

Opinion: Liberal record on criminal law reform is deeply disappointing

Montreal lawyer Ralph Mastromonaco asks, where is the party that believed in a just society?

RALPH MASTROMONACO, SPECIAL TO MONTREAL GAZETTE Updated: June 29, 2018



"The most significant change to our criminal justice system has not come from the Liberal government, but from the Supreme Court of Canada," Ralph Mastromonaco writes. CORGARASHU - FOTOLIA

This Liberal federal government is hardly liberal when it comes to reforming criminal justice.

The most significant change to our criminal justice system has not come from the Liberal government, but from the Supreme Court of Canada. The Jordan

decision significantly enhanced the right of the accused to a trial within a reasonable delay and called out the culture of complacency plaguing our criminal justice system.

Many Jordan-driven initiatives, however, display a one-dimensional obsession with clearing cases.

Jordan has required a fundamental re-evaluation of criminal justice in Canada and a consideration of some basic questions:

First, what conduct merits being labelled “criminal” and justifies allocation of the significant public resources to prosecute and sanction such conduct?

Second, can the state treat certain types of criminal conduct in an alternate manner?

Third, when dealing with cases that cannot be treated in an alternate manner, how can we better provide the fair trial we are constitutionally obliged to ensure?

Consider some of the actions and inactions of the Liberal government since Jordan.

Though marijuana possession will finally be decriminalized, it will still be a crime to be a cocaine or heroin addict. Our government will continue to show its empathy for people struggling with drug addiction by prosecuting them, calling them criminals and punishing them for their dependency.

The Liberal proposal to abolish the preliminary inquiry is solely focused on speeding cases up. Treating the preliminary inquiry as expendable is disingenuous. The preliminary inquiry goes to the state’s disclosure obligations and enables the defence to better assess the prosecution’s case. Mutually acceptable plea bargains that free up court time frequently occur at or shortly after the preliminary inquiry.

Abolishing mandatory minimum sentences would go further to alleviate court docket congestion. The Liberal government refuses to go there. Mandatory minimum sentences derogate from individualized sentencing principles that consider incarceration a last resort. They were enacted by the Conservatives to ensure that persons convicted of certain crimes are incarcerated for statutorily dictated minimum prison terms grounded in a belief that judges fail to impose “stiff sentences that make our streets safe.” The state’s heavy unseen hand

directs the convicted to jail and turns lawyers and judges in our courtrooms into robots. An accused facing the certainty of imprisonment will, not surprisingly, take even a slim-chance case to trial. This increases court docket congestion.

The new impaired driving law attempts to show that Liberals can be “tough on crime.” Passing legislation that drastically increases police search and seizure powers that are sure to attract a Charter challenge is no way to reform the law. Impaired-driving laws need to be reformed — in another direction.

No public interest is served by imposing criminal records on first-time offenders convicted of impaired driving in circumstances where no harm is done to anyone or anything. The convicted deserve sentencing justice, not gratuitous punishment. A criminal record is often a job killer that causes more hardship to the convicted and their families than any fine. Section 730 discharges should be a sentencing option. This would significantly reduce the load of impaired driving cases burdening our court dockets.

This Liberal record is disappointing.

There is a generation of liberals who remember the Liberal Party of big ideas and bold actions: employment insurance, old age pensions, national medicare, the Canadian flag, abolition of capital punishment, decriminalization of homosexuality, providing asylum to Vietnam War resisters, and the biggest idea of all, the Canadian Charter of Human Rights and Freedoms. We recall a prime minister who saw in the mandate entrusted to him by the Canadian people a moral imperative requiring the Liberal government to focus on building a just society.

This was the Liberal party that earned lifelong support from Canadians believing in the ideals of liberalism.

Where is that Liberal party today?

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