

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

COMMUNIQUÉ - Winter 2016



Report from
Luc Labonté, QC,
Past President

As expected, our annual conference held in Yellowknife, N.W.T. was a success. In reading the reports from the Criminal and Civil Sections Chairs you find the many successes that were achieved in 2015.

The challenge of attending the Conference in Canada's north is daunting. Yet, I was pleased to observe that the number of delegates that attended was not much less than in years past. Though it is sad that some jurisdictions did not send a delegate, the Conference continued to be meaningful and the dedication of the many delegates was exemplified by the many achievements.

The organizing committee did a terrific job in welcoming us and ensuring our stay would be memorable. I must point out that Ian Rennie, one of the driving forces with the host committee, was unable to attend due to illness. It is a testament to Ian and the other members of the organizing committee, that despite this serious setback, the Conference and the delegates continued to be well served. I am informed that Ian is doing better and is continuing to assist the ULCC.

On behalf of all attendees, I extend my sincere thanks and appreciation to the Government of The Northwest Territory and most importantly to every member of the organizing committee.

Unfortunately, the Conference was not without some controversy. The annual ball game ended in a tie due to a time limitation. The East would have certainly won had it been allowed its last at bat. Alas, the West deemed the tie to be a victory. As defending champions the crown should have remained with the East,

however, in large part due to the whining of the West, and the good sportsmanship of the East, it was decided the game would go in the record books as a tie.

Our international partners could not remain for the entire Conference. Nonetheless, we are grateful for their valuable contributions. For personal reasons I was unable to attend at the American Conference in July. I would like to thank Peter Lown, Chair of our International Committee, for attending on my behalf. Clearly, the strength of the relationship with our American colleagues is strong. The commitment to foster uniformity will endure and I expect will continue to be meaningful for both countries.

The opportunity to serve as President of the ULCC was an honour I will not soon forget. I thank you for bestowing such a privilege on me. In my final act as a member of the Executive, I wish to thank the Executive, Marie Bordeleau, and unquestionably, all of you that participate to make this Conference so wonderful. The dedication, the professionalism and the hard work demonstrated at each Conference is evidence that much can be accomplished when ingenuity and expertise come together. I look forward to greeting you in Fredericton in 2016.



Report from
Elizabeth
Strange,
President

Wow, time flies! I can't believe I took over as President of the Uniform Law Conference of Canada (ULCC) in August and am already mid-way through my presidency. I'm pleased to report that since our successful meeting in Yellowknife, NWT, the Executive has been hard at work. I would like to emphasise the

efforts and support I have received from Luc Labonté, Q.C., Immediate Past-President; Josh Hawkes, Q.C., Vice-President; John Lee, Civil Law Section Chair; Eric Gottardi, Criminal Law Section Chair; Peter Lown, Q.C., Chair of the Advisory Committee on Program Development & Management and Chair of the International Committee, Clark Dalton, Q.C., Projects Coordinator; Marie Bordeleau, Executive Director ULCC; as well as the contributions of the immediate past chairs of the Civil Law and Criminal Law Sections, Genevieve Harvey and Kusham Sharma.

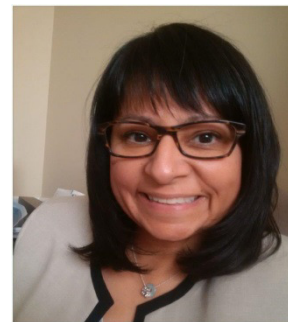
For those who didn't attend the meeting in Yellowknife, my closing address as incoming President focused on the phrase "with challenges come opportunities"; I plan to carry that theme forward over the remainder of my term. I also noted that the ULCC will be celebrating its 100th anniversary in 2018, so the time seems right to look at where we've come from, how we've evolved and where we want to go. The Executive has agreed that an important step in ensuring a solid future for the ULCC is to undertake a review of the ULCC in its entirety with regard to both the challenges and opportunities that may exist and to prepare a strategic plan that will carry us forward into the next century. The ULCC has done tremendous work over the past 98 years and will no doubt continue to do so long into the future.

What's New?

- I sent a letter to Minister of Justice and Attorney General Wilson-Raybould congratulating her on her appointment, giving her an overview of the ULCC and expressing our thanks for ongoing support from Justice Canada.
- I am pleased to announce that a Strategic Plan Oversight Committee has been struck. The Committee will consist of members from the Executive and from both sections of the ULCC. At some point in the process, delegates may be asked to participate in sub-committees. Please consider this an opportunity to make a significant contribution to the ULCC.
- I am pleased to announce that Genevieve Harvey, last year's Chair of the Civil Law Section, has agreed to Chair our new Communications and Publications Committee. Ms. Harvey takes over from Dean Sinclair, Q.C., who chaired the Communications Committee for several years and will continue to be a valuable resource to the new Chair. On behalf of the ULCC, I wish to extend thanks to Dean for all his efforts.

- The Executive began meeting bi-monthly after the 2016 Annual Meeting and to date has held meetings in October, December and February.
- A face-to-face meeting for the ACPDM is planned for late February.
- A mid-year conference call for Jurisdictional Representatives is planned for March.

Lastly, I have the great pleasure (and perhaps some added pressure 😊) of hosting the 2016 ULCC Annual Meeting in my home jurisdiction of New Brunswick. We'll be meeting August 7-11, 2016, and the Organizing Committee is planning an event filled with the requisite hard work as well as lots of fun, so mark your calendars. I look forward to seeing you in Fredericton this summer!



Report from
Kusham Sharma
Past Chair,
Criminal Section

Of the nine years that I have been attending the Uniform Law Conference of Canada, none has been more memorable than this past year in Yellowknife. This is not only because I had the honour of chairing the meeting in 2015, but also because of the unique experiences the conference and its participants enjoyed!

In June, we were lucky enough to have ULCC added to the agenda of the annual meeting of Deputy Ministers of Justice and Public Safety that was held in Winnipeg. Past President Lynn Romeo and I appeared before provincial/territorial and federal Deputy Ministers to present the important history and merits of our organization, to encourage all jurisdictions to participate in the important work of the conference. Our message was very positively received, especially by the federal Deputy Minister of Justice who lauded ULCC's valuable contribution to both civil and criminal law. This presentation not only raised our profile with governments across Canada but it resulted in at least one jurisdiction agreeing to send a representative to Yellowknife! A special thanks to all those who helped make this presentation such a great success.

Competing with this experience was the amazing opportunity for delegates to travel to Canada's beautiful Northwest Territories. For those who were fortunate enough to be there, you will agree that we enjoyed stunning landscapes, delicious food, and the moving, mystical ghostly glow of the Aurora Borealis or Northern Lights. The 2015 meeting will also be known as the first year in "living memory" that the criminal section was able to finish our work and take a day off! This was partly due to the timing of the federal election but mostly due to the hard work of our section.

Twenty-two delegates from provincial/territorial and federal governments participated in the deliberations of eighteen resolutions. Sixteen of these were carried as presented or as amended, and two were withdrawn after discussion. Although the number of resolutions was lower than what we were used to dealing with, they were still of the highest caliber, and led to the usual lively discussions and debate with our colleagues. Resolutions included a wide variety of timely and relevant topics on substantive and procedural criminal law and resulted in the formation of two new working groups - the first to monitor the development of case law surrounding the award of costs or damages against the Crown arising from criminal prosecutions, and the second to examine and monitor the interpretation and application of the decision of *R. v. Barabash* in the case law. Delegates also received updates from two of the section's current working groups - one studying informer privilege, and the second looking at endorsement of warrants, orders and authorizations. It was agreed that these groups as well as the third group on extra-provincial search warrants would continue their examination of the issues and present their final reports and recommendations at the 2016 meeting in New Brunswick.

This year's open forum allowed us to hear from Yellowknife's experts on wellness courts including a domestic violence treatment court that provides an alternative approach to the traditional court process. The presentations gave us an excellent opportunity to see how innovative ideas can be implemented to deal with a jurisdiction's unique issues.

We ended the meeting by electing Eric Gottardi as the incoming chair of the criminal section for 2015-2016. Eric is a well-seasoned defence lawyer who has been sharing his vast knowledge and experience of criminal law and procedure with the conference for the last number of years and we are extremely fortunate to

have his valuable perspective to guide us at the 2016 meeting in New Brunswick.

I would like to take this opportunity to express my deep gratitude to all delegates who made 2015 an extraordinary meeting with lasting memories. A special thanks to Dorette Pollard whose guidance and assistance kept us on track and productive through-out the year. When it was learned that Dorette couldn't attend the conference because of an unexpected injury, Anny Bernier heroically stepped into the role of secretary and ensured the meeting ran smoothly and efficiently. The section could not function without you incredible women - thanks again to both of you! Finally, I want to say that in addition to the important work we do at the ULCC, participating in this organization also gives us the chance to make lasting friendships with people across the country. I know I speak for all delegates when I say how grateful we were to have the expert leadership of our friend and colleague, Earl Fruchtman for so many years. We will always remember Earl for his common sense advice, booming voice and larger than life presence. We will miss you, dear friend.



Report from
Eric Gottardi,
Chair,
Criminal Section

I am very honoured to serve as Chair of the Criminal Section this year. I hope that I can uphold the tradition of excellence that I have seen as a delegate, for these past eight years that I have been attending the ULCC on behalf of the Canadian Bar Association.

I am not the first defence lawyer to sit as Chair of the Criminal Section, but I cannot tell you how many have sat in this spot before me. Any other year, I would have been able to do so. I simply would have called our friend and colleague, Earl Fruchtman. As the jurisdictional representative for Ontario since the earth cooled (as the legend goes) Earl was a font of knowledge about the ULCC; he knew its most intricate and arcane rules and had a wide-ranging and shockingly

accurate recollection of its history. He could remember if another delegation had brought a similar resolution eight years earlier and could explain the rationale that carried the day. He was a former Chair of the Criminal Section and President of the ULCC. He was loud and kind and generous with his time and advice. And he passed away this past January. Our gathering in Fredericton will be the lesser for his absence but we are all greater in some small measure for having known, and worked beside, him.

Unfortunately, I am one of the few defence lawyers who continue to participate in the ULCC. Our numbers have dwindled over the years as jurisdictional budgets have grown leaner. It is an issue that our Section continues to wrestle with, year after year. I encourage any defence lawyers in the Fredericton area (or anywhere else for that matter) to contact me if you are interested in participating in, or even auditing, the work of the ULCC in 2016.

The Criminal Section has two Working Groups (“WG”) this year – the first WG was formed to follow and track any costs decisions flowing against the costs in light of the recent decision of the Supreme Court of Canada in *Henry*. Ultimately, the working intends to tender a survey type report setting out the results province by province. The second WG was also intended to monitor the development of the case law in relation to the decision of the S.C.C. in *R. v. Barabash* 2015 SCC 29. Early results have suggested that the *Barabash* decision is seeing little judicial uptake. The Working Groups are set to report to the Criminal Section in August 2016.

With only two smaller working groups on the go, there may be room on the agenda at the annual meeting of the Criminal Section for some additional presentations, group discussions or local contributions. I would welcome any suggestions that delegates may have. You can send me your thoughts at egottardi@peckandcompany.ca.



Report from
Genevieve Harvey
Past Chair,
Civil Section

I am pleased to provide a brief wrap-up report on work coming out of the 2015 Annual Meeting in Yellowknife, including items which were close to completion at the Annual Meeting but subject to some follow-up work.

The *Uniform Rules on Service in Other Contracting States to the Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters* were adopted effective November 18, 2015. The rules were adopted in principle at the Annual Meeting and the final version reflects the editorial changes to the commentaries which were discussed at the Annual Meeting. The working group was chaired by Valérie Simard of Justice Canada. The Uniform Rules are intended to encourage consistent interpretation of the Convention.

The *Uniform Powers of Attorney Act* was adopted effective December 1, 2015 and is recommended for enactment. The final version of the *Uniform Powers of Attorney Act* incorporates the changes discussed at the Annual Meeting. The Act is intended to introduce measures to reinforce that powers of attorney are used in an informed and appropriately regulated way. Addressing concerns about elder financial abuse was a focus of this project. The working group was chaired by Peter Lown of the Alberta Law Reform Institute.

The *Model Interpretation Act* was adopted effective December 1, 2015. The final version of the Model Act incorporates the changes discussed at the Annual Meeting. The new Model Act replaces the 1973 *Uniform Interpretation Act*. The working group was chaired by Peter Pagano, Chief Legislative Counsel for Alberta.

The *Uniform Recognition of Substitute Decision-making Documents Act* was discussed at the Annual Meeting and adopted “subject to a review of the compatibility of the French and English documents”. At the time of writing this report, this work is on-going.

The Annual Meeting also featured updates and lively discussions on a number of on-going projects: *Uniform*

Vital Statistic Act Renewal, the *Uniform Commercial Tenancies Act*, Uniform Access to Digital Access by Fiduciaries, the *Uniform Domestic Arbitration Act*, and the international wills aspect of the *Uniform Wills Act*. We were also lucky to be joined in Yellowknife by Anita Ramasastry, Chair of the Executive Committee of the Uniform Law Commission, who delivered an interesting and informative presentation on the ULC's work.



Report from
John Lee
Chair,
Civil Section

I am honoured to be the Chair of the Civil Section for 2015-2016. For the many years that I have been a Jurisdictional Representative, I found that the Civil Section has dealt with an ambitious agenda and this year appears to be no exception.

We started the year off wrapping up work on the *Uniform Enduring Powers of Attorney Act* and the *Model Interpretation Act*. The August 2015 directions from the Conference regarding both Acts have since been incorporated. I am pleased to say that the revised Acts received no objections by the end of November following their circulation to Jurisdictional Representatives and both Acts have now been adopted. In addition, editorial changes, following the Conference's August directions, to the *Uniform Rules on Service in Other Contracting States to the Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters* were completed in November.

The Civil Section Steering Committee has been holding monthly conference calls to ensure that work continues on a variety of projects. At the next annual meeting, we will be hearing about the following topics:

- Commercial Tenancies
- Vital Statistics
- Domestic Arbitration
- Access to Digital Information
- International Wills

The respective working groups have been hard at work on these projects and as we heard at our last annual meeting, the issues they are grappling with are challenging and will be sure to bring about further engaging discussions at our 2016 Annual Meeting in Fredericton. The last three projects on the above list are expected to conclude this year so we anticipate three final Uniform Acts to review before next August.

In addition, several new projects, based on proposals that were presented last year, are at the early stages of being established. I'm hoping that we'll have preliminary reports on these projects also by next August.

Arriving at the mid-point of my term as Civil Section Chair, I would be remiss if I did not mention how I am extremely impressed by and grateful to all the members of the working groups and members of the Steering Committee. Their dedication to the Conference is truly humbling and I want to thank them all for their work. I look forward to seeing everyone this summer.



Report from
Peter Lown, QC
Chair, Int'l
Committee/Chair,
Advisory
Committee on
Program
Development &
Management

Another communiqué, another ACPDM report! How can I repackage the report? What is there new to say? By the time you read this report, two things will have happened that certainly give me something new to report.

As you know, ACPDM manages the medium to long-term work of the conference. The committee consists of a group whose experience, wisdom and representative nature help guide the work. While the section chair and steering committee handle the "current year", ACPDM operates on a 1 to 3 year window.

In order to manage project inventory, ACPDM looks at projects all the way from suggestion to completion. It has developed project descriptions, project selection criteria, progress guidelines, working group practices and an overall calendar period

All of this structural process is crucial to the operation of the conference, and the members who have worked to create this process material are to be thanked, However, we all realize that the acid test, however good our process, is the acceptance and adoption of our harmonized proposals.

Once every two or three years, the committee holds a face-to-face meeting. There is time, interaction and opportunity for a considered consensus. The next meeting will take place in Ottawa on February 24 and 25th. This meeting will focus on two areas: internal issues such as the relationship between various committees; the most efficient use of the annual meeting; leadership and succession of important committees; how ACPDM can contribute to the strategic plan.

External issues involve how to engage our consumers; a more proactive project selection process; broadening the participation by the legal community; Enhancing the use of our website. These are all significant issues as the conference approaches its centenary, and will be crucial as the conference continues the next phases of its work.

The second event is a joint meeting of the uniform law conference of Canada and the US uniform law commission. Both conferences recognize that we face similar issues, And that there are many common legal areas in North America. We are now at a comfortable level of sharing project reviews, appointing observers to each other's study groups, and cooperating in areas that have international implications. Digital assets, Autonomous vehicles and virtual currencies are typical examples.

So I look forward to my next report when I can describe the results of our face-to-face meeting and developments in cooperative activities with our US colleagues. In the meantime, the committee continues to consider suggestions in areas such as updates to the SLAPP legislation, selected issues in condominium law, and electronic evidence. We also continue to monitor major projects as we near completion of domestic arbitration and vital statistics.

It is my pleasure to represent the conference on both the advisory committee and the international committee. I do want to thank the members of both committees for the hard work and thought which they volunteer on a regular basis.



Report from Elizabeth Strange & Luc Labonté, QC, Co-Chairs of the 2016 Annual Meeting Organizing Committee



Planning for the 98th Annual Meeting of the Uniform Law Conference of Canada to be held in Fredericton, New Brunswick, is well in hand. As mentioned at the 2015 Annual Meeting, the 2016 Annual Meeting will be held at the Delta Fredericton August 7th to 11th. A block of rooms is being held at the hotel at a group rate of \$159. To reserve a room, please call 1-800-268-1133 and state that you are with the ULCC Group. Reservations must be made by Friday July 22nd to receive our special discounted rate.





The Opening Reception will be held at Government House, the residence of the Lieutenant-Governor of New Brunswick, on Sunday, August 7th at 6:30 p.m. We plan to take the traditional picture of delegates there, so we hope everyone can attend.

On Monday, August 8th, we plan to offer an evening adventure for those interested. The annual ballgame will be held on the traditional Tuesday evening, August 9th, followed by a BBQ back at the hotel. We are planning a New Brunswick lobster feast for the Closing Banquet on Wednesday, August 10th. We want people to enjoy the meetings in a relaxed Maritime atmosphere, so all events including meetings will be casual attire with the exception of the Opening Banquet which will be business attire.

August is a popular tourist month in New Brunswick, so we encourage you to book the hotel soon and make your travel plans as early as possible. We also suggest you arrive early or stay late, as there are many wonderful treasures to explore in Fredericton and the rest of New Brunswick. We highly recommend the Farmer's Market held in downtown Fredericton every Saturday morning. Fredericton also offers the world-renowned Beaverbrook Art Gallery, the New Brunswick Legislature, Officer's Square and loads of other things to see and do. You can observe nature at its best by taking a walk (or a run) on the path behind the hotel that runs alongside the Saint John River. The surroundings are second to none, so we hope you take advantage of your time in our beautiful city and take some extra time to enjoy the rest of the province. For more information, visit the City of Fredericton website at: <http://www.tourismfredericton.ca/en/index.asp>

We look forward to welcoming you to Fredericton this August. If you have questions, please don't hesitate to contact Elizabeth, Luc, or Sylvette (our meeting coordinator) at:

elizabeth.strange@gnb.ca (506-458-2855)

luc.labonte@gnb.ca (506-453-2784)

sylvette.basque@gnb.ca (506-444-2195)



And in the news...



Josh Hawkes, QC, has been elected bencher on the 2016 Board of Directors of the Law Society of Alberta. In his 24 years as a prosecutor, Josh has handled many complex cases with significant legal issues, appearing regularly before the Court of Appeal

and the Supreme Court of Canada. He has been the Jurisdictional Representative for Alberta to the Criminal Law Section of the Uniform Law Conference of Canada since 2005, was Chair of the Criminal Law Section of the Conference in 2010 to 2011, and is currently serving on the executive as the Conference Vice President.



The Uniform Law Conference of Canada wishes to congratulate Peter J. M. Lown, Q.C., on his retirement from the Alberta Law Reform Institute after 25 years as Director. Upon his retirement on December 31, 2015, Peter was appointed Director Emeritus of the Institute.

Peter has been a delegate to the ULCC since 1988. Peter has served as both Chair of the Civil Section and President and, fortunately for the Conference, he has agreed to continue his service in his current roles as Chair of the Advisory Committee on Program Development and Management and Chair of the International Committee.



In Memoriam*



It is with great sadness that we learned of the sudden death of our colleague and friend Earl Fruchtman in early January.

Earl began his distinguished legal career at the Ontario Ministry of the Attorney General 29 years ago, and in 1993 he became the lead counsel in the Criminal Law Division for Federal, Provincial, Territorial (FPT) matters and federal legislative reform.

Earl joined the Uniform Law Conference of Canada in 1988 and served as its Criminal Law Section Chair from August 1996 to August 1997, going on to become President in August 2000 for a year.

His knowledge and understanding of the history of criminal law reform and criminal law principles were vast and deep. When he spoke, everyone listened – and that was not because of his wonderful booming voice, but because they wanted to hear what he had to say.

Not only was Earl knowledgeable, but he was a kind, thoughtful and caring colleague who always had time to listen to the views of others, to mentor new members of CCSO or the ULCC, and an encyclopedic knowledge of history inside and outside of the justice system.

“In 2005 I was a new delegate to the conference and more than a bit intimidated at the high level of dialogue and discourse”, wrote ULCC Vice-President Josh Hawkes, QC. “Some quiet encouragement by Earl on a break provided the reassurance I needed. Many years later, I had the responsibility to serve as the Chair of the Criminal Section. Again when I reached out for some advice and reassurance, it was Earl who provided it. He said simply ‘I would do anything for the Conference’. He said it, meant it, and lived it, coming year after year despite many other pressing responsibilities. Always fully engaged and passionate he lived life in crescendo.”

“There are many who will speak of his very significant contributions to law reform in Canada in his role as a Senior official and advisor in Ontario. However, for me the most significant professional legacy is his legion of friends, encouraged with an uncharacteristic quiet word

here or there, and with his pervasive and persuasive example.”

It is also no secret that Earl particularly enjoyed the soft ball games... especially when the East won!

As Josh noted, we are all the better for having worked with him, and the ULCC, as well as the criminal law of Canada are better for his lifetime of dedication and public service. This is a huge loss for the ULCC, CCSO, FPT relations and the criminal justice system. We will dearly miss him.

** Thanks to Lucie Angers and Josh Hawkes, QC for their contributions to this article.*



Uniform Law Conference of Canada

President/Présidente

Elizabeth Strange – Fredericton, NB
Tel./Tél. : 506-453-2855
Email/Courriel : elizabeth.strange@gnb.ca

Immediate Past President/Président sortant

Luc Labonté, QC – Fredericton, NB
Tel./Tél. : 506-453-2784
Email/Courriel : luc.labonte@gnb.ca

Vice President/Vice-président

Josh Hawkes, QC – Calgary, AB
Tel./Tél. : 403-297-6005
Email/Courriel : josh.hawkes@gov.ab.ca

Chair, Criminal Section/Président, Section pénale

Eric Gottardi – Vancouver, BC
Tel./Tél. : 604-669-0208
Email/Courriel : egottardi@peckandcompany.ca

Chair, Civil Section/Président, Section civile

John Lee – Toronto, ON
Tel./Tél. : 416-326-5114
Email/Courriel : john.a.lee@ontario.ca

Chair, Project Development & Management and Chair, International Committee / Président, Développement & gestion de projets et Président, Comité international

Peter Lown, QC – Edmonton, AB
Tel./Tél. : 780-492-3374
Email/Courriel : lown@ualberta.ca

Project Coordinator/Coordonnateur des projets

Clark W. Dalton, QC – Edmonton, AB
Tel./Tél. : 780-482-5192
Email/Courriel : talaria@shaw.ca

EXECUTIVE DIRECTOR/DIRECTRICE ADMINISTRATIVE

Marie Bordeleau
Tel./Tél. : 613-986-2945
Email/Courriel : marie.bordeleau@ulcc-chlc.ca
www.ulcc.ca / www.chlc.ca