THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

Bill C-5 – Criminal Code and Controlled Drugs and Substances Act Amendments

CANADIAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION

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PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the CBA Criminal Justice Section, with assistance from the Advocacy Department at the CBA office. The submission has been reviewed by the Law Reform Subcommittee and approved as a public statement of the CBA Criminal Justice Section.

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I. INTRODUCTION

The Criminal Justice Section of the Canadian Bar Association (CBA Section) is pleased to comment on Bill C-5, which proposes to:

- remove several Mandatory Minimum Sentences (MMSs) from the *Criminal Code*;
- remove all MMSs from the *Controlled Drugs and Substances Act*;
- restore the availability of Conditional Sentence Orders (CSOs) to many offences; and
- set up a diversion program for simple drug possession offences.

The CBA is a national association of 36,000 members including lawyers, notaries, academics, and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section consists of a balance of prosecutors and defence lawyers from all parts of the country.

The CBA Section supports Bill C-5, as it takes important steps towards reforming the *Criminal Code* to allow a more evidence-based, principled approach to sentencing proceedings.

The proliferation of MMSs and restrictions to the availability of CSOs over the past several years have exacerbated problems within the criminal justice system. This "tough on crime" agenda is a failed approach to criminal law policy. It has, among other things, increased system delay and made the overincarceration of marginalized individuals worse. Unsurprisingly, many amendments introducing MMSs and restrictions on CSOs have been held by the courts to be unconstitutional. Many have been found to amount to cruel and unusual punishment. Others have been characterized as discriminatory and overbroad. Bill C-5 represents a shift in criminal law policy, rooted in fact and principle, that will improve the system. It will allow more tailored sentences, which will improve public safety and reduce overincarceration costs. The CBA Section advocates for the further repeal of other MMSs that remain in the *Criminal Code*, while recognizing that Bill C-5 is an important step towards a fairer, more efficient and

just system. It is also consistent with CBA policy calling for the elimination of MMSs (other than for murder).[1]

II. PROBLEMS WITH MANDATORY MINIMUM SENTENCES

MMSs unnecessarily limit the discretion of sentencing judges, resulting in unjust and sometimes cruel sentences which violate the *Canadian Charter of Rights and Freedoms*. MMSs otherwise contribute to problems in the system, including but not limited to:

- MMSs disproportionately affect Indigenous offenders, racialized offenders and other marginalized communities;
- MMSs remove judicial discretion, forcing judges to impose disproportionate sentences that do not address the basic principles of sentencing law;
- MMSs contribute to court delays as they remove opportunities to resolve matters earlier in the process and create additional constitutional litigation;
- MMSs do not deter crime;
- MMSs are coercive and can encourage justice participants to circumvent the law to avoid injustice, thereby undermining the administration of justice.

We expand on these points below to highlight why the CBA Section supports the repeal of most MMSs.

A. MMSs disproportionately affect Indigenous offenders, racialized offenders and other marginalized communities

A 2017 Justice Canada study found almost half (48%) of racialized federally incarcerated offenders were serving a MMS, compared to 31% of white federally incarcerated offenders.[2] More recently, the Office of the Correctional Investigator confirmed that Indigenous women comprise less than 5% of the population of Canadian women, but 50% of all federally sentenced women. In January 2021, the Office indicated that Indigenous people have now surpassed 32% of the federal corrections population.[3] These staggering statistics reveal the real-world impacts MMSs have on Indigenous and racialized people in Canada.

Discrimination against Indigenous and Black Canadians is now a matter of judicial notice, given its widespread and uncontroversial nature: *R. v. Jackson*, 2018 ONSC 2527 at paras. 81-92; *R. v. Anderson*, 2021 NSCA 62 at para. 111; *R. v. Morris*, 2021 ONCA 680 at para. 42; *R. v. Ipeelee*, 2012 SCC 13 at para. 60.

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1 Resolution 21-04-A, *Mandatory Minimum Sentences*, adopted at the Canadian Bar Association Annual Meeting, February 2021.

2 Department of Justice, *Just Facts: The Impact of Mandatory Minimum Penalties on Indigenous, Black and Other Visible Minorities*, October 2017.

3 Office of the Correctional Investigator, Press release, December 17, 2021.

In recognition of these issues, the Truth and Reconciliation Commission of Canada (TRC) recommended *Criminal Code* amendments to address the overincarceration of Indigenous offenders. TRC Call to Action #32 states:

> 32. We call upon the federal government to amend the *Criminal Code* to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.[4]

Similarly, the Canadian Association of Black Lawyers (CABL) recently called on the Minister of Justice to review and repeal MMSs and the limitations to CSOs.[5]

The CBA Section has made similar calls for reform. It has argued against MMSs since 1995, when Bill C-68, the *Firearms Act*, first introduced the MMSs[6] that Bill C-5 now seeks to repeal. In our 2006[7] and 2011[8] submissions on Bill C-10 (minimum penalties for offences involving firearms) and Bill C-10 (*Safe Streets and Communities Act*) the CBA Section voiced concerns about MMSs that have been borne out:

- MMSs do not advance the goal of deterrence;
- MMSs do not target the most egregious or dangerous offenders who already receive stiff sentences;
- MMSs disproportionately impact minority groups, who are already overrepresented in prisons and penitentiaries; and
- MMSs subvert the principles of proportionality and individualization, cornerstones of Canadian sentencing law.[9]

B. MMSs remove judicial discretion, forcing judges to impose disproportionate sentences that do not address the basic principles of sentencing law

Traditionally, judges have had discretion to sentence individuals in accordance with the gravity of the offence and degree of responsibility of the offender.[10] MMSs derogate from that principle since sentences are no longer proportionate, but standard regardless of offence

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4 *Truth and Reconciliation Commission of Canada: Calls to Action*, Truth and Reconciliation Commission of Canada, 2015.

5 *Open Letter to the Prime Minister and Minister of Justice* from President, Canadian Association of Black Lawyers, June 25, 2020.

6 See online.

7 Bill C-10 – *Criminal Code* amendments (minimum penalties for offences involving firearms), see: online

8 Submission on Bill C-10, *Safe Streets and Communities Act*, see: online.

9 CBA Criminal Justice Section, Submission on Bill C-10 *Criminal Code* amendments (minimum penalties for offences involving firearms), December 2006. CBA Criminal Justice Section, Submission on Bill C-10 (*Safe Streets and Communities Act*) October 2011.

10 S. 718.1 Criminal Code

gravity or offender moral culpability. This results in particularly cruel or disproportionate sentences where offences can be committed in a broad array of circumstances, ranging from serious to less serious.

For example, drug trafficking offences can be committed by sophisticated international smugglers, or by drug addicts who work to meet their own addictions. As the Supreme Court of Canada explained in *Pearson*:

> … trafficking" is a very broad concept. Under s. 2 of the *Narcotic Control Act*, "traffic" means "to manufacture, sell, give, administer, transport, send, deliber or distribute" a narcotic, or to offer to day any of those items. The offence of trafficking can even be committed by giving a narcotic to a friend for safekeeping… Thus s. 515(6)(d) applies not only to hardened drug traffickers, but also to "small fry" drug dealers and even to the "generous smoker" who shares a single joint of marijuana at a party.[11]

MMSs treat all offenders the same, regardless of personal circumstances or pressures (or lack thereof) that led to their offending. It makes little sense to treat addicts who deal drugs to their peers to feed their own addiction the same as a "hardened" criminal involved in trafficking purely for profit.

Sentencing is not a "one size fits all" proposition. Judicial discretion balances relevant factors to ensure a properly tailored sentence is imposed that reflects both the seriousness of the crime and the circumstances of the offender. At their core, MMSs erode judicial discretion, and the ability of judges to properly balance these two pillars of sentencing.

Removal of MMSs ensure that people who need not be incarcerated are not, though they may be incarcerated if the circumstances call for it.

C. MMSs contribute to court delays as they remove opportunities to resolve matters earlier in the process and create additional constitutional litigation

MMSs significantly interfere with counsel's ability to engage in resolution discussions. When an offender is charged with a mandatory sentence offence, there is little incentive to negotiate, particularly if the offender faces little prospect of receiving a sentence higher than the mandatory penalty. Logically, in these circumstances, the accused take their chances with a hearing, as there is little to no upside to negotiating a resolution. This results in litigation that could have been resolved with more flexibility available.

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11 *R. v. Pearson*, [1992] 3. S.C.R. 665 at 698 (emphasis added).

Early resolution failure creates additional negative consequences. Victims must testify in cases that could have been resolved absent the MMS. Court time is occupied by pre-trial applications and trials, lasting days and weeks, rather than the modest time for a sentencing hearing where a plea resolution is reached. Offenders languish in pre-trial custody, unable to meaningfully begin or complete the process of rehabilitation.

In addition, more delay and uncertainty arise after conviction, as offenders litigate the constitutionality of MMSs, complex litigation that can last days. Notably, challenges to these provisions amount to 47% of all constitutional litigation. Of this litigation, 69% of drug legislation challenges and 49% of firearms legislation challenges have been successful.[12]

MMSs delays place undue pressure on the system. Individually and collectively, they risk other serious cases being stayed for s. 11(b) *Charter* violations (unreasonable delay as discussed in *R. v. Jordan*[13]). In this way, MMSs have a "knock on" effect on the entire system.

D. MMSs do not deter crime

Over 20 years, courts have questioned the deterrent effect of carceral sentencing, the primary rationale behind the creation of MMSs: *R. v. Proulx*, 2000 SCC 5 at para. 107. There is no comprehensive or authoritative study which demonstrates that the MMSs in Bill C-5 deter crime. Even if harsh sentences could deter crime, Bill C-5 will not interfere with that process because judges will be able to impose stiff jail sentences where the circumstances warrant it.

Removing mandatory sentencing provisions will not prohibit judges from imposing lengthy jail sentences. The facts in *R. v. Nur*[14] are instructive. There, the Supreme Court of Canada (SCC) struck down the MMS for possession of a loaded firearm (three years). However, despite the finding of unconstitutionality, the Court upheld three- and seven-year sentences for the offenders who appealed their sentences. Even absent the MMS, the Court imposed lengthy terms of imprisonment, as was appropriate in those individual cases.

The removal of MMSs means that judges, given offender and offence circumstances, can impose fit sentences. The SCC endorsed this process as vital to a sentencing judge's role: *R. v. Lacasse.*[15] Indeed, MMSs removal mostly affects offenders committing offences in

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12 Justice Canada, *Mandatory Minimum Penalties and the Courts*, Backgrounder, 18 February 2021.

13 *R. v. Jordan* 2016 SCC 27

14 2015 SCC 15.

15 2015 SCC 64.

circumstances deserving of some leniency and who might deserve a lesser jail sentence or a community sentence. Generally, these are not career criminals that MMSs are said to target. Those offenders typically receive harsher sentences already (usually exceeding minimum jail penalties), as the existence of a prior criminal record in similar circumstances is a serious aggravating factor on sentence.

E. MMSs are coercive and can encourage justice participants to circumvent the law in order to avoid injustice, thereby undermining the administration of justice

MMSs pose a serious ethical dilemma for counsel, including Crown counsel. Crown prosecutors have a dual role. On one hand, they seek justice for victims of crime. On the other, they are who must ensure the fairness of the system. When an MMS is mandated in circumstances that do not call for it, Crown counsel's duties conflict against one another. To avoid the injustice of a MMS, Crown counsel and defence counsel may agree to a resolution involving lesser or different charges, even though they do not fully or properly reflect what occurred. In her article, "Seeking Justice by Plea: The Prosecutor's Ethical Obligations During Plea Bargaining",[16] Professor Palma Paciocco explains the dilemma:

> But, what if the Crown believes the charge that fits best with the evidence carries a disproportionate penalty? Even where it is clear which charge best captures the accused's factual and normative guilt vis-à-vis a particular wrongful act or omission, there will almost invariably be some alternative charge available that is plausibly supported by the evidence. In practice, the evidence can be finessed to support an alternative charge that fits the conduct somewhat awkwardly. Fact bargaining—an oftcriticized species of plea bargaining—occurs when the parties to a criminal case try to finagle or justify a particular outcome by cherry picking, framing, or even misstating the evidence. Whether through creative framing or outright misstatement, Crowns have the power to bring charges that do not fit the evidence as well as other possible charges, but that entail more proportionate sentencing ranges. The crucial question is therefore whether they should exercise this power. Though I have some reservations, my answer to this question is yes. As I will explain below, I am of the view that a Crown's ethical mandate demands she privilege just sentences over accurate charges.

Although Professor Paciocco sees inapposite charges as the lesser of two evils, they nonetheless present significant problems. For example, depending on the extent of counsels' reframing, pursuing a just sentence may be in tension with their ethical duty not to knowingly

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16 (2017) 63:1 McGill LJ 45 at 68. See also: Kari Glynes Elliott and Kyle Coady, "Mandatory Minimum Penalties in Canada: Analysis and Annotated Bibliography" Research and Statistics Division, Department of Justice Canada, March 2016 at 2.2.7; Mary Allen, "Mandatory minimum penalties: An analysis of criminal justice system outcomes for selected offences," Juristat, Statistics Canada, Catalogue no. 85-002-X, 29 August 2017, Text Box 1. 10.

mislead the court when entering a guilty plea: see *R. v. Youvarajah.*[17] In circumventing the application of legal principles, counsel begin to undermine the transparency of the law.

The approach endorsed by Professor Paciocco also tends to subvert the sentencing judge's role. As observed in *R. v. Anderson,*[18] the duty to impose a proportionate sentence rests on judges, not Crown prosecutors. However, where sentencing judges are bound by MMSs, the burden and power to achieve proportionality in sentencing begins to shift from the judiciary to the Crown. As observed by Professor Paciocco:

> [The limitations on judicial discretion in the *Safe Streets and Communities Act*] have the effect of increasing the power of prosecutors to shape case outcomes. Crucially, this dynamic is what makes charge bargaining effective: defendants are motivated to plead guilty to lesser offences because those offences are highly likely, or even guaranteed, to result in more lenient sentences than the sentences that would be entailed by the 22 original charges. As noted above, this bargaining strategy places tremendous pressure on defendants…

This transfer of discretion from the judiciary to the Crown disrupts the balance of power that is central to the integrity of Canada's criminal process, and raises the real risk of innocent people pleading guilty to avoid the possibility of a MMS. As the SCC warned in *R. v. Nur:*[19]

> … vesting [too] much power in the hands of prosecutors endangers the fairness of the criminal process. It gives prosecutors a trump card in plea negotiations, which leads to an unfair power imbalance with the accused and creates an almost irresistible incentive for the accused to plead to a lesser sentence in order to avoid the prospect of a lengthy mandatory minimum term of imprisonment. As a result, the "determination of a fit and appropriate sentence, having regard to all of the circumstances of the offence and offender, may be determined in plea discussions outside of the courtroom by a party to the litigation": R. M. Pomerance, "The New Approach to Sentencing in Canada: Reflections of a Trial Judge" (2013), 17 *Can. Crim. L.R.* 305, at p. 313. We cannot ignore the increased possibility that wrongful convictions could occur under such conditions.

Ultimately, where parties are forced to choose between an unjust outcome or an inapposite plea, it is incumbent on the justice system to scrutinize the law that gives rise to that dilemma. Similarly, as noted in *Anderson,* "it is *the judge's* responsibility, within the applicable legal parameters, to craft a proportionate sentence. If a mandatory minimum regime requires a judge to impose a disproportionate sentence, the regime should be challenged"[20].

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17 2013 SCC 41 at para. 61.

18 2014 SCC 41 at para 20.

19 Supra, at para 96.

20 Supra, at para 25.

F. Conclusion on MMSs

For the above reasons, the CBA Section supports the repeal of unnecessary and unjust MMSs. We agree with the MMSs that would be removed by Bill C-5. These amendments will restore judicial discretion in sentencing, which is a vital component to our criminal system. These amendments also directly address the problem of overincarceration, an issue which disproportionately affects Indigenous, Black and other racialized persons.

In addition, eliminating MMSs from the trafficking and importing/exporting offences will ensure sentencing uniformity across Canada. MMSs for these types of offences have been struck down by lower and appellate courts in some jurisdictions, but not others. This creates a situation where some offenders are subject to an MMS solely because of where the offence was committed. This has never been the way Canadian criminal law was intended to operate.

III. RESTORATION OF CONDITIONAL SENTENCE ORDERS

The Condition Sentence Order (CSO) has been part of the *Criminal Code* since 1996. It was introduced, in part, to address overincarceration in Canada, particularly for Indigenous offenders. The CSO was a unique and elegant solution to the problem. It allowed judges to sentence an offender to jail in the community. Only non-dangerous offenders were eligible, and only where the circumstances of their offence(s) warranted a sentence of two years or less.

Successive governments have restricted the availability of CSOs as a sentencing option. Unsurprisingly, the problem of overincarceration of marginalized individuals has worsened since these restrictions were enacted.

The most severe restrictions were introduced in 2011 as part of Bill c-10, the *Safe Streets and Communities Act* (*SSCA*). Following those amendments, it was very difficult for an offender to be eligible for a CSO, even though it was the appropriate sentence in the circumstances. Offenders charged with any offence that carried a maximum penalty of 14 years or life were ineligible, as were those charged with a myriad of specific offences (e.g. theft of a motor vehicle, theft over $5000). Other restrictions meant CSOs were unavailable for trafficking offences or sexual assault proceeded by way of indictment, regardless of the circumstances of the offence or the offender. This is problematic because of the broad nature of these offences.

In many of these cases, judges have openly lamented the unavailability of CSOs, leaving only jail or suspended sentences as available options. In other words, the amendments left

sentencing judges with only two options: either a too lenient outcome by granting probation, or imposing an overly harsh jail sentence.

For example, in *R. v. Hillier,*[21] two accused were convicted of trafficking in cocaine. West J. emphasized the new challenges in sentencing individuals who suffer from addiction after the enactment of the SSCA. As stated at para. 124:

> Certainly when conditional sentences were available as part of the sentencing options for trafficking or possession for the purpose of trafficking in Schedule 1 substances, … numerous judges recognized that an appropriately designed conditional sentence could balance deterrence and denunciation, while at the same time acknowledging the progress in overcoming a drug addiction an offender had made and putting in place appropriate support and enforcement mechanisms that would assist in the offender's continued rehabilitation. Justice Gillese referred to this in *Lazo*, where she held: "…his steps towards rehabilitation will be encouraged by a conditional sentence, given the likelihood of incarceration in the event of a breach." It is unfortunate sentencing judges no longer are able to fashion custodial sentences, served in the community through the use of conditional sentences, given the recognition by the Ontario Court of Appeal that successful drug treatment and rehabilitation of the addict trafficker provides the best protection for the public.

The challenge of sentencing a marginalized offender in these circumstances is also illustrated in *R. v. Foreman.*[22] In that case, an individual who committed aggravated assault faced intersecting grounds of marginalization due to her alcoholism, disability, poverty, and mental health challenges. The offender had also made significant steps towards her rehabilitation. The Court remarked on the difficulty of crafting a fit sentence without the availability of a conditional sentence order. Indeed, the Court went so far as to suggest that s. 742.1(c) was inconsistent with the principle of restraint in s. 718.2(e) (at para. 58):

> A conditional sentence order is no longer available having being specifically prohibited by Parliament. That being said, a conditional sentence order is a fit sentence in this case. I cannot, without ignoring s. 718.2, impose a custodial sentence…

The Court ultimately imposed probation, explicitly noting that a conditional sentence would have been the most appropriate sentence for the offender (at para. 60):

> …While it would have been more appropriate to have put the significant consequences of a conditional sentence order in place, I am satisfied that I can suspend passing of the sentence and impose a period of probation with terms that are strict enough to emphasize the important principles of the sentencing of denunciation and deterrence while continuing Ms. Foreman on her path of rehabilitation.

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21 2018 ONCJ 397.

22 2015 BCPC 104

This approach is arguably inconsistent with leading authorities on suspended sentences (e.g. *R. v. Voong,*[23] which indicates that a conditional sentence cannot be substituted with probation). However, in *Foreman*, a prison sentence was inconsistent with the s. 718.2(e) principle. This dilemma demonstrates how the limitation on conditional sentences can frustrate the principles of proportionality, restraint, and rehabilitation where an offence is on the lower end of the seriousness scale.

The problem is particularly acute when sentencing Indigenous offenders who fall within the *Gladue* framework. In *Sharma*,[24] the Ontario Court of Appeal held that restrictions on the availability of CSOs impede a judges' ability to apply 718.2(e) in a manner responsive to the circumstances of Aboriginal offenders. As stated at para. 130:

> The relationship between ss. 718.2(e) and 742.1 in sentencing is well established. The conditional sentence is a central tool given to sentencing judges to apply the *Gladue* factors. By restricting the availability of the conditional sentence, the impugned amendments deprive the court of an important means to redress systemic discrimination against Aboriginal people when considering an appropriate sanction. *Criminal Code* amendments that make the criminal law more stringent or that increase a maximum sentence for an offence would not have the same effect. Sections 742.1(c) and 742.1(e)(ii) undermine the purpose of the *Gladue* framework, exacerbating and perpetuating the discriminatory disadvantage of Aboriginal offenders in the sentencing process.

The Court went onto to conclude that the restrictions introduced by the *SSCA* violated s. 15 of the *Charter*, as they discriminated against Indigenous offenders.

The restrictions on the availability of CSOs at issue in *Sharma* were also struck down as overbroad. The Court of Appeal concluded that *SSCA's* object was to ensure serious offenders were sent to jail, but the restrictions at issue went well beyond this cohort, capturing individuals who did not commit serious offences. This conclusion has since been followed in other jurisdictions: *R. v. Chen*[25] and *R. v. Boyde.*[26]

The CBA Section has long been a proponent of the appropriate use of CSOs. In our 2011 submission on Bill C-10 (*Safe Streets and Communities Act*), we advocated against enacting limits to CSOs for certain enumerated offences, as well as offences where the maximum penalty was 14 years or more – many of the very restrictions that Bill C-5 now seeks to repeal. We

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23 2015 BCCA 285

24 2020 ONCA 478

25 2021 BCSC 697.

26 2021 NSSC 28.

argued that the limiting of CSOs, "…would result in restrictions that are far too broad, often arbitrary and inflexible, and could well result in sentences that are, simply put, unjust."[27]

The CBA Section still asserts that the *Criminal Code* restrictions on CSOs are discriminatory, overbroad and fail to achieve their objective. Many offenders convicted of non-serious offences, or offences committed in less serious circumstances, are captured by the legislation, even though this was not Parliament's intent. This results in individuals going to jail when it is not necessary to achieve the objectives of sentencing.

For these reasons, the CBA Section supports the repeal of unnecessary restrictions on the availability of CSOs. Specifically, we support and agree with the repeal of restrictions set out in Bill C-5. These amendments are consistent with the original spirit of the CSO and address TRC Call to Action #32. These amendments will afford broader discretion for sentencing judges to impose fit sentences, particularly in circumstances which involve an Indigenous or marginalized offender. The amendments will allow non-dangerous offenders to benefit from the many salutary effects of CSOs. These include:

- Allowing those who are overrepresented in jails (Indigenous, Black, racialized offenders) to instead serve sentences in the community where appropriate;
- Allowing offenders employed at the time of sentencing to continue to work to support themselves and their families;
- Promoting a sense of community-based restorative justice through appropriate conditions;
- Reducing the financial burden on provincial governments who bear the costs of incarcerating offenders serving sentences of less than two years (i.e. those eligible for a conditional sentence).

Undoubtedly, some detractors of these amendments will say that CSOs are too lenient. They will claim that CSOs allow hardened criminals to go unpunished. This argument fails to appreciate the punitive nature of CSOs, a point recognized in our law for over two decades: *R. v. Proulx*. The reality is that serving a sentence, confined in your home on the threat of imprisonment is a significant penalty for non-dangerous offenders (the only individuals eligible for such a sentence).

If the COVID-19 pandemic has taught us one thing, it is that being forced to stay in one's home, except for groceries or work, is, a significant punishment. The one difference is that members

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27 CBA Criminal Justice Section, Submission on Bill C10 *„Safe Streets and Communities Act*, October 2011 at p 16

of the public need not obtain advance permission from a conditional sentence supervisor to go to work or shop for groceries, nor do they risk imprisonment if they decide to leave their home. Offenders on CSOs face these challenges and the ever-present Sword of Damocles over their heads should they deviate from their conditions. This kind of sentence provides real incentives to comply with the Court's directions and engage in meaningful rehabilitation.

IV. DIVERSION

The CBA Section endorses the use of alternative measures to deal with simple possession of controlled substances. Criminal enforcement of controlled substances has led to the adverse impacts on those with substance abuse problems, including the following:

- It stigmatizes those with drug addiction and labels them as criminals;
- It saddles people with criminal records which can have adverse effects on employability and access to social supports such as community housing;
- It burdens the criminal justice system with additional charges on individuals who do not pose a significant risk to public safety;
- It diverts focus from treating substance abuse a public health and social issue.

The CBA Section agrees with the position that diversion of simple possession offences (i.e. amounts of substances less than a certain amount) should be the Crown's default position, rather than discretionary. This will assist in removing these matters from the criminal justice system early on in the process, unless there is a compelling reason to continue the prosecution.

We hope these observations will be helpful.