

**UNIFORM LAW CONFERENCE OF CANADA  
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA**

**Minutes of the Opening Plenary Session of the 101<sup>st</sup> Annual Meeting  
of the Uniform Law Conference of Canada  
Delta Hotel St. John's and Conference Centre  
in St. John's, NL  
on Sunday August 18, 2019 at 1pm NT**

**Opening Remarks**

The meeting was called to order at 1:15pm on Sunday August 18, 2019 at the Delta Hotel St. John's and Conference Centre in St. John's, NL, with President Lee Kirkpatrick as Chair and Executive Director Marie Bordeleau as Secretary.

Ms Kirkpatrick said she was delighted to welcome delegates to the Newfoundland and Labrador, a province renowned for its wonderful music, amazing writing and fierce beauty, as well as by its people, who have been formed by centuries of hardship, deprivation and isolation, resulting in their kindness, generosity and hospitality.

This is the 101<sup>st</sup> anniversary of the Uniform Law Conference of Canada, and the 75<sup>th</sup> anniversary of the Criminal Law Section, which began in 1944. We have 70 delegates but sadly none from the Northwest Territories, Prince Edward Island or Alberta. The delegates present today are judges, law reform commissioners, representatives from the Canadian Bar Association, the Ontario Bar, the Indigenous Bar, le Barreau du Québec, crown and defense, academics, the Chambre des notaires and legislative counsel.

We are happy to be graced by the presence of Kendra Wright, the Assistant Deputy Minister and a former delegate to the ULCC. We are also in the presence of eight past presidents of the ULCC, including Manon Dostie, Russell Getz, Josh Hawkes, QC, Peter Lown, QC, Darcy McGovern, Kathryn Sabo, Dean Sinclair and Elizabeth Strange.

**Introduction of the Executive Committee**

Ms Kirkpatrick introduced the members of the Executive Committee:

- John Lee, Incoming President;
- Manon Dostie, Immediate Past President;
- Joanne Klineberg, Incoming Chair of the Criminal Section;
- Maria Markatos, who took over the Chair of the Civil Section from Thomas Ahlfors when he had to step down from the position;
- Matthew Hinshaw, Chair of the Criminal Section, who is unable to join us this week;
- Caroline Quesnel, Secretary of the Criminal Section;
- Peter Lown, QC, Chair of the International Committee and the Advisory Committee on Program Development & Management; and
- Our Program Coordinator and resident historian, Clark Dalton, QC, as well as Marie Bordeleau, our Executive Director.

## **UNIFORM LAW CONFERENCE OF CANADA CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA**

She noted that Isabelle Doray and Luc Labonté have been called to the Bench and we will miss their contributions this week, but we congratulate them on their achievements.

### **Introduction of Commissioners**

Ms Kirkpatrick invited the Senior Commissioner from each jurisdiction to introduce the members of his or her respective delegation and especially welcomed all delegates who are joining the meeting for the first time. Ms Kirkpatrick noted that unfortunately, Dr Jorge Sánchez Cordero Dávila, President of the Mexican Uniform Law Centre, is unable to attend this year. However, we will be joined later this afternoon by former President of the Uniform Law Commission of the United States Rich Cassidy and President Carl Lisman.

### **Welcome from Host Government & Overview of the Week to Come**

Donna Ballard said that the Welcome Reception will be held this evening at The Rooms, a cultural facility designed to look like a traditional fishing village building. It was constructed over the 17<sup>th</sup> century fortifications of Fort Townsend and houses an art gallery, a museum and archives. Traditional Newfoundland music performed by a very talented fiddle and guitar duo will entertain us. Unfortunately, the Honourable Minister Parsons is unavailable to attend but Jennifer Mercer, the Deputy Minister, will be in attendance, as well as the Chief Justice of the Supreme Court of Newfoundland and Labrador, Deborah Fry, our Provincial Chief Justice Judge Goulding as well as Judge Pike. Delegates were asked to wear their nametags to all social events and to meet on the Lower Level of the Hotel to take buses to The Rooms.

On Tuesday the softball game will be held at beautiful Victoria Park, which was established in 1893, and from there we will head to the Royal Canadian Legion on the shores of Quidi Vidi Lake in Pleasantville for the BBQ. The lake was the site of the 201<sup>st</sup> Annual Royal St. John's Rowing Regatta last week, an event held on the first Wednesday in August every year, weather permitting. A two-kilometre path around the lake leads to historic Quidi Vidi Village and its renowned microbrewery as well as multiple artists' studios. Busing will be available for players and for those who are only attending the BBQ.

The gala will be held at the Railway Coastal Museum on Wednesday night. Newfoundland no longer has a railway system on the island, but this building was the original train station, built in 1903. The tracks have been pulled up and the former railway is now a bike and walking path more than 800 km long. Our keynote speaker is Chief Justice Pamela Goulding, the first woman to occupy the post in 400 years of legal history in Newfoundland and Labrador at the time of her appointment in 2015. Everyone will have the unique opportunity to become an honorary Newfoundlander with a screeching ceremony, which involves cod tongues, human tongues, tongue twisters, tongue-in-cheek, 40% proof Jamaican rum, or 100% sugar proof purity syrup. The JAG Hotel across the street from the Delta on George Street will be the site of post-banquet drinks for those who are interested.

The weather is expected to be lovely this week, but it gets chilly in the evening so bring a jacket and wear sensible shoes because of all the hills in St. John's.

UNIFORM LAW CONFERENCE OF CANADA  
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

President's Report

Ms Kirkpatrick noted that the Criminal Section was married to the Civil Section in 1944, appropriately, in Niagara Falls. At that time, the Criminal Section was dealing with proposals that were evidentiary and procedural in nature, and not with substantive matters as they could then make recommendations but not pass any resolutions.

Participants at that first meeting included the then nine provinces and the federal government. Issues discussed included the offence of desertion. At that time, a man who left his family for 30 days without providing maintenance for his wife and his children could be charged under the *Criminal Code*. It was necessary for the Crown to prove that the man had left without just cause and the resolution sought to reverse the onus of proof so that the deserting father would have to demonstrate he had just cause for leaving.

Another resolution dealt with whether a voluntary statement from a suspect required a caution, and the report was thus:

“Resolved that as to the question of whether or not a statement is taken voluntarily depends more on the method of approach to the prisoner than on the form of the words used; that no action be taken to recommend a statutory form of caution and that the matter be dropped from the agenda.”

There was a resolution aimed to completely revise the penalty provisions of the *Criminal Code*, as it was recognized that these were inconsistent and unfair overall, and a resolution with respect to the offense of infanticide, as mothers convicted of infanticide received very short penalties of imprisonment and it was deemed necessary to import the provisions of the *Infanticide Act* from England.

At the 1944 meeting the Civil Section updated the law on defamation to eliminate the difference between libel and slander and to address new forms of publication of defamation by radio and Hertzian waves, and provided for a provision in the *Evidence Act* to allow for microphotographs to be taken of official documents so that official documents did not have to be used in court.

The fee for attendance at that conference was \$50 per jurisdiction.

Ms Kirkpatrick noted that she wanted to outline the difference between the Civil and Criminal Sections.

In terms of the Criminal Section, she predicted that by the end of the week, we would see bleary-eyed veterans of fierce word-to-word combat borne into this room by Valkyries from the field of battle for the Closing Plenary session, to the strains of A Night on Bald Mountain, perhaps.

The work of the Civil Section, by contrast, would be characterized by calm and genteel debate, a pastoral landscape, the Blue Danube waltz in the background, with delegates laughing and having a gay old time.

**UNIFORM LAW CONFERENCE OF CANADA  
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA**

The relationships between the two Sections are, of course, excellent, and delegates enjoy great collegiality and respond to the great challenges of our justice system equally.

The law changes constantly. There are new statutes and revisions to statutes on an ongoing basis, and new case law interpreting those statutes. It's no exaggeration to say that the law changes every single day, except on weekends.

Our first challenge this year was dealing with an increase in contributions. The decision to increase contributions was made at the Annual Meeting in Regina in 2017. Those contributions had not increased since 1987 and fell far short of financing the ongoing operations of the organization.

Maria Markatos kindly took back the Chair of the Civil Section in February when Thomas Ahlfors had to step down from the role. Ms Kirkpatrick was away for six months and said she was grateful to John Lee, who acted in her stead. Despite his inability to attend the ULCC Annual Meeting itself, Mr Hinshaw continued to participate in conference calls in his capacity as Chair of the Criminal Section, but his absence resulted in the withdrawal of the resolutions from Alberta. Five delegates will share the duties of chairing the Section's debates, including four former Chairs of the Section and incoming 2020-2021 Chair Chloë Rousselle.

SPOC has been a challenge as well; the committee that was struck at the urging of Josh Hawkes when he was vice-president in 2016 has continued its work even after the new Constitution and By-laws were approved last year, including developing a the new website, updating of policy documents, etc. Ms Dostie will present on the progress of SPOC on Wednesday morning.

Ms Kirkpatrick noted that this year, the delegates will look at electronic wills, evidence in electronic form, compelling the users of digital devices to disclose their passwords, non-consensual disclosure of intimate images via the internet and crowdfunding.

She noted a number of challenges before us, including new technology, increasing globalization, and the need to comply with or enter into international conventions and treaties, court delays and major criminal reforms in the areas of sexual assault, impaired driving, penalties and juries, as well as the new criminal Bill C-75, whose provisions will be unfolding over time as they come into effect. There are major issues with respect to transitional aspects and how different new provisions will be interpreted and applied.

Another great challenge is the humanization of our court process in recognition of the toll that participation in our adversarial system has on justice participants, including victims, witnesses, jury members, and accused persons who legitimately feel that such a system does not reflect or respect their culture.

Ms Kirkpatrick invited Tony Paisana to comment on an incident involving the Uniform Police Background Checks in Alberta, which led to an individual being fired from a youth centre when a police officer in Edmonton discovered that he had a discharge in a sexual assault case 11 years ago and advised the

**UNIFORM LAW CONFERENCE OF CANADA  
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA**

youth centre of such. Mr Paisana said that the Alberta Queen's Bench encouraged the court to adopt legislation like the one that was adopted in Ontario. Ms Kirkpatrick said that an article on the case was published in the Globe & Mail and that it mentioned the work of the ULCC.

She outlined another case in which a Saskatchewan court relied on the ULCC's work respecting informal public appeals to resolve the matter of crowdfunding for the families of the deceased and the survivors of the Humboldt Broncos' accident in April 2017, allowing the matter to be concluded quickly and efficiently.

Judge Gabrielson, who was appointed by the Chief Justice to oversee the fund raised by the Go Fund Me campaign, noted:

"Fortunately we have the *Uniform Informal Appeals Act* in Saskatchewan, a new statute which was enacted in 2015 based upon the legislation developed by the Uniform Law Conference of Canada. Saskatchewan for some reason was the only jurisdiction in Canada to enact the legislation. In any event, through good government management or good fortune, this Act laid the foundation for the framework by which the money raised by the Go Fund Me campaign could be dealt with, and the matter was resolved with payments made to each of the families of the deceased in the amount of \$475,000 and the persons who were injured in the amount of \$425,000 in additional to an initial payout of \$50,000 each."

**Financial Resolutions**

**a. Approval of Audited Statements**

**MOVED** by Manon Dostie, seconded by Mia Manocchio, **THAT** the Audited Statements for the fiscal period ending March 31, 2019 be received as presented. Motion carried.

**b. Approval of the Auditors**

**MOVED** by Maria Markatos, seconded by Russell, **THAT** the firm Hendry Warren LLP Chartered Accountants be appointed as Auditors for the Uniform Law Conference of Canada for the fiscal period from April 1, 2019 to March 31, 2020. Motion carried.

**c. Banking Resolution**

**MOVED** by John Lee, seconded by Dean Sinclair, **THAT** for amounts over \$5,000, two members of the Executive Committee or a member of the Executive Committee and the Executive Director be given signing authority as officers for all banking matters of the ULCC, **AND THAT** for amounts up to \$5,000 and for the purpose of purchasing GICs and term deposits, and for the purpose of transferring funds from the research account to the general account and vice versa, the signature of the Executive Director alone will suffice. Motion carried.

**UNIFORM LAW CONFERENCE OF CANADA  
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA****d. Approval of the Budget for the Fiscal Period 2019-2020**

Ms Kirkpatrick noted that the budget was not circulated 30 days prior to the Annual Meeting, as per the By-laws. The reason for the late distribution is that information was required for a number of files and those numbers came late in July. The written motion will be circulated, and JRs will be asked to comment by September 30<sup>th</sup>, at which point silence will be considered to be acquiescence.

**Nominations Committee**

Immediate Past President Manon Dostie said she will be leading a committee composed of past presidents to discuss the nomination of the next president.

**75<sup>th</sup> Anniversary of the Criminal Section**

Clark Dalton, QC congratulated the Section on its 75<sup>th</sup> anniversary and noted that he has been working on an index of topics that are discussed at our Annual Meetings, at which point he noticed that there was very little documentation on the Criminal Section. He undertook to research the matter and is currently sifting through documents from the Proceedings in the mid-80s.

Mr Dalton said that in the beginning, Sir James Aikens, who was the guiding light of the organization, delivered a number of speeches indicating that the role of the ULCC was to deal with existing legislation rather than law reform, especially as it regarded mercantile legislation. Criminal Law is not even mentioned in the Proceedings until 1943, when the Canadian Bar Association passed a resolution to review Criminal law and its related statutes, which led to the creation of the Criminal Section of the ULCC the following year, but it was not until 1989/1990, when the ULCC updated its Constitution and By-laws, that the Criminal Section was formalized. Subgroups and provincial committees were struck within the new Criminal Section to review sections of the Criminal Code and the Conference was renamed. Unfortunately, the subgroups and committees were not successful in their endeavour and in 1947 the ULCC asked the federal government to appoint a Commission to undertake the mammoth task of updating the Criminal Code. However, the Criminal Section was able to make significant contributions to the project.

There were a number of law reform initiatives in the 1960s and the ULCC's Criminal Section became instrumental in promoting updates to the Criminal Code. Early on the Criminal Section served as a forum for Deputy Ministers and leading executives in the jurisdictions. Eventually the Deputy Ministers moved on to their own organization, but the benefit of the ULCC nonetheless remains that it allows delegates to be from many more spheres of criminal law community than just government people, which makes it a unique forum. The Criminal Law Section is doing a wonderful job of making recommendations for law reform, and the federal government continues to update the Section on the work that has been implemented through the annual Senior Federal Delegate's report.

Mr Dalton mentioned a few other details, such as the fact that the first time a woman ever attended an Annual Meeting of the ULCC was in 1961; her name was Miss Wysocki from Ontario and she was part of

**UNIFORM LAW CONFERENCE OF CANADA  
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA**

the Criminal Section. Also, although the softball game is rarely mentioned in the Proceedings, it is a very important component of our week together, and it was the brainchild of two stalwart members of the Criminal Section together with a deputy from Manitoba. Formerly the Criminal Section had played against the local police service at Annual Meetings, but that tradition was morphed into the East-West game. As well, only two knighted persons have ever been members of the ULCC; one is Sir James Aikens of Manitoba/Ontario, and the other is Sir Brian Dunfield of Newfoundland & Labrador.

An excellent speech delivered in 1969 by John Turner, then Attorney General of Canada, states that the development of the Criminal Section “has proved to be a most important one in the evolution of the Conference, because until that time no organized body had existed in Canada with the proper personnel to study and propose recommendations to the Minister of Justice for amendments to the Criminal Code. The creation of the Criminal Law Section filled a very definite void in Canada at the time and the federal government is deeply indebted to those who participate so ably in its undertakings.” Mr Dalton said that that sentiment is still felt today.

On a final note, in 2002 the President of the ULCC said at the Opening Plenary that it was a tribute to the Criminal Section and the people who run it that it pretty much took care of itself. It made very few demands on the President to assist or intervene, making the President’s life easy in that way.

**Outline of the Business of the Week****a. Criminal Section**

In Matthew Hinshaw’s absence, incoming Criminal Section Chair Joanne Klineberg thanked our colleagues from Newfoundland & Labrador for all their work in preparing this year’s Annual Meeting. The Section will debate 24 resolutions on a variety of topics. The resolutions deal with issues of substantive criminal law, procedural criminal law, the question of punishment and evidentiary issues. Some of the more interesting proposals deal with amending the offense of luring children over the internet, which was the subject of a recent Supreme Court of Canada decision name Morrison in which the Supreme Court struck down an evidentiary presumption the Crowns relied on; warrants to compel the disclosure of internet passwords and recognizing support dogs as a testimonial aid for vulnerable victims and witnesses in the courtroom.

There will be three progress reports from working group and the Earl Fruchtman Memorial Seminar will deal with Newfoundland & Labrador’s Justice Summit in the form of a joint session with the Civil Section. Other joint sessions will cover the unlawful disclosure of intimate images. The rules of procedures have been reviewed and amendments will hopefully be adopted later this afternoon.

**b. Civil Section**

Civil Section Chair Maria Markatos said she was delighted to provide the Report of the Chair of the Civil Section for a second year and expressed gratitude for her colleagues, the Executive Committee,

**UNIFORM LAW CONFERENCE OF CANADA  
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA**

jurisdictional representatives, and of course Clark Dalton for making the transition back to the role of Chair mid year seamless.

Ms Markatos noted that this is a rebuilding year for the Civil Section, with many new projects just starting and a continuation of a review of our internal documents and processes.

The meeting will begin with a report on the Rules of Procedure of the Civil Section. The Section will also receive a report from the Implementation Committee on their progress over the last year (including a review of the revised Tables), a proposal on the Revision of Drafting Conventions, and a Review of journals and judgments referencing the work of the Conference.

The Civil Section will receive reports on E-wills and A Revised *Uniform Informal Public Appeals Act* as well as on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit and the Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.

The Section will be asked to adopt *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as seven updated Uniform Acts on the implementation of International Conventions. Joint work with the Criminal Section will continue and on Wednesday, the Civil Section will receive the report of the working group on the non-consensual disclosure of intimate images. Civil Section delegates are invited to attend the Earl Fruchtmann Memorial Seminar as discussed by Ms Klineberg.

As in past years, the Civil Section is delighted to welcome several representatives from the American Uniform Law Commission including Past President Richard Cassidy and President Carl Lisman, who will be providing an update on his organization and the potential for continued cross border projects and cooperation.

Finally, the Civil Section will receive the annual report from Justice Canada on Private International Law, and reports from the International Committee and Advisory Committee on Project Management and Development.

All of the reports, draft Acts, and commentaries received this week would not be possible without the commitment of the working groups under the leadership of their chairs. The Civil Section could not operate effectively without the year-long participation of Jurisdictional Representatives in the Civil Section Steering Committee, the foundational work on projects provided by the Advisory Committee on Program Development and Management, and the unmatched support of our Projects Coordinator Clark Dalton. These are all critical to the continued success of the work of the Civil Section.

**Legislative Update/ Adoption of Uniform Acts**

Mr Dalton said that as part of the Civil Section's agenda, the Implementation Committee is working toward getting our Acts adopted, as well as translating into French the Acts that are still only in English. The chart outlining the implementation record of the ULCC is being updated to stay current. Mr Dalton



**UNIFORM LAW CONFERENCE OF CANADA  
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA**

said he is working on a list detailing all the case law that has referred to the ULCC's Acts since 2000, as well as journal articles that reference the work of both Sections.

Russell Getz said that he will report on Implementation as Chair of the Committee on Wednesday morning and will present an updated Table V to outline everything that was implemented since we last met in Québec City last year.

**Report from the ACPDM & International Committee**

Peter Lown said that the Advisory Committee on Project Development and Management took over from the Steering Committee of the Commercial Law Strategy to manage the work of the Civil Section. The ACPDM's focus is not on the current year but rather looks at the inventory of projects for the medium to distant future, both for the Civil Section and the joint projects undertaken with the Criminal Section. The committee meets almost exclusively by conference call on a monthly basis and Mr Lown thanked all the members of the committee for their discipline and contributions to the work of the ACPDM, and welcomed Laurence Bergeron of Québec, who steps in for Frédérique Sabourin following her retirement, and thanked Mr Dalton for his constant support. The ACPDM will meet face-to-face this week to discuss several activities that may have a major impact on the inventory of projects for the coming years.

The International Committee only meets in conjunction with the Annual Meeting to develop joint projects with the Uniform Law Commission of the United States. However, this past February the group met face-to-face for a full day in Toronto to look at their respective inventories, the possible methods of cooperation on joint activities, and map out the areas in which the two organizations can help each other. It was a very productive meeting, and interestingly the ULCC has gone from picking up the ULC's projects to being the source of joint work; for example our informal public appeals project is of significant interest to the US, and our unauthorized disclosure of intimate images project is far greater in scope than the limited torts remedy that the US organization looked at, and they are considering our anti-SLAPP legislation as well, while the ULCC may take up some of their work on human trafficking, which has been successful in a number of States. Mr Lown said that we are in a position of greater parity in terms of our contributions to joint work with the ULC.

Mr Lown thanked the Executive for the confidence they place in both of these committees.

**Adjournment**

Ms Kirkpatrick said that over the years we've had the opportunity to hear some brilliant, passionate and compelling interventions from many of our delegates. A pair of handknitted Newfoundland mitts, "The Knit Mitt Wit Award" will be awarded to the person in each Section who makes the best intervention over the course of the week. The Chair of each Section will select the recipient in their group.

There being no further business, the meeting was adjourned at 2:45pm.