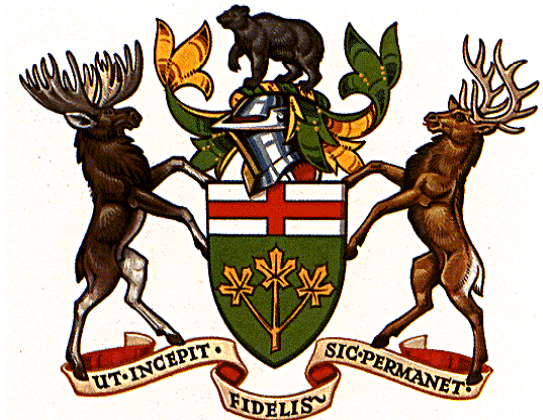


SENTENCING: A New Regime

Version 2.0

Justice Paul Robertson
Ontario Court of Justice



- **Bill C – 10**
- **Safe Streets and Communities Act**
- Collection of 9 Bills
- Died on the Order Paper of the 40th Parliament
- History
 - First reading September 20, 2011
 - Passed House of Commons December 5, 2011
 - Passed Senate March 1, 2012
 - Royal Assent March 13, 2012
 - Proclaimed in Force ...
- Status
- 5 Parts

5 Parts

- Part 1 – Justice for Victims of Terrorism Act
- Part 2 – Sentencing
- Part 3- Post Sentencing (Pardons/Record Suspensions)
- Part 4 – Youth Criminal Justice Act
- Part 5- Immigration and Refugee Protection Act

Bill C- 10 Part 2 Sentencing

- Part of an ongoing statutory reform of sentencing

Bill C- 10 Part 2 Sentencing

- INCLUDES:
- Better Protecting Children and Youth from Sexual Predators Act (former Bill C- 54)
- Increasing Penalties for Serious Drug Crimes (former Bill S-10)
- Ending House Arrest for Property and Other Serious Crimes (former Bill C-16)

- **Bill C- 10 :**

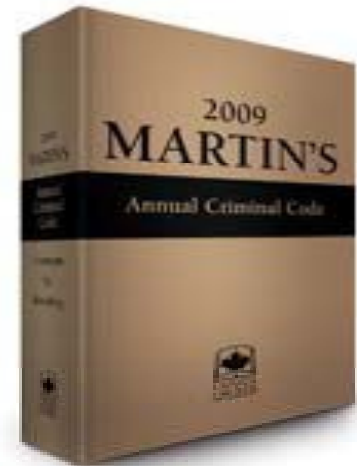
- Signals movement towards a model of one sentence fits all
- Movement towards greater incarceration
- Introduces new and increases existing MMP
- Significantly restricts the use of Conditional Sentences

MANDATORY MINIMUMS

Lots and lots of them



OFFENCES UNDER THE CRIMINAL CODE



Section 742.1

Current section provides that a conditional sentence may be imposed only if:

- **No minimum sentence is prescribed by law**
- The court imposes a sentence less than 2 yrs
- The court is satisfied that serving the sentence in the community would not endanger the safety of the community
- The sentence is consistent with the fundamental purpose of and principles of sentencing

Section 742. 1

In addition:

- Conditional sentences are not available for certain indictable offences that are punishable by a maximum of 10 years or more, namely:
 - Serious personal injury offences; defined in s. 752
 - A terrorism offence
 - A criminal organization offence

Conditional Sentences Under Bill C - 10

- The previous pre-conditions to the imposition of a C.S. remain with one exception:
 - the requirement that the offence not be a “serious personal injury offence” is abolished

New Section 742.1

- The following restrictions however are added:
- C.S. is not available for an offence that :
 - Has a maximum sentence of 14 years or more
 - Includes therefore manslaughter, aggravated assault, arson, break and enter of a dwelling house and fraud over \$5000

- It is an offence prosecuted by indictment for which the maximum sentence is 10 years and which:
 - Results in bodily harm
 - Involves drug production, importing or trafficking
 - Involves the use of a weapon

- Nor is it one of the following offences prosecuted by way of indictment:
 - Criminal harassment
 - Sexual assault
 - Theft over \$5000
 - Motor vehicle theft
 - B&E of a place other than a dwelling house
 - Being unlawfully in a dwelling

- Or one of the following prosecuted by indictment:
 - Kidnapping
 - Prison breach
 - Trafficking in persons
 - Abduction of person under 14 by a stranger
 - Arson for a fraudulent purpose

- What is the effect?
 - Amount 40 additional offences are now ineligible for conditional sentences

MANDATORY MINIMUMS

- Increases or imposes mandatory minimums for certain sexual offences **against children**
- By imposing MMP, the availability of a conditional sentence for these offences is eliminated

New Mandatory Minimums

- Sexual assault of a child s. 271
- Sex. assault with a weapon, etc. of a child; s. 272
- Aggravated sexual assault of a child s. 273
- Incest involving a child
- Luring a child through use of a computer
- Bestiality in the presence of or involving a child
- Exposure to a child
- *Child being defined as less than 16 years*

Bill C- 10 Part 2 Sentencing

- Creates two new offences:
- Making sexually explicit material available to a child (transmits, makes available, distributes or sells) to facilitate the commission of a specified offence
- Agreeing or arranging, by any means of telecommunications, with a person to commit a sexual offence against a child

- Extend the concept of luring
- Recognizes the role of home computers and social media in the offence of luring
- Captures grooming activities
- Moves the line of culpability into what before might have been preparation

Both New offences:

- Hybrid offences
- Both have mandatory minimums regardless of election

Constitutional Considerations

Issue of constitutional validity of mandatory minimum:

- R. v Nur [2011] O.J. 3878 (SCJ) Code, J.
- R. v. Smickle [2012] ONSC 602 (SCJ) Molloy, J.

OFFENCES UNDER THE CONTROLLED DRUGS AND SUBSTANCES ACT



Controlled Drugs and Substances Act

Controlled Drugs and Substances Act

- Bill C- 10 establishes mandatory minimum sentences for Schedule I and II drugs for the offences of:
 - Production
 - Trafficking
 - PFTP (trafficking)
 - Importing and exporting
 - PFTP (exporting)
- NB: there are no MMP for simple possession

Controlled Drugs and Substances Act

Bill C- 10

- The mandatory minimum sentence is dependent on the presence of aggravating factors, themselves categorized in lists
- A modified Sentencing Grid

Aggravating Factors - List A

- Offences committed:
 - Carried out for organized crime purposes
 - Involving the use or threat of violence
 - Involving the carrying, use or threat of use, of a weapon
 - By someone previously convicted of a designated drug offence
 - By someone who had served a term of imprisonment for a designated drug offence within the last 10 years

Aggravating Factors – List A

- Where the offence is importing, exporting or PFTP(exporting), where the offence was committed:
 - Through the abuse of position of authority or trust
 - By abusing rightful access to a restricted area

Aggravating Factors – List B

- Where the offence is committed:
 - In or near a school, in or near an area frequented by youth or in the presence of youth
 - In concert with a youth (e.g. by using a youth)
 - In relation to a youth (e.g. selling to a youth)
 - In a prison

Aggravating Factors – Health and Safety (it is like a List C)

- Where, in committing the offence:
 - The accused used real property belonging to a third party
 - Production was a potential public safety hazard in a residential area
 - Production was a potential security, health or safety hazard to children who were in or in the immediate area of where the offence was committed
 - The accused placed or set a trap

Drug Treatment Alternative

- S. 10(4) added:

“A court sentencing a person who is convicted of an offence under this Part may delay sentencing to enable the offender

(a) to participate in a drug treatment court program; or

(b) to attend a treatment program under ss. 720(2) of the Criminal Code

Drug Treatment Alternative

- S. 10 (5) added:

“If the offender successfully completes a program under subsection (4), the court is not required to impose the minimum punishment ...”

CONDITIONAL SENTENCES

- Well, what can I say....





R.I.P.

Where are we going from here?

Chance GO DIRECTLY
TO JAIL



DO NOT PASS GO, DO NOT COLLECT \$200

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“This (Bill C-10) is not the end; this is just the beginning of our efforts in this regard.”

- - Justice Minister Rob Nicholson (Sept, 2011)