

ULCC | CHLC

UNIFORM LAW CONFERENCE OF CANADA

MINUTES OF THE CRIMINAL SECTION (2023)

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INTRODUCTION

[1] Delegates came together again this year to attend the Criminal Section of the Uniform Law Conference of Canada (ULCC), which held its 105th meeting in Charlottetown, PEI, from August 21-25, 2023.

[2] This year a total of 34 delegates, from eleven (11) federal and provincial jurisdictions participated in the deliberations of the Criminal Section. With respect to provincial delegations, New Brunswick was unable to send a delegation to the ULCC this year. With respect to the territories, the Northwest Territories and Nunavut were also absent from the Criminal section of this year's conference.

[3] Delegates brought a broad array of expertise in Criminal law to the benefit of the section, both from within and outside government. They included academics, criminal law policy counsel, prosecutors, as well as members of the defence bar and the judiciary. Several organizations were also represented: the Barreau du Québec; the Canadian Association of Provincial Court Judges (CAPCJ); the Canadian Bar Association (CBA); The Criminal Trial Lawyers' Association (Alberta); the Canadian Council of Criminal Defence Lawyers (CCCDL); the Court of Quebec; the Criminal Defense Lawyers Association of Manitoba (CDLAM); the Criminal Lawyers Association (CLA); the Public Prosecution Service of Canada (PPSC) and the Quebec Defense Lawyers Association (AQAAD). In addition, the ULCC Criminal section welcomed the return of the Law Commission of Canada as an observer.

[4] At the opening plenary of the ULCC, the Chair spoke briefly to some of the resolutions that would be considered by the Criminal Section over the coming week. The Chair also noted that the Criminal section would be receiving the final report of the working group on section 487 of the Criminal Code, the product of a huge amount of work over the past five years. The Chair in particular thanked all the members of the section 487 working group as well as Matthew Asma, chair of the working group. The Chair noted that three other working groups – the Working Groups on section 672.26 and section 490 of the Criminal Code, as well as the Working Group on the treatment of animals in the Criminal Code, would present status reports at this year's conference.¹

The Chair noted that this year, the annual Earl Fruchtman memorial seminar would be delivered by John Diamond, Q.C., Director of Prosecution at the Prince Edward Island Department of Justice and Public Safety.

¹ The minutes of the opening plenary are available at the following link: [2023-Opening-Plenary-Minutes.pdf \(ulcc-chlc.ca\)](https://www.ulcc-chlc.ca)

OPENING

[5] The 2023 ULCC meeting began with a joint opening plenary of both the Criminal and Civil sections.² The Criminal Section convened to order on Monday, August 21, 2023 following the combined opening plenary. Anny Bernier, Deputy Director of Penal and Criminal Prosecutions (Directeur des poursuites criminelles et pénales, hereafter DPCP) presided as Chair and Aleksander Godlewski served as Secretary.

[6] Anny Bernier welcomed delegates to the Conference and reflected on the pleasure of chairing the 105th session of the ULCC. The Chair noted that the principal challenge of the criminal section would be to have sufficient time to present, debate, and vote on the 38 resolutions submitted this year. The Chair reviewed several procedural items for the efficient functioning of the work of the section, and reminded delegates of the confidential nature of the work of the Criminal Section. As an administrative item, the Chair also reported on resolution QC2022-02(3), which called for the creation of an advisory committee on issues related to the modernization of courtroom proceedings. Following a number of discussions after the 2022 conference, it was decided not to put this committee into place for the moment.

[7] Matthew Taylor, Federal Jurisdictional Representative, delivered the Federal Jurisdictional Representative's Report. Matthew Taylor thanked PEI and the organizing committee for their work in organizing the annual meeting. As a highlight of the report, Matthew Taylor noted that of the 114 resolutions carried in the past 5 years by the ULCC, 14 have found their way into law reforms, while 30 are currently being considered by Justice Canada in some capacity currently.³

[8] No changes were proposed to the Agenda of the Criminal Section.

PROCEEDINGS

*Resolutions*⁴

[9] In keeping with subsection 4(3) of the *Rules of Procedure*, British Columbia was the first province to present a resolution this year. Each jurisdiction and independent body presented one resolution in alphabetical order before moving to a second resolution, with the Canada

² Full minutes of the opening plenary are available at the following link: [ULCC - Charlottetown, PE \(ulcc-chlc.ca\)](https://ulcc-chlc.ca/Charlottetown-PE)

³ The written report of the Federal Jurisdictional Representative will be available online at the following address: [ULCC - Charlottetown, PE \(ulcc-chlc.ca\)](https://ulcc-chlc.ca/Charlottetown-PE)

⁴ A list of resolutions with the result of the vote for each is available separately online at the following address: [ULCC - 2023 Criminal Section Resolutions \(ulcc-chlc.ca\)](https://ulcc-chlc.ca/2023-Criminal-Section-Resolutions).

delegation presenting resolutions after other delegations.

[10] Initially, jurisdictions submitted 38 resolutions for consideration by delegates. Of these resolutions, five (5) were withdrawn without discussion, and two (2) were withdrawn following discussion. In total, 33 resolutions were discussed by the delegates.

[11] Ultimately, only two (2) resolutions were defeated. Twenty (20) resolutions were adopted following an amendment. A table of the outcomes of the various resolutions is found below:⁵

Table 1: Results of 2023 ULCC Criminal Section Resolutions

Outcome of Resolution		Total Number of Outcomes	Resolutions
Resolutions Carried		9	MB2023-01 (A) MB2023-01 (B), ON2023-01 SK2023-01, Can-PPSC2023-01 / Can-SPPC2023-01 ON2023-02, QC2023-02 A, QC2023-02 B, AB2023-02 ON2023-03, QC2023-05
Resolutions Carried as Amended		20	BC2023-01, NS2023-01, QC2023-01, AB2023-01 Can-CAPCJ2023-01 / Can-ACJCP2023-01 Can-CBA2023-01 / Can-ABC2023-01, BC2023-02 NS2023-02, Can-CAPCJ2023-02 / Can-ACJCP2023-02 Can-PPSC-02 / Can-SPPC2023-02, QC2023-03, SK2023-03, AB2023-03, Can-CBA2023-03 / Can-ABC2023-03, Can-PPSC2023-03 / Can-SPPC2023-03, ON2023-04 QC2023-04, Can-PPSC2023-04 / Can-SPPC2023-04 AB2023-05, AB2023-06
Resolutions Withdrawn (7)	<i>Withdrawn</i>	5	Can-CBA2023-02 / Can-ABC2023-02, AB2023-04 Can-PPSC2023-05 / Can-SPPC-05, ON2023-06, QC2023-06
	<i>Withdrawn After Discussion</i>	2	ON2023-05, QC2023-07
Resolutions Defeated		2	SK2023-02, NS2023-03
Resolutions Defeated as Amended		0	

⁵ A summary of the adopted resolutions is available on the ULCC website at the following link: [ULCC - Resolutions \(ulcc-chlc.ca\)](https://ulcc-chlc.ca)

Criminal Section Working Groups⁶

[12] The Criminal Section discussed the progress of its four (4) Working Groups, three (3) of which provided status reports, and one which provided a final report:

1) Section 487 Working Group (Final Report)

[13] Matthew Asma, chair of the working group, delivered the final report of the Working Group examining section 487 of the *Criminal Code* (search warrants). This working group was created in 2018 to review section 487 of the *Criminal Code* and examine how this investigative power should be modernized taking into account new technologies, the *Canadian Charter of Rights and Freedoms*, and relevant national and international developments.

[14] Members of the working group who contributed to the report included: chair, Matthew Asma (Ministry of the Attorney General, ON), past chair: Normand Wong (Justice Canada), and members: Karen Audcent (Justice Canada), Greg DelBigio (Canadian Council of Criminal Defence Lawyers), Sandro Giammaria (Justice Canada), Kenyata Hawthorne (Justice Canada), Pauline Lachance (Director of Penal and Criminal Prosecutions, QC) Anne-Marie Lebel (Justice Canada), Karen Lee (NB Attorney General, Public Prosecution Services), James Meloche (Public Prosecution Service of Canada), Nadine Nesbitt (AB Crown Prosecution Service), Paul Pearson (BC Ministry of the Attorney General), Christopher Samuel (Canadian Bar Association / University of Alberta), Andrew Synyshyn (Criminal Defense Lawyers Association of Manitoba), and Anna Zhang (articled student, Ministry of the Attorney General, ON). Past member Randy Schwartz (Ministry of the Attorney General, ON) contributed significantly to an early draft of the report.

[15] Mr. Asma outlined the significant work of the committee and contents of the report. Broadly, the report features two main themes – one group of proposed changes relate to revising the section to refresh, modernize, and clean up the language of the section. A second group of proposed changes related to expanding the authority of the section in several ways.

[16] The Final Report of the section 487 working group was accepted and its results approved (Carried 25-0-1, 25 in favour, 1 abstention).

2) Section 490 Working Group (Status Report)

⁶ Copies of the reports are available at the following link: [ULCC - Reports \(ulcc-chlc.ca\)](http://ulcc-reports.ulcc-chlc.ca)

[17] Nadine Nesbitt delivered the status report of the section 490 working group. This working group was struck in 2017, and reconstituted by a unanimous resolution of the ULCC at the 2022 meeting of the Conference.

[18] Members of the working group included: Melissa Adams, Crown Law Office (ON); Marc-Antoine Rock, Defence Counsel (QC); Erin Cassidy, Department of Justice Canada – Criminal Law Policy Section (ON); Michael Fawcett, Crown Law Office (ON); Sandro Giammaria, Department of Justice Canada – Criminal Law Policy Section (ON); Melissa Insanic, York Regional Police (ON) [membership ceased]; Pauline Lachance, Director of Penal and Criminal Prosecutions (QC); Michael McEachren, Public Prosecution Service of Canada (ON); Nadine Nesbitt, Crown Prosecution Service (AB); Nicholas Reithmeier Crown Prosecution Service (BC); Emilie Robert, Director of Penal and Criminal Prosecutions (QC); Julie Roy, Director of Penal and Criminal Prosecutions (QC); Heather Russell, Public Prosecution Service of Canada (BC); Martine Sallaberry, Medicine Hat Police Service (AB); Kimberly Stark, Royal Canadian Mounted Police (BC); Kevin Westell, Defence counsel, Pender Litigation (BC); Jeffrey Wyngaarden, Crown Law Office (ON); Marta Zemojtel, Department of Justice Canada (BC).

[19] The group has made progress in the preparation of a draft report, although it was not possible to present a final version of the report in time for this year's ULCC meeting. The intention of the group is to provide a final version of the report at the next annual meeting of the ULCC.

[20] The status report of the working group on section 490 of the Criminal Code was accepted, with the group to provide its final report to the Criminal section at the next meeting of the ULCC (23-0-0, 23 in favour).

3) Working group on Section 672.26 and related sections of the Criminal Code (juries and fitness) (Status Report)

[21] The status report of the Section 672.26 working group was presented by Julie Roy. The section 672.26 working group was created as a result of ULCC resolution ON2021-03, with the goal of reviewing section 672.26 and related sections of the Criminal Code for possible legislative reform as to how the issue of fitness should be tried when an accused person has elected trial by judge and jury.

[22] The Working Group is composed of Rebecca Law (Ontario) (Chair); Joanna Wells (Justice Canada) (Chair); Lee Kirkpatrick (Yukon); Noel Sinclair (Yukon); Mandy MacLeod (AB); Adam Badari (AB); Aleksander Godlewski (Justice Canada), Stéphanie Moore (Justice Canada), Julie Roy (Department of Justice, QC), Magalie Provost (Director of Penal and Criminal Prosecutions, QC), Lucie Joncas (Canadian Council of Criminal Defence Lawyers),

and Rachel Anstey (NB).

[23] The group has met 6 times virtually since the last meeting of the ULCC, and intends to meet monthly beginning in the fall in order to be able to prepare a final report for the 2024 meeting of the ULCC.

[24] The status report of the working group was accepted, with the working group to provide its next report to the Criminal section at the 2024 annual meeting (24-0-0, 24 in favour).

4) Working Group on the Treatment of Animals in the Criminal Code

[25] The status report of the Working Group on the Treatment of Animals in the Criminal Code was delivered by Nadine Nesbitt, Chair of the Working group. This working group was created as a result of resolution ON2022-03, with a goal of exploring the treatment of animals in the Criminal Code with a view to making recommendations for amendments.

[26] Members of the group included: Nadine Nesbitt, Chair, (AB AG); Nadia Farinelli, (BC AG); Adam Badari, (AB AG); Andrew Davis, (SK AG); Andrew Synyshyn, (MB Criminal Defence Lawyers' Association); Andrew Cappell, (ON AG); Caitlyn Kasper, (ON Aboriginal Legal Services); Melanie Webb, (ON Canadian Bar Association); Aleksander Godlewski (ON Justice Canada). The working group added the following members in March 2023: Mandy MacLeod, (AB AG); Tara Dobec, (ON AG).

[27] The Chair noted that the working group had been active and effective. Some discussions have already occurred regarding potential opportunities for a joint working group with the civil section. The hope is to have a final report by the next meeting of the ULCC.

[28] The Status report of the Working Group on the Treatment of Animals in the Criminal Code was accepted (24-0-0, 24 in favour), with the group to provide its final report at the 2024 meeting of the Conference.

[29] *New Criminal Section Working Groups*

[30] Two new Working Groups were established following discussion and vote of resolutions at the 2023 Criminal Section meeting, as discussed briefly below:

1) Criminal Code Section 278: Third-party records regime (Can-CBA2023-03/Can-ABC 2023-03)

[31] Resolution Can-CBA2023-03/Can-ABC 2023-03 created a new working group, with the goal of studying the current "records regime" provisions in the Criminal Code (sections 278.1 to 278.94). The new working group is Chaired by Melanie Webb, member of the federal

delegation and representative of the Canadian Bar Association. The text of the enabling resolution reads as follows:

It is recommended that a working group be created to study the current Criminal Code “records regime” provisions (sections 278.1 to 278.94), with a view to making recommendations for amendments that would serve to simplify procedural issues, streamline the current regime, and provide for a more efficient process.

Carried as Amended: **19-4-3** (In Favour – Opposed – Abstentions)

[32] Members of the new Working Group include: Melanie Webb (Can-CBA), Chair; Janet Dickie, (BC, Prosecution Service); Nadine Nesbitt (AB, Prosecution Service); Zachary Al-Khatib (AB, Defence Bar); Kelly Kaip, (SK, Public Prosecutions); Audrey Olson, (SK, Ministry of Justice and Attorney General); Rochelle Wempe, (SK, College of Physicians and Surgeons of Saskatchewan); Catherine Cooper (ON, MAG); Daniel Brown (ON, Criminal Lawyers’ Association); Anthony Cotnoir (QC, DPCP); Marie-Pier Boulet (QC, Association québécoise des avocats.es de la défense); Hon. Anouk Desaulniers, (QC, Cour du Québec); Susan Mackay (NS, Prosecution Service); David Parry (Can, CBA); Mark Knox (Canada, Canadian Council of Criminal Defense Lawyers); James Meloche (Canada, Public Prosecution Service of Canada); Laura Pitcairn (Canada, Public Prosecution Service of Canada), Hon. Eric Tolpannen (Canada, Canadian Association of Provincial Court Judges). The Working Group is to present a report of its work to the ULCC Criminal Section meeting in 2024.

2) Exceptions to Mandatory Minimum Penalties / Exceptions aux peines minimales obligatoires

[33] Resolution QC2023-03 created a new working group with the goal of examining whether the 2013 report “*Statutory Exemptions to Mandatory Minimum Penalties*” should be updated in light of recent jurisprudence and legislative changes. The group is chaired by Lina Thériault (QC, DPCP). The enabling resolution of the group is as follows:

We recommend the creation of a working group (WG), chaired by a representative from Québec, with the mandate to update, in light of the coming into force of Bill C-5 (An Act to amend the Criminal Code and the Controlled Drugs and Substances Act, ch. 15, 2022) and the various decisions that found mandatory minimum penalties unconstitutional for sexual offences committed against a person under 16 years of age, the 2013 final report “*Statutory Exemptions to Mandatory Minimum Penalties*”. The WG can also opine on whether or not the mechanism discussed in paragraph 36 of the Lloyd decision should be implemented in the Criminal Code and if so, what should be the parameters of such a mechanism in Canada.

Carried as Amended: **14-2-11** (In Favour – Opposed – Abstentions)

[34] Members of the new Working Group include: Lina Thériault (QC, DPCP) (Chair); Caitlin Dick (AB, Criminal Defence lawyer); Sheldon Steeves (NL, Public Prosecutions, Department of Justice and Public Safety); Emma Evans (ON, MAG); Leah Burt (Can,

Department of Justice); Dayna Queau-Guzzi (MB, Manitoba Prosecution Service); Sylvain Leboeuf (QC, Ministry of Justice); Tanisha Blackmore (NS, Department of Justice). The Working Group is to present a report of its work to the ULCC Criminal Section meeting in 2024.

Earl Fruchtman Memorial Seminar

[35] At the Earl Fruchtman Memorial Seminar on Wednesday, August 23, 2023, delegates from the Criminal Section and the Civil Section heard a presentation from John Diamond, Q.C., Director of Prosecution (PEI). The seminar gave the assembled delegates an opportunity to better understand the operation of the justice system in PEI, with a particular focus on restorative justice programs in the province and the role of restorative justice in indigenous communities. Since 2021, more than 70 cases have been referred to restorative justice in the province. John Diamond concluded the presentation by discussing potential future directions for the province's restorative justice framework.

Joint Session: Diversity and Inclusion Committee

[36] At a joint session of the Criminal Section and the Civil Section, on Wednesday, August 23, 2023, Matthew Hinshaw, Chair of the Diversity and Inclusion Committee (D&I Committee) presented the results of the 2022 ULCC Member Survey. The survey was conducted by the Newfoundland and Labrador Statistics Agency (NLSA), in partnership with the D&I Committee. Matthew Hinshaw also encouraged delegates to complete the 2023 survey.

[37] The presentation, as well as the ULCC 2023 Member Survey report, are both available on the ULCC website.⁷

Joint session on possible working group on the issue of the treatment of animals in Canadian law

[38] Nadine Nesbitt opened a joint session with both the Criminal and Civil sections of the ULCC on August 25th, 2023 on the topic of a possible combined civil and criminal ULCC working group on the treatment of animals.

[39] Nadine Nesbitt discussed several developments, both domestically and abroad, in how animals are treated, and noted that the Criminal Section Working Group on the Treatment of

⁷ The documents can be found at the following link: [ULCC - Charlottetown, PE \(ulcc-chlc.ca\)](https://ulcc-chlc.ca)

Animals had already identified some areas in its discussions where the input of the civil section could be of assistance, for example in the case of provincial animal welfare legislation or in how to manage animals following seizure.

[40] The Civil and Criminal Section carried the following resolution:

[41] *“That the civil section and criminal section ask the ACPDM [Advisory Committee on Program Development and Management] to consider the creation of a ULCC working group on the treatment of Animals in Canadian law”*

CLOSING

[42] Sarah Dafoe made closing remarks at the Closing plenary session on Friday, August 25th, 2023. Incoming Criminal Section chair Craig Savage presented the Criminal Section Report on behalf of the Anny Bernier, while Chair Christine Badcock presented the report of the Civil Section. Sarah Dafoe proposed a resolution to thank a number of the individuals who contributed to the success of the annual conference, which was carried.⁸

[43] Nomination Committee Chair Laura Pitcairn announced that Maria Markatos was selected by the nomination committee to be nominated to serve as Vice-President of the ULCC, and that at last year’s meeting, Matthew Hinshaw was nominated vice-president, to be president this year. Laura Pitcairn presented a motion to nominate Matthew Hinshaw as president, and Maria Markatos as Vice-President of the ULCC for 2023-2024. The motion was carried.

[44] Matthew Hinshaw delivered incoming remarks as the incoming president of the ULCC. Kathryn Sabo, member of the Canada delegation announced that the 2024 annual meeting will be held in Ottawa, from August 12-16th, 2024.

[45] The Criminal Section concluded its work on Friday, August 25, 2023.

⁸ The full minutes of the closing plenary are available at the following webpage: [ULCC - Charlottetown, PE \(ulcc-chlc.ca\)](https://ulcc-chlc.ca)