

**UNIFORM LAW CONFERENCE OF CANADA
CRIMINAL SECTION RESOLUTIONS
August 2022**

ALBERTA

AB2022-01

We recommend that Justice Canada, in consultation with the provinces and territories, review paragraph 683(5)(c) and subsection 689(1) of the *Criminal Code* with the aim of providing greater clarity regarding suspension of restitution orders in the case of an appeal, an application for leave to appeal or possible appeal. This review might also consider whether similar clarifications are advisable with respect to certain forfeiture orders (see subsection 689(1) and paragraph 683(5)(b)).

Carried as amended: 24-0-0

AB2022-02

That subsection 278.93(4) of the *Criminal Code* be amended to increase the notice period for an application for a subsection 276(2) or 278.92(2) admissibility hearing in order to allow sufficient time for a complaint to be advised of their right to counsel and to obtain and instruct counsel. Justice Canada should consider increasing the time to 60 days notice to be consistent with the notice provision in subsection 278.3(5), while continuing to authorize any shorter interval that the judge, provincial court judge or justice may allow in the interests of justice.

Carried: 17-9-1

British Columbia

BC2022-01

It is recommended that paragraph 42(5)(a) of the *Youth Criminal Justice Act* be repealed.

Carried: 23-0-4

BC2022-02

That Justice Canada, in consultation with the provinces and territories, review the criminal harassment provisions in section 264 of the *Criminal Code*, to better address modern manifestations of criminal harassment, including on-line harassment.

Carried as amended: 24-0-3

Canada – Canadian Association of Provincial Court Judges**Can- CAPCJ2022-01**

That Justice Canada review, with a view of possible amendments, subsection 527(5) of the *Criminal Code*, to ensure consistency with subsection 527(1).

Carried as amended: 26-0-0

Can- CAPCJ2022-02

That Justice Canada, in collaboration with the provinces and territories, review, with a view of possible amendments, section 511 of the *Criminal Code*, to allow judges to cancel warrants, provided that the appropriate safeguards are included (*e.g.*, on the application of the public prosecutor and when in the interest of justice). The review should also consider whether a similar mechanism should be provided for other arrest warrants in the *Criminal Code*.

Carried as amended: 25-0-0

Canada – Canadian Council of Criminal Defence Lawyers**Can-CCCDL2022-01**

It is recommended to amend the *Criminal Code*, removing the tertiary ground, paragraph 515(10)(c) of the *Criminal Code of Canada*.

Defeated as amended following discussion: 3-20-3

Canada – Public Prosecution Service of Canada

Can-PPSC2022-01

- a) That sections 489.1 and 490 of the *Criminal Code* be amended to clearly state that data is not a “thing” and these sections do not apply to the examination of electronic devices or the creation of a copy of the data.

Carried as amended: 16-10-1

- b) That this issue be referred to the ULCC Working Group studying section 487 to comprehensively study the relevant provisions in *Criminal Code* to determine how best to achieve this objective.

Carried as amended: 24-1-2

Can-PPSC2022-02

That Justice Canada review, for the purpose of amendment, section 330 of the *Excise Tax Act* to ensure consistency with section 242 of the *Income Tax Act* with respect to “commits an offence” rather than “is guilty of an offence”.

Carried as amended: 15-0-11

Manitoba

MB2022-01

That the *Criminal Code* be amended to add provisions similar to the conference provisions contained within section 19 of the *Youth Criminal Justice Act*:

- (1) The court may, with the consent of the Attorney General and the offender, convene or cause to be convened a conference for the purpose of making a decision required to be made under this Act.
- (2) The mandate of a conference may be, among other things, to give advice on appropriate treatment programs, conditions for judicial interim release, sentences and reintegration plans.

Carried: 14-2-10

MB2022-02

Section 286.4 of the *Criminal Code* should be amended by adding a minimum sentence where the victim is a child.

Withdrawn

MB2022-03

The maximum term of imprisonment for the offence contemplated in section 153.1 (sexual exploitation of person with disability) of the *Criminal Code* should be increased to 10 years in cases where the accused is guilty of an indictable offence.

Carried as amended: 22-2-3

New Brunswick

NB2022-01

It is recommended that subsections 99(1), 100(1) and 106(1) of the *Criminal Code* be amended so that they match and be harmonious with one another by adding subsections to the French version of these provisions.

Carried: 26-0-0

Ontario

ON2022-01

It is recommended that section 766 of the *Criminal Code* be amended to provide that when an arrest under a surety warrant is made by a peace officer, the peace officer may detain, place in custody, and bring the accused person before the court as they would under Part XVI, with modifications as necessary.

Carried: 19-0-7

ON2022-02

It is recommended that section 490.1 of the *Criminal Code* (Order of forfeiture of property on conviction) be amended so that an order of forfeiture under that section can be made where the accused person was convicted or discharged of an offence *that may be prosecuted by indictment*, so that, in the case of a hybrid offence, an order of forfeiture will be available when the Crown proceeds summarily. The definition of “offence-related property” in section 2 of the *Criminal Code* should also be amended so as to make clear that it applies to property by means or in respect of which an offence *that may be prosecuted by indictment is committed*.

Carried: 18-2-7

ON2022-03

Create a ULCC Criminal Section Working Group to explore the treatment of animals in the *Criminal Code of Canada*, with a view to making recommendations for amendments.

The Criminal Section will also bring the issue of the treatment of animals in the civil and criminal law contexts to the ACPDM for consideration of the establishment of a joint working group, which if established would subsume the Criminal Section working group noted above.

Carried as amended: 19-0-4

ON2022-04

In recognition of the seriousness and increasing prevalence of extortion by threat to distribute intimate images, as well as the need to ensure that the applicable procedural law is sufficiently flexible to enable prosecution services to proceed by way of summary conviction as appropriate, it is recommended that Justice Canada study the creation of a stand-alone hybridised offence of “sextortion”. It is further recommended that this recommendation be considered as part of Justice Canada’s development of online harms legislation.

Carried as amended: 13-5-5

ON2022-05

It is recommended that Justice Canada, in consultation with provinces and territories and having regard to provincial securities legislation, review the insider trading regime in section 382.1 of the *Criminal Code* with the aim of achieving greater clarity and modernization, and of removing unnecessary hurdles to prosecution.

Carried: 18-0-8

Quebec

QC2022-01

We recommend that sections 715.1 and 715.2 of the *Criminal Code* be amended to remove the requirement that the video recording be made within a “reasonable time” after the alleged offence.

Withdrawn

1. We recommend that subsection 3.1(2) of the *Criminal Code* be amended to expressly allow the clerk of the court to reflect on the court's record anything done by the bench, as well as, at the request of the court, reflect on the court's record anything that the court is required to endorse on the bench (e.g. subsections 536(3) and 536(4) of the *Criminal Code*).

Carried as amended: 22-0-0

2. We recommend that Justice Canada ensures that any current and future provisions of the laws hereafter accommodate the reality of paperless courtrooms and virtual hearings:
 - *Criminal Code*;
 - *Youth Criminal Justice Act*;
 - *Controlled Drugs and Substances Act*;
 - *Cannabis Act*;
 - *Canada Evidence Act*;
 - *Sex Offender Information Registration Act*;
 - *Firearms Act*;
 - *Corrections and Conditional Release Act*; and
 - *Criminal Records Act*.

Carried as amended: 22-0-1

3. We recommend that the Criminal Section of the ULCC create an advisory committee on issues relating to the modernization of courtroom proceedings. This new committee would, inter alia provide input on the new reality of paperless courtrooms, virtual hearings and the procedural impact of new technology.

Carried as amended: 14-5-4

QC2022-03

We recommend that section 10 of the *Youth Criminal Justice Act* be amended to provide that the use of an extrajudicial sanction against an offender or the determination of an extrajudicial sanction be conditional upon the competent authority's consideration of the impact of the crime on the victim, particularly by consulting any statement filed by the victim in accordance with section 722 of the *Criminal Code*.

Withdrawn

QC2022-04

We recommend that section 732 of the *Criminal Code* be amended to allow the court that has imposed an intermittent sentence, on application by the offender following notice to the prosecutor, to vary the times when the sentence must be served and the place where the sentence must be served, by adding a mechanism similar to that provided for in paragraph 732.2(3)(a) of the *Criminal Code*.

Carried as amended: 23-0-0

QC2022-05

That Justice Canada, in collaboration with the provinces and territories, review and modify, if necessary, the *Criminal Code* to address the legislative void regarding the theft of computer data.

Carried as amended: 18-0-8

QC2022-06

Amend paragraph 507.1(3)(a) of the *Criminal Code* to add that the hearing provided for is held *ex parte* and *in camera* and ensure that similar modifications be made to other relevant provisions.

Carried as amended: 23-0-0

REPORTS

Amendment to the Rules of Procedure of the Criminal Section

Be it resolved that the Criminal Section's *Rules of Procedure* be amended as proposed in Annex¹ to this resolution, in order to implement the first recommendation of the [2021 Report from the Working Group Examining the Scope of the Mandate of the Criminal Section](#).

JURISDICTIONAL VOTE Carried: 27-0-0

Criminal Section Working Group Reports

Working Group on Section 490 of the Criminal Code

Be it resolved that the Section 490 Working Group be reconstituted and provide a report to the Criminal Section at the 2023 annual meeting.

Carried: 26-0-0

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

Be it resolved that:

1. the Status Report of the Working Group on the section 487 review of the *Criminal Code* be accepted; and

¹ Criminal Section *Rules of Procedure* - August 2022

2. the Working Group continue its work and report back to the Criminal Section at the 2023 annual meeting.

Carried: 29-0-0

Working group on section 672.26 and related sections of the Criminal Code (juries and fitness hearings)

Be it resolved that:

1. the Status Report of the Working Group on section 672.26 and related sections of the *Criminal Code* be accepted; and
2. the Working Group provide its next report to the Criminal Section at the 2023 annual meeting.

Carried: 26-0-0

Working Group on Technology in the Courtroom

That the Criminal Section disband the Working Group on Technology in the Courtroom, and that a delegation or sub-delegation of the Criminal Section is not precluded from seeking to establish a working group with a similar mandate in the future.

Carried as amended: 23-0-0