

## **REPORT OF THE SENIOR FEDERAL DELEGATE**

### **Uniform Law Conference of Canada**

#### **Criminal Section 2014**

#### **Department of Justice Canada**

### **Introduction**

The Criminal Section of the Uniform Law Conference of Canada (ULCC) plays a valuable role on emerging criminal law issues by bringing together judges, prosecutors, policy experts, defence lawyers, members of the bar and academics once a year to identify areas of concern and discuss recent legislative initiatives and case law through resolutions and working group reports. With its broad expertise, the ULCC assists the Department of Justice (DoJ) in identifying the need for criminal law reform and in pursuing the Government's priorities, including better protecting public safety, responding to the concerns of victims of crime, improving Canadians' confidence in the justice system and increasing offender accountability.

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. 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 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.

Part 1 of this year's Report puts the spotlight on federal-provincial-territorial (FPT) work of particular interest to the deliberations of the ULCC. Part II examines the legislative initiatives before Parliament since the last meeting in Victoria, British Columbia. Both parts also include as appropriate specific references to recent Supreme Court of Canada decisions in the area of criminal law.

### **Part I - Federal-Provincial-Territorial work of interest to the Uniform Law Conference of Canada**

#### ***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. These meetings are an important opportunity for Ministers to identify areas where they can make progress by working together in ensuring the sustainability of the justice and public safety systems in Canada. Ministers last met in November 2013 in Whitehorse. Many of the issues discussed by Ministers are consistent with issues raised by delegates to the ULCC.

During the meeting, Ministers agreed that the protection of Canada's children and youth is crucial, and that cyberbullying is a serious problem that requires a comprehensive response among all governments. Ministers acknowledged the collaboration between FPT governments in arriving at the July 2013 *FPT Report on Cyberbullying and the Non-Consensual Distribution of Intimate Images*, which included a series of concrete proposals for action to address cyberbullying. PT Ministers welcomed the federal Minister's indication that the federal Government would introduce legislation informed by the report giving police and prosecutors new, judicially authorized tools to more effectively address the most serious forms of cyberbullying. This legislation would also create a new criminal offence prohibiting the non-consensual distribution of intimate images.

The federal Minister of Justice provided an update on progress in the development of a federal Victims Bill of Rights. The provinces and the territories affirmed their continued commitment to effective measures to support victims and noted the need for further consultation on the details of the federal government's proposed legislation, given their responsibility for the administration of justice and the programs and services they deliver to victims. The federal Minister recognized that the upcoming legislation needed to respect provinces and territories' constitutional responsibility.

Ministers approved the release of a draft justice framework intended to help FPT justice officials, Aboriginal organizations, and other partners work together across the country, as well as within their respective jurisdictions to find local solutions to address the serious issue of violence against Aboriginal women and girls. This draft justice framework reflects issues that have been identified in work by Aboriginal and other groups in numerous reports and consultations. Because engagement with Aboriginal groups, communities and other partners is crucial, jurisdictions will engage with Aboriginal and other groups over the next year to develop the final collaborative justice framework to be submitted to Ministers in fall 2014. Each government will be able to consider adapting the measures in the framework to address the unique needs and circumstances of Aboriginal women, families and communities.

Ministers received a report on the implementation of the 52 recommendations of the comprehensive Missing Women report released by Ministers in January 2012. They noted that many of the recommendations had been implemented.

Ministers asked that officials bring forward practical solutions for improving responses to the mental health needs of individuals involved in the justice system, and to identify priorities, recognizing that close collaboration with the Health, Community and Social Services is needed. This should be developed in consultation with Heads of Corrections. Ministers agreed that access to justice for those with fetal alcohol spectrum disorder (FASD) continues to be a priority item and directed officials to continue their work in this area.

Ministers discussed the driving offences under the *Criminal Code* including impaired driving. They discussed modernizing the provisions and increasing penalties for some offences. Some of the issues included disclosure in impaired driving cases and the applicability of certain defences.

Ministers discussed preliminary inquiry reform. Most ministers recognized the need for reform in this area to make sure preliminary inquiries are limited to more serious offences. Officials were directed to report back to Ministers expeditiously on this important issue.

Ministers approved the release of a document to help police and prosecutors dealing with cases of human trafficking, entitled *Trafficking in Persons: A Handbook for Police and Prosecutors*. They also discussed the use of technology in the criminal justice system as a means of improving the efficiency of the justice system and increasing access to justice.

***Federal- Provincial-Territorial Coordinating Committee of Senior Officials (Criminal Justice)***

The Coordinating Committee of Senior Officials (Criminal Justice) (CCSO) was initiated in 1986. It has responsibility for analysis and recommendations on criminal justice policy issues that are of joint concern to the FPT governments. It serves as a key forum for discussion and analysis of these issues in a manner that incorporates the interests and responsibilities of the different jurisdictions and for producing recommendations and analysis that reflect these varying interests and responsibilities. CCSO has established a broad set of working groups to handle the work that is set before it and has instructed these working groups to take into account ULCC resolutions in their work and to report back on a regular basis. A number of issues that were the subject of ULCC Criminal Section resolutions in recent years are considered by the CCSO.

The CCSO Working Group on Cybercrime discussed a number of ULCC resolutions, including: AB2013-01 (updating section 372(2) and (3)), which is similar to MB2010-02; AB2013-04 (reviewing the list of offences, contained in section 183, in relation to which a wiretap authorization can be obtained); and, AB2013-06 (ensuring that production orders can be executed anywhere in Canada (which is similar to resolution NB2011-02) and allowing for the electronic service of production orders). Some of these proposals were contained in the July 2013 FPT *Report on Cyberbullying and the Non-Consensual Distribution of Intimate Images* and are included in Bill C-13, the *Protecting Canadians from Online Crime Act*.

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); 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); BC2013-02 (providing a specific authority for an accused charged with an offence to enter into a section 810 recognizance without the necessity of having new information generated and sworn); NB2013-02 (allowing for subsection 173(1) to be considered as a *SOIRA* order when committed for a sexual purpose); and, SK2013-01 (amending the definition of a serious personal injury offence in section 752).

The CCSO Criminal Procedure Working Group provides an ongoing forum for the development and review of criminal procedure reform proposals, as well as best practices, and for consultations in relation to such proposals and practices. Given its broad mandate, this Working Group has discussed a number of ULCC resolutions over the years dealing with issues such as bail, preliminary inquiries and proceedings for election. Over the last two years, the Working Group considered NB2013-03 (examining section 536.3 (Statement of Issues and Witnesses – Request for Preliminary Inquiry) to determine the powers available to a judge or justice in the event there is a failure to comply with the section), NB2012-01 (amending subsections 503(2.1) and 499(2) to permit a peace officer or officer in charge to release a person on the condition to keep the peace and be of good behavior), CanCBA2012-01 (amending section 525 to allow an accused person to waive in writing his or her appearance under the 90/30 day review period).

The definition of justice system participant and the offence of intimidating such persons has been part of the discussions of the CCSO Working Group on Organized Crime, in line with QC2009-02 and AB2013-02.

The CCSO Working Group on Sentencing continues to discuss resolution 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*). The Working Group will also consider the 2013 ULCC report on Statutory Exemptions to Mandatory Minimum Penalties.

The CCSO Anti Corruption Working Group considered PPSC2013-02 which recommended increasing the maximum penalty for section 122 concerning the breach of trust by a public officer, as well as considering the hybridization of Part IV offences.

Taking into account AB2013-05, ways in which to increase the efficiency of the procedure for applications to restrain alleged offence-related property continues to be considered by the CCSO Proceeds of Crime Working Group,

The CCSO Youth Justice Working Group and its Technical Amendments Working Group 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). A number of resolutions aimed at reforming Canada's youth criminal justice system and notably that seek amendments to the *Youth Criminal Justice Act* (YCJA) were also considered by the Working Group, including: SK2009-01 (subsection 110(5) dealing with duration of the order to publish); NB2011-03 (s. 137 of the YCJA Failure to comply with sentence or disposition); QC2011-01 (paragraph 34(2)(a) of the YCJA regarding medical or psychological assessments prior to release from detention); and SK2011-04 (paragraph 109(2)(a) of the YCJA to make it clear that where a court has found a young person in breach of a deferred custody and supervision order it may cancel the supervision and vary the conditions). Further substantive discussion still needs to occur on resolutions AB2012-03 (subsection 119(2) of the YCJA regarding the period of time an accused can have access to records); NB2011-03 (section 137 of the YCJA creating an offence for the failure to comply with a sentence or disposition); SK2011-04 (paragraph 109(2)(a) of the YCJA dealing with the review by the youth justice court of the decision of the provincial director to suspend the conditional supervision); and, MB2013-01(subsection 76(4) of the YCJA requiring the preparation of a placement report).

## Part II - Legislative Initiatives 2013-2014

### *Relevant Criminal Law Bills before Parliament: August 15, 2013 - August 14, 2014*

As of August 15, 2013, there were 24 criminal law or relevant Bills before the 41st Parliament. Of these 24 Bills, 11 were Government criminal law reform initiatives and 14 were Private Members Bills (PMBs). Of the 11 Government Bills, three Justice crime Bills introduced by or on behalf of the Minister of Justice died on the Order Paper with prorogation: Bill C-54, *Not Criminally Responsible Reform Act*; Bill S-16, *Tackling Contraband Tobacco Act* and Bill C-30, *Protecting Children from Internet Predators*.

However, two of these three Bills were re-introduced, as promised in the Speech from the Throne. Unlike Government Bills, PMBs are automatically reintroduced in Parliament after prorogation. The following summary provides highlights of these legislative initiatives.

#### 1. **Government Criminal Law Bills**

Of the 11 Government criminal law bills before Parliament for the period under consideration, two have received Royal Assent and the remaining nine Bills are at various stages in the legislative process as discussed below.

##### a) Government Bills that received Royal Assent (2):

#### **1) Bill C-14, *An Act to amend the Criminal Code and the National Defence Act (mental disorder)***

Bill C-14, the *Not Criminally Responsible Reform Act* re-instated former Bill C-54 on November 25, 2013. It received First Reading in the Senate on November 26, 2013 and Second Reading on February 11, 2014. It was adopted by the Senate Standing Committee on Legal and Constitutional Affairs on March 27, 2014 without amendment but with concluding observations that recommended more study to determine the cause of the significant mental health and forensic mental health system failures, particularly the right of seriously mentally disordered individuals to refuse treatment and the interpretation given by the courts to that right. It was passed by the Senate on April 9 and received Royal Assent on April 11th, 2014 (S.C. 2014, c. 6). The *Criminal Code* amendments came into force on July 11, 2014 and the *National Defence Act* amendments came into force on proclamation.

Bill C-14 proposed amendments to ensure that public safety is given paramount consideration in the decision-making process for persons found Not Criminally Responsible on Account of Mental Disorder (NCR), as well as Unfit to Stand Trial (UST). It created a new high risk designation for accused persons who have been found to be NCR (but not UST) with respect to a serious personal injury offence and (a) who pose a substantial likelihood of committing further violence that would endanger public safety or (b) if the index offence was of such a brutal nature as to indicate a risk of grave harm to the public. The high risk designation would not affect the NCR accused's access to treatment but would address the risk to public safety (e.g., by disallowing unescorted passes into the community etc.). The Bill also proposed amendments to enhance victim safety and involvement in these proceedings. During hearings before the House of Commons Standing Committee on Justice and Human Rights, 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. Bill C-54 was further amended by this Committee to provide for a Parliamentary review of the amendments, to take place within five years of coming into force.

**2) Bill C-55, *An Act to amend the Criminal Code (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 by the Minister of Justice on February 11, 2013 and was passed by the Senate on March 26th and received Royal Assent on March 27, 2013 (S.C. 2013, c. 8). Bill C-55 addressed the Supreme Court of Canada's finding in its April 13, 2012 decision in *R. v. Tse* that section 184.4 of the *Criminal Code*, violated section 8 of the *Charter* due to the lack of a requirement for after-the-fact notification to persons whose private communications were intercepted. Section 184.4 authorizes the use of wiretapping without court authorization when there is imminent harm (such as in the case of a kidnapping or bomb threat). The Supreme Court suspended its declaration of invalidity until April 13, 2013.

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 (from "peace officers") and only for offences listed in section 183 (as opposed to for any "unlawful act"). 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 came into force 6 months after Royal Assent (September 27, 2013).

b) Government Bills still before Parliament (6):

**1) Bill C-10, *the Tackling Contraband Tobacco Act***

Bill C-10 re-instated former Bill S-16 on November 5, 2013. It was referred to the House of Commons Standing Committee on Justice and Legal Rights on November 5, 2013 and considered on December 3, 5, and 10, 2013 and February 11, 2014; adopted by the Committee on February 11, 2014 without amendment and reported to the House of Commons on February 12, 2014. The Bill was passed by the House of Commons the 30th of May, 2014. It received First Reading in the Senate on June 3, 2014 and was referred to the Standing Senate Committee on Legal and Constitutional Affairs on June 18th, 2014.

Bill C-10 proposes to amend the *Criminal Code* to create a new offence of trafficking in contraband tobacco. The maximum penalty for the offence is 6 months imprisonment on summary conviction and 5 years on indictment. Where the offence involves 10,000 cigarettes, 10 kilograms of raw leaf tobacco 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. Bill C-10 proposes to give the Attorney General of Canada concurrent jurisdiction with provincial Attorneys General to prosecute this new offence.

**2) Bill C-13, *the Protecting Canadians from On-Line Crime Act***

Bill C-13 was introduced on November 20, 2013. Second Reading debate occurred on November 27, 28 and 29, 2013 and a Time Allocation Motion was adopted on March 26,

2014. Bill C-13 proposes criminal law amendments to better protect against serious forms of cyberbullying, as well as amendments to modernize existing and introduce new investigative powers (warrants and other judicial orders) to enable police to obtain electronic evidence from the Internet and other new technologies more efficiently and effectively at the national and international levels.

Proposed cyberbullying amendments include creating a new hybrid offence against the non-consensual distribution of intimate images (6 months/5 years), as well as related amendments to enable the removal of such images from the Internet, to make peace bonds available to prevent such posting, and to enable restitution for any related costs incurred in securing the removal of such images from the Internet. Existing offences would be modernized to apply to new technologies (e.g., section 372 – false information, indecent communication, harassing communications) and section 4 would include a “for greater certainty” clause that makes clear that offences that contain an element of communication without specifying the means of communication can be committed by a means of telecommunication.

Proposed investigative powers amendments would: enable the preservation of computer data by either a police demand or court order; enable acquisition of data in the possession or control of a person by judicial authorization and require the deletion of such data once no longer required; enhance the ability to track and trace telecommunications to determine their origin or destination (e.g., transmission data – e-mail address of recipient, type, direction, date, time, duration, size, origin, destination or termination of communication but not its content; tracking data e.g., where a debit card was used); and streamline the process for obtaining multiple warrants and orders related to the execution of a wiretap authorization. Bill C-10 is awaiting Report Stage debate in the House of Commons.

Bill C-13 responds to a number of ULCC resolutions that have been discussed over recent years, e.g., NB2010-03, calling for Justice Canada to review the conduct described in section 372 of the *Criminal Code* (annoying and harassing communications), as well as MB2010-02 and AB2013-01 asking for this same provision to be updated to address modern forms of technologies; AB 2009-01 recommending that section 492.1 (tracking warrants) and 492.2 (number recorders) orders be issued by a justice or a superior court judge; and, AB2013-06 recommending to clarify that production orders are effective throughout Canada.

**3) *Bill C-26, An Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts – Tougher Penalties for Child Predators Act***

Bill C-26 was introduced on February 26, 2014 and is at Second Reading debate in the House of Commons. The Justice components of the Bill propose amendments to: increase penalties for child sexual offences (increased Mandatory Minimum Penalties (MMPs) and maximum penalties); increase the penalties for breaches of prohibition orders, probation orders and peace bonds (18 months and/or \$5,000 fine/4 years); make the commission of an offence while on a conditional sentence of imprisonment or on parole/statutory release/unescorted temporary absence an aggravating factor for sentencing purposes; simplify statutory and codify common law rules regarding consecutive and concurrent

sentences, as well as to require consecutive sentences for child pornography offences and contact child sexual offences and also for sentences involving multiple child sexual victims.

Public Safety components of the Bill propose to: enhance the monitoring of sex offenders by amending the SOIRA to require more information about registered sex offenders travelling abroad i.e., notice and foreign address where the sex offender will be abroad for 7 days or more; notice and foreign address for any duration abroad for child sex offenders, (which is currently required for domestic travel) and to facilitate information sharing with foreign jurisdictions, as well as between National Sex Offender Registry officials and Canada Border Services Agency officials (to enable secondary screening upon return to Canada of child sex offenders assessed to be high risk to re-offend); create a new *High Risk Child Sex Offender Database Act* to establish a publicly accessible database of high-risk child sex offenders who have been the subject of a public notification in a provincial/territorial jurisdiction (criteria are being developed in consultation with provinces and territories).

#### **4) Bill C-32, *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts***

Bill C-32, *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts* (CVBR) was introduced on April 3, 2014 and began Second Reading on April 9, 2014 and was referred to the Standing Committee on Justice and Human Rights on June 20, 2014. Building on existing criminal law and programs, this Act proposes to entrench the rights of victims of crime into a single federal law.

The Act creates the CVBR and modifies the *Criminal Code*, the *Corrections and Conditional Release Act* and the *Employment Insurance Act*. The CVBR creates four rights for victims (rights to information, participation, protection and restitution), as well as an enforcement mechanism for breaches by federal agencies or departments. The proposed CVBR would give a victim the right to have a sentencing court consider making a restitution order against an offender in all cases, and the right to have any unpaid portion of a restitution order entered as an enforceable civil judgment.

In addition, Bill C-32 includes a number of amendments to the *Criminal Code* provisions on restitution. The *Criminal Code* would be amended to require sentencing courts to consider imposing a restitution order in all cases, and to provide reasons when restitution is not ordered. Amendments would also clarify that an offender's ability to pay does not prevent restitution from being ordered. The court would be required to ask the prosecutor if reasonable steps have been taken to determine if a victim is seeking restitution, and if not, the court would be able to adjourn the proceedings for this purpose. Victims wishing to seek restitution would be able to use a new standardized optional restitution form. When restitution is ordered, a court would be able to make the order payable to more than one person, to designate priority among those people, and set out a payment schedule. Provinces and territories would be able to designate a public body to assist in the collection of unpaid restitution orders.

#### **5) Bill C-35, *An Act to amend the Criminal Code (law enforcement animals, military animals and service animals)***

Bill C-35, *Quanto's Law*, was introduced on May 12, 2014 by the Minister of Justice and Attorney General of Canada. The introduction of this legislation fulfilled a commitment

made by the Government in the 2013 Speech from the Throne to recognize the daily risks taken by police officers and their service animals in their efforts to enforce the law and protect Canadians and communities. The legislation honours Quanto, a police dog that was stabbed to death while helping to apprehend a fleeing suspect in Edmonton, Alberta, in October 2013. The Bill began the Second Reading stage in the House of Commons on June 3, 2014.

The Bill proposes to amend the *Criminal Code* to better protect law enforcement animals, military animals and service animals and to ensure that offenders who harm those animals or who assault peace officers are held fully accountable. Specifically, it proposes to create a specific hybrid offence, punishable by a maximum of 5 years on indictment and 18 months and/or \$10,000 fine on summary conviction. Courts would be required to give primary consideration to denunciation and deterrence as sentencing objectives as they relate to this new offence. Where a law enforcement animal is killed in the line of duty and the offence is prosecuted on indictment, the offence would carry a mandatory minimum penalty of 6 months. Where the offence is committed against a law enforcement animal or an assault is committed against a police officer, the sentence imposed would be consecutive to any sentence imposed for any other offence arising out of the same event.

**6) Bill C- 36, *An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts* -**

Bill C-36, the *Protection of Communities and Exploited Persons Act*, was introduced on June 4, 2014. It responds to the Supreme Court of Canada's December 20, 2013 decision in *R. v. Bedford* [2013] 3 S.C.R. 1101, which found three *Criminal Code* prostitution-related prohibitions unconstitutional. The Supreme Court of Canada suspended the effect of its finding for one year. The Bill proposes to characterize prostitution-related offences as offences against the person, on the basis that prostitution is inherently exploitative of the persons who provide sexual services and that commercializing the sale of sexual activity is harmful to society. In so doing, most existing prostitution-related offences would be modernized and relocated into Part VIII under a new heading. In addition, and consistent with the new legislative objectives, Bill C-36 would amend the *Criminal Code* to, among other things:

- make prostitution illegal by criminalizing the purchase of sexual services in any place;
- prohibit receiving a financial or material benefit from the prostitution of others and create statutory exceptions including for non-exploitative legitimate living arrangements and economic transactions;
- prohibit advertising the sale of sexual services and provide for an authority to seize materials containing such advertisements and to remove them from the Internet;
- make clear that a person who provides sexual services cannot be prosecuted for any role they play in relation to the offences of buying, material benefit, procuring or advertising, where the conduct was in relation to the provision of their own services; and
- modify the definition of weapon in section 2 of the *Criminal Code* to specify that, for the purposes of certain offences, a weapon includes any thing used, designed to be

used or intended for use in binding or tying up a person against their will.

As introduced, Bill C-36, also proposes creating an offence in Part VII prohibiting communicating for the purposes of selling sexual services in a public place, or in any place open to public view, that is or is next to a place where persons under the age of 18 can reasonably be expected to be present. Bill C-36 Received Second Reading on June 16, 2014 and was referred to the Standing Committee on Justice and Human Rights on the same day. Amendments to Bill C-36 were adopted by the Committee on July 15, 2014 including an amendment to the communicating offence, which now proposes prohibiting communicating — for the purpose of selling sexual services — in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre. The Committee’s Report is expected to be presented to the House of Commons when it returns in September 2014.

## **2. *Private Members Bills***

Since August 15, 2013, there are 14 PMBs still before Parliament. Of these, 11 were led by the Criminal Law Policy Section, Department of Justice Canada, while three were led by other parts of the Department or other Departments, as highlighted below.

### a) *Bills led by the Criminal Law Policy Section* (11):

#### **1) Bill C-290, *An Act to amend the Criminal Code (sports betting)***

Bill C-290 proposes to repeal paragraph 207(4)(b) of the *Criminal Code* to make it lawful for the government of a province, or a person or entity licensed by the Lieutenant Governor in Council of that province, to conduct and manage a lottery scheme in the province that involves betting on a race or fight or on a single sport event or athletic contest (this would mean, for example, that provinces would be authorized to conduct betting on a single game, such as the Stanley 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-290 is at Second Reading Debate in the Senate.

#### **2) Bill C-452, *An Act to amend the Criminal Code (exploitation and trafficking in persons)***

Bill C-452 proposes to amend the *Criminal Code* in order to provide consecutive sentences for offences related to trafficking in persons and create a presumption regarding the exploitation of one person by another and to add the offence of trafficking in persons to the list of offences to which the forfeiture of proceeds of crime apply. Bill C-452 is at Second Reading Debate in the Senate.

#### **3) Bill C-570, *An Act to amend the Criminal Code (mandatory minimum sentences for rape)***

Bill C-570 proposes to amend sections 271, 272 and 273 of the *Criminal Code* to establish mandatory minimum sentences for sexual assaults that fall within the definition of “rape” as defined for the purpose of those sections. It also establishes that sentences for such offences must be served consecutively to any other punishment arising out of the same event or series

of events. Bill C-570 is awaiting first hour of Second Reading debate in the House of Commons, expected September 16, 2014.

**4) Bill C-583, *An Act to amend the Criminal Code (fetal alcohol spectrum disorder)***

Bill C-583 proposes to amend the *Criminal Code* to add a definition of “fetal alcohol spectrum disorder” (FASD) and to establish a procedure for assessing individuals who are involved in the criminal justice system and who it is suspected suffer from FASD. It requires the court to consider, as a mitigating factor in sentencing, a determination that the accused suffers from FASD and manifests certain symptoms. Bill C-583 is awaiting second hour of Second Reading debate in the House of Commons, expected September 26, 2014.

**5) Bill C-587, *An Act to amend the Criminal Code (increasing parole ineligibility) – the Respecting Families of Murdered and Brutalized Persons Act***

Bill C-587 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-587 is awaiting second hour of Second Reading debate in the House of Commons, expected September 22, 2014.

**6) Bill C-590, *An Act to amend the Criminal Code (blood alcohol content)***

Bill C-590 proposes to amend section 255 of the *Criminal Code* to establish more severe penalties for offences committed under section 253 in circumstances where the offender has a blood alcohol content that exceeds one hundred and sixty milligrams of alcohol in one hundred millilitres of blood and to raise the minimum penalties that apply to convictions for impaired driving causing bodily harm or death. Bill C-590 is awaiting second hour of Second Reading debate in the House of Commons, expected October 6, 2014.

**7) Bill C-592, *An Act to amend the Criminal Code (cruelty to animals)***

Bill C-592 proposes to significantly amend the *Criminal Code*'s animal cruelty provisions including by creating a new Part of the *Criminal Code*, create new offences that would exclude specified activities (e.g., pest control, rodeo, hunting/fishing, agricultural activities), create an aggravating factor where the act is committed against a law enforcement animal, and include an Aboriginal non-derogation clause. Bill C-592 is awaiting first hour of Second Reading debate in the House of Commons, expected September 18, 2014.

**8) Bill S-203, *An Act to amend the Controlled Drugs and Substances Act and the Criminal Code (mental health treatment)***

Bill S-203 proposes to amend the *Controlled Drugs and Substances Act* and the *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. Bill S-203 received Second Reading in the Senate and was referred to Standing Committee on Legal and Constitutional Affairs on May 6, 2014.

**9) Bill S-210, *An Act to amend the Criminal Code (criminal interest rate)***

Bill S-210 proposes to amend the *Criminal Code* to reduce the criminal rate of interest from sixty per cent to the Bank of Canada's overnight rate plus twenty per cent on credit advanced for certain purposes, which would include personal, family and household purposes. It maintains the criminal rate at sixty per cent on credit advanced for business or commercial purposes. However, business or commercial agreements under which the credit advanced equals or exceeds one million dollars are exempt from the offence of charging a criminal rate of interest. Bill S-210 is in the Senate where it received Second Reading and was referred to Standing Committee on Banking on May 29, 2014.

**10) Bill S-221, *An Act to amend the Criminal Code (assaults against public transit operators)***

This enactment amends the *Criminal Code* to require a court to consider the fact that the victim of an assault is a public transit operator to be an aggravating circumstance for the purposes of sentencing.

**11) Bill S-214, *An Act to amend the Criminal Code (exception to mandatory minimum sentences for manslaughter and criminal negligence causing death)***

Bill S-214 proposes to amend the *Criminal Code* to provide for an exception to the mandatory minimum sentences 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. Bill S-214 is in the Senate where it received Second Reading and was referred to Standing Committee on Legal and Constitutional Affairs on June 19, 2014.

b) *PMB Bills led by other parts of the Department of Justice or other Departments* (3):

**1) Bill C-279, *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity)***

Led by the Human Rights Law Section, Department of Justice, Bill C-279, proposes to amend the *Canadian Human Rights Act* to include gender identity as a prohibited ground of discrimination, as well as the *Criminal Code* to include gender identity as a distinguishing characteristic protected under section 318 (Advocating genocide) and as an aggravating circumstance to be taken into consideration under section 718.2 at the time of sentencing. Bill C-279 is in the Senate where it received Second Reading and was referred to Standing Committee on Legal and Constitutional Affairs on June 5, 2014.

**2) Bill S-206, *An Act to amend the Criminal Code (protection of children against standard child-rearing violence)***

Led by the Family Children and Youth Section, Department of Justice, Bill S-206, proposes to repeal the *Criminal Code* section 43's justification for parents, schoolteachers, and persons standing in the place of parents to use reasonable force as a means of correction toward a pupil or child under their care. If enacted, it would come into force one year after Royal Assent to enable the Government to undertake public education and to coordinate

with the provinces. On May 8, 2014, Bill S-206 received Second Reading and referred to Standing Committee on Legal and Constitutional Affairs in the Senate.

**3) Bill S-208, *An Act to establish the Canadian Commission on Mental Health and Justice***

Led by Health Canada, Bill S-208 establishes the Canadian Commission on Mental Health and Justice. The purpose of the Commission is to facilitate the development, sharing and application of knowledge, statistical data and expertise on matters related to mental health and criminal justice. Its role includes providing recommendations for improving laws, policies and practices that address the needs of individuals who live with mental health problems or illnesses and are involved — or at risk of becoming involved — with the criminal justice system, in order to contribute to the health, safety and well-being of Canadians. The enactment also establishes the Mental Health and Justice Advisory Council to advise the Commission on the Commission's program of studies and other matters. Bill S-208 received Second Reading and referred to Standing Committee on Social Affairs, Science and Technology in the Senate on June 19, 2014.

**Conclusion**

Justice Canada, as well as its provincial and territorial counterparts involved in criminal justice issues, have been busy over the past calendar year with criminal law reform. As illustrated in this Report, the ULCC Criminal Section remains a critical source for legislative initiatives to reform Canada's criminal law regime. Justice Canada will continue to give full and careful consideration to past ULCC resolutions as it shepherds amendments to the *Criminal Code* and other related criminal law statutes through the legislative process. Finally, Justice Canada will continue to monitor prior ULCC resolutions in advance of next year's annual meeting in Yellowknife. Delegates are encouraged to follow the progress of criminal law reforms by consulting the Parliament of Canada website, LEGISinfo at: <http://www.parl.gc.ca>.

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