

# **REPORT OF THE SENIOR FEDERAL DELEGATE**

## **Uniform Law Conference of Canada Criminal Section 2011**

**August 2011**

**Department of Justice Canada**

### **Introduction**

The expertise provided by the delegates to the Uniform Law Conference of Canada (ULCC) and the forum to exchange views, identify issues and debate possible solutions and approaches is highly valued by the Federal Delegates to the Conference. Equally important, the Conference provides a resource to the Department of Justice and the Minister of Justice on a whole range of criminal law issues. The work of the Conference continues to benefit the federal Government in identifying provisions of the *Criminal Code* and related criminal law statutes in need of legislative reform and in identifying trends and issues that require further consideration.

As noted in past Reports, senior officials, the Deputy Minister and the Minister of Justice are informed of the work of the Conference following the annual meeting. Resolutions adopted by the ULCC are considered by departmental officials, and in some cases, are referred to various federal-provincial-territorial working groups for further study. Other stakeholders, not represented at the Conference, may also be consulted before a policy proposal is considered for legislative reform.

Where an issue in a resolution that has been proposed by a jurisdiction falls under the responsibility of another federal minister, the relevant Department is informed of the resolution and provides information to the federal delegates to inform our discussions at the Conference. Where a resolution is passed that falls under the responsibility of another federal Minister, the relevant Department is also informed.

Many of the resolutions of the ULCC are related to issues being considered by Federal-Provincial-Territorial (FPT) Working Groups - for example, the FPT Working Group on Cyber Crime is examining many issues that have been the subject of ULC resolutions regarding wiretap and other investigative powers. The FPT Working Group on Criminal Procedure continues to identify approaches - both legislative and non legislative - to improve efficiency of the criminal justice system. In addition, the Department of Justice considers the resolutions and discussion papers presented to the Uniform Law Conference as it develops law reform to reflect the priorities of the Government, which include increasing public safety, confidence in the criminal justice system and improving efficiency.

As in the past few years, the Report of the Senior Federal Delegate notes the active criminal law agenda and the status of current bills of interest to the Criminal Law Section. Where possible, references to past ULC resolutions that are reflected in the bill are also noted.

The 2010 report provided information about criminal law reform bills and legislation passed in the 39<sup>th</sup> Parliament and in the Second and Third Session of the 40<sup>th</sup> Parliament. The 40<sup>th</sup> Parliament (Third Session) commenced on March 3, 2010 and was dissolved on March 26, 2011. The 41<sup>st</sup> Parliament commenced on June 2, 2011.

Although it will result in some repetition from the 2010 Report to ULC, the current report provides information about the status of criminal law reform bills introduced by the Minister of Justice in the 40<sup>th</sup> Parliament (Third Session) and in the 41<sup>st</sup> Parliament to date. The Report also refers to other Government Bills and Private Members Bills that would be of interest to the Uniform Law Conference.

*Insert from Leg update – july 2011*

The **41<sup>st</sup> Session of Parliament** commenced on June 2, 2011.

**Bill C-2: *An Act to amend the Criminal Code (mega-trials) also known as The Fair and Efficient Criminal Trials Act***, was introduced on June 13, 2011. The bill reintroduced the former Bill C- 53 and proposes measures related to the following three objectives:

- Strengthening case management;
- Reducing duplication of processes; and
- Improving criminal procedure.

The bill provides for the appointment of a Case Management Judge who would be empowered to impose deadlines on parties and encourage them to simplify proceedings by narrowing the issues, making admissions and reaching agreements. The Case Management Judge would also have the power to decide preliminary issues such as Charter and disclosure motions. As well, duplication of processes could be reduced by allowing for a joint hearing of motions involving similar evidence that arise in related but separate cases. Furthermore, this bill would make the decisions of certain preliminary issues binding at a new trial resulting from a mistrial unless exceptional circumstances can be demonstrated.

Amendments aimed at improving criminal procedure would include increasing from twelve to fourteen the maximum number of jurors hearing the evidence; streamlining the use of direct indictments; and enhancing the protection of jurors' identity.

Bill C- 2 was passed by the House of Commons on June 22 and by the Senate on June 23. It received **Royal Assent as SC 2011, c.16** on June 26, 2011 and will come into force on a date or dates to be set by Order in Council.

In the **40<sup>th</sup> Parliament (Third Session) March 3, 2010 to March 26, 2011**, the Minister of Justice introduced 15 bills (of which 9 were reintroductions of bills that had died on the Order Paper in December 2009). Six bills were passed and received Royal Assent.

### **Bills that received Royal Assent**

**Bill S-6, *An Act to amend the Criminal Code and another Act (Serious Time for the Most Serious Crime Act)*** was introduced in the Senate on April 20, 2010. The Bill reintroduced former Bill C-36 as passed by the House of Commons (i.e. it included the amendments made to the Bill at the House Standing Committee).

This Bill amends the *Criminal Code* with regard to the right of persons convicted of murder or high treason to be eligible to apply for early parole (known as faint hope).

The repeal of access to the faint hope clause will mean that offenders who commit murder on or after the day that this legislation comes into force would no longer be eligible to apply for early parole (and would have to serve at least 25 years in the case of first degree murder and up to 25 years in the case of second degree murder).

The faint hope regime will, however, still apply to those offenders who are currently serving or awaiting sentencing for murder, or who have committed the offence but have not yet been charged, but the amendments will make it more difficult for those offenders to apply under the faint hope clause by establishing new procedures and conditions.

The Bill received Royal Assent on March 23, 2011 as SC 2011, c.2. It will be proclaimed into force on a date to be set by Order in Council.

**Bill S-9, *An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime)* also known as *Tackling Auto Theft and Property Crime Act***, re-introduced the provisions of former Bill C-26 (with the amendments that had been made at Committee stage to former Bill C-26). It should be noted that former Bill C-26 reintroduced the provisions of Bill C-53 from the previous Parliament but added a distinct offence of “motor vehicle theft”. Bill S-9 was introduced on May 4, 2010 and received Royal Assent on November 18, 2010 as SC 2010, c. 14. The Act was proclaimed into force on April 29, 2011.

The amendments create offences in connection with the theft of a motor vehicle, the alteration, removal or obliteration of a vehicle identification number, the trafficking of property or proceeds obtained by crime and the possession of such property or proceeds for the purposes of trafficking, and will provide for an *in rem* prohibition of the importation or exportation of such property or proceeds. In addition, the minimum sentence for a third or subsequent auto theft offence will apply regardless of whether the previous offences were summary or indictable. (This amendment reflects an amendment made to the former Bill C-26.)

**Bill C-21 - *An Act to amend the Criminal Code (sentencing for fraud)* , also known as *The Standing Up for Victims of White Collar Crime Act***, was introduced in the House of Commons on May 3, 2010. The Bill reintroduced the provisions of former Bill C- 52. It received Royal Assent on March 23, 2011 as SC 2011, c. 6. It will be proclaimed into force on a date to be set by Order in Council.

Bill C-21 amends the *Criminal Code* to:

- (a) provide a mandatory minimum sentence of imprisonment for a term of two years for fraud with a value that exceeds one million dollars;

- (b) provide additional aggravating factors for sentencing;
- (c) create a discretionary prohibition order for offenders convicted of fraud to prevent them from having authority over the money or real property of others;
- (d) require consideration of restitution for victims of fraud; and
- (e) clarify that the sentencing court may consider community impact statements from a community that has been harmed by the fraud.

**Bill C-22 - *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service (Protecting Children from Online Sexual Exploitation Act)*** was introduced in the House of Commons on May 6, 2010. The Bill reintroduced the provisions of former Bill C-58 and enacts a new statute to impose reporting duties on persons who provide an Internet service to the public if they are advised of an Internet address where child pornography may be available to the public or if they have reasonable grounds to believe that their Internet service is being or has been used to commit a child pornography offence. It will be an offence to fail to comply with the reporting duties.

The House of Commons Standing Committee on Justice and Human Rights made three amendments to the bill; deleted the short title, changed the definition of Internet Service and specified that a person would be deemed to have complied with the duty to report in section 3 of this Act, when reporting information pursuant to an obligation to report under the laws of a province or a foreign jurisdiction. The Bill received Royal Assent on March 23, 2011 as SC 2011, c. 4. It will be proclaimed into force on a date to be set by Order in Council. Note that regulations to, among other issues, designate the reporting agency will be promulgated and will come into force at the same time as the Act. The regulations will be pre published in the Canada Gazette before promulgation.

**Bill C-30 - *An Act to amend the Criminal Code (Response to the Supreme Court of Canada Decision in R. v. Shoker Act)*** was introduced in the House of Commons on May 31, 2010. The Bill reintroduced former Bill C-55 and amends the *Criminal Code* to allow a court to require that an offender provide a sample of a bodily substance on the demand of peace officers, probation officers, supervisors or designated persons, or at regular intervals, in order to enforce compliance with a prohibition on consuming drugs or alcohol imposed in a probation order, a conditional sentence order or a recognizance under section 810, 810.01, 810.1 or 810.2 of that Act.

The bill received Royal Assent on March 23, 2011 as SC 2011, c. 7. It will be proclaimed into force on a date to be set by Order in Council. Regulations will be promulgated at the same time and will first be pre-published in the Canada Gazette.

**Bill C-48 - *An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act (Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act)*** was introduced on October 5, 2010. The Bill reintroduced former Bill C-54 and amends the *Criminal Code* with respect to the parole inadmissibility period for offenders convicted of multiple murders to permit consecutive periods of 25 years for each offence. It would also make consequential amendments to the *National Defence Act*.

The Bill received Royal Assent on March 23, 2011 as SC 2011, c. 5. It will be proclaimed into force on a date to be set by Order in Council.

### **Bills that died on the Order Paper**

Due to the dissolution of Parliament on March 26, 2011, all bills that had not yet received Royal Assent died on the Order Paper. These bills included:

**Bill C-4, *An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts***, referred to as *Sébastien's Law (Protecting the Public from Violent Young Offenders)* was introduced on March 16, 2010. The Bill was referred to the Standing Committee on Justice and Human Rights for review on May 3, 2010. The Committee heard from many witnesses and clause by clause review was pending at the time of the dissolution of Parliament.

The amendments proposed to:

- make protection of society a primary goal of the legislation;
- simplify the rules to keep violent and repeat young offenders off the streets while awaiting trial, when necessary to protect society;
- require the Crown to consider seeking adult sentences for youth convicted of the most serious crimes – murder, attempted murder, manslaughter and aggravated assault. (Note that the provinces and territories will still have the discretion to set the age at which this requirement would apply.) The Crown would also be required to inform the court if they chose not to apply for an adult sentence;
- enable the courts to impose more appropriate sentences on other violent and repeat offenders, as necessary in individual cases – to use existing sanctions in a way that would discourage an individual from offending again; to use a pattern of escalating criminal activity to seek a custodial sentence when necessary; to impose a custodial sentence for reckless behaviour that puts the lives and safety of others at risk; and
- require the courts to consider publishing the name of a violent young offender when necessary for the protection of society.

**Bill C-16, *An Act to amend the Criminal Code (Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders Act)***, formerly Bill C-42, proposed to further restrict the use of conditional sentences for serious offences. The bill was introduced on April 22, 2010. The Standing Committee on Justice and Human Rights had not begun to review the bill.

A conditional sentence is a sentence of imprisonment that may be served in the community, provided several pre-conditions are met (s. 742.1). The proposed amendments would prohibit the use of conditional sentences for the following offences:

- Offences for which the law prescribes a maximum sentence of 14 years or life.
- Offences prosecuted by indictment and for which the law prescribes a maximum sentence of imprisonment of 10 years that
  - result in bodily harm
  - involve the import/export, trafficking and production of drugs, or
  - involve the use of weapons.
- The following offences when prosecuted by indictment:
  - prison breach
  - luring a child
  - criminal harassment

- sexual assault
- kidnapping, forcible confinement
- trafficking in persons - material benefit
- abduction
- theft over \$5000
- auto theft (as enacted by Bill S-9, now sc.2010,c 14.)
- breaking and entering with intent
- being unlawfully in a dwelling-house
- arson for fraudulent purpose.

**Bill C-17, *An Act to amend the Criminal Code (investigative hearing and recognizance with conditions)* also known as *Combating Terrorism Act***, was introduced on April 23, 2010. The bill reintroduced the provisions of former Bill C-19 which had reintroduced former Bill S-3 from the previous Parliament as amended by the Senate. The Standing Committee on Public Safety and National Security reviewed and reported the bill to the House of Commons on March 2, 2011 with additional amendments.

The Bill proposed to amend the *Criminal Code* to reinstate an investigative hearings power. This would give a judge the power, on application by a peace officer, to compel someone with information about a terrorism offence that has been or will be committed to appear before him or her and answer questions. The proposed reforms provided additional safeguards including that: the use of an investigative hearing would require the consent of the Attorney General; the person compelled to appear would have the ability to retain and instruct counsel at any stage of the proceedings; reasonable attempts would first have to be made to obtain the information by other means; and, the information provided by the person or anything derived from the information generally could not be used.

The bill also sought to reinstate the recognizance with conditions provision, which is intended to help law enforcement officers disrupt terrorist attacks. If a peace officer has reasonable grounds to believe that a terrorist activity will be carried out *and* reasonable grounds to suspect that the imposition of a recognizance with conditions on a particular person is necessary to prevent a terrorist activity from being carried out, then the peace officer could apply to a judge to have the person compelled to appear before him or her. The use of recognizance with conditions would be available under strictly defined conditions and would be subject to numerous procedural safeguards.

**Bill S-10, *An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts (Penalties for Organized Drug Crime Act)*** was introduced in the Senate on May 5, 2010. The bill re-introduced provisions of former Bill C-15 which had re-introduced former Bill C- 26 from the 39<sup>th</sup> Parliament, First Session. The Senate Legal and Constitutional Affairs Committee reviewed the Bill and made one amendment; a five year comprehensive review for cost-benefit analysis of mandatory minimum sentences by a committee of the Senate, of the House of Commons or of both Houses of Parliament. The Bill was passed by the Senate on December 13, 2010 and was referred to the House of Commons on December 14, 2010. The Bill was awaiting Second Reading in the House of Commons at the time of the dissolution of Parliament.

Bill S-10 proposed to provide for minimum penalties for serious drug offences, which escalated based on several aggravating factors, to increase the maximum penalty for cannabis (marihuana) production and to reschedule certain substances from *Schedule III* of that Act to *Schedule I* and to make consequential amendments to other acts.

**Bill C-50: *An Act to amend the Criminal Code (interception of private communications and related warrants and orders)* also known as the *Improving Access to Investigative Tools for Serious Crimes Act***, was introduced on October 29, 2010. The amendments were designed to streamline the application process when specific court orders or warrants need to be issued in relation to an investigation for which a judge has given a wiretap authorization.

In response to recent court decisions in British Columbia and Ontario, the bill included amendments to section 184.4 of the *Criminal Code*, which provides authority for wiretapping without a warrant in exceptional circumstances, such as a kidnapping or a potential bomb threat. The amendments would enhance privacy safeguards by adding requirements to notify persons who were intercepted under this provision and to report annually on the number of intercepts being done when private communications are intercepted in these exceptional circumstances. Such requirements already exist in relation to other *Criminal Code* wiretap authorities. The amendments to section 184.4 were previously included in Bill C-31 that died on the Order Paper with the prorogation of the 40<sup>th</sup> Parliament (Second Session) in December 2009.

**Bill C-51, *An Act to amend the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act, (Investigative Powers for the 21<sup>st</sup> Century)*** was introduced on November 1, 2010. Bill C-51 reintroduced former Bill C-46. The bill proposed to amend the *Criminal Code* to ensure that law enforcement officials have the tools they need to fight crime in today's computer and telecommunications environment by updating certain existing offences as well as by creating new investigative powers. The bill included specific provisions to obtain the routing data related to a telecommunication or to a service provider involved in the transmission of such a telecommunication, the possibility for police to preserve data, and it enhanced the privacy protections with respect to the tracking of the location of a person, as opposed to when a vehicle or thing is tracked. A key feature of the reforms proposed is that no information shall be disclosed to the police without a judicial authorization.

The amendments also proposed to create the legislative framework necessary for Canada to ratify the Council of Europe's Convention on Cybercrime and its Additional Protocol Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed through Computer Systems.

**Bill C-53, *An Act to amend the Criminal Code (mega-trials)* also known as *The Fair and Efficient Criminal Trials Act***, was introduced on November 2, 2010. The bill had not progressed beyond First Reading at the time of the dissolution of Parliament. As noted above, it was reintroduced as Bill C-2 on June 13, 2011 and received Royal Assent on June 26, 2011. (It is described above.)

**Bill C-54, *An Act to Amend the Criminal Code (Sexual Offences Against Children)*, also known as *Protecting Children from Sexual Predators Act***, was introduced on November 4, 2010. It was reviewed by the Standing Committee on Justice and Human Rights and the Committee tabled its report on March 1, 2011. The Bill received Third Reading on March 11, 2011. The Bill received

First Reading in the Senate on March 21, 2011 and Second Reading on March 25, 2011. Bill C-54 was awaiting a recorded vote at Third Reading in the Senate at the date of dissolution of Parliament.

The Bill proposed to better protect children against sexual exploitation by:

- Bringing greater consistency and coherence to the penalties for sexual offences involving child victims by Increasing mandatory minimum penalties (MMPs) for 7 child-specific sexual offences and adding 7 new MMPs to other general sexual assault provisions where the victim is under 16 years of age; and
- Enhancing measures to prevent the commission of child sexual offences by:
  - Creating 2 new offences, both of which will carry MMPs: prohibiting making sexually explicit material available to a young person for the purpose of facilitating the commission of a sexual offence against that young person, and prohibiting the use of telecommunications to communicate to agree or arrange with, another person the commission of a sexual offence against a child (previously included in former Bill C-46 that died on the Order Paper in December 2009); and
  - Directing courts to consider imposing conditions against a convicted child sex offender (section 161) and against suspected child sex offenders (section 810.1) against having unsupervised access to a child under 16 years of age and against having unsupervised use of the Internet, and expanding the list of enumerated child sexual offences for which these conditions could be made to include child procuring/prostitution offences.

**Bill C-60, *An Act to amend the Criminal Code (citizen's arrest and the defences of property and persons, also known as (Citizen's Arrest and Self-defence Act)*** was introduced on February 17, 2011. The Bill was referred to the Standing Committee on Justice and Human Rights for review on March 22, 2011, but the review had not commenced.

The bill proposed amendments to enable a person who owns or has lawful possession of property, or persons authorized by them, to arrest within a reasonable time a person whom they find committing a criminal offence on or in relation to that property. Amendments to simplify the provisions relating to the defences of property and persons were also proposed.

It should also be noted that Bill C- 31 ***An Act to amend the Criminal Code, the Corruption of Foreign Public Officials Act and the Identification of Criminals Act and to make a consequential amendment to another Act*** died on the Order Paper at prorogation of the Second Session of the 40<sup>th</sup> Parliament (December 2009) and was not re-introduced. Bill C-31, proposed a range of procedural amendments many of which reflected ULCC resolutions passed between 2001 and 2008.

### **Criminal law reform bills introduced by other Ministers**

The following criminal law reform related bills, introduced by other Ministers, may be of interest to the Uniform Law Conference, Criminal Section.



### Bills that received Royal Assent

**Bill C-23 A** was passed by the House of Commons on June 17, 2010 and by the Senate on June 28, 2010 and received **Royal Assent as SC 2010, c. 5**. The amendments came into force on Royal Assent.

This Act amends the *Criminal Records Act* to extend the ineligibility periods for certain applications for a pardon. It also enables the National Parole Board to consider additional factors when deciding whether to grant a pardon for certain offences.

### **Bill C-59 *An Act to amend the Corrections and Conditional Release Act (accelerated parole review) and to make consequential amendments to other Acts (Abolition of Early Parole Act)***

This Act amends the *Corrections and Conditional Release Act* to eliminate accelerated parole review and makes consequential amendments to other Acts. The bill was introduced on February 9, 2011 and received Royal Assent on March 23, 2011 as SC 2011, c.11. The amendments were proclaimed into force on March 28, 2011.

### **Bill S-2 - *An Act to amend the Criminal Code and other Acts (Protecting Victims from Sex Offenders Act)***

This bill (formerly Bill C-34) amends the *Criminal Code*, the *Sex Offender Information Registration Act* and the *National Defence Act* to enhance police investigation of crimes of a sexual nature and allow police services to use the national database proactively to prevent crimes of a sexual nature.

It amends the *Criminal Code* and the *International Transfer of Offenders Act* to require sex offenders arriving in Canada to comply with the *Sex Offender Information Registration Act*. It also amends the *Criminal Code* to provide that sex offenders who are subject to a mandatory requirement to comply with the *Sex Offender Information Registration Act* are also subject to a mandatory requirement to provide a sample for forensic DNA analysis. Amendments to the *National Defence Act* are included to reflect the amendments to the *Criminal Code* relating to the registration of sex offenders.

Bill S-2 received Royal Assent on December 15, 2010 as SC 2010, c. 17. It came into force April 15, 2011.

### Bills that died on the Order Paper at the dissolution of Parliament in March 2011

### **Bill C-5 - *An Act to amend the International Transfer of Offenders Act (Keeping Canadians Safe)***

This bill proposed to amend the *International Transfer of Offenders Act* to provide that one of the purposes of that Act is to enhance public safety and to modify the list of factors that the Minister may consider in deciding whether to consent to the transfer of a Canadian offender.

The bill was introduced in the House of Commons on March 18, 2010.

**Bill C-23 B - *An Act to amend the Criminal Records Act and to make consequential amendments to other Acts (Eliminating Pardons for Serious Crimes Act)***

The Minister of Public Safety introduced Bill C-23 on May 11, 2010. The bill sought to amend the *Criminal Records Act* to substitute the term “record suspension” for the term “pardon” and to extend the ineligibility periods for applications for a record suspension. It also proposed to make certain offences ineligible for a record suspension and enable the National Parole Board to consider additional factors when deciding whether to order a record suspension.

The bill was reviewed by the Public Safety and National Security Committee and subsequently split into two bills; Bill C-23 A (passed) and Bill C-23 B.

**Bill S-7 - *An Act to deter terrorism and to amend the State Immunity Act (Justice for Victims of Terrorism Act)***

Bill S- 7 was introduced on April 28, 2010. It proposed to create, in order to deter terrorism, a cause of action that allows victims of terrorism to sue perpetrators of terrorism and their supporters. The bill also proposed to amend the *State Immunity Act* to prevent a foreign state from claiming immunity from the jurisdiction of Canadian courts in respect of actions that relate to its support of terrorism.

The bill was reviewed by the Special Committee on Anti Terrorism and adopted without amendments on July 12, 2010 by the Committee. The Committee tabled its report on October 5, 2010. The Bill was adopted by the Senate with amendments on November 16, 2010. It received First Reading in the House of Commons on February 8, 2011.

**Bill C- 39- *An Act to amend the Corrections and Conditional Release Act and to make consequential amendments to other Acts (Ending Early Release for Criminals and Increasing Offender Accountability Act)***

The bill proposed to amend the *Corrections and Conditional Release Act* to, among other things, clarify that the protection of society is the paramount consideration in the determination of all cases; to establish the right of a victim to make a statement at parole hearings; to permit disclosure of information relating to the offenders to a victim; eliminate accelerated parole review; provide for the automatic suspension of the parole or statutory release of offender; and authorize a peace officer to arrest without warrant an offender for a breach of a condition of their conditional release. The bill was introduced on June 15, 2010 and referred to the Committee on Public Safety and National Security October 20, 2010.

**Bill C-49-*An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act and the Marine Transportation Security Act (Preventing Human Smugglers from Abusing Canada's Immigration System Act)***

The bill was introduced on October 21, 2010 and proposed amendments to ensure law enforcement have the tools they need to crack down on human smugglers by, among other things, make it easier to prosecute human smugglers; impose mandatory prison sentences on convicted human smugglers; and hold ship owners and operators to account for use of their ships in human smuggling operations.

The Bill was reintroduced as Bill C- 4 on June 16, 2011 by the Minister of Public Safety.

**Bill C-52- *An Act regulating telecommunications facilities to support investigations (Investigating and Preventing Criminal Electronic Communications Act)***

The Bill was introduced on November 1, 2010 and proposed to require telecommunications service providers to put in place and maintain certain capabilities that facilitate the lawful interception of information transmitted by telecommunications and to provide basic information about their subscribers to the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Commissioner of Competition and any police service constituted under the laws of a province.

**Private Members' Bills**

Some criminal law reforms proposed by Private Members in the House of Commons and by Senators in the Senate may be of interest to Criminal Section delegates and are described briefly below. These bills may not be as well publicized as Government bills. The Parliament of Canada website (<http://www.parl.gc.ca>) should be consulted for the full list and text of Private Members' bills.

**Bills that received Royal Assent**

**Bill C-268 - *An Act to amend the Criminal Code (minimum sentences for offences involving trafficking of persons under the age of eighteen years)***

The bill received Royal Assent on June 29, 2010 as SC 2010, c. 3. Because the bill did not include a specific coming into force clause, the amendments came into force on Royal Assent

The Bill amends the *Criminal Code* to include a minimum sentence of 5 years imprisonment for offences involving trafficking of persons under the age of eighteen years. A Government amendment was passed at the Standing Committee on Justice and Human Rights to impose a 6 year minimum sentence on the more serious child trafficking offence. Note that these provisions are in force.

**Bill C-464 - *An Act to amend the Criminal Code (justification for detention in custody)***

The bill was introduced on October 22, 2009. The bill amends subsection 515(10) of the Code to specifically add “or minor children of the accused” as included in the “safety of the public” to the primary ground for detention. The Bill was reviewed by the House of Commons Standing Committee on Justice and Human Rights and reported to the House of Commons with an amendment and passed on March 22, 2010. The Bill received First Reading in the Senate on March 23, 2010 and was referred to the Senate Legal and Constitutional Affairs Committee for review on June 22, 2010. The Committee tabled its report without amendment on December 2, 2010. The Bill was passed by the Senate and received Royal Assent on December 15, 2010 as SC 2010, c. 20. The amendments came into force on Royal Assent. Note that these provisions are now in force.

**Bill C-475 - An Act to amend the Controlled Drugs and Substances Act (methamphetamine and ecstasy)**

The bill was introduced on November 2, 2009. The Bill amends the CDSA to prohibit a person from possessing, producing, selling or importing anything knowing it will be used to produce or traffic in meth or ecstasy. The offence would carry a penalty of 10 years less a day. The bill was reviewed by the Standing Committee on Justice and Human Rights in April and reported to the House of Commons with an amendment and passed on June 9, 2010. The Bill received First Reading in the Senate on June 10, 2010 and was referred to the Senate Legal and Constitutional Affairs Committee on March 21, 2011. The Committee tabled its report and the bill received Third Reading on March 24, 2011. It received Royal Assent on March 25, 2011 as SC 2011, c. 14. The amendments came into force 90 days after the day on which this Act received Royal Assent (i.e. June 23, 2011).

**Bill S-215- *An Act to amend the Criminal Code (suicide bombings)***

The bill was introduced in the Senate on March 24, 2010 and adopted by the Senate on May 11, 2010. The Bill received First Reading in the House of Commons on May 12, 2010 and was referred to the Standing Committee on Justice and Human Rights on October 8, 2010. The Committee tabled its report with amendments on November 1, 2010. The bill was passed by the House of Commons and received Royal Assent on December 15, 2010 as SC 2010, c. 19. This Bill proposes to amend the *Criminal Code* to clarify that suicide bombings fall within the definition “terrorist activity”. The amendments will come into force on a date to be set by Order In Council.

**Bills that died on the Order Paper**

**Bill C-389 - *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression)***

The bill was introduced on March 3, 2010, debated at second reading on May 10 and June 8, 2010, and referred to the Standing Committee of Justice and Human Rights on June 8, 2010. The Committee tabled its report without amendment on November 3, 2010 and it was concurred in at Report Stage on December 8, 2010. The bill received Third Reading on February 9, 2011 and received First Reading in the Senate on February 10, 2011.

The bill seeks to amend the *Canadian Human Rights Act* to include gender identity and gender expression as prohibited grounds of discrimination. It also seeks to amend the *Criminal Code* to include gender identity and gender discrimination as characteristics protected under section 318 and as aggravating factors to be taken into account at the time of sentencing.

**Bill C- 576- *An Act to amend the Criminal Code (personating peace officer)***

The Bill was introduced on October 1, 2010, debated at Second Reading on November 4, 2010 and February 9, 2011, and referred to the Standing Committee of Justice and Human Rights on February 9, 2011. The Committee tabled its report without amendment on March 3, 2011. It proposed to amend the *Criminal Code* to provide that personating a police officer for the purpose of committing another offence shall be considered by a court to be an aggravating circumstance for sentencing purposes.

## **Other Initiatives of Interest to the Uniform Law Conference**

### ***Priorities identified by Federal Provincial Territorial Ministers responsible for Justice***

Federal, Provincial and Territorial (FPT) Ministers responsible for justice and public safety meet annually to discuss issues of mutual interest given the shared responsibility for criminal justice. Ministers last met in October 2010. Many of the issues discussed by Ministers are consistent with issues raised by delegates to the Uniform Law Conference, at past sessions and at the 2011 Conference.

Ministers were provided with an overview of recent federal legislative initiatives noting in particular the passage of Bills S-4 (Identity Theft), C-25 (Truth in Sentencing) and C-14 (Organized Crime), as well as Bill C-5 (International Transfer of Offenders), C-23B (Pardon Reform) and S-2 (Sex Offender Registry).

Ministers released a report by the Federal Provincial Territorial Working Group on Missing and Murdered women (available at <http://www.scics.gc.ca>) and agreed on the need to strengthen the criminal justice system's response to such cases.

Ministers also discussed several issues related to Mental Health and the Justice System and noted that the needs of those with mental health issues who come in contact with the justice system is a complex area. Ministers encouraged collaboration between the criminal justice and mental health systems and noted their support for a symposium on mental health related justice issues in May 2011, in Calgary, Alberta. The symposium was co-hosted by the Province of Alberta, Justice Canada and Public Safety Canada. A preliminary report on the Symposium was provided to FPT Deputy Ministers in June 2011 and a more detailed report with proposed action will be provided to Ministers at their next meeting.

Ministers also agreed to explore the issue of the protection of the public as the paramount consideration in *Criminal Code* Review Board decisions regarding persons found not criminally responsible due to mental disorder. A Working Group of Federal, Provincial and Territorial officials is examining the issue.

Ministers noted the affect of Fetal Alcohol Spectrum Disorder on offenders and victims. Ministers noted that FASD and the justice system would continue to be a priority for them and encouraged continuing engagement with the Canadian Bar Association about FASD as an access to justice issue.

Ministers emphasized the need to work collaboratively on criminal law reform. Ministers discussed issues concerning Bill C-4 (amendments to the *Youth Criminal Justice Act*) and C-16 (Ending House Arrest for Property and Other Serious Crimes) and exchanged views on Random Breath Testing, among many other issues.

Ministers also agreed on the need to work together and support coordinated actions on human trafficking and sexual exploitation. Ministers supported the progress made on criminal procedure, electronic disclosure, routine police evidence (allowing police to present evidence by written document rather than in person on routine matters) and sentencing for large-scale economic fraud ( Bill C- 21 which subsequently received Royal Assent in March 2011).

### ***Modernization of the Bail Regime***

The Working Group on Criminal Procedure, which is composed of Federal Provincial and Territorial (FPT) senior officials, has conducted a comprehensive review of the bail regime. A number of recommendations were approved in 2006 by FPT Ministers responsible for Justice and the Working Group is now assessing how to implement these recommendations, which touch on a vast array of issues both operational and legislative. To this end, the Working Group is currently conducting consultations to ensure that the reforms envisioned successfully address concerns with the current bail regime and do not have unintended consequences on the efficiency and effectiveness of bail courts..

### ***Steering Committee on Justice Efficiencies and Access to Justice***

The Steering Committee is composed of six Deputy Ministers as well as representatives from the Bench, Private Bar and police. The Steering Committee is currently examining issues relating to the use of technology in the criminal justice system; disclosure; reporting in the courts; and « proportionality », the latter referring to the need to balance procedural guarantees with the outcome of the trial in terms of the consequences of "guilt", including the degree of punishment.

### **Conclusion**

As noted in past Reports, the work of the Uniform Law Conference of Canada continues to be highly relevant and beneficial to the work of the Department of Justice and to the Government's agenda in relation to a whole range of criminal law reforms. The Conference remains a key stakeholder and source of expertise that informs the Minister of Justice in identifying areas in need of reform.

This report provides a snapshot or status report on criminal law reforms as of July 2011. Delegates are encouraged to refer to the parliamentary website (<http://www.parl.gc.ca>) to monitor progress of the reforms.

---

August 2011