



**UNIFORM LAW CONFERENCE OF CANADA**

**MINUTES OF THE CRIMINAL SECTION, 2017**

**Prepared by  
Dorette Pollard, LL.M.  
Secretary, Criminal Section**

**Regina  
Saskatchewan  
August, 2017**

This document is a publication of  
the Uniform Law Conference of Canada.  
For more information, please contact  
[ulccwebsite@gmail.com](mailto:ulccwebsite@gmail.com)

## ATTENDANCE

[1] Thirty one delegates from ten provincial, territorial and federal governments participated in the deliberations of the Criminal Section. Of note, there were 13 new delegates. Prince Edward Island, Newfoundland & Labrador, Nova Scotia, and Nunavut were not represented. Delegates included policy counsel, Crown prosecutors, defence counsel, academics, as well as representatives of the Canadian Bar Association (CBA), the Canadian Council of Criminal Defence Lawyers (CCCDL) and members of the judiciary.

## OPENING

[2] The Criminal Section convened to order on Sunday, August 13, 2017. Laura Pitcairn (Public Prosecutions Service of Canada (PPSC)) presided as Chair and Dorette Pollard (Counsel, Justice Canada) acted as Secretary.

[3] The Chair thanked the delegates for coming and recognized the invaluable assistance throughout the year of both the Secretary and the Steering Committee whose members included Dean Sinclair, Luc Labonté, Samantha Hulme, Cathy Cooper, Lucie Angers, and Dorette Pollard. As Chair of the Steering Committee, Ms. Pitcairn was doubly dependent on its members' guidance especially in light of the fact that her predecessor, Eric Gottardi was not here this year. Finally, the Chair reminded delegates of the full agenda and thus the importance of staying on track including from coffee breaks, which this year were sponsored by Miller Thomson, McKercher LLP and MLT Aikins LLP. Each jurisdictional representative introduced the delegates who accompanied them.

[4] The Chair introduced Senator Denise Batters who presented the findings of the Final Report of the Standing Senate Committee on Legal and Constitutional Affairs entitled, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada*.

## PROCEEDINGS

### *Earl Fruchtman Memorial Seminar*

[5] On Monday, August 14, 2017, Mr. Marco Mendicino, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada gave the inaugural address of the Earl Fruchtman Memorial Seminar on the status of the Criminal Justice System Review. This was immediately followed by a second presentation on Mandatory Minimum Penalties, in which Mr. Mendicino engaged with delegates on the possible options for reform in light of the Mandate letter to Ms. Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada.

***Report of the Senior Federal Delegate<sup>1</sup>***

[6] Lucie Angers, General Counsel and Director of External Relations for the Criminal Law Policy Section, Justice Canada, presented and tabled the Report of the Senior Federal Delegate.

***Resolutions<sup>2</sup>***

[7] The order in which resolutions are considered is set out in the [\*Rules of Procedure\*](#) of the Criminal Section. In accordance with the *Rules*, Manitoba was the first province to present its resolutions this year, followed by the other jurisdictions, in alphabetical order, and finally by the Canada delegation. However, by exception, an accommodation was accorded to the Canadian Association of Provincial Court Judges whose four resolutions were presented before Manitoba's.

[8] The jurisdictions initially submitted twenty-seven (27) resolutions for consideration. Of that number, two (2) were duplicates; both of which were withdrawn. Delegates therefore considered a total of twenty-five (25) resolutions. Nine (9) resolutions were carried without amendment, five (5) of which were unanimous. Fourteen (14) resolutions were carried as amended and two (2) resolutions were withdrawn following thorough discussion, particularly on the resolution by the Canadian Council of Criminal Defence Lawyers, calling for the establishment of a Royal Commission to study the reporting, investigation and prosecution of sexual offences.

***Criminal Section Working Groups***

[9] The current Telewarrants Working Group provided an overview of its work and indicated that it expects to present its final report at the Criminal Section's 2018 meeting. The Interim Report of the Telewarrants Working Group was adopted by a unanimous vote (26-0-0).

[10] Two new Working Groups were established. The first one stems from an Ontario Resolution (ON2017-03) and will undertake an examination of section 9 of the *Canada Evidence Act* for possible reform of the law of evidence in criminal proceedings relating to the ability of a party to confront and lead its own witnesses. This new Criminal Section Working Group will be chaired by Fraser Kelly (Ontario) and will include among others the following six delegates: Anne-Marie Boisvert (Justice Canada), Jessyca Greenwood (ON), Samantha Hulme (BC), Nadine Nesbitt (Alberta), Chloé Rousselle (Quebec) and Kevin Westell (CBA).

[11] The second new Working Group was recommended by British Columbia (Resolution

---

<sup>1</sup> This document is attached to these Minutes as Annex 1 and may be consulted in electronic form on the ULCC website.

<sup>2</sup> This document is attached to these Minutes as Annex 2 and may be consulted in electronic form on the ULCC website.

BC2017-02). This Working Group will undertake an examination of section 490 of the *Criminal Code* with a view to reform the detention of seized property regime. The Working Group is to be chaired by Manon Lapointe (PPSC) with the following representatives: Isabelle Doray (Quebec), Luc Labonté (New Brunswick), Nadine Nesbitt (Alberta), Richard Prihoda (Barreau du Quebec) and a representative each from Justice Canada and Ontario.

### ***Federal Consultations***

[12] As in 2016, Justice Canada consulted delegates on ongoing reforms of the criminal law, and notably in two key areas. First, delegates were provided an overview of the legislative and non-legislative initiatives to address delays in the criminal justice system. Legislative initiatives include an examination of options for reform of preliminary inquiries, mandatory minimum penalties, reclassification of offences, bail, and administration of justice offences. It was also noted that to date the Government has been implementing a number of non-legislative measures in the areas of federal provincial and territorial collaboration; programs and policies, as well as filling judicial vacancies to address delays in the criminal justice system.

[13] Second, delegates were consulted on the federal government's legislative proposals in Bill C-46, *An Act to amend the Criminal Code (offences relating to conveyances)* and notably with respect to lowering the criminal blood alcohol concentration (BAC) for impaired driving, which continues to be the leading criminal cause of death and injury in Canada. The Standing Committee on Justice and Human Rights is expected to resume study of Bill C-46, in September 2017. Following a heated discussion, delegates were invited to please forward additional comments, in writing to: Monique.Macaranas@justice.gc.ca by **August 31, 2017**.

### ***Joint Working Groups***

[14] The following three joint Working Groups provided interim reports at ULCC 2017:

#### **1. Status Report from the Joint Working Group on Complementary Provincial / Territorial Legislation**

[15] This Working Group is chaired by Clark Dalton, Civil Section, with assistance provided by Elizabeth Strange (New Brunswick).

[16] Clark Dalton presented a short summary of the work done by the Working Group and indicated that they expected that the Chart would be an ongoing project whose content depends on the participation of each jurisdiction from both the criminal and civil sections.

**IT WAS RESOLVED THAT** the report be accepted;

**THAT** the Chart be recognized as a living document; and

**THAT** jurisdictions continue to update the chart throughout the year.

**Carried**

**2. Status Report from the Joint Working Group on *Charter* costs award and civil damages against the Crown**

[17] This Working Group is chaired by Manon Lapointe of the Public Prosecution Service of Canada, and includes the following participants: Stephen Bindman (Justice Canada), Catherine Dumais (Director of Criminal and Penal Prosecutions of Quebec); Kathryn A. Gregory (Attorney General of New-Brunswick), Lori McMorran (Attorney General of British Columbia); Mary-Ellen Hurman and Sunil S. Mathai (Attorney General of Ontario) and W. Dean Sinclair (Attorney General of Saskatchewan).

[18] Manon Lapointe presented a brief overview of the work done by the Working Group, including a Chart that was created to follow the judicial treatment of *Charter* award of costs following the Supreme Court of Canada's decision in *Henry*<sup>3</sup>. Ms. Lapointe also noted that the members of the Working Group have examined the *Jordan*<sup>4</sup> decision and the impact on the work with respect to *Henry*. In terms of next steps, Manon Lapointe sought volunteers from the Civil Section and felt that it would be invaluable to the work to have a co-chair from the Civil Section.

**IT WAS MOVED** by Michael Desautels (Manitoba) and seconded by Luc Labonté (New Brunswick) that the Interim Report of this Working Group be accepted and that the Working Group present its final report at ULCC 2018.

**The resolution was carried with one (1) abstention.**

**3. Status Report from the Joint Working Group on Criminal Record Checks**

[19] The Working Group is chaired by Tony Paisana, defence lawyer practising at Peck and Company Barristers in Vancouver, B.C. and is supported by an Advisory Committee headed by Darcy McGovern, QC (Saskatchewan).

[20] Tony Paisana indicated that for the past year, members of the Joint Working Group have studied criminal record checks across the country via a detailed questionnaire. Seven provinces responded to the questionnaire, the results of which confirmed that wide disparity exists in Canada regarding criminal record check practices. It was further reported that the

---

<sup>3</sup> *Henry v. British Columbia (Attorney General)*, 2015 SCC 24 (SCC).

<sup>4</sup> *R. v. Jordan*, 2016 SCC 27 (SCC).

disparities relate to the types of checks that can be conducted, what information will be disclosed in these checks, and what procedural mechanisms may exist to protect applicants from the adverse effects of incorrect or unfairly included information. The Working Group expects to propose a uniform criminal record checks Act modeled on Ontario's [\*Police Record Checks Reform Act, 2015\*](#), S.O. 2015 C.30.

[21] Following discussion, the Interim Working Group Report was amended by modifying paragraphs 19 and 74 and removing paragraph 75, relating to the provinces of Quebec and Manitoba from whom information has not yet been provided. Representatives from both jurisdictions, as well as the three territories have undertaken to complete the questionnaire and provide it to the Chair of the Working Group. It was agreed that the Working Group Interim Report would be amended accordingly and delegates were asked not to circulate the current Interim Report until a revised version is made available.

**IT WAS MOVED** by Rosario (Tino) DiBella of the Canadian Bar Association and seconded by Darcy McGovern, QC;

**THAT** subject to the directions of the joint session, the Interim Report of the Working Group be accepted;

**THAT** the Working Group continue its work in accordance with the recommendations contained in the report and the directions of the Conference; and

**THAT** the Working Group report back to the Conference at the 2018 meeting.

**The resolution was carried as amended with two (2) abstentions.**

#### ***Joint Session on the Strategic Plan Oversight Committee (SPOC)***

Presenter: Manon Dostie

[22] The session began with Genevieve Harvey providing a report for the Publications Committee on communications strategy and the website. Efforts have been made to revamp the content and layout of the Communiqué to eliminate duplication and highlight the activities of the ULCC. The Publications Committee is also working towards standards for how documents will appear on the website, for example uniform cover page, updated contact information, standardized headings and page margins. Going forward, the website will focus on usability, professional image and ease of updating.

[23] Ms. Dostie then led a discussion with respect to several topics including the renewal of the relationship of ULCC with other organizations such as FPT Ministers, the Canadian Bar Association and Law Reform Institutions and new organization such as Indigenous groups. Delegates discussed the challenges of ongoing participation of the CBA because of the

rotation of representatives, how to engage Indigenous organizations, and how delegates other than jurisdictional representatives form part of the current delegations.

[24] Delegates deliberated with respect to the length and timing of the annual meeting and several comments and suggestions arose including: moving the meeting to the Spring or Fall, starting the meeting on Monday, eliminating rotation of meetings in favour of a central location, maintaining flexibility on date and number of days depending on location. Delegates also discussed the name of the conference and if a change would be supported, appropriate and feasible from a budgetary standpoint at this time.

**RESOLVED:**

**THAT** the report of the Strategic Plan Oversight Committee (SPOC) and its working groups including the Constitution and By-laws working groups be accepted;

**THAT** SPOC and its working groups continue their work in accordance with the directions of the ULCC;

**THAT** delegates be invited to submit written comments for consideration by SPOC by October 1, 2017; and

**THAT SPOC** present revised versions of the Constitution and By-laws for adoption at its 2018 meeting.

***SPOC Discussions in the Criminal Section***

[25] Manon Dostie, ULCC President chaired the SPOC (Strategic Plan Oversight Committee) discussions in the Criminal Section. She thanked Josh Hawkes QC for spearheading this initiative, and his tireless efforts up to his judicial appointment to the Alberta Provincial Court, in May 2017. The President also recognized the Criminal Section members Lucie Angers, Cathy Cooper, Stephanie O'Connor and Dorette Pollard, and added that volunteers from the Criminal Section are still needed to join the SPOC committee and its sub-committees. The topics discussed are outlined as follows:

➤ **Mandate of the Criminal Section**

[26] The Criminal Section is not reflected in the current 1996 Constitution. It was therefore necessary to amend the Mandate by adding a few lines to show what the Criminal Section is doing. The proposed Mandate is as follows:

**B. Mandate**



The mandate of the Uniform Law Conference of Canada is to develop uniform and model acts, statements of legal principles and other documents and to recommend them to the constituent jurisdictions for their consideration, as well as to recommend changes to the *Criminal Code of Canada* and other related criminal law statutes and to provide a forum to study and consult on evolving criminal law issues.

[27] A historical note will be added to the Preamble to recognize the start of the ULCC and collaboration with the Canadian Bar Association. It was noted that the ULCC was not created by the CBA but rather the CBA recommended that such an organization be constituted.

[28] The statement of Purpose is a useful tool but it was agreed that there is too much focus on the civil side and not enough on the Criminal Section. It would be useful to include a paragraph on criminal law where harmonization takes on a very different meaning. There needs to be more description on how the reforms to the criminal law trickle down and are administered by the provinces. This would fit in the Statement of Purpose. It was recognized that this was a good suggestion.

➤ **By-Laws:**

[29] SPOC's approach was to expand and update the By-Laws to reflect modern practices. The Criminal Section has its *Rules of Procedure* and the question was raised whether it would be useful to move some of these components into the By-Laws. For example, it deals with Judges who are full delegates but do not vote. The purpose would be to clarify how we do things in the Criminal Section. However, it was important to consider the procedures and policies that can be easily updated and would not require the approval of the Conference. To the extent that the civil section includes its procedures in the By-Laws, the Criminal Section may want to include similar ones. But it is important to keep By-Laws distinct from *Rules of Procedure*. Dale Tesarowski (Saskatchewan) who has experience in By-Laws was invited to volunteer to join the Constitution and By-Laws Committee.

➤ **The Nominating Committee of the Criminal Section**

[30] The Nominating Committee of the Criminal Section has been amended to remove the reference to consulting the JRs in order to nominate the Criminal Section Chair. It was noted that it is important, that there be flexibility which is different on the Civil Section whose JRs meet monthly.

➤ **Role of the Steering Committee of the Criminal Section**

[31] The proposed amendments call for at least two members from the Criminal Section, in addition to the Chair, the immediate past Chair and the Secretary. New Delegates were

encouraged to volunteer to sit on this Steering Committee as it is an important opportunity to learn about the Criminal Section.

➤ **Role of JRs for the Criminal Section**

[32] The appointment of JRs varies from jurisdiction to jurisdiction. Each year a letter is sent to FPT Deputy Ministers requesting the appointment of a JR. It is proposed that this letter be more descriptive of the work and topics discussed at the Criminal Section.

[33] A note of caution was raised however. Sometimes there are important budget cuts and JRs may not wish to have their work highlighted. It was suggested that there can be flexibility.

➤ **Confidentiality (Access to Information and Privacy (ATIP) Requests) Lucie Angers**

[34] Guidelines have been developed by Governments with respect to the release of documents in response to ATIP requests. The By-Laws deal with ULCC documents, which become public when published on the website. However, the By-Laws say that these documents are only to be distributed to delegates. Yet in preparation for ULCC meetings, JRs consult their colleagues and others.

➤ **CBA Outreach sub-group – Lucie Angers**

[35] Lucie Angers, Chair of the CBA Outreach sub-group discussed the role of the sub-group, which is composed of Clark Dalton, Eric Gottardi, Stephanie O'Connor, Dorette Pollard and Kathryn Sabo. It was noted that the CBA is traditionally a Crown law body. Defence Counsel to the Criminal Section is but a small part of the CBA.

[36] It was felt that the CBA should not be mentioned in the Constitution and By-Laws but in the Preamble document discussed at the SPOC Plenary Session.

[37] There was discussion also about the role of other organizations, such as the Barreau du Quebec. There is a constant turnover, which makes it difficult to maintain continuity. There is a definite interest in the ULCC and there is always a representative at the ULCC in both the Civil and Criminal Sections. ULCC will be held in Quebec City in 2018 and this presents an opportunity.

[38] It would be very useful to invite Indigenous National Bar Association to be represented and this would also be a key body to enrich the work of the ULCC.

[39] Delegates discussed other national organizations from the defence bar, as well as

international organizations, including the following:

- Canadian Association of Chiefs of Police (CACP)
- Canadian Association of Crown Counsel (CACC)
- Canadian Council of Criminal Defence Lawyers (CCCDL)
- Canadian Council on International Law (CCIL)
- Federation of Law Societies of Canada (FLSC)
- International Association of Prosecutors (IAP)
- International Society for the Reform of Criminal Law, (Yvon Danderaud)
- Academics from the criminal community, such as Anne-Marie Boisvert
- Steering Committee on Justice Efficiencies and Access to Justice have exchange of information. It was noted that the work of the Justice Efficiencies Committee is confidential and should not be shared.

➤ **Parameters for politicians addressing ULCC**

[40] Parameters will be established in the coming year with respect to politicians, such as Senators and Members of Parliament who come to speak to the ULCC Criminal Section. Concerns were raised with respect to the comfort level and reticence of some delegates to express fully their views in the presence of the politician.

[41] It was noted that we hope that the Minister of Justice will attend the ULCC 2018 to mark the 100<sup>th</sup> anniversary. We want to be cautious about making rules that are too strict that would prevent the Minister from attending next year.

[42] It is difficult since delegates in the Criminal Section go beyond our respective roles and speak as experts based on our experience. This was an interesting experience.

[43] This is an unwritten rule that the Guests are informed that the ULCC is an independent body and delegates express their views freely and the views expressed should not be taken beyond the ULCC.

[44] The example of the two politicians is instructive because they reveal that we cannot generalize. It is good that politicians can come because we can speak directly to them but care should be taken by their handlers and also on who is selected to speak to ULCC delegates.

[45] In concluding, the President thanked delegates for their contribution to the discussions and invited all Criminal Section delegates to submit their comments on the Constitution and By-Laws and indeed in any other area, preferably in writing by **October 1, 2017**.

**OTHER BUSINESS**

## Minutes of the Criminal Section, 2017

➤ **Volunteers needed to join the 100<sup>th</sup> Anniversary Committee**

[46] To date, there is only one Criminal Section representative on the 100<sup>th</sup> Anniversary Committee. Please contact Isabelle Doray, JR Quebec and join Richard Fowler who has volunteered to strengthen the Criminal Section on this important Committee that is tasked with organizing events to mark the ULCC milestone year.

➤ **Timelines for receipt and distribution of resolutions and reports**

[47] The *Rules of Procedure* of the Criminal Section provide as follows:

- 3.2 a) Resolutions shall be sent electronically to the Secretary on or before April 30<sup>th</sup>, 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 senior delegates by the Secretary one month prior to the meeting.

[48] To accommodate summer vacation and the need to consult widely, it was requested that the resolutions and reports be sent as they are received and not as a package one month before the conference.

[49] It was noted however that only Quebec respected the April 30<sup>th</sup> deadline. Jurisdictions acknowledged that with other commitments, it was difficult to meet the April 30<sup>th</sup> deadline. It was agreed that this deadline as well as the June 1 deadline for Working Group Reports will remain. However, the Secretary will provide an earlier call out notice to JRs. Presently, the call for resolutions is sent during the first week of February. It was recommended that this call out request be sent in November with a reminder in February.

➤ **Amendments to resolutions**

[50] Delegates are advised that the Jurisdiction is responsible for providing Amended resolutions in both official languages to the Secretariat for preparation on the Amended Resolution Template. The resolution should be reviewed and approved in both languages prior to distribution. Where a Resolutions makes reference to a section of the *Criminal Code* or other statute, the statute is to be italicized and the marginal note should be included for purposes of publication on the website. To illustrate, “THAT section 160 (Bestiality) of the *Criminal Code* be amended to prohibit sexually explicit activity with an animal.”

➤ **Recognition of Saskatchewan**

## Uniform Law Conference of Canada

[51] With a hearty round of applause, delegates recognized Dean Sinclair and the Saskatchewan Organizing Committee for the outstanding job in organizing the ULCC events this week!

**CLOSING**

[52] The Chair thanked the delegates for their participation in the meeting. In spite of tight timelines, delegates accomplished the task at hand finishing the deliberations of resolutions with 15 minutes to spare, after having started the final day 30 minutes early. She expressed her appreciation to the members of the Secretariat for their excellent work and to the interpreters for their help and dedication.

[53] The Chair also thanked Dorette Pollard for her assistance keeping her on track over the course of the year and throughout the meeting in Regina.

[54] Delegates took the opportunity to thank the Chair of the Criminal Section for the quality of her work throughout the week and for her contribution during the year.

[55] By resolution of the Criminal Section, the nomination of Samantha Hulme, Crown Counsel, British Columbia, as Chair of the Criminal Section for 2017-2018, was accepted. The nominating committee recommends that Matthew Hinshaw (Alberta), act in that capacity in 2018-2019.

[56] The Criminal Section concluded its work on Thursday, August 17, 2017 and will reconvene on Sunday, August 12, 2018, in Quebec City.

---

October 3, 2017

Minutes of the Criminal Section, 2017