

2002 Yellowknife NT

AUGUST 18-22, 2002

CRIMINAL LAW SECTION MINUTES

Attendance

Twenty-nine delegates representing all jurisdictions except Nunavut, Yukon and Newfoundland attended the Criminal Section. All jurisdictions were represented at the conference as a whole. Jurisdictional delegates included Crown, defence counsel, academics, government officials and judges.

Opening

Rob Finlayson presided as Chair of the Criminal Section. Catherine Kane acted as Secretary. The Section convened to order on Sunday, August 18 in the Caucus Room of the NWT Legislative Assembly.

The Heads of each delegation introduced their delegation.

Proceedings – Resolutions

Thirty-three resolutions were submitted by jurisdictions for consideration. Of the thirty-three resolutions, one was in three parts, twenty-seven were carried as proposed or as amended, one was defeated and five were withdrawn.

In several instances the total number of votes varies due to the absence of some delegates for some part of the proceedings.

Discussion Papers

The Criminal Section considered a Discussion Paper prepared by Professors Alan Manson and Gary Trotter, Queen's University on **Interlocutory and Third Party Appeals in the Criminal Process – Reform Options**. The paper was originally prepared for the Department of Justice and provided to ULC to ensure broader consultation. Professor Manson presented the paper. There was general agreement that the *Criminal Code* should be amended to provide for appeals of some interlocutory orders. It was agreed that the paper would be revised to include the results of the ULC discussion and more specific options for

codification of an appeal process. The revised paper would be provided, when available, to members of the Criminal Section.

Resolutions Discussed In The Joint Session

The joint session of ULC dealt with two discussion papers and resolutions were passed regarding both.

Extra-Territorial Jurisdiction of the Police

- 1) That the ULC receive the Report of the Joint Criminal Law and Civil Law Committee on the Extra Jurisdictional Authority of Police Officers;*
- 2) That the ULC direct that model provincial/territorial legislation (Uniform Act) on the Extra-Territorial Jurisdiction of Police Officers be developed and presented to the 2003 ULC (with commentaries); and*
- 3) That the Committee's report appear in the proceedings.*

It was also agreed that the Committee would continue their work.

Bill C-217 – Blood Samples Act

This issue was placed on the agenda of ULC as requested by the Standing Committee on Justice and Human Rights.

The following resolution was passed.

- 1) That the Report be received.*
- 2) That the Chairpersons of the Criminal Section and the Civil Section establish a joint working group to report to the Conference at its 2003 meeting:*
 - a) as to whether provincial legislation should be developed to address the issues raised in the report and in the deliberations of the conference; and*
 - b) if so, as to the elements that should be included in a Uniform Act.*

Report of the Senior Federal Delegate

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

Closing

The Chair thanked the delegates for the thoughtful discussion, noting that the vast majority of resolutions proposed were carried. The Nominating Committee recommended that Daniel Grégoire be elected as Chair of the Criminal Section for the 2003 Conference. The delegates thanked Rob Finlayson, Chair, for the success of this Conference and to the NWT delegation as hosts.

Annex 1 REPORT OF THE SENIOR FEDERAL DELEGATE

Several law reform and criminal justice initiatives have been developed and/or have been implemented over the last year, 2001-2002, many of which have been influenced by the work of the Uniform Law Conference and/or would be of interest to delegates.

The initiatives include,

Bill C-15

Bill C-15, An Act to amend the Criminal Code and to amend other Acts (the Criminal Law Amendment Act, 2001), was introduced in the House of Commons and given first reading on March 14, 2001. Bill C-15 reintroduced measures contained in *Bill C-17 – “An Act to amend the Criminal Code (cruelty to animals, disarming a peace officer and other amendments) and the Firearms Act (technical amendments)”* – and in *Bill C-36 – “An Act to Amend the Criminal Code (Criminal Harassment, Home Invasions, Applications for Ministerial Review – Miscarriages of Justice, and Criminal Procedure) and to Amend Other Acts”* – which were introduced in the previous Parliament but which died on the *Order Paper* at dissolution. Bill C-15 also proposed new *Criminal Code* provisions which seek to counter sexual exploitation of children involving the Internet as well as further amendments to the *Firearms Act*.

The House of Commons passed a motion on September 26, 2001 directing the Standing Committee on Justice and Human Rights to split *Bill C-15, An Act to amend the Criminal Code and to amend other Acts*, into two separate bills. The Standing Committee reported back to the House on October 3,

2001, indicating that it had divided Bill C-15 into two bills: *Bill C-15A, An Act to amend the Criminal Code and to amend other Acts*; and *Bill C-15B, An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act*.

Bill C-15A

The Committee reported to the House of Commons on their review of Bill C-15 on October 5, 2001 with amendments.

The highlights of Bill C-15A are:

- creating new offences and enforcement measures to deal with sexual exploitation of children, particularly in connection with the Internet;
- raising the maximum penalty for criminal harassment (i.e., “stalking”) from five to ten years’ imprisonment;
- making “home invasion” an aggravating factor in sentencing;
- creating an offence of disarming, or attempting to disarm, a peace officer;
- facilitating the greater use of technology in the electronic filing of documents and the “virtual” appearance of persons in court through audio-visual links;
- allowing for input from Crown prosecutors in private prosecutions;
- making preliminary inquiries optional and potentially more focused;
- requiring advance notice of the use of expert testimony by either side;
- clarifying the process of criminal conviction reviews by the Minister of Justice (*Criminal Code*, section 690), and extending the process to summary conviction cases; and
- bringing the military justice system further into line with the civilian system by providing for the fingerprinting of persons charged with or convicted of designated service offences under the *National Defence Act*.

2, and will be proclaimed in stages. Amendments to protect children from sexual exploitation were proclaimed into force on July 23, 2002, along with

the amendments to increase the maximum penalty for criminal harassment, to identify home invasion as an aggravating factor in sentencing and to create the new offence of disarming a police officer. Other provisions will be proclaimed at a later date.

Bill C-15 B

Bill C-15B (*An Act to Amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act*) contains the provisions dealing with cruelty to animals and firearms. The House of Commons Standing Committee on Justice and Human Rights amended Bill C-15B during clause-by-clause examination of the Bill. Further motions to amend were brought forward for debate at Report Stage in the House of Commons. The Bill was passed by the House of Commons on June 4, 2002. The Bill was given First Reading in the Senate on June 4, 2002, and was referred to the Senate Standing Committee on Legal and Constitutional Affairs. The Senate adjourned for the summer and is expected to resume on September 17, 2002.

The highlights of Bill C-15B are:

- With respect to cruelty to animals, there are two primary objectives: (1) to consolidate, modernize and simplify the existing scheme of animal cruelty offences, and (2) to increase existing maximum penalties and provide new sentencing tools to enhance the effectiveness of the offence provisions.
- With respect to firearms, a series of amendments are proposed to the *Firearms Act* and the firearms-related provisions of the *Criminal Code*.

A number of amendments were made by the House of Commons Standing Committee on Justice and Human Rights to Bill C-15B to provide further clarity in respect of the purpose and effect of the provisions. The changes include:

- Increasing the maximum fines available on summary conviction for intentional cruelty and criminal neglect;

- Clarifying the *mens rea* requirements for abandonment of animals and for failure to provide suitable and adequate food, water, air, shelter and care for an animal;
- Confirming the application of all common law defences available pursuant to subsection 8(3) of the *Criminal Code* in respect of proceedings for animal cruelty offences;
- Creating a specific offence for poisoning, injuring or killing a law enforcement animal while the animal is aiding or assisting a peace officer or public officer engaged in the execution of their duties; and
- Clarifying which prohibited and restricted firearms may be transported without the need for a special permit.

Bill C-24

Bill C-24, An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts, was introduced in the House of Commons on April 5, 2002. After debate and passage in Parliament, it received Royal Assent on December 18, 2001 and is now SC 2001 c 32. The provisions of this legislation are now in force.

The principle changes made by this legislation:

- simplify and extend the application of the *Criminal Code* definition of “criminal organization” and introduce three new offences to target various degrees of involvement with criminal organizations;
- improve the protection of justice system participants, journalists and others from intimidation;
- broaden the powers of law enforcement to seize and forfeit the proceeds of crime and property that was used in a crime;
- provide an accountable process to protect designated law enforcement officers from liability when, in a reasonable and proportional manner, they commit what would otherwise be offences while engaged in investigations under federal law.

ns the capacity of law enforcement and criminal justice agencies to address organized crime and provides enhancements to general enforcement abilities.

Bill C-36

The Anti-Terrorism Act, was introduced in the House of Commons on October 15, 2001. It received intense and thorough consideration by both Houses before being passed, and was given Royal Assent on December 18, 2001 as SC 2001, c 41. The legislation is now in force (with the exception of clauses 54-64).

The *Act* includes provisions that amend the *Criminal Code* to deter, disable, prosecute, convict and punish terrorist groups. The reforms include:

- a *Criminal Code* definition of "terrorist activity";
- provisions allowing for the establishment of a list of entities who carry out, participate in or facilitate terrorist activities;
- comprehensive new terrorism offences, including offences related to participating in, facilitating, or instructing terrorist activity and of harbouring others who carry out terrorist activity;
- new offences and other measures relating to the financing of terrorism;
- new offences relating to the use of explosives and other lethal devices.

The *Act* also provides new investigative tools to security, intelligence and law enforcement agencies, including:

- extension of special provisions to facilitate electronic surveillance – which already applied to criminal organization investigations – so that they also apply to investigations of terrorism offences;
- *Criminal Code* provisions to require, in certain circumstances, individuals with information relevant to an investigation of a terrorist offence to appear before a judge to provide that information in an investigative hearing;
- *Criminal Code* provisions to allow the arrest of and the imposition of conditions on release of persons where it is believed, on reasonable grounds, that a terrorist activity will occur and it is suspected, on reasonable grounds, that the procedures are necessary to prevent it;

- amendments to and renaming of the *Official Secrets Act* – now the *Security of Information Act* – to better address national security concerns;
- amendments to the *Canada Evidence Act* to better address the disclosure of sensitive information in judicial or other proceedings.

The *Act* also provides measures to address hatred and to ensure that Canada's respect for human rights and diversity is reinforced, including:

- a new *Criminal Code* offence of mischief committed against places of religious worship;
- a new power to order the deletion of hate propaganda made available to the public through computer systems;
- amendments to the *Canadian Human Rights Act* to clarify that communication of hate messages using new technologies, such as the Internet, is a discriminatory practice.

The *Act* is a balanced response to the threat of terrorism that includes strong control and accountability measures to help safeguard human rights. These control and accountability provisions include: strictly defined limits on the application of the new measures; requirements for special authorization for the use of certain powers, incorporating direct political accountability and judicial supervision; requirements for public annual reports and statutory sunseting for certain measures; and a requirement for Parliamentary review of the *Act* within three years.

Youth Justice

Bill C-7, the Youth Criminal Justice Act, received Royal Assent on February 19, 2002 as SC 2002, c 1. The *Act* will come into force in April 2003. A range of materials have been posted on the Justice Canada Internet Site to assist jurisdictions and the legal profession to prepare for the implementation of the *Act*(<http://www.canada.justice.gc.ca/en/ps/yj/index.html>).

Mental Disorder – Part XX.1 of the *Criminal Code*

The House of Commons Standing Committee on Justice and Human Rights conducted a review of the mental disorder provisions of the *Criminal Code*, as required by SC 1991 c 43, in the winter and spring, 2002. The Committee tabled their Fourteenth Report on the Review of the Mental Disorder Provisions on June 10, 2002. (The report can be found at <http://www.parl.gc.ca/inforcomdoc/37/1/just/studies/reports/justrp14-e.htm>).

The Government will table a Response to the Committee's Report, which included 19 recommendations for legislative reform and other initiatives, in the fall 2002.

Sentencing

Several Uniform Law Conference Resolutions have been reviewed in detail by the Federal-Provincial-Territorial Working Group on Sentencing including:

- Consideration of facts of a separate offence at sentencing (s. 725) submitted by Quebec in 2000;
- Recording of pre-sentence custody credits on the criminal record (ss. 719(3)) submitted by British Columbia in 1999;
- Suspension of orders of probation or conditional sentence pending appeal (s. 683) submitted by Quebec in 1999; and
- Delay in sentencing to accommodate Drug Treatment Courts (s. 720) submitted by British Columbia for consideration in 2002.

Corporate Criminal Liability

The issue of corporate criminal liability was referred to the Standing Committee on Justice and Human Rights (SCJHR). The SCJHR heard from thirty witnesses including representatives of organized labour, organizations representing victims of industrial accidents, academics, the RCMP and the bar. It did not hear from representatives of industry despite invitations to appear.

The SCJHR made no recommendations regarding the possible content of the legislation, however it recommended that "the government table in

the house legislation to deal with the criminal liability of corporations, officers, and directors.”

The Government will table a detailed response to the report in the fall of 2002.

Voyeurism

At the last Federal/Provincial/Territorial meeting of Ministers Responsible for Justice held in Moncton, February 2002, Ministers agreed to hold public consultations on a proposed voyeurism scheme that will create two distinct offences to address voyeurism issues:

- An offence of criminal voyeurism;
- An offence of distribution of visual representations obtained through voyeurism.

Department of Justice officials have prepared a Consultation Document and a Consultation Document Summary, which incorporates the proposed options discussed by Ministers Responsible for Justice at their last F/P/T meeting, for public consultation with stakeholders and the general public. The documents will be posted on the Justice website. It is anticipated that public consultations will be held over the course of the summer with a view of developing a legislative scheme before the end of the year.

The Options paper and Appendix on voyeurism prepared by the Department of Justice for participants at the U.L.C. in August, 2001, should be released publicly at the end of the consultation process to complete the public record about policy development on the issue of voyeurism.

DNA

In 2001 the Criminal Section of the ULCC had identified a number of issues relating to the scope and operation of Canada's DNA Data Bank legislation may require remedial legislative action. It had called on the Federal Government, in consultation with the provinces and territories and with other interested stakeholders, to consider amendments to the *Criminal Code* to address them. On July 30, 2002, the Minister of Justice and Attorney General of Canada, the Honourable Martin Cauchon, announced

that the Department of Justice Canada will hold consultations concerning this legislation. Submissions should be received by November 1, 2002.

Relevant International commitments/Instruments

From a substantive point of view, Canada is actively pursuing many international criminal justice initiatives, having regard to the importance of protecting persons from serious and violent crime and addressing the needs of victims, adapting to the implications of technological change on transnational crime, promoting respect for human rights and participating in various technical cooperation activities. These initiatives include:

1. G8 Activities

Canada has the Presidency for the G8 for 2002. The fourth meeting of G8 Ministers of Justice and Interior was held in Mont Tremblant, Quebec, May 13-14, of which the principle agenda topic was counter-terrorism, issues related to transnational organized crime and child pornography.

2. Financial Action Task Force on Money Laundering

In response to mounting concern over money laundering, the Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Summit that was held in Paris in 1989. Recognizing the threat posed to the banking system and to financial institutions, the G-7 Heads of State or Government and President of the European Commission convened the Task Force from the G-7 member States, the European Commission, and eight other countries. The FATF's purpose is the development and promotion of policies, both at national and international levels, to combat money laundering. The Task Force is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms to combat money laundering. At an extraordinary Plenary on the Financing of Terrorism held in Washington, D.C. on 29 and 30 October 2001, the FATF expanded its mission beyond money laundering. It will now also focus its energy and expertise on the world-wide effort to combat terrorist financing.

3. United Nations Convention on Corruption

Negotiations of a comprehensive United Nations Convention against Corruption are under way in Vienna. The Ad Hoc committee for the Negotiation of a Convention against Corruption has held two sessions in 2002 (21 January – 1 February, and 17-28 June). A further four sessions of the Ad hoc Committee are planned before the Convention is to go to the United Nations General Assembly for approval next year. In April 2002, the United Nations Commission on Crime Prevention and Criminal Justice accepted the offer by the Government of Mexico to host a High-level Political Conference for the purpose of having States sign the Convention.

4. OAS – Ministers of Justice Meeting in Tobago

Minister Martin Cauchon attended the fourth meeting of Ministers of Justice and Attorneys General of the Americas, March 10-13 in Port of Spain in Trinidad and Tobago. The meeting focused on justice cooperation in the areas of anti-terrorism and transnational organized crime.

He took the opportunity during the meeting to emphasize to its counterparts the importance of having efficient and appropriate legislation, while maintaining fundamental rights. He promoted the establishment of an electronic network for the sharing of information in relation to mutual assistance in criminal matters within the Organization of American States members and urged action by these same countries on cooperation in criminal justice. He was particularly pleased that the resolution received unanimous support as well as direct support in a speech by United States Attorney General John Ashcroft. Lastly, OAS Secretary-General Cesar Gaviria and him delivered a message of support and commitment on mutual legal assistance and invited experts in this area from all member-States to participate in this MLA network, committing also Justice Canada to continue to coordinate the project and to host a meeting in Canada before the next meeting of the Minister of Justice and Attorneys General of the Americas in order to evaluate and find common grounds to improve legal cooperation in criminal matters in the hemisphere.

5. Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption

The Committee of Experts of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption has met two times in 2002. It has decided which provisions of the Convention should be studied during the first round of reviewing the implementation of the Convention by States Parties and has finalized a questionnaire and a methodology for use during the first round of review. The States Parties to the Follow-Up Mechanism, including Canada, are required to respond to the questionnaire no later than by August 31, 2002.

6. United Nations (UN) Commission on Crime Prevention and Criminal Justice

The main theme of the session was criminal justice reform, with a particular emphasis on juvenile justice, police and court reform and international cooperation in those fields. Canada will sponsored two resolutions: one dealing with crime prevention and the other addressing restorative justice. Because of the events of September 11 and the role of the United Nations Terrorism Prevention Branch (which is part of the Secretariat servicing the Crime Commission) in relation to terrorism, the agenda was also modified to allow the Commission to address the issue of terrorism.

The main objectives of the Canadian delegation to the 11th session of the United Nations Commission on Crime Prevention and Criminal Justice (April 2002) were achieved:

- The Canadian-sponsored resolution on “Basic principles on the use of restorative justice programmes in criminal matters” was adopted with twenty-one other co-sponsors;
- The Canadian-sponsored resolution on “Action to promote effective crime prevention” was adopted with other co-sponsors;
- A balance was maintained between the crime control priorities of the Commission and the crime prevention/social development priorities.

Canada will not be a member of the Crime Commission next year and is running in the 2003 elections in the Economic and Social Council

(ECOSOC) for the 2004-2006 term. According to new rules, it appears as though not being a member of the Commission does not prevent a Member State from introducing resolutions.

7. Commonwealth Initiative on Model Terrorism Law

The Commonwealth has issued a statement calling on member States to fully respond to the United Nations Security Council Resolution 1373 on terrorism (September 28, 2001), as well as comply with all United Nations anti-terrorism Conventions. An Ad Hoc Committee of Ministers on Terrorism has been formed with a view to developing model anti-terrorism legislation and related administrative measures. Justice Canada officials participated in meetings in January 2002, to develop a model act. The Ad Hoc Committee of Ministers met in London on January 29 to consider a report from officials. A draft model anti-terrorism act is being prepared for eventual discussion by Commonwealth Law Ministers. Canada, the United Kingdom, New Zealand, Australia and several other countries already have anti-terrorism acts in place and it is expected that consensus can be reached on core elements of a model law for adaptation and implementation by all member countries. This initiative is an important step in supporting consistent approaches and maximum co-operation across the Commonwealth.

8. Commonwealth Model Cyber-Crime Law

Within the next two months, Canada will be hosting a meeting of cyber-crime experts from the Commonwealth in order to review a draft model law on electronic commerce and computer crimes. Once approved, the model law will be submitted to Commonwealth Law Ministers for their approval.

9. Council of Europe Convention on Cybercrime and related Protocols

The Council of Europe *Convention on Cyber-Crime* is an international treaty to provide signatory states with legal tools to help in the investigation and prosecution of computer crime, including Internet-based crime and crime involving electronic evidence. As a permanent observer to the Council of Europe, Canada was invited to participate in the negotiation of

the *Convention*. As of June 2002, 33 countries had signed the *Convention*, including Canada and most of its G8 partners.

The *Convention* calls for the criminalization of certain offences relating to computers, the adoption of procedural powers in order to investigate and prosecute cyber-crime, and the promotion of international co-operation through mutual legal assistance and extradition in a criminal realm that knows no borders. The *Convention* will help Canada and its partners fight crimes committed against the integrity, availability and confidentiality of computer systems and telecommunications networks or those criminal activities such as on-line fraud or the distribution of child pornography over the Internet that use such networks to commit traditional offences. Most of the required offences and procedures already exist in Canada.

10. European Union Activities

Canada and the EU have signed annual transatlantic action plans indicating areas for mutual cooperation during the year. Likely areas for attention in 2002 will include the possibility of a Canada-EU mutual legal assistance agreement, exchange of information in developing counter-terrorism measures, and furthering new policy initiatives to address computer related crimes.

11. OAS Inter-American Convention against Terrorism

The treaty commits nations from across the Americas to share intelligence, freeze assets of terrorist organizations and co-operate in prosecuting suspects. The Inter-American Convention against Terrorism was adopted at the OAS General Assembly which was held in Barbados from June 2 to 4, 2002. Canada participated in the negotiations of the Convention and supported the consensus among member-states in favour of its adoption.

12. United Nations International Convention for the Suppression of the Financing of Terrorism

The United Nations *International Convention for the Suppression of the Financing of Terrorism* aims to curb terrorist acts by cutting off terrorists' sources of funding through the creation of new offences under

international law. The measures contained in Bill C-36 fulfil Canada's obligations under this *Convention*. Canada ratified the *Convention* in February, 2002.

Annex 2

RESOLUTIONS

ALBERTA

Appeal Process ITEM 1

That the *Criminal Code* be amended to ensure a comprehensive and efficient appeal process in situations where a trial court has found the accused guilty of an offence but thereafter judicially stayed the proceedings as an abuse of process or as a *Charter*, section 24(1) remedy.

(Carried: 13-1-5)

ITEM 2 Appeals of Cost Orders, Summary Conviction Proceedings

At the present time there does not appear to be an appeal route for cost awards in relation to summary conviction offences. The Supreme Court of Canada ruling in 9746490 Ontario Inc, provides authority for provincial court judges to award costs for *Charter* violations on summary conviction matters. An amendment to the *Criminal Code* is required similar to the provision relating to indictable matters enacted as section 676.1

(Carried: 16-0-3)

ITEM 3 Mens Rea – Attempted Murder

That the *Criminal Code* be amended to add a section or amend an existing section to expressly provide that an accused is guilty of attempted murder where the Crown has proven beyond a reasonable doubt that the accused meant to cause the victim bodily harm that he knew was likely to cause the victim's death, and was reckless whether death ensued or not.

(Carried: 17-2-1)

BRITISH COLUMBIA ITEM 1 Delay of Sentencing for Treatment Programs

(Amended)

Part 1

It is recommended that section 720 of the *Criminal Code* be amended or a new subsection added to permit a court to adjourn the sentencing of an offender to permit the offender to participate in a treatment program where the court is satisfied that the adjournment would not interfere with the proper administration of justice.

(Defeated 7-10-5)

Part 2

It is recommended that section 720 of the *Criminal Code* be amended or a new subsection added to permit a court to adjourn the sentencing of an offender to permit the offender to participate in a treatment program where the court is satisfied that the adjournment would not interfere with the proper administration of justice and where a treatment program is authorized by an Order-in-Council or a consistent process (ie. authorized by the government).

(Carried 8-5-9)

Part 3

It is recommended that section 720 of the Criminal Code be amended or a new subsection added to permit a court to adjourn the sentencing of an offender to participate in a treatment program where the court is satisfied that the adjournment would not interfere with the proper administration of justice and where a treatment program is authorized by Order-in-Council or a consistent process and where there is consent of the Crown.

(Carried 16-5-1)

ITEM 2 Fees for Court Appointed Counsel

That a provision be added to the Criminal Code providing that in the absence of a direction by the court, fees and disbursements for court appointed counsel shall be determined in accordance with the Legal Aid tariff of the province.

(Withdrawn)

ITEM 3 Psychiatric Assessment on Parole Eligibility Hearings

That the Criminal Code be amended to permit a court to order a psychiatric or psychological

assessment to assist the court in determining eligibility for parole.

(Carried 13-7-7)

ITEM 4

Long Term Offender Sentence Commencement Date

That section 746 of the Criminal Code be amended to apply to the calculation of the period of imprisonment served for the purposes of long term offender designations under section 753.1.

(Carried 16-4-2)

ITEM 5

Reverse Onus on Bail Hearing – Breach of Long Term Supervision Order

That sub section 515 (6) be amended to include a provision for a reverse onus on any bail application alleging breach of a long term offender supervision order.

(Carried 14-6-2)

MANITOBA ITEM 1 Prohibited Weapons – Mace & Mace Like Weapons

That the *Criminal Code* be amended to add maces and mace like weapons to the list of prohibited weapons (in Part 3).

(Carried 15-0-7)

ITEM 2 Harmonizing Penalties for Driving Offences – Death or Bodily Harm

That the federal government undertake a review of the various driving offences with a view to harmonizing the penalties that apply when death or bodily harm result.

(Carried 15-0-7)

ITEM 3 Court Appointed Counsel

That the *Criminal Code* be amended to provide that in appropriate circumstances, the court should have authority to appoint counsel to conduct the cross examination of any witness in any case where the accused is self represented.

(Amended)

(Carried 21-0-2)

ITEM 4 Publication Ban – Appeal

That the Department of Justice consider whether and how the *Criminal Code* should be amended to provide for an appeal of a publication ban.

(Carried 21-0-2)

NOVA SCOTIA ITEM 1 Prohibition Orders

That subsection 161 (1) of the *Criminal Code* be amended so that it will apply to offences committed under subsection 173 (2).

(Amended)

(Carried 17-3-4)

ITEM 2 Publication Bans on Proceedings for Breach of a Publication Ban

That paragraph 486(3)(a)(i) of the *Criminal Code* be amended to include an offence under subsection 486(5).

(Carried 8-3-13)

ONTARIO ITEM 1 Pardons – Impaired Driving / Over 80

That the *Criminal Records Act*, subsection 7.2(a)(ii) be amended so the exemption currently provided for drinking and driving offences does not apply where the pardon is for a drinking and driving offence.

(Amended)

(Carried 20-0-4)

ITEM 2 Adding / Replacing Charges

That subsection 523(1.1) of the *Criminal Code* be amended to allow the section to apply to situations where another offence is laid as replacement

or supplement to the original charge as long as it arises from the same transaction as the original charge.

(Amended)

(Carried 20-0-4)

ITEM 3 Break and Enter – Testimonial Assistance

That subsections 486(2.1) and (3) of the *Criminal Code* be amended to include reference to section 348 (break and enter) where the intent is to commit one of the offences listed in the subsection (ie. 486(2.1), (3), or where one of the offences listed in the subsection has been committed.

(Carried 12-3-9)

ITEM 4 Testimonial Aids for Victims and Witnesses

That the Department of Justice undertake a review of the protections provided in subsection 486(2.1) and section 715.1 in order to determine whether other offences or situations

should be included and to amend these sections on a priority basis in accordance with the results of this review.

(Amended)

(Carried 17-0-4)

ITEM 5 Prohibition Order to Protect Children

That the *Criminal Code* be amended to add a reference to subsection 173(2) to the list of offences included in section 161 so that the order is available where a person is convicted under subsection 173(2).

Withdrawn due to passage of Nova Scotia # 1 on the same issue.

ITEM 6 Appeal Routes For Order to Return Seized Property

That the *Criminal Code* be amended to clarify the appeal route set out in subsection 490(17) so that an appeal from a superior court order does not go before a summary conviction appeal court (i.e. a superior court).

(Carried 23-0-0)

ITEM 7 Psychiatric Report – DO, LTO

That subsection 752.1(2) of the *Criminal Code* be amended to lengthen the period of time for which the assessment report can be filed with the court to 30 days, or as soon thereafter as practicable during any period that the court, upon application, allows.

(Carried 23-0-0)

ITEM 8 Abandoning A Child

That the *Criminal Code* be amended to clarify that the offence in section 218 does not require the prosecution to establish that the accused intended to endanger the life or health of the child being exposed or abandoned.

(Withdrawn)

ONTARIO CRIMINAL LAWYERS ASSOCIATION ITEM 1 Presentence Custody – Commencement of Sentence

That the issue of commencement of sentences and the issue of pre trial custody be referred to the FPT Working Group on sentencing for review and to report back to ULC in 2003.

(Amended)

(Carried 17-0-5)

QUEBEC ITEM 1 Omnibus Bill to Give Effect to the Proposals Adopted at ULC

That the Steering Committee of the Criminal Section of the ULC be mandated to bring forward suggestions to follow up expeditiously on resolutions passed and that the Committee report back to the Criminal Section in 2003.

(Amended)

(Carried 16-0-3)

ITEM 2 Obtaining an Endorsement or a Warrant

That sections 487 and 487.03 of the *Criminal Code* be amended, based on the model in section 528 of the *Criminal Code*, to provide for the procedure for obtaining the endorsement and the use of or means of telecommunication that produces a writing.

(Carried 21-0-3)

ITEM 3 Period of Detention of Things Seized

That section 490 of the *Criminal Code* be amended to allow the ex parte application for the extension of the period for the detention of things seized and allow the sealing of information given for that purpose when acting otherwise would be harmful to the administration of justice.

If the judge is not convinced that the conditions of section 487.03 have been met he will order the appellant to give three days notice as set out in section 490(2). If the application is allowed in an application hearing, an order clarifying the access to, and disclosure of, any information relating to the application under section 487.3 will be made.

(Carried 16-0-6)

ITEM 4 Being Unlawfully in a Dwelling House

That sections 348 and 349 of the *Criminal Code* be amended to also penalize the unlawful entry into a dwelling house where the person is reckless as to whether their presence would cause the occupants to reasonably fear for their safety.

(Withdrawn after discussion)

SASKATCHEWAN ITEM 1 Prohibition Orders

That section 161 of the *Criminal Code* be amended to allow an order under that section to be made in the event of a conviction under subsection 173(2).

Withdrawn because of passage of Nova Scotia #1 on the same issue **ITEM 2 Release on Bail with Consent**

(Note this is a resolution of the CAPCJ)

A. That the *Criminal Code* be amended to provide for release of a detained person upon an Undertaking or Recognizance entered into before a clerk of the court or registrar of the court without a judicial interim release hearing, where the Crown prosecutor and counsel for the accused have endorsed a form confirming their agreement that the accused be released and as to any terms of such release. The Undertaking or Recognizance

thereby entered into should be enforced in the same manner as are Undertakings and Recognizance's presently provided to police officers and justices under sections 503, 499 and 515.

B. That the above noted resolution be referred to the FPT Working Group on Criminal Procedure.

(Carried 14-1-9)

ITEM 3 Elimination of Value of Loss as Element of All Property Offences

That sections 334, 355, 362, 380 and 430 of the *Criminal Code* be amended to eliminate the value of loss as an essential element of the offence to be proven, and to make those offences Crown option offences with the maximum imprisonment period of 18 months on a summary conviction proceeding.

(Carried 15-7-2)

ITEM 4 Terminology re "Videotape"

That sections 715.1 and 715.2 of the *Criminal Code* be amended to substitute "video record" for the word "videotape" or that other appropriate wording be employed.

(Carried 23-0-0)

CANADA Canadian Council of Criminal Defence Lawyers ITEM 1 Victim Impact Statements - Removal of Inappropriate Material

That section 722.1 of the *Criminal Code* be amended to provide a mechanism which would allow a defendant/accused to apply to a judge, other than the trial judge, to remove inappropriate material from any victim impact statement which is to be considered by the court at the time of sentencing of the offender.

(Withdrawn after discussion)

ITEM 2 Appeal for Interlocutory Orders

That the ULC Criminal Section refer to the Department of Justice the issue of whether appropriate amendments should be made to the *Criminal Code* to allow for applications for leave to appeal to Provincial or

Territorial appellate courts from procedural or interlocutory decisions of a lower court, which are final in their effect.

(Amended)

(Carried 22-0-1)