

UNIFORM LAW CONFERENCE OF CANADA

COMMUNIQUE

FALL 2011



Report from
Michel Breton,
Immediate
Past President

The annual meeting held from August 7th to the 11th in Winnipeg, MB, was again the peak of past year's activities of the Uniform Law Conference of Canada.

More than 63 participants, presenters, guests and observers gathered at this annual meeting. Distinguished guests also honoured us with their presence; we benefited from the involvement of Mr. Michael Houghton and Mr. Robert A. Stein, President and outgoing President, respectively, of the US Uniform Law Commission, as well as of Mr. Jorge Antonio Sánchez Corro Dávila, Director of the Mexican Uniform Law Centre.

These distinguished guests, whose presentations were greatly appreciated, noted that they were very impressed with the quality of the exchanges and discussions that they attended.

Our Manitoba hosts did their utmost to facilitate the smooth running of our work and to make our stay most enjoyable. The social activity program, including the opening reception held in the magnificently impressive Manitoba Hydro building on Portage, the wonderful evening devoted to our traditional softball game, and the delicious closing banquet served at the Manitoba Legislature Building, allowed us to discover and appreciate all of the amenities of our magnificent host city, and even some of its secrets.

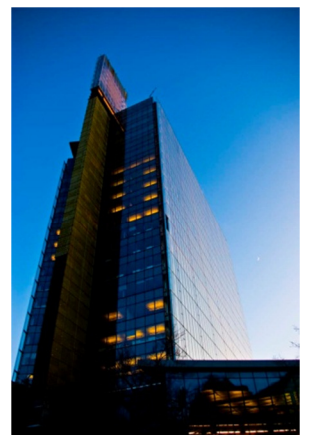
It is with great pleasure that I thank our hosts, Ms Gail Mildren and Ms Lynn Romeo, and all the members of their team for having made our stay so enjoyable; Mr.

Jeffrey Schnoor, Q.C., Deputy Minister of Justice Manitoba, for his warm welcome at the beginning of our event, for his input in our proceedings and, most of all, for his unfailing support to the interests of the Conference; and finally, the Honourable Andrew Swan, Minister of Justice Manitoba, for his exceptional welcome and his kind words for the Conference at the welcome reception.

Participants had the opportunity to get acquainted with our new Executive Director, Ms Marie Bordeleau. Everyone noticed and appreciated her competence, which the Recruitment Committee found in her at the selection interview. Her first conference will have been a tremendous success and we are delighted with our partnership with her, hoping it will be long and most successful. We thank her again for her good and loyal services.

In July of this year, I had the honour and privilege of addressing the annual meeting of the US Uniform Law Commission, in Vail, CO. I was afforded the generous hospitality that is so characteristic of our American colleagues and friends, and the chance to strengthen the ties between our two respective organizations as well as to explore with them the opportunities to cooperate on issues of common concern. I have been most impressed with their sincere desire and enthusiasm in this task.

To serve as President of the Conference has been a privilege for me and an extremely positive experience. I am thankful for the opportunity I had of working with colleagues whose great knowledge and dedication ensure the sustainability of this institution of national importance, as it verges on the celebration of its centennial, despite a chronic lack of resources.





Report from
Darcy McGovern,
President

It is indeed a privilege for me to serve as the President of the ULCC for the 2011/2012 term.

I take on this role with a strong personal conviction of the immense value of the ULCC to Canadian law and to Canadian society. The ULCC is a national forum devoted to developing recommendations to reform the criminal law in Canada and to develop uniform civil legislation for implementation in every province and territory or at the federal level. With its unique composition, the Conference is able to call on the advice and expertise of public and private sector lawyers and prosecutors, law reform organization representatives, university professors, and judges as well as representatives of the Bar and the Chamber of Notaries. As a result, the Conference offers federal, provincial and territorial governments collaborative legislative solutions that otherwise would not be accessible to each individual jurisdiction. We are cost-effective and strive to continue to provide tremendous value for the funding we receive from our governments.

We have come out of a highly productive annual meeting in Winnipeg where we were warmly welcomed by our Manitoba hosts. Our thanks go to Lynn Romeo and her team for all their efforts. In addition to the excellent facilities and the unique events that the Manitoba team provided, such as the banquet at the historic Legislative Assembly, I was particularly pleased to see that they arranged to have the Winnipeg Jets agree to announce their return to Winnipeg in time for our conference.

This positive Winnipeg energy is reflected in the reports from the Chairs of the Criminal and Civil Sections contained in this Communiqué and they confirm the success of the last general meeting. The Civil Section of the Conference considered a wide range of matters, including enforcing foreign civil protection orders to help protect victims of violence, modernizing wills and trusts legislation, residency requirements for student and military voters, and legislation that protects creditors from fraudulent activities. The Criminal Section considered a paper on enhanced restitution for fraud victims and approximately 27 resolutions

recommending amendments to the Criminal Code of Canada and related statutes. These resolutions included recommendations about mandatory minimum sentences, revocation of a pardon, collection of DNA samples and DNA orders, mandatory bail conditions, and appeals.

In addition, this year the Conference heard from invited guests Michael Houghton, President of the American Uniform Law Commission and Robert A. Stein, the Commission's Immediate Past President, as well as Dr. Jorge Sánchez Cordero Dávila, President of the Mexican Centre for Uniform Law. The contributions of our friends from Mexico and the United States invariably remind us of the need to look across borders in our collective effort to remove legal obstacles for international trade, commerce and consumers transactions. We continue to work closely with these organizations in our joint efforts to identify productive projects for collaboration such as joint ventures and life planning documents.

Without the support of a strong team, the role of President of the ULCC could quickly become overwhelming. Fortunately, I will be able to rely upon an excellent executive team consisting of Michel Breton (QC), Immediate Past President; Nancy Irving (Justice Canada), Vice-President; Gail Mildren (MB), Chair, Civil Section; Anouk Desaulniers (Justice Canada), Chair, Criminal Section; Jake Harms (MB), Chair, Drafting Section; Peter Lown, Q.C. Chair, Advisory Committee on Project Development & Management; Clark Dalton, Q.C., ULCC Projects Co-ordinator; and Marie Bordeleau, ULCC Executive Director.

This executive team is further supported by the Jurisdictional Representatives for each province, territory and the Federal Government and by the various individual delegates and working group members who continue to do the heavy lifting necessary to fulfil the ambitious agenda of the ULCC. The product of this combined teamwork by these varied professionals continues to vastly exceed the mere sum of its individual parts.

I would like to thank all of you for your hard work on behalf of the ULCC team over the past year. I would also like to thank you in advance for what I am sure will be your significant contribution to the current year's work in advance of our meeting in Whitehorse, Yukon, next August. It is this ongoing combined effort that makes the ULCC a continued success.



Report from
Josh Hawkes, QC,
Past Chair,
Criminal Section

I am pleased to report that the Criminal Section had a very successful meeting from August 7-11th, 2011 in Winnipeg Manitoba. The host jurisdiction did an excellent job in organizing the conference. We were also very fortunate to be joined by Mr. Jeffrey Schnoor, Q.C, Deputy Minister of Justice, who observed a significant portion of the proceedings of the Section this year.

We debated a number of resolutions covering a broad range of procedural and substantive issues in the *Criminal Code*, the *Youth Criminal Justice Act*, and related federal legislation. A striking feature of the deliberations of the Section this year was that with the exception of three resolutions that were withdrawn after debate, all of the remaining resolutions passed, either as introduced or after amendment. That reflects a significant consensus on many of the issues discussed in the Section this year. As usual, all of the resolutions discussed in the Section this year will be posted on the Conference website.

One of the great strengths of the Criminal Section is the diverse background of the delegates. That diversity reflects the views of those on the “front lines” of the criminal justice system from members of the judiciary, prosecutors, defence counsel, and policy experts from across the country.

In addition to the deliberations on resolutions, members of the section participated in consultations on policy development relating to reform of the self-defence, defence of property and bail provisions of the *Criminal Code*. For the first time this year, we also set aside time for an “open forum” discussion of issues of particular concern to delegates from the defence bar and those representing other non- governmental agencies. The forum was very successful, and will be continued.

We also considered two working group reports addressing provincial legislation that operates in conjunction with or complementary to federal criminal

law, as well as a report examining changes to the restitution provisions of the *Criminal Code*.

It was my great pleasure to serve as Chair of the section this past year, and I look forward to working with the new Chair of the Section, Anouk Desaulniers, as well as the Nominated Chair of the Section, Andy Rady. As usual, the Secretary of the Section, Joanne Dompierre provided invaluable assistance, and was a pleasure to work with. Finally, my profound thanks to all of the delegates this year who made such tremendous contributions to the ongoing work of the Section and to the Conference.



Report from
Anouk Desaulniers
Chair,
Criminal Section



Preparation is already underway for the next meeting of the ULCC’s Criminal Section, to be held in August 2012 in Whitehorse. The Yukon is a land “Greater than Life” whose majestic landscapes certainly will provide a magnificent and inspiring setting for our discussions.

The “Open Forum” initiative, a new item on the 2011 agenda, has enriched the Section’s deliberations and will be repeated in 2012. It is a special opportunity for non-governmental organizations and defence bar associations to present for discussions issues that are of particularly concern for them.

At its August 2011 meeting, the Criminal Section passed several resolutions recommending the creation of working groups mandated to examine in detail a number of issues during the current year. I am pleased to report that all these projects are already well underway. The first issue to be examined is the interprovincial enforcement of search warrants issued in a provincial regulatory framework. A Nova Scotia representative leads this effort in which several jurisdictions are participating.

Another working group is responsible for examining whether it would be appropriate to add a provision to the *Criminal Code* allowing courts, in exceptional

circumstances, to exempt defendants from having a minimum sentence imposed on them. The 2011 resolution presented by the Canadian Bar Association on this issue gave rise to very interesting discussions at the Criminal Section's Open Forum.

A third working group is studying the issue of contradictory evidence, and especially the evidence presented in court by witnesses who contradict their previous "KGB" statement.

Another group of delegates is reviewing and updating the Criminal Section's rules of procedure.

Finally, a fourth group is studying the best approaches to highlight the unique role of the Criminal Section, to encourage the dissemination of its resolutions and reports, as well as to ensure that jurisdictions and organizations sustain their level of attendance in the Conference.

It is unusual for so many working groups to be active during the same year but delegates are enthusiastically getting involved in these projects. These initiatives should foster very interesting and engaging discussions for delegates at our 2012 meeting as well as the development of useful reforms in several areas of criminal law.

The Criminal Section must continue to live up to its reputation as a national forum for law reform and retain the distinctiveness conferred by the participation of representatives from the judiciary and the defence bar. It is essential that jurisdictions continue to play an active role in this Conference and allocate delegations that are representative by their number of delegates and the variety of perspectives that they contribute to the debate.

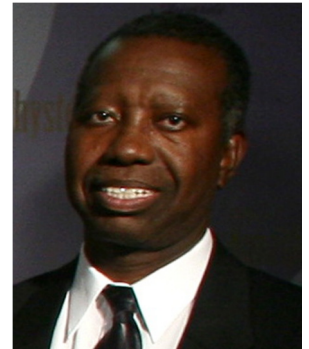
A gentle reminder that the deadline to submit resolutions to the Criminal Section for the annual meeting is **April 30, 2012**. This deadline will allow the translation and timely distribution of the resolutions, so that, among other things jurisdictions, can adequately prepare for the deliberations. The resolutions must be sent to Joanne Dompierre, secretary of the Criminal Section, at jdompier@justice.gc.ca

I would like to thank Josh Hawkes, Q.C., for his invaluable help and brilliant chairmanship of the Criminal Section in 2010-2011. I also wish to congratulate André Rady for his nomination as Chair of

the Section in 2012-2013. It will be a great pleasure and an honour for me to chair the Section this year. I hope to carry out successfully this responsibility and ensure that the 2012 Criminal Section meeting will be an interesting and rewarding experience for all. I already look forward to the pleasure of seeing you again or getting to know you in Whitehorse next August!



Report from Abiodun Lewis Past Chair, Civil Section



The 93rd annual meeting of the Uniform Law Conference of Canada (ULCC) last August was a success. Delegates who participated in the proceedings of the Civil Section would agree that it was a time well spent discussing law reform and the state of the law on sundry issues.

The Civil Section considered working group reports and draft legislation covering 13 different areas of the law including commercial law, election law, public law and private international law. Delegates passed 20 resolutions on specific subjects.

Delegates approved new uniform laws and amendments to some uniform laws including the *Uniform Public Appeals Act*, the *Uniform Electronic Communications Convention Act*, the *Uniform Enforcement of Canadian Judgments and Decrees Amendment Act* and the *Uniform Enforcement of Foreign Judgments Amendment Act*.

The *Uniform Public Appeals Act* deals with spontaneous informal public appeals for donations. It provides rules to guide those raising funds to help, for example, victims of tragedy. The Uniform Act establishes that money raised through a public appeal is held in trust for the objects of the appeal and provides for the distribution of surplus funds.

The *Uniform Electronic Communications Convention Act* implements the UN Convention on the Use of Electronic Communications in International Contracts. The Convention aims to remove legal obstacles on

electronic communications and improve commercial predictability.

Amendments to the *Uniform Enforcement of Canadian Judgments and Decrees Act* and the *Uniform Enforcement of Foreign Judgments Act* will make it easier to enforce foreign civil protection orders in Canada. If the amendments are enacted by Canadian jurisdictions, enforcement of foreign civil protection orders will no longer depend on the reciprocity principle (between Canada and a foreign country) or have to be registered in a Canadian court before law enforcement officers can act during emergency or a risky situation. Civil protection orders have become increasingly common in family law and domestic violence legislation in Canada. These orders are based on the recognition of the need to provide a tool for law enforcement agencies to separate at risk individuals from potentially violent partners or family members.

Delegates also approved the following:

- Trust indenture provisions that will amend the *Canada Business Corporations Act* and a National Instrument, which provides requirements for trust indentures, to be administered by the Canadian Securities Administrators.
- The repeal of a provision in the *Uniform Electronic Commerce Act* that excludes real estate transactions from the scope of the legislation. Delegates were of the view that the exclusion could no longer be justified in view of developments in international law, industry practice and law reform in some provinces.

Progress reports were presented on ongoing projects including the following:

Voter Residency, Voter Identification and Absentee Voting by Members of the Canadian Forces Serving outside Canada: The working group is examining these three areas of election law and working on a set of harmonized rules that will introduce some consistency in the way voters are treated across Canada.

Transactions at Undervalue and Preferential Transfers: The working group presented the second part of its final report that deals with issues relating to the law of preferential payments. Last year, the working group presented the first part of its final report that examines issues relating to transactions at undervalue and fraudulent transactions. The working group is now

ready to develop uniform legislation on reviewable transactions.

Uniform Wills Act: The Civil Section discussed areas of the law on wills that may need to be reformed. These include dispensing power, formal validity of wills, determination of testator or testatrix intention and beneficiary issues. A working group has been tasked to develop amendments to the current *Uniform Wills Act* that was first adopted in 1929.

UN Convention on Independent Guarantees and Stand-by Letters of Credit: The working group is working on a draft Uniform Act and commentaries that will establish domestic rules in this area of commercial law and also implement the UN Convention.

Uniform Trustee Act: The working group updated the meeting on the progress made in modernizing the current *Uniform Trustee Act*.

Justice Canada presented its annual Private International Law Update at the meeting. The Civil Section also discussed the report of the ULCC Advisory Committee on Program Development and Management (ACPDM) chaired by Peter Lown, QC. I thank the ACPDM for its positive contributions to the work of the Civil Section.

In addition to project ideas considered by the ACPDM, proposals on two projects were received and the Civil Section gave the go-ahead for working groups to be established for their implementation. They are:

- Commercial Tenancy Law.
- *Interjurisdictional Subpoena Act* Update.

The President of the American Uniform Law Commission, Michael Houghton, Immediate Past President, Robert Stein and the Director of the Mexican Uniform Law Centre, Dr. Jorge Sanchez Cordero, also addressed the meeting. Their participation and interaction with delegates enriched deliberations at the meeting.

Taking stock of our meeting in Winnipeg, one can say that civil law reform has been renewed through the exchange of ideas and meaningful discussion of issues.

The successful outcome would not have been possible without the support and hospitality of our host, the Manitoba government. On behalf of the Civil Section, I

express our appreciation to those who worked so hard in Winnipeg to make our annual meeting both enjoyable and successful. I also thank Clark Dalton, QC, the Projects Coordinator, and Marie Bordeleau, the Executive Director, for their commitment and contributions to the work of the ULCC.

I acknowledge the support of Michel Breton, the immediate past ULCC President, the Civil Section Steering Committee and those who have contributed over the year to ensure a productive and rewarding meeting in Winnipeg.

The ULCC definitely has a role to play in law reform. With Gail Mildren of Manitoba becoming the new Chair of the Civil Section at the end of the annual meeting in Winnipeg, I am confident that the ULCC will continue to make its mark in expanding the frontiers of legal knowledge in Canada.



Report from Gail Mildren Chair, Civil Section

Hello, everyone. What a pleasure it was to see so many of you in Winnipeg at our meetings in August. On behalf of myself, Lynn Romeo, Kusham Sharma and the rest of the 2011 Organizing Committee, thank you for making the meetings such a success – and for bringing the lovely weather. Also, a very big ‘thank you’ to Abi Lewis for so ably chairing the Civil Section Steering Committee meetings over the last year, and the Civil Section meetings in August. I have very big shoes to fill!

The Civil Section Steering Committee will continue to meet throughout the year by way of monthly conference call. And, thanks to Kathryn Sabo, Manon Dostie and their colleagues at Justice Canada, I anticipate being able to distribute our agendas and minutes in both English and French.

We’ve had our first conference call, on October 5, 2011, and have a very full year ahead. Some major projects are nearing completion and we have a number of new and exciting matters for discussion – such as:

- Voter Residency and Identification Requirements and Absentee Military Voting;

- The Hague Securities Convention, Implementation;
- UN Convention on Independent Guarantees and Stand-by Letters of Credit;
- Transactions at Undervalue and Preferential Transfers [Fraudulent Conveyances and Preferences];
- Wills Act;
- Commercial Tenancies;
- Interprovincial Subpoena Act Amendments;
- Uniform Trustee Act;
- Informal Public Appeals (version for the Civil Code of Québec);
- Uniform Legislation for the Implementation of International Conventions;
- Interpretation Act.

Clark Dalton continues to update us on the activities of the Advisory Committee on Program Development and Management and to assist in every other way imaginable. I’d like to take a moment to thank Clark, as well as Peter Lown (Chair) and all the members of the Advisory Committee for their invaluable work and support. I’m looking forward to working with all of you throughout the next year.



But what about the ball game???



Umpired by his Honour, Judge Rob Finlayson, the annual softball game was held at Norwood Community Centre on a beautifully warm, sunny and remarkably bugless afternoon. The West took the lead, but the East slowly, persistently, worked its way back to the top. Well, almost. A wicked pop-fly bonked first-time softball player and conference observer, Anny Bernier (Justice Canada), smack on the noggin, sending her to the hospital with a king-sized headache. The bad news is (for the East, anyway), that after losing such a dedicated player, the East lost the game by a single point. The good news is, Anny recovered fully, and in recognition of her courage for “taking one for the team”, was named the inaugural recipient of the ULCC’s new Daniel Grégoire Most Valuable Player Award.



And
Introducing...
Jake Harms
Chair,
Drafting Section

Jake is a 1984 graduate of the University of Manitoba Law

School, and the Legislative Counsel and Assistant Deputy Minister (Legislation) for Manitoba Justice. He has been a legislative drafter in Manitoba for 15 years. He also drafted income tax legislation for the federal Department of Finance for three years and advance income tax rulings for the Canada Revenue Agency for two years. In 2007-08, Jake joined the ULCC team as the drafter of the common-law version of the *Unincorporated Nonprofit Associations Act*, a joint project of the ULCC and its Mexican and US counterparts. Before joining the Legislative Counsel Office, Jake practised corporate, commercial and tax law for seven years with Aikins, MacAulay and Thorvaldson. As an amateur programmer, he designed and maintains the Manitoba Laws website.



2012 Conference News

The 94th Annual Meeting of the Uniform Law Conference of Canada will take place in Whitehorse, YK.

The Conference will be held from Sunday August 12th to Thursday the 16th. Please see the attached invitation and mark your calendars – you can't afford to miss this annual meeting! Coming soon, watch your inbox for hotel and social programming details.



Uniform Law Conference of Canada

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