UNIFORM LAW CONFERENCE OF CANADA

QUEBEC CITY
AUGUST 10-14, 2008

CRIMINAL SECTION

MINUTES

ATTENDANCE

Thirty-six delegates of all provinces and territories except Northwest Territories, Nunavut and Prince Edward Island and delegates of the federal government participated in the deliberations of the Criminal Section. Delegates included policy counsel, prosecutors, defence counsel and members of the judiciary. The Conference's guest from Australia, Amanda Davies, representing the Standing Committee of Attorneys General of Australia and New Zealand, attended the Criminal Section deliberations for part of the proceedings.

OPENING

Nancy Irving presided as Chair of the Criminal Section. Stéphanie O'Connor acted as Secretary. The Section convened to order on Sunday, August 10, 2008.

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 Catherine Kane, Acting Senior General Counsel, Criminal Law Policy Section, Department of Justice Canada.

Resolutions (Attached as Annex 2)

In accordance with the order in which resolutions are to be presented as set out in the *Rules of Procedure* of the Criminal Section, Quebec presented their resolutions first followed by other jurisdictions in alphabetical order.

Thirty-seven (37) resolutions were presented by jurisdictions for consideration. Four (4) resolutions were withdrawn without discussion. As a result, thirty-three (33) resolutions were debated during the proceedings. Of the thirty-three resolutions considered by delegates, twenty-four (24) were carried as submitted or amended, five (5) resolutions were defeated as submitted or amended and four (4) were withdrawn following discussion.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.

Papers

Five working group reports were prepared and considered by Criminal Section delegates at this year's Conference. Two Criminal Section working group reports, one on *Fine in Lieu of Forfeiture for Money Spent on Legal Fees* and the other on *Criminal Interest Rate*, were presented to Criminal Section delegates. In addition, the following three progress reports were presented during a joint session of the criminal and civil sections: *Identity Theft*, *Collateral Use of Crown Brief Disclosure* and *Malicious Prosecution*.

Report of the Criminal Section Working Group on Fine in Lieu of Forfeiture for Money Spent on Legal Fees

The report was presented by Simon William, Counsel, Public Prosecution Services of Canada. The report is the result of a ULCC 2007 Criminal Section resolution calling for the creation of a working group to examine the issue of the appropriateness of legal expenses paid to the accused's counsel pursuant to an order under s. 462.34(4)(*c*) of the *Criminal Code*. The working group was also mandated to consider the issue of compensatory fines in lieu of forfeiture for property released to the accused to pay legal expenses where the property seized or restrained as proceeds of crime has been diminished by the imposition of the order. The report provides a brief overview of the history of s. 462.34 of the *Criminal Code* and highlights pertinent judicial decisions on this topic including the recent case of *R*. v. *Appleby # 5* (Nfld. S.C.) (2007) which served as the basis for the issue explored in the report. In addition, the report includes a review of U.S. and U.K. legislation where a common thread found in both schemes is that the accused cannot generally have access to money that has been seized or restrained as proceeds of crime to pay his or her legal expenses. The report also provides a number of options for consideration including maintaining the status quo; removing the possibility of access to seized or restrained property for legal expenses, thereby allowing the accused to obtain legal aid or present an application for a state-funded representation (*Rowbotham/Fisher* applications); and excluding the funds released to the accused under an order further to s. 462.34 of the *Criminal Code* for legal expenses from the fine in lieu of forfeiture regime. In conclusion, the Report notes that the goal of the group was not to make specific recommendations at this time but to encourage discussions on the question.

Delegates thanked the chair of the working group for preparing the report and indicated that it was well summarized and presented in a way that took into consideration the very different view points raised by members of the group. One member noted that challenges discussed among working group members included suggesting changes to legal aid regimes taking into consideration the fact that some jurisdictions may be more generous than others with respect to the legal aid Tariff. Other issues considered by the working group included the implications of denying access to seized funds by the accused who is acquitted and funds determined not to be proceeds of crime. Also raised was the issue of the difficult position in which defence counsel are found where an order for the release of seized funds to pay legal expenses has been granted but where a determination is subsequently made that those funds are proceeds of crime. In this situation, the offender's sentence may include a fine in lieu of forfeiture, which could result in a prison term if the fine is not paid.

Some delegates were of the view that where seized funds are released to allow payment of legal expenses but those funds are subsequently determined to be proceeds of crime, the offender's sentence should include a fine in lieu of forfeiture to avoid the situation where the accused receives a benefit.

One delegate suggested that where the accused's application to receive legal aid or a state-funded counsel is granted, legal expenses paid by legal aid or the state should be reimbursed by the accused in instances where the funds seized are found not to be proceeds of crime. This option is offered in some jurisdictions where the accused's legal expenses are paid on the understanding that they will reimburse the cost of legal expenses paid by legal aid or the state if seized funds are ultimately determined not to be proceeds of crime.

The Chair of the Criminal Section commended the working group on its thorough report and noted that the *Appleby* decision, which was the impetus for the 2007 resolution is under appeal before the Newfoundland and Labrador Court of Appeal.

Report of the Criminal Section Working Group on Criminal Interest Rate: A Discussion Paper. Section 347 of the Criminal Code in Need of Reform

Erin Winocur and Earl Fruchtman presented the report to Criminal Section delegates. The report follows a ULCC 2007 resolution calling for the creation of a criminal section working group to examine the issue of the usefulness for criminal law purposes of section 347 of the *Criminal Code*, and the range of options for possible reform of the offence. The report provides an overview of the history of this provision and the policy rationale for the creation of a criminal interest rate. The report describes each element of s. 347 and reviews the method by which interest rates are calculated pursuant to this provision. The report also examines the challenges created by s. 347 including the problems faced by some short-term lenders and venture capitalists. The report provides a summary of judicial consideration of s. 347, a highlight of recent legislation passed by Parliament as well as approaches taken to address both loan sharking and unfair lending practices in other common law jurisdictions. The report also describes elements that could form part of a proposed model for reform including the following elements:

- focus on the enforcement of debts through coercive means such as violence, threats and intimidation associated with loansharking rather than relying on an objectively defined rate of interest as a proxy for certain types of harmful behaviour;
- consider whether charging interest at a defined limit is deserving of a criminal sanction in the absence of coercive methods of enforcement; and
- as there is a number of instances to which the section applies, treat such instances in a similar fashion unless there are clear and justifiable reasons for not doing so.

The working group was commended for the quality of the report. During the discussion, it was suggested that the American offence of extortionate extension of credit should be further explored. It was also proposed that instead of creating a new crime of extortion in the area of criminal interest rate, one could look to s. 346(1) of the *Criminal Code* to define what might not constitute a lawful justification which would clearly include loan sharking. Another delegate proposed to consider, as a starting point, the nature of the lender, the nature of the borrower and the amount of the loan since these three elements could be used to better define what type of behaviour should be captured by s. 347. As a result, it was suggested that corporations could be excluded from the definition of borrowers and financial institutions could be excluded from the definition of "lenders" as these situations do not usually involve loansharking-type conduct. Finally, other delegates were of the view that situations of unequal bargaining positions where individuals are subjected to exorbitant interest rates for the lending of money, with or without violence, should be included under consumer protection legislation because such situations are not the focus of criminal law. At the conclusion of the discussion, the following resolution was presented and called to a vote:

In light of the issues and discussion contained in this paper, the Criminal Section of the Uniform Law Conference of Canada recommends that the federal Department of Justice, in consultation with the provinces and territories, immediately conduct an examination of section 347 of the *Criminal Code* with a view to reforming and presenting the results of its examination on an expeditious basis.

Carried: 27-0-0

Joint Session Papers

Progress Report of the Working Group on the Collateral Use of Crown Brief Disclosure

The report was presented by Denise Dwyer, Crown Law Office – Civil, Ministry of the Attorney General of Ontario and Gail Mildren, Civil Legal Services, Manitoba Justice.

The report provides an update on the work developed by the working group in the following three areas taking into consideration views expressed by delegates during the 2007 annual meeting of the ULCC.

- the question of whether the use of Crown brief materials by the Crown and the police in the context of civil and administrative proceedings should be subject to special limits;
- the examination of underlying considerations for drafting a model rule and a statement of principles in the context of child protection and professional disciplinary proceedings such as the urgency often attached to those types of matters as well as *Charter* challenges; and
- the development of an access to information draft provision to offer broad protection against disclosure of Crown brief records.

As a result of work on these issues, the working group proposed amendments to the recommendations contained in the 2007 report. These recommendations, as amended, are reflected in the 2008 report.

Discussion (Criminal Section):

In preparation for the joint session, the Criminal Section considered the report on Collateral Use of Crown Brief Disclosure during the criminal section deliberations to focus on the criminal law components of the report.

Some noted that in light of two recent public inquiries in British Columbia where the Crown was compelled to provide what was ultimately found to be privileged information on review, it would be of critical importance that such bodies be subject to the *Wagg* screening process in order to gain access to these documents. It was also noted that for most jurisdictions, enforcement agencies are also the institutions responsible for investigating on behalf of the coroner and that there is often a thin line between circumstances where something is being investigated for criminal charges and for the purpose of fulfilling the coroner's functions. One delegate queried about the manner in which third parties would be made aware of confidentiality undertakings. In response, it was mentioned that it is anticipated that the Crown and the police would ensure that when providing disclosure to the defence, the documents would be marked as being subject to an undertaking not to be used other than for making full answer and defence. One delegate cautioned that there may be a problem in sharing something in writing that has not yet been proven in court and then using it for other purposes. Also raised was the importance of keeping in mind the self-represented accused.

Discussion (Joint Session):

Delegates thanked the presenters for a helpful summary of the issues highlighted in the report. During the discussion, one delegate was of the view that the business community may not be in favour of a blanket exception to the *Wagg* screening process for the Crown in instances where the Crown is a respondent in civil proceedings against a company, noting in particular that one of the concerns in the *Wagg* decision with respect to Crown disclosure was privacy and privilege interests of parties who are not before the Court. It was also suggested that because the privilege and privacy interests of third parties are not necessarily the same as the interests of the Crown, the model rule should include a requirement that notice be provided to individuals or corporations and allow them to bring the same type of interlocutory court proceeding. In response, it was indicated that when the Crown responds as a defendant in a civil action, the Crown ensures that information shared is properly vetted and while the Crown may not always have the same interests as those of third parties, nonetheless the Crown will protect third party rights.

It was further noted that issues that require further analysis include whether the *Wagg* screening process ought to be made to accommodate use of police and prosecution records at coroner's inquests and in public inquiries, and whether a presumption that litigants will not be able to obtain production of Crown Brief records until the prosecution has been completed should apply in family law, child welfare and professional disciplinary proceedings.

After discussion, the following resolution was presented to delegates:

RESOLVED:

That the Joint Civil/Criminal Section Working Group be directed to:

(a) prepare model rules and legislation in accordance with the recommendations contained in the Report;
(b) report back to the Conference at the 2009 meeting.

Report of the Joint Criminal/Civil Section Working Group on: Malicious Prosecution

The report on Malicious Prosecution was presented by Judy Mungovan, Counsel, Ministry of the Attorney General of Ontario.

The report notes that the working group was mandated by the Conference at the 2007 annual meeting to prepare uniform legislation and other jurisdictional responses as recommended in the 2007 report of the working group. In accordance with this mandate, the 2008 report provides the status of the work of the group and includes draft legislation for consideration by delegates at the 2008 annual meeting. The report notes that the draft model legislation is intended to address the following specific elements:

- address concerns resulting from courts conflating the third and fourth elements of the test for liability for malicious prosecution as set out in the 1989 Supreme Court of Canada decision in *Nelles* v. *Ontario*;

- provide that the action is to be brought only against the Attorney General and not the Crown prosecutor in order to better reflect the reality of modern prosecution services where the ultimate decision to prosecute does not necessarily rest on the Crown attorney;
- provide that the requirement that the four elements set out in *Nelles* to establish liability from malicious prosecution must always be proven in a civil action for prosecutorial misconduct including evidence of improper motive as an indicator of malice; and
- not limit the types of torts that are captured to ensure that the high threshold set out in the decision is not circumvented by initiating a different type of tort for prosecutorial misconduct.

The report also notes that leave to appeal to the Supreme Court of Canada has been granted in the *Miazga* v. *Kvello Estate* [2007] S. J. No. 247 on February 7, 2008 and that the working group will monitor the outcome of the decision before finalizing the model legislation.

Discussion (Criminal Section):

In preparation for the joint session, delegates considered the report on Malicious Prosecution during the Criminal Section deliberations. Delegates debated whether the opinion of the Crown prosecutor regarding the guilt or innocence of the accused should be considered when determining whether there was absence of reasonable and probable cause to initiate or continue the prosecution. Some delegates suggested that the personal belief of Crown attorneys regarding the guilt or innocence of an accused should not be a relevant consideration in the determination of malice because it is inconsistent with their role as prosecutors. It was noted that the issue had not yet been resolved by the working group but that the purpose of s. 4(3) of the draft model legislation was to respond to the finding of the majority decision of the Court of Appeal decision in *Miazga*, which said the opinion of the Crown prosecutor on guilt or innocence is relevant. Other delegates suggested that the Crown prosecutor's opinion into whether there was a prosecutable case might be relevant in determining the issue of whether or not one can find malice or improper purpose on the part of the prosecutor, particularly where the Crown and the Attorney General want to raise it as part of the defence in a malicious prosecution lawsuit.

Discussion (Joint Session)

Delegates thanked the chair and other members of the working group for the work developed on this topic to date. It was confirmed at the outset of the discussion that the Supreme Court of Canada decision in *Miazga* would not necessarily provide responses to all issues raised in the 2007 report of the working group including whether or not the focus should only be on the tort of malicious prosecution or whether the Attorney General ought to be named as the party instead of the Crown attorney. Therefore, the working group will still need to address these outstanding issues.

One delegate suggested that the working group consider providing in the model legislation that where there is a subjective belief on the part of the Crown attorney in the presence of reasonable and probable cause, that this should be an answer to an allegation of malice. It was mentioned in response that one of the reasons why a purely subjective test was not selected by the working group was that, in some instances, Crown prosecutors are encouraged to seek direction from more experienced prosecutors when the decision is particularly complex. This results in one or more senior Crown prosecutors making the final determination. It was noted that the working group would be examining this issue further.

Another consideration raised was that in light of the fact that provincial rules of civil procedure generally allow for examination for discovery of a former employee, the draft section providing that the person examined for discovery be someone other than a former Crown attorney should perhaps be modified so that the starting point provides that the former employee be discoverable unless there are valid reasons not to do so.

One delegate queried whether the scheme should address the situation where there has been a determination that a person has been wrongfully convicted. In response it was noted that discussions on this issue had not been completed but that it was an appropriate and important question that should continued to be examined by the working group.

At the end of the discussion, the following resolution was presented:

RESOLVED:

That the Joint Civil/Criminal Section Working Group be directed to:

(a) continue its work on the issues raised in the Report in accordance with the direction of the Conference;
(b) monitor the results of the *Miazga* appeal and its impact on the recommendations of the Working Group; and
(c) report back to the Conference at the 2009 meeting.

Report of the Joint Criminal/Civil Section Working Group on Identity Theft: A Progress Report

Presenters: Josh Hawkes, Appellate Counsel, Criminal Justice Division, Alberta Justice
John Gregory, General Counsel, Policy Division, Ontario Ministry of the Attorney General

The report notes that the working group was directed by the Conference in 2007 to develop a principled framework for a breach notification scheme and to conduct a detailed examination of remedies and processes to aid victims of identity theft where criminal or other official records have erroneously been created in the name of the victim.

The report provides a progress report of the working group and presents options for a principled framework for a breach notification scheme. The report specifically addresses the following topics:

- What information is covered by the breach notification scheme?
- What holders of information are covered?
- What is a "breach" or compromise?
- When is a breach or compromise reportable?
- Who decides if a breach has occurred and is reportable?
- What is the response to a breach?
- What does the notice of breach say?
- How are these obligations enforced?
- What else should be included in the framework?
- What form should uniform legislation take?

In addressing these topics, the report highlights that notification of a privacy breach is not free and that a balance is needed between notification in all cases and under-notification. The purpose underlying the proposals set out in the report is to protect individuals whose personal information is disclosed in violation of privacy legislation.

The report also examines various approaches that might be taken to assist victims of identity theft where criminal or other official records have erroneously been created in the name of the victim. The report notes that the term "criminal identity theft" is frequently used to refer to situations in which the perpetrator uses the name of an innocent victim, either alone or in combination with other identity documents, in dealings with law enforcement and others in the criminal justice system. Victims are affected directly when new records or entries in law enforcement records and databases are wrongfully associated or attributed to them.

The report summarizes the different approaches to victim assistance and notes that the approaches have at least two common characteristics. First, they provide for some mechanism to address the records erroneously created as a result of identity theft. Second, these mechanisms attempt to provide some authoritative method by which the innocent individual can identify themselves as having been a victim of identity theft to law enforcement authorities or others.

The report concludes that while some of the initiatives reviewed show promise in alleviating the harm caused by criminal identity theft, further study is required and that it would be premature to recommend the adoption of any of the initiatives in advance of the results of the studies. The report also indicates that a complete and accurate understanding of current practices and procedures of law enforcement and other justice system agencies and participants is needed before the implications of any proposed changes can be properly considered.

Discussion (Criminal Section)

In preparation for the joint session, the Criminal Section considered the Report on Identity Theft during their deliberations to discuss the specific criminal law issues.

A summary of the portion of the Report on Identity Theft regarding examination of civil remedies and other processes to aid victims of criminal identity theft was presented by Josh Hawkes, Appellate Counsel, Criminal Justice Division, Alberta Justice. Delegates expressed their appreciation for the report and indicated that it was well written, comprehensive and easy to follow. One delegate asked whether the provisions in Bill C-27, *An Act to amend the Criminal Code* (identity theft and related misconduct), 2nd Sess., 39th Parl., 2007, which empowers a court to make a restitution order to assist the person in rehabilitating their identity was considered by the working group. In response, it was noted that the first report of the working group did attempt to quantify the costs associated with rehabilitating one's identity and that although the working group was aware of Bill C-27, this bill was not considered in light of the specific task given to the working group.

Discussion (Joint Session)

Delegates thanked the presenters for a very interesting overview of the issues raised by this topic. During the discussion, it was noted by one delegate that what is often heard is that people wish to take steps to avoid being the victim of identity theft and that the focus should also be on preventing identity theft. In response, it was suggested that while prevention was an important issue, the working group should not go beyond what is relevant for the mandate given by the Conference. One delegate asked at

what stage the working group was considering consulting with the various offices of the Privacy Commissioners. It was noted in response that the working group will need to contact various interested parties as part of the development of a uniform Act. It was also pointed out by one delegate that Bill C-27, *An Act to amend the Criminal Code* (identity theft and related misconduct), 2nd Sess., 39th Parl., 2007 which relates to the new identity theft provisions, contains a provision that empowers the court to make a restitution order for costs associated with a person rehabilitating their identity.

After discussion, the following resolution was presented to delegates:

RESOLVED:

That the Joint Criminal/Civil Section Working Group be directed to:

(a) prepare a draft Act and commentaries regarding privacy breach notification in accordance with the directions of the Conference and the recommendations contained in the Report;
(b) provide the Report to Deputy Ministers of Justice to determine what further study should be undertaken to identify the appropriate method of assisting victims of identity theft where criminal records or other related documents have been erroneously created in the name of the victim; and
(c) report back to the Conference at the 2009 meeting.

CLOSING

Delegates thanked the Chair for her skills at chairing the meeting this year. The Chair noted that the Criminal Section completed a considerable amount of business and had a very productive week including 37 resolutions and five working group papers. The Chair expressed her gratitude for the cooperation by delegates in helping her work through the full agenda. The Chair noted that the energy and productive discussions including the collegiality expressed during deliberations and informed interventions contributed to the success of this year's business in the Criminal Section.

The Chair thanked members of the various working groups for their contribution over the course of the year as well as the interpreters and technicians for their assistance during the week. The Chair expressed her appreciation to the Secretary for her invaluable support to the Chair and to ULCC in keeping business on track. The Chair and delegates thanked Quebec for the warmth and hospitality as well as the exceptional organization of the annual meeting of the Conference.

By resolution of the Criminal Section, the nomination of Marvin Bloos, Canadian Council of Criminal Defence Lawyers, Alberta, as Chair of the Criminal Section for 2008-2009 was accepted. The Nominating Committee recommended that Luc Labonté be nominated to be the next Chair of the Criminal Section for the period 2009-2010.

Annex 1

REPORT OF THE SENIOR FEDERAL DELEGATE

Uniform Law Conference of Canada
Criminal Section 2008

Department of Justice Canada

Introduction

Criminal law reform benefits from the work of the Criminal Section of the Uniform Law Conference of Canada (ULCC) as well as from the expertise of its delegates. The resolutions and working group reports discussed during the annual meeting of the ULCC serve to identify evolving issues in the criminal law and as well as specific concerns regarding the application of particular provisions. Moreover, the work of the Conference assists the Department and the Minister of Justice in bringing forward proposals to improve the criminal justice system.

Following the annual meeting of ULCC, senior officials, the Deputy Minister and the Minister of Justice are briefed on the work of the Conference. Resolutions adopted by the Conference are examined and considered by departmental officials or may be referred to a Federal-Provincial-Territorial working group where the issue raised in the resolution is the subject of a broader initiative. Other stakeholders not represented at ULCC may also need to be consulted before a policy proposal is considered for inclusion in a legislative reform package. Where a particular resolution falls under the responsibility of a federal Minister other than the Minister of Justice, the relevant Department is informed of the outcome of the resolution.

The policy and legislative process includes a number of important steps including the requirement for federal Cabinet approval. The Cabinet agenda includes a range of initiatives presented by all federal Ministers. In addition, Parliament's legislative agenda includes Government bills as well as bills proposed by Private Members and Senators.

The 2007 Report provided the status of criminal law bills in the First Session of the 39th Parliament, which was prorogued on September 14, 2007. As a result, all Government bills of the 1st Session that had not received Royal Assent died on the Order Paper. Criminal law bills were either reinstated or reintroduced in the Second Session, commencing on October 16, 2007, and a number of new bills were tabled.

The 2007 Report also provided information regarding Private Members' bills considered during the First Session of the 39th Parliament as several of those bills progressed through Parliament. Unlike government bills, Private Members' bills and all other items of Private Members' Business are automatically reinstated in a new session in accordance with the *Standing Orders* of the House of Commons.

This year's Report includes information regarding government bills, several Private Members' bills as well as Senator's bills, some of which had first been introduced in the First Session.

2007-2008 Government Legislative Initiatives

Since the beginning of the Second Session seven criminal law reform bills were tabled in the House of Commons and one was introduced in the Senate. As of June 20, 2008, two bills have passed and have received Royal Assent including Bill C-13, *An Act to amend the Criminal Code* (*criminal procedure, language of the accused, sentencing and other amendments)* which contained an number of amendments that originated from resolutions adopted by the ULCC.

The 2007 Report provided information regarding Bill C-18, *An Act to amend certain acts in relation to DNA identification*, which received Royal Assent on June 22, 2007. A number of sections came into force upon Royal Assent but others were awaiting proclamation. Since the last Report, the following provisions were proclaimed into force on January 1, 2008 by order of the Governor in Council: ss. 7, 8(1), 10, 11(2) to (4), 12, 13(2), 14 to 17, 20(4), 22, 24, 26, 29, 30, 34, 35, 37(2), 38 to 41, 43(4), 45 and 46.

Bill C-2 *Tackling Violent Crime*

Bill C-2, *An Act to amend the Criminal Code and to make consequential amendments to other Acts (Tackling Violent Crime Act)* was tabled in the House of Commons on October 18, 2007. Bill C-2 received Royal Assent on February 28, 2008 as S.C. 2008, c. 6. Sections of that Act dealing with firearm offences and age of consent came into force on May 1, 2008 while provisions dealing with dangerous offenders and impaired driving came into force on July 2, 2008. Bill C-2 included provisions from the 5 following Bills introduced in the First Session of the 39th Parliament:

- Bill C-10 (minimum penalties for offences involving firearms);
- Bill C-22 (age of protection);
- Bill C-27 (dangerous offenders);
- Bill C-32 (impaired driving); and
- Bill C-35 (reverse onus in bail hearings for firearm-related offences).

Bill C-2 amended the *Criminal Code* in the following ways:

Firearm offences

- Escalating minimum sentences:
    - Five years for a first offence and seven years on a second or subsequent offence for eight specific offences involving the actual use of a firearm (attempted murder, discharging a firearm with intent, sexual assault with a weapon, aggravated sexual assault, kidnapping, hostage taking, robbery and extortion), when the offence is gang-related, or if a restricted or prohibited firearm such as a handgun is used; and
    - Three years on a first offence and five years on a second or subsequent offence for other serious firearm-related offences (firearm trafficking, possession for the purpose of firearm trafficking, firearm smuggling and illegal possession of a restricted or prohibited firearm with ammunition).
- New offences:
    - An indictable offence of breaking and entering to steal a firearm; and
    - An indictable offence of robbery to steal a firearm.
- Reverse onus and new bail factors:

A reverse onus is provided if the accused is charged with:

- using a firearm to commit certain serious offences, including attempted murder, discharging a firearm with a criminal intent, sexual assault with a weapon, aggravated sexual assault, kidnapping, hostage-taking, robbery and extortion;
- an indictable firearms-related offence that is alleged to involve, or whose subject-matter is alleged to be, a firearm or other regulated weapon where the accused is under a weapons-prohibition order; or
- firearm trafficking, possession of a firearm for the purpose of trafficking or firearm smuggling.

Additional factors that the court must take into account in determining whether an accused should be kept in jail pending trial in order to maintain confidence in the administration of justice:

- Whether a firearm was used in the commission of the offence; or
- Whether the accused faces a mandatory minimum punishment of imprisonment of three years or more for a firearm offence.

Age of Consent

- Raised the age at which youths can consent to non-exploitative sexual activity from 14 to 16 years;
- Maintained the existing age of protection of 18 years for exploitative sexual activity (i.e. sexual activity involving prostitution, pornography, or where there is a relationship of trust, authority or dependency); and
- Provided a close-in-age exception which would permit 14- and 15-year old youths to engage in consensual, non-exploitative sexual activity with a partner who is less than five years older. Another exception is provided for marriages and equivalent relationships.

Dangerous Offenders

- A new requirement on prosecutors to declare in open court, prior to sentencing, that they have considered a Dangerous Offender application in every instance where an offender is convicted for a third time of a specific serious sexual or violent offence;
- Creation of a rebuttable presumption that an individual is a Dangerous Offender if convicted of three or more specific violent or sexual offences that attract a sentence of at least two years;
- Codification of the principle enunciated in *R.* v. *Johnson*, [2003] 2 S.C.R. 357 regarding fitness of sentence for an individual designated as a Dangerous Offender. Where an individual meets the Dangerous Offender criteria in subsection 753(1), the court must designate the individual as a Dangerous Offender. However, the court then has full discretion to impose the least intrusive sentence that still serves to protect society from future violent or sexual crimes, which is either a regular sentence, a regular sentence with a Long-term Offender Supervision Order of up to 10 years, or an indeterminate sentence;
- Allowing a new Dangerous Offender sentence hearing where an individual who has been previously designated a Dangerous Offender but given the lesser Long-term Offender sentence is convicted of a breach of their Long-term Supervision Order; and
- Doubling the maximum duration of section 810.1 and 810.2 peace bonds (child sexual offenders and serious personal injury offenders) from one to two years in certain situations while clarifying that the court may impose a broad range of conditions to ensure public safety, including curfews, electronic monitoring where available and drug and alcohol prohibitions.

Impaired Driving

- Authorizes peace officers trained as Drug Recognition Experts to conduct roadside sobriety tests and to take samples of bodily fluids to determine whether a person is impaired by a drug or a combination of alcohol and a drug;

- Makes it an offence to refuse or fail to comply with police demands for physical sobriety tests or bodily fluid samples. The offence is punishable by the same *Criminal Code* penalty as refusing a demand for a breath test for alcohol — a minimum $1,000 fine for a first offence, with a maximum penalty of five-years imprisonment for more serious offences;
- Allows only scientifically valid defences to be used as evidence to avoid conviction for driving with a blood-alcohol concentration over 80; and
- Increases the penalties for impaired driving - e.g. a minimum of 120 days in jail for a third impaired-driving offence.

Bill C-13 ***Criminal procedure, language of the accused and sentencing***

Former Bill C-23 was reinstated as Bill C-13, *An Act to amend the Criminal Code* (*criminal procedure, language of the accused, sentencing and other amendments)* on October 29, 2007. Bill C-13 received Royal Assent on May 29, 2008 as S.C. 2008, c.18. Sections 7, 8, 18 to 21.1, 29, 35, 37 to 40, 42 and 44 will come into force on October 1, 2008. All other provisions came into force upon Royal Assent.

This Bill makes amendments to the *Criminal Code* in three main areas: criminal procedure, sentencing and language of the accused. Bill C-13 also includes other amendments to various *Criminal Code* provisions. Bill C-13 reflects many ULCC resolutions passed between 1996 and 2005:

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 section 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 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-13 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 current maximum default fine that can be imposed for a summary conviction offence to $ 5,000 (Note that the resolution adopted in 2001 by the Conference recommended that the amount be set at $ 10,000. Former Bill C-23, as introduced by the Government, also proposed to increase the maximum fine to $ 10,000. However, this amount was reduced to $ 5,000 following an amendment made by the Committee on Justice and Human Rights.) (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-24 ***Non-registration of firearms***

Bill C-24, *An Act to amend the Criminal Code and the Firearms Act (non-registration of firearms that are neither prohibited nor restricted*) was introduced on November 16, 2007. Bill C-24 proposes to repeal the requirement to obtain a registration certificate for firearms that are neither prohibited firearms nor restricted firearms.

Bill C-24 is currently at First Reading stage in the House of Commons.

Bill C-25 ***Youth Criminal Justice Act***

Bill C-25, *An Act to amend the Youth Criminal Justice Act* received First Reading in the House of Commons on November 19, 2007.

Bill C-25 proposes to amend the *Youth Criminal Justice Act* by adding deterrence and denunciation to the principles that a court must consider when determining a youth sentence. It also proposes to clarify that the presumption against the pre-trial detention of a young person is rebuttable and to specify the circumstances in which the presumption does not apply.

Bill C-25 completed Second Reading stage on February 5, 2008 and was referred to the Standing Committee on Justice and Human Rights on the same day.

Bill C-26 ***Drugs***

Bill C-26, *An Act to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts* received First Reading in the House of Commons on November 20, 2007. Bill C-26 proposes to provide for minimum penalties (MMP) for serious drug offences, to increase the maximum penalty for cannabis (marihuana) production and to reschedule certain substances from *Schedule III* of that Act to *Schedule I*. The proposed amendments include:

- 1 year MMP for trafficking in drugs (e.g., heroin, cocaine, methamphetamine and marijuana) when carried out for organized crime purposes, or when a weapon or violence is involved;
- 2 year MMP for trafficking in drugs (e.g., heroin, cocaine or methamphetamines) to youth, or for trafficking those drugs near a school or an area normally frequented by youth;
- 2 year MMP for the offence of production of a large marijuana grow operation of at least 500 plants;
- The maximum penalty for cannabis production would double from 7 to 14 years imprisonment; and
- Tougher penalties would be introduced for trafficking, producing or importing GHB and flunitrazepam (most commonly known as date-rape drugs).

Bill C-26 received Second Reading on April 16, 2008 and was referred to the Standing Committee on Justice and Human Rights on the same day.

Bill C-27 ***Identity theft and related misconduct***

Bill C-27, *An Act to amend the Criminal Code (Identity theft and related misconduct)* received First Reading in the House of Commons on November 21, 2007.

This Bill proposes to amend the *Criminal Code* to create a new offence of identity theft, of trafficking in identity information and of unlawful possession or trafficking in certain government-issued identity documents, to clarify and expand certain offences related to identity theft and identity fraud, to exempt certain persons from liability for certain forgery offences, and to allow for an order that the offender make restitution to a victim of identity theft or identity fraud for the expenses associated with rehabilitating their identity.

Bill C-27 completed Second Reading stage on January 30, 2008 and was referred to the Standing Committee on Justice and Human Rights on the same day. Bill C-27 is currently before the Committee.

Bill C-53 ***Auto theft and trafficking in property obtained by crime***

Bill C-53, *An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime)* amends the *Criminal Code* and proposes to create offences prohibiting the trafficking of property obtained by crime and prohibiting the alteration, removal or obliteration of a vehicle identification number. More specifically, Bill C-53 would make it a crime to:

- alter, destroy or remove a Vehicle Identification Number (VIN);
- knowingly, sell, give, transfer, transport, send or deliver goods that have been acquired criminally; and to
- possess property known to be obtained through crime for the purpose of trafficking.

Bill C-53 received First Reading in the House of Commons on April 14, 2008.

Bill S-3 ***Investigative hearing and recognizance with conditions***

Bill S-3, *An Act to amend the Criminal Code (investigative hearing and recognizance with conditions)* received First Reading in the Senate on October 23, 2007. It proposes to re-instate a modified version of the investigative anti-terrorism provisions that expired under a sunset clause on March 1, 2007. Though similar to the original provisions, which came into force with the *Anti-terrorism Act* in 2001, Bill S-3, with its added safeguards, proposes provisions to (a) bring individuals who may have information about a terrorism offence before a judge for an investigative hearing, and (b) allow a judge to impose a recognizance with conditions, including a limited arrest-without-warrant power, to avert or disrupt a potential terrorist attack. Bill S-3 also contains a five-year sunset clause and requires the Attorney General and the Minister of Public Safety to issue separate annual reports with their opinion as to whether these provisions should be extended.

Bill S-3 was passed by the Senate on March 6, 2008 and is currently at Second Reading stage in the House of Commons.

2007-2008 Other Bills of Interest

Private Members' Bills (House of Commons)

Some criminal law reforms proposed by Private Members' bills may be of interest to Criminal Section delegates and are described briefly below. The Parliament of Canada website (http://www.parl.gc.ca) should be consulted for the full list and text of Private Members' bills. Note that the description below refers to the status of bills as of June 20, 2008.

Bill C-299 - *An Act to amend the Criminal Code (Identification information obtained by fraud or false pretence)* - Mr. Rajotte (Edmonton—Leduc) was passed by the House of Commons on October 16, 2007.

The Bill proposes to amend the *Criminal Code* to create the following criminal offences:
(*a*) obtaining personal information from a third party by a false pretence or by fraud; and
(*b*) selling or otherwise disclosing personal information obtained from a third party by a false pretence or by fraud.

Bill C-299 received Second Reading in Senate and was referred to the Standing Committee on Legal and Constitutional Affairs on May 27, 2008.

Bill C-343 - *An Act to amend the Criminal Code (motor vehicle theft)* - Mr. Scheer (Regina—Qu'Appelle) received First Reading on October 17, 2007.

Bill C-343 proposes to amend the *Criminal Code* to create a distinct offence of motor vehicle theft. As introduced, it proposed escalating penalties, including mandatory minimum penalties. The Bill was pared down before the Justice Committee to provide only for a distinct offence of auto theft with no minimum penalties.

The Bill was passed by the House of Commons on February 27, 2008; received Second Reading in the Senate and referred to the Standing Committee on Legal and Constitutional Affairs on April 10, 2008.

Bill C-384 – *An Act to amend the Criminal Code (mischief against educational or other institution)* – Mrs. Freeman (Châteauguay**—**Saint–Constant) received First Reading in the House of Commons on October 16, 2007.

This Bill proposes to amend the *Criminal Code* by making it an offence to commit an act of mischief against an identifiable group of persons at an educational institution, including a school, daycare centre, college or university, or at a community centre, playground, arena or sports centre.

Bill C-384 received Second Reading on May 14, 2008 and was referred to the Standing Committee on Justice and Human Rights on the same day.

Bill C-393 - *An Act to amend the Criminal Code and the Corrections and Conditional Release Act (punishment and hearing)* - Mr. Brown (Leeds—Grenville) received First Reading on October 16, 2007.

This Bill proposes the following amendments to the *Criminal Code*:

- that the offence of carrying a concealed weapon (s. 90) provide a minimum consecutive penalty of 90 days on first offence and 1 year on a second or subsequent offence, to provide a maximum penalty of 5 years less one day, and that this offence be included on the list of offences for which provincial courts have exclusive jurisdiction;
- that the manslaughter offence (s. 236) provide a minimum penalty of 4 years where the offence is committed with a knife that was concealed and where the victim was unarmed, with a parole ineligibility period at one half of the sentence served, or 10 years, whichever is less;
- that the credit for time spent in custody before sentencing be limited to a ratio of 1 to 1, in general, and that no credit be given where an accused was detained by reason of previous convictions or as a result of a review or revocation of bail.

This Bill also proposes to amend the *Corrections and Conditional Release Act* to require that victims be provided information about the offender while in custody that would be relevant to their safety so that they may attend and participate in parole hearings, and that such hearings could be delayed in certain specified circumstances.

Bill C-393 received Second Reading on June 4, 2008 and was referred to the Standing Committee on Justice and Human Rights on the same day.

Bill C-423 - *An Act to amend the Youth Criminal Justice Act (treatment for substance abuse)* - Mr. Lake (Edmonton—Mill Woods—Beaumont) received First Reading on October 16, 2007.

This Bill proposes to amend the *Youth Criminal Justice Act* to require that a police officer must, before starting judicial proceedings or taking any other measures under this Act against a young person alleged to have committed an offence, consider whether it would be sufficient to refer the young person to an addiction specialist for assessment and, if warranted, treatment recommendations. If the young person enters into a treatment program as a result of such a referral and fails to complete the program, the outcome may be the start of judicial proceedings against that young person.

Bill C-423 received Second Reading and was referred to the Standing Committee on Justice and Human Rights on December 10, 2007. It was reported back to the House of Commons without amendments and reached Third Reading stage but was referred back to the Committee on May 16, 2008 for the purpose of considering clause 1 of the Bill (referral to addiction specialist).

Bill C-426 - *An Act to amend the Canada Evidence Act (protection of journalistic sources and search warrants)* – Mr. Ménard (Marc-Aurèle-Fortin) received First Reading in the House of Commons on October 16, 2007.

The Bill is intended to protect the confidentiality of journalistic sources. It proposes to allow journalists to refuse to disclose information or a record that has not been published unless it is of vital importance and cannot be produced in evidence by any other means. It also proposes to establish specific conditions that must be met for a judge to issue a search warrant to obtain information or records that a journalist possesses.

Bill C-426 received Second Reading and was referred to the Standing Committee on Justice and Human Rights on March 5, 2008. It was deemed reported back to the House without amendments on April 30, 2008 and is currently at Report stage.

Bill C-428 - *An Act to amend the Controlled Drugs and Substances Act* (*methamphetamine)* – Mr. Warkentin (Peace River) was introduced in the House of Commons on October 16, 2007. This Bill proposes to prohibit the production, possession and sale of any substance, equipment or other material that is intended for use in production of or trafficking in methamphetamine.

Bill C-428 was passed by the House of Commons on February 8, 2008. It received Second Reading in the Senate and was referred to the Standing Committee on Legal and Constitutional Affairs on May 27, 2008.

Bill C-484 - *An Act to amend the Criminal Code (injuring or causing the death of an unborn child while committing an offence)* – Mr. Epp (Edmonton—Sherwood Park) received First Reading in the House of Commons on November 21, 2007.

This Bill proposes to amend the *Criminal Code* to create new offences of causing (or attempting to cause) the death of or injury to a child during birth or at any stage of development before birth, while committing or attempting to commit an offence against the child's mother, who the person knows or ought to know is pregnant. The proposed penalties range from ten years imprisonment on indictment/eighteen months imprisonment on summary conviction to a maximum to life imprisonment with a mandatory minimum of ten years imprisonment, with the possibility of a reduced penalty if the accused was provoked. Delay of parole eligibility is also proposed for an accused convicted of the intentional death or injury causing the death of the unborn child.

Bill C-484 passed Second Reading stage on March 5, 2008 and was referred to the Standing Committee on Justice and Human Rights.

Bill C-519 - *An Act to amend the Criminal Code (bail for serious personal injury offences)* – Mr. Batters (Palliser) received First Reading in the House of Commons on March 3, 2008.

This Bill proposes that before a justice makes an order regarding the release of an accused who is charged with a serious personal injury offence as defined in section 752, the prosecution shall present all of its evidence that is relevant to the release of the accused, including with respect to the alleged offence and its circumstances.

Bill C-519 is currently at Second Reading stage in the House of Commons.

Bill C-558 - *An Act to amend the Criminal Code (cruelty to animals)* – Ms. Priddy (Surrey North) received First Reading in the House of Commons on June 4, 2008.

This Bill proposes to repeal and re-enact existing animal cruelty provisions in the *Criminal Code* in a new part of the *Code*, to no longer classify animal cruelty as property-related crime, and would make certain modifications to existing offences to address complex or poorly worded aspects of the current law.

Bill C-558 was placed on the Order of Precedence on June 5, 2008 and is currently awaiting Second Reading in the House of Commons.

Senate Bills (Other than Government Bills)
(Status of bills as of June 26, 2008)

Bill S-203 - *An Act to amend the Criminal Code (cruelty to animals)* (Senator Bryden) was introduced in the Senate on October 17, 2007. This Bill amends the *Criminal Code* to increase the maximum penalties for animal cruelty offences. Bill S-203 received Royal Assent on April 17, 2008 as S.C. 2008, c. 12.

Bill S-209 - *An Act to amend the Criminal Code (protection of children)* (Senator Herveux-Payette) received First Reading in the Senate on October 17, 2007 and was passed, as amended, by the Senate on June 17, 2008. Bill S-209 received First Reading in the House of Commons on June 20, 2008.

Bill S-209 as originally introduced, proposed the repeal of s. 43 of the *Criminal Code* (correction of child by force). The Senate Standing Committee on Legal and Constitutional Affairs amended the Bill by replacing current section 43 with new language that no longer focuses on using force on a child for correction. The proposed amendment would provide that parents, persons standing in the place of a parent, and schoolteachers are permitted to use reasonable force toward a child under their care where the force is used only for the purpose of:

- preventing or minimizing harm to the child or another person;
- preventing the child from engaging or continuing to engage in conduct that is of a criminal nature; and
- preventing the child from engaging or continuing to engage in excessively offensive or disruptive behaviour.

Bill S-210 - *An Act to amend the Criminal Code (suicide bombings)* (Senator J.S. Grafstein) received First Reading on October 17, 2008.

The Bill proposes to amend the *Criminal* Code's definition of "terrorist activity" to specify that a suicide bombing comes within paragraphs (*a*) and (*b*) of the definition of "terrorist activity".

Bill S-210 was passed by the Senate on June 16, 2008.

Bill S-213 - *An Act to amend the Criminal Code (lottery schemes)* (Senator Lapointe) received First Reading on October 23, 2007. This Bill proposes to narrow the exemptions that permit provincial governments to lawfully conduct and manage lottery schemes involving video lottery terminals and slot machines by limiting their location to casinos, race tracks and betting theatres.

Bill S-213 was passed by the Senate on February 5, 2008 and introduced in the House of Commons on February 12, 2008. It completed Second Reading and was referred to the Standing Committee on Justice and Human Rights. However, this Bill was deemed reported back to the House of Commons on June 10, 2008.

Conclusion

In addition to supporting the Government's active legislative agenda, the Department of Justice Canada continues to pursue research and consultations to identify the need for long-term law reform and to develop options for reform to address a range of issues for the consideration of the Minister of

Justice. The Uniform Law Conference of Canada continues to play an important role in the identification of emerging issues and the need for reform.

Annex 2

RESOLUTIONS

ALBERTA

Alberta – 01

In appropriate circumstances restrictions or prohibitions on internet use are important elements in judicial interim release orders, probation and conditional sentence orders. The *Criminal Code* should be amended to provide explicit statutory authority to ensure compliance with these orders.

Carried: 16-6-8

Alberta – 02

The *Criminal Code* should be amended to authorize issuance of a warrant to obtain DNA or other bodily substances from an unconscious person who is reasonably believed to be the victim of a crime. Any such authorization must have due regard for a wide range of factors including the need to:

1. first obtain the consent of anyone who, by law, would otherwise be able to give consent on behalf of the unconscious person where that other person's interests in providing or withholding consent does not conflict with the interests of the unconscious person;
2. balance the privacy interests of the unconscious person with the interests of justice; and
3. restrict the nature of any such DNA or bodily substance to those believed to be from the perpetrator of the crime against the unconscious person.

Carried as amended: 14-5-9

Alberta – 03

Justice Canada should examine section 486.5, and other applicable sections of the *Criminal Code* to ensure that there are adequate mechanisms to protect the identity of undercover officers at all stages of an investigation and prosecution.

Carried as amended: 30-0-1

Alberta – 04

To ensure that provincial offence notices are properly served on accused persons in other jurisdictions, the Civil and Criminal sections of the Uniform Law Conference of Canada should jointly examine the issue to develop a consistent statutory approach for consideration by all jurisdictions.

Carried: 30-0-0

BRITISH COLUMBIA

British Columbia – 01

That the definition of "Brass Knuckles" in the prohibited weapons regulations be amended to include items that do not contain metal such as "Lexan knuckles".

Carried: 29-0-1

British Columbia – 02

That the requirement to swear an information "as soon as practicable" where police release an accused on an appearance notice under s. 496 of the *Criminal Code* or with conditions under s. 497 or 498 be eliminated while retaining the requirement that the charge be laid before the return date in the release document.

Defeated: 7-13-10

British Columbia – 03

Amend section 489.1 of the *Criminal Code* so that the requirement to report, or bring, to a justice in accordance with section 490 any items seized, would only apply where the items are seized from the lawful owner, or from a person lawfully entitled to possession, or where it is reasonable to expect that a person would otherwise claim to be a lawful owner or to be lawfully entitled to possession pursuant to subsection 490(10).

Defeated as amended: 13-14-1

British Columbia – 04

That Justice Canada examine section 184.4 of the *Criminal Code* in light of constitutional and other concerns raised by recent case law and propose amendments, or other options, to maintain the ability of peace officers to respond to exceptional circumstances where an interception is immediately necessary to prevent an unlawful act that would cause serious harm to any person or property.

Carried as amended: 26-0-2

MANITOBA

Manitoba – 01

That Justice Canada immediately examine, with such consultation as necessary with the Provinces and Territories, and stakeholders, a full range of options for preventing, penalizing or otherwise addressing the use of encryption for criminal purposes and, specifically, to facilitate access to encrypted material seized pursuant to a legal search, search warrant or other legal authorization.

Carried as amended: 27-0-1

NEW BRUNSWICK

New Brunswick – 01

That paragraph 253(*a*) of the *Criminal Code* be amended to remove the words "by alcohol or drugs".

Withdrawn
(Following discussion)

New Brunswick – 02

Amend section 120 (bribery of officers) of the *Criminal Code* to broaden its scope and include receiving any consideration.

Defeated: 1-23-3

New Brunswick – 03

That Justice Canada review the search and seizure provisions and ancillary orders with a view to consolidating related provisions, simplifying the application procedure, and reconciling the standard of proof required.

Carried as amended: 24-0-4

NOVA SCOTIA

Nova Scotia – 01

That Justice Canada review and assess the adequacy of the existing provisions of the *Criminal Code* relating to restitution for costs incurred by the victim of a crime as a result of the offence and make any recommendations for amendments to the *Criminal Code* necessary to address any identified inadequacies.

Carried as amended: 27-0-0

ONTARIO

Ontario – 01

Amend section 264 of the *Criminal Code* (criminal harassment) to increase the maximum penalty on summary conviction to 18 months.

Carried: 26-1-1

Ontario – 02

Amend Part XVI of the *Criminal Code* to explicitly authorize a justice who makes a judicial interim release order, to order, pending the actual release of the accused, and separate from the undertaking or recognizance, that the accused abstain from communication with any victim, witness, or other person.

Carried as amended: 25-0-2

Ontario – 03

Amend section 846 of the *Criminal Code* to provide that a statement by a peace officer that all matters contained in the document in question are true is deemed to be a statement under oath.

Withdrawn
(Without discussion)

Ontario – 04

That the *Criminal Code*, or in the alternative the *Canada Evidence Act*, be amended to include a provision which deems that where a document has been included in the disclosure material provided to the accused, counsel for the accused or agent on behalf of the accused or counsel for the accused, it is deemed that :

1. The document has been served on the accused person and,
2. Notice of an intention to introduce the document into evidence has been served on the accused person.

Carried: 16-6-8
(Delegation vote)

Ontario – 05

That the *Criminal Code* be amended to include an offence of possession of kidnapping instruments.

Withdrawn
(Due to the passage of Saskatchewan
resolution number 01 on the same topic)

Ontario – 06

It is recommended that section 553 of *Criminal Code* which contains the list of absolute jurisdiction offences be amended to include subsection 145(2) (failure to attend/appear in court).

Defeated: 5-22-3

QUEBEC

Quebec – 01

Amend section 117.11 (onus on accused – weapon authorization) of the *Criminal Code* in order to add to it the offences covered in sections 94, 99, 100 and 103 of the *Criminal Code*, a similar resolution having been adopted in 2005 for sections 92 and 95.

Carried as amended: 26-0-0

Quebec – 02

That the Federal Department of Justice examine the general warrant and the production order regime in order to permit that, in relation to an offence that has been committed or will be committed, a peace officer may have access not only to documents and data already in existence but also to those that are reasonably foreseeable.

Carried as amended: 17-4-5

Quebec – 03

That the Federal Department of Justice request that the Federal/Provincial/Territorial Working Groups on Sentencing and Mental Disorder, which are charged with following up on resolution number Can-CBA2003-02, continue to consider the concern of being unfit and not criminally responsible at any stage of the criminal proceedings and that the Department of Justice report to the Conference in 2009.

Carried as amended: 28-0-0

Quebec – 04

That the mandate be given to a working group of the Criminal Section of the Uniform Law Conference of Canada to consider the matter of the taking into account of time spent in pre-sentence custody (subsection 719(3) of the *Criminal Code*) when imposing sentence and the availability of certain sentencing measures such as probation orders, conditional sentences, delay of parole and long-term offenders, and that the working group report to the Conference in 2009.

Carried as amended: 28-0-0

Quebec – 05

To include extortion (section 346 of the *Criminal Code*) in the list of offences found in Schedule I to the *Corrections and Conditional Release Act* (S.C. 1992, c. 20).

Carried: 27-0-3

SASKATCHEWAN

Saskatchewan – 01

That the *Criminal Code* be amended to create a new offence prohibiting possession of items suitable for facilitating the commission of sexual assault in its various forms, kidnapping, abduction or hostage-taking, without lawful excuse, in circumstances that give rise to a reasonable inference that they had been used or were intended to be used to facilitate the commission of one or more of those offences.

Carried: 14-9-9

Saskatchewan – 02

Saskatchewan proposes that s. 734.7 be amended to provide that a default warrant may issue in any jurisdiction that has a "fine option" program as defined in s. 736 on proof:
- the fine has not been paid in full; and
- the offender has failed to perform work in lieu of payment under the fine option program.

Carried: 14-3-14

CANADA

Canadian Bar Association

CBA – 01

Amend paragraph 229(*c*) (murder) of the *Criminal Code* to delete the words "or ought to have known".

Carried: 29-0-0

CBA – 02

Amend subsection 548(1) (order to stand trial or discharge) of the *Criminal Code* to allow a reviewing court or justice to commit an accused to stand for trial in cases where jurisdictional error has been found.

Withdrawn
(Following discussion)

CBA – 03

Amend paragraph 42(7)(*d*) of the *Youth Criminal Justice Act* to delete the words "and that the young person's participation in the program is appropriate".

Defeated: 4-12-11

Canadian Council of Criminal Defence Lawyers

CCCDL – 01

Be it resolved that s. 258(1)(*c*)(*i*) of the *Criminal Code* be proclaimed into full force and effect on or before November 3, 2008.

Be it resolved that 258(1)(*g*)(*iii*)(A) of the *Criminal Code* be proclaimed into full force and effect on or before November 3, 2008.

Withdrawn
(Following discussion)

CCCDL – 02

Be it resolved that appropriate changes be made to the *Criminal Code* to permit an accused who has elected or is deemed to have elected a mode of trial other than trial by provincial court judge to make a re-election as of right at any time before the completion of the preliminary inquiry or before the 60th day following the completion of the preliminary inquiry.

Carried as amended: 25-0-2

CCCDL – 03

1- That the *National Defence Act* be amended to provide the Director of Defence Counsel Services with security of tenure equivalent to that granted to the Director of Military Prosecutions as set out in section 165.1 of the *National Defence Act*, and,

2- That the *National Defence Act* be amended to require that the salary of the Director of Defence Counsel Services be prescribed by regulation, and that the method of determining remuneration be clearly specified.

Withdrawn
(Without discussion)

CCCDL – 04

Concerning the composition of the Appeals committee and related matters, that the Minister of National Defence amend the *National Defence Act* in accordance with Recommendations 26-30 as found in the Report to the Minister by the Right Honourable Antonio Lamer P.C., C.C., C.D.

Withdrawn
(Without discussion)

Public Prosecution Service of Canada

PPSC – 01

Make all warrants and warrant-like orders valid and enforceable throughout Canada without the need for endorsement by a local justice.

Carried: 21-2-7

PPSC – 02

Reconcile the differences in sections of the federal laws where one linguistic version says "convicted" or "found guilty" (respectively) and the other linguistic version says the reverse.

Carried as amended: 28-0-0

PPSC – 03

Add to section 734.3 a subsection requiring that the Attorney General be given at least seven days' notice of an application to vary a fine order.

Add a further subsection requiring that an extension of time to pay a fine should not be granted unless the Court is satisfied that such an extension is justified based on (a) the history of the applicant's prior attempts to discharge the fine and their degree of success, and (b) the reasonableness of the expectation that the extension is likely to result in a substantial part or all of the fine being paid, including where available, by participation in a fine-option program under s. 736.

Withdrawn
(Following discussion)

PPSC – 04

Amend the warrant of committal proceedings in section 734.7 of the *Criminal Code* to specify evidentiary procedures, including the burden of proof, and the ability of the hearing to proceed *in absentia*.

Carried as amended: 22-0-6