

UNIFORM LAW CONFERENCE OF CANADA
YELLOWKNIFE, NORTHWEST TERRITORIES
AUGUST 9 - 13, 2015

CRIMINAL SECTION MINUTES

ATTENDANCE

Twenty two delegates from provincial, territorial and federal government participated in the deliberations of the Criminal Section. British Columbia, Prince Edward Island, Newfoundland & Labrador and the Yukon were not represented. Delegates included policy counsel, Crown prosecutors, defence counsel, representatives of the Canadian Bar Association and members of the judiciary.

OPENING

The Criminal Section convened to order on Sunday, August 9, 2015. Kusham Sharma (Senior Advisor to the Deputy Minister of Justice & Deputy Attorney General of Manitoba Justice) presided as Chair and Anny Bernier (Counsel, Justice Canada) acted as Secretary.

The Chair thanked the delegates for coming and reminded them about the need to follow the Rules of Criminal Section Procedure so that the proceedings run smoothly. Each jurisdictional representative introduced the delegates who accompanied them.

PROCEEDINGS

Report of the Senior Federal Delegate¹

Lucie Angers, General Counsel and Director of External Relations for the Criminal Law Policy Section, Justice Canada, announced that given the ongoing federal election, Justice Canada and Public Prosecution of Canada representatives will participate in the discussion of Criminal Section resolutions but will not vote on them. She then presented and tabled the Report of the Senior Federal Delegate.

Resolutions²

The order in which resolutions are considered is set out in the *Rules of Procedure* of the Criminal Section. In accordance with the *Rules*, Alberta was the first province to present its resolutions this year, followed by the other jurisdictions, in alphabetical order, and finally by the Canada delegation.

The jurisdictions initially submitted fifteen (15) resolutions for consideration. Of that number, three (3) were split into two resolutions. Delegates therefore considered a total of eighteen (18) resolutions. Six (6) resolutions were carried without amendment, ten (10) resolutions were carried as amended and two (2) resolutions were withdrawn following discussion.

¹ This document is attached to the paper version of these Minutes and may also be consulted in electronic form on the ULCC website.

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In some instances, the total number of votes varies due to the absence of some delegates for some part of the proceedings.

Criminal Section Reports and Presentation

Three working groups provided an overview of their work. The first dealt with the endorsement of *Criminal Code and Controlled Drugs and Substances Act* warrants, orders and authorizations for inter-provincial execution, the second with the enforcement of extra-provincial search warrants and the third with informer privilege. Each of the working groups is expected to present its final report at the Criminal Section's 2016 meeting.

Two new working groups were established. The first one will monitor the development of the case law surrounding the award of costs or damages against the Crown arising from criminal prosecutions and the second will examine the implications of the decision and monitor the interpretation and application of *R. v. Barabash* in the case law.

As a result of the call for federal elections, a number of changes were made to the agenda. The Joint Session of the Civil and Criminal Sections concerning the Supreme Court of Canada decision in *Carter v. Canada*, the discussion on the impact of the Supreme Court of Canada decision in *R. v. Spencer* and the briefing on the Canada-U.S. Land, Rail, Marine and Air Preclearance Agreement were all cancelled. During the Open Forum discussion, the Criminal Section had a presentation concerning "The Northwest Territories Court System: Wellness Court; Domestic Violence Treatment Option; and the Circuit Court".

Reports

➤ **Status Report from the Working Group on the Endorsement of Warrants, Orders and Authorizations**

The working group is chaired by Lucie Angers of the federal Department of Justice. Representatives from Alberta (Matthew Hinshaw), Manitoba (Michael Desautels), Ontario (Catherine Cooper), Quebec Director of Criminal and Penal Prosecutions (Nicolas Abran), New Brunswick (Michel Bertrand, succeeded by Derek Weaver), the Public Prosecution Service of Canada (Laura Pitcairn), the Canadian Bar Association (Scott Bergman), and the federal Department of Justice (Stéphanie O'Connor and Normand Wong) participate in the working group.

Lucie Angers presented a short summary of the work done by the working group and indicated that they expected to present the final report at the Criminal Section's 2016 meeting.

IT WAS RESOLVED THAT the working group will continue its work and table its report and recommendations at the 2016 ULCC meeting.

➤ **Status Report from the Working Group on Extra-Provincial Search Warrants**

The working group is chaired by Catherine Cogswell of Nova Scotia Department of Justice. Representatives from Justice Nova Scotia (Nadine Smillie and Karen Anthony, Nova Scotia Public Prosecution Service (Peter Craig), Office of the Attorney General, New Brunswick

(Cameron Gunn), Justice PEI (Lisa Goulden), Justice Newfoundland and Labrador (Elaine Reid), Ontario Ministry of the Attorney General (Earl Fruchtman), Manitoba Justice (Colleen McDuff), Saskatchewan Ministry of Justice (Lane Wiegers, prior to his appointment to the bench) and Ministry of Justice British Columbia (Monty Carstairs) participate in the working group.

The working group is not yet ready to table a final report with the Criminal Section but expects to present a final report at the Criminal Section's 2016 meeting.

IT WAS RESOLVED THAT the working group continue its examination of the issues and table its report and recommendations at the 2016 ULCC meeting.

➤ **Status Report from the Working Group on Informer Privilege**

The working group is chaired by Matthew Taylor of Justice Canada and Ursula Hendel of the PPSC. Representatives from Alberta (Robert Sigurdson), Ontario (Susan Magotiaux, Robert Hubbard), Quebec - Director of Criminal and Penal Prosecutions (Catherine Dumais), New Brunswick (Luc Labonté), Newfoundland and Labrador (Elaine Reid), Yukon (Lee Kirkpatrick), Canadian Bar Association (Scott Bergman), Defence Bar (Richard Fowler) and Quebec Bar (Richard Prihoda replacing Jacques Ladouceur who was appointed to the bench) and Justice Canada (Andrew Di Manno, Dorette Pollard and Keith Wilkins) participate in the working group.

Earl Fruchtman presented an overview of the work done by the working group and mentioned that they were not yet ready to table a final report with the Criminal Section but expects to present a final report at the Criminal Section's 2016 meeting.

IT WAS RESOLVED THAT the working group continue its examination of the issues and table its report and recommendations at the 2016 ULCC meeting.

Presentations

➤ **Open Forum - The Northwest Territories Court System: Wellness Court; Domestic Violence Treatment Option; and the Circuit Court"**

Presented by:

- Chief Judge Christine Gagnon, Chief Judge of the Territorial Court;
- Dawn Anderson, Integrated Case Management Team, Government of Northwest Territories, Department of Justice;
- Jill Andrews, Crown Counsel with the Public Prosecution Service of Canada, Yellowknife Regional Office;
- Tony Amoud, Criminal Defence Counsel, Legal Aid, Yellowknife;
- Roger Shepard, Legal Counsel, Prosecutions Legal Division, Department of Justice, Northwest Territories – Moderator for the Open Forum

Chief Judge Christine Gagnon started the presentation by explaining that practicing law in Northwest Territories (NWT) is similar to working with circuit courts in rural areas. Some communities are isolated at times (e.g. climate changes, forest fires, etc.) and the cost of travel is prohibitive. There is only one judicial district with four judges who all live in Yellowknife. There are two to three circuits every week. Rate of violent crimes is the highest in the country which is calculated per 1 000 000 inhabitants, population of NWT is 43 000. While the rates are skewed they do not tell the real story. Most of the crimes are committed indoors and by the same people. The rate of conviction is quite low and results are disappointing because the underlying causes, mainly the abuse of alcohol, are not addressed. Repeat offenders are usually breaching their probation orders given their addictions, homelessness and mental health issues. Not all recidivists commit serious crimes and the Wellness Court was created as an option to stop criminalizing what is more akin to social problems.

In collaboration with probation services, the Wellness Court was crafted following their needs without any budget using resources already available. The Wellness Court is an alternative to the regular system. This Court focuses primarily on chronic offenders who have mental health issues, addictions or cognitive challenges that contribute to their offending behavior. In a regular court, a person charged with an offence comes before a judge who will look at the offence, listen to the evidence and make a ruling on the case before them. In the Wellness Court, a case manager provides intensive support and supervision to the offender as they work to make positive changes to their lives. The team helps to access services such as housing, income support, mental health and addictions programs. In order to access these programs, the accused must want to change their lifestyle, and must plead guilty to at least one charge. The defence lawyer will work with the accused and the crown to see if the case can be referred to the Wellness Court. Once referred, a case manager will assess the individual for suitability for the program. Consents and commitments to participation must be made. Offenders are subject to release conditions to guide them as they go through the program. If they break these conditions, they will need to work with their case managers to remain in the program or return to the court to be sentenced.

Dawn Anderson explained that when they are in partner program with probation services, they are supervised by probation officer and they use the Corrections offender management system to keep information on offenders. Probation officer supervises offenders and then reports back to court. The bail supervisor can amend the conditions but will meet with the parties before doing so. Participants who complete the partner program leave with a self-control plan and program for change.

Jill Andrews presented the Domestic Violence Treatment Option (DVTO) and indicated that all domestic files go through DVTO Court. The DVTO allows people who have used violence against a spouse to take responsibility for their behaviour and receive support and counselling. The program provides interventions by a team that can help improve the participant's relationships for the long term. After successful completion of the program, the sentencing judge will take into consideration the commitment made towards long term change by the participant. The Program is designed for low risk offenders.

Chief Justice Gagnon concluded the presentation by mentioning that when a person accepts responsibility for their actions and receives adequate support, that person does the hard work necessary for change. Specialized courts have shown that chronic offenders can succeed and

change their criminal behavior. She encouraged everyone to take a more creative approach towards these offenders.

On behalf of the delegates, the Chair thanked the speakers for their presentation.

CLOSING

The Chair thanked the delegates for their participation in the meeting. She was pleased to preside over the discussions and thanked the delegates for their patience, dedication and efforts in carrying out the week's agenda. She expressed her appreciation to the members for their excellent work and to the interpreters for their help and dedication.

The Chair highlighted the remarkable work of the conference secretariat and expressed deep gratitude to the organizing committee of the Government of the Northwest Territories.

The Chair also thanked Anny Bernier, Secretary to the Criminal Section, for her excellent work and her help throughout the week. She also thanked Dorette Pollard for her assistance over the course of the year.

The ULCC delegates took the opportunity to thank the Chair of the Criminal Section for the quality of her work throughout the week and for her contribution during the year.

By resolution of the Criminal Section, the nomination of Eric V. Gottardi, Canadian Bar Association representative, as Chair of the Criminal Section for 2015-2016, was accepted. The nominating committee recommends that Sébastien Bergeron-Guyard, Acting Deputy Chief Prosecutor, Direction des poursuites criminelles et pénales du Québec, act in that capacity in 2016-2017.

The Criminal Section meeting concluded its work on Thursday, August 13, 2015.