

RESOLUTIONS SUMMARY

Criminal Section August 2011

ALBERTA

Alberta - 01

Section 561(2) of the *Criminal Code* should be amended to increase the time required to re-elect

- for an accused out of custody to no later than 60 days before the day first appointed for trial; and
- for an accused detained in custody to no later than 30 days before the day first appointed for trial;

or otherwise only with the written consent of the prosecutor.

Carried as amended: 8-3-9

Alberta - 02

Section 734(2) of the *Criminal Code* should be amended to permit an adverse inference to be drawn regarding the ability of an offender to pay a fine where the offender fails or refuses to provide information regarding his or her ability to pay.

Withdrawn after discussion

Alberta - 03

Justice Canada should undertake a review of The Prohibited Weapons Order (SOR/98-462) to ensure that the descriptions of the weapons in question are updated, and that the descriptions are framed in such a way so as to avoid the need for constant updating to address minor changes in the composition or other non-essential characteristics of weapons to the extent possible.

Carried as amended: 20-0-4

Alberta - 04

Due to gaps within and between the applicable legislative acts (the *DNA Identification Act* and the *Criminal Code*) a significant volume of valid court orders to collect DNA samples were not executed prior to legislative amendments in 2008. The *Criminal Code* should be amended to enable the enforcement of these valid orders anywhere in Canada.

Carried as amended: 13-4-8

Alberta - 05

That Justice Canada review section 657.3 of the *Criminal Code* to consider reciprocal disclosure of expert reports well in advance of trial by both parties where that expert evidence relates to the mental condition of the accused.

Carried as amended: 15-0-6

Alberta – Canadian Association of Provincial Court Judges - 06

It is recommended that the Department of Justice review ss. 490.012 (4) and 487.053 (2) to clarify the purpose and scope of a hearing in the case of mandatory orders and to clarify the court's jurisdiction and powers in the event that a hearing is not set within 90 days and in the event that an offender can not be located.

Carried: 18-0-4

Alberta - 07

The *Criminal Code* should be amended to clarify the authority of appellate courts to enter a stay of an order or ruling pending appeal. Expansion of section 683(5) should be considered to cover those orders subject to appeal but without a corresponding power to stay pending appeal. A general power, subject to specific exception for particular orders could also be considered.

Carried: 20-0-4

MANITOBA

Manitoba - 01

That section 7.2 of the *Criminal Records Act* should be amended to remove the exception to automatic cessation of pardons for impaired driving offences.

Carried: 18-0-6

Manitoba - 02

That section 153.1 of the *Criminal Code* should be amended to provide for a ten year maximum sentence on indictable proceedings.

Carried: 17-0-4

NEW BRUNSWICK

New Brunswick – 01

That sections 487.012 and 487.013 of the Criminal Code of Canada be amended to state that the Orders may be executed anywhere in Canada.

Carried as amended: 17-0-7

New Brunswick - 02

That a criminal section working group be created to study and report on what amendments are required, if any, to capture the conduct of a person who gives evidence in a judicial proceeding contrary to the evidence previously provided in a KGB statement.

Carried as amended: 18-0-1

New Brunswick – 03

That section 137 of the Youth Criminal Justice Act be amended to permit that it be prosecuted by either summary conviction or by indictment when the accused is an adult.

Carried as amended: 12-0-12

New Brunswick - 04

That section 536 of the Criminal Code be amended to create a rebuttable presumption against preliminary inquiries once the Court is satisfied that the Crown has complied with its obligation to make full disclosure.

Withdrawn after discussion

NOVA SCOTIA

Nova Scotia - 01

That Sections 770 to 773 be referred to Justice Canada to develop a more efficient, “one court” procedure dealing with the forfeiture of a recognizance under the Criminal Code.

Carried: 20-0-4

Nova Scotia - 02

The issue of the interprovincial execution of warrants granted under the authority of Provincial legislation should be referred to a joint working group of the Civil and Criminal Sections of ULCC for study and development of recommendations.

Carried: 9-0-13

ONTARIO

Ontario - 01

The *Criminal Records Act*, s.7.2 should be amended to remove the exception for drinking and driving convictions (s.255(1) of the *Criminal Code*).

Withdrawn after discussion and vote on Manitoba - 01

Ontario - 02

The assignment of counsel pursuant to court direction under ss. 672.24, 672.5, 684 and 694.1 of the *Criminal Code* is a matter of concern insofar as courts are determining the fees and disbursements to be paid to counsel by the Attorney General and are doing so well in excess of the rates normally paid under provincial legal aid plans. Governments need to be able to control and predict the expenditure of public funds on those payments. In consultation with the provinces and territories, the *Criminal Code* should be amended to give effect to that principle.

Carried as amended: 13-2-6

QUEBEC

Quebec - 01

Amend paragraph 34(2)(a) YCJA so that the youth justice court may, at any stage of the proceedings, make an order for a medical or psychological assessment for the purpose of making its decision on an application for a young person's release from or detention in custody.

Carried: 16-0-8

Quebec - 02

When an offender has been convicted of an offence under sections 342.1, 342.2, 430(1.1), 430(5.1) of the Criminal Code of Canada or of any other offence committed using a computer or the Internet, include authority for the Court to make an order prohibiting, by virtue of a section analogous to section 161 of the Criminal Code of Canada, the possession of a computer and the use of the Internet or other digital network, unless the offender does so in accordance with conditions set by the Court, and include authority for the Court to amend the prohibition order.

Carried as amended: 18-0-7

SASKATCHEWAN

Saskatchewan - 01

Amend s. 752 of the *Criminal Code* by adding the offences created by sections 270.01 and 270.02 to the list of primary designated offences.

Carried: 14-1-9

Saskatchewan - 02

Amend s. 515(6)(c) to add the offence created by subsection 145(5.1) (violating an undertaking entered into before an officer in charge) to the list of offences for which accused persons bear the onus of showing cause why they should be released on bail.

Carried: 20-0-4

Saskatchewan - 03

Amend the *Criminal Code* (sections 493 and 515) and Forms 12 and 32 (contents of an undertaking or a recognizance entered into before a justice or a judge) to make it a statutory condition of every undertaking or a recognizance entered into before a justice or a judge that the accused keep the peace and be of good behaviour.

Carried: 9-6-9

Saskatchewan - 04

Amend s. 109(2)(a) of the *Youth Criminal Justice Act* to add the words “or a deferred custody and supervision order made under paragraph 42(2)(p)” after the words

“suspension of the conditional supervision”. The effect of this amendment will be to make it clear that a court having found a young person in breach of a deferred custody and supervision order may cancel the suspension and vary the conditions pursuant to s. 109(2)(a) of the Act.

Carried: 20-0-4

CANADA

Canadian Bar Association

CBA – 01

That a working group be struck to examine mandatory minimum punishments and to consider whether a mechanism can be developed which would permit a court, in appropriate and specified circumstances to provide relief from the imposition of certain mandatory minimum punishments where the imposition of such a custodial sentence would result in a sentence that is unjust.

Carried as amended: 17-0-3

CBA – 02

That the sentencing provisions of the *Criminal Code* be amended to permit a court, before sentencing an accused person, to require that the person be assessed by a qualified person required to report the results in writing to the court,

- (a) with the consent of the accused person and the prosecutor; or
- (b) on its own motion or on application of the accused person or the prosecutor,

if the court believes a medical, psychological or psychiatric report in respect of the person is necessary for sentencing purposes, and the court has reasonable grounds to believe that the person may be suffering from a physical or mental illness or disorder, a psychological disorder, or emotional disturbance, a learning disability or a mental disability.

Carried: 8-3-13

CBA – 03

That the *Criminal Code* be amended to allow a trial judge to convert a jury trial into a “judge alone” trial on consent of all parties, when the jury composition falls below the minimum requirement of ten.

Carried: 19-0-5

Public Prosecution Service of Canada**PPSC – 01**

That sections 37 and 38 of the *Canada Evidence Act* be amended to provide that, absent exceptional circumstances, any decision denying disclosure should only be reviewable on appeal after the conclusion of the trial in the event of a conviction.

Carried: 15-1-8