

Criminal Section Minutes 2003



Fredericton, New Brunswick

August 10-14, 2003

CRIMINAL SECTION - MINUTES

ATTENDANCE

Thirty nine (39) delegates representing all jurisdictions except Yukon attended the criminal Section. All jurisdictions were represented at the Conference as a whole. Delegates included Crown, defence counsel, academic, government officials and members of the judiciary.

OPENING

Daniel Grégoire presided as Chair of the Criminal Section. Catherine Kane acted as Secretary, assisted by Stéphanie O'Connor. The Section convened to order on Sunday, August 10, 2003.

The Heads of each delegation introduced their delegation.

PROCEEDINGS - RESOLUTIONS

Fifty two (52) resolutions were originally submitted by jurisdictions for consideration. Several resolutions were amended during the proceedings. Three resolutions were amended as two part resolutions. Eleven (11) resolutions were withdrawn without discussion due to lack of time. Two resolutions were proposed as floor resolutions. As a result, forty six (46) resolutions were considered. Of the forty six resolutions, seven (7) were defeated, eight (8) were withdrawn and thirty one (31) were carried (several as amended).

(In several instances the total number of votes varies due to the absence of some delegates for some part of the proceedings).

DISCUSSION PAPERS

Pre-Sentence Custody and the Determination of Sentence

Professor Alan Manson was retained by the Uniform Law Conference to prepare and present the above noted paper. At ULC 2002, several resolutions were considered that required a more detailed analysis of the issue of the related issues of when a sentence commences and how pre-sentence custody should be acknowledged and the implications of possible reform proposals, including, eligibility for conditional sentences, statutory minimum sentences, statutory release, parole, and custodial placement.

Professor Manson presented the paper beginning with the historical overview of the issue of pre-sentence custody, followed by a review of the jurisprudence. The paper also highlighted how pre-sentence custody is accounted for in other commonwealth jurisdictions. Professor Manson identified four potential models to explore to address pre-sentence custody; judicial reduction of sentence (discretionary or mandatory), judicial antedating of sentence, statutory antedating of sentence and administrative reduction of sentence. The potential models were considered with reference to several factors including the importance of communicating to the public the clear terms of the sentence and the reasons, the importance of communicating and recording accurate information for the purpose of the penal system and the applicability of the provisions regarding conditional sentences and long term offender designations.

Professor Manson's paper concluded with a model for statutory reform to be considered.

Delegates noted that Professor Manson's paper had identified the full range of issues that require consideration in developing a reform option. Of the four options set out in the paper, there was no consensus on a preferred option. It was agreed that the paper would inform further consultations and discussion on this issue.

Interlocutory and Third Party Appeals

The ULC Criminal Section considered a Discussion Paper prepared by Professors Alan Manson and Gary Trotter at ULC 2002.

Following the discussion in 2002, it was agreed that Professors Trotter and Manson would make final revisions to that paper and include a model for statutory reform. The final paper with the model was submitted to ULC 2003 together with an Introduction and Questions for consideration prepared by the Department of Justice Canada. The Questions for Consideration are intended to guide further consultation and refinement of the reform options.

In addition to the issues raised for discussion, delegates noted the need to give careful consideration to the issue of standing (i.e. who has standing to seek leave to appeal particular orders).

Delegates were asked to provide additional comments, if any, to the Department of Justice. The Department of Justice will be consulting on reform options with key stakeholders.

Resolutions Discussed In The Joint Session

The joint session of ULC dealt with two discussion papers and resolutions were passed regarding both.

Extra-Territorial Jurisdiction of the Police

The ULC considered the Report of the Working Group on the Extra Jurisdictional Authority of Provincially Appointed Police Officers and the draft legislation with commentaries. Glen Reid (Manitoba) provided an overview of the model legislation and a thorough discussion followed.

It was noted that RCMP officers would not be governed by this scheme since their status under federal legislation applies across the country. The RCMP have advised, however, that they support the ULC consultation process and the model that has been developed. However, concerns of the RCMP were conveyed with respect to the supervision of the visiting officer as well as with respect to the advisability of requiring mandatory review of a request for an extra-jurisdictional appointment with affected local police forces. The disciplinary model set out under the scheme was discussed and several comments noted. It was noted that the Working Group had discussed the issue of governance and recognized that professional conduct rules and penalties will differ between provinces. Although adjustments to the scheme may need to be made in each jurisdiction before it is adopted as legislation, the proposed scheme was recommended for approval by the ULC. With respect to the types of police activity covered by the scheme, it was noted that the intent of the scheme was to cover a broad range of conduct including such diverse matters as abduction investigations and transferring prisoners from one jurisdiction to another.

Following the discussion, the following resolution was carried:

Be it resolved;

- 1 That the Report of the Working Group on Extra-Jurisdictional Authority of Provincially Appointed Police Officers be received.
- 2 That the Report appear in the 2003 Conference proceedings.
- 3 That the draft *Cross Border Policing Act* as modified by the discussions be adopted as a Uniform Act and recommended to the jurisdictions for enactment.

Communicable Disease Exposure and Privacy Limitations

Professor Wayne Renke presented the paper, Communicable Disease Exposure and Privacy Limitations, and a discussion followed. The Paper focuses on the constitutional viability of mandatory testing and disclosure obligations. Professor Renke noted that the paper does not deal with the current *Criminal Code* offences which may be applicable in some situations or with options for criminal law reform. Schedule B of the paper identifies some criminal law issues for further consideration.

Professor Renke noted that provincial legislation is the preferred option in any event - although a *Criminal Code* offence may also be appropriate in specific cases. The provincial legislation would be designed to compel medical testing of the source individual and provide for the sharing of information. It would not serve to deter source individuals rather to manage post transmission conduct.

Members of the ULC Working Group commented that the paper thoroughly canvassed the issues but the perspective of medical experts may be necessary.

Following discussion, the following resolution was carried:

Be it resolved

- 1) That the paper prepared by Professor Wayne Renke be received.
- 2) That the paper, Communicable Disease Exposure and Privacy Limitations, appear in the proceedings.
- 3) That guidelines for a constitutionally permissible legislative scheme for mandatory testing and disclosure, as modified by the discussion at the 2003 meeting be referred to the Working Group for the preparation of a draft Uniform Act and commentaries for consideration by ULC 2004.
- 4) That issues in respect of communicable disease and the criminal law and warrant authority identified by Professor Renke in Schedules A and B of the Issues Paper be referred to the Criminal Section of ULC for further consideration and discussion.

Report of the Senior Federal Delegate

The Report of the Senior Federal Delegate was tabled and presented by Mr. Donald Piragoff, Senior General Counsel, Criminal Law Policy Section, Department of Justice.

CLOSING

The Chair thanked the delegates for their attention and thoughtful discussion. The delegates thanked Daniel Grégoire for his excellent chairmanship throughout the year and thanked the host, New Brunswick for the success of the 2003 Conference. The Nominating Committee recommended that Catherine Kane be elected as Chair of the Criminal Section for 2003-2004 and it is recommended that Bart Rosborough, be nominated to be the next Chair of ULC 2004-2005.

Annex 1

REPORT OF THE SENIOR FEDERAL DELEGATE

Criminal law reform and related initiatives benefit from the work of the Uniform Law Conference. The discussion papers and resolutions serve to identify emerging issues in the criminal law and more practical concerns regarding the application of particular provisions. The Uniform Law Conference also serves as a valuable consultation forum, given the expertise of the delegates.

In 2002, the ULCC passed a resolution submitted by Quebec calling on the Steering Committee of the Criminal Section to develop "suggestions to follow up expeditiously on resolutions passed ...".

The Department of Justice has participated in the discussion of the Steering Committee and the Steering Committee will report back to ULC 2003.

The vast majority of resolutions call for specific amendments to the *Criminal Code*, for which the federal Minister of Justice is responsible.

As indicated above, the work of the Uniform Law Conference assists the Department and the Minister of Justice in identifying emerging issues and the need for specific reforms. The Minister of Justice is committed to broad consultation with stakeholders and, in addition, to consultation with Provincial and Territorial Attorneys General. The Minister of Justice, in bringing forward law reform proposals, must be confident that the proposals reflect the principles of the criminal law and the *Charter* and are supported by Cabinet.

This report will provide an update on initiatives that have been developed or implemented in 2002-2003 which have been informed or influenced by several specific resolutions passed by ULCC in recent years, in particular 2001 and 2002, and will provide additional information on criminal law reform and related initiatives which will be of interest to delegates to the Uniform Law Conference.

Part 1

In recent years a significant number of resolutions considered by the ULC have dealt with procedural aspects of the *Criminal Code*. For example, in 2001 and 2002, over 70 resolutions were considered, of which 30 related to criminal procedure. These resolutions have been carefully reviewed and considered and have been the subject of additional consultation through the Federal-Provincial-Territorial Working Group on Criminal Procedure and with other stakeholders, including the Canadian Bar Association.

With respect to many of the resolutions calling for criminal procedure reforms, the resolution and discussion have identified a problem or issue, however the specific solution or amendment proposed in the ULC resolution may not adequately address the issue or related issues or may require further consideration in light of more recent initiatives. However, over 20 criminal procedure proposals have been identified for further development and consultation, on the basis of draft legislation, all of which have been drawn from recent ULC proceedings. The Department of Justice hopes to be in a position to report to ULC 2004 on the status of these potential amendments. In addition, in collaboration with the FPT Working Group on Criminal Procedure, Justice Canada intends to continue the process of reviewing past ULC resolutions as a valuable source to identify the need for potential amendments for inclusion in future criminal procedure omnibus bills.

Several resolutions in 2001 and 2002 focussed on sentencing issues. For example, the notion of delay of sentencing to permit the offender to participate in a treatment program and the need for amendments to section 720 were discussed at ULC 2002 and have subsequently been the subject of extensive consultation and refinement of reform proposals by the FPT Working Group on Sentencing. The FPT WG has recommended an amendment to allow an offender to participate in a provincially / territorially approved program such as for addiction or counselling to prevent domestic violence, with consent by the Crown, accused and consideration of the interests of any victim. Also in 2002, two resolutions related to the date upon which sentence commences. One resolution called for this issue and the issue of credit for pre-trial custody to be referred to the FPT Working on Sentencing to review and to report back to the Uniform Law Conference in 2003. The FPT WG has examined this issue and is of the view that judicial discretion should be maintained in determining credit for time served but that the *Code* should be amended to require the judge to take into account the time served and record the amount of time credited on the record. Note also that the ULC will consider a paper prepared by Professor Allan Manson on this issue at the 2003 Conference.

The Uniform Law Conference Criminal Section proposed further consideration of this issue and contracted with Professor Alan Manson to prepare and submit a Discussion Paper to the Uniform Law Conference in August 2003.

Some sentencing related amendments were included in Bill C-32, described in more detail below. These include: an amendment to Form 46, probation order, to provide for the situation where the offender is serving a custodial sentence at the time of being placed on probation for a new offence and where probation follows a conditional sentence; clarifying the term "conditional sentence" and "conditional sentence order; and, permitting civil enforcement of restitution where it is a condition of probation.

Resolutions in 2001 and 2002 called for an appeal procedure for publication ban orders and more generally, the consideration of amendments to the *Criminal Code* to provide for the appeal of interlocutory orders. The Department of Justice commissioned the preparation of a Discussion Paper to analyze the need for an interlocutory appeal process and possible options. The paper was prepared by Professors Alan Manson and Gary Trotter, Queen's University, and was submitted to and discussed by ULC in 2002. Following the ULC discussion and the consideration of comments provided at an Experts' Roundtable hosted by the Department of Justice in June 2002, Professors Manson and Trotter revised the paper and developed a single option. The Department of Justice has examined the experience of other countries and the model proposed by Professors Trotter and Manson. A revised Discussion Paper on Interlocutory Appeals which includes specific questions for targeted consultations has been submitted to ULC 2003.

In 2001, several (11) resolutions were passed regarding the DNA provisions of the *Criminal Code* including resolutions related to including additional offences in the retroactive category and expanding the list of designated primary offences. The resolutions called on the Federal Government, in consultation with provinces, territories and other stakeholders to consider several specific amendments.

The Department of Justice (and Ministry of the Solicitor General) have conducted such consultations. In August 2002, the Minister of Justice launched consultations on the DNA data bank legislation and released the DNA Data Bank Legislation Discussion Paper (http://www.canada.justice.gc.ca/en/cons/dna_and). The discussion paper seeks views on several specific issues including the issues raised in the ULC resolutions. The results of the consultation process are currently being analyzed.

Bill C-20, *An Act to Amend the Criminal Code (Protection of Children and other Vulnerable Persons)* and the *Canada Evidence Act* was tabled December 5, 2002. It should be noted that Bill C-20 includes several amendments which reflect specific resolutions passed by ULC, in addition to the discussion paper on Voyeurism (1999) and the more general discussion in 2003 regarding the need to develop a more consistent framework for the provisions governing facilitating the testimony of young victims and witnesses (currently in section 486).

The key elements of Bill C-20 include stronger child pornography provisions; protecting young persons up to 18 from sexual exploitation of children; increasing sentences for sexual exploitation of children, abandoning a child and failing to provide the necessities of life and making the abuse of any child an aggravating factor in sentencing, measures to facilitate the participation of young witnesses and other vulnerable witnesses, and creating an offence of voyeurism.

With respect to voyeurism, the proposed offences would make it a crime, in three specific cases, to deliberately and secretly observe or record another person in circumstances where a reasonable expectation of privacy exists:

when the observation or recording is done for a sexual purpose;

when the person observed or recorded is in a place where one is reasonably expected to be in a state of nudity or engaged in sexual activity; or

when the person observed is in a state of nudity or engaged in sexual activity, and the purpose is to observe or record a person in such a state or activity.

These reforms reflect the resolutions passed in 1999 and 2000.

With respect to the measures to better protect children and other vulnerable persons as witnesses, the proposed reforms streamline the existing provisions and provide greater clarity and consistency - the need for which was noted at the ULC discussion regarding specific related resolutions in 2003. The proposed reforms to the current section 486 will re draft 26 subsections into separate sections to focus on the particular protection or testimonial assistance available. In addition, as a general principle, testimonial assistance will be available for children who are victims or witnesses in proceedings for any offence upon request, without requiring the Crown or witness to establish the need for the provision. However, the judge will have the discretion to deny the aid or protection where its use would interfere with the proper administration of justice.

Adult witnesses may also benefit from these provisions (e.g. use of screen or closed circuit TV, support persons) but will be required to establish that the order is necessary in order for them to provide a full and candid account of the acts complained of.

Bill C-20 includes provisions to permit the court to appoint counsel for a self-represented accused to conduct the cross-examination of a victim or witness up to 18 years of age or a criminal harassment victim, unless the proper administration of justice requires the accused to personally conduct the cross-examination.

In addition, adult victims or witnesses will be able to apply for an order that counsel be appointed for the self-represented accused to conduct their cross-examination and the court may make the order where the victim or witness establishes that the order is necessary in order for them to give a full and candid account of the acts complained of.

These proposals respond to the resolution passed in 2000 focusing on criminal harassment victims and in 2002 calling for amendments to give courts in "appropriate circumstances ... authority to appoint counsel to conduct the cross-examination of any witness in any case where the accused is self-represented, " and to the discussion paper included in the 2002 material.

Other resolutions (2001, 2002) which have been addressed in Bill C-20 include:

that subsection 161(1) (prohibition orders) of the *Criminal Code* be amended to include reference to offences committed under subsection 173(2) (exposure of genitals to person under 14) see clause 5(2).

that publication bans apply to proceedings for breach of a publication ban (see clause 15, section 486.6).

that the Department of Justice review the protections provided in subsection 486(2.1) (use of screens and closed circuit TV) and section 715.1 (videotaped evidence) to determine whether other offences should be included (see clause 15, sections 486.1, 486.2, and 715.1)

that sections 715.1 and 715.2 (videotaped evidence) of the *Criminal Code* be amended to substitute "video record" for the word "videotape" or that other appropriate wording be used (See clause 15; the term "video recording" has been employed).

that relevant provisions in the *Criminal Code* stating that the information shall not be "published in any newspaper or broadcast" include the Internet. (See clause, 15, section 486.4 and clauses 16-22, where all references to "publish" or "broadcast" have been amended to add "transmit".)

Part 2

Several other law reform initiatives may be of interest to the ULC delegates.

In July 2002, the Minister of Justice launched a broad public consultation of the DNA Data Bank legislation. The Consultation Paper was widely distributed and posted on the Department of Justice website (http://www.canada.justice.gc.ca/en/cons/dna_adn).

The Consultation Paper notes that the jurisprudence has raised issues of legislative interpretation which could be clarified in the law and Provincial Attorneys General have identified issues related to the scope and operation of the legislation. Similar issues have been raised in resolutions brought to the Uniform Law Conference as described earlier in this report. The Consultation Paper poses several specific questions, including whether the list of designated offences in section 487.04 should be amended (for example, to include historic sexual offences), whether DNA samples should be taken from an accused found not criminally responsible on account of mental disorder and for which offences, and whether the retroactive provisions should be expanded to include other offences or types of offenders.

The results of the consultation are currently being analyzed and will be provided to the Minister of Justice.

In August 2002, the Minister of Justice, together with the Minister of Industry and the Solicitor General of Canada announced a review of lawful access laws - the lawful interception of communications and the search and seizure of information by law enforcement and national security agencies. Broad consultations have been conducted and continue. A consultation paper was released to facilitate the consultation process and is available at http://www.canada.justice.gc.ca/en/con/la_al.

In November, 2002, the Minister of Justice tabled the Government's Response to the 15th Report of the Standing Committee of Justice and Human Rights, Corporate Liability and Workplace Safety. The Government's Response indicated their intention to draft new legislation to modernize corporate criminal liability, to impose on every person who employs or directs another person to perform work a legal duty to take reasonable care to avoid foreseeable harm to the person or the public. In addition the Response noted that the Government proposes to expand the standard of fault for corporate liability which would apply to all offences including workplace safety. On June 12, 2003, the Government tabled Bill C-45, *An Act to Amend the Criminal Code (criminal liability of organisations)* to update the law on corporate liability.

In November 2002, the Minister of Justice tabled the Government's Response the 14th Report of the Standing Committee on Justice and Human Rights, Review of the Mental Disorder Provisions of the *Criminal Code*. The Government stated its intention to introduce legislation to address the key recommendations of the Committee and to pursue further consultation and non-legislative initiatives to address other recommendations. The *Criminal Code* amendments proposed include clarification of the powers of Review Boards and additional powers to assist Review Boards in making dispositions in accordance with the criteria set out in the *Criminal Code*, repeal of unproclaimed provisions, clarification of inter-provincial transfers and provisions to address the role of victims at Review Boards hearings.

In December 2002, the Minister of Justice tabled Bill C-20, An Act to amend the *Criminal Code* (Protection of Children and other vulnerable persons). Bill C-20 addresses child pornography, sexual exploitation of children under 18 years of age, sentencing for specific and related offences (i.e. sexual exploitation, child abandonment and failing to provide the necessities of life) and provides that abuse of a child in the commission of any *Criminal Code* offence is an aggravating factor for sentencing, the participation and testimony of young victims and witnesses and vulnerable adult witnesses, and voyeurism. As noted earlier in the report, many of the Bill C-20 amendments address specific issues discussed by the Uniform Law Conference. For example, the creation of an offence of voyeurism was the subject of a Discussion Paper considered by ULC in 2000 and specific resolutions were submitted and passed in 1999 and 2000. In addition, the need for a more rational and consistent approach to the provisions governing the facilitation of young victims and witness (currently in section 486) was discussed in 2002.

Bill C-20 has received second reading in the House of Commons and has been referred to the Standing Committee on Justice and Human Rights.

On April 1, 2003, the *Youth Criminal Justice Act* was proclaimed into force, replacing the *Young Offenders Act*. The *Act* applies to young people between 12 and 17 years of age.

On April 11, 2003, the Minister of Justice introduced Bill C-32, *An Act to Amend the Criminal Code and Other Acts*. The Bill, among other amendments, proposes to restructure the offence of setting deadly traps, including the creation of a new offence of setting a deadly trap in a place that is kept or used to commit another indictable offence. Bill C-32 also includes amendments to the *Financial Administration Act* and to the *Criminal Code* to permit information technology managers in government and in the private sector to use Intrusion Detection Systems (IDS) to protect their computer systems from electronic communications, such as viruses or worm attacks, that could destroy important data, cripple vital networks or protect against intrusion by hackers which could result in the theft of private or classified information.

Bill C-32 also includes a small number of clarification amendments to the *Criminal Code* and related statutes. Examples of these include amendments to: clarify that the use of reasonable force is authorized to prevent criminal activity on board an aircraft in flight that could endanger the safety of the aircraft or any person or property on board; clarify the provision dealing with warrants to search for and seize weapons, ammunition and explosives based on public safety concerns to reflect the issues raised by the Ontario Court of Appeal in *R. v Hurrell*; provide for the civil enforcement of restitution ordered as a condition of probation or conditional sentence order, and; correct other inadvertent omissions and linguistic discrepancies that are necessary from time to time to maintain the quality and clarity of the law to ensure efficiency and effectiveness.

Bill C-32 received Second Reading on April 28, 2003. The Standing Committee on Justice and Human Rights heard witnesses and approved the bill, referring it back to the House of Commons to Report Stage and Third Reading.

Bill C-15B, *An Act to Amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act*, which passed in the House of Commons in May 2002 and received first reading in the Senate before the summer recess, was reintroduced in the Senate in October 2002 as Bill C-10. On November 20th 2002, the Senate Chamber referred Bill C-10 to the Senate Committee on Legal and Constitutional Affairs, with an instruction that the Committee split the Bill into two portions, Bill C-10A (firearms) and Bill C-10B (cruelty). Bill C-10A received Royal Assent on May 13, 2003.

The animal cruelty amendments have two primary objectives; (1) to consolidate, modernize and simplify the existing regime of animal cruelty offences, and (2) to increase existing penalties and provide new sentencing tools to enhance the effectiveness of the offence provisions.

Hearings on Bill C-10B (animal cruelty) commenced in early December 2002 and concluded on May 15, 2003. On May 29, 2003, the Senate made five amendments to the Bill. The House of Commons debated the Senate amendments on June 6, 2003. The House of Commons accepted some amendments, modified others and rejected two specific amendments on the grounds that they were legally unnecessary, confusing and had unclear legal effect.

The Senate considered the decision of the House of Commons during the week of June 9 and ultimately decided to insist on their two rejected amendments, and to further modify the "legal justification, excuse and colour of right" amendment adopted by the House. The Senate has sent a message back to the House with its position, and further movement will await the return of Parliament in September.

In May 2003, the Minister of Justice and Solicitor General of Canada tabled in Parliament the annual reports on the *Anti-Terrorism Act* protections, covering the period December 24, 2001 to December 24, 2002. The Attorney General of Canada is required to report annually on the use of the recognizance with conditions and investigative hearings provisions. The Solicitor General is required to report annually on the number of arrests without warrant in relation to the recognizance provision. Neither provision was used during the reporting period. Both annual reports are available on the Department of Justice website.

On May 27, 2003, the Minister of Health, Minister of Justice and Attorney General of Canada and the Solicitor General of Canada announced a renewed Drug Strategy; the strategy addresses prevention, health promotion, treatment and rehabilitation, enforcement, public education to address substance abuse, and funding for research.

The Minister of Justice tabled Bill C-38, *An Act to Amend the Contraventions Act and Controlled Drugs and Substances Act* to reform the criminal law with respect to the possession and production of cannabis. The Bill includes measures to: replace the current process and criminal penalties for possession of 15 grams or less of marijuana or one gram or less of cannabis resin with alternative penalties (fines) and processes under the *Contraventions Act*; provide law enforcement officers with the discretion to give a ticket or issue a summons to appear in court for possession of amounts exceeding 15 grams but less than 30 grams; to provide greater alternative penalties where aggravated factors exist, such as possession while committing an indictable offence; and to create new offences and greater penalties for illegal growers.

On June 12, 2003, the Minister of Justice tabled Bill C-45, *An Act to Amend the Criminal Code (criminal liability of organizations)*, to protect workplace safety and modernize corporate liability. The Bill reflects the commitments made in the Government's Response to the 15th Report of the Standing Committee on Justice and Human Rights.

On June 12, 2003, the Minister of Justice Solicitor General of Canada and Minister of Finance, jointly announced measures to strengthen enforcement and legislation against serious capital market frauds. The Minister of Justice tabled Bill C-46, *An Act to Amend the Criminal Code (capital markets fraud and evidence gathering)* to, among other things, create new offences of improper insider trading and retaliation against employees who assist law enforcement in investigating offences, raise maximum sentences for existing fraud offences and specify aggravating factors for fraud offences that focus on harm caused by large scale frauds. The Bill will also enhance evidence-gathering tools available to police by adding production orders for obtaining documents from third parties. These orders, which will be available for all offences, will be particularly useful for capital markets fraud cases. The Bill will also provide for concurrent federal prosecutorial jurisdiction for a narrow range of cases dealing with market related misconduct. Protocols will be established with the provinces in order to ensure a co-ordinated and effective approach to prosecutions.

RESOLUTIONS

ALBERTA

Alberta - 01

That subsection 351 (1) of the *Criminal Code* be amended to make possession of a break-in instrument a hybrid offence.

(Carried: 24-1-1)

Alberta - 02

It is recommended that the Federal-Provincial-Territorial Working Group on Criminal Procedure review those provisions of the *Criminal Code* requiring consent of the Attorney General, the Deputy Attorney General or an agent acting on his behalf, to clarify what level of consent is required for each provision.

(Carried as amended: 29-0-0)

Alberta - 03

That section 648 of the *Criminal Code* be amended to provide that there be a ban on publication of all portions of the trial at which the jury is not present, including any pre-trial applications under subsection 645(5) that deal with matters necessarily heard in the absence of the jury until the jury returns its verdict.

(Carried as amended: 17-2-9)

Alberta - 04

That the *Criminal Code* be amended to:

- a) increase the maximum fines for summary conviction offences, and
- b) adjust the terms of imprisonment on a graduated scale for hybrid offences where the Crown elects to proceed by summary conviction

(Carried as amended: 21-4-2)

Alberta - 05

To amend the sentencing provisions of the *Criminal Code* to allow the sentencing judge power to order an accused to have no contact with named persons while the accused is incarcerated.

(Carried: 24-0-4)

Alberta - 06

That the *Criminal Code* be amended to enable a sentencing judge to order a psychiatric or psychological assessment of the accused for the purpose of determining a fit and proper sentence.

(Withdrawn)

MANITOBA

Manitoba - 01

That the *mens rea* requirement for attempted murder should be broadened so it is consistent with the intent required for murder.

(Withdrawn)

(Note passage of 2002 resolution submitted by Alberta on this issue)

Manitoba - 02

That paragraph (b) of the definition of "serious personal injury offence" in section 752 of the *Criminal Code* be amended to include the offences of sexual interference, invitation to sexual touching and sexual exploitation

(Withdrawn)

Manitoba - 03

Where an offence of criminal harassment involves the use of a telephone, section 662 should provide that the offence of harassing telephone calls is an included offence in criminal harassment.

(Defeated: 1-9-19)

NEW BRUNSWICK

New Brunswick - 01

That section 657.1 of the *Criminal Code* be amended to include proof of damage to property and the absence of consent to the said damages.

(Carried as amended: 26-2-2)

New Brunswick - 02

That paragraphs 498(1)(c) and (d), and 499(1)(b) and (c) of the *Criminal Code* be amended to allow the release from custody on a recognizance not exceeding \$5000 (five thousand dollars). Furthermore, that within the above noted sections, that any and all references to the amount of \$500 (five hundred dollars) be amended and replaced with the amount of \$5000 (five thousand dollars).

(Carried as amended: 17-6-6)

New Brunswick - 03

To amend subsection 254(2) to make it clear that it need not be the same officer who forms the suspicion, makes the demand, administers the screening test and forms the opinion, based on the "fail" that he/she has grounds for the breathalyser demand. This would be in line with the legal requirements in Breathalyser demands where reasonable grounds may be obtained in a variety of ways.

(Withdrawn)

New Brunswick - 04

That Parliament addresses the inconsistencies in the *Criminal Code* with respect to the various ages of consent to sexual activity.

(Carried as amended: 17-0-13)

NEWFOUNDLAND AND LABRADOR

Newfoundland - 01

That paragraph 731(1)(b) of the *Criminal Code* and/or subsection 139(1) of the *Corrections and Conditional Release Act* be amended so that the imposition of a subsequent period of imprisonment will not invalidate a prior valid probation order.

(Carried -floor resolution: 20-1-9)

NOVA SCOTIA

Nova Scotia - 01

That the Department of Justice, in consultation with the provinces and other interested stakeholders, review legislative means for resolving the issues relating to drug impaired drivers, and in the process, address the anomaly in section 256 of the *Criminal Code*, whereby a person who's capable of consenting to a blood sample cannot have a sample seized by a warrant, nor can a demand be made for a blood sample by a peace officer.

(Carried as amended: 21-1-4)

Nova Scotia - 02

That Clause 15 of Bill C-20 be revised so that with respect to the proposed s.486.3, subsections 2 and 3 are deleted and subsection 4 is expanded to apply not only to criminal harassment cases but to sexual offences and serious personal injury offences as well. Moreover, instead of placing what appears to be an unmeetable onus on the accused, the provision should require the applicant who is seeking to prevent the accused from personally cross-examining the victim of the alleged offence to bear the onus of establishing that personal cross-examination by the accused would expose the victim to further emotional trauma, suffering, or harassment. The following redrafting of the proposed section 486.3(4) is suggested:

In any proceeding in respect of sections 153.1, 155, 239, 244, 244.1, 245, 264.1, 267, 268, 269, 269.1, 271, 272, 273 or 279, if on application by the prosecutor or by a victim of the alleged offence, the presiding judge or justice is of the opinion that there are reasonable grounds to believe that to permit the accused to cross-examine a victim of the alleged offence personally or through an agent would expose a victim of the alleged offence to further emotional trauma, suffering, intimidation or harassment, the presiding judge or justice shall appoint counsel for the purpose of conducting the cross-examination. Such an application may be made at any time in the proceeding and a victim of the alleged offence shall not be a compellable witness on the hearing of the application.

(Withdrawn)

(Note that Bill C-20 is currently before Parliament)

Nova Scotia - 03

That the Department of Justice in consultation with the provinces and other stakeholders review legislative means for resolving the issues relating to lengthy trials, including the risk of mistrials due to discharge of jurors

(Carried as amended: 27-0-2)

ONTARIO

Ontario - 01

That subsection 145(3) of the *Criminal Code* be amended to include violation of an order made under subsection 516(2).

(Withdrawn)

(Note 2001 resolution carried dealing with the same issue)

Ontario - 02

That the federal Department of Justice establish a regulation on an expeditious basis pursuant to subsection 467.1(4) containing a list of offences to be included in the definition of "serious offence" in that section, and that it develop the offences to be included in that regulation in collaboration with the provinces and territories.

(Carried 23-4-3)

Ontario - 03

That the presumption of care or control contained in paragraph 258(1)(a) be made applicable to the offence of refusal or failure to provide a sample under subsection 254(5).

(Carried 5-3-23)

Ontario - 04

To ask the Department of Justice to review the scope of the Attorney General consent requirement in subsection 164(7) and its application in subsection 164.1(8).

(Carried as amended: 18-0-12)

Ontario - 05

To amend section 487.055 so that a retroactive application can be brought before warrant expiry in the case of an offender who has been convicted of more than one sexual offence and who is now serving one or more sentences, including one for an eligible sexual offence, where the offender was sentenced to 2 years or more for that sexual offence, even though at the time of the application the offender may not be serving the particular sentence for that offence.

(Carried as amended: 16-7-4)

Ontario - 06

That subsection 524(12) be amended to include reference to section 516 in order that proceedings under section 524 may be adjourned.

(Carried as amended: 22-1-7)

Ontario - 07

To amend section 150 of the *Criminal Code* to include a definition of "night" for the purpose of Part V. The definition of "night" should provide greater flexibility than the definition of "night" in section 2 of the *Code* and, in particular, should take into account different seasons involving different hours of sunset.

(Defeated as amended: 10-11-9)

ONTARIO CRIMINAL LAWYERS ASSOCIATION

Ontario Criminal Lawyers Association - 01

That given recent amendments tabled in the House of Commons in May, 2003 in Bill C-38 with respect to the simple possession of marijuana offences, it is requested that the Departments of Justice and Solicitor General explore the possible alternatives and procedures for providing pardons for those who have in the past been convicted or found guilty of simple possession of marijuana.

(Carried - floor resolution: 12-0-18)

QUEBEC

Quebec - 01

Part 1

That the offence of taking part in a riot, as contemplated in section 65 of the *Criminal Code*, become a dual procedure offence.

(Carried as amended: 25-3-2)

Part 2

That the sentences for this offence (section 65) be set at a maximum term of imprisonment of five (5) years in the case of an indictable offence and eighteen (18) months for a summary conviction offence.

(Defeated as amended: 9-12-9)

Quebec - 02

To include the offences contemplated in sections 467.11, 467.12 and 467.13 of the *Criminal Code* in subsection 109 (1).

(Withdrawn)

(Without discussion - due to time constraints)

Quebec - 03

Part 1

To provide that the consent that is contemplated in subsection 119(2) of the *Criminal Code* may also be obtained from the Attorney General of the province where the offence is alleged to have been committed.

(Carried as amended: 20-4-7)

Part 2

To refer to the FPT Working Group on Criminal Procedure the issue of whether the consent required in subsection 119(2) should be given in writing.

(Carried as amended: 26-3-2)

Quebec - 04

1 Make the offence of personating a peace officer contemplated in section 130 of the *Criminal Code* a dual-procedure offence.

2 Increase the maximum term of imprisonment for summary conviction offences to eighteen (18) months, and make this term five (5) years in prosecutions for indictable offences.

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 05

That the maximum term of imprisonment for the offence contemplated in section 153.1 of the *Criminal Code* be increased to ten (10) years in cases where the accused is guilty of an indictable offence.

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 06

1 Include in subsection 153.1(1) of the *Criminal Code* the word "invites" before the phrase "counsels or incites."

2 Include, in paragraph 153(1)(b) and subsection 153.1 of the *Criminal Code*, the words "directly or indirectly" before the phrase "invites, counsels or incites."

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 07

That, in paragraph 259(2)(a) of the *Criminal Code*, after the words "during any period that the court considers proper" to add wording to ensure that the prohibition on driving applies during any period that the offender is out of prison.

(Carried as amended: 26-0-3)

Quebec - 08

That a section 366.1 be introduced into the *Criminal Code*, to read as follows:

"**366.1** Any person who, without just cause or a legitimate excuse, as the case may be,

(a) fabricates or repairs,

(b) buys or sells,

(c) exports from Canada or imports to Canada, or

(d) has in their possession

an instrument, apparatus, material or thing that reasonably leads to the conclusion, in the circumstances, that the person knows it can be used to falsify one or more documents or make forgeries of documents, or that the person knows has been designed, modified or intended for that purpose, is guilty of an indictable offence and is

liable to a maximum term of imprisonment of ten (10) years, or is guilty of an offence punishable by summary conviction."

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 09

To amend subsections 462.33(10) and 490.8(8) of the *Criminal Code* to provide that the restraint order and the conditions stipulated in it:

1. remain in force notwithstanding the fact that there is an application for restitution of the property or an appeal of the confiscation, unless the authorities before whom such remedies are brought made an order to the contrary; and
2. shall be reviewed if the time allowed for the appeal is extended.

(Carried: 25-0-5)

Quebec - 10

Give the judge who made an order under paragraph 462.34(4)(c) of the *Criminal Code* the power to review this order at the request of the Attorney General where new facts occur or facts are newly revealed.

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 11

Provide, in sections 462.42 and 490.5 of the *Criminal Code*, that unless the circumstances are exceptional, the application shall be submitted to the judge who made the confiscation order.

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 12

That justices of the peace have jurisdiction to make any orders under the scheme of section 490 of the *Criminal Code*.

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 13

Allow covert entry for the purposes of installing a tracking device pursuant to section 492.1 of the *Criminal Code*.

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 14

Amend paragraph 495(1)(b) C.C. so that a peace officer may arrest, without a warrant, an individual who has committed a criminal offence, even if the officer does not personally see the individual committing the offence.

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 15

To increase to \$1000 (one thousand dollars) the maximum amount that may be required under paragraphs 498 (1)(d) and 499(1)(c) of the *Criminal Code*.

(Withdrawn)

(Note passage of New Brunswick resolution # 2)

Quebec - 16

1. That the following conditions be added to the conditions that a peace officer may require of a person whom the officer releases under the terms of subsections 499(2) and 503.2(2) of the *Criminal Code*:

prohibition on driving a motor vehicle

prohibition on entering a certain area

prohibition on possessing or using a pager or cell phone

obligation to observe a curfew.

2. That these conditions may be waived for the purposes of engaging in legitimate paid employment or with the authorization of a police officer.

(Carried: 17-2-9)

Quebec - 17

That section 634 of the *Criminal Code* be amended in order to grant the defence and the prosecution an equal number of additional peremptory challenges where a replacement must be found for a juror who is excused before the evidence is heard.

(Withdrawn)

(Without discussion due to time constraints)

Quebec - 18

To give the judge who makes an order for the mental assessment of an accused under sections 672.11 and 672.16 of the *Criminal Code* the power to prevent the accused from contacting certain designated persons.

(Carried: 23-0-6)

Quebec - 19

To amend subsection 683(3) of the *Criminal Code* to confer expressly on the Court of Appeal, or on one of its judges - in addition to all the non-incompatible powers that the court may exercise in connection with an appeal in a civil case - the power to make orders to facilitate the proper conduct of the appeal, and to preserve the outcome of the appeal.

(Carried: 17-1-10)

Quebec - 20

To amend subsection 686(8) of the *Criminal Code* to make the exercise of complementary powers applicable to all cases where the court of appeal disposes of an appeal before it.

(Carried: 23-0-7)

SASKATCHEWAN

Saskatchewan - 01

That the *Criminal Code* and its Forms be amended to remove any requirement for Production Orders for accused persons who have been denied bail, for their own scheduled court appearances

(Carried: 22-0-7)

Saskatchewan - 02

That the Federal-Provincial-Territorial Working Group on Sentencing consider whether section 732.1 of the *Criminal Code* should be amended to add a personal service order as one of the optional conditions which may be included in an adult probation order so long as the victim consents.

(Carried as amended: 28-0-1)

Saskatchewan - 03

That section 254 of the *Criminal Code* be amended to permit a peace officer to make an approved screening demand on a person who the officer has reasonable and probable grounds to believe operated or had the care or control of a motor vehicle that was involved in an accident if the officer reasonably suspects that person had alcohol in his body, as soon as is reasonably practicable and, in any event, within 3 hours of the accident.

(Carried as amended: 20-5-5)

CANADA

CANADIAN BAR ASSOCIATION

Canadian Bar Association - 01

That the *Criminal Code* be amended to provide a route of appeal for a finding under subsection 742.6(9) regarding breach of a conditional sentence.

(Carried as amended: 9-8-13)

Canadian Bar Association - 02

Part 1

That the definition of "unfit to stand trial" in section 2 of the *Criminal Code* be amended to include the words "or sentence imposed" after the words "verdict is rendered" in the definition itself. And, that complementary amendments be made to permit an assessment to determine fitness to be sentenced.

(Defeated as amended: 1-14-15)

Part 2

That the Federal/Provincial/Territorial Working Group on Sentencing and Mental Disorder move expeditiously to consider the dispositional implications of amendments to the definition of "unfit to stand trial" in section 2 of the *Criminal Code*.

(Carried as amended: 24-0-6)

Canadian Bar Association - 03

That section 718.2 be amended by adding, at the end of paragraph (a)

.... aggravating circumstances; and

(vi) a history of social disadvantage in relation to the offender shall be considered a mitigating factor

(Withdrawn)

Canadian Bar Association - 04

That section 726 be amended to provide that a failure to comply with section 726 shall not affect the validity of the sentence so long as the failure was not intentional and so long as the offender is represented by counsel who had an opportunity to make submissions on behalf of the offender.

(Defeated as amended: 6-12-12)

Canadian Bar Association - 05

Section 9(a) of the *Criminal Code* should be expanded to state:

(a) ... of an offence of common law, including an offence pertaining to a failure to comply with a common law duty, ...

(Defeated: 2-22-6)

CANADIAN COUNCIL OF CRIMINAL DEFENCE LAWYERS

Canadian Council of Criminal Defence Lawyers - 01

That paragraph 686(1)(b)(iv) be amended to explicitly include Crown appeals from acquittal.

(Defeated: 1-21-7)