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C-393 receives first hour of Second Reading debate

Ottawa – Gord Brown, Member of Parliament for Leeds-Grenville today spoke in the House of Commons during Second Reading debate on his Private Member's Bill, C-393.

The Bill is designed to help prevent further violent knife crimes, to re-enforce the stated intent of the existing law and to continue the ongoing progress Parliament has made in treating crime victims.

"Knife crimes have become more prevalent in Canada and in fact have overtaken gun crimes in many instances," says Brown. "The law has not kept pace."

The Bill proposes mandatory minimum sentences for knife crimes that would match the current mandatory minimums for gun crimes.

It addresses the credit that judges give to criminals for time served waiting for their trials. At sentencing judges often reduce sentences by more than the amount already served.

"Sometimes this has amounted to as much as three-for-one, time," says Brown. "In other words, it pays for criminals to spend time in pre-trial custody."

Finally, the Bill seeks to further enhance victims' rights, especially in parole hearings.

The Bill was inspired by the December 1998 knife murder of Brockville native Andy Moffitt.

Brown introduced the Bill during his first term and then took the unusual step of asking that it receive the same number, 393, in its second term introduction.

"The Bill has become well-known across Canada and indeed as far away as Australia and England as C-393 – the Knife Bill," explains Brown.

Text of his speech follows.

The Bill will now be put on the list to return for second hour debate in the near future.

For more information

Gord Brown
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Bill C-393 – Opening Speech – Gord Brown

Thank you Mr. Speaker.

I begin Second Reading Debate on Bill C-393, an Act to amend the Criminal Code and the Corrections and Conditional Release Act.

The Bill was written because of an incredibly brave and determined family.

They suffered the loss of their son through a violent criminal act and were then thrust into a justice system that they learned was in desperate need of improvement.

Their experience, although unique in facts, is not a unique story.

Many of us have constituents victimized by crime who, while they try to cope with that victimization, also try to make sense or get answers from a justice system that many times provides neither sense nor answers.

When I began assembling this Bill there were other measures that I thought of incorporating as well. These included deterrent measures by increasing the spectrum of mandatory minimum sentences for a variety of firearms crimes as well as improving the effectiveness of high risk offender supervision orders under section 810 1 and 2 of the Criminal Code.

I am very proud that our Government moved decisively and introduced those measures as well as others which this Parliament recently passed as Bill C-2.

In C-2 we enacted a series of reforms to make our justice system work better and Mr. Speaker I say to all Members of the House that this approach is repeated in C-393: specific targeted measures to make our justice system work better and I hope Members will give it the same consideration and approval they did with C-2.

Understanding individual circumstances and learning how the system and laws could be improved - is a fundamental part of how democracy and Parliament works.

We can improve our justice system.

Insight, wisdom and the courage to say that no one else need suffer as they have, is sometimes the message we get from victims of crime.

Bill C-393 aims to improve how the criminal justice system works in three specific areas.

Members will see the sensible and positive results. They are clear, specific and important.

In this place, Members can set aside partisan differences and debate changes in law and policies that make improvements. This Bill presents such an opportunity.

Brockville is in my rural riding of Leeds-Grenville.

Just before Christmas 1998 residents of that quiet city learned that Andy Moffitt, a 23 year old engineering student at the University of Ottawa with a bright future before him, was stabbed to death while trying to break up a fight in an Ottawa restaurant.

Andy was from Brockville. Mother Paulette, Father Rod and younger brother Michael lived in Brockville while older brother Rod Jr., raised in Brockville, lived in Ottawa.

Andy was expected home for Christmas and when there was noise at the front door in the early morning of December 24 the family thought it was Andy.

It wasn't. It was police telling them that their son - their brother - had been murdered.

As the evidence would subsequently show - when the justice system managed to proceed with the case after the killer had been released on bail only to be re-arrested for committing new crimes - Andy died trying to stop a violent attack on another person.

He did not know his killer. He died trying to do the right thing.

Andy was posthumously awarded the Governor General's Medal of Bravery for his action.

I've come to know his family since his death and I know where he got his courage and his sense of right and wrong.

Through all the grief and anguish of the crime, the trial - such as it was - the parole system - such as it was - the Moffitt family have remained steadfast in their determination that the flaws in the justice system that their son's death exposed, can and must be corrected.

The motivation for the Moffitts is to ensure that no one else goes through the nightmare they had to endure. They are not motivated by revenge or harsh punishment.

The proposals they have inspired in Bill C-393 are designed to prevent further violent knife crimes, to re-enforce the stated intent of the existing law and to continue the ongoing progress Parliament has made in treating crime victims.

I reference the facts of the case because they are important. They demonstrate deficiencies in the current justice system and how they can be remedied.

Andy's killer was a drug dealer who was meeting with another criminal with whom he had a dispute.

In contemplation of this, he purchased a knife and concealed it in case he felt the need to use it later.

His act in doing this, and then pulling it out later, was clear, calculated, and deliberate.

Bill C-393 does not create a new crime. It creates mandatory consequences for the crimes of deliberately and criminally, carrying a concealed knife and for killing an unarmed person with that knife.

I mention this because I know some Members opposite believe mandatory prison sentences are unwarranted because the crimes involved are spontaneous.

While that may be true for some crimes, Mr. Speaker it is clearly not for these crimes which are calculated and capable of being deterred.

The Supreme Court of Canada recently upheld the constitutional validity of Parliament using mandatory minimum sentencing in defined circumstances.

In that case, Ferguson versus The Queen, the Supreme Court recognized that mandatory minimum sentences are part of the overall sentencing functions which include both specific and general deterrence.

Criminologists and practitioners note that certainty of consequence is a greater deterrent than potential severity of consequence.

Penalties proposed in C-393 replicate existing mandatory prison sentences and correspond directly to homicides committed with firearms.

As part of that deterrent intent, C-393 also creates increased sentences for repeat criminal concealment offences and consecutive sentences where that crime is committed with other crimes.

The Bill also modifies an existing authority of a sentencing court under the Corrections and Conditional Release Act to require a delay in parole eligibility from one-third of the imposed sentence to one-half of that sentence.

This Bill sends a message that there will be clear and certain negative consequences for persons criminally concealing and using knives.

It is not a reaction to one incident.

Knife crimes have exploded in Canada and while we have responded appropriately to firearms crimes, it is time to do the same with knife crimes.

From 1999 to 2006, the number of homicides committed with knives was greater than with firearms.

The 2006 crime statistics show that homicides committed by young people is at its highest rate since 1961 and that 44 per cent of these are committed using knives compared with 17 per cent using firearms.

It is important to understand that it is the criminal arming through concealment of the knife that must also be targeted.

Kingston Ontario Police Chief Bill Closs is one voice of many that has warned us about this explosion of criminal knife carrying and the inevitable lethal consequences.

Statistics Canada indicates in 2005 only 31 per cent of victims were attacked with guns, while 68 per cent were attacked with knives or other sharp objects.

In the same year, in 19 Ontario jurisdictions, only 25 per cent of victims were attacked with guns while 75 per cent were attacked with knives or other sharp objects.

No jurisdiction is immune in experiencing this epidemic of violent knife crime. Edmonton, for example, reported a 15 per cent jump in violent knife crime since last year.

I return to the facts of Andy's case because they are also the foundation of Bill C-393's reforms.

Andy's killer was released on bail less than three months after his arrest. He was re-arrested for breaching his bail and for committing new crimes.

Following his re-arrest he was allowed to plead guilty to the reduced charge of manslaughter seven months later.

At sentencing he was given pre-trial custody credit for the time he had been detained initially and for the time he had been detained after breaching bail and committing new crimes.

It gets worse.

The killer was given extra credit for being on bail – bail which he breached.

Recognizing time spent in pre-trial custody is long-standing and codified as part of a judge's sentencing discretion pursuant to Section 719.3 of the Criminal Code.

But it is not obligatory. There isn't a required mathematical formula.

Section 515 of the Code also lawfully authorizes the denial of bail to people with criminal records, or those who have breached their bail, or both.

Sentencing courts are not required to give repeat offenders, or people who breach their bail, credit for pre-trial custody.

But that is exactly the practise that has developed in Canada.

For Andy's killer, the time spent in custody as a result of being charged with the crime was just less than three months.

He was given 30 months credit for his pre-trial custody and "restrictive" bail conditions – even though he caused their occurrence.

Reward for bad behaviour is unacceptable.

Is it any wonder that remand custody numbers are through the roof as the bad guys figure out that two- or three-for-one as a reward for past crime is a good deal?

This is what lies behind the phenomenon that has become known as the revolving door justice system.

It undermines the integrity of the justice system and the confidence that Canadians have in it.

Courts pronounce sentences but with pre-trial custody credit the real sentence is a fraction of what's been pronounced.

Canadians deserve better than this Mr. Speaker and C-393 is a step in that direction.

The Bill would specifically amend 719 3 giving direction to sentencing courts, consistent with some court rulings, that persons who are denied bail according to the existing law due to their past criminal record or for breaching bail, are not entitled to discounts off their sentence.

Further, it stipulates that where credit is given, that it be given on a day-for-day basis reflecting the reality that in our current system more than 95 per cent of offenders don't serve more than two-thirds of their court imposed sentence - as was the case for Andy's killer.

If likelihood of early release is to be taken into account in calculating pre-trial custody then logically it should be applied in calculating the actual sentence.

The net effect for those entitled to pre-trial custody credit is a straight one-day-for-one-day calculation which will go a long way to restoring public confidence.

Andy's killer was sentenced to what was supposedly an "eight to nine year sentence".

After giving him the hyper-inflated credit, the judge said, and I quote: "I am going to require that you serve - giving credit for what I have indicated -, five years in prison. So you will serve a further five years in a penitentiary for the manslaughter of Andrew Moffitt."

That was also not true.

Andy's killer was released three and a half years later when Canada's statutory release provisions kicked in.

Fixing that problem is beyond the scope of Bill C-393.

Notwithstanding the judge's solemn pronouncement, Andy's killer was eligible for parole after about 18 months.

The Moffitt family prepared agonizingly for these hearings to give voice to their son and to express their personal safety concerns in light of the killer's criminal behaviour while supposedly under the previous supervision of bail and because - by terrible co-incidence - he was returning to his home town of Brockville.

How could anyone expect they would not attend and not want to know the truth about the risk this killer posed?

The family's dealings with the corrections system was defined by uncertainty. In the name of offender privacy they were denied details about the killer's conduct while in custody including whether he posed a risk to them.

Hearings were also adjourned at the last second, causing enormous emotional upset and without consequence to the killer being able to reschedule his request for early release.

This is an unintentional and needlessly cruel consequence of our current parole system and it is these deficiencies that C-393 will also address.

I want to pause here and note that the reason the Moffitt family could attend and participate in the parole hearings was thanks to this House recognizing and confirming enhanced victim rights over the past 10 years. This has been a significant accomplishment.

Having created those rights, we now need to make sure that the Parole Board has clear authority to treat unjustifiably cancelled hearings accordingly, and to include consideration of legitimate victim interests in assessing what information is to be provided to them.

This is the final part of Bill C-393.

These are relatively small but important improvements to a part of the justice system.

In summary Mr. Speaker, Bill C-393 is a tightly focused Bill that addresses three specific areas where our justice system needs to, and can, work better.

Its sentencing provisions are not aimed at simply imposing harsh treatment on offenders. It is designed to prevent such crimes and to prevent the loss of life.

Its bail provisions are not meant to undermine the proper discretion of the judiciary but to reinforce the existing rule of law and not reward past criminal misconduct.

Its corrections provisions are simply an expression that having properly created a process of victim participation, we must ensure that is a properly informed one, where the Parole Board has the power to prevent it being used to further traumatize victims.

Mr. Speaker, I am asking for the support of Members of this House so that this Bill and the improvements it will bring can go forward.

While members opposite may turn this into a partisan issue, that type of debate does not belong here.

When Andy Moffitt stood up from his seat and took action to prevent an attack that night nine years ago, he didn't do so thinking of his actions as being heroic.

He did so because something inside him said it was the right thing to do.

Today, in our unique responsibilities as the elected representatives of the people of Canada we have the opportunity to stand and do the right thing, which is to support Bill C-393 for the people of Canada.

Thank You Mr. Speaker.