

**UNIFORM LAW CONFERENCE
TORONTO, ONTARIO
AUGUST 19 – 23, 2001**

CRIMINAL SECTION MINUTES

ATTENDANCE

Forty-six delegates representing all jurisdictions, except Nunavut and Yukon, attended the Criminal Section proceedings. (All jurisdictions were, however, represented at the Conference.) Jurisdictional delegates included Crown Attorneys, defence counsel, academics, government officials and judges.

OPENING

Glen Abbott presided as Chair of the Criminal Section. Catherine Kane acted as Secretary for the Criminal Law Section in preparation for the Conference and Shannon Davis acted as Substitute Secretary at the meetings of the Criminal Section. The Section convened to order on Sunday, August 19.

The Heads of each delegation introduced the members of their delegations.

PROCEEDINGS – RESOLUTIONS

Sixty-nine resolutions were submitted by jurisdictions for consideration, including sub-parts to resolutions and four floor resolutions. Of the sixty-nine resolutions considered, 37 were carried as proposed or amended, and 8 were defeated. Seven resolutions were withdrawn after discussion, 2 resolutions were withdrawn due to similarity to a resolution submitted by another jurisdiction, and 15 in relation to DNA were withdrawn after consolidation into 4 new resolutions submitted from the floor. In several instances, the total number of votes varies, due to the absence of some delegates for part of the proceedings.

The following resolution, submitted by British Columbia, proposing a change to the order of proceedings of the Criminal Law section, beginning in 2002, was unanimously carried:

That the Resolutions, Papers, Committee Reports and other Business of the Criminal Section be presented in the following sequence unless the Chair directs otherwise under Paragraph 4 of the Rules of Procedure:

1. Resolutions from Canada, the Provincial and Territorial delegations received by the Secretary of the Section by the annual deadline for submission of resolutions, which will be April 30 unless otherwise set by the Secretary, will be presented to the Section in the order described below.

2. The Resolutions will be presented in alphabetical order by the Provincial and Territorial delegations commencing with Alberta in 2001. The order of rotation will change from year to year with the lead delegation from the immediately preceding conference presenting resolutions last in rotation at the next conference, and in like fashion the rotation will change from to year thereafter.
3. The delegation from Canada will present Resolutions for consideration after the Resolutions received from the Provincial and Territorial delegations have been presented.
4. Papers, Committee Reports and other Business of the Section shall be presented to the Conference after the resolutions from Canada have been presented.
5. Resolutions received by the Secretary after the deadline will be presented in the order in which they were received after the regular business of the Section has been completed if permission is granted by means of a majority vote of the delegates.
6. Resolutions from the floor will be presented after the regular business of the Section has been completed if permission is granted by a majority vote of the delegates.
7. Sub-paragraph 3.2 of the Rules of Procedure is amended to substitute the words “April 30 or as otherwise directed by the Secretary” for the words “May 31.”
8. Sub-paragraph 3.4 of the Rules of Procedure is amended to substitute the words “by June 1 or as otherwise directed by the Secretary” for the words “after June 1 or before July 1.”

(Carried 38-0-0)

REPORT OF THE CHAIR

The following discussion papers were tabled:

Sexual Voyeurism / Criminal Beach of Privacy – Options Paper

At the August 2000 Uniform Law Conference, a resolution presented by Saskatchewan at the Criminal Law Section was carried in respect of criminal voyeurism. The specific resolution carried was as follows:

That Part V of the *Criminal Code* be amended to create a specific offence that would prohibit surreptitious, non-consensual viewing, photographing or videotaping of another person in a dwelling-house or business premises where there is an expectation of privacy and if the viewing, photographing or videotaping is done for a sexual purpose.

This resolution is similar to one proposed earlier by New Brunswick and carried at the Uniform Law Conference in 1996.

At a Ministerial meeting in Nunavut in September 2000, New Brunswick again raised the issue of voyeurism and suggested that a specific offence be created. The Ministers agreed to refer the question to the Federal / Provincial / Territorial Coordinating Committee of Senior Officials. This group approved, in principle, the creation of an offence of criminal voyeurism of a sexual nature. In May and June 2001, Justice Canada circulated three options papers on various elements of a voyeurism scheme and conducted two teleconferences with CCSO officials.

The purpose of the options paper submitted to the 2001 Uniform Law Conference, Criminal Section, is to explore the philosophical underpinnings of a scheme to deal with voyeurism and then to canvass the relative advantages and disadvantages of various options regarding the constituent elements of a voyeurism scheme.

Delegates praised the thoroughness of the paper and comprehensiveness of the options identified. During the debate on the main voyeurism offence, delegates debated whether a general purpose mens rea offence which would focus on the sexual nature of what was viewed would be preferable to an offence which would focus on the sexual purpose for which the viewing was done. When asked about whether or not a criminal breach of privacy offence should be created, those delegates who expressed their views indicated either a negative or a cautious response.

This issue will continue to be dealt with by Ministers of Justice.

In-Custody Informant Testimony: Discussion Paper

At the August 2000 Uniform Law Conference, Ontario's Criminal Lawyers' Association presented a resolution to the Criminal Section on "jailhouse" or "in-custody" informants. The resolution, which was unanimously carried, was as follows:

That the Department of Justice establish a task force or study group to undertake an examination of the role played by in custody informants in cases of wrongful conviction and make recommendations concerning this issue and report back to the Uniform Law Conference in 2001.

The discussion paper was submitted to the 2001 Uniform Law Conference without any time for discussion. The paper was prepared as a preparatory step to the establishment of a task force or study group. The Department of Justice (Canada) invited delegates to submit comments (in writing).

The paper examines the issue of in-custody informant testimony, which has been identified as one of the causes contributing to wrongful convictions both in Canada and in other common law jurisdictions. The paper reviews inquiries undertaken in Australia and Los Angeles, California, as well as the extensive examination of the issue in Canada by the *Morin Inquiry*.

[See Appendix K, p. 256.]

Corbett Applications: Report of the Subcommittee

In response to a 1999 resolution calling on the Uniform Law Conference of Canada to establish a subcommittee to examine a range of issues arising from *Corbett* applications, regarding limitations on cross-examination of an accused on their previous convictions, and to investigate the relevant law in other common law jurisdictions, and develop guidelines and/or make recommendations, the Uniform Law Conference commissioned a background paper. The paper was prepared by Professor David Paciocco, University of Ottawa, and submitted to the 2000 Conference.

At the 2000 Conference, delegates praised the paper and noted that proposals would require more careful analysis and discussion. Following a resolution submitted by the Canadian Council of Criminal Defence Lawyers, a subcommittee of the Uniform Law Conference was established to review the proposal in detail and make recommendations to the 2001 Uniform Law Conference.

The subcommittee submitted a report at the 2001 Uniform Law Conference, along with the following two resolutions, which were approved:

1. That the *Corbett* committee continue its discussions for a further year to see if agreement can be reached and wording for draft legislation can be proposed. If there continues to be a lack of resolution, to report back to next year's conference as to whether in the view of the committee, the lack of resolve is due to policy considerations better left for a mechanism that could incorporate broader consultation.

(Carried: 36-0-0)

2. That the Federal Department of Justice in consultation with the provinces and territories consider the question of whether a separate committee or other review mechanism ought to be established to review the similar fact evidence rule.

(Carried: 38-0-0)

REPORT OF THE SENIOR FEDERAL DELEGATE

The following Report of the Senior Federal Delegate, Donald K. Piragoff, General Counsel, Criminal Law Policy Section, Justice Canada, was tabled.

Several initiatives over the last year, 2000-2001, have been influenced by the recent work of the Uniform Law Conference and would be of interest to Criminal Section Delegates.

These initiatives include:

Bill C-7, *Youth Criminal Justice Act* - On February 5, 2001, the Minister of Justice reintroduced the *Youth Criminal Justice Act*. The reintroduced bill retains the key elements of the bill introduced in 1999 which died on the Order Paper, and includes amendments to reduce complexity, provide greater clarity and improve flexibility for the provinces. These amendments respond to suggestions made by witnesses who appeared before the Standing

Committee on Justice and Human Rights and from consultations with the provinces and territories.

Bill C-7 was passed by the House of Commons on May 29, 2001 and is currently in the Senate.

Bill C-15, the *Criminal Law Amendment Act, 2001*, was tabled in the House of Commons by the Minister of Justice on March 14, 2001.

The bill proposes to amend the *Criminal Code* by:

- (a) adding offences and other measures that provide additional protection to children from sexual exploitation, including sexual exploitation involving use of the Internet;
- (b) increasing the maximum penalty for criminal harassment;
- (c) making home invasions an aggravating circumstance for sentencing purposes;
- (d) creating an offence of disarming, or attempting to disarm, a peace officer;
- (e) consolidating animal cruelty offences and increasing the maximum penalties;
- (f) codifying and clarifying the review process for applications to the Minister of Justice with respect to allegations of miscarriage of justice; and
- (g) reforming and modernizing criminal procedure with respect to
 - procedural aspects of preliminary inquiries
 - the disclosure of expert evidence,
 - rules of court in relation to case management and preliminary inquiries,
 - a plea comprehension inquiry scheme,
 - private prosecutions,
 - the selection of alternate jurors, and
 - restriction on the use of agents.

This enactment also amends the *Criminal Code* and the *Firearms Act* in order to simplify compliance with the firearms program, to modernize administrative procedures and to meet Canada's emerging international obligations.

This enactment also amends the *National Capital Act* by increasing the maximum fine available, and the *National Defence Act* by providing for fingerprinting.

Bill C-15 includes provisions previously included in Bill C-36 (tabled in June 2000) and Bill C-17 (tabled in December 1999) which died on the Order Paper and new provisions to address internet luring and exploitation of children, an issue canvassed at 2000 ULC.

Second reading debate on Bill C-15 commenced on May 3, 2001.

Bill C-24, *An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts*, was tabled in the House of Commons jointly by the Minister of Justice and Solicitor General of Canada on April 5, 2001.

The proposed amendments to the *Criminal Code* will:

- introduce new offences to target various degrees of involvement with criminal organizations
- improve protection of people who play a role in the justice system from intimidation
- simplify the *Criminal Code* definition of “criminal organization”
- broaden powers of law enforcement to forfeit the proceeds of crime and the profits of criminal organizations and to seize property that was used in a crime
- provide an accountable process to protect law enforcement officers from criminal liability when they commit what would otherwise be considered illegal actions while investigating and infiltrating criminal organizations. [There will be no immunity for intentionally or recklessly causing death or bodily harm, sexual offences or deliberately obstructing the course of justice.] [These proposals follow from the White Paper on Law Enforcement and Criminal Liability which was discussed by ULC in 2000.]

The government also announced that an additional \$200M would be provided over five years to implement the legislation and the prosecution and law enforcement strategies to fight organized crime.

Bill C-24 was passed by the House of Commons on June 13, 2001 and is currently in the Senate.

Government Response to Law Commission of Canada Report on Institutional Child Abuse, Safeguarding The Future And Healing The Past – The Minister of Justice tabled the Government’s Response to the Law Commission of Canada, report on institutional child abuse on June 8, 2001. The response focused on three themes: protecting children, responding to the needs of victims and addressing the legacy of physical and sexual abuse in residential schools. The Response highlights a broad range of government initiatives for children and legislative reforms and notes the need to continue to work with provinces, territories and communities to develop programs to redress the wrongs and prevent future abuse.

The Government’s Response is available at <http://canada.justice.gc.ca/en/dept/pub/dig/index.htm>

The Response also notes that the results of the 1999 Department of Justice public consultation on **Child Victims and the Criminal Justice System** are being analyzed and options are being developed to address identified concerns.

Some of the key issues identified are:

- creating child specific offences
- protecting children from sexual predators
- expediting trials involving children
- facilitating the provision of children's testimony in court

Several ULC resolutions are being examined in the context of the Children As Victims Project including resolutions from Alberta regarding expansion of s. 486(2.1) to refer to murder and from Ontario regarding expansion of s. 715.1.

Firearms Regulations – On June 25, 2001, the Minister of Justice announced amendments to the firearms regulations, including waiver of the firearms transfer fee until December 31, 2002 and extension of the amnesty for prohibited handguns and unregistered restricted firearms to December 31, 2001. Note that Bill C-15, the *Criminal Law Amendment Act*, currently before Parliament, includes amendments to the *Firearms Act* to simplify compliance with the firearms program.

National Strategy on Community Safety and Crime Prevention – The Minister of Justice and Solicitor General jointly announced an additional \$145M in funding over four years for the Crime Prevention Strategy (in addition to the \$32M per year in funding the strategy currently receives). The new funds will permit developmental work in high need communities, including inner city, rural, remote and aboriginal communities in addition to expanded public education efforts, research and citizen engagement.

U.N. Convention Against Transnational Organized Crime – On December 14, 2000, the Government of Canada signed the U.N. Convention Against Transnational and Organized Crime in Palermo, Italy. The Convention promotes international co-operation to fight organized crime through mutual legal assistance, extradition, disposition of proceeds of crime and law enforcement. Canada also signed two supplementary protocols: the Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

In February, 2001, G-8 Ministers of Justice and of the Interior renewed their commitment to fight organized crime, terrorism, migrant smuggling and sexual exploitation of children. Canada is working with other countries for early ratification of the U.N Convention on Transnational Organized Crime.

Proposed United Nations Instrument Against Corruption – In July 2001 the Government of Canada released a public Consultation Document on the Proposed U.N. Instrument Against Corruption seeking the views of Canadians on issues including the nature and scope of the instrument and measures to promote compliance. Written submissions have been requested by November 15, 2001. The consultation document and existing international instruments can be found on line at <http://canada.justice.gc.ca>

Corporate Criminal Liability – Since the discussion at a joint session of ULC, the Department of Justice continues to assess legislative models and options for addressing Corporate Criminal Liability. Two private members' bills have been introduced in the House of Commons but neither has yet been debated. The Standing Committee on Justice and Human Rights presented a report to the federal government in September, 2000, but the federal election was called before there was an opportunity for the government to respond; that Committee report called for the government to review legislative models for corporate criminal liability. The Standing Committee itself has not addressed the issue recently.