

commission of an offence or an attempt to commit an offence, or during flight thereafter. Such an offence is punishable, if it is the first time, by a minimum term of imprisonment of one year and a maximum of fourteen years. Subsequent convictions are punishable by a minimum of three years and a maximum of fourteen years imprisonment. Any sentence imposed under section 85 is to be served consecutively to any other sentence imposed for an offence arising out of the same event or series of events. Therefore the section provides for a mandatory minimum and consecutive sentence.

On its face, this section would appear to provide a significant deterrent to the use of guns in crime. Some witnesses appearing before the Special Committee alleged, however, that a charge under this section is rarely proceeded with, assuming that it has been laid, and that few of the minimum consecutive terms of imprisonment are ever actually imposed. They assert that the process of plea-bargaining results in most section 85 charges being withdrawn in return for a deal on the primary offence of, for example, robbery or sexual assault. Although the extent to which section 85 charges are plea-bargained away is not clear, the Special Committee has no doubt that it happens far too often.

The process of plea-bargaining in general is not well understood or accepted by the public, and many of the witnesses we heard from regarded as incomprehensible the extent to which it appeared to blunt the enforcement of section 85. They thus demanded that the process not be allowed to interfere with the enforcement of this provision. Some witnesses urged that the application of section 85 be made mandatory, with no plea-bargaining being allowed.

The Special Committee also finds the extent to which plea-bargaining frustrates the intent of section 85 to be clearly unacceptable. In enacting section 85, Parliament affirmed its will that the use of a firearm in the commission of an offence should always attract a mandatory additional term of imprisonment, and Parliament's will, and the expectations of Canadians, must not be ignored.

The Special Committee also cannot ignore, however, that the administration of justice is a matter of provincial jurisdiction. It is Crown Attorneys, subject to the direction of provincial Attorneys General, who deal with section 85 charges in the course of administering the Criminal Code. Moreover, we recognize that there must always be an element of discretion in the decision as to whether any charge is to be laid or proceeded with. Charges for all types of offences are often withdrawn for entirely sufficient reasons such as, for example, simple lack of evidence. The plea-bargaining process is not a formal one under the Code, and it cannot be eliminated entirely because it is only one of a number of informal processes that lead to Crown Attorneys exercising their discretion to withdraw charges. The Special Committee believes, however, that it is possible to control the process of plea-bargaining, and that this must be done in the case of section 85.

Crown Attorneys must be made to take section 85 more seriously. The Special Committee therefore urges the Minister of Justice to begin consultations immediately with the provincial Attorneys General in order to ensure that they develop and implement guidelines or directives to Crown Attorneys requiring that section 85 charges be laid whenever firearms are used in the commission of criminal offences. Moreover, the Committee suggests that Crown Attorneys be required to obtain the consent of the provincial Attorney General before a section 85 charge is withdrawn.

The Special Committee also strongly believes that there is an urgent and overriding need for much tougher penalties for offences involving firearms. In order for section 85 to be an effective deterrent, the Committee believes that the minimum sentences set out in the section must be