UNIFORM LAW CONFERENCE OF CANADA

OTTAWA, ONTARIO
AUGUST 9 - 13, 2009

CRIMINAL SECTION

MINUTES

ATTENDANCE

Thirty-six delegates of all provinces and territories except British Columbia, Northwest Territories, Nunavut and Prince Edward Island, and delegates of the federal government participated in the deliberations of the Criminal Section. Delegates included policy counsel, prosecutors, defence counsel and members of the judiciary.

OPENING

Marvin Bloos presided as Chair of the Criminal Section. Stéphanie O'Connor acted as Secretary. The Section convened to order on Sunday, August 9, 2009.

The Heads of each delegation introduced their delegation.

PROCEEDINGS

Report of the Senior Federal Delegate (Attached as Annex 1)

The Report of the Senior Federal Delegate was tabled and presented by Catherine Kane, Acting Senior General Counsel, Criminal Law Policy Section, Department of Justice Canada.

Resolutions (Attached as Annex 2)

The order in which resolutions are considered is set out in the *Rules of Procedure* of the Criminal Section. In accordance with the *Rules*, Saskatchewan presented their resolution first followed by other jurisdictions in alphabetical order and then by resolutions from the Canada delegation.

Thirty-five (35) resolutions were initially presented by jurisdictions for consideration. As two of those resolutions initially presented were divided in several parts this resulted in three (3) additional resolutions. During the proceedings, one (1) floor resolution was presented and another was divided in two parts, which added two (2) more resolutions. Four (4) resolutions were withdrawn without discussion. As a result, a total of thirty-six (36) resolutions were considered by delegates. Of the thirty-six resolutions debated, thirty (30) were carried as submitted or amended, three (3) resolutions were defeated and three (3) were withdrawn following discussion.

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

Discussion on Confidentiality of Proceedings of the Criminal Section

The purpose of this discussion was to clarify the confidential nature of Criminal Section deliberations as well as the summary sheets which serve as the basis of the presentation of resolutions, and to determine whether there is a need to make changes to the ULCC Communications Policy. The Policy states that deliberations of the Criminal Section proceedings are confidential. It was noted that this encourages open and candid discussions among experts as well as contributes to the successful work of the Criminal Section. The Communications Policy also states that the summary sheets submitted by delegations remain confidential and that only the resolutions considered by the Criminal Section are not confidential. The Secretary noted that the resolutions voted on are published in the Minutes of Proceedings along with the corresponding vote as well as those that have been withdrawn following consideration by the Criminal Section.

Delegates agreed that the background information (summary sheets) should continue to be kept confidential for the same reasons as the deliberations. In this respect, one delegate noted that releasing the summary sheets would not provide an accurate reflection of the outcome of the resolution because the initial focus of the discussion often shifts to other issues during the discussions on the resolution, which may sometimes be amended.

Delegates also agreed that in preparation for the annual meeting, delegations should continue the practice of consulting government officials or members of professional associations on proposed resolutions on the undertaking that the summary sheets as well as resolutions not yet considered remain confidential.

Regarding discussion papers and working group reports of the Criminal Section, it was noted that most documents are published on the ULCC website following the annual meeting unless the Criminal Section determines otherwise. In the past recent years, it has been the practice to include in the Minutes of Proceedings a short summary of the views expressed following the presentation of the paper or report without attributing a specific comment to one expert or a delegation. This assists with follow-up action required as a result of views expressed during deliberations.

It was proposed that where a request is made for more information regarding a Criminal Section resolution, that the Chair of the Criminal Section of the ULCC be the official spokesperson for the ULCC. This would require a change to the current ULCC Communications Policy.

Papers

Four working group reports were considered by Criminal Section delegates at this year's Conference. The Working Group Report entitled *Taking into Account Pre-Sentence Custody and the Availability of Certain Sentencing Measures* was presented to Criminal Section delegates. In addition, the following three progress reports were presented during a joint session of the Criminal and Civil Sections: *Status Report of the Working Group on Collateral Use of Crown Brief Disclosure (2009), Report of the Joint Criminal/Civil Section Working Group on Malicious Prosecution (2009)* and *Interim Report of the Working Group on Interprovincial Service of Offence Notices.*

Criminal Section Paper

Report of the Criminal Section Working Group on Taking into Account Pre-Sentence Custody and the Availability of Certain Sentencing Measures

The report was presented by Randall Richmond, Directeur des poursuites criminelles et pénales (Québec). The report is the result of work undertaken following a 2008 ULCC resolution calling for the creation of a Criminal Section working group 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. The report identifies the following eight measures related to sentencing that are impacted by the giving of credit for pre-sentence custody: Minimum sentences, conditional sentences, probation orders, delayed parole, long-term offenders, the type of correctional facility, deportation, and parole eligibility for murder or high treason. The report contains a summary of relevant court decisions regarding the application of credit for pre-sentence custody in relation to these measures which showed that in the case of minimum sentences, conditional sentences and long-term offenders, the applicable criterion is the sentence determined before credit is given for pre-sentence custody. In cases of probation orders, delayed parole, the type of correctional facilities, deportation, and parole for murder the applicable criterion is the sentence determined after credit is given for pre-sentence custody. The report notes that the disparity produced in case law has led to criticism; in particular that the interpretation of the law should be consistent; should reflect the true intentions of Parliament; and that the application of pre-sentence custody for certain measures may create an incentive to delay procedures and accumulate pre-sentence custody as well as cause a shift in the financial burden of housing prisoners from the federal government to the provincial government. Three possible solutions listed below are considered in the report:

1- Defining a sentence as the amount of time for an appropriate penalty before any credit is given for pre-sentence custody;
2- Rewriting provisions that include a time threshold or ceiling where judicial interpretation does not correspond with Parliament's true intent; or
3- Amending s. 719 of the *Criminal Code* to provide that when the availability of a sentencing measure or a sentencing consequence is dependent on the length of the custodial portion of that sentence, the applicable criterion is the length of custody deemed appropriate before credit is granted for pre-sentence custody, except where a relevant enactment otherwise provides.

The report indicates that the third option best reflected the preference of the Working Group because it provided a clear rule; worked towards eliminating inconsistent applications of the same provision; and limited any derogations to cases where Parliament's intent was clearly expressed. The report concludes that Parliament's true objective should be applied and that legislative reform be proposed to reach this objective.

Discussion

Delegates thanked the members of the Working Group for a very organized approach to the issue, which will serve to assist the Department of Justice in any further examination on this issue.

Members of the Working Group noted that while there might be other measures that have not been examined in the report for which s. 719 could have an impact, the report contains the principal ones.

The presenter noted that Bill C-25, *An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody*) which was tabled in Parliament on March 27, 2009 now sets a cap on pre-sentence custody. The common credit since the decision in *R.*v. *Monière/R.* v. *Mathieu* ([2008] 1 S.C.R. 723, 2008 SCC 21) is double credit, which means that Bill C-25 would bring the current application of pre-sentence credit down to a 1 for 1 credit except for special cases where the Court would be required to justify a higher ratio. If Bill C-25 is adopted, it may impact on the way parole is being calculated.

One delegate expressed the view that the third option in the report could be open to interpretation particularly with respect to whether the availability of a sentencing measure or consequence is dependent on the length of the custodial portion of that sentence. In response, it was noted that the majority of the Working Group rejected the second option because it did not address the issue of inconsistency. The third option was favoured as it provided one rule to apply consistently for all the sentencing consequences. Another delegate expressed the view that even though there might sometimes be an important rationale for inconsistent application in sentencing, as matter of principle, a consistent approach to sentencing should be usually be pursued.

The Chair thanked the presenter for his excellent presentation and the work of the Working Group which included the contribution from many aspects including academic, defence, prosecution and policy. The Chair also noted that the report shows the high calibre of work produced by working groups and is a strong reflection of valuable work prepared by the Criminal Section. At the conclusion of the discussion, the following resolution was presented:

1- That the Working Group report on *Taking into Account Pre-sentence Custody and the Availability of Certain Sentencing Measures* be received with thanks in completion of the Working Group's mandate as set out in paragraph 1 of its report.

Carried: 29-0-0

The following resolution was also presented on the final day of the annual meeting:

2- The Criminal Section of the Uniform Law Conference of Canada recommends that Justice Canada, in accordance with the report of the Working Group on *Pre-sentence Custody and the Availability of Certain Sentencing Measures*, examine the issues raised to ensure that post-conviction consequences identified in the report and which are impacted by the length of the sentence not be circumvented by a sentence which has taken into account pre-sentence custody credit.

Carried: 27-0-1

Joint Session Papers

Status Report of the Working Group on the Collateral Use of Crown Brief Disclosure (2009)

The report was presented by:

Greg Steele, Q.C., Steele, Urquhart Payne, Barristers and Solicitors, Vancouver, BC
Nancy Irving, Senior Counsel, Office of the Director of Public Prosecutions, Public Prosecution Service of Canada and
Gail Mildren, Civil Legal Services, Manitoba Justice

The report provides an update on the work undertaken by the Working Group since the 2008 Conference. The report notes that drafting of model legislation has commenced but that further discussion and consultation is needed before presenting a final uniform Act for discussion. The purpose of the proposed model legislation is to codify principles set out in the Ontario Court of Appeal decision in *D.P*. v. *Wagg* (2004), 71 O.R. (3d) 229 to be applied by courts in addressing applications for the disclosure of prosecution records to be used in collateral proceedings. The draft scheme includes a judicial application process to determine whether access to prosecution records, in whole or in part, should be provided in those cases where the Attorney General or the police have refused access. The proposed framework also provides that the Court will apply the codified test set out in *D.P*. v. *Wagg* in deciding whether to grant production of such records by considering all relevant factors such as privacy interests, the stage at which the collateral proceedings are and availability of the information from another source. In addition, the draft framework includes a rebuttable presumption to be applied in collateral proceedings in favour of the court not allowing disclosure of prosecution records to a third party where there is an on-going investigation or prosecution. Restrictions on the scope of the proposed legislation are contemplated to ensure that the model act does not have the unintended effect of overriding or negatively impacting other legal principles related to the disclosure and use of prosecution records such as where documents are subject to privilege or prohibited from disclosure by law. The report notes that further work will need to be undertaken on the model legislation such as its impact on undertakings given by defence counsel to the Crown regarding disclosure and use of prosecution records; how the scheme would be aligned with freedom of information and privacy legislation; and whether the process should apply in child protection proceedings.

Discussion:

During the discussion, presenters indicated that the process created by the uniform Act was not intended to impede existing consensual sharing of information processes and would apply only when the informal process is malfunctioning. Presenters noted that the Working Group was of the view that the scheme would be better developed as a stand-alone Act or provisions that can be incorporated by jurisdictions to existing statutes rather than amending various court rules, which would be a difficult exercise.

Presenters sought the views of delegates regarding the insertion of a purposive clause in the scheme to assist in providing interpretive direction. In this respect, one delegate noted that some jurisdictions do not, as a rule, allow purposive clauses to be included in legislation and it is also difficult to capture the intent of a whole statute in a purposive clause.

Presenters informed delegates that the Working Group is currently considering whether a different process should apply in child protection cases, disciplinary proceedings, public inquiries and coroners' inquiries. With respect to child protection cases, presenters noted that there are two strong competing public policy concerns to be considered: maintaining the integrity of the criminal process and the need to act quickly to protect a child at risk. Further consideration is being given to whether the process should be streamlined or whether the rebuttable presumption currently in the scheme should apply. Delegates were informed that the Working Group intends to consult experts on these issues including the Federal-Provincial-Territorial Coordinating Committee of Senior Officials (Family Justice). It was noted that case law currently being developed regarding disclosure of information in child protection cases and protocols currently being drafted in the province of Ontario will serve to inform the work of the Working Group.

One delegate queried whether the Working Group intends to examine the substantive aspects of this issue more fully; in particular, whether the uniform legislation should specifically address what information is not accessible; whether the meaning of "public interest" should be specifically tailored to ensure the uniform legislation does not leave important components to jurisdictions, thereby avoiding inconsistency of key elements of the test to be applied; or whether there should be a very high threshold before the Court can authorize access to documents, perhaps even higher that what was proposed in the *Wagg* decision. In response, presenters indicated the substantive aspect of the scheme has not yet been completely examined and that further work will need to be developed.

The Chair of the Civil Section thanked the presenters for updating the Conference on the work. After discussion, the following resolution was presented to delegates:

RESOLVED:

> That the Joint Civil/Criminal Section Working Group be directed to continue to consider the issues raised in the Report and the directions of the Conference and that it prepare a Uniform Act and commentaries for consideration at the 2010 meeting.

Report of the Joint Criminal/Civil Section Working Group on Malicious Prosecution (2009)

The report was presented by Erin Winocur, Crown Counsel, Criminal Law Policy Branch, Ministry of the Attorney General of Ontario.

The 2009 report notes that the Working Group presented a report with a proposed scheme for discussion by delegates at the 2008 annual meeting. The proposed scheme intended to address specific concerns principal among which are those resulting from courts conflating the third and fourth elements of the test for liability for malicious prosecution as set out in the 1989 Supreme Court of Canada decision in *Nelles* v. *Ontario* [1989] S.C.R. 601. The Working Group's proposed scheme provides that the four elements laid out in *Nelles* to establish liability for malicious prosecution ((1) proceeding was initiated by defendant; (2) prosecution was terminated in favour of the plaintiff; (3) absence of reasonable and probable cause; (4) there was malice or that the primary purpose of the prosecution was other than that of carrying the law into effect) must always be proven in a civil action for prosecutorial misconduct, including evidence of improper motive as an indicator of malice.

Leave to appeal to the Supreme Court of Canada was granted in *Miazga* v. *Kvello Estate* [2007] S.J. No. 247 on February 7, 2008. The Working Group anticipated reconvening after the decision was released to consider whether changes to their proposed scheme would be required and to present an updated model scheme for discussion at the 2009 annual meeting. However, while oral argument was presented on December 12, 2008, the judgment was still on reserve at the time of the 2009 Conference. Accordingly, the 2009 report briefly summarizes the submissions made by the parties and the interveners, all of whom focused on either the third or fourth elements of the test in *Nelles* or both, and highlights the arguments presented in facta before the Supreme Court of Canada. These arguments focused on two main issues: 1- What should be the test for reasonable and probable grounds? 2- How do you find malice and can it be inferred from the absence of reasonable and probable grounds?

The Working Group will review their proposed scheme in light of the Supreme Court of Canada decision in *Miazga* and prepare an analysis of the relation between the two and potentially amend the proposed scheme as a result of the reasons set out in the decision.

The Chair of the Criminal Section thanked the presenter for the overview of the submissions. After the presentation, the following resolution was presented:

RESOLVED:

That the Joint Civil/Criminal Section Working Group be directed to:

a. continue its work on the issues raised in the Report in accordance with the direction of the Conference;
b. monitor the results of the *Miazga* appeal and its impact on the recommendations of the Working Group; and
c. report back to the Conference at the 2010 meeting.

Report of the Joint Criminal/Civil Section Working Group on Interprovincial Service of Offence Notices

Presenter: Lee Kirkpatrick, Head of Prosecutions, Yukon Department of Justice

At the 2008 Conference, the Criminal Section passed a resolution to, together with the Civil Section, examine how provincial offence notices are served on accused persons in other jurisdictions and develop a consistent statutory approach for consideration by all jurisdictions.

The Working Group discussed existing practices in Quebec, Yukon and Alberta. In all three jurisdictions, the *Criminal Code* procedure regarding personal service/service to someone over 18 years old was used for the most serious offences. Quebec also provides for extra-provincial service for these, if there is an agreement in place with the other jurisdiction. However, no agreements are in place at this time.

For lesser offences, there are differences in procedures amongst the three jurisdictions. No jurisdiction specifically allows for service of long form informations extra-jurisdictionally.

The Working Group sought direction from the Conference to continue its work and elicit input from other jurisdictions in order to determine what common practices might form the basis for a consistent statutory approach. Several jurisdictions offered support and named possible additional participants for the Working Group.

A recommendation was made that the Working Group review the *Uniform Regulatory Offences Procedure Act* to inform the work of the Working Group.

The Chair of the Criminal Section thanked the presenter and the members of the Working Group for preparing the report. The following resolution was presented to delegates:

RESOLVED:

That the Joint Civil/Criminal Section Working Group be directed to consider the issues raised in the Report and the directions of the Conference and report back to the Conference at the 2010 meeting.

CLOSING

The Chair noted that it was a delight to act as Chair and thanked delegates for their patience, dedication and hard work in getting through the week's schedule. The Chair expressed his appreciation to members of the several working groups for their excellent work and the interpreters for their dedicated assistance. The Chair thanked the Department of Justice personnel that provided assistance through the Secretariat of the Conference. The Chair expressed his appreciation to Catherine Kane, Senior Federal Delegate and the Organizing Committee of the federal Department of Justice for hosting the annual meeting and particularly for organizing the social events.

The Chair expressed his gratitude to the Secretary for her work and her assistance to the Chair during the week and throughout the year. The Chair noted that this is Stéphanie O'Connor's last year as Secretary and that she will be replaced by Joanne Dompierre who has agreed to act as Secretary of the Criminal Section for the coming years. The President of the ULCC also took the opportunity to thank the Secretary for her work in preparation for the 2009 annual meeting and expressed, on behalf of the entire Conference, their sincere appreciation for all her work during the years she contributed to the ULCC as Secretary to the Criminal Section. The Secretary noted that she it was a pleasure to work as Secretary and appreciated the collegiality and collaboration of ULCC members and delegates during the period she served as Secretary. The President also thanked the Chair on behalf of the Criminal Section delegates for his wonderful chairmanship during the week and for his contribution during the year.

By resolution of the Criminal Section, the nomination of Luc Labonté, Crown Prosecutor, Department of Justice and Attorney General, Moncton, New Brunswick, as Chair of the Criminal Section for 2009-2010 was accepted. The Nominating Committee recommended that Josh Hawkes, be nominated to be the next Chair of the Criminal Section for the period 2010-2011.

Annex 1

REPORT OF THE SENIOR FEDERAL DELEGATE

Uniform Law Conference of Canada
Criminal Section 2009

Department of Justice Canada

Introduction

The Uniform Law Conference of Canada (ULCC) provides invaluable support to the Department of Justice and the Minister of Justice on a whole range of criminal law issues. Delegates attending ULCC bring insightful information arising from their own experience within the criminal justice system. Moreover, the work of the Conference assists the federal Government in identifying provisions of the *Criminal Code* and related criminal law statutes in need of legislative reform.

Senior officials, the Deputy Minister and the Minister of Justice are informed of the work of the Conference following the annual meeting. Resolutions adopted by the ULCC are considered by departmental officials, and in some cases, are referred to various federal-provincial-territorial working groups for further study. Other stakeholders not represented at the Conference may also be consulted before a policy proposal is considered for legislative reform. Where an issue in a resolution that has been adopted by the Conference falls under the responsibility of another federal minister, the relevant Department is informed of the resolution.

The 2008 Report provided the status of criminal law bills in the Second Session of the 39th Parliament, which was dissolved on September 7, 2008 when the general election was called. As a result, all Government bills of the 39th Parliament that had not received Royal Assent died on the Order Paper. A number of criminal law bills were re-introduced in the 40th Parliament, commencing on November 28, 2008 and several new Government bills were also introduced and will be referenced in this Report.

The 2008 Report also provided information regarding Private Members' bills and Senators' bills considered during the 39th Parliament. Private Members' and Senators' bills that had not received Royal Assent before dissolution of Parliament have also died on the Order Paper. Some of those bills have been re-introduced in the 40th Parliament. Where such bills and other new bills of interest to Criminal Section delegates have progressed in Parliament, those bills will be referenced in this Report.

2008-2009 Government Legislative Initiatives

To date, in the 40th Parliament, the Government has introduced 13 criminal law reform bills in the House of Commons and two in the Senate.

As of June 23, 2009, one bill had passed and received Royal Assent (Bill C-14, *An Act to amend the Criminal Code (organized crime and protection of justice system participants*).

A description of the Bills and their status are set out below.

Bill C-14 ***Organized crime and protection of justice system participants***

Bill C-14, *An Act to amend the Criminal Code (organized crime and protection of justice system participants)* was tabled in the House of Commons on February 26, 2009.

This Bill amends the *Criminal Code*:

- to add to the sentencing provisions for murder so that any murder committed in connection with a criminal organization is first degree murder, regardless of whether it is planned and deliberate;
- to create offences of intentionally discharging a firearm while being reckless about endangering the life or safety of another person, of assaulting a peace officer with a weapon or causing bodily harm and of aggravated assault of a peace officer; and
- to extend the duration of a recognizance to up to two years for a person who it is suspected will commit a criminal organization offence, a terrorism offence or an intimidation offence under section 423.1 if they were previously convicted of such an offence, and to clarify that the recognizance may include conditions such as electronic monitoring, participation in a treatment program and a requirement to remain in a specified geographic area.

Bill C-14 received Royal Assent on June 23, 2009 as S.C. 2009 c. 22. The Act will come into force on a date to be fixed by Order in Council.

Bill C-15 ***Drugs***

Bill C-15, *An Act to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts* re-introduces provisions of former Bill C-26 from the previous Parliament. Bill C-15 received First Reading in the House of Commons on February 27, 2009.

Bill C-15 proposes to provide for minimum penalties for serious drug offences, to increase the maximum penalty for cannabis (marihuana) production and to reschedule certain substances from *Schedule III* of that Act to *Schedule I* and to make consequential amendments to other acts. The proposed amendments include:

- 1 year MMP for trafficking in drugs (e.g., heroin, cocaine, methamphetamine and marijuana) when carried out for organized crime purposes, or when a weapon or violence is involved;
- 2 year MMP for trafficking in drugs (e.g., heroin, cocaine or methamphetamines) to youth, or for trafficking those drugs near a school or an area normally frequented by youth;
- 2 year MMP for the offence of production of a large marijuana grow operation of at least 500 plants;
- The maximum penalty for cannabis production would double from 7 to 14 years imprisonment; and
- Tougher penalties would be available (introduced) for trafficking, producing or importing GHB and flunitrazepam (most commonly known as date-rape drugs) by virtue of these drugs being rescheduled from *Schedule III* to *Schedule I*.

Bill C-15 received Second Reading in the House of Commons on March 27, 2009 and was referred to the House of Commons Standing Committee on Justice and Human Rights on the same day. Amendments made by the Committee include the addition of another aggravating factor to the importing and exporting and trafficking offence to address the situation where a person abuses a position of authority or employment (e.g., an airport worker) to commit the offence, the addition of a requirement for a parliamentary review, the deletion of the requirement for Crown consent to the drug treatment court option and the refinement of the 6 month MMP for possession to be applicable to 6-200 plants (less than 201 and more than five).

Bill C-15 was passed by the House of Commons with amendments on June 8, 2009. On June 9, 2009, it received First Reading in the Senate and is currently at Second Reading stage.

Bill C-19 ***Investigative hearing and recognizance with conditions***

Bill C-19, *An Act to amend the Criminal Code (investigative hearing and recognizance with conditions)* generally proposes to reinstate the provisions of former Bill S-3 from the previous Parliament as amended by the Senate, thereby providing new safeguards in addition to the numerous safeguards found in the original legislation (*Anti-terrorism Act*, S.C. 2001 c. 4). Bill C-19 is substantially similar to former Bill S-3 as amended, but proposes some additional amendments for clarity and consistency.

Sections 83.28 to 83.3 of the *Criminal Code*, when enacted by the *Anti-terrorism Act*, provided for an investigative hearing to gather information for the purposes of an investigation of a terrorism offence and for the imposition of a recognizance with conditions on a person to prevent them from carrying out a terrorist activity. These provisions were subject to a sunset clause and ceased to apply as of March 1, 2007 when the House of Commons voted against a resolution that would have extended them. Bill S-3 was introduced in Parliament to reinstate these provisions, albeit with a number of additional safeguards. Bill S-3 was adopted by the Senate with amendments but the Bill died in the House of Commons on the Order Paper when a general election was called in the fall of 2008.

Bill C-19 received First Reading in the House of Commons on March 12, 2009 and is currently at Second Reading stage.

Bill C-25 ***Credit for time spent in pre-sentencing custody***

Bill C-25, *An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody)*, received First Reading in the House of Commons on March 27, 2009.

This bill amends the *Criminal Code* to specify the extent to which a court may take into account time spent in custody by an offender before sentencing. The proposed amendments will, as a general rule, cap the amount of credit for time served in pre-sentencing custody at a 1-to-1 ratio. Credit at a ratio of up to 1.5 to 1 will only be permitted where circumstances justify it. The Court will be required to explain these circumstances.

Credit for time served by offenders who have violated bail, or been denied bail because of their criminal record will also be limited to a maximum 1-to-1 ratio, and no enhanced credit beyond one to one will be permitted under any circumstances.

The Court will be required to set out in the record, the sentence before credit, the credit granted and the sentence imposed (i.e., remaining to be served) (ULCC 2005).

Bill C-25 was passed by the House of Commons on June 8, 2009. The Bill received First Reading in the Senate on June 9 and was referred to the Senate Legal and Constitutional Affairs Committee on June 16, 2009.

Bill C-26 ***Auto theft and trafficking in property obtained by crime***

Bill C-26, *An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime)* re-introduces the provisions of former Bill C-53 from the previous Parliament but also contains a distinct offence of "motor vehicle theft".

It amends the *Criminal Code* to create offences in connection with the theft of a motor vehicle, the alteration, removal or obliteration of a vehicle identification number, the trafficking of property or proceeds obtained by crime and the possession of such property or proceeds for the purposes of trafficking, and to provide for an *in rem* prohibition of the importation or exportation of such property or proceeds.

The Bill received First Reading in the House of Commons on April 21, 2009, was debated at Second Reading and referred to the House of Commons Standing Committee on Justice and Human Rights on May 6, 2009. Bill C-26 was reported back to the House of Commons with one Committee amendment which clarifies that the minimum sentence for a third or subsequent auto theft offence applies regardless of whether the previous offences were summary or indictable.

Bill C-26 received First Reading in the Senate on June 16 and is currently at Second Reading stage.

Bill C-31 ***Criminal Code, corruption of foreign public officials, Identification of criminals***

Bill C-31, *An Act to amend the Criminal Code, the Corruption of Foreign Public Officials Act and the Identification of Criminals Act and to make a consequential amendment to another Act* proposes amendments that reflect ULCC resolutions passed between 2001 and 2008. Among other things, the amendments would:

- allow a court to order the release of things seized by police for the purpose of testing once charges have been laid (ULCC 2007);
- provide greater access to the telewarrant process for peace officers and public officers including the removal of the "impracticable" requirement for obtaining warrants when the request produces a writing (ULCC 2004);
- reform the expert evidence regime to give parties more time to prepare and respond to expert evidence;
- allow the provinces to authorize programs or establish criteria governing the use of agents (non-lawyers) by defendants regardless of the maximum jail term provided for the offence (ULCC 2004);
- authorize the fingerprinting of, photographing of or application of other identification processes to, persons who are in lawful custody for specified offences but who have not yet been charged (ULCC 2001);
- expand the jurisdiction of Canadian courts to include bribery offences committed by Canadians outside Canada;

- expand the list of permitted sports under the prize fighting provisions;
- make minor corrections to the pari-mutuel betting provisions, delete unnecessary provisions and update the calculation of pool payouts;
- update the provisions on interceptions of private communications in exceptional circumstances (ULCC 2008);
- reclassify six non-violent offences as hybrid offences;
- create an offence of leaving the jurisdiction in contravention of an undertaking or recognizance;
- delete provisions of the *Criminal Code* that are no longer valid, correct or clarify wording in various provisions and make minor updates to others; and
- clarify that Form 5.2 (report of things seized) does not have to be filed by the peace officer who prepared the report (ULCC 2007).

Bill C-31 received First Reading in the House of Commons on May 15, 2009.

Bill C-34 ***Protecting victims from sex offenders***

Bill C-34, An *Act to amend the Criminal Code and other Acts* received First Reading in the House of Commons on June 1, 2009. The Bill received Second Reading on June 8, 2009 and was referred to the House of Commons Committee on Public Safety and National Security on the same day.

This Bill proposes to amend the national Sex Offender Registry to enhance police investigation of crimes of a sexual nature and allow police services to use the national database proactively to prevent crimes of a sexual nature. A fundamental change proposed in the Bill is to make registration automatic upon conviction of a sexual offence. It also proposes to amend the *Criminal Code* and the *International Transfer of Offenders Act* to require sex offenders arriving in Canada to comply with the *Sex Offender Information Registration Act.*

Bill C-34 proposes to also amend the *Criminal Code* to provide that sex offenders who are subject to a mandatory requirement to comply with the *Sex Offender Information Registration Act* are also subject to a mandatory requirement to provide a sample for forensic DNA analysis, to ensure consistency between these two national offender databases.

Corresponding amendments to the *National Defence Act* are also proposed to reflect the proposed amendments to the *Criminal Code* relating to the registration of sex offenders.

Bill C-35 ***Deterring terrorism***

Bill C-35, *An Act to deter terrorism, and to amend the State Immunity Act ((Justice for Victims of Terrorism Act)* proposes to create a cause of action that allows victims of terrorism to sue perpetrators of terrorism and their supporters. The enactment also amends the *State Immunity Act* to prevent a foreign state from claiming immunity from the jurisdiction of Canadian courts in respect of actions that relate to its support of terrorism.

Bill C-35 received First Reading in the House of Commons on June 2, 2009.

Bill C-36 ***Faint hope***

Bill C-36, *An Act to amend the Criminal Code (Serious Time for the Most Serious Crime Act)* received First Reading in the House of Commons on June 5, 2009 and was referred to the House of Commons Standing Committee on Justice and Human Rights on June 18, 2009 following Second Reading.

This Bill proposes to amend the *Criminal Code* with regard to the right of persons convicted of murder or high treason to be eligible to apply for early parole (known as faint hope).

A proposed repeal of access to the faint hope clause means that offenders who commit murder on or after the day that this proposed legislation comes into force will no longer be eligible to apply for early parole (and would have to serve at least 25 years in the case of first degree murder and up to 25 years in the case of second degree murder).

The faint hope regime would, however, still apply to those offenders who are currently serving or awaiting sentencing for murder, or who have committed the offence but have not yet been charged, but the proposed legislation would make it more difficult for those offenders to apply under the faint hope clause by establishing new procedures and conditions.

Bill C-42 ***Conditional sentences***

Bill C-42, *An Act to amend the Criminal Code (Ending Conditional Sentences for Property and Other Serious Crimes Act)* proposes to further restrict the use of conditional sentences for serious offences. A conditional sentence is a sentence of imprisonment that may be served in the community, provided several pre-conditions are met (s. 742.1). The proposed amendments would further restrict and ban the use of conditional sentences for the offences listed below:

- Offences for which the law prescribes a maximum sentence of 14 years or life.
- Offences prosecuted by indictment and for which the law prescribes a maximum sentence of imprisonment of 10 years that

    - result in bodily harm
    - involve the import/export, trafficking and production of drugs
    - involve the use of weapons.

(The reference to serious personal injury offences will be deleted and replaced with the above).

- Offences specified below when prosecuted by indictment:

    - prison breach
    - luring a child
    - criminal harassment
    - sexual assault
    - kidnapping, forcible confinement
    - trafficking in persons - material benefit
    - abduction
    - theft over $5000
    - auto theft (proposed in Bill C-26)
    - breaking and entering with intent

- being unlawfully in a dwelling-house
- arson for fraudulent purpose.

Bill C-42 received First Reading in the House of Commons on June 15, 2009.

Bill C-43 ***Corrections and conditional release***

Bill C-43, *An Act to amend the Corrections and Conditional Release Act and the Criminal Code (Strengthening Canada's Corrections System Act)*, proposes to amend the Act to amend the *Corrections and Conditional Release Act* to enhance sharing of information with victims; enhance offender responsibility and accountability; strengthen the management of offenders and their reintegration; and, modernize disciplinary actions.

Amendments in Bill C-43 include:

- clarifying that the protection of society is the paramount consideration for the Correctional Service of Canada in the corrections process and for the National Parole Board and the provincial parole boards in the determination of all cases;
- providing that a correctional plan is to include the level of intervention by the Service in respect of the offender's needs and the objectives for the offender's behaviour, their participation in programs and the meeting of their court-ordered obligations;
- expanding the range of disciplinary offences to include intimidation, false claims and throwing a bodily substance;
- establishing the right of a victim to make a statement at parole hearings;
- permitting the disclosure to a victim of information relating to the offender's transfer, participation in programs and convictions for serious disciplinary offences as well as reasons for temporary absences or hearing waivers;
- providing consistency as to which offenders are excluded from accelerated parole review;
- providing for the automatic suspension of the parole or statutory release of offenders who receive a new custodial sentence and require the National Parole Board to review their case within a prescribed period; and
- authorizing a peace officer to arrest without warrant an offender for a breach of condition of their conditional release.

Bill C-43 received First Reading in the House of Commons on June 16, 2009.

Bill C-46 ***Investigative powers***

Bill C-46, *An Act to amend the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act* proposes to amend the *Criminal Code* to add new investigative powers in relation to computer crime and the use of new technologies in the commission of crimes. It provides, among other things, for:

- the power to make preservation demands and orders to compel the preservation of electronic evidence;
- new production orders to compel the production of data relating to the transmission of communications and the location of transactions, individuals or things;
- a warrant to obtain transmission data that will extend to all means of telecommunication the investigative powers that are currently restricted to data associated with telephones; and

- warrants that will enable the tracking of transactions, individuals and things and that are subject to legal thresholds appropriate to the interests at stake.

The Bill also proposes to amend offences in the *Criminal Code* relating to hate propaganda and its communication over the Internet, false information, indecent communications, harassing communications, devices used to obtain telecommunication services without payment and devices used to obtain the unauthorized use of computer systems or to commit mischief. The Bill further proposes to create an offence of agreeing or arranging with another person by a means of telecommunication to commit a sexual offence against a child.

Amendments to the *Competition Act* are also proposed in Bill C-46 to make applicable, for the purpose of enforcing certain provisions of that Act, the new provisions being added to the *Criminal Code* respecting demands and orders for the preservation of computer data and orders for the production of documents relating to the transmission of communications or financial data. It also modernizes the provisions of the Act relating to electronic evidence and provides for more effective enforcement in a technologically advanced environment.

The amendments to the *Mutual Legal Assistance in Criminal Matters Act* will make some of the new investigative powers being added to the *Criminal Code* available to Canadian authorities executing incoming requests for assistance and will allow the Commissioner of Competition to execute search warrants under the *Mutual Legal Assistance in Criminal Matters Act*.

Bill C-46 was introduced in the House of Commons on June 18, 2009.

Bill C-47 ***Technical assistance for law enforcement***

Bill C-47, *An Act regulating telecommunications facilities to support investigations (Technical Assistance for Law Enforcement in the 21st Century Act)* proposes amendments to require telecommunications service providers to install and maintain intercept-capable systems in order to facilitate the lawful interception of information transmitted by telecommunications. The Bill would also require telecommunications service providers to provide, on request, basic information about their subscribers (e.g., name, address, telephone numbers, and Internet Protocol address) to the RCMP, the Canadian Security Intelligence Service, the Commissioner of Competition and any police service constituted under the laws of a province.

Bill C-47 received First Reading in the House of Commons on June 18, 2009.

Bill S-4 ***Identity Theft***

Bill S-4, An *Act to amend the Criminal Code (identity theft and related misconduct)*, re-introduces the provisions of former Bill C-27 from the previous Parliament. The Bill received First Reading in the Senate on March 31, 2009 and proposes to amend the *Criminal Code* to create a new offence of identity theft, of trafficking in identity information and of unlawful possession or trafficking in certain government-issued identity documents, to clarify and expand certain offences related to identity theft and identity fraud (such as mail related offences and debit and credit offences), to exempt certain persons from liability for certain forgery offences, and to allow for an order that the offender make restitution to a victim of identity theft or identity fraud for the expenses associated with rehabilitating their identity.

Following Second Reading, Bill S-4 was referred to the Senate Committee on Legal and Constitutional Affairs. The Committee studied the Bill and reported back to the Senate with amendments which included the addition of a 5 year parliamentary review, changes to the definition of "government issued identity information" to allow for the introduction of new documents in the future and refinement of the definition of "personal authentication information" in relation to credit and debit card offences. The Bill was passed with amendments by the Senate on June 11, 2009.

The Bill received First Reading in the House of Commons on June 15. It received Second Reading on June 17 and was referred to the House of Commons Standing Committee on Justice and Human Rights on the same day.

Bill S-5 ***Firearms***

Bill S-5, *An Act to amend the Criminal Code and another Act (Long-Gun Registry Repeal Act)* re-introduces the provisions of former Bill C-24 of the previous Parliament. It proposes to repeal the requirement to obtain a registration certificate for firearms that are neither prohibited firearms nor restricted firearms.

Bill S-5 Received First Reading in the Senate on April 1, 2009.

2008-2009 Other Bills of Interest

Private Members' Bills (House of Commons)

Some criminal law reforms proposed by Private Members' bills may be of interest to Criminal Section delegates and are described briefly below. The Parliament of Canada website (http://www.parl.gc.ca) should be consulted for the full list and text of Private Members' bills. Note that the description below refers to the status of bills as of June 23, 2009.

Bill C-268 - ***An Act to amend the Criminal Code (minimum sentences for offences involving trafficking of persons under the age of eighteen years)*** - Mrs. Smith (Kildonan—St. Paul)

The Bill proposes to amend the *Criminal Code* to include a minimum sentence of 5 years imprisonment for offences involving trafficking of persons under the age of eighteen years. A Government amendment was passed at the Standing Committee on Justice and Human Rights to impose a 6 year minimum sentence on the more serious child trafficking offence.

Report stage and Third Reading debate in the House of Commons is expected on October 9, 2009.

Bill C-384 – ***An Act to amend the Criminal Code (right to die with dignity)***
Mrs. Lalonde (La Pointe-de-l'Île) – received First Reading on May 13, 2009 and has been placed on the Order of Precedence on May 26, 2009.

This enactment proposes to amend the *Criminal Code* to allow a medical practitioner, subject to certain conditions, to aid a person who is experiencing severe physical or mental pain without any prospect of relief or is suffering from a terminal illness to die with dignity once the person has expressed his or her free and informed consent to die. It proposes to exempt medical practitioners from criminal liability for the offence of murder or assisted suicide.

Senate Public Bills (Other than Government Bills)
(Status of bills as of June 23, 2009)

Bill S-205 - *An Act to amend the Criminal Code (suicide bombings)*
(Senator Grafstein) received First Reading on January 27, 2009 and was passed by the Senate on June 10, 2009. It received First Reading in the House of Commons and was added to the Order of Precedence on June 12, 2009. It is awaiting commencement of Second Reading debates.

This Bill proposes to amend the *Criminal Code* to clarify that suicide bombings fall within the definition "terrorist activity".

Bill S-209 - *An Act to amend the Criminal Code (protection of children)*
(Senator Hervieux-Payette) – received First Reading on January 27, 2009. Bill S-209 received Second Reading on June 22, 2009 and was referred to the Senate Standing Committee on Legal and Constitutional Affairs.

This Bill proposes to remove the justification in the *Criminal Code* available to schoolteachers, parents and persons standing in the place of parents of using force as a means of correction toward a pupil or child under their care. It replaces it with a new provision.

It provides the Government with up to one year between the dates of Royal Assent and coming into force of the amendment, which is meant to be used to educate Canadians and to coordinate with the provinces.

Bill S-226 - *An Act to amend the Criminal Code (lottery schemes)* - (Senator Lapointe) – received First Reading on February 11, 2009 and is currently at Second Reading stage in the Senate.

This Bill proposes to amend the *Criminal Code* in relation to gaming offences in order to narrow the exemption that allows provincial governments to lawfully conduct and manage lottery schemes involving video lottery terminals and slot machines, by limiting the locations at which such machines can be installed to casinos, race-courses and betting theatres.

Conclusion

The Government has pursued an active criminal law reform agenda. Delegates can check the progress of these reforms on the parliamentary website (http://www.parl.gc.ca).

The work of the Uniform Law Conference of Canada is beneficial to the work of the Department of Justice and to the Government's agenda in relation to a whole range of criminal law reform. ULCC remains a valuable stakeholder that greatly assists the Minister of Justice in identifying areas in need of reform.

Annex 2

RESOLUTIONS

ALBERTA

Alberta – 01

In order to ensure that multiple applications are not required regarding one set of circumstances, it is recommended that section 492.1 (tracking warrant) and section 492.2 (recorder number) of the *Criminal Code* be amended to include superior court justices or a judge as defined by section 552 in the authority to issue tracking and number recorder warrants.

Carried: 31-0-0

Alberta – 02

Subsection 189(5) (notice – production of evidence re: private communication) of the *Criminal Code* should be amended to include the word "device" as an alternative to "place," as determining the exact location of the communication when mobile devices are used is difficult. (...statement respecting the time, place or device, and date).

Carried: 31-0-0

Alberta – 03

In certain circumstances it can be difficult to determine if a particular communication originates within Canada, or is intended to be received by a person in Canada. The resulting uncertainty can cause difficulties in relation to the interpretation and appropriate application of the provisions of part VI (Invasion of Privacy) of the *Criminal Code.* Justice Canada should examine alternatives to clarify the application of these provisions in such circumstances.

Carried as amended: 30-0-0

Alberta – 04

A complete review of Part VI (Invasion of Privacy) of the *Criminal Code* is a matter of the highest priority. Continued delay poses a serious and ongoing threat to public safety. Justice Canada should review, and provide a comprehensive update of these provisions on an urgent basis.

Carried: 31-0-0

Alberta – 05

The registration of covert identities, created in conjunction with undercover investigations or witness protection programs is an integral part of the successful creation of such identities. Registration of these identities may contravene sections 377-378 (damaging documents; offences re: registers) and subsection 430(1.1) (data mischief) of the *Criminal Code.* Justice Canada should create exemptions, with appropriate procedural safeguards, for these activities.

Carried as amended: 29-0-1

Alberta – 06

A Uniform Law Conference of Canada Criminal Section working group should be formed to examine provincial legislative initiatives with a criminal law impact, such as civil forfeiture regimes, safe communities and neighbourhoods legislation, or witness protection programs, to share best practices, and to determine if model legislation in any of these areas should be recommended.

Carried as amended: 21-0-10

MANITOBA

Manitoba – 01

Section 487.07 (duty to inform) of the *Criminal Code* should be amended to remove paragraph (4)(*b*) and subsection (5) so that judicially authorized samples do not have to be taken in the presence of counsel, parent, or any other appropriate adult chosen by the young person.

Defeated: 10-17-3

Manitoba – 02

Allow the identification processes as provided for in the *Identification of Criminals Act* for all hybrid offences even after the Crown has elected to proceed summarily.

Carried as amended: 25-3-2

Manitoba – 03

The *Criminal Records Act* should be amended to clarify that a long-term offender is not entitled to apply for a pardon until the expiration of 5 years from the completion of the community supervision term of their long-term supervision order imposed under Part XXIV (Dangerous Offenders and Long-Term Offenders) of the *Criminal Code.*

Carried as amended: 24-0-6

Manitoba – 04

That Part VI (Invasion of privacy) of the *Criminal Code* be amended to give judges the power to grant any ancillary warrants or orders required to support the execution of an authorization issued under Part VI.

Carried as amended: 26-0-0
(Floor Resolution)
(This resolution was voted together with resolution PPSC-01-2)

NEW BRUNSWICK

New Brunswick – 01

That an offence be added to the *Criminal Code* to deal with the improper use of disclosure material.

Carried: 18-7-5

New Brunswick – 02

That the *Controlled Drugs and Substances Act* be amended to impose a graduated scheme of minimum punishment for the possession of a controlled substance, including marihuana.

Withdrawn following discussion

New Brunswick – 03

That section 732 of the *Criminal Code* be reviewed to consider what number of days is truly required to satisfy the best interests of justice before an intermittent sentence may be considered.

Carried as amended: 10-7-13

NOVA SCOTIA

Nova Scotia – 01

Amend section 708 (contempt) of the *Criminal Code* to provide that the failure of a witness to appear or remain in attendance at trial is punishable by a maximum $5000 fine, or 18 months in jail, or both.

Carried as amended: 30-0-0

Nova Scotia – 02

That the *Criminal Code* be amended to provide that binding pre-trial decisions may be made by a judge of equivalent jurisdiction to the trial judge prior to the commencement of hearing of evidence at the trial.

Carried: 26-2-3

ONTARIO

Ontario – 01

It is recommended that section 745.3 (parole eligibility – jury recommendation – person under sixteen) of the *Criminal Code* be repealed.

Carried: 27-2-0

Ontario – 02

1- That subsection 139(2) (obstructing justice – indictable offence) of the *Criminal Code* be made a dual procedure offence, with the maximum punishment on summary conviction set at eighteen months.

Defeated: 11-19-1

2- That section 405 (acknowledging instrument in false name) of the *Criminal Code* be made a dual procedure offence, with the maximum punishment on summary conviction set at eighteen months.

Carried: 29-2-0

Ontario – 03

That all property offences where the value of the property involved exceeds $5000 should become dual procedure offences.

Carried: 13-8-8

Ontario – 04

Amend subsections 173(1) and (2) of the *Criminal Code* (indecent act and indecent exposure) to make them dual procedure offences with a maximum punishment on indictment of five years.

Withdrawn

Ontario – 05

It is recommended that sections 751 (costs - libel) and 751.1 (recovery of costs - libel) of the *Criminal Code* be repealed.

Carried as amended: 30-0-0

Ontario – 06

Amend subsection 4(4) (competent and compellable witness if victim under 14) of the *Canada Evidence Act* to raise the age requirement from 14 to 18.

Carried: 18-3-10

Ontario – 07

Supplement the proceeds of crime, offence-related property, and terrorism-related property restraining order provisions of the *Criminal Code* (ss. 462.33, 490.8 and 83.13, respectively) with a statutory requirement that, upon the demand of a designated officer, persons holding assets temporarily freeze them so as to enable the Attorney General an opportunity to obtain a judicial restraining order.

Withdrawn

Ontario – 08

That section 650.01 of the *Criminal Code* be amended to require counsel of record pursuant to a designation, to accept service of documents, in circumstances where the document would otherwise be required to be served personally on the accused.

Carried as amended: 22-4-5

Ontario – 09

Amend schedule I of the *Corrections and Conditional Release Act (CCRA)* and the definition of "sexual offence involving a child" in paragraph 129(9)(*a*) of the *CCRA* to include the offences in section 172.1 (internet luring) and section 163.1 (child pornography offences) of the *Criminal Code.*

Carried: 28-0-3

QUEBEC

Quebec – 01

That Justice Canada examine the defence included in subsection 163.1(6) (defence – child pornography) of the C*riminal Code* in order to determine the possibility to impose on the person in possession for a legitimate purpose of the material mentioned in that section the obligation to take the necessary precautions to ensure that this material has not been made accessible.

Carried as amended: 16-2-12

Quebec – 02

Amend paragraph 423.1(2)(*d*) (intimidation - justice system participant or journalist) of the *Criminal Code* to state that communication with the intent to provoke fear constitutes intimidation even if it occurs only once.

Carried: 22-0-6

Quebec – 03

That section 487.01 (general warrant) of the *Criminal Code* be amended to allow information to be gathered that may reveal the whereabouts of the person believed to have committed the offence.

Withdrawn following discussion

Quebec – 04

That the *Criminal Code* be amended in order to confer to the competent justice the power to hear « ex parte » the applications related to the detention of things seized in a covert search in accordance with the delays mentioned in subsections 487.01(5.1) and (5.2) of the *Criminal Code*.

Carried as amended: 24-3-3

Quebec – 05

That Justice Canada examine the amendments to be made to the *Criminal Code* to ensure that frivolous appeals are swiftly rejected.

Carried as amended: 28-0-0

SASKATCHEWAN

Saskatchewan – 01

That subsection 110(5) (order to publish – duration) of the *Youth Criminal Justice Act* be amended to provide that an order made under subsection 110(4) (order to publish) not exceed 15 days and that such

order terminates with the apprehension of the young person or the expiration of the time limit imposed by the Youth Justice Court Judge, whichever occurs first.

Carried as amended: 16-5-8

CANADA

Canadian Bar Association

CBA – 01

To provide for a new bail hearing so that normal procedures under section 515 of the *Criminal Code* would apply when the trial judge considers a change of custodial status after a finding of guilt and before sentence for an offender not previously held in custody.

Withdrawn

CBA – 02

To include a provision under part XX.1 (Mental Disorder) of the *Criminal Code* to allow for application of a publication ban similar to that found in section 517 of the *Criminal Code*.

Carried: 18-3-8

Canadian Council of Criminal Defence Lawyers

CCCDL – 01

That the *Criminal Code* be amended as follows:

1- Amend the *Criminal Code* to include judges sitting on preliminary inquiries as "courts of competent jurisdiction" for the purpose of granting *Charter* remedies.

2- Amend section 548 of the *Criminal Code* to allow judges sitting on preliminary inquiries to discharge an accused where, having regard to the reliability and persuasiveness of the evidence, there is no reasonable prospect of conviction.

Withdrawn

CCCDL – 02

That the *Criminal Code* be amended as follows:

1- Amend section 254 of the *Criminal Code* to remove the offence of failing or refusing to comply with an approved screening device demand, but provide that the failure or refusal gives a peace officer reasonable and probable grounds to make an improved instrument demand.

Withdrawn following discussion

2- Amend section 259 of the *Criminal Code* to permit the sentencing justice to adjust the suspension of an accused's driver's licence to take into account the administrative suspension.

Defeated: 10-17-2

CCCDL – 03

That the *Youth Criminal Justice Act* be reviewed in relation to the issue of judicial interim release for young persons pending review of allegations of non-compliance with custody and supervision orders, and deferred custody and supervision orders.

Carried as amended: 21-3-6

Public Prosecution Service of Canada

PPSC – 01

1- That Justice Canada conduct a comprehensive review of Part VI (Invasion of Privacy) and the electronic surveillance provisions in Part XV (Special Procedure and Powers) of the *Criminal Code* and update them to bring them into line with developments in technology, particularly in the realm of wireless and internet-based communications.

Carried: 25-0-0

2- That Part VI be amended to give judges the power to grant any ancillary warrants or orders required to support the execution of an authorization issued under Part VI.

Carried as amended: 26-0-0

3- That Part VI and Part XV of the *Criminal Code* be further amended to harmonize, streamline and clarify their provisions.

Carried: 26-0-0