



Canadian Association of Chiefs of Police

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Presentation to the Standing Senate Committee on Legal and Constitutional Affairs

Bill S-4: An Act to amend the *Criminal Code* and the *Identification of Criminals Act* and to make related amendments to other Acts (COVID-19 response and other measures)

Remarks by:

Deputy Chief Constable Howard Chow

(Co-chair of the CACP Law Amendments Committee)

and

Ms. Isabelle Massé

(Member of the CACP Law Amendments Committee)

Representing:

Canadian Association of Chiefs of Police

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Good morning and thank you for the opportunity to address this committee on behalf of the Canadian Association of Chiefs of Police (CACP).

COVID IMPACT

Over the past two years, the world has been coping with COVID-19 and society has had to adapt to the challenges of the pandemic. The criminal justice system has also had to make adjustments to ensure justice continued to be served.

As we appear to be returning to pre-COVID conditions, there are opportunities to entrench some of the positive adaptations that emerged during the pandemic.

Overall, the CACP supports Bill-S-4 and its intention to make changes that will improve the administration of criminal justice, while standardizing modernized procedures.

In the interest of time, today we will focus on two areas of Bill S-4: tele-warrants and the fingerprinting of individuals.

EXPANDING THE TELE-WARRANT PROCESS

Our position is that we adopt the recommendations outlined in Bill S-4 to expand the tele-warrant process to all search warrants and judicial authorizations provided for in the *Criminal Code of Canada*.

During the pandemic, there were significant limitations to the warrant process because of localized public health restrictions. As a result, concessions were made provincially to allow a more efficient process for obtaining warrants.

Officers were no longer required to meet face-to-face with a justice of the peace to present an *Information to Obtain a Warrant*. The resource and time savings are apparent for large urban centres, but even more pronounced for remote locations, where access to a justice of the peace may often be hindered by distance, severe weather, and road conditions.

Security and privacy concerns have been identified as an impediment. However, police agencies are aware of the security structures that must be in place to handle such communication.

For example, encryption on both ends would be required to maintain the privacy of the information. Police agencies are equipped with this functionality and, in many cases, are already experienced in implementing such security practices when handling classified information.

It is important to note that the proposed changes will *not* affect legal thresholds to obtain warrants or judicial authorizations. The judge, from whom the authorization is sought, will have to ensure the legal threshold is met.

The CACP agrees with the removal of an explanatory requirement to describe why it is not practicable to obtain a warrant through conventional means. In some instances, this requirement meant that the application would have to be sworn, creating additional staffing challenges. More importantly, removal of this requirement will help mitigate defence challenges.

I will now let my colleague Ms. Isabelle Massé speak to the proposed changes related to fingerprinting.

FINGERPRINTING

Good afternoon.

The CACP supports the legislative changes related to fingerprinting.

In this regard, the CACP contends that the new paragraph 2(1)(c) of the *Identification of Criminals Act* eliminates any restrictive interpretation of the term “criminal offence” for the purpose of the enforcement of this Act. The State can therefore fingerprint a person charged with a hybrid offence, regardless of the mode of prosecution selected by the prosecutor at the pre-authorization stage of complaints, in provinces where this system is in place. As a result, this amendment ensures consistency in the application of identification measures across Canada.

It should be noted that the legislative amendments introduced in Bill C-75 have considerably increased the number of hybrid offences under the *Criminal Code*. It would be undesirable for the effect of this reform of the *Criminal Code* to be the inability of the police to fingerprint individuals charged and prosecuted by way of summary conviction.

That being said, the police have observed a high percentage of accused persons not showing up on the date set for their fingerprints to be taken. The two-year pandemic only exacerbated this problem. In this context, it is important for the State to be able to benefit from additional opportunities for fingerprinting throughout the justice process, when the procedure could not previously be completed.

The CACP welcomes the possibility for a judge, at any stage of the judicial process, to issue a summons, requiring an accused or offender to appear for fingerprinting, when exceptional circumstances have prevented the fingerprinting process on previously scheduled dates.

In addition, the CACP would like to emphasize the importance of the new power granted to judges when making release decisions, allowing them to order an accused to appear at a later date for fingerprinting, when fingerprints were not obtained prior to the individual's appearance before the court. We believe this new power will best serve the interests of criminal justice.

CONCLUSION

In conclusion, the pandemic revealed some weaknesses in the Canadian justice system. During this period, the use of digital technology has increased significantly and has been welcomed in many areas of society.

However, in many respects, the Canadian justice system has failed to take advantage of this technology in a meaningful way. Opportunities for improvement remain and we believe that the tele-warrant and fingerprinting proposals are important examples of adapting to the health situation. A return to old practices would, in our view, be a step backwards.

Thank you.