Responding to Gun Violence

The Boxing Day shootings on Toronto’s Yonge Street that killed a 15-year-old innocent bystander and wounded six others placed a focus on gun violence during the recent federal election. There is an urgent need to respond to the terrible gun violence that produced 52 firearm homicides in Toronto in 2005. Nevertheless, the causes of gun violence are too complex and the need to respond effectively is too pressing for quick and simplistic fixes.

Had the despicable shootings occurred a month earlier, it is possible that Parliament would have enacted a private member’s bill that would have imposed mandatory minimum penalties of 5, 10 and 15 years for offences involving possession, discharge and wounding with a firearm respectively. The bill, Bill C-215, was amended in committee in late November 2005 to remove the mandatory 15-year sentence, but its remaining 5- and 10-year sentences have now been embraced by the Conservatives. Even the New Democratic Party is calling for increases in four-year mandatory minimum sentences.

The Liberal government pre-empted Bill C-215 by introducing Bill C-82 in November. It featured more modest increases of existing one-year mandatory minimum sentences to two years for various trafficking, smuggling and possession of loaded gun offences. It also featured increased powers for firearm prohibitions, parole ineligibility and the use of screens to protect witnesses, as well as new offences relating to the theft of firearms. Both bills died when Parliament was dissolved for the January 2006 election.

Before reliance is placed on mandatory minimum penalties, we should think about why the existing mandatory minimums are not deterring gun violence. The existing mandatory penalties are considerable and include the mandatory term of life imprisonment for murder; four-year mandatory minimums for a variety of crimes including manslaughter, attempted murder, intentionally causing bodily harm with a firearm and robbery; and one-year
mandated minimums for committing other indictable offences with a firearm and various offences relating to the possession or importing or trafficking of firearms if prosecuted by indictment.

The issue with any new mandatory minimum penalty is its marginal deterrent value. There is little evidence that existing mandatory penalties are deterring gang-related violence, and the existing criminological evidence suggests that new or increased mandatory sentences are not likely to deter. Sentence severity is not likely to influence a person who does not think he will be caught and does not care.

The answer, however, cannot be to maintain the status quo and a solution will require work and co-operation from all levels of government. Ontario has responded to the gun violence with a package that includes more money for police officers tasked to guns and gangs, the hiring of new Crowns, and three dedicated major crime courts for complex cases. These are positive developments, but prosecutors should think twice before using criminal organization offences given the unhappy experience with mega-trials in Manitoba, Quebec and Alberta. Police and prosecutors need to work on practical strategies to prevent and counter gang violence.

Cities and local police boards must work with community and faith groups to promote disapproval of gang lifestyles and to provide viable alternatives. This will require money, and provincial and federal governments must invest in the disadvantaged sectors of cities to ensure that parts of Vancouver, Regina, Saskatoon, Winnipeg and Montreal, as well as Toronto, do not become no-go areas that descend into violence, fear and despair.

Responding to gun violence will require increased engagement with the affected communities that are the source of both gangs and their victims. The affected communities are diverse across Canada and include Aboriginal, African-Canadian and Indo-Canadian communities in various parts of the country. These communities may also have the ability to provide the most effective disapproval of crime.

A recurring problem in Toronto has been a lack of co-operation by witnesses with the police. Alienation of some communities from the police needs to be addressed, as does the problem of witnesses being afraid to testify against gangs in their communities. Providing screens behind which witnesses can testify may be a start, but it is not enough to address why many witnesses will not co-operate.

The relation between schools, gangs and violence needs to be explored. We need to examine the hypothesis that mandatory suspensions and expulsions under Ontario’s Safe Schools Act, 2000, S.O. 2000, c. 12, ss. 306 and 309 may have contributed to a situation in which some young people are becoming thoroughly disenfranchised from mainstream Canadian society and some communities have become less safe. We also need to monitor the ability of the Youth Criminal Justice Act, S.C. 2002, c. 1 and other initiatives, including social programs, to respond to youth at risk for violence.
Charter rights and the same is true for gun violence. Stop and search powers are too important to be left to the intricacies of common law and Charter decisions by the courts.

There is no question that we must respond to gun violence, but we need to make every effort to ensure that our responses are smart, co-ordinated and monitored and adjusted to ensure effectiveness. The problem is far too serious and the harms far too grave to rely on simplistic, one-dimensional or politically expedient strategies.

K.R.

Congratulations

Although the Criminal Law Quarterly will lose him as a member of our editorial board, the public will be very well served by the appointment of Gary Trotter to the Ontario Court of Justice. Justice Trotter brings to the court many years of experience both as a talented appellate litigator and as an outstanding teacher and scholar at Queens University’s Faculty of Law. He is also Canada’s leading authority on the law of bail and has been actively involved in judicial education. We thank him for his seven years on our editorial board and wish him the very best.