

Criminal Section Minutes 2004



Regina, Saskatchewan

August 22-26, 2004

CRIMINAL SECTION MINUTES

Attendance

Thirty three (33) delegates representing all jurisdictions except Nunavut, Newfoundland and Labrador and Prince Edward Island attended the Criminal Section. All jurisdictions were represented at the Conference as a whole. Delegates included Crown, defence counsel, academics, government officials and members of the judiciary.

Opening

Catherine Kane presided as Chair of the Criminal Section. Stéphanie O'Connor acted as Secretary. The Section convened to order on Sunday, August 22, 2004.

The Heads of each delegation introduced their delegation.

Proceedings

A consolidated version of the Rules of Procedure for the Criminal Section was tabled by the Chair for consideration by delegates. The consolidated version includes the amendments submitted during the 2001 ULC proceedings by British Columbia proposing a change to the order of proceedings of the Criminal Law section, beginning in 2002. The 2001 British Columbia resolution proposing the amendments to the Rules of Procedure was unanimously carried in 2001. It was agreed that the Steering Committee of the Criminal Section would review the consolidated rules and a vote on the rules was deferred to 2005.

Resolutions (Attached as Annex 2)

Fifty three (53) resolutions were initially submitted by jurisdictions for consideration. One resolution was proposed as a floor resolution. Several resolutions were amended during the proceedings, four of which were amended as two part resolutions. As a result, forty four (44) resolutions were considered by delegates. Thirty eight (38) resolutions were carried as proposed or amended, eleven (11) were withdrawn after discussion (6) or due to a similar resolution carried (5), and nine (9) resolutions were withdrawn without discussion, four (4) of which due to lack of time.

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

Discussion Papers

The Right to State Funded Counsel in the Criminal Context: Emerging Issues on an Evolving Entitlement

Graeme Mitchell, Director, Constitutional Law Branch, Saskatchewan Justice, prepared and presented the paper noted above. The paper reviewed the evolution, in the criminal context, of the right to state funded counsel as a constitutional entitlement. The author notes that the caselaw evolved in two linked but discrete areas: stagnation for funding and the accused's right to a fair trial which courts have interpreted to mean that accused individuals who have been denied legal aid may be entitled to a state funded counsel in certain circumstances. The paper categorizes orders for state-funded counsel as it evolved in criminal cases in four different ways: (1) general orders - *Rowbotham* Orders (2) specific orders for setting fee schedules - *Fisher* Orders (3) interim cost orders - awarding costs prior to trial in certain circumstances - and (4) orders respecting court appointments. The paper identifies a number of emerging issues for discussion: perceived inadequacy of legal aid tariffs, notice and proper protocol in commencing applications, jurisdiction of provincial courts to issue orders for court appointments and appellate mechanism respecting court appointment orders. Delegates noted that the paper provided a thorough review of the current emerging issues on orders for state-funded counsel which served as a good basis for discussion. Delegates discussed the issues identified in the paper and noted various practices with respect to unrepresented applicants for appointments of state-funded counsel and the low rates of legal aid funds for legal aid. Delegates further discussed the role of federal and provincial governments, courts and counsel with respect to these issues.

Delegates noted the importance of referring the issue for options for further consideration. It was agreed that the paper would inform the network of legal aid for distribution.

Disclosure Reform: Preliminary Discussion Paper

ULC - Criminal Section delegates considered a Justice Canada consultation document on disclosure, presented by Michael Zigayer, Senior Counsel, Federal Department of Justice. The consultation document presented four issues for further consideration: facilitating electronic disclosure, core disclosure (two part disclosure process), detailed disclosure management procedures and improper use of disclosed material. Delegates noted the importance of experienced lawyers and good management practices to deal with disclosure issues. Discussion among delegates included the question of whether there is a need to regulate electronic disclosure. Concerns were raised with the core disclosure concept as it relates to the issue of relevance. Delegates further noted the difficulties with frivolous disclosure requests and requests for non disclosable material. Concerns were also raised with the application of detailed disclosure management rules on day to day proceedings.

Delegates were asked to provide additional comments, if any, to the Department of Justice Canada.

Report of the Senior Federal Delegate (Attached as Annex 1)

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 Canada.

Closing

The Chair thanked the delegates for their contribution to the dynamic discussions. The delegates thanked Catherine Kane for her excellent role as moderator. Delegates thanked the host, Saskatchewan for the success of the 2004 Conference. The Nominating Committee recommended that Bart Rosborough be elected as Chair of the Criminal Section for 2004-2005 and it is recommended that Dean Sinclair be nominated to be the next Chair of the Criminal Section 2005-2006.

Annex 1

REPORT OF THE SENIOR FEDERAL DELEGATE

Introduction

The Uniform Law Conference continues to be a valuable consultation forum on criminal law reforms and criminal law policy. In addition, the discussion papers that are presented and the resolutions assist the Department of Justice in identifying evolving issues and the need for amendments to the *Criminal Code* and to other related criminal statutes. The Minister of Justice is committed to consultation with provinces, territories and a wide range of stakeholders. The ULC Criminal Section is a key stakeholder, providing expert advice and a range of perspectives.

Resolutions passed by the ULC Criminal Section are carefully considered. In some cases, a specific legislative amendment may need further study or may be better addressed either as part of a broader review or, by other non-legislative means. All legislative reform proposals require approval of the federal Cabinet.

This Report provides an overview of several legislative initiatives of the last year (2003-2004) that have been influenced by and benefited from the work of the ULC Criminal Section, some of which respond to specific resolutions that were passed in recent years. This Report also includes other legislative initiatives that may be of interest to Criminal Section delegates. It should be noted that during the last year, Parliament was dissolved on two occasions and, as a result, several bills died on the Order Paper, most recently following the general election, which was called on May 23, 2004.

2003-2004 Initiatives

Corporate Liability in the Workplace

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 November 2002 Response to the 15th Report of the Standing Committee on Justice and Human Rights. Bill C-45 received Royal Assent in November 2003 and was proclaimed in force on March 31, 2004.

Capital Markets Fraud and Evidence Gathering

In February 2004, the Minister of Justice tabled Bill C-13, *An Act to Amend the Criminal Code (capital markets fraud and evidence gathering)*, formerly Bill C-46, 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 amendments 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 also provides 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. Bill C-13 received Royal Assent on March 29, 2004. Bill C-13 will be proclaimed in force on a date to be determined by the Governor in Council.

Criminal Code - Setting Deadly Traps, Intrusion Detection Systems etc.

In February 2004, the Minister of Justice introduced Bill C-14, *An Act to Amend the Criminal Code and Other Acts* (formerly Bill C-32). The Bill, among other amendments, restructures 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-14 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-14 included a small number of clarifying amendments to the *Criminal Code* and related statutes, for example 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. Such amendments are necessary from time to time to maintain the quality and clarity of the law to ensure efficiency and effectiveness.

Bill C-14 received Royal Assent on April 22, 2004. With the exception of the amendments to Form 46 (regarding probation orders) all the amendments were proclaimed in force on April 22. The form 46 amendments will be proclaimed in force on a date to be determined by the Governor in Council.

Controlled Drugs and Substances Act

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.

In February 2004, the Minister of Justice introduced Bill C-10, *An Act to Amend the Contraventions Act and Controlled Drugs and Substances Act* (formerly Bill C-38) to reform the criminal law with respect to the possession and production of cannabis. The Bill included 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; provide greater alternative penalties where aggravated factors exist, such as possession while committing an indictable offence; and create new offences and greater penalties for illegal growers.

Bill C-10 died on the Order Paper when the federal general election was called on May 23, 2004.

Protection of Children and Other Vulnerable Persons

On February 12, 2004, the Minister of Justice tabled Bill C-12, *An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canada Evidence Act* (formerly Bill C-20) in the House of Commons. Bill C-12 addressed child pornography, sexual exploitation of children under 18 years of age, increased sentences for specific and related offences (i.e. sexual exploitation, child abandonment and failing to provide the necessities of life), provided that abuse of a child in the commission of any *Criminal Code* offence is an aggravating factor for sentencing, added measures to facilitate the participation and testimony of young victims and witnesses and vulnerable adult witnesses, and proposed an offence of voyeurism.

With respect to voyeurism, Bill C-12 was informed by the ULC discussion paper on Voyeurism (1999). Bill C-12 proposed offences to address conduct 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.

The Bill C-12 reforms also reflected 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 were intended to 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 re-drafted 26 subsections into separate sections to focus on the particular protection or testimonial assistance available. In addition, as a general principle, testimonial assistance would have been 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 would retain the discretion to deny the aid or protection where its use would interfere with the proper administration of justice.

It was intended that adult witnesses also benefit from these provisions (e.g. use of screen or closed circuit TV, support persons) but required adults 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-12 also included 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 required the accused to personally conduct the cross-examination.

These proposals responded 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 were addressed in Bill C-12 included the following:

§ 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);

§ that publication bans apply to proceedings for breach of a publication ban;

§ 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;

§ 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 (the term "video recording" was employed in Bill C-12); and

§ that relevant provisions in the *Criminal Code* stating that the information shall not be "published in any newspaper or broadcast" include the Internet. (References to "publish" or "broadcast" were revised to add "transmit" in Bill C-12.)

Bill C-12 was passed by the House of Commons and had received first reading in the Senate at the time the federal general election was called on May 23, 2004.

Cruelty to Animals

Bill C-22, *An Act to Amend the Criminal Code* (Cruelty to Animals), formerly Bill C-10B was introduced in March 2004. The animal cruelty amendments had 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. Bill C-22 died on the Order Paper in the Senate when the federal general election was called on May 23, 2004.

Mental Disorder

In November 2002, the Minister of Justice tabled the Government's Response to the 14th Report of the Standing Committee on Justice and Human Rights, Review of the Mental Disorder Provisions of the *Criminal Code*. The Standing Committee's report confirmed that the *Criminal Code* regime governing persons found unfit to stand trial or not criminally responsible on account of mental disorder, which has been in place since 1992, works well but needs some refinements.

In its Response, 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. On March 29, 2004, the Minister of Justice tabled Bill C-29, *An Act to Amend the Criminal Code* (*Mental Disorder*).

These amendments included:

§ Expanding the powers of the provincial and territorial Review Boards to enhance their ability to fulfill their mandate, which is to make decisions about the detention, supervision or release of persons found unfit to stand trial or not criminally responsible on account of mental disorder;

§ Allowing victim impact statements to be read by the victim at Review Board hearings and providing Review Boards similar powers to the courts to protect the identity of victims;

§ Permitting the court to hold an inquiry and order a judicial stay of proceedings for an unfit accused who is not likely to ever become fit to stand trial and who poses no threat to public safety, when a stay is in the interests of the proper administration of justice;

§ Streamlining transfer provisions, which permit a person found not criminally responsible on account of mental disorder to be relocated from one province to another when in the best interests of rehabilitation; and

§ Repealing unproclaimed provisions from 1992 reforms, including provisions related to maximum time limits on possible detention for persons found not criminally responsible on account of mental disorder (capping) as well as those related to the dangerously mentally disordered accused. The Standing Committee and a majority of stakeholders recommended repealing these provisions. As these provisions were never enacted, their repeal would have had no effect on the laws and procedures currently governing the mentally disordered accused.

Bill C-29 died on the Order Paper when the federal general election was called on May 23, 2004.

Drugs and Impaired Driving

On April 26, 2004, the Minister of Justice tabled Bill C-32, *An Act to Amend the Criminal Code* (drugs and impaired driving). The proposed reforms aimed to improve investigations of *Criminal Code* drug-impaired driving offences by authorizing police to demand physical tests and bodily fluid samples from suspected drivers using Drug Recognition Expert testing. Refusal or failure to comply with any of the demands for physical sobriety tests or bodily fluid samples by police would have been a criminal offence, punishable by the same *Criminal Code* penalty as refusing a demand for a breath test for alcohol. The proposed legislation also addressed enhancing investigations of driving while impaired by any drug - over-the-counter, prescription or illegal - not just cannabis.

The proposed reforms responded to the recommendations of the House of Commons Special Committee on the Non-Medical Use of Drugs (2003), the Senate Special Committee on Illegal Drugs (2002) and the House of Commons Standing Committee on Justice and Human Rights in its report *Towards Eliminating Impaired Driving* (1999). A consultation paper was also used to obtain responses from several key stakeholders in the fall of 2003, which helped inform the proposed legislation. The proposed amendments also addressed the 2003 ULC resolution calling for a review of legislative means for resolving the issues relating to drug impaired drivers.

Bill C-32 died on the Order Paper when the federal general election was called on May 23, 2004.

DNA

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) conducted such consultations. On May 7, 2004, The Minister of Justice introduced Bill C-35, *An Act to Amend the Criminal Code* (*DNA Identification Act and National Defence Act*). The amendments included:

§ Adding certain *Criminal Code* offences, including criminal harassment, to the list of designated offences for which a DNA data bank order can be made;

§ Permitting a data bank order to be made against a person who has committed a designated offence but was also found not criminally responsible on account of mental disorder;

§ Expanding the list of sexual offences under the retroactive scheme (for persons convicted prior to June 30, 2000) by adding historical sexual offences like indecent assault, and the offence of break and enter and committing a sexual offence. A new class of offender was also added to the list of offenders who may be candidates for the retroactive scheme: those who have committed one murder and one sexual assault at different times;

§ Creating the means to compel an offender to appear at a certain time and place to provide a DNA sample; and

§ Creating a procedure for the review of DNA data bank orders that appear to have been made for a non-designated offence and the destruction of samples taken from these offenders.

Bill C-35 died on the order paper when the federal general election was called on May 23, 2004.

Sentencing

Some sentencing related amendments were included in Bill C-14, *An Act to Amend the Criminal Code and Other Acts* (previously Bill C-32) discussed in more detail above. Bill C-14 received Royal Assent on April 22, 2004. The sentencing amendments include: a modification 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.

Several ULC resolutions carried in 2001 and 2002 focussed on sentencing issues such as the notion of sentencing to permit the offender to participate in a treatment program and the need for amendments to section 720. These proposals were subsequently the subject of further review and refinement by the FPT Working Group on Sentencing. The FPT WG 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 Group on Sentencing to review and to report back to the Uniform Law Conference in 2003. The FPT WG examined this issue in 2003 and recommended 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. ULC delegates discussed a paper prepared and presented by Professor Allan Manson on this issue at the 2003 Conference. The FPT Working Group will also consider the options proposed in the paper.

Criminal Procedure

In the past few years, many resolutions considered by ULC delegates have dealt with procedural aspects of the *Criminal Code*. 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 resolutions calling for criminal procedure reform, while a resolution and discussion identify a problem or particular issue, the specific proposed amendment as worded in the resolution may not adequately address the issue, or may require further consideration in light of other relevant legislative initiatives. Over 20 criminal procedure proposals have been identified for further development and consultation, many of which have been drawn from recent ULC proceedings. The Department of Justice hopes to be in a position to consult on these proposals, for possible inclusion in a criminal procedure omnibus bill, in the near future. In addition, 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.

Other Initiative - Review of Criminal Code Provisions Requiring Consent of the Attorney General

Following the discussion of 2003 ULC resolutions presented by Ontario, Quebec and Alberta on the issue of *Criminal Code* provisions requiring consent of the Attorney General, the Alberta resolution was amended to refer the review of all *Criminal Code* provisions requiring consent of the Attorney General, the Deputy Attorney General and agents acting on their behalf to the FPT Working Group on Criminal Procedure for the purpose of determining the appropriate level of authority to consent on behalf of the Attorney General and to correct inconsistencies found in these provisions. In the fall 2003, a chart detailing each provision requiring consent was prepared and distributed to members of the FPT Working Group on Criminal Procedure for their review and comments. In April 2004, a subcommittee of the Criminal Procedure Working Group was formed. This Subcommittee met by teleconference on July 28, 2004 to develop a rationalized approach to codified levels of authority to consent on behalf of the Attorney General. The Subcommittee also discussed policies and practices in various provinces. One member was tasked with preparing a short paper on the principles applicable to the question of when the personal consent of the Attorney General or Deputy Attorney General should be required while other members will review other closely related federal statutes for similar consent provisions and review court decisions on consent provisions. It is anticipated that the products flowing from the work of the subcommittee will be presented to the Federal Provincial Territorial Working Group on Criminal Procedure in November 2004.

Additional information on legislative initiatives can be found on the Department of Justice website at

<http://canada.justice.gc.ca>.

August 2004

Annex 2

RESOLUTIONS

ALBERTA

Alberta - 01

Amend section 372 (false messages, indecent and harassing telephone calls) of the *Criminal Code* to include all forms of modern communication including electronic communications via the computer or other wireless communication. This includes, but is not limited to email, instant messaging and pagers.

Withdrawn

(Note passage of New Brunswick resolution # NB2004-01)

Alberta - 02

A - That Justice Canada review the (3) three month initial detention period prescribed by s. 490 (detention of things seized) of the *Criminal Code* with a view to extending that initial detention period in complex cases and cases involving voluminous evidence.

Carried as amended: 24-0-4

B - That the *Criminal Code* be amended to direct the hearing of applications under ss. 490(8) (application - order of return - exception) or 490(9) (disposal of things seized) to the provincial court; and condition extensions of detention on a test balancing the nature of the property interest interfered with and the need for the property in any ongoing complex or voluminous investigation.

Carried as amended: 16-0-12

Alberta - 03

Amend the *Criminal Code* by increasing the maximum penalty on summary conviction for offences under sections 151 and 152 (sexual interference and invitation to sexual touching) to 18 months incarceration.

Carried: 20-5-2

Alberta - 04

Modify the *Criminal Code* to prescribe a mandatory prohibition order for offences under s. 249.1 (flight from police).

Carried as amended: 14-6-7

Alberta - 05

Add subsection 249.1(3) - Flight causing bodily harm, or death to schedule 1 of the *Corrections and Conditional Release Act*.

Carried: 22-5-1

Alberta - 06

A - Subsection 249.1 (1) (flight from police) should be added as a secondary designated offence for the purposes of the DNA legislation in the *Criminal Code*.

Carried: 12-9-7

B - Subsection 249.1(3) (flight from police causing bodily harm or death) should be added as a secondary designated offence for the purposes of the DNA legislation in the *Criminal Code*.

Carried: 23-4-1

Alberta - 07

That the bail forfeiture procedures in sections 770 and 771 of the *Criminal Code* be streamlined and that the development of the details of those procedures be developed by referral of this resolution to the Federal/Provincial/Territorial Working Group on Criminal Procedure.

Carried as amended: 24-0-4

Alberta - 08

Recognizing that the imposition of a probation order is an important part of a sentence disposition and that the automatic nullification of that order when a sentence of imprisonment in excess of 2 years comes to exist, is contrary to the proper administration of justice, it is recommended that the Criminal Section of the Uniform Law Conference make proposals to Justice Canada on how best to rectify the problem.

Carried as amended: 22-1-3

Alberta - 09

Section 733.1 (failure to comply with probation order) of the *Criminal Code* should be amended to set out a procedure allowing breaches to be proven using the supervisor's report and the signed reports of any other witnesses. Safeguards should be worked into the section to protect the accused's right to a fair trial.

Withdrawn

(Following discussion)

Alberta - 10

Section 172.1 (luring a child) of the *Criminal Code* should be added immediately to the list of

"primary designated offences" under section 487.04 (Forensic DNA analysis).

Withdrawn

(Note passage of Nova Scotia resolution # NS2004-03 on the same issue)

BRITISH COLUMBIA

British Columbia - 01

That subsection 55(3) (restriction on use of information) of the *Canada Elections Act* be amended to permit the use of information contained in the Federal Register of Electors for the creation of jury source lists.

Carried : 18-0-12

British Columbia - 02

That an offence be created prohibiting production and possession of counterfeit mail box keys.

Withdrawn

(Following discussion)

British Columbia - 03

That a provision be added to the *Youth Criminal Justice Act* permitting the Provincial Director to vary optional supervision in the community conditions previously set by the Provincial Director.

Carried: 18-0-11

British Columbia - 04

That the reference to paragraph (h) in subsection 119(6) (records of assessments) of the *Youth Criminal Justice Act* be amended to refer to paragraph (i) permitting the provincial director, or director of the provincial correction facility for adults or the penitentiary at which the young person is serving a sentence access to medical, psychological and psychiatric reports made under s. 34.

Carried : 21-3-5

British Columbia - 05

That subsection 99(4) (notice of hearing) of the *Youth Criminal Justice Act* be amended to permit a court to reduce the notice period to less than 5 clear days.

Withdrawn

British Columbia - 06

That s. 2 of the *Identification of Criminals Act* be amended to ensure that, in pre-charge screening jurisdictions, persons who are in lawful custody, but not yet charged with an indictable offence, can be fingerprinted and photographed where the police intend to seek charge approval.

Carried as amended: 22-3-4

British Columbia - 07

That s. 39(1)(b) of the *Youth Criminal Justice Act* be amended to permit the court to consider the violation of any sentence in deciding whether to impose a custody sentence.

Carried: 15-6-8

British Columbia - 08

That section 130 (personating a peace officer) of the *Criminal Code* be hybridized to permit proceeding by indictment or summary conviction.

Withdrawn

British Columbia - 09

That s. 119 (persons having access to records) of the *Youth Criminal Justice Act* be amended to permit use of a court transcript from a previous YCJA proceeding in any other court proceeding at any time for the purpose of refreshing the memory of a witness, meeting a disclosure obligation or cross-examining a witness.

Withdrawn**British Columbia - 10**

That Justice Canada be urged to resist the use of incorporation by reference in legislative drafting.

Withdrawn

(Chair notes that this item could be considered by the

Drafting Section of ULC and that it will be brought to their attention.)

MANITOBA**Manitoba - 01**

Justice Canada should carefully re-examine the objective of section 172 (corrupting children) of the *Criminal Code* in the context of other existing offences and provincial child protection statutes and determine whether it should be either amended or repealed.

Carried as amended: 26-0-0

Manitoba - 02

Notwithstanding the provisions that give provincial courts jurisdiction to try absolute jurisdiction offences, section 468 of the *Criminal Code* should be amended to give the superior court jurisdiction to try any offence that arises from the same transaction as an indictable offence, with the indictable procedure to then apply.

Carried as amended: 17-0-4

Manitoba - 03

That a working group of ULC - Criminal Section be formed to consider whether section 565(2) of the *Criminal Code* should be amended to provide that where a direct indictment is preferred, the accused is deemed not to have requested a preliminary hearing but may elect to be tried either by a court composed of a judge alone, a court composed of a judge and jury or, in the case of an offence not

covered by s. 469, a provincial judge; and whether other necessary amendments are needed; and that the working group report back to ULC 2005.

Carried as amended: 21-0-5

Manitoba - 04

Section 759 (appeal - dangerous offender) of the *Criminal Code* should be amended to include an express power to allow the court of appeal to remit a case to the sentencing judge, with directions where necessary, as an additional remedy in cases where a full re-hearing may not be necessary in the interests of justice.

Carried: 11-5-12

New Brunswick**New Brunswick - 01**

Section 372 of the *Criminal Code* should be amended to include any means of electronic communications, specifically where subsections 372(2) (indecent telephone calls) and 372(3) (harassing telephone calls) are concerned.

Carried as amended: 26-2-1

New Brunswick - 02

That section 462.48 (re: disclosure of income tax information) of the *Criminal Code* be amended, by removing *designated substance offence* and replacing it with *designated offence*, to remain consistent with the other amendments made to the proceeds of crime sections of the *Criminal Code*.

Carried: 13-7-5

New Brunswick - 03

The *Criminal Code* should be amended to include a mechanism to allow the Crown to apply for a stay of sentence pending the resolution of an appeal. The same type of undertaking prescribed in section 679 could be utilized should there be concerns for the public interest.

Withdrawn**(Following discussion)****NOVA SCOTIA****Nova Scotia - 01**

That the Federal-Provincial-Territorial Working Group on Mental Disorder consider whether, and how, firearm prohibition orders could be imposed on persons found not criminally responsible on account of mental disorder.

Carried as amended: 23-4-2

Nova Scotia - 02

That the *Criminal Code* and its Forms be amended to add the inclusion of section 172.1 (luring a child) as a designated offence for Part VI wiretap applications (section 183).

Carried 25-0-3

Nova Scotia - 03

That the *Criminal Code* and its Forms be amended as follows: Section 172.1 (luring a child) be added immediately to the list of "primary designated offences" under section 487.04 (forensic DNA analysis).

Carried: 25-1-3

Nova Scotia - 04

That the *Criminal Code* and its Forms be amended to address electronic communication (s. 372 of the *Criminal Code*).

Withdrawn

(Note passage of New Brunswick resolution # NB2004-01 on the same issue)

Nova Scotia - 05

Amend ss. 487.051 and 487.052 of the *Criminal Code* to provide for an order authorizing the taking of bodily samples for DNA analysis in respect of a person found not criminally responsible in relation to a designated offence on account of mental disorder under s. 672.34.

Carried: 24-4-4

Nova Scotia - 06

Amend sections 487.1 (telewarrants) and 529.5 (telewarrant) of the *Criminal Code* to delete the phrase "...and that it would be impracticable...with section 256 or 487" (s. 256 re: warrants to obtain blood samples; s. 487 re: information for search warrant).

Withdrawn

(Note passage of Quebec resolution #QC2004-01 on same issue)

Nova Scotia - 07

To amend s. 738 (restitution) of the *Criminal Code* so that an offender must give a sworn statement with respect to property, income and expenses if he is contesting a Restitution Order based on impecuniosity.

Withdrawn

(Following discussion)

ONTARIO

Ontario - 01

Amend the *Criminal Code* to clarify that, where an indictment is preferred under s. 577 (direct indictments), the accused's status on judicial interim release continues in the new proceedings subject to variance by the superior court judge.

Carried as amended: 24-1-4

Ontario - 02

Amend s.107 (false statement) of the *Criminal Code* to clarify that the commission of the offence is not restricted to situations where the false report or statement is knowingly made in the presence of a peace officer or chief firearms officer, but includes situations where a false report or statement is knowingly made by an individual and provided to that officer.

Carried: 28-0-0

Ontario - 03

Amend the *Criminal Code* provisions relating to counterfeiting in order to establish a more sensitive scheme that differentiates between various activities relating to counterfeiting, or level of these activities, resulting in a set of offences with differing maximum penalties, some of which will be hybrid offences.

Carried: 25-1-3

Ontario - 04

Make section 351 (possession of break-in instruments) of the *Criminal Code* a hybrid offence.

Withdrawn

(Note passage of Alberta resolution # AB2003-01 on the same issue)

Ontario - 05

Create a criminal offence that, subject to a reasonable excuse or other defence, would prohibit interference with legitimate or lawful efforts to contact an emergency service, or call 911.

Carried: 20-5-4

ONTARIO CRIMINAL LAWYERS ASSOCIATION

Ontario Criminal Lawyers Association - 01

That the Federal Government consider an amendment to s. 802.1 (limitation on the use of agents) of the *Criminal Code* to allow for provincial regulation of all agents in all summary conviction matters.

Carried as amended: 21-0-8

(Floor resolution)

QUEBEC

Quebec - 01

A - That the *Criminal Code* be amended to make it possible to obtain any warrant by a means of telecommunication.

Carried: 22-0-4

B - That the *Criminal Code* be amended to provide that to obtain a warrant by a means of telecommunication, that it no longer be necessary to show that it is impracticable to appear personally before a justice.

Carried: 23-0-5

Quebec - 02

A - Include in subsection 153.1(1) (sexual exploitation of persons with disability) of the *Criminal Code* the word "invites" before the phrase "counsels or incites."

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

Withdrawn**(Following discussion)****Quebec -03**

Include the offences referred to in sections 467.11 (participation in activities of criminal organization), 467.12 (commission of offence for criminal organization) and 467.13 (instructing commission of offence for criminal organization) of the *Criminal Code* in subsection 109 (1) (mandatory prohibition order - possession of weapons) or subsection 110(1) (discretionary prohibition order - possession of weapons).

Carried as amended: 23-0-4**Quebec - 04**

Amend paragraph 495(1) (b) of the *Criminal Code* 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.

Carried: 12-7-7**Quebec - 05**

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

Carried: 20-4-3**Quebec - 06**

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

Carried: 23-3-4

B - 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**Quebec - 07**

That the activity of possession of things or data under circumstances that give rise to a reasonable inference of use for the purpose of forgery be addressed by the Department of Justice Canada which is considering relevant legislative amendments in a broader context of identity theft.

Carried as amended: 18-2-1**Quebec - 08**

Give the judge who made an order under paragraph 462.34(4)(c) (re: order for revocation, variation of property seized) 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 - 09**

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

Carried: 19-0-2**Quebec - 10**

That justices of the peace have jurisdiction to make any orders under the scheme of section 490 (detention of things seized) of the *Criminal Code*.

Withdrawn**(Without discussion due to time constraints)****Quebec - 11**

Provide, in sections 462.42 (application - claim interest for relief from forfeiture) and 490.5 (application - offence related property forfeited) 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 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)****SASKATCHEWAN****Saskatchewan - 01**

That the *Criminal Code* be amended to provide that demonstrable risk of danger is not an essential element of the offence of impaired care or control of a motor vehicle.

Carried: 19-5-4

CANADA

CANADIAN BAR ASSOCIATION

Can-CBA - 01

Section 606(4) (plea to an included or other offence) of the *Criminal Code* should be amended to explicitly allow for pleas of not guilty to the offence as charged, but guilty to any other offence arising out of the same transaction, whether or not it is an offence arising out of any other Provincial or Federal statute.

Withdrawn

(Following discussion)