

CRIMINAL LAW

COMMENTARY: Cluttered *Code* bogs down criminal justice system

By Leo Adler

How many crimes are in Canada's *Criminal Code*? The answer isn't on the last page. Why? Because there are hundreds of sections with tricky numbers "hidden away" to make you think that the *Code* is slimmer than it really is. Thus, between ss. 83 (prize fights) and 84 (weapons) are ss. 83.01 to 83.33 dealing with terrorism, plus their numerous subparagraphs, such as s. 83.05(1)(1.1). You get the idea.

And that doesn't include the *Controlled Drugs and Substances Act* or the *Youth Criminal Justice Act*, to name just a few of the hundreds of statutes that constitute our total federal criminal justice system.

Doubtless many provisions had good reasons to have been adopted. The problem, though, is that much of the rationale for their enactment is long passé. Indeed, some of these offences are no longer really crimes, yet continue to be part of the *Code*. An example of the latter is s. 287, which deals with abortions. Then there are dastardly crimes such as obtaining

of soft drugs and other similar activities that are more properly labelled "nuisance offences".

Why can't we separate the wheat from the chaff and get rid of many of the illegal acts that clog our *Code* and our courts to the detriment of s. 11(b) of the *Canadian Charter of Rights and Freedoms*? Surely these matters would be more appropriately handled by the provinces and municipalities, assuming they have to be dealt with at all.

But editing the *Criminal Code* is only the tip of what confronts those of

us who deal with police, Crowns, criminals, courts, the *Code* and the *Charter* on a daily basis. The main culprit is the politicization of the

criminal justice system.

Public opinion, political pressure or media attention has always caused criminal laws to be enacted. However, the political and social correctness of the post-*Charter* era (and not necessarily spawned by the introduction of the *Charter*) has caused politicians to see the criminal justice system as their ticket to fame, glory and power.

Annual "wars" on drugs, hockey violence, domestic abuse, pornography and any other topic one can think of, are almost always initiated as a result of a particularly horrendous act which had seized the imagination of the public due to news reports. Headlines proclaiming "the year of the gun" overreact to statistical anomalies. Victims then become exploited as laws are hastily



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passed bearing their names. Those who call for calm, rational thought and reflection are savaged as being "soft on crime and criminals" in the rush to pass a law, any law, as long as it appears that something is

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fraudulent accommodation (s. 364), causing disturbances (s. 175), practising witchcraft (s. 365), possession of small amounts

Offset addition of new laws with removal of older ones

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being done to make certain that such crimes “never happen again”.

And when there are no more laws to pass, the focus turns to processes like bail and sentencing.

As an example, domestic altercations in Ontario invariably lead to overnight or over-the-weekend incarceration, followed by stringent bail conditions which financially impoverish families and ensure the disintegration of the family unit. All of this is done for the sole purpose of making sure that in the statistically insignificant possibility that a domestic murder does occur, all the parties can say that they tried to deal with it.

Statistics Canada’s figures for the period 2001 to 2005 make it clear that there are annually, on average, 7,800 crimes for every

100,000 Canadians. In other words, the raw data indicates that one in every 13 Canadians is a victim of crime. That is a seemingly high number, but further analysis takes the sting out of that claim.

While all crimes of violence, on average, occurred at the rate of 950 per 100,000 population,

common assaults made up 75 per cent of that statistic, and homicides hovered at just under the two per 100,000 rate. Since most common assaults are one-time, non-injurious incidents where the participants, after cooling down, learned their lessons, dealing with

those assaults outside the *Code* would lead to a more concentrated effort against “true violence” involving weapons, injuries, sexual assaults, robberies, etc.

Similarly, thefts under \$5,000 account for more than half of all 3,800 property crimes out of the 7,800 total crimes for every 100,000 Canadians per annum. While stealing is wrong, not all thefts have to be criminally prose-

theless make up such a large segment of Canada’s crime rate of 7,800 crimes per 100,000 people? Removing the majority of “other offences” from the *Code* would free up enormous resources to investigate and prosecute truly major, serious crimes.

The point is that the crime industry seems to benefit primarily police departments and elected officials who view

“advancements” in their political anti-crime campaigns as something to be done on the backs of unfortunate victims

and deceptively high statistics. In so doing, the social and fiscal cost of dragging people through the courts for what are primarily minor lapses of judgment simply enhances the public’s cynicism, disrespect for the courts and a contemptuous misunderstanding of

what “crime” should be.

Not that this is a uniquely Canadian problem. Professor Gary Slapper, Director of the Centre for Law at the Open University, in an article in the *London Times* of April 18, pointed out that in the past 10 years, “the [British] Government has created 3,000 new criminal offences, adding to a compendium of 8,000 existing offences”.

Maybe the time has come to start thinking that the addition of new laws has to be countered by the removal of old laws. The belief that “there oughta be a law” has to give way to a better understanding of what should or should not be criminalized.

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cuted, especially if restitution is made.

And what about the approximately 3,000 “other *Criminal Code* offences”, other than crimes of violence, property offences, driving incidents, drugs, or other significant matters, but which never-