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It's a label reserved for some of Canada's most frightening criminals, mainly sexual predators.

Canada's dangerous offender designation, which puts high-risk criminals behind bars indefinitely, has been called the country's answer to capital punishment.

"For most, the exit is only feet first," says veteran defence lawyer Daniel Brodsky. "Once you get in, it's almost impossible to get out."

Dangerous offenders can apply for parole after seven years, but few succeed. As of September 2004, 95 per cent of the country's 331 dangerous offenders, all men, were still behind bars.

It's a statistic unlikely to faze the average citizen disgusted by violent, sexual predators. But defence lawyers argue that, given that more people are being slapped with the dangerous offender label – from eight a year before 1987 to 22 a year today – and its enormous implications for the convict, Crowns should be more selective in its use.

The process begins once a person is convicted of a serious personal injury offence that could be punished by 10 years or more. At that point Crown prosecutors can apply to have the convict branded a dangerous offender.

In Ontario, Crowns have to first seek approval from their attorney general.

Once that's obtained, they usually have the offender assessed by a psychiatrist. In response, defence lawyers almost invariably seek their own psychiatric expert. Court hearings follow. The process can take two years.

"Essentially an offender's entire life is on trial," says defence lawyer Arun Maini, whose client, wife-beater Ian Bell, 45, is battling a dangerous offender label.

The process takes an enormous amount of time and money, so it should be used judiciously, Maini says. The former prosecutor believes the Ontario government too often seeks the label to look tough on crime.

He says, in many cases, it would be more appropriate for Crowns to apply for the less restrictive "long-term offender" designation, which allows authorities to supervise convicts for up to 10 years after release.

Brodsky agrees, charging that some Crowns are treating dangerous offender applications as just another sentencing option or as a big stick in plea-bargaining, rather than for the worst of the worst.

In September, one of Brodsky's clients, seniors sex assaulter James Burrows, 47, accepted a long-term offender designation and agreed to treatment, including chemical castration, rather than face the possibility of being designated a dangerous offender.

Judges can, after a dangerous offender hearing, declare the criminal a long-term offender instead.

Many Crowns almost invariably seek the more serious designation, reasoning the least they will get is the less serious one, Brodsky says.

Brendan Crawley, a spokesman for the ministry, denied that and noted it's a judge who determines if an application succeeds, based on clear legal tests.

Crawley also denies the Crown is making too many applications, which are reviewed many times before being sent to the attorney general for consent. Since Attorney General Michael Bryant took office in October 2003, he has consented to 46 dangerous offender requests and 13 long-term offender requests, Crawley says.

Defence lawyer Richard Posner worries that Crown psychiatrists rely too much on standard tests to determine if the offender is a psychopath or likely to re-offend.

"It must not be forgotten that we are dealing with a human being and a human process," he adds. "I always get concerned when we look at these things from an overly scientific prospective."

Crawley disagrees, insisting that courts are giving such psychological tests appropriate weight, alongside other evidence.

Fernando Zola, who abducted and raped two teen girls, avoided being labelled a dangerous offender simply by refusing, on Brodsky's advice, to allow himself to be assessed by a psychiatrist.

He had no criminal convictions in Canada before his vicious rape and robbery spree, and authorities in his native Angola refused to say if he has a criminal record there.

The result was that, in June, Superior Court Justice Brian Trafford ruled that he could not label Zola a dangerous offender in the absence of evidence. But the judge did give him a stiff sentence – the equivalent of 25 years in prison.

One of the problems with the dangerous offender legislation, Brodsky says, is that it's patchwork of measures amended over the years. "The whole thing's a mess," Brodsky says.

While not adopting the term "patchwork," Crawley says the ministry agrees the legislation needs improving.

Bryant has proposed several changes "to better protect the public," including permitting the Crown to bring a new dangerous offender application if a long-term offender violates a serious condition of his supervision order.

Under present law, a new dangerous offender application can only be brought if the offender commits a new serious violent offence.