

THREE STRIKES – YOU'RE OUT OR IN

In response to the lobbying of interest groups and general public outcry that the law is too soft on recidivist violent offenders, the Government has brought a draconian law to try to deal with persistent violent offenders. It has become known as the Three Strikes rule. It sounds more like a base-ball umpires call.

The legislation contains a list of some 36 serious offences, including homicide, sexual offences, grievous bodily harm, robbery, kidnapping and lots more. If an offender is convicted the sentencing Judge is required to give the offender a written warning if he/she has achieved strike 1 or 2 or 3 as the case may be. Where an offender is convicted and sentenced on Strike 2 he/she must be given written warning of the consequences should the offender commit further offences which would qualify him/her for Strike 3.

If the offender is convicted of Strike 3 offences he/she must be sentenced to the maximum penalty for the offences for which he/she has been convicted. Any sentences imposed are to be served without parole unless it would be manifestly unjust to impose such an order. There are some special provisions in respect of murder. Where the serious violent offence is murder and is also a stage 2 or 3 offence and the offender is convicted he or she must be sentenced to life imprisonment. The Court is also required to order that the sentence must be served without parole unless the Court is satisfied that under the circumstances it would be unjust to do so.

The sentence of preventive detention has not been abolished. Under that sentence an offender is sentenced to serve an indefinite term of imprisonment. Preventive detention is imposed on offenders who have been convicted of a number of serious offences. Anybody receiving such a sentence will not be released unless they can demonstrate to the Parole Board that they will not pose a threat to the community if they are released. The minimum sentence a Court can impose in respect of preventive detention is 5 years.

The new sentencing rules have raised some disturbing issues. It is questionable whether the rules contravene our Bill of Rights Act and maybe also be inconsistent with our international responsibilities on human rights and inhumane punishment. It is difficult to know why we needed a new law when there were already laws on the statute books to

cover such sentences. Time will tell whether it will provide protection for the community.

Personally I would have thought it appropriate to see what can be done to prevent the crimes being committed in the first place. The damage is done, sometimes irreparably, when the offence has been committed.

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