

# REPORT OF THE FEDERAL JURISDICTIONAL REPRESENTATIVE

## Uniform Law Conference of Canada Criminal Section 2019

### 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 and to inform our legal and policy advice to the Minister of Justice and Attorney General of Canada. 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 during the 100<sup>th</sup> anniversary meeting at ULCC 2018 in Québec city, 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 2018-2019

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

FPT Attorneys General and Ministers Responsible for Justice and Public Safety (Ministers) 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 November 16, 2018 meeting in St. John's, Newfoundland and Labrador, Ministers discussed a number of issues of interest to the ULCC Criminal Section, including the modernization of the criminal justice system, the new legal frameworks for cannabis and impaired driving, Indigenous overrepresentation in criminal justice system and other priority issues.

Ministers held productive talks on the progress being made to make Canada's criminal justice system more fair, efficient and accessible. This included discussions on the status of criminal law reforms included in Bill C-75 (which received Royal Assent on June 21, 2019) which proposes reforms that seek to address delays in the system. Ministers expressed their general support for Bill C-75 and their commitment to continued collaboration, including to examine ways to improve the jury selection process in Canada. Some jurisdictions expressed the need for further consideration on mandatory minimum penalties and the *Identification of Criminals Act*. The need to fill new and existing judicial vacancies in a timely fashion was also raised, while progress that has already been made was mentioned.

Ministers discussed the role that restorative justice can play at all stages of the criminal justice system to help modernize the system and promote safer communities. The use of restorative justice encourages accountability of offenders to their communities and victims; supports better outcomes for victims; aims to interrupt the cycle of criminal behaviour; and provides opportunity for healing, repairing harm and reintegration. Ministers approved the *Principles and Guidelines for Restorative Justice Practice in Criminal Matters* and endorsed *Restorative Justice – Key Elements of Success*, which support accelerating the use of restorative justice. Ministers agreed to increase the use of restorative justice processes by a minimum target of 5% per jurisdiction, where possible, over the next 3 years. Jurisdictions noted the need for increased funding to support restorative justice.

Ministers were informed on and discussed the progress of firearm-related initiatives; approaches to combat gun and gang violence; Bill C-71, *An Act to amend certain Acts and Regulations in relation to firearms* (which received Royal Assent on June 21, 2019); and the federal government's public engagement on handguns and assault-style weapons. Jurisdictions with significant gun and gang violence raised the need for greater upfront investment to address this issue.

Ministers reconfirmed that the new legal frameworks for cannabis and impaired driving must be guided by the objectives of displacing organized crime, regulating access, and protecting the health and safety of all Canadians, particularly young people.

Ministers shared their views on the initial successes and challenges concerning the legalization and regulation of cannabis. Ministers agreed to continue to collaborate in this regard, in particular, keeping cannabis out of the hands of youth and profits away from organized crime.

Ministers also engaged in productive discussions regarding the new impaired driving legislation, including the importance of equipping police with the tools and training they need for drug impaired driving enforcement.

With respect to the overrepresentation of Indigenous people in the criminal justice system, both as victims and offenders, Ministers agreed the issue requires further collaboration. Specifically, Ministers agreed to establish a Pan-Canadian Strategy that accommodates jurisdictional and community differences by coordinating existing FPT activities and best practices. Areas of focus may include restorative justice; *Gladue* factors; bail and remand; as well as support for victims, particularly for youth, women and girls. Ministers acknowledged that there are factors involved

in overrepresentation that exist outside the criminal justice system and that there is a need to work in partnership with Indigenous peoples and stakeholders.

They also agreed to ask their officials to develop a similar strategy, for their consideration, to address other populations who are overrepresented in the criminal justice system. This strategy would also respect jurisdictional responsibilities and have appropriate links to the Pan-Canadian Strategy.

Ministers acknowledged the links between money laundering, commercial crime, and guns and gangs. Ministers agreed to consider how to work cooperatively to combat these growing areas of concern.

Ministers discussed the issue of administrative segregation, including former Bill C-83 (which received Royal Assent on June 21, 2019), which proposes to strengthen the federal correctional system, aligning it with the latest evidence and best practices by implementing a new correctional interventions model in federal institutions.

Ministers discussed issues of domestic and sexual violence, including current legislative measures proposed by Bill C-51 (which since received Royal Assent on December 13, 2018); and Bill C-75, which aim to strengthen the criminal justice system's response to sexual assault and intimate partner violence. Ministers also approved an FPT report on access to justice for adult victims of sexual assault. Ministers were informed about new federal funding for legal advice and outreach initiatives related to sexual harassment in the workplace.

Prior to their meeting, FPT Ministers engaged with representatives from the Assembly of First Nations and Native Women's Association of Canada. The discussions focused on key issues, notably initiatives to combat gun and gang violence; firearm issues; the overrepresentation of Indigenous people in the criminal justice system as victims and offenders; restorative justice; 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 December 2018, meeting in Toronto and at their April 2019 meeting in Montréal, 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

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 past five years (2014-2018), the Criminal Section considered 140 resolutions. Of these, 20 were withdrawn, and three were defeated. 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*

More than seventeen ULCC resolutions dealing with bail (**QC2001-06, Can-CBA-2012-01, BC2010-03, Can-CBA2015-02, BC2016-04, SK2016-01**), juries (**Can-CBA2011-03**), reclassification of offences, intimate partner violence, remote appearances (**NB2017-01**), judicial signatures (**BC2007-04**), re-election of the mode of trial (**CCCDL2008-02, AB2011-01, Can-CBA1997-03**), out-of-province warrants (see the recommendations made in the August 2016 report of the **ULCC Working Group on “Endorsement of Search Warrants, Orders and Authorizations in the Criminal Code and the Controlled Drugs and Substances Act”**), and youth justice (**BC2016-02** and **MB2013-01**) were taken into account in the development of former Bill C-75, which received Royal Assent on June 21, 2019. The Bill addressed a number of issues including: modernizing and clarifying bail provisions; providing an enhanced approach to administration of justice offences, including for youth; abolishing peremptory challenges of jurors and modifying the process of challenging a juror for cause and of judicial stand-by; restricting the availability of preliminary inquiries; streamlining the classification of offences; expanding judicial case management powers; and, enhancing measures to better respond to intimate partner violence.

Former Bill C-51, *An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act*, which received Royal Assent on December 13, 2018, also contains a number of past resolutions made by ULCC, including **ON2003-01, AB2005-03** and **QC2001-05** that called for subsection 145(3) of the *Criminal Code* to be amended to include violation of an order made under subsection 516(2).

Former Bill C-84, *An Act to amend the Criminal Code (bestiality and animal fighting)*, which came into force on June 21, 2019, followed up on resolution **MB2017-01** that requested Justice Canada, in consultation with the provinces and territories, to review the Supreme Court of Canada's decision of *R v DLW*, 2016 SCC 22 and examine whether the *Criminal Code* should be amended to criminalize any direct or indirect contact with an animal for a sexual purpose. It also took into account **BC2017-03** that requested that section 160 (Bestiality) of the *Criminal Code* be amended to include a definition for bestiality, this being that "bestiality" includes any direct or indirect contact with an animal for a sexual purpose.

With respect to resolution **SK2014-02** (election of adult sentence), Part 8 of *An Act Respecting National Security Matters*, which received Royal Assent on June 21, 2019, amends 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*".

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 *Act* also took into account **NS2003-02** as it amended subsections 486.3 (1) to (4.1) regarding when an accused cannot cross-examine a witness when he is self-represented.

Finally, the coming into force the *Anti-Terrorism Act 2015*, S.C. 2015, c. 20, addressed the issue raised in resolution **MB2014-01 A**) which recommended that the *Criminal Code* be amended to allow the interjurisdictional transfer and enforcement of orders under sections 810, 810.01, 810.1, and 810.2 (sureties to keep the peace).

### ***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 2018-2019**

Three (3) Justice-led and three (3) Justice co-led Government bills received Royal Assent.

During the same period, the Minister of Justice was leading the Government's response to Private members business: seven (7) Private Members' Bills; five (5) Senate Public Bills; and one (1) Private Member's Motion.

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

#### **Justice led Bills that received Royal Assent**

##### **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***

The Act 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 Code relating to sexual assault in order to clarify their application and to provide a procedure applicable to the admissibility and use of a complainant's record when in the possession of the accused.

It 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 received Royal Assent on December 13, 2018.

##### **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***

The Act 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 a term of 14 years or more 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) re-enact the victim surcharge regime and provide the court with the discretion to waive a victim surcharge if the court is satisfied that the victim surcharge would cause the offender undue hardship or would be disproportionate to the gravity of the offence or the degree of responsibility of the offender; 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.

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.

The Bill received Royal Assent on June 21, 2019.

### **3) Bill C-84, *An Act to amend the Criminal Code (bestiality and animal fighting)***

The Act amends the *Criminal Code* to:

- (a) define “bestiality”;
- (b) expand the scope of the offence of encouraging, aiding or assisting at the fighting or baiting of animals or birds so that the offence
  - (i) includes promoting, arranging, receiving money for or taking part in the fighting or baiting of animals or birds, and
  - (ii) also applies with respect to the training, transporting or breeding of animals or birds for fighting or baiting; and
- (c) expand the scope of the offence of building, making, maintaining or keeping a cockpit so that the offence applies with respect to any arena for animal fighting.

The Bill received Royal Assent on June 21, 2019.

### **Other Government Department led Bills of interest**

#### **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 Royal Assent on June 21, 2019.

## **2) 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 Bill received Royal Assent on June 21, 2019.

**3) Bill C-97, *An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures***

Subdivision B of Division 2 of Part 4 amends the *Criminal Code* to add the element of recklessness to the offence of laundering proceeds of crime.

The Bill received Royal Assent on June 21, 2019.

**Other Government Bills of interest**

**1) Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act***

The Bill amends the *Corrections and Conditional Release Act* to, among other things,

- (a) eliminate the use of administrative segregation and disciplinary segregation;
- (b) authorize the Commissioner to designate a penitentiary or an area in a penitentiary as a structured intervention unit for the confinement of inmates who cannot be maintained in the mainstream inmate population for security or other reasons;
- (c) provide less invasive alternatives to physical body cavity searches;
- (d) affirm that the Correctional Service of Canada has the obligation to support the autonomy and clinical independence of registered health care professionals;
- (e) provide that the Correctional Service of Canada has the obligation to provide inmates with access to patient advocacy services;
- (f) provide that the Correctional Service of Canada has an obligation to consider systemic and background factors unique to Indigenous offenders in all decision-making; and
- (g) improve victims' access to audio recordings of parole hearings.

This enactment also amends the English version of a provision of the *Criminal Records Act*.

The Bill received Royal Assent on June 21, 2019.

**2) Bill C-93, *An Act to provide no-cost, expedited record suspensions for simple possession of cannabis***

The Bill amends the *Criminal Records Act* to, among other things, allow persons who have been convicted under the *Controlled Drugs and Substances Act*, the *Narcotic Control Act* and the *National Defence Act* only of simple possession of cannabis offences committed before October 17, 2018 to apply for a record suspension without being subject to the period required

by the *Criminal Records Act* for other offences or to the fee that is otherwise payable in applying for a suspension.

The Bill received Royal Assent on June 21, 2019.

**Private Members Bills - Justice lead**

**1) Bill C-206, *An Act to amend the Criminal Code (abuse of vulnerable persons)***

The Bill amends paragraph 718.2(a) of the *Criminal Code* to specify that the physical, emotional, sexual or financial abuse of a person over the age of 65 or of a person 18 years of age or older who depends on others for their care because of a mental or physical disability is to be considered an aggravating circumstance for sentencing purposes.

The Bill was at Second Reading in the House of Commons on June 4, 2019.

**2) Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples***

The Bill requires the Government of Canada to take all measures necessary to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples.

The Standing Senate Committee on Aboriginal Peoples had studied the Bill and reported it to the Senate on June 11, 2019.

**3) Bill C-266, *An Act to amend the Criminal Code (increasing parole ineligibility)***

The Bill amends the *Criminal Code* to provide that a person convicted of the abduction, sexual assault and murder of the same victim in respect of the same event or series of events is to be sentenced to imprisonment for life without eligibility for parole until the person has served a sentence of between twenty-five and forty years as determined by the presiding judge after considering the recommendation, if any, of the jury.

The House of Commons Standing Committee on Justice and Human Rights had studied the Bill and reported it to the House without amendments as of June 18, 2019.

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

Bill C-337 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 Standing Senate Committee on Legal and Constitutional Affairs had studied the Bill and reported it to the Senate with amendments on June 5, 2019.

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

The Bill amends the *Criminal Code* to require that a presentence report contain information on any aspect of the offender's mental condition that is relevant for sentencing purposes.

The Bill was at Second reading in the Senate on April 30, 2019.

**6) Bill C-417, *An Act to amend the Criminal Code (disclosure of information by jurors)***

The Bill amends the *Criminal Code* to provide that the prohibition against the disclosure of information relating to jury proceedings does not, in certain circumstances, apply in respect of disclosure by jurors to health care professionals.

The Bill was at First Reading in the Senate on April 30, 2019.

**7) Bill C-418, *An Act to amend the Criminal Code (medical assistance in dying)***

The Bill amends the *Criminal Code* to make it an offence to intimidate a medical practitioner, nurse practitioner, pharmacist or any other health care professional for the purpose of compelling them to take part, directly or indirectly, in the provision of medical assistance in dying.

It also makes it an offence to dismiss from employment or to refuse to employ a medical practitioner, nurse practitioner, pharmacist or any other health care professional for the reason only that they refuse to take part, directly or indirectly, in the provision of medical assistance in dying.

The Bill was at Second Reading in the House of Commons on May 5, 2019.

**Senate Public Bills – Justice Lead**

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

The Bill removes the justification in the *Criminal Code* available to schoolteachers, parents and persons standing in the place of parents of using force as a means of correction toward a pupil or child under their care.

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

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

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

The Bill 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 was at Third Reading Debate in the Senate on June 19, 2019.

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

The Bill 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 Bill had been passed with amendments by the Senate and was amended by the House of Commons. A Message from the House of Commons was being considered by the Senate on May 14, 2019.

**4) Bill S-250, *An Act to amend the Criminal Code (interception of private communications)***

The Bill amends the *Criminal Code* to include, for interception of private communications purposes, the offence of prohibited insider trading in the definition of offence in section 183.

The Bill was at Second Reading debate in the Senate on May 14, 2019.

**5) Bill S-251, *An Act to amend the Criminal Code (independence of the judiciary) and to make related amendments***

The Bill amends the *Criminal Code* to give a court the discretion to vary the punishment to be imposed in respect of an offence for which the punishment or different degrees or kinds of punishment is prescribed in an enactment.

It allows a court to decide to not make a mandatory prohibition order provided for under a provision of that Act, or to add conditions or vary any of the conditions set out in that provision, if the court considers it just and reasonable to do so. It requires the court to provide its reasons for making such a decision.

It requires a court to consider all available options prior to imposing a minimum punishment of imprisonment or period of parole ineligibility under a provision of that Act, and to provide written reasons for imposing a minimum punishment of imprisonment or period of parole ineligibility.

It gives a court discretion in the treatment or counselling program that a person who has been found guilty of an offence may attend and removes the requirement for the Attorney General to give his or her consent in order to delay sentencing under subsection 720(2) of that Act.

It further provides that a court may order the payment of a victim surcharge in an amount lower than that set out in subsection 737(2) of that Act or order that no victim surcharge be imposed if the court considers it appropriate in the circumstances and is satisfied that the amount set out in that subsection cannot be paid. It requires the court to provide its reasons for making such an order.

It provides that a judge is to take into consideration the recommendation of the jury in setting the period of parole ineligibility of a person who has been found guilty of first or second degree murder.

Lastly, it makes related amendments.

The Bill was referred to the Standing Senate Committee on Legal and Constitutional Affairs on November 27, 2018.

### **Private Members' Motion**

#### **1) M-203, *Fraud activities against the seniors community***

That, in the opinion of the House, the government should:

- (a) recognize the disproportionate effect of fraud activities against the seniors community across Canada;
- (b) coordinate a national response to fraud activities to ensure that seniors and other vulnerable groups have the resources they need to understand the signs of fraud;
- (c) establish tangible recourses for victims of fraud; and
- (d) work with local law enforcement agencies and the Canada Revenue Agency to introduce legislation to combat fraudulent attacks targeting vulnerable seniors.

The Motion was adopted by the House of Commons on May 14, 2019.

### **Private Member's Business - Defeated**

#### **1) Bill C-331, *An Act to amend the Federal Courts Act (international promotion and protection of human rights)***

The Bill amends the *Federal Courts Act* to provide for the jurisdiction of the Federal Court over civil claims brought by non-Canadians in respect of alleged violations outside Canada of international law or a treaty to which Canada is party.

The Bill was defeated at Second Reading in the House of Commons on June 19, 2019.

**2) Bill C-415, *An Act to establish a procedure for expunging certain cannabis-related convictions***

The Bill established a procedure for expunging certain cannabis-related convictions and provides for the destruction or removal of the judicial records of those convictions that are in federal repositories and systems.

The Bill was defeated at Second Reading in the House of Commons on May 1, 2019.

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

The Bill would have amended the *Criminal Code* to require a court, when imposing a sentence for certain violent offences, to consider the fact that the victim is an Aboriginal woman to be an aggravating circumstance.

The Bill was defeated at Second Reading in the House of Commons on April 10, 2019.

## **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. Delegates are encouraged to follow the progress of criminal law reforms by consulting the Parliament of Canada website, LEGISinfo at: <http://www.parl.gc.ca>.

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August 8, 2019