

COMMUNIQUÉ

Fall 2016



Report of ULCC President 2015-2016 Elizabeth Strange, New Brunswick

My term as President of the Uniform Law Conference of Canada (ULCC) formally ended at our 2016 Annual Meeting held in August in Fredericton, N.B., and I can't believe how quickly the year went. I was in the somewhat unique position of hosting the ULCC's Annual Meeting in my home province and am happy that I had the opportunity to cap off my year as President in spectacular fashion in Fredericton!

The Annual Meeting provides the opportunity to meet new people and connect with old acquaintances from across the country and beyond. The week was filled with hard work, strenuous debate and even a little fun. The Opening Reception was held at beautiful Government House, the ball-game in the neighbouring town of Oromocto, and everyone was treated to a delicious lobster dinner at the Closing Banquet.

During the Opening Plenary, I was honoured to read aloud a letter of strong support for the ULCC from the Federal Minister of Justice and Attorney General Jody Wilson-Raybould. We were pleased our esteemed colleagues from the US Uniform Law Commission (ULC) President Rich Cassidy and former President Bob Stein could join us for part of the Annual Meeting. We were fortunate to have delegates attend from all jurisdictions in Canada (although not in both Sections, so we continue to stress the need for governments to send at least one representative for each of the Civil and Criminal Sections). Details of our achievements at the

2016 Annual Meeting and our continuing work are described in the reports of the Outgoing Section Chairs.

Although the Annual Meeting is the highlight of the year, the ULCC Executive and staff, Committees, Jurisdictional Representatives and Working Groups work extremely hard all year long. As this is the end of my term, I would like to take the opportunity to formally thank everyone who contributed to another successful year for the ULCC. In particular, I want to thank our Executive Director, Marie Bordeleau, our Projects Coordinator, Clark Dalton, Q.C., John Lee, Outgoing Civil Section Chair; Eric Gottardi, Outgoing Criminal Section Chair, Dorette Pollard, Secretary for the Criminal Section, Peter Lown, Q.C., Chair of the Advisory Committee and the International Committee, and Genevieve Harvey, Chair of the Communications Committee. I also want to note the hard work of the Chairs of our Working Groups, as I know from experience how challenging that role can be.

What's New?

- The **Strategic Plan Oversight Committee** (aka SPOC) has begun a comprehensive review of the ULCC. Some small changes are already being implemented and we look forward to unveiling further changes over the next two years as we prepare to celebrate the ULCC's 100th Anniversary in Quebec City in 2018.
- A **100th Anniversary Committee** has been formed.
- I had the opportunity to appear before the **Senate Committee on delays in the Canadian justice system**. This was a great opportunity to speak to

federal law makers about the ULCC and to explain our process.

- In July, I attended the **US ULC's Annual Meeting** in Stowe, Vermont, with Peter Lown, Q.C. We had the opportunity to participate in several sessions and met with colleagues from the European Union and from across the US.

This is where I leave you in the capable hands of Josh Hawkes, Q.C., the new President of the ULCC. As Immediate Past-President, I thank all of you for putting your faith in me and I look forward to working with Josh and everyone involved with the ULCC in continuing to tackle challenges and build on the success of the past year.

Plan to attend the 2017 Annual Meeting!

The 99th Annual Meeting of the ULCC will be held from Sunday, August 13 to Thursday, August 17, 2017 in Regina, Saskatchewan.

A block of rooms at the Hotel Saskatchewan has been set aside for delegates at the special group rate of \$159/night (based on single or double occupancy, before taxes). Reservation details will be provided in the New Year. <http://www.hotelsaskatchewan.ca>

The start of our Annual Meeting overlaps with the annual folk music festival held in Victoria Park immediately in front of the host Hotel and we would encourage delegates to consider coming a day or two early to take in the event.



2015-2016 Criminal Section Report Chair Eric Gottardi, British Columbia

As defence Counsel, it was a distinct privilege to Chair of the Criminal Section this past year.

The Annual Meeting in Fredericton in August was tinged with sadness as we mourned the untimely passing of our dear friend and ULCC Champion, Earl Fruchtmann of Ontario in January 2016. As a posthumous recognition of his loyal contribution to ULCC and the Criminal Section for almost three decades, the Steering Committee for the Section proposed a delegation vote, which passed unanimously to designate the Open Forum in his memory called the "Earl Fruchtmann Memorial Seminar."

This year's meeting brought together 28 delegates from nine jurisdictions to deliberate on a very ambitious agenda, which required three extra sittings. Delegates considered 33 resolutions, 30 of which passed either without amendment (15) or as amended (15). Only one resolution was rejected and in spite of amendments and two were withdrawn after careful consideration. These resolutions covered a variety of subject matters ranging

from reform of the *Youth Criminal Justice Act*, and a variety of provisions in the *Criminal Code* relating to sentencing reform, publication bans, sexual offences against children, repeal of the victims surcharge and voyeurism. The Criminal Section created two new working groups to examine telewarrants; and criminal records checks, a joint working group with the Civil and Criminal Sections, Chaired by Tony Paisana of the Canadian Bar Association. Indeed the three items on the ULCC 2016 Joint Session emanated from the Criminal Section.

In addition, three working groups tabled final reports in 2016 on the following topics:

- **private recordings and public risk:** the balance after *R v Barabash*;
- **law of informer privilege;** and
- **endorsement of search warrants, orders and authorizations** in the *Criminal Code* and the *Controlled Drugs and Substances Act*

Delegates participated in five presentations; three of which were consultative in nature; another was an Open Forum on the Elsipogtog Healing to Wellness Court of New Brunswick, followed by a strategic

brainstorming session on the ULCC, from the perspective of the Criminal Section.

Many of these deliberations flowed seamlessly into the consultations held on the Criminal Justice System Review in support of a key item in the mandate letter to the Minister of Justice and Attorney General of Canada. Delegates provided their views on a presentation on possible reform of the *Identification of Criminals Act*. The Criminal Section was also consulted on the possible impact of the unanimous decision by the Supreme Court of Canada in *R v Spencer*, on the ability of law enforcement officials to receive voluntary access to basic subscriber information (BSI) from not only telecommunications service providers (TSP) but also third parties, such as banks and transportation companies. Also of note, the Senior Federal Delegate Report, which provides a synopsis of the legislative reforms by Parliament and policy development in criminal law at Justice Canada included a new section this year, which provides a status update on ULCC criminal section resolutions.

This is a welcome addition particularly since it highlights the work of the Criminal Section and represents an indispensable reference tool for Jurisdictional Representatives as they make the case to justify their attendance at the annual Criminal Section meetings.

Finally, the ULCC celebrates its 100th anniversary in 2018 and the Criminal Section devoted a significant part of its deliberations to a brainstorming session on the strategic direction and possible reform of the ULCC. This forms part of a broader initiative that seeks to ensure ULCC's sustainability and contribution to law reform in Canada well into the next century.

I would like to thank all delegates for their commitment and hard work throughout the Section's deliberations. Also, I wish to acknowledge and commend Ms. Tammy Augustine, LL. B., Justice Manager, Elsipogtog Health & Wellness Centre; and Katherine Piercey, Primary Case Manager, Elsipogtog Health & Wellness Centre for the compelling presentation during the Open Forum on their ground breaking work with the Elsipogtog Healing to Wellness Court.

I look forward to working with my successor Laura Pitcairn, in the months ahead as together we prepare to meet again in Regina next August.



2015-2016 Civil Section Report Chair John Lee, Ontario

The Civil Section had an extremely busy year and I'm pleased to report on the following highlights of our annual meeting in

Fredericton.

The Civil Section adopted the *Uniform Access to Digital Assets by Fiduciaries Act*. This Act sets out a legal framework to deal with access to digital information/assets by attorneys under powers of attorney, estate executors, trustees and guardians. It has already drawn keen interest from STEP. The Civil Section also adopted amendments to the *Uniform Wills Act* dealing with international wills.

In addition, the Civil Section adopted the following Uniform Acts, subject to further revisions by the respective working group in a number of areas identified at the annual meeting:

- **Uniform Arbitration Act:** This Act represents a modern restatement of arbitration law and replaces the previous Uniform Arbitration Act, which was adopted by the Conference in 1990.
- **Uniform Protection of Public Participation Act:** This Act is designed to protect critics from strategic lawsuits aimed at burdening them with the cost of a legal defense until they abandon their criticism. This Act replaces the previous Uniform Prevention of Abuse of Process Act.

Unless two or more objections are received by the Projects Coordinator of the Conference by November 30, 2016, for the revised *Uniform Arbitration Act*, and by February 1, 2017, for the revised *Uniform Protection of Public Participation Act*, the statutes will be taken as adopted as Uniform Acts and recommended to the jurisdictions for enactment.

As for ongoing projects, the Civil Section received reports on the following:

- **Commercial Tenancies Act:** The Act will deal with issues such as the formal requirements of a lease and the remedy of distress for rent.
- **Uniform Vital Statistics Act:** This Act will be a revision of vital statistics legislation in response to legal developments such as the adoption of the Uniform Child Status Act and recent human rights decisions on transgendered persons.

We also heard from Richard Cassidy and Robert Stein from the American Uniform Law Commission, who provided the Civil Section with a presentation of the Commission's work over the past year. In addition, Kathryn Sabo provided the Civil Section with an overview of the activities and priorities of the Federal Department of Justice in International Private Law.

Finally, following discussions with the Criminal Section of the Conference, the Civil Section and the Criminal Section will be engaging in future work in the following areas:

- **Complementary Provincial/Territorial Legislation:** The Conference will continue to track provincial and territorial legislation that complements criminal legislation to identify uniform law projects that may be undertaken in the future.
- **Charter Costs Awards and Civil Charter Damages Against the Crown:** The Conference will track cases across Canada that have awarded costs and damages against the Crown for Charter breaches arising out of criminal proceedings to determine if there is any work that may be undertaken in this area in the future.
- **Police Record Checks:** The Conference will be undertaking a project to address inappropriate disclosure of non-conviction and non-criminal records, such as mental health information, in police record checks.

It was a pleasure to serve as Chair for the past year and I am looking forward to working with our new Chair, Sarah Dafoe.

ULCC Introduces 2016-2017 Executive Members

President: Josh Hawkes, QC

Josh has been a prosecutor with Alberta Justice for 25 years. He has been doing policy and appellate work for most of that time, and has represented the Crown at every level of court. He has been a delegate to the Conference for over 10 years, is a past chair of the Criminal Section, and has chaired many working groups. In his spare time he is a Bencher of the Law Society of Alberta.

Vice-President: Manon Dostie

Manon is Senior Counsel with the Constitutional, Administrative and International Law Section of the Department of Justice (Canada). She is a member of the Law Society of Upper Canada in Ontario. Ms. Dostie holds a Bachelor of Commerce - International Business from McGill University, as well as a LLB and LLL from the Faculty of Law of the University of Ottawa. She has participated in ULCC activities since 1999 in various capacities and was previously Chair of the Civil Section (2013-2014).

Chair, Civil Section: Sarah Dafoe

Sarah was called to the Alberta bar in 1998 and joined the Legal Services Division of Alberta Justice in 2001, providing legal and policy advice on civil matters. She currently holds the position of Chief of Staff to the Deputy Minister of Justice and Solicitor General. She has participated in ULCC activities since 2006, participating in working groups and taking on the role of *ad hoc* secretary at the civil section meetings.

Chair, Criminal Section: Laura Pitcairn

Laura is Senior Counsel with the Headquarters Counsel Group of the Public Prosecution Service of Canada, based in Ottawa. She has an LLB from the University of Manitoba and is a member of the Law Society of Alberta. Laura first practiced law in Alberta as a crown prosecutor with the Edmonton and Calgary offices of the then Federal Prosecution Service before moving to Ottawa in 2002 to join the headquarters counsel section. Laura has been participating in the Criminal Section meetings of the ULCC since 2010.

Report on ULCC work for 2016-2017

ULCC President 2016-2017, Josh Hawkes, QC, Alberta



I am very pleased to be able to serve as President of the ULCC this year. I have been a delegate to the Conference for over 10 years. This is a very exciting year for the organization. We are working on several important projects that we hope will have a

significant impact on the principled development of the law, and on modernizing the ULCC.

Some of the most important work of the Conference involves joint projects between the criminal and civil sections of the Conference. These projects are an important and unique contribution that only the ULCC can undertake.

First among these is a **joint project examining the issue of criminal record checks**. At present there is no uniform approach to the type of information that can be requested through this process, the ability to verify or contest that information provided, and the limits to the use to which that information can be put. A uniform approach to these important issues is critical. Second, the Conference continues to work on a project that monitors the developments in the law surrounding the award of Charter damages against the Crown because of the decision of the Supreme Court of Canada in the decision of *Henry v. British Columbia* (2015 SCC 24). That case has significant criminal and civil law ramifications.

Third, both Sections will continue to work on updating a **report on provincial legislation that operates in a**

complementary fashion to the criminal law. Provincial

legislation represents an increasingly important aspect in responding both to entrenched issues such as impaired driving as well as emerging issues such as the unlawful distribution of intimate images.

The Executive of the ULCC continues to work on the process of **strategic renewal for the organization**. Significant progress has been made on many aspects of that project. We anticipate providing updated versions of the Constitution and By-laws of the Conference for consideration at the Annual Meeting in Regina in 2017. We would then be able to have these new documents approved by the Conference at the 100th anniversary of the ULCC at the Annual Meeting in Québec City in 2018.

I attended both the Roundtable meeting on Criminal Justice Review hosted by the Alberta and Federal Ministers of Justice and the FPT Meeting of Ministers Responsible for Justice and Public Safety. These were important opportunities to showcase the significant contributions that the ULCC can, and does make to these and other important law reform initiatives in Canada. I am very pleased to report that Ministers expressed appreciation and strong interest in and support for the work of the ULCC. We look forward to the opportunity to provide regular updates to Ministers on our on-going work.

I am looking forward to the 2017 Annual Meeting, to be held in Regina from August 13th to the 17th. I also remind delegates that the **deadline for Criminal Section resolutions is April 30, 2017**.

Uniform Law Conference of Canada

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