

Keynote Address delivered by
Assistant Chief Judge Josh Hawkes
At the ULCC 2022 Annual Meeting Closing Gala
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This evening, I am speaking solely in my role as a past President. I will do my best to stick with the time limits that were suggested in conjunction with the invitation, although as anyone from the Criminal Section will tell you, it is always a dangerous thing to give me the floor without strict time limits or rules of order.¹

With your indulgence, over the next 15 minutes I will attempt to weave together four different strands in support of the thesis that organizations like the ULCC are a key element in the support of a free and democratic society. My objective is nothing less than to convince you that by attending a meeting for a week every summer you are contributing in an essential way to the very fabric that sustains freedom and the rule of law. That is a bold claim – “attend a meeting and save the country”, but I am ambitious, and I have 14 minutes left.

Like all good slogans, this is a gross oversimplification. I am fully aware of the long hours of work that are put in around the margins of your respective day jobs. While that work is essential, it is the face-to-face meetings we have every summer that start, sustain, and finalize that critical work of the Conference.

History

The Uniform Law Conference of Canada was founded in 1918 in response to a resolution by the Canadian Bar Association. Initially known as the Conference of Commissioners on Uniformity of Laws throughout Canada its scope was restricted to harmonizing civil law. The genesis of the CBA resolution was the National Conference on Commissioners on Uniform State Laws in the

¹ The views expressed are strictly my own. I do not speak on behalf of the court where I work, or individually or collectively on behalf of my colleagues.

United States. The CBA saw the value in that enterprise, passed the resolution, and the ULCC was formed.

The Criminal law section of the Conference was formed, again as a result of a recommendation of the Canadian Bar Association in 1944 to provide recommendations for criminal law reform to the Minister of Justice.

The Conference has met annually during the summer with only two exceptions – one meeting was missed due to the second world war and one as a result of Covid. Every year there are proposals for reform arising from both Sections. Uniform Draft Acts are produced by the Civil Section and resolutions by the Criminal Section. Both sections provide individual and joint working group reports which provide a more detailed examination of complex issues and problems.

Products of the ULCC

The work product of the ULCC has been prodigious. Time and space, as well as a natural modesty befitting a Canadian organization prevent a full recounting of our greatest hits over the past 104 years. Notable achievements include the 28 separate acts under the umbrella of the Commercial Law Strategy, as well as initiatives as diverse as SLAPP (Strategic Lawsuits Against Public Participation), Electronic Evidence, Assisted Human Reproduction, and The Production of Crown Brief Disclosure in Civil Matters. The Criminal Section has passed hundreds of resolutions that are reflected in significant procedural and substantive changes to the *Criminal Code*. Recent examples include the reform of the self defence provisions of the *Code*, the expansion of case management powers, and, significantly for reasons that will be described below, an approach to mandatory minimum sentences in the *Code*.

In terms of the Appellate context, the impact of the Conference is clear. The work of the ULCC is cited more than 20 times by the Supreme Court of Canada since 1992, and more than 104 times by Provincial Appellate Courts since 1982.

Constitutional Context

And now for something completely different – a constitutional overview that is part foundation myth, aspirational guide, and call to action. I know the contrast between our constitutional aim of “peace, order, and good government” and those of our neighbours to the south of “life, liberty, and the pursuit of happiness” has come in and out of favour. I suggest that one point of emphasis may be in the collective nature of the objectives of “peace, order, and good government”. These are things that we can only achieve and enjoy together. These objectives of democracy are the ultimate “group project”.

Consider the following description from the Supreme Court in 1998:

Finally, we highlight that a functioning democracy requires a continuous process of discussion. The Constitution mandates government by democratic legislatures, and an executive accountable to them, "resting ultimately on public opinion reached by discussion and the interplay of ideas" (*Saumur v. City of Quebec, supra*, at p. 330). At both the federal and provincial level, by its very nature, the need to build majorities necessitates compromise, negotiation, and deliberation. No one has a monopoly on truth, and our system is predicated on the faith that in the marketplace of ideas, the best solutions to public problems will rise to the top. Inevitably, there will be dissenting voices. A democratic system of government is committed to considering those dissenting voices, and seeking to acknowledge and address those voices in the laws by which all in the community must live.²

The second constitutional context revolves around the explicit recognition and value of diversity. I appreciate that our progress along this path has been uneven, and that at times as a society and a legal community we have not only failed to stop division and discrimination but have been complicit in or have actively supported objectives and initiatives that undermined that value.

However, I suggest that the basic constitutional elements that entrench what were then minority language and religious protections provide a blueprint and an obligation for the way forward. Respect for and protection of minority rights was recognized as a foundational

² *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 SCR 217 at para 68

constitutional and democratic principle in the 1998 SCC Reference case. That recognition gives us a responsibility in relation to reconciliation with respect to First Nations and to many others where our constitutional ideals have not been met. Rather than concluding that those ideals have not and therefore cannot be achieved, I believe that we must see these constitutional values as clarion calls to do better and to be better.

Implicit in the recognition and respect for minority rights is a rejection of noxious nationalism built around race or other divisive concepts. These are not relics of the past but remain ever present dangers amplified by technological currents that seek to divide us into ever smaller and more isolated groups and silos.

Contrast that troubling vision with the following description of the work of building Canada from the same 1998 SCC reference case:

A nation is built when the communities that comprise it make commitments to it, when they forego choices and opportunities on behalf of a nation, . . . when the communities that comprise it make compromises, when they offer each other guarantees, when they make transfers and perhaps most pointedly, when they receive from others the benefits of national solidarity. The threads of a thousand acts of accommodation are the fabric of a nation. . . .³

The Current Climate

Technology has not been our friend in this regard. The algorithms and anonymity of the Internet fused in the oxymoron of “social media” can erode the quality and content of national debate and discourse. Marshall McLuhan’s observation that the medium is the message has gone from important insight to cliché and is now, I suggest, more trenchant than ever. One way to look through that lens anew is to ask the question – “what messages cannot be delivered through a particular medium”? It becomes clear that twitter and tik-tok and all their ilk do not allow for complexity, nuance, and the emotionally rich connection essential to sustaining and sustained democratic dialogue.

³*Reference, supra*, at para 96

The ULCC as a Civility Generator

I believe that the ULCC (and many organizations like it) are “Civility Generators”.

Let me give you an example from the work of the Criminal Section on mandatory minimum sentences that was initiated by a CBA resolution that they feared was doomed to fail in the political climate of that day. What ensued was a unanimous resolution to create a working group that produced two reports that not only achieved a consensus on this difficult and divisive issue but were themselves unanimously adopted by the Criminal Section. In an irony that is one of the highlights of my pre-judicial career – the co-chairs of that group, Eric Gottardi and I were on opposite sides as intervenors in the Supreme Court of Canada – with Eric citing the report that we worked on together in strong support for the CBA position on the issue.

Key Elements and Scalability

May I suggest that there are four elements that are the key to the success of the Conference as a “Civility Generator”:

- 1) We gather in person. Although we use technology to do the work throughout the year, the critical debates and decision happen in person when we are all present together and fully engaged.
- 2) We try to gather as many diverse views and opinions as possible. Wherever possible we try to have those perspectives represented at the Conference.
- 3) We are all committed to larger goals than the individual groups or constituencies that we come from. We are really here to make the law better, and that larger objective permeates all that we do.
- 4) We have a culture that fosters a full and free exchange of ideas and perspectives in a civil and civilized fashion. We recognize the value in conflicting ideas and viewpoints and seek first to understand and then to be understood.

Meeting in person is the vital medium in which these messages must be communicated. Real dialogue, negotiation, compromise, and respect flourish in face-to-face meetings. The

pandemic has shown us that in emergencies we can “make do” with virtual meetings. However, over the long term, virtual communication cannot sustain the vital connections that hold people, communities, and the nation together.

The great value of the microcosm that is the ULCC is that this approach can and must be replicated in as many different contexts, and with as many different groups as possible. This is the work that builds the vital bonds that bring and hold us together. Those bonds provide the foundation for the formal elements of constitutional structure and order.

This is the real and critical work of strengthening society and democracy – one community, one issue at a time across the country. The ULCC is but one of the key groups in society that perform this vital work.

Thank you for this opportunity, for the invaluable work of the Conference, and for the chance to articulate the key elements that we must sustain and build on to safeguard democracy and the Rule of Law.