



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

INFLUENCE. LEADERSHIP. PROTECTION.

May 4, 2015

Via email: just@parl.gc.ca

Mike Wallace, M.P.
Chair, Committee on Justice and Human Rights
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Wallace:

Re: Bill C-35, *Justice for Animals in Service Act (Quanto's law)*

The Canadian Bar Association is a national association representing 36,000 jurists across Canada. Among the Association's primary objectives is seeking improvements in the law and the administration of justice. The CBA's Criminal Justice Section consists of criminal law experts, including a balance of prosecutors and defence lawyers from across Canada.

The CBA Section appreciates this opportunity to comment on Bill C-35, *Criminal Code* amendments (law enforcement animals, military animals and service animals), with the short title, *Justice for Animals in Service Act (Quanto's Law)*. We recognize the important contribution of animals in service and support legislative protections for those animals. We focus our comments on the sentencing aspects of Bill C-35.

Clause 2 of Bill C-35 would add new mandatory consecutive sentences to section 270 of the *Criminal Code*, dealing with assaults on law enforcement officers. Proposed section 270.03 would require that offences arising out of the same event or series of events be served consecutively. There is also a mandatory consecutive sentence proposed for the new section 445.01 offence (killing or injuring certain animals).

Consecutive sentences go against key sentencing principles under Canadian law, in particular the principle of proportionality. That principle (sentences should be proportionate to one another in terms of the gravity of the offence) expresses itself through the more particular totality principle. The totality principle requires a sentencing judge who orders consecutive sentences for multiple offences to ensure that the cumulative sentence does not exceed the overall culpability of the offender.

If sentencing judges are to respect the totality principle but simultaneously impose mandatory consecutive sentences, they have an impossible task. The CBA Section has also suggested that consecutive sentences are unlikely to withstand constitutional scrutiny under section 12 of the

Charter, representing cruel and unusual punishment.¹ These concerns apply to the proposed mandatory consecutive proposals in Bill C-35.

Finally, clause 3 of the Bill proposes a new mandatory minimum sentence under section 445.01(2)(a). In our view, mandatory minimum sentences:

- do not advance the goal of deterrence. International social science research has made this clear.² The government itself has stated that:

The evidence shows that long periods served in prison increase the chance that the offender will offend again....In the end, public security is diminished, rather than increased, if we “throw away the key”.³
- do not target the most egregious or dangerous offenders, who will already be subject to very stiff sentences precisely because of the nature of their crimes. More often, less culpable offenders are caught by mandatory sentences and subjected to extremely lengthy terms of imprisonment.
- have a disproportionate impact on those minority groups who already suffer from poverty and deprivation. In Canada, this will affect aboriginal communities, a population already grossly over represented in penitentiaries, most harshly.⁴
- subvert important aspects of Canada’s sentencing regime, including principles of proportionality and individualization, and reliance on judges to impose a just sentence after hearing all facts in the individual case.

¹ Criminal Justice Section submission on Bill C-26, *Tougher Penalties for Child Predators Act* (Ottawa: CBA, 2015) at 8-9.

² See, for example, Michael Tonry, “Mandatory Penalties” (1992), 16 *Crime and Justice Review* 243, which begins with the succinct statement, “Mandatory penalties do not work”. See also, Neil Morgan, “Capturing Crimes or Capturing Votes: the Aims and Effects of Mandatories” (1999) UNSWLJ 267 at 272 and the Crime Prevention Council of Northern Australia, “Mandatory Sentencing for Adult Property Offenders” (2003 presentation to the Australia and New Zealand Society of Criminology Conference (August 2003): www.nt.gov.au/justice/ocp/docs/mandatory_sentencing_nt_experience_20031201.pdf.

Professor Morgan, of the Crime Research Centre at the University of Western Australia, notes that in the US and Australia, criminologists have studied the effects of mandatory sentencing on attaining sentencing objectives. The state of Western Australia introduced two mandatory minimum sentencing schemes in 1992 and 1996, respectively, targeting high-speed vehicle chases and home burglaries. Morgan used subsequent sentencing data in a study to examine the effects of these provisions. In the course of his study, he also examined recent literature in the US. Morgan stated that: “The obvious conclusion is that the 1992 Act has no deterrent effect. This is fully in line with research from other jurisdictions.”

³ Department of Justice, *A Framework for Sentencing, Corrections and Conditional Release: Directions for Reform* (Ottawa: Justice Canada, 1990) at 9. We note that MMS have been severely criticized in many other important studies, including Canada’s own *Sentencing Commission Report*.

⁴ *Juristat*: Canadian Centre for Justice Statistics, “Returning to Correctional Services after Release: A Profile of Aboriginal and Non-Aboriginal Adults Involved in Saskatchewan Corrections from 1999/00 to 2003/04”, Vol. 25: 2 (Ottawa: StatsCan, 2005). On the inordinately high level of arrest and incarceration of people of Aboriginal background, see also *Juristat*, “Adult Correctional Services in Canada” 26:5 (Ottawa: StatsCan, 2005) at 15: “Aboriginal people represent more than one in five admissions to correctional services.”

If evidence demonstrates that an offender should be subject to a lengthy prison sentence, the Crown will bring that to the judge's attention. Still, there will be circumstances where mandatory minimum sentences will result in injustice. Bill C-35 would remove discretion from sentencing judges, who are in the best position to effectively determine a sentence that balances all the fundamental objectives of sentencing. Prohibiting judges from exercising discretion to determine an appropriate sentence for the offender before them is contrary to the spirit and letter of a large body of Canadian jurisprudence recognizing the importance of discretion in assessing and determining the most appropriate sentence in the individual case.

We suggest that clause 2, and the portions of clause 3 dealing with consecutive sentences and a mandatory minimum sentence, of Bill C-35 be removed before the Bill moves forward in the legislative process. We trust that these comments will be helpful in your deliberations. Thank you for considering them.

Yours truly,

(original letter signed by Gaylene Schellenberg for Eric V. Gottardi)

Eric V. Gottardi
Chair, CBA Criminal Justice Section