

2021 Minutes of the Annual Meeting

UNIFORM LAW CONFERENCE OF CANADA

MINUTES OF THE CRIMINAL SECTION

Prepared by
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Secretary, Criminal Section
Virtual, via Zoom
August 2021

ATTENDANCE

[1] For the second consecutive year, the Uniform Law Conference (ULCC) held a virtual annual meeting via Zoom, as a result of the global pandemic. Forty-four (44) delegates from 11 provincial, territorial and federal jurisdictions participated in the deliberations of the ULCC Criminal Section. The Northwest Territories, Nunavut and Prince Edward Island were not represented.

[2] Delegates included policy counsel, Crown prosecutors, defence counsel, academics, as well as representatives of the Association québécoise des avocats.es de la défense (AQAAD), the Barreau du Québec, the Canadian Bar Association (CBA), the Canadian Council of Criminal Defence Lawyers (CCCDL), the Criminal Defence Advocacy Society (CDAS), the Criminal Defense Lawyers Association of Manitoba, the Indigenous Bar Association, the Saskatoon Criminal Defense Lawyers' Association, as well as members of the judiciary representing the Canadian Association of Provincial Court Judges (CAPCJ), the Canadian Council of Chief Judges (CCCJ) and the Cour du Québec.

OPENING

[3] The Criminal Section convened to order on Monday, August 23, 2021. Chloé Rousselle (Counsel, Justice Canada) presided as Chair. Dorette Pollard (Counsel, Justice Canada) acted as Secretary and Caroline Quesnel (Counsel, Justice Canada) facilitated amendments to resolutions.

[4] The Chair welcomed delegates and continued by acknowledging that as the meeting was being held virtually, many were gathered in different traditional ancestral territories. For her part, the Chair acknowledged that she was appearing from the traditional Algonquin Anishinaabe territory.

[5] In addition, the Chair noted that given that this year marked the first time the Criminal Section would deal with resolutions in a virtual format, there was a perpetual planning process to ensure that resolutions will be dealt with in a fulsome manner in the collegial tradition of in-person meetings. This virtual approach is exceptional and the Chair took the occasion to thank the Steering Committee for its efforts and support in planning the meeting.

[6] Following several introductory housekeeping remarks, the Chair recognized the technical assistants and the interpreters. The Chair also thanked Dorette Pollard and Caroline Quesnel for their invaluable assistance, before inviting Jurisdictional Representatives (JRs) to present the members of their delegation, including observers. The list of delegates is available on the ULCC website: [Annual Meetings](#).

PROCEEDINGS

Report of the Senior Federal Delegate¹

[7] Lucie Angers, General Counsel and Director of External Relations for the Criminal Law Policy Section, Justice Canada, presented and tabled the Report of the Federal Jurisdictional Representative. Ms. Angers regretted that this would be her last such report, prior to her retirement early next year.

Earl Fruchtman Memorial Seminar

[8] On Thursday, August 26, 2021, Ms. Kathleen Roussel, Director of Public Prosecutions and Deputy Attorney General of Canada delivered opening remarks on the topic entitled, “Racism and Systemic Discrimination in the Criminal Justice System”. This was immediately followed by a question and answer period, moderated by Mr. Matthew Hinshaw, Deputy Chief Prosecutor – Policy, Alberta Crown Prosecution Service. Ms. Roussel made personal observations about the shortcomings in the criminal justice system and the role of the prosecutor in addressing racism and systemic discrimination. She noted the high rates of incarceration and over representation of Indigenous people, Black members of our communities across the country, as well as others who are marginalized, due to the opioid crisis.

[9] These opening remarks generated several questions and comments from attendees in relation to the treatment of victims, sentencing, including consideration of non-custodial options and indigenous approaches to crime and punishment. Reference was also made to the recent decision of the Nova Scotia Court of Appeal in [R. v. Anderson](#),² which addresses similar issues and in particular, the use of Impact of Race and Culture Assessments (IRCAs) in sentencing African Nova Scotian offenders.

[10] Members of the Civil Section and a number of observers expressed interest in attending the 2021 Earl Fruchtman Memorial Seminar to hear Ms. Roussel speak on this important and pressing issue that exists in the criminal justice system across all jurisdictions in Canada.³

Joint Civil and Criminal Section Social Event

¹This document is attached to these Minutes as Annex 1. It also appears as a separate document on the ULCC website: [Reports of the Federal Jurisdictional Representative](#).

² *R. v. Anderson*, 2021 NSCA 62.

³ A record 84 people attended the *Earl Fruchtman Memorial Seminar*: 27 representatives from the Civil Section, 42 from the Criminal Section and 15 observers. This record attendance almost doubled the daily average attendance at the 2021 ULCC Criminal Section Virtual Meeting of 44 participants.

[11] In keeping with the in-person tradition of the East-West baseball rivalry, a planning committee⁴ created a joint social event in the form of a trivia game testing participants' knowledge of ULCC, Baseball and Canadiana. The virtual baseball was moderated ably in bilingual format by Lucie Angers, with Zoom assistance from Caroline Quesnel.

[12] Represented by Susan MacKay (NS), Nicolas Le Grand Alary (QC), Mark Knox (NS), Cathy Cooper (ON), and Laurence Bergeron (QC), the East eked out a win on the final question to become champions of the ULCC 2021 Virtual Baseball. The West was very well represented by Kevin Westell (BC), Chris Samuel (AB), Craig Savage (MB), Kathryn Sabo (MB) and Ian Rennie (NWT).

Resolutions⁵

[13] The order in which resolutions are considered is set out in the [Rules of Procedure of the Criminal Section \(Rules\)](#). In accordance with the *Rules*,⁶ Québec was the first province to present its resolutions this year followed by the other jurisdictions, in alphabetical order (in English), and finally by the Canada delegation (CA).⁷ Mindful of the limited time inherent in conducting a virtual meeting and motivated by a desire to foster diversity, the Steering Committee kept the interpretation adopted in 2019, as to allow as many jurisdictions to present as many resolutions as possible. In other words, instead of Quebec presenting its three (3) resolutions all at once, it presented its second resolution only after each jurisdiction had presented its first resolution. This first round was followed by three successive rounds, during which all the resolutions were considered.

[14] The jurisdictions initially submitted twenty-five (25) resolutions for consideration. Of these, one resolution was retracted because it did not adhere to the 5-year *Rule*.⁸ Delegates therefore considered a total of twenty-four (24) resolutions, three (3) of which consisted of two separate parts. As a result, there were twenty-seven (27) resolutions. Of these, six (6) resolutions were carried without amendment, three (3) of which were unanimous. Sixteen (16) resolutions were carried as amended. Four (4) resolutions were withdrawn, three (3) following thorough discussion, including one resolution that was withdrawn after suggested amendment. Finally, one resolution was withdrawn without discussion because it was similar to another resolution. Only one resolution was defeated, garnering 14 votes in favour, 14 against and 3 abstentions.⁹

⁴ Members of the planning committee: Lucie Angers, Normand Wong, Caroline Quesnel, Chloé Rousselle, Dorette Pollard, Caroline Guilbert, Sarah Dafoe, Valérie Simard, Kathleen Cunningham and Christian Delaquis. Special thanks to Anny Bernier for her excellent ideas and contribution to the content and spirit of the trivia game.

⁵ The resolutions presented at ULCC Criminal Section in 2021 are attached as Annex 2. They are also available on the ULCC website: [Recommendations](#).

⁶ *Rule 4(3)(a)*.

⁷ The Canada Delegation is composed of Counsel from the Department of Justice Canada (Justice Canada) and entities that are not associated with Justice Canada, including the CAPCJ, the CCCJ, the CBA, the CCCDL, the PPSC and the Université de Montréal. Resolutions submitted by these entities were considered in alphabetical order.

⁸ *Rule 4(1)(d)*: "A resolution that has been considered by the Criminal Section within the past five years shall not be submitted for consideration without leave of the Chair."

⁹ Subsection 32(4) of the ULCC [By-Laws states](#), "The result of any vote shall be determined by a majority of the votes cast."

Criminal Section Working Groups

[15] Three (3) Working Groups provided reports at ULCC 2021:

1. Final Report of the Working Group Examining the Scope of the Mandate of the Criminal Section

[16] The Working Group Examining the Scope of the Mandate of the Criminal Section presented its Final Report about the scope of the mandate of the Criminal Section. Chair of the Working Group, Chloé Rousselle thanked the members of the Working Group: Lee Kirkpatrick; Samantha Hulme; Kevin Westell; Tony Paisano; Matthew Hinshaw; Craig Savage; Catherine Cooper; Laura Pitcairn; Lucie Angers; Stéphanie O'Connor; Caroline Quesnel; Normand Wong and Anne Marie Boisvert who met several times remotely since the Status Report presented at the 2020 ULCC meeting.

[17] The Working Group proposes three recommendations. First, it is recommended that the mandate procedure and the decision-making grid, contained in the Annex to the Final Report, be incorporated as an Appendix, into the *Criminal Section Rules of Procedure* with consequential amendments if any. This procedure and grid acknowledge that the Mandate of the Criminal Section cannot be defined with precision. The decision-making grid is multifactorial and aims to help the people including the Secretary, the Chair and the Steering Committee who have to make the decisions about whether a resolution falls within the Mandate of the Criminal Section. It is hoped also that the grid will be useful to delegates and those who submit resolutions to avoid debates like the ones that took place in 2019 leading to the creation of the Working Group.

[18] Second, the Working Group's Final Report recommends that the appointment of Members-at-large to the Steering committee, while it is at the discretion of the Chair, should be inclusive to reflect the diversity of expertise and experience of the ULCC Criminal Section. The third recommendation seeks to correct any discrepancies between the French and English versions of the ULCC [Constitution](#) that may create ambiguity, and particularly with respect to the mandate of the Criminal Section. The Working Group noted a difference between the English and French versions of the Constitution's Statement of Purpose. The French version indicates that the criminal section deals with legal and operational issues "that might benefit from reform", while the English text speaks more precisely of legislative reform.

[19] Immediate past Chair, Joanne Klineberg moderated the discussion, which included comments of appreciation from two delegates. Special appreciation was also expressed by the JR for Ontario, Cathy Cooper to the Chair of the Working Group for her leadership, which was conducted with real resolve, utmost fairness, great precision, and orderliness. Following these expressions of sincere appreciation, the Criminal Section voted unanimously to accept the Working Group's Final Report and to approve the recommendations contained therein (31-0-0). After the vote, Chloé Rousselle noted that the French version of the report would be amended slightly to correct some typos before it is published on the ULCC website.

[20] Joanne Klineberg relinquished her role as interim Chair and Chloé Rousselle resumed her function as Chair.

2. Status Report of the Working Group on Section 490 of the *Criminal Code*

[21] The Chair of the Working Group on Section 490 of the *Criminal Code*, Manon Lapointe (General Counsel, Public Prosecution Service of Canada), presented a status report on the group's work relating to the detention of seized property regime. She provided a brief recap of its consultations in Phase I of its work ([Status Report 2018](#)) and Phase II ([Status Report 2019](#)) looking at the criminal policies that led to this regime. She noted that Stéphanie O'Connor, Counsel, Justice Canada and member of the Working Group studied the history of the section and concluded that very little research has been done of the section. Currently in Phase III,¹⁰ the Working Group will be making recommendations with a view to amending section 490 the *Criminal Code*. The goal is not only to identify problems but also to recommend solutions in three distinct areas:

1. What happens between the execution of the warrant and the tabling of or rather, the laying of charges?
2. What happens between the laying of charges and the trial, including the trial?
3. What happens after the trial?

[22] It was further noted that the review of this section is a complex project, as this provision deals with many aspects of criminal law. Of note, section 490 is linked to other provisions, such as section 487 of the *Criminal Code*, which is under review by a ULCC Working Group. During the past year, the Working Group also communicated with Working Groups of the Coordinating Committee of Senior Officials - Criminal Justice (CCSO). As well, the Working Group created a list of precedents under section 490 and it is hoped that this list will be useful to practitioners in this area of the criminal law. It is anticipated that the Working Group will present a detailed final report with recommendations at ULCC 2022. Participants were invited to contact Ms. Lapointe should they have any suggestions or precedents on section 490 of the *Criminal Code*.

[23] Before responding to questions and comments, Ms. Lapointe thanked members of the Working Group for their work and interventions over the past year. Members include Nadine Nesbitt (Department of Justice of Alberta); Nicholas Reithmeier (Department of Justice of British Columbia); Melissa Adams, (Attorney General of Ontario); Adam Weisberg (Criminal Defence Lawyers Association, Ontario); Michael McEachren (PPSC); Martine Sallaberry, Edmonton Police Service, Legal Advisors' Section; Michel Green, Prosecutor, Directeur des poursuites criminelles et pénales; and Stéphanie O'Connor, Paul Saint Denis and Normand Wong of Justice Canada.

[24] Questions and comments ranged from the seizure of live animals in the context of the prevention of cruelty of animals¹¹ and ongoing litigation in British Columbia.

[25] After discussion, there was a unanimous vote (29-0-0) on the following resolution:

Be it resolved that:

1. the Status Report of the Working Group on Section 490 of the *Criminal Code* be accepted; and

¹⁰ See Working Group on section 490 of the *Criminal Code* [Status Report 2020](#).

¹¹ Live animals are not contemplated in the current regime under section 490 of the *Criminal Code*, which is an issue of concern addressed by the Working Group.

2. the Working Group continue its work and report back to the Criminal Section at the 2022 annual meeting.

3. Status Report of the Working Group on the review of section 487 of the *Criminal Code*

[26] On behalf of the Chair, Normand Wong, Justice Canada, the Federal Jurisdictional Representative, Lucie Angers presented the status report of the Working Group on the review of section 487 of the *Criminal Code*. While the Working Group has met several times since its creation in 2018, unfortunately the Chair was unable to convene a meeting this past year, as planned. In the interim, the Chair has collected all relevant information consisting of a 90-page document, which is anticipated to form the basis of the final report to be presented at the next ULCC Criminal Section meeting in 2022. For ease of reference, the Working Group was created to explore options to modernize section 487 of the *Criminal Code*, which has several elements that are incompatible with other provisions of the *Code* in relation to the section. Further, there have been a number of cases on section 487 and efforts to modernize this section will be informed by this body of the common law, particularly in the areas of search warrants issued to search premises, transportation, computers and persons.

[27] Ms. Angers thanked the members of the Working Group: Normand Wong, Stéphanie O'Connor, Glen Boyd, Kenyatta Hawthorne and Karen Audcent (all from Justice Canada), Nadine Nesbitt (Alberta), Paul Pearson (British Columbia), Karen Lee (New Brunswick), Matt Asma (Ontario), Nicolas Abran (Quebec), Kevin Westell (Criminal Defence Advocacy Society), and Adam Weisberg (Criminal Defence Lawyers Association, Ontario).

[28] There was no discussion on the interim report and the following resolution was adopted unanimously (29-0-0):

Be it resolved that:

1. the Status Report of the ULCC Criminal Section Working Group on the review of section 487 of the *Criminal Code* be accepted; and
2. the Working Group continue its work and report back to the ULCC Criminal Section at the 2022 annual meeting.

[29] Two (2) new Working Groups were established following consideration of resolutions at the 2021 Criminal Section meeting:

1. Working Group to consider the use of technology in criminal matters

[30] It was decided following amendment and discussion of Resolution Can-CCCDL2021-01 to create a Working Group to consider the use of technology in criminal matters, as follows:

Can-CCCDL2021-01:

Appreciating that Can-CAPCJ2021-01 has passed (“Alternative Modes of Appearance for the Accused”), the ULCC Criminal Section establish a Working Group for the purposes of making recommendations in relation to possible *Criminal Code* amendments pertaining to the use of technology in criminal matters, bearing in mind the impact of the pandemic on the criminal justice system. Carried as amended: 18-0-9

[31] The Working Group is expected to report to the Criminal Section with either an interim or final report at the 2022 meeting of the ULCC. The following delegates who were present at the meeting expressed interest in joining the Working Group, or having a member of their organisation join: Shannon Davis-Ermuth (CA), Lisa Stead (NL), and Andrew Davis (SK). It was noted that members of the defence bar and other jurisdictions might wish to join the Working Group at a later date.¹² Mark Knox (CCCDL), who presented the resolution, mentioned he would act as chair of this Working Group.

2. Working Group to review section 672.26 (and related sections) of the Criminal Code (Trier of Issue of Fitness to Stand Trial)

[32] Following discussion and amendment of Resolution ON2021-03, the Criminal Section voted unanimously to create a Working Group as follows:

ON2021-03:

It is recommended that the Criminal Section of the ULCC strike a Working Group to review section 672.26 (and related sections) of the *Criminal Code* for possible legislative reform as to how the issue of fitness should be tried when an accused person has elected trial by judge and jury. Carried as amended: 29-0-0

[33] The following delegates who were present at the meeting expressed interest in joining the Working Group (or an expert from their organisation or jurisdiction): Patrick McGuinty (NB), Craig Savage (MB), Anthony Cotnoir (QC), Anny Bernier (QC), Chris Samuel (CBA), Lee Kirkpatrick (YK) or David McKinney (YK), Mark Knox (CCCDL) and Matthew Hinshaw (AB). In addition, Lucie Angers indicated that Joanna Wells, (Counsel, Justice Canada and Co-Chair of a CCSO Working Group) would be pleased to co-chair the Working Group.¹³ Members of the defence bar and other jurisdictions may wish to join the Working Group at a later.¹⁴ Rebecca Law (ON), who presented the resolution, expressed a desire to chair or co-chair the Working Group.

[34] Finally, the Working Group is expected to report to the Criminal Section with either an interim or final report at the 2022 meeting of the ULCC.

CLOSING

[35] In her closing remarks, the Chair reviewed the accomplishments of the 5-day meeting with delegates and observers from many different jurisdictions. Delegates considered the report of the Federal Jurisdictional Representative, which will form part of the Minutes of the meeting. In addition, delegates received three Working Group reports and created two new Working Groups

¹² Following the meeting, Alicia Adams, JR for British Columbia wrote to confirm that the BC Prosecution Service's Director of Legal Operations, Paul Sandhu (Paul.Sandhu@gov.bc.ca) would be willing to participate in the CCCDL2021-01 Working Group. Other interested participants are encouraged to contact Mark Knox (mark.knox@knoxlaw.ca), with copy to Kevin Westell, 2022 ULCC Chair, Criminal Section (kbw@penderlitigation.com) and the Secretary, Dorette Pollard (Dorette.pollard@justice.gc.ca).

¹³ Following the meeting, it was noted that unlike CCSO, ULCC Working Groups do not have co-chairs. Joanna Wells has graciously offered to serve as a mentor to Rebecca Law in her new role as Chair of the Working Group.

¹⁴ For individuals wishing to participate in this Working Group, please contact Rebecca Law (rebecca.law@ontario.ca), with copy to Kevin Westell, (kbw@penderlitigation.com) and Dorette Pollard (Dorette.pollard@justice.gc.ca).

based on the resolutions, all 24 of which (27 considering that three (3) consisted of two separate parts) were addressed. Some resolutions dealt with extremely complex criminal law issues, several were amended, a few were withdrawn and only one was defeated. The Chair noted that it was quite a challenge and given these very impressive results, she wanted to point out that there was colossal work done to prepare the meeting throughout the year.

[36] The Chair thanked all those who planned and organized the meeting, as well as the Working Groups. She thanked the interpreters, as well as ULCC Executive Directors Kathleen Cunningham (interim) and Christian Delaquis (incoming). A special expression of appreciation was made to members of the Steering Committee: Lucie Angers; Anny Bernier; Matthew Hinshaw; Joanne Klineberg; Denise Lighting; Laura Pitcairn; Dorette Pollard / Caroline Quesnel and Kevin Westell, Chair of the 2022 ULCC Criminal Section.

[37] The Chair paid tribute to Lucie Anger and Joanne Klineberg for their contributions to ULCC and invited delegates and observers to send messages to both as they retire this year.

Annex 1 to the 2021 Criminal Section Minutes

REPORT OF THE SENIOR FEDERAL DELEGATE

UNIFORM LAW CONFERENCE OF CANADA

Criminal Section 2021

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 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.

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 2020-2021

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 December 17, 2020 meeting, Ministers discussed the impacts of the COVID-19 pandemic on Canada's justice system. They resumed ongoing discussion on justice system recovery and the restoration of court operations. They committed to continue to collaborate by sharing practices put in place within their respective jurisdictions federally, provincially and territorially to support Canada's courts as they adapt and restore operations in response to the COVID-19 pandemic. Ministers were updated on the work being undertaken in this regard through the Action Committee on Court Operations in Response to COVID-19. They agreed to work together on the challenges and concerns regarding the delivery of court services to northern, remote and Indigenous communities. Ministers also discussed principles that should be reflected in actions taken by different orders of government in response to the challenges and concerns identified. They shared experiences and ideas for modernizing the justice system, including using technology, and other measures to address challenges that have been created or exacerbated by COVID-19.

Ministers recognized the continuing challenges and financial pressures that each jurisdiction faces in delivering legal aid services, especially in light of COVID-19. They also discussed the need for increased funding for legal aid and agreed to continue to monitor the impact of the pandemic on the delivery of legal aid services. They also committed to collaborate to better legal aid services.

Ministers shared actions taken and lessons learned to prevent, reduce and address the spread of COVID-19 in correctional facilities. They discussed what information has been valuable in making operational and policy decisions. They also agreed to continue to share next steps in their COVID-19 response and restoring correctional service operations focusing on how population density is adequately managed.

Ministers acknowledged the realities of bias and racism in the justice system and the importance of further work to address these very serious issues. Ministers agreed to share ideas for initiatives and reforms to address these issues, including systemic racism in the justice and public safety sector. Some ministers also underscored the importance of disaggregated data collection efforts to better inform the development of responses to systemic racism in the justice system.

Ministers were updated on federal firearms-related initiatives, including funding to support youth-at-risk and combat gun and gang violence, and engagement with partners on handguns. They were also provided with an update on the rural crime initiative, and provided their support for the continued development of a pan-Canadian strategic framework on rural crime.

Ministers also discussed Indigenous policing issues, including funding and the intention of the federal government to introduce legislation that would recognize Indigenous policing as an essential service. Ministers agreed to continue to work on these issues. They also emphasized that ongoing supports are necessary to launch and sustain community-led public safety initiatives that build capacity and allow for culturally and community relevant solutions.

Ministers shared views regarding body-worn cameras for police officers, which can help respond to calls for increased transparency and accountability, as well as concerns over bias and racism. The federal government gave an update on its plans for implementing the use of such cameras across the RCMP, which provides policing services in many parts of the country. Other ministers provided updates on body-worn cameras in their jurisdictions. Discussions also included matters related to implementation and ongoing cost.

Federal Ministers updated their provincial and territorial colleagues on the recent federal Fall Economic Statement, which outlines important investments to support key justice and public safety priorities.

Prior to their meeting, FPT Ministers engaged with representatives from the Assembly of First Nations, Inuit Tapiriit Kanatami, the Métis National Council, as well as the Native Women's Association of Canada. Discussions focused on three key issues: policing in Indigenous communities, countering bias and racism in the justice system, and progress towards a National Action Plan on Missing and Murdered Indigenous Women, Girls, Two-Spirit and LGBTQIA people. The issue of legislative initiatives to implement the United Nations Declaration for the Recognition on the Rights of Indigenous Peoples was also raised.

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.

Since the last ULCC meeting in August 2020, CCSO held a number of virtual meetings to discuss issues of common interest, including the need for all CCSO working groups 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 (<https://www.ulcc-chlc.ca/>).

During the past five years (2016-2020), the Criminal Section considered 110 resolutions. Of these, 12 were withdrawn after discussion, and one was defeated. Exceptionally in 2020, the first year in which the ULCC held a virtual meeting because of physical distancing requirements to ensure participants' safety in light of the COVID-19 pandemic, no resolutions were considered by the Criminal Section of the ULCC. Furthermore, in 2016, the ULCC adopted one special resolution to mark the untimely passing of Earl Fruchtmann, the longstanding Jurisdictional Representative (JR) for Ontario. Adopted unanimously by a delegation vote, this resolution renamed the Open Forum, the Earl Fruchtmann 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.

A number of resolutions adopted during this five-year period have been addressed in the context of legislative amendments to the *Criminal Code* and other Acts, such as the *Identification of Criminals Act* and the *Canada Evidence Act*. Justice Canada continues to actively pursue policy development options related to 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 addressed in legislative initiatives in 2020-2021

Between August 2020 and August 2021, two government bills that amended the *Criminal Code* and related acts were adopted: former Bill C-3, *An Act to amend the Judges Act and the Criminal Code*, S.C. 2021, c. 8, and former Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)*, S. C. 2021, c. 2. Neither of these statutes addressed previous ULCC resolutions.

Seven (7) government bills that proposed to amend the *Criminal Code* and related acts were introduced during this same period, namely:

- 1) Bill C-6, *An Act to amend the Criminal Code (conversion therapy)*;
- 2) Bill C-13, *An Act to amend the Criminal Code (single event sport betting)*;
- 3) Bill C-21, *An Act to amend certain Acts and to make certain consequential amendments (firearms)*;
- 4) Bill C-22, *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*;
- 5) Bill C-23, *An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures)*;
- 6) Bill C-31, *An Act to amend the Criminal Records Act and to make consequential amendments to other Acts*; and
- 7) Bill C-36, *An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act (hate propaganda, hate crimes and hate speech)*.

However, following the dissolution of Parliament on August 15, 2021, all Parliamentary business was terminated, and as such, these bills died on the Order Paper. Some would have addressed ULCC resolutions. For example, Bill C-31, *An Act to amend the Criminal Records Act and to make consequential amendments to other Acts*, would have addressed resolutions **MB2011-01**, **ON2011-01** (withdrawn because of its similarity to MB2011-01), and **ON2002-01**, all of which called for amendments to section 7.2 of the *Criminal Records Act* to remove the exception for impaired driving offences from the provision that automatically ceases a pardon when a person is subsequently convicted of a *Criminal Code* offence punishable either on conviction on indictment or on summary conviction. Bill C-31 proposed to remove this exception, such that the impaired driving offences would be treated the same as other offences.

Resolutions under active consideration by Justice Canada

As mentioned earlier, 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 also 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, as well as the Coordinating Committee of Senior Officials on Youth Justice.

Part III - LEGISLATIVE INITIATIVES 2020-2021

Nine (9) Government justice-related bills are discussed below, including three, which have received Royal Assent and six (6) that have died on the Order Paper following the dissolution of Parliament on August 15, 2021.

In addition, eighteen (18) Private Members' Bills and eleven (11) Senate Public Bills that relate to criminal justice matters are discussed below. While two Private Members' Bill received Royal Assent, fourteen (14) of these Bills died on the Order Paper following the dissolution of Parliament on August 15, 2021 and two others were defeated. The eleven (11) Senate Public Bills all died on the Order Paper.

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

Government Bills (9)

1) Bill C-3, *An Act to amend the Judges Act and the Criminal Code*

This Bill amends the *Judges Act* to restrict eligibility for judicial appointment to persons who undertake to participate in continuing education on matters related to sexual assault law and social context, including systemic racism and systemic discrimination. It also amends the *Judges Act* to require that the Canadian Judicial Council report on seminars offered for the continuing education of judges on matters related to sexual assault law and social context. Finally, it amends the *Criminal Code* to require that judges provide reasons for decisions in sexual assault proceedings.

Bill C-3 received Royal Assent on May 6, 2021 (S.C. 2021, c. 8).

2) Bill C-6, *An Act to amend the Criminal Code (conversion therapy)*

This Bill amends the *Criminal Code* to, among other things, create the following offences:

- (a) causing a person to undergo conversion therapy without the person's consent;
- (b) causing a child to undergo conversion therapy;
- (c) doing anything for the purpose of removing a child from Canada with the intention that the child undergo conversion therapy outside Canada;
- (d) advertising an offer to provide conversion therapy; and,
- (e) receiving a financial or other material benefit from the provision of conversion therapy.

It also amends the *Criminal Code* to authorize courts to order that advertisements for conversion therapy be disposed of or deleted.

Bill C-6, which was introduced on October 1, 2020 and was referred to the Senate Committee on Legal and Constitutional Affairs on June 28, 2021, died on the Order Paper on August 15, 2021.

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

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

- (a) repeal the provision that requires a person's natural death be reasonably foreseeable in order for them to be eligible for medical assistance in dying;
- (b) specify that persons whose sole underlying medical condition is a mental illness are not eligible for medical assistance in dying, until March 2023;
- (c) create two sets of safeguards that must be respected before medical assistance in dying may be provided to a person, the application of which depends on whether the person's natural death is reasonably foreseeable;
- (d) permit medical assistance in dying to be provided to a person who has been found eligible to receive it, whose natural death is reasonably foreseeable and who has lost the capacity to consent before medical assistance in dying is provided, on the basis of a prior agreement they entered into with the medical practitioner or nurse practitioner; and
- (e) permit medical assistance in dying to be provided to a person who has lost the capacity to consent to it as a result of the self-administration of a substance that was provided to them under the provisions governing medical assistance in dying in order to cause their own death.

Bill C-7 received Royal Assent on March 17, 2021 (S.C. 2021, c. 2).

4) Bill C-13, *An Act to amend the Criminal Code (single event sports betting)*

This Bill would amend the *Criminal Code* to permit the provinces and territories to offer single event sports betting as a permitted lottery scheme. It would also preserve the federal government's role in pari-mutuel betting on horseracing.

On February 18, 2021, the Speaker of the House of Commons, in response to a point of order, ruled that Bill C-13 could not proceed because another bill, Bill C-218 (see below), proposing similar amendments had been referred to the House of Commons Standing Committee on Justice and Human Rights.

Bill C-13, which was introduced on November 26, 2020, died on the Order Paper on August 15, 2021.

5) Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*

The Bill enacted the *United Nations Declaration on the Rights of Indigenous Peoples Act*. The Act requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to:

- (a) take all measures necessary to ensure the laws of Canada are consistent with the Declaration; and,
- (b) prepare and implement an action plan to achieve the Declaration's objectives table an annual report on progress to align the laws of Canada and on the action plan.

The Action Plan must include measures to address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination against Indigenous peoples, including elders, youth, children, persons with disabilities, women, men and gender-diverse and two-spirit persons.

Bill C-15 received Royal Assent on June 21, 2021 (S.C. 2021, c. 14).

6) Bill C-21, *An Act to amend certain Acts and to make certain consequential amendments (firearms)*

This Bill would propose significant amendments to the *Firearms Act*, the *Criminal Code* and other statutes with the goal of addressing firearms violence and improving public safety. Amendments include:

- (a) the creation of "red flag" and "yellow flag" laws to permit individuals to seek court orders for the immediate removal of firearms or the suspension of firearms licences where public safety risks have been identified;
- (b) increased maximum penalties for a number of *Criminal Code* firearms offences, including weapons smuggling and trafficking;
- (c) the creation of a new offence of altering a magazine cartridge;
- (d) measures to complete the prohibition of assault-style firearms; and,
- (e) measures to support municipalities that pass bylaws concerning the storage or

transportation of handguns in their jurisdictions by making compliance with such bylaws a condition of a federal firearms licence.

Bill C-21, which was at the Second Reading in the House of Commons, died on the Order Paper on August 15, 2021.

7) Bill C-22, *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*

Bill C-22 proposes amendments in three broad areas and would:

- (a) Repeal a number of mandatory minimum penalties of imprisonment (MMPs) in the *Criminal Code* and all MMPs in the *Controlled Drugs and Substances Act*;
- (b) Allow for the greater use of conditional sentence orders, in appropriate cases, by removing current statutory restrictions;
- (c) Require police officers and prosecutors to consider alternatives to charging or prosecuting individuals charged with simple possession of drugs.

Bill C-22, which was at Second Reading in the House of Commons, died on the Order Paper on August 15, 2021.

8) Bill C-23, *An Act to amend the Criminal Code and the Identification of Criminals Act and to make related consequential amendments to other Acts (COVID-19 response and other measures)*

Bill C-23 would address challenges and proposes measures to modernize the criminal justice system, including by:

- (a) Clarifying the law to allow accused persons to appear remotely by video or audioconference in most criminal proceedings, on consent, at the discretion of the court and with other appropriate safeguards;
- (b) Allowing remote participation and the use of technology in jury selection;
- (c) Allowing judicial case management for unrepresented accused;
- (d) Updating the existing telewarrant process to broaden its availability; and,
- (e) Allowing fingerprinting to occur at a later date.

Bill C-23, which was at the Second Reading in the House of Commons, died on the Order Paper on August 15, 2021.

9) Bill C-36, *An Act to amend the Criminal Code and the Canadian Human Rights Act and to make consequential amendments to another Act (hate propaganda, hate crimes and hate speech)*

Bill C-36 seeks to address hate propaganda, hate crime and hate speech and would amend the *Criminal Code* to create a new peace bond directed at preventing the commission of hate propaganda offences or hate crimes in the *Criminal Code*. It would also include a definition of “hatred” in the *Criminal Code* based on Supreme Court of Canada jurisprudence.

Bill C-36 also proposes amendments to the *Canadian Human Rights Act* to define a new discriminatory practice of communicating hate speech online and to provide individuals with additional remedies to address hate speech.

Bill C-36, which was at the Second Reading in the House of Commons, died on the Order Paper on August 15, 2021.

Private Members' Bills (18)

1) Bill C-202, *An Act to amend the Criminal Code (assault against a health care worker)*

This Bill would amend the *Criminal Code* to require sentencing courts to treat assaults (or uttering threats) committed against health care workers engaged in the performance of their duties as an aggravating factor at sentencing.

Bill C-202, which was at the Second Reading in the House of Commons, died on the Order Paper on August 15, 2021.

2) Bill C-211, *An Act to amend the Criminal Code (assaults against health care workers and first responders)*

This Bill would amend the *Criminal Code* to require sentencing courts to treat assaults (or uttering threats) committed against health care workers or first responders engaged in the performance of their duties as an aggravating factor at sentencing.

Bill C-202, which was at the Second Reading in the House of Commons, died on the Order Paper on August 15, 2021.

3) Bill C-218, *An Act to amend the Criminal Code (sports betting)*

This Bill repeals paragraph 207(4)(b) of the *Criminal Code* to make it lawful for the government of a province, or a person or entity licensed by the Lieutenant Governor in Council of that province, to conduct and manage a lottery scheme in the province that involves betting on a race or fight or on a single sport event or athletic contest. The Bill was amended in the House of Commons to preserve the federal government's role in respect of pari-mutuel betting on horseracing.

Bill C-218 received Royal Assent on June 29, 2021 (S.C. 2021, c. 20) and will come into force on a day to be fixed by the Governor in Council.

4) Bill C-219, *An Act to amend the Criminal Code (sexual exploitation)*

This Bill would add increase the mandatory minimum penalty, on summary conviction, for the offence of sexual exploitation (section 153) to one year imprisonment, add a mandatory minimum penalty of imprisonment to the offence of sexual exploitation of a person with a disability (section 153.1) and make it an aggravating factor at sentencing in cases where a person was convicted of soliciting sexual services (section 286.1) involving another person with a physical or mental disability.

Bill C-219, which was at the Second Reading in the House of Commons, died on the Order Paper on August 15, 2021.

5) Bill C-228, *An Act to establish a federal framework to reduce recidivism*

This Bill enacted the *Reduction of Recidivism Framework Act*, which requires the Minister of Public Safety to consult the provinces and territories, Indigenous organizations and non-governmental organizations, the faith sector and private organizations to develop and implement a federal framework to reduce recidivism.

Bill C-228 received Royal Assent on June 29, 2021 and came into force.

6) Bill C-233, *An Act to amend the Criminal Code (sex selective abortion)*

This Bill sought to amend the *Criminal Code* to make it an offence to perform an abortion knowing that it was sought solely on the grounds of the child's genetic sex.

Bill C-233 was defeated at Second Reading on June 2, 2021.

7) Bill C-236, *An Act to amend the Controlled Drugs and Substances Act (evidence-based diversion measures)*

This Bill would amend the *Controlled Drugs and Substances Act* to require peace officers to consider measures other than judicial proceedings to deal with individuals alleged to have been in possession of certain substances. It also sets out principles to be taken into account in the determination of the most appropriate measures to take.

The Bill, which was at the Second Reading in the House of Commons, died on the Order Paper on August 15, 2021.

8) Bill C-238, *An Act to amend the Criminal Code (possession of unlawfully imported firearms)*

This Bill sought to amend the *Criminal Code* to provide that a person who is charged with an offence in respect of the possession of a firearm that is alleged to have been unlawfully imported into Canada is required to demonstrate that their pre-trial detention is not justified. It also proposed to increase the mandatory minimum penalty for the possession of such weapons.

Bill C-238 was defeated at Second Reading on January 27, 2021.

9) Bill C-247, *An Act to amend the Criminal Code (controlling or coercive control)*

This bill proposes a new *Criminal Code* offence that would prohibit engaging in controlling or coercive conduct towards an intimate partner that has a "significant impact" on them, including a decline in their physical or mental health, or a "substantial adverse effect" on their daily activities.

The Bill, which was introduced on October 5, 2020, died on the Order Paper on August 15, 2021.

10) Bill C-267, *An Act to amend the Criminal Code (increasing the period of parole ineligibility)*

This bill would amend the *Criminal Code* to increase the period of parole ineligibility for persons convicted of certain enumerated kidnapping/abduction offences, as well as certain enumerated sexual offences and the offence of murder in respect of the same victim and the same event or series of events.

The Bill, which was introduced on February 17, 2021, died on the Order Paper on August 15, 2021.

11) Bill C-268, *An Act to amend the Criminal Code (intimidation of health care professionals)*

This bill would amend the *Criminal Code* to create two hybrid offences to protect the conscientious objection of medical practitioners, nurse practitioners, pharmacists, and any other healthcare professional: (1) and an “intimidation” offence prohibiting the use of violence or threats of violence, coercion or any other form of intimidation to compel a healthcare professional to participate in the provision of medical assistance in dying (MAID); and, (2) an “employment sanctions” offence prohibiting employers from refusing to employ, or dismissing from employment, healthcare professionals because they refuse to participate, directly or indirectly, in the provision of MAID.

The Bill, which was at the Second Reading in the House of Commons, died on the Order Paper on August 15, 2021.

12) Bill C-274, *An Act to amend the Criminal Code (criminal interest rate)*

This bill would amend the *Criminal Code* to lower the criminal rate of interest to an amount that exceeds the Bank of Canada’s overnight rate by 30%. It would also amend the definition of interest to include the charges paid to obtain insurance. Finally, it would repeal the provision of the *Criminal Code* exempting payday loans from the criminal interest rate provisions.

The Bill, which was introduced on March 11, 2021, died on the Order Paper on August 15, 2021.

13) Bill C-277, *An Act to amend the Criminal Code (exploitation and trafficking in persons)*

This bill would add certain trafficking in persons offences as well as receiving a material benefit from the sexual services of a child and the procuring offence to the list of offences for which a reverse onus applies in proceeds of crime proceedings. It would also eliminate preliminary inquiries for these offences. Further, it seeks to bring into force a provision of former Bill C-452 (S.C. 2015, c. 16) requiring mandatory consecutive sentencing for trafficking in persons cases. Finally, it would require the Minister of Justice to prepare a report for Parliament on mutual legal assistance in connection with child sexual exploitation on the internet.

The Bill, which was introduced on March 23, 2021, died on the Order Paper on August 15, 2021.

14) Bill C-289, *An Act to amend the Criminal Code (sentencing)*

This bill would amend the *Criminal Code* to, amongst other things create a new aggravating factor for sentencing that requires the court to consider evidence that the offence was directed at property or persons that were vulnerable because of their remoteness from emergency medical or police services.

The Bill, which was introduced on April 20, 2021, died on the Order Paper on August 15, 2021.

15) Bill C-293, *An Act to amend the Criminal Code and to make consequential amendments to another Act (interim release and domestic violence recognizance orders)*

This bill would amend the *Criminal Code* to address the issue of domestic violence including by: (a) amending the bail provisions to allow for the imposition of a condition requiring the wearing of an electronic monitoring device or to attend an addiction treatment program of domestic violence counselling program; and, (b) to create a new peace bond seeking to prevent the commission of offences involving personal injury against an intimate partner or the child of an intimate partner.

The Bill, which was introduced on May 6, 2021, died on the Order Paper on August 15, 2021.

16) Bill C-302, *An Act to amend the Criminal Code (pornographic material)*

This bill would prohibit a person from making pornographic material for commercial purposes without having first ascertained that each person whose image is depicted in the material is 18 years of age or older and has given their express consent to their image being depicted. It also prohibits a person from distributing or advertising pornographic material for commercial purposes without having first ascertained that each person whose image is depicted in the material was 18 years of age or older at the time the material was made and gave their express consent to their image being depicted.

The Bill, which was introduced on May 27, 2021, died on the Order Paper on August 15, 2021.

17) Bill C-304, *An Act to amend the Criminal Code (grooming)*

The bill would enact a new aggravating factor for sentencing in respect of certain enumerated sexual offences that would require courts to consider whether the offender communicated with the victim with the intention that it lead the victim to participate in the activity that is the subject of the offence.

The Bill, which was introduced on May 28, 2021, died on the Order Paper on August 15, 2021.

18) Bill C-313, *An Act to amend the Criminal Code (banning symbols of hate)*

This bill would amend the hate propaganda offences to publicly display visual representations that promote or incite hatred against an identifiable group.

The Bill, which was introduced on June 17, 2021, died on the Order Paper on August 15, 2021.

Senate Public Bills (11)

1) Bill S-203, *An Act to restrict young persons' online access to sexually explicit material*

This bill would create a new Act designed to prevent children from being exposed to pornography on the internet. Among other things, it would create a new offence of making sexually explicit material available to a young person for a commercial purpose. It would provide a mechanism for establishing an enforcement authority responsible for enforcing the Act.

The Bill, which was at Third Reading in the Senate, died on the Order Paper on August 15, 2021.

2) Bill S-204, *An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs)*

This bill would amend the *Criminal Code* to create new offences in relation to trafficking in human organs. 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.

The Bill, which had received first reading in the House of Commons on May 10, 2021 after passing the Senate, died on the Order Paper on August 15, 2021.

3) Bill S-207, *An Act to amend the Criminal Code (independence of the judiciary)*

This bill would amend 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 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.

The Bill, which was at Second Reading in the Senate, died on the Order Paper on August 15, 2021.

4) Bill S-212, *An Act to amend the Criminal Code (disclosure of information by jurors)*

This bill would amend 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, which was at Second Reading in the Senate, died on the Order Paper on August 15, 2021.

5) Bill S-221, *An Act to amend the Criminal Code (mischief related to memorials to first responders)*

This Bill would enact a new hybrid offence prohibiting mischief in relation to first responder memorials and would be subject to mandatory penalties (fines or imprisonment, depending on whether it is a first of subsequent offence).

The Bill, which was introduced on December 8, 2020, died on the Order Paper on August 15, 2021.

6) Bill S-224, *An Act to amend the Criminal Code (increasing parole ineligibility)*

This bill would amend the *Criminal Code* to increase the period of parole ineligibility for persons convicted of certain enumerated kidnapping/abduction offences, as well as certain enumerated sexual offences and the offence of murder in respect of the same victim and the same event or series of events.

The Bill, which was at Second Reading in the Senate, died on the Order Paper on August 15, 2021.

7) Bill S-228, *An Act to amend the Criminal Code (trafficking in persons)*

This bill would amend the *Criminal Code* by amending the definition of exploitation that is used in the trafficking in persons offences.

The Bill, which was introduced on March 16, 2021, died on the Order Paper on August 15, 2021.

8) Bill S-231, *An Act to amend the Criminal Code and to make consequential amendments to another Act (interim release and domestic violence recognizance orders)*

This bill would amend the *Criminal Code* to address the issue of domestic violence including by: (a) amending the bail provisions to allow for the imposition of a condition requiring the wearing of an electronic monitoring device or to attend an addiction treatment program of domestic violence counselling program; and, (b) to create a new peace bond seeking to prevent the commission of offences involving personal injury against an intimate partner or the child of an intimate partner.

The Bill, which was at Second Reading in the Senate, died on the Order Paper on August 15, 2021.

9) Bill S-233, *An Act to amend the Criminal Code (criminal interest rate)*

This bill would amend the *Criminal Code* to lower the criminal rate of interest from 60% to the Bank of Canada's overnight rate plus 20%.

The Bill, which was at Second Reading in the Senate, died on the Order Paper on August 15, 2021.

10) Bill S-235, *An Act to amend the Canadian Victims Bill of Rights (posting of information about the victim)*

This bill would amend the *Canadian Victims Bill of Rights* to enumerate a new right to have reasonable and appropriate measures taken by criminal justice system authorities to prohibit the posting of information about victims by offenders.

The Bill, which was introduced on June 9, 2021, died on the Order Paper on August 15, 2021.

11) Bill S-236, *An Act to amend the Criminal Code, the Criminal Records Act, the National Defence Act and the DNA Identification Act*

This bill would amend various federal statutes to facilitate the collection and use of DNA in the investigation of crimes, including by broadening the definition of “primary designated offence” in section 487.04 of the *Criminal Code*.

The Bill, which was introduced on June 15, 2021, died on the Order Paper on August 15, 2021.

Conclusion

Justice Canada will maintain its close working relationship with ULCC. Delegates are encouraged to follow the progress of these and other criminal law reforms by consulting the Parliament of Canada website, LEGISinfo at: <http://www.parl.gc.ca>.

August 23, 2021

Annex 2 to the 2021 Criminal Section Minutes

UNIFORM LAW CONFERENCE OF CANADA

CRIMINAL SECTION RECOMMENDATIONS – AUGUST 2021

Alberta

AB2021-01

That the endorsed warrant regime set out in the *Criminal Code* be examined with a view to expanding it to allow the endorsement of a wider range of warrants.

Carried: 34-0-0

AB2021-02

- a) That sections 486.4 and 486.5 of the *Criminal Code*, and any other section dealing with orders restricting publication which refer to the concept of publication in any document or broadcast or transmission in any way, be amended to clarify that the prohibition applies to information that continues to be available or accessible after the imposition of a publication ban.

Carried as amended: 29-0-0

- b) That Justice Canada consider whether the *Criminal Code* needs to be amended to allow pre-trial conditions to be placed on corporate accused to prevent the commission of further offences.

Withdrawn following discussion

AB2021-03

That Justice Canada, in consultation with provinces and the territories, consider whether the *Criminal Records Act* should be amended to allow the record of a discharge to be disclosed in subsequent sentencing hearings.

Carried as amended: 19-7-2

AB2021-04

That the *Criminal Code* be amended to allow the admission into evidence of a written report of a probation officer alleging a breach of an order made under sections 731 or 732 of the *Criminal Code*, with similar safeguards as those found in subsections 742.6(4), (5) and (8) of the *Criminal Code*, specifically notice to the accused of the prosecutor's intent to use the report, and the ability, with leave of the court, for the accused to require the attendance of the probation officer for cross examination purposes. For further certainty, the only admissible evidence in the report would be evidence within the personal knowledge of the probation officer.

Carried as amended: 22-2-3

British Columbia

BC2021-01

It is recommended that the definition of "serious personal injury offence" in paragraph 752(b) of the *Criminal Code* be amended to include sexual interference (section 151), invitation to sexual touching (section 152), and sexual exploitation (section 153).

Carried as amended: 30-0-1

Canada – Canadian Association of Provincial Court Judges

Can- CAPCJ2021-01

The provisions of the *Criminal Code* relating to alternatives to physical appearance by an accused are complex and found in many different Parts of the *Code*. The *Code* should be amended to gather all of these provisions in one Part. Further, the ability of a trial judge to order a particular mode or form of appearance, with or without consent, should be clarified.

Carried: 30-0-0

Can- CAPCJ2021-02

While there are constitutional and common law principles, statutory provisions and principles of statutory interpretation relating to when and how new legislation operates, applying these tools in practice generates voluminous case law, uncertainty and delay. To alleviate these difficulties the Criminal Section of the Uniform Law Conference of Canada recommends that legislation reforming criminal law include express provisions regarding prospective or retrospective application and transition provisions relating to repeal and replacement of provisions in force at the time of the new enactment.

Carried as amended: 28-0-0

Canada – Canadian Bar Association

Can-CBA2021-01

That a mechanism, similar to section 6.1 of the *Criminal Records Act*, be introduced in the *Criminal Code* and/or *Criminal Records Act* to limit the disclosure and retention of records related to stays of proceedings once they can no longer be legally revived.

Carried: 27-4-0

Can-CBA2021-02

That subsection 507(6) of the *Criminal Code* be amended to include witness warrants under section 705 as warrants that can be endorsed for release by police officer.

Withdrawn without discussion because similar to AB2021-01

Can-CBA2021-03

That Justice Canada, in consultation with the provinces and territories, study the possibility of amending the *Criminal Code* to include a judicial authorization for the seizure of DNA belonging to someone other than the suspect, in circumstances where the power to search incident to an arrest is not applicable.

Carried as amended: 18-7-3

Canada – Canadian Council of Criminal Defence Lawyers

Can-CCCDL2021-01

Appreciating that Can-CAPCJ2021-01 has passed (“Alternative Modes of Appearance for the Accused”), the ULCC Criminal Section establish a working group for the purposes of making recommendations in relation to possible *Criminal Code* amendments pertaining to the use of technology in criminal matters, bearing in mind the impact of the pandemic on the criminal justice system.

Carried as amended: 18-0-9

Can-CCCDL2021-02

It is recommended that the *Criminal Code* be amended to create a national temporary moratorium on law enforcement use of facial recognition technologies. It is recommended that this be accomplished by expressly banning law enforcement use of these technologies, similar to the ban on unauthorized wiretap interception, but without the possibility of prior judicial authorization, for 18 months, renewable or amendable by Governor-in-Council.

Withdrawn following discussion

Can-CCCDL2021-03

The offence of refusing to provide a mandatory breath sample for alcohol screening, pursuant to subsection 320.27(2) of the *Criminal Code*, be amended. Added to subsection 320.27(2) shall be

the following: “A refusal to provide a sample pursuant to subsection 320.27(2) shall not be an offence, but shall be grounds for a demand to be made pursuant to section 320.28.”

Withdrawn as amended following discussion

Canada – Public Prosecution Service of Canada

Can-PPSC2021-01

That subsection 193(2) of the *Criminal Code* be amended to explicitly exempt the Crown from criminal liability any time a private communication is disclosed to an accused person during the investigation or prosecution of an offence.

Carried as amended: 30-0-1

Can-PPSC2019-02

That subsection 508.1(1) of the *Criminal Code* be amended to include “or public officer” as defined in section 2 of the *Criminal Code*.

Carried as amended: 25-0-2

Manitoba

MB2021-01

Part I, as amended:

Subsection 161(1) of the *Criminal Code* should be amended to change the reference to persons under the age of 16 years to persons under the age of 18 years, both in reference to the age of the victim and the age of the persons referred to in the protective conditions.

Carried as amended: 27-0-5

Part II, unamended:

Subsection 161(1.1) of the *Criminal Code* should be amended to include sexual exploitation (section 153 of the *Criminal Code*) as a listed offence.

Carried: 28-0-4

MB2021-02

Paragraph 2(1)(a) of the *Identification of Criminals Act (ICA)* should be amended to read “any person who is in lawful custody after being arrested for or charged with or convicted of...”.

Also, references to the *Cannabis Act* should be added, where required, to subsection 2(1) of the *ICA*.

Carried as amended: 20-0-10

Ontario

ON2021-01

It is recommended that paragraph 508(1)(b) of the *Criminal Code* be amended so that the justice can cancel only the mandatory condition in an undertaking compelling appearance, should there be a defect only in it, and confirm the rest of the undertaking.

Carried: 31-0-0

ON2021-02

Part I, as amended

- a) It is recommended that the following offences be added to the definition of “offence” in section 183 of the *Criminal Code*:
1. Manslaughter (section 236)
 2. Attempted Murder (section 239)
 3. Criminal Negligence Causing Death (section 220)
 4. Criminal Negligence Causing Bodily Harm (section 221)
 5. Dangerous Operation Causing Death (subsection 320.13(3))
 6. Operation While Impaired Causing Death (subsection 320.14(3))
 7. Fail to Stop After Accident where Death ensues (subsection 320.16(3))
 8. Fail to Stop After Accident where Bodily Harm ensues (subsection 320.16(2))

9. Possession of a Prohibited or Restricted Firearm with Ammunition (section 95)
10. Possession of Firearm Knowing its Possession is Unauthorized (section 92)
11. Prohibited Insider Trading (section 382.1)
12. Wilful Promotion of Hatred (subsection 319(2))

Carried as amended: 19-1-10

Part II, as amended

- b) It is recommended that Justice Canada, in consultation with provinces and territories, review section 183 of the *Criminal Code* to determine how to address the designation of offences in a more effective and comprehensive way than solely by enumerating individual offences, and that that review include consideration of the use of a generic category of offences with a maximum penalty of 10 years imprisonment or more.

Carried as amended: 26-0-1

ON2021-03

It is recommended that the Criminal Section of the ULCC strike a working group to review section 672.26 (and related sections) of the *Criminal Code* for possible legislative reform as to how the issue of fitness should be tried when an accused person has elected trial by judge and jury.

Carried as amended: 29-0-0

Quebec

QC2021-01

We recommend that the *Criminal Code* be amended, to allow the duration of an order issued pursuant to subsection 490.012(1) to be corrected by the tribunal that issued the order, such that the duration be as prescribed by law (section 490.013 of the *Criminal Code*).

Carried: 30-0-1

QC2021-02

That Justice Canada, in consultation with provinces and territories, consider amending subsection 34(7) of the *Youth Criminal Justice Act* to permit that a report made under subsection 34(1) be given to the provincial director responsible for drafting a pre-sentence report, in accordance with the conditions that a possible working group may deem appropriate.

Carried as amended: 29-1-2

QC2021-03

That Justice Canada, in consultation with provinces and territories, consider increasing the maximum sentences enacted by sections 318 and 319 of the *Criminal Code* in a manner that reflects the seriousness of those offences.

Carried as amended: 27-0-3

Saskatchewan

SK2021-01

That Justice Canada, in consultation with the Provinces and Territories, consider amending section 467.1 and/or Part XIII of the *Criminal Code* to allow for the designation of organisations as Criminal Organisations within the meaning of section 467.1, and that Justice Canada, in consultation with the Provinces and Territories, consider whether this designation power may be appropriately delegated to the Provinces and Territories.

Defeated: 14-14-3

REPORTS

Criminal Section Working Group Reports

Working Group Examining the Scope of the Mandate of the Criminal Section

Be it resolved that:

1. the Final Report of the Working Group Examining the Scope of the Mandate of the Criminal Section be accepted; and
2. the recommendations in the Final Report of the Working Group Examining the Scope of the Mandate of the Criminal Section be approved.

Carried: 31-0-0

Working Group on Section 490 of the Criminal Code

Be it resolved that:

1. the Status Report of the Working Group on Section 490 of the *Criminal Code* be accepted; and
2. the Working Group continue its work and report back to the Criminal Section at the 2022 annual meeting.

Carried: 29-0-0

Working Group on the review of section 487 of the Criminal Code

Be it resolved that:

1. the Status Report of the ULCC Criminal Section Working Group on the review of section 487 of the *Criminal Code* be accepted; and
2. the Working Group continue its work and report back to the ULCC Criminal Section at the 2022 annual meeting.

Carried: 29-0-0

Votes reported: In Favour – Opposed – Abstentions