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UNIFORM LAW CONFERENCE OF CANADA

**WORKING GROUP ON TELEWARRANTS
STATUS REPORT**

**Presented by
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Presented to the Criminal Section

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[1] At the 2016 meeting of the Criminal Section of the ULCC, the Public Prosecution Service of Canada (PPSC), moved a resolution on amending the *Criminal Code* telewarrant provision (section 487.1) to include all production orders as well as tracking and transmission data recorder warrants (PPSC 2016-01). The resolution was carried 16-0-8. The PPSC also presented a floor resolution that proposed the following:

*to 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).

[2] The Working Group is chaired by Stéphanie O'Connor of Justice Canada. Other participants on the working group include: Frank Au (Ministry of the Attorney General Ontario); André Brochu (Bureau du Directeur des poursuites criminelles et pénales Québec); Alex Millman (Millman Law Offices, Alberta); Kenneth Madsen (British Columbia Attorney General); Laura Pitcairn and Marke Kilkie (Public Prosecution Service of Canada); and Lucie Angers, Normand Wong and Karen Audcent (Justice Canada).

[3] Although the Working Group is not yet ready to provide a final report, it has met regularly since the last ULCC, holding 9 teleconferences and numerous email exchanges to discuss the issues relating to telewarrant reform and the possible solutions for updating the telewarrant process in order to make it more efficient. With the above resolutions in mind as well as past ULCC resolutions pertaining to telewarrants¹, the group has discussed a number of issues thus far, including:

- The “impracticability” test as a safeguard, including a study of all the relevant case law that has interpreted that test;
- The difference between an oral telewarrant and a written telewarrant and between a regular in-person application process and a telewarrant application;
- What other procedural tools could benefit from the telewarrant process; and
- Possible solutions to making the process more efficient and relevant, including rethinking the telewarrant process from a conceptual perspective (a “means by which to obtain a warrant” rather than a distinct warrant), eliminating the “impracticability requirement” for written applications and considering the modified test for oral applications as proposed in former 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*, which died on the Order Paper (2009).

¹ CAN1983-05, ON1993-07, ON1995-08, QC-1997-03, QC2004-01, NS2004-06, QC2006-01 (as amended), and QC2012-02 (as amended).

[4] In order to better understand how the telewarrant process is applied in practice, the Working Group developed two surveys, one that was circulated to some members of the judiciary and another which was circulated to law enforcement through the Canadian Association of Chiefs of Police. While the survey distributed to law enforcement received a fairly high response rate and generally supported the main premises for reform in this area, the Working Group is still awaiting responses from the judiciary and is looking forward to those responses in order to better inform its work.

[5] The Working Group plans to present its final report to ULCC at the 2018 annual meeting.