



UNIFORM LAW CONFERENCE OF CANADA

MINUTES OF THE CRIMINAL SECTION (2024)

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INTRODUCTION

[1] Delegates returned this year for the Criminal Section meeting of the Uniform Law Conference of Canada (ULCC), which held its 106th meeting in Ottawa, ON, from August 12-16, 2024.

[2] This year more than 35 delegates, from twelve (12) federal, provincial, and territorial jurisdictional delegations participated in the deliberations of the Criminal Section. With respect to provincial delegations, Prince Edward Island did not send a delegation this year. With respect to the territories, the Northwest Territories' delegation was also absent from the Criminal section of this year's conference.

[3] Delegates brought a broad array of expertise in criminal law to the benefit of the section, both from within and outside government. They included policy counsel, prosecutors, as well as members of the defence bar and the judiciary. A number of organizations apart from governments and prosecution agencies were also represented by the delegates attending this year's conference, including: the Barreau du Québec; The BC First Nations Justice Council; the Canadian Association of Provincial Court Judges (CAPCJ); the Canadian Bar Association (CBA); The Criminal Trial Lawyers' Association (Alberta); the Court of Quebec; the Criminal Lawyers Association (CLA); Norway House Cree Nation; The Quebec Defense Lawyers Association (AQAAD) and the Law Commission of Canada.

OPENING PLENARY

[4] At the opening plenary of the ULCC, the President of the ULCC, Matthew Hinshaw, delivered a land acknowledgement and opening words. The Honourable Arif Virani, Minister of Justice and Attorney General of Canada, delivered welcoming remarks to ULCC delegates via video. M. Hinshaw introduced the members of the ULCC executive committee, as well as Pierre Daigneault, ULCC executive director. Jurisdictional representatives present introduced the members of their delegations, and Manon Dostie provided an overview of the week's social events.

[5] M. Hinshaw delivered the president's report. In plenary session, Sarah Dafoe explained 7 proposed changes to the ULCC bylaws and constitution, which passed with one vote against. With respect to the financial business of the ULCC, financial resolutions were put forward, and resolutions related to the ULCC auditor and financial statements passed unanimously. S. Dafoe spoke to the work of the nomination committee. Anny Bernier on behalf of Craig Savage provided an update on the week's work of the ULCC Criminal Section. Christine Badcock

provided an overview of the work of the ULCC Civil Section. Laura Pitcairn provided an update on behalf of the Roles Review committee.¹

MEETING OF THE CRIMINAL SECTION

[6] The Criminal Section convened to order on Monday, August 12, 2024 following the combined opening plenary. Anny Bernier, previous chair of the criminal section (2023), presided as Chair on behalf of Craig Savage for the first day of the conference, and Aleksander Godlewski served as Secretary.

[7] A. Bernier delivered opening remarks on behalf of C. Savage, and both A. Bernier and A. Godlewski noted several housekeeping items for the benefit of attending delegates including: the amount of time that would be available to discuss resolutions; a reminder of the confidentiality of the proceedings; and logistics on how to operate Sharepoint and amend resolutions if required. A. Godlewski also noted that, taking advantage of the presence of the annual meeting in Ottawa, the Department of Justice Canada (DOJ) would be sending several observers who would be present at the meeting over the course of the week.

[8] Matthew Taylor, Federal Jurisdictional Representative, delivered the Federal Jurisdictional Representative's Report. M. Taylor noted the challenge of tracking all of the diverse work of the ULCC, and the DOJ's appreciation for the way the ULCC does its work, and its importance. As a highlight of the report, M. Taylor noted that of the 150 resolutions considered in the past 5 years by the ULCC, at least 9 have found their way into legislation.²

[9] Chloé Rousselle moved the approval of the Criminal Section agenda, seconded by L. Pitcairn. The agenda of the Criminal Section was adopted with unanimous consent.

PROCEEDINGS

*Resolutions*³

[10] In keeping with subsection 4(3) of the *Rules of Procedure*, Nova Scotia was the first province to present a resolution this year. Each jurisdiction and independent body presented one resolution in alphabetical order before moving to a second resolution, with the Canada delegation presenting resolutions after other delegations.

¹ The minutes of the opening plenary are available at the following link: [https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-\(8\)?lang=en-us](https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-(8)?lang=en-us)

² The written report of the Federal Jurisdictional Representative will be available online at the following address: [https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-\(8\)?lang=en-us](https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-(8)?lang=en-us)

³ A list of resolutions with the result of the vote for each is available separately online at the following address: <https://www.ulcc-chlc.ca/Criminal-Section/Recommendations/2024-Criminal-Section-Resolutions>

[11] Initially, jurisdictions submitted 28 resolutions for consideration by delegates. Of these resolutions, four (4) were withdrawn after discussion.

[12] Ultimately, only one (1) resolution was defeated. Seventeen (17) resolutions were adopted following an amendment. A table of the outcomes of the various resolutions is found below:⁴

Table 1: Results of 2024 ULCC Criminal Section Resolutions⁵

Outcome of Resolution		Total Number of Outcomes	Resolutions
Resolutions Carried		6	NS2024-01; AB2024-01; AB2024-02; BC2024-02; AB2024-03; ON2024-04
Resolutions Carried as Amended		18	ON2024-01; ON-CLA2024-01; BC2024-01; Can-CBA2024-01 / Can-ABC2024-01; Can-PPSC2024-01 / Can-SPPC2024-01; NS2024-02; ON2024-02; QC2024-02; SK2024-02; Can-PPSC2024-02 / Can-SPPC2024-02; ON2024-03; QC2024-03; SK2024-03 A, SK2024-03 B; Can-PPSC2024-03 / Can-SPPC2024-03; QC2024-05; QC2024-06; QC2024-07
Resolutions Withdrawn	Withdrawn	0	
	Withdrawn After Discussion	5	QC2024-01; SK2024-01; QC2024-04; Can-PPSC2024-04 (#1), Can-PPSC2024-04 (#2) / Can-SPPC2024-04 (#1), Can-SPPC2024-04 (#2);
Resolutions Defeated		0	
Resolutions Defeated as Amended		1	Can-CBA2024-02 / Can-ABC2024-02

⁴ A summary of the adopted resolutions is available on the ULCC website at the following link: <https://www.ulcc-chlc.ca/Criminal-Section/Recommendations>

⁵ Given that one resolution may be presented in multiple parts that can be voted on separately, the total number of outcomes in the table below may not match the total number of resolutions.

Criminal Section Working Groups⁶

[13] The Criminal Section received reports on the progress of its five (5) Working Groups, four (4) of which provided status reports, and one which provided a final report:

1) Section 490 Working Group (Final Report)

[14] Nadine Nesbitt presented the final report of the Working Group examining section 490 of the *Criminal Code* on behalf of Nicholas Reithmeier, chair of the working group. This working group was reconstituted at the August 2022 meeting of the ULCC and undertook a comprehensive reconsideration of section 490 of the *Criminal Code* and related foundational parts of section 489.1.

[15] Members of the working group included: chair, Nicholas Reithmeier (BC Prosecution Service), Melissa Adams (Crown Law Office ON), Matthew Asma (Crown Law Office ON), Erin Cassidy (Justice Canada - Criminal Law Policy Section (ON)), Michael Fawcett (Crown Law Office ON), Sandro Giammaria (Justice Canada - Criminal Law Policy Section (ON)), Michael Gismondi (Defence Counsel - Peck and Company (BC)), Pauline Lachance (Director of Penal and Criminal Prosecutions, QC), James Mallet (Director Civil Forfeiture Office (AB), James Meloche (Public Prosecution Service of Canada – HQ Counsel Group (ON)), Michael McEachren (Public Prosecution Service of Canada (ON)), Nadine Nesbitt (Crown Prosecution Service AB), Emilie Robert (Director of Penal and Criminal Prosecutions, QC), Marc-Antoine Rock (Defence Counsel (QC)), Heather Russell (Public Prosecution Service of Canada (BC), Kimberly Stark (Royal Canadian Mounted Police (BC)), Kevin Westell (Defence counsel - Pender Litigation (BC)) and Marta Zemojtel (Department of Justice Canada (BC). Past members of the group Melissa Insanic (York Regional Police (ON)), Julie Roy (Director of Penal and Criminal Prosecutions, QC), Martine Sallaberry (Medicine Hat Police Service (AB)) and Jeffrey Wyngaarden (Crown Law Office ON) ceased membership prior to the submission of the final report.

[16] The Final Report of the section 490 working group was accepted (Carried **25-0-0**, 25 in favour) and its results approved (Carried **18-0-7**, 25 in favour, 7 abstentions).

2) Working group on Section 672.26 and related sections of the *Criminal Code* (juries and fitness) (Status Report)

[17] The status report of the Section 672.26 working group was presented by Joanna Wells. The section 672.26 working group was created as a result of ULCC resolution ON2021-03,

⁶ Copies of the reports are available at the following link: <https://www.ulcc-chlc.ca/Criminal-Section/Reports>

with the goal of reviewing section 672.26 and related sections of the *Criminal Code* for possible legislative reform as to how the issue of fitness should be tried when an accused person has elected trial by judge and jury.

[18] The group has met 12 times since it was established, unfortunately due to an unanticipated absence of one member, and the appointment of two members of the group to the bench, there were insufficient members available to continue the work and reach a meaningful consensus recommendation.

[19] The status report of the working group was accepted, with the working group to provide its next report to the Criminal section at the 2025 annual meeting (23-0-0, 23 in favour).

3) Working Group on the Treatment of Animals in the Criminal Code

[20] The status report of the Working Group on the Treatment of Animals in the *Criminal Code* was delivered by Nadine Nesbitt, Chair of the working group. This working group was created as a result of resolution ON2022-03, with a goal of exploring the treatment of animals in the *Criminal Code* with a view to making recommendations for amendments.

[21] Members of the group included: Nadine Nesbitt, Chair, (AB AG); Emma Lehrer, (BC AG); Adam Badari, (AB AG); Mandy MacLeod, (AB AG); Andrew Davis, (SK AG); Andrew Synyshyn, (MB Criminal Defence Lawyers' Association); Andrew Cappell, (ON AG); Tara Dobec, (ON AG); Caitlyn Kasper, (ON Aboriginal Legal Services); Melanie Webb, (ON Canadian Bar Association); Aleksander Godlewski (ON Justice Canada).

[22] As contemplated by the 2022 resolution, it is the intention of the Criminal Section Animals Working Group that any recommendations regarding amendments to the *Criminal Code* will be contained in the Joint Animals Working Group Final Report, and it is the hope of the Criminal Section Animals Working Group that the Joint Animals Working Group Final Report will be completed for the 2025 ULCC annual meeting.

[23] The Status report of the Working Group on the Treatment of Animals in the *Criminal Code* was accepted (26-0-0, 26 in favour), with the group to endeavor to provide its final report at the 2025 meeting of the Conference.

4) Working Group on Sections 278.1 – 278.94 of the Criminal Code (“Records Regime”)

[24] The status report of the working group was delivered by David Parry, co-chair of the working group. Resolution Can-CBA2023-03/Can-ABC 2023-03 created a working group with the goal of studying the current “records regime” provisions in the *Criminal Code* (sections

278.1 to 278.94). The working group is Chaired by Melanie Webb and David Parry, representatives of the Canadian Bar Association.

[25] Members of the Working Group include: Melanie Webb (Defence Counsel, ON/CBA), Co-Chair; David Parry (ON Crown Counsel/CBA), Co-Chair; Janet Dickie, (BC, Prosecution Service); Nadine Nesbitt (AB, Prosecution Service); Kelly Kaip, (SK, Public Prosecutions); Audrey Olson, (SK, Ministry of Justice and Attorney General); Anthony Cotnoir (QC, DPCP); Hugo Caissy (QC, Defence Counsel); Emma Evans (ON Ministry of the Attorney General); Aidan Seymour-Butler (ON, Defence Counsel); Cheryl Schurman – (NS Public Prosecution Service); Carla Ball (NS Public Prosecution Service); Annie Piché (Public Prosecution Service of Canada, NWT); Morna Boyle (Department of Justice Canada); The Hon. Anouk Desaulniers, (Judge, Cour du Québec); The Hon. Eric Tolpannen (Judge, Alberta Court of Justice, Canadian Association of Provincial Court Judges)

[26] The working group intends to have a final report for the 2025 Annual ULCC meeting.

[27] The status report of the working group was accepted, with the working group to endeavor to provide a final report to the Criminal section at the 2025 annual meeting (26-0-0, 26 in favour).

5) Working Group on Statutory Exemptions to Mandatory Minimum Penalties of Imprisonment

[28] The status report of the working group was delivered by Anthony Cotnoir, chair of the working group. Resolution QC2023-03 created a working group with the goal of examining whether the 2013 report “*Statutory Exemptions to Mandatory Minimum Penalties*” should be updated in light of recent jurisprudence and legislative changes. The group is chaired by Anthony Cotnoir, who replaced Lina Thériault this year as chair of the working group. The enabling resolution of the group is as follows:

We recommend the creation of a working group (WG), chaired by a representative from Québec, with the mandate to update, in light of the coming into force of Bill C-5 (*An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*, ch. 15, 2022) and the various decisions that found mandatory minimum penalties unconstitutional for sexual offences committed against a person under 16 years of age, the 2013 final report “Statutory Exemptions to Mandatory Minimum Penalties”. The WG can also opine on whether or not the mechanism discussed in paragraph 36 of the *Lloyd* decision should be implemented in the *Criminal Code* and if so, what should be the parameters of such a mechanism in Canada.

Carried as Amended: 14-2-11 (In Favour – Opposed – Abstentions)

[29] Members of the Working Group include: Anthony Cotnoir (QC, DPCP) (Chair); Sheldon Steeves (NL, Public Prosecutions, Department of Justice and Public Safety); Emma

Evans (ON, MAG); Leah Burt (Justice Canada); Matthias Villetorte (Justice Canada) Dayna Queau-Guzzi (Manitoba Prosecution Service); and Sylvain Leboeuf (QC, Ministry of Justice). The group was previously chaired by Lina Thériault (QC, DPCP). The Working Group aims to present a report of its work to the ULCC Criminal Section meeting in 2025.

New Criminal Section Working Groups

[30] One new Working Group was established following discussion and a vote at the 2024 Criminal Section meeting, as discussed briefly below:

1) Working Group on Restriction on Publication of Names of Accused

[31] Resolution ON-CLA2024-01 created a new working group with the goal of examining whether any recommendations should be made relating to restrictions on the name or other identifying information of accused persons, with a chair of the working group to be identified. The enabling resolution of the group is as follows:

That a ULCC working group be formed to make recommendations concerning the restriction of the publication of the name or other identifying information of an accused person, given the need to protect the privacy interests, dignity, security of the person and the presumption of innocence relating to that person, while recognizing public safety and other interests of justice.

Carried as amended: **24-4-1** (In Favour – Opposed – Abstentions).

Earl Fruchtman Memorial Seminar

[32] At the Earl Fruchtman Memorial Seminar on Wednesday, August 14, 2024, delegates from the Criminal Section and the Civil Section heard a presentation from Shauna Van Praagh, President of the Law Commission of Canada, entitled “Serious, Surprising and Sustainable: The Project of Rebuilding a Law Commission for Canada”. Delegates had an opportunity to hear first-hand from President Van Praagh about the inspiring and sometimes daunting sense of possibility and scope attached to the task of rebuilding a federal agency dedicated to engaging the people of Canada in the evolution of law.⁷

⁷ Further information on the Law Commission of Canada and its work can be found at the following webpage (<https://www.canada.ca/en/law-commission-canada.html>). President Van Praagh’s August 2024 letter, reflecting in part on her presentation to the ULCC, can be found here (<https://www.canada.ca/en/law-commission-canada/about/president/letters.html>).

Joint Session: Diversity and Inclusion Committee

[33] At a joint session of the Criminal Section and the Civil Section, on Wednesday, August 14, 2024, Matthew Hinshaw, Chair of the Diversity and Inclusion Committee (D&I Committee) presented the results of the 2023 ULCC Member Survey. The survey was developed and conducted by the Newfoundland and Labrador Statistics Agency (NLSA), in partnership with the D&I Committee. Matthew Hinshaw also encouraged delegates to complete the 2024 survey.

[34] The ULCC 2024 Diversity and Inclusion Committee report is available on the ULCC website.⁸

Joint session on the Joint Working Group on the Treatment of Animals in Canadian Law

[35] Nadine Nesbitt presented to a joint session of both the Criminal and Civil sections of the ULCC on August 14th, 2024 on the work to date of the Joint Working Group on the Treatment of Animals in Canadian Law.⁹

[36] The joint session of the ULCC carried the following resolution:

“Resolved: THAT the progress report of the working group on the Treatment of Animals in Canadian Law be accepted; THAT the working group continue its work in accordance with the directions of the ULCC; and THAT the Working Group report back to the ULCC at the 2025 Annual Meeting”

CLOSING

[37] At the closing session of the Criminal Section, A. Bernier announced that James Meloche had been selected by the nomination committee as Chair of the Criminal Section for 2026.

[38] Delegates approved the nomination of James Meloche as Chair of the Criminal Section, 2026, carried: **24-0-1** (In Favour – Opposed – Abstentions).

[39] Outgoing chair Craig Savage delivered closing remarks to the Criminal Section, noting the collegiality and professionalism of delegates to the conference, and the pleasure of working with everyone involved with the ULCC. M. Hinshaw and C. Savage thanked the interpreters at

⁸ The report can be found at the following link: [https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-\(8\)](https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-(8))

⁹ The full progress report of the working group can be found at the following link: [https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-\(8\)](https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-(8))

the conference for their hard work and diligence. A. Bernier thanked both C. Savage and A. Godlewski for their work in making the conference a success.

Closing Plenary¹⁰

[40] M. Hinshaw delivered closing remarks to both sections of the ULCC on Friday, August 16th 2024. M. Hinshaw thanked the organizing committee for the success of the closing banquet. C. Savage delivered the report of the Criminal Section, indicating that 28 resolutions had been considered at the 2024 annual meeting, with 23 accepted, 1 defeated, and 4 withdrawn. C. Badcock delivered the report from the civil section.

[41] L. Pitcairn provided an update from the Roles Review committee, and announced that Gregory G. Blue, K.C., will chair the Advisory Committee on Program Development and Management (ACPDM), taking up the mantle from Peter Lown, K.C, after his retirement from the role following many contributions to the work of law reform over the years.

[42] M. Hinshaw brought forward a motion to thank a number of individuals that contributed to the success of the annual meeting, which passed with unanimous consent.

[43] Sarah Dafoe announced that the nomination committee had selected Chloé Rouselle as the incoming vice-president of the ULCC. Maria Markatos was nominated as incoming president of the ULCC. A resolution confirming M. Markatos and C. Rouselle as President and Vice-President of the ULCC was approved with unanimous consent. M. Markatos delivered incoming remarks upon her nomination as president of the ULCC.

[44] Angus Gibbon reported to the assembled delegates on behalf of the host-jurisdiction of the ULCC 2025 annual meeting, to be held in Halifax, Nova Scotia, from August 10th-14th, 2025.

[45] The Criminal Section concluded its work on August 16th, 2024.

¹⁰ The full minutes of the closing plenary will be available at the following webpage: [https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-\(8\)](https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Ottawa,-ON-(8))