

COMMUNIQUÉ

Fall 2021

Report of ULCC Past President John Lee, Ontario



When I look back over the period in which I was president, I am compelled to also think about the ULCC's earliest days when it was decided that the creation of a national forum was necessary to improve the law in Canada. Back then, in 1918, the Conference's work also took place in the context of a public

health crisis – the Great Influenza pandemic – which claimed an estimated 50,000 lives in Canada by the time it was all over. I can't help but ask myself, "Did any of those 22 individuals, who gathered in Montreal from across the country for that first ULCC meeting, have any concerns about meeting during a pandemic?"

We will likely never know the answer to that. Certainly, nothing in the proceedings of that first meeting offers us any clue that there was even a pandemic.

However, what is clear is that first meeting took place regardless of the public health situation and that meeting led to over a hundred more meetings. We are fortunate today that, despite another public health crisis much like the one in 1918, our ability to meet and to continue with our work is no longer dependent on meeting in person. We have demonstrated in the past two years that virtual annual meetings work. That does not mean that virtual meetings are a perfect substitute for in person meetings, but they are clearly valuable tools that could serve to enhance the ULCC's operations in the future.

When I agreed to be president, I had expressed my view that the ULCC's value rests not just on what it produces, but also on how it goes about producing its work. This has been a theme that I've tried to emphasize throughout my term. How we go about doing our work – that is, how we engage a diverse group of people to collaborate in our work, how we hold ourselves to account, how we ensure continuity and sustainability – is critical.

Grounded in that belief, I am proud to have been able to lead the ULCC to the completion of a variety of initiatives during the past two years, including the:

- Development of a diversity and inclusion policy;
- Launch of an updated and improved website;
- Development of a new mentorship program for jurisdictional representatives;
- Improvement to succession planning for its executive committee;
- Recruitment of a new executive director;
- Establishment of new spending controls and enhanced financial accountability measures;
- Development of a reserve fund policy; and
- Development of an environment and climate crisis policy.

What the current pandemic has made all too clear is that we now live in a world that is very different from the world that preceded it. The ULCC, as with all organizations, needs to change and I am happy to see willingness on the part of many of our members to adapt to this new reality.

Indeed, our latest annual meeting saw major improvements compared to our first. We set another record in terms of attendance. There was a successful deliberation of many resolutions in the criminal section, a significant accomplishment considering that none had been addressed the previous year. Carl Lisman, Immediate Past President of the Uniform Law Commission, gave a report on the work of the Commission to the civil section, which unfortunately could not have been accommodated at our first virtual annual meeting. Christiane Wendehorst, President of the European Law Institute, was able to report on the Institute's work to the civil section for the first time ever. Kathleen Roussel, Director of Public Prosecutions and Deputy Attorney General of Canada, spoke on the topic of racism and systemic discrimination in the criminal justice system, which was the first virtual Earl Fruchtmann Memorial Seminar that included the civil section. We also paid a tribute to Arthur Close, QC, our longest serving member, who died just prior to our annual meeting. And last, but not least, we were able to revive our friendly East-West rivalry among delegates in the form of a virtual competition in place of our traditional softball game. None of this could have been possible had it not been for all those at the ULCC who shared a vision for making our second virtual annual meeting a reality.

While we should all celebrate our successes, we should also be very mindful of the challenges that lie ahead of us. The many new ways of doing things that we have recently adopted will mean that many of our old ways of doing things may no longer or will no longer be acceptable. Nevertheless, I am confident that, if we remain faithful to the ideals of the founders of our organization – those individuals who first traveled across the country despite the risks to their own health and safety – and continue to reform the ULCC so it is more open to new ideas, more accessible to different voices and more collaborative, the ULCC will continue meeting many years into the future.

Don't miss the 2022 Annual Meeting !

After two years of meeting virtually, we are planning a return to an in-person Annual Meeting for 2022.

While there are still many details to be confirmed, our goal is to hold the 2022 Annual Meeting in Edmonton, Alberta: either from August 7th to 11th, or from August 14th to 18th, 2022. The dates have yet to be confirmed.

Please look for more information in the Spring edition of our communiqué.



photos: Sarah Dafoe



2021-2022 Criminal Section Chair Report

Chloé Rousselle,
Canada

It was a real privilege for me to chair the Criminal Section meeting in the summer of 2021. This year, 44 delegates, invited by 10 jurisdictions, participated in the deliberations of the Criminal Section. The Section welcomed four new jurisdictional representatives and another 15 people registered as observers to monitor the progress of some of the Section's work.

This increased presence was certainly made easier by holding a virtual meeting. Relying on the 2020 experience when the ULCC organized its very first virtual meeting, the Steering Committee of the Criminal Section decided that it would be able to resume all of its regular activities at the 2021 annual meeting, including debates on the resolutions. In light of this decision, the virtual format posed a significant challenge, primarily due to the time constraints to effectively discuss a maximum number of resolutions. I am extremely grateful for the ingenuity of the Steering Committee of the Criminal Section in planning the meeting because the twenty-four (24) resolutions were ultimately presented – including three (3) that were divided into two parts – for a total of twenty-seven (27) resolutions. Among these, six (6) resolutions were adopted without amendment, three (3) of them unanimously. Sixteen (16) resolutions were adopted following amendment. Four (4) resolutions were withdrawn, three (3) of them after thorough discussion and one (1) without debate because it resembled another resolution. One single resolution was rejected. The resolutions covered a wide variety of criminal justice issues, including the endorsement for certain warrants, the temporal application of criminal legislative reforms, as well as the penalty for hate propaganda offences. Moreover, two (2) working groups were created in response to resolutions adopted. The first is responsible for making recommendations on any future amendments to the *Criminal Code* regarding the use of technology in criminal matters. The second is responsible for reviewing section 672.26 of the *Criminal Code* with the view to the possible

reform of the way fitness should be determined when an accused has elected to be tried by a judge and jury. We are eager to learn the results of their work at the next annual meeting!

Aside from the resolutions, the Criminal Section also unanimously adopted the final report of the Working Group responsible for reviewing the scope of the Criminal Section's mandate. This report contains three (3) recommendations, one of which is to adopt a procedure and a decision-making grid to be applied when determining whether a resolution falls within the Criminal Section's mandate. The Criminal Section also adopted, again unanimously, the status reports of the working groups on search warrants under section 487 of the *Criminal Code* and on the detention of seized property under section 490 of the *Criminal Code*.

This year, the guest speaker invited to the Earl Fruchtmann Memorial Seminar was Kathleen Roussel, Director of Public Prosecutions and Deputy Attorney General of Canada, who spoke about racism and systemic discrimination in the criminal justice system. The seminar was moderated by Matthew Hinshaw, chair of the ULCC Diversity and Inclusion Committee.

Concealed behind these impressive results is the monumental work that began months before the meeting was held. I would like to sincerely thank everyone involved in organizing the ULCC and who contributed to the progress of the working groups. For their expertise, professionalism, and patience, at a time when we had to adapt to the realities of virtual debates, I would also like to thank the delegates who attended the annual meeting. Last, I would like to thank the secretaries of the Criminal Section in 2020-2021, first Caroline Quesnel followed by Dorette Pollard, for their considerable skill and support throughout the year.

The Criminal Section had a very busy agenda, even ambitious, given the virtual context, but the work accomplished is a testament to its members' commitment to the ULCC and, in a broader context, to an ideal of justice. Over the coming months, I look forward to working with Kevin Westell, who succeeds me as chair of the Criminal Section, to prepare the 2022 annual meeting!



2020-2022 Civil Section Chair Valérie Simard, Canada

The Civil Section concluded another annual meeting conducted virtually in August 2021. Participants in our annual meeting included delegates from provincial, territorial and federal

justice departments, law reform bodies, academia, the private sector and bar associations. We were also pleased to be joined by Mr. Carl Lisman, immediate Past President of the Uniform Law Commission and Ms. Christiane Wendehorst, President of the European Law Institute.

The Section started its week with a tribute to Mr. Arthur Close, Q.C. His absence from the ULCC will be deeply felt. He was not only one of the Section's longest serving members but also one of its most active members. Among his many projects with the ULCC, his latest was the *Uniform Informal Public Appeals Act* which the Section adopted in August 2020.

In August, the Section adopted, in principle, the *Uniform Court Jurisdiction and Procedures Transfer Act*. The Act and commentary were revised this fall in response to comments made to the working group by delegates following the annual meeting. The revised Act was circulated to jurisdictional representatives this fall as no objections were received by November 30, 2021, the Act is adopted and recommended to jurisdictions for enactment.

We received our Implementation Committee's report on the materials it prepared to help facilitate the implementation by provincial and territorial governments of the *Uniform Police Record Checks Act* adopted by the Conference in 2018.

We heard about the status of the following projects: the reforming of the general partnership law 2006, charitable organizations, online defamation and Canadian judgments and decrees. We expect to receive updates on these projects at our next annual meeting in August 2022.

We also welcomed an annual report from Justice Canada on private international law initiatives, an update from the American Uniform Law Commission on its recent projects and a presentation by the European Law Institute on its digital assets project.

With several ongoing projects, the year leading up to our next annual meeting will be a busy one for Civil Section working groups and committees. I take the opportunity to note that several working groups would be pleased to welcome additional members, and a few are also seeking legislative drafters. I invite you to contact me should you or someone in your jurisdiction wish to contribute to our working groups.

It was my pleasure to serve as Chair of the Civil Section for the 2020-2021 term. I would like to thank the members of the Executive Committee, the jurisdictional representatives, Mr. Clark Dalton, National Project Coordinator and Ms. Kathleen Cunningham, immediate past Civil Section Chair and past interim Executive Director, for their support throughout the past year and their continued commitment to the ULCC. I have the pleasure of continuing to serve as Chair of the Civil Section in 2021-2022 and am looking forward to working with Civil Section members on our projects throughout the year. I do hope that we will be meeting in person in August 2022!

Diversity and Inclusion Survey!

Early in the new year, you will receive the ULCC's survey on Diversity and Inclusion. Please look for it in your email inbox: it will be sent by the Newfoundland and Labrador Statistics Agency. We strongly encourage everyone to take the 10 minutes required to complete the survey.

Be assured that your answers will be kept strictly confidential, but the information provided will give us a better understanding of the ULCC's diversity.

Thank you!



President's Report

**Laura Pitcairn,
Canada**

I am very pleased and honoured to serve as President of the ULCC for 2021-22. I have been a delegate to the Conference for a little over 10 years now, since my first meeting in Halifax in 2010. I have also been the Vice President for the past two years, so I am eager to be leading the organization into the year ahead. Having been significantly impacted by the pandemic for the past two annual meetings, including being required to meet virtually and for shorter periods of time, I am looking forward to preparing for an in-person meeting in 2022 if at all possible. The Host Committee (Alberta) has already commenced planning for the 2022 annual meeting and I am very hopeful that we will be able to finally come together in person again, as the virtual forum, though adequate and necessary in the circumstances, simply did not have the same culture and dynamics as an in-person meeting.

Having been involved with the ULCC for a little over a decade, I can say that I am very proud of the work this organization does. The ULCC is like no other law reform organization in Canada. Since its inception in 1918, the ULCC has been instrumental in generating significant changes to key areas of Canadian law, in both the criminal and the civil contexts. The ULCC is the only organization in Canada that brings 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 also lies with the collegiality of how counsel from various organizations work cooperatively towards improving the legal system in Canada.

It is with this in mind that I agreed to take on the role of President and continue on the strong traditions of the ULCC. The past year and a half has been an especially challenging time for the ULCC in adapting to working in a virtual format, but despite these challenges, we managed to accomplish some very important work at the 2021

annual meeting. Much remains to be done however, and we hope to be able to return to an in-person meeting format in 2022 so that we can have a more comprehensive annual meeting. With that in mind, since the end of the 2021 annual meeting in August, work has begun in earnest towards next year's annual meeting, including constituting the Executive Committee and the Budget and Finance Committees. Both committees have commenced their meeting schedules and thus far, the Executive Committee has met three times since the annual meeting in August, and the Budget and Finance Committee met once in September, with plans to meet bi-monthly. Many other committees are also getting started in their preparation for 2022, such as the Civil and Criminal Section Steering Committees, while others are continuing their important work, such as the Diversity and Inclusion Committee, the Environment Committee and the Advisory Committee on Program Development and Management (ACPDM).

The coming year promises to be an interesting and challenging one and in facing those challenges I am grateful to be able to rely on a strong executive team, consisting of John Lee (Ontario, Immediate Past President); Sarah Dafoe (AB, Vice-President); Valerie Simard (Canada, Chair of the Civil Section); Kevin Westell (BC, Chair of the Criminal Section); Peter Lown, Q.C., (Chair, Advisory Committee on Project Development & Management); Clark Dalton, Q.C., (ULCC Projects Coordinator); Christian Delaquis (ULCC Executive Director); and the following members at large: Matthew Hinshaw (AB), Chloe Rousselle (Canada), Manon Dostie (Canada), Christine Badcock (Yukon, incoming Civil Section chair), Anny Bernier (QC, incoming Criminal Section Chair), Caroline Quesnel (Canada) and Dorette Pollard (Canada, Criminal Section Secretary).

I also wish to acknowledge and thank each of the Jurisdictional Representatives, the individual delegates and working group members for their dedication and contributions to ULCC. I ask for your continued support in the coming year as we continue to build on ULCC's success. I look forward to seeing you all in person in Alberta in 2022, if all goes well!

ULCC introduces 2021-2022 Executive Members



Sarah Dafoe, Vice-president

Sarah has served as an Alberta delegate to the ULCC since 2006 and has been Alberta's jurisdictional representative to the ULCC's Civil Section since 2016. She was the Chair of the Civil Section in 2016-2017 and is currently a member of numerous ULCC committees and working groups, including the Advisory Committee on Program Development and Management and the Civil Section Procedures and Policies Working Group. Sarah has been a lawyer with Alberta's Department of Justice and Solicitor General since 2001 and has led and participated on many law reform projects for the Alberta government.



Valérie Simard, Chair, Civil Section

Valérie Simard is Counsel with the Constitutional, Administrative and International Law Section of Justice Canada. She earned civil and common law degrees at McGill University and is a member of the Law Society of Ontario. Her work at the Department of Justice focusses on the negotiation of international private law instruments and their implementation in Canada. She has led delegations to the United Nations Commission on International Trade Law and the Hague Conference on Private International Law. Valérie has been participating in Civil Section meetings and projects since 2010.



Kevin Westell, Chair, Criminal Section

Kevin Westell is a founding partner at Pender Litigation. In addition to his criminal and regulatory defence work in private practice, he is often retained to act as Crown Counsel, counsel for witnesses in criminal proceedings and as *amicus curiae*. He has represented clients across Canada facing all levels of seriousness and at all levels of court in British Columbia.

He currently serves as the Secretary of the Canadian Bar Association (CBA) National Criminal Justice Section. In the past he has chaired the Trial Lawyers Association of BC (TLABC) Criminal Law Committee, the Advocate's Club and the CBA Vancouver Criminal Justice Subsection.

Kevin teaches trial advocacy skills to law students and junior lawyers at programs that include the Allan McEachern Course in Trial Advocacy at UBC's Allard Faculty of Law, the Continuing Legal Education Society of BC (CLEBC) Winning Advocacy Skills Workshop, and the Osgoode Hall Intensive Trial Advocacy Workshop. He has also presented at many continuing legal education conferences including the Canadian Bar Association (CBA) National Criminal Law Conference, as well as various programs put on by the Law Society of British Columbia (LSBC), the Advocate's Society (TAS) and the CLEBC.

He served as an elected Bencher of the LSBC for Vancouver County in 2021 and, as part of that role, sat on the LSBC's Access to Justice Advisory Committee, Ethics Committee and was the LSBC's representative on the Canadian Bar Association, BC Branch (CBABC) Provincial Council.

Kevin recently represented the CBABC and the Criminal Defence Advocacy Society at the Commission of Inquiry into Money Laundering in British Columbia.