

ULCC | CHLC

UNIFORM LAW CONFERENCE OF CANADA

**WORKING GROUP ON SECTIONS 278.1 – 278.94 OF THE *CRIMINAL CODE*
("RECORDS REGIME")**

STATUS REPORT

**Presented by
MELANIE WEBB**

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, may not have not been adopted by the Uniform Law Conference of Canada. They may not necessarily reflect the views of the Conference and its Delegates. Please consult the Resolutions on this topic as adopted by the Conference at the Annual meeting.

**Ottawa
Ontario
August 2024
Presented to the Criminal Section**

This document is a publication of
the Uniform Law Conference of Canada.
For more information, please contact
info@ulcc-chlc.ca

1. At the August 2023 Uniform Law Conference of Canada (“ULCC”), the Criminal Section adopted the following resolution:

“It is recommended that a working group be created to study the current Criminal Code “records regime” provisions (sections 278.1 to 278.94), with a view to making recommendations for amendments that would serve to simplify procedural issues, streamline the current regime, and provide for a more efficient process.”

2. The current members of the Criminal Section Working Group on Section 278.1 to 278.94 of the *Criminal Code* (“working group”) are:

- **Melanie Webb** – Co-Chair – Canadian Bar Association (Defence Counsel, Ontario)
- **David Parry** – Co-Chair – Canadian Bar Association (Crown, Ontario)
- **Janet Dickie** – Crown Counsel, Policy and Justice, B.C. Prosecution Service
- **Nadine Nesbitt** – Senior Counsel, Policy, Alberta Crown Prosecution Service
- **Kelly Kaip** – Senior Crown Prosecutor – Appeals (Saskatchewan)
- **Audrey Olson** – Senior Director, Legal and Policy, Ministry of Justice and Attorney General (Saskatchewan)
- **Hugo Caissy** – Bureau d’aide juridique de Rimouski (Defence Counsel/counsel for complainant, Quebec)
- **Anthony Cotnoir** – Directeur des poursuites criminelles et pénales (DPCP) (Quebec)
- **Emma Evans** – Ministry of the Attorney General (Ontario)
- **Aidan Seymour-Butler** – Defence Counsel (Ontario)
- **Cheryl Schurman** – Nova Scotia Public Prosecution Service
- **Carla Ball** – Nova Scotia Public Prosecution Service
- **Annie Piché** – General Counsel, Sexual Violence Team, Public Prosecution Service of Canada, Northwest Territories Regional Office
- **Morna Boyle** – Department of Justice, Criminal Law Policy Section
- **Anouk Desaulniers** – Juge, Cour du Québec
- **Eric Tolppanen** – Justice, Alberta Court of Justice, Canadian Association of Provincial Court Judges

3. The co-chairs have strived to maintain regional balance and representation from Crown, Defence and complainant’s counsel. There have been several changes to the composition of the working group, due to members having been appointed to the bench, stepping down due to other commitments, and other reasons. The co-chairs are actively seeking to increase the representation from complainant’s counsel, and are mindful of the importance of increasing diversity in the group.

4. The working group has met a total of eight times (once per month) since the resolution was passed in August 2023, and will meet again on June 4, 2024, before breaking for the summer.
5. The records regime as it currently stands is complicated, involving questions of production and admissibility of records in the possession of the Crown, the accused, and third parties.
6. Accordingly, the working group first sought to structure its task. The first two meetings were dedicated to a relatively free-form discussion of the working group's mandate and the members' initial thoughts regarding issues they encounter in their respective practices.
7. From this, the co-chairs engaged in a thematic analysis of this discussion. The themes were divided into substantive and procedural issues, and a schedule was then set, with each further meeting dedicated to a discussion of one or two of these issues.
8. The working group has so far considered amendments around the definition of a record and creating explicit statutory exemptions or "carve outs" for common types of records, simplification of the steps of the production and admissibility regimes, the role of procedural waivers, the role of complainant's counsel, notice periods and service requirements, and whether to add child exploitation offences to the ambit of the regime. The main topic that remains to be discussed is mid-trial applications.
9. The working group intends to take a summer break and then continue its work in the fall of 2024. The plan is for the co-chairs to begin drafting recommendations for proposed amendments to the *Criminal Code*, for discussion and refinement at meetings during the 2024-2025 term.
10. As such, the working group intends to have a final report for the 2025 Annual ULCC meeting.