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UNIFORM LAW CONFERENCE OF CANADA

**WORKING GROUP ON TELEWARRANTS
STATUS REPORT**

**Presented by
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**Quebec
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Presented to the Criminal Section

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[1] At the 2016 meeting of the Criminal Section of the ULCC, the Public Prosecution Service of Canada (PPSC) moved a resolution on amending the *Criminal Code* telewarrant provision (section 487.1) to include all production orders as well as tracking and transmission data recorder warrants (PPSC 2016-01). The resolution was carried 16-0-8. The PPSC also presented a floor resolution that proposed the following:

That the Criminal Section of the Uniform Law Conference of Canada o establish a working group to examine the telewarrant process under section 487.1 of the *Criminal Code*, in order to develop recommendations to make it more efficient. (Carried 22-0-1)

[2] The Working Group, which is chaired by Stéphanie O'Connor of Justice Canada, includes a number of participants referenced in the ULCC 2017 status report. Two additional members have been added since the last report: Anny Bernier (Bureau du Directeur des poursuites criminelles et pénales, Québec) and Kimberley Pearce (Justice Canada).

[3] The Working Group has continued its work and has met regularly since the last annual meeting of the ULCC to discuss a number of additional questions relating to the telewarrant scheme and possible solutions for updating the law in this area in order to make it more efficient. The Working Group has continued to discuss several questions referenced in the 2017 ULCC status report and has made progress on a number of proposals.

Some of the more recent issues explored by the Working Group includes the impact of Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and to make consequential amendments to other Acts* on proposed changes to the telewarrant regime. The following includes the key issues and proposals that the Working Group has considered since its inception:

- the “impracticability” test as a safeguard, including a study of all the relevant case law that has interpreted that test;
- making the telewarrant application process available for all investigative warrants, orders and wiretap authorizations;
- the difference between an oral telewarrant and a written telewarrant and the value in retaining a threshold for an oral telewarrant;
- what would an oral telewarrant process look like and what elements would it retain from the current process;
- comparing the current regular in-person application process with the telewarrant application process to determine substantive differences;
- removing the requirement for designation of justices by the chief judge;
- restricting the telewarrant application process to government applicants (peace officers, public officers and the Attorney General, as the case may be);

- whether the telewarrant application process should apply to search warrants and other investigative techniques that are intended to be executed in another province;
- whether the reporting requirement currently applicable to the telewarrant process (s. 487.1(7)) should remain for telewarrant applications or be harmonized with the reporting requirement for in-person applications (s. 489.1(1)) (place of execution vs. place of issuance); and
- the impact of any changes to the telewarrant process on provincial and territorial statutes that incorporate the relevant provisions of the *Criminal Code*.

[4] The Working Group has received responses from a number of members of the judiciary and from law enforcement through the Canadian Association of Chiefs of Police. These responses have been helpful in better understanding how the telewarrant process applies in practice and has informed the work of the working group.

[5] The Working Group plans to present its final report to ULCC at the 2019 annual meeting.