



**Canadian Police Association
Association canadienne des policiers**

BRIEF

LEGISLATIVE COMMITTEE ON BILL C-35

***An Act to amend the Criminal Code
(reverse onus in bail hearings for firearm-related offences)***

Appearance:

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INTRODUCTION

The Canadian Police Association (CPA) welcomes the opportunity to present our submissions to the House of Commons Legislative Committee on Bill C-35, *An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences)*.

The CPA is the national voice for 56,000 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.

BILL C-35

The presumption of innocence and the right not to be denied bail without just cause are rights protected under the Charter of Rights and Freedoms. While liberty pending trial is the basic presumption, bail can be denied in order to:

- ensure that the accused does not flee from justice -- primary ground
- protect the public if there is a substantial likelihood that the accused will re-offend --secondary ground
- maintain confidence in the administration of justice -- tertiary ground.

Usually the prosecutor usually bears the onus of demonstrating why an accused should be denied bail, however it falls to the accused to have to demonstrate that detaining him/her is not justified:

- if they are charged with an indictable offence committed while already released on another indictable offence;
- if they fail to appear in court or allegedly breach a release condition;
- for certain organized crime, terrorism or security of information offences;
- for drug trafficking, smuggling, or drug-producing offences; or,
- if they are not ordinarily a resident of Canada.

In *R. v. Pearson* [1992] 3 S.C.R. 665, the Supreme Court of Canada, by majority decision, upheld the “reverse onus” provision with relation to drug offences in Section 515(6)(d) of the Code, to the extent that it requires the accused to show cause why detention is not justified. The court concluded that this provision does not violate ss. 7, 9, 11(d) or 11(e) of the Charter.

The proposed changes in C-35 will provide a reverse onus if an accused is charged with:

- attempted murder, robbery, discharging a firearm with intent, aggravated sexual assault, sexual assault with a weapon, kidnapping, hostage-taking, or extortion;
- any indictable offence involving firearms or other regulated weapons if committed while under a weapons prohibition order;
- firearm trafficking, possession for the purpose of trafficking, or firearm smuggling

In addition to the reverse onus provisions, the court will be required to specifically consider:

- the fact that a firearm was allegedly used in the commission of the offence or
- the fact that the accused faces a minimum penalty of three-years or more imprisonment when they are deciding whether the accused should be released or detained until the trial.

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

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 to protect Canadians from offenders who commit crimes with guns, or any type of weapon. We support the introduction of reverse onus legislation for offenders charged with serious offences involving firearms and other regulated weapons.

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 introduce reverse onus bail rules and 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
- ***Impose a reverse onus on bail for all gun crimes***, (emphasis added) and
- Set more severe penalties for any breach of bail conditions.

Premier McGuinty stated he supports reverse onus legislation, because “when you pick up a gun and commit a crime, you lose your right to be free.”²

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> >

² CBC News. “Ontario, Toronto back Harper’s crackdown on gun crimes.” Nov. 23, 2006. Toronto.

In January, 2006, Ontario Attorney General Michael Bryant released the province's Anti-Gun Strategy, which includes a call for "Reverse Onus Bail (Appendix A).

Toronto Mayor David Miller supports the new legislation "because guns are different than anything else",³ as a means to ensure that witnesses of gun crimes are able to come forward without fear of reprisal. "Witnesses need to know that if they help police in apprehending a criminal using a gun, they'll be able to come forward and speak without fear, because (the criminal will remain in jail)." ⁴

Liberal Leader Stéphane Dion has "pledged that his caucus is prepared to offer the Conservatives the votes they need to pass 'reverse-onus bail hearings' legislation that would make it more difficult for those arrested on firearm offences to be released on bail." The Liberal Crime Strategy, announced on March 14, 2007, includes a commitment to "continue to support reverse-onus bail hearings for those arrested for a gun crime".

Canadians are concerned that our criminal justice system does not provide an adequate response to firearms offences. A Justice Department Survey conducted in March, 2005, by Decima Research ⁵, 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 ⁶ 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.

³ CBC News. "Ontario, Toronto back Harper's crackdown on gun crimes." Nov. 23, 2006. Toronto.

⁴ CTV.ca News. "PM unveils 'reverse-onus' gun crime legislation." Nov. 23, 2006. Toronto.

⁵ 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> >

⁶ Global National. January 2, 2006. "Exclusive: Cdns polled on violence."

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

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 the measures contained within Bill C-35.

REVERSE ONUS IS “JUSTIFIABLY NECESSARY”

Some lawyers and academics have questioned the validity of the reverse onus approach for gun related crimes.^{7,8} We contend, however, that repeat, violent offenders are a serious problem. Statistics released by the Toronto Police Homicide Squad for 2005⁹ 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.

In November, 2006, statistics provided by Toronto police indicated that of the nearly 1,000 crimes committed so far that year involving firearms or restricted weapons, nearly forty (40) percent were committed by persons on bail, parole, temporary absence or probation.

We contend that Canada’s revolving door justice system is failing to prevent further criminal activity by these repeat, violent offenders.

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 that¹⁰ the cities of Regina, Winnipeg, Abbotsford, Edmonton, Saskatoon and Vancouver have had consistently higher homicide rates than Toronto for the past decade.

⁷ Tyler, Tracy. Toronto Star. “New anti-gun bill ‘a shot in the dark’”. November 24, 2006. Toronto

⁸ Levy, Harold. Toronto Star. “Two Osgoode Professors Comment on ‘Reverse Onus’ Bail in Gun Crimes”. Jan. 3, 2006. Toronto.

⁹ The Globe and Mail. “Repeat Offenders.” Friday November 24, 2006

¹⁰ “Homicides”, The Daily. Statistics Canada. Ottawa. November 8, 2006.

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

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 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 ARE ALSO REQUIRED

In addition to custody awaiting trial, it is also important for Parliament to conclude with passage of Bill C-10, to ensure minimum sentences are in place for firearms related offences. We need stronger intervention which combines general deterrence, specific deterrence, denunciation, and reform. This will help to ensure that “dead time” served awaiting trial does not become the sentence upon conviction. It is important for those convicted of serious violent and firearms offences to serve meaningful sentences with the opportunity for intervention, rehabilitative programs and supervised reintegration into the community.

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.
- 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.

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.

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 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.

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 of 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 ¹¹

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. Bill C-35 is a positive step in addressing the pre-trial custody of persons accused of serious crimes involving firearms and regulated weapons.

In addition, we need to restore meaningful consequences and deterrence in our justice system, which begins with stiffer sentences, real jail time, meaningful intervention and rehabilitation, and stronger parole eligibility policies for violent offenders. We need stiffer minimum sentences for offenders who commit crimes with guns, or any type of weapon.

¹¹ < <http://www.wolverinesupplies.com/default.asp?Pg=16> >

Bill C-35 provides a positive component in an integrated strategy to address current shortfalls, specifically pertaining to the concern with gun violence. We urge Parliament to proceed swiftly with passage of Bill C-35.