



**Canadian Police Association
Association canadienne des policiers**

BRIEF

**TO THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

REGARDING BILL C-9

An Act to amend the Criminal Code (conditional sentence of imprisonment)

Appearance: David Griffin, Executive Officer

Date: April 26, 2007

INTRODUCTION

The Canadian Police Association (CPA) welcomes the opportunity to appear before the Standing Senate Committee on Justice Legal and Constitutional Affairs concerning Bill C-9, *An Act to Amend the Criminal Code (conditional sentence of imprisonment)*. The CPA is the national voice for 54,000 police personnel serving across Canada. Through our 175 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.

Our goal is to work with all parliamentarians 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. We believe that a positive first step to addressing these concerns is to eliminate access to Conditional Sentences for certain criminals.

BACKGROUND

Bill C-9

Conditional sentencing was introduced ten years ago, in September 1996, following the passage of Bill C-41. Conditional sentences were introduced as part of a significant overhaul of the sentencing provisions of the *Criminal Code of Canada*. The Canadian Police Association expressed concern with the changes occurring to reduce the consequences for criminal activity, in the debates leading up to the passage of C-41. While conditional sentencing was introduced to bridge the gap between probation and incarceration for less serious, non-violent, minor offences, the application of the law by the courts has in fact permitted offenders convicted of serious and violent crimes to avoid incarceration and serve their “sentences” in the community.

The original Bill C-9, as proposed by the Minister of Justice, would have amended section 742.1 of the *Criminal Code* to provide that a person convicted of an offence prosecuted by way of indictment for which the maximum term of imprisonment is ten years or more is not eligible for a conditional sentence.

While the CPA supported the objectives as set out in Bill C-9, we expressed concern that the maximum term of imprisonment of ten years or more would leave out certain offences that should not be eligible for conditional sentencing.

The Standing Committee on Justice and Human Rights subsequently reported with amendments to Bill C-9, which were adopted in the House of Commons. These served to reduce the exclusions for conditional sentencing to:

...a serious personal injury offence as defined in Section 752, a terrorism offence or a criminal organization offence prosecuted by way of indictment for which the maximum term of imprisonment is ten years or more ...

The Canadian Police Association is disappointed by this amendment to Bill C-9.

DISCUSSION

The Current Law is Inadequate

Canadians are acutely aware that current sentencing and parole practices are inconsistent with public expectations, undermining public confidence in law enforcement and, more particularly, our entire justice system. Canada's front-line police officers interact with members of the public and victims of crime on a daily basis, and understand and share in their sense of frustration. People who are introduced to our justice system as witnesses to, or victims of crime, are frequently at a loss to understand the principles and processes applied in sentencing convicted offenders, how the sentences are served, and the opportunities available for early release. Police officers are at a loss to explain the rationale behind the current system.

By the time the vast majority of offenders are sentenced to incarceration in a federal institution, they have benefited from the leniency that permeates the entire justice system, and are the most violent, dangerous and/or hardened criminals in the justice system.

There is an increased reliance on alternatives to incarceration, which means that only the most violent and repetitive offenders are sentenced to prison. As a consequence, the pressure to increase the proportion of federal inmates on community release programs translates to an increase in the number of violent and higher risk individuals serving their sentences in our communities.

We believe that offenders should be held accountable for the offences they commit. Each victim is equally important. Unfortunately, the current sentencing and conditional release provisions do not recognize this principle.

CPA members are very concerned that court decisions applying the current legislation have permitted offenders to receive conditional sentences of imprisonment for crimes of serious violence including manslaughter, sexual assault offences, driving offences involving death or serious bodily harm, drug trafficking, major thefts, and theft committed in the context of a breach of trust.

Canada's police officers are frustrated, and 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 repeat and violent offenders. Among the recommendations that have been consistently advocated by CPA:

1. 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 instill public confidence.
2. In determining the level of security for serving sentences, an offender's criminal history and crime for which he/she is sentenced should be the predominant factor.
3. Give victims greater input into decisions concerning sentencing, prison classification, parole and release.
4. Tighten our laws and prison policies to protect Canadians from violent criminals.

On April 20, 2007, the Honourable Stockwell Day, Minister of Public Safety, announced the appointment of an independent panel to review the operations of Correctional Service Canada (CSC). The 2007 Federal Budget Plan includes a commitment to conduct this review by making sure that CSC has the necessary resources to deal with the challenges of a changing offender profile. The Federal Budget dedicates \$3.5 million so that a review by a blue ribbon panel can be undertaken in the coming year.

The CPA welcomes this announcement and is committed to contributing to the review and working with government and Parliament to identify significant improvements to the justice system.

Limiting Access to Conditional Sentencing

The CPA contends that persons convicted of violent and sexual offences, or crimes committed where the potential for violence exists, should not be given an opportunity to

be considered for conditional sentencing. We maintain that sex offences, especially those offences involving children or violence, should be banned from conditional sentencing.

For example, criminals convicted of the following offences would not be covered by Bill C-9 :

- Luring a Child Via the Internet (s. 172.1)
- Removing a Child from Canada (s. 273.3(2))
- Abduction of a Person Under the Age of 16 (s. 220(1))

Public Safety Offences

The CPA is further concerned that offences committed against those sworn to protect our communities, such as the crime of Assaulting a Police Officer, and offences that have serious police officer and public safety consequences, such as Flight (failing to stop a motor vehicle while being pursued by a peace officer), are not covered by Bill C-9. This is because the maximum sentence for these offences falls short of the proposed ten year minimum. We acknowledge that the current sentencing scheme contained within the *Criminal Code* is at times contradictory and illogical. This serves to further support our contention that the sentencing regime should be reviewed, along with the current corrections and parole systems. We further submit that Bill C-9 should be amended to prohibit conditional sentences for the offences of:

- Flight (s. 249.1(2))
- Assaulting a Peace Officer (s. 270)
- Disarming a Peace Officer (s. 270.1)
- Participation in Activities of a Criminal Organization (s. 467.11)

We contend that any person who chooses to assault a peace officer in the lawful performance of their duties, or to jeopardize their safety and the safety of others by engaging police in a motor vehicle pursuit, should be barred from receiving a conditional sentence.

In addition, Bill C-9 does not capture offences involving weapons, where the Crown chooses to proceed summarily, such as:

- Possession of a Weapon for a Dangerous Purpose (s. 88)
- Possession of a Weapon in a Motor Vehicle (s. 94)
- Possession of Restricted or Prohibited Firearm with Ammunition (s. 95), or
- Possession Contrary to an Order (s. 117.01)

We contend that a conditional sentence is not an appropriate disposition of a charge involving unlawful possession of a weapon or firearm.

“Non-Violent” Offences

The arguments against limiting the use of conditional sentencing for serious non-violent offences are misguided at best. As front-line professionals, police officers see first-hand the far-reaching impacts of minimizing the seriousness of property crimes and other so-called non-violent crimes.

The penalties for serious property crimes have become so trivialized, with an absence of meaningful and proportionate consequences, that criminals have come to understand and work within the system; committing more criminal acts. Whether they steal a vehicle or commit a break and enter into a home; they know that should they get caught, they will be back out on the street in no time. The lack of meaningful consequences has become so obvious to organized crime that they use it as an effective recruiting tool. The impact on families victimized by such offences is marginalized, as it is expected that insurance will cover the monetary costs. Too often, however, the deeper emotional trauma of having a home burglarized, an identity stolen, or a family heirloom taken, are over-looked. In fact, property crimes have become so trivial for criminals and the justice system that police departments have reduced and often cut resources for officers to investigate property crimes, and resources are transferred to other priorities.

A glaring example of this situation is Auto Theft. Young offenders and car thieves know that there are no meaningful consequences for car theft. They steal cars for cash, with little fear of apprehension, and even less fear of consequences from the courts. It is not

until the police attempt to stop a stolen vehicle, a chase ensues, and somebody gets maimed or killed, that people pay attention.

What is certain, however, is that having someone violate your privacy and having your precious possessions stolen out of your own home is not something trivial for the victims of these crimes. Victims will never feel completely safe in their own homes or in their community from that point on.

Property crimes are often linked with other serious criminal behaviours and social issues, including drug trade, organized crime, and white-collar crime. These are interconnected and cross cutting issues that cannot, and should not be neglected. Unfortunately, drug trafficking and production offences also fall within the category of “non-violent” offences, which totally ignores the tragic consequences of drug abuse in our communities, and the inextricable link between gang violence and the drug trade. Drug Lords and Grow Operators avoid meaningful consequences through conditional sentences and accelerated parole provisions; provisions originally intended for non-violent crimes. We have seen examples of captured drug traffickers apprehended in the United States seeking extradition to Canada, to take advantage of these lenient sentencing and parole provisions. Police agencies have also overheard drug traffickers speak openly about these perceived benefits while monitoring wiretaps. Certainly these loop-holes should be closed to those who choose to profit on the lives of others through the illicit drug trade?

Level of Supervision

According to the Library of Parliament Legislative Summary on Bill C-9, the Canadian Centre for Justice Statistics reports that the annual cost of supervising an offender in the community is \$1,792. We are concerned that these costs are woefully inadequate given the nature of offenders being released into the community. We would estimate that the current level amounts to less than one hour per week for supervising offenders serving conditional sentences in the community. We contend that the probation and parole officers serving in our communities are seriously under-staffed and over-worked, minimizing the effect of supervision.

CONCLUSION

The experience since conditional sentencing was introduced in 1996 demonstrates that the application has far exceeded the intent. We urge this committee to consider amendments to Bill C-9 that will tighten these provisions and exclude application to more serious crimes.

We contend that limiting the use of conditional sentencing reduces the risks for communities that continue to be victimized by violent criminals, sexual offenders, and serious invasions of their privacy and intimacy through property crimes.

We recommend that the Bill be strengthened by addressing crimes of violence, sexual offences, and serious risk. Bill C-9 should address the seriousness of certain violent and sexual offences that do not meet the narrow criteria adopted in the House of Commons, while keeping the option of conditional sentencing for less serious crimes and where an alternative sentencing mechanism is appropriate.

Canada's police officers have lost confidence in a system that sees violent offenders regularly returned to the streets.

Bill C-9, as passed by the House of Commons does not adequately address the revolving door justice system and instil meaningful and proportionate consequences for serious and violent crimes. The amendment adopted in the House of Commons is vague and leaves open to interpretation to application of the definition of Serious Personal Injury Offence as contained in Section 752. We submit That Parliament should in fact enumerate the offences for which Conditional Sentencing applies.

RECOMMENDATIONS

1. Amend Bill C-9 to include the following offences for a prohibition for conditional sentences:
 - a. Luring a Child Via the Internet (s. 172.1)
 - b. Removing a Child from Canada (s. 273.3(2))
 - c. Abduction of a Person Under the Age of 16 (s. 220(1))
 - d. Flight (s. 249.1(2))
 - e. Assaulting a Peace Officer (s. 270)
 - f. Disarming a Peace Officer (s. 270.1)
 - g. Participation in Activities of a Criminal Organization (s. 467.11)
 - h. All weapons offences
 - i. Drug trafficking and production offences

**Cases in adult criminal court by type of sentence; total convicted cases, prison, conditional sentence, probation, by province and Yukon Territory
(Canada)**

2003

Canada	Total convicted cases	Prison	Conditional Sentence	Probation
		number		
Total cases	257,127	90,916	13,267	118,379
Total <i>Criminal Code</i>	229,953	84,422	10,687	110,313
Crimes of violence	57,562	20,166	3,619	43,857
Homicide	143	124	5	21
Attempted murder	54	38	0	19
Robbery	3,189	2,325	258	1,635
Sexual assault	1,722	780	307	1,306
Other sexual offences	887	408	179	681
Major assaults	13,007	5,730	1,226	9,168
Common assaults	25,607	6,128	1,032	20,547
Uttering threats	10,126	3,594	416	8,116
Criminal harassment	1,757	552	101	1,583
Other crimes against persons	1,070	487	95	781
Property crimes	64,192	26,064	4,215	35,271
Theft	26,777	10,505	1,326	13,439
Breaking and entering	8,791	5,138	745	5,413
Fraud	11,577	3,972	1,408	6,987
Mischief	6,716	1,320	111	4,541
Possession of stolen goods	9,672	4,897	555	4,494
Other property crimes	659	232	70	397
Administration of justice	50,041	25,560	1,385	16,194
Other <i>Criminal Code</i> offences	16,799	5,273	595	8,107
<i>Criminal Code</i> offences (traffic offences)	41,359	7,359	873	6,884
Impaired driving	34,265	4,238	399	4,753

Other <i>Criminal Code</i> traffic offences	7,094	3,121	474	2,131
Other Federal Statute Total	27,174	6,494	2,580	8,066
Drug possession	6,174	1,247	113	1,862
Drug trafficking	6,944	2,993	2,405	2,287
<i>Youth Criminal Justice Act</i>	765	271	22	256
Residual federal statutes	13,291	1,983	40	3,661

Note:

- Adult Criminal Court Survey data are not reported by Manitoba, Northwest Territories and Nunavut.
- The conditional sentence of imprisonment option came into effect under Bill C-41 in September 1996. When a conditional sentence is imposed, the offender serves their sentence in the community under supervision. The Adult Criminal Court Survey (ACCS) began collecting data on conditional sentences in 1998/99 from Newfoundland and Labrador, Ontario and Alberta. Prince Edward Island, Nova Scotia, Saskatchewan and the Yukon began reporting conditional sentencing data to the Adult Criminal Court Survey (ACCS) from 1999/00, and New Brunswick and British Columbia from 2001/02. Quebec does not report conditional sentencing data at this time.

Source: Statistics Canada, CANSIM, table (for fee) [252-0017](#) and Catalogue no. [85-002-X](#).

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Adult correctional services, average counts of offenders in provincial, territorial and federal programs (Canada)					
Canada¹	1999	2000	2001	2002	2003
Custodial and community supervision					
	number of persons				
Total actual-in count	31,608	31,477	32,016	32,523	32,007
Sentenced	.	.	.	.	.
Remand	.	.	.	.	.
Other statuses	.	.	.	.	.
	rate				
Incarceration rates per 100,000 adults ^{2,3}	136	134	134	134	130
	current dollars				
Average daily inmate cost	153.47	162.29	173.55	179.12	180.72
	constant 1992/1993 dollars				
Average daily inmate cost	138.64	142.74	149.23	149.64	148.13
	number of persons				
Total community supervision count	121,845	119,921	125,167	126,490	122,599
Probation	102,860	100,526	103,946	105,061	100,993
Conditional sentence	8,984	9,885	12,209	13,193	13,632
Conditional release ⁴	10,000	9,510	9,013	8,236	7,974
	rate				
Probation counts per 100,000 adults ³	443	439	436	434	411
.: not available for any reference period.					
Note: Fiscal year (April 1 through March 31). Not all variables are applicable to or available for all jurisdictions. Inter-jurisdictional comparisons of the data should be made with caution.					
1. Represents the total or weighted average of provincial, territorial and federal jurisdiction figures as applicable.					
2. Based on total actual-in counts.					
3. Calculated using population estimates provided by Demography Division of Statistics Canada.					
4. Provincial and territorial figures represent provincial parole where applicable. Federal figures represent the sum of day parole, full parole and statutory release.					
Source: Statistics Canada, CANSIM, tables (for fee) 251-0004 and 251-0007 .					
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