working group, should be congratulated on their intense effort towards the completion of this project. The revised Rules have been reviewed by Jurisdictional Representatives and are now adopted.

As is customary, the Civil Section participated in energetic joint sessions with the Criminal Section resulting in the adoption of the *Uniform Police Record Checks Act*. We also received a report from the federal government on private international law initiatives, as well as a report from the American Uniform Law Commission President on the projects being considered by our friends across the border.

Reports on new topics were also considered, including a report on the non-consensual disclosure of intimate images and a review of the existing legislation across Canada and issues to be considered. The working group on the review of certain Acts implementing international conventions also presented a report. Over the next year, the working group will review six uniform Acts to ensure their conformity with the *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention*.

In Québec City we received a discussion paper on the Non-Consensual Disclosure of Intimate Images. A working group has been created and is meeting regularly; the Civil Section can expect to receive a progress report on this project. The Civil Section also received a progress report from the working group on the Review of Uniform Acts in Light of the Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention. The working group is reviewing seven Acts and continues to meet monthly. I anticipate a final report with draft Acts will be presented for review at our next meeting.

With the completion of two large projects last year, the Civil Section can look forward to reports on new topics including electronic wills and crowdfunding. Preliminary work is also being done in relation to a

review of testamentary additions to trusts and recommendations will be presented to delegates for consideration. A working group has been re-established with respect to the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary and a report is anticipated. The Civil Section may also receive a report on the Hague Convention on Independent Guarantees and Standby Letters of Credit.

The Civil Section is involved in efforts to update Table 5 – Implementation by Jurisdictions of Uniform Acts, Uniform Rules, Model Acts or other Recommendations since 2000. Diligent efforts are being made to ensure the Table is updated prior to the Annual Meeting in August and on a regular basis going forward. Delegates will also recall that the Civil Section plans to undertake a review of its own of Rules of Procedures to complement the recent revisions to the ULCC Constitution and bylaws. As well, the section will be involved in the review of the ULCC's Conventions on Drafting.

As always, many thanks to our Project Coordinator, Clark Dalton, QC for his supernatural ability to take part in nearly every committee and working group. Thanks also to all of the jurisdictional representatives who take the time to participate in our monthly calls and weigh in on a variety of topics, as well as all the working group members who make time to work on our valuable projects.

It is my pleasure to take the reins as Chair of the Civil Section for a second term, and I look forward to lively debates and deliberations in Newfoundland & Labrador.

100th Anniversary Chair Report **Kathryn Sabo, Canada**

The August 2018 Annual Meeting in Québec City provided an opportunity to celebrate the 100th year of the Uniform Law Conference of Canada. To mark the occasion, the Governor General and the Prime Minister of Canada sent congratulatory messages underscoring the important role of the ULCC in developing uniform civil and commercial legislation, and in the reform of Canadian criminal law. Through historical presentations from each jurisdiction, delegates were reminded of the significant contributions to the work of the ULCC made by individuals and jurisdictions over the years.

The Honourable Justice Georgina R. Jackson, President from 1988-1990, was made an honorary life member of the ULCC in recognition and appreciation of her service and contribution to the organization. As the keynote speaker at the closing dinner, in her thoughtful remarks Justice Jackson underscored the benefits of the ULCC's work to all jurisdictions and the commitment of the individuals who participate in it and invited delegates to be mindful of the challenges the ULCC faces, including the need to consider indigenous perspectives and the importance of demonstrating the ULCC's value to deputy ministers and ministers.



Don't miss the 2019 Annual Meeting!

The Host Committee is pleased to invite you to the 101st Annual Meeting of the Uniform Law Conference of Canada, to be held from Sunday August 18th to Thursday August 22nd in St. John's, NL. Please note that this is one week later than the usual week for the ULCC's Annual Meeting.

All sessions will take place at the Delta and St. John's Convention Centre, and the hotel has set aside a block of rooms at the special group rate of \$174/night. The deadline to book a room at this preferential rate is Friday July 26, 2019. We encourage you to book early, as St. John's is very busy at that time of year.

To reserve, either call 1-888-793-3582 or 1-709-739-6404, or contact the hotel by email at reservationsdtsj@whg.com. When making your reservation, please indicate that you are with the ULCC.

Plans for the Annual Meeting include a welcome reception on Sunday night, the world's most anticipated sporting event for 2019 (the ULCC softball game and BBQ, of course) and a closing dinner. More information will be available as planning progresses so keep an eye out for further details.

We also encourage you to consider coming early to St. John's, or staying afterwards to enjoy the city or other parts of the province. A great vacation destination, St. John's is the place where early risers can be the first in North America to watch the sun rise, take a hike on historic Signal Hill next to the ocean, or explore the fabulous music and nightlife of famous George Street. For more tourist information or to help plan your visit, please check out www.newfoundlandandlabrador.com or call 1-800-563-6353.

We look forward to seeing you in St. John's in August!

