



**UNIFORM LAW CONFERENCE OF CANADA**

**RESOLUTIONS OF THE CRIMINAL SECTION (2016)**

**Fredericton  
New Brunswick  
August, 2016**

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the Uniform Law Conference of Canada.  
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**UNIFORM LAW CONFERENCE OF CANADA  
RESOLUTIONS**

**Criminal Section  
August 2016**

**ULCC, CHAIR**

**ULCC – 01**

BE IT RESOLVED:

THAT the Chair of the Criminal Section of the ULCC reserve at least one open session on the agenda per year and name that session the “Earl Fruchtmann Memorial Seminar”; and

THAT the text from the recommendation be included in the materials and made available to all delegates in advance of the open session each year.

Earl Fruchtmann was a longstanding contributor to and champion of the ULCC. For most of his career, he was Counsel with the Criminal Law Division of the Ontario Ministry of the Attorney General. For his last 23 years, he was lead counsel in that Division for Federal/Provincial/ Territorial matters and federal legislative reform, and was also appointed General Counsel in 2009.

The overwhelming focus of Earl’s work was criminal law policy and that brought him to the ULCC for the first time in 1988. Earl attended virtually every annual meeting after that, up to and including in 2015 — an impressive, if not record, 28-year involvement. He served for many years as Ontario’s Jurisdictional Representative to the Criminal Section, was Chair of the Criminal Section in the 1996-1997 term, and served as President of the Conference from 2000-2001.

While Earl executed these official duties with consummate professionalism and thoughtfulness, he will probably best be remembered for his passionate, persuasive (and booming) interventions at the annual meetings, his behind-the-scenes mentorship of newer delegates, and his simply exemplary judgment. He had a singular gift for melding principle, practicality and common sense. And he set a beautiful example for the collegiality that is a hallmark of the ULCC.

Earl also understood the unique value of the ULCC as a body for generating arm’s length, expert consideration of and support for law reform proposals, and as a venue for studying those issues that straddle both the criminal and civil spheres. The ULCC held a special place in Earl’s heart and, likewise, Earl holds a special place in ULCC history.

**Carried as amended BY DELEGATION VOTE: 36-0-0****BRITISH COLUMBIA****British Columbia – 01**

That Justice Canada review section 95 (Possession of prohibited or restricted firearm with ammunition) of the *Criminal Code* to ensure that it complies with recent Supreme Court of Canada cases, accurately reflects the moral blameworthiness of the conduct and addresses the potential practical challenges that may arise when the offence is investigated and/or prosecuted.

**Carried as amended: 22-0-1**

**British Columbia – 02**

That Justice Canada review subsection 64(1.1) (Adult sentence and election - Application by Attorney General - Obligation) of the *Youth Criminal Justice Act* with a view to repealing it.

**Carried: 24-0-0**

**British Columbia – 03**

That Justice Canada analyze the interplay between section 743.5 (Transfer of jurisdiction when person already sentenced under *Youth Criminal Justice Act*) of the *Criminal Code* and subsection 6(7.1) (Transfer or committal to prison) of the *Prisons and Reformatories Act* and consider mechanisms to prevent the unintended consequences that currently can result where youths serve more or less jail time than the court intended, and in some cases, lose the community supervision portion of their youth sentence, which can bring the youth justice system into disrepute.

**Carried: 24-0-0**

**British Columbia – 04**

That Justice Canada consider amendments to the *Criminal Code* police release provisions to enhance the ability of the police to release accused people by providing additional offence specific conditions, which the police consider necessary to prevent the continuation of the offence, as well as for the protection or safety of the public generally. That Justice Canada also consider the need for enhanced and streamlined provisions for the review of such conditions.

**Carried as amended: 24-0-0**

**British Columbia – 05**

That Justice Canada pursue the modernization of the definition “brass knuckles” in the Schedule, Part 3, paragraph 15 of the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted*, (SOR/98-462) and section 84 (Firearms and other weapons =Definitions), of the *Criminal Code* to include materials other than metal.

**Carried: 19-0-5**

**MANITOBA****Manitoba – 01**

That Justice Canada review section 486.4 (Order restricting publication — Sexual offences) of the *Criminal Code* with a view to clarifying the basis for revocation of publication bans regarding the identity of the victim or witness.

**Carried as amended: 23-0-0**

**Manitoba - 02**

That Justice Canada amend subsection 720(2) (Sentencing proceedings - Court-supervised programs) of the *Criminal Code* to say:

The court may, with the consent of the Attorney General and the offender and after considering the interests of justice and of any victim of the offence, delay sentencing to enable the offender to *pay restitution, make amends to the community, complete community service hours or* attend a treatment program approved by the province under the supervision of the court, such as an addiction treatment program or a domestic violence counselling program.

**Carried: 12-6-6**

**Manitoba - 03**

That the taking of a DNA sample is automatic for all adults convicted of any designated offence.

**Defeated, as amended: 8-15-1**

**NEW BRUNSWICK****New Brunswick - 01**

Paragraph 31(1)(a) (Placement of young person in care of responsible person) and subsection 33(1) (Application for release from or detention in custody) of the *Youth Criminal Justice Act* should be reviewed by Justice Canada with respect to the references to section 515 (Judicial interim release) of the *Criminal Code*.

**Carried as amended: 23-0-1**

## **ONTARIO**

### **Ontario - 01**

That the offence of Agreement or Arrangement – Sexual offence against child in section 172.2 of the *Criminal Code* be amended so that the communications need not reach the level of an agreement or an arrangement, but that telecommunications between two persons that are for the purpose of facilitating the commission of one of the listed offences is sufficient.

**Carried: 15-3-5**

### **Ontario - 02**

That the list of offences in subparagraph 486.4(1)(a)(i) of the *Criminal Code* for which a mandatory publication ban on the identity of a victim or witness is available be reviewed by Justice Canada in consultation with the provinces and territories.

**Carried as amended: 20-0-4**

### **Ontario - 03**

- a) That the offence of Voyeurism in paragraph 162(1)(c) of the *Criminal Code* be added to the list of offences in paragraph (a) of the definition of “designated offence” in section 490.011 so that an order to comply with the *Sex Offender Information Registration Act* is mandatory.

**Carried as amended: 14-5-5**

- b) That the offence of Voyeurism in section 162 of the *Criminal Code* be added to the list of offences in paragraph (c) of the definition of “secondary designated offence” in section 487.04 so that a DNA Data Bank order can be applied for regardless of the mode of proceedings.

**Carried: 18-3-3**

- c) That the offence of Voyeurism in section 162 of the *Criminal Code* be added to the list of offences in section 164.2 for which an order of forfeiture of things used in the commission of an offence can be made.

**Carried as amended: 21-0-3****Ontario - 04**

That the margin note accompanying section 94 (Unauthorized possession in motor vehicle) of the *Criminal Code* be changed so that it more accurately captures the essence of the offence of being an occupant in a motor vehicle knowing it contained a firearm or other weapon or ammunition referred to in section 94.

**Carried: 17-1-5****Ontario - 05**

Justice Canada should, in consultation with provinces and territories, review the various provisions of the *Criminal Code* providing for a ban on the publication, broadcast or transmittal, or disclosure of certain evidence or information to determine whether they should contain an exception in respect of disclosure made in the course of the administration of justice, as in subsection 486.4(4) (Order restricting publication – Sexual offences – Limitation) of the *Criminal Code*.

**Carried: 22- 0 - 2****QUEBEC****Quebec - 01**

Include, among the offences giving rise to the reversal of the burden of proof in a release hearing pursuant to subsection 515(6) (Order of detention) of the *Criminal Code*, the human trafficking offences referred to in sections 279.01 (Trafficking in persons) and 279.011 (Trafficking of a person under the age of eighteen years) of the *Criminal Code*.

**Carried: 13-6-5****Quebec – 02**

That Justice Canada in collaboration with the provinces and territories review subsection 486.3(2) (Accused not to cross-examine complainant — Certain offences) of the *Criminal Code* in order to extend the situations in which cross-examination, by a self-represented accused, of a witness who was the victim of a sexual offence should be prohibited.

**Carried as amended: 21-0-3****Quebec – 03**

It would be useful to reconcile the French and English versions of subsection 462.37(2.01) (Order of forfeiture — Particular circumstances) of the *Criminal Code*. The French version has “des biens de l’accusé”, whereas the English version refers to “any property of the offender”. Consequently, we recommend that the term “accusé” used in the French version be replaced by “contrevenant” wherever it appears in that section.

**Carried: 18-3-3**

## **SASKATCHEWAN**

### **Saskatchewan - 01**

Justice Canada should undertake a review and study of section 525 (Review of detention where trial delayed—Time for application to judge) of the *Criminal Code* on an urgent basis with a view to determining whether:

- a) the time periods specified in section 525 should be varied;
- b) the judge receiving a section 525 application may determine the application without the necessity of a formal judicial hearing; and
- c) the judge should be permitted to dismiss the application if there has been no unreasonable delay in the prosecution.

**Carried as amended: 22-0-1**

### **Saskatchewan - 02**

Amend section 708 of the *Criminal Code* (Contempt) to provide that a witness who is required by law to attend court and fails to attend or a witness who is required by law to remain in attendance for the purpose of giving evidence and who fails to remain in attendance is guilty of a summary conviction offence and subject to the maximum sentences as set out in section 787 (General penalty).

**Carried: 19-4-0**

## **ALBERTA**

### **Alberta - 01**

Subsection 486.4(3) (Order restricting publication — Child pornography) of the *Criminal Code* provides for a mandatory publication ban on information identifying a witness under the age of 18 or a person who is the subject of a representation. Publication bans in relation to other sexual offences provide for varying degrees of flexibility, including being mandatory upon application. This threshold permits an adult victim to determine whether a ban will be sought. That threshold should apply in subsection 486.4(3). The subsection should also be clarified so as not to provide a ban for an offender who is also depicted in the representation.

**Withdrawn following discussion**



**Alberta - 02**

A series of recent decisions of the Supreme Court of Canada, including, *R. v. Nur* 2015 SCC 15, *R. v. Lloyd* 2016 SCC 13, *R. v. Safarzadeh-Markhali* 2016 SCC 14, coupled with the mandate of the Minister of Justice and Attorney General of Canada to review the last 10 years of *Criminal Code* changes, provide both the opportunity and a compelling reason to convene a national Sentencing Commission to comprehensively analyze and review the sentencing provisions of the *Criminal Code*. The Criminal Section of the Uniform Law Conference of Canada strongly supports the creation of a national Sentencing Commission to comprehensively review and provide recommendations for revision of the sentencing provisions of the *Criminal Code*.

**Carried: 16-0-8**

**Alberta - 03**

Justice Canada should examine the drafting of sections 672.23- 672.33 (Fitness to stand trial) of Part XX.1 of the *Criminal Code*, particularly with respect to the requirement of detention as a pre-condition in circumstances where it would be both in the interests of justice and in the interests of the accused that fitness be maintained in a hospital setting as otherwise contemplated in section 672.29 (Where continued detention in custody). Other issues, such as the significant probability of unfitness in the near future as identified in the case law should also be examined.

**Carried as amended: 16-0-8**

**CANADA****Canadian Bar Association (CBA)****CBA – 01**

The Canadian Bar Association recommends amending paragraph 515(2)(e) (Release on undertaking with conditions etc.) of the *Criminal Code* to remove the words “if the accused is not ordinarily resident in the province in which the accused is in custody or does not ordinarily reside within two hundred kilometers of the place in which he is in custody”.

This amendment would allow local accused persons to propose cash bail with a surety and be more consistent with s. 11(e) of the *Canadian Charter of Rights and Freedoms*.

**Withdrawn following discussion**

**CBA – 02**

That Justice Canada, in collaboration with the provinces and territories review Part XXI.1 (Applications for ministerial review – Miscarriages of justice) of the *Criminal Code* with a view to creating a uniform standard for post appeal disclosure, including a discernible and reviewable standard for obtaining access to materials that may remedy miscarriages of justice.

**Carried as amended: 22-0-1**

**CBA – 03**

The Canadian Bar Association recommends that section 737 (Victim surcharge) of the *Criminal Code* be amended to restore judicial discretion in imposing victim surcharges and ensure that undue hardship is not an acceptable condition in sentencing.

**Carried: 18-1-4**

**CBA – 04**

A working group be constituted to study whether the federal, provincial and territorial governments should adopt uniform legislation to restrict the disclosure of “non-conviction” information in police and RCMP databases to third parties, and whether to provide a mechanism for individuals to review and correct information contained in those databases.

**Carried as amended: 23-0-0**

**Canadian Council of Criminal Defence Lawyers (CCCDL)**

**CCCDL – 01**

That Justice Canada consider whether a new ancillary order should be available in the *Criminal Code* upon sentencing an offender requiring that he or she have no contact with the victim for the specified period, which could be imposed whether or not when the offender is not otherwise required to abide by a probation order.

**Carried as amended: 23-0-0**

**CCCDL – 02**

Increasing the maximum number of community service hours permitted in paragraph 732.1(3)(f) (Optional conditions of probation order) and paragraph 742.3(2)(d) (Optional conditions of conditional sentence order) of the *Criminal Code* to 300 hours (currently 240 hours) and increasing the time to complete such hours to 24 months (currently 18 months).

**Carried: 21-0-2**

### **Public Prosecution Service of Canada (PPSC)**

#### **PPSC – 01**

That the *Criminal Code* be amended to allow for all production orders, as well as the tracking and transmission data recorder warrants, to be available with a telewarrant.

**Carried: 16-0-8**

#### **PPSC – 02**

That Justice Canada urgently examine the need to amend the *Criminal Code* or other federal legislation as appropriate, to address access to basic subscriber information on varying thresholds proportionate to the privacy interest engaged.

**Carried as amended: 21-0-3**

### **FLOOR RESOLUTION(S)**

#### **PPSC – 01**

That the Criminal Section of the Uniform Law Conference of Canada establish a working group to examine the telewarrant process under section 487.1 of the *Criminal Code*, in order to develop recommendations to make it more efficient.

**Carried: 22-0-1**

### **DISCUSSION PAPER RESOLUTIONS**

#### **Report of the Working Group on private recordings and public risk: the balance after *R v Barabash***

That the Criminal Section of the Uniform Law Conference of Canada accept the Working Group Report on Private recordings and public risk: the balance after *R v Barabash*.

**Carried: 24-0-0**

**Report of the Working Group on the law of informer privilege**

That the Criminal Section of the Uniform Law Conference of Canada accept the final report of the Working Group on the law of informer privilege.

**Carried: 24-0-0**

**Report of the Working Group on endorsement of search warrants, orders and authorizations in the *Criminal Code* and the *Controlled Drugs and Substances Act***

That the Criminal Section of the Uniform Law Conference of Canada accept the final Report of the Working Group on Endorsement of Search Warrants, Orders and Authorizations in the *Criminal Code* and the *Controlled Drugs and Substances Act*.

That the *Criminal Code* and the *Controlled Drugs and Substances Act* be amended to remove the requirement for out-of-province endorsement of investigative warrants and wiretap authorizations and provide that all such warrants and authorizations issued by a justice or judge, as the case may be, have effect anywhere in Canada.

**Carried: 23-0-1**