

## Joint Session of Civil and Criminal Sections 1997

**1997 Whitehorse YT**

### **JOINT SESSION OF CIVIL AND CRIMINAL SECTIONS**

#### **1. Criminals' Exploitation of Violent Crime**

**Presenter: Donald Bur (Ontario)**

##### **Joint Session with Criminal Section**

The Conference was reminded of the public and political interest in this *Act* and of the two models available ie., the preserving funds model and the administrative model. Last year the Conference expressed a preference for the administrative model.

The presenter noted that the legislation as drafted does not prevent freedom of expression but does seize the proceeds of certain writing.

Questions were raised about the effect of pardons. A person who has received a pardon has nevertheless been convicted of an offence and should be covered by the Act. However, a person who has received a free pardon may have been found not to have committed the offence and therefore should not be included. In addition, a concern was raised about what would be covered by "consideration " in section 2. There was a concern that this might include persons who receive a benefit for assisting in the administration of justice.

There was discussion about the constitutionality of the *Act* as drawn and the existence of a constitutional opinion and whether or not further constitutional opinion should be sought. The joint session was advised that this issue would be addressed by the Executive.

The joint Session decided to adopt the *Criminals' Exploitation of Violent Crimes Act* as a model act.

##### **RESOLVED:**

- 1. That a draft *Criminals' Exploitation of Violent Crimes Act* be adopted in principle.**
- 2. That a final draft act and commentaries be completed and circulated to the jurisdictions, consistent with the discussions of the Conference, as soon as possible. Unless two or more objections are received by the Executive Director of the Conference by November 30, 1997, the draft should be taken as adopted as a model act and the text appear in the 1997 Proceedings.**

Note: The deadline was later extended to February 28, 1998, by the Executive of the Conference. No objections were received. See Appendix D at page 193.

#### **2. Electronic Evidence**

Presenters: John Gregory (Ontario) and Donald Piragoff (Canada)

## Joint Session with Criminal Section

Following the approval of the principles last year, a consultation document was prepared and circulated widely and a consultation meeting was held in Toronto. After consultation, the draft *Act* was prepared and circulated. There have been expressions of support for the project but little comment on the *Act*.

- This *Act* deals with authentication and best evidence - it does not affect other obstacles such as hearsay or business records or exemptions such as records in the possession of the accused.
- The provision on other prevailing statutes needs clarification.
- The authentication provisions are not intended to make admission generally more difficult and should not be read to have this effect.
- The draft *Act* does not specify who should make the affidavit; that is a matter for the proponent of the evidence, based on likely credibility of the deponent.
- The working group may consider whether the presumption of reliability of another party's records should be restricted to those of a party adverse in interest, to avoid collusion.

### **RESOLVED:**

1. That the draft *Uniform Electronic Evidence Act* be adopted in principle and the text appear in the 1997 Proceedings.
2. That the draft *Uniform Electronic Evidence Act* be circulated for consultations.
3. That if no substantive policy changes arise out of the consultations, a final draft act and commentaries be completed and circulated to the jurisdictions as soon as possible. Unless two or more objections are received by the Executive Director of the Conference by February 28, 1998, the draft should be taken as adopted as a uniform act and recommended to the jurisdictions for enactment.
4. That if substantive policy changes arise out of the consultations, the *Act* should be referred back to the annual meeting.