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Highlights

Peace and
security

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publics

Peace and
security

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publics

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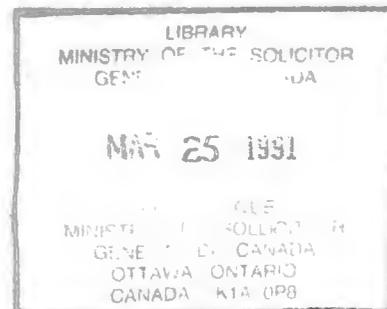
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Protection against
violent crime
Protection contre
la violence criminelle

THE HIGHLIGHTS
OF THE
PEACE AND SECURITY
PROGRAM



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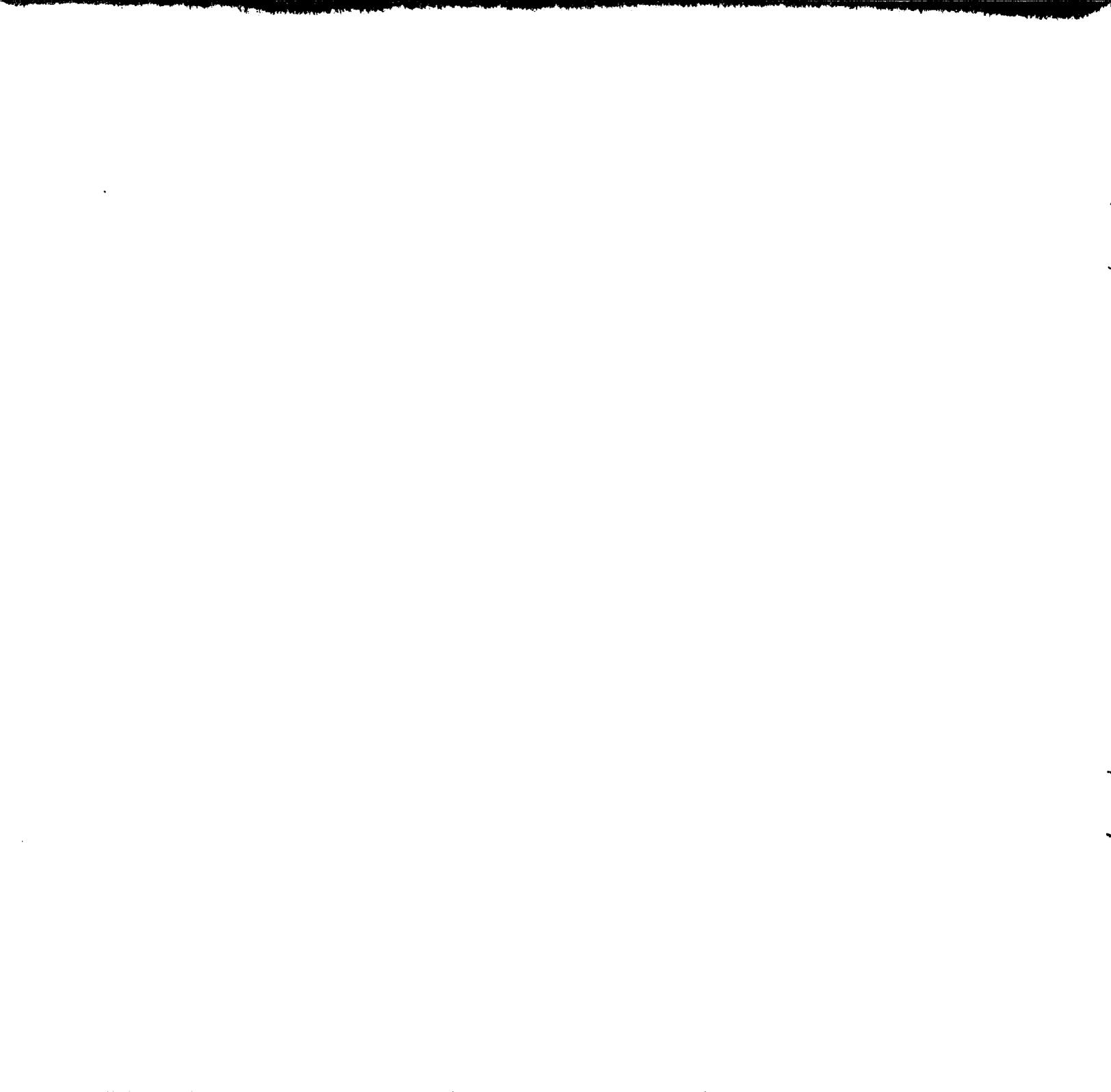
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Note:

This paper is a very brief description of the elements of the Peace and Security Program. Those wishing to have a fuller understanding of the measures and their effect are referred to the new legislation now before the House of Commons and to background papers available from the Ministry of the Solicitor General and the Department of Justice.

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INTRODUCTION

Rising crime rates, including rates of violent crime, are bringing home to Canadians that changes in the criminal law and in the administration of criminal justice are needed if the best possible protection is to be afforded to the public.

The whole apparatus of criminal justice exists first and foremost to protect society against the effects of crime. Crime in Canada is not out of control, but it is much easier to maintain control than to regain it. It is for this reason that the Government is now putting forward the Peace and Security Program, a series of measures to amend the criminal law and improve the administration of criminal justice. These measures are briefly summarized in the following pages. They are designed to come to grips with the increasing incidence of crime in Canadian society and to meet the need the public feels for a greater measure of protection.

Public concerns focus upon:

- repeated crimes committed by accused persons released on bail;
- the increase in violent crime;
- the difficulty encountered by the law officers in contending with the “untouchables” of organized crime;
- a few spectacular crimes committed by persons released mandatorily from federal institutions, by parolees and by offenders on temporary absence from prison;
- disturbances and hostage-taking in penitentiaries;
- repeated crimes by offenders who seem to be chronically violent;
- tragic and spectacular crimes involving the use of firearms.

One result of the public concern about violent crime is the tendency of many to regard the death penalty as a “cure-all”, especially for the ultimate act of violence—murder.

Having examined the question in depth, the Government feels there is no evidence to support this “cure-all” view.

Thorough studies in Canada and elsewhere (notably the United States) have shown that capital punishment cannot be proven to have any perceptible effect, either way, on the murder rate. There is no documented evidence either, that capital punishment is an effective deterrent to a person who has formed the intent to commit a murder.

The duty of the state is to protect its citizens against the effects of crime, particularly violent crime. The only possible justification for capital punishment would be its proven effectiveness as a protection against murder. Lacking this proof the Government is recommending to Parliament that capital punishment be abolished.

In a society that places such high value on the dignity of the individual, the use of the death penalty must be viewed as an unacceptable and essentially purposeless form of punishment. In itself, it suggests that problems and conflicts in society can be resolved by resorting to violent acts. The state is under an obligation to the people to set its face against violence in any form and to exemplify, by its conduct, that acts of violence cannot achieve any good end and cannot be tolerated in a civilized society.

The proposed sentencing provisions for convicted murderers deal firmly and effectively with convicted murderers by the imposition of long periods of impris-

onment to be served before the offender becomes eligible to apply for parole.

The new measures in the Peace and Security Program are designed to afford better protection to the public against all violent crime, not just murder. These measures are summarized under six headings, all of which will be expanded in this paper.

Specifically, a greater measure of protection against violent crime will be achieved by:

1. The provision of increased resources in crime prevention;
2. New sentencing provisions for convicted murderers;
3. A more stringent gun control program, including increased penalties for people who use firearms, in criminal activity and the licensing of all possessors of guns and purchasers of ammunition;
4. Special provisions for the control of dangerous offenders;
5. A concerted attack on organized crime by facilitating police investigation through electronic surveillance and providing for provincial inquiry commissions on organized crime;
6. The imposition of more effective screening procedures regarding the release of violent offenders into society and the provision for better supervision of such offenders after release.

The program also includes plans to:

- improve the training of police officers and penitentiary staffs;
- accelerate the construction of new smaller prisons to replace unworkable institutions of the “fortress” type;
- improve special training programs for the police in the handling of crisis situations;

—assist the police by the development of better preventive measures and procedures;

—ascertain the real incidence and effect of violent crime on victims;

—learn more about public attitudes toward the criminal law and criminal justice administration.

Already approved by the House of Commons and now before the Senate is a Bill to amend the Criminal Code, that, among other things, tightens conditions for the granting of bail and corrects abuses of the bail system, makes it more difficult for the bosses of organized crime to “launder” money acquired through criminal activity and changes the procedure in rape trials to offer more protection to the victim. The Government has under active consideration the views of the Law Reform Commission on many aspects of the criminal law and its administration. Nationwide consultations are in process that will lead to new legislation respecting young offenders.

The Peace and Security Program should accordingly, be seen as a stage in a continuing process, and not as the Government’s last word on the protection of society against violent crime.

Responsibility for the administration of criminal justice is shared by federal, provincial and local governments. To be effective, there must be a high degree of coordination. The Federal Government is proposing a series of consultations to this end, with all levels of government.

The criminal justice system is essentially a control mechanism. It plays a part in controlling the incidence of crime by the deterrent effect of the punishment it reserves for the criminal and in crime prevention by the work of the police. However, order in society is maintained by the value system and by fostering the sense of responsibility of every citizen for his own actions and toward his own community. This is the business of us all.

THE PENALTY FOR MURDER

Capital punishment has long been a controversial issue. It has been exhaustively debated in the House of Commons, particularly in 1967 and in 1973. In 1967, the Criminal Code was changed so that only murderers of police officers and prison guards on duty would be subject to the death penalty. The Cabinet has the statutory authority to commute a death sentence to imprisonment for life.

After careful consideration of the issue, the Government proposes to abolish the death penalty for persons convicted of murder and to replace it with a sentence of life imprisonment, with new provisions for sentence administration.

The Criminal Law Amendment Act (No. 2) 1976, divides murder into two categories: first degree and second degree.

First degree murder includes:

- planned and deliberate murder, including “contract” murder;
- the murder of a police officer or a person working in a prison or penitentiary in the line of duty;
- murder committed in the course of hijacking of aircraft, kidnapping and certain sexual offences including rape and attempted rape.

Second degree murder includes all other murders, such as murders of passion.

New Sentencing Provisions

The penalty for both first and second degree murder is a mandatory sentence of imprisonment for life.

Persons convicted of first degree murder must serve 25 years of imprisonment before they are eligible to be considered for parole for the first time.

Persons convicted of second degree murder will not be eligible to be considered for parole until they have completed 10 years of their sentences. In second degree murder cases, however, the judge may, at the time of sentencing, after seeking the view of the jury, increase the mandatory period of imprisonment without eligibility for parole to a maximum of 25 years.

There are provisions for a review of the parole eligibility date by three Superior Court Justices after the offender has served 15 years. This applies to all first degree murder cases and to those second degree cases where the parole eligibility date has been set at more than 15 years. These provisions recognize the fact that every individual is capable of change and that hope must not be denied. In addition, the possibility of an earlier parole eligibility date is likely to make it less difficult for penitentiary authorities to maintain control.

This judicial review may reduce the period to be served before the initial consideration of parole by the National Parole Board, but the decision to grant or refuse to grant parole remains with the Board. If released on parole, an offender will, of course, remain on parole for the rest of his life.

In the case of those convicted of murder, the Parole Board will include in their hearing panels two members from the community into which the parolee would be released, such as police officers, local officials and members of professional and trade associations, who will have full voting rights.

Persons convicted of either first or second degree murder will not be permitted unescorted temporary absences or day paroles by the Parole Board until they have completed all but three years of the non-parolable portion of their sentences. For example, an inmate who is required to serve 25 years before he is eligible for parole will not be permitted unescorted temporary absences or day paroles until he has completed 22 years.

These new safeguards will still enable the gradual release of selected offenders into the community under close surveillance and guidance as a careful testing

mechanism so that the Parole Board may assess the suitability of the offender for release on full parole.

GUN CONTROL

There is a growing concern about the increase in crimes and tragic incidents involving the use of firearms. Murders committed with firearms have increased from 178 in 1970 to 272 in 1974. In fact, guns are the most common murder weapons and claim almost one-half of all murder victims. They also claim over one-third of Canada's twenty-five hundred suicide victims and are the instruments of over one hundred accidental deaths annually as well.

Existing Canadian legislation on the possession of handguns is among the best in the world. But the owners of some ten million long guns, such as rifles and shotguns are subject to few restrictions on their use and handling of these weapons.

The Government shares the public's concern regarding the use of firearms in the commission of crimes, suicide and gun-related accidents. Amendments to the Criminal Code and other measures are being proposed to control the general availability of guns, to promote increased public responsibility in relation to firearms, and to increase the penalties for the use of guns during the commission of offences. This legislation, however, will not prevent the legitimate ownership and use of firearms for such purposes as hunting and target-shooting.

Penalties

Guns are the tools of the trade for many criminals, especially robbers. They are selected deliberately or are used because of their ready availability. New provi-

sions will specify higher maximum sentences for most crimes involving offensive weapons. Further, if a person uses an offensive weapon while committing an indictable offence, he will be liable to a mandatory minimum sentence of at least one (1) year and up to fourteen (14) years, to run consecutively to any other sentence imposed.

Seizure of Weapons by Police

Under existing law, the police can seize weapons without a warrant only if a crime is actually being committed or has already been committed. Under the present provisions a warrant may be obtained to seize weapons from a person where there are grounds for believing that his possession is not desirable in the interest of safety of any person. This provision will be extended to enable police officers to seize a weapon without a warrant, if the danger to the safety of some person is likely and it is impracticable to proceed otherwise. The police will therefore be able to seize a weapon in an imminently threatening situation, for example, in the case of domestic quarrels, which account for approximately one-third (1/3) of all murders in Canada.

Restricted and Prohibited Firearms

The Criminal Code presently requires the registration of restricted weapons such as pistols and as a general rule, allows restricted weapon possession only in one's home or place of business. Under the new

measures, the registration procedure for restricted firearms will be tightened significantly so that applicants will be required to justify the need for such a weapon before being granted a certificate. The only acceptable needs will be protection of life, lawful occupation, authorized target-shooting and *bona fide* collecting.

Certain weapons are already prohibited. This category will be enlarged to include formerly restricted weapons such as fully automatic guns, sawed-off guns, and "Saturday Night Specials" (inexpensive, low-accuracy weapons.)

Firearms Availability

Many of the ten million long guns in Canada are held by Canadians who no longer have any use for them. The Government will endeavour to collect these unwanted guns through an extensive voluntary recall and amnesty campaign. This campaign will attempt to educate Canadians to the responsibilities of firearms' ownership, and will encourage them to turn in guns to the nearest Police Station if they do not wish to retain them.

Licensing

The registration of all guns in Canada appears neither feasible nor likely to be effective. Rather, the Government feels it important to ensure that those people who continue to possess or acquire firearms and ammunition are fit to do so. To that end, every person in possession of any firearm or ammunition, will require a license. The license will be valid for five years, and will be issued only if the licensing officer is satisfied that the applicant has nothing in his background that would render him unfit to possess a firearms' license.

Further, the applicant will be required to submit the statements of two guarantors, from a selected list, who have known him for more than two years, to the effect that they too know of nothing that would render him

unfit to possess a firearms' license. Fees collected from licensees will be set at a level sufficient to cover the cost of this system.

Persons under the age of eighteen who wish to use firearms will require special permits, to which strict conditions will be attached. Such a permit will be issued only for target practice, game hunting or instruction in the use of firearms and the application must be signed by two guarantors, one of whom must be a parent or closely related person.

Special provisions will be made to allow permits to persons under eighteen years of age who need to possess a firearm to provide food for their families in areas where hunting and trapping are a way of life. Such permits may be issued without a fee being charged so as not to impose a financial hardship on such persons.

All firearms and ammunition dealers (both wholesale and retail), importers and manufacturers must have permits. They must also keep records of every transaction involving firearms or ammunition. These records will be inspected regularly. Further steps will be taken to improve the operation of the present import control system.

Legal Responsibility

Not only is it important to screen those who are to possess firearms and ammunition, they must keep and use those firearms in a responsible fashion. Careless handling and storage of firearms may make a gun owner liable to a criminal offence, carrying a penalty of up to five years of imprisonment. The Federal Government will also encourage Provincial Governments to enact legislation to provide stricter civil liability for firearms' ownership.

System Administration

It should be noted that the firearms control measures outlined here permit a flexible administration. A con-

siderable number of local registrars and licensing officers will be located across Canada to permit easy access by all Canadians. Consistency in the administration of the provisions will be ensured, however, by instructing these officials in the intent of the law and by providing them with a manual to guide their activities. Broad avenues of appeal will be provided in most cases if a citizen feels that he has been unjustly refused a license or permit or if his license or permit has been revoked.

Additional related measures will be taken to help reduce the level of gun violence. An extensive educational effort will occur to inform Canadians about responsible firearms' handling and about the dangers that firearms can represent. And the Government has made a commitment to new research into firearms misuse and violence. The implementation of all of these measures will take time. The Government expects that they will be phased in over a three-year period following proclamation.

DANGEROUS OFFENDERS

Over the past ten years there has been a substantial increase in violent crime in Canada. The new legislation is designed to combat this increase in violent crime, including rape and other sexual offences. It calls for a category of dangerous offenders who may be subject to sentences of indeterminate length—that is, continuing sentences which will be subject to periodic review by the National Parole Board.

The proposed legislation will repeal the existing provisions of the Criminal Code dealing with habitual criminals and dangerous sexual offenders and enact new provisions that will enable the courts to impose an indeterminate sentence of imprisonment in the case of all dangerous offenders, including dangerous sexual offenders. The present provisions of the Code do not deal with all kinds of dangerous, violent offenders.

An application to the court for an indeterminate sentence can only be made following the conviction of the offender and will require the prior consent of the Attorney General of the province. The indeterminate sentence is in lieu of any other sentence which the law provides for the particular crime committed by the dangerous offender.

The court may impose such a sentence if the offender has been found guilty of an indictable offence, for which he may be sentenced to ten years or more and which involved:

- the use or attempted use of violence; or
- conduct endangering or likely to endanger the life of another person or likely to inflict severe psychological damage upon another person.

Before an application for an indeterminate sentence can be made, however, the approval of the provincial Attorney General must be sought. In granting an application, the court must be satisfied that the offender constitutes a threat to the life, safety or well-being of others on the basis of evidence which must establish:

- a pattern of repetitive behaviour which demonstrates a failure to control his actions and a likelihood of causing injury in the future;
- a pattern of persistent aggressive behaviour demonstrating a substantial degree of indifference to the consequences of that behaviour; or
- unrestrained brutal behaviour.

(The crimes of first and second degree murder are excluded since separate legislation exists for these.)

An indeterminate sentence may also be imposed if the offender has been found guilty of:

- rape;
- attempted rape;
- sexual intercourse or attempted sexual intercourse with a female under sixteen;
- indecent assault on a female or male;
- gross indecency

and if the offender has shown a failure to control his sexual impulses and there is a likelihood that he will cause injury, pain or other evil to other persons through failure in the future to control his sexual impulses.

The legislation provides a number of safeguards for the offender, including his right to call for testimony from any psychiatrist, psychologist or criminologist and a right to appeal the court's finding.

The National Parole Board will be required to review the case of a dangerous offender in the first instance not later than three years after the sentence and not later than every two years thereafter in order to determine whether the offender should be released into the community on parole and if so, upon what terms and conditions. Periodic reviews are considered necessary since the sentence has no termination date and there is no fixed date for parole eligibility as is the case for all other offenders.

No dangerous offender may be released by the Parole Board unless there are two community participants as in the case of convicted murderers.

CRIME DETECTION—ELECTRONIC SURVEILLANCE

Criminal operations, especially those of organized crime, depend on effective communication. They are often planned on the telephone and discussed in private meetings. These oral communications are an important source of evidence and their interception is a key aspect of police work in fighting crime.

After almost two years of experience with the Protection of Privacy Act, some aspects of that law are seriously impairing the effectiveness of police, particularly in combatting organized crime.

The legislation introduces several changes designed to increase the effectiveness of police use of electronic surveillance, while at the same time maintaining the fundamental protection of the individual's rights to privacy adopted by Parliament in 1974, including the criminal and civil sanctions for the violation of these rights.

There are six principal amendments proposed:

- the courts will be empowered to grant authorization to intercept communications in relation to all indictable offences instead of the limited list of crimes now specified. In addition, any offence, indictable or otherwise, may justify an authorization where it appears to form part of a pattern of criminal activity of an organized nature;
- evidence derived directly or indirectly from an unlawful interception may be admitted by the court. This restores the common law rule in part but the unauthorized intercepted communication itself remains inadmissible and the act of interception punishable as a criminal offence;
- court authorization for electronic surveillance will be extended from thirty to sixty days, experience

having shown that the average interception is likely to last approximately sixty days. This will further the objectives of such authorization and reduce costs;

—the requirement to notify the person under surveillance, of this fact, will be repealed. The present notification provisions result in the suspect being alerted that the police are interested in his activities, thereby severely hampering police investigations flowing from the surveillance. Investigations

of organized crime bosses often take several years before enough evidence is obtained to lay charges; —evidence of an offence other than one for which the authorization was obtained will be made admissible in prosecuting that other offence; —reporting by the media of an intercepted communication that has been revealed in open court will not constitute an offence. This puts beyond doubt the original intent of the legislation in assuring that the media will be free to report fully proceedings in open court.

SPECIAL CRIME INQUIRIES

The traditional means of investigation provided for in the Criminal Code are sometimes found to be insufficient for law enforcement agencies seeking to gather all of the information necessary about crime and criminal organizations to protect society.

The proposed amendments providing for “special crime inquiries” add to those traditional means by enabling the provincial authorities to create special commissions of inquiry when it is deemed necessary to obtain knowledge about crime and criminal organizations, which is not likely to be acquired through the ordinary investigatory procedures.

Powers of Commissions of Inquiry

The proposed amendments provide specifically for a number of powers of a Special Commission of Inquiry such as the authority:

—to summon witnesses to appear and testify under oath and to furnish documents which the Commission may require;

—to issue search warrants and to make appropriate orders with respect to evidence seized as a result; —to allow for a person whose conduct is being investigated to be represented by counsel and to appear in order to give testimony or explanations; —to exclude the public from a hearing when the interests of the administration of justice so require; —to apply through the Attorney General to the court for authorization to intercept private communications.

Safeguards of the Rights of Citizens

Certain safeguards to protect the rights of citizens appearing before a Crime Commission have been built into this legislation. These include:

—no person’s alleged misconduct may be cited in a Commission report unless the person has had a full opportunity to be heard; —no person may disclose evidence given at a closed hearing, without proper authorization given

by the Commission or the Attorney General of the province;

- no Commission may cite or punish witnesses for contempt; this power is reserved to a judge of a superior court;
- a superior court will have power to review seizures under a search warrant issued by a Commission;
- any witness being examined under oath will be entitled to be represented by a lawyer.

Canada-wide Jurisdiction

Recent experiences of the Quebec Organized Crime Commission have shown that certain witnesses were able to evade subpoenas issued by the Commission by moving outside the boundaries of the province. The proposed legislation will allow a subpoena or warrant issued by a Commission to be served or executed anywhere in Canada. Search warrants may also be executed in a province other than the province where the Commission has been created with the consent of the Attorney General of that first province.

THE CUSTODY AND RELEASE OF INMATES

The purpose of the changes proposed is to provide better control of penitentiary inmates and improvements regarding the release of inmates into the community by full parole, day parole and temporary absence.

Some procedural safeguards will be introduced into parole hearings to ensure that the process by which the Board reaches its decisions will meet the expectations of natural justice. These will include assistance to the applicant, further information to the applicant and stated reasons for refusal of parole. These will be defined in regulations and will be phased in over a period of several years.

The Custody of Inmates

- the maximum penalty for escape or attempted escape from a prison will be increased from five to ten years;
- remission procedures in federal and provincial institutions will be changed. At present, inmates are automatically credited with statutory remission (one quarter of their sentence.) They can earn an

additional three days per month (earned remission.) Statutory remission can be forfeited for misconduct and may be restored to the inmate. In effect, most inmates who are not granted parole serve about two-thirds of their sentences and are released on mandatory supervision. Under the new measures, statutory remission is abolished and is replaced by an equivalent measure of earned remission. Remission will be granted at the rate of one day for every two served. Under the proposals, earned remission can be forfeited and once forfeited, cannot be restored to the inmate. Inmates released to serve their remission period in the community will continue to be placed on mandatory supervision. However, the inmate will be given the opportunity to choose between release on mandatory supervision and remaining in the institution.

This means that there will be a greater onus on inmates to earn time off their sentences and greater pressure to behave responsibly.

In addition, it is proposed to provide a greater degree of security and safety in prisons by:

- improving and strengthening the training of correctional staff;
- establishing emergency response or “crisis” teams to react immediately to potential danger or actual trouble such as prison disturbances and hostage-taking incidents;
- extending the team or “living unit” concept of deployment of staff in maximum security institutions;
- and instigating a revised construction program that will accelerate the replacement of large obsolete maximum security institutions by smaller, more manageable institutions and the reduction of populations in the existing medium institutions.

Release of Inmates

The National Parole Board will be expanded from its present nineteen members to twenty-six, thus enabling a more careful review of each case, and to undertake responsibility for other programs noted below:

- the National Parole Board will exercise ultimate authority for all forms of unescorted temporary absences from federal institutions. This will represent an increased coordination of all programs of temporary release and enable these programs to be administered with greater control and consistency;
- the rules regarding temporary releases from penitentiaries will be tightened to increase the period of time before which temporary release to the community may be considered;
- the supervision of those released on parole, mandatory supervision and temporary absence will be increased in intensity;
- offenders convicted of certain types of offences involving violence, who have, in addition, a history of violent crime, will not become eligible to be considered for parole until they have served at least one-half of their term of imprisonment;
- representatives of the local community will participate in the decision-making process at parole hearings for those convicted of murder or serving indeterminate sentences;
- provinces which choose to do so, will be enabled to establish their own parole boards for offenders serving less than two years and some federal inmates transferred under federal-provincial transfer agreements;
- regulations will be developed to provide some procedural safeguards to applicants for parole and those being considered for revocation for parole. These will be introduced gradually during the next three years;
- the Parole Board will no longer have power to parole by exception. This means that all inmates will have to serve one-third of their sentences or seven years, whichever is lesser, before being eligible for parole consideration. (Or one-half in the case of offenders serving a second or subsequent sentence for a violent offence.);
- the Parole Board will be relieved of the administration of the National Parole Service. The responsibility for the Parole Service is being transferred to the Commissioner of Penitentiaries, who is to be renamed “Commissioner of Corrections”.

CRIME PREVENTION MEASURES

The Government is proposing a number of measures designed to prevent the commission of crimes:

Preventive policing

- information exchange between police forces will be improved, particularly with regard to policing programs and techniques;
- better training in crisis intervention will be provided;
- expanded experimentation will be encouraged in team policing and community policing to bring about better cooperation between citizen and policeman.

Victimization

- studies every eighteen months over the next five years to assess more accurately the incidence and effects of crime on victims.

Defensible Space

- accelerating work on the development of better knowledge on target hardening and environmental design strategies to increase the crime resistant quality of communities.