

John Howard

THE JOHN HOWARD SOCIETY OF CANADA
LA SOCIÉTÉ JOHN HOWARD DU CANADA

**Standing Committee on Justice, Human Rights, Public Safety and
Emergency Preparedness**

Ottawa, November 24, 2005

Speaking Notes

Bill C-215: An Act to amend the Criminal Code

(consecutive sentence for use of firearms in commission of offence)

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November 24, 2005

Introduction:

The John Howard Society is a national charity comprising those who believe an essential component of community safety lies in social measures that serve to reintegrate those who have offended into the community as law-abiding citizens. We are located in 60 communities across Canada. Our Mission is *Effective, just and humane responses to the causes and consequences of crime.*

Crimes committed with guns are very serious. Even when no injury occurs, the potential for injury or death is high. The criminal code and the courts clearly take such offences seriously.

I am *not* here to debate what the sentence for gun crimes should be. I am here to debate *who* should sentence and on *what principles those sentences should be based*. In particular, The John Howard Society believes that:

- the principles of sentencing found within the *criminal code* are substantially correct,
- the Provincial, Appeal, and Supreme Courts are competent and in a much better position than Parliament to impose just sentences, and
- there is not an overriding need to impose *particularly severe sanctions in every case* in addition to those severe sanctions imposed today.

In short, we believe that principled sentencing cannot be invoked through severe and arbitrary mandatory minima as proposed in Bill C-215. Neither do we believe that such measures will reduce gun-related criminal activity.

Homicide Trends

According to Statistics Canada:

“There were 172 homicides committed with a firearm in 2004, 11 more than in 2003 and 20 more than in 2002. However, the 2004 total was still slightly below the average of 176 homicides involving firearms over the past decade.”

(**Statistics Canada**, The Daily, October 6, 2005

<http://www.statcan.ca/Daily/English/051006/d051006b.htm>)

Homicide rates in Toronto were 1.8 per 100,000 in 2004 - significantly below the national rate of 1.95 per 100,000 and much lower than those found in the US where the rate can be as high as 25.5. (Statistics Canada, Juristat, Homicide in Canada 2004)

Penalties for homicide in the US are amongst the most severe in the world.

Principles of Sentencing

Other witnesses, more qualified than I, have already appeared as witnesses to testify regarding the ways in which Bill C-215 is inconsistent with many of the principles of sentencing and perhaps the *Constitution*.

We agree with them that long mandatory minimum sentences are incompatible with the *Fundamental Principle of Sentencing* as set out in section 718.1 of the *Criminal Code*, that being:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Mandatory Minima are also inconsistent with the other *Principles of Sentencing* contained in section 718.2 of the *Criminal Code*. In particular the following principles *could not* be applied under Bill C-215:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender,

(b) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(c) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(d) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Proportionality

With Bill C-215, committing manslaughter could bring a substantially less severe sentence than an armed robbery in which no one was injured. Such a circumstance lacks proportion if we use the word 'proportion' in the way that is clearly contemplated in the *Criminal Code*.

At the lowest end of the spectrum, the public would not consider a \$1 fine for the theft of a \$1 chocolate bar to be sufficient. We do not want 'proportionate'

penalties to the harm suffered in minor crimes because we feel that such penalties are too weak. At the other extreme end, society is unwilling to paralyse a negligent driver who left another person paralysed. The reluctance to impose punishments that repeat the crime on the offender is what separates us morally from the act of the criminal. We do not want penalties proportionate to the harm suffered when such punishment is brutal. It is for these reasons that the *Criminal Code* does not define proportion solely in relation to the harm suffered by the victim.

Those who drafted the sentencing principles in the *Criminal Code* knew that proportionality can only work when we try to make one sentence proportional to the sentences given for other crimes. If crime A is more severe than crime B - regardless of what the crime is called - then it should attract a more severe sentence. Sometimes a property crime can cause more serious suffering than a violent crime. Individualized sentencing can take all of this into consideration.

Proportionality is achieved when the gravity of the offence, along with the degree of responsibility of the offender, are used to establish where the offence falls in relation to the *relative severity* of other crimes. Proportionality is not a process that merely tries to match the penalty to the pain caused by the crime.

In specifying principles that stress individualized sentencing, the provisions of the *Criminal Code* clearly anticipate that we can only have proportionate sentencing where the individual circumstances of the offence and the offender are carefully considered.

Arbitrary

It is self evident that individualized sentencing cannot be done by Parliament. Sentencing must be done by those who hear the case - judges. Mandatory minima make proportionality impossible because Parliament cannot consider individual circumstances and judges have no discretion. Without such consideration the penalty becomes arbitrary and potentially unconstitutional - particularly as the severity of the mandatory penalty increases.

This point is reflected by the Chief Justice Beverly McLachlin when the Supreme Court of Canada ruled that:

Absence of arbitrariness requires that punishment be tailored to the acts and circumstances of the individual offender.

(**McLachlin C.J.**, Chief Justice, Supreme Court of Canada. *Sauvé v. Canada* (Chief Electoral Officer) 2002 SCC 68.)

Tacking on a mandatory penalty to what is *already* a proportionate sentence designed to comply with the *Principles of Sentencing* might well be seen as arbitrary.

Excessive

Mandatory minima affect most severely the *least serious* offenders in circumstances that have the greatest mitigating circumstances while having little or no effect on the most serious offenders who would attract such sentences anyway.

Adding a 15 year term to a life sentence for premeditated murder because the person chose to use a gun rather than their hands or other weapon draws a distinction between these crimes that most Canadians would not view as important. If a life sentence does not deter a murder, the additional penalty is unlikely to make a difference. Canada already has the most severe penalties in the world, other than some US jurisdictions, that provide for life without parole.

Credibility

If ordinary people serving on juries and competent thoughtful judges would not give sentences required under Bill C-215, then it is likely that the justice system will lose credibility as it is viewed increasingly as being premised primarily on political considerations rather than judicial ones.

Risk

Few criminologists today consider deterrence through penalties an effective way to reduce crime. The existing penalties are sufficient to deter any rational person. But for those who believe that offenders weigh carefully the risks and benefits of carrying a gun and care not for the harm they might do, they should also consider whether the addition of a mandatory and consecutive long prison term might make gun carrying offenders more desperate and likely to use their weapons to avoid detection or arrest.

Unfair

Armed robbery already has a sentencing structure and case law that applies to the use of a gun - up to and including life terms. With mandatory consecutive sentences it might be argued that the person is being sentenced twice for the same offence.

Ineffective

It is because of our *Principles of Sentencing* that Canada benefits from a substantially lower rate of imprisonment than the US where mandatory minima have become the norm. The fact that we also enjoy a lower crime rate,

particularly for the most serious offences, speaks to the ineffectiveness of long mandatory minimum sentences. We spend much less on punishment per capita than the United States and have a more humane society and criminal justice system.

Increasing the severity of sentences does not lower crime rates. The very fact that the current focus on gun crime is situated in a few communities in a few major centres shows that sentencing is not a major influence. The huge variation in gun crimes between St John's Newfoundland and Toronto is not because the judges are sentencing more harshly in Newfoundland. The fact that even within Toronto there are huge differences between neighbourhoods in rates of gun crimes is not because sentences are tougher in low crime neighbourhoods.

Differences in social environments have a much greater impact on crime rates than sentencing practices. I wonder if politicians in France today would not have preferred that their predecessors had relied on progressive social policy to deal with the long-term build up of resentment over economic disparity and social exclusion, rather than rely on criminal justice sanctions to suppress criminal activity.

In Virginia, state law amendments imposed mandatory minimum sentences for firearm offences as well as special grants to support the prosecution of these offences in certain participating localities. Data collected between 2000 and 2002 "indicated that levels of nearly all violent offences committed using a firearm increased in both the program localities and statewide following the program implementation."

(Virginia Exile Project *Evaluation of the Virginia Exile Program, Criminal Justice Research Center, Department of Criminal Justice Services, Virginia*

<http://www.dcjs.virginia.gov/research/documents/exileFinal.pdf>)

Racism

Aboriginal youth in Winnipeg or young blacks in Toronto do not turn to gun crimes as an alternative to medical school or operating their own businesses. They turn to gun crimes as an alternative to grinding poverty and the perceived lack of opportunity. If we do not address those factors that contribute to racism, alienation and poverty, no criminal justice sanction will be sufficient to deter, and no number of prison cells will be sufficient to hold, the new offenders.

Mandatory penalties fall most often on the most disadvantaged. Mandatory minima lead to increased incarceration rates of poor visible minorities and in

particular Aboriginal and African-Canadians. Such sentencing practices are viewed as racist by many of those from minority communities. This only intensifies the anger and alienation they feel.

Future problems

When Bill C-215 runs its course, 5 to 15 years from now the same number of gun offenders will be released each year from prison than is the case today. Having served longer sentences, those being released from our prisons will likely be much more difficult to reintegrate into society, and we will have fewer resources to either prevent crime or rehabilitate offenders. They will be more likely to offend again. That will be the legacy of this Bill.

Bill C-215 may open a new door to mandatory sentencing that others will follow with similar measures for whatever crime is currently catching headlines. Thanks to the escalation in the use of mandatory minima in the United States, they now house 25% of the world's prison population and have 5 to 8 times the imprisonment rate of any other western industrialized country. The US does not offer a model we should emulate. Indeed they should be coming here to find out how we do so much better than they in creating a just and peaceful society with an incarceration rate that is one-fifth of theirs.

In fact, looking to Canada for solutions appears increasingly to be the case. Criminologist Julian Roberts notes that:

... countries with some of the most severe laws for MMPs are beginning to repeal them. For example, about 25 U.S. states in the past few years have passed laws eliminating or reducing some of the lengthy MMPs, given the distortion, increased costs, and high rates of incarceration that have resulted from rigid sentencing schemes...

(**Julian V. Roberts**, Mandatory Sentences of Imprisonment in Western Nations Representative Models, http://canada.justice.gc.ca/en/news/nr/2005/doc_31690.html)

Conclusion

All of the above give rise to our conclusions articulated at the beginning that principled sentencing cannot be invoked through severe and arbitrary mandatory minima as proposed in Bill C-215. Neither do we believe that such measures will reduce gun-related criminal activity.

Appendix



Homicide rates for selected countries, 2003

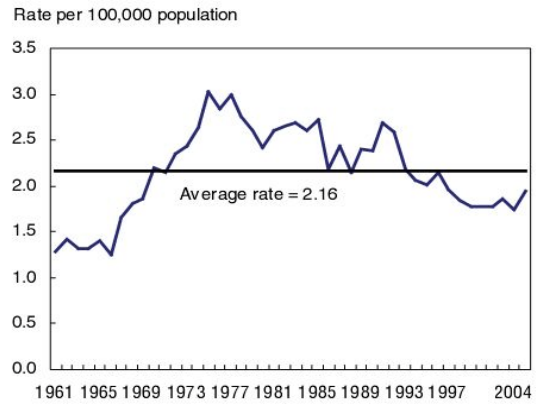
Country	Rate per 100,000 population
South Africa	44.10
Russia	19.82
United States ¹	5.70
Turkey	5.57
Hungary	2.22
Armenia	2.00
Finland	1.98
Canada²	1.95
Poland ²	1.70
France	1.65
England & Wales ³	1.62
Northern Ireland	1.53
Australia	1.51
Denmark	1.21
Greece	1.12
Spain	1.10
Germany	0.99
Switzerland	0.99
Scotland	0.64
Japan	0.51

1. Federal Bureau of Investigation. (2004). "Crime in the United States - 2003". U.S. Department of Justice. Washington, D.C.
2. Figures reflect 2004 data.
3. Based upon 2003/2004 fiscal year data from Research Development & Statistics (CRCSG) Home Office. "Crime Statistics for England and Wales, 2003-2004". London, England.

Source: National Central Bureau - Interpol Ottawa.



Homicide rate, Canada, 1961-2004

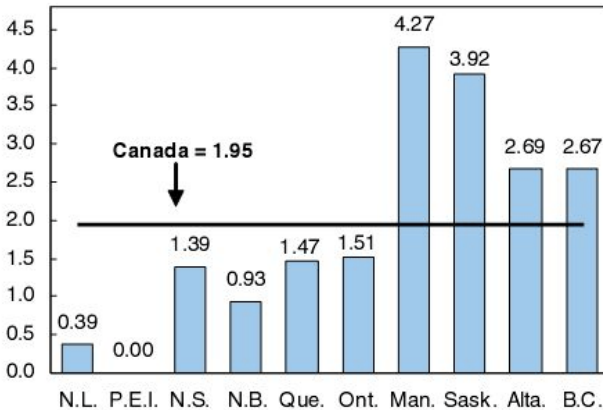


Source: Statistics Canada, Canadian Centre for Justice Statistics, Homicide Survey.



Homicide rates by province, 2004

Rate per 100,000 population

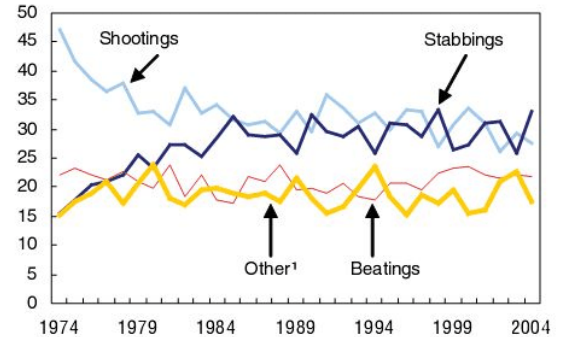


Source: Statistics Canada, Canadian Centre for Justice Statistics, Homicide Survey.



Most common methods used to commit homicide, Canada, 1974-2004

Percentage



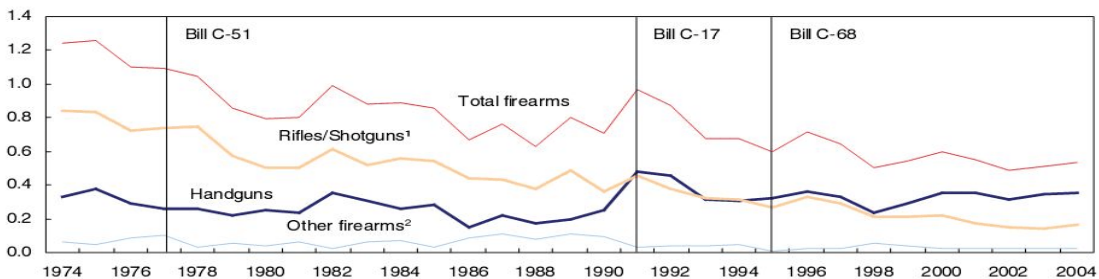
1. Other includes strangulation, poisoning, deaths caused by fire (smoke inhalation), exposure/hypothermia, Shaken Baby Syndrome, deaths caused by vehicles, etc.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Homicide Survey.



Rate of firearm homicides, Canada, 1974-2004

Rate per 100,000 population



Note: The information is not intended to imply a causal relationship between gun-control legislation and homicide rates. See Firearm Legislation textbox for details of Bills.

1. Includes sawed-off rifles/shotguns.
2. Includes firearm-like weapons (e.g. nail gun, pellet gun) and unknown type of firearm.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Homicide Survey.

Lengths of felony sentences imposed by State courts, 2002

**Average maximum sentence length
(in months) for felons sentenced to:**

Incarceration

Most serious conviction offense	Total	Prison	Jail	Probation
All offenses	36 mo	53 mo	7 mo	38 mo
Violent offenses	62 mo	84 mo	8 mo	43 mo
Property offenses	28 mo	41 mo	7 mo	37 mo
Drug offenses	32 mo	48 mo	6 mo	36 mo
Weapons offenses	28 mo	38 mo	7 mo	35 mo
Other offenses	23 mo	38 mo	6 mo	37 mo

Note: Means exclude sentences to death or to life in prison. Sentence length data were available for 945,167 incarceration and probation sentences.

(**Bureau Of Justice Statistics**, Criminal Sentencing Statistics,
<http://www.ojp.usdoj.gov/bjs/sent.htm>)