

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

COMMUNIQUÉ

Fall 2019

Report of 2018 – 2019 ULCC President Lee Kirkpatrick, Yukon

St. John's Newfoundland hosted the 101st meeting of the ULCC which coincided with the 75th anniversary of the first meeting of the ULCC Criminal Section. That inaugural Criminal Section meeting was held in Niagara Falls in 1944 and addressed such topical issues as amending the *Criminal Code* penalty sections with a view to removing inconsistencies and obtaining uniformity, the advisability of introducing provisions related to habitual criminals and amending the *Code* to deal with cases of infanticide. No wonder we are renowned for our remarkable prescience.

The over 70 delegates attending this year included Judges from Québec, Alberta and Ontario, Newfoundland and Labrador's Deputy and Assistant Deputy Minister of Justice, law reform counsel, counsel from the CBA and from the Ontario, Québec and Indigenous Bar, prosecutors and defence counsel, Justice Canada criminal justice policy representatives, legislative counsel, academics, senior civil counsel, counsel from the Chambre des notaires du Québec and the current and past presidents of the American Uniform Law Commission.

We are much indebted to our fabulous Newfoundland and Labrador host committee consisting of Kendra Wright, Donna Ballard, Q.C., Lisa Stead, Madeleine White and Kim Cooper who worked with our expert planner and Executive Director Marie Bordeleau to keep us organized us and welcome us in grand style, from our opening reception at the Rooms to our closing banquet at the Railway Coastal Museum.

We are also most grateful to Chief Justice Deborah Fry of the Newfoundland and Labrador Court of Appeal, to Jennifer Mercer, Q.C., Deputy Minister of Justice and Public Safety and Deputy Attorney General of

Newfoundland and Labrador and to Chief Judge Pamela Goulding of the Newfoundland and Labrador Provincial Court for their warm greetings and recognition of the value of ULCC's longstanding contribution to the law in Canada. Our thanks also to the Honourable Andrew Parson, Minister of Justice and Public Safety and Attorney General for hosting our meeting. We were very pleased that Jennifer Mercer was able to join us for meetings throughout the week.

An unexpected round of musical Chairs played out this year when Thomas Ahlfors became unable to continue as Chair of the Civil Section and outgoing Civil Section Chair Maria Markatos graciously stepped up once again to take on these duties. Maria reports on the work of her section.

Subsequent developments prevented the attendance of a number of our jurisdictional delegates, including our colleague Matthew Hinshaw, who had taken on the role of Chair of the Criminal Section in August of 2018 and had done an excellent job, spending many hours participating in calls and working to ensure a successful session set to discuss what were at that time 34 resolutions and numerous reports. We are most grateful to incoming Chair Joanne Klineberg and our five other colleagues who stepped up to take on Matt's duties over the course of the week. Joanne's report is included in this Communiqué.

Those reports outline various ongoing projects including the creation and enhancement of various model acts, a proposal for the creation of a tort to address the non-consensual distribution of intimate images and work by the Criminal Section on seized property and warrants.

A recent court case highlighted a project related to both past and ongoing work of the Civil Section involving the creation of the model *Informal Public Appeals Act*. This project allowed for a timely and effective distribution of funds received by way of a crowdfunding campaign for the victims of the Humboldt Broncos tragedy, which had occurred in April 2018. In approving the final distribution of funds in November 2018, Justice Gabrielson of the Saskatchewan Court of Queen's bench noted: "Fortunately we had an Act in Saskatchewan, *The Informal Public Appeals Act*... based upon legislation developed by the Uniform Law Conference of Canada. Saskatchewan, for some reason was the only province in Canada to enact the legislation. In any event, through good government management or good fortune, this *Act* laid out the framework by which the monies raised by the GoFundMe campaign could be dealt with."

As noted, work on issues addressed in the model *Informal Public Appeals Act* will continue and address additional aspects of crowdfunding including surpluses and international issues.

The subject of a recent joint project of the Criminal and Civil sections leading to the 2018 adoption of a model *Uniform Police Records Checks Act*, based in part on Ontario's *Police Records Checks Reform Act* also attracted recent judicial scrutiny. The need for such legislation was endorsed by the Alberta Queen's Bench in 2019 in the case of *Edmonton Police Service and Alberta (Information and Privacy Commissioner) and A.B.* in which the court noted that the Ontario legislation had been created to address concerns about the fairness of police records checks and held that until Alberta has similar legislation, applicants are essentially held ransom to an enforcement agency's terms respecting disclosure. We encourage jurisdictions to adopt the model legislation in order to establish guidelines for release of such information.

Throughout this past and very busy year, I was greatly assisted in my work by my predecessor, Manon Dostie, who took over as President in May of 2017 and helped initiate the work on increased contributions and Strategic Planning. She has been a most excellent mentor.

Much of the credit for this year's work goes also to incoming President John Lee who agreed to take over my duties for a period of four months while I was absent on leave from my work and admirably fulfilled them.

The success of this year's ULCC would not have been possible without Manon's willingness to share her wisdom and experience and John's readiness to step into

my role and deal with some of the more difficult issues that arose during my absence, including finalizing work on the new contribution agreements and negotiating updated contracts for our Executive Director and Project Coordinator. John's leadership, skillfulness and diplomacy will serve ULCC well in the time leading up to our next meeting in Iqaluit.

My deep thanks to the members of this year's Executive Committee consisting of John Lee, Manon Dostie, Thomas Ahlfors, Maria Markatos, Matthew Hinshaw, Peter Lown, QC, Clark Dalton, QC, Caroline Quesnel and Marie Bordeleau, as well as to those of you who participated in the many other committees required to make the ULCC function. Much appreciation is due also to our Project Coordinator, Clark Dalton, QC, resident expert on all things ULCC and to our wonderful Executive Director, Marie Bordeleau.

Lastly, congratulations and our deepest appreciation to our much-admired colleague Kathryn Sabo for her 20 years of contributions and dedication to ULCC. Congratulations also to Team East, triumphant on the diamond once again, despite the absence of the redoubtable Danielle Côté, and to Arthur Close and Denise Lightening, the Civil and Criminal Section winners of the coveted Knit Mitt Wit award for the most eloquent intervention.

Like John, I am thrilled to have the occasion to have ULCC hosted in Nunavut for the very first time. Our territorial colleagues have travelled regularly to what are often for them costly and far-flung places in order to bring a uniquely northern perspective to our debates and proceedings and we are very much looking forward to returning the favour by travelling to meet up with them in their home and having the opportunity to experience Nunavut culture.

Challenges in the next year will include launching of the new website, ensuring that the recently amended bylaws, rules and mandates function as they should and encouraging your attendance in Iqaluit. I have absolutely no doubt that our new Executive Committee is up to the task of meeting these goals and I look forward to continuing my work with them and with all of you over the coming months.

Clark Dalton's report on the work of the ACPDM follows:

During the year the Advisory Committee on Program Development and Management spent a significant amount of time scoping out potential projects, establishing working groups and naming chairs to those projects for the Civil Section to consider.

These projects included the ULCC Drafting Conventions, Electronic Wills, Crowdfunding, Testamentary additions to Trusts and Intimate Images. In addition, the Committee undertook to review previous suggestions for projects and updates to previous work of the Section on Enforcement of Judgments, Court Jurisdiction and the Convention on Independent Guarantees and Standby Letters of Credit. Some members of the Committee also met with members of the Uniform Law Commission of the United States in February to discuss mutual matters of concern and potential co-operation including reviewing current and recent project activity of both Conferences. Specific matters were identified for an exchange of information and some projects were highlighted for cooperative activity including Crowdfunding, Intimate Images and SLAPP legislation.

Finally, there was a discussion on the possible relationship by both Conferences with other international agencies.



**2019 – 2020
Criminal Section
Chair Report
Joanne
Klineberg,
Canada**

Shortly before the Annual Meeting in St. John's, the Criminal Section learned that our Chair for 2018-2019, Matthew Hinshaw, would be unable to attend. The Section came together with a strategy of having six delegates rotate through the chairing functions, including me as Chair for 2019-2020. I was privileged to provide the overarching continuity in the Chair's functions that were necessary to ensure a successful meeting. It was also an excellent preparation for my duties as Chair for the 2020 meeting in Iqaluit!

Don't miss the 2020 Annual Meeting!

The Host Committee is pleased to invite you to the 102nd Annual Meeting of the Uniform Law Conference of Canada, to be held from Sunday August 9th to Thursday August 13th in Iqaluit, NU for the first time in our history!

Iqaluit means "many fish" in Inuktitut, the language of the Inuit. The capital city and main hub in the eastern arctic, Iqaluit is a vibrant, diverse city of approximately 8,000 people, of which Inuit make up 60%. Iqaluit has a tundra climate and is completely above the tree line.

Visitors will be able to take advantage of long summer evenings, enjoy great fishing and beautiful hikes along the tundra.

Our home for the week will be the Frobisher Inn and the ULCC has a room block at \$245/night, which is the government rate. Reservations can be made by calling 867-979-2222.

Flying to and from Iqaluit can be a challenge, as there is only one flight per day on weekends and two on weekdays. The ULCC is currently investigating ways of making it easier for our delegates to book their flights. So stay tuned - more details to come soon!

The local organizing committee looks forward to welcoming everyone to Iqaluit next August.



The place to begin this report is by expressing my and the entire Criminal Section's enormous gratitude to Matthew for all his efforts in planning this year's meeting. As Chair, Matthew devoted a significant amount of time, energy and commitment over the course of 2018-2019 in preparation for the meeting. Matthew showed great leadership before the meeting and continued to provide guidance and support from a distance while the meeting was taking place, including by providing opening remarks that I was happy to deliver on his behalf. In these remarks, Matthew thanked the President, Lee Kirkpatrick and the members from the Criminal Section who assisted him in planning the meeting. He also emphasized the role of the criminal justice system in creating a peaceful, law-abiding society, and the importance of the Uniform Law Conference of Canada in generating proposals for reform that are discussed and debated by the informed and passionate professionals from across the criminal justice system who participate in the Criminal Section's work. Matthew's presence was felt throughout the week, and in our closing session the Criminal Section formally expressed its appreciation for Matthew's commitment and contribution.

On behalf of the Criminal Section, I would also like to express our deep gratitude to the five rotating Chairs: Cathy Cooper, Samantha Hulme, Laura Pitcairn, Chloe Rousselle, and Dean Sinclair. Each of the rotating chairs is either a past or future Chair of the Criminal Section, so they have already in many ways demonstrated their commitment to the ULCC. In agreeing to take on the responsibilities of chairing for a particular session of our meeting, these individuals gave up their ability to participate in the meeting as a representative of their jurisdiction so that they could contribute to the success of the meeting for the whole of the Section. They deserve special thanks.

At this year's meeting we had a wonderful turnout of 31 delegates coming from 10 provincial, territorial and federal governments, including policy lawyers and prosecutors, and which also included defence lawyers, members of the judiciary and academia, and representatives of the Canadian Bar Association, the Barreau du Québec and the Indigenous Bar Association, as well as the Chambre des notaires du Québec. After adopting some revisions to our Rules of Procedures, the Criminal Section debated and voted on 24 resolutions relating to a wide variety of criminal justice issues, including compelling disclosure of electronic passwords, permitting certain types of evidence in identity theft

cases to be given by affidavit, reform of the offence of child luring following the decision of the Supreme Court of Canada in *Morrison*, a new form of courtroom support for witnesses, and the classification of certain offences, such as possessing and uttering counterfeit money. Seventeen of the resolutions carried (12 of which were amended), and seven were withdrawn after discussion. No resolutions were defeated.

The Criminal Section also received interim reports from three working groups exploring issues related to telewarrant procedure, the search warrant regime under section 487 of the *Criminal Code*, and the regime that governs the detention of seized property under section 490 of the *Criminal Code*. We look forward to hearing the conclusions and recommendations of these Working Groups at one of the upcoming meetings!

This year's Earl Fruchtmann Memorial Seminar, which was attended by both the Criminal Section as well as members from the Civil Section, involved a presentation on Newfoundland's Justice Summits, from Iain Hollett, Director of Public Prosecutions for Newfoundland & Labrador, and Pegah Memarpour, Director of Policy and Strategic Planning of the Newfoundland & Labrador Department of Justice and Public Safety. The Justice Summits were a province-wide consultation with stakeholders such as the judiciary, police, and mental health advocates on the top challenges within the criminal justice system, as well as innovative approaches and collaborative solutions to address these challenges. A Civil Section Working Group on the Nonconsensual Disclosure of Intimate Images presented at a joint Civil/Criminal session. While the Working Group is considering the creation of a tort for distribution of intimate images, their work is of great interest to the delegates from the Criminal Section, who are gaining experience with a criminal offence related to this form of wrongdoing that was enacted a few years ago.

On behalf of all of the rotating Chairs of 2019, I would like to thank all the delegates for their enthusiasm, willingness to share, and collegiality throughout the week. I would also like to thank the Criminal Section Secretary, Caroline Quesnel, for her exceptional contribution, diligence and professionalism throughout the year, and through each minute of the annual meeting. As I embark on my year as Chair of the Criminal Section, I would like to thank the members of the Criminal Section who are assisting me in planning our next annual meeting, and I am very much looking forward to seeing everyone in Iqaluit!



2018 - 2019 Civil Section Chair Report

Maria Markatos, Saskatchewan

The Civil Section concluded another successful year at our annual meeting in St. John's. 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 also pleased to be joined by representatives from the American Uniform Law Commission: current President Carl Lisman and Past President Richard Cassidy.

The Civil section adopted *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as seven Uniform Acts implementing International Conventions, which were revised based on the *Guidelines*. The *Guidelines* complement the *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* and will be a useful reference tool for future working groups preparing uniform acts to implement international conventions giving them force of law.

The Civil Section also adopted in principle a Revised *Uniform Testamentary Additions to Trusts Act* to address pour over clauses in wills. Trusts as estate planning tools have become more common in Canada. The revision will address pour over clauses in wills where the testator wants to make a gift of some or all of their estate to an existing trust. Revisions have been circulated to jurisdictional representatives and if no objections are received by November 30, 2019, the Act will be adopted and recommended to jurisdictions for enactment.

We considered a report on e-wills and delegates agreed that a testator should be able to make a will in electronic form. The Civil Section also considered reports on the enforcement of judgments and court jurisdiction and recommended that working groups be created for the implementation of the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters and to review the *Uniform Enforcement of Canadian Judgments Act* and the *Uniform Court Jurisdiction and Procedures Transfer Act*. We expect to receive updated reports on these topics in 2020.

The Civil Section also received reports on a Revised *Uniform Informal Public Appeals Act*, the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit and the Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary. We anticipate that in 2020, we will be asked to adopt Acts with commentaries on these three projects.

In our joint session with the Criminal Section we heard from the working group on the non-consensual disclosure of intimate images. We expect a draft Act on this topic for consideration at the annual meeting in 2020.

We also received our annual report from the federal government on private international law initiatives and were given an update from the American Uniform Law Commission on the Acts adopted at their most recent annual meeting and the projects they are considering for the future.

We also continue to review our internal documents and will receive reports in Nunavut on the Rules of Procedure of the Civil Section and a report from the working group on the Revision of Drafting Conventions.

For the year leading up to our next annual meeting, the Civil Section will be in the capable hands of Kathleen Cunningham from the British Columbia delegation.

It was my pleasure to serve as the Chair of the Civil Section for a second year, and I would like to thank the members of the Executive Committee, the jurisdictional representatives and all the working group members for their help throughout the year and continued commitment to the ULCC.



President's Report John Lee, Ontario

I am honoured to be President of the ULCC for 2019-2020. Having been the Acting President for part of last year, I am eager to continue to lead our organization into the year ahead.

I have been involved with the ULCC for almost two decades and I know that we are like no other law reform organization in the country. For more than a century, our organization has been instrumental in significant changes to key areas of Canadian law – both civil and criminal. I have always believed that the reason for the ULCC's longevity and success lies not simply with what we produce, but also with how we are able to develop those products. The ULCC is the only organization in Canada that can continuously bring together a vast array of legal expertise from across the country to address the most challenging legal problems of our time. Our strength lies with the diversity of views and experience that is shared by all our delegates. It is with this in mind that I agreed to take on the role of President.

Last year was exceptionally busy and I want to mention a couple of highlights. First, I am particularly proud to have led us to securing much needed additional funding for our organization. This new funding puts us on a solid financial footing and I want to thank everyone who was involved in this effort – especially the jurisdictional representatives who are the ULCC's direct line to the governments that support us.

Second, in July, I attended the annual meeting of the Uniform Law Commission in Anchorage, Alaska, with Peter Lown, Q.C. I had the opportunity to address the members of the Commission and discuss some of the projects that we have been working on. This was my first opportunity to attend a ULC annual meeting and I was deeply impressed by the ULC's work and the practices that they have developed to carry out their work. I hope to use my term as President not only to strengthen the relationship of our two organizations, but to also incorporate what I've learned of the ULC's practices into our own operations.

Looking at the year ahead, we will remain very busy not only with the continuation of our work on projects carried over from last year, but with the initiation of several new projects. On the civil side, work will continue on projects such as electronic wills and informal public appeals, with a public consultation just recently initiated for the latter. The civil section will also be working on a new project to implement the Hague Judgments Convention. This project has further led the civil section to initiate a review of its previous work on court jurisdiction and the enforcement of judgments within Canada. On the criminal side, we will again be considering a range of new resolutions aimed at improving various aspects of the criminal law. We will also be considering a final report on telewarrants and receiving updates from working groups exploring search warrants and the detention of items seized during criminal investigations.

Of course, all this work will lead us to a very special annual meeting in 2020. For the first time in our history, we'll be meeting in Nunavut. As a national organization, committed to diversity and inclusion, I can think of no better way for us to demonstrate our commitment than to give those in Nunavut who are interested in the ULCC the opportunity to attend our meeting and participate directly in our work.

I am genuinely excited to be working with my executive team and the chairs of our various committees. While the executive committee will continue to lead the transformation of our organization based on the strategic planning exercise that we have been involved in for the past few years, I have asked the committee to also focus its attention on how we can improve engagement with our delegates and everyone else who is involved in our work. I hope you'll be able to see noticeable changes in this area throughout the year and at our next annual meeting.

ULCC Introduces 2019-2020 Executive Members



John Lee, President

John has served as an Ontario delegate to the ULCC since 2002 and was Chair of the Civil Section of the ULCC in 2015-2016. He was chair of the Uniform Limitations Act working group and has participated in the development of numerous uniform statutes. John has been Counsel with the Ontario Ministry of the Attorney General since 1998. He has led many law reform projects for the Ontario government in such diverse areas as limitation periods, human trafficking, civil asset forfeiture, civilian oversight of the police, private international law and construction law. Before joining the Ontario government, John was a law clerk at the Ontario Superior Court of Justice and worked briefly in the private sector. He received his common law and civil law degrees from McGill University and is a member of both the New York and Ontario bars.



Laura Pitcairn, Vice-President

Laura Pitcairn 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.



Kathleen Cunningham, Chair, Civil Section

Kathleen Cunningham, B. Comm, LLB, MPS, TEP, joined the BCLI as the Executive Director in June 2015 and led the completion of the ULCC Uniform Vital Statistics Act project. Following a 20-year career in the estate and trust industry, she assisted the Office of the Public Guardian and Trustee with implementation of personal planning and guardianship legislation and projects addressing the financial abuse of vulnerable adults. A past member of the BCLI Board and treasurer, she was also a member of the BC Law Institute Committees on the Modernization of the Trustee Act and Recommended Practices for Wills Practitioners Relating to Undue Influence.



Joanne Klineberg, Chair, Criminal Section

Joanne Klineberg is the Acting General Counsel in the Criminal Law Policy Section at Justice Canada. She earned her civil law and common law degrees at McGill University in 1996. Since being called to the Bar in Ontario in 1998, Ms Klineberg has worked in the Criminal Law Policy Section of the Department of Justice, except for one year (2001-2002) during which she pursued a Master of Laws at University of British Columbia. Her work at the Department of Justice focuses on criminal law reform, where she specializes in general principles of criminal liability and substantive criminal law issues such as mental states, voluntariness, participation in crime, corporate criminal liability, inchoate liability and liability for omissions. She has worked on such diverse issues as self-defence and provocation, intoxication, homicide, securities fraud and insider trading, fraud and forgery, honour crimes, polygamy, cruelty to animals, medical assistance in dying and identity theft.