UNIFORM LAW CONFERENCE OF CANADA

EDMONTON, ALBERTA
AUGUST 20-24, 2006

CRIMINAL SECTION

MINUTES

ATTENDANCE

Thirty-one (31) delegates representing all jurisdictions except Nunavut, Prince Edward Island, and the Yukon attended the Criminal Section. All jurisdictions were represented at the Conference as a whole. Delegates included Crown counsel, defence counsel, policy counsel and members of the judiciary. The President of the National Conference of Commissioners on Uniform State Laws attended as a guest for a portion of the proceedings.

OPENING

Dean Sinclair, presided as Chair of the Criminal Section. Stéphanie O'Connor acted as Secretary. The Section convened to order on Sunday, August 20, 2006.

The Heads of each delegation introduced their delegation.

PROCEEDINGS

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

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

Resolutions (Attached as Annex 2)

Thirty-one (31) resolutions were presented by jurisdictions for consideration including one (1) floor resolution and two submitted as a two-part resolution. One (1) resolution was withdrawn without discussion. In addition, during the proceedings, one resolution was divided in two parts and voted on separately. As a result, thirty-one (31) resolutions were debated during the proceedings. Of the thirty-one resolutions considered by delegates, twenty-nine (29) were carried as submitted or amended, one (1) resolution was defeated as amended and one (1) was withdrawn following discussion.

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

Criminal Section Working Group Report

Report of the Criminal Section Working Group on Strangulation

Josh Hawkes, Counsel, Alberta Justice, provided an overview of the Report of the Working Group on Strangulation. The Report was produced following Alberta Resolution AB2005-01 which recommended the creation of the Working Group to explore the feasibility of creating a general intent offence of assault by strangulation. The Report highlights the various legislative initiatives that the Working Group has examined in several jurisdictions together with medical and other expert opinion. The Report also includes an examination of the interpretation and application of existing ***Criminal Code*** provisions that are relevant to this conduct. The Working Group concluded that the existing ***Code*** provisions were capable of adequately addressing strangulation as an elevated form of assault. However, the Working Group recommended that further education and training of police and prosecutors regarding the serious risks associated with this form of assault would assist in ensuring the appropriate investigation and prosecution of these cases.

The following two resolutions proposed by the Working Group were carried:

1. That the Criminal Section of the Uniform Law Conference of Canada accept the Report of the Working Group on Strangulation.

Carried: 25-0-0

2. That the Report be forwarded to the Federal/Provincial/Territorial Heads of Prosecutions Committee for consideration of the education and training recommended in the Report.

Carried: 25-0-0

Discussion Papers

Collateral Use of Crown Brief Disclosure – A Study Paper

In anticipation of the joint session of the Criminal and Civil Sections on the topic of the use of Crown brief materials in collateral proceedings, Criminal Section delegates discussed the above topic with a view to narrowing the specific criminal law issues for further development. Delegates were joined by the authors of the Study Paper, Crystal O'Donnell, Counsel, Ministry of the Attorney General of Ontario and David Marriott, Appellate Counsel, Alberta Justice, Appeals Branch (a summary of the Study Paper can be found below, under the title ***Joint Session of the Criminal and Civil Sections***).

During the discussion, a number of issues were highlighted by delegates such as the need to more precisely define the term "Crown brief documents"; consider if different kinds of protection should attach to different types of Crown brief documents, and if so, assessing the best mechanism to achieve this objective; the need to clarify the nature and scope of the privilege that attaches to materials gathered and used in the course of a prosecution; the need to adopt a consistent approach across the country that would prioritize the competing interests at play, with particular attention to situations involving requests in civil proceedings for production of Crown brief materials before criminal proceedings have concluded; and the relevant ***Charter*** rights that are raised by these issues.

Criminal Section delegates noted that before a mechanism for possible reform can be explored, a framework consisting of criminal law issues should be prepared in contemplation of further development by a ULCC working group.

Hybridization: A Consultation Paper

Criminal Section delegates considered a Consultation Paper on Hybridization developed by a working group of the Federal/Provincial/Territorial Coordinating Committee of Senior Officials - Criminal Justice (F/P/T). The Consultation Paper was presented by Anouk Desaulniers, Acting Senior Counsel, Criminal Law Policy Section, Justice Canada.

The Consultation Paper, which is the result of many years of discussions in the F/P/T context, describes hybridization as the process of taking an indictable or straight summary conviction offence and legislatively reclassifying it as a hybrid offence (dual procedure offence). Annexes to the Consultation Paper list over 100 indictable offences and 22 straight summary conviction offences for which hybridization is being considered. The Paper also includes a list of 15 recent ULCC resolutions calling for the hybridization of a number of ***Criminal Code*** offences that have been considered by the F/P/T working group. During the presentation, it was noted that one of the challenges associated with hybridization of offences is not to downplay the seriousness of many of the offences that are being considered for hybridization. It was emphasized that this initiative will provide the Crown with flexibility in determining the procedure to follow depending on the circumstances surrounding the commission of the offence.

During the discussions, some delegates expressed agreement with the overall policy of hybridization. However, there was concern expressed by some delegates about certain indictable offences that are being considered for hybridization. These delegates thought some of the listed offences were so serious that they should not be hybridized. Others noted that there is an overlap in ***Criminal Code*** offences and that in many cases, the issue is proper charging rather than hybridizing. Some expressed the view that the goal of hybridization is to provide flexibility and maximize efficiency but that there is also a need to change the culture that equates summary conviction offences with less serious offences. It was also noted that, particularly in light of the hybridization proposal being considered, the subject of appeals in summary conviction matters should also be reviewed.

In closing, delegates were reminded that the proposal to hybridize certain ***Criminal Code*** offences as presented in the Consultation Paper is not definitive and that comments provided during the discussion would be taken into consideration. Delegates were asked to provide additional comments, if any, to Justice Canada.

Joint Session of the Criminal and Civil Sections

Collateral Use of Crown Brief Disclosure – A Study Paper

This Study Paper examines the legal and policy issues arising out of the use of prosecution materials in collateral proceedings. In particular, the Paper highlights the decision in ***D.P. v. Wagg*** (2004), 239 D.L.R. (4th) 501 (Ont. C.A.) in which the Court of Appeal confirmed the Ontario Divisional Court's decision regarding the mechanism to be followed to determine whether Crown brief materials should be produced in a civil proceeding. This process proposes that Crown brief materials not be produced until the Attorney General and the appropriate police service have been notified and examine the

documents with a view to ensuring that production of those documents is determined with due consideration of the public interest.

The Paper then provides an overview of the many relevant issues including legal rights and interests impacted by the production of Crown brief materials in collateral proceedings including solicitor-client privilege; litigation privilege; public interest privilege; protection of privacy rights; Crown immunity; criminal disclosure; implied undertakings; ***Charter*** issues; jurisdiction; and overarching concerns regarding the administration of justice and the integrity of the prosecution (e.g. protecting the criminal trial process, protecting informants, avoiding witness contamination and ensuring witness safety). The authors note that practice regarding the request for prosecution materials for use in a collateral proceeding varies depending on the jurisdiction but that all jurisdictions recognize the sensitivity of the information contained in prosecution materials and make efforts to redact them. However, a significant difference in approach in jurisdictions across Canada was whether the Crown responds to such motions as a non-party to the collateral proceeding and whether the access to prosecution materials is permitted through the courts or under the applicable freedom of information and privacy legislation.

The authors conclude with a number of recommendations including a suggestion that there be a consistent approach across the country in responding to requests for production of Crown brief materials for use in collateral proceedings. The Paper acknowledges that difficulties may arise in addressing jurisdictional concerns regarding which court or forum has the ability to hear any motions or applications for particular documents and which level of government will be required to make the necessary changes.

Following discussion, the following resolution regarding the use of Crown brief materials in collateral proceedings was adopted:

Resolved:

That a joint working group be established to consider the issues raised in the Report and, in accordance with any directions of the Conference, report and make any recommendations to the Conference in 2007 respecting the desirability and feasibility of legislative or non-legislative initiatives to promote uniformity in the use of Crown Brief material in collateral proceedings.

Compensation for the Wrongfully Convicted **(Informal Request to Draft Model Legislation)**

Lynn Romeo, Acting Director, Civil Legal Services, Manitoba Department of Justice and Earl Fruchtman, Acting Director, Crown Law Criminal, Ontario Ministry of the Attorney General provided a status report on the informal request to draft model legislation regarding compensation for the wrongfully convicted.

Canada acceded to the ***United Nations International Covenant on Civil and Political Rights*** in 1976. Article 14(6) of that Convention establishes the right to compensation according to law in cases of miscarriages of justice of a person who has been convicted and suffered punishment as a result of the conviction. There is presently no statutory regime in Canada (federally or provincially) establishing a program of compensation for persons who have been wrongfully convicted.

In 2002, the Federal/Provincial/Territorial Ministers Responsible for Justice (F/P/T) released the Report of the Working Group on the Prevention of Miscarriages of Justice. At the same time, the

Federal/Provincial/Territorial Coordinating Committee of Senior Officials - Criminal Justice established a working group to review guidelines approved by the F/P/T in 1998 with respect to compensation of wrongfully convicted persons. Work on this issue is ongoing and will be monitored.

CLOSING

The Chair expressed that it was an honour to serve as Chair of the Criminal Section and noted the quality of the debate by delegates throughout the week. The Chair thanked Alberta for hosting this year's Conference and noted his appreciation for the continued support he received by members of the Steering Committee throughout the year. The Chair expressed his gratitude to the Secretary for her ongoing work throughout the year and her assistance during the proceedings. Finally, the Chair thanked the interpreters for their assistance during the course of the deliberations.

Delegates thanked the Chair for his good chairmanship during discussions. The Nominating Committee recommended that Michel Breton of Québec be elected as Chair of the Criminal Section for 2006-2007 and it was recommended that Nancy Irving of Justice Canada be nominated to be the next Chair of the Criminal Section 2007-2008.

Annex 1

REPORT OF THE SENIOR FEDERAL DELEGATE

Department of Justice Canada
Uniform Law Conference of Canada
Criminal Section 2006

Introduction

The Uniform Law Conference of Canada continues to play a valuable role in providing expertise on a range of emerging criminal law issues. Topics addressed in Papers, Working Group Reports and Resolutions of the Uniform Law Conference of Canada (ULCC) assist the Department of Justice in identifying the need for reform and options for reform.

The Minister of Justice remains committed to consultation with provinces, territories and a wide range of stakeholders. The ULCC Criminal Section is a key stakeholder, providing expert advice and a range of perspectives.

Resolutions passed by the ULCC Criminal Section are carefully considered by Senior Officials in the Department of Justice. The Deputy Minister of Justice and the Minister of Justice are thoroughly briefed on the outcome of ULCC discussions.

As noted in past reports, the passage of resolutions calling for ***Criminal Code*** and other related criminal law amendments may not result in immediate legislative reform. Developing criminal law policy and considering whether legislative proposals may move forward involves a number of steps that are taken to ensure that all options to address the issue and possible implications have been thoroughly explored. For example, the ***Charter*** implications will be assessed, consultation with stakeholders not represented at the Uniform Law Conference may be held and existing studies on the issue may need to be considered before a particular proposal may be recommended for legislative amendment. In some cases, upon further examination, a proposal may be addressed by non-legislative means. In other cases, the Uniform Law Conference discussion and resolution leads to the consideration of additional options for law reform or a different approach to address the issue raised by the resolution.

Moreover, all legislative reform proposals require approval of the federal Cabinet. Often there are several legislative initiatives that are of interest to the Minister of Justice. However, the Cabinet and Legislative agenda include initiatives from all Ministers. While law reform remains a government priority, it is not possible to forecast whether a particular ULCC proposal will result in legislative reform.

Legislative reform may sometimes take time. However, as evidenced by the information that follows, the work of the Uniform Law Conference of Canada greatly contributes to criminal law reform.

Several criminal law reform bills were introduced in 2004–2005. As noted below, several bills died on the Order Paper upon the dissolution of Parliament in November 2005. Two bills were passed and proclaimed into force; Bill C-49 to combat trafficking in persons and Bill C-53 to address proceeds of crime. In addition, two bills passed in the spring and summer of 2005, which were noted in the 2005

report, were proclaimed into force; Bill C-2, ***An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*** (S.C. 2005, c. 32) and Bill C-10, ***An Act to amend the Criminal Code (mental disorder)*** (S.C. 2005, c. 22).

This Report provides an overview of criminal law legislative initiatives of the past year. For ease of reference, the initiatives are set out in chronological order beginning with the most recent bills introduced. Of particular interest to the Criminal Section is Bill C-23, ***An Act to Amend the Criminal Code*** (***criminal procedure, language of the accused, sentencing and other amendments***), which addresses a number of resolutions that were passed in recent years.

2005-2006 Legislative Initiatives

39th Parliament – 1st Session

Bill C-23 ***Criminal Procedure, Language of the Accused, Sentencing and Other Amendments***

Bill C-23, ***An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*** received First Reading in the House of Commons on June 22, 2006. As highlighted below, Bill C-23 reflects a number of ULCC resolutions passed between 1996 and 2005. This Bill proposes amendments in three main categories: criminal procedure, sentencing and language of the accused. Bill C-23 also includes other amendments to various ***Criminal Code*** provisions.

Criminal Procedure

The amendments include:

- consolidating into one section all provisions regarding proof of service of specific documents, for example, notices, subpoenas, and summons (ULCC 1999);
- making it an offence for an accused person who is remanded to custody to be in breach of an order not to communicate with a victim, a witness or other person (ULCC 2001, 2005);
- providing for the use of a means of telecommunication to forward warrants for the purpose of endorsement and execution in a jurisdiction, other than the jurisdiction where the search warrant was obtained (ULCC 2002);
- providing that an appeal of a superior court order with respect to things seized lies with the court of appeal (ULCC 2002);
- where a preferred indictment has been filed against the accused, allowing the accused to elect to be tried before a superior court judge sitting without a jury, subject to the Attorney General's power to require a jury trial when the alleged offence carries a maximum punishment of not more than five years (ULCC 2005);
- granting the defence and the prosecution an equal number of additional peremptory challenges when replacing a juror who is excused before the evidence is heard (ULCC 2005);
- providing that on application by the accused, the court may require jurors be excused during a challenge for cause (ULCC 1997);
- providing for a new election for the accused where the Supreme Court of Canada orders a new trial (ULCC 2001);

- correcting an error and ensuring consistency between the English and French versions of a provision by providing that the prosecutor's appeal is of the verdict of acquittal, not of a conviction (ULCC 2005);
- providing that evidence taken at the preliminary inquiry can still be admissible at trial if the accused requested to be absent during the preliminary inquiry knowing that a witness would be testifying and provide that upon request by the accused to be absent for part or all of the preliminary inquiry, that evidence taken in his or her absence could be admissible at trial (ULCC 2005);
- providing for a summary conviction trial with respect to co-accused to proceed where one of the co-accused does not appear (ULCC 2001); and
- reclassifying the offence of possession of break and enter instruments into a dual procedure offence (ULCC 1998, 2003).

Sentencing

Amendments to the sentencing regime include ULCC proposals to clarify impaired driving penalties as follows:

- clarifying that the minimum penalties ($600 fine for a first offence; 14 and 90 days imprisonment for a second and third offence, respectively) provided for impaired driving offences (e.g. operation while impaired, failure or refusal to provide a breath sample) apply to a person convicted of an offence of impaired driving causing bodily harm or of an offence of impaired driving causing death (ULCC 2001);
- providing the sentencing judge with the power to make a driving prohibition order consecutive to an existing driving prohibition order (ULCC 1999);
- providing that unless otherwise stated by the court, the accused is authorized to apply for enrolment in an alcohol ignition interlock device program (ULCC 2005);
- clarifying that an offender is only permitted to drive, while being the subject of a driving prohibition order, if he or she has registered in an alcohol ignition interlock device program and is in compliance with the conditions of the program (ULCC 2000); and
- clarifying that where the actual prison term imposed is less than life, the prohibition on driving applies during the period that the offender is incarcerated ***in addition*** to the period imposed by the sentencing court (ULCC 2003).

Bill C-23 also includes the following amendments to the sentencing provisions of the ***Criminal Code***:

- providing the court with the power to order an offender not to communicate with identified persons while in custody and creating an offence for failing to comply with the order (ULCC 2000, 2003 and 2005);
- increasing the maximum fine that can be imposed for a summary conviction offence to $10,000 (ULCC 2001);
- allowing the appeal court to suspend a conditional sentence order or a probation order and to require the convicted person to enter into an undertaking or a recognizance until the appeal is determined (ULCC 1999);
- providing that failure to adhere to the requirements that an offender receives an explanation as well as a copy of a probation order, conditional sentence order or order imposing a fine does not affect the validity of the order (ULCC 2000); and

- providing the court with the power to order, on application by the Attorney General and after convicting a person of the offence of luring a child by means of a computer system, the forfeiture of things used in relation to that offence (ULCC 2005).

Language of the Accused

The amendments to the language rights provisions of the ***Criminal Code*** will improve the means through which an accused is informed of the right to be heard by a judge or a judge and jury who speak the official language of Canada that is the language of the accused, or both official languages of Canada. The amendments also codify the right of the accused to obtain a translation of the information or indictment on request (ULCC 1996). Other provisions clarify the application of the language provisions of the ***Criminal Code*** in the context of bilingual trials.

Bill C-22 ***Age of Protection***

Bill C-22, ***An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act*** received First Reading in the House of Commons on June 22, 2006.

This Bill amends the ***Criminal Code*** to raise the age, from 14 to 16 years, at which a person can consent to non-exploitative sexual activity.

It creates an exception in respect of an accused who engages in sexual activity with a 14 or 15 year old youth and who is less than five years older than the youth.

It also creates an exception for transitional purposes in respect of an accused who engages in sexual activity with a 14 or 15 year old youth and who is five or more years older than the youth if, on the day on which this Act comes into force, the accused is married to the youth.

The exception also applies to the accused if, on the day on which this Act comes into force, he or she is the common-law partner of the youth or has been cohabiting with the youth in a conjugal relationship for less than one year and they have had or are expecting to have a child as a result of the relationship, and the sexual activity was not otherwise prohibited before that day.

Below this age, all sexual activity with a young person, ranging from sexual touching to sexual intercourse, is prohibited.

This exception would apply to 14 and 15 year old youth who engage in non-exploitative sexual activity with a partner who is less than five years older**.**

The proposed reforms maintain an existing close-in-age exception that exists for 12 or 13 year olds who engage in sexual activity with a peer who is less than 2 years older, provided the relationship is not exploitative. The legislation also maintains the existing age of protection of 18 years old for exploitative sexual activity.

Bill C-21 ***Non-Registration of Firearms***

Bill C-21, ***An Act to amend the Criminal Code and the Firearms Act (non-registration of firearms that are neither prohibited nor restricted)*** received First Reading in the House of Commons on June 19, 2006.

This Bill proposes to amend the ***Criminal Code*** and the ***Firearms Act*** to repeal the requirement to obtain a registration certificate for firearms that are neither prohibited firearms nor restricted firearms (long-guns), as well as associated offences.

Bill C-21 requires current owners to notify the Chief Firearms Officer prior to the transfer (sell, barter or give) of a long-gun. This notice will invoke the Chief Firearms Officer's obligations to verify the transferee's licence status, licence eligibility and whether the transferee can possess that type of firearm, as well as authorize the transfer if it is determined that it is not contrary to the interests of the safety of the public.

Finally, businesses transferring long-guns to another business will not be required to contact either the Chief Firearms Officer or the Registrar (as previously done) prior to a transfer. However, conditions that those businesses must meet with respect to such transfers to further the public safety objectives of the legislation will be prescribed in regulations. As such, this Bill amends the ***Firearms Act*** to provide that the Governor in Council may make regulations regulating the keeping and destruction of records by businesses in relation to long-guns.

Bill C-19 ***Street Racing***

Bill C-19, ***An Act to amend the Criminal Code (street racing) and to make a consequential amendment to the Corrections and Conditional Release Act*** received First Reading on June 15, 2006.

This Bill creates a separate ***Criminal Code*** offence of street racing based on dangerous driving (no bodily harm or death)**,** dangerous driving causing bodily harm**,** dangerous driving causing death**,** criminal negligence causing bodily harm, and criminal negligence causing death. This new offence would also include increased maximum punishments and escalating mandatory driving prohibitions for those convicted of street racing.

For further details on the penalties proposed for the new street racing offence, please refer to the Department of Justice Web site at the following address:
www.canada.justice.gc.ca/en/news/press_releases/general.html

Bill C-18 ***DNA***

Bill C-18, ***An Act to amend certain Acts in relation to DNA identification*** received First Reading in the House of Commons on June 8th, 2006.

Bill C-18 amends the ***Criminal Code***, the ***DNA Identification Act*** and the ***National Defence Act*** to facilitate the implementation of ***An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act***, S.C., c. 25 (previously Bill C-13 - as reported in the 2004 and 2005 reports). Bill C-18 builds upon the changes proposed in Bill C-72 (38th Parliament) that died on the Order Paper. In addition to reintroducing the changes proposed in Bill C-72, Bill C-18 will allow for the effective implementation of Bill C-13. The amendments include provisions to:

- clarify that a warrant can be executed for the arrest of a person who fails to show for a DNA sampling and the bodily substances be taken by any Canadian police force that arrests the person; permit a hearing to determine whether to make a DNA order within 90 days of sentence being pronounced;
- make it an offence to fail to appear for DNA sampling**,** similar to the offence for failing to show up for fingerprinting;
- add attempted murder and conspiracy to commit murder to the offences covered by the retroactive provisions, which apply to offenders convicted of a single murder, sexual offence or manslaughter prior to June 30, 2000, when the legislation that enabled the creation of the National DNA Data Bank came into force;
- ensure information provided by the National DNA Data Bank can be used to investigate all criminal offences; and
- require the Commissioner of the Royal Canadian Mounted Police to destroy the bodily substances collected under an order or authorization and the information transmitted with them if, in the opinion of the Attorney General or the Director of Military Prosecutions, as the case may be, the offence to which the order or authorization relates is not a designated offence.

Changes would also be made to the ***National Defence Act*** to ensure that corresponding reforms apply to the military justice system.

Bill C-10 ***Minimum Penalties for Firearm Offences***

Bill C-10, ***An Act to amend the Criminal Code (minimum penalties for offences involving firearms) and to make a consequential amendment to another Act*** was introduced in the House of Commons on May 4, 2006 and referred to the Justice and Human Rights Committee on June 13, 2006.

Bill C-10 proposes three different escalating minimum penalty schemes, based on the nature and level of seriousness of the offences.

Serious *Use* Offences:

I - Escalating Mandatory Minimum Penalties:
- 5 years - on a first offence;
- 7 years - if accused has one prior ***use*** conviction (any one from a pool of serious offence); and
- 10 years - if accused has more than one prior ***use*** convictions.

Aggravating Factors:
- if the offence is linked to a criminal organization and any firearm is used; or
- if a restricted or prohibited firearm, such as a handgun, is used.

Offences Targeted:
- attempted murder (s. 239);
- discharging a firearm with intent (s. 244);
- sexual assault with a weapon (s. 272);
- aggravated sexual assault (s. 273);
- kidnapping (s. 279);
- hostage taking (s. 279.1);
- robbery (s. 344); and
- extortion (s. 346).

Serious *Non-Use* Offences:

II- Escalating Mandatory Minimum Penalties:
- 3 years - on first offence; and
- 5 years - if accused has one prior ***use*** or serious ***non-use*** conviction.

Offences Targeted:
- possession of a loaded restricted or prohibited firearm (s. 95);
- firearms trafficking (s. 99);
- possession for the purpose of trafficking (s. 100);
- making an automatic firearm (s. 102);
- firearms smuggling (s. 103); and
- new offence of robbery where a firearm is stolen (s. 98.1).

III - Escalating Mandatory Minimum Penalties:
- 1 year - on first offence;
- 3 years - if accused has one prior ***use*** or serious ***non-use*** conviction; and
- 5 years - if accused has more than one prior ***use*** or serious ***non-use*** conviction.

Offences Targeted:
- possession of a firearm obtained by crime (s. 96);
- possession of a firearm contrary to a court order (s. 117.01(3));
- new offence of breaking and entering with intent to steal or stealing a firearm (s. 98); and
- use of a firearm or imitation firearm in the commission of other offences (s. 85).

Bill C-9 ***Conditional Sentence of Imprisonment***

Bill C-9, ***An Act to amend the Criminal Code (conditional sentence of imprisonment)*** received First Reading in the House of Commons on May 4th, 2006.
This Bill amends section 742.1 of the ***Criminal Code*** to provide that a person convicted of an offence prosecuted by way of indictment for which the maximum term of imprisonment is ten years or more is not eligible for a conditional sentence.

Bill C-2 ***Federal Accountability Act***

Bill C-2, ***An act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability (federal accountability act)*** received Third Reading in the House of Commons on June 21, 2006.

Bill C-2 includes amendments to a number of federal statutes as well as enacting new acts. Of particular interest to Uniform Law Conference delegates is Part 3 of Bill C-2. Part 3 enacts the ***Director of Public Prosecutions Act*** which provides for the appointment of the Director of Public Prosecutions (DPP) and one or more Deputy Directors. That Act gives the Director the authority to initiate and conduct criminal prosecutions on behalf of the Crown that are under the jurisdiction of the Attorney General of Canada. That Act also provides that the DPP has the power to make binding and final decisions as to whether to prosecute, unless the Attorney General of Canada directs otherwise, and that such directives must be in writing and published in the ***Canada Gazette***. The Director would hold office for a non-renewable term of seven years during good behaviour and is the Deputy Attorney General of Canada for the purposes of carrying out the work of the office. The Director is given

responsibility, in place of the Commissioner of Canada Elections, for prosecutions of offences under the ***Canada Elections Act***.

38th Parliament – 1st Session

Bill C-82 ***Firearms***

Bill C-82, ***An Act to amend the Criminal Code (firearms)***, received First Reading in the House of Commons on November 25, 2005. Bill C-82 proposed to amend the ***Criminal Code*** to:

- increase certain minimum penalties relating to smuggling, trafficking in and possession of firearms and other weapons;
- create two new offences: breaking and entering to steal a firearm and robbery to steal a firearm;
- expand the application of provisions relating to prohibitions on the possession of a firearm or other weapon, including where a firearm has been used in the commission of certain offences or where the accused, suffering from a mental disorder, is released on conditions;
- provide for the court to delay release on parole in cases involving the use of a firearm in the commission of certain serious offences; and
- extend measures to assist and protect witnesses to cases relating to offences involving a firearm or other weapon.

Note that Bill C-82 died on the Order Paper as a result of the dissolution of Parliament on November 29, 2005.

Bill C-72 ***DNA***

Bill C-72, ***An Act to amend certain Acts in relation to DNA Identification*** received First Reading in the House of Commons on November 2, 2005. Bill C-72 proposed to amend the ***Criminal Code***, the ***DNA Identification Act*** and the ***National Defence Act*** to facilitate the implementation of ***An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act***, S.C. 2005, c. 25. The proposed amendments included provisions to:

- clarify definitions and procedures for obtaining a DNA data bank order and for sharing information with international law enforcement partners;
- help ensure DNA data bank orders can be carried out even when, for logistical reasons, it may not be possible to take the sample at the precise time set out in the order;
- ensure that the law enforcement community can use information provided by the National DNA Data Bank to investigate all criminal offences;
- simplify the procedure to destroy samples taken from those convicted of an offence not intended to be included in the DNA data bank; and
- allow for hearings by video, to reduce the costs and security associated with transporting a greater number of offenders eligible for retroactive sampling, as a result of Bill C-13.

Retroactive sampling applies to those convicted of a single murder, sexual offence or manslaughter prior to June 30, 2000, when the legislation that enabled the creation of the National DNA Data Bank came into force.

Bill C-72 died on the Order Paper as a result of the dissolution of Parliament on November 29, 2005.

Bill C-70 ***Conditional Sentence of Imprisonment***

Bill C-70, ***An Act to amend the Criminal Code (conditional sentence of imprisonment)*** received First Reading in the House of Commons on October 27, 2005.

Bill C-70 proposed to amend the ***Criminal Code*** to create a presumption that courts shall not make conditional sentence orders when sentencing offenders convicted of serious personal injury offences, terrorism offences, criminal organization offences or any other offences the nature and circumstances of which require the paramount sentencing objective of the court to be the expression of society's denunciation. It also proposed to allow a court to suspend a conditional sentence order pending appeal, and, before doing so, to order the accused to enter into an undertaking or recognizance. In addition, the Bill proposed to clarify that the minimum punishment provided for offences under sections 253 and 254 of the ***Criminal Code*** applied to impaired driving offences causing bodily harm or death and provided that a court may order that the time served under an order prohibiting the operation of a means of transport be served consecutively to the time served under any other similar order that is in force.

Bill C-70 died on the Order Paper as a result of the dissolution of Parliament on November 29, 2005.

Bill C-65 ***Street Racing***

Bill C-65, ***An Act to amend the Criminal Code (street racing) and to make a consequential amendment to another Act*** received First Reading in the House of Commons on September 28, 2005. This Bill proposed to amend the ***Criminal Code*** by defining street racing and by specifically identifying the involvement in street racing as an aggravating factor during sentencing for the following offences: dangerous operation of a motor vehicle causing bodily harm, dangerous operation of a motor vehicle causing death, criminal negligence causing bodily harm and criminal negligence causing death. It also provided for a mandatory driving prohibition order if street racing is found to be involved in one of those offences. The period of driving prohibition would follow any period to which an offender is sentenced to imprisonment.

Bill C-65 died on the Order Paper as a result of the dissolution of Parliament on November 29, 2005.

Bill C-64 ***Vehicle Identification Number***

Bill C-64, ***An Act to amend the Criminal Code (vehicle identification number)*** received First Reading in the House of Commons on September 28, 2005.

All vehicles in Canada are required to have a vehicle identification number (VIN) in order to clearly distinguish one similar motor vehicle from another. One of the ways in which the cycle of theft, disguise and resale of motor vehicles is facilitated is through tampering with a VIN.

Bill C-64 included amendments to the ***Criminal Code*** to make it an offence to alter, remove or obliterate a vehicle identification number on a motor vehicle without lawful excuse and under circumstances that give rise to a reasonable inference that this was done to conceal the identity of the motor vehicle. Anyone convicted of this offence on indictment would be liable to imprisonment for a term not exceeding five years or on summary conviction to a maximum fine of $2,000, imprisonment for six months, or both.

Bill C-64 died on the Order Paper as a result of the dissolution of Parliament on November 29, 2005.

Bill C-53 ***Proceeds of Crime***

Bill C-53, ***An Act to amend the Criminal Code (proceeds of crime) and the Controlled Drugs and Substances Act and to make consequential amendments to other acts*** received Royal Assent on November 25, 2005 as S.C. 2005, c. 44 and came into force on that date.

The reverse onus scheme in Bill C-53 is now available after a conviction for a criminal organization offence as defined under the ***Criminal Code*** or for certain drug offences under the ***Controlled Drugs and Substances Act***. Under the C-53 scheme, the court would also have to be satisfied on a balance of probabilities that the offender has engaged in a pattern of criminal activity for the purpose of providing the offender with material benefit, or that income of the offender unrelated to crime cannot reasonably account for the value of all the property of the offender. Upon these conditions being satisfied, any property of the offender identified by the Attorney General will be forfeited unless the offender demonstrates, on a balance of probabilities, that the property is not proceeds of crime. Finally, the court is permitted to set a limit on the total amount of property forfeited under these provisions as may be required by the interests of justice.

These amendments apply to all criminal organization offences as defined in section 2 of the ***Criminal Code*** where the offence is punishable by five or more years of imprisonment or after conviction, on indictment, for an offence under sections 5, 6, and 7 of the ***Controlled Drugs and Substances Act*** (being the offences of trafficking, importing/exporting, and production of drugs).

In addition to the creation of the new reverse onus scheme, Bill C-53 also clarifies the ***Criminal Code*** and the ***Controlled Drugs and Substances Act*** to ensure consistency between the English and French versions of a provision; more explicitly affirms the Attorney General of Canada's authority to pursue proceeds of crime in certain circumstances; to more explicitly affirm the ability of the Crown to seek proceeds upon conviction of offences where the Crown has the option to proceed either on indictment or by way of summary conviction; and ensures the applicability of ***Controlled Drugs and Substances Act*** warrants to investigations of drug-related money laundering and the possession of property obtained by drug-related crime.

Bill C-50 ***Cruelty to Animals***

Bill C-50, ***An Act to amend the Criminal Code in respect of cruelty to animals***, was tabled on May 16, 2005. This legislation was introduced in very similar form several times in the past five years.

The objectives of the amendments were to: (1) modernize, simplify, consolidate and rationalize existing criminal offences of cruelty; and (2) increase penalties. The amendments confirmed the existing criminal standard of cruelty, which is that of causing "unnecessary pain". They did not modify normal care practices (e.g., humane animal husbandry practices or practices governed by more specific legislation).

Bill C-50 died on the Order Paper as a result of the dissolution of Parliament on November 29, 2005.

Bill C-49 ***Trafficking in Persons***

Bill C-49, ***An Act to amend the Criminal Code (trafficking in persons)*** received Royal Assent on November 25, 2005 as S.C. 2005, c. 43. Bill C-49 came into force upon receiving Royal Assent.

Trafficking in persons involves the recruitment, transportation or harbouring of persons in order to exploit them, usually in the sex industry, or for forced labour. Bill C-49 amended the ***Criminal Code*** to prohibit:

- the trafficking in persons;
- persons from receiving a financial or other material benefit from trafficking in persons; and
- the withholding or destroying of identity, immigration or travel documents to facilitate the trafficking of persons.

These reforms build upon existing related offences in the ***Criminal Code*** and the ***Immigration and Refugee Protection Act***, and create a more comprehensive and effective legislative framework to combat trafficking in persons in all its forms.

The main offence (279.01) of "trafficking in persons," prohibits anyone from engaging in specified acts for the purpose of exploiting or facilitating the exploitation of a person. This offence carries a maximum penalty of life imprisonment where it involves kidnapping, aggravated assault or sexual assault, or death and a maximum imprisonment of 14 years in all other cases.

The second offence (279.02) prohibits anyone from receiving a financial or other material benefit resulting from the commission of a trafficking in persons offence. It is punishable by a maximum penalty of 10 years imprisonment.

The third offence (279.03) prohibits the withholding or destroying of documents, such as identification or travel documents, for the purpose of committing or facilitating the commission of a trafficking in persons offence and carries a maximum penalty of 5 years imprisonment.

At the core of human trafficking is the exploitation of its victims. Accordingly, the new offences address exploitation directly. Section 279.04 defines exploitation, for the purpose of the trafficking in persons offences, as causing a person to provide labour or services – such as sexual services – by engaging in conduct that leads the victim to reasonably fear for their safety or that of someone known to them, if they fail to comply. It also applies to the deception, use or threat of force, or any other form of coercion, which causes the removal of a human organ or tissue.

Bill C–17 ***Cannabis Reform***

Bill C-17, ***An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act and to make consequential amendments to other Acts***, received First Reading in the House of Commons on November 1st, 2004. Bill C-17 created offences with respect to the possession of small amounts of cannabis (marihuana) and the production of cannabis (marihuana).

This Bill also allowed for the designation of certain criminal offences as contraventions and specified that contraventions may be prosecuted by means of either a ticket or a summons through the use of a provincial ticketing scheme unless another Act of Parliament provides otherwise.

Bill C-17 died on the Order Paper as a result of the dissolution of Parliament on November 29, 2005.

Bill C-16 ***Drug Impaired Driving***

Bill C-16, ***An Act to amend the Criminal Code (drug impaired driving***), received First Reading on November 1, 2004 and was referred to the Standing Committee on Justice and Human Rights and Public Safety and Emergency Preparedness. Bill C-16 proposed to authorize police to demand Standardized Field Sobriety Tests (at the roadside), Drug Recognition Evaluations (by a trained officer at the police station), and bodily fluid samples for laboratory analysis.

Bill C-16 died on the Order Paper as a result of the dissolution of Parliament on November 29, 2005.

Bill C-10 ***Mental Disorder***

Bill C-10, ***An Act to amend the Criminal Code (mental disorder)*** was introduced on October 8, 2004, passed by the House of Commons in February 7, 2005 and by the Senate in May 2005 following a thorough review by the Senate Standing Committee on Legal and Constitutional Affairs. The Senate Committee passed the bill without further amendment but made several observations in its Report regarding the need for on-going review and monitoring of the amendments and, more generally, of the law governing mentally disordered accused.

The reforms provide:

- new powers for Review Boards to ensure that they have the essential information to determine whether a mentally disordered accused should be released, detained or supervised with conditions;
- more options for the police when an arrest is made for breach of a disposition;
- streamlined transfer provisions;
- additional safeguards for the permanently unfit accused including an ability for the court to order a judicial stay of proceedings, to respond directly to the Supreme Court of Canada decision in ***Demers*** (2004);
- for the repeal of the unproclaimed provisions of the 1992 ***Act***, including capping; and
- a range of other clarifying amendments.

Bill C-10 received Royal Assent on May 19, 2005 as S.C. 2005, c. 22 and was proclaimed into force in two stages in June, 2005 and January, 2006.

Bill C-2 ***Protection of Children and Other Vulnerable Persons***

Bill C-2, ***An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act***, reforms the criminal law in the five following key areas:

- enhanced child pornography prohibitions including broadening the definition, increasing maximum penalties; and providing a new, clearer and narrower two-part, harms-based "legitimate purpose" defence;
- increased protection to youth (between 14 and 18 years of age) against sexual exploitation;
- increased penalties for offences against children to ensure that offences involving the abuse, neglect and sexual exploitation of children better reflect the serious nature of such conduct;

- facilitation of the testimony by child and other vulnerable victims/witnesses to ensure that all child victims/witnesses under the age of 18 can benefit from the use of testimonial aids and other measures unless it would interfere with the proper administration of justice. It also provides that children under 14 can give their evidence if they are able to understand and respond to questions, without the need for a competency hearing; and
- new voyeurism offences to protect against the surreptitious viewing or recording of persons in specific circumstances that give rise to a reasonable expectation of privacy.

As a result of amendments to the Bill passed by the Justice Committee, eight new mandatory minimum penalties for sexual offences against children were enacted:

- ss. 151, 152, and 153 (sexual interference, invitation to sexual touching, sexual exploitation): 14 days on summary conviction; 45 days on indictment;
- ss. 163.1(2) and (3) (making and distribution of child pornography): 90 days on summary conviction; 1 year on indictment;
- ss. 163.1(4) and (4.1) (possessing and accessing child pornography): 14 days on summary conviction; 45 days on indictment;
- ss. 170 and 171 (parent procuring; householder permitting): 45 days where child is between 14-18; 6 months where child is under 14;
- ss. 212(2) (living off the avails of a juvenile prostitute): 2 years; and
- ss. 212(4) (using the sexual services of juvenile prostitute): 6 months.

Additional amendments were made by the Committee to the ***Criminal Code*** regarding facilitating testimony to clarify that motions for the use of testimonial aids for child victims/witnesses under 18 years and other vulnerable witnesses could be brought during the pre-trial stage. Amendments were also made to the ***Canada Evidence Act*** to clarify that a child could not choose to testify on oath.

Note that the voyeurism provisions and the clarification of the provisions governing facilitation of witness testimony were greatly influenced by the work of the ULCC.

Bill C-2 received Royal Assent on July 20th, 2005 as S.C. 2005, c. 32 and was proclaimed in two stages in November, 2005 and January, 2006.

Other Initiatives

Delegates may also be interested in the on going work of the Department of Justice relating to bail and the hybridization of offences as these issues have been the subject of discussion at ULCC.

Bail

A number of resolutions pertaining to bail and dating back to 1985 have been examined by an ad hoc sub-committee of the Federal/Provincial/Territorial Criminal Procedure Working Group (as referred to in the 2005 Senior Federal Delegate's report). This sub-committee undertook to review the entire judicial interim release scheme, including the provisions relating to release by police officers. It is anticipated that the recommendations of the Working Group will be presented to F/P/T Ministers of Justice in the near future. This Report takes into consideration a number of ULCC resolutions relating to bail and release by police officers.

Hybridization

ULCC resolutions pertaining to the reclassification of various ***Criminal Code*** offences have been considered in the context of a hybridization initiative. These resolutions are listed in a consultation document on hybridization which will be presented at this year's Conference. Justice Canada has commenced the process of consulting various justice system stakeholders on this initiative.

Justice Canada continues to benefit from the work of the Uniform Law Conference and will carry on its review of resolutions proposing amendments to the ***Criminal Code*** and other related criminal law statutes for consideration in future legislative initiatives.

August 2006

Annex 2

RESOLUTIONS

ALBERTA

Alberta – 01

Section 680 (review by court of appeal) of the ***Criminal Code*** should be amended to incorporate the publication restriction scheme contained in section 517 (show cause – order not to publish for specified period). This would ensure consistency throughout the judicial interim release and review process. It would also ensure that section 680 was consistent with the approach taken in subsections 520(9), 521(10), 523(3), and 525(8).

Carried: 24-0-2

Alberta – 02

Where a conditional discharge or a suspended sentence has been imposed, the ***Criminal Code*** should be amended to permit the court to suspend the running of the probation order upon application by the Crown that the offender be sentenced for the index offence where it is in the interests of justice to do so. Provision should also be made for the offender to enter into an undertaking with or without conditions pending the hearing of the application.

Carried as amended: 19-2-4

Alberta – 03

The Federal/Provincial/Territorial working group on Identity Theft should examine what ancillary orders or declarations that might be made in conjunction with a criminal prosecution to assist a victim in this process.

Carried: 25-0-1

Alberta – 04

The issue of expanding long-term prohibitions or restrictions on Internet use (paragraph 161(1)(***c***) of the ***Criminal Code***) should be referred to the Federal/Provincial/Territorial Cyber-Crime Working Group for detailed consideration.

Carried: 25-0-1

Alberta – 05

That the ***Criminal Code*** sections dealing with appeal of summary conviction matters be amended so as to grant clear authority to the summary conviction appeal court to review decisions made by inferior courts regarding costs.

Carried: 24-0-1

Alberta – 06

That the ***Criminal Code*** be amended as proposed in Bill C-23, ***An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments),*** 1st Session, 39th Parliament (1st reading, June 22, 2006) to permit an appeal court judge to suspend a conditional sentence order and to require the person who was the subject of that order to enter into an undertaking, with or without conditions, pending the appeal.

Carried as amended: 24-1-2

BRITISH COLUMBIA

British Columbia – 01

That section 320 (warrant of seizure) of the ***Criminal Code*** be amended to ensure that it is consistent with the burden on the Crown in sections 320.1 (warrant of seizure – hate propaganda), 164 (warrant of seizure – child pornography, voyeuristic recording, etc.) and 164.1 (warrant of seizure – computer system) as being on a balance of probabilities.

Carried: 24-0-1

British Columbia – 02

That section 423.1 (intimidation of a justice system participant) of the ***Criminal Code*** be amended in subsection (2) to address the public dissemination, on the internet and websites, of the identities, visual representations, addresses of home, business, school, or of any similar information, of justice system participants, journalists and/or their families when the intent is to provoke a state of fear.

Carried: 26-1-0

British Columbia – 03

A- That the federal government in conjunction with its agencies, such as Industry Canada, consider legislation requiring the mandatory reporting by internet service providers of suspected child pornography to law enforcement when found in the ordinary course of providing that service.

Carried as amended: 15-0-12

B- That the Federal/Provincial/Territorial Working Group on Cyber-Crime examine the issue of federal regulatory legislation requiring the mandatory reporting to customers and law enforcement, of the loss or theft of, or unlawful access to, computerized customer databases by internet service

providers, financial institutions, internet commercial retailers or commercial firms providing the storage of such databases.

Carried as amended: 15-0-5

MANITOBA

Manitoba – 01

Section 184.1 (interception to prevent bodily harm) of the ***Criminal Code*** should be amended to allow for video monitoring in addition to the acoustic monitoring that is already included.

Carried: 27-0-0

Manitoba – 02

That the provisions of the ***Criminal Code*** that impose mandatory and discretionary driving prohibitions for driving offences be reviewed and that amendments be made to provide a rational and consistent regime.

Carried as amended: 20-0-1

Manitoba – 03

A- Section 270 (assaulting a peace officer) of the ***Criminal Code*** should be amended to increase the maximum sentence for an offence of Assault Peace Officer from five years to ten years incarceration for indictable proceedings and from six months to 18 months incarceration for summary proceedings.

Carried: 17-0-9

B- That the sections in the ***Criminal Code*** that relate to assaults against peace officers and justice system participants be referred to the appropriate federal/provincial/territorial working group for detailed review and consideration.

Carried: 16-0-5

NEW BRUNSWICK

New Brunswick – 01

Subsection 490.8(9) (offence - breaching restraint order) of the ***Criminal Code*** and subsection 14(10) (offence – breaching restraint order) of the ***Controlled Drugs and Substances Act*** should be amended so that the French version and the English version are the same, specifically that the words "***ou fait défaut de s'y conformer***" be added to the French version.

Carried: 25-0-0

New Brunswick – 02

That section 487.092 (impression warrant) of the ***Criminal Code*** be amended to provide that the court may, with appropriate safeguards for the accused, draw an inference adverse to the accused from evidence that the accused refused to acquiesce and passively permit an impression to be obtained under the authority of a section 487.092 warrant.

Withdrawn
(Following discussion)

NOVA SCOTIA

Nova Scotia – 01

A- Amend paragraph 172.1(2)(***b***) (luring – penalty on summary conviction) of the ***Criminal Code*** to provide for a maximum sentence of eighteen months for a summary offence.

Carried: 21-0-0

B- In order to provide consistency with the intent of Bill C-2, ***An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act***, S.C. 2005, c. 32, it is recommended that section 172.1 of the ***Criminal Code*** be amended to provide that conditional sentences are not available for the offence of luring unless the purpose of the luring is for an offence for which a conditional sentence can be imposed.

Defeated as amended: 3-4-15

Nova Scotia – 02

Amend subsection 491(1) (forfeiture of weapons and ammunition) of the ***Criminal Code*** to provide that where the offence is one under section 86 (careless use of a firearm, etc.) that forfeiture of the seized firearm is discretionary as opposed to automatic.

Carried: 23-1-3

Nova Scotia – 03

That the Federal/Provincial/Territorial Coordinating Committee of Senior Officials - Youth Justice specifically address the inadequacies in sections 39 and 29 of the ***Youth Criminal Justice Act*** in relation to the sentencing and pre-trial custody provisions for young persons who commit an offence in circumstances that pose a significant danger to the public or a member thereof.

Carried as amended: 22-0-0

ONTARIO

Ontario – 01

That an offence be created to publish, distribute, circulate, sell, advertise or make available, for a malicious or sexual purpose, without the consent of the person depicted, a visual recording of a person who is nude, exposing his or her genital organs, anal region, or breasts or is engaging in explicit sexual activity in circumstances that give rise to a reasonable expectation of privacy.

Carried as amended: 10-5-12

Ontario – 02

Extend the kinds of harm giving rise to the obligation in section 252 (failure to stop at scene of accident) of the ***Criminal Code*** to include buildings and other structures where there has been damage.

Carried: 22-0-5

Ontario – 03

Transform subsection 351(2) (disguise with intent) of the ***Criminal Code*** into a dual procedure offence.

Carried: 20-0-6

Ontario – 04

That subsection 34(2) (defence – extent of justification) of the ***Criminal Code*** be amended to insert the words "without having provoked the assault" in the subsection at the appropriate place (that is, after the words "unlawfully assaulted" and before the words "and who causes death").

Carried: 20-0-7

Ontario Criminal Lawyers' Association

On-OCLA – 01

That the Federal/Provincial/Territorial Working Group on Impaired Driving consider whether subsection 254(3) (samples – breath or blood – reasonable belief of commission) of the ***Criminal Code*** should be amended to provide that the failure or refusal to comply with a demand under subsection 254(2) (testing for presence of alcohol in the blood – approved screening device) shall either:

- give a peace officer reasonable grounds to believe that an offence under section 253 (operation while impaired) has been committed; or
- shall empower a peace officer to make a demand under subsection 254(3); and

whether subsection 254(5) (failure or refusal to provide sample) should be amended to specify that only the refusal or failure to comply with a demand under subsection 254(3) is an offence.

Carried as amended: 23-0-0
(Floor resolution)

QUEBEC

Quebec – 01

That, in accordance with resolution Quebec-01 passed by the Section in 2004, the ***Criminal Code*** be amended to make it possible, unless otherwise provided, to obtain by telewarrant any warrant or judicial authorization obtained ***ex parte***.

Carried as amended: 21-0-0

SASKATCHEWAN

Saskatchewan – 01

Amend section 183 (interception of private communication) of the ***Criminal Code*** to include section 220 (criminal negligence causing death) and section 221 (criminal negligence causing bodily harm) in the definition of "offence".

Carried: 23-1-3

Saskatchewan – 02

Amend the ***Prohibited Weapons Order***, S.O.R. /74-297, PC 1974-1051 so that the opening words of the order reads as follows:

> "Any device designed to be used or intended to be used for the purpose of injuring, immobilizing or otherwise incapacitating any person…."

Withdrawn
(Without discussion)

Saskatchewan – 03

Amend section 137 (failure to comply with sentence or disposition) of the ***Youth Criminal Justice Act*** to make it an offence that can be prosecuted by indictment or by summary conviction.

Carried: 12-3-11

Saskatchewan – 04

Amend section 231 of the ***Criminal Code*** to provide that the murder of a person who is a lawful occupant of a dwelling-house during the commission of a home invasion is first degree murder.

Carried as amended: 21-0-5

CANADA

Canadian Bar Association

Can–CBA – 01

That the ULCC Criminal Section recognize the importance of the need to study the issue of access to justice including the possibility of providing a statutory power allowing trial judges to assign counsel to persons charged with criminal offences and that it continue to be a priority in studies of legal aid issues being conducted by the appropriate federal/provincial/territorial working group.

Carried as amended: 17-3-5

Canadian Council of Criminal Defence Lawyers

Can-CCCDL – 01

That the Department of Justice be asked to review subsection 261(1) (stay of driving prohibition order pending appeal) of the ***Criminal Code*** with a view to making changes to the ***Criminal Code*** to permit individuals to apply for the restoration of their driver's license pending an application for leave to appeal or an appeal to the Supreme Court of Canada, to the Court of Appeal being appealed from, rather than directly to the Supreme Court itself.

Carried as amended: 26-0-0