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Press Release For Immediate Release

Toronto, ON – March 25, 2009 – The Criminal Lawyers' Association (CLA) voiced its opposition to proposed federal legislative changes to the calculation of pre-trial custody in sentencing offenders. The Ontario government has indicated support for reform in this area, including limiting or removing judicial discretion to increase credit for so-called "dead time."

"There are flaws in the proposed reforms which need to be addressed," says Frank Addario, President of the Criminal Lawyers' Association, warning that "such legislation would be a step backwards." Dead time is more onerous than post-sentence incarceration, exacerbated by the state of many correctional facilities and is often one of the reasons cited by the judiciary when granting credit for pre-trial custody detention.

Quotes from Frank Addario:

"It's not well thought out. It's toughness unguided by thinking. It won't make anyone safer. At a time when the Americans are finding out that harsh sentences are expensive and ineffective, our Government is taking us down the same road."

"I'd challenge the Minister of Justice to show Canadians how this will make us safer in the long run. Where has relentlessly harsh punishment solved social problems? He should tell us if he knows."

"In Ontario, like most other provinces, judges do not give the enhanced credit if the prisoner deliberately delayed his sentence. So, this law won't improve a situation that needed fixing. It will promote harsher sentences, produce less guilty pleas and give Parliament's approval to harsh and inhumane detention facilities."

"There's no evidence of a problem statistically significant enough to justify taking away judges' discretion. It's another example of this Government's mistrust of judges."

Few detention centres in Ontario provide educational or training programs for defendants in custody awaiting trial. On any modern theory of corrections, the availability of such programs is an essential aspect of rehabilitation. Further, a large number of Ontario detention centres suffer from overcrowding, high tension and diminished access to physical activity. It would be punitive to encourage the federal government to remove enhanced credit for pre-trial custody without a corresponding public commitment to improving the conditions of such custody.

Reducing credit for pre-trial custody punishes the least fortunate caught up in the justice system. A substantial portion of defendants who cannot make bail are poor, homeless, mentally disordered or Aboriginal. Reforms will further marginalize these high-risk populations.

“Before imposing further restrictions and limiting judicial discretion, the focus should be on eliminating the opportunities for delay and their financial burden on the criminal justice system,” adds Frank Addario. This might be done by making standardized disclosure briefs and in-custody trial dates available in every jurisdiction, within 30 days of arrest for all offences prosecuted summarily. This type of reform is not uncomplicated, but it is principled. Importantly, it does not punish a wide number of persons for the perceived misconduct of a few.

The Criminal Lawyers' Association strongly urges government to consider all aspects of pre-trial custody detention before adopting reforms that do not address some of core challenges in the over crowded, under-funded criminal justice system.

The Criminal Lawyers' Association (CLA) is one of the largest specialty legal organizations in Canada, with more than 1,000 members. The CLA is a voice for everyone concerned with criminal justice and civil liberties in Canada. Our advice and perspective is sought frequently by all levels of government and the judiciary on issues relating to legislation and the administration of criminal justice. The CLA also assists its members in every aspect of the practice of criminal litigation. A list of our membership and a more detailed description of our organization is located at <http://www.criminallawyers.ca>

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