# CANADIAN POLICE ASSOCIATION

# BRIEF

# TO THE STANDING COMMITTEE ON JUSTICE

# AND THE SOLICITOR GENERAL

# ON BILL C-36

# AN ACT TO AMEND THE

# CORRECTIONS AND CONDITIONAL RELEASE ACT

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*Appearances:*
*Neal Jessop, Vice-President, CPA*
*Chairman of the Legislation Committee*

*James M. Kingston, Chief Executive Officer, CPA*
*Bob Brennan, Editor, CPA*
*Diane Lalonde, Administrative Secretary, CPA*

CANADIAN POLICE ASSOCIATION

L'ASSOCIATION CANADIENNE DES POLICIERS

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**TO THE STANDING COMMITTEE ON JUSTICE AND**

**THE SOLICITOR GENERAL ON BILL C-36**

**THE CORRECTIONS AND CONDITIONAL RELEASE ACT**

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| Chairman: | Bob Horner |
| Members: | Carole Jacques<br>Robert Nicholson<br>George Rideout<br>Jacques Tétreault<br>Blaine Thacker<br>Ian Waddell<br>Tom Wappel |

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# CANADIAN POLICE ASSOCIATION

## BRIEF ON BILL C-36

**STATEMENT:**

Mr. Chairman, we have read with considerable interest and with mixed reaction the contents of Bill C-36 and the comments made by the Honourable Doug Lewis, Solicitor General of Canada, Mr. Ole Ingstrup, Commissioner C.S.C., Mr. Fred Gibson, Chair National Parole Board and Mr. Ron Stewart, Correctional Investigator, concerning various provisions of the Act.

The comments made by the CPA are based on the considerable experience of myself and other active police officers with the sentencing and parole of criminally convicted persons. You may assume, and rightfully so, that the overwhelming bulk of this experience has been negative, as we see only the failures of the parole system and we, in fact, work

to save the victims of these failures. As a result of this experience, we take a very hardened approach toward, for example, any parole of violent offenders, and are very suspect of most rehabilitative programs. We are reinforced in our views by a majority of citizens that we speak to, who demand that violent offenders be incarcerated for their entire sentence as prescribed by law. I read with interest a quote by the Honourable Minister, Mr. Lewis, who stated in this forum on November 26, 1991:

> "I agree with my honourable friend from Brant, when he questions the extremely high levels of incarceration that we see in the US, more than four times ours on a per capita basis. The US tendency to lengthen sentences and eliminate parole is costly in both dollar and human terms and so far it has failed the most important test of all - the enhancement of public safety."

The Minister should be reminded that it was the American public who demanded longer terms and no parole for violent offenders who had been the recipients of flawed and inadequate alleged rehabilitative programs. Those legislators who did not respond to the wishes of the electorate at large (as opposed to special interest groups) were simply voted out of office. As for the cost of incarcerating repeat and violent offenders, police officers ask the question. **"Does anyone care about the physical, mental and financial costs of the victims of these individuals?"** Apparently not, as we seldom see their plight addressed.

It is obvious to our delegation, after the review of this Bill and its provisions that financial consideration took precedence over the best interests of the public. The C.S.C. has gone so far as to estimate general increases in prison population as a result of the provisions of this Bill.

However we, as Police Officers, are obliged to be realistic and we will attempt to address changes in the Bill in realistic terms. Prior to addressing our concerns, we want to make it abundantly clear that our experiences with local parole officers in our various jurisdictions (particularly mine) have been in recent years very positive. Where there is a question of public safety, our experience has been that local C.S.C. officers act quickly and with resolve to protect the public and we hope that they are permitted to continue to have the authority to carry out their onerous tasks with confidence and decency.

We will attempt to comment on Bill C–36 as areas of principle are presented.

## (1) PART I

## INSTITUTIONAL AND COMMUNITY CORRECTIONS

Section 4 (a) provides that the protection of society be the paramount consideration in the corrections process. We

sincerely hope that this consideration will be kept squarely in the minds of all those who are in the position of releasing repeat, violent or potentially violent prisoners and/or drug traffickers.

**WORK RELEASE PROGRAMS**

It has been our experience that consistently violent persons including persons with multiple convictions of a violent nature seldom benefit from Work Release Programs. Those persons who have been convicted of property crimes, committed because the perpetrator was uneducated and/or unemployed because of a lack of skills should be assisted in these programs. If these types of persons are "offenders who are classified as minimum or medium security" then we would agree with the proposal.

## PART II

## CONDITIONAL RELEASE

Section 101(a) again describes that the protection of society be the paramount consideration in the determination of any case. This statement, however, is contradicted in 101(d) which states "That Parole Boards make the least restrictive determination consistent with the protection of society." One is therefore led to the conclusion that Parole Boards are receiving direction, in fact, which is no direction at all. A conclusion can be drawn that Parole Boards will err in favour of the offender and at the expense of society. It is our opinion that 101(d) should be removed and the emphasis left with 101(a).

## UNESCORTED TEMPORARY ABSENCE

It is sufficient to say that we find it particularly offensive that unescorted temporary absence may be granted by the board, to offenders listed under section 107(1)(e)(i) and (ii) and some offences set out in (iii) schedule I or II. We are not aware of

the success rate of the granting of such passes, but we are certainly aware of some of the more notable failures in the system. It is our opinion that the general public would not favourably view the granting of passes in situations as described above, if the public was aware of the frequency of same.

## DAY PAROLE AND FULL PAROLE

### FULL PAROLE

The proposal that sentencing judges be given authority in law to set full parole eligibility at one half of the sentence for violent offenders and serious drug offenders, instead of one third, is a positive but cosmetic change. It is a fact now, that most violent offenders are serving about one half of their sentences before parole. A more realistic and effective approach would allow judges to mandate the serving of two thirds of a sentence before eligibility for full parole, and to amend eligibility for day parole accordingly, to a period of six months before eligibility

for full parole. The approach that we are taking here is somewhat softer than many citizens demand. Time after time we hear from angry citizens that time served should equal the sentence imposed, particularly in areas of violent crime and the break and enter of personal residences.

**APPLICATION FOR JUDICIAL REVIEW**

**CC SECTION 745(i)**

In many United States jurisdictions, a life sentence means incarceration for the remainder of one's natural life. In Canada many persons are or were of the understanding that a life sentence for first degree murder meant twenty-five years incarceration. This impression, of course, was recently publicly destroyed, obviously, when persons convicted of first degree murder, eventually reached an eligibility date to apply for consideration for parole under Section 745 of the Criminal Code. There are many constituents who are very vocal in requesting that a life sentence be exactly that, however if all

factors are considered a more reasonable compromise would elevate the application for eligibility consideration date to twenty years from the present fifteen. In addition, for those in the system now under a sentence for first degree murder, more stringent law under Bill C–36 should apply.

**PAROLE REVIEW**

It is proposed that first time penitentiary inmates who are not serving sentences for violent offences would receive a streamlined parole review before their first eligibility date. A panel of board members would review the case without a hearing to determine whether there were reasons to believe that there was a risk of violence. If there was not, these offenders would be released under supervision in the community after serving one third of their sentence.

On the surface, this proposal seems reasonable. However, we know as Police Officers, that many career criminals, are not

sentenced to penitentiary until relatively late in their lives. By the time they receive a penitentiary term they may have served multiple maximum sentences (two years less one day) in provincial correctional institutions, where they may have served a maximum of two thirds of their sentence(s) (sixteen months). We are speaking now for example of the chronic offender whose stock in trade is residential break–ins, and other property related crimes. Under this streamlined system, it is conceivable and quite probable that an offender sentenced to three years in penitentiary could do less time (1 yr. = 1/3), than an offender sentenced to two years in a provincial institution (sixteen months = 2/3). In fact, <u>now,</u> you may ask a convicted offender, as to his choice of receiving a maximum provincial sentence (two years less a day) or three years in a federal institution and he will choose the federal sentence, because he knows that he is likely to do less time, and in addition, complete that sentence in a minimum security federal setting as opposed to a maximum security provincial setting. You

must also be aware that accelerated parole reviews at both the provincial and federal levels are a convenient outlet to relieve overcrowding situations in our correctional facilities, and this fact will be widely recognized by an already angry public. Our citizens view the violation of the sanctity of their homes by offenders as a violent and despicable act and although a house break–in is considered a property crime, those who designed the criminal code attached a maximum life sentence upon conviction of the offence.

Surely parole authorities and above all the Canadian Parliament should recognize that streamlined parole in these types of "non violent" offences is not the answer to the problem nor should it be considered as an alternative to an overcrowding situation brought on by longer sentences served by more violent criminals.

## DETENTION OF DRUG OFFENDERS

Any initiative by parole authorities to keep drug traffickers locked up is a welcome response. Drug traffickers and money launderers prey upon the young and the psychologically weak and/or confused in our society. We can only hope that parole authorities will have the strength of conviction to use the provisions of the statute to its fullest extent.

## ABOLITION OF EARNED REMISSION

The rationale used here is that since the vast majority of offenders earn all or nearly all remission, a change to statutory release would not significantly change the amount of time served by offenders.

We would suggest that if the "vast" majority of offenders are earning all their remission then perhaps remission is too easily earned, and in fact figuratively speaking "the tail may be wagging the dog" in our correctional institutions. Surely

acceptable behaviour can be distinguished from behaviour that is dangerous, aggressive or disruptive. We would view the abolition of earned remission as an abdication of responsibility by Correctional Service Canada, and would have to be convinced that a fixed statutory release is a better system considering the fact that outside supervision suffers from severe "person power" shortages in C.S.C. We have spoken to local parole authorities who tell us, without doubt, real supervision of those released on mandatory supervision is relatively difficult, and perhaps impossible.

**PAROLE BY EXCEPTION FOR DEPORTATION**

If this proposal would eliminate advance parole for offenders subject to a deportation order under the Immigration Act or an order to be surrendered under the Extradition Act or the Fugitive Offenders Act where the order requires the inmate be detained until deported or surrendered then we would agree. Potential foreign national offenders and fugitives, should know

that if convicted in Canada, they will be subject to a serving a full sentence, and then to be deported to face whatever charges may await them in a foreign country. It is far too easy at this time for a deported offender, to re-enter Canada and begin committing offences again.

**INCREASED PUBLIC ACCESS TO PAROLE HEARINGS**

It is our considered view that the proposal in this area is inadequate and restrictive. We see no reason why victims of violent offenders should not be permitted to attend a parole board hearing, make representations to the board and be represented by legal counsel. It is high time that Parole Boards come out of isolation and hear from victims or their immediate family, if the victim is deceased. If the board concludes that there may be a danger factor, then adequate security should be provided in a location suitable for the needs of the board. The presiding board should have the authority to conduct the hearing in an orderly and rational manner. Those

who conduct themselves in an unacceptable manner should be removed. If the offender is unable or unwilling to face the victim or the family then the offender is obviously not mentally prepared to accept any condition that the board might impose, and parole should be denied.

## CONCLUSION

We have been very critical of Bill C–36. The criticism is based on years of watching violent persons returned to the community too early, only to see them recommit offences of a serious nature, or escape apprehension for an extended period of time simply because they learned to be more efficient criminals while incarcerated. Some persons of course commit offences, do their time, are paroled, and never come to our attention again. However, there appears to be a prevalent naivety in the Correctional Service in some areas and this naivety at times is also seen in the decisions of Parole Boards. We, of course do not find comfort in seeing persons thrown into jails and coming

out more demented than when they arrived. However, we see some rehabilitative programs as much less successful than some segments of the justice system, who are disconnected from involvement with the violent criminal until the criminal is convicted again. We would urge you to rebuild this Bill with less emphasis on the welfare of offenders and more emphasis on the safety of the law abiding public.

## APPENDIX "A"

Last September, I celebrated twenty-two years as an active Police Officer, divided almost evenly between uniform and plain clothes. I've walked the beat, driven the sector car, worked in both drug enforcement and criminal investigation, and most recently as a supervising Staff Sergeant in the Detective Office. All of that service has been in a medium sized Ontario city, (sporting this country's fifth highest crime rate), situated on the US Canada border directly across from an American metropolis. My entire police experience has been in dealing with crime, criminals, courts, jails, crown attorneys, defense counsel, judges, and victims.

If someone were to ask if, the war on crime was being won, I would say definitely and unequivocally, "NO". In fact, it would be my view we are rapidly approaching a crime situation in many Canadian cities that closely parallels our American counterparts.

The answer to the crime problem is simple; we must eliminate poverty, hunger, prejudice, violence, drug use, and mental instability. Additionally, we should provide quality education for all and stable employment to everyone capable of working. Then and only then, will the need for police be reduced and Police Officers can rest secure in the knowledge all is well with

the world. You might say these suggestions are "pie in the sky", and I would agree. However, as an old cop with some extensive experience, let me propose a few practical suggestions that just might improve the situation.

**Accountability and Responsibility**

Stop blaming the police for the rising crime rate unless you are prepared to give them the resources to identify, and fight, the problem. Major urban police forces in this country are understaffed and overburdened. Police Officers distrust and resist trendy new programs which simply move human resources from one area of responsibility to another, at the whim of whoever is currently in charge. We watch as resources are randomly shunted from traffic problems, to break in problems, to robbery problems, etc., etc.. No one ever admits we need help in all these areas to control and suppress crime, so we continue of applying band aids to the gaping wounds of crime.

No doubt you have heard of "Community based" or "Community Oriented" policing. Many people talk of the concept; few have studied it sufficiently to know what it really means. It will fail as a worthy idea (which it is) because it requires extensive interaction with individuals in the community

which is costly. It also requires delegating responsibility to street cops, and management, as it exists now, will not relinquish that responsibility to mere Constables.

**Drugs**

In the late 1960's and through the 1970's, Police Officers, in general, were shocked at the spread and use of illegal drugs such as marijuana, methamphetamine (speed) and cocaine. They knew, having dealt first hand with drug and alcohol abusers, that any expansion in illegal drug use would be a disaster for the community and a prime source of revenue for the committed major criminal. The majority of society, however, including lawyers, judges, social workers, and lawmakers, called these drugs and their use "Recreational". They generally condoned their use, with minimal fines and in some cases, condoned trafficking in the substances with fines and/or minimal jail sentences. Society now recognizes what we knew all along (and tried to tell our masters) that the use, and sale, of illegal drugs threatens the very fabric of our civilization.

Cocaine cartels now control entire countries, destroy major legitimate banking institutions, and murder their opposition with reckless abandon. In some countries, the cartels dictate the

style of luxury jail they are to be housed in while they carry on their illegal activities uninhibited. "Crack", a most addictive form of cocaine, is being bought and sold in unprecedented quantities in my own community, by young people, who have no hope of shaking the addiction. They are, and will become, people who require hundreds of dollars a day to support a drug habit; which in turn will be supported by criminal activity, including violence.

We must educate our youth about all drugs, and the dangerous results for them personally, if they abuse these substances. Secondly, we must send a message to drug traffickers, and their associates the money launderers, that convictions for trafficking will result in lengthy jail terms measured in years, and not days or months. Additionally, there will be no sanctuary for the profits of trafficking and money gleaned from the sale of illegal drugs will be returned to the community for drug treatment and law enforcement.

In order to accomplish these goals, someone is going to have to jar the federal, provincial, and municipal governments into providing funds to deal with this danger. Politicians in general, support this initiative but as a rule, that support is lip service only. Responsibility is passed from federal to provincial, to municipal authorities, with no *additional* funds being granted;

the result is a terrible frustration as we watch our youth go down the drain into the garbage can of life.

## COURTS

### THE SUPREME COURT OF CANADA

In a recent decision the Supreme Court ruled four to three in favour of returning two accused murderers, (Mr Ng and Mr Kindler), to the United States in order to face trial for their alleged crimes, knowing they might face the death penalty. We were very disturbed to learn three dissenting justices favoured permitting these individuals to remain in Canada. One of my police associates put the point most succinctly when he said, "Well, if they're in favour of letting him (Mr Ng) stay here, then perhaps they, (the dissenting justices), would let him stay at their house(s) when he is released from Canadian custody." That Police Officer, and many others, are practical people concerned with reality and their implication, as mine, is that some of the Supreme Court justices are isolated from the real world and that is manifested in their thinking. We believe, as they do, in individual human rights but there comes a time when the public good supersedes the rights of indicted and/or convicted murderers. It is time that those justices spend some time in our squad cars, in the heat of summer on a Friday and Saturday night. Such an experience would bring their lofty thinking back to reality.

**THE CRIMINAL COURTS**

In most major urban centres of Ontario, if not Canada, the criminal courts are operating at a 19th century pace, in a 20th century reality. Our Canadian constitution, assuming that justice delayed is justice denied, makes it clear a person accused of a crime has a right to a speedy trial. The Supreme Court of Canada, in a recent decision, guaranteed that right. Later, a member of that court, in a different forum, said they (the Supreme Court) didn't really mean the conclusion to be interpreted in that fashion. It is our considered opinion that everyone accused of a crime should be tried within ninety days of being arraigned. Such a rule would force all those involved in the justice system to work longer and harder.

The benefits are numerous. Consider for example, a victim of a violent crime who must wait for up to two years to testify against his/her assailant before continuing with a normal life. The trauma and the anxiety felt over that period, for some people, has a life long adverse affect. In addition, the accused is likely to be free on bail during this time and may, if guilty, be committing more offenses of the same nature. If on the other hand, the accused is innocent, he or she will also suffer great trauma and anxiety while awaiting trial.

Is it time to gear the courts to the well being of the victim, the

best interests of the accused and the overall benefit to society. The interests of the judges, lawyers, and police must become secondary.

**THE YOUNG OFFENDERS ACT**

This act was designed to separate the youthful offender before and after trial, from hardened, habitual or dangerous criminals. In addition, it would provide for alternative methods of dealing with convicted youth, according to the nature, type, and seriousness of the crime. It also provided for immediate notification of parents or legal counsel, upon arrest, or detention, of the youthful offender. All things considered, it was intended to be remedial in nature, altering the conduct of the young offender, before he/she became entrenched in a criminal lifestyle. The Young Offenders Act, however, has failed to provide the intended results. On the contrary, it rewards silence and deceit when the youth is questioned by legitimate police authority, in the presence of a parent or legal representative.

If the "telling of truth" is a worthwhile attribute to be nurtured in a young person, then those who designed this act never heard or understood the meaning of the word "truth". As a young person, when I made a serious mistake because of my ignorance or inexperience, I was encouraged to be truthful

about the incident and if I was, and accepted the responsibility for my actions, those who meted out the penalty were suitably lenient. This simple premise is not followed in the administration of the Young Offenders Act. However, leniency *alone* is rampant in the administration of this Act.

It is not uncommon for a convicted young offender, who has broken into another person's home and violated the sanctity of that home, to be sentenced to a term of a few days in "Open Custody". It is also not uncommon for that offender to walk away from that custody and commit more offenses before apprehension. This attitude of leniency is widely known amongst repeat young offenders and we, as Police Officers, are reminded by them during interviews that the justice system will not take their crimes seriously.

The result, overall, amongst our youth is disdain and disrespect for the law. This attitude continues into adult life and by the time the young offender becomes an adult offender, the pattern is set and the die is cast.

We do not view the Young Offenders Act as a successful and productive statute and feel it should be scrapped and replaced with an act that promotes and rewards honesty, decency and respect for others and their property.

## CONCLUSION

A recent poll suggested Canadians generally are satisfied with the overall performance of their Police Officers. In some areas of the country, this satisfaction reached almost ninety percent. Personally, I was somewhat shocked that our citizens awarded us such confidence. I know there is a large gap between the service we could provide and that which we presently provide. All we need to close this gap are more resources, better allocated, and stronger support from the rest of the justice system.

Another recent poll suggests that approximately seventy five percent of Canadians feel courts do not treat criminals harshly enough. As Police Officers, we agree, particularly in the area of violent crime. It's time for our politicians to pay attention, to the opinions and feelings of most Canadians. The result of an overburdened, inept, and incompetent justice system has manifested itself with our neighbours in the United States. We are sowing the seeds of a similar system in our own country and if we don't reverse the process, we will reap a dangerous harvest.

by Neal Jessop