



**Canadian Police Association
Association canadienne des policiers**

BRIEF

**TO THE STANDING COMMITTEE ON JUSTICE AND
HUMAN RIGHTS**

REGARDING BILL C-10

An Act to amend the Criminal Code (minimum penalties for offences involving firearms) and to make a consequential amendment to another Act

Appearance: Tony Cannavino, President
David Griffin, Executive Officer

Date: November 27, 2006

INTRODUCTION

The Canadian Police Association (CPA) welcomes the opportunity to present our submissions to the House of Commons Standing Committee on Justice and Human Rights with respect to Bill C-10, *An Act to amend the Criminal Code (minimum penalties for offences involving firearms) and to make consequential amendments to another Acts*.

The CPA is the national voice for 54,700 police personnel serving across Canada. Through our 170 member associations, CPA membership includes police personnel serving in police services from Canada's smallest towns and villages as well as those working in our largest municipal cities, provincial police services, members of the RCMP, railway police, and First Nations police associations.

The Canadian Police Association is acknowledged as a national voice for police personnel in the reform of the Canadian criminal justice system. We are motivated by a strong desire to:

- Enhance the safety and quality of life of the citizens in our communities;
- Share the valuable experiences of those who are working on the front lines; and,
- Promote public policies that reflect the needs and expectations of law-abiding Canadians.

Our goal is to work with elected officials from all parties, to bring about meaningful reforms to enhance the safety and security of all Canadians, including those sworn to protect our communities.

Canada Needs to Address the Revolving Door Justice System

For over a decade, police associations have been advocating reforms to our justice system in Canada. In particular we have called for changes to bolster the sentencing, detention, and parole of violent offenders. The Canadian Police Association has been urging governments to bring an end to Canada's revolving door justice system. Chronic and violent offenders rotate in and out of the correctional and judicial systems, creating a sense of frustration among police personnel, fostering uncertainty and fear in our communities, and putting a significant strain on costs and resources for the correctional

and judicial systems. The CPA welcomes Bill C-10, as a positive response to the problems of repeat firearms offenders and urban violence in our communities.

URBAN VIOLENCE

Urban violence has been a significant concern for our association. For over a decade police associations have been advocating reforms to our justice system in Canada, and in particular we have called for changes to bolster the sentencing, detention, and parole of violent offenders.

At our 2004 Annual General Meeting, CPA delegates unanimously adopted a resolution which called upon the federal government to provide additional funding to:

- Increase border security to prevent the illegal importation of firearms into Canada;
- Properly monitor retailers, wholesalers and manufacturers of firearms and ammunition; and,
- Fund additional front-line police officers across Canada to help stem the tide of firearms violence.

In addition, ***the resolution called for federal legislation to be introduced to ensure tougher and more adequate mandatory prison sentences for individuals involved in firearms related crime.***

GUN VIOLENCE REQUIRES A NON-PARTISAN APPROACH

It's time to stop talking about the problem of urban violence in Canadian cities, and start making meaningful changes.

Stopping the gang violence in Canada's major cities is a concern for police officers across this country, and the solution begins with bringing an end to Canada's revolving door justice system. Canada's police officers have lost confidence in a system that sees violent offenders regularly returned to the streets. We need to restore meaningful consequences and deterrence in our justice system, which begins with stiffer sentences, real jail time, and tougher parole eligibility policies for violent offenders. We need stiffer minimum sentences for offenders who commit crimes with guns, or any type of weapon.

Support for tougher measures to thwart gun violence transcends party lines. During the last federal election, all three major parties promised tougher sentences for crimes involving firearms:

- The NDP platform promised to "Increase the mandatory minimum penalty for possession, sale and importation of illegal arms such as hand guns, assault rifles and automatic weapons", and "Add mandatory minimum sentences to other weapons offences", including "a four-year minimum sentence on all weapon offences, such as 'possession of a concealed weapon'."
- Former Prime Minister Martin promised to toughen penalties, "by re-introducing legislation to crack down on violent crimes and gang violence, by doubling the mandatory minimum sentences for key gun crimes."

On Thursday November 23, Prime Minister Harper, Ontario Premier Dalton McGuinty, and Toronto Mayor David Miller, held a joint news conference in Toronto, to announce new federal legislation to toughen bail conditions for gun related crimes.

Ontario Premier McGuinty has been a proponent of tougher measures to deal with gun crime. On December 29, 2005, following the Boxing Day shooting death of Toronto student Jane Creba, Premier McGuinty wrote "***An Open Letter from Premier McGuinty to Federal Leaders on Gun Crimes***"¹ In the letter the Premier proposed several initiatives to address the gun crime concern:

- Impose a ban on handguns
- Impose a mandatory minimum sentence of four years for illegal possession of a handgun
- ***Impose increased mandatory minimum sentences for all gun crimes***
- ***Create two new Criminal Code offences with mandatory minimum sentences for robbery with the intent to steal a gun and for breaking and entering with the intent to steal a gun*** (emphasis added)
- Impose a reverse onus on bail for all gun crimes, and

¹ An Open Letter From Premier McGuinty To Federal Leaders On Gun Crimes Dec. 29, 2005. < <http://www.premier.gov.on.ca/news/Product.asp?ProductID=555> >

- Set more severe penalties for any breach of bail conditions.

When Bill C-10 was introduced this spring, Premier McGuinty was quoted as stating that the Bill will “make a real difference when it comes to promoting safety for our families and our communities.”²

Former Liberal Justice Minister Irwin Cotler introduced legislation in November, 2005, to address gun violence. Bill C-82 would:

- ***Increase certain minimum penalties relating to smuggling, trafficking in and possession of firearms and other weapons;***
- ***Create two new offences: breaking and entering to steal a firearm and robbery to steal a firearm;*** (emphasis added)
- Expand the application of provisions relating to prohibitions on the possession of a firearm or other weapon, including where a firearm has been used in the commission of certain offences or where the accused, suffering from a mental disorder, is released on conditions;
- Provide for the court to delay release on parole in cases involving the use of a firearm in the commission of certain serious offences; and
- Extend measures to assist and protect witnesses to cases relating to offences involving a firearm or other weapon.

Last year, Conservative MP Daryl Kramp introduced a Private Member’s Bill, C-215 that would require that a sentence for the commission of certain serious offences be supplemented if a firearm is used in the commission of that offence. The additional sentence would be served consecutively to the other sentence and there would be a further minimum punishment of:

- five years imprisonment if the firearm is not discharged,
- ten years if it is discharged, and
- fifteen years if it is discharged and as a result a person, other than an accomplice, is caused bodily harm.

² Canadian Press. “Tory Crime Bills May Jam Jails - Minimum Sentences for Serious Crime Could Add 300-400 to Inmate Population” May 4, 2006. Ottawa

A Justice Department Survey conducted in March, 2005, by Decima Research ³, confirmed that an “overwhelming majority“ of Canadians support mandatory minimum jail terms for gun crimes; such as robbery with a firearm and criminal negligence causing death with a firearm. According to CanWest News, the poll of 2,343 Canadians revealed that “support for mandatory jail terms for robbery with a firearm was as high as 82%, compared with 14% who opposed the prospect.”

Similarly, an Ipsos Reid/CanWest Global poll ⁴ conducted December 30th 2005 to January 2nd, 2006 of 8336 Canadian voters, found that a large majority (73%) of the respondents supported changing the current laws so that being convicted of committing a gun crime carries a mandatory 10-year prison sentence with no eligibility for parole or early release; 71 per cent also support the idea of forcing young offenders charged with gun crimes to be treated as adults in the court system.

Clearly, there is broad political and public support for tougher measures to deal with firearms crime. We urge Parliament to move swiftly to address the areas of consensus, as quickly as possible. The CPA supports, in principle, the measures contained within Bill C-10, with necessary modifications.

VIOLENCE IS NOT JUST A TORONTO ISSUE

Gang violence is a major problem in many of our cities, as we have seen in recent months in the City of Toronto. Make no mistake about it, urban violence is not only a Toronto problem. Statistics Canada confirms that⁵ the cities of Regina, Winnipeg, Abbotsford, Edmonton, Saskatoon and Vancouver have had consistently higher homicide rates than Toronto for the past decade.

PROVINCES HAVE A ROLE TO PLAY

We need more than lip service and finger pointing from provincial authorities. Current penalties and mandatory minimum sentences for firearms related offences are often the

³ Tibbets, Janice. Canwest News Service. “Liberals' policy change linked to gun survey.” November 16, 2005.

< <http://www.canada.com/search/story.html?id=a2e26928-ce0d-444a-9d36-52d323c6e425> >

⁴ Global National. January 2, 2006. “Exclusive: Cdns polled on violence.”

< <http://www.canada.com/globaltv/national/story.html?id=de4aa826-087b-407a-9c53-778cf5213ed7> >

⁵ “Homicides”, The Daily. Statistics Canada. Ottawa. November 8, 2006.

< <http://www.statcan.ca/Daily/English/061108/d061108b.htm> >

first thing dealt away by provincial Crown Attorneys in their efforts to obtain a plea bargain and thereby reduce trial costs and caseloads. If provincial Attorneys General are serious about getting tough on gun crime, they must do their part by directing a no plea bargain approach to mandatory minimum sentences for violent crimes involving firearms.

MINIMUM SENTENCES CAN MAKE A DIFFERENCE

Some officials and academics are often prone to argue against minimum sentences. They advocate greater discretion for the judiciary, alternatives to incarceration, and an emphasis on rehabilitation.

Violent offenders are not deterred by our current sentencing, corrections and parole policies. Chronic offenders understand the system and work it to their advantage. Criminal gangs have taken over prisons, and have taken over some neighbourhoods. We need stronger intervention which combines general deterrence, specific deterrence, denunciation, and reform.

Canada's experience with impaired driving legislation over the past three decades demonstrates that mandatory minimum sentences has had a deterrent effect, both in general terms with respect to potential impaired drivers, and in a specific respect with regards to repeat offenders.

REPEAT OFFENDERS ARE A SERIOUS PROBLEM

There has been considerable debate at this committee about the use of minimum sentences and the frequency of repeat offenders. Make no mistake about it; repeat offenders are a serious problem. Police understand this intuitively, as we deal with these frequent flyers on a routine basis. Statistics released by the Toronto Police Homicide Squad for 2005⁶ demonstrate this point:

Among the 32 people facing murder or manslaughter charges for homicides in 2006:

- 14 were on bail at the time of the offence;
- 13 were on probation;
- 17 were subject to firearms prohibition orders.

⁶ The Globe and Mail. "Repeat Offenders." Friday November 24, 2006

The revolving door justice system is failing to prevent further criminal activity by these repeat, violent offenders.

AN INTEGRATED APPROACH IS REQUIRED

In August, 2005, Toronto Police Association President Dave Wilson made public a series of recommendations that would help the Toronto Police Service address the urban violence problem in that City.

In addition to restoring and increasing police ranks to an appropriate level, President Wilson recommended that the Chief of the Toronto Police Service and Toronto politicians should act swiftly on other solutions to gun violence:

- Fund and take full advantage of the potential of computerized tracking of crime hotspots, and inform the public of real-time crime trends and statistics — for example, by using the Toronto Police Service website in bold new ways to communicate better and share information with the public to improve awareness and vigilance.
- Adopt measures to encourage and protect law-abiding citizens who want to cooperate with police investigations in troubled areas.
- Place video cameras in public places in high-crime areas.
- ***Demand that the justice system send a decisive message to gun criminals, including guaranteed jail time for those who possess unlawful guns, not only use them to commit crimes.*** (emphasis added)
- Direct the Canada Border Services Agency to adopt tough new measures to stop the flood of illicit guns into Canada from the U.S., including funding for hi-tech vehicle scanning systems at all border crossings.
- Implement a new gun amnesty program — as done successfully in October 2000 — to get illegal weapons off Toronto streets.

These are realistic and concrete suggestions.

AMENDMENTS

While the CPA supports the vast majority of proposals contained within Bill C-10, we do have one significant area of concern, which relates to the proposals dealing with the use of firearms in the commission of:

- Attempted Murder (s. 239)
- Discharging a Firearm With Intent (s. 244)
- Sexual Assault With a Weapon (s. 272)
- Aggravated Sexual Assault (s. 273)
- Kidnapping (2. 279)
- Hostage-Taking (s. 279.1)
- Robbery (s. 344), and
- Extortion (s. 346)

Bill C-10 contemplates a tiered response. Offenders who commit these crimes with a restricted or prohibited firearm, or, any firearm in connection with a criminal organization, are subject to escalating penalties:

- 5 years (1st offence)
- 7 years (2nd offence)
- 10 years (3rd or subsequent offence)

Conversely, if the firearm is not used in connection with a criminal organization, and the weapon is not restricted or prohibited, the mandatory minimum sentence is only four (4) years, regardless of whether it is a second, third, or subsequent offence.

We find the different treatment for long guns to be misguided and are at a loss to understand the rationale for distinguishing the penalty on the basis of the class of firearms that is used by a person in the commission of a very serious crime. Police officers routinely discover these weapons in firearms seizures, clandestine drug labs, and marijuana grow operations. Will shotguns and rifles become the weapon of choice for repeat violent offenders? They are much easier to obtain legally, or illegally, and will be even more so if the government proceeds with its plans to disable the federal long-gun registry.

A rifle or shotgun is, in many situations, far more of a lethal threat in the hands of a criminal, than a handgun. For example, high powered rifles are capable of shooting through body armour and other protective equipment. Shotguns can be extremely powerful weapons when used at short range.

Of the thirteen police officers killed with firearms in the past decade, only three were murdered with handguns. Seventy-seven percent (77%) were murdered with long guns, and it is unlikely that any of the offenders in these cases would have met the threshold for participation or membership in a “criminal organization.”

This latter threshold of connection with a criminal organization also presents an additional hurdle for prosecutors to meet, in these cases, to obtain the higher mandatory penalty. While we applaud measures to deal proactively with criminal organizations, we contend that any person who uses a firearm in the commission of an offence should receive the full mandatory minimum penalty available, and particularly repeat offenders.

CANADA’S JUSTICE SYSTEM NEEDS A MAJOR OVERHAUL

We contend that the time is long overdue to reform our criminal justice system. An independent review of Canada’s Sentencing, Corrections, and Parole Systems remains a top priority for the Canadian Police Association. Among the proposals the CPA has advanced to the Minister and Members of Parliament:

- First Degree murders should spend a minimum of 25 years in prison, not a club fed, with no eligibility of parole.
- Section 745 should be repealed, removing the so-called “faint hope clause” that has allowed 80% of applicant killers to obtain early release.
- In determining the level of security for serving sentences, an offender’s criminal history and crime for which he is sentenced should be the predominant factor.
- Parliament should convene an independent public inquiry into Canada’s sentencing, corrections and parole systems, for the purpose of identifying measures to provide meaningful consequences for offenders, reinforce public safety, and instil public confidence.
- Give victims greater input into decisions concerning sentencing, prison classification, parole and release.
- Tighten our laws and prison policies to protect Canadians from violent criminals.

Accelerated parole, conditional sentences, and concurrent sentences for crimes of violence are also issues of concern to our membership.

TIGHTEN FIREARMS CONTROLS

The recent tragedy at Dawson College in Montreal has reinforced the need to strengthen Canada's controls over civilian firearms possession.

To our knowledge, no new firearms have been added to the restricted or prohibited categories in Canada for over a decade. Yet, many new firearms have been designed which are being offered for sale in Canada which would arguably meet existing criteria. As a consequence, some weapons are being legally sold in Canada, despite the fact that they meet existing criteria for restricted or prohibited status, and present significant concerns for public safety.

Retailers understand and exploit these loopholes, as demonstrated by this posting on the web site for Wolverine Supplies in Manitoba:

The final class is the **Prohibited (With out grandfathering)** this would include (but not limited to) firearms *from all the Prohibited Grandfathered classes* that were not registered into the system prior to their respective cut off dates. **Do not try and register one of these firearms (Even during an amnesty) you will lose it!** If you have something interesting in this area contact me and I will explain your options, Yes you do have more options than simply surrendering her, but don't delay.

There are many errors and misunderstandings concerning the classification of different firearms. The following are just a few examples. Lots of people think all Fifty cal rifles are prohibited. **WRONG!!!!** Some are, and some are not. The Mini 14 is still not restricted, folding stocks are legal, so are factory shotguns with 14 inch barrels. An MP5 SMG would have to be either a FA or CA. The factory semi auto version, the HK 94 would be in the 12.5 class. This is very straightforward and easy to understand. **However** when you look at the FN FAL family you have firearms that could be in either FA, CA or the 12.5 class, and some FN FAL whose correct classification can not be determined. These last ones are accepted at face value in whatever class they are currently registered in.

Here at **Wolverine Supplies** we deal in ***all classes of firearms***. We supply both private citizens and Government Agencies, literally from coast to coast. Whilst we do not support all the current facets of our firearm control system, we will follow the law. *Due to my long extensive involvement in the Canadian Firearms Industry I have a*

better than average understanding of our system, if you have any concerns regarding any intended purchase, please phone or e-mail me.

John Hipwell
President
Wolverine Supplies ⁷

We submit that further steps must be taken to close the loopholes by updating and maintaining the restricted and prohibited firearms classifications.

Among the other issues that need to be addressed:

- Maintain an effective system of licensing all firearms owners and registering all firearms, including regular renewals and enhanced screening of new and renewal applicants.
- Maintain support and funding for enforcement initiatives, including the National Weapons Enforcement Support Team (NWEST)
- Improve police training on the use of the firearms licensing and registration systems, and on assessing domestic and spousal abuse risk factors.

CONCLUSION

Stopping the gang violence in Canada's cities is a concern for Canadian police officers, and the solution begins with bringing an end to Canada's revolving door justice system. Canada's police officers have lost confidence in a system that sees violent offenders regularly returned to the streets. We need to restore meaningful consequences and deterrence in our justice system, which begins with stiffer sentences, real jail time, and tougher parole eligibility policies for violent offenders. We need stiffer minimum sentences for offenders who commit crimes with guns, or any type of weapon.

Bill C-10 provides a positive component in an integrated strategy to address current shortfalls, specifically pertaining to the concern with gun violence. We believe that it can provide an effective deterrent against violent gun crimes and we fully endorse the principle of creating tougher mandatory minimum penalties for the commission of serious offences involving the use of a firearm.

⁷ < <http://www.wolverinesupplies.com/default.asp?Pg=16> >

RECOMMENDATIONS

1. The Canadian Police Association (CPA) recommends that Parliament proceed with swift passage of Bill C-10, with the necessary amendments to give effect to the amendments contained therein.
2. The CPA recommends that clauses 17 to 24 of Bill C-10 be amended to apply to the use of ANY firearm in the commission of:
 - Attempted Murder (s. 239)
 - Discharging a Firearm With Intent (s. 244)
 - Sexual Assault With a Weapon (s. 272)
 - Aggravated Sexual Assault (s. 273)
 - Kidnapping (2. 279)
 - Hostage-Taking (s. 279.1)
 - Robbery (s. 344), and
 - Extortion (s. 346)
3. The CPA recommends that funding be provided to:
 - Increase border security to prevent the illegal importation of firearms into Canada;
 - Properly monitor retailers, wholesalers and manufacturers of firearms and ammunition;
 - Fund additional front-line police officers across Canada to help stem the tide of firearms violence.
4. The CPA recommends a comprehensive and integrated approach to addressing firearms violence, which includes:
 - Updating and maintaining the restricted and prohibited firearms classifications.
 - Maintain an effective system of licensing all firearms owners and registering all firearms, including regular renewals and enhanced screening of new and renewal applicants.

- Maintain support and funding for enforcement initiatives, including the National Weapons Enforcement Support Team (NWEST)
- Improve police training on the use of the firearms licensing and registration systems, and on assessing domestic and spousal abuse risk factors.

5. The CPA calls for reform to our criminal justice system, including:

- First Degree murders should spend a minimum of 25 years in prison, not a club fed, with no eligibility of parole.
- Section 745 should be repealed, removing the so-called “faint hope clause” that has allowed 80% of applicant killers to obtain early release.
- In determining the level of security for serving sentences, an offender’s criminal history and crime for which he is sentenced should be the predominant factor.
- Parliament should convene an independent public inquiry into Canada’s sentencing, corrections and parole systems, for the purpose of identifying measures to provide meaningful consequences for offenders, reinforce public safety, and instil public confidence.
- Give victims greater input into decisions concerning sentencing, prison classification, parole and release.
- Tighten our laws and prison policies to protect Canadians from violent criminals.