

# UNIFORM LAW CONFERENCE OF CANADA

## REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL LEGISLATION

*Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, have not been adopted by the Uniform Law Conference of Canada. They do not necessarily reflect the views of the Conference and its Delegates.*

**Halifax  
August 2010**



# UNIFORM LAW CONFERENCE OF CANADA

## Report of the Working Group August 2010

### INTRODUCTION

[1] Provincial governments have enacted a wide range of legislation which operates in conjunction with, or complementary to, federal criminal legislation. This is not a new development. For example, provincial licence suspension regimes triggered as a result of specified *Criminal Code* convictions date back to at least 1936.<sup>1</sup> The recent decision of the Supreme Court of Canada in *Chatterjee v. Ontario (Attorney General)* may provide renewed impetus for that trend.<sup>2</sup>

[2] In recognition of that fact, the Criminal Section of the Conference passed the following resolution in 2009:

*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.*

[3] The working group is comprised of the following members:

- (1) Joshua B. Hawkes, Q.C. – Director, Policy Unit, Alberta Justice
- (2) Earl Fruchtmann – General Counsel, Crown Law Office – Criminal, Ontario
- (3) Ronald MacDonald, Q.C. – Senior Crown Counsel, Criminal Law Policy Advisor, Nova Scotia
- (4) Lane Wieggers – Senior Crown Prosecutor, Saskatchewan
- (5) Lee Kirkpatrick – Prosecutions Coordinator, Department of Justice, Yukon

### **The Constitutional Context – Division of Legislative Jurisdiction**

[4] The following general overview of some of the major themes in the case law relating to the division of legislative authority in the constitution is intended to provide some context and background to the decision of the Court in *Chatterjee*. It is neither a treatise

**REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION**

on the division of powers, nor a comprehensive commentary on the leading decisions on that subject.

[5] One of the most frequent areas of constitutional collision in this area is between the criminal law power, reserved to the federal government by virtue of section 91(27) of the *Constitution Act, 1867*, and section 92(13), which vests the authority over legislation relating to property and civil rights to the provinces.

[6] A brief description of several doctrines or principles of constitutional analysis is necessary for a proper understanding of the context within which both the decision of the Court in *Chatterjee*, and the legislative initiatives described in this report reside.

[7] The determination of the pith and substance of legislation is the first step in conducting a division of powers analysis. This involves determining the true meaning or essential character or core of the legislation. Two aspects of the legislation must be examined -- the purpose of the legislation as described by the enacting body, and the legal effect of the law.<sup>3</sup> The purpose of the legislation may be determined by consulting the terms of the legislation itself, or be ascertained by reference to extrinsic material such as parliamentary transcripts or government publications.<sup>4</sup> The purpose may also be determined by examining the mischief that the legislation is intended to address.<sup>5</sup> The legal effect of the law must then be determined by considering how it will operate. This does not include an examination of the efficacy of the proposed scheme.<sup>6</sup>

[8] Once the "pith and substance" has been determined, the second step involves determining which head of constitutional power the matter falls within.<sup>7</sup> This is not an exact science, as either level of government may expect to have its jurisdictions affected by the actions of the other to a certain degree. Overlap or incidental effects between otherwise valid federal or provincial legislation are to be expected.<sup>8</sup> The impact of these "incidental effects" may be operationally or practically significant so long as they are collateral or secondary to the legislative purpose and mandate in question.<sup>9</sup>

[9] Where issues relating to these incidental effects cannot otherwise be appropriately resolved, two further constitutional principles come into play. The doctrine of

## UNIFORM LAW CONFERENCE OF CANADA

interjurisdictional immunity is a limited principle used to protect "that which makes certain works or undertakings ... specifically of federal jurisdiction."<sup>10</sup> Thus, otherwise valid provincial legislation cannot have the effect of "sterilizing or mutilating" a federally incorporated entity or interprovincial or international undertaking.<sup>11</sup>

[10] The second principle is that of federal paramountcy. It operates where there is a direct operational conflict between federal and provincial legislation such that to comply with one would constitute a violation of the other. Where such a conflict exists, it must be resolved in favour of the valid federal legislation.<sup>12</sup>

[11] Regarding interjurisdictional immunity, the Supreme Court of Canada noted that broad application of this doctrine would be "incompatible with the flexibility and coordination required by contemporary Canadian federalism."<sup>13</sup> The need to circumscribe the application of this doctrine was affirmed in *Chatterjee*.

[12] In *Chatterjee*, the Court was asked to determine whether the *Remedies for Organized Crime and Other Unlawful Activities Act* (referred to as the *Civil Remedies Act*) was within the legislative competence of the province, or an impermissible encroachment on the federal criminal law power. The Court concluded that the province was entitled to use *in rem* proceedings to try to offset the substantial costs that crime imposes on provincial treasuries.<sup>14</sup> Further, they noted, that the fact that the legislative scheme was intended to deter crime, and remove the financial benefits of criminal activity did not change the provincial nature of the legislation. The dominant feature of the legislation was a focus on the property obtained by criminal activity. That focus was clearly within provincial legislative jurisdiction.<sup>15</sup>

[13] The decision of the Court in *Chatterjee* was also significant for the affirmation of constitutional interpretation emphasizing a cooperative approach in areas of overlapping jurisdiction, and in rejecting the use of the doctrine of interjurisdictional immunity to create federal jurisdictional enclaves. They reiterated that courts should favour the ordinary operation of statutes enacted by both levels of government wherever possible.<sup>16</sup>

**REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION**

[14] In light of the emphasis given to these principles, and of the number of Attorneys' General intervening in the case, it may be safe to assume that *Chatterjee* represents the beginning of a broader range of provincial initiatives in areas related to criminal law.

[15] What follows is a summary of provincial legislation in 11 areas, together with a description of major *Constitutional* or *Charter* challenges to that legislation.

### **Civil Forfeiture**

#### **Yukon**

[16] Yukon introduced a civil forfeiture regime in Bill 82 (the *Civil Forfeiture Act*) on March 29, 2010.<sup>17</sup> Significant opposition to the Bill has been expressed, and the measure has not been passed as yet. This Bill is based on the British Columbia *Civil Forfeiture Act* passed in 2005, and subsequently proclaimed.<sup>18</sup>

#### **Alberta**

[17] The *Victims Restitution and Compensation Payment Act* was passed in 2004, and proclaimed in force in September 2008. The *Act* enables the provincial government to seek a civil order forfeiting property that has been acquired by illegal means to the Crown. Property includes all types of assets, such as real estate, cars, and cash. Illegal acts include contraventions of federal or Alberta legislation or regulations. The objects of the *Act* are to compensate victims, and to disrupt and deter criminal activity. The government only has to prove, based on a balance of probabilities, that the property was acquired by illegal means.<sup>19</sup>

[18] Applications under the *Act* are conducted by the Civil Forfeiture Office, established on October 1, 2008, as part of the Safe Communities Initiative. To date, there have been no *Constitutional* or *Charter* challenges to the *Act*.

[19] Alberta has recently introduced amendments to this *Act* to permit the Crown or other specified public bodies to recover costs arising from unlawful activity, in relation to preservation of the property to be forfeited, or in related circumstances.<sup>20</sup> These changes

## UNIFORM LAW CONFERENCE OF CANADA

give the *Act* the broadest scope of the civil forfeiture regimes examined by the working group.

### **Saskatchewan**

[20] The *Seizure of Criminal Property Act* allows for forfeiture of “proceeds” and “instruments” of unlawful activity. It also establishes a forfeiture fund with rules relating to the storage, maintenance, and disposition of forfeited property under all provincial *Acts* and the *Criminal Code*.<sup>21</sup>

### **Ontario**

[21] The Ontario Legislature passed the *Civil Remedies Act 2001* in December, 2001. It was fully proclaimed by April, 2002. The legislation provides for a regime of civil forfeiture in Ontario. Upon application by the Attorney General, a court is authorized to order the forfeiture of proceeds of crime and instruments of crime. The legislation also provides for the impounding of motor vehicles used in “vehicular unlawful activity”, which include drinking and driving. There are provisions for the management of property seized under the legislation.

### **Nova Scotia**

[22] The *Civil Forfeiture Act* and the *Asset Management and Recovery Act* establish a civil forfeiture regime in Nova Scotia. These two *Acts* provide for the forfeiture of “proceeds of crime” through civil proceedings, and for the management of seized assets. These companion statutes received Royal Assent on December 13, 2007. They are not yet proclaimed.<sup>22</sup>

## **Safe Communities and Neighborhoods**

### **Yukon**

[23] The Yukon legislation came into effect in 2007, and is based on the SCAN legislation enacted first by Manitoba in 2002. It is essentially the same as that of Saskatchewan, Nova Scotia, and Alberta.

**REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION**

[24] It provides for sanctions primarily by way of evictions against those who habitually use property for a specified purpose resulting in an adverse effect upon their neighbourhood or community.

[25] The judicial treatment of analogous provincial SCAN *Acts* and the Nova Scotia decision in *Nova Scotia (Public Safety) v. Cochrane* suggest the Yukon SCAN *Act* is in pith and substance property regulation, not criminal law, and thus constitutionally valid.<sup>23</sup> This conclusion is supported by the fact that the SCAN *Act* allows response to activities prohibited as both territorial offences and criminal offences, or activities which are not statutorily prohibited at all, does not attach consequences directly to a specific person who performed a specific prohibited act, and does not attach penalties to a prohibited act, other than those related to non-compliance with orders made under the *Act*.<sup>24</sup>

**Alberta**

[26] The *Safer Communities and Neighbourhoods Act* (SCAN) was proclaimed in force on October 1, 2008.<sup>25</sup> It targets properties used for illegal activities. Individuals may file a complaint with the Director, who may apply to the Court for an order permitting a broad range of actions to stop the activity in question on the property. There have been no *Constitutional* or *Charter* challenges to the legislation.

**Saskatchewan**

[27] Saskatchewan has two pieces of legislation that address this issue. The *Safer Communities and Neighbourhoods Act* has substantially the same purpose and effect as comparable legislation in other jurisdictions. The Director may choose from a range of possible sanctions to prevent the use of properties for illegal activities. Fortified buildings receive special attention in this legislation. The *Act* also prohibits the display of “gang colours” in permitted premises.<sup>26</sup> This latter restriction on gang colours has been successfully challenged as an infringement of freedom of expression.<sup>27</sup> The *Act* has subsequently been amended in response to this decision to change the penalties for violating these provisions and to specify with greater clarity the locations in which the wearing of gang colours or other identifying marks are prohibited.<sup>28</sup> These changes received Royal Assent on May 20, 2010, and take effect upon proclamation.

## UNIFORM LAW CONFERENCE OF CANADA

[28] The *Criminal Enterprise Suppression Act* concerns businesses that are owned or directed by members of criminal organizations or have been established to pursue unlawful activity. The *Act* provides an array of court-ordered measures ranging from the cancellation of business licenses to business closure.<sup>29</sup>

### Ontario

[29] The Ontario Legislature passed the *Safe Streets Act 1999* in December 1999. It was fully proclaimed by December, 2000. The legislation prohibits aggressive solicitation for money at any location. It prohibits solicitation *simpliciter* for money at certain locations (automated tellers, public washrooms, public transit stops, stopped vehicles). It prohibits disposing in public of condoms and syringes. An offender can be imprisoned for up to six months for a second or subsequent conviction under this legislation.

[30] Currently, there is before the Ontario Legislature, a Private Member's Bill scheduled for Third Reading, Bill 106 (*An Act to provide for safer communities and neighbourhoods*). If passed, the bill would create a structure and process enabling a municipality, upon complaint, to apply to a court for a community safety order. If the court is satisfied that a property is being used habitually for purposes of drug or illegal alcohol production, consumption, transmission or storage, or for the sexual abuse or exploitation of children, or for the possession or use of illegal firearms or explosives, and that such use adversely affects the community, the court can make a community safety order. The order will prohibit the activities from being carried out at the property. The order can also order the property to be vacated, or a tenancy to be terminated, or to close the property for a period of time.

### Nova Scotia

[31] The *Safer Communities and Neighbourhoods Act* provides a process to enable a complainant to apply for an order from the court to enjoin activity, terminate tenancies, or close down a property that is used for illegal activity as defined in the *Act*. The *Act* also gives the power to inspect and enter where necessary a "fortified" building. It also permits orders requiring removal of such fortifications where they are considered a threat to public safety, and for closing up of such buildings. A respondent can be required to

REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION

pay the province for costs it incurs taking steps under the *Act*. This *Act* has been in force since January 7, 2007.<sup>30</sup>

### **Mandatory Reporting of Child Pornography**

#### **Alberta**

[32] Alberta has recently passed legislation requiring reporting of child pornography. The legislation would require any person who has reasonable and probable grounds to believe that material constitutes child pornography as described in the *Criminal Code* to report the matter to an entity proscribed in *Regulations* passed pursuant to the *Act*. The *Act* takes effect upon proclamation.<sup>31</sup>

#### **Ontario**

[33] The Ontario Legislature passed the *Child Pornography Reporting Act 2008* in December, 2008. It has not yet been proclaimed into force. It amends the *Child and Family Services Act*, which already has a legal duty to report child abuse, to add a legal duty to report child pornography to a designated agency, yet to be determined. The duty to report child pornography, if breached, will constitute a provincial offence.

#### **Nova Scotia**

[34] The *Child Pornography Reporting Act* requires anyone who encounters a representation, material or recording that they reasonably believe is, or may be, child pornography to report the information to a “reporting entity.” The *Act* provides the Governor in Council the authority to designate organizations or individuals as “reporting entities.”

[35] The *Act* received Royal Assent on November 25, 2008, and was proclaimed on April 10, 2010. All Nova Scotia police agencies are designated as the only reporting entities.<sup>32</sup>

## UNIFORM LAW CONFERENCE OF CANADA

### Administrative License Suspension and Related Provisions

#### Yukon

[36] Section 256 of the *Motor Vehicle Act* permits a 24 hour suspension/disqualification where a peace officer has reasonable grounds to believe that the driver has consumed alcohol or drugs in a quantity sufficient to impair his or her ability to operate a motor vehicle. There is no minimum reading required and there are no provisions respecting second or subsequent suspensions/disqualifications under this part.

[37] Section 257 provides a lengthier suspension/disqualification where a peace officer has reasonable grounds to believe the driver has committed an offence under either s. 253(b) or s. 254 of the *Criminal Code*, or is driving while suspended, disqualified, or prohibited.

[38] This suspension/disqualification can be reviewed and revoked only where the officer did not have reasonable grounds; it is not dependent on a criminal or territorial charge being laid and is not revoked where a charge laid is withdrawn, stayed or disposed of by dismissal or acquittal. Unless revoked on review, the suspension/disqualification is in effect for 90 days or until the driver is convicted of a s. 253(b), 254 or 255 offence arising out of the same circumstances, whichever occurs first.

[39] Under section 266, breaches of section 257 sanctions within a five year period result in increasing mandatory minimum penalties and increasing statutorily mandated periods of disqualification, and mandatory minimum periods of incarceration for second and subsequent offences.<sup>33</sup>

#### Alberta

[40] Part 4 of the *Traffic Safety Act* (TSA), automatically imposes a minimum 3 months suspension or disqualification on drivers who are charged with an alcohol-related driving offence. If the offence results in bodily harm or death, the term is increased to 6 months.

[41] Section 89 of the TSA provides a 24 hour disqualification if a peace officer reasonably suspects that the driver of a motor vehicle has consumed alcohol or otherwise

**REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION**

introduced into the driver's body any alcohol, drug or other substance in such a quantity so as to affect the driver's physical or mental ability. This section does not apply if the peace officer decides to lay any charges under the Criminal Code, or if the driver's operator's licence is suspended, or if the driver is disqualified from driving a motor vehicle.

[42] Section 90 of the TSA provides for one month's suspension when a peace officer reasonably suspects that the driver of a motor vehicle, having consumed alcohol, drove the motor vehicle, and obtains a breath sample that registers a result on the approved screening device that indicates the presence of alcohol in the driver's blood, or if the driver without a reasonable excuse fails or refuses to provide a breath sample when required. This section does not apply if the peace officer decides to lay any charges under the *Criminal Code*, or the driver's operator's licence is suspended, or the driver is disqualified from driving a motor vehicle.

[43] There have been no recent *Constitutional* challenges to this section and *Charter* challenges to the administrative license suspension regime have been unsuccessful.<sup>34</sup>

**Saskatchewan**

[44] Saskatchewan has provisions for licence suspension similar to other provinces. The *Traffic Safety Act* mandates a 24 hour suspension where a peace officer has reasonable grounds to believe the driver's blood alcohol concentration is not less than .04 milligrams per cent. The suspension rises to a minimum of 15 days where the driver has received a 24 hour suspension in the preceding five years. Where the driver has had two such suspensions in the preceding five years the minimum term of suspension is 90 days.<sup>35</sup>

[45] Section 148 provides a 90 day suspension where a peace officer has reasonable grounds to believe the driver has committed an offence under either s. 253(b) or s. 254 of the *Criminal Code*.

[46] Where a motorist is convicted under either s. 253 or s. 254 of the *Criminal Code*, an administrative suspension automatically follows. Its length varies with the number of prior related convictions, if any (s. 141).

## UNIFORM LAW CONFERENCE OF CANADA

### Ontario

[47] The Ontario *Highway Traffic Act* contains provisions that create an administrative licence suspension regime, both for those whose blood alcohol reading is between .05 and .08, and for those whose reading is more than .08 and who have been charged with a criminal offence. Those charged with a criminal offence involving drinking and driving will have their licences suspended for 90 days.

[48] The administrative licence suspension regime for those whose blood alcohol reading is between .05 and .08 has recently been toughened, with the passage of *Safer Roads for a Safer Ontario Act, 2007* (S.O. 2007, c.13), amending the *Highway Traffic Act*. Before the amendment, the suspension was for a period of twelve hours. Now the suspension is for 3, 7 and 30 days for first, second, third and subsequent suspensions respectively. The *Safer Roads* legislation also creates an ignition interlock program, pursuant to s.259(1.1) of the *Criminal Code*.

### Nova Scotia

[49] Nova Scotia has provisions providing for licence suspension similar to other provinces. This includes suspensions for failing a Roadside Screening Device, being found with an over 80 blood alcohol level, and being convicted of impaired driving or over 80, dangerous driving, theft of a motor vehicle, and use of a motor vehicle in connection with a theft.<sup>36</sup>

### Restrictions on Body Armor/Armored Vehicles

#### Alberta

[50] Alberta has enacted amendments to *Vehicle Equipment Regulations* under the *Traffic Safety Act* that prohibit armoured vehicles where the modifications render the vehicle unsafe or otherwise not in compliance with the *Regulations*.<sup>37</sup> There have been no *Constitutional* or *Charter* challenges to these provisions.

[51] The government has tabled a Bill based on British Columbia legislation requiring restricting the sale of body armour to those with permits, or others falling in a specified list of exempted categories. The *Act* creates offences for those who fail to comply, and

REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION

permits the seizure of body armour where the possessor has no permit. The Bill passed Second Reading on April 13, 2010.<sup>38</sup>

**Child Protection (Either in relation to prostitution, drug houses, or other illegal activity)**

**Alberta**

[52] The *Drug-endangered Children Act* was proclaimed in force in Alberta on November 1, 2006. Children exposed to an adult's involvement in serious drug activity, such as manufacturing and trafficking, are considered victims of abuse and need protection.

[53] This *Act* enables a police officer who has reasonable and probable grounds to believe that a child is a drug-endangered child to make an *ex parte* application to a judge of the Court or to a justice of the peace for an order authorizing the police officer to apprehend the child.

[54] This *Act* also proclaims it an offence to willfully cause a child to be a drug-endangered child, or obstruct or interfere with a police officer exercising any power or performing any duty under this *Act* and imposes a punishment of a fine of not more than \$25,000, or to imprisonment for a term of not more than 24 months, or to a fine and imprisonment.

[55] To date there have been no *Constitutional* or *Charter* challenges to this legislation.

[56] The *Protection of Sexually Exploited Children Act* is the successor to legislation initially introduced in 1996 to specifically protect children involved in prostitution.<sup>39</sup> It recognizes that children involved in prostitution are victims of sexual abuse and allows police and caseworkers to remove sexually exploited children from dangerous situations to ensure their safety and well-being.

[57] A police officer who believes on reasonable and probable grounds that a person is a child and is in need of protection can apply to the Court for an apprehension order. If a police officer has reasonable and probable grounds to believe that the child's life or

## UNIFORM LAW CONFERENCE OF CANADA

safety is seriously and imminently endangered because the child is engaging in prostitution, the police officer may apprehend and convey the child to a protective safe house without an order.

[58] If a child is physically or emotionally injured or sexually abused or is likely to be physically or emotionally injured or sexually abused or encouraged to engage in prostitution by a person, upon application, the Court of Queen's Bench can issue an order restraining that person from contacting the child or associating in any way with the child.

[59] There have been no *Constitutional* challenges to this version of the *Act*. The procedural protections afforded a child under a previous version were challenged unsuccessfully under the *Charter*.<sup>40</sup>

### Saskatchewan

[60] The *Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act* is aimed at protecting children who are or may become sex trade workers. The *Act* creates a procedure similar to that provided under the *Victims of Domestic Violence Act* whereby an applicant may obtain an "emergency protective intervention order" (basically a non-contact order) on evidence that a child has been exposed to child sexual abuse (i.e. "harmful interaction for a sexual purpose"). The *Act* also creates offences for those who expose a child to harmful interactions for a sexual purpose or become aware of such a circumstance and fail to report it.<sup>41</sup>

### Ontario

[61] The *Child and Family Services Act* contains provisions that allow for the apprehension (s.42) and court order (s.57) to protect children who are in situations where they are suffering or may suffer harm. In 2002 the Ontario Legislature passed the *Rescuing Children from Sexual Exploitation Act 2002*, which authorized the police to apprehend a person under 18 where such person is or may be sexually exploited for commercial purposes. A court may order that child to be placed in a facility for a maximum period of 30 days. This Act has not yet been proclaimed into force.

**REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION**

**Nova Scotia**

[62] Two *Acts* in Nova Scotia address different aspects of this problem. First, the *Child and Family Services Act* creates a Child Abuse Register, which contains the names of individuals convicted of specified criminal offences against children.<sup>42</sup> Information from the Register may be disclosed at the direction of the Minister to a child protection agency, or to the police in certain circumstances.

[63] Second, provisions in the *Protection from Illegal Drugs Act* also require that provincial authorities be notified when a person believes that the health or safety of a child is at risk from drug use, growth, manufacture, or production. The *Act* received Royal Assent on July 14, 2006. Proclamation is expected soon.

[64] This *Act* also regulates the storage, transportation, distribution, and sale of ingredients, materials and equipment used in the manufacture of illegal drugs. It also imposes reporting requirements when such items are stolen or misplaced.<sup>43</sup>

**Witness Protection Legislation**

**Alberta**

[65] Alberta has recently passed legislation providing for a witness protection regime. The *Witness Security Act* creates a Witness Security Coordinator and a Witness Security Panel that will make decisions regarding the provision of proscribed security measures to witnesses and associated persons in accordance with the statute and regulations. This *Act* comes into force upon Proclamation.<sup>44</sup>

**Saskatchewan**

[66] The *Witness Protection Act* establishes a witness protection program for Crown witnesses who may face danger due to that status.<sup>45</sup> Applications for “protection agreements” are vetted by the Director who can strike an agreement if it appears the witness requires protection for a period of no more than 30 days. If protection is likely required for a longer period the application must be determined by an “approval committee.”

## UNIFORM LAW CONFERENCE OF CANADA

### Ontario

[67] Ontario has legislation that supports its witness protection program. Provisions can be found in the *Crown Witness Act* and the *Change of Name Act* that allow for various actions to ensure proper and adequate witness protection.

### Family Violence

#### Yukon

[68] Yukon's *Family Violence Prevention Act* is often used in family violence situations by applicants as an alternative to the criminal justice system and allows the courts to make time-limited protective orders in favour of those who allege that their partners have assaulted or threatened them or their children. Initial applications are generally made *ex parte* before a justice of the peace and referred to a judge within three days. In addition to protective orders, the legislation permits the courts to make temporary orders including clauses respecting exclusive occupation of the family home, maintenance, bill payments, etc.<sup>46</sup>

[69] Prosecutions for breaches of these orders most commonly relate to non-compliance with no contact orders.

#### Alberta

[70] The *Protection Against Family Violence Act* was passed in Alberta on June 1, 1999. This *Act* provides for emergency protection orders that may restrict contact between the alleged perpetrator and the victim. Such orders may also give exclusive rights of occupation of a residence to the person seeking the order. If these orders are granted by a designated Justice of the Peace or Provincial Court Judge, they must be confirmed by a Justice of the Court of Queen's Bench within 9 days.<sup>47</sup>

#### Saskatchewan

[71] The *Victims of Domestic Violence Act* affords an alleged victim of domestic violence the ability to apply to a Justice of the Peace for an emergency order to obtain sole occupancy of the dwelling that has been shared with the alleged abuser. If the order is

**REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION**

issued then it must be reviewed within three days by a Superior Court Justice who may confirm the decision or order a rehearing.<sup>48</sup>

**Ontario**

[72] There are provisions in the *Child and Family Services Act* and the *Family Law Act* that deal with family violence, including a restraining order regime.

**Nova Scotia**

[73] The *Domestic Violence Intervention Act* allows a Justice of the Peace to issue an Emergency Protection Order in the event of domestic violence. Such an order can provide for a variety of things, including exclusive possession of a home, removal of someone from a residence, restraining orders, and exclusive power over vehicles and bank accounts. The *Act* requires the order to be reviewed by the Supreme Court within specified time periods for confirmation or variation. The *Act* has been in force since April 1, 2003.<sup>49</sup>

**Mandatory Reporting of Gunshots and Other Wounds**

**Alberta**

[74] *The Gunshot and Stab Wound Mandatory Reporting Act* requires a health care facility or emergency medical technician to disclose to the police that they have treated a patient for a gunshot or stab wound unless reasonably believed to be accidentally or self inflicted.<sup>50</sup> The *Act* received Royal Assent on November 26, 2009.

**Saskatchewan**

[75] The *Gunshot and Stab Wound Mandatory Reporting Act* requires any hospital or facility that treats a patient for a gunshot or stab wound to disclose to the local police service that treatment has been or is being provided, the name of the patient, and the hospital or facility's location.<sup>51</sup>

## UNIFORM LAW CONFERENCE OF CANADA

### Ontario

[76] The Ontario Legislature passed the *Mandatory Reporting of Gunshot Wounds 2005* in June 2005. It requires any facility to report its treatment of a gunshot wound to a police service.

### Nova Scotia

[77] Nova Scotia has similar legislation – *The Gunshot Wounds Mandatory Reporting Act*. It requires health professionals to report the treatment of gunshot wounds to the police. It applies to gunshot wounds only, and contains no exception for self-inflicted or apparently accidental wounds. It came into force on October 31, 2008.<sup>52</sup>

### Enforcement of Court Orders

#### Alberta

[78] The *Traffic Safety Act* similarly permits the Registrar to refuse to issue motor vehicle documents if fines under the *Act* or other *Acts* specified by regulation have not been paid.<sup>53</sup>

#### Ontario

[79] In Ontario, the *Highway Traffic Act* provides for suspensions upon failure to pay a fine for a *Criminal Code* or *Highway Traffic Act* driving offence. It also prohibits renewals of licences where any fine imposed for a driving offence (including illegal parking) is outstanding.

#### Nova Scotia

[80] *An Act to Assist in Enforcement of Court Orders Act* permits the court to notify the Registrar of Motor Vehicles if a person is in default on any fine imposed under any *Act* of Parliament payable to the province. The Registrar may take a range of options including refusing to renew a licence, permit, or allow a transfer of ownership. Driver's licences may also be suspended. This *Act* came into force on July 1, 2006.

REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION

## **Profiting From Accounts of Crime**

### **Yukon**

[81] Section 66 of the Yukon *Motor Vehicles Act* provides for loss of licence for those who have outstanding fines resulting from convictions under the *Motor Vehicles Act* and other Territorial statutes as prescribed. No other statutes have been prescribed to this time. Section 68 also provides for loss of licence for those with outstanding payments under the Yukon's *Maintenance Enforcement Act*.<sup>54</sup>

### **Alberta**

[82] Alberta has similar legislation in the *Criminal Notoriety Act* proclaimed in October 2006.<sup>55</sup> It requires a party contracting with an offender to give notice of the contract to the Crown, and prohibits the payment to the offender. Any amounts payable under contract to the offender must be paid to the Crown. It also prohibits the sale of criminal memorabilia.

### **Saskatchewan**

[83] The *Profits of Criminal Notoriety Act* denies benefits for an offender who enters a “contract for the recounting of a crime.” The party to the contract who would have been compensated may apply for a court-order directing payment to him/her if express criteria are met. Otherwise, the party is required to direct the compensation to the responsible Minister.<sup>56</sup>

### **Ontario**

[84] The Ontario Legislature passed the *Prohibiting Profiting from Recounting Crimes Act 2002* in June 2002. The Act requires that a person entering into a contract for commercial gain for providing information about a crime he/she committed, or the other party to the contract, must report the contract to the Attorney General. The Attorney General may apply for a court order that any money or property agreed to in the contract be paid or provided to the Attorney General, or if already transferred under the contract, that the court make an order that it be forfeited to the Attorney General. The proceeds

## UNIFORM LAW CONFERENCE OF CANADA

will then be placed into a fund to reimburse the victims of that offence, or to assist victims of crime in general.

### **Nova Scotia**

[85] The *Criminal Notoriety Act* prevents criminals from financially exploiting the notoriety of their crimes. It prohibits anyone from paying any consideration to a person who committed a crime within the province under a contract for the “recollection of a crime.” It also includes crimes committed outside the province if the person convicted resides within the province or is in custody in the province. It also prohibits the receipt of such consideration. Any monies owing under such a contract shall be paid to the Minister. Similarly, it prohibits the sale of “criminal memorabilia” which is made more valuable by virtue of the fact of the crime. This *Act* has been in force since March 12, 2007.<sup>57</sup>

### **CONCLUSION**

[86] This brief review of provincial legislative initiatives from 5 jurisdictions illustrates both the broad range of complementary provincial legislation, and the high degree of similarity between many of these initiatives. In light of the decision of the Supreme Court of Canada in *Chatterjee* it is reasonable to assume that both of these trends will continue, perhaps at an accelerated rate.

[87] In light of these trends, it may be advisable at some point to suggest model or uniform legislation. However, given the relatively small number of jurisdictions represented on this working group, such a recommendation may be premature. As an interim step, the group recommends that the ULCC adopt a coordinating role with respect to these legislative initiatives. A chart is attached to this paper as Appendix “A”. Jurisdictional Representatives from each jurisdiction could be tasked with the responsibility of updating this document. The document could be used by any jurisdiction considering complementary legislation to examine the initiatives undertaken in other jurisdictions. The value of this information, together with any refinements to the chart could be reviewed by the Conference annually.

REPORT OF THE CRIMINAL SECTION WORKING GROUP ON COMPLEMENTARY PROVINCIAL  
LEGISLATION

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- <sup>1</sup> See for example, *Prince Edward Island (Provincial Secretary v. Egan)* [1941] S.C.R. 396
- <sup>2</sup> *Chatterjee v. Ontario (Attorney General)* 2009 SCC 19
- <sup>3</sup> *Reference re Firearms Act (Can)* 2000 SCC 31 at para 16
- <sup>4</sup> *Firearms, supra*, at para 17
- <sup>5</sup> *Firearms, supra*, at para 21
- <sup>6</sup> *Firearms, supra*, at para 18
- <sup>7</sup> *Firearms, supra*, at para 25
- <sup>8</sup> *Firearms, supra*, at para 26
- <sup>9</sup> *Canadian Western Bank v. Alberta* 2007 SCC 22 at para 26
- <sup>10</sup> *Canadian Western, supra*, at para 39
- <sup>11</sup> *Constitutional Law of Canada* (2<sup>nd</sup> Ed.), Peter W. Hogg, Carswell 1985 at pages 329-331
- <sup>12</sup> *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161 at page 191. See also *Canadian Western, supra*, at para 31
- <sup>13</sup> *Canadian Western, supra*, at para 45
- <sup>14</sup> *Chatterjee, supra*, at paras 3-4, 15
- <sup>15</sup> *Chaterjee, supra*, at paras 23, 29, 40-41
- <sup>16</sup> *Chaterjee, supra*, at para 2
- <sup>17</sup> This Bill is available online at [http://www.legassembly.gov.yk.ca/pdf/bill81\\_32.pdf](http://www.legassembly.gov.yk.ca/pdf/bill81_32.pdf)
- <sup>18</sup> Civil Forfeiture Act, S.B.C. 2005, c. 29
- <sup>19</sup> A more detailed overview of the civil forfeiture process in Alberta is available online at [http://justice.alberta.ca/programs\\_services/safe/Pages/civil\\_forfeiture\\_process.aspx](http://justice.alberta.ca/programs_services/safe/Pages/civil_forfeiture_process.aspx)
- <sup>20</sup> Bill 10, *Victim Restitution and Compensation Amendment Act*, available online at [http://www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_27/session\\_3/20100204\\_bill-010.pdf](http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_27/session_3/20100204_bill-010.pdf)
- <sup>21</sup> This Act is available online at <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S46-002.pdf>
- <sup>22</sup> These Acts are available online at [http://www.gov.ns.ca/legislature/legc/bills/60th\\_2nd/3rd\\_read/b011.htm](http://www.gov.ns.ca/legislature/legc/bills/60th_2nd/3rd_read/b011.htm), [http://www.gov.ns.ca/legislature/legc/bills/60th\\_2nd/3rd\\_read/b014.htm](http://www.gov.ns.ca/legislature/legc/bills/60th_2nd/3rd_read/b014.htm)
- <sup>23</sup> *Nova Scotia (Public Safety) v. Cochrane* 2008 NSSC 60, paragraphs 20-32 (Nova Scotia Supreme Court)
- <sup>24</sup> This Act is available online at <http://www.gov.yk.ca/legislation/acts/sacone.pdf>
- <sup>25</sup> Safer Communities and Neighbourhoods Act, S.A. 2007 c. S-0.5, available online at <http://www.canlii.org/en/ab/laws/stat/sa-2007-c-s-0.5/latest/sa-2007-c-s-0.5.html>
- <sup>26</sup> This Act is available online at <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S0-1.pdf>
- <sup>27</sup> *R. v. Bitz* 2009 CarswellSask 878 (Prov. Ct.)
- <sup>28</sup> This Bill – *The Safer Communities and Neighbourhoods Amendment Act 2010* is available online at [http://www.legassembly.sk.ca/bills/pdfs/3\\_26/bill-137.pdf](http://www.legassembly.sk.ca/bills/pdfs/3_26/bill-137.pdf).
- <sup>29</sup> This Act is available online at <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/C46-1.pdf>
- <sup>30</sup> This Act is available online at <http://www.gov.ns.ca/legislature/legc/statutes/safecomm.htm>
- <sup>31</sup> The *Mandatory Reporting of Child Pornography Act* is available online at [http://www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_27/session\\_3/20100204\\_bill-202.pdf](http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_27/session_3/20100204_bill-202.pdf). It was amended at 3<sup>rd</sup> Reading to take effect upon proclamation. The amendment is available online at [http://www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_27/session\\_3/20100204\\_am-202-A3.pdf](http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_27/session_3/20100204_am-202-A3.pdf)
- <sup>32</sup> This Act is available online at [http://www.gov.ns.ca/legislature/legc/bills/60th\\_2nd/3rd\\_read/b187.htm](http://www.gov.ns.ca/legislature/legc/bills/60th_2nd/3rd_read/b187.htm)
- <sup>33</sup> This Act is available online at <http://www.gov.yk.ca/legislation/acts/move.pdf>
- <sup>34</sup> See for example, *Thomson v. Alberta (Transportation and Safety Board)*, 2003 ABCA 112 and the decisions reviewed therein.
- <sup>35</sup> This Act is available online at <http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/T18-1.pdf>
- <sup>36</sup> This Act is available online at <http://www.gov.ns.ca/legislature/legc/statutes/motorv.htm>
- <sup>37</sup> *Vehicle Equipment Regulation*, Alta. Reg 122/2009, s. 79.1, available online at <http://www.canlii.org/en/ab/laws/regu/alta-reg-122-2009/latest/alta-reg-122-2009.html>
- <sup>38</sup> A copy of Bill 12 is available online at [http://www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_27/session\\_3/20100204\\_bill-012.pdf](http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_27/session_3/20100204_bill-012.pdf)

## UNIFORM LAW CONFERENCE OF CANADA

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<sup>39</sup> The legislative history of these provisions is summarized in “*Alberta (Dis)Advantage: The Protection of Children*

*Involved in Prostitution Act and the Equality Rights of Young Women*” (2003) 2 J.L. & Equality 210

<sup>40</sup> *Alberta (Director of Child Welfare) v. K.B.* (2000), 279 A.R. 328, [2000] A.J. No. 1570 (Q.B.) (QL)

<sup>41</sup> This Act is available online at <http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/e8-2.pdf>

<sup>42</sup> This Act is available online at <http://www.gov.ns.ca/legislature/legc/statutes/childfam.htm>.

<sup>43</sup> This Act is available online at

<sup>44</sup> This Act is available online at [http://www.assembly.ab.ca/net/index.aspx?p=bills\\_status&selectbill=011](http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=011)

<sup>45</sup> This Act is available online at <http://www.canlii.org/en/sk/laws/stat/ss-2009-c-w-14.2/latest/>

<sup>46</sup> This Act is available online at <http://www.gov.yk.ca/legislation/acts/favipr.pdf>

<sup>47</sup> This Act is available online at <http://www.gov.ns.ca/legislature/legc/sol/solp.htm>

[http://www.qp.alberta.ca/574.cfm?page=p27.cfm&leg\\_type=Acts&isbncIn=9780779742820](http://www.qp.alberta.ca/574.cfm?page=p27.cfm&leg_type=Acts&isbncIn=9780779742820)

<sup>48</sup> This Act is available online at <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/V6-02.pdf>

<sup>49</sup> This Act is available online at <http://www.gov.ns.ca/legislature/legc/statutes/domestcv.htm>

<sup>50</sup> This Act is available online at

[http://www.qp.alberta.ca/574.cfm?page=g12.cfm&leg\\_type=Acts&isbncIn=9780779746798](http://www.qp.alberta.ca/574.cfm?page=g12.cfm&leg_type=Acts&isbncIn=9780779746798)

<sup>51</sup> This Act is available online at

<sup>52</sup> This Act is available online at <http://www.gov.ns.ca/legislature/legc/statutes/gunshot.htm>

<sup>53</sup> This Act is available online at [http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/G9-](http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/G9-1.pdf)

[1.pdfhttp://www.qp.alberta.ca/574.cfm?page=T06.cfm&leg\\_type=Acts&isbncIn=9780779748013](http://www.qp.alberta.ca/574.cfm?page=T06.cfm&leg_type=Acts&isbncIn=9780779748013)

<sup>54</sup> This Act is available online at <http://www.gov.yk.ca/legislation/acts/move.pdg>

<sup>55</sup> This Act is available online at

[http://www.qp.alberta.ca/574.cfm?page=C32P5.cfm&leg\\_type=Acts&isbncIn=0779750292&display=html](http://www.qp.alberta.ca/574.cfm?page=C32P5.cfm&leg_type=Acts&isbncIn=0779750292&display=html)

<sup>56</sup> This Act is available online at <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/P28-1.pdf>

<sup>57</sup> This legislation is available online at <http://www.gov.ns.ca/legislature/legc/statutes/crimnot.htm>