



**REVIEW OF THE “REFORMING CPIC” PAPER
WRITTEN BY PROFESSOR GARY A. MAUSER**

Caroline Sauvé, Analyst
Legal Affairs and National Security Section
Parliamentary Information and Research Service

25 July 2013

NOT TO BE PUBLISHED

Projects prepared by the Parliamentary Information and Research Service are designed in accordance with the requirements and instructions of parliamentarians making the request. The views expressed should not therefore be regarded as those of the Parliamentary Information and Research Service nor of the individual preparing the project.

INTRODUCTION

This document reviews a recommendation made by Professor Mauser in his paper entitled “Reforming CPIC” that the current addresses of violent offenders who have been released from custody should be maintained and available on CPIC (the Canadian Police Information Centre). It specifically reviews this recommendation from the standpoint of whether it is vulnerable to a challenge under the *Canadian Charter of Rights and Freedoms* (Charter). It also discusses the arguments for and against maintaining registries of information concerning offenders.

BACKGROUND

It is recognized that violent and sexual offenders elicit a great deal of fear in our society. As a consequence, the Government of Canada, the provinces and the territories have enacted multiple programs and made various changes to the criminal laws to minimize the risk posed by violent and high-risk offenders and to lessen public concerns.

In Canada, offender registries apply mostly to sex offenders, except for Alberta, which also maintains a high-risk offender registry.¹ On December 15, 2004, in cooperation with the provinces and territories, the national sex offender registration program was implemented to enable police to have rapid access to information about convicted sex offenders. The database maintained by the Royal Canadian Mounted Police (RCMP) is only accessible to police agencies and is only used to investigate or prevent crimes of a sexual nature.

The Alberta government has defined a high-risk offender as a person who has been determined to present a high risk to commit a violent offence (or offence against a person) through information supplied by corrections officials, police agencies, the Crown and/or mental health professionals. The determination is made under section 32 of the *Alberta Freedom of Information and Protection of Privacy Act*. Once an offender’s name is added to the registry, the police service will issue a news release containing a physical description and photograph of the offender, information about his/her offences, the general area in which the offender lives, and a contact name at the appropriate police service. Information is removed from the registry when the offender has been offence-free for a period of 12 months and the offender is no longer under court-ordered supervision.

The movement toward identification of violent offenders upon release aims to reduce the risk that violent offenders may pose to the rest of society. It should be noted that the enactment of Bill C-55 in 1997 introduced some revisions to the Dangerous Offender (DO) law. One of the most important amendments was the establishment of the Long-Term

1

http://www.solgps.alberta.ca/safe_communities/community_awareness/serious_violent_offenders/Pages/high_risk_offenders.aspx

Offender (LTO) category. Bill C-55 gave the courts the authority to exercise tighter control over violent offenders who are at high risk of re-offending. Courts could now impose a term of up to ten years of community supervision on offenders following completion of a prison sentence of two or more years.² It also contained amendments to the 'peace bond' provisions of the *Criminal Code* allowing an individual, with the consent of the provincial Attorney General, having reasonable grounds to fear that an individual will commit a "serious personal injury offence", to seek a court order against that person requiring him/her to comply with a variety of conditions, which could include reporting to the correctional authorities or to the police and remaining within a specified geographic area or obeying a curfew.

The authority to impose standard conditions on all offenders is found in section 133 (2) of the *Corrections and Conditional Release Act (CCRA)*. Section 133(3) authorizes the parole board to impose any condition it feels is necessary in order to protect society and to facilitate the successful reintegration into society of the offender. Section 161(1) of the *Corrections and Conditional Release Regulations* lists the conditions that are to be imposed on every offender released on parole or statutory release. One of these standard conditions is that he or she must advise the parole supervisor of the offender's address of residence on release and thereafter report immediately any change in the offender's address of residence. Section 133(6) of the *CCRA* allows the parole board to dispense with this condition of release, if it thinks it is appropriate. The monitoring plan for each offender is based on their individual needs and the risk factors that must be addressed to manage their risk to the community. An offender may commit a violent crime (murder for example) and be considered a violent offender but because of the nature of his crime, not be as high a risk to the community as someone who has committed less violent crimes, but on a repetitive basis.

On April 15, 2011, Bill S-2, *Protecting Victims from Sex Offenders Act*, came into force. It strengthened the National Sex Offender Registry by making automatic the inclusion of convicted sex offenders in the Registry, compelling Canadians convicted abroad of sex offences to register when they return to Canada under the *International Transfer of Offenders Act*, and requiring registered sex offenders to provide notice in advance if they are away from home for seven days or more and notify Registry officials within seven days if their work or volunteer work address changes.

² <http://www.publicsafety.gc.ca/res/cor/rep/2005-04-flg-sysm-eng.aspx>

CAN MAKING MANDATORY THE MAINTENANCE IN CPIC OF THE ADDRESSES OF VIOLENT OFFENDERS, ONCE RELEASED FROM CUSTODY, BE CHALLENGED UNDER THE CHARTER?

To determine whether Professor Mauser's recommendation is too broad and therefore violates principles of fundamental justice, a thorough analysis of the state interest has to be conducted and balanced against a thorough analysis of the rights and interests of offenders.

While section 810 of the *Criminal Code* authorizes a judge or justice of the peace to require someone to enter into a recognizance (or 'peace bond') where there are reasonable grounds to believe that the person will cause injury to another person, the Judge must balance this against the right of the defendant to privacy or to be left alone.³

Various cases across Canada have challenged Sex Offender Registries legislation as a violation of offenders' rights. Making mandatory the keeping of the addresses of violent offenders in CPIC once they have been released from custody and have fully served their sentence could be challenged under section 11(h) (double punishment) or section 12 (cruel and unusual treatment or punishment) of the Charter. A Charter claim here is that the released offender has already paid his or her debt to society.⁴

In *R. v. Dyck*⁵, a convicted sex offender, who failed to report a change of residence within the required time frame, claimed the Ontario Sex Offender Registry, known as Christopher's Law (2000), violated his rights under sections 7, 11 (g), (h), (i), and 12 of the Charter.

Although, at first instance, Christopher's Law was found to contravene section 7 of the Charter; the Superior Court⁶ decided otherwise. To prove a violation of section 7 of the Charter, a claimant must show that he or she has been deprived of something that qualifies as "the right to life, liberty and security of the person" and that the deprivation was not in accordance with the principles of fundamental justice. It was determined the requirements to report to the police annually unless the offender moves are no greater than the information required by the Ministry of Transportation for the renewal of a driver's license or by the Ministry of Health for the issuance or renewal of a health card: "A person must keep his address current with a multitude of government agencies and professional service providers". Therefore, the reporting obligation is not overbroad and does not infringe section 7 of the Charter.

³ *R. v. Soungie*, [2005] AJNo 899 (ALTA PC)

⁴ Berliner, L. (1996). Community notification of sex offenders: A new tool or a false promise? *Journal of Interpersonal Violence*, 11(2), 294-300

⁵ *R. v. Dyck*, [2004] ONCJ 103

⁶ *R. v. Dyck*, [2005] O.J. No 47771 (S.C.J.)

Then, the Superior Court balanced the reporting requirements of Christopher's Law with the term "punishment" as it is used in section 11 of the Charter and concluded that the reporting provisions do not constitute punishment such as to attract the protections of sections 11 (h) and (i) of the Charter. It referred to Justice Rosenberg in *R. v. McDonald*⁷ where a distinction between the concepts of sentence and punishment was drawn:

"The word "sentence" comes from the Latin "sententia", which means opinion or the expression of an opinion. Therein lies one fundamental difference between a punishment and a sentence. The former is the actual infliction of a deprivation, whereas the latter is a statement ordering the imposition of a sanction and determining what it should be.

In its discussion of the two terms, the Commission further contrasted sentencing and punishment by defining the latter, at p. 109, as the "imposition of severe deprivation on a person found guilty of wrongdoing". The Commission left no doubt that it considered imprisonment to be a severe deprivation. Sentencing on the other hand is defined at p. 115 as the "judicial determination of the legal sanction to be imposed on a person found guilty of an offense."

Those advocating the maintenance of residential addresses after offenders are released does not violate the Charter will refer to *R. v. Budreo*,⁸ one of the key decisions in the evolution of peace bonds in Canada. In *Budreo*, the Ontario Court of Appeal held that section 810.1 of the *Criminal Code* was preventative rather than punitive and therefore, did not contravene the rights guaranteed by sections 7, 9, 11, and 15 of the Charter.

In *R. v. Lyons*,⁹ the Supreme Court of Canada held that the Dangerous Offender (DO) provisions of the *Criminal Code*¹⁰ do not contravene the rights guaranteed by sections 7, 9, 11, or 12 of the Charter. The court found that the "DO provisions do not deny fundamental justice and that the respective importance of prevention, deterrence, retribution, and rehabilitation will vary in a rational system of sentencing. The DO provisions allow the court to accommodate its sentence to the present condition of the offender who is not inhibited by normal standards of behavioural restraint".¹¹

Those supporting Professor Mauser's recommendation may also argue that the mandate of the CPIC database is different from the mandate of a public registry: "The Police Information Portal (PIP) is an information sharing tool used by Canadian Police Agencies and managed by the RCMP. The PIP is a national index of persons and vehicles containing

⁷ *R. v. McDonald* 1998 CanLII 13327 (ON CA), (1998), 40 O.R. (3d) 641, 127 C.C.C. (3d) 57 (C.A.),

⁸ *R. v. Budreo*, [2000] CanLII 5628 (Ont. C.A.)

⁹ *R. v. Lyons*, [1987] 2 S.C.R. 309

¹⁰ Part XXIV, sections 752-761

¹¹ http://www.publicsafety.gc.ca/res/cor/rep/_fl/2001-05-hnd-bk-eng.pdf

information submitted by Police Partner Agencies across Canada”.¹² Contrary to a public registry, all PIP users must obtain authorization before using any information on PIP, which mitigates the risks of violating the Charter.

Other arguments against maintaining up-to-date addresses for violent offenders include but are not limited to:

- It must be acknowledged that CPIC contains only records of convicted offenders and, therefore, it contains only a fraction of those offenders about whom the community should be concerned. Information contained in CPIC does not aim at tracking the whereabouts of violent offenders.
- Professor Mauser’s recommendation could be interpreted as recommending a system that is closer to what an offender registry is. However, the concept of an offender registry has already been studied in Canada and the Federal, Provincial and Territorial Working Group on High Risk Offenders did not support the concept.¹³
- The reliability of the registry depends on the degree to which individuals and other contributing agencies comply with its requirements. For instance, there will always be a risk the offender won’t provide an accurate address. Even when the obligation to keep the judicial system apprised of any change of address is compulsory, compliance rates have been found to be low and information may be inaccurate or incomplete¹⁴.
- Local police services have independent systems of tracking persons¹⁵ with whom they have come in contact. Information stored in local and provincial criminal records systems are not automatically found in the CPIC database. Since there is no legislation in place that requires local police to submit criminal information to CPIC (with the exception of the *Young Offenders Act*), unless there is an amendment to the *CCRA* requiring all local and provincial police services to share their criminal records with the central system, it will be difficult to keep CPIC accurate and up-to-date. The costs of maintaining CPIC in terms of completeness and accuracy will put further strain on police, court and other correctional personnel who are already overburdened.

¹² <http://www.cpic-cipc.ca/English/pippsp.cfm>

¹³ Offender Registry, John Howard Society of Alberta, 2001 (<http://www.johnhoward.ab.ca/pub/offender.htm#false>)

¹⁴ Federal/Provincial/Territorial Working Group on High Risk Offenders, Report to Federal, Provincial and Territorial Ministers on Information Systems on Sex Offenders Against Children and Other Vulnerable Groups, 1998, p. 6

¹⁵ Understanding Criminal records, John Howard society, 2000 (<http://www.johnhoward.ab.ca/pub/pdf/A5.pdf>)

Arguments in favour of maintaining up-to-date addresses for violent offenders who have been released from custody:

- In 1995, the National Flagging System (NFS) for High-Risk Offenders was created. The concern at the time was that offenders, who were committing serious crimes, but crimes not yet serious enough to warrant a DO application, would move to another province or territory to avoid attracting a DO application. The NFS allows Crown attorneys across the country to check whether an offender had been of particular concern in another jurisdiction.

In 2005, Public Safety conducted a research evaluating the effectiveness of the National Flagging System (NFS)¹⁶ in identifying and tracking high-risk, violent offenders.

While findings from this study proved the effectiveness of the NFS in identifying violent offenders, it was found less convincing in terms of tracking violent offenders who pose a risk to the community. Making sure CPIC contains up-to-date residence addresses of violent offenders may facilitate the monitoring of these violent offenders.

- In 2011-2012, the RCMP conducted an audit to assess whether sufficient and adequate monitoring and oversight measures are in place to ensure the data integrity and reliability of information held in CPIC records. The results of the audit¹⁷ indicated that better monitoring and oversight measures are needed to ensure that information held in CPIC is reliable, complete and accurate. Professor Mauser's recommendation may help resolve the issue of CPIC accuracy.

¹⁶ <http://www.publicsafety.gc.ca/res/cor/rep/2005-04-flg-sysm-eng.aspx>

¹⁷ <http://www.rcmp-grc.gc.ca/aud-ver/reports-rapports/cpic-cipc-eng.htm>