

Criminal Section Minutes

ATTENDANCE

A total of 34 delegates attended the meetings of the Criminal Section of the Uniform Law Conference held in Halifax, Nova Scotia.

OPENING

Alex Pringle presided as Chair and Catherine Kane acted as Secretary for the Meetings of the Criminal Section of the Uniform Law Conference. The Section convened to order on Sunday, August 16, 1998. The heads of each delegation introduced the commissioners attending with them.

REPORT OF THE CHAIR

Fifty-eight resolutions were submitted for consideration by the Section. Of the 58 resolutions considered, 43 were adopted as proposed or as amended, 7 were withdrawn and 8 were defeated.

The following discussion papers and reports were considered:

Diversity, Equality and Access To Justice

The Criminal Law Section discussed the IDEAS document (Integrated Diversity and Equality Analysis Screen) noting its usefulness in assessing the impact of proposed resolutions. It was agreed that all jurisdictions would endeavour to apply the "IDEAS" screen to 1999 resolutions.

Regulating Charter Applications

To follow up on the Alberta resolution from the 1997 Criminal Section of the Uniform Law Conference, "That a working group or committee be created to develop a proposal respecting a body of procedural law to govern the conduct of Charter applications", a discussion paper was prepared for consideration at the 1998 Conference.

The Criminal Law Section noted that the Discussion Paper provided an excellent overview of the current law and expressed their appreciation to Bart Rosborough, Counsel, Alberta Justice for its preparation.

The following resolution was proposed:

That the issue of the Regulation of the Charter Applications be referred to a Working Group of the Criminal Law Section of the Uniform Law Conference to create model rules governing such applications and to make any other recommendations it deems appropriate in consultation with the bar and judiciary.

(Carried: 29-0-2)

Evidence By Spouses In Criminal Proceedings

The Working Group mandated by the 1996 Criminal Law Section of the Uniform Law Conference to study the issue of Spousal Competence submitted their Report. Following discussion, the following resolution was proposed:

That further consultation on the issue of Spousal Competence be carried out including distribution by the Chair of the paper prepared by the Working Group of the Criminal Law Section (as revised) to selected groups and responses reviewed by the Working Group and presented to the Criminal Law Section in 1999.

(Carried: 27-0-0)

Indecency And Nudity

To follow up on Ontario's 1997 resolution "That a Working Group of the Criminal Section of the Uniform Law Conference be established to examine the indecency and public nudity provisions of the Criminal Code as well as the legal and constitutional issues related to the feasibility of local (i.e. municipal) regulations and to report back at the next conference", the Working Group presented their paper "A Review of the Law of Indecency and Nudity".

The following resolution was proposed:

That the Chair of the Criminal Law Section of the Uniform Law Conference provide a copy of the paper, A Review of the Law of Indecency and Nudity, to all Federal, Provincial and Territorial Ministers Responsible for Justice and Attorneys General.

(Carried: 26-0-4)

Self Defence, Provocation and Defence of Property

To follow up on the 1997 resolution of the Criminal Law Section of the Uniform Law Conference, "that the Department of Justice proceed on an urgent basis with the completion of its review and the preparing of amendments in respect of the law of self defence", the Department of Justice Consultation Paper, "Reforming Criminal Code Defences, Provocation, Self Defence and Defence of Property", was distributed to the Criminal Law Section and discussed.

S. 690 Applications For Mercy Alternative Approaches

The Criminal Law Section generally discussed the current process governing applications under s. 690 of the Criminal Code for the royal prerogative of mercy, the powers of the Minister of Justice as set out in s. 690 and the prevailing case law. It was noted that the public and members of the bar are not well informed about the current process, including the comprehensive nature of the investigation and review or that the information gathered is provided to counsel for the applicant for comments.

It was noted that the Department of Justice is examining similar processes in other jurisdictions, including Britain.

A consultation document on the s. 690 process was under development and Uniform Law Conference delegates expressed interest in further opportunities to discuss this issue.

REPORT OF THE SENIOR FEDERAL DELEGATE

With respect to the implementation of resolutions, several of the Criminal Law Sections 1997 resolutions have been addressed.

Bill C-16, An Act to Amend the Criminal Code (powers to arrest and enter dwellings) was passed in December 1997 and proclaimed into force on December 18, 1997. These amendments respond to a resolution proposed by Alberta at the 1997 conference.

In addition, the resolution proposed by Ontario for a review of the law of self defence and provocation has been addressed. In June 1998, the

Department of Justice published a consultation paper, Reforming Criminal Code Defences, Provocation, Self Defence and Defence Property.

On May 12, 1998, the Minister of Justice launched the federal government's Strategy for the Renewal of Youth Justice. The Minister has indicated that legislation will be introduced in the fall. The resolutions of the Criminal Law Section of 1997 and 1998 will be considered in the course of the reform initiative.

Bill C-51, An Act to amend the Criminal Code, Controlled Drugs and Substances Act and the Corrections and Conditional Release Act was introduced on June 12, 1998. The Bill includes over 55 amendments including approximately 15 substantive changes and other consequential and technical amendments. These amendments address a series of resolutions of the Criminal Law Section calling for Criminal Code amendments as modified following subsequent discussions. For example, resolutions calling for clarification of the enforcement of the conditional sentence provisions are addressed in Bill C-55.

CLOSING

The Chair thanked the delegates for their co-operation which permitted the Section to deal with a heavy workload and for the thoughtful discussion with respect to the resolutions and working papers. The Nominating Committee recommended that Yvan Roy of the Department of Justice, Canada be elected Chair for the 1999 meetings. A motion thanking Alex Pringle and Catherine Kane for their efforts in ensuring the success of this Conference was adopted. The 1999 Uniform Law Conference will take place August 15-19 in Winnipeg, Manitoba.