

Dangerous sexual offender legislation, as contained in Section 687 of the *Criminal Code*, defines a dangerous sexual offender as:

... a person who, by his conduct in any sexual matter, has shown a failure to control his sexual impulses, and who is likely to cause injury, pain or other evil to any person, through failure in the future to control his sexual impulses.

Where an accused has been convicted of rape, sexual intercourse with a female under fourteen years, indecent assault on a male or female, buggery, bestiality, or gross indecency, or, of an attempt to commit any of these offences, the court must, upon application, hold a hearing to determine whether the accused is a dangerous sexual offender.<sup>4</sup> The evidence presented at the hearing must include the expert testimony of at least two psychiatrists, one of whom is nominated by the Attorney General.

We accept the conclusion of the Ouimet Committee that this legislation is "capable of being applied against, and has in fact been applied against, sexual offenders who are not dangerous."<sup>5</sup> It suggested that the basis upon which dangerous sexual offenders are defined is inadequate and concluded that the dangerous sexual offender is "only one class of dangerous offender and the present legislation obscures this fact."<sup>6</sup>

### Recommendation

71. The present legislation on habitual criminals and dangerous sexual offenders should be repealed and replaced by dangerous offenders legislation which would set criteria for identification of dangerous offenders and a mechanism for the assessment of persons alleged to be dangerous.

### Criteria for Identification

Dangerous offender legislation must be formulated to provide for incarceration of dangerous individuals but explicitly excluding persistent petty offenders who are not dangerous. Criteria for identifying dangerous offenders should not be based so much on the number of offences as on the type and circumstances of the offences and on the character of the offender.

The *Model Sentencing Act* covers two distinct categories of dangerous offenders: the assaultive criminal and the racketeer.<sup>7</sup> An offender would be sentenced as a dangerous offender if any one of the following applies:

...(1) he inflicted or attempted to inflict serious bodily harm, and he has a propensity to commit crime; (2) he committed a crime (such as arson) which, intended or not, seriously endangered the life or safety of another, he has a previous criminal conviction, and he has a propensity to commit crime; (3) he is a participant in organized crime, racketeering.<sup>8</sup>

The Ouimet Report, on the other hand, defined a dangerous offender as one who:

... has been convicted of an offence specified in this Part (of the Criminal Code) who by reason of character disorder, emotional disorder, mental disorder or defect constitutes a continuing danger and who is likely to kill, inflict serious bodily injury, endanger life, inflict severe<sup>9</sup> psychological damage or otherwise seriously endanger the personal safety of others.