

**UNIFORM LAW CONFERENCE OF CANADA
RESOLUTIONS SUMMARY**

**Criminal Section
August 2015**

ALBERTA

Alberta - 01

A working group should be formed to monitor the development of the case law surrounding the award of costs or damages against the Crown arising from criminal prosecutions. Civil section participation in the working group would be welcome.

Carried: 14-0-0

Alberta - 02

In *R v Barabash*, 2015 SCC 29, the Supreme Court of Canada re-interpreted the “private use defence” to the making and possession of child pornography, removing some of the criteria that had been applied by lower courts, making the defence easier to achieve, thereby exposing children to an increased risk of harm, particularly in circumstances where exploitation is a significant risk.

A working group should be formed to examine the implications of the decision and to monitor the interpretation and application of *R. v. Barabash* in the case law. At the discretion of the working group it will report back to the Section with either an interim or final report at the next conference.

Carried as amended: 10-1-3

Alberta - 03

Subsection 652.1(2) (reduction of number of jurors to 12) of the *Criminal Code* requires that additional jurors sworn pursuant to subsection 631(2.2) be dismissed prior to deliberations. The dismissal of jurors at the end of a long and complex trial simply to reduce the size of the jury gives rise to practical problems, is unfair to those jurors, and should be repealed.

Withdrawn following discussion

Alberta - 04

Justice Canada should examine s.489.1 (Restitution of property or report by peace officer) of the *Criminal Code* to ensure that a consistent rationale is provided for the return / report obligations required by the section for all seizures by a peace officer undertaken pursuant to federal statutory

authority or in the execution of duty. The broad scope of that section applies across a very wide spectrum of activity. Uncertainty as to the rationale for, and applicability of this section to searches in the digital age, and to the production of information from third parties in certain circumstances, has given rise to considerable litigation. Clear statements of purpose and remedies for failures to comply should be considered.

Carried: 12-0-0

Alberta - 05

For greater certainty, the list of prohibited actions subject to the penalty in paragraph 467.111(a) of the *Criminal Code* should mirror the list of prohibited actions in section 467.111 (Recruitment of members by a criminal organization). At present, coercion is omitted from paragraph 467.111(a). There is no principled reason for the difference.

Carried: 12-0-0

MANITOBA

Manitoba - 01

That Justice Canada review and clarify the forms appended to the *Criminal Code*, including Forms 1, 5.02, 5.009, 5.0081, 5.004 and 5.002, to ensure that they all consistently reflect that all Informations to Obtain a Judicial Authorization shall be sworn or solemnly affirmed before a person authorized to administer the oath.

Carried as amended: 13-0-0

Manitoba - 02

a) That the criminal law be amended to specifically allow for spouses to be charged with conspiracy to commit an indictable offence to overrule the SCC decision in *R. v. Kowbel*, [1954] SCC 498.

Carried as amended: 12-0-1

b) That the criminal law be amended to allow for the admissibility of intercepted private communications between spouses.

Carried as amended: 7-5-1

ONTARIO**Ontario - 01**

- a) That section 657.1 of the *Criminal Code* be amended to expressly provide greater flexibility as to which items of information listed in subsection (2) a particular affidavit or solemn declaration may contain.

Carried as amended: 14-0-0

- b) Section 657.1 of the *Criminal Code* should be amended so that a person who has specialized knowledge of the property that is the subject matter of the offence is permitted to attest or solemnly declare to each of the matters covered by subsection (2), as appropriate.

Carried: 14-0-0

Ontario - 02

That Justice Canada, in consultation with provinces and territories, examine the requirement for Attorney General consent in subsection 742.6(3.2) (out-of-province conditional sentence breach hearings) and in comparable provisions in Parts XXIII and XXIV of the *Criminal code*, such as subsection 753.3(2) and subsection 733.1(2).

Carried as amended: 12-0-1

Ontario - 03

Sections 732.1 (probation) and 742.3 (conditional sentence) of the *Criminal Code* should be amended to repeal the mandatory conditions of non-communication and non-contact and to replace them with an optional condition of non-communication/non-contact for persons to be specified (and this would include victims and witnesses, etc.) where, if the Crown asks for the imposition of the condition, the judge must impose it in the order.

Carried: 15-0-0

QUEBEC**Quebec - 01**

Justice Canada should review section 144 (prison breach) of the *Criminal Code* with a view to modernizing the description of the offence, which has not been modified since 1892; namely (1) to specify that the offence is committed as soon as a person escapes or attempts to escape from a prison notwithstanding how this was done (e.g., use of a helicopter; *R. v. Pomerleau et. al.*, 200-01-

184318-149, December 19, 2014) and whether or not there has been damage to property or use of force or violence, and (2) to ensure that the definitions and the presumptions of Part IX of the *Criminal Code* (section 321, subsection 348(2) and section 350) regarding breaking and entering are applicable to section 144 of the *Criminal Code*, with the necessary modifications.

Carried as amended: 11-0-2

CANADA

Canadian Bar Association

Can-CBA2015 - 01

Amend section 642 (Summoning other jurors when panel exhausted) of the *Criminal Code* to add “or the accused”, so that either party can request the talesman procedure. This would provide more flexibility and equality between the Crown and Defense so that jury selection can be as efficient and effective as possible throughout Canada.

642. (1) If a full jury and any alternate jurors considered advisable cannot be provided notwithstanding that the relevant provisions of this Part have been complied with, the court may, at the request of the prosecutor or the accused, order the sheriff or other proper officer to summon without delay as many persons, whether qualified jurors or not, as the court directs for the purpose of providing a full jury and alternate jurors.

Carried: 15-0-0

Can-CBA2015 – 02

That Justice Canada, in consultation with the Provinces and Territories, continue its review of the *Criminal Code* sections dealing with compelling appearance, interim release and detention with a view to consolidating and simplifying procedures.

Carried as amended: 13-0-0

Public Prosecution Service of Canada

PPSC – 01

That the definition of “counterfeit money” in section 448 of the *Criminal Code* be amended:

- a) to also contemplate counterfeit bills made from a polymer substrate.

Carried as amended: 14-0-0

b) to harmonize the English and French versions.

Carried as amended: 14-0-0

PPSC – 02

That the *Criminal Code* be amended to require that applications for peace bonds under ss. 810.011, 810.01, 810.1 and 810.2, be commenced within a set number of days but no more than 30 days after arrest or summons.

Withdrawn following discussion