

Conditional sentencing works best

By: John Hutton

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The Harper government is expected to release up to 11 pieces of legislation related to justice and corrections in a single omnibus bill in the next few days. Individually, these are all bills that were previously introduced and failed to pass. The omnibus is expected to contain a number of new mandatory minimum sentences that would further limit the ability of judges to consider alternatives such as conditional sentences.

The John Howard Society has joined the Canadian Bar Association and prominent jurists in opposing the mandatory sentences because it amounts to breaking something that has, by all accounts, been working quite well.

In Canada, conditional sentences became part of a judge's arsenal in 1996 for those facing sentences of two years or less. Sometimes known as house arrest -- the offender is sentenced to serve his or her sentence in the community abiding by a series of conditions -- should any of the conditions be violated the offender could be incarcerated for the remainder of the sentence.

Unlike a custodial sentence, conditional sentences allow an offender to remain working and self-supporting in the community, attend school or upgrade their technical skills. An immediate advantage is that an offender on a conditional sentence is in a far better position to pay restitution to a victim, both during the period of the sentence and in the future. As well, conditional sentences are much cheaper for taxpayers as the individuals on sentence usually support themselves and don't have to be locked up at the cost of \$65,000 a year or more.

Most importantly, conditional sentences have a high rate of success. From September 1996 through September 2003, more than 3,000 conditional sentences were handed down in Manitoba and 70 per cent of the offenders completed their sentence without reoffending. Fifty per cent of those receiving conditional sentences were employed and able to maintain their jobs.

Conditional sentences have also become a very useful tool for repairing harm done to victims and the community, and giving victims a greater role in the justice process. Restorative resolution was created by the John Howard Society of Manitoba in 1993 and is jointly operated by JHSM and Manitoba Corrections. The program, which works with about 150 clients at a time who would otherwise be facing at least six months in jail. The offender begins by considering the harm that has been done to the victim, the community at large and themselves. He or she must then begin to develop a plan for repairing the harm, keeping the victim's wishes foremost. When the plan is complete, it is submitted to a judge who can then use it as the basis of a conditional sentence instead of incarceration.

Restorative resolutions have been extremely successful. The court plans are accepted 95 per cent of the time, without the individual having to be incarcerated. This alone saves taxpayers \$4 million a year; the cost of having a client in the program is only a tenth of what it would cost to

incarcerate the individual. To date, clients in the program have paid out a total of \$1.6 million in restitution. Victim satisfaction has been evaluated and found to be much higher in comparison to other victim programs. Most significantly, clients in this program have extremely low rates of recidivism, or reoffending.

In a study of the program carried out in 2003, restorative resolution clients were found to have a recidivism rate of only 18 per cent, compared to a 45 per cent rate of recidivism for those incarcerated for the same kinds of offences. As well, victims have an opportunity to have a say in what the consequences for the offender should be -- something that would not happen with mandatory sentencing.

Sentencing guidelines previously put in place by the Harper government already limit the ability of judges to use conditional sentences even when the recommendation has the support of both the Crown attorney and the victim. Changes expected as part of the omnibus bill will make it far more difficult for judges to use conditional sentencing as an alternative to incarceration.

Canadians need to be very wary of the new crime omnibus bill, especially where it seeks to limit judges' discretion. Mandatory minimums have been extensively used over a 30-year period in the United States and have failed to produce any meaningful results. The costs of the measures have been staggering -- over the same time frame, the U.S. government increased spending on corrections by about 700 per cent, at the expense of other programs, such as public education. In recent months a wide range of U.S. politicians, from former President Jimmy Carter to former leader of the House of Representatives Newt Gingrich, have spoken out against the use of mandatory minimums and have urged Canada not to copy U.S. mistakes.

In addition, overcrowding in our provincial jails has reached a crisis point, creating stress and dangerous conditions for inmates and correctional staff alike. As conditional sentences are used in cases where the individual is facing a sentence in a provincial facility, the federal government is in fact forcing the provinces to lock up more people whether they want to or not.

Meanwhile, the crime rate in Canada recently fell to a 40-year low. Suggestions that rates are only dropping because Canadians are failing to report crime insult our intelligence.

John Hutton is executive director, John Howard Society of Manitoba.