

**BILL C-65: AN ACT TO AMEND THE CRIMINAL CODE  
(STREET RACING) AND TO MAKE A CONSEQUENTIAL  
AMENDMENT TO ANOTHER ACT**

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## LEGISLATIVE HISTORY OF BILL C-65

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 28 September 2005

Second Reading: 25 October 2005

Committee Report:

Report Stage:

Third Reading:

### SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-65: AN ACT TO AMEND THE CRIMINAL CODE  
(STREET RACING) AND TO MAKE A CONSEQUENTIAL  
AMENDMENT TO ANOTHER ACT\*

## BACKGROUND

### A. Purpose and Legislative History of the Bill

Bill C-65, An Act to amend the Criminal Code (street racing) and to make a consequential amendment to another Act, was introduced in the House of Commons by the Minister of Justice on 28 September 2005. The bill, which is intended to underline the seriousness of the street racing problem, essentially makes three amendments to the *Criminal Code*<sup>(1)</sup> (the Code). First, it defines street racing. Second, it provides that street races constitute an aggravating circumstance. Third, it provides for the making of an order that prohibits driving.

Bill C-65 does not create a new offence. It should be noted that the proposed amendments apply only at the sentencing stage, that is, when an accused has been convicted of one of the offences referred to in the bill. There are four offences in question, under the Code: criminal negligence causing death,<sup>(2)</sup> criminal negligence causing bodily harm,<sup>(3)</sup> dangerous driving causing death<sup>(4)</sup> and dangerous driving causing bodily harm.<sup>(5)</sup> Where an offender has committed one of those four offences *and was street racing at the time*, the judge must then, in determining the appropriate sentence, consider the fact that this is an aggravating circumstance. In addition, the judge must prohibit the offender from driving a motor vehicle for a specified period of time.

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\* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

- (1) R.S. 1985, c. C-46.
- (2) Section 220 of the Code.
- (3) Section 221 of the Code.
- (4) Subsection 249(4) of the Code.
- (5) Subsection 249(3) of the Code.

This initiative comes in response to calls by the late member of Parliament Chuck Cadman<sup>(6)</sup> for street racing to be denounced more forcefully. Mr. Cadman had in fact introduced a private member's bill on 11 December 2002 that had essentially the same purpose.<sup>(7)</sup> He introduced it again at the beginning of the next session, on 2 February 2004.<sup>(8)</sup> After the 37<sup>th</sup> Parliament was dissolved, Mr. Cadman introduced his bill again, on 20 October 2004.<sup>(9)</sup> Although there are a few differences, in particular in relation to how repeat offenders are treated, the substance of Bill C-65 is essentially the same as that bill.

### B. The Street Racing Problem

The proliferation of street racing during the 1990s<sup>(10)</sup> led to serious injuries and loss of life among both participants and spectators. The victims also included bystanders, and even police officers. While it is generally difficult to obtain precise figures about street racing,<sup>(11)</sup> we know that the practice is growing.<sup>(12)</sup> In the United States, according to figures from the National Highway Traffic Safety Administration, street racing caused 125 deaths in 2004.<sup>(13)</sup> These races have also claimed numerous victims across Canada. Vancouver is one notable example, but others include Edmonton, Moose Jaw, Regina, Winnipeg, Montréal and

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- (6) Mr. Cadman died on 9 July 2005. It was also at his urging that Bill C-64, which attacks the problems of the theft and defacing of motor vehicles, was introduced.
- (7) Bill C-338, An Act to amend the Criminal Code (street racing), second reading, 2<sup>nd</sup> Session, 37<sup>th</sup> Parliament. After it passed second reading (121 to 88), it was sent to the Standing Committee on Justice and Human Rights on 5 November 2003. The government members opposed the imposition of mandatory orders, and also the special treatment for repeat offenders.
- (8) Bill C-338, An Act to amend the Criminal Code (street racing), second reading, 3<sup>rd</sup> Session, 37<sup>th</sup> Parliament. It was continued at committee stage, under s. 86.1 of the Provisional Standing Orders.
- (9) Bill C-230, An Act to amend the Criminal Code (street racing), first reading, 1<sup>st</sup> Session, 38<sup>th</sup> Parliament. The text is identical to that of Bill C-338.
- (10) In the United States, this practice goes back to the 1950s: see Kenneth J. Peak and Ronald W. Glensor, *Street Racing*, Problem-Oriented Guides for Police – Problem-Specific Guides Series, No. 28, U.S. Department of Justice, December 2004, p. 1 (<http://www.cops.usdoj.gov/default.asp?Item=1418>). That document also refers to the Canadian problem.
- (11) Only certain police services and insurance companies keep statistics. Quite often, the data collected report only speeding or collisions caused by speeding. The situation is apparently similar in the United States (*ibid.*, p. 4).
- (12) *Ibid.*
- (13) There were 82 deaths in 2000, 143 in 2001, 142 in 2002 and 115 in 2003.

Sackville. In the Toronto region, it is estimated that at least 29 people have lost their lives in the last six years.<sup>(14)</sup>

While this problem is also seen in rural areas, it is more widespread in urban centres, very often in less public locations or industrial zones.<sup>(15)</sup> Street racing also occurs in the middle of urban traffic.<sup>(16)</sup>

To enhance the vehicles' performance, street racers rely on a host of modifications, which include doing an "engine swap" or installing tanks containing nitrogen oxide.<sup>(17)</sup> The risk of a serious accident is therefore exacerbated. In addition, it is common for the people at the wheel of these fireballs to be inexperienced, thrill-seeking drivers.<sup>(18)</sup> Although this dangerous activity generally attracts a relatively young demographic, there are participants from various age groups.<sup>(19)</sup> In fact, participants can be classified, as a general rule, into one of three distinct demographic groups:<sup>(20)</sup>

- young people aged 18 to 24, who usually live at home and in most cases have low incomes;
- individuals aged 25 to 40, who generally modify and use "muscle cars" such as Camaros, Corvettes or Mustangs;
- individuals of varying ages, who drive imported vehicles such as late-model Acuras, Hondas, Mitsubishiis or Nissans.

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(14) Web site of the E.R.A.S.E. project ("Eliminate Racing Activity on Streets Everywhere"), which includes 12 police services and the Ontario ministries of Transport and the Environment (<http://www.yorkregionsavealife.com/Erase/ProjectErase.htm>).

(15) Peak and Glensor (2004), p. 5. Some races also take place in parking lots.

(16) *R. v. Tang*, 2001 BCPC 62 (B.C. Prov. Ct.), para. 43.

(17) The modifications can easily cost \$10,000 or more. The vehicles used are also commonly in poor condition (Peak and Glensor (2004), pp. 3 and 6).

(18) Influential role models are found in films such as "The Fast and the Furious" and video games such as "Street Racing Syndicate."

(19) Peak and Glensor (2004), pp. 1-3.

(20) *Ibid.*, pp. 2 and 3.

In addition, some participants use stolen vehicles,<sup>(21)</sup> and it is suspected that some of them also engage in illegal activities to finance their hobby.<sup>(22)</sup>

While some street races occur spontaneously – as in response to a challenge – between drivers who do not know each other, there are other races that are very well organized and take place before hundreds of spectators.<sup>(23)</sup> The event is announced, the length of the improvised track is defined,<sup>(24)</sup> and sometimes streets are even blocked. Someone is in charge of giving the starting signal and timing the race, while lookouts keep an eye out for the police, using laptops, cell phones, portable transceivers and radar detectors.

Although there are supervised locations where speed lovers can test their vehicles completely legally, street racing is still popular. Indeed, a variant of this activity has been invented – the “hat race” or “cannonball run”: money is put into a hat, which is put in a location that is kept secret until just before the race starts, and the first participant to get there wins the money. No holds are barred: the drivers run red lights and ignore stop signs. These races are a clear reflection of the general attitude of recklessness that prevails among street racing participants.

## C. Overview of Legislation

### 1. Provincial Legislation

Every province and territory has its own statute relating to motor vehicles and road safety. In addition, there are provincial regulations governing motor vehicle equipment. For example, a driver of a modified vehicle – such as one with a gas tank in the trunk, or with tanks containing nitrogen oxide installed on it – is committing an offence and is liable to penalties.

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(21) *Ibid.*, p. 1.

(22) *Ibid.*, pp. 3, 5 and 6.

(23) In many cases, the spectators are very close to the competitors’ vehicles, and are thus exposed to a higher risk of injury (*ibid.*, p. 5).

(24) The length is generally about one-eighth or one-quarter of a mile (200 m or 400 m, respectively).

For street racing, provincial legislation applies, generally speaking, to less serious offences, as opposed to the offences of criminal negligence<sup>(25)</sup> or dangerous driving,<sup>(26)</sup> which are found in the Code.<sup>(27)</sup> In each case, all of the relevant circumstances will have to be taken into consideration in order to determine whether the offence is provincial or federal.

In 2002, British Columbia enacted legislation<sup>(28)</sup> to allow the police to immediately seize and impound any vehicle that they have reasonable grounds to believe has been used for street racing. The initial 48-hour seizure<sup>(29)</sup> may extend to 30 days in the case of a subsequent offence committed within two years of the first offence.<sup>(30)</sup> In addition, an offender is liable to a maximum fine of \$2,000 or a maximum of six months' imprisonment,<sup>(31)</sup> or both. In Ontario, an offender is liable to a maximum fine of \$1,000<sup>(32)</sup> or a maximum of six months' imprisonment, or both. In addition, Ontario provides that an offender convicted of the provincial street racing offence may have his or her driver's licence suspended for a maximum of two years.<sup>(33)</sup>

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(25) Subsection 219(1) of the Code. If the criminal negligence caused death or bodily harm, s. 220 or s. 221 of the Code, respectively, will apply.

(26) Paragraph 249(1)(a) of the Code. If the dangerous driving caused bodily harm or death, s. 249(3) or s. 249(4) of the Code, respectively, will apply.

(27) On the question of the distinction between actual criminal offences and "public welfare" offences (also referred to as "statutory" or "regulatory" offences), see the decision of the Supreme Court in *R. v. City of Sault Ste-Marie*, [1978] 2 S.C.R. 1299, para. 45.

(28) *Motor Vehicle Amendment Act*, S.B.C. 2002, c. 49, entered into force on 28 June 2002.

(29) In Alberta, new amendments came into force on 31 October 2005, enabling the police to immediately seize a vehicle used for street racing, for a 24-hour period (*Traffic Safety Amendment Act*, 2005 (Bill 39)).

(30) Sections 241 *et seq.* of the *Motor Vehicle Act*, RSBC 1996, c. 318.

(31) These maximum penalties are provided for the offences of "careless driving" (s. 144 of the *Motor Vehicle Act*, RSBC 1996, c. 318) and "excessive speeding" (s. 148 of the *Motor Vehicle Act*, RSBC 1996, c. 318), committed while street racing. See ss. 241 and 242 of the *Motor Vehicle Act*, RSBC 1996, c. 318, and s. 4 of the *Offence Act*, RSBC 1996, c. 338. For the offence of "careless driving," the minimum fine is \$100. Demerit points will also be placed on the offender's record: three points in the case of an "excessive speeding" offence, and six points in the case of a "careless driving" offence (*Motor Vehicle Regulations*, B.C. Reg. 26/58, s. 28.01, Schedule, Tables 2 and 3).

(32) Subsection 172(2) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8. The minimum fine is \$200.

(33) *Ibid.*

In Manitoba, the fine for a driver who participates in a street race may be as high as \$5,000.<sup>(34)</sup> In addition, the judge who passes sentence may suspend the offender's driver's licence for a maximum of one year.<sup>(35)</sup> In Quebec, the maximum fine is only \$600.<sup>(36)</sup>

These examples illustrate the extent to which measures to deter street racing may vary from one province to another.<sup>(37)</sup> The situation seems similar in the United States.

## 2. United States Legislation

Countries such as New Zealand, the United Kingdom and the United States have examined the street racing problem and enacted legislation to deal with it. In the United States, laws vary from one state to another.<sup>(38)</sup>

In California, for example, a conviction for street racing is punishable by a maximum fine of \$1,000 or a maximum of 90 days' imprisonment, or both. In addition, the vehicle in question may be impounded for 30 days, and a prohibition on driving may be imposed for up to six months. Moreover, a person who aids or abets any activity associated with street racing is guilty of a misdemeanour. The city of Fremont, California, has gone so far as to ban all traffic between 10 p.m. and 6 a.m. on certain roads popular with street racers. Spectators' vehicles, as well as participants' vehicles, may be seized by the police.

In 2003, the city of San Diego was among the first to implement a system that allows for the permanent seizure of a vehicle used for street racing. Vehicles will be permanently seized where the offenders have prior convictions for a serious driving offence.<sup>(39)</sup> The city of Los Angeles soon followed San Diego's example, and also prosecutes street racing spectators, who are committing a misdemeanour. In Reno, Nevada, any spectator within 200 feet (61 m) of a street race is liable to a maximum fine of \$200.<sup>(40)</sup>

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(34) Subsection 189(2) of the *Highway Traffic Act*, C.C.S.M. c. H60.

(35) *Ibid.*, para. 189(3)(a).

(36) The minimum fine is \$300 (ss. 422 and 512 of the *Highway Safety Code*, R.S.Q., c. C-24.2).

(37) The same is true for the statutes of the various territories. The statutes of the Northwest Territories and Nunavut provide for the same penalties: a maximum fine of \$5,000 or a maximum of six months' imprisonment, or both (ss. 236 and 338 of the *Motor Vehicles Act*, R.S.N.W.T. 1998, c. M-16, and of the *Motor Vehicles Act (Nunavut)*, R.S.N.W.T. 1998, c. M-16). In Yukon, on the other hand, street racing is an offence punishable by a maximum fine of \$1,000 or a maximum of six months' imprisonment (s. 187 and s. 247(15) of the *Motor Vehicles Act*, R.S.Y. 2002, c. 153).

(38) The information that follows is from Peak and Glensor (2004), pp. 21-27.

(39) Examples are reckless driving and attempting to evade police.

(40) Street racers are liable to a maximum fine of \$1,000 and a maximum of six months' imprisonment.

In 2003, Texas enacted harsher penalties for both drivers and passengers in motor vehicles involved in street racing: a maximum fine of \$2,000 and a maximum of six months' imprisonment. In the case of a repeat offender, the penalties can be as high as \$4,000 and imprisonment for one year. Spectators are liable to a fine of up to \$500.

## DESCRIPTION AND ANALYSIS

Bill C-65 contains ten clauses. Clause 1 defines street racing. Clauses 2 and 3 provide that street racing is an aggravating circumstance. Clause 4 provides for driving prohibition orders. Clauses 5 to 10 introduce consequential amendments to reflect the changes proposed in the previous clauses. This discussion will focus on the substantive amendments introduced by the first four clauses of the bill.

### A. Definition of "Street Racing" (Clause 1)

Clause 1 of the bill defines "street racing" for the purposes of the *Criminal Code*.<sup>(41)</sup> The new definition, which will appear in section 2 of the Code, is stated in general terms, unlike, for example, the definition in the British Columbia statute.<sup>(42)</sup> This could be, among other things, because the definition in the bill relates to two offences – criminal negligence and dangerous driving – that are already described in the Code.<sup>(43)</sup> It can apply to a broad range of activities, and it relates both to organized street racing and to improvised events.

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(41) The definition reads: "street racing" means operating a motor vehicle in a race with another motor vehicle on a street, road, highway or other public place."

(42) The definition reads: "'race' means circumstances in which, taking into account the condition of the road, traffic, visibility and weather, the operator of a motor vehicle is operating the motor vehicle without reasonable consideration for other persons using the highway or in a manner that may cause harm to an individual, by doing any of the following:

(a) outdistancing or attempting to outdistance one or more other motor vehicles;

(b) preventing or attempting to prevent one or more other motor vehicles from passing;

(c) driving at excessive speed in order to arrive at or attempt to arrive at a given destination ahead of one or more other motor vehicles" (s. 241 of the *Motor Vehicle Act*, RSBC 1996, c. 318).

(43) Criminal negligence is described in subsection 219(1) of the Code: "Every one is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons." Dangerous operation of a motor vehicle is described in subsection 249(1)(a) of the Code: "Every one commits an offence who operates ... a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place."

The bill uses the expression “race *with another motor vehicle*” (emphasis added), which implies that two or more vehicles participate in it. The proposed definition therefore does not seem to include a race against the clock, in which only one motor vehicle is involved.<sup>(44)</sup> As well, the expression “motor vehicle” is already defined in section 2 of the Code,<sup>(45)</sup> and it might mean that a race between, for example, motorcycles, snowmobiles or all-terrain vehicles could be characterized as a “street race.” On the other hand, under the definition in the bill, the “race” must take place in a public place.<sup>(46)</sup>

## B. Aggravating Circumstance (Clauses 2 and 3)

### 1. Offences in Question: Criminal Negligence and Dangerous Driving Causing Death or Bodily Harm

The principles of sentencing are set out in sections 718 *et seq.* of the Code. They include the aggravating factors listed, non-exhaustively,<sup>(47)</sup> in paragraph 718.2(a). In addition to that list, Bill C-65 makes street racing an aggravating circumstance. On the other hand, street racing is an aggravating circumstance only where the individual who engaged in it has been convicted of criminal negligence causing death<sup>(48)</sup> or bodily harm<sup>(49)</sup> (s. 2 of the bill), or of

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(44) For example, a single driver trying to beat his or her own record, or more than one driver taking turns at the wheel of a single vehicle. Under s. 422 of the Quebec *Highway Safety Code*, “No person may drive a road vehicle in a race with another vehicle, *or for a wager or a stake*” (emphasis added). The statutes of the Northwest Territories and Nunavut use different terminology: “No driver shall drive his or her vehicle in a race or in a *contest of performance*” (emphasis added) (ss. 236 and 338 of the *Motor Vehicles Act* and of the *Motor Vehicles Act (Nunavut)*). The California law, on the other hand, appears to apply to a timed race involving a single motor vehicle (Peak and Glensor (2004), p. 21).

(45) “A vehicle that is drawn, propelled or driven by any means other than muscular power, but does not include railway equipment.”

(46) Clause 1 of the bill uses the expression “on a street, road, highway or other public place.” The same expression is found in ss. 259(1) and 259(2) of the Code, which deal with orders prohibiting driving. It may also be noted that s. 2 of the Code provides that the expression “highway” means “a road to which the public has the right of access, and includes bridges over which or tunnels through which a road passes.” The judge in a decision of the Court of Quebec held that a federated snowmobile trail was considered to be a public place (*R. v. Bossé*, 2005 CarswellQue 1008, para. 48).

(47) The courts may therefore adapt the penalty to each offender, by weighing the other factors that they consider to be aggravating or mitigating circumstances that apply in each case (*R. v. L. (J.)*, (2000) 147 C.C.C. (3d) 299 (Ont. C.A.); *R. v. Hamilton*, (2004) 22 C.R. (6<sup>th</sup>) 1 (Ont. C.A.)). Previous convictions are an aggravating circumstance that is not listed in the Code, but that the courts will take into account in sentencing.

(48) Section 220 of the Code.

(49) Section 221 of the Code.

dangerous driving causing death<sup>(50)</sup> or bodily harm<sup>(51)</sup> (s. 3 of the bill). The bill thus applies only to street races that result in death or bodily harm<sup>(52)</sup> and that may be characterized, in criminal law, as criminal negligence or dangerous driving.

On a scale of seriousness, criminal negligence is higher than dangerous driving.<sup>(53)</sup> The distinguishing factor between the two offences is the degree of carelessness or recklessness. For the offence of dangerous driving,<sup>(54)</sup> it must be proved beyond a reasonable doubt that the accused's conduct amounted to *a marked departure* from the standard of care that a reasonable person would observe in the same situation.<sup>(55)</sup> For the offence of criminal negligence,<sup>(56)</sup> the departure must be more marked. A negligent driver must have shown “wanton or reckless disregard for the lives or safety of other persons.”<sup>(57)</sup>

There must be a causal connection between the street racing and the death or bodily harm caused, for both the offence of dangerous driving and the offence of criminal negligence. While that connection must be more than minor (*de minimis*),<sup>(58)</sup> racing with another vehicle may be enough to establish the causal connection, even where there was no direct collision with the victim.<sup>(59)</sup>

In addition, as indicated earlier, some of the rules to combat the street racing problem in the United States apply not only to the racers but also to organizers and spectators. Clauses 2 and 3 of Bill C-65 use the expression “the offender *was street racing*” (emphasis added). In Canadian criminal law, a person who aids or abets a racer may also be considered to have been a party to the offence.<sup>(60)</sup>

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(50) Subsection 249(4) of the Code.

(51) Subsection 249(3) of the Code.

(52) Section 2 of the Code defines bodily harm as follows: “any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.”

(53) *R. v. Palin*, (1999) 135 C.C.C. (3d) 119 (Que. C.A.).

(54) Defined in para. 249(1)(a) of the Code.

(55) *R. v. Hundal*, [1993] 1 S.C.R. 867, and *R. v. MacGillivray*, [1995] 1 S.C.R. 890.

(56) Defined in s. 219(1) of the Code.

(57) Subsection 219(1) of the Code.

(58) *R. v. Ewart*, (1989) 53 C.C.C. (3d) 153 (Alta. C.A.).

(59) See *R. v. Olivier*, REJB 2002-31668 (Que. C.A.) and *R. v. Khosa*, (2003) 180 C.C.C. (3d) 225 (B.C.C.A.).

(60) Paragraphs 21(1)(b) and (c) of the Code.

There is also legislation in the provinces and the United States that provides for vehicles used for street racing to be seized and impounded. Under the Code, a peace officer may, without a warrant, seize a vehicle used for that purpose.<sup>(61)</sup> The vehicle may be detained until the completion of the criminal proceedings<sup>(62)</sup> and forfeited on conviction.<sup>(63)</sup>

## 2. Imprisonment

The more serious offence, criminal negligence causing death, is punishable by life imprisonment,<sup>(64)</sup> while the less serious offences, criminal negligence and dangerous driving causing bodily harm, are punishable by imprisonment for a maximum of 10 years.<sup>(65)</sup> The maximum sentence for dangerous driving causing death is imprisonment for 14 years.<sup>(66)</sup>

There is no minimum term of imprisonment for the four offences to which the bill relates. A person convicted of any of those offences may therefore serve his or her sentence in the community, if the judge believes that to be appropriate.<sup>(67)</sup> That situation will not change if Bill C-65 is brought into force. The presence of an aggravating circumstance will not prevent the judge from imposing a conditional sentence.<sup>(68)</sup>

At present, imposing conditional sentences is a widespread practice, even for a serious offence such as criminal negligence causing death.<sup>(69)</sup> The sentencing judge is required, under the Code, to consider all available sanctions less restrictive than deprivation of liberty.<sup>(70)</sup>

In *R. v. Khosa*,<sup>(71)</sup> the British Columbia Court of Appeal affirmed a conditional sentence of two years less a day. In that case, two young adults had been convicted of criminal negligence causing death. On 13 November 2000, they took part in an impromptu street race,

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(61) Paragraphs 489(2)(b) and (c) of the Code.

(62) Section 490 of the Code.

(63) Subsection 490.1(1) of the Code.

(64) Paragraph 220(b) of the Code.

(65) Section 221 and s. 249(3) of the Code.

(66) Subsection 249(4) of the Code.

(67) Section 742.1 of the Code.

(68) *R. v. Proulx*, [2000] 1 S.C.R. 61, para. 115.

(69) Clayton C. Ruby *et al.*, *Sentencing*, 6<sup>th</sup> ed., Butterworths, Markham, July 2004, p. 880, §23.505.

(70) Paragraph 718.2(d).

(71) (2003) 180 C.C.C. (3d) 225 (B.C.C.A.).

which ended tragically in the death of a pedestrian who was completely uninvolved in the race. The factors that the Court took into consideration included the fact that the offenders had no criminal record and the fact that the race had not been organized.<sup>(72)</sup> The Court also pointed out that street racing is not an aggravating circumstance under the existing rules.<sup>(73)</sup>

On the other hand, some courts have held that street racing was indeed an aggravating circumstance and that deterrence was an important factor to be considered.<sup>(74)</sup> In *R. v. Tang*,<sup>(75)</sup> for example, the judge, who was dealing with a street racing case, handed down a sentence of four years' imprisonment to a person convicted of negligent driving causing death and failure to stop at the scene of an accident.<sup>(76)</sup> The British Columbia Court of Appeal has even affirmed an exemplary sentence imposed on a 17-year-old young offender involved in street racing.<sup>(77)</sup> After convicting him of negligent driving causing death and of driving while intoxicated causing death,<sup>(78)</sup> the trial judge had ordered that he be placed in custody for a period of one year.

Thus not all courts are in agreement on the question of whether street racing is an aggravating factor. The result can be marked discrepancies in the sentences imposed. Clauses 2 and 3 of Bill C-65 therefore require the courts to consider street racing to be an aggravating circumstance. To quote Chief Justice Lamer of the Supreme Court (since retired): "Where objectives such as denunciation and deterrence are particularly pressing, incarceration will generally be the preferable sanction."<sup>(79)</sup>

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(72) *Ibid.*, paras. 36 and 50.

(73) *Ibid.*, para. 27.

(74) For example, *R. v. Tang*, 2001 BCPC 62 (B.C. Prov. Ct.), para. 45; *R. v. Rivard*, [2001] Q.J. No. 3357 (Que. C.A.) and *R. v. Lam*, [2003] O.J. No. 4127 (Ont. C.A.), para. 11. In the last case, the Ontario Court of Appeal held that in addition to street racing, the following factors were aggravating circumstances: consumption of alcohol or drugs, number of victims, duration of the careless driving, criminal record, bad driving record, attempt to evade police and leaving the scene of an accident.

(75) 2001 BCPC 62 (B.C. Prov. Ct.).

(76) Subsection 252(1.3) of the Code.

(77) *R. v. S. (S.)*, 2004 BCCA 94 (B.C.C.A.).

(78) Subsection 255(3) of the Code.

(79) *R. v. Proulx*, [2000] 1 S.C.R. 61, para. 114.

### C. Prohibition Order (Clause 4)

Under the existing provisions of the Code, a judge who sentences a person convicted of one of the offences to which the bill relates may, but is not required to, make an order prohibiting the offender from driving.<sup>(80)</sup> The order is therefore discretionary. Clause 4 of Bill C-65, like the provisions regarding orders in drunk driving cases,<sup>(81)</sup> requires that the judge make the order. Accordingly, in a street racing case in which an offender is convicted of either criminal negligence (causing death or bodily harm) or dangerous driving (causing death or bodily harm), the judge will have to prohibit the offender from driving in a public place, for a specified period. The order is therefore mandatory.

Another change made by the bill is the introduction of a minimum period of prohibition on driving. The minimum is one year, for the four offences to which the bill relates. On the other hand, the bill does not change the maximums already in place, and, unlike Mr. Cadman's bill, does not establish a system whereby the length of the prohibition order would increase for each repeat offence.<sup>(82)</sup>

The various times provided in the Code and in the two bills are set out below in Table 1.

While Mr. Cadman's bill provided for a gradual increase in the length of the prohibition for repeat offenders – a system that currently applies to drunk driving cases<sup>(83)</sup> – it also reduced the maximum in some cases<sup>(84)</sup> and established a maximum for a first offence of criminal negligence causing death. For example, under Bill C-230 a judge could not have made an order such as was made in *R. v. Khosa*,<sup>(85)</sup> prohibiting the accused from driving for five years. The order would have had to be limited to three years. On the other hand, it must be acknowledged that the private member's bill dealt more severely with repeat offenders who caused death.

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(80) Subsection 259(2) of the Code.

(81) Subsection 259(1) of the Code.

(82) This is the main difference between Bill C-65 and Mr. Cadman's bill.

(83) Subsection 259(1) of the Code.

(84) From ten to three years for a first offence of criminal negligence causing bodily harm or dangerous driving causing death or bodily harm. From ten to five years for a second offence of criminal negligence or dangerous driving causing bodily harm.

(85) (2003) 180 C.C.C. (3d) 225 (B.C.C.A.). This was a first conviction for criminal negligence causing death.

Table 1: Length of Prohibition on Driving a Motor Vehicle

Offences (committed while street racing)	<i>Criminal Code</i>	Bill C-65	Bill C-230 (Mr. C. Cadman)		
			1st offence	2nd offence	3rd and subsequent offence
Criminal negligence (death)	Discretion of the court	Minimum: 1 year  No maximum	Minimum: 1 year  Maximum: 3 years	Life	Life
Criminal negligence (bodily harm)	No minimum  Maximum: 10 years	Minimum: 1 year  Maximum: 10 years	Minimum: 1 year  Maximum: 3 years	Minimum: 2 years  Maximum: 5 years  <i>Life if the previous offence caused death</i>	Minimum: 3 years  No maximum  <i>Life if the previous offence caused death</i>
Dangerous driving (death)	No minimum  Maximum: 10 years	Minimum: 1 year  Maximum: 10 years	Minimum: 1 year  Maximum: 3 years	Life	Life
Dangerous driving (bodily harm)	No minimum  Maximum: 10 years	Minimum: 1 year  Maximum: 10 years	Minimum: 1 year  Maximum: 3 years	Minimum: 2 years  Maximum: 5 years  <i>Life if the previous offence caused death</i>	Minimum: 3 years  No maximum  <i>Life if the previous offence caused death</i>

It must be noted that these are not minimum terms of imprisonment, but rather orders prohibiting offenders from driving motor vehicles. Those orders are in addition to any other sentences imposed by the court. The period of the prohibition on driving will therefore follow any term of imprisonment. Moreover, driving during a period of prohibition is a hybrid offence punishable by a maximum of five years' imprisonment.<sup>(86)</sup> An offender may also appeal a prohibition order<sup>(87)</sup> and the National Parole Board may cancel or vary the order.<sup>(88)</sup>

## COMMENTARY

Generally speaking, the principle on which Bill C-65 is based – recognition of street racing as a serious problem that must be severely denounced – has been favourably received by law enforcement organizations<sup>(89)</sup> and members of Parliament.<sup>(90)</sup>

On the other hand, the treatment of repeat offenders has been a matter of debate in the House of Commons. According to Paul Harold Macklin, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, it would be difficult to implement a system in which the length of the prohibition on driving increased gradually for repeat offences, given that no record of the aggravating circumstances – here, street racing – is kept by the Canadian Police Information Centre.<sup>(91)</sup> This means that a Crown attorney would have to consult the transcript of the hearing, or the physical file, in order to know that the accused was previously involved in street racing.

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(86) Subsection 259(4) of the Code.

(87) Paragraph 675(1)(b) of the Code, and see clause 7 of the bill.

(88) After five years, if the length of the prohibition exceeded that period, or after 10 years, if the prohibition was imposed for life (s. 109 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20; see also clause 9 of the bill).

(89) See, for example, Paul Turenne, “Street-Racing Law Proposed – Cops Support New Legislation,” *The Winnipeg Sun*, 29 September 2005, p. 3.

(90) The motion to refer the bill to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness passed on 25 October 2005, by the following vote: YEA – 198, NAY – 86.

(91) House of Commons, *Debates*, 18 October 2005, p. 8646. The offences themselves, however (e.g., operating a motor vehicle while impaired: para. 253(a) of the Code), do appear in an offender's criminal record.

Some Conservative Party MPs believe, rather, that Bill C-65 is a “watered down version” of the legislation proposed by Mr. Cadman.<sup>(92)</sup> They criticize the fact that there are no special rules for repeat offenders.<sup>(93)</sup> The bill should at least leave the door open to the possibility of police and Crown attorneys looking into the facts and seeking harsher sentences for repeat offenders. In addition, there should be express provisions making spectators and organizers of street races liable.<sup>(94)</sup> Amendments are therefore needed, in their view.

The Bloc Québécois believes that C-65 is “a step in the right direction.”<sup>(95)</sup> And while the New Democratic Party supports the bill, it has not ruled out the possibility that amendments will be proposed.<sup>(96)</sup> Mr. Joe Comartin, the NDP spokesperson for Justice, has commented that a public education campaign is also needed to combat speeding.<sup>(97)</sup>

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(92) *Ibid.*, pp. 8650 *et seq.*

(93) Dona Cadman, widow of the late Mr. Cadman, is apparently of the same opinion (Ian Bailey, “Cadman’s widow: Bills fall short,” *The Province* [Vancouver], 27 October 2005, p. A14).

(94) House of Commons, *Debates*, 18 October 2005, p. 8672.

(95) *Ibid.*, p. 8653.

(96) *Ibid.*

(97) *Ibid.*, p. 8673.