Legislative Summary **LS-526E**

BILL C-9: AN ACT TO AMEND THE CRIMINAL CODE (CONDITIONAL SENTENCE OF IMPRISONMENT)

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LEGISLATIVE HISTORY OF BILL C-9

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	4 May 2006	First Reading:	
Second Reading:	6 June 2006	Second Reading:	
Committee Report:	24 October 2006	Committee Report:	
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Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL C-9: AN ACT TO AMEND THE CRIMINAL CODE (CONDITIONAL SENTENCE OF IMPRISONMENT)*

Bill C-9, An Act to amend the Criminal Code (conditional sentence of imprisonment) was given first reading in the House of Commons on 4 May 2006. The bill amends section 742.1 of the *Criminal Code*(1) to provide that a person convicted of an offence prosecuted by way of indictment for which the maximum term of imprisonment is 10 years or more is not eligible for a conditional sentence.

BACKGROUND

A. General

Conditional sentencing, introduced in September 1996, allows for sentences of imprisonment to be served in the community, rather than in a correctional facility.(2) It is a midway point between imprisonment and sanctions such as probation or fines. The conditional sentence was not introduced in isolation, but as part of a renewal of the sentencing provisions in the *Criminal Code*. These provisions included the fundamental purpose and principles of sentencing. The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The renewed sentencing provisions set out further sentencing principles, including a list of aggravating and mitigating circumstances which should guide sentences imposed.(3)

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) R.S.C. 1985, c. C-46.

(2) Conditional sentences were introduced by Bill C-41, now S.C. 1995, c. 22, proclaimed in force on 3 September 1996, amending the *Criminal Code*. Amendments to the conditional sentencing regime were made by Bill C-51, *An Act to amend the Criminal Code, the Controlled Drugs and Substances Act and the Corrections and Conditional Release Act*, S.C. 1999, c. 5. The relevant part (clauses 39-42) came into force on 1 July 1999.

(3) This legislative summary is based, in part, on Robin MacKay, *Conditional Sentences*, PRB 05-44E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 21 December 2005, http://lpintrabp.parl.gc.ca/lopimages2/prbpubs/bp1000/prb0544-e.asp.

The primary goal of conditional sentencing is to reduce the reliance upon incarceration by providing an alternative sentencing mechanism to the courts. In addition, the conditional sentence provides an opportunity to further incorporate restorative justice concepts into the sentencing process by encouraging those who have caused harm to acknowledge this fact and to make reparation.

At the time of their introduction, conditional sentences were generally seen as an appropriate mechanism to divert minor offences and offenders away from the prison system. Overuse of incarceration was recognized by many as problematic, while restorative justice concepts were seen as beneficial. In practice, however, conditional sentences are sometimes viewed in a negative light when used in cases of very serious crime.(4)

Concern has been expressed that some offenders are receiving conditional sentences of imprisonment for crimes of serious violence, sexual assault and related offences, driving offences involving death or serious bodily harm, and theft committed in the context of a breach of trust. While allowing persons not dangerous to the community, who would otherwise be incarcerated, and who have not committed serious or violent crime, to serve their sentence in the community is widely believed to be beneficial, it has also been argued that sometimes the very nature of the offence and the offender require incarceration. The fear is that to refuse to incarcerate an offender can bring the entire conditional sentence regime, and hence the criminal justice system, into disrepute. In other words, it is not the existence of conditional sentences that is problematic, but, rather, their use in cases that appear to justify incarceration.

B. The Legislative Basis for Conditional Sentencing

The provisions governing conditional sentences are set out in sections 742 to 742.7 of the *Criminal Code*. These set out four criteria that must be met before a conditional sentence can be considered by the sentencing judge:

1. The offence for which the person has been convicted must not be punishable by a minimum term of imprisonment;

2. The sentencing judge must have determined that the offence should be subject to a term of imprisonment of less than two years;

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(4) Alberta Justice and Attorney General, *The Conditional Sentence of Imprisonment: The Need for Amendment*, 17 June 2003.

3. The sentencing judge must be satisfied that serving the sentence in the community would not endanger the safety of the community; and

4. The sentencing judge must be satisfied that the conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 of the *Criminal Code*.

Insofar as the fourth criterion is concerned, among the objectives of sentencing are:

- The denunciation of unlawful conduct;
- The deterrence of the offender and others from committing offences;
- The separation of the offender from the community when necessary;
- The rehabilitation of the offender;
- The provision of reparation to victims or the community; and
- The promotion of a sense of responsibility in the offender.

The fundamental principle underlying sentencing is proportionality – the sanction imposed by the court must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Among the other sentencing principles are that aggravating and mitigating factors be taken into account, that there be similarity of sentences for similar offences, that the totality of consecutive sentences should not be unduly long, and that the least restrictive sanction short of incarceration should be resorted to whenever possible.

In addition to meeting the criteria set out above, conditional sentences involve a number of compulsory conditions, as set out in section 742.3 of the *Criminal Code*. These conditions compel the offender to:

- Keep the peace and be of good behaviour;
- Appear before the court when required to do so;
- Report to a supervisor where required;
- Remain within the jurisdiction of the court, unless written permission to go outside that jurisdiction is obtained from the court or the supervisor; and

- Notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.

Furthermore, optional conditions are designed to respond to the circumstances of the individual offender. Such conditions may include an order that the offender abstain from the consumption of alcohol or drugs, abstain from owning, possessing or carrying a weapon, perform up to 240 hours of community service, or any other reasonable condition that the court considers desirable for securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of another offence. The court must ensure that the offender is given a copy of this order, and an explanation of the procedure for changing the optional conditions and the consequences of breaching the conditions.

Section 742.6 of the *Criminal Code* sets out the procedure to be followed when one or more of the conditions of a conditional sentence is breached. The section contemplates that the allegation of the breach may be made out by documentary evidence. The allegation must be supported by a written report of the supervisor including, where possible, signed witness statements. The offender must be given a copy of this report. If the court is satisfied that a breach of a condition has been proved on a balance of probabilities, the burden is then on the offender to show a reasonable excuse. Where the breach is made out, the court may take no action, or change the optional conditions, or suspend the conditional sentence for a period of time and require the offender to serve a portion of the sentence and then resume the conditional sentence with or without changes to the optional conditions, or terminate the conditional sentence and require the offender to serve the balance of the sentence in custody.

C. Suspended Sentences and Probation Orders

As an alternative to the possibility of imposing a conditional sentence, a court may suspend sentence and impose a probation order. Section 731 of the *Criminal Code* indicates that, where a person is convicted of an offence, a court may, having regard to the age and character of the offender, the nature of the offence, and the circumstances surrounding its commission, suspend the passing of sentence and direct that the offender be released on the conditions prescribed in a probation order. This possibility is open to the court only if no minimum punishment is prescribed by law.

The court has the power to revoke a suspended sentence where the offender is convicted of an offence while on probation. The court also has the option of directing that the offender comply with the conditions prescribed in a probation order, in addition to fining or sentencing the offender to imprisonment for a term not exceeding two years. The term of imprisonment may be a conditional one, in which case the probation order comes into force at the expiration of the conditional sentence. A court may also make a probation order where it discharges (either absolutely or conditionally) an accused under subsection 730(1). The maximum period of probation is three years.

As with conditional sentences, there are mandatory and optional conditions for a probation order. Section 732.1 of the *Criminal Code* states that the mandatory conditions are that the offender keep the peace and be of good behaviour, appear before the court when required, notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

The optional conditions available to the court include a requirement that the offender report to a probation officer when required to do so, abstain from alcohol or drugs, abstain from owning, possessing or carrying a weapon, participate actively in a treatment program, if the offender agrees, and comply with such other reasonable conditions as the court considers desirable for protecting society and for facilitating the offender's successful reintegration into the community. As is the case with conditional sentences, the court is required to furnish the offender with a copy of the probation order, an explanation of the consequences for breaching the order, and an explanation of the procedure for applying to vary the optional conditions.

Section 733.1 of the *Criminal Code* sets out the consequences of an offender failing to comply with the terms of a probation order, without reasonable excuse. Such a failure is either an indictable offence and makes the offender liable to imprisonment for a term not exceeding two years, or is a summary conviction offence and makes the offender liable to imprisonment for a term not exceeding eighteen months or to a fine not exceeding $2,000, or both.

D. A Comparison of Conditional Sentences, Suspended Sentences and Probation Orders

The provisions set out above demonstrate some important differences between conditional sentences, suspended sentences, and probation orders. Firstly, unlike the suspended sentence under section 731(1)(a), the court acting under the conditional sentences provision actually imposes a sentence of imprisonment. This sentence, however, is served in the community, rather than in a correctional facility.

Secondly, under section 742.3(2)(e) the court may order the offender to attend a treatment program as part of a conditional sentence. There is no statutory requirement for the offender's consent as there is under section 732.1(3)(g) for probation orders.

Thirdly, the wording of the residual clause in section 732.1(3)(h) dealing with optional conditions in probation orders states that one of their goals is to facilitate the offender's successful reintegration into the community. This is unlike the residual clause in section 742.3(2)(f) dealing with conditions of conditional sentences, which does not focus principally on the rehabilitation and reintegration of the offender and therefore authorizes the imposition of punitive conditions such as house arrest or strict curfews. This again emphasizes that conditional sentences are considered to be more punitive than probation orders.

Finally, the punishment for breaching the conditions of a conditional sentence range from the court taking no action to the offender being required to serve the remainder of his or her sentence in custody. By contrast, breach of a probation order is made its own offence, with imprisonment a possible punishment. The differing consequences for breach of a condition are related to the fact that breaches of conditional sentence orders need be proved only on a balance of probabilities while breaches of probation orders, since they constitute a new offence, must be proved beyond a reasonable doubt.

E. Conditional Sentence Case-Law

The criticism that has been directed at sentencing practices in Canada tends to focus on the nature of the offence. It often omits consideration of how the courts weigh the aggravating and mitigating factors relevant to the offender, and the circumstances surrounding the offence, in crafting an appropriate sentence. Through the sentencing provisions of the *Criminal Code*, Parliament has placed a major emphasis on a "least restrictive measures" approach and has directed

the courts to use incarceration only where community sentencing alternatives are not adequate. This is consistent with Parliament's concern to address the overuse of incarceration as a response to crime in Canada and to provide for a restorative justice approach to sentencing. Collectively, these principles encourage flexibility in the exercise of judicial discretion. Over time, the Courts of Appeal and the Supreme Court of Canada are providing more detailed guidance as to how the various principles should be applied to categories of offences and offenders. Examples of the cases that have considered various aspects of conditional sentencing are set out below.

1. *R.* v. *Proulx*[(5)]

The most important case to consider conditional sentencing is the decision of the Supreme Court in *R.* v. *Proulx*. Here, the Court examined the issue of conditional sentences in a case that concerned a charge of dangerous driving causing death and bodily harm. Prior to this decision, judges had little guidance on when it was appropriate to impose a conditional sentence, outside of the criteria set out in the *Criminal Code*. The Supreme Court made it clear that a number of changes needed to be made to the way in which the sanction was used. But the judgment also consists of a strong endorsement of conditional sentencing. The Supreme Court set out a number of principles, which may be summarized as follows:

1. Unlike probation, which is primarily a rehabilitative sentencing tool, a conditional sentence is intended to address both punitive and rehabilitative objectives. Accordingly, conditional sentences should generally include punitive conditions that restrict the offender's liberty. Therefore, conditions such as house arrest or strict curfews should be the norm, not the exception.

2. There is a two-stage process involved in determining whether to impose a conditional sentence. At the first stage, the sentencing judge merely considers whether to exclude the two possibilities of a penitentiary term or a probationary order as inappropriate, taking into consideration the fundamental purpose and principles of sentencing. At the second stage, having determined that the appropriate range of sentence is a term of imprisonment of less than two years, the judge should then consider whether it is appropriate for the offender to serve his or her sentence in the community.

3. "Safety of the community," which is one of the criteria to be considered by a sentencing judge, refers only to the threat posed by a specific offender and not to a broader risk of undermining respect for the law. It includes consideration of the risk of any criminal activity, including property offences. In considering the danger to the community, the judge must consider the risk

(5) [2000], 1 S.C.R. 61.

of the offender re-offending and the gravity of the damage that could ensue. The risk should be assessed in light of the conditions that could be attached to the sentence. Thus, the danger that the offender might pose may be reduced to an acceptable level through the imposition of appropriate conditions.

4. A conditional sentence is available for all offences in which the statutory prerequisites are satisfied. There is no presumption that conditional sentences are inappropriate for specific offences. Nevertheless, the gravity of the offence is clearly relevant to determining whether a conditional sentence is appropriate in the circumstances.

5. There is also no presumption in favour of a conditional sentence if the prerequisites have been satisfied. Serious consideration, however, should be given to the imposition of a conditional sentence in all cases where these statutory prerequisites are satisfied.

6. A conditional sentence can provide a significant amount of denunciation, particularly when onerous conditions are imposed and the term of the sentence is longer than would have been imposed as a jail sentence. Generally, the more serious the offence, the longer and more onerous the conditional sentence should be.

7. A conditional sentence can also provide significant deterrence if sufficient punitive conditions are imposed, and judges should be wary of placing much weight on deterrence when choosing between a conditional sentence and incarceration.

8. When the objectives of rehabilitation, reparation and promotion of a sense of responsibility may realistically be achieved, a conditional sentence will likely be the appropriate sanction, subject to considerations of denunciation and deterrence.

9. While aggravating circumstances relating to the offence or the offender increase the need for denunciation and deterrence, a conditional sentence may be imposed even if such factors are present.

10. Neither party has the onus of establishing that the offender should or should not receive a conditional sentence. However, the offender will usually be best situated to convince the judge that such a sentence is appropriate. It will be in the offender's interest to make submissions and provide information establishing that a conditional sentence is appropriate.

11. The deference due to trial judges in imposing sentence generally applies to the decision whether or not to impose a conditional sentence.

12. Conditional sentencing was enacted both to reduce reliance on incarceration as a sanction and to increase the principles of restorative justice in sentencing.

The key result of the *Proulx* decision, therefore, is that there is no presumption against the use of a conditional sentence if the crime does not have a mandatory period of incarceration.

2. *R.* v. *Wells*[6]

Another key decision of the Supreme Court concerned the role that conditional sentencing should play in relation to Aboriginal offenders. The case of *R.* v. *Wells* involved a sentence of 20 months' imprisonment imposed on an Aboriginal man convicted of sexual assault. In upholding this sentence as appropriate in the circumstances, the Supreme Court found that the proper approach for considering a conditional sentence for an Aboriginal offender involves the following sequential considerations:

1. A preliminary consideration and exclusion of both a suspended sentence with probation and a penitentiary term of imprisonment as fit sentences;

2. Assessment of the seriousness of the particular offence with regard to its gravity, which necessarily includes the harm done, and the offender's degree of responsibility;

3. Judicial notice of the "systemic or background factors that have contributed to the difficulties faced by aboriginal people in both the criminal justice system and throughout society at large"; and

4. An inquiry into the unique circumstances of the offender, including any evidence of community initiatives to use restorative justice principles in addressing particular social problems.

While no offence is presumptively excluded from the possibility of a conditional sentence, as a practical matter, and notwithstanding section 718.2(e), particularly violent and serious offences will result in imprisonment for Aboriginal offenders as often as for non-Aboriginal offenders. While counsel and pre-sentence reports will be the primary source of information regarding the offender's circumstances, there is a positive duty on the sentencing judge to inform himself.[7] In this case, the sentencing judge did properly inform himself. The application of subsection 718.2(e) of the *Criminal Code* does not mean that Aboriginal offenders must always be sentenced in a manner that gives greatest weight to the principles of restorative justice and less weight to goals such as deterrence, denunciation, and separation. The offence in this case was a serious one, so the principles of denunciation and deterrence led to the imposition of a term of imprisonment.

(6) [2000] 1 S.C.R. 207.

(7) Allan Manson, *The Law of Sentencing*, Irwin Law, Toronto, 2001, pp. 274-275.

3. *R.* v. *Knoblauch*[8]

Mentally ill offenders are not excluded from access to conditional sentences. In the case of *R.* v. *Knoblauch*, an offender with a long history of mental illness was found to be in possession of a substantial arsenal capable of causing great harm to the public and damage to property. He pleaded guilty to unlawful possession of an explosive substance and to unlawful possession of a weapon for a purpose dangerous to the public peace. In its decision, the Supreme Court upheld the imposition by the trial judge of a conditional sentence of two years less a day to be followed by three years of probation. The offender was required to spend the period of the conditional sentence in a secure psychiatric treatment unit, unless and until a consensus of psychiatric professionals made a decision to transfer him from the locked unit.

The focus of the analysis in the *Knoblauch* case was on the risk posed by the individual offender while serving his sentence in the community. Danger to the community is evaluated by reference to the risk of re-offence and the gravity of the damage in the event of re-offence. While the gravity of the damage in this case could be extreme, the conditions imposed by the trial judge, including that the accused reside in a secure psychiatric facility, reduced the risk to a point that it was no greater than the risk that the accused would re-offend while incarcerated in a penal institution. The expansion in the scope of conditional sentences arose from the use of the new sanction to produce what is essentially confinement, albeit in a psychiatric facility rather than in a prison or penitentiary.

In this case, the optional conditions that may be imposed as part of a conditional sentence order were used to assess an offender's dangerousness and reduce the threat of recidivism. This is in contrast to the optional conditions of a probation order that are directed towards "facilitating the offender's successful reintegration into the community."[9] The appropriateness of confining the offender to a secure psychiatric facility flows from the intent of Parliament, in creating conditional sentences, to hold offenders accountable for offending while respecting the statutory purpose and principles of sentencing; this is to be done without subjecting the offender to penal confinement.[10] The importance of *Knoblauch* may lie in the ability of courts to send more offenders to mental health facilities and not prisons.

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(8) [2000] 2 S.C.R. 780.

(9) *Criminal Code*, section 732.1(3)(h).

(10) Julian V. Roberts and Simon Verdun-Jones, "Directing Traffic at the Crossroads of Criminal Justice and Mental Health: Conditional Sentencing after the Judgment in Knoblauch," *Alberta Law Review*, Vol. 39, 2002, pp. 788-809.

4. *R.* v. *Fice*[11]

In the case of *R.* v. *Fice,* the Supreme Court ruled that a woman who attacked her mother with a baseball bat and strangled her with a telephone cord should have been sent to prison rather than allowed to serve her sentence in the community. This case should serve to restrict the availability of conditional sentences across the country. Ms. Fice pleaded guilty to aggravated assault on her mother after the pair's argument turned violent. She also pleaded guilty to fraud, personation, forgery and breach of recognizance. The Supreme Court held that the time Ms. Fice had spent in pre-trial custody was not a mitigating factor that can affect the range of sentence and, therefore, the availability of a conditional sentence. The Court held that, in considering whether to impose a conditional sentence, a court must first decide that a sentence of less than two years is appropriate. The conditional sentence regime was not designed for those offenders for whom a penitentiary term is appropriate. When a sentencing judge considers the gravity of the offence and the moral blameworthiness of the offender and concludes that a sentence in the penitentiary range is warranted and that a conditional sentence is therefore unavailable, time spent in pre-sentence custody ought not to disturb this conclusion.

5. *R.* v. *F.(G.C.)*[12]

The case of *R.* v. *F.(G.C.)* illustrates the manner in which the Courts of Appeal in Canada have developed guidelines for the use of conditional sentencing by the lower courts. In this case, the accused was convicted of sexual assault and sexual interference for his grooming of two 13-year-old girls to become sex objects. This eventually led to the offender having sexual intercourse with one of the complainants. The trial judge imposed a conditional sentence of 12 months. The Crown successfully appealed this sentence to the Ontario Court of Appeal, which varied it to one year in custody, after giving credit for the one-year sentence already served. In its reasons for decision, the Court of Appeal pointed out that it had repeatedly indicated that a conditional sentence should rarely be imposed in cases involving sexual assault of children, particularly where the accused was in a position of trust. Moreover, cases that involve multiple sexual activities over an extended period of time and escalating in obtrusiveness generally warrant a severe sentence. The trial judge had also failed to take into consideration the fundamental sentencing principle in section 718.1 of the *Criminal Code* that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

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(11) [2005] 1 S.C.R. 742.

(12) (2004), 71 O.R. (3d) 771 (C.A.).

6. *R.* v. *Bhalru*; *R.* v. *Khosa*[13]

The case of *R.* v. *Bhalru; R.* v. *Khosa* is an example of a Court of Appeal upholding a trial judge's imposition of a conditional sentence in the face of a Crown appeal. Here, two individuals were convicted of criminal negligence causing death arising out of a street race in which they participated. In the course of the race, a pedestrian was struck and killed. The trial judge ordered the two drivers to serve conditional sentences of two years less a day, followed by probation for three years. The terms imposed as part of the conditional sentences included house arrest with limited exceptions and an order to perform 240 hours of community work over a period of 18 months. A five-year driving prohibition was also imposed.

The Crown argued that the sentences were unfit. This appeal was denied by the Court of Appeal. It followed the principles articulated in *Proulx,* and the judicial recognition that conditional sentences may achieve general deterrence and denunciation in driving offences in some circumstances, in concluding that the sentence was consistent with the sentencing principles and was not demonstrably unfit. The Court of Appeal also found that there was an absence of aggravating factors beyond the street racing in this case; that, in addition to the strict nature of the conditional order that the trial judge fashioned, indicated that it was not unreasonable to order the two convicted persons to serve their sentence in the community.

7. *R.* v. *Coffin*[14]

The case of *R.* v. *Coffin* is an example of a Court of Appeal emphasizing different aspects of the sentencing principles in order to impose a sentence of imprisonment in place of a conditional sentence. The offender in this case had pleaded guilty to 15 charges of defrauding the Government of Canada. At trial, he was sentenced to a conditional sentence of two years less a day, due, in part, to his public acknowledgment of his guilt and return of moneys illegally obtained. The Court of Appeal overturned this sentence and, in its place, sentenced Mr. Coffin to 18 months' imprisonment.

(13) [2003] BCCA 645.

(14) 2006 QCCA 471.

The appeal court found that the trial judge had not placed sufficient emphasis upon certain principles and objectives of sentencing. One of these was that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.(15) In this case, the crimes were well-planned, of long duration, and involved large amounts of public money and, therefore, lowered the level of trust in government. The second principle insufficiently emphasized by the trial judge was that an important objective of sentencing is that of denunciation and deterrence.(16) Here, a person in a position of privilege had defrauded the government and a strong message of denunciation and deterrence needed to be sent. Finally, the trial judge did not sufficiently emphasize the principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.(17) Generally, a term of imprisonment was the sentence in Canada for large, planned frauds that took place over extended periods of time. The *Coffin* decision included an appendix with over 50 decisions to support its conclusion that a consensus had emerged on how to punish people in Mr. Coffin's position.

F. Conditional Sentencing Data

Statistics Canada reports that conditional sentences still represent a small proportion of all sentences. A conditional sentence was imposed in 5% of all cases resulting in a conviction, and a small percentage of all sentences. Thus, in 2003, of the 104,183 sentences of custody imposed across Canada, 13,267 or 12.7% were conditional sentences of imprisonment.(18) Of these, 4,215 conditional sentences were imposed for property offences while 3,619 were imposed for crimes of violence.

One year later, on an average day in 2003-2004, 154,600 adults were under the supervision of correctional services agencies in Canada, down 3% from the previous year. Four out of five of these adults, or just under 122,600, were being supervised in the community. The vast majority, 82%, were on probation, 11% were on conditional sentences and 7% were on parole or

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(15) *Criminal Code*, s. 718.1.

(16) *Criminal Code*, s. 718(a) and 718(b).

(17) *Criminal Code*, s. 718.2(b).

(18) See the Statistics Canada report *Cases in adult criminal court by type of sentence; total convicted cases, prison, conditional sentence, probation, by province and Yukon Territory*, 7 September 2005, http://www40.statcan.ca/l01/cst01/legal22a.htm. Note that Quebec does not report conditional sentencing data.

statutory release. The remaining one in five adults, about 32,000, were in a federal penitentiary or in a provincial or territorial jail. This total was 2% lower than it was in 2002-2003, and more than 5% below the level a decade earlier.(19) Statistics Canada states that the implementation of the conditional sentence in 1996 provided the courts with a community-based alternative to imprisonment, and has had a direct impact on the decline in the number of sentenced prison admissions.(20)

The same Statistics Canada report, however, also states that, for the first time since conditional sentences were introduced in 1996, the total number of offenders admitted to a conditional sentence dropped, falling 2% in 2003-2004 from 19,200 to 18,900 offenders. In spite of this drop from the previous year, the number of conditional sentence admissions was 17% higher than in 1999-2000. These admissions have been the largest contributing factor to the 4% increase in community supervision admissions during this period. Changes in the number of admissions to conditional sentences from the previous year varied substantially among the provinces and territories. They ranged from a 57% increase in Prince Edward Island to an 11% decline in British Columbia.

The imposition of conditional sentences will not only result in a decline in the rate of incarceration, it should also represent a significant monetary saving; the average annual inmate cost for persons in provincial/territorial custody (including remand and other temporary detention) in 2002-2003 was $51,454, while the average annual cost of supervising an offender in the community (including conditional sentences, probation, bail supervision, fine option, and conditional release) was $1,792.(21) Unfortunately, no recent national statistics are publicly available on the proportion of orders breached or the nature of the judicial response to breaches. An earlier survey found that the successful completion rate of conditional sentence orders fell from 78% in 1997-1998 to 63% in 2000-2001. This failure rate was largely attributed to breaches of the increasing number of conditions placed upon offenders rather than allegations of fresh offending.(22)

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(19) Statistics Canada, *The Daily*, 16 December 2005, http://www.statcan.ca/Daily/English/051216/d051216b.htm.

(20) *Ibid.*

(21) Canadian Centre for Justice Statistics, Adult Correctional Services in Canada, 2002-2003, Table 11, http://dsp-psd.communication.gc.ca/Collection-R/Statcan/85-002-XIE/0100485-002-XIE.pdf.

(22) Julian V. Roberts, "The Evolution of Conditional Sentencing: An Empirical Analysis," *Criminal Reports*, 6th Series, Vol. 3, 2002, pp. 267-283 (Table 7).

A study of the trial courts in Ontario and Manitoba reveals an increase in the proportion of offenders being committed to custody and a corresponding decline in the proportion of offenders being permitted to continue serving their sentences in the community, following an unjustified breach of conditions. In 1997-1998, for example, 65% of offenders in Manitoba found to have breached their orders without reasonable excuse were subsequently committed to custody for some period of time; in 2000-2001, this proportion rose to 74%. In Ontario, the proportion rose from 42% to 50% over the same period. These data – the most recent breach statistics currently available – demonstrate a more rigorous judicial response to the breach of a conditional sentence order following the judgment of the Supreme Court in the *Proulx* case.(23)

Due to the relatively recent introduction of conditional sentencing, few academic studies of its impact upon the criminal justice system have been completed. Furthermore, there is a dearth of sentencing statistics in Canada, with even the Adult Criminal Court Survey of Statistics Canada lacking important data. One study that has been done found that conditional sentencing has had a significant impact on the rates of admission to custody, which have declined by 13% since its introduction.(24) This represents a reduction of approximately 55,000 offenders who otherwise would have been admitted to custody. There has been, however, evidence as well of net-widening; approximately 5,000 offenders who prior to 1996 would have received a non-custodial sanction were sentenced to a conditional sentence, which is a form of custody.

Considerable variation in incarceration rates was found between provinces: in some jurisdictions net-widening was quite significant; in other provinces, the opposite occurred.(25) In several provinces, the reduction in the number of admissions to custody exceeds by a considerable margin the number of conditional sentences imposed. Thus, there has been a general shift towards the greater use of alternatives to imprisonment, possibly as a result of the statutory reforms introduced in 1996.(26) One of these changes was the codification of the principle of restraint with respect to the use of imprisonment.

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(23) David M. Paciocco and Julian Roberts, *Sentencing in Cases of Impaired Driving Causing Bodily Harm or Impaired Driving Causing Death*, Canada Safety Council, Ottawa, 25 February 2005.

(24) Julian V. Roberts and Thomas Gabor, "The Impact of Conditional Sentencing: Decarceration and Widening of the Net," *Canadian Criminal Law Review*, Vol. 8, 2004, pp. 33-49.

(25) *Ibid.*

(26) Roberts (2002), p. 267.

In a study that concentrated upon the victims of crime and their attitudes towards conditional sentencing, the benefits of conditional sentencing are said to be as follows:

- Most rehabilitation programs can be more effectively implemented when the offender is in the community rather than in custody.
- Prison is no more effective a deterrent than more severe intermediate punishments, such as enhanced probation or home confinement.
- Keeping offenders in custody is significantly more expensive than supervising them in the community.
- The public has become more supportive of community-based sentencing, except for serious crimes of violence.
- Widespread interest in restorative justice has sparked interest in community-based sanctions. Restorative justice initiatives seek to promote the interests of the victim at all stages of the criminal justice process, but particularly at the sentencing stage.
- The virtues of community-based sanctions include the saving of valuable correctional resources and the ability of the offender to continue or seek employment and maintain ties with his or her family.(27)

The study concluded that, while it was clear that there was an acceptance amongst victims of the *concept* of community-based sentencing, the acceptance does not extend to its use in the most serious crimes of violence.(28) The seriousness of such offences appeared to warrant a custodial term, in the eyes of victims. Research on conditional sentencing suggests that only a small percentage of conditional sentences are imposed for the most serious crimes of violence. Yet greater attention to the interests of victims in crafting conditional sentences could advance the restorative purposes of sentencing by providing reparation, acknowledgment of harm, and protection to crime victims. It could also help offenders understand the harms caused by their crimes and enhance the credibility of the conditional sentence as a meaningful alternative to imprisonment.

(27) Julian V. Roberts and Kent Roach, "Conditional Sentencing and the Perspectives of Crime Victims: A Socio-Legal Analysis," *Queen's Law Journal*, Vol. 30, 2005, pp. 560-600.

(28) *Ibid.*, p. 599.

DESCRIPTION AND ANALYSIS

Bill C-9 consists of 1 clause.

A. Clause 1: Replacement of Section 742.1 of the *Criminal Code*

The proposed replacement to section 742.1 of the *Criminal Code* provides that a person convicted of an offence prosecuted by way of indictment for which the maximum term of imprisonment is 10 years or more is not eligible for a conditional sentence. There are over 100 offences in the *Criminal Code* with maximum sentences of 10 years' imprisonment or more. Some of these, such as murder, child pornography and weapons offences, already have mandatory minimum sentences and so offenders cannot receive a conditional sentence. Those offences that will be affected by Bill C-9's restrictions range from attempted murder to possessing counterfeit money. The 10-year threshold, therefore, does not designate violent versus non-violent offences. (A list of the offences affected by Bill C-9 is attached as an appendix.)

The government estimates that the combined effect of Bill C-9 and Bill C-10, which proposes to amend the *Criminal Code* by imposing minimum penalties for offences involving firearms, will be to place 300 to 400 more offenders into federal penitentiaries and an additional 3,800 a year into provincial jails.(29) This represents a 15-20% increase in the provincial inmate population and a 3% increase in federal penitentiaries. There are currently 70 federal prisons in Canada and 116 provincial jails.(30) In another estimate, government officials have said that the bill would mean about 5,500 people annually would no longer be able to serve their time at home and be monitored through an electronic tracking device.(31)

COMMENTARY

One editorial has stated that the government is right to "turn back the clock" on the 10-year existence of conditional sentences.(32) This view is supported by references to the

(29) Editorial, "Filling the Jails," *The Chronicle-Herald* [Halifax], 8 May 2006, p. A7.

(30) Bill Curry, "Saskatchewan warns of risk to justice system: More natives will be jailed, minister fears," *The Globe and Mail* [Toronto], 5 May 2006, p. A6.

(31) Joel Kom, "Tories get tough on non-violent offenders: Harsh mandatory sentences not limited to dangerous criminals," *Ottawa Citizen*, 5 May 2006, p. A1.

(32) Editorial, "The good and the bad in the new crime bills," *The Globe and Mail* [Toronto], 5 May 2006, p. A24.

fact that the sentence has been applied to adults who molest children, or street-racing youth who kill innocent people, and repeat drunk drivers who kill cyclists or pedestrians. These sentences were not contemplated when conditional sentences were introduced, with the justification for them being that only 10% of crimes were violent and that too many non-violent offenders were ending up in prison. The limited flexibility that is left to judges is appropriate since sentencing should reflect both the offence and the offender.

Another editorial has stated that judges who give conditional sentences to those convicted of serious crimes such as manslaughter or impaired driving causing death are wrong. In this view, it is unconscionable for people convicted of those types of serious crimes not to do jail time.(33) While judges need some discretion to find the right sentence for the right situation, the option of house arrest for serious, violent crimes should be out of the question. That is why legislation is needed to put a sentencing floor on these crimes. Governments need to start sending the message to the courts that the failed experiment of light sentencing for violent crimes is over.

The reaction of some provincial figures has also been positive. Nova Scotia Justice Minister Murray Scott has said "We welcome those changes and believe they will have a positive impact on the justice system in Canada."(34) Alberta's Justice Minister Ron Stevens has praised the federal government for responding to a public desire to get tougher on crime as confidence in the justice system declines.(35) Mr. Stevens went on to say that his government has asked the federal government to take this step for years and so he is "absolutely delighted."

Less positive has been the noting of the fact that Bill C-9 covers a wide range of offences, several of which involve no violence.(36) While such crimes as hijacking, manslaughter, attempted murder and sexual assault with a weapon will be covered by the bill, it will also include offences such as the unauthorized use of a computer, cattle theft, mail theft and bestiality. David Paciocco, a criminal law professor at the University of Ottawa, has been quoted as saying "You can't for a minute think that all offences that have 10 years or more for a sentence are offences that in every situation are serious offences."(37) He went on to say that banning conditional sentences for all those offences would not only put many people in jail who

(33) Editorial, "Crime Bills Good Start," *The Edmonton Sun*, 8 May 2006, p. 10.

(34) Curry (2006).

(35) Kelly Cryderman, "Tougher sentences could clog courts: judge," *Edmonton Journal*, 5 May 2006, p. A6.

(36) Kom (2006).

(37) *Ibid.*

do not need to be there, but would also likely result in lawyers and judges finding ways to avoid the ban. Judges might demand a higher level of evidence for a conviction, while prosecutors might lay lesser charges in order to ensure that conditional sentences are still an option. Professor Paciocco said the government could have legislated aggravating factors, such as the use of violence or breach of trust, to be taken into account if the goal was to curb conditional sentences for serious and violent crimes.

A number of other potential problems with eliminating conditional sentences and thereby putting more offenders in jail have been discussed. One difficulty is that judges often hand offenders double credit for the time they serve on remand waiting for a trial or sentencing, and so lawyers and inmates may purposefully delay legal proceedings to avoid spending time in jail. More people accused of crimes may plead not guilty, meaning more court time spent prosecuting people. When they have an option, Crown prosecutors may pursue less serious consequences for offenders so they are more likely to get a conviction, and judges may find criminals guilty of lesser offences to avoid imposing some of the more onerous sentences. The result will be more prisoners on remand and serving sentences in provincial correctional centres, all paid for by provincial taxpayers.(38)

The Saskatchewan executive director of the John Howard Society, Mike Dunphy, has said that 33% of criminals sentenced to house arrest in 2005 would have wound up in jail under the provisions of Bill C-9. Jails will, therefore, need 33% more beds, employees and programs to serve them. Conditional sentences are often longer than jail terms and when prisoners are released sooner on parole, they roam the community under less stringent conditions than if they were under house arrest. Earlier release is an issue for the community if inmates have not had the time or the access to rehabilitation services. Offenders also have a better chance if they are reintegrated into society by living at home under tough conditions, rather than languishing in jail under the influence of criminals.(39)

A further potential problem with Bill C-9 is that it could backfire by forcing judges to choose between prison and probation, with nothing in between. Evidence of prison and probation numbers in British Columbia suggests that judges are using conditional sentences more

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(38) Janet French, “Quennell pans crime measures: Ottawa not in synch with consensus reached by provincial ministers,” *The StarPhoenix* [Saskatoon], 5 May 2006, p. A3.

(39) *Ibid.*

often as an alternative to probation than as a substitute for jail.(40) The conditions imposed in a conditional sentence are generally far stricter than those that accompany a probation order, so the result may be to make things easier, not tougher, on many criminals.

The president of the Canada Safety Council has written in response to the argument that long prison sentences are a more effective deterrent than house arrest.(41) He points out that, if this were so, offenders who go to jail should be less likely to re-offend when released than those given conditional sentences, yet the two groups tend to re-offend at about the same rates. There is even evidence that long prison sentences without other remedial programs may actually increase the chances of re-offending after release. If an offender can be rehabilitated, conditional sentencing makes sense from a safety standpoint as it offers the potential to establish an environment for positive behaviour change.

Frank Quennell, Justice Minister of Saskatchewan, has said that measures that limit conditional sentences could put at risk the province's unique justice programs aimed at its large Aboriginal population.(42) Aboriginal people now make up nearly one in five admissions to Canadian correctional services, while they represent only 3% of the general population. The Justice Minister said Saskatchewan, which has the highest percentage of Aboriginal residents in the country, has had some success in encouraging the use of penalties focused on native traditions of "restorative justice" rather than prison time. The programs encourage native communities to find alternatives to jail, such as providing restitution to the victim of a crime, volunteering with a charity or attending counselling or addictions programs. The proposed changes may also be problematic for Nunavut where, in 2005, territorial judges handed down 203 conditional sentences compared with 189 jail terms.

The issue of the cost of the new crime measures has been the focus of some comment. By eliminating conditional sentences for certain offences, there is a possibility that more than 3,000 additional prisoners will be put into provincial jails. The cost of this increased jail population will be borne by the provinces, and this cost is unknown.(43) There has been no

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(40) Chad Skelton, "Tories' tough justice plans could backfire, expert says: Bill leaves no middle ground between prison and probation," *Vancouver Sun*, 5 May 2006, p. A1.

(41) Emile-J. Therien, "Courts Need Conditional Sentencing," *Ottawa Citizen*, 8 May 2006, p. A9.

(42) Curry (2006).

(43) Brigitte Breton, "Sécurité fictive," *Le Soleil* [Québec], 6 May 2006, p. 32.

commitment to federal funding targeted specifically to help the provinces bear this burden.(44) Furthermore, paying for increased incarceration invariably results in cuts to social services, educational services, and employment opportunities. These cuts to essential social welfare services actually increase the likelihood of crime, as individuals attempt to survive.(45)

Also relating to the cost issue is the fact that no Canadian study has been presented to prove that the measures found in Bill C-9 and Bill C-10 will be of benefit in the fight against crime.(46) Pointing to the United States to prove the benefit of the increased expense in prosecuting and imprisoning offenders is problematic as the United States punishes offenders more harshly than does Canada and yet the crime rate there is five times what it is here.(47) Critics of Bill C-9 have pointed to more promising avenues for expenditure of public funds, such as prevention, education, rehabilitation and the fight against poverty.

In response to those who have criticized Bill C-9 and Bill C-10, it has been asserted that the government's proposals are not harsh enough but are the best that can be achieved at this time.(48) The bills' supporters claim that the proposed provisions will reduce crime, as harsh sentencing laws have reduced violent crime levels in several large U.S. cities. In this view, the "root causes" approach to crime, including outreach to minority communities, cannot work as an instrument of state policy. Governments cannot impose from above cultural change on communities. In the meantime, the government's new crime strategy will make all of us safer.(49)

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(44) Jim Brown, "New Tory sentencing rules would put more criminals behind bars; One bill would do away with conditional sentencing for a range of offences," *New Brunswick Telegraph-Journal*, 5 May 2006, p. A3.

(45) Alisa M. Watkinson, "Society no better off with packed prisons," *The StarPhoenix* [Saskatoon], 11 May 2006, p. A11.

(46) Raymond Giroux, "Des centaines de prisonniers de plus; Le gouvernement Harper présente sa nouvelle politique de lutte contre la criminalité," *Le Soleil* [Québec], 5 May 2006, p. 5.

(47) André Normandeau, SRC Télévision, "Le Téléjournal/Le Point," 4 May 2006.

(48) Editorial, "Harper's plan for a safer Canada," *National Post* [Toronto], 9 May 2006, p. A16.

(49) *Ibid.*

APPENDIX

CRIMINAL CODE OFFENCES AFFECTED BY BILL C-9

APPENDIX

CRIMINAL CODE OFFENCES AFFECTED BY BILL C-9

Criminal Code Section	Name of Offence	Maximum Sentence
46(2)(a), (c) or (d), 47(2)(a)	Treason	Life
46(2)(b) or (e), 47(2)(b)	Treason in time of war	Life
46(2)(b) or (e), 47(2)(c)	Treason outside of time of war	14 Years
49	Alarm Her Majesty	14 Years
50	Assisting alien enemy or omitting to prevent treason	14 Years
51	Intimidating Parliament	14 Years
52	Sabotage	10 Years
53	Inciting to mutiny	14 Years
57(1)	Forge passport or use forged passport	14 Years
61	Sedition	14 Years
68	Offences re: riot proclamation	Life
74	Piracy by law of nations	Life
75	Piratical acts	14 Years
76	Hijacking	Life
77	Endanger aircraft	Life
78	Take weapon or explosive on board	14 Years
78.1(1)	Seizing control of ship or fixed platform	Life
78.1(2)	Endangering ship or fixed platform	Life
78.1(3)	Communicating false information	Life
78.1(4)	Threatening and endangering ship or fixed platform	Life
80(a)	Breach of duty of care, explosives, causing death	Life
80(b)	Breach of duty of care, explosives, causing harm	14 Years
81(1)(a) & (b)	Explosives, intent to cause death or harm	Life
81(1)(c) & (d)	Explosives, placing or making	14 Years
82(2)	Explosives, for benefit of criminal organization	14 Years
83.02	Providing or collecting property for certain activities	10 Years
83.03	Providing property or services for terrorist purposes	10 Years
83.04	Using or possessing property for terrorist purposes	10 Years
83.12	Freezing of property, disclosure or audit	10 Years
83.18	Participation in activity of terrorist group	10 Years
83.19	Facilitating terrorist activity	14 Years
83.2	Commission of offence for terrorist group	Life
83.21	Instructing to carry out activity for terrorist group	Life

Criminal Code Section	Name of Offence	Maximum Sentence
83.22	Instructing to carry out terrorist activity	Life
83.23	Harbouring or concealing terrorist	10 Years
83.231(3)(a)	Hoax regarding terrorist activity, causing bodily harm	10 Years
83.231(4)	Hoax regarding terrorist activity, causing death	Life
88	Possession of weapon for dangerous purpose	10 Years
92	Possession of firearm knowing possession unauthorized	10 Years
94	Possession of weapon in motor vehicle	10 Years
95	Possession of restricted or prohibited firearm with ammunition	10 Years
117.01	Possession contrary to order; failure to surrender documents	10 Years
119	Bribery of judicial officers	14 Years
120	Bribery of officers	14 Years
131, 132	Perjury	14 Years
136	Contradictory evidence with intent to mislead	14 Years
137	Fabricating evidence	14 Years
139(2)	Obstructing justice	10 Years
144	Prison breach	10 Years
155	Incest	14 Years
159	Anal intercourse	10 Years
160	Bestiality	10 Years
212(1)	Procuring	10 Years
212(2)	Living on the avails of prostitute under 18	14 Years
220(b)	Cause death by criminal negligence	Life
221	Cause bodily harm by criminal negligence	10 Years
234, 236(b)	Manslaughter	Life
238	Killing unborn child in act of birth	Life
239(b)	Attempt murder	Life
240	Accessory after fact, murder	Life
241	Counselling or aiding suicide	14 Years
244.1	Causing bodily harm with intent, use of air gun or pistol	14 Years
245(a)	Administering noxious thing with intent to endanger life or cause bodily harm	14 Years
246	Overcoming resistance to commission of offence	Life
247(2)	Trap causing bodily harm	10 Years
247(3)	Trap placed to commit indictable offence	10 Years
247(4)	Trap placed to commit indictable offence, causing bodily harm	14 Years
247(5)	Trap causing death	Life
248	Interfering with transportation facilities	Life

Criminal Code Section	Name of Offence	Maximum Sentence
249(3)	Dangerous operation of vehicle, etc., injury occurs	10 Years
249(4)	Dangerous operation of vehicle, etc., death occurs	14 Years
249.1(4)(a)	Flight causing bodily harm	14 Years
249.1(4)(b)	Flight causing death	Life
252(1.2)	Failure to stop at scene of accident, bodily harm caused	10 Years
252(1.3)	Failure to stop at scene of accident, death caused	Life
253(a), 255(2)	Impaired operation causing bodily harm	10 Years
253(a), 255(3)	Impaired operation causing death	Life
262	Impeding attempt to save life	10 Years
263(3)(a)	Duty to safeguard opening in ice, death results	Life
263(3)(b)	Duty to safeguard opening in ice, bodily harm results	10 Years
264	Criminal harassment	10 Years
267	Assault causing bodily harm or with weapon	10 Years
268	Aggravated assault	14 Years
269	Unlawfully cause bodily harm	10 Years
269.1	Torture	14 Years
271	Sexual assault	10 Years
272(2)(b)	Sexual assault with weapon, threats or causing harm	14 Years
273(2)(b)	Aggravated sexual assault	Life
279(1), (1.1)(b)	Kidnapping	Life
279(2)	Forcible confinement	10 Years
279.01	Trafficking in persons	Life
279.02	Material benefit from trafficking in persons	10 Years
279.1(2)(b)	Hostage taking	Life
281	Abduction of person under 14	10 Years
282	Abduction contravening custody order	10 Years
283	Abduction where no custody order	10 Years
287(1)	Procuring miscarriage	Life
322-332, 334(a)	Theft over $5,000	10 Years
336	Criminal breach of trust	14 Years
337	Public servant, refuse to deliver property	14 Years
338(2)	Cattle theft	10 Years
340	Destroying documents of title	10 Years
342	Theft or forgery of credit card	10 Years
342.01	Instruments for forging or falsifying credit card	10 Years
342.1	Unauthorized use of computer	10 Years
343, 344(b)	Robbery	Life
345	Stop mail with intent	Life

Criminal Code Section	Name of Offence	Maximum Sentence
346(1), (1.1)(b)	Extortion	Life
348(1)(d)	Break & enter with intent, committing indictable offence re: dwelling house	Life
348(1)(e)	Break & enter with intent, committing indictable offence re: non-dwelling house	10 Years
349	Being unlawfully in dwelling house	10 Years
351(1)	Housebreaking instruments possession	10 Years
351(2)	Disguise with intent	10 Years
354, 355(a)	Possession of property over $5,000 obtained by crime	10 Years
356	Theft from mail	10 Years
357	Bring into Canada property obtained by crime	10 Years
362(1)(a), (2)(a)	False pretence, property over $5,000	10 Years
362(1)(b)(c) or (d), (3)	Obtain credit, etc., by false pretence	10 Years
366, 367(1)	Forgery	10 Years
368	Utter forged document	10 Years
369	Exchequer bill paper, public seals, etc.	14 Years
374	Draw document without authority	14 Years
375	Obtaining, etc., based on forged document	14 Years
376(1)	Counterfeiting stamp	14 Years
376(2)	Counterfeiting mark	14 Years
380(1)(a)	Fraud over $5,000 or re: testamentary instrument	14 Years
380(2)	Fraud affecting public market	14 Years
382	Fraudulent manipulation of stock exchange transactions	10 Years
382.1	Prohibited insider trading	10 Years
396	Offences relating to mines	10 Years
400	False prospectus	10 Years
403	Personation with intent	10 Years
418	Selling defective stores to Her Majesty	14 Years
423.1	Intimidation of a justice system participant	14 Years
424.1	Threat against United Nations or associated personnel	10 Years
430(2)	Wilful mischief endangering life	Life
430(3)	Wilful mischief, testamentary instrument or property over $5,000	10 Years
430(4.1)	Wilful mischief re: religious property	10 Years
430(4.2)	Wilful mischief re: cultural property	10 Years
430(5)	Wilful mischief, data	10 Years
431	Attack on premises, residence or transport of internationally protected person	14 Years
431.1	Attack on premises, accommodation or transport of United Nations or associated personnel	14 Years

Criminal Code Section	Name of Offence	Maximum Sentence
431.2(2)	Placing explosive device	Life
433	Arson, disregard for human life	Life
434	Arson, damage to property of others	14 Years
434.1	Arson, damage to own property, threat to safety of others	14 Years
435	Arson for fraudulent purpose	10 Years
439(2)	Interfering with marine signal, etc.	10 Years
449	Make counterfeit money	14 Years
450	Possession, etc., of counterfeit money	14 Years
452	Uttering, etc., counterfeit money	14 Years
455	Clipping and uttering clipped coin	14 Years
458	Making, having or dealing in instruments for counterfeiting	14 Years
459	Conveying instruments for coining out of mint	14 Years
462.31	Laundering proceeds of crime	10 Years
463(a)	Attempts & accessories, indictable, punishment by life	14 Years
464(a)	Counselling indictable offence not committed	Same punishment to which the attempter is liable
465(1)(a)	Conspiracy, murder	Life
465(1)(b)(i)	Conspiracy to prosecute, sentence 14 yrs or more	10 Years
465(1)(c)	Conspiracy to commit other indictable offence	Same as for principal offence
467.12	Commission of offence for criminal organization	14 Years
467.13	Instructing commission of offence for criminal organization	Life

Table prepared by Robin MacKay, Parliamentary Information and Research Service, Library of Parliament.