

# UNIFORM LAW CONFERENCE OF CANADA

TORONTO, ONTARIO  
AUGUST 10 - 14, 2014

## CRIMINAL SECTION

### MINUTES

#### ATTENDANCE

Thirty-two delegates from provincial, territorial and federal delegations participated in the deliberations of the Criminal Section. Not represented were British Columbia, the Northwest Territories, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island. Delegates included policy counsel, prosecutors, defence counsel and members of the judiciary. Nancy Irving, Past President, attended part of the meeting. International guests from the United States of America Uniform Law Commission also attended part of the Criminal Section meeting as observers.

#### OPENING

Catherine Cooper (Counsel, Crown Law Office – Criminal, Ontario Ministry of the Attorney General) presided as Chair of the Criminal Section. Dorette Pollard (Counsel, Justice Canada) acted as Secretary. The Section convened to order on Sunday, August 10, 2014.

#### PROCEEDINGS

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

The Report of the Senior Federal Delegate was tabled and presented by Lucie Angers, Director and General Counsel, 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*, Quebec presented their resolutions first, followed by other jurisdictions in alphabetical order and then by resolutions from the Canada delegation.

Twenty-four resolutions were initially presented by jurisdictions for consideration, one of which was split into three resolutions. There was also one floor resolution, for a total of 27 resolutions. Sixteen of those resolutions were adopted (nine as presented and seven as amended). Two resolutions were defeated and nine were withdrawn (five of them after discussion).

##### **Criminal Section Reports and Presentations**

➤ *Discussion on the Impact of the Supreme Court of Canada Decision in R. v. Spencer*

Lucie Angers, Senior Federal Delegate, led a discussion on the Supreme Court of Canada decision in *R. v. Spencer* and its potential impact on law enforcement agencies. Rendered on June 13, 2014, this decision makes it clear that police forces will now require a warrant to obtain subscriber information related to an Internet Protocol (IP) address from a telecommunication service provider rather than relying on its voluntary disclosure, as has been the practice.

After discussion, delegates agreed to monitor the impact of the decision in their jurisdictions. It was felt that the federal government has to ensure that privacy interests recognized by the decision are respected while ensuring legitimate law enforcement activities can continue to protect the safety of Canadians and international cooperation in relation to cybercrime.

➤ ***Endorsement of Warrants, Orders and Authorizations for Inter-Provincial Execution***

Lucie Angers, Senior Federal Delegate, made a presentation on the endorsement of warrants, orders and authorizations for inter-provincial execution. Delegates were asked whether a working group should be mandated to consider options and make recommendations for reforming endorsement requirements found in the *Criminal Code*. It was explained that the execution of backing orders may vary from one jurisdiction to another and that the present system creates a number of practical concerns.

It was noted that this issue was first discussed in 2002 in the context of the federal “Lawful Access” initiative. Further, in 2008, a Public Prosecution Service of Canada resolution to “[m]ake all warrants and warrant-like orders valid and enforceable throughout Canada without the need for endorsement by a local justice” was carried (21-2-7). The issue was raised again at Federal/Provincial/Territorial working group meetings in 2009.

Following discussion, delegates then proceeded to vote on the following resolution:

*That the Uniform Law Conference of Canada – Criminal Law Section establish a working group to develop options on how to address the endorsement of warrants, authorizations and orders; and that the working group report back to the Conference at the 2015 meeting.*

*Carried as amended: In favour 26 Opposed 0 Abstention 0*

➤ ***Modernization of Notice Provisions Working Group Status Report***

Josh Hawkes (Appellate Counsel, Alberta Justice) gave a status report on the work commenced by the Criminal Section Working Group on the Modernization of Notice Provisions.

At the 2012 meeting of the Criminal Section, the following Alberta resolution was carried as amended (23-0-2):

*It is recommended that a working group be created to examine the notice provisions in the Criminal Code and applicable notice provision in the Canada Evidence Act to modernize these provisions post R. v. Stinchcombe.*

The resulting Working Group was co-chaired by Susan Kennedy (Alberta) and Karen Markham (Justice Canada) and had representatives from Manitoba, Saskatchewan, New Brunswick, Nova Scotia, Ontario, Quebec and the Public Prosecution Service of Canada. The Working Group compiled a comprehensive list revealing 18 notice provisions in the *Criminal Code*, two under the *Canada Evidence Act*, and one under the *Controlled Drugs and Substances Act*.

Research and analysis was undertaken by members of the group on the historical development of these provisions together with a review of the leading issues revealed in the case law relating to each of these sections. The Working Group gave a status report at the 2013 Criminal Section meeting stating that additional time was required to complete this work.

Since that time, the federal Co-Chair retired, and the provincial Co-Chair returned to other duties and was unable to continue as Co-Chair of the working group. As interim replacement Co-Chair, Josh Hawkes noted the amount of work that remained to be done and also noted that since the *Canada Evidence Act* provisions apply to proceedings under all federal statutes, it would be difficult to proceed without federal involvement in the work.

Following discussion, delegates voted on the following resolution:

*That the Uniform Law Conference of Canada – Criminal Law Section suspend the work of the Modernization of Notice Provisions Working Group and that the Public Prosecution Service of Canada is not precluded from bringing this matter forward next year.*

*Carried: In favour 23 Opposed 0 Abstention 3*

### **Open Forum - Forensic Pathology in Ontario's Criminal Justice System**

Jennifer Woollcombe (Ontario Ministry of the Attorney General) led a panel presentation and discussion on recent changes to forensic pathology in Ontario's Criminal Justice System. Panellists were Dr. Michael Pollanen (Chief Forensic Pathologist, Ontario Forensic Pathology Service) and Mark Sandler (Cooper, Sandler, Shime & Bergman, LLP). Panellists outlined the lessons learned and reforms instituted in Ontario's forensic pathology system following the 2008 Report by Mr. Justice Goudge entitled, "Inquiry into Pediatric Forensic Pathology in Ontario."

Dr. Pollanen's presentation examined the importance of a scientific method in the use of forensic pathology in the Courts. He explained that forensic pathology is the medical investigation of death, which should never overlap with the criminal death investigation by the police. He outlined the five steps of forensic pathology methodology and cautioned of the risks of confirmation bias. He emphasized the importance now being placed on peer review in all forensic pathology opinions. In addition to the importance of systematic inquiry and scientific methodology in medico-legal autopsies, the reforms in Ontario also included an increased emphasis on professional qualification and credentials. These comprehensive reforms are aimed at minimizing the number of miscarriages of justice related to forensic pathology in Ontario. Jennifer Woollcombe spoke of some of the mechanisms in place in the Ministry of the Attorney General to either help prevent miscarriages of justice related to forensic pathology (the Child Homicide Resource Team) or to address claims of a miscarriage of justice (the Ontario Criminal Conviction Review Committee).

### **CLOSING**

By resolution of the Criminal Section, the nomination of Kusham Sharma (Senior Advisor to Deputy Minister of Justice & Deputy Attorney General, Manitoba Justice) as Chair of the Criminal Section for 2014-2015 was accepted. The Nominating Committee, chaired by Josh Hawkes, recommended that

Eric Gottardi (Chair, Canadian Bar Association, National Criminal Justice Section) act as Chair of the Criminal Section for 2015-2016.

The Chair thanked delegates and the Secretary for their participation and contribution to the meeting. The Criminal Section meeting concluded on Thursday, August 14, 2014.