

The Criminal Law Quarterly

Volume 53, Number 3

February 2008

Editorial

Rates of Imprisonment and Criminal Justice Policy

One of the most important distinctions between Canada and the United States is their respective reliance on imprisonment. As is well known, the United States incarcerates more people than any other country in the world. The most recent rate of imprisonment in the United States is 738 per 100,000 population. The staggering nature of this figure, one that produces more than 2.2 million prisoners, may produce a certain complacency in Canadian reactions to recent reports by Statistics Canada that the Canadian rate has recently increased from 107 per 100,000 population to 110 per 100,000 population.

The current imprisonment rate in Canada is still 17% lower than that of a decade ago. Canadian prison rates increased almost 25% between 1988 to the mid-1990s, but even that growth was less than occurred in the United Kingdom and Australia. At present, the United Kingdom has an imprisonment rate of 145 per 100,000 population while Australia has 126 per 100,000 population. Canada still uses prison with greater restraint than its more frequent comparators.

That said, Canadians should pay close attention to a number of bills before Parliament that if implemented could take the country in a more punitive direction. Bill C-2, increasing the term of mandatory minimum sentences for various firearms offences and imposing reverse onuses for bail in a number of firearm cases, has already been passed by the House of Commons. Gun control is an important factor in distinguishing Canada from the United States, and the use of guns in cities like Toronto is alarming. The existing mandatory minimum sentences of imprisonment for many gun crimes do not seem to be deterring gun crime and it is not clear that increasing such sentences will necessarily be effective.

Effective gun control requires a holistic approach that relies on import and production control, licensing and enforcement — not just

imprisonment. Bill C-24 sits uneasily with Bill C-2. Bill C-24 proposes to repeal the requirement to obtain a registration certificate for firearms, mainly long guns, that are not prohibited or restricted. It is questionable whether the long gun registry was worth its costs, but the government should take a firm stance on the control of handguns. Just as the prevention of terrorism is an understandable priority for the United States when it deals with Canada, so too should gun control be a priority when Canada negotiates border issues with the United States.

There are other measures before Parliament that could result in increased use of imprisonment. Bill C-25 proposes to reverse the Supreme Court's decision in *R. v. P. (B.W.)*, [2006] 1 S.C.R. 941, by providing denunciation and deterrence as sentencing purposes for young people. In that case, the court indicated that young offenders could be held accountable; that the cause of offending could be addressed; and that society could be protected without reliance on the concept of general deterrence, which would support increased sentences.

The *Youth Criminal Justice Act* has achieved impressive decreases in imprisonment rates but Bill C-25, if enacted, could affect these trends. Sentencing policy is a legitimate matter for Parliamentary intervention, but Parliamentarians should carefully consider whether it is necessary to include these new sentencing purposes that could dramatically increase the use of imprisonment for young people. Such increases will have a disproportionate effect on Aboriginal populations and likely on other minorities.

Bill C-26 is in some ways the most alarming of all the current bills before Parliament. It proposes to create a series of mandatory minimum sentences for a variety of drug offences under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19. Most of the mandatory minimums are for one or two years' imprisonment and do not apply to simple possession offences, so defenders of the legislation may argue that there is no cause for alarm. Nevertheless, the use of mandatory minimum sentences with respect to drug offences would establish a bad precedent.

Drug offences make up a far greater part of the court's business than firearms offences, and the quickest way that Canada could increase rates of imprisonment would be to enact more and more mandatory sentences. We have not had mandatory sentences for drug offences since the Supreme Court struck down the seven-year mandatory minimum for importing in *R. v. Smith*, [1987] 1 S.C.R. 1045. Alas, the number of mandatory sentences have been steadily increasing in Canada. They have often been enacted in response to concerns about horrific crimes but with little research or attention to their effects on sentencing tariffs and prison populations.

Mandatory minimum sentences transfer sentencing discretion from judges to prosecutors. Again, it is difficult to speculate about the effects of the many new mandatory sentences currently before Parliament. It is

possible that prosecutors will use these new offences with restraint and cases may be resolved in a manner that will avoid the mandatory minimum sentences. That said, though, the bills set a bad precedent because they stake Parliament's claim over the exercise of sentencing discretion.

Bill C-2, by increasing a number of mandatory sentences for firearm offences, illustrates that once a mandatory minimum sentence has been introduced, a certain inflationary logic often sets in as Parliament responds to apparent failures of the mandatory sentence to deter crime by increasing the severity of the mandatory sentence. The problem here, one that even advocates of deterrence accept, is that deterrence is a product not only of the severity of punishment, but also of its certainty and celerity.

Bill C-2 illustrates how once Parliament has staked its claim with a mandatory sentence, inflation in these prison terms will often follow. Faced with the need to respond to crimes, Parliamentarians often cannot resist the simple and dramatic fix of increasing the mandatory minimum penalty.

Hopefully Bill C-2, which has been passed by the House of Commons, will deter the scourge of guns in Toronto, Vancouver and elsewhere, but there is little basis for optimism given that mandatory sentences of imprisonment already existed for these horrific and frightening gun crimes.

Bill C-2 is also interesting because it demonstrates how left-of-centre opposition parties can support punitive measures. The Blair government in the United Kingdom was well known for a variety of punitive measures. Punitive strategies can be attractive to parties who fear being labeled soft on crime. In this vein, it is interesting that the Liberals appear ready to support another bill before Parliament, Bill S-3, which would restore investigative hearings and preventive arrests in the anti-terrorism provisions of the *Criminal Code*. The Liberals and all the opposition voted to allow these provisions to expire in February 2007, but the political climate has apparently changed and Bill S-3 is widely expected to pass in the new year.

It would be alarmist to predict that Canada is moving towards American rates of imprisonment. We may, however, be moving towards Australian or even British rates of imprisonment. A number of punitive bills presently before Parliament and their effects on Canada's so far modestly expanding prison populations deserve careful attention.

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