

CRIME, PUNISHMENT AND THE CANADIAN LEGAL SYSTEM

When it comes to crime and punishment in Canada, most people are "mad as hell and they're not going to take it any more." They get frustrated when convicted criminals serve little or none of the jail time to which they are sentenced. They are annoyed about being denied information and being kept in the dark with gag orders and publication bans, especially when the trials in question are hundreds or thousands of miles away.

They don't understand why the people in the United States have the right to know what is going on in Canada's courts while Canadians are kept in the dark. They get REALLY angry when sex offenders are given anonymity or when dangerous inmates are allowed out on parole or early release to commit further violent crimes.

Usually this anger, frustration and hostility is directed at the criminal justice system in general and judges and prosecutors in particular. This is doubly unfortunate. Not only is the Canadian criminal justice system undeserving of the bad rap but the crown prosecutors and the judges are the least able to defend themselves (judges aren't allowed to and crown prosecutors just don't have the time).

Let's start by taking a look at publication bans and gag orders. The federal parliament has decided that they are to be available to the defense or the prosecution in certain well defined circumstances. Parliament has also laid down the preconditions and the criteria necessary to entitle someone to that remedy.

If an applicant meets those criteria and satisfies the preconditions, it is not appropriate for a judge to refuse the order. This is so even if the judge knows full well that it may not meet with the approval of either the media or the public.

Judges are required to interpret and enforce the laws. They are not allowed to rewrite them. It is the parliament and the legislatures that do that. Politicians are also the ones who are responsible for changing the laws (or at least they should be taking the blame for them) when they are no good. Blaming the prosecutors and the judges in situations like this is a lot like getting mad at the weatherman when he forecasts crappy weather.

Much of the criticism presently leveled at courts, prosecutors and judges would be far more accurate if it were directed at the politicians and the parole boards they appoint. If the truth be known, the Canadian criminal justice system works extremely well. It may even be the best in the world.

In Canada, the vast majority of cases proceed and conclude exactly as they should. Very, very few innocent people are ever convicted and the guilty parties usually either plead or are found guilty. The convicts are then correctly sentenced and handed over to the corrections authorities thereafter for the punishment to be meted out. That is where most of the problems start.

What most people outside the system fail to understand is that once the judge has

pronounced sentence, the convict is no longer in the justice system. Once sentenced, he's in the corrections system. The sentencing judge cannot even specify where or how or, in some cases, even if the sentence is to be served. That is up to the bureaucrats on the parole boards and in the corrections system.

The judges send the convicts up the river based on the circumstances of the case, the crook's record, the community's interests and the guidelines set by parliament and the higher courts. It is the bureaucrats in the corrections branch and the political appointees on the parole boards that send them right back down again, often basing their decision on such things as how crowded the jails are, where the convicts relatives live, whether the convict has convinced the social workers that he really has gotten his life turned around this time and whether or not he has been a good boy since he was incarcerated.

Another criticism often leveled at the justice system is that, generally, sentences are too lenient. Again, judges are blamed. However, let's look at things from the point of view of the judge. When sentencing a convicted criminal he or she is required to consider many factors besides the facts of that particular case. The judge is required to act within the guidelines set down by the higher courts and the maximum punishments set by parliament.

Judges are not supposed to levy the maximum penalty unless it is the worst example of that particular type of offence. While there is nothing to stop a judge from giving the maximum sentence for every offence, most judges fail to see the point of rendering a sentence that is inappropriate or that is destined to be overturned by the higher courts. If the judge does hand down the maximum every time, there would be no room left to increase the punishment for the worst offenders.

If the maximum punishment has been set too low by the lawmakers, there is absolutely nothing the judge can do. Increasing the penalty is up to the politicians.

I am not suggesting by this article that the public shouldn't be angry or frustrated with the problems of maintaining law and order in Canada today. I am also not suggesting that there aren't a few bonehead decisions handed down from time to time ? there are.

What I do suggest is that, most of the time, instead of getting angry with the police, the prosecutors or the judges, that anger should be directed at the people who can change things - the politicians, the parole boards and the corrections system.