

Reverse Onus stirs up Charter controversy

Fulfilling his election promise to crack down on crime, Prime Minister Stephen Harper announced plans for new legislation similar to the United States' "three strikes" policy, aimed at repeat and violent offenders, on October 12th, 2006.

The proposed law seeks to amend Canada's Criminal Code, ordering tougher sentences and penalties for repeat offenders. Specifically, anyone convicted of their third sexual or violent crime would be automatically deemed a dangerous offender and face extended jail time with no chance of parole for at least seven years. More controversially, the proposed law contains a "reverse onus" element, allowing criminals to prove why they should not fall under the dangerous offender category. Presently, the responsibility lies with the Crown to prove why a criminal should be deemed a serious threat to society and imprisoned indefinitely.

The proposed legislation has caused widespread controversy across Canada. Critics argue that a reverse onus is contrary to the presumption of innocence (or "innocent until proven guilty") - a fundamental principle of Canada's justice system and pillar of all democratic societies. In addition, critics maintain that this proposed law infringes on the guarantees enshrined in Canada's [Charter of Rights and Freedoms](#); including, section 7 and the right to life, liberty, and security of the person, section 11 and the presumption of innocence, and section 12's prohibition of cruel and unusual treatment or punishment.

In reply, officials from the federal Department of Justice have noted that the legislation does not violate s. 7, 11, or 12, because it does not deal with legal rights in a trial setting, nor does it presume guilt in any way; the reverse onus only operates after the criminal has been convicted of a third crime and applies only to sentencing. Furthermore, officials state that if the legislation is passed, the government fully anticipates a legal challenge and expects the new law will be upheld.

Sources

- Chris Wattie, "Harper takes aim at violent offenders" Calgary Herald (13 October 2006)
- CBC News, "Tories bring in bill to reverse onus for dangerous offenders" (17 October 2006)