



UNIFORM LAW CONFERENCE OF CANADA

MINUTES OF THE CRIMINAL SECTION, 2018

**Prepared by
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Secretary, Criminal Section**

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Uniform Law Conference of Canada

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ATTENDANCE

[1] Thirty four delegates from eleven provincial, territorial and federal jurisdictions participated in the deliberations of the Criminal Section. Prince Edward Island, the Northwest Territories and Nunavut were not represented. Delegates included policy counsel, Crown prosecutors, defence counsel, academics, as well as representatives of the Canadian Bar Association (CBA), the Indigenous Bar Association, and members of the judiciary.

OPENING

[2] The Criminal Section convened to order on Sunday, August 12, 2018. Samantha Hulme (Crown Counsel, Prosecution Service of British Columbia) presided as Chair and Caroline Quesnel (Counsel, Justice Canada) acted as Secretary.

[3] The Chair welcomed all delegates of the Criminal Section, particularly those participating for the first time. She noted the presence of delegates from Nova Scotia and Newfoundland and Labrador, as both jurisdictions had not had delegates for some time. The Chair thanked the Canada delegation for its ongoing support of ULCC.

[4] The Chair presented the new Secretary of the Criminal Section, who stepped in following the appointment of the previous Secretary to the Youth Division of the Court of Québec, who had himself stepped in following the appointment of the former Secretary to the Parole Board of Canada. The Chair thanked the members of the Criminal Section Steering Committee, Laura Pitcairn, Catherine Cooper, Lucie Angers, Isabelle Doray, Chloé Rousselle, Matthew Hinshaw, Tony Paisana and Lee Kirkpatrick, for their assistance in preparing this year's Criminal Section meeting.

[5] The Chair also thanked members of the various working groups for their hard work throughout the year, and particularly working group chairs Fraser Kelly (Witness Confrontation and Section 9 of the *Canada Evidence Act*), who unfortunately could not attend the meeting, Stéphanie O'Connor (Telewarrants) and Tony Paisana (Criminal Record Checks), as well as Manon Lapointe, who chairs both the Working Group on *Charter* Costs and Civil Damages Awards against the Crown and on Section 490 of the *Criminal Code*.

[6] Each jurisdictional representatives introduced the delegates of their jurisdiction. The agenda of the meeting was approved.

[7] Laura Pitcairn, immediate past Chair of the Criminal Section and Chair of the Selection Committee, established the Selection Committee, comprised of Luc Labonté, Catherine Cooper, Lucie Angers and Manon Lapointe, and indicated that the Committee would aim to present its recommendation for incoming Chair of the Criminal Section for 2019-2020 at the end of the week.

PROCEEDINGS

Report of the Senior Federal Delegate¹

[8] On Monday, August 13, 2018, Lucie Angers, General Counsel and Director of External Relations for the Criminal Law Policy Section at Justice Canada, presented and tabled the Report of the Senior Federal Delegate.

Earl Fruchtman Memorial Seminar

[9] On Wednesday, August 15, 2018, Joanne Marceau, Chief Prosecutor of the Director's Office and Patrick Michel, Chief Prosecutor of the Legal Services' Office of Québec's Directeur des poursuites criminelles et pénales (DPCP), gave a presentation entitled The Search for Balance between Independence, Accountability, Discretionary Power and Professional Autonomy in the context of the Earl Fruchtman Memorial Seminar. Their presentation provided an historical overview of the independent role of prosecutors in Québec, defined concepts of independence, accountability, discretionary power and professional autonomy and the interaction between these concepts, and outlined their practical application, including new challenges in the current, heavily-mediatized context.

Resolutions²

[10] The order in which resolutions are considered is set out in the [Rules of Procedure](#) of the Criminal Section. In accordance with the *Rules*, Manitoba would have been the first province to present its resolutions in 2017. However, by exception, the Canadian Association of Provincial Court Judges was allowed to present its resolutions before Manitoba in 2017. In light of Manitoba not having presented its resolutions first in 2017, the possibility of having it start in 2018 was explored. However, since the jurisdictional representative of Manitoba was participating at the ULCC for the first time, the Chair offered that Manitoba observe and participate in the proceedings before presenting their own resolution and therefore, the rotation order proceeded as though Manitoba had gone first in 2017. As such, New Brunswick was the first province to present its resolution in 2018, followed by the other provincial jurisdictions, in

¹ This document is attached to these Minutes as Annex 1.

² This document is attached to these Minutes as Annex 2.

alphabetical order, and finally by the Canada delegation.

[11] The jurisdictions initially submitted twenty-nine (29) resolutions for consideration. Of that number, two (2) were duplicates,³ one of which was withdrawn prior to discussion. One (1) floor resolution was presented during the meeting. Delegates therefore considered a total of twenty-nine (29) resolutions. Ten (10) resolutions were carried without amendment, two (2) of which were unanimous. Seventeen (17) resolutions were carried as amended, and two (2) resolutions were withdrawn following thorough discussion.

Criminal Section Working Groups

[12] The Chair of the Working Group on Telewarrants, Stéphanie O'Connor, provided an overview of its work, including monthly teleconference calls, informal consultations with members of the judiciary and law enforcement, and the potential to examine the impact of recently-introduced Bill C-75, *An Act to amend the Criminal code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, on telewarrants. The Chair of the Working Group indicated that it expects to present its final report at the Criminal Section's 2019 meeting. The Status Report of the Telewarrants Working Group was accepted by a unanimous vote (29-0-0).

[13] The Chair of the Working Group on Section 490 of the *Criminal Code*, Manon Lapointe, presented an overview of its work relating to the detention of seized property regime. The Working Group will examine broader questions of criminal law policy relating to this regime and has gathered an inventory of enforcement problems arising from section 490 of the *Criminal Code*. The Working Group anticipates its work will take time, and it will report back to the Criminal Section at the 2019 meeting. Its Status Report was accepted by a unanimous vote (27-0-0).

[14] The Working Group on Witness Confrontation and Section 9 of the *Canada Evidence Act* presented its Final Report about the law of evidence in criminal proceedings relating to a party's ability to confront and lead its own witnesses. While the Working Group's overarching recommendation is to repeal and replace section 9 of the *Canada Evidence Act*, it sought the input of the Criminal Section delegates on the more complex question of what should replace it: in particular, the Working Group sought the Section's views on the type of inconsistency in a testimony that should trigger the ability to cross-examine one's own witness, and once triggered, the appropriate breadth of the cross-examination. Following discussion of these questions, the Criminal Section voted to accept the Working Group's Final Report, to approve

³ The duplicate resolutions, QC2018-03 and Can-PPSC2018-02, recommended amendments to section 487.11 of the *Criminal Code* to allow the exercise of the powers set out at sections 492.1(2) and 492.2 without a warrant under exigent circumstances. QC2018-03 was withdrawn.

the recommendations contained therein, and to share the Final Report with the Civil Section of the ULCC (27-0-1).

[15] A new Working Group was established following a floor resolution presented by the Canadian Bar Association (Can-CBA2018-05). The Working Group will undertake an examination of section 487 of the *Criminal Code* to assess how this investigative power should be modernized, taking into account new technologies, the *Canadian Charter of Rights and Freedoms* and relevant national and international developments. The Working Group is expected to report back to the Criminal Section with either an interim or final report at the 2019 meeting of the ULCC. The following delegates who were present at the meeting expressed interest in joining the Working Group: Lucie Angers (CAN), Catherine Cooper (ON), Isabelle Doray (QC), Luc Labonté (NB), Meagan Mahoney (NS), Mia Manocchio (QC), Kevin Westell (BC), James Wood (MB) and Normand Wong (CAN).

Federal Presentation on Duress

[16] While time was set aside in the agenda for a federal presentation on possible reform of the duress defence, the presenters ceded their allotted time on Thursday, August 16, 2018 to allow the discussion of the Final Report of the Working Group on Witness Confrontation and Section 9 of the *Canada Evidence Act* to continue.

Joint Working Groups

[17] Two joint Working Groups provided reports at ULCC 2018:

1. Status Report from the Joint Working Group on *Charter* costs award and civil damages against the Crown

[18] It was reported that there were two cases from the Court of Appeal of Ontario. First of all, there was *Brown v Canada (Public Safety)*, 2018 ONCA 14. It was found that it was not justified on the facts to award damages against the Crown and as well that it was not desirable to join a *Charter* damages claim with a *habeas corpus* application because a *habeas corpus* proceeding is a more accelerated proceeding and is not intended to determine if damages be awarded.

[19] The other decision was *Ogiamien v Ontario (Community Safety and Correctional Services)*, 2017 ONCA 667, where the Ontario Court of Appeal found that there was a violation of procedural fairness against the Attorney General of Ontario and the Attorney General of Canada, as the Attorneys General had not been notified that damages would be requested. The court said that at the very least those parties should be notified when damages were requested and it was not appropriate to award damages when they were not requested in the first place.

[20] A third case was mentioned: the B.C. Court of Appeal decision in *Henry v British Columbia (Attorney General)*, 2017 BCCA 420. At trial, Mr. Henry had sought damages against the Province of British Columbia, the City of Vancouver and the Attorney General of Canada following his arrest, conviction and imprisonment. During the course of the trial, the City of Vancouver and the federal government settled out of court with Mr. Henry for an amount just over \$5 million. Ultimately the Court awarded Mr. Henry aggregate damages of \$8 million. The Province of British Columbia applied to have the settlement deducted from the award. The judge granted the order and an appeal was launched by Mr. Henry.

[21] This case discussed the principle of double recovery under section 24(1) of the *Charter*. Paragraphs 40 and following contain a discussion of the nature of *Charter* damages, and the court cited the Supreme Court of Canada decision in *Ward* that held that Charter damages seek to obtain compensation, vindication and deterrence. Mr. Henry argued that the award of constitutional damages goes beyond the compensation of the plaintiff and includes damages for vindication and deterrence. It was argued that constitutional damages were akin to punitive damages, such that the double recovery principles should generally be inapplicable to them. The Court of Appeal rejected this argument (paragraph 59). It was understood that the decision is under appeal to the Supreme Court of Canada.

[22] Manon Lapointe reported that the working group was willing to continue monitoring the situation regarding the award of costs and damages against the government.

[23] A question was asked as to whether these reports would continue to be provided indefinitely, or would there be an end product. Ms. Lapointe understood from previous reports that the working group would continue to monitor developments and that for the meantime the purpose of the working group is to monitor developments.

IT WAS RESOLVED

THAT the report be accepted; and

THAT that the report be updated for presentation at the 2019 ULCC meeting.

2. Final Report from the Joint Working Group on Criminal Record Checks

[24] The Working Group on Criminal Record Checks is chaired by Tony Paisana, a defence lawyer practising at Peck and Company Barristers in Vancouver, B.C., Chair of the Law Reform Committee of the CBA's National Criminal Justice Section, and Adjunct Professor at the UBC Faculty of Law.

[25] The Chair of the Working Group indicated that the communication of non-conviction information following police record checks is an issue that affects hundreds of thousands of Canadians. He noted several calls to action from organizations, but also from the judiciary. Mr. Paisana observed that the ULCC was a particularly appropriate organization to address this issue, since it requires a unified response to a provincial and territorial matter, and expertise in both civil and criminal law. Since 2016, the Working Group investigated criminal record checks practices across the country, presented an interim report to the ULCC in 2017, studied Ontario's [*Police Record Checks Reform Act, 2015, S.O. 2015 c. 30*](#) ("Ontario's legislation"), and consulted with Ontario's Ministry of Community Safety & Correctional Services.

[26] The draft Uniform Police Record Checks Act prepared by the Working Group used Ontario's legislation as a starting point and includes three central features: 1) a standardization of the types of criminal record checks to be provided; 2) limitations on the disclosure of non-conviction information, including the development of disclosure criteria; and 3) the provision of appeal and reconsideration processes to correct inaccurate information and to challenge the inclusion of irrelevant information disclosed in criminal record checks. The Chair of the Joint Working Group noted five points of divergence between the draft Uniform Police Record Checks Act and Ontario's legislation:

1. The Uniform Act gives discretion to a police record check provider to refuse to disclose non-conviction information where a person is not going to be responsible for the well-being of a child or vulnerable person;
2. The Uniform Act gives the responsible Minister the ability to make regulations specifying a period of validity of a police record check, so that the results of a record check can be used more than once;
3. The Uniform Act clarifies, at subsection 1(3) of the Schedule, that only straight summary convictions (i.e., for an offence that is punishable *only* by way of summary conviction, not hybrid offences) are subject to the five-year limitation period, after which they are not disclosed;
4. The Uniform Act changes row 6 of the Table, expanding disclosure to family court orders and narrowing disclosure to apply only to current court orders; and
5. The Uniform Act eliminates findings of not criminally responsible by reason of mental disorder from any disclosure, and removes that row (#7 in the Ontario legislation) from the Table.

[27] During the discussion that followed, concerns were raised with regards to the discretion to refuse to disclose non-conviction information where an applicant is not be responsible for a vulnerable person, but nonetheless in their proximity. The Working Group considered this situation and selected language from the federal *Criminal Records Act*, noting that the provision (subsection 10(6)) achieves balance and that police may still choose to disclose the non-

conviction information.

[28] Delegates raised concerns with the removal of findings of not criminally responsible by reasons of mental disorder (NCRMD) from the disclosure table. The Working Group acknowledged that this may be controversial, and provided six reasons in its Final Report explaining why it recommended excluding findings of NCRMD from the disclosure table.

[29] Delegates also expressed concerns with the language of “pattern of predation” in subsection 10(2) as the test to disclose non-conviction information in the context of a vulnerable sector check: specifically, it may be too high a bar to require repeated, predatory actions, thereby excluding single incidents that could still indicate a risk of harm to a child or vulnerable person. It was suggested that “behaviour indicating that the individual presents a risk of harm” would be a more appropriate test.

[30] A specific concern with the French version of the Uniform Act was raised: subsection 10(1) used the word “*travail*”, which would exclude those applying for volunteer positions. The Working Group Chair confirmed that it was not the intent to limit vulnerable sector checks to paid positions, and that the French version would be changed to align with the intent.

[31] Following discussion, it was agreed that the Final Report and *Uniform Police Record Checks Act* be put to a vote, on the understanding that the following changes would be brought to the Act if adopted:

1. Paragraph 10(2)3. (subsequently re-numbered to 10(2)(c) to align with drafting conventions) would be amended to replace the words “a pattern of predation” with “behaviour”;
2. Subsection 10(6) (discretion to not disclose non-conviction information) would remain in square brackets, for consideration by each administration;
3. The Table would be amended to reintroduce non-criminally responsible for reason of mental disorder findings into the disclosure regime, in square brackets, for consideration by each administration;
4. Section 19 would be amended to include reference to section 18 (requirements respecting third party entities) as part of the enforcement provision;
5. The Act would be amended to conform to uniform drafting standards;
6. The French version of the Act would be amended to reflect the intent of the English version of the Act; and
7. The commentary would be amended as necessary to account for the changes above.

IT WAS MOVED by Darcy McGovern, QC (SK) and seconded by Dean Sinclair, QC (SK),

THAT the report of the working group be accepted; and

THAT the Uniform Police Record Checks Act and commentaries be adopted and recommended to the jurisdictions for enactment, subject to the direction of the Conference.

The resolution was carried with six (6) abstentions.

Joint Session on the Strategic Plan Oversight Committee (SPOC)

[32] Manon Dostie, Chair of the ULCC, presided the SPOC session, the overall goal of which was to make progress on elements identified at annual meetings in Fredericton (2016) and Regina (2017). It was noted that while key aspects of the organization renewal were completed in time for the 100th annual meeting, the implementation of the Strategic Plan will continue in the coming years. For this purpose, it was suggested that an Implementation Committee be created.

[33] In particular, implementation steps include: updates to the ULCC's operational documents, consideration of updates to the Civil and Criminal Sections' Rules of Procedure, continued work on the website, consideration of social media presence, implementation of new annual budget approval procedures, creation of succession plans, and the establishment of an Implementation Committee for Uniform Acts.

Adoption of Revised Constitution and By-laws

[34] Updating the ULCC Constitution and By-laws was one of the key issues identified in the 2016 Strategic Plan. The ULCC Constitution was last amended in 1996, and inconsistencies were identified between the structure and processes outlined in the Constitution and By-laws, and the actual functioning of the ULCC.

[35] Manon Dostie presented a revised version of the ULCC Constitution and By-laws. She indicated that the work on the Constitution and By-laws began in 2016 under the leadership of past President Josh Hawkes, and continued through formal and information consultation of the ULCC membership since then. The overall approach was to keep the text of the Constitution brief, with more details presented in the By-laws.

[36] Delegates agreed on amendments to the revised Constitution (the mechanism to amend the Constitution is a jurisdictional vote of two thirds or more in favour of the amendment) and By-laws (the result of any vote is determined by a majority of the votes cast; removal of the phrase "if applicable" to a provision allowing the Executive Committee to invite the secretary of the Civil Section to participate in its meetings).

[37] The revised Constitution and By-laws, as amended during the annual meeting, were adopted.

Website Update

[38] Modernizing the ULCC website was also one of the key issues identified in the Strategic Plan 2016. Marie Bordeleau, Executive Director of the ULCC, provided an overview of the progress with the new ULCC website by presenting an offline version. The visual appearance of the website will be streamlined and modernized, and the site made more user-friendly. Efforts will be made to ensure various documents of the ULCC are clearly identified and easy to locate for users who may not be familiar with ULCC. The objective is for the new website to be operational in the new calendar year, but the task is more onerous than anticipated.

Historical Highlights from Jurisdictions

[39] To celebrate the 100th anniversary of the ULCC, jurisdictional representatives shared highlights of their jurisdiction's participation at the Conference throughout the years.

OTHER BUSINESS

➤ Amendments to resolutions during the meeting

[40] Delegates were reminded that each jurisdiction is responsible for providing amended resolutions in both official languages to the Secretariat for preparation using the amended resolution template provided. The resolution should be reviewed and approved in both languages prior to distribution to all delegates of the Criminal Section for debate and vote.

CLOSING

[41] The Chair thanked the delegates for their participation in the meeting and noted the presence of 13 new delegates this year. The Chair noted the immense value of delegates from the Indigenous Bar Association (Denise Lightning) and the Aboriginal Legal Services (Caitlyn Kasper) in bringing an Indigenous perspective to the debates. The Chair also noted the invaluable input of members of the judiciary (the Honourable Danielle Côté of the Court of Québec, the Honourable Joshua Hawkes, Q.C. of the Provincial Court of Alberta, and the Honourable Faith Finnestad, Associate Chief Justice of the Ontario Court of Justice). The Chair also acknowledged the academic perspective brought by Professor Anne-Marie Boisvert, Full Professor at the Université de Montréal.

[42] The Chair thanked the Canada delegation for its work and the breadth of expertise of its members, including from the Public Prosecution Service of Canada, Criminal Law Policy Section, and Youth Justice and Strategic Initiatives Section. The Chair also recognized delegates who have participated in the ULCC's Criminal Section for a long period of time, including Luc Labonté and Dean Sinclair.

[43] Despite a limited amount of time for debate and vote on resolutions (about 11 hours), delegates accomplished the task at hand, after having started the final day 30 minutes earlier than scheduled. The Chair expressed thanks to the delegates for accomplishing this important amount of work and the Working Group chairs and members for their continued efforts.

[44] The Chair also thanked the Criminal Section Steering Committee for its work throughout the year, which was particularly involved in light of the ULCC's 100th anniversary in 2018. The Chair expressed her gratitude to the members of the Québec delegation, hosts of the ULCC meeting for its 100th anniversary, for the exemplary organization of the week and its various events, and the warm welcome they extended to all the delegates.

[45] The Chair thanked the Criminal Section Secretary for her assistance over the past weeks and throughout the meeting in Québec City. The Chair also expressed her appreciation to the members of the Secretariat for their prompt and efficient support throughout the week, to the interpreters for their excellent work in a fast-paced environment, and to the audio-visual support team.

[46] Delegates thanked the Chair of the Criminal Section for the quality of her work throughout the week, for her ability to keep discussions on track without unfairly curtailing debate, and for her efforts in advancing the work of the Section during the year.

[47] By resolution of the Criminal Section, the nomination of Matthew Hinshaw, Director of the Policy Unit with the Appeals, Education & Prosecution Policy Branch (Alberta) as Chair of the Criminal Section for 2018-2019 was unanimously accepted. The Selection Committee recommended that Joanne Klineberg, Senior Counsel with the Criminal Law Policy Section (Canada), act in that capacity in 2019-2020.

[48] The Criminal Section concluded its work on Thursday, August 16, 2018 and will reconvene on Sunday, August 18, 2019 (exceptionally, one week later than usual in light of venue availability), in St. John's, Newfoundland.

December 5, 2018

REPORT OF THE SENIOR FEDERAL DELEGATE

Uniform Law Conference of Canada Criminal Section 2018 Federal Department of Justice

Introduction

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.

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.

As we look back over the past twelve months since we last met at ULCC 2017 in Regina, Saskatchewan, 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). Part II provides a status update of ULCC resolutions.

Part I - FPT DEVELOPMENTS OF INTEREST TO ULCC 2017-2018

FPT Ministers Responsible for Justice and Public Safety

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.

At their September 2017 meeting in Vancouver, FPT Ministers discussed key issues including addressing delays in the criminal justice system, ensuring Canada's national security, preparing for the cannabis and impaired driving legislation and implementation, as well as other priority items.

In relation to the issue of reducing delays in the criminal justice system, Ministers agreed on the need for urgent and bold reforms to reduce these delays. They discussed reforms to the *Criminal Code*'s mandatory minimum penalty provisions. Ministers supported improving the bail system to make it more efficient, while protecting public safety and considering the circumstances of Indigenous accused and accused persons from vulnerable populations. They looked at how to more efficiently and effectively address administration of justice offences, such as breaches of bail conditions, as these offences often lead to additional charges for vulnerable people. Ministers also considered how the reclassification of offences could provide greater flexibility to use simpler and faster court processes. Also highlighted was the need for reforms to the availability of preliminary inquiries in the criminal justice system, as they can contribute to court delays and their functions can be met through other mechanisms. Ministers recognized the importance of judicial case management in reducing delays and agreed on the need for legislative enhancements.

Provincial and territorial (PT) Ministers were briefed on Bill C-59, the proposed *National Security Act, 2017*, and provided views on how the federal government can work with provinces and territories to keep Canadians safe, while safeguarding *Charter* rights and freedoms. The Government of Canada signaled its openness to hearing further views as the legislation proceeds through Parliament.

Ministers agreed that the legalization and regulation of cannabis must be guided by the objectives of protecting the health and safety of all Canadians, particularly young people. They discussed Bill C-45, the proposed federal *Cannabis Act*, which would create a new legal framework for controlling the production, distribution and possession of cannabis in Canada. Ministers shared their views on the implementation of the regulatory regime for cannabis use. PT Ministers noted that there are significant administrative, regulatory, public education, officer training and law enforcement issues, including those related to home cultivation, which need to be addressed. These entail significant costs for provincial and territorial governments. They urged the federal government, as the government advancing this policy change, to invest the appropriate resources to support cannabis legalization. The Government of Canada has committed up to \$274 million for this purpose. PT Ministers also noted that there are challenges associated with the federal government's proposed implementation by July 2018 and that continued federal engagement and information sharing will be required to manage this transition.

The implementation of the federal government's impaired driving legislation, Bill C-46, was also raised. This legislation proposes new laws and penalties to address those who drive while impaired by drugs or alcohol. Ministers also discussed the federal consultations on lowering the criminal blood alcohol concentration to 50 mg of alcohol per 100 ml of blood; specifically, Ministers agreed to complete work, under the leadership of the federal government, on the design of a model law regarding the creation of administrative enforcement regimes for alcohol and drug impaired driving.

Federal ministers provided an update on cannabis and impaired driving legislative initiatives, planned federal public awareness efforts, and federal funding for law enforcement in support of cannabis legalization and regulation.

Among the other priority items, Ministers discussed HIV non-disclosure. They re-iterated the importance of an appropriate criminal justice system response to HIV transmission and exposure cases involving people living with HIV who do not disclose their status to sexual partners. FPT ministers agreed to collaborate on possible next steps on this important issue in the coming months.

Ministers also discussed initiatives underway to help improve how the criminal justice system responds to sexual assault in Canada, including steps to improve data collection and shared police best practices.

In addition, Ministers discussed over-representation of marginalized people in the criminal justice system and identified possible coordinated actions regarding metrics, information sharing, restorative justice, bail and remand.

Ministers also discussed the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples.

Given their interest in working together to address public safety and justice issues for Indigenous communities, Ministers also heard from representatives of the Assembly of First Nations, the Native Women's Association of Canada, the Congress of Aboriginal Peoples and the Women of the Métis Nation regarding justice and public safety challenges for Indigenous communities. Key discussion items were: delays in the criminal justice system, restorative justice, gaps in services for Indigenous people involved with the criminal justice system, the Truth and Reconciliation Commission of Canada's Calls to Action, violence against Indigenous women and girls, and Indigenous policing.

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

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.

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 2013-2017

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.

During the period 2013-2017, the Criminal Section considered and voted on 134 resolutions. Of these, 21 resolutions were withdrawn, while four resolutions were defeated. Further, a few resolutions led to the creation of working groups. Furthermore, in 2016, 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.

Of the remaining resolutions that were adopted during this five-year period, a number have been addressed in the context of legislative amendments to the *Criminal Code* and other Acts, such as the *Canada Evidence Act*. 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. 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

On March 29, 2018, the federal Minister of Justice introduced Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*. Bill C-75 proposes, among other things, to: modernize and clarify bail provisions; provide an enhanced approach to administration of justice offences, including for youth; abolish peremptory challenges of jurors and modify the process of challenging a juror for cause and of judicial stand-by; restrict the availability of preliminary inquiries; streamline the classification of offences; expand judicial case management powers; and, enhance measures to better respond to intimate partner violence. More than seventeen ULCC resolutions dealing with bail, juries, reclassification of offences, intimate partner violence, remote appearances, judicial signatures, re-election of the mode of trial, out-of-province warrants, and youth justice were taken into account in drafting this bill.

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*”.

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.

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.

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.

Finally, the coming into force of 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).

Resolutions addressed in case law

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

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

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, more than half of the resolutions adopted during the past five years have been referred to and further studied by CCSO and its working groups, including the Working Group on Criminal Procedure, the Working Group on High-Risk Offenders, the Working Group on Sentencing, the Working Group on Cybercrime, as well as the Coordinating Committee of Senior Officials on Youth Justice.

Part III - LEGISLATIVE INITIATIVES 2017-2018

Three Justice-led Government criminal justice bills received Royal Assent and two were introduced in Parliament. Four Government bills of interest were introduced.

During the same period, the Minister of Justice was leading the Government’s response to seven criminal justice Private Members’ Bills (PMBs). One PMB received Royal Assent and four were defeated at Second Reading. In addition, the Minister of Justice was leading the response to six Senate Public Bills. Two received Royal Assent and two were defeated/not proceeded with.

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

a) Criminal law bills that received Royal Assent (3)

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

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.

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

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

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.

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.

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.

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*.

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

The Bill received Royal Assent on June 21, 2018.

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

Part 1 of the legislation 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.

Part 2 of the legislation 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.

Part 3 of the former Bill contained coordinating amendments and the coming into force provisions.

Part 1 of the Bill came into force upon Royal Assent (June 21, 2018) and Part 2 will come into force on December 18, 2018.

b) *Government Criminal Law Reform Bills introduced in Parliament(6)*

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

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.

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*.

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

2) *Bill C-75, An Act to Amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*

This enactment amends the *Criminal Code* to, among other things,

- (a) modernize and clarify interim release provisions to simplify the forms of release that may be imposed on an accused, incorporate a principle of restraint and require that particular attention be given to the circumstances of Aboriginal accused and accused from vulnerable populations when making interim release decisions, and provide more onerous interim release requirements for offences involving violence against an intimate partner;
- (b) provide for a judicial referral hearing to deal with administration of justice offences involving a failure to comply with conditions of release or failure to appear as required;
- (c) abolish peremptory challenges of jurors, modify the process of challenging a juror for cause so that a judge makes the determination of whether a ground of challenge is true, and allow a judge to direct that a juror stand by for reasons of maintaining public confidence in the administration of justice;
- (d) increase the maximum term of imprisonment for repeat offences involving intimate partner violence and provide that abuse of an intimate partner is an aggravating factor on sentencing;
- (e) restrict the availability of a preliminary inquiry to offences punishable by imprisonment for life and strengthen the justice's powers to limit the issues explored and witnesses to be heard at the inquiry;
- (f) hybridize most indictable offences punishable by a maximum penalty of 10 years or less, increase the default maximum penalty to two years less a day of imprisonment for summary conviction offences and extend the limitation period for summary conviction offences to 12 months;
- (g) remove the requirement for judicial endorsement for the execution of certain out-of-province warrants and authorizations, expand judicial case management powers, allow receiving routine police evidence in writing, consolidate provisions relating to the powers of the Attorney General and allow increased use of technology to facilitate remote attendance by any person in a proceeding;
- (h) allow the court to exempt an offender from the requirement to pay a victim surcharge if the offender satisfies the court that the payment would cause the offender undue hardship,

provide the court with guidance as to what constitutes undue hardship, 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 those types of offences would be disproportionate in the circumstances, require courts to provide reasons for granting any exception for certain administration of justice offences or any exemption from the requirement to pay a victim surcharge and clarify that the amendments described in this paragraph apply to any offender who is sentenced after the day on which they come into force, regardless of whether or not the offence was committed before that day; and

(i) remove passages and repeal provisions that have been ruled unconstitutional by the Supreme Court of Canada, repeal section 159 of the Act and 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.

The enactment also amends the *Youth Criminal Justice Act* in order to reduce delays within the youth criminal justice system and enhance the effectiveness of that system with respect to administration of justice offences. For those purposes, the enactment amends that Act to, among other things,

- (a) set out principles intended to encourage the use of extrajudicial measures and judicial reviews as alternatives to the laying of charges for administration of justice offences;
- (b) set out requirements for imposing conditions on a young person's release order or as part of a sentence;
- (c) limit the circumstances in which a custodial sentence may be imposed for an administration of justice offence;
- (d) remove the requirement for the Attorney General to determine whether to seek an adult sentence in certain circumstances; and
- (e) remove the power of a youth justice court to make an order to lift the ban on publication in the case of a young person who receives a youth sentence for a violent offence, as well as the requirement to determine whether to make such an order.

Finally, the enactment amends among other Acts *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 and also makes consequential amendments to other Acts.

Bill C-75 was introduced on March 29, 2018. The Bill received Second Reading on May 24, June 5, 7 and 11, 2018. It was referred to the Standing Committee on Justice and Human Rights on June 11 and was studied on June 19, 2018 with the Minister of Justice appearing.

The elements of Bill C-28, An Act to amend the Criminal Code (victim surcharge) Bill C-32, An Act related to the repeal of section 159 of the Criminal Code, Bill C-38, An Act to amend An Act to amend the Criminal Code (exploitation and trafficking in persons), and Bill C-39, An Act to amend the Criminal Code (unconstitutional provisions) and to make consequential amendments to other Acts are included in Bill C-75.

c) **Government Bills of interest/co-led (4)**

1) *Bill C-59, An Act respecting national security matters*

Part 7 amends the *Criminal Code* to, among other things,

- (a) make certain procedural modifications to the terrorist listing regime under section 83.05, such as providing for a staggered ministerial review of listed entities and granting the Minister of Public Safety and Emergency Preparedness the authority to amend the names, including aliases, of listed entities;
- (b) change the offence of advocating or promoting terrorism offences in general, in section 83.221, to one of counselling the commission of a terrorism offence, and make corresponding changes to the definition of terrorist propaganda;
- (c) raise one of the thresholds for imposing a recognizance with conditions under section 83.3, and amend when that section is to be reviewed and, unless extended by Parliament, to cease to have effect;
- (d) repeal sections 83.28 and 83.29 relating to an investigative hearing into a terrorism offence and repeal subsections 83.31(1) and (1.1), which require annual reports on such hearings;
- (e) require the Attorney General of Canada to publish a report each year setting out the number of terrorism recognizances entered into under section 810.011 in the previous year; and
- (f) authorize a court, in proceedings for recognizances under any of sections 83 and 810 to 810.2, to make orders for the protection of witnesses.

Part 8 amends the *Youth Criminal Justice Act* to, among other things, ensure that the protections that are afforded to young persons apply in respect of proceedings in relation to recognizance orders, including those related to terrorism, and give employees of a department or agency of the Government of Canada access to youth records, for the purpose of administering the Canadian Passport Order.

The Bill Received First Reading in the Senate on June 20, 2018.

2) *Bill C-66, An Act to establish a procedure for expunging certain historically unjust convictions and to make related amendments to other Acts*

This enactment creates a procedure for expunging certain historically unjust convictions and provides for the destruction or removal of the judicial records of those convictions from federal repositories and systems. It gives the Parole Board of Canada jurisdiction to order or refuse to order expungement of a conviction. The enactment deems a person who is convicted of an offence for which expungement is ordered never to have been convicted of that offence. The enactment provides that an application for an expungement order may be made in respect of convictions involving consensual sexual activity between same-sex persons related to the offences of gross indecency, buggery and anal intercourse. The enactment provides that the Governor in Council

may add certain offences to the schedule and establish criteria that must be satisfied for expungement of a conviction to be ordered. The enactment also makes related amendments to other Acts.

Bill C-66 Received Royal Assent on June 21, 2018.

3) *Bill C-71, An Act to amend certain Acts and Regulations in relation to firearms*

Part 1 of this Act amends the *Firearms Act* to, among other things,

- (a) remove the reference to the five-year period, set out in subsection 5(2) of that Act, that applies to the mandatory consideration of certain eligibility criteria for holding a licence;
- (b) require, when a non-restricted firearm is transferred, that the transferee's firearms licence be verified by the Registrar of Firearms and that businesses keep certain information related to the transfer; and
- (c) remove certain automatic authorizations to transport prohibited and restricted firearms.

Part 1 also amends the *Criminal Code* to repeal the authority of the Governor in Council to prescribe by regulation that a prohibited or restricted firearm be a non-restricted firearm or that a prohibited firearm be a restricted firearm and, in consequence, the Part

- (a) repeals certain provisions of regulations made under the *Criminal Code*; and
- (b) amends the *Firearms Act* to grandfather certain individuals and firearms, including firearms previously prescribed as restricted or non-restricted firearms in those provisions.

Furthermore, Part 1 amends section 115 of the *Criminal Code* to clarify that firearms and other things seized and detained by, or surrendered to, a peace officer at the time a prohibition order referred to in that section is made are forfeited to the Crown.

Part 2, among other things,

- (a) amends the *Ending the Long-gun Registry Act*, by repealing the amendments made by the *Economic Action Plan 2015 Act, No. 1*, to retroactively restore the application of the *Access to Information Act* and the *Privacy Act* to the records related to the registration of non-restricted firearms until the day on which this enactment receives royal assent;
- (b) provides that the *Access to Information Act* and the *Privacy Act* continue to apply to proceedings that were initiated under those Acts before that day until the proceedings are finally disposed of, settled or abandoned; and
- (c) directs the Commissioner of Firearms to provide the minister of the Government of Quebec responsible for public security with a copy of such records, at that minister's request.

The Standing Committee on Public Safety and National Security reported the Bill with amendments on June 12. The Bill as amended received concurrence at Report Stage on June 20, 2018.

4) *Bill C-74, An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures*

Division 20 of Part 6 of Bill C-74 amends the *Criminal Code* to establish a remediation agreement regime. Under this regime, the prosecutor may negotiate a remediation agreement with an organization that is alleged to have committed an offence of an economic character referred to in the schedule to Part XXII.1 of that Act and the proceedings related to that offence are stayed if the organization complies with the terms of the agreement.

Bill C-74 received Royal Assent on June 21, 2018.

d) Private Members Bills - Justice lead (7)

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

Bill C-305 was introduced by Chandra Arya (Liberal) on September 27, 2016. This enactment 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.

The Bill received Royal Assent on December 12, 2017.

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

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.

The Bill was referred to the Standing Senate Committee on Legal and Constitutional Affairs on May 31, 2018.

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

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

Bill C-338 was defeated at Second Reading on September 27, 2017.

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

Bill C-349 was introduced by Rhéal Fortin (BQ) on April 11, 2017. The Bill proposed to amend the *Criminal Code* to provide that the Governor in Council may establish a list of entities

consisting of criminal organizations. It also made 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.

Bill C-349 was defeated at Second Reading on October 18, 2017.

5) *Bill C-365, An Act to amend the Criminal Code (firefighting equipment)*

Bill C-365 was introduced by Mel Arnold (Conservative) on October 3, 2017. It proposed to amend the *Criminal Code* to establish specific penalties related to the theft of firefighting equipment. It also created an aggravating circumstance for sentencing if the mischief involves firefighting equipment. Finally, it established sentencing objectives in relation to the theft of such equipment.

The Bill was defeated at Second Reading on February 7, 2018.

6) *Bill C-373, An Act respecting a federal framework on distracted driving*

Bill C-373 was introduced by Doug Eyolfson (Liberal) on October 18, 2017. The Bill provided for the development of a federal framework to deter and prevent distracted driving. It also set out consultation, review and reporting requirements in relation to the framework.

The Bill was defeated at Second Reading on March 21, 2018.

7) *Bill C-375, An Act to amend the Criminal Code (presentence report)*

Bill C-375 was introduced on October 19, 2017 by Majid Jowhari (Liberal). As introduced, the Bill amended the *Criminal Code* to require that a presentence report contain information on any mental disorder from which the offender suffers.

The Committee reported the Bill with amendments on May 10, 2018 to require that a presentence report contain information on any aspect of the offender's mental condition that is relevant for sentencing purposes.

e) *Senate Public Bills – Justice Lead (6)*

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

Bill S-201 was introduced by Senator James S. Cowan (Liberal) on December 8, 2015. This enactment 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.

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.

The Bill received Royal Assent on May 4, 2017.

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

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.

On May 9 the Standing Committee on Justice and Human Rights Committee passed a motion that the bill not proceed further. The Motion passed in the House on June 16, 2017.

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

Bill S-230 was introduced on October 4, 2016 by Senator Claude Carignan (CPC). It proposed to amend 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 authorized 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.

The Bill was defeated at Second Reading on October 25, 2017.

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

Bill S-231 was introduced by Senator Claude Carignan (CPC) on November 22, 2016. This enactment 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.

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.

The Bill received Royal Assent October 18, 2017.

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

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.

The Bill, as amended by Committee, is currently at Third Reading Debate.

6) *Bill S-240, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs)*

The Bill was introduced by Senator Salma Ataullahjan (CPC) on October 31, 2017. This enactment amends the *Criminal Code* to create new offences in relation to trafficking in human organs and tissue. It also amends the Immigration and Refugee Protection Act to provide that a permanent resident or foreign national is inadmissible to Canada if the Minister of Citizenship and Immigration is of the opinion that they have engaged in any activities relating to trafficking in human organs or tissue.

The Standing Senate Committee on Human Rights Report, which presented the Bill with amendments, was adopted on June 14, 2018.

Conclusion

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>.

August 8, 2018

**UNIFORM LAW CONFERENCE OF CANADA
CRIMINAL SECTION RECOMMENDATIONS**

August 2018

ALBERTA

Alberta – 01

That Justice Canada examine whether height and weight should be included as “other measurements” approved by order of the Governor in Council, pursuant to section 2 of the *Identification of Criminals Act*.

Carried: 19-0-10

Alberta – 02

That section 57 of the *Youth Criminal Justice Act* be amended to include conditional discharges as sentences that may be transferred between territorial divisions.

Carried: 25-0-3

Alberta – 03

That the *Youth Criminal Justice Act* be amended to prevent a young person from receiving credit toward a custodial sentence for any period of time during which they are unlawfully at large.

Carried: 27-0-2

Alberta – 04

That the *Youth Criminal Justice Act* be amended to allow for a youth justice court judge to review a release order made by a justice who is not a youth justice court judge for the purpose of varying the release order.

Carried as amended: 29-0-0

Alberta – 05

The Criminal Section of the Uniform Law Conference of Canada expresses support for clause 167(2) of Bill C-59, tabled in the first session of the 42nd Parliament, creating a records access period in the *Youth Criminal Justice Act* for recognizances entered into under sections 83.3, 810, 810.01, 810.011, 810.02 and 810.2 of the *Criminal Code*.

Carried as amended: 27-0-0

BRITISH COLUMBIA

British Columbia – 01

That the Department of Justice, in consultation with the provinces and territories, review section 672.11 of the *Criminal Code* with a view to amending the provision to include a ban similar to the ban contained in section 517 of the *Criminal Code* (i.e. a publication ban on the evidence taken, the information given, or the representations made during an application for an assessment order under section 672.11 of the *Criminal Code* as well as the reasons, if any, given or to be given by the justice).

Carried as amended: 27-0-1

British Columbia – 02

That Justice Canada review section 4.1 of the *Controlled Drugs and Substances Act* (CDSA) and section 8.1 of the *Cannabis Act* to clarify the circumstances in which people who are present at the time of a 911 response to an overdose, are to be exempt from liability for breaches other than breaches of a pre-trial release, probation order, conditional sentence or parole stemming from a subsection 4(1) CDSA or 8(1) *Cannabis Act* offence.

Carried as amended: 29-0-0

British Columbia – 03

That section 488.01 of the *Criminal Code* be amended to exempt from the special process described in that section, applications where the information which formed the basis of the application was provided by a journalist and where there is no journalistic source to protect.

Carried as amended: 27-0-1

British Columbia – 04

That subsection 753.3(1) of the *Criminal Code* be added to subsection 515(6) in order to place the onus on the accused to show cause as to why their detention in custody is not justified.

Carried: 10-7-12

British Columbia – 05

That section 487.051 of the *Criminal Code* be amended to provide that: where an order made under subsection (4) remains unexecuted, the judge who made the order, or another judge of the same or equivalent court, may issue a summons to appear to allow samples of bodily substances to be taken.

Carried as amended: 19-0-9

MANITOBA

Manitoba – 01

To amend Part XXIII of the *Criminal Code* to allow for the court to make stand-alone restitution orders when offences are dealt with by way of Alternative Measures under section 717.

Withdrawn following discussion

NEW BRUNSWICK

New Brunswick – 01

Amend section 531 of the *Criminal Code* to remove the reference to the Province of New Brunswick.

Carried: 25-0-0

ONTARIO

Ontario – 01

That the Criminal Section of the Uniform Law Conference of Canada express support for clause 166 of Bill C-59, tabled in the 1st session of the 42nd Parliament, amending paragraphs 67(1)(c) and 67(3)(c) of the *Youth Criminal Justice Act* so as to provide a young person charged with murder, who was between the ages of 14 and 17 at the time of the offence, with an election as to mode of trial regardless of whether the Attorney General is seeking an adult sentence against the young person.

Carried as amended: 28-0-0

Ontario – 02

That Justice Canada, in consultation with the provinces and territories, examine options for amending the *Youth Criminal Justice Act* to reform the procedure applicable in situations where two or more young persons are jointly charged and the Attorney General is seeking an adult sentence against at least one but not all of them. The examination should consider, amongst other things, the negative consequences of a multiplicity of proceedings and the interests of the young persons.

Carried as amended: 26-0-1

Ontario – 03

That Justice Canada and Public Safety Canada, in consultation with the provinces and territories, review the definition of “antique firearm” in subsection 84(1) of the *Criminal Code*, as well as the *Regulations Prescribing Antique Firearms* (SOR 98-464), in the context of a broader review of the regulation of firearms exempted from the firearms offence regime in Part III of the *Criminal Code*, with a view to improving public safety.

Carried as amended: 27-0-1

Ontario – 04

That section 110 [Discretionary Prohibition Order] of the *Criminal Code* be amended to enable a court to make a firearms prohibition order in respect of a person who has been found guilty of an offence in the commission of which violence against an animal or bird was used, threatened or attempted.

Carried: 23-0-6

Ontario – 05

The Criminal Section of the ULCC strongly recommends that in the broader context of sentencing reform, priority be given to the review of mandatory minimum penalties to promote greater judicial discretion in sentencing. This is particularly important in the context of Aboriginal offenders.

Carried as amended: 25-3-1

QUEBEC

Quebec – 01

Repeal section 151 of the *Youth Criminal Justice Act* [Evidence of a child or young person] to eliminate the disparity of treatment of youth witnesses that results from the dual regime of section 16.1 of the *Canada Evidence Act* and section 151 of the *Youth Criminal Justice Act*.

Carried: 20-1-8

Quebec – 02

Amend the French version of subsection 486.2(2) of the *Criminal Code* [Other witnesses] to spell out the procedure for conducting the hearing under subsection 486.2(4) to ensure that the witness can testify outside the court room or behind a screen or other device that would allow the witness not to see the accused, in accordance with the English version.

Carried as amended: 27-0-0

Quebec – 03

Amend section 487.11 [Where warrant not necessary] of the *Criminal Code* to add a reference to subsection 492.1(2) of the *Criminal Code*.

Withdrawn because of similar resolution Can-PPSC2018-02

Quebec – 04

Amend paragraph 518(1)(d.1) [Inquiries to be made by justice and evidence] of the *Criminal Code* such that the justice may receive evidence obtained by the use of a video camera or other similar electronic device, without requiring the notice in subsection 189(5) [Notice of intention to produce evidence], in the same manner as an intercepted private communication under Part VI.

Carried as amended: 23-0-5

Quebec – 05

Amend section 669.2 of the *Criminal Code* [continuation of proceedings] so that a judge, provincial court judge, justice or other person who is a summary conviction court and who recommences a trial under subsection 669(3) of the *Criminal Code* [continuation of proceedings – if no adjudication made] may admit into evidence a transcript and/or audio recording of any testimony already given unless a party (the accused or the prosecutor) demonstrates that it would be contrary to the interest of justice.

Carried as amended: 20-1-6

Quebec – 06

Amend subsection 732(2) of the *Criminal Code* [Application to vary intermittent sentence] so that a court that has imposed an intermittent sentence can change the times when the sentence must be served by adding a mechanism similar to that provided for in paragraph 732.2(3)(a) of the *Criminal Code* [Changes to probation order].

Carried: 29-0-0

CANADA

Canadian Bar Association (CBA)

CBA – 01

That the *Criminal Code* be amended to allow an accused to elect or re-elect as the case may be, to have a judge-alone trial for section 469 offences and that section 568 of the *Criminal Code* be amended to apply to elections and re-elections of judge-alone trials for section 469 offences.

Carried as amended: 17-4-6

CBA – 02

That Public Safety Canada review the *Corrections and Conditional Release Regulations* and its related directives to determine whether the vulnerability arising from the mental illness of offenders is being appropriately assessed in classifying inmates.

Carried as amended: 26-0-1

CBA – 03

That paragraph 487(1)(a) of the *Criminal Code* be reworded to clearly reflect the “reasonable grounds to believe” standard.

Carried: 24-2-2

CBA – 04

That Part XXIII of the *Criminal Code* be amended to introduce a principle of restraint in sentencing that recognizes the overrepresentation of vulnerable populations in addition to Indigenous people in the criminal justice system.

Withdrawn after discussion

CBA – 05 (Floor resolution)

A working group should be formed to review section 487 of the *Criminal Code* (information for search warrant) and examine how this investigative power should be modernized, taking into account new technologies, the *Canadian Charter of Rights and Freedoms* and relevant national and international developments. At the direction of the working group, it will report back to the Section with either an interim or final report at the next conference.

Carried: 28-0-1

Public Prosecution Service of Canada (PPSC)

PPSC – 01

That the *Criminal Code* be amended to allow a peace officer to remove a person serving a sentence of imprisonment or detained in pre-trial custody for the purpose of executing an arrest and carrying out the powers found in Part XVI of the *Criminal Code*.

Carried as amended: 19-4-4

PPSC – 02

That section 487.11 of the *Criminal Code* be amended to include subsection 492.1(2) (warrant for tracking device – individuals) and section 492.2 (transmission data recorder warrant), allowing the exercise of the powers described therein without a warrant under exigent circumstances.

Carried as amended: 24-0-4

REPORTS

Criminal Section Working Group Reports

Working Group on Telewarrants

BE IT RESOLVED THAT:

1. the status report of the telewarrant working group be accepted; and
2. the working group continue its work and report back to the Criminal Section at the 2019 meeting.

Carried: 29-0-0

Working Group on Section 490 of the Criminal Code

BE IT RESOLVED THAT:

1. the status report of the working group on section 490 of the *Criminal Code* be accepted; and
2. the working group continue its work and report back to the Criminal Section at the 2019 meeting.

Carried: 27-0-0

Working Group on Witness Confrontation and Section 9 of the Canada Evidence Act

THAT the report of the Working Group be accepted;

THAT the recommendations in the Report be approved;

THAT the Report be shared with the Civil Section of the Conference.

Carried: 27-0-1

Joint Working Group Reports

Working Group on Criminal Record Checks

THAT the report of the working group be accepted; and

THAT the Uniform Police Records Checks Act and commentaries be adopted and recommended to the jurisdictions for enactment, subject to the direction of the Conference.

Carried: 6 abstentions