Submitted by Councillor Vaughan

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From Parliament

Hon. Irwin Cotler (Mount Royal, Lib.):

Mr. Speaker, while the debate this evening is on Bill C-394 and criminal organization recruitment, it reflects and, indeed, invites initial comment on the overall approach to criminal policy by the Conservative government in general.

In this bill, we see the problems of this generic approach to criminal law, namely, that everything is a matter for the criminal law even if there already exists an offence in the Criminal Code on this issue, that the only way to address these criminal matters is through the prism of punishment and that the best approach to punishment is through the use of mandatory minimums.

Frankly, this is a variance with long-standing principle, policy and an evidence-based approach to criminal justice. The government's preoccupation with this type of legislating is not only somewhat disingenuous but also ineffective, wasteful, prejudicial, constitutionally suspect and, simply put, bad public policy.

I realize that colleagues in this place may be somewhat surprised that I am beginning with this type of approach and perspective. However, I believe that as a chamber, given this whole approach to policy-making, that we must take a step back and gain some perspective on what we are doing.

I know the government is very quick to pounce on these types of critiques and to label those who make them, be it the Liberal Party, others or myself, as being soft on crime. We all have a shared commitment to combatting crime. The issue is how we combat it, whether we are smart and effective on crime or whether we are in a situation where we are simply legislating for the sake of legislating and sending a signal as if we are tough on crime when in fact the very subject matter may already be present in the Criminal Code.

If one looks at the legislation, it proposes to punish anyone who "recruits, solicits, encourages or invites a person to join a criminal organization". This offence would become the new section 467.11 of the Criminal Code, but, and this is the important point, enhancing the ability of a criminal organization is already a crime under the Criminal Code.

Section 467.11 of the Criminal Code, the very section to which this bill adds a subsection, clearly states:

Every person who, for the purpose of enhancing the ability of a criminal organization to facilitate or commit an indictable offence under this or any other Act of Parliament, knowingly, by act or omission, participates in or contributes to any activity of the criminal organization is guilty of an indictable offence....

I have no problem with legislation that sometimes seeks to make a necessary clarification to the law or to enhance the law, but what is being suggested here is that somehow without this bill there will be no offence with respect to gang recruitment. Yet recruitment previously was one of the issues on the minds of the legislators themselves in this House, as evidenced by the fact that when enacting section 467.11 in 2001, the then-minister of justice, Anne McLellan, said in this place upon the introduction of what is currently in the Criminal Code, in order to reference that this was already anticipated and then implemented as law:

We know that successful recruitment enhances the threat posed to society by criminal organizations. It allows them to grow and to more effectively achieve their harmful criminal objectives. Those who act as recruiters for criminal organizations contribute to these ends both when they recruit for specific crimes and when they recruit simply to expand the organization's human capital.

Thus, the express provisions of the proposed participation offence make it clear that the crown does not, in making its case, need to link the impugned participation, in this case recruitment, to any particular offence. In fact, these words could have been spoken by the introducer of this particular bill because that particular section in the Criminal Code already covers what this bill purports to do, as reflected in the words of the then justice minister at the time. Indeed, this is the current state of the law.

(1755)

Section 467.11 of the Criminal Code goes on to note that in the prosecution of an offence under subsection (1) it is not necessary for the prosecutor to prove that, and it goes through a whole series of factors which, for reasons of time, I will not enter into here. If one looks at the offence, one will see that it already covers that which this bill purports to do.

I do not therefore wish to dwell on some of those technical points of law. Suffice it to say that the behaviour the new offence seeks to criminalize is something already criminal under another provision of the Criminal Code. Whatever act that would give rise to this proposed section would also likely be criminal under another section, such as the offences relating to counselling, aiding, abetting, conspiracy and the like.

As such, Bill C-394 is both duplicative and arguably duplicitous as well, duplicative in that it essentially repeats what is already in the Criminal Code and somewhat duplicitous in that it is being presented as if this were our only option with respect to combatting gang recruitment and as if there were no present offence that deals with this issue before us, and that those who will oppose this piece of legislation are again somehow soft on crime or do not care about street gangs and the like.

As I mentioned in my introduction, Conservative crime policy is regrettably all about punishment, yet

we should be seeking to prevent young people from joining gangs to begin with. This involves an understanding and appreciation of the serious initiatives that need to be taken with respect to education. social services and the like, in order to allow people to stay in school for as long as they can to provide them with employment opportunities, so that young people are shown that there are alternatives to gang life.

Yet this would involve, and this is the core of my remarks here this evening, addressing the underlying causes and concerns relating to gang crime: housing, poverty, income inequality, employment, minority inclusion and access to education, and an understanding of why young people join gangs.

There are no young people in Canada contemplating gang life because they believe there is no offence against it or their recruitment in the Criminal Code.

There are plenty of offences in the Criminal Code, an ever-expanding list that has grown tremendously with the adoption of Bill C-10, and yet these do very little to address the root causes and concerns of crime. In fact, many of them will only lead to an increase in crime.

Here I am speaking in particular of mandatory minimum penalties, something which Bill C-394 seeks to add to the Criminal Code in the matter of gang recruitment. While I have spoken many times in the House on this point, once again one finds an ignoring or marginalizing of the evidence with respect to the fallout of mandatory minimums.

Simply put, not only do we know that mandatory minimums do not deter crime, rather they tend to increase crime both within prisons, which become schools for crime, and outside prisons. They do not deter crime. This is not my conclusion. This is a conclusion reached by studies the world over and even our own justice department here in Canada.

They remove necessary prosecutorial and judicial discretion, leading to pleas for lesser offences or forcing trials where there may have been none. This clogs the courts. The Canadian Bar Association has warned us that with the addition of more mandatory minimums, we may end up in a situation where more accused are set free contrary to the intention and objectives of the government's legislation to begin with simply because their charter right to a fair trial within a reasonable period of time has been violated.

Moreover, mandatory minimums will lead to further overcrowding in prisons, yet prisons in this country are already overcrowded. We have seen in U.S. court judgments that overcrowding amounts to cruel and unusual punishment.

Lastly, though perhaps most important, such sentences also invite constitutional critiques and have been struck down, as we saw recently in the Ontario courts, for being cruel and unusual, arbitrary, disproportionate, outrageous and intolerable.

While I do not have time to elaborate further, I would like to conclude by simply reminding members that criminal law should be as much about prevention as it should be about punishment. Our approach to social evils should be as much to ensure that individuals and groups have a viable way of avoiding that which leads them into gang recruitment through all the causes and concerns that I addressed earlier in this regard.
(sent via blackberry)

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