

Increased victim surcharges a tax on the poor



By [Jacob Stilman](#)

We have seen this movie before. Actually, to be more accurate, we hardly ever saw this movie at all until the Conservative government began to implement its tough-on-crime political agenda.

Now, we are seeing this movie on an all-too-regular basis.

Here is the plot in a nutshell: the Harper government announces a new legislative scheme to "make criminals pay for their offences" and to "respect the rights of victims." The scheme invariably involves the imposition of some mandatory aspect of sentencing (leading to an augmentation of the sentence) and the further diminution or outright elimination of judicial discretion.

This formula first appeared with the Orwellian-named [Truth in Sentencing Act](#), and has been religiously followed in a host of other mandatory sentencing regimes involving firearms charges, sexual offences, child pornography, marijuana laws, impaired driving – the list goes on. Since no one in politics wants to be accused of "siding with the criminals," the opposition has largely slept-walked through this lamentable march to a penal state.

However, there are some in the criminal justice system who are prepared to take this issue on. And thanks to the intrinsic principle of judicial independence, a backlash appears to be welling up from the bench.

As reported in the [Globe and Mail](#), an increasing number of judges are sending a message: Enough! This grassroots judicial response is in reaction to the latest attempt by the government to needlessly punish and incarcerate the underprivileged, which this time came under the guise of the [Increasing Offenders Accountability for Victims Act](#) (where do they get these catchy names?).

The newly implemented legislation has doubled the Victim Fine Surcharges from 15 per cent to 30 per cent, has doubled the surcharge imposed for custodial penalties from \$100 to \$200, and most odiously, has eliminated the discretion previously entrusted to judges to waive the surcharge. The net impact of the legislation is to impose punishing and often unpayable fines upon a frequently impecunious demographic, with the only option being further jail time in the event of default. Prison overcrowding, anyone?

Judges, who are becoming increasingly frustrated with the current government encroaching on their jurisdiction, have responded creatively. As was the case with the Truth in Sentencing Act, and mandatory three-year prison sentences for first-time firearms offenders, judges are taking action against needlessly punitive sanctions. In one case, on his own motion, a judge declared the provisions unconstitutional. Other judges are responding by imposing nominal fines, resulting in surcharges which amount to mere pennies, or are allotting convicted offenders years or even decades to pay, thus rendering the surcharges meaningless.

Where will this end up? Well, the appellate courts obviously. But, if early indications are anything to go by, our courts of appeal have been taking a surprisingly robust activist approach, striking down bad laws or limiting their impact.

So take heart. It would appear that some clever plot twists are on the horizon after all, and we may be in for some surprise endings.