

## REPORT OF THE SENIOR FEDERAL DELEGATE

### Uniform Law Conference of Canada Criminal Section 2015 Department of Justice Canada

#### Introduction

The Uniform Law Conference of Canada (ULCC) is an important forum for the federal government. We believe that the ULCC is a good investment for federal-provincial-territorial (FPT) justice portfolios as it is a reliable forum that governments can count on for quality research, open and frank discussion of legal issues and for producing quality and usable end products.

We were pleased that this view is widely shared by governments across Canada as evidenced by the discussion on ULCC that was held during the last meeting of FPT Deputy Ministers Responsible for Justice and Public Safety in Winnipeg, Manitoba, June 10-12, 2015. At that meeting, Deputy Ministers recognized the ULCC as an efficient and cost effective forum, critical to the improvement and harmonization of the law in Canada. Reiterating their commitment to the work of ULCC, “Deputy Ministers agreed to renew their commitment to the invaluable work of the ULCC, to reconsider sending a delegation to the Criminal Section meeting, and to reassess their ability to support ULCC, through translation and legislative drafting services for the Civil Section”.

This decision of Deputy Ministers is especially significant for the Criminal Section, which has seen a decline in representation from several jurisdictions in the recent past. We at the federal level join our provincial and territorial counterparts in recognizing the significant role the Criminal Section plays not only because of its work, but also because of who participates in its work. Each year, judges, prosecutors, policy experts, defence lawyers, and academics examine resolutions and working group reports to advance reforms to the criminal law. In addition, the Criminal Section of ULCC provides a unique opportunity for the federal Department of Justice to take the pulse and consult key stakeholders in the criminal justice system on its priorities, including to ensure that the justice system continues to enhance the personal safety and security of citizens through criminal laws, policies, and programs, to support victims of crime and to support the Government of Canada's priorities through the delivery of high-quality legal services.

Resolutions passed by the ULCC Criminal Section are carefully considered by the Department of Justice criminal law policy officials. The Deputy Minister of Justice and the Minister of Justice are informed of the outcome of ULCC discussions following the annual meeting, as are other Departments where it is established that an issue raised by a ULCC resolution falls within the purview of another federal minister. While the passage of resolutions calling for *Criminal Code* and other related criminal law amendments may not result in immediate legislative reform, the work of the ULCC Criminal Section is integral to this process. Officials at the Department of Justice turn regularly to past ULCC deliberations to inform the policy development process leading to amendments to the *Criminal Code* and related criminal statutes.

Part I of this Report provides an update on federal-provincial-territorial (FPT) developments of interest for the work of ULCC. Part II examines the legislative initiatives before Parliament since the 2014 annual ULCC meeting in Toronto, Ontario.

## **Part I - FPT DEVELOPMENTS OF INTEREST TO ULCC**

### ***Federal, Provincial and Territorial Ministers Responsible for Justice and Public Safety***

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 October 2014 in Banff. Many of the issues discussed by Ministers are related to the issues raised by delegates to the ULCC.

During the meeting, Ministers emphasized that the threat of homegrown terrorism was a significant concern for all levels of government. Ministers also recognized the importance of involving communities in addressing the issue. They agreed to fully support discussions on initiatives related to countering violent extremism and to continue exploring opportunities to collaborate with other ministries within their jurisdictions.

Ministers discussed the important role of legal aid in delivering an accessible and effective criminal justice system for all Canadians. Ministers acknowledged the need for continued innovation to maximize the effectiveness and efficiency of legal aid. In the context of the current funding agreements, provincial ministers reiterated their request for increased federal funding in recognition of changing demographics across the country. Ministers reiterated the emphasis for continued collaboration between the federal government and the provinces and territories to strengthen legal aid and the justice system for Canadians.

Ministers expressed strong support for the objectives of the proposed *Victims Bill of Rights* (which came into force on July 23, 2015). Provincial and territorial Ministers noted that many initiatives had been taken in their own jurisdiction, given their constitutional responsibility for the administration of justice. They identified and discussed implementation challenges, particularly in regards to existing provincial and territorial programs and services for victims. Ministers also agreed that legal and implementation considerations should be addressed by FPT senior officials in a timely fashion. The federal Ministers committed that funding would be made available to provinces and territories to assist in the implementation of the Bill.

FPT Ministers discussed the proposed *Protection of Communities and Exploited Persons Act* (which came into force on December 6, 2014) and the federal government's commitment to provide funding, taking into account provincial and territorial priorities, for programs that prevent persons from becoming involved in prostitution and assist exploited persons who wish to leave prostitution.

The federal Ministers gave a status update on the proposed federal *Tougher Penalties for Child Predators Act* (which received Royal Assent on June 18, 2015) and High Risk Child Sex Offender Database. Ministers agreed on the need for further consultations and collaboration with

provinces and territories on the creation of the Database. The federal Public Safety Minister committed to ensuring the federal database would be compatible with similar provincial initiatives.

The federal Justice Minister described implications of the Supreme Court of Canada decision in *R. v. Spencer* (police access to information on subscribers to Internet Service Providers), for the criminal justice system. Given the serious implications of this decision on public safety, Ministers agreed to ask senior officials to consider options that would balance the needs of law enforcement and the privacy interests of Canadians.

Ministers reviewed a report from the Sentencing Working Group on FASD. The recommendations of the working group were appreciated and Ministers directed officials to conduct further research on key issues, taking into consideration the input of the Canadian Bar Association and Private Members Bill C-583, *An Act to Amend the Criminal Code (Fetal Alcohol Spectrum Disorder)*.

### ***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. At each CCSO meeting, all of these working groups are encouraged to take into account ULCC resolutions relevant to their working group and report back on their discussions of proposed reforms. A number of issues that were the subject of ULCC Criminal Section resolutions in recent years are currently being considered by CCSO.

## **Part II - LEGISLATIVE INITIATIVES 2014-2015**

As of August 15, 2014, there were 30 criminal law or relevant Bills before the 41st Parliament, 2<sup>nd</sup> Session. Of these Bills, 14 were Government criminal law reform initiatives and 16 were Private Members Bills (PMBs). Further detail of these legislative initiatives are provided in the passages that follow.

### **A. GOVERNMENT CRIMINAL LAW BILLS (14)**

Of the 14 Government criminal law bills before Parliament for the period under consideration, ten (10) Bills were enacted of which six (6) were introduced by the Minister of Justice and Attorney General of Canada, while four (4) were presented by other Cabinet Ministers. Of the remaining four (4) Government Bills, one (1) Regulation came into force during this Session of Parliament, while the remaining three (3) Bills were at various stages in the legislative process before they died on the Order Paper when the federal election was called on August 2, 2015.

**a) Government Bills Introduced in Parliament by the Minister of Justice and Attorney General of Canada and Enacted (6):**

**1) *Bill C-10, An Act to amend the Criminal Code (trafficking in contraband tobacco) (the Tackling Contraband Tobacco Act)***

Bill C-10 received Royal Assent on November 6, 2014 and came into force on April 10, 2015. The amendments created a new offence of trafficking in contraband tobacco, with a maximum penalty of 6 months imprisonment on summary conviction and 5 years on indictment. Where the offence involves 10,000 cigarettes, 10 kg of raw leaf tobacco or 10 kg of other tobacco products and the offender is a repeat offender, the offence will carry a mandatory minimum penalty of 90 days incarceration on a second conviction, 120 days on a third conviction and 2 years less a day on subsequent convictions. The Attorney General of Canada will have concurrent jurisdiction with provincial Attorneys General to prosecute the new offence.

**2) *Bill C-13, An Act to amend the Criminal Code, the Canada Evidence Act, the Competition Act, and the Mutual Legal Assistance in Criminal Matters Act (the Protecting Canadians from Online Crime Act)***

Bill C-13 received Royal Assent on December 9, 2014 and came into force on March 10, 2015. These amendments protect against serious forms of cyberbullying, including through the creation of a new hybrid offence against the non-consensual distribution of intimate images, 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 permit restitution orders to be made for any related costs incurred to secure the removal of such images from the Internet. Existing offences are also modernized to apply to new technologies.

The amendments also modernize existing investigative powers and introduce new investigative powers to provide police with the necessary means to investigate crime in today's high-tech environment while maintaining judicial checks and balances to protect Canadians' privacy. The amendments will: 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-13 is a good example of legislation that responds to ULCC resolutions that have been discussed over recent years, including NB2010-03, calling for Justice Canada to review the conduct described in section 372 of the *Criminal Code* (annoying and harassing communications); 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 (the Tougher Penalties for Child Predators Act)***

Bill C-26 was introduced on February 26, 2014, adopted by the Senate on June 11, 2015, and received Royal Assent on June 18, 2015. The *Criminal Code* amendments came into force on July 17, 2015; the remaining amendments will come into force on a day or days to be fixed by order of the Governor in Council.

Justice components of the Bill amend the *Criminal Code* 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 require consecutive sentences for child pornography offences and contact child sexual offences, as well as for sentences involving multiple child sexual victims.

Public Safety components of the Bill: enhance the monitoring of sex offenders by amending the *Sex Offender Information Registration Act* (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) 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 (the Victims Bill of Rights Act)***

Bill C-32, *the Victims Bill of Rights* received Royal Assent on April 23, 2015 and came into force on July 23, 2015. The *Canadian Victims Bill of Rights* (CVBR) provides victims of crime with:

1. the **right to information** including general information on the criminal justice system and case-specific information on the status/outcome of an investigation, status of proceedings, review of offender's conditional release, and reviews of NCR/UST accused;
2. the **right to protection** including to have victims' security and privacy considered in their interactions with the criminal justice system, to be protected against intimidation

and retaliation, to have enhanced access to the use of testimonial aids and to protect their identity from public disclosure;

3. the **right to participation** including through enhanced victim and community impact statement provisions and by enabling victims to convey their views about decisions made by criminal justice authorities that affect their rights under the Act and to have those views considered; and
4. the **right to restitution**, including requiring courts to consider a restitution order for all offences.

The CVBR will enable victims to seek remedies from the relevant system official (first level) and if unsatisfied at the federal level, to seek assistance from the Office of the Federal Ombudsman for Victims of Crime (second level). For breaches allegedly committed by provincial/territorial agencies, victims will be able to file complaints in accordance with provincial/territorial legislation. It will not provide victims with standing in criminal proceedings or entitle victims to damages. The CVBR will have primacy over all federal legislation (except the *Charter*), will be balanced with other quasi-constitutional legislation (e.g. Canadian Bill of Rights), and will be required to be interpreted and applied in a manner that is reasonable in the circumstances and not likely to interfere with police/prosecutorial/Ministerial discretion or interfere with the life or safety of an individual or injury national/international relations.

Bill C-32 included technical amendments to the *Criminal Code*, *Corrections and Conditional Release Act* and the *Canada Evidence Act*. These amendments include: allowing victims to request a copy of a bail/probation/conditional sentence order; enhancing access to testimonial aids; making spouses competent and compellable to testify (but maintain the spousal communication privilege); before accepting a plea bargain for a serious personal injury offence (or for an offence punishable by 5 years or more on indictment, where the victim requested notice), requiring a court to ask the prosecutor if reasonable steps were taken to inform the victim of the plea bargain; enhanced correctional information sharing with the victim, non-contact orders and geographical restrictions and access to a current photograph of the offender prior to release; mandatory form for victim impact and community impact statements; clarifying what can/cannot be included and enabling victims to bring a photograph during their presentation of their statement; expanding the sentencing principles to specify that the protection of society is the fundamental purpose of sentencing, to require courts to denounce harm caused to victims and society by criminal conduct, and require courts to take this harm into account when considering whether non-custodial sanctions are reasonable in the circumstances; requiring a sentencing court to consider imposing a restitution order in all cases and requiring victim surcharges to be paid within a reasonable time or within the time prescribed by provincial/territorial regulations.

##### **5) Bill C-35, *An Act to amend the Criminal Code (law enforcement animals, military animals and service animals) – Justice for Animals in Service Act (Quanto's Law)***

Bill C-35 was introduced on May 12, 2014, adopted by the Senate on June 19, 2015 and received Royal Assent on June 23, 2015. It came into force upon Royal Assent. 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.

It amends 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 creates 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 are 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 carries a mandatory minimum penalty of 6 months. Bill C-35 also creates a new section 270.03 in the *Criminal Code*, which provides that sentences for any assaults on “law enforcement officers” shall be served consecutively to any other punishment imposed on the person for an offence arising out of the same event or series of events.

**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 (the Protection of Communities and Exploited Persons Act)***

Bill C-36 received Royal Assent on November 6, 2014 and came into force on December 6, 2014. These amendments treat prostitution as a form of sexual exploitation by enacting new legislative objectives; criminalizing the purchase of sexual services in any place; prohibiting receiving a financial or material benefit from the prostitution of others; creating statutory exceptions, including for non-exploitative legitimate living arrangements/legal or moral obligations/goods and services generally offered to the public; prohibiting procuring of others to sell sexual services; prohibiting advertising the sale of sexual services; increasing the penalties for the prostitution of persons under 18 years; and immunizing persons from prosecution for selling or advertising the sale of their own sexual services except where they communicate for this purpose in a public place that is or is next to specific locations designed for use by children (i.e., school grounds, playgrounds and day care centres).

New federal funding of \$20 M over 5 years (announced on December 1, 2014) will support programming to assist sellers of sexual services to exit prostitution: \$10.47 M through Justice Canada’s Victims Fund (e.g., trauma therapy, addiction recovery, employment training and financial literacy, transitional housing, emergency safe houses and drop-in centres) and \$9.55 M through Public Safety’s National Crime Prevention Strategy to support community-based organizations helping persons to exit prostitution.

**b) Government Bills Introduced in Parliament by Other Ministers that included *Criminal Code* Amendments and Enacted (4)**

**1) Bill C-43, *A second Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures (Economic Action Plan 2014, No. 2)***

Bill C-43 was introduced by the Minister of Finance on November 3, 2014 and received Royal Assent on December 16, 2014. Division 4 of Part 4 amended section 207 of the *Criminal Code* to permit charitable or religious organizations to be licensed by the provinces and territories to conduct a raffle that uses a computer in its sales, selection of a winner or prize distribution in accordance with any terms and conditions. This will assist these organizations to avoid costs and efforts associated with manually conducting such raffles. Provinces and territories will maintain their existing *Criminal Code* authority to decide whether to grant a license and if so, with what terms and conditions. This amendment came into force upon Royal Assent.

**2) Bill C-51, *An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts (the Anti-terrorism Act, 2015)***

Under the lead of the Minister of Public Safety, Bill C-51 was introduced on January 30, 2015. It was adopted by the Senate on June 9, 2015 and received Royal Assent on June 18, 2015. The new *Criminal Code* offence came into force upon Royal Assent; the balance of the *Criminal Code* amendments came into force on July 19, 2015.

**Part 1** enacts the *Security of Canada Information Sharing Act* to authorize Government of Canada institutions to disclose information to Government of Canada institutions that have jurisdiction or responsibilities in respect of activities that undermine the security of Canada.

**Part 2** enacts the *Secure Air Travel Act* to provide a new legislative framework for identifying and responding to persons who may engage in an act that poses a threat to transportation security or who may travel by air for the purpose of committing a terrorism offence. The Act authorizes the Minister of Public Safety and Emergency Preparedness to establish a list of such persons and to direct air carriers to take a specific action to prevent the commission of such acts. It establishes powers and prohibitions governing the collection, use and disclosure of information in support of its administration and enforcement. It also includes an administrative recourse process for listed persons who have been denied transportation in accordance with a direction from the Minister of Public Safety and Emergency Preparedness and appeal procedures for persons affected by any decision or action taken under that Act. That Act also specifies punishment for contraventions of listed provisions and authorizes the Minister of Transport to conduct inspections and issue compliance orders.

**Part 3** amends the *Criminal Code*:

- with respect to recognizances to keep the peace relating to a terrorist activity or a terrorism offence, to extend their duration, provide for new thresholds, authorize a judge



to impose sureties and require a judge to consider whether it is desirable to include in a recognizance conditions regarding passports and specified geographic areas;

- recognizances to keep the peace would also be amended to allow hearings to be conducted by video conference and orders to be transferred to a judge in a territorial division other than the one in which the order was made and increase the maximum sentences for breach of those recognizances;
- to create a new offence of knowingly advocating or promoting the commission of terrorism offences in general, providing courts with the power to order the seizure of terrorist propaganda or, if the propaganda is in electronic form, to order the deletion of the propaganda from a computer system;
- to provide for the increased protection of witnesses, in particular of persons who play a role in respect of proceedings involving security information or criminal intelligence information.

**Part 4** amends the *Canadian Security Intelligence Service Act* to permit the Canadian Security Intelligence Service to take, within and outside Canada, measures to reduce threats to the security of Canada, including measures that are authorized by the Federal Court. It authorizes the Federal Court to make an assistance order to give effect to a warrant issued under that Act. It also creates new reporting requirements for the Service and requires the Security Intelligence Review Committee to review the Service's performance in taking measures to reduce threats to the security of Canada.

**Part 5** amends Divisions 8 and 9 of Part 1 of the *Immigration and Refugee Protection Act* to, among other things:

- define obligations related to the provision of information in proceedings under that Division 9;
- authorize the judge, on the request of the Minister, to exempt the Minister from providing the special advocate with certain relevant information that has not been filed with the Federal Court, if the judge is satisfied that the information does not enable the person named in a certificate to be reasonably informed of the case made by the Minister, and authorize the judge to ask the special advocate to make submissions with respect to the exemption; and
- allow the Minister to appeal, or to apply for judicial review of, any decision requiring the disclosure of information or other evidence if, in the Minister's opinion, the disclosure would be injurious to national security or endanger the safety of any person.

### **3) Bill C-42, *An Act to amend the Firearms Act and the Criminal Code and to make a related amendment and a consequential amendment to other Acts (the Common Sense Firearms Licensing Act)***

Bill C-42 was introduced by the Minister of Public Safety on October 7, 2014 and received Third Reading in the Senate on June 16, 2015 and Royal Assent on June 18, 2015. It amends the *Firearms Act* to simplify and clarify the firearms licensing regime for individuals, to limit the

discretionary authority of chief firearms officers and to provide for the sharing of information on commercial importations of firearms. It amends the *Criminal Code* to: (1) strengthen the provisions relating to orders prohibiting the possession of weapons, including firearms, when a person is sentenced for an offence involving domestic violence; and (2) define “non-restricted firearm” and give the Governor in Council authority to prescribe a firearm to be non-restricted and expanded authority to prescribe a firearm to be restricted. The *Criminal Code* amendments came into force upon Royal Assent.

**4) Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts (the Zero Tolerance for Barbaric Cultural Practices Act)***

Under the lead of the Minister of Citizenship and Immigration, Bill S-7 was introduced by the Leader of the Government in the Senate on November 5, 2014, passed by the House of Commons on June 16, 2015 and received Royal Assent on June 18, 2015. The *Civil Marriage Act* reforms came into force upon Royal Assent. The *Criminal Code* amendments came into force on July 17, 2015. The *Immigration and Refugee Protection Act (IRPA)* reforms will come into force on a day or days to be fixed by order of the Governor. Justice-related amendments will come into force on a day or days to be fixed by order of the Governor in Council.

Bill S-7 amends the *IRPA*, the *Civil Marriage Act* and the *Criminal Code* to: render permanent and temporary residents inadmissible to Canada if they practise polygamy; establish the age of 16 years as the new national minimum age for marriage and requiring free and enlightened consent for marriage and for ending a marriage before entering another; criminalize conduct related to underage and forced marriage ceremonies including the act of removing a child from Canada for the purpose of such marriages; create a new peace bond where there are reasonable grounds to fear that someone would commit an offence related to forced or underage marriage; and restrict the defence of provocation to prevent its application in cases involving “honour” killings and spousal homicides that are provoked by insulting but otherwise lawful words or gestures.

**c) Government Bill and Supporting Regulations that Came into Force This Session (1):**

**1) *Bill C-30, An Act to amend the Criminal Code (the Response to the Supreme Court of Canada Decision in R. v. Shoker Act)***

Bill C-30 received Royal Assent on March 23, 2011 and was to come into force upon proclamation, together with enabling regulations. The Act and Regulations came into force on March 31, 2015. The Act amended the *Criminal Code* to allow a court to require that an offender provide a sample of bodily substance on the demand of peace officers, probation officers, supervisors or designated persons, or at regular intervals, in order to enforce compliance with a prohibition on consuming illicit drugs or alcohol imposed in a probation order, a conditional sentence order or a recognizance. The Regulations were developed after consultation with the provinces and territories.

**d) Government Bills that died on the Order Paper (3):**

**1) *Bill C-53, An Act to amend the Criminal Code and the Corrections and Conditional Release Act and to make related and consequential amendments to other Acts (the Life Means Life Act)***

Bill C-53 was introduced on March 11, 2015. It proposed to amend the *Criminal Code* to make a life sentence of imprisonment without eligibility for parole mandatory for high treason, and for planned and deliberate first degree murders involving sexual assault, kidnapping or forcible confinement, terrorism, the killing of a police or correctional officer, or conduct that was of a particularly brutal nature so as to compel the conclusion that the accused's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint.

A court would have had discretion to impose a life sentence without the possibility of parole in any other first degree murder cases, as well as for second degree murders where the offender has been previously convicted of murder or of an intentional killing under the *Crimes Against Humanity and War Crimes Act*. The court would have exercised this discretion upon consideration of the accused's age and character, the nature of the offence, the circumstances surrounding its commission and any jury recommendation.

It also proposed to amend the *Corrections and Conditional Release Act* to allow an offender who is sentenced to life without parole to apply for executive release after serving a minimum of 35 years of the sentence. Executive release would have been granted/denied by the Governor in Council on the recommendation of the Minister of Public Safety (which would have been based upon a consideration of whether the fundamental purpose and objectives of sentencing have been met and whether there were humanitarian and compassionate reasons).

**2) *Bill C-69, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in R. v. Nur (the Penalties for the Criminal Possession of Firearms Act)***

Bill C-69 was introduced on June 10, 2015. It proposed to amend section 95 of the *Criminal Code* to:

- (a) establish mandatory minimum punishments of imprisonment for indictable offences (3 years for a first offence and 5 years for repeat offences) under that section that were committed for the purpose of committing another indictable offence under that Act or the *Controlled Drugs and Substances Act* or that were committed in a manner that, objectively speaking, created a real risk of harm to another person;
- (b) prescribe that, under certain circumstances, the offence was deemed to be committed in a manner that created a real risk of harm to another person; and
- (c) prescribe certain exceptions to the application of the section.

**3) Bill C-73, *An Act to amend the Criminal Code (offences in relation to conveyances) and the Criminal Records Act and to make consequential amendments to other Acts (the Dangerous and Impaired Driving Act)***

Bill C-73 was introduced on June 16, 2015. It proposed to modernize and simplify the *Criminal Code* provisions that govern offences in relation to conveyances. The amendments would have:

- (a) harmonized the prohibitions and penalties for offences in relation to the operation of conveyances;
- (b) increased the penalties for repeat offences in relation to the operation of conveyances;
- (c) modernized the procedures for determining whether a person's ability to operate a conveyance is impaired by a drug, and for analyzing breath samples to determine a person's blood alcohol concentration;
- (d) provided for rules governing the disclosure of information with respect to the results of analyzing breath samples; and
- (e) recognized that evaluating officers are experts in determining whether a person's ability to operate a conveyance is impaired by a drug.

The Bill would also have amended the *Criminal Records Act* to remove the offences of impaired driving and failure or refusal to comply with a demand as exceptions to the offences that result in a record suspension ceasing to have effect.

**B. PRIVATE MEMBERS BILLS (PMB) (16)**

Since August 15, 2014, there have been 16 criminal law PMBs before Parliament during the time period under consideration. Of these, two (2) received Royal Assent, one (1) was defeated, and thirteen (13) died on the Order Paper. Each of these 16 PMBs is highlighted below.

**a) PMBs that received Royal Assent (2):**

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

Bill S-221 was introduced on May 8, 2014 and passed by the House of Commons on February 16, 2015 and received Royal Assent on February 25, 2015. It came into force upon Royal Assent. It amended 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.

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

Bill C-452 was reinstated on October 16, 2013, adopted by the Senate on May 12, 2015 and received Royal Assent on June 18, 2015. It will come into force on a day or days to be fixed by order of the Governor in Council. Bill C-452 amends the *Criminal Code* order to require consecutive sentences for offences related to trafficking in persons and to 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.

**b) PMB defeated (1):**

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

Bill C-583 proposed 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 required 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 was introduced in the House of Commons on March 31, 2014 and was defeated at second reading on November 26, 2014. On Nov 26, 2014 the subject-matter of Bill C-583 was referred to the Justice Committee for study. The Committee Report was tabled May 8, 2015.

**c) PMB Bills that died on the Order Paper (13):**

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

Bill C-279 proposed to amend the *Canadian Human Rights Act* to include gender identity as a prohibited ground of discrimination and proposed to amend 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.

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

Bill C-290 proposed 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 have meant, for example, that provinces would have been 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 have been left to each province and territory.

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

Bill C-570 proposed 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 established that sentences for such offences would have been served consecutively to any other punishment arising out of the same event or series of events.

**4) 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 proposed to amend the *Criminal Code* to provide that a person convicted of the abduction, sexual assault and murder of one victim was 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.

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

Bill C-590 proposed to amend section 255 of the *Criminal Code* to establish more severe penalties for offences committed under section 253 in circumstances where the offender had a blood alcohol content that exceeded 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.

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

Bill C-592 proposed to significantly amend the *Criminal Code*’s animal cruelty provisions including by creating a new Part of the *Criminal Code*, to create new offences that would have excluded specified activities (e.g., pest control, rodeo, hunting/fishing, agricultural activities), to create an aggravating factor where the act was committed against a law enforcement animal, and to include an Aboriginal non-derogation clause.

**7) Bill C-639, *An Act to amend the Criminal Code (protection of critical infrastructures)***

Bill C-639 proposed to create a new *Criminal Code* offence of interfering with critical infrastructures: hybrid offence punishable by a maximum of 10 years imprisonment on indictment and 2 years less a day on summary conviction with mandatory minimum fines for each (\$3000 and \$500 respectively), and an indictable offence where the conduct caused actual danger to life, punishable by life imprisonment. Sentences imposed for the new offence would have been required to be served consecutively to any other sentence imposed for an offence arising out of

the same event/series of events.

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

Bill S-203 proposed 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 was successfully completed, the court would not have been required to impose a mandatory minimum penalty.

**9) 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, proposed 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 have come into force one year after Royal Assent to enable the Government to undertake public education and to coordinate with the provinces.

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

Led by Health Canada, Bill S-208 would have established the Canadian Commission on Mental Health and Justice. The purpose of the Commission was to facilitate the development, sharing and application of knowledge, statistical data and expertise on matters related to mental health and criminal justice. Its role included providing recommendations for improving laws, policies and practices that would have addressed the needs of individuals who lived with mental health problems or illnesses and were 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 established the Mental Health and Justice Advisory Council to advise the Commission on the Commission's program of studies and other matters.

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

Bill S-210 proposed 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 have included personal, family and household purposes. It maintained 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 equaled or exceeded one million dollars would have been exempt from the offence of charging a criminal rate of interest.

**12) 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 proposed 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 was satisfied that the victim engaged in a pattern of conduct that constituted physical, sexual or psychological abuse of the offender.

**13) Bill S-225, *An Act to amend the Criminal Code (physician-assisted death)***

Bill S-225 proposed to amend the *Criminal Code* to allow a physician, at a person's request and subject to certain conditions, to assist that person to end his or her life if he or she was enduring intolerable suffering or was in a state of weakening capacities due to illness, disease or disability.

**Conclusion**

As illustrated in this Report, the ULCC Criminal Section remains a critical source for federal, provincial and territorial governments when considering 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 remain attentive to ULCC resolutions in advance of next year's annual meeting in New Brunswick. Delegates are encouraged to follow the progress of these and other criminal law reforms by consulting the Parliament of Canada website, LEGISinfo at: <http://www.parl.gc.ca>.

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