Submissions to - The House of Commons Committee
on
Justice and Legal Affairs

Re - Bill C-84

From - Canadian Civil Liberties Association
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## The Death Penalty

The Canadian Civil Liberties Association welcomes the House of Commons vote to abolish capital punishment.

The killing of even the worst killers will gain nothing for society that could not be gained by less violent means, for example, by imprisonment. Indeed, scores of studies in many countries over long periods of time fail to show that capital punishment reduces murder in general or police murder in particular.

The death penalty must be seen, therefore, as an exercise in senseless violence. As such, it should be abolished once and for all.

## The Longer Prison Sentences

The Government Bill will increase the severity of the penalty for every type of murder other than those that are now designated as capital offences. It will do so by imposing greater limits on the eligibility for parole. Under the present law, the minimum time that has to be served is ten years, with discretion in the Trial Judge to raise it to twenty. But under the new Bill: (1) for first degree-murder there is an automatic twenty-five year minimum, unless a panel of three Judges can be persuaded to reduce it (though it cannot be reduced to less than 15 years); and (2) for second-degree murder, the Trial Judge has the power to raise the ten year minimum to twenty-five years, (though this is softened slightly to the extent that a minimum of more than fifteen years is reviewable later on).

In our view, it is inconceivable that society will acquire any additional significant protection from these additional rigid penalties. To the extent that penalties deter at all, we submit that there is sufficient deterrence in the probability of being caught and the certainty that, if caught, there will be a long and unpleasant term of imprisonment. This is what the potential non-capital murderer faces today. It strains credulity to believe that fifteen years certain, up to twenty-five years possible, and somewhere-in-between probable will stop in his tracks the potential "first-degree" killer who today is not stopped by ten years certain and fifteen to twenty years probable.

While it is doubtful whether these additional penalties will reduce the incidence of murder, it is certain that they will prevent the flexible handling of exceptional cases. Whatever misgivings may be felt about the consequences of parole in some cases, the experience in murder cases is beyond reproach. Only once in the history of parole in Canada has tragedy accompanied the parole of a convicted murderer, and that occurred more than 30 years ago. Indeed, the recidivism rate for murder ranks among the lowest for all criminal offences.

Thus, there is simply no valid reason to confine so rigidly the exercise of parole discretion in cases of murder. The present penalties provide sufficient power to hold those who are dangerous and sufficient unpleasantness to deter those who are deterrable. Essentially, the new penalties will contribute little more than the denial of humane treatment in deserving cases.

Defining the Types of Murder

Apart from those general objections to the proposed changes, there are a number of specific problems. First, with respect to the grouping of offences, we agree that if any type of murder ought to be singled out for special attention it is the general type which might be referred to as "planned and deliberate". The purpose here would be to insure that the increased severity would be likely to have some effect by trying to identify those situations where the offender has the time and state of mind to contemplate the penalty. The problem with the provision proposed is that it is too vague and is likely to catch in its webb those whom increased severity is unlikely to affect. This is because it seeks to do indirectly what can be done directly. The crucial elements are time and state of mind. It should not be too difficult to arrive at a formula which makes more specific reference to the elements, such as where "the intention to kill pursuant to which death was caused was formed sufficiently in advance of the situation in which death was caused, and the offender was in a sufficiently rational state of mind, to fully appreciate the penal consequences of his act". If a shorthand phrase is desired, "premeditated" is probably preferable to "planned and deliberate".

The major problem in the proposed grouping of offences, though, is not in the definition of premeditated murder but in the singling out, for extra severity, murder that is not premeditated. Whether it is a police officer or prison employee who is the victim, or whether the situation is the commission of one of the specified offences where there is no premeditation, the increased penalty for murder cannot hope to have any marginal deterrent effect on the offender. If it is thought necessary to single out a group of victims because of their special vulnorability (though this has never been empirically demonstrated with respect to the groups in question), it ought to be in conjunction with premeditation as a separate requirement, and not independent of premeditation. As for the offences specified, the same reasoning applies a fortiori. In themselves, these offences carry heavy penalties ranging up to life imprisonment. The additional heavy penalty which will result from treating murder in these cases as first-degree murder is, in our view, totally unnecessary.

A further problem arises with respect to the definition of murder. Recourse will be allowed under the proposed changes to the definitions in Section 212(c) and 213, alone, or in combination with Section 21(2). The general result of this will be that a person could become subject to the penalty for first-degree murder without ever contemplating, much less intending, death or bodily harm likely to cause death to anyone. Even the "by his own act" requirement of the current law is absent from the proposals. Strong arguments can be made for the repeal of these provisions, but certainly no increase in the penalty for murder should be undertaken without at least a revision of these sections. For example, as the law now stands, it would be likely that it would be held to be "planned and deliberate" murder on X's part if he, in a planned and deliberate manner, agreed to help Y in the commission of an offence under Section 213 (which could be completely non-violant as contemplated by X) and during Y's commission of the offence, Y unintentionally caused someone's death. (See, for example, R. v. Trinneer, [1970] 3 C.C.C. 289).

The Determination of Parole Eligibility

Finally, with respect to the proposed Section 672(2), we feel that the criteria for amending the parole eligibility date must be more clearly set out if unwarranted disparity is not to result and if there is to be public understanding of the nature of the process. It ought to be made clear whether this is a sentencing function or a paroling function, and in order to do this, the purposes for which the various factors mentioned are to be considered (e.g. denunciation, prevention, deterrence, etc.) ought to be set out some way or another as they are in the Parole Act. For instance, "character", divorced from the question of prognosis, can involve irrelevant and even objectionable considerations when the question is when to release someone who has been convicted of murder. It is also questionable whether the conduct of the applicant in the institution, which may have nothing to do with his culpability or prognosis, ought to be taken into account by the judicial panel, as opposed to the National Parole Board or the institutional authorities.

Summary of Recommendations

The Canadian Civil Liberties Association respectfully requests the House of Commons Standing Committee on Justice and Legal Affairs to support the following recommendations.

1. The complete abolition of capital punishment.
2. The rejection of all murder penalties beyond those presently available for non-capital murder.
3. In the alternative, the amendment of the definition of "first-degree" so as to confine it to those situations where death or at least grievous bodily harm likely to cause death is intended and premeditated.
4. The formulation by statute of criteria which the judicial panel should consider in amending the parole eligibility date.