

RCMP-GRC



ROYAL CANADIAN MOUNTED POLICE • GENDARMERIE ROYALE DU CANADA

**Annual Report of the
Minister of Public Safety
Concerning *Criminal Code* section 83.3
Recognizance with Conditions**

July 15, 2021 – July 14, 2022

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Royal Canadian Mounted Police
Gendarmerie royale du Canada

Canada

1. Introduction

This document constitutes the annual report of the Minister of Public Safety on the arrest without warrant power found in section 83.3 of the *Criminal Code*, the recognizance with conditions provision. The Minister is required, under subsections 83.31 (3) and (3.1) of the *Criminal Code*, to prepare and present this report before Parliament, which covers the reporting period of July 15, 2021 to July 14, 2022. The Attorney General of Canada reports on other issues relating to the recognizance with conditions provision pursuant to subsections 83.31(2) and 83.31(3.1) of the *Criminal Code*.

2. Requirements of the Annual Report

Subsections 83.31(3) and (3.1) of the *Criminal Code* state that the Minister must report on:

1. the number of arrests without warrant that were made under subsection 83.3(4) and the period of the arrested person's detention in custody in each case;
2. the number of cases in which a person was arrested without warrant under subsection 83.3(4) and was released:
 - a. by a peace officer under paragraph 83.3(5)(b), or
 - b. by a judge under paragraph 83.3(7)(a), (7.1)(a) or (7.2)(a); and
3. the opinion of the Minister of Public Safety, supported by reasons, on whether the operation of section 83.3 should be extended.

The Minister responsible for policing in every province must also publish, or otherwise make available to the public, a similar annual report on the use of this provision. These provincial reports are separate from, and are not included in, this report.

3. Background on s. 83.3: Recognizance with Conditions

The recognizance with conditions provisions were originally created in the *Criminal Code* by the *Anti-terrorism Act* of 2001. This measure expired in March 2007, but was renewed in July 2013 for an initial five-year period when the *Combating Terrorism Act* came into force. The *Anti-terrorism Act, 2015* made additional amendments to the recognizance with conditions provisions. This measure was subject to a sunset clause, and it sunsetted on October 25, 2018.

Bill C-59 (*National Security Act, 2017*) received Royal Assent on June 21, 2019. It re-enacted the recognizance with conditions provision, with amendments, and enacted a new sunset clause, such that the recognizance with conditions provision would cease to have effect at the end of the fifth anniversary of the day on which Bill C-59 received Royal Assent unless, before that date, it is extended by resolution passed by both Houses of Parliament.

Bill C-59 restored one of the thresholds for obtaining the recognizance with conditions to what it was before the *Anti-terrorism Act, 2015* came into effect. Specifically, it amended paragraph 83.3(2)(b) of the *Criminal Code* to require that a peace officer must suspect on reasonable grounds that the imposition of a recognizance on a person, or the arrest of a person, "is necessary to prevent" the carrying out of a terrorist activity, rather than the previous threshold of "is likely to prevent" the

carrying out of a terrorist activity. This change is also reflected in paragraph 83.3(4)(b), which relates to the limited police power of arrest without warrant that I am required to report on.

As in the previous sunset clause in section 83.32 of the *Criminal Code*, Bill C-59 provided that a committee of the Senate, House of Commons, or of both Houses of Parliament would comprehensively review the operation of the recognizance with conditions provision. However, unlike the previous section, the amendment requires that the report of the committee be completed no later than one year before the recognizance with conditions is to sunset. This will allow sufficient time for the Government to seek to have the recognizance with conditions extended, should it choose to do so, before the recognizance with conditions sunsets.

This report covers the operation of the arrest without warrant power found in section 83.3 during the period from July 15, 2021 to July 14, 2022. During this entire period, the recognizance with conditions provision was in effect and subject to the thresholds enacted by Bill C-59.

4. Statistics

The RCMP did not use the arrest without warrant power, found in section 83.3 of the *Criminal Code*, during the current reporting period.

Paragraph 83.31(3)(a): number of arrests without warrant and period of detention.	0
Paragraph 83.31(3)(b): number of cases in which a person was arrested without warrant, and released: 1. by a peace officer under paragraph 83.3(5)(b), or 2. by a judge under paragraph 83.3(7)(a), (7.1)(a) or (7.2)(a).	0

Minister's Opinion:

The Government of Canada takes a whole-of-government approach to protecting Canadians from terrorism, and in doing so, is committed to respecting our collective rights, values and freedoms. One tool at the federal government's disposal, specifically available to the Royal Canadian Mounted Police (RCMP), is the Recognizance with Conditions provisions found in section 83.3 of the Criminal Code.

Subject to certain requirements, the provisions allow a peace officer to impose a recognizance with conditions on a person if necessary to prevent the carrying out of a terrorist activity. As in the previous reporting period, the RCMP did not use recognizance with conditions between July 15, 2021, and July 14, 2022. Nevertheless, these provisions are an important tool to law enforcement and remain particularly valuable in exigent circumstances. Canadians should feel confident that their use requires the consent of the Attorney General, is subject to judicial oversight, and entails annual reporting made public through tabling in Parliament.

The *National Security Act, 2017* is the most recent legislation to amend the recognizance with conditions provisions in the Criminal Code. When the Act received Royal Assent on June 21, 2019, it re-enacted the recognizance with conditions, with amendments, including a reversion back to a previously used higher threshold of "necessity" to ensure that the tool remained effective but better respected the rights and freedoms that underpin our democracy.

The Act also enacted a new sunset clause under 83.32(1) of the Criminal Code, such that the recognizance with conditions would cease to have effect at the end of the fifth anniversary of the day on which the Act (former Bill C-59) received Royal Assent unless, before that date, it is extended by resolution passed by both Houses of Parliament. In addition, the Act required that, under 83.32(1.1), a comprehensive review of section 83.3 and its operation be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established by the Senate or the House of Commons, or by both Houses of Parliament, as the case may be, for this purpose.

I look forward to Parliament's review and report regarding recognizance with conditions, including its advice with respect to extending the operation of section 83.3. I would like to assure Canadians that the government remains committed to keeping Canada safe by using all of the tools at its disposal while respecting our nation's fundamental rights and freedom.