

**UNIFORM LAW CONFERENCE OF CANADA**

**EDMONTON, ALBERTA  
AUGUST 20-24, 2006**

**CRIMINAL SECTION**

**(Annex 2 of the Minutes of the Criminal Section)**

**RESOLUTIONS**

**ALBERTA**

**Alberta – 01**

Section 680 (review by court of appeal) of the *Criminal Code* should be amended to incorporate the publication restriction scheme contained in section 517 (show cause – order not to publish for specified period). This would ensure consistency throughout the judicial interim release and review process. It would also ensure that section 680 was consistent with the approach taken in subsections 520(9), 521(10), 523(3), and 525(8).

**Carried: 24-0-2**

**Alberta – 02**

Where a conditional discharge or a suspended sentence has been imposed, the *Criminal Code* should be amended to permit the court to suspend the running of the probation order upon application by the Crown that the offender be sentenced for the index offence where it is in the interests of justice to do so. Provision should also be made for the offender to enter into an undertaking with or without conditions pending the hearing of the application.

**Carried as amended: 19-2-4**

**Alberta – 03**

The Federal/Provincial/Territorial working group on Identity Theft should examine what ancillary orders or declarations that might be made in conjunction with a criminal prosecution to assist a victim in this process.

**Carried: 25-0-1**

**Alberta – 04**

The issue of expanding long-term prohibitions or restrictions on Internet use (paragraph 161(1)(c) of the *Criminal Code*) should be referred to the Federal/Provincial/Territorial Cyber-Crime Working Group for detailed consideration.

**Carried: 25-0-1**

## **Alberta – 05**

That the *Criminal Code* sections dealing with appeal of summary conviction matters be amended so as to grant clear authority to the summary conviction appeal court to review decisions made by inferior courts regarding costs.

**Carried: 24-0-1**

## **Alberta – 06**

That the *Criminal Code* be amended as proposed in Bill C-23, *An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament (1<sup>st</sup> reading, June 22, 2006) to permit an appeal court judge to suspend a conditional sentence order and to require the person who was the subject of that order to enter into an undertaking, with or without conditions, pending the appeal.

**Carried as amended: 24-1-2**

## **BRITISH COLUMBIA**

### **British Columbia – 01**

That section 320 (warrant of seizure) of the *Criminal Code* be amended to ensure that it is consistent with the burden on the Crown in sections 320.1 (warrant of seizure – hate propaganda), 164 (warrant of seizure – child pornography, voyeuristic recording, etc.) and 164.1 (warrant of seizure – computer system) as being on a balance of probabilities.

**Carried: 24-0-1**

### **British Columbia – 02**

That section 423.1 (intimidation of a justice system participant) of the *Criminal Code* be amended in subsection (2) to address the public dissemination, on the internet and websites, of the identities, visual representations, addresses of home, business, school, or of any similar information, of justice system participants, journalists and/or their families when the intent is to provoke a state of fear.

**Carried: 26-1-0**

### **British Columbia – 03**

A- That the federal government in conjunction with its agencies, such as Industry Canada, consider legislation requiring the mandatory reporting by internet service providers of suspected child pornography to law enforcement when found in the ordinary course of providing that service.

**Carried as amended: 15-0-12**

B- That the Federal/Provincial/Territorial Working Group on Cyber-Crime examine the issue of federal regulatory legislation requiring the mandatory reporting to customers and law enforcement, of the loss or theft of, or unlawful access to, computerized customer databases by internet service

providers, financial institutions, internet commercial retailers or commercial firms providing the storage of such databases.

**Carried as amended: 15-0-5**

## **MANITOBA**

### **Manitoba – 01**

Section 184.1 (interception to prevent bodily harm) of the *Criminal Code* should be amended to allow for video monitoring in addition to the acoustic monitoring that is already included.

**Carried: 27-0-0**

### **Manitoba – 02**

That the provisions of the *Criminal Code* that impose mandatory and discretionary driving prohibitions for driving offences be reviewed and that amendments be made to provide a rational and consistent regime.

**Carried as amended: 20-0-1**

### **Manitoba – 03**

A- Section 270 (assaulting a peace officer) of the *Criminal Code* should be amended to increase the maximum sentence for an offence of Assault Peace Officer from five years to ten years incarceration for indictable proceedings and from six months to 18 months incarceration for summary proceedings.

**Carried: 17-0-9**

B- That the sections in the *Criminal Code* that relate to assaults against peace officers and justice system participants be referred to the appropriate federal/provincial/territorial working group for detailed review and consideration.

**Carried: 16-0-5**

## **NEW BRUNSWICK**

### **New Brunswick – 01**

Subsection 490.8(9) (offence - breaching restraint order) of the *Criminal Code* and subsection 14(10) (offence – breaching restraint order) of the *Controlled Drugs and Substances Act* should be amended so that the French version and the English version are the same, specifically that the words “*ou fait défaut de s’y conformer*” be added to the French version.

**Carried: 25-0-0**

## **New Brunswick – 02**

That section 487.092 (impression warrant) of the *Criminal Code* be amended to provide that the court may, with appropriate safeguards for the accused, draw an inference adverse to the accused from evidence that the accused refused to acquiesce and passively permit an impression to be obtained under the authority of a section 487.092 warrant.

**Withdrawn  
(Following discussion)**

## **NOVA SCOTIA**

### **Nova Scotia – 01**

A- Amend paragraph 172.1(2)(b) (luring – penalty on summary conviction) of the *Criminal Code* to provide for a maximum sentence of eighteen months for a summary offence.

**Carried: 21-0-0**

B- In order to provide consistency with the intent of Bill C-2, *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, S.C. 2005, c. 32, it is recommended that section 172.1 of the *Criminal Code* be amended to provide that conditional sentences are not available for the offence of luring unless the purpose of the luring is for an offence for which a conditional sentence can be imposed.

**Defeated as amended: 3-4-15**

### **Nova Scotia – 02**

Amend subsection 491(1) (forfeiture of weapons and ammunition) of the *Criminal Code* to provide that where the offence is one under section 86 (careless use of a firearm, etc.) that forfeiture of the seized firearm is discretionary as opposed to automatic.

**Carried: 23-1-3**

### **Nova Scotia – 03**

That the Federal/Provincial/Territorial Coordinating Committee of Senior Officials - Youth Justice specifically address the inadequacies in sections 39 and 29 of the *Youth Criminal Justice Act* in relation to the sentencing and pre-trial custody provisions for young persons who commit an offence in circumstances that pose a significant danger to the public or a member thereof.

**Carried as amended: 22-0-0**

## **ONTARIO**

### **Ontario – 01**

That an offence be created to publish, distribute, circulate, sell, advertise or make available, for a malicious or sexual purpose, without the consent of the person depicted, a visual recording of a person who is nude, exposing his or her genital organs, anal region, or breasts or is engaging in explicit sexual activity in circumstances that give rise to a reasonable expectation of privacy.

**Carried as amended: 10-5-12**

### **Ontario – 02**

Extend the kinds of harm giving rise to the obligation in section 252 (failure to stop at scene of accident) of the *Criminal Code* to include buildings and other structures where there has been damage.

**Carried: 22-0-5**

### **Ontario – 03**

Transform subsection 351(2) (disguise with intent) of the *Criminal Code* into a dual procedure offence.

**Carried: 20-0-6**

### **Ontario – 04**

That subsection 34(2) (defence – extent of justification) of the *Criminal Code* be amended to insert the words “without having provoked the assault” in the subsection at the appropriate place (that is, after the words “unlawfully assaulted” and before the words “and who causes death”).

**Carried: 20-0-7**

## **Ontario Criminal Lawyers’ Association**

### **On-OCLA – 01**

That the Federal/Provincial/Territorial Working Group on Impaired Driving consider whether subsection 254(3) (samples – breath or blood – reasonable belief of commission) of the *Criminal Code* should be amended to provide that the failure or refusal to comply with a demand under subsection 254(2) (testing for presence of alcohol in the blood – approved screening device) shall either:

- give a peace officer reasonable grounds to believe that an offence under section 253 (operation while impaired) has been committed; or
- shall empower a peace officer to make a demand under subsection 254(3); and

whether subsection 254(5) (failure or refusal to provide sample) should be amended to specify that only the refusal or failure to comply with a demand under subsection 254(3) is an offence.

**Carried as amended: 23-0-0  
(Floor resolution)**

## **QUEBEC**

### **Quebec – 01**

That, in accordance with resolution Quebec-01 passed by the Section in 2004, the *Criminal Code* be amended to make it possible, unless otherwise provided, to obtain by telewarrant any warrant or judicial authorization obtained *ex parte*.

**Carried as amended: 21-0-0**

## **SASKATCHEWAN**

### **Saskatchewan – 01**

Amend section 183 (interception of private communication) of the *Criminal Code* to include section 220 (criminal negligence causing death) and section 221 (criminal negligence causing bodily harm) in the definition of “offence”.

**Carried: 23-1-3**

### **Saskatchewan – 02**

Amend the *Prohibited Weapons Order*, S.O.R. /74-297, PC 1974-1051 so that the opening words of the order reads as follows:

“Any device designed to be used or intended to be used for the purpose of injuring, immobilizing or otherwise incapacitating any person....”

**Withdrawn  
(Without discussion)**

### **Saskatchewan – 03**

Amend section 137 (failure to comply with sentence or disposition) of the *Youth Criminal Justice Act* to make it an offence that can be prosecuted by indictment or by summary conviction.

**Carried: 12-3-11**

## **Saskatchewan – 04**

Amend section 231 of the *Criminal Code* to provide that the murder of a person who is a lawful occupant of a dwelling-house during the commission of a home invasion is first degree murder.

**Carried as amended: 21-0-5**

## **CANADA**

### **Canadian Bar Association**

#### **Can-CBA – 01**

That the ULCC Criminal Section recognize the importance of the need to study the issue of access to justice including the possibility of providing a statutory power allowing trial judges to assign counsel to persons charged with criminal offences and that it continue to be a priority in studies of legal aid issues being conducted by the appropriate federal/provincial/territorial working group.

**Carried as amended: 17-3-5**

### **Canadian Council of Criminal Defence Lawyers**

#### **Can-CCCDL – 01**

That the Department of Justice be asked to review subsection 261(1) (stay of driving prohibition order pending appeal) of the *Criminal Code* with a view to making changes to the *Criminal Code* to permit individuals to apply for the restoration of their driver's license pending an application for leave to appeal or an appeal to the Supreme Court of Canada, to the Court of Appeal being appealed from, rather than directly to the Supreme Court itself.

**Carried as amended: 26-0-0**