

# Report

## Criminal Justice Section Branch Section Activity Report Winnipeg, May 1 and 2, 2009

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**I attended a meeting of the National Criminal Justice Section of the CBA on May 1 and 2, 2009 in Winnipeg.**

### 1. Branch Activity report

Representatives of the provinces who attend the meeting are invited to present a short report as to what is occurring in their respective jurisdiction.

In Alberta :

- The economic crisis affected the Legal Aid Program. The 3 years financial deal between the province and Legal Aid is now shorten to one year.
- There exist long pretrial custody delays in the province and Bill C-25 – *Truth in sentencing* - will not help resolving this issue

In Saskatchewan:

- Attendance to local meeting is very weak. Legal Aid lawyers and Crown prosecutors are not members of the CBA.
- Saskatchewan's criminal section of the CBA only has 17 members.
- Two CLE seminars were held, one on impaired driving and the other on constitutional remedies.
- Women offenders are not permitted to participate in treatment session for domestic violence cases because of lack of participates.
- Delays for trials are extremely long. Trials are currently being scheduled for January 2010 but there are not a lot of *Askov* and *Morin* motions.
- First videoconference appearance in provincial court occurred in December 2008.

In Manitoba:

- There were 3 CLE seminars held this year: 1- On s.24 (2) *Grant* and *Sheppard* 2- Advising corporations in criminal and quasi criminal matters. 3- Jury trials
- They held a “bring a body” month concept to try to increase membership of the CBA.

In Yukon:

- They recently restarted the criminal section of the CBA.
- The membership is very small.
- The *German* appeal is an important case in Yukon. It concerns a woman who was declared not criminally responsible and was sent to prison because of the lack of proper medical institution. This case might go to the S.C.C.

In Nova Scotia:

- Budget in the PPS and Legal Aid for CLE has decreased; which will help having more participant to attend the CBA's CLE seminars
- The next CLE seminar title will be: *Who has been naughty and nice*; discussing the disclosure issues in the case of *McNeil*.
- New Mental Health court in Dartmouth in April 2009.

## 5. Legislation and Law Reform

### 1. Bill C-14 – Organized Crime

- a. ex: the killing of a police officer deemed a first degree murder... when the death is caused by that person for the benefit of, at the direction of or in association with a criminal organization .....

The Section could have a problem with the provision stating “in association for” because it is too broad.

- b. Discharging of firearm, assault on PO etc.

New section for assault on PO and also a new section on sentencing principles the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offense.

Our Section will look into this, as it could create a historical precedent by stating explicitly in the *Criminal Code* that denunciation and deterrence would be the primary consideration.

- c. 810 modification

Extending it for two years if previously convicted of certain offense: ex: Karla Homolka.

The Section doesn't have an issue with those new provisions.

### 2. Organized Crime Commons Committee general review

### 3. Bill C-15 – Controlled drugs and Substances Act Amendments.

Our Section submissions are on their final draft. Essentially we are opposing all of the new sections which deal with minimum sentences on the basis that they often create unjust and disproportionate sentences.

We are also concerned with some of the new offenses Ex: offense of trafficking near a school (what affect would this have on sentencing, would the judge consider the fact of trafficking near a school an aggravating factor which is established in the sentencing principle.)

There is also the problem with the *mens rea* component ex: knowing that the it was a school property or near a school.

The Section is opposing the passage of Bill C-15.

4. Bill S-5 – Long Gun Registry

The CBA has always consistently approved the gun registry. So we will oppose the passage of the Bill S-5.

5. SCC Intervention on *R. v. Cunningham*

The lawyer wanted to be off the case but the judge refused.

The CBA intervention says that the rule should be that lawyers should be trusted, if lawyers want to step down the court should be very reluctant not to accept the request.

There are distinctions between the various provincials in the Law Society regulations in regard to mandatory withdraw or permissive withdraw (ex: payment of fees).

In the BCCA ruling, they discussed the Alberta CA decision *D.D.C.*, where the Court refused the lawyer to withdraw if not done in a timely manner even if it was for none payment of fees.

6. Bill C-25 – Two for one sentencing

We are working on first draft. The Bill states that it should be 1:1, and if the circumstances justify it, the maximum should be 1:1.5. The Court shall give reasons for any credit granted and shall state those reasons on record.

All the participants take issue with the title: *Truth in sentencing*

7. Bill C-19 – Investigative Hearings

Bill C-19 creates antiterrorism procedures for the investigative hearings. The Section does not think unconstitutional because protection afforded by s. 13 of the Charter and right to counsel. Those procedures are not wrong but should be use restrictively.

There is also the problem with the use of the information gathered during those hearing. Ex: Accused conspires to commit a terrorism attack in the States from Canada. This information can be used to an extradition to the States and be charged there but not used in criminal procedures in Canada.

#### 8. Bill C-26 - Auto Theft Bill

Creates a new offense with regard to trafficking of property obtained by crime punishable by a maximum of 14 years.

There is also a mandatory minimum for a third offense (not conviction)

#### 9. Bill S-4 - ID Theft Bill

10. Proceeds of crime

11. Private Member's bills

Ex: Bill C-268 – Minimum sentence for offences involving trafficking of persons under the age of eighteen years. (5 years minimum)

### 6. ULCC

The CBA can submit suggestions on changes to the Criminal Code: The Section will look into the following suggestions and decide in do courses.

- a. Publication ban on assessment hearing pursuant 672
- b. Cleaning the CCC after 1 year after CSC decision
- c. Review of the revocation of Bail after guilty finding or plea.
- d. Notice for peace bond

### 7. CBA/DOJ (department of Justice) Meeting (November 9, 2009)

There is funding for the chair and also 2 “expert” from the section depending of the agenda.

### 8. Budget Report

We will have sufficient funding for every meeting: two criminal justice section meetings ULCC, ect.

### 9. Canadian Legal Conference, August 14-18, 2009 – Dublin

No funding to attend.

## **10. Newsletter / Webpage**

We need somebody to be the editor for the newsletter.

## **11. CBA/NSC Update (National Section Counsel)**

We want to create National Criminal CLE seminar for the National meeting in Niagara in August 2010.

## **12. Planning and Priorities – June 2009 to November 2009**

- newsletter
- ULCC
- online CLE
- submissions for new Bill
- Secretary position: open for nomination (remainder of the 2 year term)
- 10 Executive Members ( 1 year term)

## **13. Other Business**

**Next Meeting in Ottawa on November 6<sup>th</sup> and 7<sup>th</sup>, 2009**

**Pierre Gionet  
Section chair  
Criminal Section  
New Brunswick Branch  
Canadian Bar Association.**