

Appendices

Appendices

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Appendix A

The Commission's Research Plan

The background of members of the research staff reflected a diversity of approaches to sentencing. A multi-disciplinary approach was employed to address the wide-ranging issues raised by the Commission's mandate.

The research workplan was designed to provide the Commission with both a clear delineation of the issues and possible approaches to their solution. Once the major areas requiring analysis were identified, four major functions were assigned to the staff: first, to conduct research in-house; second, to define and oversee research to be conducted for the Commission; third, to collect information from existing government sources on a variety of issues to minimize the risk of duplication of effort; and finally, to prepare meeting books, background papers and options papers for presentation at each Commission meeting. A time-frame was constructed, outlining all projects to be undertaken in the course of the two and a half year mandate. With minor variations and additions, the progress of the Commission's research workplan followed the time-frame as initially set. Over the course of its mandate, the Commissioners met approximately every four to six weeks for a total of 22 meetings.

A number of issues were dealt with exclusively in-house: sentencing theory and policy, consecutive and concurrent sentences, comparative legislated maximum penalties, mandatory minima, offence ranking, the development of questionnaires for judges, lawyers and criminal justice professionals, and surveys of public perceptions. Given the time-consuming nature of conducting empirical research, a number of papers were contracted out to consultants. This also ensured that time and energy would remain to conduct the difficult tasks of providing the Commission with thoughtful options on how the issues addressed in these papers might be approached.

The research staff expended considerable energy and resources gathering and cross-checking statistics upon current sentencing practice. The difficulties involved in obtaining reliable data are discussed in Chapter 3. Prior to the establishment of this Commission, the most recent statistics on sentencing practice were contained in a series of reports published by the federal

Department of Justice (see Hann *et al*; 1983). One of the tasks remaining was to compile, in co-operation with the Department of Justice, more recent sentencing data (see Hann and Kopelman, 1986). In addition, data were derived from the fingerprint records maintained by the Royal Canadian Mounted Police (FPS-CPIC). These statistical data were systematically compared and discrepancies were resolved by additional research. The Commission drew most heavily upon these three sources of information, but others were employed as well. The Ministry of the Solicitor General provided information upon specific requests made by the Commission research staff. In addition, provincial government agencies (e.g., Ministry of Correctional Services, Ontario and the Ministère du Solliciteur Général du Québec) were also very helpful in providing information about provincial institutions.

The reports written for the Commission are listed in the Bibliography, but given their importance to our work, they are described more fully below.

Reports Prepared For The Commission

This list includes some reports written in-house in order to present a fuller picture of the research workplan.

1. Literature Review

- | | | |
|-----|----------------------------|--|
| 1.1 | Bibliography | general bibliography on sentencing undertaken by research staff |
| 1.2 | Canadian Literature Review | <p>"Sentencing Research in Canada: A Review of the Literature, 1969-1984", Julian V. Roberts, January, 1985</p> <p>- a comprehensive review and summary of recent research on sentencing</p> |
| 1.3 | Disparity Review | <p>"Inventaire d'extraits significatifs ayant trait à la disparité des sentences dans la littérature canadienne", Alvaro P. Pires, 1984</p> <p>- an assessment of the literature and Canadian government documents with respect to the existence of real or perceived disparity in Canada</p> |
| 1.4 | Catalog on Incarceration | <p>"Critiques à la prison et principe de modération: inventaire d'extraits dans les documents canadiens", Alvaro P. Pires, August, 1985.</p> <p>- a catalog of excerpts from Canadian official documents and literature on the need for restraint in the use of incarceration</p> |

1.5 Historical Study

"Sentencing Structure in Canada; Historical Perspectives", Martin L. Friedland, October, 1985

- a history of sentencing in Canada with a focus on the legislative history of maximum penalties and the use of imprisonment in Canada

1.6 Review of Non-Custodial Sanctions

"A Profile of Canadian Alternative Sentencing Programmes: A National Review of Policy Issues", John W. Ekstedt and Margaret A. Jackson, February, 1986

- an extensive review of Canadian literature evaluating the success of community sanctions and alternative ways of serving a sentence of imprisonment

1.7 Guidelines in the U.S.

"Issues Relating to Guideline Implementation and Evaluation in the U.S. and their Relevance to Canadian Sentencing Reform", Aidan Vining, March, 1985

- an analysis of the methods and impacts of sentencing guidelines commissions in a number of U.S. jurisdictions

1.8 Parole/Mandatory Supervision Review

"Parole and Remission: A Review of Issues and Trends", A Working Paper of the Correctional Law Review, Ministry of the Solicitor General of Canada, Lee Axon, March, 1985

- a study shared with the Correctional Law Review reviewing the literature on parole and mandatory supervision in Canada and the U.S.

2. Legal Research

2.1 Breakdown of Offences

a categorization of all offences in the *Criminal Code*, *Narcotic Control Act*, and *Food and Drugs Act* (Parts III, IV) by maximum and minimum penalties to compare with actual sentencing practice (i.e. corresponding ranges from Court of Appeal judgments according to Nadin-Davis, and existing sentencing data).

- 2.2 Revised Index of Offences a list of all offences in the relevant statutes (listed above) reflecting the amendments pursuant to the *Criminal Law Amendment Act, 1985*
- 2.3 Comparative Penalty Charts comparative penalty charts listing maximum penalties for comparable offences for a number of jurisdictions, undertaken by research staff
- 2.4 Appeal Courts
- "The Role of Appeal Courts in Establishing Sentencing Ranges"**, Alan Young, December, 1984
- an examination of judgments of selected Courts of Appeal regarding their role in establishing sentencing ranges in "guideline judgments"
- "The Operation of Appellate Sentencing Ranges in Trial Court Sentencing Decisions"**, Alan Young, December, 1984
- an examination of trial court judgments for citations of Court of Appeal "guidelines" or policy decisions
- "The Operation of Mitigating and Aggravating Factors in Appellate Sentencing Decisions"**, Alan Young, April, 1985
- an examination of judgments of selected Appeal Courts regarding the development of guidelines to assist sentencing judges in their analysis of aggravating and mitigating factors
- "Tariff Sentencing in Canada"**, Alan Young, August, 1985
- an examination of the impact of tariff sentencing in Canada on reducing disparity or contributing to a greater rationality in sentencing
- "The In-out Decision and the Impact of the Criminal Record"**, Alan Young, November, 1985
- a review of appellate jurisprudence on principles relating to the appropriate use of imprisonment and of the prior criminal record in sentencing

- "An Empirical Study of the Use of Mitigating and Aggravating Factors in Sentence Appeals in Alberta and Québec from 1980 to 1985"**, Shereen Benzvy Miller, February, 1986
- a review of appellate jurisprudence to derive a list of the most frequently-cited aggravating and mitigating factors and the context in which they are used
- "Concurrent and Consecutive Sentences"**, (Staff)
- a review of appellate jurisprudence on the use of concurrent and consecutive sentences.
- 2.5 Plea Bargaining
- "Plea Bargaining and Sentencing Guidelines"**, Simon Verdun-Jones and Alison J. Hatch, March 1985
- an assessment of the literature and an analysis of reported judgments respecting plea bargaining and prosecutorial discretion in Canada
- 2.6 Fines
- "The Fine as a Sentencing Option in Canada"**, Simon Verdun-Jones, Teresa Mitchell-Banks, April, 1986
- a review of fines as a sentencing option in Canada and an examination of how the issue of fines might be approached in the context of guidelines
- 2.7 Permanent Sentencing Commission
- An examination of the feasibility of establishing a permanent sentencing commission and the corresponding legal and administrative implications, Martin L. Freidland, Hudson Janish, November, 1985
a legal opinion on the status of sentencing guidelines and a permanent sentencing commission in Canada, Roger Tassé, July, 1986.
3. Empirical Research
- 3.1 Survey of Judges
- "Opinion of Sentencing Judges in Canada: A Report"**, Research Staff, November, 1985
- a survey of Canadian judges involved in criminal sentencing on a number of

topics including: sentencing goals; sentencing resources; plea-bargaining; the administration of sentences of imprisonment; and the effectiveness of appellate review (staff)

some follow-up interviews were also conducted

3.2 Survey of Defence and Crown Counsel

"Crown and Defence Counsel Questionnaire", Staff; Landau, T., March 1986

- a survey of Canadian Crown and defence counsel on a number of topics including: sentencing goals; sentencing resources; plea bargaining; the administration of sentences of imprisonment; and the effectiveness of appellate review

3.3 Survey of Probation and Parole: Officers

"La détermination de la peine: les professionnels et praticiens non-juristes s'expriment", Samir Rizkalla, Sylvie Bellot, Anne Morrisette, March 1986
-a survey of the opinions of probation and parole officers in Quebec on issues relating to the terms of reference.

"Probation and Parole Officers Survey". Jim Richardson, June, 1986.

- a survey of the opinions of probation and parole officers in the Atlantic provinces on issues relating to the terms of reference

3.4 Survey of Inmates

"Points de vue de détenu-e-s du Québec sur quelques questions soulevées par le mandat de la Commission canadienne sur la détermination de la peine", Pierre Landreville, July, 1985

- Since the Commission was unlikely to hear from a broad section of the inmate population through public submissions, a survey was undertaken to canvass the view of inmates on a number of important issues relevant to the mandate. This qualitative survey was undertaken in the province of Quebec.

"Justice in Sentencing: Offender Perceptions", John Ekstedt, September, 1985

- a survey of inmate views of sentencing undertaken in the province of British Columbia.

"Native Offender Project", Brad Morse, Linda Lock, November, 1985

- a separate survey of native inmates was also conducted in several provinces.

3.5 Survey of Public Views

Nationwide survey of public views on issues such as public understanding of parole and mandatory supervision and public perceptions regarding the relative seriousness of offences (Staff; Gallup)

Opinion surveys of selected groups to test the Commission's offence-ranking with other groups perceptions of the seriousness of offences (Staff)

A second nationwide survey of public estimates of imprisonment rates and maximum penalties (Staff; Gallup)

A third representative survey of public views on knowledge of mandatory minima and the sentencing process in general (Staff, Gallup)

3.6 Survey of the Media

"Process, Policy and Prejudice – A Survey of Editorial Policies on Sentencing Related News", Erika Rosenfeld, April, 1986

- a survey of newspaper, radio and television, newsmagazine editors and writers regarding existing policies with regard to coverage of sentencing issues, (Ontario)

"Recherche sur les stratégies et pratiques des médias en matière d'information judiciaire," Gaetan Tremblay, March, 1986

- a similar survey was conducted in the province of Quebec

"Sentencing in the Media: A Content Analysis of Canadian Newspapers"

- (English Language)", (Staff)
- a content analysis of newspaper coverage of sentencing issues.
- 3.7 Community Programs
- "Alternatives to Incarceration/Sentencing Option Programmes: What are the Alternatives?"** John Ekstedt and Margaret A. Jackson, April, 1986
- empirical research on selected programs (e.g., community service orders, intermittent sentences) which have been identified as successful
- 3.8 Sentencing Trends in Canada
- "Custodial and Probation Sentences Project: Overview Report and Individual Offence Reports"**, Robert G. Hann and Faigie Kopelman, May, 1986
- a study of the most recent trends in sentencing which was prepared jointly for the Department of Justice and the Canadian Sentencing Commission
- 3.9 Judicial Resources
- "Sentencing Inventory"**, Melody Hainsworth, March, 1985
- an inventory of sentencing resources in selected provinces, including circulation and publication of Appeal Court judgments, availability of continuing education seminars, sentencing material in court libraries, etc.
- 3.10 Information Systems
- "Information Systems for Sentencing Guidelines: Recent Experience"** Robert G. Hann (The Research Group), March, 1985
- a study of already implemented information systems in select U.S. jurisdictions
- "Information Systems to Support a Canadian Sentencing Commission: Initial Comments"** (Draft #1), William G. Harman and Robert G. Hann (The Research Group), March, 1986
- a follow-up study to the report on information systems necessary to support a permanent sentencing commission in Canada
- 3.11 Impact Study
- "Simulation of Federal Penitentiary Populations: A Methodology** (Draft

#1)", William G. Harman, Robert G. Hann, March, 1986

- a methodology for the simulation of federal penitentiary populations including a preliminary study on the effect of the Commission's recommendations and an analysis of the feasibility of assessing the future impact of a proposed guidelines model

4. Position Papers

4.1 Terms of Reference

"The Canadian Sentencing Commission: Issues and Methods", Jean-Paul Brodeur, August, 1984.

- a discussion of the issues raised by the Commission's terms of reference and proposals for developing an approach to their solution (translated by the author under the title of **"Commission Canadienne sur la détermination de la peine: Questions et Méthodes"**).

4.2 Victims

"The Role of the Victim in Sentencing and Related Processes," Irvin Waller, January, 1986.

- an opinion paper on the role of the victim in the sentencing process

4.3 Deterrence

"Legal Sanctions and Deterrence", F.D. Cousineau, March, 1986

- an opinion paper examining the effectiveness of deterrence as a goal of sentencing,

Acknowledgements

There are a number of government departments, organizations and individuals who provided the Commission with data, studies, reports and perhaps most important, food for thought.

The Department of Justice, Canadian Centre for Justice Statistics and the Ministry of the Solicitor General were co-operative throughout the course of the mandate in providing research reports and access to data.

The Commission also benefitted from consultations with the Law Reform Commission of Canada, John Howard Society (Canada, Alberta and Ontario), Elizabeth Fry Society (Canada), National Parole Board, Correctional Law Review (Ministry of the Solicitor General), Ontario District Court Judges, The National Joint Committee of the Canadian Association of Chiefs of Police and Federal Correctional Services, the Ontario Criminal Lawyers Association, and the Church Council on Justice and Corrections. A large number of provincial

court judges also gave generously of their time through meetings held with The Canadian Association of Provincial Court Judges and several provincial court judges associations.

In the first year of its mandate, the Commission consulted with a number of Canadians who had made major contributions in the past to the study of sentencing. Professors Duncan Chappell, John Hogarth, Keith Jobson and Aidan Vining were most helpful in providing feedback to the Commission's research plans. As well, the Commission benefitted greatly from the major Canadian treatises on sentencing by John Hogarth, Paul Nadin-Davis and Clayton Ruby and from the collection of papers published by Brian Grosman. At the end of its term, the Commission benefitted from the advice of Professor Alan Manson on the more technical aspects of early release. Jack MacDonald, previously with the Sentencing Project at the Department of Justice, was generous with his time and provided us with some valuable insights.

The work of the Commission also benefitted greatly from the advice of prominent people in the field of sentencing in Great Britain and the United States. Professor D.A. Thomas provided the Commission with insight as to the tide of sentencing reform in Great Britain. The Commission also consulted Professors Andrew von Hirsch and Albert Reiss on a number of occasions and benefitted greatly from their knowledge of sentencing reform in the United States and their most helpful insights regarding the development of a sentencing policy for Canada. Professor von Hirsch was particularly helpful in providing the Commission with specific proposals as well as with material on the recent sentencing reforms proposed in Sweden where he had previously worked as a consultant.

Interviews were also held with the research directors of three U.S. state sentencing guidelines commissions in order to allow this Commission to learn from the recent experience in these jurisdictions. The Commission primarily sought to learn more about the kinds of information systems existing or developed in these states. Since much of this type of information is not readily accessible in written form, the Commission relied on the patient co-operation of those people with first-hand knowledge of the often complex sentencing information and data collection systems. Kay Knapp (Research Director, Minnesota Sentencing Guidelines Commission), David Fallen (Research Director, Washington Sentencing Guidelines Commission), John Kramer (Executive Director, Pennsylvania Commission on Sentencing) and the staff of these commissions, were most helpful in explaining their information structures to us.

Commissioners and research staff were invited to speak at conferences across the country on a number of occasions. One particularly helpful meeting was a consultation held in Whitehorse with a number of community and professional individuals and groups from the Yukon. These occasions were

most illuminating as they revealed early on that perceptions of disparity in sentencing vary greatly from St. John's to Victoria. As well, the Chairman and Director of Research were invited to attend two international conferences (International Criminal Law Congress in Adelaide, Australia, October, 1985; Conference on Sentencing Disparity and Consistency in Oxford, England, April, 1986).

Appendix B

Submissions Made to the Canadian Sentencing Commission

Individuals

Alarie, Denis
Anderson, Robert J.
Antonow, E.
Batchelor, Dahn
Bauche, Daniel
Bennett, Michael
Booth, Gordon
Couvrette, L.
Dennison, I.
Dion, Pierre
Ellerton, Angelique L.
Enright, R.L.
Farrell, Norman
Ford, Mrs. James A.
Garand, Ms. Louise
Gillissie, Rev. A.W.J.
Honey, Larry P.
Houle, Sylvio
Irwin, Ross W.
Jobson, Keith B.
Lee, Robert
Lewsey, Alfred A.

Lewis, Diane F.
Lingley, Bob
Lister, Philip
MacDonald, Chris
Matthews, Mrs. Charlotte
McIntyre, Brian E.
McNab, Gordon F.
McQueen, A.T.
Mohr, Johann W.
Morissette, Sylvain
Paris, Walter
Petronio, A.A.
Raineville, Rejeanne
Ray, Dr. A.K.
Rigo, Alfred
Robitaille, Robert
Schneider, Howard
Smith, William Neil
Stephen, Douglas
Struthers, Wallace
Teed, Eric, L.
Tosczak, Jan; Kaill, Helen and Sweet,
Elaine

National Groups

Canadian Association of Chiefs of Police
Canadian Association of Elizabeth Fry Societies
Canadian Association of Paroling Authorities
Canadian Bar Association
Canadian Crime Victims Advocates
The Canadian Criminal Justice Association
Canadian Federation of Humane Societies
The Church Council on Justice and Corrections
Citizens' Advisory Committee to the Correctional Service of Canada
The John Howard Society of Canada
Law Reform Commission of Canada
The National Parole Board
Quaker Committee on Jails and Justice
St. Leonard's Society of Canada
Victims of Violence Inc., Victims Rights Advocates

Provincial Groups

Advisory Council on the Status of Women (New Brunswick)
Alberta Seventh Step Society
Alberta Status of Women Action Committee
Attorney General of Alberta
Canadian Bar Association (Yukon Branch)
Citizens for Public Justice
Crees of Québec
Criminal Lawyers' Association of Ontario
Government of Northwest Territories
John Howard Society of Alberta
John Howard Society of Ontario
Legal Aid Manitoba
Native Counselling Services of Alberta
New Brunswick Chapter of the Canadian Criminal Justice Association
Northwest Territories Defence Lawyers' Association
Ontario Women's Directorate
Plaidoyers-Victimes
Sexual Abuse Victims Anonymous (British Columbia)
Société de Criminologie du Québec
Solicitor General of Alberta

Local Groups

The Catholic Diocese of Victoria Office of Social Justice, et. al.
Community Justice Initiatives of Waterloo Region

County of Cape Breton
Elizabeth Fry Society of Toronto
Edmonton Chamber of Commerce
First Filipino Baptist Church
Greater Nanaimo Chamber of Commerce
Groupe Vie-Plus Etablissement Carceral Leclerc
The John Howard Society of Ottawa
Metro Action Committee on Public Violence Against Women and Children
Office des Droits des Détenu-e-s
St. John's Board of Trade
Social Planning Council of Oshawa-Whitby
Women in Niagara

Judges' Associations

Provincial Court of British Columbia
Provincial Court Judges' Association of New Brunswick
Nova Scotia Provincial Judges' Association
Provincial Judges' Association – Ontario (Criminal Division)

Appendix C

Public Opinion Research

As part of its research program, the Canadian Sentencing Commission sought the views of the Canadian public on many sentencing issues. Surveys were carried out by the Canadian Gallup Poll Limited in 1985 and 1986. The questions were part of their national omnibus survey. Approximately 1,000 individuals were sampled in each survey. Some of the findings were presented and discussed in Chapter 4 of the report. This appendix contains additional findings.

<i>Table</i>	<i>Title</i>
Table 1	Knowledge of minimum penalties
Table 2	Knowledge of minimum penalty for importing
Table 3	Knowledge of maximum penalty for impaired driving
Table 4	Reasons for making sentences harsher
Table 5	Most appropriate sentence to ensure protection of the public
Table 6	Opinion regarding most effective way to control crime
Table 7	Opinion regarding imprisonment for various offences
Table 8	Public knowledge of mandatory supervision and parole
Table 9	Number of years that should be served by people serving life sentences for murder before they become eligible for parole
Table 10	Opinion concerning who should be eligible for parole
Table 11	Opinion concerning the strongest argument in favour of parole, and against parole
Table 12	Perceptions of unwarranted sentencing disparity
Table 13	Perceptions of who is responsible for crime control

Table 1

Knowledge of minimum penalties

	%
No	36
Murder	22
Sexual Assault	12
Assault	2
Drinking/Driving	16
Robbery	12
Break and Enter/Theft	12
Fraud	1
Drug-related	4
Treason	1
Kidnapping/Hijacking	1
Other	<u>4</u>
	123*

*Total exceeds 100 due to multiple responses from some respondents.

Question (1): Can you name an offence that carries a minimum penalty?

Table 2

Knowledge of minimum penalty for importing

	%
Don't Know	62
1 month – 3 years	16
37 months – 5 years	8
61 months – 78 months	0
79 months – 84 months*	6
Over 85 months	<u>8</u>
	100

* Correct.

Question (3): What is the minimum penalty for importing a narcotic?

Table 3

Knowledge of maximum penalty for impaired driving

	%		%
1 year imprisonment (or less)	9	9 years imprisonment	1
2 years imprisonment	1	Other	5
3 years imprisonment	3	Don't Know	<u>75</u>
5 years imprisonment	4		100
7 years imprisonment	2		

Question (4): Recently Parliament changed the maximum penalties for impaired driving. Do you know that the new *maximum penalty* for impaired driving is?

Table 4

Reasons for making sentences harsher (n = 620)¹

	Percentage rating reason as very important*
More severe sentences are desirable because offenders deserve more punishment than they are now getting	76
More severe sentences are desirable because they express society's disapproval of criminal behaviour	68
More severe sentences will deter other potential offenders from committing offences	63
More severe sentences will deter the offender from committing further offences	62
More severe sentences will prevent offenders from committing further offences by keeping them in prison longer	57

*i.e., points 8, 9, 10 on a 10 point scale.

Question (7): Here are some reasons why sentences should be made more severe. As I read each one to you please rate the reason from 1 to 10 on its importance to your belief that sentences should be more severe. To do this you should rate a reason as "1" if is not at all important to you or you should rate it as "10" if it is very important to you, or you may use any number in between.

¹ This question was posed only to those individuals who had previously expressed the view that sentences were too lenient.

Table 5

Most appropriate sentence to ensure protection of the public

	Minor Offences (%)	Major Offences (%)
A fine	13	2
A period of probation (where the offender is allowed to remain in the community providing he complies with certain conditions)	22	8
A community service order (a condition of probation where an offender is required to perform a specified number of hours in work which provides a service to the community)	53	10
Imprisonment of a greater proportion of offenders	5	33
Imprisonment of offenders for longer periods of time	4	42
Not stated	<u>3</u> 100	<u>5</u> 100

Question (4 and 5): For most offences in the *Criminal Code* a judge has a choice as to the kind of sentence to impose. Consider the case of relatively minor crimes such as theft under \$200 and consider more serious crimes such as assault. Assuming for the moment that the aim of sentencing is protection of the public, please choose the *most* appropriate sentence to achieve that aim.

Table 6

Opinion regarding most effective way to control crime

	%
Reduce the level of unemployment	41
Make sentences harsher	27
Increase the use of non-imprisonment sentencing options such as restitution or community service orders	13
Increase the number of police	4
Increase the number of social programs	10
Other/ Don't know/not stated	<u>5</u>
	100

Question (9): Which of the ways listed on this card would in your view be the *single* most effective way to control crime?

Table 7

Opinion regarding imprisonment for various offences

	Imprisonment			
	%Yes	%No	%Don't Know	
Assault	74	21	5	100
Theft over \$200	64	30	6	100
B/E private dwelling	63	32	5	100
Impaired driving	60	35	5	100
Robbery	59	34	7	100
B/E business premise	56	39	5	100
Theft under \$200	17	79	4	100

Question (12): There are a number of different sentences an offender can be given other than a term of imprisonment. These include a fine, a period of probation and/or probation or community service.

In the case of an adult offender with no previous convictions, please tell me, for each offence I read to you, whether in your opinion, and generally speaking, the offender should or should not be sentenced to a term of imprisonment.

Table 8

Public knowledge of mandatory supervision and parole

1. Which of the following best describes mandatory supervision?

a) a period of surveillance to which all inmates are subject upon leaving prison after completing their sentences	40.3
b) a period of observation that applies to all new prison guards before they can obtain permanent employment	7.8
c) a form of close observation to which certain inmates are subject during their time in prison	27.2
d) a form of early release from prison as a result of good behaviour	15.3
Don't know/not stated	9.4
	100.0

Question (1): "First on general knowledge. I'd like you to tell me which one of the phrases or definitions on this card best describes mandatory supervision"

2. Which of the following best describes parole?

a) a period of supervision ordered by a judge as part of a sentence	17.5
b) a form of early release from prison that inmates must apply for and which is only granted to certain applicants	34.8
c) a period of close observation to which certain inmates are subject during their time in prison	10.1
d) a form of early release from prison as a result of good behaviour while in prison	32.8
Don't know/not stated	4.8
	100.0

Question (2): "Now please read these phrases and tell me which one best describes parole".

Table 9

Number of years that should be served by people serving life sentences for murder before they become eligible for parole

	%
1 – 9 years	1.2
10 – 19 years	12.4
20 – 30 years	38.6
Should never get parole	42.1
Don't know/not stated	<u>5.7</u>
	100.0

Question (9): “Now, turning to people serving life sentences for murder, how many years should these individuals have to serve in prison before they become eligible for full parole?”

Table 10

Opinion concerning who should be eligible for parole

a) All offenders	8.9
Only certain offenders	65.4
Parole should be abolished	22.5
Don't know/not stated	<u>3.2</u>
	100.0
b) If "only certain offenders", who exactly should never be eligible?	
1. murderers	80.9
2. sex offenders	48.4
3. child-related offences	25.8
4. other	19.3
5. habitual criminals	6.7
6. Don't know/not stated	<u>4.2</u>
	185.3*

*Total exceeds 100 due to multiple choices; numbers represent percentage of total responses.

Question (12a): Please look at this card and tell me which comes closest to your opinion? (Read options)

Question (12b): If respondent chooses "only certain offenders" ask what offenders should never be eligible.

Table 11

Opinion concerning the strongest argument in favour of parole, and against parole.

a) Strongest argument for parole

1. Promotes rehabilitation	21.0
2. Provides second chance	32.9
3. Saves money	14.1
4. Provides incentive to inmates	26.2
5. Don't know/not stated	<u>5.8</u>
	100.0

b) Strongest argument against parole

1. Recidivism of parolees	55.5
2. Undermines sentence of court	10.3
3. Undermines deterrent effect of law	13.6
4. Introduces uncertainty into sentencing	12.4
5. Don't know/not stated	<u>8.2</u>
	100.0

Question (15): "Which one of the following is the strongest reason in favour of parole?"

Question (16): "Which one of the following is the strongest reason against parole?"

Table 12

Perceptions of unwarranted sentencing disparity

	Overall	Excluding "Don't know"
Yes, it is a problem	72.5	82.5
No, it is not a problem	15.4	17.5
Don't know/not stated	<u>12.1</u> 100.0	<u>—</u> 100.0

Question (19): "One topic that has been discussed recently concerns sentencing disparity. This refers to the possibility that *similar* offenders, convicted of *similar* offences, sometimes receive *dissimilar* sentences. From what you know about sentencing in Canada do you think this is a problem or not?"

Table 13

Perceptions of who is responsible for crime control

Police	8.3
Courts	24.3
Corrections (including parole)	5.7
Elsewhere (e.g., employment and community programs)	9.6
Society generally	47.2
Other	1.3
Don't know/not stated	<u>3.6</u> 100.0

Question (22): "Although reducing crime is a responsibility shared by many, where do you think the *main* responsibility lies?"

Appendix D

Criminal Law Reform Act, 1984 (Bill C-19) Declaration of Purpose and Principles of Sentencing

(Section 645)

645. (1) It is hereby recognized and declared that the fundamental purpose underlying the imposition of a sentence for an offence is the protection of the public and that this end may be furthered by:
- (a) promoting respect for the law through the imposition of just sentences;
 - (b) separating offenders from society, where necessary;
 - (c) deterring the offender and other persons from committing offences;
 - (d) promoting and providing for redress to victims of offences or to the community; and
 - (e) promoting and providing for opportunities for offenders to become law-abiding members of society.
- (2) Subject to subsection (3), the sentence to be imposed on an offender in a particular case is in the discretion of the court that sentences the offender.
- (3) In furtherance of the purpose set out in subsection (1), a court that sentences an offender for an offence shall exercise its discretion within the limitations prescribed by this or any other Act of Parliament and in accordance with the following principles:
- (a) a sentence should be proportionate to the gravity of the offence, the degree of responsibility of the offender for the offence and any other aggravating or mitigating circumstances;
 - (b) a sentence should be similar to sentences imposed on other offenders for similar offences committed in similar circumstances;

- (c) a sentence should be the least onerous alternative appropriate in the circumstances;
- (d) the maximum punishment prescribed should be imposed only in the most serious cases of the commission of the offence;
- (e) the court should consider the total effect of the sentence and the combined effect of that sentence and any other sentence imposed on the offender;
- (f) a term of imprisonment should be imposed only
 - (i) to protect the public from a violent or dangerous offender,
 - (ii) where a less restrictive alternative would not adequately protect the public or the integrity of the administration of justice or sufficiently reflect the gravity of the offence or the repetitive nature of the criminal conduct of an offender, or
 - (iii) to penalize an offender for wilful non-compliance with the terms of any other sentence that has been imposed on the offender; and
- (g) a term of imprisonment should not be imposed, or its duration determined solely for the purpose of rehabilitation.

Appendix E

List of Offences with Proposed Maximum Penalties and Presumptive Dispositions

This appendix contains a listing of all offences in the *Criminal Code*, *Narcotic Control Act* and *Food and Drugs Act (Parts III, IV)*. They were ranked in terms of their seriousness by the Commissioners (see Chapter 9) and are presented here from most to least serious levels of proposed penalty bands. Within the bands, offences are listed in sequence in accordance with their section numbers as they appear in the relevant statutes. In addition, the presumptive dispositions recommended by the Commission are indicated. Thus "IN" means unqualified presumption of incarceration, "OUT" means unqualified presumption of community sanction, "QI" means qualified in and "QO" means qualified out. (See Chapter 11 for further details).

NOTES

1. Current and proposed maxima in years unless otherwise stated (m = months).
2. An asterisk (*) beside a current maximum denotes a hybrid offence under current penalty provisions. The maximum penalty accompanying these offences is that prescribed for indictable cases.

Schedule of Proposed Seriousness Levels and Presumptive Dispositions

12 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
Life	Treason, rebellion/conspiracy, attempted high treason	s.47(2)(a)	IN
Life	Passing secrets or conspiracy to do so when at war	s.47(2)(b)	IN
Life	Hijacking	s.76.1	IN
Life	Endangering aircraft in flight	s.76.2	IN
Life	Causing an explosion, intent to cause death, bodily harm	s.79(1)(a)(b)	IN
Life	Causing death by criminal negligence	s.203	IN
Life	Manslaughter	s.219	IN
Life	Killing unborn child in act of birth	s.221	IN
Life	Attempt to commit murder	s.222	IN
Life	Interfering with transportation facilities	s.232	IN
Life	Aggravated sexual assault	s.246.3	IN
Life	Kidnapping	s.247(1)	IN
Life	Hostage Taking	s.247.1	IN
	Attempts, accessories – indictable offences punishable by life	s.421(a)	IN
14	Conspiracy to commit murder	s.423(1)(a)	IN
Life	Trafficking and possession for purpose	NCA s.4	IN
Life	Import/Export	NCA s.5	IN

9 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
14	Passing secrets or conspiring to do so <i>but not state of war</i>	s.47(2)(c)	IN
14	Alarming her Majesty/intended to cause bodily harm	s.49	IN
14	Assisting alien enemy to leave Canada/Omitting to prevent treason	s.50	IN
14	Intimidating Parliament	s.51	IN
10	Sabotage	s.52	IN
14	Inciting to mutiny	s.53	IN
Life	Piracy	s.75	IN
14	Piratical acts	s.76	IN
14	Board offensive weapon	s.76.3	IN
Life	Breach of Duty of care <i>re</i> explosives causes death	s.78(a)	IN
14	Acceptance or attempt to bribe judicial officers M.P., M.L.A.	s.108(1)(a)(b)	IN
14	Perjury	s.120, 121	IN
Life	Perjury	s.120, 121	IN
14	Witness giving contradictory evidence	s.124	IN
14	Fabricating evidence	s.125	IN
Life	Sexual intercourse with female under 14	s.146(l)	IN
Life	Accessory to murder	s.223	IN
14	Causing bodily harm with intent	s.228	IN
Life	Overcoming resistance to commission of offence	s.230	IN
14	Dangerous operation of motor vehicle, vessel, aircraft where death caused	s.233(4)	IN

9 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
14	Impaired operation of motor vehicle, etc., causing death	s.237/239(3)	IN
14	Aggravated assault	s.245.2	IN
14	Sexual assault with weapon/ bodily harm	s.246.2	IN
Life	Robbery	s.302/303	IN
Life	Extortion	s.305	IN
Life	Wilful mischief causing danger to life	s.387(2)	IN
14	Arson (specific types)	s.389(1)	IN
5	Arson (others)	s.389(2)	IN
10*	Conspiracy to prosecute knowing person innocent – offences punishable by life or fourteen years	s.423(1)(b)(i)	QO
10*	Trafficking and possession for purpose	FDA s.34	IN
10	Trafficking and possession for purpose	FDA s.42	IN

6 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
14	Forging passport/using forged passport	s.58(l)	QO
14	Seditious offences	s.62	QO
14	Breach of Duty of care <i>re</i> explosives causes bodily harm	s.78(b)	QI
14	Placing explosive/making or/ has in care and control	s.79(l)(c)(d)	QI
14	Use of firearm during com- mission of offence	s.83	IN
10	Carrying weapon or imitation for dangerous purposes	s.85	QO
5*	Importing or delivering	s.93	QI
5*	Importation of restricted weapons	s.94(3)	QI
14	Bribery of officers	s.109	IN
5	Frauds upon the government	s.110(l)	QO
5	Breach of trust, public officer	s.111	QO
10	Obstructing Justice	s.127(2)	QO
10	Prison breach	s.132	IN
14	Incest	s.150	IN
14	Parent or guardian procuring defilement of female under 14	s.166(c)	IN
5	Parent or guardian procuring defilement, 14 years or older	s.166(d)	IN
10	Procuring	s.195	QO
10	Causing bodily harm by criminal negligence	s.204	IN
14	Counselling or aiding suicide	s.224	QO
14	Administering noxious thing intends harm to life	s.229(a)	IN

6 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
5	Traps likely to cause death/bodily harm	s.231	IN
10	Dangerous operation of motor vehicle, vessel, aircraft where bodily harm caused	s.233(3)	IN
10	Impaired operation of vehicle where bodily harm	s.237/239(2)	IN
10	Impeding attempt to save life	s.243.2	IN
10	Assault causing bodily harm or with a weapon	s.245.1	QI
10	Unlawfully causing bodily harm	s.245.3	QI
10	Sexual assault	s.246.1	QI
10	Forcible confinement	s.247(2)	IN
10	Theft over \$1000	s.283/294(a)	QO
14	Criminal breach of trust	s.296	QO
10	Theft of cattle	s.298(1.1)	QO
10	Destroying documents of title	s.300	QO
10	Unauthorized use of computer	s.301.2	QO
Life	Stopping mail with intent	s.304	QO
Life	Break and enter dwelling house	s.306(1)(d)	QI
10	Possession of property obtained by crime over \$1000	s.312/313(a)	QO
10	False pretence leading to theft over \$1000	s.319/320(2)(a)	QO
14	Forgery	s.325(1)	QO
14	Uttering forged document	s.326(1)	QO
14	Making, using or possessing exchequer bill paper, public seals, without authority	s.327	QO

6 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
14	Drawing up a document without authority, etc., with intent to defraud	s.332	QO
14	Obtaining, etc., by instrument based on forged document	s.333	QO
14	Counterfeiting/possessing instrument to counterfeit stamps	s.334(1)	QO
14	Making, use or selling of a mark without lawful authority	s.334(2)	QO
10	Fraud over \$1000	s.338(1)(a)	QO
10	False prospectus, etc.	s.358	QO
14	Selling defective stores to her Majesty	s.376(1)	QO
14	Fraud in relation to defective stores	s.376(2)	QO
10*	Wilful mischief in relation to testamentary instrument or property worth over \$1,000	s.387(3)	QO
10*	Wilful mischief in relation to data	s.387(5)	QO
14	Attack of premises, internationally protected persons.	s.387.1	IN
14	Making of counterfeit money	s.407	IN
14	Possession, buying or receiving or offering to buy/receive counterfeit money	s.408	IN
14	Uttering, etc., counterfeit money	s.410	IN
14	Making, having or dealing in instruments for counterfeiting	s.416	IN

3 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
5	Possession of forged passport	s.58(3)	QO
5	Offences in relation to military forces	s.63	QO
Life	Offences related to proclamation	s.69	QO
5	Unlawful military drilling	s.71(3)	QO
5	Unlawful possession of explosive	s.80	QO
5*	Pointing firearm	s.84(1)	QO
5*	Possession of prohibited weapon	s.88(1)	QO
5*	Occupant of motor vehicle – prohibited weapon	s.88(2)	QO
5*	Possession elsewhere than place authorized	s.89(2)	QO
5*	Restricted weapon in motor vehicle	s.89(3)	QO
5*	Wrongful delivery of firearms	s.92	QO
5*	Delivery of restricted weapon to person without permit	s.94(1)	QO
5*	Possession of firearm, ammunition, etc., while prohibited by order	s.98(12)	QI
5*	Possession of firearm, ammunition, while prohibited by order	s.101(10)	QI
5*	Finding a prohibited weapon/lost weapon	s.102(5)	QO
5*	Offences relating to business of firearms	s.103(8)	QO
5	Contractor subscribing to election fund	s.110(2)	QO

3 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
5	Municipal Corruption	s.112(1)(2)	QO
5	Selling/purchasing office	s.113	QO
5	Influencing or negotiating appointments	s.114	QO
5*	Public mischief	s.128	QO
5*	Corruptly taking reward for recovery of goods	s.130	QO
2*	Escape and being at large without excuse	s.133(1)	IN
5	Permitting escape	s.135	QI
5	Assisting Prisoner of war to escape	s.136	IN
5	Sexual intercourse with female 14 to 16	s.146(2)	IN
2	Sexual intercourse with step-daughter, etc.	s.153(1)(a)	QO
14	Buggery or bestiality	s.155	QO
5	Householder permitting defilement	s.167	QO
5	Interception of communication	s.178.11	QO
5	Infanticide	s.220	QO
5*	Dangerous operation of motor vehicle, vessel, where no injury	s.233(2)	QO
5	Lending unseaworthy vessel or aircraft	s.235	QO
5*	Operation of motor vehicle, vessel or aircraft while impaired, no harm caused	s.237(a)/239(1)	QO
5*	Operation of motor vehicle, vessel or aircraft, exceeding .08, no bodily harm caused	s.237(b)/239(1)	QO

3 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
5*	Refusal to provide breath or blood sample	s.238	QO
5	Uttering threats to cause death or serious bodily harm	s.243.4(1)(a)	QO
5	Abduction of person under 16 years	s.249	QO
10	Abduction of person under 14 years	s.250	QO
10	Abduction in contravention of custody order	s.250.1	QO
10	Abduction no custody order	s.250.2	QO
Life	Procuring miscarriage	s.251(1)	QO
5	Extortion by libel	s.266	QO
5	Advocating genocide	s.281.1	QI
2*	Inciting or wilfully promoting hatred	s.281.2	QI
14	Public servant refusing to deliver property	s.297	QO
5	Fraudulently taking cattle or defacing brand	s.298(1)	QO
5*	Criminal interest rate	s.305.1	QO
14	Breaking and entering other than a dwelling house	s.306(1)(e)	QO
10	Being unlawfully in dwelling house	s.307	QO
14	Possession of housebreaking instruments	s.309(1)	QO
10	Disguise with intent	s.309(2)	QO
10	Theft from mail	s.314	QO
10	Bringing into Canada property obtained by crime	s.315	QO

3 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
10	Obtaining credit by false pre- tence	s.320(3)	QO
5	Damaging documents	s.335	QO
10*	Fraud affecting public mar- ket prices	s.338(2)	QO
5	Fraudulent manipulation of stock exchange transactions	s.340	QO
5	Gaming in stock or merchan- dise	s.341(l)(a)(b)	QO
5	Broker reducing stock by selling own account	s.342	QO
5	Fraudulent registration of title	s.344	QO
10	Offences regarding mines	s.354	QO
5	False return by public officer	s.357	QO
14	Fraudulent personation with intent to gain advantage	s.361	QO
5	Acknowledging instrument in false name (recognizance of bail, etc.)	s.363	QO
5*	Criminal breach of contract	s.380	QO
5	Threat to commit offences against internationally pro- tected persons	s.381.1	QI
5	Secret commissions (by agents and principals)	s.383	QO
5*	Wilful act or omission to act, likely to cause danger to life or mischief to property	s.387(5.1)	QO
5	Setting fire to substances not mentioned in s. 389	s.390(a)(b)	QO
5	Interfering with the saving of a wreck	s.394(l)	QO

3 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
10	Wilful interference (altering, removing) signals	s.395(2)	QO
5	Interfering with international boundary marks	s.399	QO
5	Injuring cattle	s.400	QO
5	Advertising and dealing in counterfeit money, etc.	s.418	QO
5	Conspiracy to prosecute knowing person innocent – offences punishable by less than fourteen years	s.423(1)(b)(ii)	QO
7*	Failure to disclose previous prescriptions	NCA s.3.1	QO
3*	Failure to disclose previous prescriptions	FDA s.33.1	QO

1 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
2	False statement to procure passport	s.58(2)	QO
2	Fraudulent use of certificate of citizenship	s.59	QO
2	Riot	s.66	QO
2	Duelling	s.72	QO
5*	Careless use/storage	s.84(2)	QO
5*	Carrying concealed weapon – no permit	s.87	QO
5*	Possession of unregistered restricted weapon	s.89(1)	QO
2*	Transfer of firearm to person under 16	s.91	QO
2*	Delivery of firearm to person without F.A.C.	s.95(1)	QO
2*	Acquisition of firearms without F.A.C.	s.95(3)	QO
5*	False statements to procure firearms certificate, etc.	s.106.5(1)	QO
2*	Tampering with firearms certificate	s.106.5(2)	QO
2*	Failing to comply with condition of firearm permit	s.106.5(3)	QO
2	Disobeying a statute	s.115	OUT
2	Disobey order of Court	s.116	QO
2	Misconduct of officers executing process	s.117	OUT
2*	Offences relating to public or peace officers	s.118	QO
2	Offences relating to affidavits	s.126	QO
2	Compounding indictable offence	s.129	QO

1 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
2	Permitting escape	s.134	QI
2	Corrupting morals	s.159/165	OUT
2	Tied sale for obscene publica- tions	s.161/165	OUT
2	Restriction on publication of report of judicial proceedings	s.162/165	OUT
2	Corrupting children	s.168	QO
2	Obstructing or violence to or arrest of officiating clergy- man	s.172(1)	OUT
2	Common nuisance	s.176	OUT
5	Breach of duty regarding dead body	s.178	QO
2	Possession of device	s.178.18	OUT
2	Disclosure of information	s.178.2	OUT
2*	Failing to provide necessities	s.197	OUT
2	Abandoning child	s.200	QO
2	Concealing body of child	s.227	QO
2	Administering noxious thing to aggrieve	s.229(b)	OUT
2*	Failure to stop at scene of accident	s.236	QO
2*	Operating motor vehicle, ves- sel, aircraft while disqualified	s.242(4)	QO
2*	Uttering threats to damage property or injure or kill ani- mal	s.243.4(1)(b)(c)	OUT
5*	Assault	s.244/245	OUT
5*	Assaulting peace officer/ resisting arrest	s.246(2)	QO
5	Bigamy	s.255	OUT

1 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
5	Procuring feigned marriage	s.256	OUT
5	Polygamy	s.257	OUT
5	Taking possession, etc., of drift timber	s.299(l)	OUT
10*	Theft, forgery of credit card	s.301.1	OUT
2	Selling, etc., auto master key w/o licence	s.311(l)	OUT
5	Obtaining execution of valu- able security by fraud	s.321	QO
5	Counterfeit proclamation, etc., that falsely purports to have printed by the Queen's Printer	s.328	OUT
5	Conveying a telegram with false information	s.329	OUT
5	Issuing of false records or certificates by an authorized person	s.336(a)(c)	OUT
5	Fraudulent issue of records or certificates by an unau- thorized person	s.336(b)	OUT
2	Using mails to defraud	s.339	OUT
2	Fraudulent concealment or use of title documents	s.343	OUT
2	Fraudulent sale of real prop- erty	s.345	OUT
2	Misleading receipt	s.346	OUT
2	Fraudulent disposal of goods on which money advanced	s.347	OUT
2	Fraudulent receipts under the Bank Act	s.348	OUT
2	Disposal or acceptance of property to defraud creditors	s.350	OUT

1 Year Maximum

Current Maximum	Offence	Section	Presumptive Disposition
5	Fraud in relation to minerals	s.352	QO
5	Falsifying books or documents	s.355	QO
2	Trader failing to keep accounts	s.360	OUT
2*	Offences with respect to trade marks	s.370	OUT
2	Applying or removing distinguishing marks without authority	s.375(1)	OUT
5*	Buying, receiving military stores from a member of the forces, without leave	s.378	OUT
2*	Mischief in relation to other property	s.387(4)(a)	OUT
5	Setting fire by negligence	s. 392(1)	QO
2	Removing of natural bars necessary to a public harbour	s.396	OUT
5	Occupant injuring building to the prejudice of a mortgage/owner	s.397	OUT
5	Having clippings obtained from current gold or silver coins	s.409	OUT
2	Uttering coin	s.411	OUT
14	Clipping and uttering clipped coins	s.413	OUT
14	Conveying instruments for coining out of mint	s.417	OUT
7	Cultivation	NCA s.6	OUT

6 Month Maximum

Current Maximum	Offence	Section	Presumptive Disposition
6m	Assisting deserter	s.54	OUT
6m	Counselling/concealing/aid- ing deserter from R.C.M.P.	s.57	OUT
6m	Unlawful assembly	s.67	OUT
2	Police officer neglecting to suppress riot	s.70	OUT
2*	Forcible entry and detainer	s.74	OUT
6m	Engaging in prize fight	s.81	OUT
6m	Weapon in possession while attending public meeting	s.86	QO
6m	Failing to deliver up firearms certificate	s.106.5(4)	OUT
6m	Personating a peace officer	s.119	QO
6m	False statement where not permitted or required to make statement	s.122.1	OUT
2*	Prohibition of bail bondsmen	s.127(1)	QO
6m	Advertising reward and immunity (stolen goods)	s.131	OUT
2*	Failure to attend court when at large on undertaking or recognizance or failing to attend as required by court	s.133(2)	QO
2*	Failure to comply with condi- tion of undertaking or recog- nizance	s.133(3)	QO
2*	Failing to appear with respect to summons	s.133(4)	QO
2*	Failing to appear, appearance notice/promise to appear	s.133(5)	QO
2	Seduction of female passen- gers 16 to 18	s.151	OUT

6 Month Maximum

Current Maximum	Offence	Section	Presumptive Disposition
2	Seduction under promise of marriage	s.152	OUT
2	Sexual intercourse with female employee	s.153(1)(b)	OUT
2	Seduction of female passengers on vessels	s.154	OUT
5	Acts of gross indecency	s.157	OUT
2*	Immoral theatrical performance	s.163/165	OUT
2*	Mailing obscene matter	s.164/165	OUT
6m	Indecent acts	s. 169	OUT
6m	Nude in public place	s. 170	OUT
6m	Causing disturbance, indecent exhibition, loitering	s. 171	OUT
6m	Disturbing religious worship or certain meetings	s.172(2),(3)	OUT
6m	Trespassing at night	s.173	OUT
6m	Offensive volatile substance	s.174	OUT
6m	Vagrancy, loitering	s.175	OUT
2	Spreading false news	s.177	OUT
2	Keeping a common gaming house or common betting house	s.185(1)	OUT
6m	Person found in or owner of gaming house	s.185(2)	OUT
2	Betting, pool-selling, book-making, etc.	s.186	OUT
2	Placing bets for others	s.187	OUT
2*	Fail to comply with regulations re: pari-mutual system	s.188(8)	OUT
2	Offence in relation to lotteries and games of chance	s.189(1)	OUT

6 Month Maximum

Current Maximum	Offence	Section	Presumptive Disposition
6m	Purchaser of lot, ticket	s.189(4)	OUT
2	Conducting unauthorized lottery	s.190(3)	OUT
6m	Receiving unauthorized lottery ticket	s.190(4)	OUT
2	Cheating at play	s.192	OUT
6m	Keeping common bawdy-house	s.193(1)	OUT
6m	Landlord, inmate of common bawdy-house	s.193(2)	OUT
6m	Transporting person to bawdy-house	s.194	OUT
6m	Soliciting	s.195.1	OUT
5	Neglect to obtain assistance in childbirth	s.226	QO
6m	Failing to keep watch on person towed	s.234(1)	OUT
6m	Towing a person after dark	s.234(2)	OUT
6m	Failing to safeguard opening in ice, etc.	s.243.3(c)	OUT
6m	Publication of evidence concerning sexual activity	s. 246.6(5)	OUT
2	Woman procuring her miscarriage	s.251(2)	OUT
2	Supplying noxious things	s.252	OUT
2	Pretending to solemnize marriage	s.258	OUT
2	Marriage contrary to law	s.259	OUT
2	Blasphemous libel	s.260	OUT
5	Punishment of libel known to be false	s.264	OUT
2	Punishment for defamatory libel	s.265	OUT

6 Month Maximum

Current Maximum	Offence	Section	Presumptive Disposition
2*	Theft under \$1000	s.283/294(b)	OUT
2	Possession of device to obtain telecommunication service	s.287.1	OUT
6m	Taking motor vehicle without consent	s.295	OUT
6m	Dealer in second-hand goods trading lumber equipment without written consent	s.299(2)	OUT
2	Fraudulent concealment	s.301	OUT
2	Possession of instruments for breaking into coin operated exchange devices	s.310	OUT
6m	Failing to keep record of transaction in auto master keys	s.311(4)	OUT
2*	Possession of property obtained by crime under \$1000	s.312/313(b)	OUT
2*	False pretence leading to theft under \$1000	s.319/320(2)(b)	OUT
6m	Fraudulently obtaining food and lodging	s.322(1)	OUT
6m	Pretending to practice witchcraft	s.323	OUT
2	False messages with intent to injure or harm	s.330(1)	OUT
6m	Indecent telephone calls	s.330(2)	OUT
6m	Harassing telephone calls	s.330(3)	OUT
2*	Fraud under \$1000	s.338(1)(b)	OUT
6m	Fraud in relation to fares, etc.	s.351(1)	OUT
6m	Bribing fare collector	s.351(2)	OUT
6m	Unlawfully obtaining transportation	s.351(3)	OUT

6 Month Maximum

Current Maximum	Offence	Section	Presumptive Disposition
6m	Falsifying employment record	s.356	OUT
6m	Obtaining carriage by false billing	s.359(1)	OUT
6m	Falsely personating a candidate at an examination	s.362	OUT
6m	Falsely representing that goods are made by a person holding a royal warrant, etc.	s.371	OUT
2*	Offences in relation to wrecked vessel	s.373	OUT
2*	Reception, possession or delivery of public stores	s.375(2)	OUT
6m	Unlawful use of military uniforms or certificates	s.377	OUT
6m	Intimidation	s.381	OUT
6m	Offences by employers re: trade unions	s.382	OUT
6m	Issuing trading stamps, employee, agent	s.384(1)	OUT
6m	Issuing trading stamps, merchant, dealer	s.384(2)	OUT
2*	False alarm of fire	s.393	OUT
6m	Interfering with the saving of wreck	s.394(2)	OUT
6m	Interfering with marine signals	s.395(1)	OUT
6m	Interfering with boundary marks, etc.	s.398	OUT
6m	Injuring or endangering other animals	s.401	OUT
6m	Causing unnecessary suffering (to animals or birds)	s.402(2)	OUT
6m	Ownership, custody or control of animal or bird when prohibited from so doing	s.402(6)	OUT

6 Month Maximum

Current Maximum	Offence	Section	Presumptive Disposition
6m	Keeping of cock-pits	s.403	OUT
6m	Manufacturing or possession of tokens	s.412	OUT
6m	Defacing current coins	s.414	OUT
6m	Printing of circulars, etc., in likeness of notes	s.415(a),(b)	OUT
6m	Printing anything in likeness of notes	s.415(2)	OUT
6m	Breach of court order restricting public and publicity	s.442(4)	OUT
6m	Publication concerning search, before charges laid	s.443.2	OUT
6m	Failure to comply with a court order directing matters not to be published	s.457.2(2)	OUT
6m	Failure to comply with order restricting publication of evi- dence taken at a preliminary inquiry	s.467(3)	OUT
6m	Failure to comply with a restriction on publication when a jury is not present	s.576.1	OUT
6m	Disclosure of jury proceed- ings	s.576.2	OUT
3m	Contempt of court	s.636	QO
6m	Failure to comply with a pro- bation order	s.666	QO
6m	Breach of recognizance	s.746	OUT
7*	Possession of narcotic	NCA s.3	OUT
3*	Possession of restricted drug	FDA s.41	OUT

* See note p. 493.

Attempts – Conspiracies – Accessories

Except as otherwise expressly provided in the legislation, the following rule applies to attempts, conspiracies and accessories (see *Criminal Code* subsections 421, 422, 423 for offence descriptions and penalties).

1. Everyone who attempts to commit or is an accessory after the fact to the commission of any offence is liable to imprisonment for a term that is one-half the longest term prescribed for that offence as well as being subject to the same presumptive disposition.
2. Everyone who counsels, procures or incites another person to commit any offence is liable to the same maximum penalty to which a person who attempts to commit that offence is liable and subject to the same presumptive disposition.
3. Everyone who conspires to prosecute a person for an alleged offence, knowing that he did not commit that offence is liable to the same maximum penalty to which a person who attempts to commit that offence and is subject to the same presumptive disposition.

Appendix F

Guideline Prototypes

This appendix contains prototype sheets for selected offences. Each prototype contains: (i) an offence description; (ii) proposed maximum penalty; (iii) presumptive disposition; (iv) guidelines range; (v) information on current practice (where available); and (vi) information on case law (where available). These offences were selected to represent a variety of offences.

Notes:

1. Current practice: The Canadian Sentencing Commission drew most heavily upon two sources of information. These were (A) Correctional Sentences Project, and (B) Canadian Sentencing Commission Project.

(A) *Correctional Sentences Project*: this was a study undertaken for the Department of Justice in consultation with the Canadian Sentencing Commission. It documented the sentences given to admissions to provincial and federal correctional institutions during the fiscal year 1984-85. Not all provinces were able to supply information for all offences. Also, the data on custodial terms are presented in intervals (e.g., 36-42 months). For the sake of brevity a single value has been entered in these guideline sheets. The reader is urged to consult the reports (Hann and Kopelman, 1986) of these data for further details of the project.

(B) *Canadian Sentencing Commission Project*: with the co-operation of the Canadian Centre for Justice Statistics, the Canadian Sentencing Commission compiled a data-base derived from the fingerprint files of the R.C.M.P. This included a sub-set of the offences covered in the Correctional Sentences Project. It covered the years 1983-84. Since this source was not designed to provide systematic, accurate sentencing data, it suffers from certain deficiencies, most notably with respect to undercoverage of certain dispositions, for some offences. The Commission was made aware of these deficiencies by the Canadian Centre for Justice Statistics. The reader is directed to a recent publication by the Department of Justice (Hann and Harman,

1986) for a full discussion of this data-base. Whenever possible, sentencing trends were cross-checked using both data-bases, as well as earlier work by the Department of Justice (Hann et al. 1983). It would not be surprising if the two sources revealed quite different pictures of sentencing. They cover different time-periods and reflect very different biases. However it can be said with some confidence that the picture of sentencing which emerges from the two sources is quite similar. The reader can verify this by comparing the medians and 90th percentiles provided by the different sources.

2. The data on current practice presented here reflect the current sentencing process, including the possibility of full release on discretionary parole as early as one-third of the sentence and release on mandatory supervision at the two-thirds mark. The proposals of the Sentencing Commission abolish discretionary release on full parole and reduce remission to one-quarter of the sentence. Thus, a three year sentence under the system proposed by the Commission would be significantly more severe than a three year sentence imposed under the current system.
3. These prototypes are designed to provide the reader with an idea of the kind of information contained in a guideline sheet .
4. For further discussion of maximum penalties, see Chapter 9.
5. For further discussion of presumptive dispositions and guidelines, see Chapter 11.

Guideline Prototype

I. Offence:	Manslaughter s.219, <i>Criminal Code</i>
II. Maximum:	12 Years
III. Presumptive Disposition:	Presumption of Custody (IN)
IV. Guidelines:	Range: 4 – 6 Years

Advisory Information

V. Current Practice

(These data reflect sentencing under the current system which includes full release on parole as early as one-third and remission based release after an inmate has served two-thirds of sentence. To get an idea of time actually served by inmates, these sentences must be discounted to a greater degree than would the ranges proposed by the Commission).

Criminal Code sections 215, 217, 219

Percentiles (m = months, y = years)

<i>Source</i>	<i>25th</i>	<i>50th (Median)*</i>	<i>75th</i>	<i>90th**</i>
Correctional Sentences Project	3.5y	5y	10y	10y
Sentencing Commission		5y	12y	

- * The median sentence can be regarded as the sentence in the middle of the distribution: of all cases resulting in custody, half are above (i.e. higher) and half are below it.
- ** The 90th percentile is that sentence below which 90% of cases can be found. To illustrate, the 90th percentile for manslaughter during this period was 12 years (Sentencing Commission). This means that of all offenders who were convicted of manslaughter *and* who were sent to prison, 90% received terms of imprisonment that were 12 years or below.

VI. Case Law:

1. Description:
 - “manslaughter is of course a crime which varies very greatly in its seriousness. It may sometimes come very close to inadvertence. That is one end of the scale. At the other end of the scale, it may sometimes come very close to murder.” *R v. Cascoe* (1970), 54 Cr. App. R. 401 (C.A.) [British case]

- “There are certain cases of manslaughter where the line between crime and accident is narrow... *The Queen v. Gregor* (1953), 31 M.P.R. 99 (N.S.S.C.)

2. Aggravating and Mitigating Factors:

a) *Aggravating*

- i) Premeditation:
 - callousness of the preparation. *R. v. Warner, Urqhart, Martin and Mullen*, [1946] O.R. 808 (Ont. C.A.)
- ii) Victim Stranger:
 - where the offender is a danger to the public as seen by the fact that victim was a total stranger. *R. v. Johnson* (1971), 4 C.C.C. (2d) 226 (Ont. C.A.)
- iii) Age of victim:
 - where the victim is a child. *R. v. Bezeau* (1958), 28 C.R. 301 (Ont. C.A.)
- iv) Alcohol involved:
 - where alcohol was involved. *R. v. Sadowski* (1968), 3 C.R.N.S. 269 (Ont. C.A.)
 - where offender is an incurable alcoholic and presents a continuing danger. *R. v. Empey* (1978), 4. C.R. (3d) S-59 (Ont. C.A.)
- v) Criminal record:
 - where the record is lengthy and involves violence. *R. v. MacDonald* (1974), 27 C.R.N.S. 212 (Ont. C.A.)

b) *Mitigating*

- i) Domestic context:
 - where the death occurs as a result of a domestic quarrel involving relatives or friends. *R. v. Muttart* (1971), Nfld. & P.E.I.R. 404 (P.E.I. C.A.)
 - where the accused is a mother and her incarceration would adversely affect her children, alternatives should be used. *R. v. Henry* (1977), 20 Crim. L.Q. 139 (Que. C.A.)
 - where the victim is a child, the “domestic context” no longer operates as a mitigating factor. *R. v. Bezeau* (1958), 28 C.R. 301 (Ont. C.A.) *R. v. Bompas* (1959), 123 C.C.C. 39 (Alta. S.C.) unless parents have personality defect (i.e. suffer from mental retardation) *R. v. Antone and Antone* (1977), 20 Crim. L.Q. 143 (Ont. C.A.)

- where the offender repeatedly assaulted the victim (usually his wife) in the past, this will also negate the mitigating effect of the "domestic context". *R. v. MacDonald* (1974), 27 C.R.N.S. 212 (Ont. C.A.)
- ii) Intoxication:
 - where the accused was drunk and only intended to frighten the victim. *R. v. Baldhead*, [1966] 4 C.C.C. 183 (Sask. C.A.)
- iii) Native offender:
 - where the offender is native and for whom a penitentiary sentence would involve being sent away from the remote area in which he lived without contact with the outside world. *R. v. Fireman* (1971), 4 C.C.C. (2d) 82 (Ont. C.A.)
- iv) Inadvertance:
 - where death was the result of inadvertance on the part of the offender. *R. v. O'Neill* (1966), 51 Cr. App. R. 241 (C.A.)
- v) Provocation:
 - where the offender was provoked or acting in self-defence. *R. v. Muttart* (1971), 1 Nfld. and P.E.I.R. 404 (P.E.I.C.A.)
- vi) Offender's suffering:
 - where the offence itself carries with it an inherent punishment (i.e. killing a member of one's own family or being seriously disfigured or maimed as a result of the incident. *R. v. Beckner* (1984), 15 C.C.C. (3d) 244 (Ont. C.A.) *A.G. of Quebec v. Rubio* (1984), 39 C.R. (3d) 67 (Que. S.C.)
- vii) Other factors:
 - include previous good character of the accused, the unlikely repetition of the crime and the age of the accused. *The Queen v. Gregor* (1953), 31 M.P.R. 99 (N.S.S.C.)

Guideline Prototype

- I. Group of Offences:** Theft Over \$1000
s.283/294(a), *Criminal Code*
Possession of Property obtained by Crime Over \$1000
s.312/313(a), *Criminal Code*
False Pretence Leading to Theft Over \$1000
s.319/320(2)(a), *Criminal Code*
Fraud Over \$1000 or Pertaining to a Testamentary Instrument
s.338(1)(a), *Criminal Code*
- II. Maximum:** 6 Years
- III. Presumptive Disposition:** Qualified Presumption of Non-Custody (QO) (i.e. "out" unless it is a serious instance of the offence *and* the offender has a relevant criminal record).
- IV. Guidelines:** Range*: 1-2 Years
- *For those cases resulting in custody

Advisory Information

V. Current Practice:

(These data reflect sentencing under the current system which includes full release on parole as early as one-third and remission based release after an inmate has served two-thirds of sentence. To get an idea of time actually served by inmates, these sentences must be discounted to a greater degree than would the ranges proposed by the Commission).

1. Theft

Percentiles (m = months, y = years)

Source	25th	50th (Median)*	75th	90th**
Correctional Sentences				
Project (s. 283, 294)	1m	3m	5m	1y
Sentencing Commission				
(s. 294(a))		4m		18m

* The median sentence can be regarded as the sentence in the middle of the distribution: of all cases resulting in custody, half are above (i.e. higher) and half are below it.

** The 90th percentile is that sentence below which 90% of cases can be found. To illustrate, the 90th percentile for theft over \$1,000 during this period was 18 months (Sentencing Commission). This means that of all offenders who were convicted of theft over \$1,000 and who were sent to prison, 90% received terms of imprisonment that were 18 months or below.

2. Possession

Percentiles (m = months, y = years)

<i>Source</i>	<i>25th</i>	<i>50th (Median)</i>	<i>75th</i>	<i>90th</i>
Correctional Sentences Project (s. 312, 313)	1m	3m	6m	1y
Sentencing Commission (s. 313(a))		4m		2y

3. False Pretence Over

Percentiles (m = months, y = years)

<i>Source</i>	<i>25th</i>	<i>50th (Median)</i>	<i>75th</i>	<i>90th</i>
Correctional Sentences Project	n/a	n/a	n/a	n/a
Sentencing Commission (s. 320(2)(a))		3m		2y

4. Fraud Over

Percentiles (m = months, y = years)

<i>Source</i>	<i>25th</i>	<i>50th (Median)</i>	<i>75th</i>	<i>90th</i>
Correctional Sentences Project (s. 338)	1m	3m	1y	18m
Sentencing Commission (s. 338(1)(a))		6m		2y

VI. Case Law:

No clear principles emerged which were relevant to the entire group of offences.

Guideline Prototype

- I. **Offence:** Sexual Assault with a Weapon, Threats to a third Party or Causing Bodily Harm
s. 246.2, *Criminal Code*
- II. **Maximum:** 9 Years
- III. **Presumptive Disposition:** Presumption of Custody (IN)
- IV. **Guidelines:**

<i>Offence</i>	<i>Description</i>	<i>Range</i>
Sexual Assault with a Weapon	Section 246.2 includes the elements of presence or use of a weapon, threats to cause bodily harm to a third person or causing bodily harm to the victim.	2-4 yrs.

Note: Although this offence is clearly related to s.246.3 and s.246.1, advisory information is only provided for s. 246.2

Advisory Information

V. **Current Practice:**

(These data reflect sentencing under the current system which includes full release on parole as early as one-third and remission based release after an inmate has served two-thirds of sentence. To get an idea of time actually served by inmates, these sentences must be discounted to a greater degree than would the ranges proposed by the Commission).

Criminal Code sections 246.2, 246.2(a), 246.2(b), 246.2(c), 246.2(d)

Percentiles (m = months, y = years)

<i>Source</i>	<i>25th</i>	<i>50th (Median)*</i>	<i>75th</i>	<i>90th*</i>
Correctional Sentences Project	6m	2.5y	5y	7y
Sentencing Commission		3y		8y

* The median sentence can be regarded as the sentence in the middle of the distribution: of all cases resulting in custody, half are above (i.e. higher) and half are below it.

** The 90th percentile is that sentence below which 90% of cases can be found. To illustrate, the 90th percentile for sexual assault with a weapon during this period was 8 years (Sentencing Commission). This means that of all offenders who were convicted of sexual assault with a weapon *and* who were sent to prison, 90% received terms of imprisonment that were 8 years or below.

VI. Case Law:

1. Description:

- “In ascending order of seriousness, sexual assault (s.246.1), sexual assault with a weapon or by threats by a third person (s.246.2) and aggravated sexual assault (s.246.3) resemble the gradation of assault in s.245.

‘sexual assault’ includes an act which is intended to degrade or demean another person for sexual gratification.”

R. v. Taylor (1985), 36 Alta. L.R. (2d) 275 (Alta. C.A.)

- “One archetypical case of sexual assault is where a person, by violence or threat of violence, forces an adult victim to submit to sexual activity of a sort or intensity such that a reasonable person would know beforehand that the victim likely would suffer lasting emotional or psychological injury, whether or not physical injury occurs. The injury might come from the sexual aspect of the situation or from the violence used or from any combination of the two. This category, which we would describe as major sexual assault, includes not only what we suspect will continue to be called rape, but obviously also many cases of attempted rape, *fellatio*, *cunnilingus*, and bug-gery where the foreseeable major harm which we later describe more fully is present.”

“The starting point for a major sexual assault is 3 years assuming a mature accused with previous good character and no criminal record”.
(re: s. 246.1)

R. v. Sandercock (1986), 48 C.R. (3d) 154 (Alta. C.A.)

- “This section is a step up in severity to s. 245 and includes sexual assaults involving the actual use of a weapon or imitation thereof or the threat of the use of a weapon. (Actual possession of the weapon is not a condition precedent).” (re: s.246.2)

R. v. Kelly (1985), 37 C.R. (3d) 190 (B.C.C.A.)

2) Aggravating and Mitigating Factors

a) *Aggravating:*

- i) Pre-meditation:
 - where the attack is planned and deliberate, whether the offender has stalked his

- victim or chosen her at random. *R. v. Cardinal*, [1983] Alta. D. 7515-01
- ii) Degree of force:
 - where the assault involved protracted forcible confinement or kidnapping. *R. v. Craig* (1975), 28 C.C.C. (2d) 311 (Alta. C.A.)
 - includes acts of horror or degradation. *R. v. Sweitzer* (1980), 26 A.R. 208 (Alta. C.A.)
 - iii) Repeated acts:
 - where there are repeated assaults or other acts of degradation. *R. v. Beauregard* (1983), 38 A.R. 350 (Alta. C.A.)
 - where a parent is engaged in intercourse with daughters over a period of many years and impregnated them. *Regina v. R.P.T. and Regina v. T.S.* (1984), 7 C.C.C. (3d) 109 (Alta. C.A.)
 - iv) Location:
 - where there is an invasion of the sanctity of the home. *R. v. Henry* (1983), 44 A.R. 242 (Alta. C.A.)
 - v) Weapon:
 - the display or use of weapon. *R. v. Sinitoski* (1983), 46 A.R. 206 (Alta. C.A.)
 - use of a gun. *F. v. R.* (1982), 2nd Alta. L.R. (2d) 90 (Alta C.A.)
 - vi) Several offenders:
 - where several offenders act together. *R. v. Brown and Murphy* (1982), 41 A.R. 69 (Alta. C.A.)
 - vii) Characteristics of the victim:
 - her age and whether she was a virgin. *R. v. Wilmott*, [1967] 1 C.C.C. 171 (Ont. C.A.)
 - b) *Mitigating*
 - i) Offender's good character:
 - where there is a reduction in sentence length in recognition of the accused's previous good character. (Such a reduction can be rejected where there is a significant criminal record). *R. v. Hastings* (1985), 58 A.R. 108 (Alta. C.A.)

- ii) Guilty plea:
 - not only relevant to show remorse – accused should receive substantial recognition either for sparing the victim the need to testify or to wait to testify or for waiving some of his constitutional rights in deference to expeditious justice. *R. v. Sandercock* (1986), 48 C.R. (3d) 154 (Alta. C.A.)
- iii) Remorse:
 - offender shows remorse. *R. v. Henry* (1983), 44 A.R. 242 (Alta. C.A.)
- iv) Spontaneous offence:
 - the fact that an assault is totally spontaneous can offer mitigation, and sometimes drunkenness is a factor in determining whether the attack is spontaneous or whether the likely consequences were fully appreciated. *R. v. Sandercock* (1986), 48 C.R. (3d) 154 (Alta. C.A.)
- v) Provocation:
 - provocation of the offender by the victim is an obvious mitigating factor. *R. v. Sandercock* (1986), 48 C.R. (3d) 154 (Alta. C.A.)

Guideline Prototype

- I. Offence:** Break and Enter/
Dwelling-House*
s. 306(1)(d)
- II. Maximum:** 6 Years
- III. Presumptive Disposition:** Qualified Presumption of
Custody (QI) (i.e. unless it
is not a serious instance
of the offence *and* the offender
has no relevant record).
- IV. Guidelines:**

<i>Offence</i>	<i>Description</i>	<i>Range*</i>
Break and Enter	Breaking and entering a private dwelling and committing (or intending to commit) an indictable offence therein or breaking out of a private dwelling after having committed or intending to commit an indictable offence therein	3-18 months

* For those receiving custody

Advisory Information

V. Current Practice:

(These data reflect sentencing under the current system which includes full release or parole as early as one-third and remission based release after an inmate has served two-thirds of sentence. to get an idea of time actually served by inmates, these sentences must be discounted to a greater degree than would the ranges proposed by the Commission).

Criminal Code sections 306, 306(1), 306(1)(a), 306(1)(b), 306(1)(c), 306(1)(c)(i), 306(1)(c)(ii) (Includes break and enter of dwelling and non-dwelling):

Percentiles (m = months, y = years)

Source	25th	50th (Median)*	75th	90th**
Correctional Sentences Project (both dwelling and business premises)	3m	6m	1y	2y
Sentencing Commission (both dwelling and business premises)		6m		2y

* The median sentence can be regarded as the sentence in the middle of the distribution: of all cases resulting in custody, half are above (i.e. higher) and half are below it.

** The 90th percentile is that sentence below which 90% of cases can be found. To illustrate, the 90th percentile for break and enter during this period was 2 years (Sentencing Commission). This means that of all offenders who were convicted of break and enter and who were sent to prison, 90% received terms of imprisonment that were 2 years or below.

VI. Case Law:

1. Description:
 - No particular sub-categorization; variation as *per* aggravating and mitigating factors.
2. Aggravating and Mitigating Factors
 - a) *General*
 - i) Amount stolen:
 - the value of the goods stolen during the break and enter will aggravate or mitigate depending: *R. v. Prieduls* (Unreported) June 6, 1975 (Ont. C.A.)
R. v. Lemire (Unreported) June 8, 1977 (B.C.C.A.)
 - b) *Aggravating*
 - i) Series of offences:
 - where there is a string of offences. *R. v. Garcia and Silva*, [1970] 3 C.C.C. 124 (Ont. C.A.) N.B. where the number of offences is low and the accused is youthful, custody is to be avoided. *R. v. Dengo* (1972), 15 Crim. L.Q. 259 (Ont. C.A.)
 - ii) Premeditation:
 - where the offence is premeditated. *R. v. Murray* (1960), 32 W.W.R. 312 (Sask. C.A.)
 - iii) Criminal record:
 - where the offender has a criminal record - if the accused is a "professional burglar" this will justify a very serious penalty. *R. v. Brooks*, [1970] 4 C.C.C. 377 (Ont. C.A.)
 - c) *Mitigating*
 - i) Background of offender:
 - where the offender has no criminal record and has a good employment history and/or a supportive family. *R. v.*

Davenport (Unreported) February 17, 1977 (Ont. C.A.)

- where the offender has an unfortunate background or family history. *R. v. Alderton* (1985), 44 C.R. (3d) 254 (Ont. C.A.)
- ii) Offender's alcoholism:
 - where the offender suffers from alcoholism and is trying to rehabilitate himself. *R. v. Alderton* (1985), 44 C.R. (3d) 254 (Ont. C.A.)
- iii) Age:
 - where the offender is a youth. *R. v. Alderton* (1985), 44 C.R. (3d) 254 (Ont. C.A.)
- iv) Desire for rehabilitation:
 - where the offender has a desire to be rehabilitated (and there are facilities available to assist in this). *R. v. Redstar* (1984), 34 Sask. R. 229 (Sask. C.A.)
 - where the offender has a criminal record but has "gone straight" for a period of time. *R. v. Murray* (1960), 32 W.W.R. 312 (Sask. C.A.)
- v) Mental Capacity:
 - where the offender is of borderline intelligence. *R. v. Lewis* (1985), 67 N.S.R. (2d) 198 (N.S.S.C.)
- vi) Spontaneous offence:
 - where there was only one offence and it was committed on impulse. *R. v. Murray* (1960), 32 W.W.R. 312 (Sask. C.A.)
- vii) Intoxicated:
 - where the offender was intoxicated when the offence was committed. *R. v. Ward* (1976), 14 N.S.R. (2d) 96 (N.S.S.C.)

Guideline Prototype (Stratified Offence)

- I. Offence:** Robbery
ss. 302/303, *Criminal Code*
- II. Maximum:** 9 Years
- III. Presumptive Disposition:** Presumption of Custody (IN)
- IV. Guidelines:**

<i>Category</i>	<i>Description</i>	<i>Range</i>
Robbery I: (Aggravated)	Armed robbery of banks, merchants, private dwelling, with threats or use of violence	2-4 Years
Robbery II: (Simplified)	Armed robbery of unprotected commercial outlets in the absence of actual physical harm to the victim; includes purse-snatching	4-16 Months

Advisory Information

V. Current Practice (All robberies combined)

(These data reflect sentencing under the current system which includes full release on parole as early as one-third and remission based release after an inmate has served two-thirds of sentence. To get an idea of time actually served by inmates, these sentences must be discounted to a greater degree than would the ranges proposed by the Commission).

Criminal Code sections 302, 302(a), 302(b), 302(c), 302(d), 303

Percentiles (m = months, y = years)

<i>Source</i>	<i>25th</i>	<i>50th (Median)*</i>	<i>75th</i>	<i>90th**</i>
Correctional Sentences Project	1y	2y	3.5y	6y
Sentencing Commission		2y		7y

* The median sentence can be regarded as the sentence in the middle of the distribution: of all cases resulting in custody, half are above (i.e. higher) and half are below it.

** The 90th percentile is that sentence below which 90% of cases can be found. To illustrate, the 90th percentile for robbery during this period was 7 years (Sentencing Commission). This means that of all offenders who were convicted of robbery *and* who were sent to prison, 90% received terms of imprisonment that were 7 years or below.

VI. Case Law:

1. Description:
 - "simple" robbery is: unsophisticated armed robbery of unprotected commercial outlets in the absence of actual physical harm to the victim and with modest success. *R. v. Johnas* (1983), 2 C.C.C. (3d) 490 (Alta. C.A.)

- “Armed robbery and robbery with violence require strongly deterrent sentences of imprisonment and that in the absence of exceptional mitigating circumstances such sentences should not be less than 3 years.” (re: Robbery I) *R. v. Owen* (1982), 50 N.S.R. (2d) 696 (N.S.S.C.)

2. Aggravating and Mitigating Factors

a) *General:*

- i) Locality of the offence:
 - where a preliminary indication of the seriousness of the offence is whether it took place in a financial institution, a small commercial establishment, or a night depository. *R. v. Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.) *R. v. Kurichh* (1983), 9 W.C.B. 138 (Alta. C.A.)
- ii) Degree of violence:
 - where a preliminary indication of the seriousness of the offence is the degree of violence or threat of violence used. *R. v. Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.)

b) *Aggravating:*

- i) Use of weapon:
 - use of firearm or possession of a loaded gun. *R. v. Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.)
 - use of a weapon – even if it is inoperable, it is still a terrifying experience for the victim. *R. v. Hessam* (1983), 43 A.R. 247 (Alta. C.A.)
 - possession of any weapon, including an imitation. *R. v. Johnston* (1976), 18 Crim. L.Q. 286 (Ont. C.A.)
- ii) Degree of violence:
 - degree of actual physical violence or threat of violence. *R. v. Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.)
 - where victim is seriously injured. *R. v. Miller and Couvreau* (1972), 8 C.C.C. (2nd) 97 (Man. C.A.)
- iii) Character of victim:
 - presence of vulnerable victim. *R. v. Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.)
 - character of victim may aggravate but never mitigate. *R. v. Duval* (1970), 15 C.R.N.S. 140 (Que. C.A.)

- iv) Criminal record:
 - where offender has a serious criminal record showing "confirmed criminality". *R. v. McDonald* (1969), 12 C.R.N.S. 215 (Ont. C.A.)
- v) Premeditation:
 - degree of planning involved. *R. v. Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.)
- vi) Amount stolen:
 - the greater the amount, the more serious the offence is thought to be. *R. v. Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.)
- vii) Prevalence:
 - increased incidence of robbery is a proper factor to consider. *R. v. Mitchell* (1981), 23 C.R. (3d) 1 (N.S.S.C.)
- c) *Mitigating:*
 - i) Nature of record:
 - where offender's long record includes no violence or penitentiary time. *R. v. Dummont and Dummont* (1970), 12 Crim. L.Q. 344 (Sask. C.A.)
 - where offender's record is virtually clear of prior offences. *R. v. Hessam* (1983), 43 A.R. 247 (Alta. C.A.)
 - ii) Spontaneous offence:
 - where robbery was not planned or premeditated. *R. v. Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.)
 - iii) Amount stolen:
 - where amount of take or its value is low. *R. v. Windsor et al.* (Unreported) December 30, 1976 (Ont. C.A.) *R. v. MacDonald et al.* (1973), 16 Crim. L.Q. 143 (Ont. C.A.)
 - iv) Youthful offender:
 - in some cases, extreme youth is a mitigating factor. *R. v. Casey* (1977), 20 Crim. L.Q. 145 (Ont. C.A.)
 - where a youthful offender is under the influence of an older accomplice. *R. v. Hessam* (1983), 43 A.R. 247 (Alta. C.A.)
 - v) Mental incompetence:
 - where offender is mildly retarded this may mitigate. *R. v. MacLaren* (1984), 62 N.S.R. (2d) 152 (N.S.S.C.)
 - where offender suffers from severe mental illness. *R. v. Thompson* (1983), 58 N.S.R. (2d) 21 (N.S.S.C.)

- vi) Assisting authorities:
 - where there is co-operation with the police, or a guilty plea. *R. v. Turner*; *R. v. Jurik* (1984), 50 A.C. 49 (Ont. C.A.)
- vii) Guilty plea:
 - where offender pleads guilty at first opportunity. *R. v. Hessam* (1983), 43 A.R. 247 (Alta. C.A.)
- viii) Remorse:
 - remorse is generally a mitigating factor. *R. v. Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.)

Guideline Prototype (Stratified Offence)

- I. Offence:** Trafficking; Possession for Purpose of Trafficking
s. 4, *Narcotic Control Act*
- II. Maximum:** 12 Years
- III. Presumptive Disposition:** Presumption of Custody (IN)
- IV. Guidelines:**

<i>Category</i>	<i>Description</i>	<i>Range</i>
Trafficking I (Major)	Large-scale commercial: large-scale distribution or wholesaling or possession of large quantities for that purpose	2-4 Years
Trafficking II (Minor)	Petty retailing: peddling of small quantities, isolated sales or transfers or possession for that purpose	1-6 Months

Advisory Information

V. Current Practice

(These data reflect sentencing under the current system which includes full release on parole as early as one-third and remission based release after an inmate has served two-thirds of sentence. To get an idea of time actually served by inmates, these sentences must be discounted to a greater degree than would the ranges proposed by the Commission).

Narcotic Control Act sub-sections 4, 4(1), 4(2), 4(3)

Percentiles (m = months, y = years)

<i>Source</i>	<i>25th</i>	<i>50th (Median)*</i>	<i>75th</i>	<i>90th**</i>
Correctional Sentences				
Project	1m	3m	1y	3.5y
Sentencing Commission		3m		2y

* The median sentence can be regarded as the sentence in the middle of the distribution: of all cases resulting in custody, half are above (i.e. higher) and half are below it.

** The 90th percentile is that sentence below which 90% of cases can be found. To illustrate, the 90th percentile for trafficking during this period was 2 years (Sentencing Commission). This means that of all offenders who were convicted of trafficking *and* who were sent to prison, 90% received terms of imprisonment that were 2 years or below.

VI. Case Law:

1. Description:

a) General:

Where three categories of trafficking are suggested:

- i) large-scale commercial distribution or wholesaling or possession of large quantities for that purpose
- ii) petty retailing or peddling of small quantities or possession for that purpose
- iii) isolated sales or transfers in a social setting by youthful offenders.

R. v. Fifield (1978), 5 C.R. (3d) S-9

(N.S.C.A.) *R. v. Longueay* (1978), 3 C.R. (3d) S-29 (N.S.C.A.)

b) Ranges:

i) large scale commercial operation:

7 years imprisonment for \$2,000,000 worth.
Carr and Robson v. The Queen (1976), 15 N.S.R.(2d) 465 (N.S.S.C.).

5 years imprisonment for \$3,000,000 worth of hashish (1,700 pounds). *R. v. Erven* (1977), 21 N.S.R.(2d) 654 (N.S.S.C.).

2 years imprisonment for marijuana (8 pounds). *R. v. Eustace* (1977), 23 N.S.R.(2d) 524 (N.S.S.C.).

3 years imprisonment for \$40,000 worth of hashish (20 pounds). *R. v. James* (1978), 24 N.S.R. (2d) 423 (N.S.S.C.).

ii) petty retailer:

12 months imprisonment for hashish (approximately 1 1/3 pounds in packages) – 24 years old student. *Spencer v. The Queen* (1973), 6 N.S.R. (2d) 555 (N.S.S.C.).

60 days intermittent imprisonment for possession of thirteen 1 ounce packages – 18 years old. *R. v. Stuart* (1975), 24 C.C.C. (2d) 370 (N.S.C.A.).

4 months imprisonment for hashish (3/4 pound) – 22 years old with a good record. *Baker v. The Queen* (1977), 17 N.S.R. (2d) 239 (N.S.S.C.).

90 days intermittent imprisonment for marijuana (approximately 1 pound).
McLaughlan v. The Queen (1977), 17 N.S.R. (2d) 604 (N.S.C.A.).

iii) social sale or transfer:

2 and 4 months imprisonment for two small sales of marijuana – 19 years old. *R. v. MacArthur* (1975), 9 N.S.R.(2d) 353 (N.S.S.C.).

90 days intermittent imprisonment for marijuana (approximately 1 ounce). *R. v. Eisan* (1975), 12 N.S.R. (2d) 34 (N.S.S.C.)

6 months imprisonment for hashish (4 capsules) – 20 years old with a prior record. *R. v. Fitzgerald* (1976), 14 N.S.R. (2d) 638 (N.S.S.C.)

suspended sentence for hashish \$5.00 worth – 19 years old. *R. v. McLay* (1977), 17 N.S.R. (2d) 135 (N.S.C.A.)

Note:

Categories two (petty retailing), and three (social sale) are similar both in nature and proposed range and have been collapsed into one category for the purposes of this guideline sheet. The major distinction in trafficking cases in both the case law and current practice is between large-scale commercial ventures on the one hand and petty retailing (where a social sale represents the least serious type of petty retailing) on the other.

2. Aggravating and Mitigating Factors

a) General:

i) Type of drug:

- major factor in determining the seriousness of the offence: *Canadian Sentencing Handbook* (pp. 65-87) drug offences are discussed under the headings: marijuana, heroine, morphine, cocaine, LSD, P.C.P., amphetamines.
- as for the relative seriousness of the types of drugs, cocaine is considered slightly more dangerous than marijuana and hashish but much less so than heroine and alcohol. *R. v. Libby* (1986), 23 C.R. (3d) 10 (Que. C.S.P.)
- even though heroine is considered to be one of the "worst" types of narcotics, the type of drug is not enough to make it a

- “worst case” demanding the maximum penalty. Other factors must be considered. *R. v. Ko* (1980), 11 C.R. (3d) 298 (B.C.C.A.)
- ii) Type of venture:
 - size of the operation – big stakes in a very dangerous business attract big gains and require an equally imposing penalty. *R. v. Ponak and Gunn* (1973), 11 C.C.C. (2d) 346 (B.C.C.A.)
 - possession of weapon is not in itself an aggravating factor but may be evidence of premeditation or a sophisticated organizational network. *R. v. Bosley and Duarte*, [1970] 1 C.C.C. 328 (Ont. C.A.)
 - iii) Amount of drug:
 - as indicating the nature of the distribution network. *R. v. McLay* (1977), 17 N.S.R. (2d) 135 (N.S.C.A.).
 - iv) Role of accused:
 - accused’s position in the hierarchy (if any), frequency of accused’s sales, number of people involved. *R. v. McLay* (1977), 17 N.S.R. (2d) 135 (N.S.C.A.)
- b) *Aggravating:*
- i) Major role of offender:
 - as part of a “major trafficking equation”. *R. v. Ponak and Gunn* (1973), 11 C.C.C. (2d) 346 (B.C.C.A.)
 - ii) Profit motive:
 - where the offender is an entrepreneur who traffics drugs strictly for profit. *R. v. Pearce* (1974), 16 C.C.C. (2d) 369 (Ont. C.A.)
 - consider also the value of drug as evidence of desire to secure large profits. *R. v. Ponak and Gunn* (1973), 11 C.C.C. (2d) 346 (B.C.C.A.)
 - iii) Previous criminal record:
 - particularly relevant if prior drug offences. *R. v. Babiak* (1975), 21 C.C.C. (2d) 464 (Man. C.A.)
 - iv) Nature of drug:
 - where the drug is “destructive to the life of the purchaser” (i.e. more serious than hashish and marijuana). *R. v. Di Giovanni* (1977), 10 C.C.C. (2d) 392 (Ont. C.A.)
 - v) Teenage buyers:
 - sales or attempted sales to teenage buyers highlights the “vicious” consequences

- of the drug trade. *R. v. Salamon* (1972), 6 C.C.C. (2d) 165 (Ont. C.A.)
- vi) Position of trust:
- physicians in positions of trust – abuse of physician/patient relationship motivated by profit. *R. v. Burke* (1978), 16 Nfld. and P.E.I.R. 132 (P.E.I.C.A.)
- c) *Mitigating:*
- i) Possibility of rehabilitation:
- in cases where the offender is a drug addict and may be rehabilitated. *R. v. Marcello* (1973), 11 C.C.C. (2d) 302 (Ont. C.A.)
 - responding well to treatment. *R. v. Wright*, [1976] 12 O.R. 8 (Ont. C.A.)
 - offender is a small-time pusher and user and shows post-arrest progress towards rehabilitation (e.g., desire to find a job and abandon the drug culture), court will be reluctant to impose a custodial term. *R. v. Longueay* (1979), 3 C.R. (3d) S-29 (N.S.C.A.)
- ii) Offender's background:
- where offender has a good reputation and a steady job. *R. v. Libby* (1980), 23 C.R. (3d) 10 (Que. C.S.P.)
 - youthfulness of the accused, apparent desire to reform, education records – usually in minor types of trafficking. *R. v. McLay* (1977), 17 N.S.R. (2d) 135 (N.S.C.A.)
 - where sales were part of a large scale operation, the court will not be impressed by the fact that the accused used his good reputation as a shield. *R. v. Kotrbaty* (1978), 5 C.R. (3d) S-13 (B.C.S.C.)
- iii) External influences:
- where but for the insistence of the undercover officer the accused would probably not have become involved in dealing cocaine. *R. v. Murphy* (1983), 44 Nfld. and P.E.I.R. 243 (P.E.I.C.A.)
- iv) Nature of drug:
- where substance sold wasn't the hard drug it was represented to be. *R. v. Masters* (1974), 15 C.C.C. (2d) 142 (Ont. C.A.)

- v) Financial need:
 - where economic pressures prompt involvement, rather than simple greed. *R. v. Bruckshaw* (1973), 9 C.C.C. (2d) 133 (B.C.C.A.)
- vi) Remorse:
 - lack of remorse cannot be used in order to increase a sentence but only as a reason for not extending a degree of leniency. *R. v. Campbell* (1977), 18 N.S.R. (2d) 547 (N.S.C.A.)
- vii) Absence of criminal record:
 - absence of previous convictions will not count as a mitigating factor of any significant value where the offender was involved in a relatively large-scale operation. *R. v. Kotrbaty* (1978), 5 C.R. (3d) S-13 (B.C.S.C.)
- viii) Assisting the authorities:
 - co-operation with the authorities in providing evidence against other accused is a factor. *R. v. Wong and Man* (1986), B.C. Decisions, Sentencing, 7400-01 (B.C.C.A.)

Appendix G

Explanation of the Qualified Presumptions

This appendix explains a critical component of the intermediate categories of presumption. Recall from the discussion in Chapter 11 that an offender convicted of a *qualified in* offence is incarcerated unless the offence is not serious (i.e., less serious than most instances of this crime) *AND* the offender has no relevant criminal record. The reader may ask why the conjunction “and” is used, rather than the disjunction “or”? There is an important logical reason why it cannot be “or”. This will become clear by considering the following:

There are four possible outcomes, that is, the offence can be serious/or not and the offender can have a record/or not. This gives rise to the following four possibilities.

Table 1

Presumption: QUALIFIED IN

(First interpretation: AND)

1. Offence is a serious instance; offender has relevant record	IN
2. Offence is a serious instance; offender has no relevant record	IN
3. Offence not a serious instance; offender has relevant record	IN
4. Offence not a serious instance; offender has no relevant record	OUT

It is obvious that all cases have to fall in one of these 4 categories: the offence is either serious or not and the offender either has or does not have a criminal record.

Now let's examine the presumptive dispositions. If we use “and”, then for 3 out of the 4 conditions the presumption is IN. (See Table 1). This is what one would expect from a presumptive IN disposition.

What happens if the "and" becomes an "or"? It will be seen that this change does not just decrease the number of offenders who get imprisonment, it changes the whole presumption. In fact it turns an "IN unless" into an "OUT unless".

Reading the wording, this time inserting an "or" instead of an "and", will make this clear.

An offender convicted of a "qualified in" offence is incarcerated unless the offence is not serious *OR* the offender has no relevant record. The four logical possibilities are the same, but the presumptions change.

Table 2

Presumption: QUALIFIED IN

(Second interpretation: OR)

1. Offence is a serious instance; offender has relevant record	IN
2. Offence is a serious instance; offender has no relevant record	OUT
3. Offence not a serious instance; offender has relevant record	OUT
4. Offence not a serious instance; offender has no relevant record	OUT

So the definition has to employ "and", not "or", for otherwise the presumed "IN" becomes a presumed "OUT".

Also, in describing qualified "OUT" offences, the word must be "and", not "or" as the qualified "OUT" also reverses, and becomes a presumed "IN". (i.e. 3/4 of cases are "OUT" using an "and"; 3/4 are "IN", using an "or").

On pages 313-315 of Chapter 11, we describe in words the eight possible outcomes that may result from the use of a qualified presumption of non-custody (a qualified "OUT"). It would also appear useful to provide the same information in the form of a diagram. We shall provide a diagram for the qualified "IN" and for the qualified "OUT".

Table 3

Compliance and Departure Outcomes for a Qualified Presumption of Custody

Presumption: QUALIFIED IN

<i>Case</i>	<i>Sentence</i>	<i>Outcome</i>
1. Offence is a serious instance; offender has relevant record	Custody (IN)	Compliance
2. Offence is not a serious instance; offender has no relevant record	Non-Custody (OUT)	Compliance
3. Offence is not a serious instance; offender has relevant record	Custody (IN)	Compliance
4. Offence is a serious instance; offender has no relevant record	Custody (IN)	Compliance
5. Offence is a serious instance; offender has a relevant record	Non-Custody (OUT)	Departure
6. Offence is not a serious instance; offender has no relevant record	Custody (IN)	Departure
7. Offence is not a serious instance; offender has relevant record	Non-Custody (OUT)	Departure
8. Offence is a serious instance; offender has no relevant record	Non-Custody (OUT)	Departure

Table 4

Compliance and Departure Outcomes for a Qualified Presumption of Non-Custody

Presumption: QUALIFIED OUT

<i>Case</i>	<i>Sentence</i>	<i>Outcome</i>
1. Offence is not a serious instance; offender has no relevant record	Non-Custody (OUT)	Compliance
2. Offence is a serious instance; offender has a relevant record	Custody (IN)	Compliance
3. Offence is a serious instance; offender has no relevant record	Non-Custody (OUT)	Compliance
4. Offence is not a serious instance; offender has a relevant record	Non-Custody (OUT)	Compliance
5. Offence is not a serious instance; offender has no relevant record	Custody (IN)	Departure
6. Offence is a serious instance; offender has a relevant record	Non-Custody (OUT)	Departure
7. Offence is a serious instance; offender has no relevant record	Custody (IN)	Departure
8. Offence is not a serious instance; offender has relevant record	Custody (IN)	Departure

Appendix H

Criminal Law Reform Act, 1984; (Bill C-19) Proposed Conditions of Probation

(Sections 662 and 663)

662. (1) Where an offender is convicted of an offence, the court may direct that the offender comply with the conditions prescribed in a probation order in accordance with section 663.

(2) Where a court imposes a term of imprisonment on an offender, the court shall not make a direction under subsection (1), unless the term of imprisonment is less than two years.

663. (1) The following conditions shall be deemed to be prescribed in a probation order; namely, that the offender shall

- (a) keep the peace and be of a good behaviour;
- (b) appear before the court when required to do so by the court; and
- (c) report to and be under the supervision of a probation officer or some other person designated by the court.

(2) The court may, in addition to the conditions referred to in subsection (1), prescribe as conditions in a probation order that the offender shall do any one or more of the following things specified in the order; namely,

- (a) refrain from residing or being in a designated place;
- (b) provide for the support of his spouse or any other dependants whom he is liable to support;
- (c) submit to treatment for alcohol or drug abuse if the court is satisfied that the offender is in need of treatment and is a suitable candidate for treatment;
- (d) abstain from owning, possessing or carrying a weapon;

- (e) make restitution to any other person for any loss, damage or injury suffered by that person in respect of which an order under section 665 or 666 may be made;
- (f) remain within the jurisdiction of the court and notify, in writing, the court or the probation officer or any other person designated by the court of any change in his address or his employment or occupation prior to such change;
- (g) make reasonable efforts to find and maintain suitable employment or to attend educational or training programs;
- (h) attend a program of driver education or improvement:
 - (i) in the province in which the probation order was made, or
 - (ii) in the province in which the offender resides,

if the court is satisfied that the offender would benefit from such a program; and

- (i) comply with such other reasonable conditions as the court considers desirable for securing the good conduct of the offender and for preventing a repetition by him of the same offence or the commission of other offences.

(3) Where a court prescribes a condition in a probation order under paragraph (2)(i), the court shall:

- (a) provide the reasons why such a condition is considered desirable; and
- (b) enter the reason in the record of the proceedings, or where the proceedings are not recorded, provide written reasons.

(4) A probation order shall be in writing and may be in Form 44 and the court that makes the probation order shall specify therein the period for which it is to remain in force.

(5) A probation order comes into force

- (a) on the date on which the order is made; or
- (b) where the offender is sentenced to imprisonment, on his release from custody.

(6) Subject to paragraph 668.17(5)(c), no probation order shall continue in force for more than three years from the date on which the order comes into force.

(7) Where an offender who is bound by a probation order is imprisoned prior to the expiration of the order, the order continues in force except in so far as the term of imprisonment renders it impossible for the offender for the time being to comply with the order.

Appendix I

Excerpt from *An Act to Amend the Parole Act and the Penitentiary Act* as passed by the House of Commons, June 26, 1986

(Section 15.3)

- s.15.3 (1) The Commissioner shall cause to be reviewed by the Service the case of an inmate, before the presumptive release date of the inmate, where the inmate is serving a term of imprisonment that includes a sentence imposed in respect of an offence mentioned in the schedule that had been prosecuted by indictment.

Schedule

1. An offence under any of the following provisions of the *Criminal Code*:
 - (a) paragraph 79(2)(a) (causing injury with intent);
 - (b) section 83 (use of firearm during commission of offence);
 - (c) subsection 84(1) (pointing a firearm);
 - (d) section 132 (prison breach);
 - (e) section 219 (manslaughter);
 - (f) section 222 (attempt to commit murder);
 - (g) section 228 (causing bodily harm with intent);
 - (h) section 230 (overcoming resistance to commission of offence);
 - (i) section 245 (assault);

- (j) section 245.1 (assault with a weapon or causing bodily harm);
 - (k) section 245.2 (aggravated assault);
 - (l) section 245.3 (unlawfully causing bodily harm);
 - (m) section 246 (assaulting a peace officer);
 - (n) section 246.1 (sexual assault);
 - (o) section 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm);
 - (p) section 246.3 (aggravated sexual assault);
 - (q) section 247 (kidnapping);
 - (r) section 303 (robbery);
 - (s) section 389 (arson);
 - (t) section 390 (setting fire to other substance);
 - (u) section 392 (setting fire by negligence);
 - (v) paragraph 423(1)(a) (conspiracy to commit murder);
2. An offence under any of the following sections of the *Criminal Code*, as they read immediately before January 4, 1983:
- (a) section 144 (rape);
 - (b) section 145 (attempt to commit rape);
 - (c) section 149 (indecent assault on female);
 - (d) section 156 (indecent assault on male);
 - (e) section 245 (common assault); and
 - (f) section 246 (assault with intent).

Appendix J

An Example of a Sentencing Grid

This appendix contains an example of a sentencing guidelines grid. It is drawn from the three year evaluation report of the Minnesota Guidelines Commission published in 1984. It is a two-dimensional grid. The vertical dimension indicates the seriousness level of the offence of conviction. The horizontal dimension indicates the offender's criminal record score. The dark line across the grid is referred to as the *dispositional* line. All cases falling in cells *below* the line receive sentences of imprisonment. Cases falling in cells *above* the dispositional line receive stayed sentences, or non-imprisonment. The single number in the cells above the line (and this is sometimes a source of confusion) indicates the length of the sentence that should be "stayed". For cases falling in cells below the line, any sentence within the ranges shown in the cell can be imposed without the sentence being a departure from the sentencing guidelines. Thus, for example, an offender convicted of aggravated robbery with a criminal history score of "4", could receive a sentence of between 60 and 70 months without the sentence being a departure from the guidelines. For further information upon the use of a sentencing guidelines grid, and its impact upon sentencing practice in that state, the reader is referred to Minnesota Guidelines Commission, 1984 and related publications.

Minnesota Sentencing Guidelines Grid

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

Offenders with non-imprisonment felony sentences may be subject to jail time according to law.

CRIMINAL HISTORY SCORE

SEVERITY LEVELS OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or more
<i>Unauthorized Use of Motor Vehicle</i> <i>Possession of Marijuana</i>	I	12*	12*	12*	13	15	17	19 18-20
<i>Theft Related Crimes (\$250-\$2500)</i> <i>Aggravated Forgery (\$250-\$2500)</i>	II	12*	12*	13	15	17	19	21 20-22
<i>Theft Crimes (\$250-\$2500)</i>	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
<i>Nonresidential Burglary</i> <i>Theft Crimes (over \$2500)</i>	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
<i>Criminal Sexual Conduct 2nd Degree (a) & (b)</i> <i>Intrafamilial Sexual Abuse 2nd Degree subd. 1(1)</i>	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
<i>Aggravated Robbery</i>	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
<i>Criminal Sexual Conduct 1st Degree</i> <i>Assault, 1st Degree</i>	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree (felony murder)</i>	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
<i>Murder, 2nd Degree (with intent)</i>	X	120 116-124	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

☒ At the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation.

☐ Presumptive commitment to state imprisonment.

* One year and one day

Appendix K

Complete List of Recommendations

Chapter 6

- 6.1 The Commission recommends that the fundamental purpose of sentencing be formulated thus: It is recognized and declared that in a free and democratic society peace and security can only be enjoyed through the due application of the principles of fundamental justice. In furtherance of the overall purpose of the criminal law of maintaining a just, peaceful and safe society, the fundamental purpose of sentencing is to preserve the authority of and promote respect for the law through the imposition of just sanctions.
- 6.2 The Commission recommends the following Declaration of Purpose and Principles of Sentencing be adopted by Parliament for inclusion in the *Criminal Code*:

Declaration of Purpose and Principles of Sentencing

1. *Definitions*

“Sentencing” is the judicial determination of a legal sanction to be imposed on a person found guilty of an offence.

“Sanction” includes an order or direction made under subsection 662.1(1) (absolute or conditional discharge); subsection 663(1)(a) (suspended sentence and probation); subsection 663(1)(b) (probation with imprisonment or fine); sections 653 and 654 (restitution); subsections 646(1) and (2), section 647 and subsection 722(1) (fine); subsections 160(4), 281.2(4), 352(2) and 359(2) (forfeiture); subsections 98(2) and 242(1) and (2) (prohibition); subsection 663(1)(c) (intermittent term of imprisonment); and a term of imprisonment.

(Note: The definition of sanction is intended to include all sentencing alternatives provided for in the *Criminal Code*. Section numbers refer to *Code* provisions as they currently exist).

2. *Overall Purpose of the Criminal Law*

It is hereby recognized and declared that the enjoyment of peace and security are necessary values of life in society and consistent therewith, the overall purpose of the criminal law is to contribute to the maintenance of a just, peaceful and safe society.

3. *Fundamental Purpose of Sentencing*

It is further recognized and declared that in a free and democratic society peace and security can only be enjoyed through the due application of the principles of fundamental justice. In furtherance of the overall purpose of the criminal law of maintaining a just, peaceful and safe society, the fundamental purpose of sentencing is to preserve the authority of and promote respect for the law through the imposition of just sanctions.

4. *Principles of Sentencing*

Subject to the limitations prescribed by this or any other Act of Parliament, the sentence to be imposed on an offender in a particular case is at the discretion of the court which, in recognition of the inherent limitations on the effectiveness of sanctions and the practical constraints militating against the indiscriminate selection of sanction, shall exercise its discretion assiduously in accordance with the following principles:

- a) The paramount principle governing the determination of a sentence is that the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender for the offence.
- b) Second, the emphasis being on the accountability of the offender rather than punishment, a sentence should be the least onerous sanction appropriate in the circumstances and the maximum penalty prescribed for an offence should be imposed only in the most serious cases.
- c) Subject to paragraphs (a) and (b) the court in determining the sentence to be imposed on an offender shall further consider the following:
 - i) any relevant aggravating and mitigating circumstances;

- ii) a sentence should be consistent with sentences imposed on other offenders for similar offences committed in similar circumstances;
- iii) the nature and combined duration of the sentence and any other sentence imposed on the offender should not be excessive;
- iv) a term of imprisonment should not be imposed, or its duration determined, solely for the purpose of rehabilitation;
- v) a term of imprisonment should be imposed only:
 - aa) to protect the public from crimes of violence,
 - bb) where any other sanction would not sufficiently reflect the gravity of the offence or the repetitive nature of the criminal conduct of an offender, or adequately protect the public or the integrity of the administration of justice,
 - cc) to penalize an offender for wilful non-compliance with the terms of any other sentence that has been imposed on the offender where no other sanction appears adequate to compel compliance.
- d) In applying the principles contained in paragraphs (a), (b), and (c), the court may give consideration to any one or more of the following:
 - i) denouncing blameworthy behaviour;
 - ii) deterring the offender and other persons from committing offences;
 - iii) separating offenders from society, where necessary;
 - iv) providing for redress for the harm done to individual victims or to the community;
 - v) promoting a sense of responsibility on the part of offenders and providing for opportunities to assist in their rehabilitation as productive and law-abiding members of society.

Chapter 8

- 8.1 The Commission recommends the abolition of mandatory minimum penalties (fines and periods of incarceration), for all offences except murder and high treason.
- 8.2 The Commission recommends that mandatory prohibition orders be further studied in light of the proposed sentencing framework.

Chapter 9

- 9.1 For offences other than murder and high treason, the Commission recommends that the current penalty structure be repealed and replaced by the following penalty structure:

12 years
9 years
6 years
3 years
1 year
6 months

- 9.2 The Commission recommends that hybrid offences be abolished and reclassified as offences carrying a single maximum penalty of 6 months, 1 year, 3 years, 6 years, 9 years or 12 years imprisonment.
- 9.3 The Commission recommends that the dangerous offender provisions in the *Criminal Code* be repealed.
- 9.4 The Commission recommends that, according to explicit criteria, the court be given the power to impose an exceptional sentence exceeding the maximum sentence for specified offences by up to 50%, following the procedure specified in this report.
- 9.5 The Commission recommends that the use of consecutive and concurrent sentences for multiple offence sentencing be replaced by the use of the total sentence.
- 9.6 The Commission recommends the introduction of a provision in the *Criminal Code* similar to that proposed in subsection 668.17(10) of the Criminal Law Reform Act, 1984 (Bill C-19).
- 9.7 The Commission recommends the introduction of a provision in the *Criminal Code* similar to that proposed in subsection 668.24(a) of the Criminal Law Reform Act, 1984 (Bill C-19).

Chapter 10

- 10.1 The Commission recommends the abolition of full parole, except in the case of sentences of life imprisonment.
- 10.2 The Commission recommends that earned remission be retained by way of credits awarded for good behaviour which may reduce by up to one-quarter the custodial portion of the sentence imposed by the judge.
- 10.3 The Commission recommends that all offenders be released without conditions unless the judge, upon imposing a sentence of incarceration, specifies that the offender should be released on conditions.

- 10.4 The Commission recommends that a judge may indicate certain conditions but the releasing authority shall retain the power to specify the exact nature of those conditions, modify or delete them or add other conditions.
- 10.5 The Commission recommends that the nature of the conditions be limited to explicit criteria with a provision that if the judge or the releasing authority wishes to prescribe an "additional" condition, they must provide reasons why such a condition is desirable and enter the reasons on the record.
- 10.6 The Commission recommends that where an offender, while on remission-based release, commits a further offence or breaches a condition of release, he or she shall be charged with an offence of violating a condition of release, subject to a maximum penalty of one year..
- 10.7 The Commission recommends that voluntary assistance programs be developed and made available to all inmates prior to and upon release from custody to assist them in their re-integration into the community.
- 10.8 The Commission recommends that a Sentence Administration Board be given the power to withhold remission release according to the criteria specified in the recently enacted legislation: *An Act to Amend the Parole Act and the Penitentiary Act*.
- 10.9 The Commission recommends that all inmates be eligible to participate in a day release program after serving two-thirds of their sentence, with the exception of those who meet the criteria for withholding remission release.
- 10.10 The Commission recommends that the granting of special leave according to explicit criteria remain at the discretion of the prison administration. Inmates shall be eligible for special leave passes immediately upon being placed in custody.
- 10.11 The Commission recommends that parole by exception be abolished and that cases where the inmate is terminally ill or where the inmate's physical or mental health is likely to suffer serious damage if he or she continues to be held in confinement shall be dealt with by way of the Royal Prerogative of Mercy.
- 10.12 The Commission recommends that the Sentence Administration Board should conduct the necessary review and forward submissions regarding clemency to the Solicitor General.
- 10.13 The Commission recommends that Canadian immigration law should be amended to provide the necessary authority for the deportation of convicted offenders in specified circumstances.
- 10.14 The Commission recommends that where a judge imposes a custodial sanction, he or she may recommend the nature of the custody imposed.

- 10.15 The Commission further recommends that federal and provincial governments provide the necessary resources and financial support for the establishment and maintenance of open custody facilities.
- 10.16 The Commission recommends that the mandatory life imprisonment sentence be retained for first and second degree murder and high treason.
- 10.17 The Commission recommends that inmates serving sentences for first degree murder or high treason be eligible for release on conditions after serving a minimum of 15 years up to a maximum of 25 years in custody. The court would set the date of eligibility for release within that limit.
- 10.18 The Commission recommends that inmates serving a life sentence for second degree murder be eligible for release on conditions after serving a minimum of ten years, and a maximum of 15 years in custody. The court would set the date of eligibility for release within that limit.
- 10.19 The Commission recommends that at the eligibility date, the inmate have the burden of demonstrating his or her readiness for release on conditions for the remainder of the life sentence.
- 10.20 The Commission recommends that the ineligibility period set by the court be subject to appeal.

Chapter 11

- 11.1 The Commission recommends that written reasons be provided every time the judge imposes a sentence which departs from the sentencing guidelines.
- 11.2 The Commission recommends that a sentence, whether it is within the sentencing guidelines or departs from them, can be appealed either by the defendant or the Crown prosecutor.
- 11.3 The Commission recommends that the sentencing guidelines should be tabled in the House of Commons by the Minister of Justice within 15 days of their receipt and would come into effect at the expiry of 90 days unless rejected by negative resolution of the House of Commons. In order to be considered, such a resolution would have to be presented by a minimum of 20 members of the House.
- 11.4 The Commission recommends that the *Statutory Instrument Act* be amended specifically to exclude the national sentencing guidelines from the application of the Act.
- 11.5 The Commission recommends that four presumptions be used to provide guidance for the imposition of custodial and non-custodial sentences:

- unqualified presumptive disposition of custody
 - unqualified presumptive disposition of non-custody
 - qualified presumptive disposition of custody
 - qualified presumptive disposition of non-custody.
- 11.6 The Commission recommends that the presumptive dispositions assigned by the Canadian Sentencing Commission to the offences defined in the *Criminal Code*, the *Narcotic Control Act* and the *Food and Drugs Act* (Parts III, IV) be adopted as national sentencing guidelines for Canada.
- 11.7 The Commission recommends that the guideline prototypes that it has developed be adopted as providing the basis for the formulation of a complete set of national numerical sentencing guidelines for Canada.
- 11.8 The Commission recommends that the following list of aggravating and mitigating factors be adopted as the primary grounds to justify departures from the guidelines:

Aggravating Factors

1. Presence of actual or threatened violence or the actual use or possession of a weapon, or imitation thereof.
2. Existence of previous convictions.
3. Manifestation of excessive cruelty towards victim.
4. Vulnerability of the victim due, for example, to age or infirmity.
5. Evidence that a victim's access to the judicial process was impeded.
6. Existence of multiple victims or multiple incidents.
7. Existence of substantial economic loss.
8. Evidence of breach of trust (e.g., embezzlement by bank officer).
9. Evidence of planned or organized criminal activity.

Mitigating Factors

1. Absence of previous convictions.
2. Evidence of physical or mental impairment of offender.
3. The offender was young or elderly.

4. Evidence that the offender was under duress.
5. Evidence of provocation by the victim.
6. Evidence that restitution or compensation was made by offender.
7. Evidence that the offender played a relatively minor role in the offence.

- 11.9 In order to facilitate the process of providing explicit justification for departing from the guidelines, the Commission recommends that the following principles respecting the use of aggravating and mitigating factors be incorporated to the sentencing guidelines:

Identification: when invoking aggravating and mitigating factors, the sentencing judge should identify which factors are considered to be mitigating and which factors are considered to be aggravating.

Consistency: when invoking a particular factor, the judge should identify which aspect of the factor has led to its application in aggravation or mitigation of sentence. (For example, rather than merely referring to the age of the offender, the judge should indicate that it was the offender's *youth* which was considered to be a mitigating factor or the offender's *maturity* which was considered to be an aggravating factor. This would prevent the inconsistent use of age as an aggravating factor in one situation and as a mitigating factor in a comparable situation.)

Specificity: the personal circumstances or characteristics of an offender should be considered as an aggravating factor only when they relate directly to the commission of the offence. (For example, a judge might consider an offender's expertise in computers as an aggravating factor in a computer fraud case but the above principles would preclude the court from considering the lack of education of a convicted robber as an aggravating circumstance.)

Legal rights: the offender's exercise of his legal rights should never be considered as an aggravating factor.

- 11.10 The Commission recommends that time spent in custody before the sentence is imposed should count towards any sentence of imprisonment imposed following conviction. This time shall be credited on a one-to-one ratio with time served after conviction. An offender may earn remission upon time served prior to sentencing.
- 11.11 The Commission recommends the establishment of a Judicial Advisory Committee which would act in an advisory capacity to the permanent sentencing commission, in the formulation of amendments to the original sentencing guidelines to be submitted to Parliament. Furthermore, the membership of the Judicial Advisory Committee should be composed of a majority of trial court judges from all levels of courts in Canada.

- 11.12 The Commission recommends that the *Criminal Code* be amended to grant explicitly to the Courts of Appeal the power to make sentencing policy and, for substantial and compelling reasons to amend the presumptive custodial ranges determined by this Commission and by its successor, the permanent sentencing commission.

Chapter 12

- 12.1 The Commission recommends that the federal and provincial governments provide the necessary resources and financial support to ensure that community programs are made available and to encourage their greater use.
- 12.2 The Commission recommends the development of mechanisms to provide better information about sentencing objectives to sentence administrators.
- 12.3 The Commission recommends that a transcript of the sentencing judgment be made available to the authorities involved in the administration of the sentence.
- 12.4 The Commission recommends that court officials, corrections personnel and other sentence administrators meet and discuss the parameters of authority in criminal justice administration, sentencing objectives and other issues in sentencing.
- 12.5 The Commission recommends the development of mechanisms to provide better information about alternative sentencing resources to the judiciary.
- 12.6 The Commission recommends that feedback to the courts regarding the effectiveness of sanctions be provided on a systematic basis.
- 12.7 The Commission recommends that prior to imposing a particular community sanction, the sentencing judge be advised to consult or obtain a report respecting the suitability of the offender for the sanction and the availability of programs to support such a disposition.
- 12.8 The Commission endorses the general policy in the Criminal Law Reform Act, 1984 (former Bill C-19) that community sanctions be developed as independent sanctions. The Commission recommends that the federal government enact legislation which reflects the sentencing proposals in the Criminal Law Reform Act, 1984 (Bill C-19). The Commission further recommends that additional proposals be examined by the permanent sentencing commission and by the federal and/or provincial governments for further review, development and implementation.
- 12.9 The Commission recommends that community sanctions be defined and applied as sanctions in their own right.

- 12.10 The Commission recommends that specific guidance be developed, either by the permanent sentencing commission or by a body specifically mandated to study this issue, respecting when particular community sanctions should be imposed.
- 12.11 The Commission recommends that the permanent sentencing commission consider the feasibility of developing criteria and principles which permit the comparison of individual community sanctions and which attempt to standardize their use (e.g., X dollars is the equivalent of Y hours of community service).
- 12.12 The Commission recommends that the judiciary retain primary control over the nature and conditions attached to community sanctions.
- 12.13 The Commission recommends that the permanent sentencing commission include in its review of community sanctions both those dispositions imposed by the judge at the time of sentencing and administrative programs in the custodial setting which affect the degrees of incarceration to which an inmate is subject.
- 12.14 The Commission recommends that the *Criminal Code* be amended to permit the imposition of a fine alone even for those offences which are punishable by a term of imprisonment of more than five years.
- 12.15 The Commission recommends that fines be available for all offences (except life sentences) regardless of the maximum penalty provided and in spite of the fact that some offences would have presumptive "in" designations. Where the imposition of a fine would constitute a departure from the presumptive disposition, it should be justified with reasons.
- 12.16 The Commission recommends that for those offences for which a judge has decided to impose a community disposition, a pecuniary sanction such as a fine be considered as a first alternative for the more serious offences and for the more serious instances of the lesser offences.
- 12.17 The Commission recommends that a restitution order be imposed when the offence involves loss or damage to an individual victim. A fine should be imposed where a public institution incurs loss as a result of the offence or damage caused to public property.
- 12.18 The Commission recommends that where the offence carries a presumptive "out" disposition, greater use be made of fines where the offender has benefitted financially from the commission of the offence.
- 12.19 The Commission recommends that the permanent sentencing commission should consider ways of assisting the courts in the determination of equitable fines on offenders of varying means so as to maximize equality of impact. The Swedish day-fine system is an

example to be studied. Meanwhile, the provinces should be encouraged to institute pilot projects on the use of day-fine systems.

- 12.20 The Commission recommends that once it has been decided that a fine may be the appropriate sanction, consideration must be given to whether it is appropriate to impose a fine on the individual before the court. The amount of the fine and time for payment must be determined in accordance not only with the gravity of the offence, but also with the financial ability of the offender. Further to the above principle, prior to the imposition of a fine, the court should inquire into the means of the offender to determine his ability to pay and the appropriate mode and conditions of payment.
- 12.21 The Commission recommends that where the limited means of an offender permits the imposition of only one pecuniary order, priority be given to an order of restitution, where appropriate.
- 12.22 The Commission recommends a reduction in the use of imprisonment for fine default.
- 12.23 The Commission recommends that a quasi-automatic prison term not be imposed for fine default and that offenders only be incarcerated for *wilful* breach of a community sanction.
- 12.24 The Commission recommends that section 648 of the *Criminal Code* be retained.
- 12.25 The Commission recommends that the payment of fines be enforced in accordance with the model for fine default described on pages 382-384.
- 12.26 The Commission recommends that the following national conversion table be used for the assessment of default periods where incarceration is imposed for wilful non-payment of a fine:

<i>For the portion of the sum between:</i>	<i>Per diem rate:</i>	<i>Prison days:</i>
\$1 - \$150	25	6
\$151 - \$300	30	6 + 5 = 11
\$301 - \$500	35	11 + 6 = 17
\$501 - \$800	40	17 + 8 = 25
\$801 - \$1200	45	25 + 9 = 34
\$1201 - \$2000	50	34 + 16 = 50
\$2001 - \$4000	60	50 + 33 = 83
\$4001 - \$7000	70	83 + 43 = 126
\$7001 - \$10,000	80	126 + 38 = 164
\$10,001 - \$15,000	90	164 + 56 = 220
\$15,001 - \$20,000	100	220 + 50 = 270
\$20,001 - \$25,000	110	270 + 45 = 315
\$25,001 +	Judge's discretion	315 + discretion of the judge.

- 12.27 The Commission recommends that the *Criminal Code* clarify the distinction between compensation and restitution by providing a definition of restitution which is used consistently throughout the *Code*.
- 12.28 The Commission recommends that restitution in the *Criminal Code* be understood to include the return of property obtained by the commission of the offence, the payment of money for the ascertainable loss, damage or destruction of property and/or the payment of money for the ascertainable loss or injury suffered as a result of the commission of the offence, by the offender to the victim.
- 12.29 The Commission recommends that compensation be understood as contribution or payment by the state to the victim of the offence for loss or injury suffered as a result of the commission of the offence.
- 12.30 The Commission recommends that its fine default model also apply to the enforcement of restitution orders.
- 12.31 The Commission recommends that the *Criminal Code* provisions be expanded and permit an order of restitution to be imposed as a separate sanction or in combination with other sanctions.

Prior to the imposition of an order of restitution, the sentencing judge shall inquire, or cause to be conducted, an inquiry into the present or future ability of the offender to make restitution or to pay a fine.

An order of restitution shall include consideration of:

- i) property damages incurred as a result of the crime, based on actual cost of repair (or replacement value);
- ii) medical and hospital costs incurred by the victim as a result of the crime; and
- iii) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime.

As between the enforcement of an order of restitution and other monetary sanctions, priority should be given to restitution.

Chapter 13

- 13.1 The Commission recommends that the interests of the victim in plea negotiations continue to be represented by Crown counsel. To encourage uniformity of practice across Canada, the responsible federal and provincial prosecutorial authorities should develop guidelines which

direct Crown counsel to keep victims fully informed of plea negotiations and sentencing proceedings and to represent their views.

- 13.2 The Commission recommends that, where possible, prior to the acceptance of a plea negotiation, Crown counsel be required to receive and consider a statement of the facts of the offence and its impact upon the victim.
- 13.3 The Commission recommends that the sentencing judge inquire of the defendant whether he or she understands the plea agreement and its implications and, if he or she does not, the judge should have the discretion to strike the plea or sentence.
- 13.4 The Commission recommends that federal and provincial prosecutorial authorities collaborate in the formulation of standards or guidelines for police respecting over-charging and/or inappropriate multiple charging.
- 13.5 The Commission recommends that the relevant federal and provincial authorities give serious consideration to the institution of formalized screening mechanisms to permit, to the greatest extent practicable, the review of charges by Crown counsel prior to their being laid by police.
- 13.6 The Commission recommends that police forces develop and/or augment internal review mechanisms to enhance the quality of charging decisions and, specifically, to discourage the practice of laying inappropriate charges for the purpose of maximizing a plea bargaining position.
- 13.7 The Commission recommends that the relevant federal and provincial prosecutorial authorities establish a policy (guidelines) restricting and governing the power of the Crown to reduce charges in cases where it has the means to prove a more serious offence.
- 13.8 The Commission recommends that the appropriate federal and provincial authorities formulate and attempt to enforce guidelines respecting the ethics of plea bargaining.
- 13.9 The Commission recommends a mechanism whereby the Crown prosecutor would be required to justify in open court a plea bargain agreement reached by the parties either in private or in chambers unless, in the public interest, such justification should be done in chambers.
- 13.10 The Commission recommends that the trial or sentencing judge never be a participant in the plea negotiation process. This recommendation is not intended to preclude the judge from having the discretion to indicate in chambers the general nature of the disposition or sentence which is likely to be imposed upon the offender in the event of a plea of guilty.
- 13.11 The Commission also recommends that the *Criminal Code* be amended to *expressly* provide that the court is not bound to accept a joint

submission or other position presented by the parties respecting a particular charge or sentence.

- 13.12 The Commission recommends the development of a mechanism to require full disclosure in open court of the facts and considerations which formed the basis of an agreement, disposition or order arising out of a pre-hearing conference.
- 13.13 The Commission recommends that an in-depth analysis of the nature and extent of plea bargaining in Canada be conducted by the federal and provincial governments or by a permanent sentencing commission.

Chapter 14

- 14.1 The Commission recommends that the *Criminal Code* be amended to provide for the establishment and maintenance of a permanent sentencing commission.
- 14.2 The Commission recommends that the permanent sentencing commission be given the independent authority to collect the data necessary to carry out its mandate. This would include the authority, similar to that given to Statistics Canada, to enlist the co-operation of the provinces.
- 14.3 The Commission recommends that the permanent sentencing commission rely, where necessary in the early years, on special *ad hoc* surveys of sentencing practice.
- 14.4 The Commission recommends that a budget sufficient for collecting the sentencing data necessary to carry out its responsibilities be allocated to the permanent sentencing commission.

List of Statutes

An Act to Amend the Parole Act and the Penitentiary Act, S.C. 1986, c. 42.

British North America Act, (Constitution Act) 1867, 30 & 31 Vict., c. 3.

Canada Act 1982, (U.K.) c. 11 (Sched. B).

Canadian Bill of Rights, 8-9 Elizabeth II, c. 44.

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act 1982*, (as enacted by the *Canada Act, 1982*, (U.K.) c. 11 (Sched. B)).

Combines Investigation Act, R.S.C. 1970, c. C-23.

Constitution Act, 1982 (enacted by the *Canada Act, 1982* (U.K.) c. 11. (Sched. B)).

Criminal Code, 1892, 55-56 Vict., c. 29.

Criminal Code, S.C. 1919, c. 46.

Criminal Code, S.C. 1921, c. 25.

Criminal Code, 1927, R.S.C. 1927, c. 36.

Criminal Code, S.C. 1953-54, c. 51.

Criminal Code, S.C. 1968-69, c. 38.

Criminal Code, R.S.C. 1970, c. C-34.

Criminal Code, S.C. 1972, c. 13.

Criminal Law Amendment Act, 1985 (Bill C-18), 33-34 Elizabeth II, c. 19.

Department of the Attorney General Act, R.S.A. 1980, c. D-13.

Department of Justice Act, R.S. Nfld. 1970, c. 85.

Food and Drugs Act, R.S.C. 1970, c. F-27.

Government Organization Act, S.C. 1970, c. 14.

Interpretation Act, R.S.C. 1970, c. I-23.

Judges Act, R.S.C. 1970, c. J-1.

Narcotic Control Act, R.S.C. 1970, c. N-1.

Parole Act 1958, 7 Elizabeth II, c. 38.

Penitentiary Act, 1868, 31 Victoria, c. 74.

Prisons and Reformatories Amendment Act, S.C. 1913, c.39.

Provincial Offences Act, R.S.O. 1980, c. 400.

Summary Convictions Act, R.S.B.C. 1974, c. 73.

Ticket-of-Leave Act, 1899, (An Act to provide for the Conditional Liberation of Penitentiary Convicts) 62-63 Victoria, c. 49.

Young Offenders Act, S.C. 1980-81-82-83, c. 110.

Proposed Legislation

Criminal Law Reform Act, 1984 (Bill C-19). Second Session, Thirty-second Parliament, 32-33 Elizabeth II, 1983-1984. (The Bill received first reading February 7, 1984, and subsequently died on the order paper.)

List of Cases

- Abbott, Re* (1970), 13 C.R.N.S. 70 (Ont. S.C.)
- Adgey* (1973), 23 C.R.N.S. 298 (S.C.C.)
- A.G. Can. v. Roy* (1972), 18 C.R.N.S. 89 (Que. S.C.)
- A.G. of Canada v. C.N. Transportation Ltd. et al.; A.G. of Canada v. C.P. Transport Co. Ltd. et al. and A.G. of Ontario et al.* (1983), 7 C.C.C. (3d) 449 (S.C.C.)
- A.G. of Québec v. Rubio* (1984), 39 C.R. (3d) 67 (Que. S.C.).
- Alderton* (1985), 44 C.R. (3d) 254 (Ont. C.A.)
- Antone and Antone* (1977), 20 Crim. L.Q. 143 (Ont. C.A.).
- Aramah* (1983), Crim. L. R. 27
- Aziz* (1981), 57 C.C.C. (2d) 97 (S.C.C.)
- Babiak* (1975), 21 C.C.C. (2d) 464 (Man. C.A.)
- Baker* (1977), 17 N.S.R. (2d) 239 (N.S.S.C.)
- Baldhead*, [1966] 4 C.C.C. 183 (Sask. C.A.)
- Baldhead* (1965), 4 C.C.C. 118 (Sask. C.A.).
- Baldwin and Bauer and The Queen, Re* (1980), 54 C.C.C. (2d) 85 (Ont. H.C.J.)
- Basha* (1978), 23 Nfld. & P.E.I.R. 310 (Prov. Ct.)
- Basha et al.* (1979), 23 Nfld. & P.E.I.R. 286 (Nfld. C.A.)
- Beauregard* (1983), 38 A.R. 350 (Alta. C.A.)
- Beckner* (1984), 15 C.C.C. (3d) 244 (Ont. C.A.).
- Begum Bibi* (1980), 71 Cr. App. 360

Bezeau (1958), 28 C.R. 301 (Ont. C.A.)
Bompas (1959), 123 C.C.C. 39 (Alta. C.A.).
Bosley and Duarte, [1970] 1 C.C.C. 328 (Ont. C.A.)
Brooks, [1970] 4 C.C.C. 377 (Ont. C.A.)
Brousseau, [1969] S.C.R. 181 (S.C.C.)
Brown and Murphy (1982), 41 A.R. 69 (Alta. C.A.)
Bruckshaw (1973), 9 C.C.C. (2d) 133 (B.C.C.A.)
Brush (1975), 13 N.S.R. (2d) 669 (C.A.)
Burke (1978), 16 Nfld. & P.E.I.R. 132 (P.E.I.C.A.)
Burnchall (1980), 65 C.C.C. (2d) 490 (Alta. C.A.).
Campbell (1983), 10 W.C.B. 490 (N.S.C.A.)
Campbell (1977), 18 N.S.R. (2d) 547 (N.S.C.A.)
Cardinal, [1983] Alta. D. 7515-01
Carr and Robson (1976), 15 N.S.R. (2d) 465 (N.S.S.C.)
Cascoe (1970), 54 Cr. App. R. 401 [British case] (C.A.).
Casey (1977), 20 Crim. L.Q. 145 (Ont. C.A.)
Clarke (1982), 1 W.L.R. 1090
Collins, Re (1973), 13 C.C.C. (2d) 172 (S.C.C.)
Cousins (1981), 22 C.R. (3d) 298 (Nfld. C.A.)
Craig (1975), 28 C.C.C. (2d) 311 (Alta. C.A.)
Davenport (Unreported) February 17, 1977 (Ont. C.A.)
Deeb (Unreported) May 22, 1986 (Ont. Prov. Ct.)
Dengo (1972), 15 Crim. L.Q. 259 (Ont. C.A.)
Desmarais (1971), 3 C.C.C. (2d) 523 (Qué. C.A.)
Di Giovanni (1977), 10 C.C.C. (2d) 392 (Ont. C.A.)
Doherty (1972), 9 C.C.C. (2d) 115 (Ont. C.A.)
Dummont and Dummont (1970), 12 Crim. L.Q. 344 (Sask. C.A.)

Duval (1970), 15 C.R.N.S. 140 (Que. C.A.)
Eisan (1975), 12 N.S.R. (2d) 34 (N.S.S.C.)
Empey (1978), 4 C.R. (3d) S-59 (Ont. C.A.).
Erven (1977), 21 N.S.R. (2d) 654 (N.S.S.C.)
Eustace (1977), 23 N.S.R. (2d) 524 (N.S.S.C.)
Fait (1982), 68 C.C.C. (2d) 367 (Alta. C.A.)
Fairn (1973), 22 C.R.N.S. 307 (B.C. Co. Ct.)
Fifield (1978), 5 C.R. (3d) S-9 (N.S.C.A.)
Fireman (1977), 4 C.C.C. (2d) 82 (Ont. C.A.).
Fitzgerald (1976), 14 N.S.R. (2d) 638 (N.S.S.C.)
Gallop (1980), 22 C.R. (3d) 292 (Nfld. C.A.)
Garcia and Silva, [1970] 3 C.C.C. 124 (Ont. C.A.)
Gardiner, [1982] 2 S.C.R. 368 (S.C.C.)
Gregor (1953), 31 M.P.R. 99 (N.S.S.C.).
Hastings (1975), 58 A.R. 108 (Alta. C.A.)
Hauser (1979), 8 C.R. (3d) 89 (S.C.C.)
Henry (1983), 44 A.R. 242 (Alta. C.A.)
Henry (1977), 20 Crim. L.Q. 139 (Que. C.A.).
Hessam (1983), 43 A.R. 378 (Alta. C.A.)
His Honour Judge Wetmore and Attorney General for Ontario et al. (1983), 7 C.C.C. (3d) 507 (S.C.C.)
James (1978), 24 N.S.R. (2d) 423 (N.S.S.C.)
Jensen et al., [1983] I.W.W.R. 717 (Alta. C.A.)
Johnas (1983), 2 C.C.C. (3d) 490 (Alta. C.A.)
Johnas (1982), 32 C.R. (3d) 1 (Alta. C.A.)
Johnson (1972), 6 C.C.C. (2d) 380 (B.C.C.A.)
Johnson (1971), 4 C.C.C. (2d) 226 (Ont. C.A.).

Johnston (1976), 18 Crim. L.Q. 286 (Ont. C.A.)
Kelly (1985), 37 C.R. (3d) 190 (B.C.C.A.)
Ko (1980), 11 C.R. (3d) 298 (B.C.C.A.)
Konechny (1983), 10 C.C.C. (3d) 233 (B.C.C.A.)
Kotrbaty (1978), 5 C.R. (3d) S-13 (B.C.S.C.)
Kurichh (1983), 9 W.C.B. 138 (Alta. C.A.)
Lemire (Unreported) June 8, 1977 (B.C.C.A.)
Lewis (1985), 67 N.S.R. (2d) 198 (N.S.S.C.)
Libby (1986), 23 C.R. (3d) 10 (Que. C.S.P.)
Longeuay (1978), 3 C.R. (3d) S-29 (N.S.C.A.)
MacArthur (1975), 9 N.S.R. (2d) 353 (N.S.S.C.)
MacDonald (1974), 27 C.R.N.S. 212 (Ont. C.A.).
MacDonald et al. (1973), 16 Crim. L.Q. 143 (Ont. C.A.)
MacIntyre (1982), 2 F.C. 310 (F.C.)
MacLaren (1984), 62 N.S.R. (2d) 152 (N.S.S.C.)
MacLean (1979), 49 C.C.C. (2d) 552 (N.S.C.A.)
Marcello (1973), 11 C.C.C. (2d) 302 (Ont. C.A.)
Masters (1974), 15 C.C.C. (2d) 142 (Ont. C.A.)
McDonald (1969), 12 C.R.N.S. 215 (Ont. C.A.)
McLaughlan (1977), 17 N.S.R. (2d) (N.S.C.A.)
McLay (1977), 17 N.S.R. (2d) 135 (N.S.C.A.)
Miller and Couvreau (1972), 8 C.C.C. (2d) 97 (Man. C.A.)
Mitchell (1981), 23 C.R. (3d) 1 (N.S.S.C.)
Murphy (1983), 44 Nfld. & P.E.I.R. 243 (P.E.I.C.A.)
Murray (1960), 32 W.W.R. 312 (Sask. C.A.)
Muttart (1971), 1 Nfld. & P.E.I.R. 404 (P.E.I.C.A.).
Newall et al. (No. 4) (1982), 70 C.C.C. (2d) 10 (B.C.S.C.)

Newman (1977), 22 N.S.R. (2d) 488 (N.S.C.A.)
O'Neill (1966), 51 Cr. App. R. 241 (C.A.).
Owen (1982), 50 N.S.R. (2d) 696 (N.S.S.C.)
Paquet and Vieno (1978), 43 C.C.C. (2d) 23 (Ont. C.A.)
Paul (1982), 67 C.C.C. (2d) 97 (S.C.C.)
Pearce (1974), 16 C.C.C. (2d) 369 (Ont. C.A.)
Pelletier (1974), 18 C.C.C. (2d) 516 (S.C.C.)
Ponak and Gunn (1973), 11 C.C.C. (2d) 346 (B.C.C.A.)
Pooley (1974), 27 C.R.N.S. 63 (B.C.S.C.)
Prieduls (Unreported) June 6, 1975 (Ont. C.A.)
Redstar (1984), 34 Sask. R. 229 (Sask. C.A.)
Roberts (1982), 74 Cr. App. R. 242
Sadowski (1968), 3 C.R.N.S. 269 (Ont. C.A.).
Saikaly (1979), 52 C.C.C. (2d) 191 (Ont. C.A.)
Salamon (1972), 6 C.C.C. (2d) 165 (Ont. C.A.)
Sandercock (1986), 48 C.R. (3d) 154 (Alta. C.A.)
Shand (1976), 29 C.C.C. (2d) 199 (Ont. Co. Ct.)
Shand (1976), 30 C.C.C. (2d) 23 (Ont. C.A.)
Simoneau (1978), 40 C.C.C. (2d) 307 (Man. C.A.)
Simmons, Allen and Bezzo (1973), 13 C.C.C. (2d) 65 (Ont. C.A.)
Sinitoski (1983), 46 A.R. 206 (Alta. C.A.)
Slaney (1985), 22 C.C.C. (3d) 240 (Nfld. C.A.)
Smith (1984), 11 C.C.C. (3d) 411 (B.C.C.A.)
Smythe (1971), 3 C.C.C. (2d) 366 (S.C.C.)
Spencer (1973), 6 N.S.R. (2d) 555 (N.S.S.C.)
Stanger; Bramwell (1983), 7 C.C.C. (3d) 337 (Alta. C.A.)
Stuart (1975), 24 C.C.C. (2d) 370 (N.S.C.A.)

Sweitzer (1980), 26 A.R. 208 (Alta. C.A.)
Taylor (1985), 36 Alta. L.R. (2d) 275 (Alta. C.A.)
Thompson (1983), 58 N.S.R. (2d) 21 (N.S.S.C.)
Tobac (1985), 20 C.C.C. (3d) 49 (N.W.T.C.A.)
Turner; Jurik (1984), 50 A.C. 49 (Ont. C.A.).
Wai Fun Fung (1979), 3 W.C.B. 397 (B.C.C.A.)
Ward (1976), 14 N.S.R. (2d) 96 (N.S.S.C.)
Warner, Urqhart, Martin and Mullen, [1946] O.R. 808 (Ont. C.A.).
White, Dubeau and McCullough (1974), 27 C.R.N.S. 66 (Ont. C.A.)
Willaert (1953), 105 C.C.C. 172 (Ont. C.A.)
Wilmott, [1967] 1 C.C.C. 171 (Ont. C.A.)
Windsor et al. (Unreported) December 30, 1986 (Ont. C.A.)
Wong and Man (1986), B.C.D., Sentencing, 7400-01 (B.C.C.A.)
Wright, [1976] 12 O.R. 8 (Ont. C.A.)
Wood (1975), 26 C.C.C. (2d) 100 (Alta. C.A.)
Royal Prerogative of Mercy Upon Deportation Proceedings, Re, [1933] 2 D.L.R. 348 (S.C.C.)
Section 94(2) of the Motor Vehicle Act, Re (1986), 63 N.R. 266 (S.C.C.)

Bibliography

Advisory Committee to the Solicitor General of Canada on the Management of Correctional Institutions (1984). *Report of the Advisory Committee to the Solicitor General of Canada on the Management of Correctional Institutions*. Ottawa: Minister of Supply and Services.

Advisory Council on the Penal System (1978). *Sentences of Imprisonment - A Review of Maximum Penalties - Report of the Advisory Council on the Penal System*. London: Her Majesty's Stationery Office.

Allen, F. (1959). Criminal Justice, Legal Values and the Rehabilitative Ideal. *Journal of Criminal Law, Criminology and Police Science*, 50, 226-232.

American Friends Service Committee (1971). *Struggle For Justice*. New York: Hill and Wang.

Ashworth, A. (1986). *Criminal Justice, Rights and Sentencing: A Review of Sentencing Policy and Problems*. Paper presented at a seminar on Sentencing, Canberra, Australia.

Ashworth, A. (1983). *Sentencing and Penal Policy*. London: Weidenfeld and Nicolson.

Australia Law Reform Commission (1980). *Sentencing of Federal Offenders*. Canberra: Australian Government Publishing Service.

Badovinac, K., Harvey, M. and Eastman, S. (1985). *Earned Remission: Analysis of Trends and Survey of Opinions. Working Paper*. Ottawa: Solicitor General Canada.

Baldwin, J. and McConville, M. (1977). *Negotiated Justice: Pressures on Defendants to Plead Guilty*. London: Martin Robertson.

Beattie, J.M. (1977). *Attitudes Towards Crime and Punishment in Upper Canada 1830-1850: A Documentary Study*. Toronto: Centre of Criminology.

Beck, J.M. (ed.) (1971). *The Shaping of Canadian Federalism: Central Authority or Provincial Right?* Toronto: Copp Clark.

Benzvy Miller, S.H. (1986). *An Empirical Study of the Use of Mitigating and Aggravating Factors in Sentence Appeals in Alberta and Quebec from 1980 to 1985*. Ottawa: The Canadian Sentencing Commission.

Beyleveld, D. (1980). *A Bibliography on General Deterrence Research*. Kettering, Northamptonshire: Saxon House.

Biggar Report (1921). *Report of the Committee appointed by the Rt. Hon. C.J. Doherty, Minister of Justice to advise upon revision of the penitentiary regulations and the amendment of the Penitentiary Act*. Ottawa: King's Printer.

Blumstein, A. (1984). Sentencing reforms: impacts and implications. *Judicature*, 68, 129-139.

Blumstein, A., Cohen, J. and Nagin, D. (Eds.) (1978). *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*. Washington, D.C.: National Academy of Sciences.

Blumstein, A., Cohen, J., Martin, S.E. and Tonry, M.H. (Eds.) (1983). *Research on Sentencing: The Search for Reform*. Volumes 1 and 2. Washington, D.C.: National Academy Press.

Borick, K. (1985). *Plea Bargaining*. Paper presented to the International Criminal Law Congress, October 6-11, 1985, Adelaide, Australia.

Borthwick, J.D. (1907). *History of the Montreal Prisons*. Montreal: The Gazette Printing Company.

Brillon, Y., Louis-Guérin, C. and Lamarche, M.C. (1984). *Attitudes of the Canadian Public Toward Crime Policies*. International Centre for Comparative Criminology, University of Montreal.

Brodeur, J.P. (1984). *The Canadian Sentencing Commission: Issues and Methods*. Ottawa: The Canadian Sentencing Commission.

Brown Commission (1849). *Second Report of the Commissioners of the Penitentiary Inquiry*. Appendix B., 12 Victorial, A. 1849.

Browne, G.P. (Ed.) (1969). *Documents on the Confederation of British North America*. Toronto: McClelland and Stewart.

Burt, A.L. (1968). *The Old Province of Quebec*. Toronto: McClelland and Stewart.

Calder, W.A. (1979). *The Federal Penitentiary System in Canada, 1867-1899: A Social and Institutional History*. Unpublished, University of Toronto dissertation.

Canada (1984). *Sentencing*. Ottawa: Government of Canada.

Canada (1982). *The Criminal Law in Canadian Society*. Ottawa: Government of Canada.

Canada (1982a). *The Criminal Law in Canadian Society. Highlights*. Ottawa: Government of Canada.

Canada (1954). *Report of the Royal Commission on the Revision of Criminal Code. An Act Respecting the Criminal Law*. Ottawa: Queen's Printer and Controller of Stationery.

Canada (1952). *House of Commons Debates*. Sixth Session, Twenty-first Parliament, 1 Elizabeth II.

Canada (1948). *House of Commons Debates*. Fourth Session, Twentieth Parliament, 11-12 George VI.

Canada (1944). *House of Commons Debates*. Fifth Session, Nineteenth Parliament, 8-9 George VI.

Canada, National Parole Board (1983). *National Parole Board Handbook for Judges and Crown Attorneys*. Ottawa: Minister of Supply and Services.

Canada, Solicitor General (1984). *Selected Trends in Canadian Criminal Justice*. Ottawa: Minister of Supply and Services.

Canada, Solicitor General (1984a). *Long Term Imprisonment in Canada*. Working Paper no. 1. Ottawa: Ministry Secretariat.

Canada, Solicitor General (1983). "Victims of Crime". *Canadian Urban Victimization Survey*. Bulletin 1. Ottawa: Minister of Supply and Services.

Canada, Solicitor General (1982). *International Conference on Alternatives to Imprisonment Report*. Ottawa: Minister of Supply and Services.

Canada, Solicitor General (1981). *Criminal Justice Research - A Selective Review*. Ottawa: Minister of Supply and Services.

Canada, Solicitor General (1981). *Solicitor General's Study of Conditional Release*. Ottawa: Minister of Supply and Services.

Canada, Status of Women (1986). *A Feminist Review of Criminal Law. Report*. Ottawa: Minister of Supply and Services.

Canadian Association of Provincial Court Judges (1982). *Canadian Sentencing Handbook*. Ottawa: Canadian Association of Provincial Court Judges.

Canadian Bar Association (1986). *Submission to the Canadian Sentencing Commission*. Ottawa: The Canadian Sentencing Commission.

Canadian Committee on Corrections (1969). *Report of the Canadian Committee on Corrections. Toward Unity: Criminal Justice and Corrections*. Ottawa: The Queen's Printer.

Canadian Federal-Provincial Task Force on Justice for Victims of Crime (1983). *Report*. Ottawa: Minister of Supply and Services.

Canadian Sentencing Commission (1986). *Survey of Crown and Defense Counsel: Final Report (Research #5)*. Ottawa: The Canadian Sentencing Commission.

Canadian Sentencing Commission (1986). *Sentencing and Public Opinion: The Second Nation-Wide Survey* (Research #2). Ottawa: The Canadian Sentencing Commission.

Canadian Sentencing Commission (1986). *Sentencing and Public Opinion: The Third Nation-Wide Survey* (Research #3). Ottawa: The Canadian Sentencing Commission.

Canadian Sentencing Commission (1986). *Sentencing in the Media: A Content Analysis of Canadian Newspapers (English-language)* (Research #4). Ottawa: The Canadian Sentencing Commission.

Canadian Sentencing Commission (1985). *Opinion of Sentencing Judges in Canada* (Research #6). Ottawa: The Canadian Sentencing Commission.

Canadian Sentencing Commission (1985). *Public Opinion Concerning Parole and Other Sentencing Issues: The Nation-Wide Survey* (Research #1). Ottawa: The Canadian Sentencing Commission.

Careless, J.M.S. (1959). *Brown of the Globe*, vol 1. Toronto: MacMillan.

Chan, J. and Ericson, R. (1981). *Decarceration and the Economy of Penal Reform*. Centre of Criminology, University of Toronto.

Cohen, J. and Tonry, M.H. (1983). Sentencing Reforms and Their Impacts. In A. Blumstein, J. Cohen, S.E. Martin and M.H. Tonry (Eds.), *Research on Sentencing: The Search for Reform* (vol. 1, pp. 305-459). Washington, D.C.: National Academy Press.

Cohen, S. (1985). *Visions of Social Control: Crime, Punishment and Classification*. Cambridge: Polity Press.

Comité d'étude sur les solutions de rechange à l'incarcération. Voir Document de Consultation, Mai 1986, Québec.

Committee Appointed to Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada (1956). *Report of a Committee Appointed to Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada*. Ottawa: Queen's Printer and Controller of Stationery.

Commonwealth Correctional Administrators (1985). *Report of First Meeting of Commonwealth Correctional Administrators 18-22 March 1985*. London: Commonwealth Secretariat.

Commonwealth of Pennsylvania Commission on Sentencing (1982). *Sentencing Guidelines Implementation Manual*.

Correctional Law Review (1986). *Correctional Philosophy*. Working Paper No. 1. Ottawa: Solicitor General Canada.

Correctional Law Review (1986a). *A Framework For the Correctional Law Review*. Ottawa: Solicitor General Canada.

Correctional Law Review (1985). *Parole and Remission: A Review of Issues and Trends*. Ottawa: Solicitor General Canada.

Correctional Service of Canada (1986). *Basic Facts About Corrections in Canada*. Ottawa: Minister of Supply and Services.

Corrections Policy Division (1985). *Conditional Release. Myths and Realities*. Ottawa: Solicitor General, Secretariat Policy Branch.

Corrections Policy Division (1985a). *Conditional Release Programs for Federal Offenders*. Ottawa: Solicitor General, Secretariat Policy Branch.

Cousineau, F.D. (1986). *Legal Sanctions and Deterrence*. Ottawa: The Canadian Sentencing Commission.

Cross, R. (1978). The Report of the Criminal Law Commissioners (1833-1849) and the Abortive Bills of 1853. In P.R. Glazebrook (Ed.), *Reshaping the Criminal Law*. London: Stevens.

Curtis, D., Graham, A., Kelly, L. and Patterson, A. (1985). *Kingston Penitentiary: The First Hundred and Fifty Years*. Ottawa: Minister of Supply and Services.

Dandurand, Y. (1982). *Description de l'évolution de la partie positive du Code Criminel canadien 1892-1955*. Ottawa: Ministère de la Justice.

Decore, J.V. (1964). Criminal Sentencing: The Role of the Canadian Courts of Appeal and the Concept of Uniformity. *Criminal Law Quarterly*, 6, 324-380.

Del Buono, V. (1978). The Right to Appeal in Indictable Cases: A Legislative History. *Alberta Law Review*, 16, 446-469.

Department of Justice (1985). *C.19 is Tough....* (Pamphlet published by the Department of Justice).

Donelson, A.C., (1985). *Impaired Driving Report No. 4. Alcohol and Road Accidents in Canada: Issues Related to Future Strategies and Priorities*. Ottawa: Department of Justice.

Doob, A.N. and Roberts, J.V. (1983). *An analysis of the public's view of sentencing*. Ottawa: Department of Justice.

Doob, A.N. and Roberts, J.V. (1982). *Crime and the Official Response to Crime: The View of the Canadian Public*. Ottawa: Department of Justice.

Edmison, J.A. (1976). Some Aspects of Nineteenth-Century Canadian Prisons. In W.T. McGrath, *Crime and Its Treatment in Canada* (2nd ed.). Toronto: MacMillan.

- Edwards, J.L.J. (1983). The Advent of English (Not French) Criminal Law and Procedure Into Canada – A Close Call in 1774. *Criminal Law Quarterly*, 26, 464-482.
- Ekstedt, J.W. (1986). *A Profile of Canadian Alternative Sentencing Programmes: A National Review of Policy Issues*. Ottawa: The Canadian Sentencing Commission.
- Ekstedt, J.W. (1986a). *Alternatives to Incarceration/Sentencing Option Programmes: What are the Alternatives?* Ottawa: The Canadian Sentencing Commission.
- Ekstedt, J.W. (1985). *Justice in Sentencing: Offender Perceptions*. Ottawa: The Canadian Sentencing Commission.
- Ekstedt, J.W. and Griffiths, C.T. (1984). *Corrections in Canada: Policy and Practice*. Toronto: Butterworths.
- Elliott, J.K. (1931). Crime and Punishment in Early Upper Canada. *Ontario Historical Society*, 27, 335-340.
- Ericson, R. (1982). *Reproducing Order: A Study of Police Patrol Work*. Toronto: University of Toronto Press.
- Ericson, R. (1981). *Making Crime: A Study of Police Detective Work*. Toronto: Butterworths.
- Ericson, R. and Baranek, P. (1982). *The Ordering of Justice: A Study of Accused Persons as Dependents in the Criminal Process*. Toronto: University of Toronto Press.
- European Committee on Crime Problems (1977). *Treatment of Long-Term Prisoners*. Strasbourg: Council of Europe.
- European Committee on Crime Problems (1974). *Sentencing*. Strasbourg: Council of Europe.
- Evans, M.K. (1971). *The Prerogative of Pardon in Canada: Its Development 1864-1894*. Unpublished master's thesis, Carleton University.
- Fattah, E.A. (1972). *A Study of the Deterrent Effect of Capital Punishment with Special Reference to the Canadian Situation*. Ottawa: Solicitor General Canada.
- Feinberg, J. (1965). The Expressive Function of Punishment. *The Monist*, 49, 397-423.
- Ferguson, G. and Roberts, D. (1974). Plea Bargaining Directions for Canadian Reform. *Canadian Bar Review*, 52, 497-576.

- Flaherty, D.H. (1983). *Essays in the History of Canadian Law*. Toronto: The Osgoode Society. Volumes 1 and 2.
- Fogel, D. (1975). *...We Are the Living Proof...: the Justice Model for Corrections*. Cincinnati: The W.H. Anderson Company.
- Forst, M.L. (1983). Sentencing Disparity: an Overview of Research and Issues. In M.L. Forst (Ed.), *Sentencing Reform: Experiments in Reducing Disparity* (pp. 9-34). Beverly Hills, Ca.: Sage Publications.
- Frankel, M.F. (1972). *Criminal Sentences: Law Without Order*. New York: Hill and Wang.
- Friedland, M.L. (1985). *Sentencing Structure in Canada: Historical Perspectives*. Ottawa: The Canadian Sentencing Commission.
- Friedland, M.L. (1984). Criminal Justice and the Constitutional Division of Power in Canada. Chapter 2 of *A Century of Criminal Justice*. Toronto: Carswell.
- Friedland, M.L. (1980). *National Security: The Legal Dimensions*. Ottawa: Minister of Supply and Services.
- Friedland, M.L. (1969). *Double Jeopardy*. Oxford: Oxford University Press.
- Galegher, J. and Carroll, J.S. (1983). Voluntary Sentencing Guidelines: Prescription for Justice or Patent Medicine? *Law and Human Behavior*, 7, 361-400.
- Gibson Report (1947). *Report of General R.B. Gibson, A Commissioner Appointed under Order-in-Council P.C. 1313, regarding the Penitentiary System of Canada*. Ottawa: King's Printer.
- Gottfredson, M. and Gottfredson, D.M. (1980). *Decision-making in Criminal Justice*. Cambridge, Mass.: Ballinger.
- Graber, D.A. (1980). *Crime News and the Public*. New York: Praeger.
- Greaves, C. (1861). *The Criminal Law Consolidation and Amendment Acts of the 24 & 25 Vict. with notes and observations*. London: Stevens.
- Greenwood, P.W. and Abrahamse, A. (1982). *Selective Incapacitation*. Santa Monica: The Rand Corporation.
- Gross, H. (1979). *A Theory of Criminal Justice*. New York: Oxford University Press.
- Gross, H. and von Hirsch, A. (Eds.) (1981). *Sentencing*. New York: Oxford University Press.

- Grosman, B. (Ed.) (1980). *New Directions in Sentencing*. Toronto: Butterworths.
- Hainsworth, M. (1985). *Sentencing Inventory*. Ottawa: The Canadian Sentencing Commission.
- Hamburger, L. and J. (1985). *Troubled Lives: John and Sarah Austin*. Toronto: University of Toronto Press.
- Hann, R.G. (1985). *Information Systems for Sentencing Guidelines: Recent Experience*. Ottawa: The Canadian Sentencing Commission.
- Hann, R.G. and Harman, W.G. (1986). *Full Parole Release: An Historical Descriptive Analysis*. Ottawa: Solicitor General Canada, Ministry Secretariat.
- Hann, R.G. and Kopelman, F. (1986). *Custodial and Probation Sentences Project: Overview Report and Individual Offence Reports*. Ottawa: Department of Justice.
- Hann, R.G., Moyer, S., Billingsley, B. and Canfield, C. (1983). *Sentencing Practices and Trends in Canada: A Summary of Statistical Information*. Ottawa: Department of Justice.
- Harman, W.G. and Hann, R.G. (1986). *Information Systems to Support a Canadian Sentencing Commission: Initial Comments*. Ottawa: The Canadian Sentencing Commission.
- Harman, W.G. and Hann, R.G. (1986). *Release Risk Assessment: An Historical Descriptive Analysis*. Ottawa: Solicitor General Canada, Ministry Secretariat.
- Harman, W.G. and Hann, R.G. (1986). *Simulation of Federal Penitentiary Populations: A Methodology*. Ottawa: The Canadian Sentencing Commission.
- Hart, H.L.A. (1968). *Punishment and Responsibility*. Oxford: Oxford University Press.
- Herbert, R. (Ed.) (1902). *Speeches on Canadian Affairs by the Fourth Earl of Carnarvon*. London: John Murray.
- Hogarth, J. (1971). *Sentencing as a Human Process*. Toronto: University of Toronto Press.
- Home Office Report (1979). *Sentences of Imprisonment*. London: Her Majesty's Stationery Office.
- Hulsman, L. and Bernat de Celis, J. (1982). *Peines perdues*. Paris: Le Centurion.
- Jackson, M. (1983). *Prisoners of Isolation: Solitary Confinement in Canada*. Toronto: University of Toronto Press.

Jaffary, S.K. (1965). Correctional Federalism. *Canadian Journal of Corrections*, 7, 362-376.

Jaffary, S.K. (1963). *Sentencing of Adults in Canada*. Toronto: University of Toronto Press.

Jobson, K.B. (1971). Imprisonment. *Ottawa Law Review*, 4, 421-457.

Joint Study of the Government of Canada, Government of Saskatchewan and Federation of Saskatchewan Indian Nations (1985). *Reflecting Indian Concerns and Values in the Justice System*. Report from the Steering Committee. Regina: Government of Saskatchewan.

Joliffe, K. (1984). *Penitentiary Medical Services: 1835-1983*. Ottawa: Solicitor General Canada.

Kant, I. (1797). *The Metaphysics of Morals*. Part I: The Metaphysical Elements of Justice. Translated by John Ladd. Indianapolis: Indiana University Press.

Kennedy, W.P.M. (Ed.) (1930). *Statutes, Treaties and Documents of the Canadian Constitution 1713-1929* (2nd ed.). Oxford: Oxford University Press.

Knapp, K.A. (1984). What Sentencing Reform in Minnesota Has and Has Not Accomplished. *Judicature*, 68, 181-189.

Kress, J.M. (1980). *Prescription For Justice: The Theory and Practice of Sentencing Guidelines*. Cambridge, Mass.: Ballinger.

Landreville, P., Hamelin, M. & Gagnier, S. (1985). *Points de vue de détenu-e-s du Québec sur quelques questions soulevées par le mandat de la Commission canadienne sur la détermination de la peine*. Ottawa: La Commission canadienne sur la détermination de la peine.

Lapin, M.A. and Patrick, J.S. (Eds.) (1951). *Index to Parliamentary Debates on Confederation of the British North American Provinces*. Ottawa: King's Printer and Controller of Stationery.

Law Reform Commission of Canada (1977). *Guidelines; Dispositions and Sentences in the Criminal Process*. Ottawa: Minister of Supply and Services.

Law Reform Commission of Canada (1975). *Criminal Procedure; Control of the Process*. (Working Paper 15). Ottawa: Information Canada.

Law Reform Commission of Canada (1976). *Our Criminal Law*. Ottawa: Minister of Supply and Services.

Law Reform Commission of Canada (1976a). *Community Participation in Sentencing* (Research Paper). Ottawa: Minister of Supply and Services.

Law Reform Commission of Canada (1976b). *Studies on Imprisonment*. Ottawa: Minister of Supply and Services.

- Law Reform Commission of Canada (1975). *Limits of Criminal Law; Obscenity: A Test Case* (Working Paper 10). Ottawa: Information Canada.
- Law Reform Commission of Canada (1975a). *In Sight of Land...Fourth Annual Report 1974-1975*. Ottawa: Information Canada.
- Law Reform Commission of Canada (1975b). *Imprisonment and Release* (Working Paper 11). Ottawa: Information Canada.
- Law Reform Commission of Canada (1975c). *Studies on Diversion*. Ottawa: Information Canada.
- Law Reform Commission of Canada (1974). *The Meaning of Guilt: Strict Liability* (Working Paper 2). Ottawa: Information Canada.
- Law Reform Commission of Canada (1974a). *The Principles of Sentencing and Dispositions* (Working Paper 3). Ottawa: Information Canada.
- Law Reform Commission of Canada (1974b). *Restitution and Compensation; Fines* (Working Papers 5 and 6). Ottawa: Information Canada.
- Law Reform Commission of Canada (1974c). *Studies on Sentencing*. Ottawa: Information Canada.
- Law Society of Upper Canada Special Lectures (1969). *Defending a Criminal Case*. Toronto: Richard de Boo.
- Le Dain Report (1973). *Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs*. Ottawa: Information Canada.
- Le Dain Report (1972). *Cannabis. A Report of the Commission of Inquiry into the Non-Medical Use of Drugs*. Ottawa: Information Canada.
- Levi, M. and Jones, S. (1985). Public and Police Perceptions of Crime Seriousness in England and Wales. *British Journal of Criminology*, 25, 234-250.
- Lewis, C.S. (1953). The Humanitarian Theory of Punishment. *Res Judicatae*, 6, 224-230.
- Linden, A.M. (1986). Toward a New Criminal Code for Canada. In P. Fitzgerald (Ed.), *Crime, justice and codification: essays in memory of Jacques Fortin* (pp. 163-196). Toronto: Carswell.
- Lipton, D., Martinson, R. and Wilks, J. (1975). *The Effectiveness of Correctional Treatment; a Survey of Treatment Evaluation Studies*. New York: Praeger.
- Loftin, C., Heumann, M. and McDowall, D. (1983). Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control. *Law and Society Review*, 17, 287-318.
- MacDonald, L. (1969). Crime and Punishment in Canada: A Statistical Test of the "Conventional Wisdom". *Canadian Review of Sociology and Anthropology*, 6, 212-236.

- MacDonnell Report (1914). *Report of the Royal Commission on Penitentiaries*. Ottawa: King's Printer.
- Mackie, J.L. (1982). Morality and the Retributive Emotions. *Criminal Justice Ethics*. Winter/Spring, 5-10.
- MacGuigan Report (1977). *Report to Parliament by the Sub-Committee on the Penitentiary System in Canada*. Ottawa: Minister of Supply and Services.
- Mandel, M. (1985). Democracy, Class, and Canadian Sentencing Law. *Crime and Social Justice*, 21-22, 163-182.
- Mandel, M. (1975). Rethinking Parole. *Osgoode Hall Law Journal*, 13, 501-546.
- Manning, P.K. (1977). *Police Work*. Cambridge, Mass.: The M.I.T. Press.
- Manning, P.K. (1980). *The Narc's Game*. Cambridge, Mass.: The M.I.T. Press.
- Martinson, R. (1974). What Works. Questions and Answers About Prison Reform. *The Public Interest*, Spring, No.35, 22-54.
- McCleary, R., O'Neil, M.J., Epperlein, T., Jones, C. and Gray, R. (1981). Effects of legal education and work experience on perceptions of crime seriousness. *Social Problems*, 28, 276-289.
- Minnesota (1984). *Minnesota Sentencing Guidelines and Commentary. Revised August 1, 1984*. St. Paul, Mn.: Minnesota Guidelines Commission, 1984.
- Minnesota Sentencing Guidelines Commission (1984). *The Impact of the Minnesota Sentencing Guidelines: Three Year Evaluation*. St. Paul, Mn.: Minnesota Guidelines Commission.
- Morris, N. (1951). *The Habitual Criminal*. London: Longmans.
- Morrison, W.L. (1982). *John Austin*. Stanford: Stanford University Press.
- Morse, B. and Lock, L. (1985). *Native Offender Project*. Ottawa: The Canadian Sentencing Commission.
- Nadin-Davis, P. (1982). *Sentencing in Canada*. Ottawa: Carswell.
- National Parole Board (1986). *NPB's Impact on the Reduction of Recidivism*. Ottawa: National Parole Board, Statistical Liaison Office.
- National Parole Board (1984). *Average Time Served Data*. Data Provided by the Statistical Liaison Office. Ottawa: National Parole Board.
- Neatby, H.M. (1937). *The Administration of Justice Under the Québec Act*. Minneapolis: University of Minnesota Press.

Needham, H.G. (1980). Historical Perspectives on the Federal-Provincial Split in Jurisdiction in Corrections. *Canadian Journal of Criminology*, 22, 298-306.

Nielsen Task Force Report on the Justice System (1986). *The Justice System – A Study Team Report to the Task Force on Program Review*. Ottawa: Minister of Supply and Services.

Nisbett, R.E. and Ross, L. (1980). *Human Inference: Strategies and Shortcomings of Social Judgment*. New Jersey: Prentice Hall.

Packer, H.L. (1968). *The Limits of Criminal Sanctions*. Stanford, Ca.: Stanford University Press.

Palys, T.S. (1982). *Beyond the Black Box: A Study in Judicial Decision-Making*. Ottawa: Solicitor General Canada (unpublished).

Palys, T.S. and Divorski, S. (1984). Judicial Decision-Making: An Examination of Sentencing Disparity Among Canadian Provincial Court Judges. Chapter 24 in D.C. Muller, P.E. Blackman, and A.J. Chapman, (Eds.). *Psychology and the Law*. Toronto: John Wiley and Sons.

Parker, G. (1981). The Origins of the Canadian Criminal Code. In D.H. Flaherty, *Essays in the History of Canadian Law*. Vol. 1. Toronto: Osgoode Society.

Pennsylvania Commission on Sentencing (1981). The Courts, Title 204, Judicial System, General Provisions, *Pennsylvania Bulletin*, Part II, Harrisburg, Pa., 11, 463-476.

Pennsylvania Commission on Sentencing (1981). The Courts, Title 204, Judicial System, General Provisions, Part VIII, Criminal Sentencing, Chapter 301, Pennsylvania Commission on Sentencing (Reserved), Chapter 303, Sentencing Guidelines, *Pennsylvania Bulletin*, Harrisburg, Pa., 12, 65-75.

Pennsylvania Commission on Sentencing (Commonwealth of Pennsylvania) (1982). *Sentencing Guidelines Implementation Manual*. Harrisburg, Pa.: Pennsylvania Commission on Sentencing.

Petersilia, J., Greenwood, P.N. and Marvin, L. (1978). *Criminal Careers of Habitual Felons*. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice.

Pires, A.P. (1985). *Critiques à la prison et principe de modération: inventaire d'extraits dans les documents canadiens*. Ottawa: La Commission canadienne sur la détermination de la peine.

Pires, A.P. (1984). *Inventaire d'extraits significatifs ayant trait à la disparité des sentences dans la littérature canadienne*. Ottawa: La Commission canadienne sur la détermination de la peine.

President's Commission on Law Enforcement and Administration of Justice (1967). *Task Force Report: The Courts*. Washington: U.S. Government Printing Office.

Price, R.P. and Gold, A.D. (1976). Legal Controls for the Dangerous Offender. In Law Reform Commission of Canada, *Studies on Imprisonment*. Ottawa: Minister of Supply and Services.

Québec (1980). *Rapport: le vol à main armée au Québec*. Québec: Ministère de la Justice.

Québec, Ministère du Solliciteur Général (1986). *Rapport du comité d'étude sur les solutions de rechange à l'incarcération*. Québec: Ministère du Solliciteur Général.

Radzinowicz, L. (1948). *A History of English Criminal Law and its Administration from 1750*, vol.1. London: Stevens.

Rapport Prévost (1969). *La Société face au crime. Rapport de la Commission d'enquête sur l'administration de la justice en matière criminelle et pénale au Québec*. (Vol. 1: Principes fondamentaux). Québec: Gouvernement du Québec.

Rich, W. and Sutton, L.P. (1980). *The Impact of Sentencing Guidelines on Judicial Discretion: Issues of Compliance and Disparity*. Williamsburg, Va.: National Center for State Courts.

Rich, W., Sutton, L.P., Clear, T.D. and Saks, M.J. (1982). *Sentencing by Mathematics: An Evaluation of the Early Attempts to Develop and Implement Sentencing Guidelines*. Williamsburg, Va.: National Center for State Courts.

Rich, W., Sutton, L.P., Clear, T.D. and Saks, M.J. (1981). *Sentencing Guidelines: Their Operation and Impact on the Courts*, Draft. Williamsburg, Va.: National Center for State Courts.

Rich, W., Sutton, L.P., Clear, T.D. and Saks, M.J. (1980). *Modeling the Sentencing Process: An Examination of Empirically Based Sentencing Guidelines*. Williamsburg, Va.: National Center for State Courts.

Richardson, J. (1986). *Probation and Parole Officers' Survey*. Ottawa: The Canadian Sentencing Commission.

Rizkalla, S., Bellot, S. & Morissette, A. (1986). *La détermination de la peine: les professionnels et praticiens non-juristes s'expriment*. Ottawa: La Commission canadienne sur la détermination de la peine.

Robert, Ph. et Faugeron, C. (1980). *Les forces cachées de la justice*. Paris: Le Centurion.

Roberts, J.V. (1985). *Sentencing Research in Canada: A Review of the Literature, 1969-1984*. Ottawa: The Canadian Sentencing Commission.

Roberts, J.V. and White, N.R. (1986). Public Estimates of Recidivism Rates: Consequences of a Criminal Stereotype. *Canadian Journal of Criminology*, 28, 229-241.

Rosenfeld, E. (1986). *Process, Policy and Prejudice – A Survey of Editorial Policies on Sentencing – Related News*. Ottawa: The Canadian Sentencing Commission.

Ross, R.R. and Barker, T.G. (1986). *Incentives and Disincentives: A Review of Prison Remission System*. (Working Paper). Ottawa: Solicitor General Canada, Ministry Secretariat.

Rossi, P.H., Waite, E., Bose, C.E. and Berk, R.E. (1974). The Seriousness of Crimes: Normative Structure and Individual Differences. *American Sociological Review*, 39, 224-237.

Royal Commission on the Revision of Criminal Code (1952). Report. In Senate of Canada, *Official Report of Debates*. Sixth Session, Twenty-First Parliament, 1 Elizabeth II.

Royal Commission to Investigate the Penal System of Canada (1938). *Report of the Royal Commission to Investigate the Penal System of Canada*. Ottawa: Printer to the King's Most Excellent Majesty.

Ruby, C. (1980). *Sentencing*. (2nd ed.) Toronto: Butterworths.

Rusche, G. and Kirchheimer, O. (1939). *Punishment and Social Structure*. New York: Columbia University Press (reissued by Russell and Russell, New York, 1968).

Rutherford, A. (1984). *Prisons and the Process of Justice*. London: Heinemann.

Sechrest, L., White, S. and Brown, E. (Eds.) (1979). *The Rehabilitation of Criminal Offenders: Problems and Prospects*. Washington, D.C.: National Academy of Sciences.

Senate of Canada (1952). *Official Report of Debates*. Sixth Session, Twenty-First Parliament, 1 Elizabeth II.

Sentencing Guidelines Commission (1983). *Report to the Legislature*. Olympia, Wa.: Washington Sentencing Guidelines Commission.

Service de recherche de la Commission des services juridiques (1984). *Sentences Drogues*. Montréal: Wilson & Lafleur/Sorej Ltée. et Québec: Bibliothèque nationale du Québec.

Shaw, A.G.L. (1966). *Convicts and the Colonies*. London: Faber and Faber.

Shore, J.J.M. (1984). An Evaluation of Canada's Dangerous Offender Legislation. *Les Cahiers de Droit*, 25, 411-426.

Shortt, A. and Doughty, A.G. (Eds.) (1918). *Documents Relating to the Constitutional History of Canada 1759-1791* (2nd ed.). Ottawa: Printer to the King's Most Excellent Majesty.

Splane, R.B. (1965). *Social Welfare in Ontario 1791-1893*. Toronto: University of Toronto Press.

Standing Senate Committee on Legal and Constitutional Affairs (1974). *Parole in Canada - Report of the Standing Senate Committee on Legal and Constitutional Affairs*. Ottawa: Information Canada.

Statistics Canada, Centre for Justice Statistics (1985). *Adult Correctional Services in Canada* (1983-1984). Ottawa: Minister of Supply and Services.

Stenning, P.C. (1985). *Appearing for the Crown*. Montreal: Brown's Legal Publications.

Stephen, J.F. (1883). *A History of the Criminal Law of England*, London: MacMillan.

Stephen, J.F. (1874). *Liberty, Equality, Fraternity*. (2nd ed.). London: Smith, Elder, & Co.

Swackhamer Report (1972). *Report of the Commission of Inquiry into Certain Disturbances at the Kingston Penitentiary during April 1971*. Ottawa: Solicitor General Canada.

Talbot, C.K. (1983). *Justice in Early Ontario 1791-1840*. Ottawa: Crimcare.

Task Force on Program Review (1985). *Improved Program Delivery: Justice System*. Study Team Report. Ottawa: Minister of Supply and Services.

Task Force on the Role of the Private Sector in Criminal Justice (1977). *Community Involvement in Criminal Justice*. Vol.1 (Report to the Continuing Committee of Deputy Ministers). Ottawa: Minister of Supply and Services.

Thomas, D.A. (1983). *Current Sentencing Practice*. London: Sweet & Maxwell.

Thomas, D.A. (1979). *Constraints on Judgment - The Search for Structured Discretion in Sentencing 1860-1910*. Institute of Criminology Occasional Series No.4, University of Cambridge.

Thomas, D.A. (1978). *The Penal Equation - Derivations of the penalty structure of English criminal law*. Institute of Criminology, University of Cambridge.

Thornstedt, H. (1979). The Day Fine System in Sweden. *Criminal Law Review*, 1975, 307-312.

Tremblay, G. (1986). *Recherche sur les stratégies et pratiques des médias en matière d'information judiciaire*. Ottawa: La Commission canadienne sur la détermination de la peine.

Tuttle, E.O. (1961). *The Crusade Against Capital Punishment in Great Britain*. London: Stevens.

Twentieth Century Fund Task Force on Criminal Sentencing (1976). *Fair and Certain Punishment*. New York: McGraw-Hill Book Company.

United Nations, General Assembly (1985). *Declaration on Basic Principles of Justice For Victims of Crime and Abuse of Power*. 40th Session. New York.

Van Dijk, J.J. (1978). *The extent of public information and the nature of public attitudes towards crime* (Draft). Research and Documentation Centre of the Ministry of Justice, The Hague.

Verdun-Jones, S. and Hatch, A.J. (1985). *Plea Bargaining and Sentencing Guidelines*. Ottawa: The Canadian Sentencing Commission.

Verdun-Jones, S.N. and Mitchell-Banks, T.R. (1986). *The fine as a sentencing option in Canada*. Ottawa: The Canadian Sentencing Commission.

Vining, A. (1985). *Issues relating to guideline implementation and evaluation in the U.S. and their relevance to Canadian sentencing reform*. Ottawa: The Canadian Sentencing Commission.

von Hirsch, A. (1985). *Past or Future Crimes – Deservedness and Dangerousness in the Sentencing of Criminals*. New Brunswick: Rutgers University Press.

von Hirsch, A. (1984). Equality, 'Anisonomy', and Justice: a Review of Madness and the Criminal Law. *Michigan Law Review*, 82, 1093-1112.

von Hirsch, A. (1984a). The Ethics of Selective Incapacitation: Observations on the Contemporary Debate. *Crime and Delinquency*, 30, 175-194.

von Hirsch, A. (1983). Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and Their Rationale. *The Journal of Criminal Law and Criminology*, 74, 209-248.

von Hirsch, A. (1983a). "Neoclassicism", Proportionality, and the Rationale for Punishment: Thoughts on the Scandinavian Debate. *Crime and Delinquency*, 29, 52-70.

von Hirsch, A. (1983b). Recent Trends in American Criminal Sentencing Theory. *Maryland Law Review*, 42, 6-36.

von Hirsch, A. (1982). Constructing Guidelines for Sentencing: The Critical Choice for the Minnesota Sentencing Guidelines Commission. *Hamline Law Review*, 5, 164-215.

von Hirsch, A. (1981a). Utilitarian Sentencing Resuscitated: The American Bar Association's Second Report on Criminal Sentencing. *Rutgers Law Review*, 33, 772-789.

von Hirsch, A. (1981b). Desert and Previous Convictions in Sentencing. *Minnesota Law Review*, 65, 591-634.

von Hirsch, A. (1976). *Doing Justice: The Choice of Punishments*. New York: Hill and Wang.

von Hirsch, A. and Gottfredson, D.M. (1984). Selective Incapacitation: Some Queries About Research Design and Equity. *New York University Review of Law and Social Change*, 12, 11-51.

von Hirsch, A. and Hanrahan, K.J. (1981). Determinate Penalty Systems in America: an Overview. *Crime and Delinquency*, 27, 289-316.

von Hirsch, A. and Hanrahan, K.J. (1979). *The Question of Parole: Retention, Reform or Abolition?*. Cambridge, Mass.: Ballinger.

Waite, P.B. (1971). *Canada 1874-1896*. Toronto: McClelland and Stewart.

Walker, N. (1985). *Sentencing Theory, Law and Practice*. London: Butterworths.

Walker, N. (1971). *Sentencing in a Rational Society*. New York: Basic Books.

Waller, I. (1986). *The Role of the Victim in Sentencing and Related Processes*. Ottawa: The Canadian Sentencing Commission.

Wasserstrom, R. (1980). *Philosophy and Social Issues*. Notre Dame: University of Notre Dame Press.

Webster, C., Dickens, B. and Addario, S. (1985), Centre of Criminology, University of Toronto, *Constructing Dangerousness: Scientific, Legal and Policy Implications*, Ottawa: Department of Justice.

Webster's Third New International Dictionary of the English Language Unabridged (1981). Springfield, Mass.: G. & C. Merriam Company, Publishers.

Wilkins, L.T. (1981). *The Principles of Guidelines for Sentencing, Methodology and Philosophical Issues in Their Development*. Washington, D.C.: U.S. Department of Justice.

Wilkins, L.T., Kress, J.M., Gottfredson, D.M., Calpin, J.C. and Gelman, A.A. (1978). *Sentencing Guidelines. Structuring Judicial Discretion: Report on the Feasibility Study*. Washington, D.C.: U.S. Department of Justice.

Young, A. (1985). *The In-Out Decision and the Impact of the Criminal Record*. Ottawa: The Canadian Sentencing Commission.



Young, A. (1985). *The operation of mitigating and aggravating factors in appellate sentencing decisions*. Ottawa: The Canadian Sentencing Commission.

Young, A. (1985). *Tariff Sentencing in Canada*. Ottawa: The Canadian Sentencing Commission.

Young, A. (1984). *The Operation of Appellate Sentencing Ranges in Trial Court Sentencing Decisions*. Ottawa: The Canadian Sentencing Commission.

Young, A. (1984a). *The Role of Appeal Courts in Establishing Ranges*. Ottawa: The Canadian Sentencing Commission.

Zimring, F.E. and Hawkins, G.J. (1973). *Deterrence: The Legal Threat in Crime Control*. Chicago: Chicago University Press.

Zubrycki, R.M. (1980). *The Establishment of Canada's Penitentiary Nystem: Federal Correctional Policy 1867-1900*. Toronto: University of Toronto.

