

UNIFORM LAW CONFERENCE OF CANADA

QUEBEC CITY

AUGUST 10-14, 2008

CRIMINAL SECTION

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

RESOLUTIONS

ALBERTA

Alberta – 01

In appropriate circumstances restrictions or prohibitions on internet use are important elements in judicial interim release orders, probation and conditional sentence orders. The *Criminal Code* should be amended to provide explicit statutory authority to ensure compliance with these orders.

Carried: 16-6-8

Alberta – 02

The *Criminal Code* should be amended to authorize issuance of a warrant to obtain DNA or other bodily substances from an unconscious person who is reasonably believed to be the victim of a crime. Any such authorization must have due regard for a wide range of factors including the need to:

1. first obtain the consent of anyone who, by law, would otherwise be able to give consent on behalf of the unconscious person where that other person's interests in providing or withholding consent does not conflict with the interests of the unconscious person;
2. balance the privacy interests of the unconscious person with the interests of justice; and
3. restrict the nature of any such DNA or bodily substance to those believed to be from the perpetrator of the crime against the unconscious person.

Carried as amended: 14-5-9

Alberta – 03

Justice Canada should examine section 486.5, and other applicable sections of the *Criminal Code* to ensure that there are adequate mechanisms to protect the identity of undercover officers at all stages of an investigation and prosecution.

Carried as amended: 30-0-1

Alberta – 04

To ensure that provincial offence notices are properly served on accused persons in other jurisdictions, the Civil and Criminal sections of the Uniform Law Conference of Canada should jointly examine the issue to develop a consistent statutory approach for consideration by all jurisdictions.

Carried: 30-0-0

BRITISH COLUMBIA

British Columbia – 01

That the definition of “Brass Knuckles” in the prohibited weapons regulations be amended to include items that do not contain metal such as “Lexan knuckles”.

Carried: 29-0-1

British Columbia – 02

That the requirement to swear an information “as soon as practicable” where police release an accused on an appearance notice under s. 496 of the *Criminal Code* or with conditions under s. 497 or 498 be eliminated while retaining the requirement that the charge be laid before the return date in the release document.

Defeated: 7-13-10

British Columbia – 03

Amend section 489.1 of the *Criminal Code* so that the requirement to report, or bring, to a justice in accordance with section 490 any items seized, would only apply where the items are seized from the lawful owner, or from a person lawfully entitled to possession, or where it is reasonable to expect that a person would otherwise claim to be a lawful owner or to be lawfully entitled to possession pursuant to subsection 490(10).

Defeated as amended: 13-14-1

British Columbia – 04

That Justice Canada examine section 184.4 of the *Criminal Code* in light of constitutional and other concerns raised by recent case law and propose amendments, or other options, to maintain the ability of peace officers to respond to exceptional circumstances where an interception is immediately necessary to prevent an unlawful act that would cause serious harm to any person or property.

Carried as amended: 26-0-2

MANITOBA

Manitoba – 01

That Justice Canada immediately examine, with such consultation as necessary with the Provinces and Territories, and stakeholders, a full range of options for preventing, penalizing or otherwise addressing the use of encryption for criminal purposes and, specifically, to facilitate access to encrypted material seized pursuant to a legal search, search warrant or other legal authorization.

Carried as amended: 27-0-1

NEW BRUNSWICK

New Brunswick – 01

That paragraph 253(a) of the *Criminal Code* be amended to remove the words “by alcohol or drugs”.

**Withdrawn
(Following discussion)**

New Brunswick – 02

Amend section 120 (bribery of officers) of the *Criminal Code* to broaden its scope and include receiving any consideration.

Defeated: 1-23-3

New Brunswick – 03

That Justice Canada review the search and seizure provisions and ancillary orders with a view to consolidating related provisions, simplifying the application procedure, and reconciling the standard of proof required.

Carried as amended: 24-0-4

NOVA SCOTIA

Nova Scotia – 01

That Justice Canada review and assess the adequacy of the existing provisions of the *Criminal Code* relating to restitution for costs incurred by the victim of a crime as a result of the offence and make any recommendations for amendments to the *Criminal Code* necessary to address any identified inadequacies.

Carried as amended: 27-0-0

ONTARIO

Ontario – 01

Amend section 264 of the *Criminal Code* (criminal harassment) to increase the maximum penalty on summary conviction to 18 months.

Carried: 26-1-1

Ontario – 02

Amend Part XVI of the *Criminal Code* to explicitly authorize a justice who makes a judicial interim release order, to order, pending the actual release of the accused, and separate from the undertaking or recognizance, that the accused abstain from communication with any victim, witness, or other person.

Carried as amended: 25-0-2

Ontario – 03

Amend section 846 of the *Criminal Code* to provide that a statement by a peace officer that all matters contained in the document in question are true is deemed to be a statement under oath.

**Withdrawn
(Without discussion)**

Ontario – 04

That the *Criminal Code*, or in the alternative the *Canada Evidence Act*, be amended to include a provision which deems that where a document has been included in the disclosure material provided to the accused, counsel for the accused or agent on behalf of the accused or counsel for the accused, it is deemed that :

1. The document has been served on the accused person and,
2. Notice of an intention to introduce the document into evidence has been served on the accused person.

**Carried: 16-6-8
(Delegation vote)**

Ontario – 05

That the *Criminal Code* be amended to include an offence of possession of kidnapping instruments.

**Withdrawn
(Due to the passage of Saskatchewan
resolution number 01 on the same topic)**

Ontario – 06

It is recommended that section 553 of *Criminal Code* which contains the list of absolute jurisdiction offences be amended to include subsection 145(2) (failure to attend/appear in court).

Defeated: 5-22-3

QUEBEC

Quebec – 01

Amend section 117.11 (onus on accused – weapon authorization) of the *Criminal Code* in order to add to it the offences covered in sections 94, 99, 100 and 103 of the *Criminal Code*, a similar resolution having been adopted in 2005 for sections 92 and 95.

Carried as amended: 26-0-0

Quebec – 02

That the Federal Department of Justice examine the general warrant and the production order regime in order to permit that, in relation to an offence that has been committed or will be committed, a peace officer may have access not only to documents and data already in existence but also to those that are reasonably foreseeable.

Carried as amended: 17-4-5

Quebec – 03

That the Federal Department of Justice request that the Federal/Provincial/Territorial Working Groups on Sentencing and Mental Disorder, which are charged with following up on resolution number Can-CBA2003-02, continue to consider the concern of being unfit and not criminally responsible at any stage of the criminal proceedings and that the Department of Justice report to the Conference in 2009.

Carried as amended: 28-0-0

Quebec – 04

That the mandate be given to a working group of the Criminal Section of the Uniform Law Conference of Canada to consider the matter of the taking into account of time spent in pre-sentence custody (subsection 719(3) of the *Criminal Code*) when imposing sentence and the availability of certain sentencing measures such as probation orders, conditional sentences, delay of parole and long-term offenders, and that the working group report to the Conference in 2009.

Carried as amended: 28-0-0

Quebec – 05

To include extortion (section 346 of the *Criminal Code*) in the list of offences found in Schedule I to the *Corrections and Conditional Release Act* (S.C. 1992, c. 20).

Carried: 27-0-3

SASKATCHEWAN

Saskatchewan – 01

That the *Criminal Code* be amended to create a new offence prohibiting possession of items suitable for facilitating the commission of sexual assault in its various forms, kidnapping, abduction or hostage-taking, without lawful excuse, in circumstances that

give rise to a reasonable inference that they had been used or were intended to be used to facilitate the commission of one or more of those offences.

Carried: 14-9-9

Saskatchewan – 02

Saskatchewan proposes that s. 734.7 be amended to provide that a default warrant may issue in any jurisdiction that has a “fine option” program as defined in s. 736 on proof:

- the fine has not been paid in full; and
- the offender has failed to perform work in lieu of payment under the fine option program.

Carried: 14-3-14

CANADA

Canadian Bar Association

CBA – 01

Amend paragraph 229(c) (murder) of the *Criminal Code* to delete the words “or ought to have known”.

Carried: 29-0-0

CBA – 02

Amend subsection 548(1) (order to stand trial or discharge) of the *Criminal Code* to allow a reviewing court or justice to commit an accused to stand for trial in cases where jurisdictional error has been found.

**Withdrawn
(Following discussion)**

CBA – 03

Amend paragraph 42(7)(d) of the *Youth Criminal Justice Act* to delete the words “and that the young person’s participation in the program is appropriate”.

Defeated: 4-12-11

Canadian Council of Criminal Defence Lawyers

CCCDL – 01

Be it resolved that s. 258(1)(c)(i) of the *Criminal Code* be proclaimed into full force and effect on or before November 3, 2008.

Be it resolved that 258(1)(g)(iii)(A) of the *Criminal Code* be proclaimed into full force and effect on or before November 3, 2008.

**Withdrawn
(Following discussion)**

CCCDL – 02

Be it resolved that appropriate changes be made to the *Criminal Code* to permit an accused who has elected or is deemed to have elected a mode of trial other than trial by provincial court judge to make a re-election as of right at any time before the completion of the preliminary inquiry or before the 60th day following the completion of the preliminary inquiry.

Carried as amended: 25-0-2

CCCDL – 03

1- That the *National Defence Act* be amended to provide the Director of Defence Counsel Services with security of tenure equivalent to that granted to the Director of Military Prosecutions as set out in section 165.1 of the *National Defence Act*, and,

2- That the *National Defence Act* be amended to require that the salary of the Director of Defence Counsel Services be prescribed by regulation, and that the method of determining remuneration be clearly specified.

**Withdrawn
(Without discussion)**

CCCDL – 04

Concerning the composition of the Appeals committee and related matters, that the Minister of National Defence amend the *National Defence Act* in accordance with Recommendations 26-30 as found in the Report to the Minister by the Right Honourable Antonio Lamer P.C., C.C., C.D.

**Withdrawn
(Without discussion)**

Public Prosecution Service of Canada

PPSC – 01

Make all warrants and warrant-like orders valid and enforceable throughout Canada without the need for endorsement by a local justice.

Carried: 21-2-7

PPSC – 02

Reconcile the differences in sections of the federal laws where one linguistic version says “convicted” or “found guilty” (respectively) and the other linguistic version says the reverse.

Carried as amended: 28-0-0

PPSC – 03

Add to section 734.3 a subsection requiring that the Attorney General be given at least seven days’ notice of an application to vary a fine order.

Add a further subsection requiring that an extension of time to pay a fine should not be granted unless the Court is satisfied that such an extension is justified based on (a) the history of the applicant’s prior attempts to discharge the fine and their degree of success, and (b) the reasonableness of the expectation that the extension is likely to result in a substantial part or all of the fine being paid, including where available, by participation in a fine-option program under s. 736.

**Withdrawn
(Following discussion)**

PPSC – 04

Amend the warrant of committal proceedings in section 734.7 of the *Criminal Code* to specify evidentiary procedures, including the burden of proof, and the ability of the hearing to proceed *in absentia*.

Carried as amended: 22-0-6