

Rules of Procedure

UNIFORM LAW CONFERENCE OF CANADA

CRIMINAL SECTION RULES OF PROCEDURE - AUGUST 2022

Interpretation

1(1) The terms “conference”, “delegate” and “jurisdictional representative” have the same meaning assigned by subsection 1(1) of the Uniform Law Conference of Canada (ULCC) By-laws.

1(2) The term “secretary” means the secretary appointed pursuant to subsection 12(1) of the ULCC Bylaws.

Jurisdictional Delegations

2(1) Each province and territory, as well as the federal government, shall designate the number of delegates participating in the conference.

2(2) Each delegation shall be headed by a jurisdictional representative.

2(3) Each jurisdictional representative shall submit a list of its delegates in writing to the ULCC Executive Director on or before July 1st, each year.

2(4) All jurisdictional representatives shall identify themselves and their jurisdictional delegation at the beginning of the annual meeting.

2(5) Members of the judiciary attending the meetings shall be recognized as full delegates but, as a matter of principle, will not have a vote.

Agenda

3(1) The agenda for the Criminal Section annual meeting is prepared by the Chair for the year in question with the assistance of the Secretary and the other members of the Criminal Section Steering Committee.

3(2) Supplementary agenda items may be considered during the deliberations of the Criminal Section at the annual meeting at the discretion of the Chair.

Resolutions and Reports

4(1) Format of Resolutions and Reports:

a) Resolutions shall follow the template provided by the Secretary and be limited to a maximum of two (2) 8 ½ x 11 pages.

b) Resolutions shall contain the following headings:

- subject,
- statutory reference, if applicable,
- name of constituent jurisdiction presenting the resolution,
- summary, and
- recommendation.

c) Where applicable, resolutions shall make reference to any previous known resolutions on similar issues considered by the Criminal Section.

d) A resolution that has been considered by the Criminal Section within the past five years shall not be submitted for consideration without leave of the Chair.

e) Where feasible, resolutions should be provided to the Secretary in both official languages.

f) Reports of the Criminal Section shall follow the ULCC template.

4(2) Timelines for receipt and distribution of resolutions and reports:

a) Resolutions shall be sent electronically to the Secretary on or before April 30th, or as otherwise directed by the Secretary.

b) Reports shall be sent electronically to the Secretary on or before June 1 or as otherwise directed by the Secretary.

c) Resolutions and reports shall be sent electronically to the jurisdictional representatives by the Secretary at least one month prior to the meeting.

d) The Secretary may request that any delegate who wishes to submit a resolution or report after the above-noted deadlines be responsible for distributing the relevant document to the other jurisdictional delegations, in both official languages.

4(3) Order of Presentation of Resolutions:

a) The Resolutions will be presented in alphabetical order by the Provincial and Territorial delegations commencing with Alberta in 2001. The order of rotation will change from year to year with the lead jurisdictional delegation from the immediately preceding annual meeting presenting resolutions last in rotation at the next annual meeting, and in like fashion the rotation will change from year to year thereafter.

- b) The delegation from Canada will present Resolutions for consideration after the Resolutions received from the Provincial and Territorial delegations have been presented.
- c) Resolutions from the floor will be presented after the regular business of the Criminal Section has been completed if permission is granted by a majority vote of the delegates.
- d) Where the Chair wishes to present a resolution on behalf of the jurisdictional delegation of which he or she would ordinarily be a member, the incoming Chair of the Criminal Section shall assume the responsibilities of the chair while that resolution is being debated and voted upon. If the incoming Chair is unable to perform this function, the immediate past Chair of the Criminal Section shall assume this role.
- e) The order of discussion by delegates shall be at the recognition of the Chair.
- f) The length of the deliberations on each resolution shall be at the discretion of the Chair.

4(4) Resolving uncertainty as to whether a resolution falls within the Criminal Section's mandate:

- a) There is a general presumption that all submitted resolutions are within the Criminal Section's mandate and can be presented, discussed and voted on at the annual meeting.
- b) If there are uncertainties as to whether a resolution should be presented, discussed and voted on, the procedure and decision-making grid found in Appendix A should be applied.

Individual voting

5(1) The Chair shall orally state the resolution or amended resolution before putting it to a vote of the delegates. A majority vote by show of hands:

- for the resolution, or
- against the resolution, or
- abstaining from voting on the resolution,

will determine if a resolution is carried or defeated. Abstentions, through show of hands, will also be recorded.

5(2) Each member of a jurisdictional delegation is entitled to cast a vote except in the case of a vote by constituent jurisdiction as provided by subsection 32(3) of the ULCC By-laws.

5(3) The delegates may, by majority vote, decide that an agenda item is to be carried over for another year or that no action is to be taken in regard to an item.

5(4) Individual delegates must be physically present to vote or abstain.

Vote by Constituent Jurisdiction

6. Where a vote by constituent jurisdiction is called pursuant to subsection 32(3)(a) of the ULCC Bylaws, this vote takes precedence over the vote of individual delegates.

Confidentiality

7. In addition to the circumstances where release of materials is permitted under section 30 of the ULCC By-Laws, a resolution that has been debated may be released to federal, provincial or territorial government officials for the purpose of consideration or analysis.

Report of the Federal Jurisdictional Representative

8. The federal jurisdictional representative shall report on the status of the resolutions carried in prior years.

Rules of Procedure and Policies of the Criminal Section

9. Adoption or amendment of a rule of procedure or policy made by the Steering Committee pursuant to subsection 34(1) of the ULCC By-laws is subject to a majority vote by constituent jurisdiction in its favour at the next annual meeting of the Criminal Section, in accordance with subsection 32(3) of the ULCC By-laws.

APPENDIX A

PROCEDURE BY WHICH THE CRIMINAL SECTION COULD DETERMINE WHETHER A RESOLUTION SHOULD BE DEBATED DURING THE ANNUAL MEETING

There is a general presumption that all submitted resolutions are within the Criminal Section's mandate and can be debated at the annual meeting.

1. **The Chair and the Secretary** of the Criminal Section consider all resolutions received to verify whether they raise any concerns in light of the *Decision-Making Grid*.
2. If **the Chair and the Secretary** are of the opinion that a resolution might be outside the mandate, they contact the Jurisdictional Representative and the delegate who submitted the resolution, where applicable, to that effect. Following an informal discussion with the Chair and the Secretary, the Jurisdictional Representative and the delegate can decide to keep the resolution as is, amend it or withdraw it.
3. If the Jurisdictional Representative and the delegate decide to maintain the resolution (as is or amended), and **the Chair and the Secretary** are still concerned about the resolution falling outside the Criminal Section's mandate, they bring it to the attention of the Criminal Section's **Steering Committee**.
4. **The Steering Committee** schedules a meeting, which must be held at least ten weeks before the ULCC annual meeting (subject to the information below regarding the applicable timeframe).
5. **The Steering Committee** considers and discusses the resolution in light of the *Decision-Making Grid*. At this stage :
 - a. The Steering Committee can consult anyone whose opinion or views may be helpful in the discussion or decision;
 - b. The Jurisdictional Representative and the delegate who submitted the resolution have the opportunity, if they choose to do so, to make a case for why the resolution should not be rejected;
 - c. The Steering Committee may suggest to the Jurisdictional Representative and the delegate that they modify the resolution or adopt other measures to address the concerns, including by taking into account the *List of Characteristics or Conditions* that accompanies the *Decision-Making Grid*.
6. If, following these discussions, a majority of **the Steering Committee** members are of the opinion that the resolution is outside the mandate of the Criminal Section, the resolution is rejected. The result of the vote is the final decision.
7. **The Chair and the Secretary** of the Criminal Section notify the Jurisdictional Representatives, as well as the delegate who submitted the resolution, of the Steering Committee's decision.

If it is not possible to follow the procedure within the established **timeframe** , for example with floor resolutions, resolutions submitted after the deadline or if a valid concern is raised at a later date, **the Chair and the Secretary** can decide to set aside the resolution for the upcoming or current meeting, for the purpose of submitting it to **the Steering Committee** before the next annual meeting.

If the resolution is rejected, withdrawn or amended during the above-described procedure (steps 2 or 5):

- before the resolutions are shared with the Jurisdictional Representatives: the resolution is considered as never submitted (if rejected or withdrawn) or as the original (if amended);
- after the resolutions are shared with the Jurisdictional Representatives: the resolution is referred to as rejected, withdrawn or amended as a result of the mandate procedure, including for the purpose of the record of resolutions.

DECISION-MAKING GRID

The *Decision-Making Grid* sets out the key criteria related to the core elements of the mandate of the Criminal Section. However, using this tool, and the *List of Characteristics or Conditions* that accompanies it, should not be a mathematical exercise. While certain criteria may carry more weight than others, a combination of factors may as well mitigate certain aspects that were initially perceived as concerning. A resolution that at first may seem outside the mandate could in fact turn out to be appropriate for consideration in light of, for example, the context or the desired outcome.

Criteria	Weighs in favour	Weighs against
(i) The resolution seeks legislative reform.	X	
(ii) The resolution is related to one of the following: <ul style="list-style-type: none"> • <i>Criminal Code, Youth Criminal Justice Act;</i> • <i>Controlled Drugs and Substances Act, Cannabis Act, Canada Evidence Act;</i> • <i>Sex Offender Registration Act, Firearms Act, Corrections and Conditional Release Act, Criminal Records Act.</i> 	X	
(iii) The resolution is related to legislation entirely or partially made under the federal jurisdiction over criminal law, including criminal procedure.	X	
(iv) The resolution seeks to amend legislation adopted by a province or territory.		X
(v) The resolution concerns provincial rules of court.		X
(vi) The Criminal Section has direct expertise in the topic of the resolution. (NB: direct expertise means the personal expertise of the delegate, the expertise of the organization for which the delegate works or the expertise of people the delegate can easily consult.)	X	
(vii) There is another forum or avenue (outside the ULCC) that would be more appropriate for dealing with the issue identified by the resolution. (NB: The fact that other fora, such as the Coordinating Committee of Senior Officials – Criminal Justice or the Steering Committee on Criminal Justice Efficiencies and Access to the Criminal Justice System, might be tasked to deal with issues identified in a resolution should not weigh against that resolution being debated at the ULCC, given the broad membership of the delegations and their expertise in criminal law matters.)		X

(viii) The resolution addresses prosecutorial discretion or suggests that the prosecution services or courts adopt directives or instructions.		X
(ix) The resolution concerns the executive branch of a government (e.g.: implementing a program, spending funds in a particular field or for a specific initiative).		X

List of Characteristics or Conditions

In addition to the criteria of the decision-making grid, consideration must also be given to the presence of certain characteristics or the possibility of imposing conditions that could help to overcome certain difficulties regarding the Criminal Section’s mandate. For example:

- The resolution will be amended so that the anticipated outcome is that the issue be submitted to a working group (joint or of the Criminal Section) or to the Civil Section, or be addressed through the Earl Fruchtmann Memorial Seminar.
- A backgrounder will be produced and distributed before the annual meeting.
- An expert will be available for a presentation at the annual meeting.

The resolution will be modified with more appropriate wording in regard to the mandate.