# UNIFORM LAW CONFERENCE OF CANADA

## HALIFAX, NOVA SCOTIA
## AUGUST 22 - 26, 2010

## CRIMINAL SECTION

## MINUTES

### ATTENDANCE

Twenty-eight delegates of all provinces and territories, except 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

Luc Labonté presided as Chair of the Criminal Section. Joanne Dompierre acted as Secretary. The Section convened to order on Sunday, August 22, 2010.

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, 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,* Alberta presented their resolutions first followed by other jurisdictions in alphabetical order and then by resolutions from the Canada delegation.

Twenty-five (25) resolutions were initially presented by jurisdictions for consideration. Two (2) of those resolutions initially presented were divided; this resulted in two (2) additional resolutions. During the proceedings, one (1) floor resolution was presented. Three (3) resolutions were withdrawn following discussion. As a result, a total of twenty-eight (28) resolutions were considered by delegates. Of the twenty-eight resolutions debated, twenty-three (23) were carried as submitted or amended, two (2) resolutions was defeated and three (3) were withdrawn following discussion.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.

**Papers**

One paper was considered by Criminal Section delegates at this year's Conference. A Justice Canada discussion paper entitled *Modernizing the Transportation Provisions of the Criminal Code* was presented. In addition, the following four progress reports were presented during a joint session of the Criminal and Civil Sections: *Report of the Working Group on Uniform Prosecution Records Production Act (Collateral Use of Crown Brief Disclosure); Final Report of the Joint Criminal/Civil Section Working Group on Malicious Prosecution; Final Report of the Working Group on Interprovincial Service of Offence Notices* and *Report of the Criminal Section Working Group on Complementary Provincial Legislation.*

**Criminal Section Paper**

***Modernizing the Transportation Provisions of the Criminal Code***

This discussion paper was presented by Greg Yost, Counsel, Criminal Law Policy Section, Department of Justice, Canada. The discussion paper was developed to obtain the views of various stakeholders on the issue of legislative reform of impaired driving provisions. In 2009, the House of Commons Standing Committee on Justice and Human Rights conducted a full review of this issue and made 10 recommendations, 8 of which were addressed to the federal government. These recommendations were accepted in principle by the Government and, in addition, the Government believes the time has come to consider a comprehensive set of reforms. The paper presented sets out options for responding to the recommendations made by the Standing Committee that would require federal legislation and raises further options for legislative changes.

The paper proposes to recast provisions of the Criminal Code relating to impaired driving into a new Part of the Criminal Code that addresses all transportation-related offences and is written in simpler language with the following structure:

1. Purpose and declarations
2. Offences
3. Penalties
4. Prohibitions
5. Investigatory powers
6. Evidentiary - proof of alcohol concentration
7. General

Each section presents a discussion and options for considerations and seeks input on specific points.

**Discussion**

Mr. Yost presented and explained some of the proposals and responded to questions from participants. Some of the participants expressed concern relating to some of the proposals, suggesting they may go too far in the interference with individual rights. A new approach being considered by the province of British Columbia to deal with impaired driving matters outside of the criminal law per se was discussed.

The Chair thanked the presenter for his presentation and invited delegates to provide any comments on the proposals to Mr. Yost.

**Joint Session Papers**

***Status Report of the Working Group on the Collateral Use of Crown Brief Disclosure (2010)***

Presented by:

Greg Steele, Q.C., Steele, Urquhart Payne, Barristers and Solicitors, Vancouver, BC.

Greg Steele presented the report; draft uniform *Prosecution Records Production Act* and commentaries for consideration of the Conference (formerly known as the "Collateral Use of Crown Brief Disclosure" project). The uniform Act is aimed at codifying principles set out in the Ontario Court of Appeal decision in *D.P.* v. *Wagg* (2004), 71 O.R. (3d) 229.

There is an ever-increasing number of applications seeking production of records in the possession of the Crown or police as a result of an investigation or prosecution. Often, such requests are handled informally. The uniform Act is not intended to interfere with such informal arrangements; instead, it is intended to address those instances where the informal regime breaks down and the Attorney General or police refuse to consent to production. A court application would then follow.

In the absence of special circumstances, the working group supports the general rule that production of a prosecution record should be delayed until the prosecution or investigation to which it relates is completed. Child protection proceedings would receive different treatment, however, because of the urgency that generally surrounds such proceedings. Where the well-being of the child is at stake, serious harm could occur if proceedings were delayed, and as such there is no requirement to wait for the prosecution or investigation to be completed before applying to court.

Under the uniform Act, when an application is made to court for production of records, and the court must balance the public interest in promoting the administration of justice by providing full access to the prosecution record, against the public interest in preventing or limiting access to or use of the prosecution record. The uniform Act lists factors that a court is to consider, in exercising its discretion, however no order can be made requiring the production of a prosecution record without the consent of the Attorney General or relevant police force.

**Discussion:**

Discussion at the meeting further clarified that the uniform provisions were not intended to apply to fatality inquiries or public inquiries, as those processes are generally carried out by or in cooperation with the Crown. Any disputes regarding records would be handled through the Crown's own internal processes. Further, public inquiries normally have terms of reference which would determine the scope of records that could be obtained.

Additional questions were raised regarding section 6 of the draft Act presented by the working group, which says that the Act does not bind the Crown. Some delegates were unclear as to the intent and effect of such a provision, wondering if it would offer the Crown the alternative of refusing to participate in a court action for production. Mr. Steele clarified that this was not the intent of the section, but that the working group would add to the commentary to clarify the point.

**RESOLVED:**

1. That the report of the working group and the draft *Uniform Prosecution Records Production Act* be accepted; and
2. That the directions of the Conference be incorporated into the uniform Act and commentaries, and circulated to both Civil and Criminal jurisdictional representatives. Unless two or more objections are received by the Executive Director of the Conference by November 30, 2010, the draft Act should be taken as adopted as a uniform Act and recommended to the jurisdictions for enactment.

***Final Report of the Joint Criminal/Civil Section Working Group on Malicious Prosecution (2010)***

Presented by:

W. Dean Sinclair, Saskatchewan Justice

Dean Sinclair presented the report of the working group, which had been established in 2006 to address whether there was a need for uniform legislation to respond to concerns about the common law evolution of the tort of malicious prosecution.

The working group's approach was to follow a Supreme Court of Canada decision in Nelles v. Ontario [1989] S.C.R. 601. Specifically, four elements must be shown 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, and

(4) there was malice or that the primary purpose of the prosecution was other than that of carrying the law into effect.

In 2008, the working group became aware of an important case, Kvello Estate v. Miazga, which was winding its way through the courts. The issue at the heart of Miazga was the same issue that most concerned the working group: were the courts conflating the third and fourth criteria from Nelles, such that proof of actual malice or improper purpose was no longer required?

The Supreme Court of Canada issued its judgment in the Miazga appeal ([2009] SCC 51). In a unanimous decision, the Court held that the tort of malicious prosecution requires proof that a prosecutor was impelled to act for an improper purpose inconsistent with the office of a Crown attorney. The absence of reasonable and probable grounds to prosecute, standing alone, is not a sufficient basis to infer malice. Additionally, the Court concluded that there can be no finding of malice if a prosecutor initiates or continues a prosecution based on an honest, albeit mistaken, professional belief that reasonable and probable cause exists.

The working group has concluded that the decision of the Supreme Court of Canada in Miazga has eliminated the need to codify essential elements of the tort of malicious prosecution. As such, it recommends that the Malicious Prosecution project be concluded.

> RESOLVED: That as a result of the decision of the Supreme Court of Canada in the Miazga case, the report of the Joint Civil/Criminal Section Working Group be accepted as the conclusion of this project.

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

Presented by:

Lee Kirkpatrick, Yukon Department of Justice

Lee Kirkpatrick presented the report of the working group, which was established to examine how provincial offence notices are served on accused persons located outside the province/territory, and develop a consistent statutory approach for consideration by all jurisdictions.

The working group collected information regarding existing practices in Quebec, Yukon and Alberta, and concluded the while the legislation differed between those jurisdictions, the legislation in place in each jurisdiction best served its own particular needs. After the 2009 Conference, an invitation was extended to other Canadian jurisdictions to provide input in order to determine what practices might form the basis for a common approach, however no other jurisdiction expressed an interest. As a result, the working group has concluded that there is currently no need or benefit to be gained through the formulation

of a consistent statutory approach to extra-provincial service of provincial offence notices.

> RESOLVED: That the report by the Joint Civil/Criminal Section Working Group be accepted as the conclusion of this project.

***Report of the Criminal Section Working Group on Complementary Provincial Legislation***

Presented By:

Joshua B. Hawkes Q.C., Director, Policy Unit, Alberta Justice

A Working Group, comprised of Joshua B. Hawkes, Alberta Justice, Earl Fruchman, Ontario Crown Law Office, Ronald MacDonald, Criminal Law Policy, Nova Scotia, Lane Wiegers, Prosecutions Services, Saskatchewan and Lee Kirkpatrick, Prosecution Services, Yukon was established as a result of a 2009 ULLC Criminal Law Section resolution recommending that a group 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".

The Working Group examined 11 areas of provincial legislation in 5 provinces. It concluded that it would not be appropriate to recommend uniform legislation to any of the 11 areas reviewed, but that rather, it would be more appropriate to establish coordinating mechanisms whereby Jurisdictional Representatives would provide a yearly update of provincial legislation in these areas. This would be useful to all jurisdictions contemplating development of legislation or requiring easy and quick access to a list of existing provincial or territorial legislation.

The report contains detailed information on legislation reviewed as well as an easy to use Chart containing information on the jurisdictions and their legislation.

> RESOLVED: That the report by the Criminal Section Working Group be accepted; That the working group receive information from all jurisdictions to update their legislative chart and circulate the updated chart prior to the 2011 annual meeting and; That the chart be reviewed for possible projects on uniform legislation.

***Potential joint civil and criminal section projects- oral report-***

Presenters: Nolan Steed, Q.C., Justice and Attorney General, Alberta, and Luc J. Labonté, Office of the Attorney General, New Brunswick

Nolan Steed and Luc Labonté led a brainstorming session to generate new ideas for consideration as future joint civil and criminal section projects. Currently, there are no

joint civil and criminal section projects underway; while there is no requirement that joint projects be done, if there are any opportunities to be examined, there is currently a capacity to do so. Project ideas would be presented to the Advisory Committee for consideration in more depth.

Delegates were advised that the criminal section has been considering a proposal to amend Criminal Code provisions regarding restitution orders to cover investigation or accounting costs that are often borne by victims of white collar crime, before charges are laid. Expenses such as forensic audits are often necessary, and can be very expensive. One delegate suggested that consideration could be given to expanding this to become a joint project to consider if there are other civil law approaches that could assist these victims of white collar crime.

Any other suggestions that arise may be provided to any member of the Advisory Committee.

(no resolution)

**CLOSING**

The Chair noted that it had been his pleasure to have acted as Chair and thanked delegates for their 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 Nova Scotia Government personnel that provided assistance through the Secretariat of the Conference.

By resolution of the Criminal Section, the nomination of Joshua B. Hawkes, Q.C., Director, Policy Unit, Alberta Justice, as Chair of the Criminal Section for 2010-2011 was accepted. The Nominating Committee recommended that Anouk Desaulniers, be nominated to be the next Chair of the Criminal Section for the period 2011-2012.

**Annex 1**

# REPORT OF THE SENIOR FEDERAL DELEGATE

**Uniform Law Conference of Canada**
**Criminal Section 2010**

**July 21, 2010**

**Department of Justice Canada**

## Introduction

The Uniform Law Conference of Canada (ULCC) provides an invaluable source of expertise to the Department of Justice and the Minister of Justice on a whole range of criminal law issues. Delegates attending ULCC offer candid, thoughtful and thorough input and advice arising from their own experience within the criminal justice system. The work of the Conference continues to benefit the federal Government in identifying provisions of the *Criminal Code* and related criminal law statutes in need of legislative reform and in identifying trends and issues that require further consideration.

Each year, 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.

Many of these resolutions of recent years are being considered by FPT Working Groups in the context of their consideration of related issues- for example, the FPT Working Group on Sentencing continues to examine credit for time served in pre-sentenced custody following the implementation of Bill C-25 and the implications for other sentence provisions. The FPT Working Group on Cyber Crime is examining many issues that have been the subject of ULC resolutions regarding wiretap and other investigative powers. The FPT Working Group on Criminal Procedure continues to identify approaches - both legislative and non legislative - to improve efficiency of the criminal justice system. In addition, the Department of Justice considers the resolutions and discussion papers presented to the Uniform Law Conference as it develops law reforms to reflect the priorities of the Government, which include increasing confidence in the criminal justice system and improving efficiency.

The Reports of the Senior Federal Delegate in recent years have noted the active criminal law agenda and the status of current bills of interest to the Criminal Law Section. Where possible, references to past ULC resolutions that are reflected in the bill are also noted.

The 2008 Report provided the status of criminal law bills in the Second Session of the 39th Parliament (October 2007 – September 2008), 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.

In the 39th Parliament, Second Session (October 2007–September 2008), seven criminal law bills were tabled, some of which reintroduced bills that died on the Order paper in the previous session of Parliament and others that reflected new initiatives. Of the seven bills tabled, two received Royal Assent (Bill C-2, *The Tackling Violent Crime Act* and Bill C-13, *Criminal Procedure, Language of the Accused, Sentencing and Other Amendments).* Five bills died on the Order Paper at the call of the election in the fall 2008.

The bills reflected platform commitments and related initiatives aimed at strengthening the criminal law and public safety (for example, Bill C-25 regarding the YCJA). Sentencing reforms were a key priority as evidenced in Bill C-2, and Bill C-26. Bill C-27 regarding Identity Theft and Bill C-53 regarding auto theft and trafficking in property obtained by crime demonstrated commitment to respond to key concerns of Canadians beyond violent crime.

The current report focuses on criminal law reforms that proceeded in the 40th Parliament, Second Session and Third Session.

**40th Parliament (Second Session)**

In the 40th Parliament (Second Session), January 26, 2009 to December 30, 2009), the Minister of Justice introduced 14 crime Bills (four of which were re introductions of bills that had died on the Order paper in fall, 2008). Three bills were passed, received Royal Assent and proclaimed into force (Bill C-14, which dealt with organised crime, Bill C-25, which dealt with credit for time spent in pre sentenced custody, and Bill S-4, which dealt with Identity theft).

Several of the bills introduced in the 40th Parliament (Second Session) focussed on sentencing and related issues. For example, Bill C-25 responded to a platform commitment and an issue of concern to the Provinces to limit credit for time served in pre-trial detention. Bill C-42 sought to further limit the availability of conditional sentences. Bill C-52 focussed on the sentences for serious fraud. Bill C-55 proposed to ensure compliance with alcohol and drug prohibition orders by providing a regime for demands for bodily samples. Bill C-15 proposed amendments to the CDSA to provide minimum penalties for drug crimes.

Bill C-36 focussed on offenders serving life sentences for murder by proposing to restrict and eventually repeal the faint hope provision. Bill C-54 also focussed on murderers

serving a life sentence by proposing to permit consecutive parole ineligibility periods of 25 years each for each life taken.

The other Bills proposed a range of reforms, including the creation of new offences (Bill S-4, to address Identity Theft, Bill C-27 to address Auto theft and stolen property and Bill C-58 to require mandatory reporting of on line child pornography), modernisation of investigative powers
(Bill C-46), criminal procedure (Bill C-3 1), and re-instatement of investigative hearings (Bill C-19).

***Bills that received Royal Assent and were proclaimed into force***

**Bill C-14 O*rganized 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 introduced in the House of Commons on February 26, 2009. Bill C-14 received Royal Assent on June 23, 2009 as S.C. 2009 c. 22. The amendments were proclaimed in force on October 2, 2009

The Act 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-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),* also known as the *Truth in Sentencing Act,* was introduced in the House of Commons on March 27, 2009 and passed by the House of Commons on June 8, 2009. The Bill received First Reading in the Senate on June 9 and was passed by the Senate on October 21 and received Royal Assent on October 22, 2009 as SC 2009, c. 29. The amendments came into force on February 22, 2010.

This Act 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 amendments, as a general rule, cap the amount of credit for time served in pre-sentencing custody at a 1-to1 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 S-4 *Identity Theft*

Bill S-4, An *Act to amend the Criminal Code (identity theft and related misconduct),* re-introduced the provisions of former Bill C-27 from the previous Parliament. Bill S-4 received First Reading in the Senate on March 31, 2009 and was passed by the Senate with amendments on June 11, 2009. The amendments 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 referred to the House of Commons on June 15, 2009 reviewed by the House of Commons Standing Committee on Justice and Human Rights, passed and ultimately received Royal Assent on October 22, 2009 as SC 2009, c.28. The amendments came into force on January 8, 2010.

The Act amends 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.

***Bills that died on the Order Paper***

Due to the prorogation of Parliament on December 30, 2009, all bills that had not yet received Royal Assent died on the Order Paper. These bills included:

Bill C-15 ***An Act to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts***

Bill C-19 ***An Act to amend the Criminal Code (investigative hearing and recognizance with conditions)***

Bill C-26 ***An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime)***

Bill C-3 1 ***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*** (criminal procedure reforms)

Bill C-36 ***An Act to amend the Criminal Code (Serious Time for the Most Serious Crime Act)*** (Faint Hope)

Bill C-42 ***An Act to amend the Criminal Code (Ending Conditional Sentences for Property and Other Serious Crimes Act)***

Bill C-46 ***An Act to amend the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act***

Bill C-52 ***An Act to amend the Criminal Code (sentencing for fraud)***

Bill C-54 ***An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act (Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act)***

Bill C-55 ***An Act to amend the Criminal Code (Response to the Supreme Court of Canada Decision in R. v. Shoker Act)*** (Enforcement of Drug and Alcohol Prohibition Orders)

Bill C-58 ***An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service (Child Protection Act - Online Sexual Exploitation)***

The majority of the bills that died were reintroduced in the Third Session of the 40th Parliament. These are described below at page 7 with reference to the current Bill number and former Bill number.

Note that the following Bills **died on the Order Paper at prorogation of the Second Session of the 40th Parliament and have not yet been re-introduced.**

**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*** proposed a range of procedural amendments many of which 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-3 1 was introduced on May 15, 2009 and was referred to a Legislative Committee for study at Second Reading. The Committee had not started the review at the time of prorogation.

**Bill C-46,** ***An Act to amend the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act*** proposed 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 proposed, 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 proposed 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 proposed 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* were 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 would also modernize the provisions of the Act relating to electronic evidence and provide for more effective enforcement in a technologically advanced environment.

The amendments to the *Mutual Legal Assistance in Criminal Matters Act* proposed to make some of the new investigative powers being added to the *Criminal Code* available to Canadian authorities executing incoming requests for assistance and to 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 and was referred to the Standing Committee on Public Safety and National Security on October 27, 2009. The Committee had not yet commenced its review at the time of prorogation.

**Bill C-54 - *An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act (Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act)*** was introduced on October 28, 2009. It proposed to amend the *Criminal Code* with respect to the parole inadmissibility period for offenders convicted of multiple murders to permit consecutive periods of 25 years for each offence. It would also make consequential amendments to the *National Defence Act.* The bill died on the Order Paper at prorogation.

**40th Parliament (Third Session)**

In the 40th Parliament (Third Session) March 3, 2010- to the date of writing (July 2010), the Minister of Justice has introduced 9 bills. These are described below.

**Bill C-4, An *Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts,*** referred to as *Sébastien 's Law (Protecting the Public from Violent Young Offenders)* was introduced on March 16, 2010. The Bill was referred to the Standing Committee on Justice and Human Rights for review on May 3, 2010.

The proposed amendments would:

- make protection of society a primary goal of the legislation;
- simplify the rules to keep violent and repeat young offenders off the streets while awaiting trial, when necessary to protect society;
- require the Crown to consider seeking adult sentences for youth convicted of the most serious crimes – murder, attempted murder, manslaughter and aggravated assault. (Note that the provinces and territories will still have the discretion to set the age at which this requirement would apply.) The Crown would also be required to inform the court if they chose not to apply for an adult sentence;

- enable the courts to impose more appropriate sentences on other violent and repeat offenders, as necessary in individual cases – to use existing sanctions in a way that would discourage an individual from offending again; to use a pattern of escalating criminal activity to seek a custodial sentence when necessary; to impose a custodial sentence for reckless behavior that puts the lives and safety of others at risk; and
- require the courts to consider publishing the name of a violent young offender when necessary for the protection of society.

**Bill S-6,** ***An Act to amend the Criminal Code (Serious Time for the Most Serious Crime Act)*** was introduced in the House of Commons on April 21, 2010. The Bill is identical to former
Bill C-36 as passed by the House of Commons (i.e. it includes the amendments made to the Bill at the House Standing Committee). The Bill was debated on April 28 and May 5 and referred to the Senate Legal and Constitutional Affairs Committee. The Committee reported the bill without amendments and the Senate passed the Bill on June 29, 2010. The bill will now be referred to the House of Commons.

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).

The repeal of access to the faint hope clause would mean that offenders who commit murder on or after the day that this proposed legislation would come into force would 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-16,** ***An Act to amend the Criminal Code (Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders),*** formerly Bill C-16, proposes to further restrict the use of conditional sentences for serious offences. The bill was introduced on April 22, 2010, debated on May 3, 5 and 6 and referred to the Standing Committee on Justice and Human Rights.

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 prohibit 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, or
- involve the use of weapons.

• The following offences 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 (as proposed in Bill C-26)
- breaking and entering with intent
- being unlawfully in a dwelling-house
- arson for fraudulent purpose.

**Bill C-17, *An Act to amend the Criminal Code (investigative hearing and recognizance with conditions)*** reintroduced the provisions of former Bill C- 19 which had reintroduced 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-17 received First Reading in the House of Commons on April 23, 2010.

**Bill S-9, *An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime)*** re-introduced the provisions of former Bill C-26 (with amendments made at Committee stage to that bill). Bill C-26 had reintroduced the provisions of Bill C-53 from the previous Parliament but had also included a distinct offence of "motor vehicle theft". The Bill was introduced on May 4, 2010 and passed by the Senate on June 8, 2010. The Bill was referred to the House of Commons on June 8, 2010.

The proposed amendments would 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 would provide for an *in rem* prohibition of the importation or exportation of such property or proceeds. In addition, Bill S-9 proposes that the minimum sentence for a third or subsequent auto theft offence applies regardless of whether the previous offences were summary or indictable. (This amendment reflects an amendment made to the former Bill C-26.)

**Bill S-10*, An Act to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts*** re-introduced provisions of former Bill C-15 which had re-introduced former Bill C- 26 from the 39th Parliament, First Session. Bill S-10 received First Reading in the Senate on May 5, 2010.

Bill S-10 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.

Bill S-10 includes amendments made to former Bill C-15 by the House of Commons Standing Committee on Justice and Human Rights (i.e. 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 5-200 plants (less than 201 and more than five).

At the time of prorogation in December 2009, Bill C-15 had been extensively reviewed by the Senate Legal and Constitutional Affairs Committee and passed with additional Committee amendments (to provide exemptions for aboriginal offenders, to remove the mandatory penalty for up to 200 plants and to provide for a review after two years). Bill C-15 had not been referred back to the House of Commons at the time of prorogation.

Bill S-10 does not include the amendments made in the Senate.

**Bill C-21 - *An Act to amend the Criminal Code (sentencing for fraud)*** , also known as *The Standing Up for Victims of White Collar Crime Act*, was introduced in the House of Commons on May 3, 2010. Bill C-21 reintroduces the provisions of former Bill C-52 and proposes to amend the *Criminal Code* to:

(a) provide a mandatory minimum sentence of imprisonment for a term of two years for fraud with a value that exceeds one million dollars;
(b) provide additional aggravating factors for sentencing;
(c) create a discretionary prohibition order for offenders convicted of fraud to prevent them from having authority over the money or real property of others;
(d) require consideration of restitution for victims of fraud; and
(e) clarify that the sentencing court may consider community impact statements from a community that has been harmed by the fraud.

**Bill C-22 - *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service (Child Protection Act (Online Sexual Exploitation)*** was introduced in the House of Commons on May 6, 2010. The Bill reintroduces the provisions of former Bill C-58 and proposes to create a new statute to impose reporting duties on persons who provide an Internet service to the public if they are advised of an Internet address where child pornography may be available to the public

or if they have reasonable grounds to believe that their Internet service is being or has been used to commit a child pornography offence. It would be an offence to fail to comply with the reporting duties.

**Bill C-30 - *An Act to amend the Criminal Code (Response to the Supreme Court of Canada Decision in R. v. Shoker Act)*** was introduced in the House of Commons on May 31, 2010. The Bill reintroduces former Bill C-55 and proposes to amend the *Criminal Code* to allow a court to require that an offender provide a sample of a bodily substance on the demand of peace officers, probation officers, supervisors or designated persons, or at regular intervals, in order to enforce compliance with a prohibition on consuming drugs or alcohol imposed in a probation order, a conditional sentence order or a recognizance under section 810, 810.01, 810.1 or 810.2 of that Act.

***Other criminal law reform bills of interest to the Uniform Law Conference***

The following criminal law reform related bills, which were introduced by Ministers, other than the Minister of Justice, may be of interest:

**Bill C-5 - *An Act to amend the International Transfer of Offenders Act (Keeping Canadians Safe)***

This bill proposes to amend the *International Transfer of Offenders Act* to provide that one of the purposes of that Act is to enhance public safety and to modify the list of factors that the Minister may consider in deciding whether to consent to the transfer of a Canadian offender.

The bill was introduced in the House of Commons on March 18, 2010, and was debated at Second Reading on April 16, 21, 22, 2010.

**Bill C-1 1 - *An Act to amend the Immigration and Refugee Protection Act and the Federal Courts Act (Balanced Refugee Reform Act)***

This bill amends the *Immigration and Refugee Protection Act,* primarily in respect of the processing of refugee claims referred to the Immigration and Refugee Board.

The bill was introduced in the House of Commons on March 30, 2010, and was debated at second reading on April 26, 27 and 29, 2010. The bill was reviewed by the Standing Committee of Citizenship and Immigration and passed by the House of Commons on June 15, 2010. The Bill was passed by the Senate and received Royal Assent as SC 2010, c.8 on June 29, 2010. The amendments will be proclaimed in stages at future dates.

**Bill C-23 - *An Act to amend the Criminal Records Act and to make consequential amendments to other Acts (Eliminating Pardons for Serious Crimes Act)***
The Minister of Public Safety introduced Bill C-23 on May 11, 2010. The bill seeks to amend the *Criminal Records Act* to substitute the term "record suspension" for the term "pardon" and to extend the ineligibility periods for applications for a record suspension. It also seeks to make certain offences ineligible for a record suspension and enables the

National Parole Board to consider additional factors when deciding whether to order a record suspension.

The bill was reviewed by the Public Safety and National Security Committee and subsequently split into two bills; Bill C-23 A and Bill C-23 B.

Bill C-23 A was passed by the House of Commons on June 17, 2010 and by the Senate on June 28, 2010 and received Royal Assent as SC 2010, c. 5. The amendments came into force on Royal Assent.

This enactment amends the *Criminal Records Act* to extend the ineligibility periods for certain applications for a pardon. It also enables the National Parole Board to consider additional factors when deciding whether to grant a pardon for certain offences.

**Bill S-2 - *An Act to amend the Criminal Code and other Acts (Protecting Victims from Sex Offenders Act)***

This bill (formerly Bill C-34) proposes to amend the *Criminal Code*, the *Sex Offender Information Registration Act* and the *National Defence Act* 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.

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.*

It also amends 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. Amendments to the *National Defence Act* are included to reflect the amendments to the *Criminal Code* relating to the registration of sex offenders.

The Bill received first reading in the Senate on March 17, 2010 and was referred to the Senate Legal and Constitutional Affairs Committee on March 29, 2010. The Committee considered the bill during April and May, 2010, and reported the bill without amendment on May 6, 2010. The bill was debated at third reading and adopted by the Senate on May 11, 2010. The bill received first reading in the House of Commons on May 26, 2010 and was referred to the Public Safety and National Security Committee on June 15, 2010.

**Bill S-7 - *An Act to deter terrorism and to amend the State Immunity Act (Justice for Victims of Terrorism Act)***

This bill proposes to create, in order to deter terrorism, a cause of action that allows victims of terrorism to sue perpetrators of terrorism and their supporters. The bill 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.

The bill received first reading on April 21, 2010, and was debated at second reading on April 28, 2010, referred to the Special Committee on Anti Terrorism and adopted without amendments on July 12, 2010 by the Committee. The bill has not yet been passed by the Senate.

## Private Members' Bills

Some criminal law reforms proposed by Private Members in the House of Commons and by Senators in the Senate may be of interest to Criminal Section delegates and are described briefly below. These bills may not be as well publicized as Government bills but, if passed, would have an impact for police, Crown, defence counsel, Judges and other criminal justice system personnel. The Parliament of Canada website (http://www.parl.gc.ca) should be consulted for the full list and text of Private Members' bills.

### Bill C-232 - *An Act to amend the Supreme Court Act (understanding the official languages)*

The bill was first introduced on January 26, 2009 and was passed by the House of Commons on March 31, 2010. The bill is at second reading in the Senate and was last debated on July 6, 2010.

### Bill C-268 - *An Act to amend the Criminal Code (minimum sentences for offences involving trafficking of persons under the age of eighteen years)*

The bill was passed by the House of Commons on September 30, 2009. It received first reading in the Senate on March 4, 2010. The bill was referred to the Social Affairs Committee on April 21, 2010 and was reported without amendment on June 3, 2010. The bill was passed by the Senate and received Royal Assent on June 29, 2010 as SC 2010, c. 3. Because the bill did not include a specific coming into force clause, the amendments came into force on Royal Assent

The Bill amends 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. **Note that these provisions are now in force.**

### Bill C-389 - *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression)*

The bill was introduced on March 3, 2010, debated at second reading on May 10 and June 8, 2010, and referred to the Standing Committee of Justice and Human Rights on June 8, 2010.

The bill seeks to amend the Canadian Human Rights Act to include gender identity and

gender expression as prohibited grounds of discrimination. It also seeks to amend the Criminal Code to include gender identity and gender discrimination as characteristics protected under section 318 and as aggravating factors to be taken into account at the time of sentencing.

**Bill C-464 -** ***An Act to amend the Criminal Code (justification for detention in custody)***

The bill was introduced on October 22, 2009. The bill seeks to amend subsection 515(10) of the Code to specifically add "or minor children of the accused" as included in the "safety of the public" to the primary ground for detention. The Bill was reviewed by the House of Commons Standing Committee on Justice and Human Rights and reported to the House of Commons with an amendment and passed on March 22, 2010. The Bill received First Reading in the Senate on March 23, 2010 and was referred to the Senate Legal and Constitutional Affairs Committee for review on June 22, 2010.

**Bill C-475 -** ***An Act to amend the Controlled Drugs and Substances Act (methamphetamine and ecstasy)***

The bill was introduced on November 2, 2009. The Bill seeks to amend the CDSA to prohibit a person from possessing, producing, selling or importing anything knowing it will be used to produce or traffic in meth or ecstasy. The offence would carry a penalty of 10 years less a day. The bill was reviewed by the Standing Committee on Justice and Human Rights in April and reported to the House of Commons with an amendment and passed on June 9, 2010. The Bill received First Reading in the Senate on June 10, 2010.

**Bill C-391 –** ***An Act to amend the Criminal Code and the Firearms Act (repeal of long-gun registry)***

The Bill was introduced on May 15, 2009. The Public Safety Committee reported to the House on June 9, 2010, recommending that the House not proceed with the bill.

**Bill S-204 -** ***An Act to amend the Criminal Code (protection of children)***
(Senator Hervieux-Payette)

The bill received First Reading in the Senate on March 9, 2010 and is at second reading stage in the Senate. 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 proposes that the Government would have up to one year between the dates of Royal Assent and coming into force of the amendment, in order to educate Canadians and to coordinate with the provinces.

**Bill S-215-** ***An Act to amend the Criminal Code (suicide bombings)***

The bill was introduced in the Senate on March 24, 2010 and adopted by the Senate on May 11, 2010. The Bill is currently at second reading stage in the House of Commons. This Bill proposes to amend the *Criminal Code* to clarify that suicide bombings fall within the definition "terrorist activity".

## Other Initiatives of Interest to the Uniform Law Conference

### *Proposed Securities Act*

In May 2010, the Minister of Finance made public a draft *Securities Act.* The draft act contains some key substantive and evidence-gathering criminal provisions.

In an effort to achieve better criminal enforcement outcomes, the proposed *Securities Act* would contain securities-related criminal offences which are currently in the *Criminal Code* – specifically, securities fraud, prohibited insider trading and tipping, fraud affecting the market, fraudulent manipulation of stock transactions, and filing a false prospectus. The criminal offences in the *Securities Act* would have the same penalties as the current Code offences do (including the measures proposed in Bill C-2 1, the fraud sentencing bill) and would apply nationally, including in non-participating jurisdictions. Certain criminal offences in the Act would be modified from their current formulation in the *Criminal Code* – most importantly the insider trading and tipping offences – in order to make them fit better within the *Securities Act*'s overall enforcement framework. The insider trading offence would also be strengthened to facilitate insider trading prosecutions by providing for a presumption that a person who trades while in possession of information had actually used the information in making the trade. The *Criminal Code* would retain a general fraud offence, but the other securities-related offences would be repealed from the Code upon the enactment of the *Securities Act* criminal provisions.

The *Securities Act* would also provide two new evidence-gathering tools to support securities-related criminal investigations: the first would allow investigators to compel entities like publicly-traded companies and brokerage houses to respond in writing to questions related to an investigation, while the second would allow investigators to more easily compel the production of names of individuals who ordered the purchase or trade of specified securities over a specified period of time. Both powers will be available to peace officers investigating criminal offences under the *Securities Act.*

To promote witness cooperation, the Act would also provide an express prohibition of civil action against persons who cooperate and disclose information to criminal investigators that they reasonably believe is true.

### *Priorities identified by Federal Provincial Territorial Ministers responsible for Justice*

Federal, provincial and territorial (FPT) ministers responsible for justice and public safety meet annually to discuss issues of mutual interest given the shared responsibility for criminal justice. Ministers last met in October 2009. Many of the issues discussed by Ministers are consistent with issues raised by delegates to the Uniform Law Conference, at past sessions and at the 2010 Conference.

Ministers were provided with an overview of recent federal legislative initiatives. Ministers acknowledged the progress made on combating crime, noting in particular Bills C-25 (Truth in sentencing), C- 14 (Organized crime and the protection of justice system participants) and S-4 (Identity theft).

FPT Ministers agreed on the need for further reforms to address organized crime: bail reform; wire tap reform; drug trafficking; and the pre-trial process.

Among the issues discussed, FPT Ministers acknowledged the seriousness of major economic crime and the impacts on victims. Ministers continued discussion on access to justice for people with Fetal Alcohol Spectrum Disorder (FASD).

In addition, Ministers discussed the sentencing of repeat impaired driving offenders and acknowledged the seriousness of this issue.

The agenda also included a discussion of justice effectiveness issues such as jury reform, self-represented accused, electronic disclosure, a report related to self-defence and changes to simplify the search warrant application process.

FPT Ministers acknowledged the need to address the increasing challenges related to mental health issues in the criminal justice system. They recognized that consultation with their respective health and social services ministries is critical. Ministers agreed this topic would be a standing agenda item for their future meetings.

**Conclusion**

The Government continues to pursue an active criminal law reform agenda.

The work of the Uniform Law Conference of Canada is highly relevant and beneficial to the work of the Department of Justice and to the Government's agenda in relation to a whole range of criminal law reforms. The Conference remains a key stakeholder and source of expertise that informs the Minister of Justice in identifying areas in need of reform.

Due to the challenges of tracking the progress of bills that have been reintroduced, delegates are encouraged to refer to the parliamentary website (http://www.parl.gc.ca).

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August 2010

**Annex 2**

## RESOLUTIONS

## ALBERTA

### Alberta - 01

The sentence maximums for breaches, or for refusal to enter into recognizances as ordered under sections 810.1, 810.01, 810.2 should be examined to determine if these maximums adequately reflect the risk proposed by offenders subject to these orders.

**Carried as amended: 24-1-0**

### Alberta - 02

The use of model jury instructions promulgated by Canadian Judicial Council should be mandatory.

**Carried as amended: 13-6-6**

Further, the powers of Appellate review regarding the language of jury instructions should be restricted where those model instructions have been used.

**Carried as amended: 12-7-6**

### Alberta - 03

Where parole or statutory release has been revoked, the Parole Board should be empowered to impose an escalating period of ineligibility to make subsequent applications based on the seriousness of the violation, or the history of previous violations.

**Defeated: 6-18-1**

### Alberta - 04

Section 680 of the *Criminal Code* should be examined to determine if the process of appellate review should be streamlined, and if different processes should be used for review of the various orders presently referenced in that section.

**Carried: 19-0-6**

## BRITISH COLUMBIA

### British Columbia - 01

As s. 159 has been found unconstitutional by the Courts of Appeal of Ontario, Quebec, and B.C., and as s. 179(1(b) has been found unconstitutional by the Supreme Court of Canada, both sections should be removed from the *Criminal Code.*

**Carried as amended: 20-0-3**

**British Columbia - 02**

That Justice Canada explore creation of specific procedures for compelling the appearance of the accused for the retrial and creating concurrent jurisdiction to address bail in the appellate court before any appearance in the trial court and in the trial court after the first appearance in the trial court on the retrial.

**Carried: 19-0-6**

**British Columbia - 03**

That s. 516(2) be amended to provide that a non-communication order remains in effect until bail is granted or denied, or it is varied by the court.

**Carried: 23-0-2**

## MANITOBA

**Manitoba - 01**

Amend section 129 of the Corrections and Conditional Release Act to provide the ability to detain long-term offenders who are serving less than 2 years on a new offence or offences.

**Carried: 11-5-10**

Amend the *Criminal Code* so that an interruption in a long-term offender order takes into account the total sentence (i.e., the actual time spent in custody) and not just the time received at the date of sentencing.

**Carried: 16-3-7**

**Manitoba - 02**

That *Criminal Code* sections 372 (1), (2) and (3) should be amended to expand the means by which these offences can be committed to include all methods of telecommunications.

**Carried as amended: 25-0-0**

## NEW BRUNSWICK

### New Brunswick - 01

That 743.6 be amended to include all the listed offences found in section 348.1.

**Withdrawn after discussion**

### New Brunswick - 02

That section 657.1 be studied by Justice Canada to identify other offences to be included in its regime and to amend this section accordingly.

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

### New Brunswick - 03

That the conduct described in section 372 *Criminal Code* (annoying and harassing communications) be reviewed to establish whether this behaviour should continue to be criminalized, and if so, whether or not this conduct should be criminalized when done in person.

**Carried as amended: 20-1-2**

### New Brunswick - 04

That the French version of subsection 490(8) be amended to reflect the English version in respect to the term hardship.

**Carried: 13-1-8**

### New Brunswick - 05

That section 462.32 be amended to delete the words “in Form 1”.

**Carried as amended: 18-0-4**

## NEWFOUNDLAND

### Newfoundland and Labrador - 01

Resolve that Section 719(3.1) be amended to provide that if an accused person has been remanded pursuant to Section 672.29 in determining sentence a court may take into account any time spent in custody as a result of the offence and is not limited to a maximum credit of 1.5 days for each day served.

**Defeated: 4-15-5**

## NOVA SCOTIA

### Nova Scotia - 01

Victims of white collar crime and related offences, frequently bear costs that are not presently covered by the restitution provisions of the *Criminal Code.* These costs for items such as forensic audits can be significant. A criminal section working group should be formed to examine these issues, with the possible participation of the civil section.

**Carried as amended: 21-0-2**

### Nova Scotia - 02

Upon an accused's conviction for a new offence, Sections 730(4) and 732.2(5) of the Criminal Code provide for the revocation of a conditional discharge and suspended sentence and the re-sentence of the accused on the original offence. In practice these sections are not effective. Amendments to the Criminal Code should be considered to give effect to the intent of these sections.

**Carried as amended: 18-0-5**

## ONTARIO

### Ontario - 01

That the *Criminal Code,* and other federal legislation, if necessary, be amended to clarify that a person receiving an absolute or conditional discharge is not eligible to be placed on the national sex offender registry.

**Carried as amended: 13-5-5**

### Ontario - 02

That s.672.92(1) be amended to clarify that the place to which the accused is taken has the legal authority to detain that person after the police have delivered him/her to that place, pending a review of the person's status by the provincial Review Board, and that the Review Board be notified of the breach as soon as practicable.

**Withdrawn**

That Justice Canada, in consultation with the provinces and territories, undertake expeditiously a review of the process following the arrest of an accused under 672.91 of the Criminal Code.

**Carried as amended: 23-0-0**

**Ontario - 03**

That the federal Department of Justice, in consultation with the provinces and territories, undertake on an expeditious basis, a review of the scheme set out by s.490 of the *Criminal Code* to deal with the detention of things seized.

**Carried: 25-0-0**

**QUEBEC**

**Quebec - 01**

Include in the list of offences resulting in the reversal of onus during a bail hearing under subsection 5 15(6) of the *Criminal Code* the offence set out in section 753.3 Cr.C. for failure or refusal to comply with a long term supervision order.

**Carried as amended: 22-0-2**

**SASKATCHEWAN**

**Saskatchewan - 01**

Amend s. 752.1 of the *Criminal Code* to require the court to:

a) designate an expert jointly proposed by the prosecution and defence to perform an assessment on the offender; and
b) if the parties cannot agree on an expert, designate one expert nominated by the prosecution and one expert nominated by the defence to perform assessments on the offender.

**Withdrawn following discussion**

**Saskatchewan - 02**

Amend the *Criminal Code* to stipulate that it applies to the prosecutor, counsel designated under s.650.02 of the *CC*, counsel acting for a defendant charged with a summary conviction offence or counsel appearing as agent for a defendant charged with a summary conviction offence.

**Carried as amended: 23-0-0**

**Saskatchewan - 03**

Amend s. 650.02 of the *Criminal Code* by adding a subsection which would provide that, subject to those sections of the *Criminal Code* which require an appearance by video link, when the court cannot open at the place originally scheduled due to exceptional or

emergency circumstances, the court may open in another place and may permit counsel and accused to appear by telephone.

**Carried: 24-0-0**

**CANADA**

**Canadian Bar Association**

**CBA – 01**

That the *Criminal Code* be amended so that terms for paying restitution in a CSO shall be converted to a free-standing Restitution Order (as presently allowed at the time of sentencing under section 738 of the *Code)* if the CSO is terminated pursuant to section 742.6(9)(d) of the *Code,* unless the judge orders otherwise.

**Carried as amended: 23-0-1**

**CBA – 02**

Amend the Criminal Code to allow a reviewing court or justice to commit an accused to stand for trial in cases where jurisdictional error has been found to have been committed by a preliminary inquiry judge in discharging an accused.

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