

# Fighting Crime: The Right Tools are Needed

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**for**

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**CHECK AGAINST DELIVERY**



CANADIAN BANKERS ASSOCIATION

*Building a Better Understanding*

## ***Fighting Crime: The Right Tools are Needed***

Good afternoon. Thank you for attending. It is my pleasure to have the opportunity to speak here, in Vancouver, to the Vancouver Board of Trade.

The Vancouver Board of Trade is a strong and passionate advocate, promoting and facilitating the growth of the region as a centre for trade, commerce and travel. In your work, you tackle challenges head-on, including the issue I want to talk about today – putting to work the right tools to fix gaps in the criminal justice framework.

Vancouver is certainly known for its pleasant weather and beautiful scenery. As art critic Alvin Balkin said, “Vancouver is the only city in the world where you don’t buy a picture. You put in a window.” Unfortunately, though, it is also known as a city that has a favourable climate for crime. For example, the Vancouver region is reported to have one of the highest rates of property crime in North America. It also has the highest number of financial institution robberies in Canada. In both 2004 and 2005, a third of all financial institution robberies in Canada took place in this region.

That is why I chose Vancouver to deliver this speech. There are challenges here, challenges residents and businesses, including our industry, know intimately and are trying to address.

In fact, the banking community, with the Vancouver Board of Trade and other businesses have been working together in the region to try to influence change and build a safer community. I want to take a moment to recognize and thank some of our partners who are here today.

I am going to focus my remarks today on three gaps in the criminal justice framework that need attention and steps that can be taken to help fix them. These gaps are:

- Sentencing reform for commercial robbery, including financial institution robbery, generically referred to as bank robbery,
- Needed changes regarding identity theft, and
- Modernizing the *Criminal Code*.

These may seem like disparate issues. But, there is a thread that binds them. Each one negatively impacts the safety, security and sense of well-being of businesses, their staff, and consumers daily.

I will start with the first gap – the need for sentencing reform for commercial robbery.

Robbery is a serious issue facing financial institutions, convenience stores, gas stations and other commercial enterprises, as well as police. Unfortunately, though, we often hear the refrain, “but the robbers are only note-passers” and “banks can afford the losses, what does it matter? It’s not that serious.” Our friends at the convenience stores hear comments such as, “They don’t get that much so what’s the big deal?”

I will tell you as bluntly as I can: It is a big deal. Robbery is a personal crime, not an economic one. It has nothing to do with the money that is stolen. It is all about the people on the receiving end of that threat – our staff and customers. There is nothing “petty” about a robbery. Just talk to an employee who has gone through one, two, or even more. These are dangerous, unpredictable situations that put the public and employees in harm’s way. As such, those who commit this crime should be dealt with seriously and should be held accountable to the fullest extent of the law. Unfortunately, this does not always happen.

From the banks’ perspective, and I think I can speak for other businesses, we all want safe and comfortable environments in which staff can work and customers can carry out their business. In this regard, we all have a role to play in preventing this type of criminal activity. Prevention is our number one priority. The banks have a long history of implementing and continuously improving security measures that discourage offenders from striking. We also work very closely with police to assist in identifying offenders after an incident has occurred, and provide any information and assistance that we can to their investigations. And, we appreciate this strong, cooperative, and supportive relationship. The police, for their part, have an excellent track record at getting robbers off the streets: we commend them for their exceptional work.

But, catching them is one thing. Preventing them from robbing again is another.

In 2004-2005 the Canadian Bankers Association, in cooperation with the British Columbia Chiefs of Police, commissioned a study to take a closer look at the bank robbery problem in Vancouver and to compare Vancouver’s experience to that of other Canadian cities. It also looks at how robbery affects other commercial enterprises.

The study’s findings were revealing. Vancouver stood out from other provincial jurisdictions, having more of the underlying factors that contribute to crime in the first place, compounded by a more lenient response to criminal offences when they occur.

As noted earlier, bank robberies are more likely to occur in Vancouver than in any other Canadian city. For example, robberies occur in Vancouver at six times the per capita rate that they do in Toronto.

Close to three-quarters of robbers are caught, but in Vancouver, they do not appear to be deterred by the expected penalty. One-third of offences are committed by offenders who are on parole, probation, unlawfully at large, or out on bail. In Vancouver, 65 per cent of offenders have prior robbery convictions, compared to 56 per cent in Edmonton, and 52 per cent in Toronto and Calgary.

While custody is the most common penalty for bank robbery offenders, the incarceration rate in B.C. for Vancouver robberies is consistently lower than other jurisdictions. As well, offenders' sentences are also shorter, and offenders are more often offered alternatives to jail time. The median incarceration period in B.C. for Vancouver robberies is 24 months compared to 36 months in Ontario for Toronto robberies, and in Alberta it is 48 months for Edmonton and 54 months for Calgary robberies.

This is not just a bank robbery issue. When it comes to other types of commercial robbery, for example convenience stores and gas stations, the evidence is similarly disturbing. And, business owners, employees and customers are at particular risk as a result of commercial robberies because of the greater incidence of violence and use of weapons.

In commercial robberies, 68 per cent involve a weapon, and 55 per cent involve physical force. As well, jail terms are short, with a median of just 21 months. Undeterred, these offenders show a high rate of repeat offending, with a tendency to "graduate up" to bank robbery.

Many cite Vancouver's drug problems as a key reason for this phenomenon. Without question, substance abuse is a contributing factor. In Vancouver, 84 per cent of bank robberies are motivated by substance abuse, compared to 49 per cent in Toronto, 52 per cent in Edmonton, and 57 per cent in Calgary.

However, despite the fact that substance abuse clearly contributes to the robbery issue in Vancouver, when it comes to sentencing, evidence suggests that it is used to justify shorter sentences. This is not what happens elsewhere in the country. In fact in Alberta, judges have specifically ruled that substance abuse should not be a mitigating factor in sentencing.

A case this spring highlights this fact. In March, an Edmonton man was on parole for committing seven bank robberies when he robbed three bank branches after falling back into a \$1000 a day cocaine habit. That week he was arrested and sentenced on the Friday to ten years in prison, to be served consecutively with the remainder of the previous sentence. He also apologized to the tellers at the three banks for threatening them.

Other provinces' sentencing approaches appear to be contributing to better outcomes: lower robbery rates and lower rates of repeat offending. These sentencing approaches are characterized by increased use of custodial sentences and longer sentences, particularly for repeat offenders. Rehabilitation may be a potential alternative, however, the current approach is not working, as non-custodial orders are most common for Vancouver robberies, and yet repeat offending is highest here.

Robbery is a defined *Criminal Code* offence. And, the *Criminal Code* is federal law for the whole country. Yet, it is inconsistently applied. The sentences sometimes do not reflect the nature of the offence and that is frustrating. Some argue that addressing this issue is a federal matter. Others say it is in the provincial domain. What is clear is that the inconsistent application is highly problematic. Quite simply, when you consider the criminal differently, you consider the victim differently. Is the convenience store clerk any less traumatized in Vancouver than Toronto? Is a Vancouver gas bar attendant less likely to fear going to work after being threatened? Is a Vancouver bank employee less likely to question why the person that terrorized their place of work is walking free on the street a week after the incident? No.

That is why our broad coalition of concerned businesses is recommending that a number of areas be reviewed, including:

- The proportion of sentences involving custody and the median sentence length for Vancouver robberies, so that both are reasonably on par with the experience in other provinces,
- The tendency to consider substance abuse as a mitigating factor in sentencing, and
- The tendency to not consider the number of prior offences as a significant factor in sentencing.

There is a gap and it needs to be fixed. As the Vancouver Board of Trade said in its open letter to the federal Justice Minister, Vic Toews, and I quote: "The simple fact is: If repeat and dangerous offenders are not on the street, they can't break into our houses and businesses, steal our cars and threaten our safety. The justice system needs to focus on the rights and freedoms of victims, as well as the rights and freedoms of criminals."

Let me turn to the second gap – identity theft. It is hard to read the newspaper, listen to a newscast, or even go to a social event without hearing about identity theft. Indeed, it is often described as the fastest growing crime in North America.

For the most part, though, the stories are about fraud; fraud that has likely resulted from an identity theft incident. Some may say it is semantics, but I make a distinction for a reason. It is because identity theft, which is the unauthorized collection and use of personal information, is not a defined statutory offence in Canada. In short, it is not a crime. The resultant fraud is, but the advance work is not.

Identity theft is not a recent phenomenon and some of the tools used by perpetrators are very low-tech, for example, dumpster diving. That is, going through garbage to find any piece of paper with some personal information on it. But there has been a recent increase in identity theft as the criminal element, especially organized crime, turns more and more to new technologies to turn that piece of paper and other personal data into a gold mine. The misappropriation of personal information inevitably leads to a broad range of criminal activity: financial crimes, for example fraud, forgery and personation; abuse of government financial programs, social assistance payments, student loans and identification documentation, such as health card fraud; and even to the funding of international criminal activity.

So why should we have to wait for fraud to happen, and all the ensuing harm to consumers and businesses, before the criminals are stopped? The answer lies in this question: at what point in the continuum of criminal activity should criminal law be applied to an issue? We think that early intervention could help avoid further criminal activity, such as financial fraud, and its impact on people, business and society in general.

The approach of early intervention is not precedent setting. For example, there is an offence for the possession of burglary tools – this is before a burglary is committed. So if I get stopped by police with the tools of the trade to commit burglary, I can be arrested before I pick a lock on your house and walk off with a computer, cash and jewellery. But if I am stopped with a fist full of drivers' licences, blank payment cards, card numbers and PINs, there is not much that the officers can do until I take over title of a house or commit credit or debit card fraud. By having the tools to stop identity theft, making it an actual offence, law enforcement agencies would be in a far better position to catch and stop criminals before an actual fraud or theft is committed.

This serious gap in law is a consumer protection matter that must be addressed. That's why the banking industry, along with coalition partners such as the Canadian Association of Chiefs of Police, Canadian Chamber of Commerce, Canadian Association of Retired Persons, and others, have been calling for more to be done to prevent identity theft from happening in the first place. We have been advocating for changes to criminal law and other measures that would help fight identity theft and prevent further harm. In addition to making identity theft a defined offence, we are also calling for changes to make it illegal to:

- Possess multiple pieces of identification for a number of individuals,
- Manufacture or possess novelty identification, and
- Traffic in stolen personal information.

In addition, efforts should be targeted at strengthening the integrity of government identity documents so they are harder to duplicate. Financial institutions and other credit and service providers need to verify customer identity. How well this is done depends largely on the integrity of the identifying documents received. It also depends on the extent to which the institution or business can verify the authenticity of the documents.

Herein lies a large problem. The quality and security of documents is inconsistent and there are few reliable ways to authenticate identification. For example, let's look at provincial drivers' licences. They range from one extreme to the other. Alberta has one of the most secure in North America. It incorporates such features as laser engraving, anti-copy ink colours, raised text, a high-definition photo with soft edges, florescent ink and more. British Columbia's licence is probably the second best in Canada, with key security features. In August 2006, Manitoba announced steps to introduce a more secure, one-piece driver's licence. Currently, it is a two-piece system with a green paper certificate and a laminated photo identification card that does not have a magnetic stripe. New Brunswick just moved to mandatory photo drivers' licences in January 2005. Other provinces have different standards as well. Taking the steps to improve the quality, consistency, security and reliability of identification documents issued both federally and provincially would certainly help combat identity theft.

To aid the process of verifying an individual's identity, we also think that systems could be adopted that would allow for the use of federal and provincial databanks for the purpose of validating identification documents. In this regard, we can learn a lot from other countries. Australia, for example, is prototyping a Document Verification Service. The system allows for the verification of identification documents by providing a confirmation or non-confirmation depending on whether the

identification matches information on record with the government. No personal information would be transmitted. It is just a simple “Yes” it is valid or “No” it is suspect.

The Canadian Bankers Association has met with more than 400 people from other interested parties, including the federal and provincial governments, police, businesses and consumer groups across the country as part of our advocacy efforts. I believe that there is a realization that we need some changes. As I noted earlier, fixing this gap is a consumer protection matter. It’s time to find the will to make it happen.

This leads me to the third gap.

The fact that the problem of identity theft has increased so much over the last few years is, in large measure, because of the limited scope and effectiveness of the current laws aimed at deterring and punishing the kinds of criminal activity connected to identity theft. There are provisions in the *Criminal Code* and in other statutory instruments that might apply to some identity theft activities. But, for the most part, these provisions are no longer adequate. Even where the Crown tries to use existing *Criminal Code* provisions against these activities, it invariably means that an attempt is being made to force the proverbial “square peg into a round hole.” Phishing, vishing and dumpster diving are all tools of the identity theft trade, but law enforcement can only pigeon hole those into existing offences.

Therefore, the *Criminal Code* must be modernized, kept current and evergreen to reflect the society in which we live. Things change quickly – no more so than technology. Let’s just look at a few changes in communications alone.

On January 27, 2006 Western Union sent its last telegram in Canada. For those of you born post-1850, the telegram was a method of communication, before telephones, that required writing down your message and bringing it to the telegraph office, where someone would dot-dot-dash it off to another telegraph office near the intended recipient for transcription and delivery.

While Western Union has become wise to the use of new technologies and abandoned its telegram and commercial messaging services, the *Criminal Code* is stuck in the dark ages. For example, Section 371 of the *Criminal Code* states that individuals are guilty of an indictable offence if they fraudulently send “a telegram, cablegram or radio message” with the intent to defraud. What about email? There is no mention of it.

Granted, the growth of email has happened quickly. But, it has been fairly pervasive over the last 15 or so years. According to Statistics Canada, 60 per cent of Canadian households are connected to the Internet, with nine in 10 using it for email. Now stack this up against the number of telegrams being sent.

If criminals are tapping into new tools such as email and sending false messages or luring individuals to divulge personal information unwittingly, then the *Code* should reflect the nature of the types of crime being perpetrated. We strongly recommend that the *Criminal Code* be modernized to effectively deal with offences aimed at addressing identity theft.

It is a gap that needs to be fixed.

I have given you a snapshot of some areas where our criminal justice framework needs work. Steps need to be taken to deal with sentencing issues for commercial robbery, including bank robbery, identity theft, and modernizing the *Criminal Code*. This is by no means an exclusive list. There are other issues that also need attention.

Fixing the gaps in the system is on people's radar screen and priority lists. The federal government has been taking a strong position on tackling problems associated with crime and we commend their efforts. The B.C. government and other provincial governments have had open doors and been receptive to the concerns that we and our coalition partners have put on the table.

I think we all recognize that there are no quick fixes, no one-size-fits-all solutions. Criminologists and other social scientists spend careers studying the issue. Harsh sentencing is not a panacea, nor is leniency. Bail works for some but not for others who have committed serious crimes while out on bail awaiting trial. The list goes on.

Having a consistent, balanced, effective and fair judicial framework is not a static project – build it and it's done. Over time, gaps are going to appear in any foundation. When they do, we have a choice: deal with them or let them be and watch them grow.

I am not here to claim that all is broken and in desperate need of repair. I am saying that we cannot be blind to evident and emerging problems. Make no mistake, inaction has its consequences. It's already evident. And, not just in Vancouver. These gaps are hurting other Canadian cities and communities, and businesses and individuals across the country.

We need to continue to examine and adjust our criminal justice framework to ensure it fits the society it seeks to protect. It is not good enough to say that our current system is “adequate” or “other systems are worse.” After all, the public’s safety rests in the balance. It is time to apply the right tools to fix the gaps.

