

REPORT OF THE SENIOR FEDERAL DELEGATE

Uniform Law Conference of Canada Criminal Section 2013

Department of Justice Canada

Introduction

The Criminal Section of the Uniform Law Conference of Canada (ULCC) plays a valuable role in providing expertise on a broad spectrum of emerging criminal law topics. Issues identified in working group reports and resolutions of the ULCC assist the Department of Justice in identifying the need for criminal law reform. Resolutions passed by the ULCC Criminal Section are carefully considered by the Department of Justice officials and the Deputy Minister of Justice and the Minister of Justice are informed of the outcome of ULCC discussions following the annual meeting. Resolutions pertaining to the work of federal-provincial-territorial (FPT) working groups are referred to these groups for further study. Where an issue identified in a ULCC resolution falls under the responsibility of another federal minister, the relevant Department is informed of the outcome of the resolution.

The Department of Justice considers the resolutions adopted by the Criminal Section and discussion papers presented to the Criminal Section as it develops criminal law reform in furtherance of the Government's priorities, which include better protecting public safety, responding to the concerns of victims of crime, improving Canadians' confidence in the justice system and increasing offender accountability.

The passage of resolutions calling for *Criminal Code* and other related criminal law amendments may not result in immediate legislative reform as developing criminal law policy and considering whether legislative proposals may move forward involves a number of steps. Moreover, all Government legislative reform proposals require approval of the federal Cabinet. Several legislative initiatives are of interest to the Minister of Justice. However, the Cabinet and legislative agenda include initiatives from all Ministers. While criminal law reform remains a government priority, it is not possible to forecast whether or when a particular ULCC proposal will result in legislative reform. While work of the ULCC may not result in prompt criminal law reform, as evidenced in past reports however, its work remains important and has been reflected in past criminal reform legislation.

As in the past few years, the Report of the Senior Federal Delegate notes the broad criminal law agenda and the status of current bills of interest to the Criminal Section. Where applicable, references to past ULCC resolutions that are reflected in bills as well as where such resolutions were further examined in other forums are noted.

The 2012 Report provided the status of criminal law bills in the First Session of the 41st Parliament on June 22, 2012. Where such bills have progressed in Parliament following the August 2012 ULCC meeting, those bills will be referenced in this Report. The current Report also provides information about new criminal law bills introduced since the last meeting of the ULCC. Finally, the Report provides an overview of Private Members' and Senators' Bills that may be of interest to Criminal Section delegates of the ULCC.

2012-2013 Government Legislative Initiatives

Five criminal law reform bills that were already before Parliament at the time of the 2012 annual meeting have since received Royal Assent: Bill C-26 (*Citizen's Arrest and the Defences of Property and Persons Act*), Bill C-36 (*Protecting Canada's Seniors Act*), Bill C-37 (*Increasing offenders' accountability for victims Act*), Bill S-7 (*Combating Terrorism Act*) and Bill S-9 (*Nuclear Terrorism Act*). Three of these have come into force (Bills C-26, C-36 and S-7) as well as the balance of the *Safe Streets and Communities Act*. This makes twenty-five crime bills that have been enacted since 2006.

The Government has also introduced two new criminal law reform bills in the House of Commons (Bills C-54 (*Mental Disorder*) and C-55 (*Response to the Supreme Court of Canada Decision in R. v. Tse Act*)) and one in the Senate (Bill S-16 (*Trafficking in Contraband Tobacco Act*)).

Bill C-26 *Citizen's Arrest and Self-Defence Act*

Bill C-26, *An Act to amend the Criminal Code (citizen's arrest and the defences of property and persons)*, was introduced on November 22, 2011. The Bill's amendments enable a person who owns or has lawful possession of property, or persons authorized by them, to arrest within a reasonable time a person whom they find committing a criminal offence on or in relation to that property. It simplifies the provisions relating to the defences of property and persons.

The Bill received Royal Assent on June 28, 2012 as S.C. 2012, c. 9 and came into force on March 11, 2013.

Bill C-30 *Protecting Children from Internet Predators Act*

Bill C-30, *An Act to enact the Investigating and Preventing Criminal Electronic Communications Act and to amend the Criminal Code and other Acts*, was introduced by the Minister of Public Safety, with the support of the Minister of Justice, on February 14, 2012.

Bill C-30 proposed to require telecommunications service providers (TSPs) to:

- implement and maintain systems capable of lawfully intercepting communications in order to support the police and CSIS when needed; and
- provide basic subscriber information in a consistent and timely fashion to designated police, CSIS and Competition Bureau officials upon request (limited to subscriber name, address, telephone number, e-mail address, the Internet protocol address, and the name of the service provider).

Bill C-30's Justice-led amendments proposed to:

- streamline the process for court orders or warrants that relate to an authorization to intercept private communications;
- update existing offences in the *Criminal Code* to ensure that they are able to cover new ways of committing existing crimes;
- create carefully tailored investigation tools, such as production and preservation orders in the *Criminal Code* and the *Competition Act*; and
- add safeguards to the authority to wiretap in exceptional circumstances under section 184.4 of the *Criminal Code* which would address the Supreme Court of Canada's finding of unconstitutionality in *R. v. Tse* (April 15, 2012).

Bill C-30 also proposed to create the legislative framework necessary for Canada to ratify the Council of Europe's *Convention on Cybercrime and its Additional Protocol on Xenophobia and Racism*. It should be noted that upon introduction of Bill C-55 (*Response to the Supreme Court of Canada Decision in R. v. Tse Act*) on February 11, 2013, the Minister of Justice announced that the Government would not pursue Bill C-30 in its present form. Bill C-55 enacted the amendments that were introduced in Bill C-30 to address the Supreme Court of Canada's decision in *R. v. Tse*.

Bill C-36 *Protecting Canada's Seniors Act*

Bill C-36, *An Act to amend the Criminal Code (elder abuse)*, was introduced on March 15, 2012. The Bill was passed by the House of Commons on November 6, 2012 and by the Senate on December 13, 2012. The Bill received Royal Assent on the following day as S.C. 2012, c. 29 and came into force on January 13, 2013.

The Bill amends paragraph 718.2(a) of the *Criminal Code* to provide that, where an offence has had a significant impact on a victim due to that victim's age and other personal circumstances, including their health or financial situation, it shall be considered to be an aggravating factor for sentencing purposes.

Bill C-37 *Increasing Offenders' Accountability for Victims Act*

Bill C-37, *An Act to amend the Criminal Code*, was introduced on April 24, 2012. The Bill increases the minimum amount of the victim surcharge provided for in section 737 of the *Criminal Code* from 15% to 30 % of any fine that is imposed on the offender for the offence. If no fine is imposed on the offender for the offence, the surcharge is increased from \$50 to \$100 for an offence punishable by summary conviction, and is increased from \$100 to \$200 for an offence punishable by indictment. In addition, the judge will retain the discretion to impose an increased surcharge where the circumstances warrant and the offender has the ability to pay.

Bill C-37 also makes the victim surcharge mandatory in all cases by removing the option of waiving the surcharge by reason of undue hardship on the offender. Offenders who are unable to pay the victim surcharge will now have the possibility to pay the surcharge through fine option programs where they exist or through alternative mechanisms.

Bill C-37 was passed by the House of Commons on December 12, 2012 and by the Senate on April 30, 2013. The Bill received Royal Assent on June 19, 2013 as S.C. 2013. c. 11 and will come into force on a day to be fixed by order of the Governor in Council.

Bill C-54 *Mental Disorder*

Bill C-54, *An Act to amend the Criminal Code and the National Defence Act (mental disorder)*, was introduced on February 8, 2013. The Bill, as amended, was passed by the House of Commons on June 18, 2013. It received First Reading in the Senate on the same day.

The Bill proposes to amend certain aspects of the *Criminal Code* Mental Disorder Regime (Part XX.1) and related provisions in the *National Defence Act* in order to:

- specify that public safety is the paramount consideration in the disposition-making process;
- create a new application process for the court to determine whether certain persons found not criminally responsible on account of mental disorder (NCR accused) should be designated as high-risk accused and if so, not be released into the community until the court revokes the designation; and
- improve victim safety and involvement in Part XX.1 proceedings, including by requiring victims who request it to be notified when an NCR accused is discharged.

During the Committee hearings, an amendment to the victim notification provision was passed to also require that the accused's intended place of residence also be given to the victim at their request. Furthermore, Bill C-54 was further amended by the Committee to provide for a Parliamentary review of the amendments, to take place within five years of coming into force.

Bill C-55 *Response to the Supreme Court of Canada Decision in R. v. Tse Act*

Bill C-55, *An Act to amend the Criminal Code*, was introduced in the House of Commons on February 11, 2013 and was passed by the House of Commons on March 20, 2013 and by the Senate on March 26, 2013. It received Royal Assent on the following day as S.C. 2013, c. 8.

The Bill addressed the Supreme Court of Canada's finding in *R. v. Tse* dealing with the constitutionality of section 184.4 of the *Criminal Code* which allows for the use of wiretapping without a court authorization in situations of imminent harm (such as in the case of kidnappings or bomb threats). In that decision, the court found that section 184.4 violated section 8 of the *Canadian Charter of Rights and Freedoms* due to the lack of a requirement for after-the-fact notification to persons whose private communications were intercepted without court authorization in such situations.

Bill C-55 added a requirement to notify persons who have been wiretapped under section 184.4 within 90 days of the interception (unless extended by a judge) as well as restricted the use of this wiretap power to police officers only and only for offences listed in section 183. These amendments came into force upon Royal Assent. Bill C-55 also requires annual reports to be

made on the use of section 184.4 wiretaps; this amendment will come into force on September 27, 2013.

The Bill addresses the main concerns raised in BC2008-04 that dealt with the constitutional gaps identified by the court in *R. v. Tse*.

Bill S-7 *Combating Terrorism Act*

Bill S-7, *An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act*, was introduced in the Senate on February 15, 2012. The Bill, as amended, was passed by the Senate on May 16, 2012 and by the House of Commons on April 24, 2013. The Bill received Royal Assent on the following day as S.C. 2013, c. 9 and came into force on July 15, 2013.

The *Combating Terrorism Act* (the “Act”) re-enacted, with additional safeguards, the investigative hearing and recognizance with conditions provisions in the *Criminal Code*, two measures that expired in 2007 after being originally created in 2001 by the *Anti-terrorism Act*. The investigative hearing allows the courts, when certain criteria are met, to compel a witness who may have information regarding a past or future terrorism offence to appear in court and provide information, or produce a thing in their possession or control. When certain criteria are met, the recognizance with conditions provision requires a person to enter into an agreement before a judge to abide by certain conditions in order to prevent the carrying out of a terrorist activity. Both the Attorney General of Canada and the Minister of Public Safety are required to include in their respective annual reports their opinions on whether these sections should be extended.

The Act also created four new *Criminal Code* offences of leaving or attempting to leave Canada to commit certain terrorism offences in order to deter persons from leaving Canada to attend terrorist training camps or engage in other terrorist activity abroad. In addition, the Act increased the maximum penalty from 10 to 14 years for the section 83.23 offence of knowingly harbouring or concealing a person who carried out a terrorist activity, where the terrorist activity is a terrorism offence punishable by a maximum penalty of life imprisonment. In all other cases, the maximum penalty of 10 years remains the same.

The Act also amended the *Canada Evidence Act* (CEA) to allow the Federal Court to order that applications for the disclosure of sensitive or potentially injurious information be made public and that hearings related to those applications be heard in private. In addition, the Act provides for the annual reporting on the operation of the provisions of the CEA that relate to the issuance of certificates and fiats. As well, the Act amended the English definition of “special operational information” in the *Security of Information Act* (SOIA). It also increased the maximum penalty from 10 to 14 years for the offence of knowingly harbouring or concealing a person who committed a SOIA offence, where the individual being harboured or concealed has committed an offence under the SOIA that is punishable by a maximum penalty of life imprisonment. Lastly, the *Combating Terrorism Act* made technical amendments in response to a parliamentary review of the *Anti-terrorism Act*.

Bill S-9 *Nuclear Terrorism Act*

Bill S-9, *An Act to amend the Criminal Code* was introduced in the Senate on March 27, 2012. The Bill was passed by the Senate with one amendment on June 26, 2012 and by the House of Commons on May 21, 2013. The Bill received Royal Assent on June 19, 2013 as S.C. 2013, c. 13 and will come into force on a day to be fixed by order of the Governor in Council.

Bill S-9 amends the *Criminal Code* to create four new offences relating to nuclear terrorism:

- making a device, or possessing, using, transferring, exporting, importing, altering or disposing of nuclear or radioactive material or a device, or committing an act against a nuclear facility or its operations, with the intent to cause death, serious bodily harm or substantial damage to property or the environment;
- using or altering nuclear or radioactive material or a device, or committing an act against a nuclear facility or its operation, with the intent to compel a person, a government or a domestic or international organization to do, or refrain from doing, anything;
- committing an indictable offence with intent to obtain nuclear or radioactive material or a device or to obtain access to a nuclear facility; and
- threatening to commit any of these offences.

The first three offences carry a maximum penalty of life imprisonment and the threat offence carries a maximum penalty of 14 years imprisonment. The coming into force of the *Nuclear Terrorism Act* will allow Canada to ratify the Amendment to the *Convention on the Physical Protection of Nuclear Material* and the *International Convention for the Suppression of Acts of Nuclear Terrorism*.

Bill S-16 *Trafficking in Contraband Tobacco Act*

Bill S-16, the *Trafficking in Contraband Tobacco Act*, was introduced in the Senate on March 5, 2013. The Bill was passed by the Senate on June 4, 2013 and received First Reading in the House of Commons followed by Second Reading on June 13, 2013. It is currently awaiting study by the Standing Committee on Justice and Human Rights.

The Bill proposes to amend the *Criminal Code* to create a new offence of trafficking in contraband tobacco, punishable by a maximum of 6 months imprisonment on summary conviction and 5 years on indictment. Where the offence involves 10,000 cigarettes or 10 kilograms of other tobacco products and the offender is a repeat offender, the offence would carry a mandatory minimum penalty of 90 days incarceration on a second conviction; 180 days incarceration on third conviction; and 2 years less a day on subsequent convictions. The Bill would also give the Attorney General of Canada concurrent jurisdiction with provincial Attorneys General to prosecute this new offence.

Other Bills of Interest

Private Members Bills and Senate Public Bills (Other than Government Bills)

Some criminal law reforms proposed by Private Members' bills (PMBs) that may be of interest to Criminal Section delegates are described briefly below. The Parliament of Canada website (<http://www.parl.gc.ca>) should be consulted for the full list and text of Private Members' bills. Eight new PMBs have been introduced since the 2012 ULCC meeting. Of the nine PMBs that were already before Parliament last summer, four have been enacted and are now into force (C-299, C-309, C-310 and S-209). Two Private Member items have been defeated (Motion 312 and C-273). This makes ten Private Members' crime bills that have been enacted since 2006.

Bill C-217 *Mischief Relating to War Memorials*

Bill C-217, *An Act to amend the Criminal Code (mischief relating to war memorials)* was introduced by Conservative M.P. David Tilson on June 15, 2011, received Second Reading and was referred to the Standing Committee on Justice and Human Rights on February 2, 2012 which proposed one amendment. The Bill, as amended, was passed by the House of Commons on October 31, 2012 and received First Reading in the Senate on same day. Bill C-217 received Second Reading and was referred to the Senate Committee on Legal and Constitutional Affairs on March 21, 2013.

As passed by the House of Commons, Bill C-217 proposes to amend section 430 of the *Criminal Code* to create a new hybrid offence of mischief committed in relation to property that is a building, structure, or part thereof that primarily serves as a monument to honour persons who were killed or died as a consequence of war, including in relation to a war memorial or cenotaph. The new proposed offence provided for a maximum of 18 months imprisonment on summary conviction and 10 years imprisonment on indictment. Bill C-217 also includes proposed mandatory minimum penalties that would be the same whether the Crown proceeds by indictment or by way of summary conviction: \$1,000 fine for a first offence; 14 days imprisonment for a second offence; and, 30 days imprisonment for a third and subsequent offence.

Bill C-273 *Cyberbullying*

Bill C-273, *An Act to amend the Criminal Code (cyberbullying)* was introduced by Liberal M.P. Hedy Fry on September 19, 2011. The Bill received Second Reading and was referred to the House of Commons Standing Committee on Justice and Human Rights on June 6, 2012. This Bill proposed amendments to sections 264 (criminal harassment), 298 (defamatory libel) and 372 (false messages) of the *Criminal Code* to clarify that cyberbullying is an offence. On March 27, 2013, the House of Commons adopted the House of Commons Committee's recommendation that the Bill not proceed further.

Bill C-279 *Gender Identity*

Bill C-279, *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity)* was introduced by NDP M.P. Randall Garrison on September 21, 2011 and adopted, as amended by the House of Commons on March 20, 2013. The Bill received First Reading in the Senate on the following day and is currently at Third Reading debate in the Senate.

As introduced in the Senate, Bill C-279 proposes to amend the *Canadian Human Rights Act (CHRA)* to include gender identity as a prohibited ground of discrimination and also proposes to amend the *Criminal Code* to include gender identity in the hate propaganda provisions of the *Criminal Code* (sections 318 and 319) and in section 718.2 of the *Criminal Code* as aggravating circumstances to be taken into consideration at the time of sentencing where the offence is motivated by hate, bias or prejudice. A definition of “gender identity” is also proposed to be added to both statutes.

Bill C-290 *Sports Betting*

Bill C-290, *An Act to amend the Criminal Code (sports betting)* was introduced by NDP M.P. Joe Comartin on September 28, 2011. The Bill, as amended, was passed by the House of Commons on March 2, 2012. Bill C-290 received First Reading in the Senate on March 6, 2012 and is currently at Third Reading debate in the Senate.

This Bill would repeal paragraph 207(4)(b) of the *Criminal Code* to authorize provinces and territories to conduct single sport event betting within the province or territory as an authorized “lottery scheme.” As a result, provinces would be authorized to conduct betting on the outcome of a single game, such as the Grey Cup (rather than just a series/number of games as they can now), by telephone, by Internet or at land-based locations. The decision about whether, and by what means, to offer single sport event betting would be left to each province and territory.

Bill C-299 *Kidnapping of a Young Person*

Bill C-299, *An Act to amend the Criminal Code (kidnapping of young person)* was introduced by Conservative M.P. David Wilks on September 29, 2011. The Bill, as amended, was adopted by the House of Commons on October 17, 2012 and by the Senate on June 21, 2013. Bill C-299 received Royal Assent on June 26, 2013 as S.C. 2013, c. 32 and came into force upon Royal Assent.

This Bill proposed to ensure that severe penalties are imposed in cases involving abduction of children by strangers by amending subsection 279(1.1) of the *Criminal Code* to impose a mandatory minimum penalty of five years imprisonment on those convicted of kidnapping a child under the age of 16 years unless the person who commits the offence is a parent, guardian or person having the lawful care or charge of the victim. This Bill also amended section 279 by providing that the court shall, in imposing a sentence for the offence of kidnapping a child under 16 years of age, take into account the age and vulnerability of the victim.

Bill C-309 *Concealment of Identity during a Riot*

Bill C-309, *An Act to amend the Criminal Code (concealment of identity)* was introduced by Conservative M.P. Blake Richards on October 3, 2011, was passed by the House of Commons with amendments on October 31, 2012. It was adopted by the Senate on May 23, 2013 and received Royal Assent on June 19, 2013 as S.C. 2013, c.15. Bill C-309 came into force upon Royal Assent.

This Bill amended sections 65 and 66 of the *Criminal Code* to make it an offence to wear a mask or other disguise to conceal one's identity, without lawful excuse, while taking part in a riot or an unlawful assembly. The new indictable offence of wearing a mask or other disguise, to conceal one's identity without lawful excuse while taking part in a riot would carry a maximum penalty of ten years. The new hybrid offence of wearing a mask or other disguise to conceal one's identity without lawful excuse while being a member of an unlawful assembly provides for a maximum penalty of five years on indictment, and a maximum penalty of a \$5,000 fine and/or six months imprisonment on summary conviction. Each new offence incorporates a specific intent of wearing a mask or other disguise to conceal identity, and also provides for a defence of lawful excuse. Thus, criminal liability would not extend to persons participating in a riot or being a member of unlawful assembly who were wearing a mask or other disguise for lawful purposes (e.g., for safety or security purposes or to observe religious or cultural norms).

Bill C-310 *Trafficking in Persons*

Bill C-310, *An Act to amend the Criminal Code (trafficking in persons)* (CPC) amended the *Criminal Code* to authorize the assumption of extra-territorial jurisdiction to enable the Canadian prosecution of Canadian citizens and permanent residents who commit a human trafficking offence abroad (section 279.01 - primary trafficking offence and 279.011 - child trafficking); and enacted an interpretive provision setting out the types of evidence that may be considered to determine exploitation for the purpose of trafficking. The amendments came into force upon Royal Assent on June 28, 2013.

Bill C-394 *Criminal Organization Recruitment*

Bill C-394, *An Act to amend the Criminal Code and the National Defence Act (criminal organization recruitment)* was introduced on February 13, 2012 by Conservative M.P. Parm Gill. The Bill concluded Second Reading and was referred to the House of Commons Standing Committee on Justice and Human Rights on June 20, 2012. The Bill, as amended, was passed by the House of Commons on May 1, 2013. It was introduced in the Senate on May 2, 2013 and is currently at Second Reading debate in the Senate.

The Bill proposes amendments to the *Criminal Code* to make it an indictable offence to recruit, solicit, encourage, coerce or invite a person to join a criminal organization. The offence would carry a maximum penalty of five years imprisonment with a mandatory minimum penalty of six months imprisonment for the recruitment of persons who are under 18 years of age. This Bill also makes numerous consequential amendments to the *Criminal Code* and to the *National*

Defence Act. These amendments would ensure that the special rules in place for organized crime offences would also apply to the proposed recruitment offence (e.g., reverse onus bail, wiretap, and the use of testimonial aids).

Bill C-444 *Personating Peace Officer or Public Officer*

Bill C-444, *An Act to amend the Criminal Code (personating peace officer or public officer)* was introduced on September 27, 2012, by Conservative M.P. Earl Dreeshen. This Bill was passed by the House of Commons on June 14, 2013 and was introduced in the Senate on June 17, 2013. The Bill proposes to amend the *Criminal Code* to establish that the act of personating a police officer or a public officer for the purpose of committing another offence must be considered by a court to be an aggravating circumstance for sentencing purposes.

Bill C-452 *Exploitation and Trafficking in Persons*

Bill C-452, *An Act to amend the Criminal Code (exploitation and trafficking in persons)* was introduced on October 16, 2012, by Bloc Québécois M.P. Maria Mourani and is currently at Third Reading debate in the House of Commons.

As adopted at Report Stage in the House of Commons, Bill C-452 proposes: to impose mandatory consecutive sentences on those convicted of trafficking in persons and other offences at the same time; to create a presumption that would allow prosecutors to prove an essential element of the offence of human trafficking by bringing forward evidence that an accused lived with or was habitually in the company of a person who was exploited; and, to expand the provision that imposes a reverse onus for forfeiture of proceeds of crime to apply to human trafficking offences.

Bill C-478 *Increasing Parole Ineligibility*

Bill C-478, *An Act to amend the Criminal Code (increasing parole ineligibility)* was introduced in the House of Commons on February 27, 2013, by Conservative M.P. James Bezan. The Bill received Second Reading and was referred to the House of Commons Standing Committee on Justice and Human Rights on June 5, 2013.

The Bill proposes to amend the *Criminal Code* to provide that a person convicted of the abduction, sexual assault and murder of one victim is to be sentenced to imprisonment for life without eligibility for parole until the person has served a sentence of between twenty-five and forty years as determined by the presiding judge after considering the recommendation, if any, of the jury.

Bill C-489 *Restriction on Offenders*

Bill C-489, *An Act to amend the Criminal Code and the Corrections and Conditional Release Act (restrictions on offenders)* was introduced in the House of Commons on April 18, 2013 by Conservative M.P. Mark Warawa. The Bill received Second Reading and was referred to the House of Commons Standing Committee on Justice and Human Rights on June 6, 2013.

This Bill proposes to amend section 161 of the *Criminal Code* to require a court to consider making an order prohibiting certain offenders from being within two kilometres of a dwelling house where the victim is present without a parent or guardian and from being in a private vehicle with a person who is under the age of 16 years without the presence of the parent or guardian. It also proposes to amend subsection 732.1(2) (probation) to ensure that the offender abstains from communicating with any victim, witness or other person identified in a probation order, or refrains from going to any place specified in the order, except in accordance with certain conditions. It proposes to similar amendments to section 742.3 (conditional sentence orders) and subsection 810.1(3.02) (conditions of recognizance).

The Bill also proposes amendments to section 133 of the *Corrections and Conditional Release Act* to add, as a compulsory condition of the parole, statutory release or unescorted temporary absence of an offender, the condition that the offender abstain from communicating with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order, except in accordance with specified conditions.

Bill C-517 *Trafficking in Persons*

Bill C-517, *An Act to amend the Criminal Code* (trafficking in persons) (CPC) proposes amend subsection 279.01(1) to impose mandatory minimum penalties for the trafficking of an adult person of 5 years where it involves death, kidnapping, aggravated sexual assault or aggravated assault and 4 years in any other case. It models the mandatory minimum penalties of 6 and 5 years respectively that were enacted by former PMB Bill C-268 in 2010 where the victim is under 18 years of age.

Bill C-526 *Sentencing*

Bill C-526, *An Act to amend the Criminal Code* (*Sentencing*) (CPC), proposes to amend section 718.2 of the *Criminal Code* to ensure that offences committed by three or more persons with common criminal purpose are treated as aggravating factors for sentencing purposes and that terrorism and criminal organization offences are treated as “serious” aggravating factors for sentencing purposes. The Bill was added to the Order of Precedence on June 7, 2013 and is awaiting Second Reading debate.

Bill S-209 *Prize Fights*

Bill S-209, *An Act to amend the Criminal Code* (*prize fights*) was introduced on March 15, 2012 by Conservative Senator Runciman and was passed by the Senate on June 22, 2012. The Bill received First Reading in the House of Commons on October 18, 2012 and adopted by the House of Commons on June 5, 2013. Bill S-209 received Royal Assent on June 19, 2013 as S.C. 2013, c.19 and came into force upon Royal Assent.

The Bill proposed amendments to subsection 83(2) of the *Criminal Code* to expand the list of sports permitted by the provinces and territories under the prize fighting provisions.

Bill S-216 *Mental Health Treatment*

Bill S-216, *An Act to amend the Controlled Drugs and Substances Act and the Criminal Code (mental health treatment)* (LIB), proposes to amend the *CDSA* and *Criminal Code* to allow a sentencing court to delay sentencing to enable an offender to participate in a mental health treatment program or to receive mental health treatment under the court's supervision. Where the treatment is successfully completed, the court would not be required to impose a mandatory minimum penalty. It is at Second Reading debate in the Senate.

Bill S-221 *Exception to Mandatory Minimum Sentences*

Bill S-221, *An Act to amend the Criminal Code (exception to mandatory minimum sentences for manslaughter and criminal negligence causing death)* (LIB) proposes to create an exception to the mandatory minimum penalty for manslaughter using a firearm and criminal negligence causing death with a firearm if the sentencing court is satisfied that the victim engaged in a pattern of conduct that constituted physical, sexual or psychological abuse of the offender. It was introduced on June 13, 2013, and is awaiting the commencement of Second Reading debate.

Defeated Private Members' Business

Motion 312 (CPC) proposed to establish a special House of Commons Committee to review the declaration in subsection 223(1) of the *Criminal Code* which states that a child becomes a human being only at the moment of complete birth. The Motion was defeated (203-91) on September 26, 2012.

Bill C-273, *An Act to amend the Criminal Code (cyberbullying)* (LIB) proposed to amend several sections of the *Criminal Code* to clarify that specific offences (criminal harassment, defamatory libel, false messages and indecent phone calls), when committed by use of the Internet, constitute offences. The Bill received Second Reading and was referred to the Standing Committee on Justice and Human Rights. On March 27, 2013, the House of Commons adopted the Justice Committee's recommendation (244:38) not to proceed further with the Bill.

Other Initiatives of Interest to the Uniform Law Conference of Canada

Victims Bill of Rights

In February 2013, the Government of Canada announced that it will bring forward legislation creating a Canadian Victims Bill of Rights. The Minister of Justice is currently consulting with the public and stakeholders to seek their views and input on what rights should be recognized and protected by a federal Victims Bill of Rights. A public consultation is being hosted by the Department of Justice Canada website at <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/vrights-droitsv/> and will be open until September 3, 2013. All interested persons are invited to participate by sharing their views on their priorities for a Canadian Victims Bill of Rights to victimsrights@justice.gc.ca.

Cyberbullying

In April 2013, Federal, Provincial and Territorial (FPT) Ministers Responsible for Justice and Public Safety agreed unanimously to expedite a review of laws surrounding cyberbullying and directed FPT officials to conclude their study of the issue by June 2013.

The Coordinating Committee of Senior Officials – Criminal Justice Working Group on Cybercrime’s *Report on Cyberbullying and the Non-Consensual Distribution of Intimate Images* was publicly released on the Department of Justice website on July 19, 2013. The Report found that, although most criminal behavior associated with bullying is currently covered by the *Criminal Code*, there exist some gaps that have been exposed by the widespread adoption of new technologies and the prevalence of social media.

In order to address these gaps, the Report puts forward a number of recommendations including improvements to modernize the *Criminal Code* and proposes that all levels of government support a multi-pronged approach, including the involvement of educators, police, and community and family groups to address this issue. Specific recommendations include the modernization of section 372 (false messages, indecent and harassing phone calls) to make it applicable to an Internet context; the creation of a new offence of non-consensual distribution of intimate images; and the modernization of investigative tools in order to enable or facilitate the investigation of crimes involving new technologies and those that involve electronic evidence. In addition to these recommendations for criminal law reform, the Report also recommends that the primary focus of responses by all levels of government to cyberbullying should be on prevention and education and to support a multi-pronged, multisectoral approach to address cyberbullying.

Other issues identified by Federal, Provincial and 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 2012. Many of the issues discussed by Ministers are consistent with issues raised by delegates to the ULCC.

During this meeting, Ministers agreed that the *Criminal Code* should reflect that public safety is a paramount consideration in the law relating to persons found not criminally responsible on account of mental disorder. The Federal Minister of Justice reiterated the importance of this issue and that it is a priority for the Government of Canada. Ministers also discussed proposals to make the process more responsive to the needs of victims, including consideration of the appropriate length of time between annual review hearings in serious personal injury offence cases.

Ministers discussed the modernization of the current transportation offences, as well as increased penalties for crimes related to impaired driving, particularly crimes involving repeat offenders or where serious bodily harm or death is caused. Ministers requested FPT Deputy Ministers to direct the Coordinating Committee of Senior Officials (FPT) (CCSO) to review, in a timely way,

the need for increasing mandatory penalties for drivers with high blood alcohol content and repeat impaired drivers and other proposals to explore if a consensus can be achieved.

Ministers approved the implementation plan of the FPT Missing Women Working Group, expressed support for the Working Group's ongoing work and agreed that the Working Group table its implementation plan at the June 2013 meeting of FPT Deputy Ministers. Ministers noted the important actions taken to date, including the creation of the RCMP's National Police Support Centre for Missing Persons and Unidentified Remains and provincial legislation to assist police investigations into missing persons and the potential for uniform law in this area.

Ministers discussed the need for preliminary inquiries given the impact of Crown disclosure obligations and more effective Crown screening. It was felt that the 2004 amendments to streamline preliminary inquiries have not had the anticipated impact. Ministers agreed to refer the issue of preliminary inquiry reform to FPT Deputy Ministers to mandate the CCSO to review the issue and report back in a timely way.

Ministers acknowledged that mental health issues present significant challenges for the criminal justice system and recognized the impacts that mental illness has, especially with respect to correctional systems. They agreed that increased collaboration between federal and provincial jurisdictions is required in order to better address the needs of the mentally ill and to avoid their contact with the prison system. Ministers supported continued cross-jurisdictional cooperation, including exchanging information on current and best practices that reflect the recommendations of the 2011 Symposium *Building Bridges: Mental Health and the Justice System, a Symposium to Promote Collaboration* and on the 5th Annual Criminal Justice Symposium, hosted by the Canadian Association of Chiefs of Police, on the topic of mental illness and the justice system, held in January 2013. Some jurisdictions indicated that they are implementing their own mental health strategies and agreed to share best practices and information with others.

Ministers identified, as an ongoing priority, the need to improve access to justice for marginalized persons, including those with Fetal Alcohol Spectrum Disorder (FASD). Ministers were provided an update regarding work of the CCSO Steering Committee on FASD as well as prevalence of FASD and mental disorder in the Yukon adult correction population project. Ministers agreed that FPT officials should continue to collaborate to explore how to best respond to individuals with FASD who are involved in the criminal justice system.

Ministers approved the report outlining specific proposed reforms to the judicial interim release (bail) regime, which was prepared by the CCSO Working Group on Criminal Procedure.

The Federal Minister of Justice opened a dialogue with colleagues on the issue of reciprocity of criminal injuries compensation programs and asked jurisdictions to consider reciprocity between jurisdictions to ensure that Canadians have access to criminal injuries compensation regimes and victims services. FPT Ministers tasked Deputy Ministers to examine the issue.

Ministers requested Deputy Ministers to examine the need for *Criminal Code* amendments to the testimonial provisions to better protect the safety of witnesses in criminal proceedings.

Ministers also requested Deputy Ministers to instruct the CCSO Working Group on Gambling to continue its discussions on the use of computers in charitable gambling and the use of proceeds from charitable gaming and the municipal interest in the use of proceeds from charitable gambling in the context of the Working Group's consideration of ways to modernize the gambling provisions in the *Criminal Code*. The Working Group will report to Deputy Ministers in 2013 on this item and was requested to report back to Ministers next fall.

Federal Provincial Territorial Coordinating Committee of Senior Officials (Criminal Law)

A number of issues that were the subject of ULCC Criminal Section resolutions in recent years are considered by the CCSO, including the issue of spousal testimony in criminal proceedings. The CCSO Working Group on Cyber Crime discussed CAN-PPSC2012-01 (removing the naming requirement for federally designated wiretap agents and peace officers in reports to Parliament). MB2010-02 (expanding the means by which section 372 offences may be committed to include all methods of telecommunications) and NB2011-02 (allowing sections 487.012 and 487.013 production orders to be executed anywhere in Canada) were addressed in Bill C-30, *An Act to enact the Investigating and Preventing Criminal Electronic Communications Act and to amend the Criminal Code and other Acts*, which the Government has indicated would not proceed in its current form. These amendments were also recommended in the recent CCSO report on cyberbullying.

The following resolutions from the Criminal Section were recently examined by the CCSO Working Group on High Risk Offenders: AB2012-04 (definition of serious personal injury offence in section 752); AB2012-05 (interrelationship between the dangerous and long term offender provisions); AB2012-06 (public safety as a sentencing consideration for material breaches of long term offender orders); NB2012-04 (limited right of appeal of orders to comply with the *Sex Offender Information Registration Act (SOIRA)*); SK2012-01 (allow Attorney General to apply for variation of 810.1 peace bond conditions); ON2012-01 (make section 161 prohibition orders and section 810.1 recognizances available in relation to the offence of voyeurism); AB-CAPCJ2011-06 (clarifying purpose and scope of hearing and jurisdiction and powers of the court related to mandatory *SOIRA* orders); and SK2011-01 (adding section 270.01 (peace officer assault causing bodily harm or involving firearm) and section 270.02 (aggravated assault of a peace officer) offences to the section 752 primary designated offence list regarding dangerous/long term offender applications).

The CCSO Working Group on Sentencing has recently discussed the following resolutions: AB2012-01 (appropriate onus of proof regarding offender's ability to pay a fine in light of the 2011 Supreme Court of Canada decision in *R. v. Topp*) and CAN-CBA2011-02 (allow sentencing court to require psychological/medical assessment of person and resulting report before imposing sentence in appropriate circumstances).

The CCSO Youth Justice Working Group has recently examined QC2011-01 (allowing youth court power to order medical/psychological assessment in relation to young person's release or detention) and SK2011-04 (clarifying that procedure for breaches of conditional supervision applies to breaches of deferred custody and supervision orders).

Steering Committee on Justice Efficiencies and Access to Justice

The Steering Committee is composed of six Deputy Ministers as well as representatives from the Bench, Private Bar and police. In its recent Discussion Paper on Proportionality, the Steering Committee recommended that the general principle of proportionality inform the advancement of any initiatives aimed at streamlining criminal processes or developing justice efficiencies. In the post *Charter* world, moving towards greater proportionality is challenging but, the Committee believes, essential. The Committee also strongly recommended that proportionality options should complement, and not replace, initiatives aimed at diverting people out of the criminal process entirely in appropriate circumstances, especially when those people have mental health and/or addiction challenges. The Committee is currently finalizing a report on the use of technology in the criminal justice system.

Conclusion

Justice Canada will continue the process of reviewing past ULCC resolutions as a valuable source to identify the need for potential amendments for inclusion in the *Criminal Code* and other related criminal law statutes for consideration in future legislative initiatives. The Conference remains a key stakeholder and source of expertise that informs the federal Minister of Justice, as well as provincial and territorial counterparts in identifying areas in need of reform.

This report provides a snapshot or status report on criminal law reforms as of July 2013. Delegates are encouraged to refer to the Parliament of Canada website (LEGISinfo) (<http://www.parl.gc.ca>) to monitor progress of the reforms.