

## UNIFORM LAW CONFERENCE OF CANADA

## CRIMINAL LAW SECTION

2009 RESOLUTIONS

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## 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: 3 1-0-0

#### 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

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

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 Criminal 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:

Amend the Criminal Code to include judges sitting on preliminary inquiries as “courts of competent jurisdiction” for the purpose of granting Charter remedies.

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

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

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