

## **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>.

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August 8, 2018