

Use time to reform minimum sentencing, not polls: O'Connor

By Rob Lamberti, AdvocateDaily.com Contributor



The federal government should keep its promise to reform minimum sentencing requirements rather than polling Canadians to determine how they feel about the issue, says Toronto civil litigator [Sarah O'Connor](#).

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), comments after a recent Canadian Press [story](#) reported the Liberal government is asking people how they feel about minimum sentences that were imposed by the previous Stephen Harper Conservative government.

The concept of minimum sentencing has long been problematic in the legal profession, she tells [AdvocateDaily.com](#).

"Minimum sentencing generally takes away the ability of judges to use their discretion in handing out a consequence that fits the crime," she says. O'Connor says that judicial ability is critical in the application of even-handed justice.

"The judge presiding over a case can make the best determination of how a sentence can be appropriate and fair, and having a minimum sentence that they have to follow takes away that discretion," she says.

"There's no evidence that minimum sentences reduce crime," O'Connor says. Indeed, while overall [crime statistics](#) are dropping, federal [charts](#) suggest the number of incidents subject to mandatory sentencing has increased.

"Even with crimes which already had minimum sentences, those were increased in length and severity," she says. "If there was no reduction in those crimes, increasing the minimum sentences isn't going to take you any further in preventing crime."

O'Connor says a "tough-on-crime" movement within the previous federal government sparked the drive for longer mandatory minimum sentencing. The Supreme Court [struck down](#) the Harper-era legislation and the Justin Trudeau Liberal government promised to revamp them.

"Jailing people costs more money than some sort of community sanction. Minimum sentencing would move the authority to make a determination to the Crown from the judge, so that 'if you plead to something else, there's not going to be a minimum sentence,'" O'Connor says. "In more vulnerable sections of society, I think, it could lead to innocent people pleading guilty to a lesser charge."

O'Connor says public opinion polls should play no role in sentencing because it would "undermine the value of the justice system."

It's interesting to see the government polling people about the issue, she says but she hopes they won't be used to frame the legislation.

"That should be left for legal scholars using hard evidence for what's needed," she says.

"I think polling the public is playing for time," O'Connor says. "They said this was a priority but it hasn't been."

"If you're using the polls to educate people to show that the law is unique, interesting that it's not just black and white, so they have a better understanding of what the law is, that's great," she says.

"The whole point of the Constitution is to protect the weak from the powerful, the minority from the majority," O'Connor says. "Public opinion shouldn't change laws."