

UNIFORM LAW CONFERENCE OF CANADA
CHARLOTTETOWN, PRINCE EDWARD ISLAND
SEPTEMBER 9-13, 2007
CRIMINAL SECTION

(Annex 2 of the Minutes of the Criminal Section Proceedings)

RESOLUTIONS

ALBERTA

Alberta – 01

Subsections 4 (2) to (4) of the *Canada Evidence Act* imposes restrictions on the competence and compellability of spousal witnesses and recognizes a broad privilege on spousal communication. These provisions have long been the subject of judicial and academic criticism, and repeated calls for reform. They should be repealed.

Carried: 16-6-5

Alberta – 02

The *Criminal Code* should be amended to provide for a mandatory sealing order regarding exhibits that constitute child pornography.

Carried as amended: 24-0-4

Alberta – 03

The Federal-Provincial-Territorial Working Group on Criminal Procedure should examine the proper scope and application of subsection 686(8) (appeal – additional powers) of the *Criminal Code*, with particular reference to the appropriate procedure when a stay of proceedings is overturned, in light of the decision of the Alberta Court of Appeal in *R. v. Yelle* [2006] ABCA 276.

Carried: 19-0-7

BRITISH COLUMBIA

British Columbia – 01

That the Uniform Law Conference of Canada urge Justice Canada to explore options to permit courts to order psychological or psychiatric reports for sentence hearings.

Carried as amended: 20-0-7

British Columbia – 02

That the Uniform Law Conference of Canada urge Justice Canada to explore replacement of conditional sentence order enforcement procedures in the *Criminal Code* with provisions: 1) deeming the conditions of a conditional sentence order to be parole conditions, and 2) providing for enforcement of the conditions by parole authorities as parole conditions.

**Withdrawn
(Following discussion)**

British Columbia – 03

That the attendance order provision in s. 527 of the *Criminal Code* be amended by replacing the requirement for an affidavit setting out the “facts of the case” with policy based factors.

Carried as amended: 26-0-0

British Columbia – 04

That section 849 (forms) of the *Criminal Code* be amended to add a clause permitting a clerk of the court, in the absence of an order to the contrary, to sign any form on behalf of an issuing judge.

Carried: 17-3-5

MANITOBA

Manitoba – 01

Section 161 (prohibition order – offences in respect of person under the age fourteen years) of the *Criminal Code* should be amended to include section 212 (procurement) under the list of enumerated offences for which a prohibition order can be sought.

Carried: 23-0-2

Manitoba – 02

Section 278.2 (production of record to accused) of the *Criminal Code* should be amended to include all personal injury offences.

Defeated: 4-16-8

NEW BRUNSWICK

New Brunswick – 01

That subsection 487.3(1) (order denying access to information used to obtain warrant or production order) of the *Criminal Code* be amended to preserve common law powers respecting sealing orders and to include other types of orders including restraint orders, income tax information orders, assistance orders, etc.

Carried as amended: 26-0-0

New Brunswick – 02

That section 29 (pre-trial detention not a substitute for social measure) of the *Youth Criminal Justice Act* be amended to remove any restrictive reference to section 39 (committal to custody) of the YCJA to provide that a court may remand into custody on a bail hearing a youth who has allegedly breached the terms of his undertaking given to the Court if such detention of the young person is necessary for the protection or safety of the public.

**Withdrawn
(Without discussion)**

NEWFOUNLAND AND LABRADOR

Canadian Association of Provincial Court Judges

CAPCJ – 01

1- Amend subsection 109(1) (mandatory prohibition order – firearms) of the *Criminal Code* as follows:

Where a person is convicted or discharged under section 730 of (a) (b) (c) (d)

The offender shall be prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition; prohibited ammunition and explosive substance during the period specified in accordance with section (2) or (3) as the case may be.

(2) A prohibition under subsection (1) shall be in the case of a first conviction or discharge (...) etc.

2- Amend subsection 109(3) of the *Criminal Code* to provide that a lifetime prohibition be imposed where the accused has been served with a notice of intention to seek greater punishment.

**Withdrawn
(Following discussion)**

CAPCJ – 02

Subsection 722 (2) (procedure – victim impact statement) of the *Criminal Code* be amended to include that no victim impact statement shall contain a recommendation as to sentence or criticism of the accused person’s character or personality traits.

Defeated as amended: 5-20-1

CAPCJ – 03

Amend subsection 737(3) (victim surcharge – increase) of the *Criminal Code*:

The court may order an offender to pay a victim surcharge in an amount exceeding that set out in subsection (2) if the court considers it appropriate in the circumstances and is satisfied that the offender is able to pay the higher amount or may order the offender to pay a surcharge in amount less than that set out in subsection (2) if the court is satisfied that paying the full amount would cause the offender undue hardship but the offender has the means to pay a lesser amount.

Carried: 21-2-5

ONTARIO

Ontario – 01

That Part XV (Special Procedure and Powers) of the *Criminal Code* be amended to give superior court judges the jurisdiction to do anything with respect to warrants or warrant-like orders that the *Criminal Code* allows justices of the peace or provincial court judges to do under that Part.

Carried as amended: 24-1-4

Ontario – 02

That subsection 489.1(1) (restitution of property or report by peace officer) of the *Criminal Code* be amended to clarify that the Form 5.2 report to a justice does not have to be physically submitted by the seizing officer who prepared the report but can be filed by any peace officer.

Carried: 24-2-2

Ontario – 03

It is recommended that subsection 742.6(4) (evidence - breach of conditional sentence) of the *Criminal Code* be clarified and that it be amended to allow witness statements, where provided, to be in audio or video form.

Carried as amended: 25-0-2

Ontario – 04

Amend paragraph 109(2)(c) of the *Youth Criminal Justice Act* to allow young persons to serve all or a portion of the remainder of the conditional supervision order as a custody and supervision order. Any portion of the conditional supervision order not converted to a custody and supervision order should remain as a conditional supervision order to be served after the custody and supervision order.

**Withdrawn
(Following discussion)**

Ontario – 05

Amend the *Youth Criminal Justice Act* to permit young persons who elect to be tried by judge and jury to be tried with adults in murder cases.

**Withdrawn
(due to the fact that the question of whether the YCJA permits
a young person to be tried together with an adult will soon be
before the Supreme Court of Canada in the Quebec case of
Her Majesty the Queen v. S.L.G., et al.)**

Ontario Criminal Lawyers' Association

OCLA – 01

That subsection 254(3) (sample of breath or blood – reasonable and probable grounds) of the *Criminal Code* be amended to provide that the failure or refusal to comply with a demand under subsection 254(2) (breath sample – reasonable suspicion) shall either:

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

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

Defeated: 4-21-3

CANADA

Public Prosecution Service of Canada

PPSC – 01

That a Uniform Law Conference of Canada Criminal Section Working Group study the issues of the appropriateness of legal fees paid pursuant to an order made under paragraph 462.34(4)(c) (order for restoration of property or revocation or variation of order) of the *Criminal Code* and of compensatory fines in lieu of forfeiture that may be imposed where the seized or restrained property has been diminished by such an order.

Carried as amended: 20-0-6

PPSC – 02

A- To amend Part II (Enforcement) of the *Controlled Drugs and Substances Act* and Part XV (Special Procedure and Powers) of the *Criminal Code* to permit the immediate disposal of hazardous offence-related property.

Carried: 18-0-0

B- To amend Part II of the *Controlled Drugs and Substances Act* and Part XV of the *Criminal Code* to permit the expeditious disposal of enumerated lower-value offence-related property, to provide a compensation scheme to address unjustified disposal, and to address the issue of notice.

Carried as amended: 15-0-3

C- To amend the *Controlled Drugs and Substances Act* and the *Criminal Code* to allow, on consent, an order for the interlocutory sale and disposition of offence-related property.

Carried: 18-0-0

PPSC – 03

Amend paragraph 725(1)(c) (facts forming separate charge - sentencing) of the *Criminal Code* to require the consent of the prosecutor.

Carried as amended: 21-1-3

Canadian Bar Association

CBA – 01

Amend the *Criminal Code* to provide the Court with the additional jurisdiction to order, after charges are laid, the release and independent testing of any evidence seized by the police during its

investigation consistent with the procedural safeguards in section 605 (release of exhibits for testing) of the *Criminal Code*.

Carried as amended: 27-0-0