

Criminal Section Minutes 1999

1999 Winnipeg, MB

Criminal Section Minutes

ATTENDANCE

A total of 39 delegates attended the meeting of the Criminal Section of the Uniform Law Conference held in Winnipeg, Manitoba. Jurisdictional delegations included Crown Attorneys, members of the defense bar, government officials and judges.

OPENING

Yvan Roy presided as Chair and Catherine Kane acted as Secretary for the meetings of the Criminal Section. The Section convened to order on Sunday, August 15, 1998. The heads of each delegation introduced the commissioners attending with them. The Section was pleased to welcome Nunavut to the Uniform Law Conference.

REPORT OF THE CHAIR

Sixty-two resolutions were submitted for consideration by the Section. Of the 62 resolutions considered, 48 were adopted as proposed, or as amended, 7 were withdrawn and 3 were defeated. Several amended resolutions merged other resolutions originally tabled. Note that of the potential 39 votes per delegate per resolution, not all delegates were present for each vote.

The following discussion papers were tabled:

Regulating Charter Applications - Interim Report of the Working Group

The Interim Report of the Working Group on Regulating Charter Applications was tabled. It was agreed that the Working Group should pursue the recommended option; to create a model set of Rules of Court to Regulate Charter Applications and to report back to the 2000 Uniform Law Conference. Following consideration of the model rules by the Criminal Section, jurisdictions would be encouraged to adopt the rules, with necessary modifications to reflect local practice.

Fitness to Stand Trial - Report of the FPT Working Group on Mental Disorder

The paper was not discussed. It should be regarded as an interim report to the Conference. The Federal-Provincial-Territorial Working Group will continue to examine this issue.

Evidence by Spouses in Criminal Proceedings: Results of Consultations

The Report on the consultations on the paper presented to the 1998 Criminal Section, "Evidence by Spouses in Criminal Proceedings" was tabled and discussed. It was noted that the 1998 resolution called for further consultation on the issue with selected groups and review of the responses by the Working Group.

The options set out in the Discussion Paper and the results of the consultation process were thoroughly discussed.

The Criminal Section agreed that maintaining the status quo is not a viable option.

The Criminal Section agreed also that Option 1 (spouses should be competent for the prosecution in all cases and compellable for certain offences) should not be recommended.

The Criminal Section did not reach a consensus on the preferred option for reform. A majority of delegates preferred Option 3 (spouses are competent and compellable at the instance of the prosecution in all cases) noting that a case-by-case privilege is still available at common law and the statutory marital communication privilege would be abolished.

Some delegates preferred Option 2 (spouses are competent and compellable at the discretion of the trial judge). Other delegates were of the view that some combination of Options 1 and 2 could be developed.

The Criminal Section noted that the Discussion Paper and results of the consultation process reflected the views shared by the Criminal Section and will further inform the process of law reform in this area.

John Campbell and Sabatore Shirose v. Her Majesty the Queen - Possible Legislative Response

A paper was distributed but not discussed. Delegates were asked to review the paper and provide comments directly to the Department of Justice.

Police Chases

The paper was presented and discussed. Delegates noted that a Private Members' Bill (Bill C-440 proposed by Dan McTeague) seeks to create a specific offence. Delegates further noted that the public and the police are concerned about the risks posed to the police and public by police chases.

The discussion focused on the advantages and disadvantages of the creation of a new offence, and the conduct currently covered by Code offences.

It was noted that Provincial Highway Traffic legislation should be reviewed to assess whether amendments could address the prevailing concerns. For example, the Ontario Highway Traffic Act prohibits failure to stop for police. Persistently failing to stop has a higher penalty than simply failing to stop (single incident).

Corporate Criminal Liability

The paper on Corporate Criminal Liability was presented to a joint session of the Criminal and Civil Sections of the Uniform Law Conference. It was noted that the goal of the discussion was to launch a process to develop and analyze options for the reform of the law on corporate criminal liability. The legislation of other common law jurisdictions was highlighted, as were two Private Members' Bills currently before Parliament which seek to address this issue. It was noted that further consultations with the Canadian Bar Association

would be beneficial. Further discussion would be directed to the Criminal Section of the Uniform Law Conference, in consultation with interested members of the Civil Section.

REPORT OF THE SENIOR FEDERAL DELEGATE

The Report of the Senior Federal Delegate, Richard Mosley, Assistant Deputy Minister, Criminal Law Policy and Community Justice Branch was tabled. The Report is attached as Annex 1.

CLOSING

The Chair thanked the delegates for their detailed attention, hard work, comments and thoughtful discussion with respect to the resolutions and working papers. The Nominating Committee recommended that Lee Kirkpatrick of the Yukon Department of Justice be elected chair for the 2000 meeting.

A motion thanking Yvan Roy for his leadership role in chairing the section and ensuring that all resolutions were thoroughly discussed and, where necessary, amended to ensure an appropriate solution or response to complex, controversial and/or technical issues and thanking Catherine Kane for the preparatory work to ensure the success of the conference was adopted.

The 2000 Uniform Law Conference will take place August 13 - 18 in Victoria, British Columbia.