

# **REPORT OF THE SENIOR FEDERAL DELEGATE**

## **Uniform Law Conference of Canada Criminal Section 2017 Federal Department of Justice**

### **Introduction**

- [1] Each year judges, prosecutors, policy experts, defence lawyers, and academics examine resolutions and working group reports to advance reforms to Canada's criminal law at the Criminal Section meeting of the Uniform Law Conference of Canada (ULCC). The Criminal Section of ULCC also provides a unique opportunity for the federal Department of Justice to consult criminal law experts from a broad spectrum of the criminal justice system from each province and territory.
- [2] This diversity and inclusiveness provide critical insights that help to shape criminal law policy development. It also informs our legal and policy advice to the Minister of Justice and Attorney General of Canada as she follows the direction delineated in her mandate letter. 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 federal 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. The critical analysis and unique perspective from the delegates of the Criminal Section help to ensure that criminal legislation meet the highest standards of fairness, justice and respect for the rule of law and in turn that the Canadian criminal justice system retains the confidence and trust of the Canadian public.
- [3] As we look back over the past twelve months since we last met at ULCC 2016 in Fredericton, New Brunswick, this Annual Report highlights federal-provincial-territorial (FPT) developments of interest to ULCC (Part I) and legislative initiatives with respect to the Criminal Law (Part III). As overwhelmingly reclaimed by delegates in Fredericton, Part II provides a status update of ULCC resolutions.

### **Part I - FPT DEVELOPMENTS OF INTEREST TO ULCC 2016-2017**

#### ***FPT Ministers Responsible for Justice and Public Safety***

- [4] FPT attorneys general and ministers responsible for justice and public safety usually meet at least once a year to discuss key justice and public safety issues and give direction to government officials from the various jurisdictions on new and ongoing collaborative

work being conducted over the year. Many of the issues discussed at these meetings are related to the issues raised by delegates to the ULCC.

*Halifax, October 13-14, 2016*

- [5] At their October 2016 meeting in Halifax, FPT Ministers discussed key issues including violence against Indigenous women and girls and the National Inquiry into Missing and Murdered Indigenous Women and Girls; tangible responses to the Truth and Reconciliation Commission Calls to Action; the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the Canadian context; and how best to address overrepresentation of and gaps in services to Indigenous peoples throughout the justice system. The FPT ministers also approved the release of a compilation of recommendations from published reports which address violence against Indigenous women and girls.
- [6] Ministers talked about the importance of continuing to support professional, dedicated and culturally responsive policing services in Indigenous communities. Ministers will continue to collaborate towards a renewed approach for policing in Indigenous communities, recognizing the need for adequate and sustainable funding.
- [7] A significant point of discussion was the federal government's ongoing review of the criminal justice system to make it more effective and efficient. The federal ministers provided an overview and update on their discussions to date with stakeholders. FPT ministers noted the importance of this review to address delays in the completion of criminal cases. Ministers also expressed the need to address issues affecting vulnerable people and Indigenous overrepresentation in the criminal justice system.
- [8] Following a presentation by ULCC past President Josh Hawkes, FPT Ministers agreed to renew their commitment to the invaluable work of the ULCC by supporting the implementation of the work of ULCC on criminal and civil law reform and the participation of their officials to ULCC annual meetings. FPT Ministers agreed to receive regular updates from the ULCC.
- [9] Provincial and territorial ministers were updated on the implementation of the Office for Community Outreach and Countering Radicalization to Violence and on the Government of Canada's national security consultation. Ministers reaffirmed their commitment to coordinate their efforts to counter radicalization to violence.
- [10] Ministers received recommendations on bail, remand, judicial case management, and the need to modernize fingerprinting legislation. Discussions also took place on

challenges related to cybercrime and progress made on justice system innovation. They agreed to explore ways to improve access to justice for sexual assault complainants and to share best practices and lessons learned.

[11] They discussed the challenges that the justice system faces in appropriately responding to those with Fetal Alcohol Spectrum Disorder (FASD) and other neurocognitive disabilities and agreed to publicly release the Final Report of the Steering Committee on FASD and Access to Justice. They also considered the social and economic impact of alcohol abuse and supported the need for FPT collaboration to identify solutions.

[12] The FPT ministers also agreed to continue to work together to address issues leading up to the legalization of marijuana for non-medical use.

[13] Ministers also met with leaders and representatives from five National Indigenous Organizations to hear their perspectives on justice and public safety matters and future engagement.

*Gatineau, April 28, 2017*

[14] Ministers Responsible for Justice also met in April 2017 in Gatineau to discuss actions taken and ways to strategically address delays in the criminal justice system. The *Canadian Charter of Rights and Freedoms* states that a person accused of a crime has the right to be tried within a reasonable time. The Supreme Court of Canada *Jordan* decision expands on what constitutes an unreasonable delay to bring an accused person to trial. Ensuring the efficiency and effectiveness of the criminal justice system is a shared responsibility of the Government of Canada and provincial and territorial governments.

[15] Discussions during the meeting included identifying innovative practices as well as legislative reforms to resolve criminal cases in a just and timely manner. This meeting built on FPT Ministerial discussions held in October, which included the federal government's ongoing review of the criminal justice system to make it more effective and efficient, including decreasing over-representation of vulnerable populations.

[16] At the meeting, ministers agreed on the need for targeted criminal law reform and the federal Minister committed to further legislative action. Ministers identified mandatory minimum penalties, bail, administration of justice offences, preliminary inquiries, and reclassification of offences as priorities for legislative reform.

[17] Officials were directed to develop recommendations on these legislative reform

options on a priority basis and report back to FPT ministers for decision at their next meeting. To demonstrate the importance of transformational change in the criminal justice system, ministers agreed to discuss progress mid-summer and to hold the next in-person meeting in September rather than October to ensure that momentum is maintained.

- [18] Ministers agreed on the importance of a collaborative approach with all players in the criminal justice system. Ministers also considered policies, programs and resources; alternatives to the traditional criminal justice system (including restorative justice); and more rigorous case management. Provincial and territorial Ministers reiterated their call for recently announced resources for new judicial positions.

### ***FPT Coordinating Committee of Senior Officials - Criminal Justice (CCSO)***

- [19] 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. A number of issues that were the subject of ULCC Criminal Section resolutions in recent years are currently being considered by CCSO, including bail, mandatory minimum penalties, publication bans and cybercrime.

- [20] At their November 2016, meeting in Fredericton and at their March 2017 meeting in Toronto, all CCSO working groups were again reminded to follow-up on ULCC resolutions in order to report back on their follow-up by CCSO.

## **Part II - STATUS OF ULCC RESOLUTIONS 2012-2016**

- [21] Following deliberations, delegates of the Criminal Section vote on resolutions presented by the Canada, provincial and territorial delegations. Resolutions are adopted by majority vote by a show of hands and may also be amended, withdrawn or defeated. A chart containing all the resolutions adopted by the Criminal Section since 1983 can be found on the Uniform Law Conference of Canada website.

- [22] During the period 2012-2016, the Criminal Section considered and voted on 132 resolutions. Of these, 22 resolutions were withdrawn, while five (5) resolutions were defeated. Further, six (6) resolutions led to the creation of working groups. Furthermore, the ULCC adopted one special resolution to mark the untimely passing of Earl

Fruchtman, the longstanding Jurisdictional Representative (JR) for Ontario. Adopted unanimously by a delegation vote, this resolution renamed the Open Forum, the Earl Fruchtman Memorial Seminar, which is a regular feature of the Criminal Section annual Conference intended to highlight areas of interest in the criminal justice system of the host jurisdiction.

- [23] Of the remaining 98 resolutions that were adopted during this five-year period, eleven have been addressed in the context of legislative amendments to the *Criminal Code* and other Acts, such as the *Canada Evidence Act*, and one was addressed by case law. Justice Canada continues to actively pursue policy development options in a number of resolutions. Several resolutions are also presently under study and consultation at CCSO. Examples of resolutions from each of these three categories are discussed in greater detail below. As this status update illustrates, the work of the ULCC Criminal Section is integral to policy development and criminal law reform in Canada.

#### ***Resolutions that have been addressed in statute***

- [24] With respect to resolution **SK2014-02** (election of adult sentence), Part 8 of Bill C-59, *An Act Respecting National Security Matters*, introduced in the House of Commons on June 20th, 2017, proposes to amend paragraphs 67(1)(c) and 67(3)(c) of the *Youth Criminal Justice Act* by replacing the current text in those paragraphs with “the young person is charged with first or second degree murder within the meaning of section 231 of the *Criminal Code*”.

- [25] As highlighted in the 2016 Senior Federal Delegate Report, the *Protecting Canadians from Online Crime Act*, S.C. 2014, c. 31, implemented proposals made in a number of ULCC resolutions. First, it included the proposal made in resolution **AB2013-01**, which called for urgent legislative measures to modernise provisions to address all forms of modern telecommunication pertaining to harassing, indecent and other forms of prohibited communication in subsections 372 (2) and (3) of the *Criminal Code*. In line with resolution **AB2013-06 A**), the *Criminal Code* was also amended to specify that production orders (sections 487.012 to 487.017) are effective throughout Canada without the need for endorsement or other order if they are to be executed in a jurisdiction other than that in which they were issued, and that the provisions of 487.015 (variation applications) provide for a fair and efficient mechanism to apply for variation where the order has been issued in a jurisdiction other than the one in which it is executed. The issues raised by these two resolutions have been the subject of ongoing study by the CCSO Cybercrime Working Group. Resolution **NB2011-01** has also been addressed in the Bill which provides that production orders may be executed anywhere in Canada. Finally, the *Act* took into account resolution **QC2011-02** dealing with orders to be made

when an offender has been convicted of a computer-related offence.

[26] The *Tougher Penalties for Child Predators Act*, S.C. 2015, c. 23, amended section 4 of the *Canada Evidence Act* to ensure that the spouse of a person accused of a child pornography offence is both competent and compellable, as called for in **NB2012-02**. Subsequently, amendments made in the *Victims Bill of Rights* amended the *Canada Evidence Act* to make spouses competent and compellable for the Crown in all cases.

[27] Similarly, the *Criminal Code* was amended in line with ULCC Resolution **AB2014-03**, pursuant to *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*, c. 13, s. 16. This resolution called for Justice Canada to amend subsection 486.3(4.1) (Application) of the *Criminal Code* so as to allow any judge of the Court with jurisdiction over the offence to hear an application under section 486.3 (Accused not to cross-examine witness under 18) of the *Criminal Code* prohibiting the personal cross-examination of witnesses in specified circumstances.

[28] The *Protection of Communities and Exploited Persons Act*, S.C. 2014, c. 25, added all child trafficking offences to both sections 161 and 810.1. This reform is consistent with the proposal made in resolution **ON2013-02 A)** to amend paragraph 161(1.1)(a) of the *Criminal Code* by adding sections 279.01 (Trafficking in Persons) and 279.011 (Trafficking of a Person Under 18) to the list of offences for which an order of prohibition can be made. Taking into account resolution **ON2013-02 B)**, subsection 810.1(1) (recognizance – fear of sexual offence against person under 16) of the *Criminal Code* was amended by adding section 279.011 (Trafficking of a Person Under 18) to the list of offences in respect of which a person may lay an information.

[29] Finally, the coming into force the *Anti-Terrorism Act 2015*, S.C. 2015, c. 20, addressed the issue raised in resolution **MB2014-01 A)** which recommended that the *Criminal Code* be amended to allow the interjurisdictional transfer and enforcement of orders under sections 810, 810.01, 810.1, and 810.2 (sureties to keep the peace). In addition, Bill C-51 amended subsection 195(1) of the *Criminal Code* to remove the naming requirement for federally designated wiretap agents and peace officers in annual reports to Parliament, as adopted by the 2012 ULCC resolution, **CAN- PPSC-02**.

### ***Resolutions addressed in case law***

[30] As noted in last year's report of the Senior Federal Delegate, the Supreme Court of Canada (SCC) in [\*R v Steele\*](#), 2014 SCC 61, from the Manitoba Court of Appeal, decided in favour of the Crown, and settled the law on the scope of the definition of a

“serious personal injury offence” (SPIO) and, consequently, the threshold for entry into the dangerous and long-term offender system. This decision deals with the issue raised in resolution **SK2013-01**, which called for an amendment to the definition of “serious personal injury offence” in section 752 (Definitions Applicable to Part XXIV – Dangerous Offenders and Long-Term Offenders) of the *Criminal Code* by inserting the words “or threatened use” between the words “attempted use” and “of violence” in subparagraph 752(a)(i).

### ***Resolutions under active consideration by Justice Canada***

[31] 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 federal 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, its work remains important and has been reflected in past criminal reform legislation as outlined in the previous paragraphs.

### ***Resolutions before CCSO***

[32] As indicated earlier, part of the policy development process conducted by Justice Canada takes place at the CCSO. To that end and given that the issues covered in ULCC resolutions fall within the CCSO areas of expertise, Justice Canada regularly consults with CCSO on such resolutions. To illustrate, of the 132 resolutions adopted by the ULCC in the five-year period under consideration, about half have been referred to CCSO for further consideration.

## **Part III - LEGISLATIVE INITIATIVES 2016-2017**

[33] During the 42<sup>nd</sup> Parliament, First Session (December 3, 2015 – Present), three Justice-led Government crime bills received Royal Assent and seven were introduced in Parliament.

[34] During the same period, the Minister of Justice was leading the Government’s response to five criminal justice Private Members’ Bills (PMBs) and seven Senate Public Bills. Four bills were defeated during this session of Parliament which were of interest to

Justice. Further detail of these legislative initiatives are provided in the passages that follow.

**a) Criminal law bills that received Royal Assent during this session of Parliament (3)**

**1) *Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)***

[35] The Bill amended the *Criminal Code* to, among other things:

- (a) create exemptions from the offences of culpable homicide, of aiding suicide and of administering a noxious thing, in order to permit medical practitioners and nurse practitioners to provide medical assistance in dying and to permit pharmacists and other persons to assist in the process;
- (b) specify the eligibility criteria and the safeguards that must be respected before medical assistance in dying may be provided to a person;
- (c) require that medical practitioners and nurse practitioners who receive requests for, and pharmacists who dispense substances in connection with the provision of, medical assistance in dying provide information for the purpose of permitting the monitoring of medical assistance in dying, and authorize the Minister of Health to make regulations respecting that information; and
- (d) create new offences for failing to comply with the safeguards, for forging or destroying documents related to medical assistance in dying, for failing to provide the required information and for contravening the regulations.

[36] This enactment also makes related amendments to other acts to ensure that recourse to medical assistance in dying does not result in the loss of a pension under the *Pension Act* or benefits under the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*. It amends the *Corrections and Conditional Release Act* to ensure that no investigation need be conducted under section 19 of that *Act* in the case of an inmate who receives medical assistance in dying.

[37] This enactment provides for one or more independent reviews relating to requests by mature minors for medical assistance in dying, to advance requests and to requests where mental illness is the sole underlying medical condition.

[38] Lastly, this enactment provides for a parliamentary review of its provisions and of the state of palliative care in Canada to commence at the start of the fifth year following the day on which it receives Royal Assent. The Bill was enacted and came into force June 17, 2016.



## **2) *Bill C-16, An Act to amend the Canadian Human Rights Act and the Criminal Code***

[39] This enactment amends the *Canadian Human Rights Act* to add gender identity and gender expression to the list of prohibited grounds of discrimination. It also amends the *Criminal Code* to extend the protection against hate propaganda set out in that *Act* to any section of the public that is distinguished by gender identity or expression and to clearly set out that evidence that an offence was motivated by bias, prejudice or hate based on gender identity or expression constitutes an aggravating circumstance that a court must take into consideration when it imposes a sentence.

[40] The Bill was enacted and came into force on June 19, 2017.

## **3) *Bill S-201, An Act to prohibit and prevent genetic discrimination***

[41] Bill S-201 was introduced by former Senator James S. Cowan (Liberal) on December 8, 2015. It prohibits any person from requiring an individual to undergo a genetic test or disclose the results of a genetic test as a condition of providing goods or services to, entering into or continuing a contract or agreement with, or offering specific conditions in a contract or agreement with, the individual. Exceptions are provided for health care practitioners and researchers. The enactment provides individuals with other protections related to genetic testing and test results.

[42] The enactment amends the *Canada Labour Code* to protect employees from being required to undergo or to disclose the results of a genetic test, and provides employees with other protections related to genetic testing and test results. It also amends the *Canadian Human Rights Act* to prohibit discrimination on the ground of genetic characteristics.

[43] The Bill received Royal Assent on May 4, 2017.

## **b) Government Criminal Law Reform Bills (7)**

### **1) *Bill C-28, An Act to amend the Criminal Code (victim surcharge)***

[44] This bill, which was introduced on October 21, 2016, amends the victim surcharge provisions in the *Criminal Code* to:

- (a) allow the court to exempt an offender from the payment of a victim surcharge in cases where the offender satisfies the court that the payment would cause the offender undue hardship and to provide the court with guidance with respect to what constitutes undue hardship;

- (b) provide that a victim surcharge is to be paid for each offence, with an exception for certain administration of justice offences if the total amount of surcharges imposed on an offender for these types of offences would be disproportionate in the circumstances;
- (c) require courts to provide reasons for the application of any exception for certain administration of justice offences or any exemption from the payment of a victim surcharge; and
- (d) clarify that these amendments apply to any offender who is sentenced after the day on which the amendments come into force, regardless of whether or not the offence was committed before that day.

[45] The bill is awaiting the commencement of Second Reading debate.

**2) *Bill C-32, An Act related to the repeal of section 159 of the Criminal Code***

[46] Bill C-32, which was introduced November 15, 2016, amends the *Criminal Code* to repeal section 159 and to provide that no person shall be convicted of any historical offence of a sexual nature unless the act that constitutes the offence would constitute an offence under the *Criminal Code* if it were committed on the day on which the charge was laid. It also makes consequential amendments to that *Act*, the *Corrections and Conditional Release Act* and the *Youth Criminal Justice Act*. The Bill is awaiting the commencement of Second Reading debate.

**3) *Bill C-38, An Act to amend An Act to amend the Criminal Code (exploitation and trafficking in persons)***

[47] Bill C-38, which was introduced on February 9, 2017, amends *An Act to amend the Criminal Code (exploitation and trafficking in persons)* so that certain sections of that *Act* can come into force on different days. The Bill is awaiting the commencement of Second Reading debate.

**4) *Bill C-39, An Act to amend the Criminal Code (unconstitutional provisions) and to make consequential amendments to other Acts***

[48] Bill C-39, which was introduced on March 8, 2017, amends the *Criminal Code* to, among other things, remove passages and repeal provisions that have been ruled unconstitutional by the Supreme Court of Canada. It also repeals section 159 of that *Act* and provides that no person shall be convicted of any historical offence of a sexual nature unless the act that constitutes the offence would constitute an offence under the *Criminal Code* if it were committed on the day on which the charge was laid. It also makes consequential amendments to the *Corrections and Conditional Release Act* and the *Youth Criminal Justice Act*. The Bill is awaiting the commencement of Second Reading debate.

**5) *Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (Cannabis Act)***

[49] Bill C-45, which was introduced on April 13, 2017, enacts the *Cannabis Act* to provide legal access to cannabis and to control and regulate its production, distribution and sale. The objectives of the *Act* are to prevent young persons from accessing cannabis, to protect public health and public safety by establishing strict product safety and product quality requirements and to deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework. The *Act* is also intended to reduce the burden on the criminal justice system in relation to cannabis.

[50] The *Act*:

- (a) establishes criminal prohibitions such as the unlawful sale or distribution of cannabis, including its sale or distribution to young persons, and the unlawful possession, production, importation and exportation of cannabis;
- (b) enables the Minister to authorize the possession, production, distribution, sale, importation and exportation of cannabis, as well as to suspend, amend or revoke those authorizations when warranted;
- (c) authorizes persons to possess, sell or distribute cannabis if they are authorized to sell cannabis under a provincial Act that contains certain legislative measures;
- (d) prohibits any promotion, packaging and labelling of cannabis that could be appealing to young persons or encourage its consumption, while allowing consumers to have access to information with which they can make informed decisions about the consumption of cannabis;
- (e) provides for inspection powers, the authority to impose administrative monetary penalties and the ability to commence proceedings for certain offences by means of a ticket;
- (f) includes mechanisms to deal with seized cannabis and other property;
- (g) authorizes the Minister to make orders in relation to matters such as product recalls, the provision of information, the conduct of tests or studies, and the taking of measures to prevent non-compliance with the Act;
- (h) permits the establishment of a cannabis tracking system for the purposes of the enforcement and administration of the Act;
- (i) authorizes the Minister to fix, by order, fees related to the administration of the Act; and
- (j) authorizes the Governor in Council to make regulations respecting such matters as quality, testing, composition, packaging and labelling of cannabis, security clearances and the collection and disclosure of information in respect of cannabis as well as to make

regulations exempting certain persons or classes of cannabis from the application of the Act.

[51] This enactment also amends the *Controlled Drugs and Substances Act* to, among other things, increase the maximum penalties for certain offences and to authorize the Minister to engage persons having technical or specialized knowledge to provide advice. It repeals item 1 of Schedule II and makes consequential amendments to that *Act* as the result of that repeal.

[52] In addition, it repeals Part XII.1 of the *Criminal Code*, which deals with instruments and literature for illicit drug use, and makes consequential amendments to that Act.

[53] It amends the *Non-smokers' Health Act* to prohibit the smoking and vaping of cannabis in federally regulated places and conveyances.

[54] The Bill was referred to the House of Commons Standing Committee on Health on June 8, 2017.

**6) *Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts***

[55] Bill C-46 was introduced on April 13, 2017. Part 1 amends the provisions of the *Criminal Code* that deal with offences and procedures relating to drug-impaired driving. Among other things, the amendments:

- (a) enact new criminal offences for driving with a blood drug concentration that is equal to or higher than the permitted concentration;
- (b) authorize the Governor in Council to establish blood drug concentrations; and
- (c) authorize peace officers who suspect a driver has a drug in their body to demand that the driver provide a sample of a bodily substance for analysis by drug screening equipment that is approved by the Attorney General of Canada.

[56] Part 2 repeals the provisions of the *Criminal Code* that deal with offences and procedures relating to conveyances, including those provisions enacted by Part 1, and replaces them with provisions in a new Part of the *Criminal Code* that, among other things:

- (a) re-enact and modernize offences and procedures relating to conveyances;
- (b) authorize mandatory roadside screening for alcohol;
- (c) establish the requirements to prove a person's blood alcohol concentration; and
- (d) increase certain maximum penalties and certain minimum fines.

[57] Part 3 contains coordinating amendments and the coming into force provision.

[58] The Bill was referred to the Standing Committee on Justice and Human Rights on May 31, 2017.

**7) *Bill C- 51, An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act***

[59] Bill C-51 was introduced on June 6, 2017. It amends the *Criminal Code* to amend, remove or repeal passages and provisions that have been ruled unconstitutional or that raise risks with regard to the *Canadian Charter of Rights and Freedoms*, as well as passages and provisions that are obsolete, redundant or that no longer have a place in criminal law. It also modifies certain provisions of the *Criminal Code* relating to sexual assault in order to clarify their application and to provide a procedure applicable to the admissibility and use of the complainant's or a witness's record when in the possession of the accused.

[60] This enactment also amends the *Department of Justice Act* to require that the Minister of Justice cause to be tabled, for every government Bill introduced in either House of Parliament, a statement of the Bill's potential effects on the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*. Finally, it makes consequential amendments to the *Criminal Records Act*.

[61] The Bill was referred to the Standing Committee on Justice and Human Rights on June 6, 2017.

**c) Private Members Bills - Justice lead (5)**

**1) *Bill C-305, An Act to amend the Criminal Code (mischief)***

[62] Bill C-305 was introduced by Chandra Arya (Liberal) on September 27, 2016. It amends the *Criminal Code* to add to the offence of mischief relating to religious property the act of mischief in relation to property that is used for educational purposes, for administrative, social, cultural or sports activities or events or as a residence for seniors.

[63] The Bill was referred to the Standing Senate Committee on Legal and Constitutional Affairs on June 13, 2017. The Committee report was presented to the Senate without Amendments on June 21, 2017.

**2) *Bill C-337, An Act to amend the Judges Act and the Criminal Code (sexual assault)***

[64] Bill C-337 was introduced by Rona Ambrose (CPC) on February 23, 2017. It amends the *Judges Act* to restrict eligibility for judicial appointment to individuals who have completed comprehensive sexual assault education. It also requires the Canadian Judicial Council to report on continuing education seminars in matters related to sexual assault law. Furthermore, it amends the *Criminal Code* to require a court to provide written reasons in sexual assault decisions.

[65] The Bill was introduced in the Senate on May 16, 2017 and received Second Reading Debate (June 6, 7, 13, 15, 19 and 21, 2017).

**3) *Bill C-338, An Act to amend the Controlled Drugs and Substances Act (punishment)***

[66] Bill C-338 was introduced by Bob Saroya (CPC) on February 24, 2017. It amends the *Controlled Drugs and Substances Act* to increase sentences for offences related to the importing and exporting of controlled drugs and substances.

[67] The Bill commenced Second Reading debate on May 8, 2017.

**4) *Bill C-343, An Act to establish the Office of the Federal Ombudsman for Victims of Criminal Acts and to amend certain Acts***

[68] Bill C-343 was introduced on April 4, 2017 by Sylvie Boucher (CPC). It establishes the Office of the Federal Ombudsman for Victims of Criminal Acts and sets out the Ombudsman's powers, duties and functions. It also amends the *Canadian Victims Bill of Rights* to clarify that the Ombudsman is the authority that has jurisdiction to review complaints under that *Act*.

[69] The Bill is awaiting Second Reading debate.

**5) *Bill C-349, An Act to amend the Criminal Code and to make consequential amendments to other acts (criminal organization)***

[70] Bill C-349 was introduced by Rhéal Fortin (BQ) on April 11, 2017. It amends the *Criminal Code* to provide that the Governor in Council may establish a list of entities consisting of criminal organizations. It also makes it an offence for anyone to wear the emblem of a listed entity in order to establish his or her membership in such an organization.

[71] The Bill commenced Second Reading debate on May 31, 2017.

***d) Senate Public Bills – Justice Lead (7)***

***1) Bill S-202, An Act to amend the Divorce Act (shared parenting plans)***

[72] Bill S-202 was introduced by Senator Anne C. Cools (Independent) on December 8, 2015. It amends the *Divorce Act* to provide for parenting plans that set out the responsibilities and authority of each spouse with respect to the care, development and upbringing of a child of the marriage. A parenting plan may be included in an application for a custody or access order brought by one or both spouses under the *Act*.

[73] The new provisions also set out the fundamental principles of shared parenting that are to be included in a parenting plan, although the court may approve a plan that does not include all the listed principles if satisfied that doing so is in the best interests of the child.

[74] The enactment also requires a court to satisfy itself that reasonable arrangements have been made for the parenting of any children of a marriage before granting a divorce under the *Act*.

[75] The Bill was referred to the Standing Senate Committee on Legal and Constitutional Affairs on October 10, 2016.

***2) Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins)***

[76] Bill S-203 was introduced by former Senator Wilfred P. Moore (Liberal) on December 15, 2015. It amends the *Criminal Code* to create offences respecting cetaceans in captivity. It also amends the *Fisheries Act* to prohibit the taking of a cetacean into captivity and the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* to prohibit the import of a cetacean into Canada and the export of a cetacean from Canada.

[77] The Bill is currently being studied by the Standing Senate Committee on Fisheries and Oceans (February 28, March 2, 28 and 30, April 4, 6, 11 and 13, May 4, 9, 16, 18, 30, June 1 and 8, 2017).

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

[78] Bill S-206 was introduced on December 8, 2017 by Senator Céline Hervieux-Payette (Liberal). It removes the justification in the *Criminal Code* available to schoolteachers, parents and persons standing in the place of parents of using force as a means of correction toward a pupil or child under their care.

[79] It provides the Government with up to one year between the dates of royal assent and coming into force, which could be used to educate Canadians and to coordinate with the provinces.

[80] The Bill is currently at Second Reading Debate in the Senate (debated on February 2, April 12, June 17 and November 1, December 8, 2016 and March 2 and 7 and April 6 and 8, 2017).

**4) *Bill S-215, An Act to amend the Criminal Code (sentencing for violent offences against Aboriginal women)***

[81] Bill S-215 was introduced on December 8, 2015 by Senator Lillian Eva Dyck (Liberal). It amends the *Criminal Code* to require a court, when imposing a sentence for certain violent offences, to consider the fact that the victim is an Aboriginal woman to be an aggravating circumstance.

[82] The Bill was adopted by the Senate on December 12, 2016.

**5) *Bill S-230, An Act to amend the Criminal Code (drug-impaired driving)***

[83] Bill S-230 was introduced on October 4, 2016 by Senator Claude Carignan (CPC). It amends the *Criminal Code* to authorize the use of an approved screening device to detect the presence of drugs in the body of a person who was operating a vehicle or who had the care or control of a vehicle. It also authorizes the taking of samples of bodily substances to determine the concentration of drugs in a person's body, based on physical coordination tests and the result of the analysis conducted using an approved screening device.

[84] The Bill was amended and passed by the Senate December 15, 2016. It received First Hour of Second Reading debate on April 4, 2017.

**6) *Bill S-231, An Act to amend the Canada Evidence Act and the Criminal Code (protection of journalistic sources)***



[85] Bill S-231 was introduced by Senator Claude Carignan (CPC) on November 22, 2016. It amends the *Canada Evidence Act* to protect the confidentiality of journalistic sources. It allows journalists to not disclose information or a document that identifies or is likely to identify a journalistic source unless the information or document cannot be obtained by any other reasonable means and the public interest in the administration of justice outweighs the public interest in preserving the confidentiality of the journalistic source.

[86] The enactment also amends the *Criminal Code* so that only a judge of a superior court of criminal jurisdiction or a judge within the meaning of section 552 of that *Act* may issue a search warrant relating to a journalist. It also provides that a search warrant can be issued only if the judge is satisfied that there is no other way by which the desired information can reasonably be obtained and that the public interest in the investigation and prosecution of a criminal offence outweighs the journalist's right to privacy in the collection and dissemination of information. The judge must also be satisfied that these same conditions apply before an officer can examine, reproduce or make copies of a document obtained under a search warrant relating to a journalist.

[87] The Bill was passed by the Senate with an amendment. The Standing House Committee on Public Safety and National Security reported the bill with amendments June 20, 2017.

#### **7) *Bill S-237, An Act to amend the Criminal Code (criminal interest rate)***

[88] Bill S-237 was introduced on March 9, 2017 by Senator Pierrette Ringuette (Independent). It amends 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.

[89] The Bill is currently at Second Reading debate.

#### **e) *Bills that were defeated during this session of Parliament (4)***

##### ***1) Bill C-235, An Act to amend the Criminal Code and the Corrections and Conditional Release Act (fetal alcohol disorder)***

[90] Bill C-235, which was introduced by Larry Bagnell (Liberal) on February 25, 2016, amends the *Criminal Code* to establish a procedure for assessing individuals who are involved in the criminal justice system and who may suffer from a fetal alcohol disorder. It requires the court to consider, as a mitigating factor in sentencing, a determination that the offender suffers from a fetal alcohol disorder.

[91] The enactment also requires the court to make orders to require individuals who are determined to suffer from a fetal alcohol disorder to follow an external support plan to ensure that they receive the necessary support to facilitate their successful reintegration into society.

[92] The Bill was defeated at Second Reading December 13, 2016.

**2) *Bill C-226, 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 (Impaired Driving Act)***

[93] Bill C-226, which was introduced by Steven Blaney (CPC) on February 23, 2016, amends the provisions of the *Criminal Code* that govern offences in relation to conveyances. The amendments, among other things:

- (a) harmonize the prohibitions and penalties for offences in relation to the operation of conveyances;
- (b) increase the penalties for repeat offences in relation to the operation of conveyances;
- (c) modernize 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) provide for rules governing the disclosure of information with respect to the results of analyzing breath samples; and
- (e) recognize that evaluating officers are experts in determining whether a person's ability to operate a conveyance is impaired by a drug.

[94] The enactment also amends 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.

[95] On March 6, 2017, the House of Commons Standing Committee on Public Safety and National Security the Committee recommended that the House of Commons not proceed further with the Bill. The Committee further recommended that the Government introduce robust measures to deal with impaired driving. The motion was passed by the House on May 3, 2017.

### **3) *Bill C-247, An Act to amend the Criminal Code (passive detection device)***

[96] Bill C-247 was introduced by Gagan Sikand (Liberal) on February 26, 2016. It amends the *Criminal Code* to authorize the use by a peace officer of a passive detection device to detect the presence of alcohol in the immediate vicinity of a person whom the officer has reasonable grounds to believe was, within the preceding three hours, operating a motor vehicle or having the care or control of a motor vehicle. The enactment also provides that if such a device indicates the presence of alcohol, it establishes reasonable grounds to suspect that the person has alcohol in their body.

[97] On February 14, 2017 the House of Commons Standing Committee on Justice and Human Rights recommended that the House of Commons not proceed further with the Bill. The motion passed in the House on April 4, 2017.

### **4) *Bill S-217, An Act to amend the Criminal Code (detention in custody)***

[98] Bill S-217 was introduced by Senator Bob Runciman (CPC) on February 3, 2016. This enactment amends the *Criminal Code* to:

- (a) expand the grounds for the justification of detention in custody;
- (b) require that, in any proceeding under section 515, the prosecutor lead evidence to prove the fact that the accused has failed to appear in court when required to do so and the fact that the accused has previously been convicted of a criminal offence or has been charged with and is awaiting trial for another criminal offence.

[99] The Bill was adopted at Third Reading by the Senate on October 20, 2016 with an amendment. It was introduced in the House of Commons on October 24, 2016 and was referred to Standing Committee on Justice and Human Rights on March 8, 2017. On May 9 the Committee passed a motion that the bill not proceed further. The Motion passed in the House on June 16, 2017.

## **Conclusion**

[100] Justice Canada will maintain its close working relationship with ULCC and consult with the Criminal Section as it undertakes consultations in keeping with the mandate letter to the Minister of Justice and Attorney General of Canada and other related criminal law legislative proposals. Justice Canada encourages ULCC delegates to participate in the ongoing consultations to reform the criminal justice system. Finally, Justice Canada will remain attentive to ULCC resolutions in advance of next year's centennial meeting in Québec. 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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October 10, 2017