

# Tally "too crude" a measure for dangerousness



A streamlined section of the Criminal Code creates a risk of excessive punishment of individuals, criminal defence lawyer [Jacob Stilman](#) says.

Stilman, partner with [Lo Greco Stilman LLP](#), agrees with a recent ruling from Ontario Superior Court Justice Alan Bryant that calls the change in the dangerous offender process a “significant” infringement of Section 7 of the Charter, the *National Post* reports. [Read National Post](#)



“The dangerous offender provisions in the Criminal Code represent the most drastic sentencing regime that we have under our criminal justice system,” Stilman says. “A declaration of dangerous offender status confers an effective full-life quarantine on the offender, something that is unheard of under any other sentencing provision of the code.”

In a recent article, the *National Post* reports that typically, when prosecutors want to designate someone a dangerous offender, they have to call on the opinion of experts and prove beyond a reasonable doubt that the offender is dangerous.

But in 2008, the Tackling Violent Crime Act streamlined the process for certain serial offenders. If someone were convicted at least three times of certain serious or violent offences, they were automatically presumed to be dangerous and the burden fell to the defence to prove otherwise.

“To permit this change in the law to go unchecked is an incremental step towards a ‘three-strikes-and-you’re-out’ type of system, which has produced drastic results in U.S. jurisdictions where it has been applied,” Stilman says.

For Stilman, the danger of the new process is twofold. One, it lowers the bar on the ability of the state to impose an indefinite term of incarceration, which is a retrograde step. Two, it creates the potential for over-punishment.

“By simply tallying up the number of convictions in a certain category, the legislation created a very rough yardstick to measure dangerousness,” Stilman says. “A violent recidivist convict may well satisfy the criteria for dangerousness, and his record is going to be a relevant and important starting point. But a gross tally, without careful consideration of all of the aspect of the prior offences, and the psychiatric profile of the offender, is simply too crude an instrument for this sort of determination to be made by the courts.”

Stilman questions the need for a streamlined process.

“There is no statistical basis to make the case that violent crimes are on the increase, and that streamlining will result in greater public safety,” he says. “The opposite is true: violent crimes are decreasing across the populace.”

Stilman says that while “a very small slice of cases in Canada will be impacted” by this rule, it remains an interesting one to watch.

“The safeguards that have served society well, in balancing the rights of individuals against the safety interests of the public, should not be tampered with,” Stilman says.