Bill C-27 Dangerous offenders

Bill C-27 passed Second Reading in the House of Commons on May 4, 2007, and has been referred to the Standing Committee on Justice and Human Rights.

Bill C-27 amends the dangerous offender and long-term offender provisions in the *Criminal Code* (Part XXIV). Being designated a dangerous offender results in the imposition of incarceration for an indeterminate period.

The Canadian Criminal Justice Association states that, if passed, Bill C-27 would do three things:

1) broaden the application of the dangerous offender legislation, most notably by reducing the requirements for a finding of dangerousness by allowing an application in cases of offences which would be subject to a sentence of only two years or more (rather than 10 years);
2) create a presumption that the conditions of a dangerous offender have been met by the mere fact that the person has three convictions for "primary designated offences" with sentences of two years or more. The onus is then put on the person to prove, on a balance of probabilities, that despite the convictions, he/she should not be declared a dangerous offender – this is known as "reverse onus"; and
3) remove the discretion of judges in relation to holding a dangerous offender hearing, remanding a person for dangerous offender assessment, and declaring the person to be a dangerous offender.

Under the current provisions in the *Criminal Code*, only convictions for "serious personal injury offences" for which a person may be sentenced to imprisonment for 10 years or more may form the basis of a dangerous offender application. There are two categories of a "serious personal injury offence" defined under s. 752: 1) an indictable offence involving the use or attempted use of violence against another person, and 2) sexual assault, sexual assault with a weapon, or aggravated sexual assault.

Bill C-27 would add offences which can then be used in determining whether to declare a person to be a dangerous offender. Specifically, Bill C-27 proposes amending s. 752 to include two new categories of offences: "designated offences" and "primary designated offences". There are more that 25 offences listed as designated offences, including child pornography, assault, removal of a child from Canada, hostage taking, and robbery. Note that a designated offence also includes a primary designated offence. There are more than 12 offences lists as primary designated offences, including sexual interference, incest, attempting to commit murder, sexual assault, and kidnapping. Offences under either category are not subject to a maximum period of incarceration of 10 years or more.

If Bill C-27 is passed into law, a prosecutor will be able to make a dangerous offender application where the person has been convicted of a serious personal injury offence that is a designated offence and where that person had been convicted twice previously of a

designated offence and given a sentence of at least two years for each of those convictions.

Under the current provisions in the *Criminal Code*, judges have discretion when making dangerous offender determinations. Bill C-27 would take away that discretion and would require judges to order an assessment of the person if an application for dangerous offender status is made, and to declare the person a dangerous offender if satisfied that the criteria under s. 753(1)(a) and (b) are met. The criteria include whether the person poses a danger to another person or has a pattern of persistent aggressive behaviour showing a substantial degree of indifference in respect of the consequences of her/his behaviour or has shown a failure to control her or his sexual impulses. No changes to the criteria have been proposed under Bill C-27.

Commentary

The Canadian Criminal Justice Association states that the current dangerous offender provisions in the *Criminal Code* are adequate to meet the need to impose an indeterminate sentence in certain serious cases.

One concern about Bill C-27 raised by the CCJA is that the very broad offence categories included as “designated offences” have the potential to create a situation in which a person who has engaged in some “relatively minor” offences may be subject to a dangerous offender application.

As well, the CCJA states that putting the onus of proof on defendants (“reverse onus”) seriously disadvantages defendants who, because of their limited financial means, may have difficulty accessing to community supports and expert witnesses, for example.

Finally, the CCJA notes the danger in limiting judicial discretion in that judges may be more likely to hand down sentences of two years less a day in order to get around the conditions for a dangerous offender application. As persons sentenced to periods of incarceration of less than two years are held in provincial facilities this would further tax the provincial prison system.