Canadian Police Association
Association canadienne des policiers

BRIEF

TO THE HOUSE OF COMMONS
LEGISLATIVE COMMITTEE ON BILL C-27

REGARDING BILL C-27

An Act to amend the Criminal Code
(dangerous offenders and recognizance to keep the peace)

Appearance: Tony Cannavino, President

David Griffin, Executive Officer

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INTRODUCTION

The Canadian Police Association (CPA) welcomes the opportunity to appear before the Legislative Committee on Bill C-27, An Act to amend the Criminal Code (dangerous offenders and recognizance to keep the peace). 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.

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. We welcome the changes introduced in Bill C-27, to strengthen the provisions dealing with dangerous and long-term violent offenders and sexual predators.

BACKGROUND

Bill C-27

Bill C-27 addresses offenders who have committed one or more violent or sexual offences.

1. Tightens the rules that apply to dangerous offenders in the case of repeat offenders.
2. Extends the recognizance to keep the peace and clarifies the terms of recognizances in order to prevent repeat offences.

Bill C-27 makes the following amendments to the *Criminal Code of Canada*:

- An offender convicted of a third violent or sexual offence ("primary designated offence") for which it would be appropriate to impose a sentence of two years or more is presumed to be a dangerous offender, and may therefore be subject to incarceration for as long as the offender presents an unacceptable risk to society;
- A recognizance to keep the peace may be ordered for a period that does not exceed two years in the case of a defendant who has previously been convicted of a violent or sexual offence;
- The conditions of a recognizance to keep the peace in relation to a violent or sexual offence are broadened include participation in a treatment program, wearing an electronic monitoring device or requiring the defendant to observe a curfew.

DISCUSSION

Dangerous Offenders

For well over a decade the CPA has been calling for Parliament to restore meaningful consequences, protection 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 instil public confidence.
2. 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 factors.
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**. (Emphasis added)

Currently, applications for Dangerous Offender designation are infrequent, as Crown Attorneys perceive the thresholds and onus to be high. According to research compiled by the Library of Parliament, 384 Criminals have been designated as Dangerous Offenders between 1978 and April 2005, an average of only 14 a year. The average has increased modestly for the latter ten years of that period (1995-2004), to 22 offenders. The characteristics of these offenders are often similar:

- All of the offenders are male.
- 93% of dangerous offenders had at least one previous conviction as adults.
- 45% of dangerous offenders had 15 or more previous convictions on their adult record.

- Many dangerous offenders admit to having committed a large number of sexual offences for which they were not arrested – an average of 27 offences per offender.
- A 1996 study reported that 75% of dangerous offenders had a juvenile record and 96.6% showed evidence of forcible sexual activity before the age of 16.
- A 2002 study reported that dangerous offenders caused physical injury in 31% of cases, and serious psychological damage in 88% of cases. 40% of dangerous offenders used a weapon while committing the offence.
- 80% of dangerous offenders with prior convictions have had three or more victims, predominantly female.
- 49% have victimized children.
- 98% of dangerous offenders are classified to be at high risk to re-offend.

A dangerous offender designation automatically provides for an indeterminate prison sentence in a penitentiary. While not eligible for statutory release, a dangerous offender will be eligible for day parole after 4 years' imprisonment and for full parole after 7 years. After that time, the Parole Board must reassess the offender's file every two years. Dangerous offenders who are paroled are subject to parole for the rest of their lives. If the parole board determines that they continue to present an unacceptable risk for society, they could stay in prison for life. Bill C-27 does not alter the sentencing and parole provisions.

An offender may appeal the dangerous offender designation.

The Process

Before a Crown prosecutor submits a dangerous offender application, experts in corrections and mental health must assess the offender's behaviour in order to establish a psychological diagnosis. In the case of a sexual offender, the sexual preferences and deviances will also be assessed. The assessment, which lasts a maximum of 60 days, is based on reasonable criteria for dangerousness and on the possibility of supervising

the offender in the community. The assessment report will be entered into evidence and the experts will be able to testify in court.

The Crown attorney must obtain the consent of the province's attorney general and give the offender seven clear days' notice before the date of the application hearing. The notice must contain the grounds for making the application.

Depending on whether it is a dangerous offender application or a long-term offender application, the prosecutor must prove, beyond a reasonable doubt, very specific elements to convince a judge sitting without a jury that the offender presents a high risk of recidivism:

1. The judge must first be convinced that the underlying offence constitutes a serious personal injury offence.
2. The prosecutor must then show that the offender represents a risk to society, by proving that the offender demonstrates a marked indifference to the consequences of his or her actions, that his or her behaviour is so brutal that it cannot be controlled, or that the offender is incapable of controlling his or her actions or sexual impulses and will in all probability cause death or other serious injury if he or she is not put in preventive detention.

The Supreme Court of Canada has rendered several decisions that uphold the dangerous offender application process:

- In *Mack*, (1988) the Supreme Court of Canada held that the standard of proof beyond a reasonable doubt applies only where the issue is the guilt or innocence of the accused.
- In *Lyons*, (1987) the majority of the Supreme Court of Canada was of the opinion that the right to be presumed innocent did not apply in the context of a dangerous offender application.
- In *Lyons*, the Supreme Court of Canada held that imprisonment for an indefinite period was not cruel and unusual treatment, contrary to section 12 of the Charter, as "… the group to whom the legislation applies has been functionally defined so

as to ensure that persons within the group evince the characteristics that render such detention necessary." In the opinion of the Court, the availability of parole for dangerous offenders "can truly accommodate and tailor the sentence to fit each offender's circumstances."

- In *Lyons,* the Supreme Court of Canada held that the rules governing dangerous offenders did not violate section 9 of the Charter (protection against arbitrary detention or imprisonment), as the Crown has discretion to make the application and the court may decide to impose a less severe sentence.
- The Supreme Court of Canada held, in *Johnson* (2003) that before considering finding that an offender is a dangerous offender the judge must consider whether the risk presented by the offender can be adequately controlled in the community, and thus whether it would be appropriate to apply the long-term offender rules. The Court said: "the imposition of an indeterminate sentence is justifiable only insofar as it actually serves the objective of protecting society."

Bill C-27 does not alter this situation; the court retains discretion not to make a dangerous offender, finding in a case where another sentence would adequately protect the public and impose a less severe sentence;

- a long-term offender finding; or
- impose a sentence for the underlying offence.

Sub clause 3(2) of the Bill provides that:

> *the court shall not find the offender to be a dangerous offender if it is satisfied by the evidence adduced during the hearing of an application under that subsection that a lesser sentence — either a finding that the offender is a long-term offender or a sentence for the offence for which the offender has been convicted — would adequately protect the public. Neither the prosecutor nor the offender has the onus of proof in this matter.*

The CPA would support an amendment to this provision that would require the onus to rest with the accused to establish that the public would be adequately protected by

either a finding that the offender is a long-term offender or a sentence for the offence for which the offender has been convicted. We submit that this is consistent with the reverse onus for the dangerous offender designation for repeat offenders.

The CPA supports Bill C-27, with the proposed amendment, as a reasonable and proportionate approach to repeat, violent offenders who present a significant threat to re-offend:

1. The dangerous offender amendments contained in Bill C-27 deal specifically with offenders who have already been convicted of a number of serious offences.
2. In order to protect society from violent repeat offenders, it is necessary to impose a reasonable limit on the offenders' rights and freedoms.
3. Bill C-27 provides protective measures:
    a. The circumstances in which an offender may be presumed to be dangerous apply only to a limited number of serious offences for which a prison sentence is provided.
    b. The Crown retains discretion to make an application.
    c. In all cases the Court retains its discretion to decline to make a dangerous offender finding and impose a less severe sentence;
        - a long-term offender finding; or
        - impose a sentence for the underlying offence.
    d. The offender retains the opportunity to satisfy the judge that the presumption should not be applied in his or her case.
    e. The court will not be able to make a dangerous offender finding until after the offender has been assessed by a group of experts, and it can be made only if the Crown decides.
    f. An offender will also be able to appeal both the conviction and the sentence imposed.

Long-Term Offenders

In 1997, Bill C-55 introduced the long-term offender category as a means to monitor offenders in the community on a long-term basis because, who present a risk of recidivism yet are not characterized as dangerous offenders.

Bill C-27 does not alter the regime that applies to long-tem offenders, other than in respect of the assessment process. Bill C-27 amends the assessment process for both dangerous and long-term offender consideration. Presently, where the prosecutor thinks it appropriate to do so, an application for assessment is made to the court. A prosecutor has no obligation to inform the court of the intention.

Bill C-27 imposes an obligation on the prosecutor to inform the court, as soon as is feasible before sentencing, whether he or she intends to make an application for assessment of the offender for designated offences.

The CPA would support an amendment to Bill C-27 that would address breach of long-term offender supervision order. Presently, a conviction for the criminal offence of breach of a long term offender supervision order (punishable by up to 10 years imprisonment) cannot lead to a Dangerous Offender application by the Crown prosecutor.

The CPA would support the inclusion of the criminal offence of breach of a long term offender supervision order in the list of designated criminal offences found under the clause 1 of C-27 definitions. If adopted, this would ensure that a long term offender who is found guilty of breaching his supervision order could become subject to an application for a dangerous offender hearing.

Recognizance to Keep the Peace

The CPA has long been on record concerning the problem of the release of high-risk offenders into the community at time of warrant expiry. The high-profile release of Karla Homolka brought significant public attention to this issue.

Current mechanisms are inadequate to adequately address the protection of the public from persons who are identified to pose a significant threat to society, are about to

complete their full sentence without a successful parole period, and were not designated as a dangerous offender at the time the sentence was imposed. While the CPA would support the creation of a process that would enable such a designation to be re-considered prior to warrant expiry, this poses significant Charter concerns.

Recognizances to Keep the Peace have been utilized to some extent to maintain supervision and preventative restrictions on an individual who is identified to present such a risk.

Bill C-27 deals only with those recognizances which deal with certain sexual offences in respect of a person under the age of 14 years, and serious personal injury offences. Serious personal injury offences are defined in the *Criminal Code of Canada* as:

- offences for which the offender may be sentenced to imprisonment for 10 years or more (other than high treason, treason and murder) *and* that involve the use or attempted use of violence, conduct endangering another person or conduct inflicting severe psychological damage; and
- all forms of sexual assault.

Bill C-27 extends the maximum period for a recognizance for these offences from 12 months to two years, and expands the scope of conditions that may be imposed by a judge in these cases.

The CPA supports the proposed amendments set out in Bill C-27 with respect to the recognizance provisions.

CONCLUSION

Bill C-27 is a proportionate and justifiable measure to protect Canadians from repeat violent offenders, and safeguard communities. The Canadian Police Association supports the Bill, in principle and urges Parliament to amend and pass this legislation without delay.

The CPA supports the Dangerous Offender proposals contained in Bill C-27, with the proposed amendment, as a reasonable and proportionate approach to repeat, violent offenders who present a significant threat to re-offend. The CPA would support an amendment that would require the onus to rest with the accused to establish that the public would be adequately protected by either a finding that the offender is a long-term offender or a sentence for the offence for which the offender has been convicted.

The CPA would support the inclusion of the criminal offence of breach of a long term offender supervision order in the list of designated criminal offences found under the clause 1 of C-27 definitions.

The CPA supports the proposed amendments set out in Bill C-27 to extend the maximum period for a recognizance for these offences to two years, and expand the scope of conditions that may be imposed by a judge in these cases.

RECOMMENDATIONS

1. The Canadian Police Association supports Bill C-27 in principle, and urges Parliament to amend and pass this legislation without delay.
2. The CPA would support amendments to Bill C-27 to:
    a. Require the onus to rest with the accused to establish that, as an alternative to dangerous offender designation, the public would be adequately protected by either a finding that the offender is a long-term offender or a sentence for the offence for which the offender has been convicted.
    b. Include the criminal offence of breach of a long term offender supervision order in the list of designated criminal offences found under the clause 1 of C-27 definitions.