



December 15, 2009

The Honourable Joan Fraser, Senator
Chair, Legal and Constitutional Affairs Committee
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

Dear Senator Fraser,

Re: Bill C-26 (auto theft and trafficking in property obtained by crime)

The Canadian Bar Association National Criminal Justice Section (CBA Section) welcomes this opportunity to comment on Bill C-26, *Criminal Code* amendments (auto theft and trafficking in property obtained by crime). The CBA is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The CBA's primary objectives include improvement in the law and in the administration of justice. The CBA Section represents a balance of Crown counsel, defence lawyers and academics from every part of Canada.

The CBA Section supports the legitimate goal of combating auto theft and trafficking in stolen automobiles and automobile parts but we believe legislative change should be considered only if the current law is inadequate to address a particular problem. Bill C-26 would introduce a new offence of motor vehicle theft. This offence is already addressed by the general theft provisions of the *Criminal Code*.

The new offence proposed in clause 2 of the Bill includes a mandatory minimum sentence of imprisonment. The CBA Section has consistently opposed mandatory minimum sentences. Judges have extensive legal and practical experience and their independent role in the justice system should be respected. The judge at trial has the opportunity to observe the accused, learn the history and current circumstances of the accused, hear the facts of the particular case, and become aware of the prevailing conditions in the local community. That judge is best placed to assess the circumstances surrounding any previous offences, and to give a prior record appropriate consideration in arriving at a just sentence given the particulars of the case and the range of sentencing options. Instead, Bill C-26 would dictate a minimum sentence triggered upon proof of the offence and previous convictions for similar offences under subsection 331.1(1)(a).

Since its introduction, the Bill has been amended so that the mandatory minimum sentence under clause 2 would be triggered where previous convictions are for either indictable or summary offences. As originally introduced, it would have only applied if an offender's prior record was for indictable offences and that offender was then charged with an indictable offence under the same subsection. This amendment amplifies our concerns about potential injustice and lack of judicial discretion as a result of mandatory minimum sentences.

In our view, the Bill is unnecessary. If it is passed, we suggest that it be amended to remove the mandatory minimum sentence in clause 2, and permit judges to use discretion in dealing with each individual case and offender according to established sentencing principles. We trust that our comments will be helpful to your Committee's deliberations. Thank you for considering the views of the CBA Section.

Yours truly,

(Original signed by Gaylene Schellenberg for Josh Weinstein)

Josh Weinstein
Chair, National Criminal Justice Section