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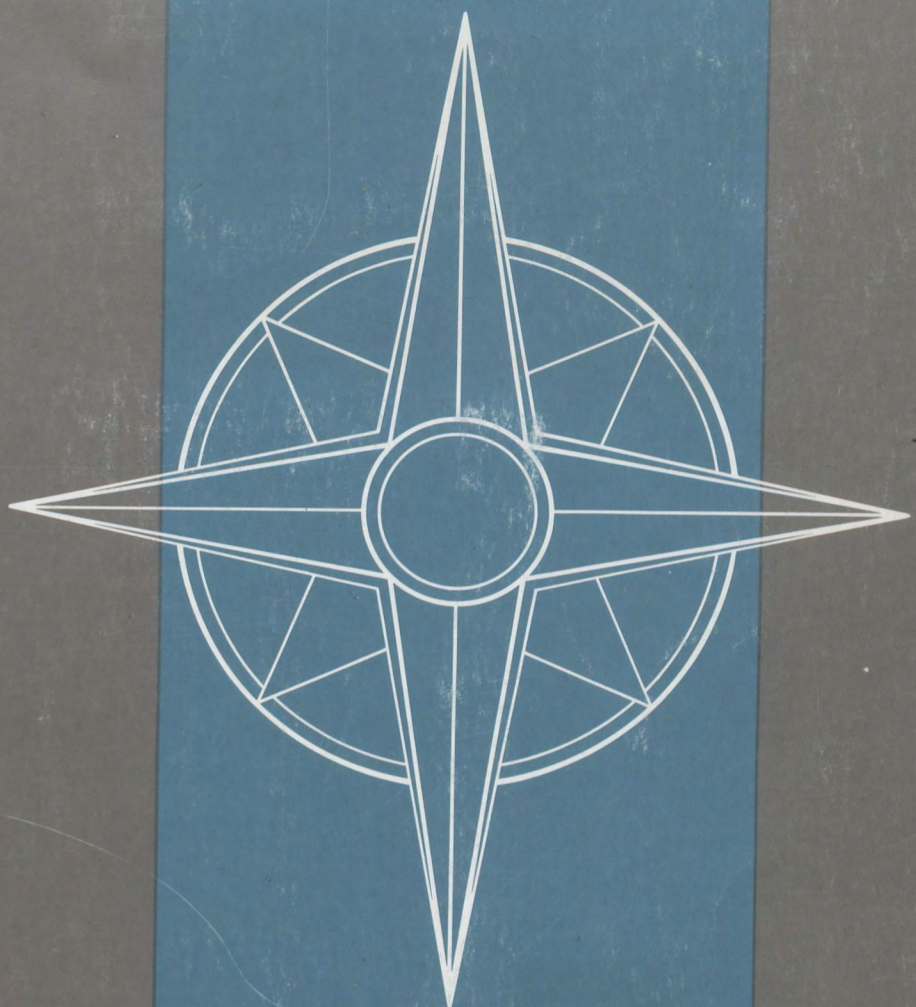

A Framework for Sentencing, Corrections and Conditional Release

DIRECTIONS FOR REFORM

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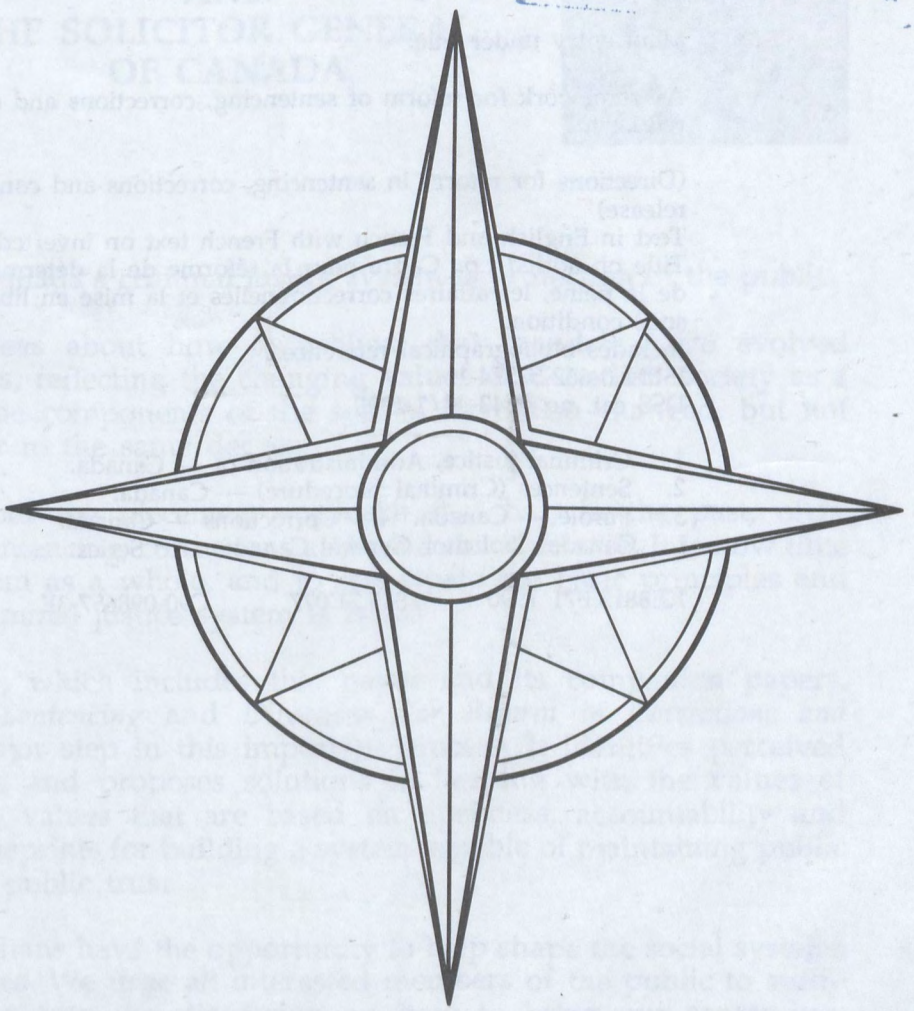

A Framework for
Sentencing, Corrections
and Conditional Release

DIRECTIONS FOR REFORM

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A MESSAGE FROM THE MINISTER OF JUSTICE AND ATTORNEY GENERAL OF CANADA AND THE SOLICITOR GENERAL OF CANADA

The primary mandate of Canada's criminal justice system is protection of the public.

But our attitudes and ideas about how to achieve that mandate have evolved dramatically over the years, reflecting the changing values of Canadian society as a whole. In keeping pace, the components of the system have also changed, but not always at the same rate or to the same degree.

Concerns have arisen about the piecemeal approach that has, in the past, often characterized changes to sentencing, corrections and conditional release. It is now time to take a look at the system as a whole, and to reevaluate the basic principles and practices on which our criminal justice system is based.

This consultation package, which includes this paper and its companion papers, *Directions For Reform in Sentencing* and *Directions For Reform in Corrections and Conditional Release*, is a major step in this important process. It identifies perceived weaknesses in the system, and proposes solutions in keeping with the values of Canadian society today -- values that are based on openness, accountability and fairness. It provides the blueprints for building a system capable of maintaining public confidence and worthy of public trust.

It is essential that all Canadians have the opportunity to help shape the social systems that serve their communities. We urge all interested members of the public to study these documents and enter into the discussion on how to bring our sentencing, corrections and conditional release system into the 1990s.

A. Kim Campbell
Minister of Justice and
Attorney General of Canada

Pierre H. Cadieux
Solicitor General of Canada

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FOREWORD

The Criminal Law Review

Recognizing the need for criminal law to reflect changes in the concerns of society, the federal government and the provinces unanimously agreed in 1979 to a comprehensive review of the criminal law.

The Criminal Law Review, and the contributing work of the Law Reform Commission of Canada, led to a number of government positions concerning different aspects of the criminal justice system. In 1982 the Government of Canada published *The Criminal Law in Canadian Society*, which provided a basic framework of principles within which the more specific issues of criminal law policy could be addressed and assessed.

A 1984 government discussion paper led to the tabling of a bill (C-19) to reform sentencing, which died on the order paper, and to the creation of the Canadian Sentencing Commission. In March, 1987, the Canadian Sentencing Commission, appointed by the federal government as part of the Review to advise upon sentencing and related processes, issued its report, *Sentencing Reform: A Canadian Approach.*

The Correctional Law Review is a sub-project of the Criminal Law Review process. It has produced important proposals for corrections reform in a series of working papers.

A key work integrating much of the above material is *Taking Responsibility* (the 1988 Report of the Standing Committee on Justice and Solicitor General on its review of sentencing, conditional release and related aspects of corrections), also known as the "Daubney Report" after Mr. David Daubney, then Chairman of the Committee.

Although the recommendations of these studies sometimes diverged, there has been a large measure of consensus on needed changes that the government can draw on. While the options proposed in this document are the responsibility of the government, it is important to recognize the significant debt the next step in criminal justice reform owes to these preparatory analyses.

As these studies have detailed, an effective criminal justice and correctional system is not the sole responsibility of any single party. Many agencies and constituencies (such as victims, the bar, and volunteers working with offenders) have vital roles to play, and many of the issues that are raised in this Paper are of immediate concern to these various participants. For these reasons, the government is committed to consultation on these proposals, and invites the active participation of all concerned.

I. INTRODUCTION

A convicted burglar stands before a judge for sentencing. The *Criminal Code of Canada* provides for a maximum penalty of life imprisonment for breaking and entering a dwelling. The offender has admitted to two other crimes of break and enter in his community, but he is only nineteen years old, and while out in the community awaiting trial he has found a good job for the first time. What kind of sentence should the judge impose?

A woman with no previous criminal history who killed her husband in the course of a domestic quarrel is convicted of manslaughter and sentenced to six years of imprisonment. Experience with this type of case indicates that she presents a very low risk to commit another crime, and she has two young children. Should she be eligible for release from penitentiary before the six years expire, and if so, how long a period should she have to serve in custody before becoming eligible?

A repeat sex offender is nearing the end of his sentence. He has been in custody for five years, and has no family or other support in the community to help him with a long-standing alcohol problem which has usually triggered his assaultive behaviour. Should he be placed in a halfway house before the end of his sentence, where he can receive supervision and assistance to establish a normal life, or should he be kept in penitentiary until the end of his sentence in order to isolate him from society as long as possible?

How do we ensure the sentence fits the crime and the criminal? What purposes and principles should drive our criminal justice system? What place is there in the correctional system for efforts to reform and redirect the lives of prisoners? Do prisons and penitentiaries deserve the central place that they occupy in our penal system? What is the proper scope for programs of conditional release from prisons and penitentiaries?

Canadians rightly feel the need to be protected from crime, especially violent crime, but the choices about how to deal effectively with crime are never easy.

Undoubtedly, the best response to crime would be to prevent it by affecting the underlying social and economic conditions which contribute to it, such as the breakdown in our social values, support systems and family structure, the loss of a sense of community, as well as unemployment. However, the problem of crime and how best to deal with convicted criminal offenders will always be with us. Some believe that a consistently applied system of punishments is our best hope for controlling crime. Others feel that isolation of predatory offenders for the longest possible time is the best defence. At the same time there is also strong support for a system which helps offenders to overcome the problems that led them to crime, and offers them opportunities to establish more acceptable ways of living in the community.

In this Paper, the central issues pertaining to sentencing, corrections, and conditional release will be addressed, and general directions will be set for the work of the federal government in the coming years in these key areas. (Readers who wish to read more on these issues are referred to the list of references in the bibliography.)

1. What is Wrong with our Sentencing, Corrections, and Conditional Release Systems?

The following are some of the key concerns — sometimes amounting to subjective impressions and interpretations — about our current system of sentencing, corrections, and conditional release which must be addressed:

- Canadians do not feel that the criminal justice system punishes criminals severely enough. Their fear of violent crime is increased by their perception that the penal system is too lenient with violent criminals.

- At the same time, Canadians overestimate our rate of violent crime, underestimate the sentences prescribed and imposed for specific offences, underestimate the severity of prison, overestimate the ease with which parole is granted, underestimate the length of time served by most offenders before parole is given, and overestimate the number of offenders on parole who commit new crimes.

- Many victims, particularly victims of violent crime, feel alienated from the criminal justice system. While significant improvements have been made in this area in recent years, efforts must continue to ensure that victims do not come away from their contact with the system feeling only frustration.

- The criminal justice system components — police forces, prosecutors, courts, prisons, parole agencies — do not adequately share information with one another. This reduces the quality of decisions and services, and can have tragic consequences.

- There are inconsistencies in sentencing which cannot be explained by reference to accepted principles. The same case might draw a different sentence depending on the individual judge, the court, or the region involved. These inconsistencies stem in part from the lack of both an overall guiding purpose and a set of principles for sentencing in Canada. Although flexibility in sentencing is vital, unjustified disparity does not serve the cause of justice.

- Sentencing judges do not have enough non-carceral programs or choices to draw on, especially for non-violent crimes.

- Canada relies too much on incarceration in sentencing. Our imprisonment rate is very high compared to that of Western Europe. Imprisonment is very costly. It punishes, but there is little evidence of its usefulness as a deterrent.

- Recent tragedies have drawn attention to the need for proper psychological assessment of offenders. However, we must recognize that there are severe

limits to psychological assessment, and we must allocate scarce resources for treatment of offenders as well as for assessment.

- Many offenders serve their time in prison and then commit new crimes, without having their needs met and without having been positively re-directed by correctional programs.

- What is appropriate for the majority of offenders may not be appropriate or effective for certain specific offender groups. For example, many Aboriginal offenders have different backgrounds, different criminal and social profiles, different experiences in prison and different problems in the community after release. There also needs to be recognition of the need to respond to the different needs of female offenders. Different approaches may also be needed to deal more effectively with long-term offenders, sex offenders, and the mentally disordered.

- Many Canadians see the release systems of this country — temporary absences, parole, remission-based release — as mechanisms that reduce the connection between the sentence imposed by the court and what the offender actually undergoes. In particular, Canadians are concerned about the possibility that punishment for violent crimes may be eroded as our corrections system makes decisions about conditional release. At the same time, many also recognize the value of, and support the principle of, conditional release.

This is a picture of a criminal justice system not in crisis, but beset with inconsistencies, discordance, and serious questions about fairness and effectiveness. Policies must respond to legitimate public criticisms and the careful research of justice professionals.

Through this consultation paper, the Government is shaping the recommendations received into a plan for action.

2. Our Current System and Calls for Reform

Canada's *Criminal Code* reflects centuries of common law and nine decades of piecemeal and patchwork amendment.

The *Criminal Code* sets a range of sanctions that the court may impose after a guilty verdict, but Parliament has not given any explicit direction through the Code on the objectives of sentencing, the criteria to be applied in individual cases, or procedures for obtaining and assessing information that could be relevant to a sentence.

The categorization of offences and the maximum sentence lengths in the Code provide very little guidance for sentencing judges. Maximum sentences are frequently very high — several offences carry maxima of life imprisonment. But the majority of cases receive sentences far less severe than the maximum, which is aimed at the worst possible offence and the worst possible offender.

Currently the Code provides for maximum penalties of six months, two years, five years, ten years, fourteen years, or life imprisonment, depending on the offence. These broad categories do not and cannot reflect the infinite variety of factors and circumstances which are relevant to sentencing. Nor is there consistency within and among categories. Statutory sentence lengths do not always seem to be an accurate reflection of the seriousness of the offence. But within this broad framework, the courts are left to determine the right sentence.

To this mix must be added the provincial and territorial Courts of Appeal which review the principles, rules and guidelines which have evolved in the courts. These courts act separately from each other and produce, in the words of former Chief Justice Bora Laskin, an "almost limitless range of judicial observations on sentencing."

The Canadian Sentencing Commission detailed the inadequacies of our present sentencing regime: there are no guiding policies for sentencing; unjustified disparities exist in sentences imposed; maximum sentences are too high to give real guidance to judges; and the existence and operation of parole and remission reinforce the uncertainty and disparity in sentence length.

With this diagnosis, it was therefore not surprising that the Commission also found that the public had little confidence in the system, with its lack of predictability, its apparent leniency, and its absence of focus on the needs of the victim.

Among the remedies proposed were a permanent sentencing commission which would, among other things, complete the work begun by the Commission on sentencing guidelines. Drastic changes to parole and remission systems were recommended, which would reduce their impact on the sentence.

The report of the House of Commons Standing Committee, *Taking Responsibility*, echoed many of these findings about fairness and consistency, and approved the idea of a sentencing commission. However, the Daubney Committee found more value in the parole system than had the Commission. It proposed a tightening up of the provisions relating to violent offenders, but concluded that for a large body of non-violent offenders, incarceration was an overused and frequently ineffective punishment.

In some of these latter recommendations on parole and remission, the Committee echoed proposals made by the government in 1988 to reform the system of conditional release.

The criminal justice system must not only respond to the valid critiques which have come from these public commentaries, but must also strive to ensure that its laws and regulations conform with the *Canadian Charter of Rights and Freedoms*.

II. GOALS OF REFORM IN SENTENCING, CORRECTIONS AND CONDITIONAL RELEASE

What are the key issues which must be addressed, and the goals which must be pursued, in response to the consensus on the need for reform?

1. Rebuilding Public Trust

Canadians fear crime, particularly violent crime. They expect the criminal justice system to protect them from victimization and punish those who trespass on their rights as citizens.

As in every society, the threat of violent crime is real, but it is also significantly over-estimated by Canadians. The crime rate, particularly the rate of violent crime, is significantly lower than Canadians estimate, and many sentences are harsher than most people believe.

Yet if the criminal justice system does not provide some reassurance to Canadians that it is working as efficiently and effectively as possible to achieve its stated goals, then it has failed in a critical way.

Rebuilding public trust is an essential goal and principle in itself. In addition, our efforts to rebuild public trust must serve and reflect the principles that the system should be as predictable, understandable, and effective as possible.

Two fundamental steps are necessary to rebuild public trust.

Government must demonstrate that the criminal justice network is as informed and effective as it can be in dealing with criminals, and that it properly balances competing interests and goals, such as the need to separate offenders from society and the need to reintegrate them productively back into society at the end of their sentence.

Second, the realities of the system — accomplishments and challenges, gains and failures — must be communicated to the public. Inaccurate public perceptions should not dictate public policy. But public perceptions, however accurate or inaccurate, are important to the credibility and continued functioning of the penal system. The voice of the public in shaping our justice system will be less effective if it relies on fallacies and not facts, but it is government itself which must see that the facts are in the public domain. As the Daubney Committee said, "Ultimately, the evolution of sound government policy — one that has broad public support — is dependent on an informed public."

Part of what must be communicated is how far we have to travel in understanding criminal behaviour and the effects of different forms of sentencing. Our policies are strained by incomplete knowledge and conflicting objectives. We instinctively look to long sentences to punish offenders, yet the evidence shows that long periods served in prison increase the chance the offender will offend again. This remains true even when we consider other factors which affect the likelihood of re-offending. If we isolate offenders from society we cannot be surprised when they exhibit anti-social behaviour.

2. The Need for Equity and Predictability

There is agreement that unjustified sentencing disparity exists and that, in the interest of justice and fairness, it should not. Nor can we accept inequities in conditional release decisions.

Unjustified disparity is variation in sentencing which cannot be explained or justified by reference to principles. This disparity takes a number of forms:

> **Case to case** — the same judge gives different sentences for similar offences, or gives the same sentence despite important differences;
>
> **Judge to judge** — different judges react to the same facts with different sentences;
>
> **Court to court** — different courts within a province, or courts in different provinces or regions, develop distinct attitudes on appropriate sentences.

The lack of clear governing principles or a consensus on how sentencing should be approached makes the personal attitude or approach of individual judges a key factor in sentencing and therefore in producing unwarranted disparities.

All disparity is a concern, but when it appears to take the form of discrimination — different treatment for rich and poor, white and non-white — it is particularly damaging to the credibility of the system and deserves special attention.

Disparities at the judicial level may be repeated as offenders apply to leave prison. Numerous official reports on conditional release have cited the uncertainty and unexplained variation in release decisions. Differences between the federal and provincial governments, and among the provinces, compound this problem. All provinces have some form of temporary absence, authorized by the *Prisons and Reformatories Act*. Three provinces have parole boards operating under the federal *Parole Act*, which also provides for the National Parole Board. The federal correctional system operates under the *Penitentiary Act*.

By virtue of conditional release prior to sentence expiry, as well as the possibility of detention until sentence expiry, it is not known at the time of sentencing — by offenders, the public, judges, or anyone else — if or when the offender will be released prior to the end of the sentence. This lack of certainty and predictability can lead to further inequities, because although the case law forbids judges to consider

the possibility of conditional release in setting sentences, judges approach the existence of parole and remission differently according to their varying personal understanding of the operation, availability and likelihood of conditional release.

A certain measure of flexibility is inevitable and desirable in both sentencing and conditional release. A rigid and completely predictable regime would be fundamentally unjust, incapable of seeing the enormous differences between different offences and different offenders. No system can foresee all the relevant variations in circumstances which appear in the courtroom or in conditional release hearings.

However, the flexibility and discretion necessary to fairness in sentencing and conditional release can and do result in unjustified disparity. This disparity violates the fundamental principles of equity and predictability.

3. The Need for Greater Integration among Components

Because the criminal law and each of its agencies are the product of piecemeal, incremental change, lack of integration among the various components — sentencing, sentence administration and release systems — has become a significant problem. The police, prosecuting attorneys, judges and corrections officials have their own priorities and practices and operate in too much isolation from each other. While the important principle of balance is served by the separate operation of these components, the equally important principle of integration must not be lost through excessive fragmentation.

Some of the tensions among the components grow from legitimate divergences in role.

Sentencing judges are primarily concerned with determining an appropriate sentence for the offence which was committed, taking into account the relevant circumstances and considerations concerning the offender.

Corrections officials, on the other hand, are much less concerned with assessing and responding to what has occurred in the past. Rather, they are principally concerned with sentence administration and rehabilitation, including the design of effective programs to deal with such things as substance abuse, literacy, job training, physical and mental health, life skills, anger and impulse control. Releasing authorities must determine the optimum time and method for the return of the offender to society, consonant with his or her rehabilitation and the safety of the community.

Other practical difficulties exist. For example, some judges make recommendations for treatment or for parole release while others do not. Correctional authorities take these recommendations into account, but they cannot assume that when judges do not make recommendations, the offender is not a good candidate for treatment or release. The frequent absence of judicial reasons for sentence also contributes to problems of integration.

The different perspectives of the components must be blended for mutual support, not aggravated for mutual frustration. We must harmonize both attitudes and

mechanisms so that the sentencing, release and correctional components work smoothly together. This may require adjustments to the balance of responsibilities among those components. Better communication and mutual understanding are also required.

4. The Need for More Effective Sentencing and Sentence Administration

Later in this Paper, we discuss the objectives and principles which should be pursued by a sentencing and correctional system. None of these will be unfamiliar to persons in the field. In this section, we review key issues related to the effectiveness of the system in achieving certain objectives.

We do not at present have the means or the knowledge to drastically reduce crime or rehabilitate all offenders. We can, however, seek to reduce or mitigate the social costs of crime, punish offenders, and create programs, opportunities and incentives for treatment for those we think might respond so that they are not an ongoing burden to society.

The search for effective approaches is constant. We should continue to develop a broad range of sentencing options for judges. In many cases the apparent ineffectiveness of sentencing may be a function of the lack of meaningful programs from which judges may choose. Too often the only options appear to be a fine (inappropriate for indigent offenders) or jail (which may be unnecessarily restrictive under all the circumstances of a particular case), and probation (which may not be able to provide all the support and supervision which the offender needs).

Canada relies too much on incarceration, which may decrease rather than increase the chances of reforming individual offenders. We need to develop effective alternative methods for punishing and reforming offenders, and where imprisonment is used, we must better prepare offenders for safe reintegration into the community.

Much of corrections is risk assessment and management. Offenders will serve their sentence and return to the community, whether they are released on parole or released near the end of their full sentence. Vital to the release process is timely and effective information-sharing among justice agencies, and effective institutional and community-based programs — such as halfway houses and after-care services.

It will continue to be critically important to meet the needs of specific offender groups such as substance abusers, the mentally disordered, and female and Aboriginal offenders.

5. Reintegration and Public Protection

As noted above, the vast majority of offenders will inevitably return to the community, one way or another. A key question is whether it is better to reintegrate them gradually into society through conditional release or to have them leave prison at the end of their sentences, without this assistance and control.

The Sentencing Commission recommended the elimination of most programs of conditional release for offenders. Like the Daubney Committee, however, the government has concluded that release serves the important goals of reintegration and rehabilitation, and should be retained. In the end, public security is diminished rather than increased if we "throw away the key" and then return offenders to the streets at sentence expiry, unreformed and unsupervised.

In addition, the timely release of suitable candidates before sentence expiry ensures that we use our finite resources where they are most needed — with the costlier option of continued incarceration reserved for those offenders who are a real threat, and community-based approaches for those who can be safely managed in the community. The important principles of restraint and balance are served by this approach.

However, critical concerns have been raised about where the proper balance does indeed lie with programs of release for violent offenders. Many Canadians cannot accept that individuals who have been convicted of violent crimes are eligible for release at the same point in their sentence as those who committed property crimes. Reforms are needed to reinforce the integrity of the system and restore public confidence that public safety is our number one priority.

6. The Need for Fairness and Accountability

Substantive and procedural fairness are requisites of an effective criminal justice system. This means fairness for the victim, for society, for the offender, and for those who work in the system.

Fairness and "fitness" in the choice of sentence is key. There is no statutory definition of the meaning of "fitness of sentence". Although the Supreme Court of Canada will occasionally hear a sentence appeal on a matter of principle, the question of "fitness" of a sentence is never heard.

Our courts of appeal have articulated in case law certain purposes and principles of sentencing, such as balance, proportionality, and totality, but have provided little consistent guidance as to how the factors in an individual sentence should be weighted in arriving at a desired result. Consequently, judges, lawyers and others must sift through the case law to determine appropriate sentences. Doing so is not always particularly helpful. No effective information base on criminal sentences in Canada is available for use by lower courts or courts of appeal to allow them to know what types of sentences are normally given for various crimes in various circumstances.

Our *Criminal Code* gives the accused no absolute right to speak to sentence, and is otherwise silent as to the procedures which should apply during the sentencing hearing. There are no guidelines on when or if a pre-sentence report should be prepared or what it should contain. No reasons need to be given for a sentence, which limits the judge's accountability and the effectiveness of appellate courts in reviewing the sentence.

Once the offender is in jail, fairness for all — offenders, correctional staff and the public — demands that there be clear criteria for the major decisions affecting how the sentence will be served, and fair procedures in order to make the system open and accountable. Our courts and the *Charter of Rights* have provided some guidance in these areas. However, greater guidance is needed in law and policy to promote fairness throughout the process. We cannot continue to rely on patchwork, *ad hoc* approaches to achieve a consistent, predictable result. The Correctional Law Review is directed towards creating a coherent, integrated set of rules in corrections.

7. Reducing our Over-Reliance on Incarceration; The Need for Alternatives

Virtually all official reports on sentencing and corrections have declared that we rely too heavily in Canada on imprisonment as a criminal sanction.

Imprisonment is generally viewed as of limited use in controlling crime through deterrence, incapacitation and reformation, while being extremely costly in human and dollar terms. Over 20 per cent of all criminal justice expenditures in Canada annually (including policing and the courts) go into imprisonment; less than one per cent goes to community-based sanctions. In the words of the 1986 Nielsen Task Force on Program Review: "Our over-reliance on incarceration is a luxury which is quickly becoming difficult to afford."

Reducing this dependency on prisons is needed to achieve greater effectiveness, balance and restraint in our system.

The Sentencing Commission proposed a sentence guideline system in which many offences would carry the presumption of a community-based sentence, in contrast to the *Criminal Code*, which expresses the penalty for most offences as a term of imprisonment, even though the judge is in most instances free to impose a non-carceral sentence.

Surveys show Canadians are willing to look at alternative sanctions, but those alternatives must be developed, available, credible, and known to judges.

Prisons are expensive, but it also costs money to create community-based alternatives. It is difficult to channel savings from one to the other. We must also ensure that the end result is not a "widening of the net." The objective is to divert less serious offenders from prison to community-based programs, not to invent new sanctions for those who would not have been sent to prison anyway.

8. Special Classes of Offenders

It can be said that our prison system is geared to managing a homogeneous population of offenders. As much as it has inadequacies in this primary focus, its shortcomings are unfortunately even more acute for women, Aboriginal People, ethnic groups, the mentally disturbed, and other distinct groups. The effectiveness of our system, its fairness, and its even-handedness are called into question by our approach to these groups.

Numerous commentators have focused on the inadequate way in which our penitentiary system deals with female offenders. Because they are less numerous, there are fewer facilities and programs for them, and the programs available frequently do not specifically address the special situation and problems of female offenders.

More work is needed to develop suitable programs, gain more useful data, and work in partnership with the agencies and provincial governments dealing with female offenders. The work of a joint task force of the private sector and Solicitor General will be essential to the development of options for the female offender.

The statistics are very clear. Nationally, Aboriginal people are disproportionately represented in the inmate population; this is particularly so in the western provinces. Crime rates (especially violent crime) on Indian Reserves are significantly higher than the national averages. There are particular problems related to Aboriginal involvement in crime in urban areas. The proportion of Aboriginal personnel employed in criminal justice is less than their proportion in the population. Additionally, with a greater population growth rate among Aboriginal people, there is a good chance that these disparities will increase in coming years. We must be more effective in preventing Aboriginal people from going to prison where viable alternatives can be used, more effective in meeting the special needs of Aboriginal inmates so that they do not return, and more effective in ensuring that they are fairly treated in the conditional release process. For Aboriginal women, the difficulties may be compounded even further, and concerted attention must be paid to their special situation.

Part of the solution must lie in recognizing that traditional Aboriginal community, spiritual and cultural values are not the same as those of non-Aboriginal communities. These differences present a special challenge in our efforts to deal fairly and effectively with Aboriginal offenders.

9. The Concerns of Victims

Although individual victims respond in different ways and may have different needs when recovering from the experience of victimization, almost every study has highlighted the need to give victims a more active voice at sentencing and to ensure that they can obtain the information they need from the criminal justice system, including corrections. Reforms in this area can and do serve the principles of clarity, predictability, and rebuilding public trust.

Victims' advocates suggest that keeping victims informed throughout the criminal justice process and providing victims with information about particular offenders prevents the sense of being further injured by the process and may contribute to victims' capacity to deal positively with their experience.

A more prominent role for victims at sentencing is also important. Significant progress has been made in recent years in this area. Legislation amending the *Criminal Code* in respect of the rights of victims was introduced by the federal government and passed by the House of Commons in 1988. This legislation included

provisions which allow the courts to consider victim impact statements in determining the appropriate sentence to be imposed upon the offender. This legislation also provides for the creation of a victim fine surcharge program which will enable the provinces to collect money for provincially administered victim assistance programs. Finally, the legislation contains provisions, not yet proclaimed, which would allow the courts to order restitution to victims who have incurred financial losses due to property damage or destruction, or as a result of injuries, and to order restitution to persons, such as innocent receivers of stolen goods, who have incurred financial losses as a result of dealing with offenders in good faith.

Correctional authorities must provide information to victims about corrections generally, and about specific individuals where appropriate and permitted by law, in a timely and forthright way.

10. The Need for Clear Purposes and Principles

Public and professional concern about the system can be traced in part to confusion about the purposes and principles of sentencing and sentence administration. Without a clear rationale, the components of the criminal justice system lose credibility.

The Criminal Law in Canadian Society (CLICS), the first government white paper in the Criminal Law Review series, suggested that the purpose of the criminal law is:

> . to contribute to the maintenance of a just, peaceful and safe society through the establishment of a system of prohibitions, sanctions and procedures to deal fairly and appropriately with culpable conduct that causes or threatens serious harm to individuals or society.

All the processes of criminal justice discussed in this paper must finally flow from this purpose. Certain central concepts spring from this universal statement, concepts also established in CLICS.

There must be a proper balance between security (protection) and justice (fairness and equity); between the power of the state and the rights of individuals; amongst the subsidiary aims of the criminal law; and between Parliament's roles in both leading and reflecting public opinion.

The state must use restraint in defining criminal conduct, by not defining acts as criminal except where no other official response will suffice. Restraint is also an important consideration in all decisions made about individual criminal cases, including decisions about sentencing and correctional intervention.

Criminal penalties should be applied in proportion to the degree of responsibility of the offender. To do justice, the seriousness of the criminal conduct, the culpability of the offender, and the harm caused or threatened to society must all be taken into account to ensure fairness in sentencing. On the other hand, the principle requires that punishment be limited by the requirement not to sacrifice the individual accused to the common good.

As part of the process of embedding these general principles in the criminal justice system, a clear statement of the purposes and principles of sentencing, corrections and conditional release should be placed in the law to guide and aid in the interpretation of related sections of the law.

Confusion over the purposes and role of conditional release leads to public concern over apparent anomalies in the treatment of offenders. Many Canadians see the principal purpose of imprisonment as punishment, and the early release of offenders, particularly violent ones, as illegitimate. The objectives of sentencing and release are seen as contradictory. Paradoxically, Canadians also object to just "warehousing" offenders, with nothing being done to prepare them for a return to society.

The absence of declared and understood principles is a fundamental failing. Clear, consistent objectives must be articulated for every part of the criminal justice system.

III. FUTURE DIRECTIONS FOR REFORM IN SENTENCING, CORRECTIONS AND CONDITIONAL RELEASE

Changes to the criminal justice system must follow the principles set out earlier in this document. We need to:

— promote clear purposes and principles;

— rebuild public trust; respond to public fears about crime and concerns about criminal justice; and promote better public understanding of crime and criminal justice;

— promote greater equity and predictability in the system and in the decisions made about individual offenders including special needs offenders such as women and Aboriginals;

— promote greater integration among the components of the criminal justice system;

— increase the effectiveness of sentencing, sentence administration, and conditional release by improving our capacity to assess, rehabilitate and reduce the risk presented by offenders, now and in the future;

— achieve the proper balance among the competing aims, authorities, and interests in the system;

— promote restraint in the use of criminal sanctions, and the most effective use of resources; and

— reduce our over-reliance on imprisonment, and promote alternatives.

While achieving these goals we must maintain the necessary degree of discretion for decision-makers, keep the system as simple and understandable as possible, and make effective use of limited resources.

PROPOSALS FOR CHANGE

Legislated Statements of Purpose and Principles

Legislated statements of the overall purpose and governing principles of sentencing, corrections, and conditional release would provide a rationale for, and give direction to, these processes.

These statements would address the problem of the need for clear objectives and principles, and contribute to the development of coherent policies. They would address disparity and the lack of integration among components, and inform the public about the objectives of the system.

Statement of Purpose and Principles of Sentencing

(1) **The fundamental purpose of sentencing is to contribute to the maintenance of a just, peaceful and safe society through the imposition of just sanctions.**

(2) **The court shall/may consider the following objectives in assessing the appropriate sentence to be imposed upon an offender:**

- (a) **denouncing blameworthy behaviour;**
- (b) **deterring the offender and others from committing offences;**
- (c) **separating offenders from society, where necessary;**
- (d) **providing for redress for the harm done to individual victims or to the community;**
- (e) **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.**

(3) **In furtherance of the purpose set out above, a court that sentences an offender for an offence shall exercise its discretion within the limitations prescribed by this or any 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 the least onerous alternative appropriate in the circumstances;**
- (c) **a sentence should be similar to sentences imposed on other offenders for similar offences committed in similar 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 the other sentences imposed on the offender; and**
- (f) **a term of imprisonment should be imposed only;**

(i) to protect the public from crimes of violence;

(ii) 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;

(iii) 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.

Statement of Purpose and Principles for Corrections

(1) The purpose of federal corrections is to contribute to the maintenance of a just, peaceful and safe society by:

(a) carrying out the sentence of the court through the imposition of appropriate measures of custody and control; and

(b) contributing to the rehabilitation and reintegration of offenders into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

(2) The following principles shall guide correctional staff members in achieving the above purpose:

(a) offenders under sentence retain the rights and privileges of all members of society, except those that are necessarily removed or restricted as a consequence of the sentence;

(b) the sentence should be carried out having regard to all relevant information, including the stated reasons and recommendations of the sentencing judge, information from the trial or sentencing process, and the release policies of, and any comments from, the National Parole Board;

(c) correctional authorities should use the least restrictive measures necessary to protect the public, staff members and offenders;

(d) correctional authorities should ensure effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through the public communication of information about correctional policies, programs and resources;

(e) correctional decisions should be made in a forthright and fair manner, with access to effective grievance mechanisms;

(f) correctional policies, programs and practices should respect gender, ethnic and cultural differences, and should be responsive to the needs of women and Aboriginal Peoples, as well as the needs of other groups of offenders with special needs; and

(g) correctional staff should be properly selected and trained, and supported by appropriate personnel development opportunities, good working conditions, and opportunities to participate in correctional policy and program development.

Statement of Purpose and Principles for Conditional Release

(1) The purpose of parole is to contribute to the maintenance of a just, peaceful and safe society by facilitating the reintegration of offenders through decisions on the timing and conditions of release.

(2) The following principles shall guide board members in achieving the above purpose:

(a) Protection of the public is the paramount consideration in parole board decisions, and in all decisions parole board members should choose the least restrictive option necessary.

(b) Parole board members should consider all relevant information available, including the stated reasons and recommendations of the sentencing judge, information from the trial or sentencing, as well as information and assessments from correctional authorities and others.

(c) Parole board members should be provided with and guided by appropriate policies and should be provided with the training necessary to implement such policies.

(d) Offenders should be provided with relevant information, reasons for decisions, and access to a statutorily based review of decisions, to ensure an understandable and impartial process.

(e) Parole boards should ensure effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through the public communication of information about their policies, programs and resources.

SENTENCING

Sentencing and Parole Commission

There remain some concerns with sentencing that cannot be addressed in a comprehensive manner through legislative changes to the *Criminal Code* alone. For example, sentencing guidelines, although they would be provided for in legislation,

would need to be developed and their use monitored through an ongoing administrative body. For this reason, the government proposes to create a Permanent Sentencing and Parole Commission.

The numerous anomalies and inconsistencies with respect to current maximum sentences prescribed for each offence, for example, require further intensive consideration. Many offences carry the same penalty in the *Criminal Code* but are of substantially differing degrees of seriousness. Other offences with different maxima are perceived to be similar in all other respects.

The Canadian Sentencing Commission argued that parole added uncertainty to the sentencing system, that it served to "equalize" sentences which should be determined by the judge on the basis of seriousness and culpability, and that equity, clarity, and predictability require consistency of purpose from the start of the sentence through to its expiry. In keeping with the principles which have been accepted for this exercise, the recommendation of the Canadian Sentencing Commission that parole be abolished is rejected.

The proposed Permanent Sentencing Commission, however, could and should deal with the concerns raised in the Archambault report. Accordingly, we propose that the Sentencing and Parole Commission have as part of its mandate a significant role in the assessment and monitoring of conditional release policies.

The Commission would also be mandated to examine the relationship between sentencing guidelines and other aspects of the criminal justice system, to ensure that an attempt to structure discretion at one point in the system (sentencing by the judge who hears the case) does not adversely affect other points. For example, police, prosecution, prison authorities and parole officials all exercise discretion which may affect the way in which a sentence will be served. In devising and implementing guidelines, it is therefore important to take a broad view of sentencing. Care must be taken not simply to shift discretion inadvertently from judges to the prosecution through enhanced plea bargaining opportunities. Similarly, the impact of discretionary decisions in respect of parole, detention and mandatory supervision have to be taken into account. To treat discretion and sentence disparity narrowly as only a judicial problem would be to overlook the variety of sources of discretion in the current system, and might result in changes more apparent than real.

Code of Evidence and Procedure at the Sentencing Hearing

It is also proposed that a body of sentencing procedures, set into the *Criminal Code*, be established to bring greater regularity, fairness and accountability to sentencing. Such a code should clarify the circumstances in which pre-sentence reports are to be prepared, and would require judges to give reason for their sentences. Judges should be required to state why other dispositions were rejected and why they departed from the applicable sentence guideline if that was the case, and should note the relevant factors and circumstances in each case. This will enhance the appellate courts' ability to review sentences effectively.

Such a code would address the requirement for courts to provide necessary information to the correctional and release authorities responsible for carrying out

sentences. Judges' reasons for sentence and recommendations, if any, to correctional and release bodies would also be required to be forwarded to post-sentence authorities.

Intermediate Sanctions; The Use of Fines

We agree with the opinions voiced in other reports that Canada relies too heavily upon incarceration in sentencing, both as the sanction of choice and as the sanction to be imposed where a default in compliance with a non-carceral sentence has occurred.

There are two methods of dealing with Canada's over-reliance on imprisonment: the expanded use of community-based sanctions, and the increased use of fines. A fine does not disrupt the offender's social and economic ties with the community; it is an expedient and inexpensive sanction to administer, and requires relatively few administrative personnel; and it generates revenue for the state and thereby helps to defray the costs of criminal justice. The European experience, notably in the Federal Republic of Germany and in England and Wales, indicates that fines are the most effective and credible option to imprisonment as a sanction which both deters and denounces criminal behaviour.

However, to enhance the effectiveness and credibility of fines as an alternative to imprisonment, the fines which are imposed must be collected. The government will therefore propose measures which will result in a more efficient and effective fine collection process. In addition, proposals are made to ensure that the fine imposed is commensurate with the ability to pay, and that imprisonment in default of payment of a fine would be the subject of a separate inquiry by the court.

A wide array of community-based sanctions such as probation, community service programs, and fine-option programs is necessary if the purposes and principles of sentencing, as articulated earlier in this paper, are to be followed.

These sanctions have a denunciatory and deterrent effect. In addition, the increased use of such sanctions can aid in the reintegration of the offender into society while at the same time providing a means for reparation to society of the harm done by the offender. To accomplish these goals, a wide range of community sanctions and programs must be available for use by the courts. They must also be supported philosophically if they are to be effective over the long term. We therefore propose to take steps in cooperation and consultation with the various components of the criminal justice system, the provinces, community groups, sentencing professionals and the public, to create and strengthen these sanctions.

We also propose to clearly state and promote policies respecting the use of such sanctions. This will enhance integration among the components of the system, clarify objectives and principles, and promote a coherent criminal justice policy.

CONDITIONAL RELEASE

Changes to Conditional Release Eligibility Dates

For virtually all offenders except those convicted of murder, full parole eligibility is currently fixed by law at the lesser of one-third of the sentence or seven years. (Of course, becoming eligible for parole consideration is no guarantee of receiving a parole release.) Eligibility dates are fixed, regardless of the nature of the offence which brought the offender into penitentiary. At present, virtually all violent offenders, like others, have their parole eligibility date fixed at one third of sentence. While we are frequently unable to predict which group of offenders is likely to re-offend violently, those who have already committed violent crimes should be carefully assessed to determine whether they should benefit from the same provisions as other offenders.

One option would be to increase the amount of time which selected violent and drug offenders must serve in a federal penitentiary before they can become eligible for parole.

The government proposes that the sentencing judge have the option, for those offenders committing a drug offence or a violent offence listed on the Schedule to the Parole Act, of moving the parole eligibility date from one-third to one-half of sentence. Criteria governing the exercise of this judicial authority would be placed in law.

In this way judges may, because of the very serious nature of a crime, ensure that offenders serve more of their sentence in prison before eligibility for supervised release.

At the same time, violent offenders will still be subject to the detention provisions of the *Parole Act*, and not released before full expiry of the sentence if authorities feel this is necessary in special circumstances. The government proposes that the same authority to detain a violent offender until warrant expiry be created in respect of drug offenders (see below, under "Changes to Remission").

In addition the government proposes that day parole eligibility (which normally, but not necessarily, involves return to a halfway house each night) should become available at a point later in lengthy sentences, instead of at one-sixth of the sentence as now. It violates the public's sense of confidence and trust in the system to know that an offender sentenced to a lengthy custodial term may be released so soon after the pronouncement of sentence. Such early releases may also cause judges to compensate for this releasing authority by lengthening their sentences. This judicial adjustment of the overall sentence length sends confusing messages to correctional authorities.

Therefore, the government proposes that day parole eligibility will in future be fixed at six months before the date of full parole eligibility.

Accelerated Review for Release

This being said, the question arises as to whether the non-violent offender — particularly the offender serving his or her first term in a federal penitentiary — should be treated differently from the violent offender. One option would be to release property offenders who are serving their first penitentiary term at the current parole eligibility date (one-third of the sentence), unless the National Parole Board considers that they would present a serious threat to public safety.

Studies show that Canadians are very supportive of conditional release for non-violent offenders. This approach would emphasize the importance of reintegrating non-violent offenders into the community as quickly as possible; it would allow for the reallocation of correctional resources to two important areas — supervision and programming in the community. Such a system would provide the necessary safeguards for the protection of the community, including assessment by correctional and parole authorities of each offender's risk of future violence, an increase in community correctional activity, and swift intervention measures such as increased penalties for breach of conditions. (See below for a discussion of these measures.)

Post-Release Interventions

There is a need to increase the range of interventions which can be made when an offender violates the terms of his or her conditional release to the community. In addition, there is the dilemma presented by the fact that the consequences of a violation of release conditions decrease as the offender approaches the expiration of sentence.

A wider range of interventions would promote the goal of fairness by providing for more appropriate responses to different types of release violations. These interventions could include suspension (reincarceration) for a period of thirty days as a specific response to a violation of conditions which is serious enough to warrant sanction, but not serious enough to incur return to the institution for a more indefinite period.

Parole Reforms for Openness and Accountability

There are a number of suggested changes to parole which could increase openness, accountability and professionalism without affecting the structure of sentencing and release. These include provision for more open hearings, making reasons for decisions publicly available, changes to the membership structure of the Board, and various technical amendments.

The government believes a greater degree of openness and accountability would be valuable and intends to pursue these objectives.

CORRECTIONS

New Federal *Corrections Act*

The Corrections Law Review is a series of interrelated initiatives to update and improve the law of corrections and release. It will form correctional legislation into a coherent whole, in part by establishing the philosophical underpinnings of corrections through a legislated statement of objectives and principles. In so doing, it would contribute to the creation of a coherent policy for criminal justice generally, and to integrating the various components of the system.

These changes will be implemented in part through a new *Corrections Act* proposed by the government. This draft Act is attached as Appendix A to *Directions for Reform in Corrections and Conditional Release,* another consultation paper in this series.

Consistent with the goal of system integration, new correctional legislation should contain provisions ensuring the effective transmission of information between the courts and the police on the one hand, and correctional and release authorities on the other. However, this obligation for government agencies to share relevant information with one another does not end when the offender completes his or her sentence. As an offender nears the end of his or her sentence, there is also a duty on correctional authorities to notify certain provincial authorities of information about the offender, where to do so is necessary for public protection.

To ensure compliance with the Charter and to ensure that correctional staff have the powers and protection necessary for them to carry out their duties under the Act safely and effectively, the Act will contain clear rules governing major correctional decisions such as penitentiary placement, transfer, segregation, search and discipline. These rules will protect the Charter rights and other rights of inmates, while balancing them where reasonable to achieve the objectives of the correctional system.

To promote openness and accountability, there will be a statutory requirement for current mechanisms which permit citizen involvement in the operation of penitentiaries and parole offices. In addition, there will be specific authority for releasing information about offenders to victims where appropriate. Similarly, federal offenders have access to a procedure for addressing grievances which arise during the service of their sentence. Legislation will require that a grievance procedure be enshrined in law so that problems can be effectively resolved at the operational level, without resort to the courts in most cases.

Changes to Remission

Inmates within the federal and provincial corrections systems are currently released after serving approximately two-thirds of their sentence, based on the principle of earned remission. Inmates receive remission for each day served with good behaviour and program participation in the institution. They can also lose this remission for unsatisfactory performance. For federal offenders, a period equivalent to the sentence credits earned through remission must be served under supervision in the community before warrant expiry — a program known as "mandatory supervision". A mandatory period of supervision in the community is considered

essential to reducing the risk presented by offenders being released from lengthy periods in custody. In the end, society is better protected by a supervised transition to the community than by outright release at the end of the sentence, without assistance or controls.

Because remission results in release from imprisonment before the end of the sentence, it has been subject to criticism. To a large extent, this criticism has been allayed by the introduction in 1986 of the power to detain dangerous federal offenders in penitentiary until the end of sentence, regardless of any remission earned.

The government now proposes to create an equivalent authority to detain serious drug offenders in penitentiary until the end of sentence. This provision would apply to federal offenders who have committed a serious drug offence in the past, and are considered likely to commit such an offence in the future.

Remission itself, however, is a time-consuming and cumbersome process, and greatly increases the complexity and difficulty of accurately calculating sentences and the time at which offenders become eligible for various forms of release. A main objective of the remission process — delay the mandatory supervision date of inmates displaying disruptive or violent behaviour in penitentiary — is now served through the detention provisions of the *Parole Act*, which require that institutional behaviour be considered in determining release risk. Institutional conduct is similarly considered when making all release decisions (temporary absence, day parole and full parole). These release programs did not exist when remission was first introduced.

The limited impact of the earned remission process on inmate behaviour and its complexity to administer suggest that for federal inmates, earned remission could be converted to statutory release. Thus, the federal government proposes that federal offenders be released by law, rather than through the operation of remission, at the two-thirds mark in their sentence, unless they are paroled earlier or detained by the parole board past the two-thirds mark. Mandatory supervision would be retained from the time of statutory release to sentence expiry, to ensure control and assistance. The release date of offenders who are not paroled and not detained would remain roughly the same as in the current practice.

Improved Correctional Programs

Along with legislative proposals to deal with both violent and non-violent offenders, there is a need to operate correctional agencies in a way that will support the legal framework by offering programs that meet the needs of these various offenders and of the community. To this end, programs have been developed which attempt to identify and intervene effectively with those offenders requiring more intensive preparation before release and supervision after release, those who could be released earlier due to their non-violent nature and low incidence of re-offending, and those offenders who present particularly serious problems both in institutions and in the community.

Aboriginal Offenders

The federal government views the over-representation of Aboriginal peoples within the criminal justice system as a priority, and endeavours to ensure that all components of the system provide for the equitable treatment and sentencing of, and provision of appropriate programs for, Aboriginal offenders. Supervision and support mechanisms in the community are also required to provide opportunity for the individual's successful reintegration into the community. For that reason efforts in this area have begun in advance of this current round of initiatives. In the areas of corrections and conditional release, there have been consultations throughout the Aboriginal community through the Solicitor General Task Force on Aboriginal Peoples in Federal Corrections, completed in 1989. Recommendations from that Task Force have been accepted by the federal government, and work has begun on their implementation in partnership with Aboriginal people.

Recognizing that the treatment of Aboriginal offenders must involve more than the replication of programs designed for non-Aboriginal offenders, the government is developing corrections programs specific to the needs of Aboriginal offenders and, where possible, operated by Aboriginal peoples. Ministry of the Solicitor General agencies are increasing staff awareness of Aboriginal offender issues. Cross-cultural training for non-Aboriginal staff and efforts to increase the number of Aboriginal staff within the system are on-going in all Ministry agencies. Joint efforts with some provinces and Aboriginal groups with expertise in corrections and treatment are underway.

Consistent with the government's policy of endorsing greater Aboriginal control over matters that affect them, the proposed *Corrections Act* contains provisions for the establishment of agreements between federal corrections and Aboriginal communities to permit such communities to assume varying degrees of responsibility for Aboriginal offenders. The proposed Act also addresses the availability of programs suited to the needs of Aboriginal offenders and ensures the same status for Aboriginal spirituality and spiritual leaders as is accorded other religions and religious leaders.

Female Offenders

The report of the joint federal government-private sector Task Force on Federally Sentenced Women, submitted to the Commissioner of Corrections, was released to the public in April 1990. It recommends a comprehensive set of reforms to the correctional treatment of women sentenced to two years or more, most notably the closure of the only federal penitentiary for women and its replacement by smaller, regional facilities across the country.

Previous reviews of female offender issues have resulted in improvements in programming within the Prison for Women, and the federal government has established a new minimum security institution for females in Kingston to assist pre-release preparation. But major problems, including women being classified at too high a security level and being housed far from families and support networks, remain. Results of the current task force will form an integral part of the planning process as the government confronts the issues of this small inmate population.

Initiatives will focus on methods to reduce the use of custodial sanctions, maximize use of conditional release, and encourage effective aftercare in the community.

Other Offenders

Over the last few years, the federal corrections and parole agencies have recognized and begun to grapple with the problems presented by other specific offender groups in terms of correctional treatment and preparation for conditional release.

In the case of mentally disordered offenders, Correctional Service of Canada is in the process of analyzing the results of an in-depth study which will provide a clear picture of the extent of mental disorder among offenders, in order to define what programs and resources are required to deal with these problems. Among the most serious of problems in this area is the handling of sex offenders, who require particular attention for assessment and treatment.

The problem of drug and alcohol abuse and trafficking among offenders in institutions and in its link to criminal activity in the community is of serious concern. This concern is shared by all criminal justice agencies, and resolution of the problems will require vigorous action by all agencies concerned. In particular, the federal corrections agencies must deal effectively with substance abuse and trafficking within institutions, and also develop more programs for the treatment of substance abusing offenders, whose use of drugs or alcohol is in many cases linked to their criminal activity.

Finally, the growing number of long term offenders, especially those serving life sentences with no parole eligibility for ten to 25 years, will require special attention in the medium to long term.

INFORMATION FOR CRIMINAL JUSTICE PROFESSIONALS AND THE PUBLIC

Public information is indispensable to the goal of rebuilding public trust and achieving openness. We must both clear up misunderstandings about how the system presently operates, and provide for an informed public, able to contribute knowledgeably to the debate on criminal justice. The government endorses a coordinated approach by all concerned federal departments and agencies.

INFORMATION SYSTEMS

A fundamental failing of our system is the appalling lack of systematic information about how crimes and criminals are being handled. A new information system under development for federal corrections will dramatically increase knowledge in this area. But there is still a need to develop and share cross-jurisdictional information systems on operational processes, decisions and programs, especially about sentencing, to inform judges and assist them in making consistent and equitable decisions.

Because the availability of detailed, up-to-date information about sentencing practices is essential to the work of the proposed Sentencing and Parole Commission in developing sentencing guidelines, the Commission would be provided with research funds which would allow for the collection of this information. The resulting data would supplement, where necessary, the efforts of existing federal, provincial and territorial bodies which are responsible for data collection in this area. Besides assisting in the development of sentencing guidelines, this information would help the Commission to monitor and assess the impact of sentencing and conditional release changes.

IV. CONCLUSION

The criminal justice system exists to protect Canadians.

While the mission is simply stated, the means of achieving it must be developed and thought through with care. There is much we do not know about criminal behaviour. There is much we do know that is not instinctively accepted by all Canadians.

If true security could be enhanced by locking up all offenders for the maximum possible period, Canadians might accept the enormous cost this would entail and build the extra prisons necessary.

Not surprisingly, it is not that simple. Not all offenders and not all offences are the same. Part of our concept of justice is making the punishment fit the crime. Penalties should be neither heavier nor lighter than merited, but in proportion to the offence. The system exists to produce the ideal of justice, not breed injustice, contempt, bitterness, and reactive violence.

Those who offend must be caught, sentenced, and then, in most cases, released. While we have no reason to be excessively confident of our ability to change offenders, there is reason to believe the right programs matched to the right offender will produce some positive results. Some Canadians who spend time in prison, or on other forms of sentence, will be less of a threat to society at the end of the process than at the beginning.

The chances of this are far better if offenders do not finish a sentence in prison and suddenly stand alone and unsupervised on the outside of the prison walls, where hours before they were inside and rigidly guarded.

We have more to hope for if release is planned, gradual and supervised.

Where offenders pose a particular problem, or a higher risk on release, we should be prepared to concentrate our resources — whether that be for treatment, supervision, or simply a longer period of incarceration before supervised release.

Punishment or denunciation, isolation from society, deterrence, and rehabilitation must all be part of a criminal justice system which truly protects society. Fairness, balance and proportion must be blended in. The loss of any of these elements, or worst still, unwillingness to pursue them, will leave us further from the true security Canadians want.

To achieve our objectives, each component of the system — police, courts, corrections and release officials — must work at being what they in reality are — integral parts

of the unified machinery of justice. Clear goals, linked procedures and shared information are its characteristics. Justice and the protection of the public are its achievement.

This consultation paper has presented the government's view of the steps that must now be taken to adjust our policies and improve procedures across this system. Other papers in this series provide more detail on these proposals.

The government will seek the views of Canadians on these proposals, and then move forward. Canadians expect and deserve action.

Comments respecting this document should be sent to:

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