Legislative Summary

Bill C-30:
Response to the Supreme Court of Canada Decision in R. v. Shoker Act

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Cynthia Kirkby

Legal and Legislative Affairs Division
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Legislative Summary of Bill C-30

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

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LEGISLATIVE SUMMARY OF BILL C-30: RESPONSE TO THE SUPREME COURT OF CANADA DECISION IN R. v. SHOKER ACT

1 BACKGROUND

1.1 General

Bill C-30, An Act to amend the Criminal Code (alternative title: Response to the Supreme Court of Canada Decision in *R.* v. *Shoker* Act), was introduced in the House of Commons on 31 May 2010 by the Minister of Justice and Attorney General of Canada, the Honourable Robert Nicholson. It is identical in substance to Bill C-55,[1] which received first reading during the 2nd Session of the 40th Parliament but died on the *Order Paper* when Parliament was prorogued on 30 December 2009. According to its summary, Bill C-30 amends the *Criminal Code* (the Code)[2] to allow a court to require that an offender or defendant provide a sample of a bodily substance on the demand of peace officers, probation officers, supervisors or designated persons, or at regular intervals, in order to enforce compliance with a prohibition on consuming drugs or alcohol imposed in a probation order, a conditional sentence order or a "peace bond."[3]

1.2 *R.* v. *Shoker*

In the 2006 decision *R.* v. *Shoker*,[4] a majority of the Supreme Court of Canada ruled that the Code does not authorize judges to order an individual on probation to provide samples of bodily substances for the purpose of determining whether the probationer is complying with a condition to abstain from consuming drugs or alcohol. The *Shoker* decision was said to have "hampered the ability of police and probation officers to monitor offenders in the community"[5] because officers had routinely been demanding breath, blood, or urine samples from individuals who were under a court order that contained an abstention condition.[6]

The underlying facts of the case were that a sleeping woman was awakened after midnight when a naked stranger, Harjit Singh Shoker, got into bed with her, possibly while under the influence of illegal drugs. Mr. Shoker was convicted of breaking and entering a dwelling-house with intent to commit sexual assault, and sentenced to 20 months' incarceration to be followed by a two-year period of probation. One of the conditions of his probation required that he "[a]bstain absolutely from the consumption and possession of alcohol and non prescription narcotics" and "submit to a urinalysis, blood test or breathalyzer test upon the demand/request of a Peace Officer or Probation Officer to determine compliance with this condition."[7] Although Mr. Shoker challenged this condition on grounds related to the *Canadian Charter of Rights and Freedoms* (the Charter),[8] the Supreme Court majority instead focused on whether the Code in fact authorized sentencing judges to impose such a condition, noting that "[i]f a sentence is illegal on the basis that it is unauthorized under the governing legislation, it must be struck down and the constitutional issue does not arise."[9]

The conditions that a court may or must impose as part of a probation order are set out in section 732.1 of the Code, including the condition that the offender abstain from the consumption of alcohol, non-prescription drugs, or other intoxicating substances.[10] A five-member majority of the Supreme Court rejected the argument that the ability to *enforce* a condition requiring an offender to abstain from the consumption of alcohol or non-prescription drugs flows implicitly from the power to *impose* it. In particular, they drew an analogy with the prohibition against impaired driving under section 253 of the Code; the enforcement scheme for demanding bodily samples in that context does not flow implicitly from the prohibition, but is instead explicitly set out in sections 254 to 258 of the Code. Consequently, the court held, since the legislative basis to demand bodily samples was not implicit in paragraph 732.1(3)(*c*) of the Code, which authorizes a court to impose the abstention prohibition, it would have to be sought elsewhere.[11]

The majority of the Court then considered whether the legislative basis for requiring bodily samples could be found in the "residual clause" in paragraph 732.1(3)(*h*) of the Code, which authorizes a court to require the probationer to "comply with such other reasonable conditions as the court considers desirable … for protecting society and for facilitating the offender's successful reintegration into the community." They reasoned that "other reasonable conditions" should be of the same kind as the conditions that were specifically enumerated in the Code, and noted that the fulfilment of any of the listed conditions could have no incriminating consequence for the probationer. They found that, by contrast, "conditions intended to facilitate the gathering of evidence for enforcement purposes do not simply monitor the probationer's behaviour and, as such, are of a different kind."[12] The majority concluded that, because "[t]he seizure of bodily samples is highly intrusive and … subject to stringent standards and safeguards to meet constitutional requirements,"[13] it could not be left to the discretion of the sentencing judge in individual cases. Given the kinds of policy decisions involved and the expenditure of resources that would be required, they said the matter was one for Parliament, not the courts.[14] The majority stated that until Parliament created a legislative scheme authorizing the seizure of bodily samples, the enforcement of abstention conditions would have to be done in accordance with existing investigatory tools, such as through the evidence of witnesses to the event.[15]

Two members of the Supreme Court, in concurring reasons, held that the residual clause was broad enough to authorize the challenged condition. Parliament could not be expected to address a wide range of individual situations in minute detail, they said, so the broad residual clause ensured "that the terms of probation orders are effective and can be implemented in a practical way."[16] They added that even though the legislative authority to impose the monitoring condition existed, in the absence of a Charter-compliant statutory framework, "compelling the accused to undergo blood tests would be far too intrusive and would breach [section 8 of the Charter, which states that "(e)veryone has the right to be secure against unreasonable search or seizure"].[17] They agreed with the majority that Parliament would be in a better position to craft a solution than the courts, and that Parliament's solution would then be open to review to ensure compliance with the Charter.

1.3 Academic Commentary on the Constitutional Implications of *Shoker*

In an article published in 2007, Professor Sanjeev Anand of the Faculty of Law at the University of Alberta considered some of the constitutional issues that could arise if legislation were drafted to authorize the seizure of bodily samples from offenders subject to an abstention condition as part of a community-based sentence. Professor Anand reached the following conclusions with respect to legislation that, in his opinion, would be both effective and constitutional, particularly with respect to the right to be secure against unreasonable search and seizure:

> [D]emands for the production of bodily samples should be premised on reasonable and probable grounds for believing that offenders have breached abstention conditions and that bodily samples will provide evidence of these breaches. The legislation must also include detailed provisions for the collection of evidence that are solicitous of the offender's privacy and security. Perhaps most importantly, the legislation needs to set stringent limits on the potential use of the collected evidence.[18]

Professor Tim Quigley of the University of Saskatchewan raised another potential constitutional issue in a 2006 annotation to *Shoker* published in the *Criminal Reports*: whether mandatory bodily testing could be a condition of release on bail of an accused individual. Professor Quigley noted that, unlike a convicted offender serving a community-based sentence, "the accused retains the presumption of innocence at [the bail] stage and therefore should retain *Charter* protections against invasion of a reasonable expectation of privacy with full vigour."[19]

2 Description and Analysis

Bill C-30 consists of 14 clauses. The following discussion highlights selected aspects of the bill.

2.1 Probation Orders (Clauses 2 to 4)

Clauses 2 through 4 of Bill C-30 relate to probation orders. Probation is primarily a rehabilitative sentencing tool,[20] and it can be imposed without a fine or imprisonment for offences not subject to a minimum penalty, or in addition to a fine or term of imprisonment not exceeding two years.

Section 732.1 of the Code sets out certain conditions that may or must be added to a probation order.[21] Currently, under paragraph 732.1(3)(*c*), a court may prescribe as a condition that the offender abstain from the consumption of drugs, except in accordance with a medical prescription, or of alcohol or other intoxicating substances. Subclause 3(1) of the bill adds two new conditions that a court may prescribe:

> [The court may prescribe, as additional conditions of a probation order, that the offender …]
>
> (*c.1*) provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation on the demand of a peace officer, a probation officer or someone designated under subsection (9) to make a demand, at

> the place and time and on the day specified by the person making the demand, if that person has reasonable grounds to believe that the offender has breached a condition of the order that requires them to abstain from the consumption of drugs, alcohol or any other intoxicating substance;
>
> (*c.2*) provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation at regular intervals that are specified by a probation officer in a notice in Form 51 served on the offender, if a condition of the order requires the offender to abstain from the consumption of drugs, alcohol or any other intoxicating substance;

Under the first condition, the probationer would provide a bodily substance for analysis if a specified official had reasonable grounds to believe that he or she had breached an abstention condition. Under the second condition, the probationer subject to an abstention condition would provide a bodily substance at the regular intervals that a probation officer specified in the proposed Form 51 (created by clause 13 of the bill).

Subclause 3(2) of Bill C-30 adds related procedural provisions. Under proposed subsection 732.1(7), the notice given to a probationer under paragraph 732.1(3)(*c.2*) must specify when and where the samples are to be provided, although the first sample may not be taken earlier than 24 hours after the notice is served, and subsequent samples must be taken at regular intervals of at least seven days. Proposed subsection 732.1(8) requires the provinces and territories to designate or specify such things as who may take and destroy samples of bodily substances and how the samples are to be analyzed and stored, while proposed subsection 732.1(9) permits a province or territory to designate who may demand a sample of a bodily substance. Under proposed subsection 732.1(10), samples and the records of the results of analysis of the samples may not be dealt with except in accordance with the designations and specifications made under subsection (8). Proposed subsection 732.1(11) states that the Attorney General of a province or the minister of Justice of a territory, or a person authorized by him or her, shall cause all samples to be destroyed within the prescribed periods "unless the samples are reasonably expected to be used as evidence in a proceeding" for breach of probation. Finally, under proposed subsection 732.1(12), the Governor in Council may make regulations prescribing bodily substances, respecting the designations and specifications in subsections (8) and (9), prescribing the periods within which samples are to be destroyed under subsection (11), and "respecting any other matters relating to the samples of bodily substances."

Clause 4 of the bill creates two related offences. Proposed subsection 732.11(1) prohibits a person from using a bodily substance except for the purpose of determining the probationer's compliance with an abstention condition. Proposed subsection 732.11(2) states that no person shall use, disclose, or allow the disclosure of the results of the analysis of the bodily substance, subject to subsection (3), which permits the use or disclosure of the results in certain situations: to the offender, for use in a breach of probation investigation or proceeding, or, if provided anonymously, for statistical or other research purposes. Under proposed subsection 732.11(4), every person who contravenes subsection (1) or (2) is guilty of an offence punishable on summary conviction.

Finally, clause 2 of the bill adds related evidentiary provisions. Proposed section 729.1 relates to the use of a certificate of analysis in a court proceeding for failure to comply with an abstention condition. As long as certain requirements are met, a certificate containing the results of the analysis is admissible in evidence. The party against whom it is to be used must be given reasonable notice and a copy of the certificate, and may, with leave of the court, require the analyst to attend for cross-examination.

2.2 Conditional Sentence Orders (Clauses 2, 5 and 6)

Although *Shoker* addressed only whether there was a legislative basis to order an individual *on probation* to provide samples of bodily substances in order to determine compliance with an abstention condition, Bill C-30 creates new enforcement conditions, notice requirements, regulation-making powers, misuse offences, and evidentiary provisions in the context of conditional sentences and peace bonds as well. Since the amendments in each context are largely similar, the differences rather than the similarities will be highlighted.

A "conditional sentence of imprisonment" is served in the community, rather than in prison, and generally includes punitive conditions such as house arrest or strict curfews.[22] The conditions that may or must be imposed are set out in section 742.3 of the Code, including the optional condition that the offender abstain from the consumption of alcohol or other intoxicating substances or drugs except in accordance with a medical prescription.[23]

Clause 5 of Bill C-30 amends this section to provide the court with the authority to prescribe that the offender provide samples of a bodily substance in order to determine compliance with an abstention condition in a conditional sentence order. As with probation orders, this could be either at the regular intervals a supervisor specifies in a notice in Form 51, or on the demand of a peace officer, the supervisor, or a designated individual. It should be noted, however, that in the context of a conditional sentence order, the individual making the demand need only have reasonable grounds to *suspect* that the offender has breached a condition in order to make the demand and, as a consequence of a breach, the offender may be returned to prison to serve the remainder of his or her sentence. This is in contrast with the context of a probation order, where the individual making the demand must have reasonable grounds to *believe* the offender failed to comply with an abstention condition in order to make the demand, and where breach of a condition is a separate criminal offence.[24]

Subclause 5(2) essentially replicates, in the context of conditional sentence orders, the procedural provisions that subclause 3(2) creates for probation orders, while clause 6 of the bill essentially replicates the offence provisions that clause 4 creates in the context of probation orders, concerning the use of samples and the use and disclosure of the results of analysis.[25]

Clause 2 of the bill, with respect to the certificate of analysis, relates both to proceedings for breach of probation and to hearings to determine whether the offender breached an abstention condition of a conditional sentence order.

2.3 Peace Bonds (Clauses 7 to 12)

As noted above, in addition to amendments in the contexts of probation orders and conditional sentence orders, Bill C-30 also creates new enforcement conditions, notice requirements, regulation-making powers, misuse offences, and evidentiary provisions in the context of "peace bonds," which are intended to prevent future harm and may be imposed in certain circumstances even if the "defendant" has not been charged with or convicted of an offence.[26] Similar amendments are made to each of four different types of "peace bond" or recognizance.

2.3.1 Section 810 Recognizance: "Where Injury or Damage Feared" (Clause 7)

Clause 7 of the bill amends section 810 of the Code, which allows a court to order a defendant to enter into a recognizance for up to 12 months when a person fears on reasonable grounds that the defendant "will cause personal injury to him or her or to his or her spouse or common-law partner or child or will damage his or her property."[27] Currently, section 810 states that the recognizance may include such conditions as that the defendant be prohibited from possessing weapons, or from approaching or communicating with the person who sought the peace bond. The defendant may be imprisoned for up to 12 months if he or she fails or refuses to enter into the recognizance.

Clause 7 of the bill allows the court to impose conditions that require the defendant to (a) abstain from the consumption of non-prescription drugs, alcohol, or any other intoxicating substance, (b) provide a sample of a bodily substance when a peace officer, probation officer or designated individual has reasonable grounds to believe that the defendant has breached the abstention condition, and (c) provide a sample of a bodily substance at specified regular intervals.

2.3.2 Section 810.01 Recognizance: Fear of Criminal Organization or Terrorism Offence (Clause 8)

Clause 8 of the bill amends section 810.01 of the Code, which allows a court to order a defendant to enter into a recognizance for up to two years, in certain circumstances, if a person has reasonable grounds to fear that the defendant will commit a criminal organization offence, a terrorism offence, or an offence under section 423.1 of the Code (intimidation of a justice system participant or journalist). This process can only be commenced with the consent of the Attorney General.

Currently, section 810.01 states that the recognizance may include such conditions as those requiring the defendant to participate in a treatment program, or, if the Attorney General makes the request, to wear an electronic monitoring device. The abstention condition for this type of recognizance is already listed in paragraph 810.01(4.1)(*e*) of the Code. The defendant may be imprisoned for up to 12 months for failing or refusing to enter into the recognizance.

Clause 8 of the bill allows the court to add to the recognizance the condition that the defendant provide a sample of a bodily substance when a peace officer, probation officer or designated individual has reasonable grounds to believe that he or she has breached the abstention condition, or at specified regular intervals.

Subclause 8(2) also amends the purpose for which such conditions can be added to a section 810.01 recognizance. Currently, as is the case with the section 810 peace bond, the court may add any reasonable conditions considered desirable to secure "the good conduct of the defendant."[28] Bill C-30 amends subsection 810.01(4.1) so that the court can instead add any reasonable conditions considered desirable "for preventing the commission of an offence referred to in subsection (1)" (intimidation of a justice system participant or journalist, criminal organization offence, or terrorism offence). In all cases, however, an individual bound by a section 810.01 recognizance would still be required to keep the peace and be of good behaviour.[29]

2.3.3 Section 810.1 Recognizance: Fear of Sexual Offence Against a Child (Clause 9)

Clause 9 of the bill amends section 810.1 of the Code, which allows a court to order a defendant to enter into a recognizance for up to two years, in certain circumstances, if a person has reasonable grounds to fear that the defendant will commit one of the specified sexual offences against a person under the age of 16 years. The defendant may be imprisoned for up to 12 months for failing or refusing to enter into the recognizance.

Currently, under subsection 810.1(3.02), the court may add to the recognizance any reasonable conditions considered desirable to secure the good conduct of the defendant, including conditions that prohibit the defendant from engaging in any activity that involves contact with persons under the age of 16 years, and from attending daycare centres, playgrounds, and other places. As well, the court can require the defendant to participate in a treatment program, and to abstain from the consumption of alcohol, non-prescription drugs, or other intoxicating substances.

Clause 9 adds that the court can require the defendant to provide a sample of a prescribed bodily substance for analysis on the demand of a peace officer, probation officer, or designated individual who has reasonable grounds to believe that the defendant has breached the abstention condition, or at specified regular intervals.

2.3.4 Section 810.2 Recognizance: Fear of Serious Personal Injury Offence (Clause 10)

Clause 10 of the bill amends section 810.2 of the Code, which allows a court to order a defendant to enter into a recognizance for up to two years, in certain circumstances, if a person has reasonable grounds to fear that the defendant will commit a "serious personal injury offence," which includes certain violent and sexual offences.[30] This process can only be commenced with the consent of the Attorney General, and the defendant can be imprisoned for up to 12 months for failing or refusing to enter into the recognizance.

Currently, the conditions that the court can add to the recognizance to secure the good conduct of the defendant include conditions that require the defendant to participate in a treatment program and to abstain from the consumption of alcohol, non-prescription drugs, or other intoxicating substances.

Clause 10 adds that the court can require the defendant to provide a sample of a prescribed bodily substance for analysis on the demand of a peace officer, probation officer, or designated individual who has reasonable grounds to believe that the defendant has breached the abstention condition, or at specified regular intervals.

2.3.5 General (Clauses 11 and 12)

Clauses 11 and 12 of the bill introduce amendments that relate to all four types of peace bond.

Clause 11 introduces notice requirements and regulation-making powers similar to those introduced with respect to probation orders (subclause 3(2) of the bill) and conditional sentence orders (subclause 5(2) of the bill).

For example, under proposed subsection 810.3(1), the Attorney General of a province or the minister of Justice of a territory is required to designate such things as who may take samples of bodily substances and who may destroy them, and to specify such things as the manner in which samples are to be taken, analyzed, stored, handled, and destroyed. Under proposed subsection 810.3(5), the Governor in Council may make regulations prescribing bodily substances for the purpose of the amended peace bond provisions.

Under proposed subsection 810.3(6), the notice to be given to the defendant must specify when and where the samples of bodily substances are to be provided. The first sample may not be taken earlier than 24 hours after the defendant is served with the notice, and subsequent samples must be taken at regular intervals of at least seven days.

The main difference between these provisions in the contexts of probation orders, conditional sentence orders, and peace bonds relates to which individuals may specify the regular intervals at which samples of bodily substances are to be provided. With respect to probation orders, only the probation officer may do so (proposed paragraph 732.1(3)(*c.2*)), while with respect to conditional sentence orders, only the supervisor may do so (proposed paragraph 742.3(2)(*a.2*)). Because a probation officer or a designated person may specify the regular intervals at which a defendant subject to a peace bond must provide samples of a bodily substance, however, clause 11 of the bill authorizes the provinces and territories to designate such persons.[31]

Clause 11 also creates offence provisions nearly identical to those created in the contexts of probation orders (clause 4) and conditional sentence orders (clause 6). This includes a prohibition on the use of bodily substances except for the purpose of determining compliance with an abstention condition, and a prohibition relating to the use and disclosure of the results of the analysis, subject to specified exceptions

(including for related court proceedings and for statistical purposes). Under proposed subsection 810.4(4), a person who contravenes these prohibitions is guilty of an offence punishable on summary conviction.

Clause 12 creates evidentiary provisions in the context of peace bonds similar to those that clause 2 creates in the context of probation orders and conditional sentence orders. Currently, it is an offence under section 811 to breach a "peace bond" recognizance, punishable by up to two years' imprisonment. Under proposed subsection 811.1, as long as certain requirements are met, a certificate containing the results of the analysis of a bodily substance is admissible in evidence in a prosecution for breach of the abstention condition of a "peace bond" recognizance. The party against whom the certificate of analysis is to be used must be given reasonable notice and a copy of the certificate, and may, with leave of the court, require the analyst to attend for cross-examination.

2.4 Form 51: Notice of Obligation to Provide Samples of Bodily Substance (Clause 13)

Clause 13 creates Form 51, "Notice of Obligation to Provide Samples of Bodily Substance." This form is to be served on an individual ordered to provide samples of bodily substances at regular intervals as part of a probation order (proposed paragraph 732.1(3)(*c.2*)), a conditional sentence order (proposed paragraph 742.3(2)(*a.2*)), or a peace bond (proposed paragraphs 810(3.02)(*c*), 810.01(4.1)(*g*), 810.1(3.02)(*i*), and 810.2(4.1)(*g*)).

Form 51 provides notice of when and where the individual is to report in order to provide the first sample and subsequent samples. It advises that the individual has the right to apply to a court to terminate the obligation to provide samples, as well as the right to appeal that decision. The form warns that failure to comply with the obligation to provide samples may result in a fine or imprisonment, and that the results of the analysis of the samples may be used in proceedings that may result in a fine or imprisonment. The form is to be signed by the probation officer, supervisor, or person designated by the Attorney General or minister of Justice, as the case may be.

NOTES

1. Non-substantive changes include that clause 1 now refers to the alternative title for the bill, rather than the short title.
2. *Criminal Code*, R.S.C. 1985, c. C-46.
3. In general terms, a probation order is primarily a rehabilitative sentencing tool and can be imposed alone or after a period of incarceration. A conditional sentence is served in the community as an alternative to incarceration, and may include both rehabilitative and punitive conditions. A "peace bond" or recognizance under sections 810, 810.01, 810.1 and 810.2 is preventive in nature and may be imposed even when the individual has not been charged with or convicted of an offence.
4. *R. v. Shoker*, [2006] 2 S.C.R. 399, 2006 SCC 44.

5. Department of Justice, "Backgrounder: Drug and Alcohol Prohibition Compliance," 31 May 2010.

6. Janice Tibbetts, "Bill restores forced drug testing," *The Gazette* [Montréal], 31 October 2009, p. A16.

7. *R.* v. *Shoker*, para. 6.

8. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

9. *R.* v. *Shoker*, para. 18.

10. *Criminal Code*, s. 732.1(3)(*c*):

> The court may prescribe, as additional conditions of a probation order, that the offender … abstain from
>
> (i) the consumption of alcohol or other intoxicating substances, or
>
> (ii) the consumption of drugs except in accordance with a medical prescription.

11. *R.* v. *Shoker*, para. 20.

12. *R.* v. *Shoker,* para. 22.

13. *R.* v. *Shoker*, para. 23.

14. *R.* v. *Shoker*, para. 25.

15. *R.* v. *Shoker*, paras. 26 and 20.

16. *R.* v. *Shoker*, paras. 34 and 36.

17. *R.* v. *Shoker*, paras. 40 and 42.

18. Sanjeev Anand, "The Validity of Community-Based Sentences Compelling the Production of Bodily Samples," *Criminal Reports,* Vol. 49, 2007, p. 25.

19. Tim Quigley, "Annotation to *R. v. Shoker*," *Criminal Reports*, Vol. 41, 2006, p. 2.

20. *R. v. Proulx*, [2000] 1 S.C.R. 61, 2000 SCC 5, paras. 32–34.

21. The compulsory conditions of a probation order are set out in subsection 732.1(2) of the *Criminal Code*:

> (2) The court shall prescribe, as conditions of a probation order, that the offender do all of the following:
>
> (*a*) keep the peace and be of good behaviour;
>
> (*b*) appear before the court when required to do so by the court; and
>
> (*c*) notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

22. *R.* v. *Proulx*, para. 36.

23. *Criminal Code*, s. 742.3(2)(*a*).

24. Similarly, as noted at para. 38 of *R.* v. *Proulx*, "breaches of conditional sentence need only be proved on a balance of probabilities, pursuant to s. 742.6(9), whereas breaches of probation must be proved beyond a reasonable doubt."

25. Non-essential differences relate to such things as numbering and the fact that breach of conditions of a conditional sentence order is not a separate offence.

26. Department of Justice (2010). The DOJ backgrounder explains that peace bonds "are imposed by a court where there is no criminal conviction, but a complainant has satisfied the court that an individual is likely to commit a criminal act."

27. *Criminal Code*, s. 810(1).

28. *Criminal Code*, ss. 810(3)(*a*) and 810.01(4.1).

29. *Criminal Code*, s. 810.01(3).

30. "Serious personal injury offence" is defined in section 752 of the Code as meaning:

> (*a*) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving
>
> (i) the use or attempted use of violence against another person, or
>
> (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person, and for which the offender may be sentenced to imprisonment for ten years or more, or
>
> (*b*) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

31. Compare this to proposed subsections 732.1(9) (subclause 3(2)) and 742.3(7) (subclause 5(2)), which do not permit the Attorney General of a province or the minister of Justice of a territory to designate the persons who may specify the regular intervals at which samples of bodily substances are to be provided.