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# SENTENCING ALTERNATIVES INITIATIVE: AN OVERVIEW

Research Section
Research and Development Directorate
Department of Justice Canada

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*This description of the Sentencing Initiative is based upon the Initiative reports and Fact Books listed in the bibliography, and upon a larger unedited report "Sentencing Alternative Research Program - Synthesis Report" which was prepared by Sherilyn A. Palmer in December, 1988.*

Table of Contents

## INTRODUCTION

This report is an overview of the Department of Justice Canada Sentencing Alternative Initiative from 1984 to 1987. Its purpose is not so much to provide the reader with the status of sentencing alternatives in Canada today, but to describe the genesis of this initiative and to present information about the Department's research, program and evaluation activities in relation to it, as a basis for assessing further work in this area.

The overview is in two parts. Part I describes the origins of the initiative. Part II provides information on the various types of sentencing alternatives (i.e., community service orders, fine options and restitution) and describes briefly the range of activities undertaken by the Department in relation to each.

The timing for an examination of the work done to date by the Department of Justice in sentencing alternatives is appropriate. The review of the recommendations of the Sentencing Commission is currently under way. Sentencing alternatives comprise an important part of the Report of the Sentencing Commission.

## PART I: THE GENESIS OF THE INITIATIVE

In 1984 to 1985, Cabinet approved the establishment of the Sentencing Fund, under the umbrella of the existing Criminal Law Reform Fund, to promote and facilitate the implementation of sentencing reform initiatives. This was the outcome of several years of activity that addressed the issue of sentencing and imprisonment. It was concluded that alternatives to incarceration were essential, and work to examine and test various models must also be undertaken. To that time, the position of the Department of Justice Canada, with respect to these concerns, was clearly revealed in activities such as the Criminal Law Review, the White Paper, The Criminal Law in Canadian Society, and Bill C-19, the proposed Criminal Law Reform Act, that committed the federal government to the concept of sentencing alternatives. The establishment of the Sentencing Fund, however, made the commitment of the Department of Justice Canada real and visible by initiating and undertaking sentencing alternative research, projects and evaluations.

On February 1, 1984, Cabinet approved the Sentencing Reforms Initiatives. One aspect identified by the Department was to develop, implement and evaluate sentencing options. The Sentencing Alternatives Initiative was the provision of resources to provinces and territories for the development and implementation of community-based sentencing options; the promotion and maintenance of provincial and territorial interest in sentencing reform; as well as the creation of community-based sanctions that would be sensitive to the needs of special groups (i.e., victims and aboriginal people). Specifically, resources were approved for project support, training and education of the criminal

justice community and the general public regarding sentencing options, and research and evaluation activities for the development and implementation of sentencing options.

Consultations with provincial and territorial officials, regarding the initiative and the proposed program of research, were undertaken. Through these consultations, the submission of proposals for research and demonstration projects relating to community service orders, restitution and fine options, was encouraged. In response to these consultations, 16 pilot projects and research studies were conducted in eight jurisdictions between 1984 to 1987, with the research program ending in late 1987. The Yukon, North West Territories, Ontario, Manitoba, New Brunswick, Newfoundland, and Prince Edward Island participated in the initiative in varying degrees, using the designated Sentencing Fund to explore their need for sentencing options, and the forms these options could take in accommodating and reflecting local conditions.

In essence, the Sentencing Alternatives Initiative served to augment and enhance some of the sentencing alternative projects already in existence across the country, and to stimulate interest in areas where alternatives were not available. As a result, the activities of the initiative are varied and range in type from program reviews to feasibility studies, pilot projects, surveys in jurisdictions and compilation of fact books on the use of alternatives in Canada. Perhaps this eclectic approach is the most distinctive feature of the initiative, and suggests the need for flexibility in considering the role of sentencing alternatives in the criminal justice process.

## PART II: SENTENCING ALTERNATIVE MODELS AND ACTIVITIES

The purpose of this section is to provide an overview and a context to understanding the range of projects funded and evaluated under the Sentencing Alternatives Initiative. Three main types of sentencing alternatives were funded under the Initiative:

(1) community service orders,
(2) fine options, and
(3) restitution.

Because of the need to focus specifically on the projects that were an integral part of the Initiative, this report will not provide information on the nature and scope of sentencing options across the country. The three fact books on fine option, community service and restitution programs provide detailed information on the type and extent of programs, program policies and processes and reviews of programs (Peat, Marwick and Partners, 1986).

The sentencing alternative bibliography contains specific references to the projects (including specific program initiatives as well as the fact book reviews) that were funded during the course of the Initiative.

## 1. COMMUNITY SERVICE ORDERS

Community service orders (CSOs) are imposed by the court as conditions of probation, pursuant to section 737, Criminal Code, R.S.C. 1985. This section authorizes the court to compel the offender to "comply with such other reasonable conditions (i.e., participate in a community service program) as the court considers desirable for securing the good conduct of the accused and for preventing a repetition by him of the same offence or the commission of other offenses".

In general, the purposes of CSOs are:

-- to take the place of a fine, either wholly or in part;

-- to achieve reconciliation between the community and the offender by repairing the harm done; and

-- to apply a positive form of censure to an offence, even though the offence has not caused any direct form of damage.

During the 1970s, the community service order gained popularity as a sentencing option as it was seen as an answer to overcrowding in correctional facilities. However, many judges were uncertain of the legality -- and perhaps even of public acceptance -- of the community service order as a sentencing option. This concern was reduced with the 1977 Ontario Court of Appeal decision upholding their legality (see R. v. Shaw and Brehn).

The first community service order program in Canada was implemented in British Columbia in 1974. Quebec, Prince Edward Island, Nova Scotia, the Northwest Territories, New Brunswick, Alberta, Ontario, and the Yukon Territory followed suit in the next four to five years. The most recent programs were implemented in Newfoundland (1980), Saskatchewan (1983) and Manitoba (1984). Each jurisdiction has a unique set of program objectives, but the stated common goal of most programs is to provide an alternative to incarceration.

The most common eligibility criteria for CSO programs are offender willingness and nonviolent offender behaviour. The offender's willingness to work is an explicit criterion for participation in the Quebec, Northwest Territories, British Columbia, and New Brunswick programs. The absence of a history of violent behaviour is required for participation in the CSO programs of Newfoundland, Nova Scotia, New Brunswick,

Saskatchewan, British Columbia, and the Northwest Territories. The Quebec program, while not expressly excluding crimes of violence, requires that the offender not be heavily involved in criminal activities.

Two studies on CSOs were conducted in the Northwest and Yukon Territories during the Sentencing Alternatives Initiative. The research objectives of both were:

- to review the current status of the use of community service orders, including the background, administrative structure, procedures and caseload;
- to assess the relationship of CSOs to other community corrections programs; and
- to assess special problems/issues encountered with program delivery, and in particular, with program delivery in isolated or rural communities.

a) Yukon Territory

Prentice reviewed the use of community service orders between 1981 and 1987 by interviewing key respondents involved in the program (e.g., judges, justices of the peace, and community agencies) and reviewing probation orders which included community service.

In order to assess the degree to which the program provided work for the community, representatives from 16 agencies that accepted community service placements were interviewed. All found the program to be of value to their organization. Some were able to put a dollar value on placements, while others felt that the program enabled their agency to accomplish tasks that would have been impossible without the program. Clearly, the program was seen as useful to the agencies involved, as well as to the community at large. However, while the program was viewed as beneficial from the perspective of participating agencies, respondents from the judiciary and the justices of the peace wanted more feedback and information regarding overall program effectiveness.

From 1981 to 1986, 22 to 31 per cent of the total probation cases involved community service orders. The completion rates (measured by the proportion of the total cases completing the order and the proportion of the total hours completed) were generally 75 per cent or higher.

The research suggested that CSO programs appear to be working in both rural and urban areas in the Yukon. The researchers concluded that a good indicator of the program's success was the result of support and participation by the 90 various community agencies which serve as CSO work placements.

b) Northwest Territories

The community service order program in the Northwest Territories was initially implemented in Inuvik during 1976. Since then, formalized programs have been implemented throughout the territories. The target population for the community service order program includes:

- offenders who agree voluntarily to participate in the program;
- young offenders and adult offenders;
- offenders who would otherwise be sentenced to short-term incarceration (a few days to three weeks);
- offenders without a history of "violent behaviour"; and
- offenders who are employed, and whose employment may be put in jeopardy by a prison term.

The purpose of the study conducted in the Northwest Territories by Thomas and Thomas was to design and implement an evaluation of the CSO program. Three major groups (i.e., the community, the Department of Social Services and criminal justice officials) were the primary sources of data for the evaluation.

Interviews with a variety of respondents indicated that the CSO program was considered cost-effective for the criminal justice system and for the community. The savings in costs were realized from fewer incarcerations, escorts to and from jail and court proceedings. However, problems arose from insufficient supervision of the offender at the job site. This was especially true where the type of work being done did not stimulate a high degree of motivation. Although supervision was required to ensure that the terms of probation were properly fulfilled, for some CSO placements it was not cost-effective to supply supervision for the work.

Some of the operational problems noted from respondent interviews, which included offenders, was the menial nature of much of the CSO work. Community respondents suggested that further work was required to find appropriate work placements. Interviews with criminal justice system officials revealed that any subsequent development of the community service order program must include a requirement to make the program relevant and appropriate for particular groups of offenders such as aboriginal people.

Overall, however, there was significant optimism shown toward the CSO program indicating that the use of community service orders was realistic and effective. Those familiar with the program found the goals and objectives to be clear and realistic; there

was a general knowledge within the community about the role of CSOs within the broader criminal justice system.

## 2. RESTITUTION

Prior to the Criminal Law Amendment Act, 1985, the term "restitution" was used in the Criminal Code to refer to two different concepts: the power of the court to order the return of property to the victim (section 655), and the power of the court, as a condition of probation, to order payment of money to the victim for actual loss or damage suffered as a result of the commission of an offence (paragraph 663 (2)(e)). Criminal Code Amendment Act, 1985, replaced the provisions respecting the return of property (sections 388 and 655) with new provisions dealing with the return of articles seized by police as part of a criminal investigation (sections 445.1 and 446), and with the return of property obtained by the commission of an offence (section 446.2). The 1985 Act further provided that the court may order the accused to pay the person who has suffered loss of, or damage to, property as a result of the offence, "an amount by way of satisfaction or compensation" (subsection 653 (one)). This order may be made only if an application is submitted by the aggrieved person at the time the sentence is imposed. If the accused fails to pay the amount ordered, the court order may be filed with a superior court and enforced in the same way as a judgement in a civil proceeding (subsection 725, R.S.C).

The power of the court to order the payment of money to the victim (paragraph 737, R.S.C.), which was not affected by the 1985 amendments, is limited to those cases in which the court specifies as a condition of a probation order that the accused "make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof".

The genesis of restitution may be found in ancient times but in recent years, the responsibility of the offender to "redress harm done" has again become a focus of the criminal justice system. Restitution provides the best opportunity for an offender to make amends for harm done to the victim and the community.

While the majority of restitution programs involve monetary payments to the victim, community-based Victim-Offender Reconciliation Projects (VORPS) also exist. Their purpose is to achieve reconciliation between victims and offenders, or between symbolic victims (i.e., other community representatives) and offenders. Reconciliation may be obtained through meetings mediated by trained community volunteers acting as independent third parties. Restitution by an offender to the victim is often one of the main considerations in resolving the dispute. However, any tentative agreement over the amount, form, or other details of the monetary restitution is made only as a recommendation to the sentencing court, usually in a presentence report.

Four projects on restitution were undertaken during the Sentencing Alternatives Initiative. With the exception of the Yukon follow-up, the projects took place prior to the 1985 Criminal Code amendments. The objectives of the four studies were as follows:

- to examine and describe the restitution process across a wide spectrum of criminal and civil processes used by the courts to order restitution to the victim by the offenders;

- to determine the effectiveness of the various restitution processes used; and

- to assess the feasibility of introducing a formal restitution and/or victim-offender reconciliation program.

A description of each of the restitution studies is given below.

a) Newfoundland: A Review of the Use of Restitution

In Newfoundland, Burford reviewed the use of restitution during the 1983 to 1984 fiscal year. The methodology used for the study was patterned after the Yukon study by Zapt (1984) where both qualitative and quantitative data were collected from a variety of sources. The objectives of the study were to describe the process of restitution from the time of sentencing to the final payment to the victim, to determine if offenders met the restitution conditions of their probation orders, and to determine the amounts ordered and paid.

During the one year period, 2,587 probation orders were imposed by the Newfoundland courts. One-third involved supervised probation and two-thirds involved unsupervised probation. Of the supervised orders, 27 per cent included restitution conditions and of the unsupervised orders, 24 per cent included restitution conditions. The database comprised 633 restitution files (i.e., 35 per cent involving reporting or supervised probation, 65 per cent nonreporting or unsupervised probation).

In total, courts ordered offenders to pay $184,839 to victims; of this amount, $88,625 (48 per cent) was paid. Compliance rates (i.e., the rates at which sample probationers met the conditions of restitution on their probation orders) indicated that 60 per cent of the dollar amounts were "paid back in full" and 29 per cent were "not paid back at all". Researchers found that age and gender were not much of a factor in payment among both supervised and unsupervised orders. There was strong support for the philosophy behind restitution among key informants involved in the criminal justice process, but the lack of information on victim satisfaction makes this finding inconclusive at best.

Recommendations were made by the researchers with respect to clarification of some roles in the restitution process, particularly those having to do with education of victims in the use of the civil and small claims court and other options available to victims when restitution payments are not ordered. Other recommendations included:

-- more standardized means testing (ability to pay);
-- closer involvement of probation officers prior to sentencing;
-- more efficient means of tracking and monitoring payments;
-- verification of insurance claims;
-- enforcement of those orders in which the probationer was noncompliant; and
-- further research and planning efforts.

Many key informants noted that a positive aspect of restitution was the acknowledgement of the need to make redress to victims for harm done. Restitution was seen to have a meaningful role in the sentencing process.

b) Yukon Territory: An Examination of Ordering, Monitoring, and Compliance Patterns for the Practice of Restitution

Zapt's study for the Yukon Department of Justice involved an analysis of all probation orders imposed by the courts for the fiscal years 1981 to 1983, in which restitution was dealt with as a condition of probation. During the study period, 1,473 probation orders were imposed by the courts. Twenty-two per cent included a restitution order as a condition of probation. Of the probation orders with restitution conditions, 59 per cent included reporting requirements, 37 per cent were nonreporting orders and five per cent were ambiguous (i.e., the offender was reporting on another order).

The researcher found that probation orders involving restitution contained a reporting condition (i.e., supervised probation) less frequently than did the total number of probation orders imposed from 1981 to 1983 (59 per cent versus 71 per cent). Overall, the compliance rate was 65 per cent. However, these rates were found to vary according to the method of payment. Not surprisingly, 100 per cent of those ordered to pay the full amount immediately made restitution, compared to 60 per cent of persons given the option of paying at any time during the period specified and 27 per cent of those asked to make instalment payments. Those ordered to make an immediate payment were normally determined by the court as having the means to pay. Compliance rates did not differ if there was a reporting condition on the probation order.

The total amount of restitution ordered was $127,909 with two orders amounting to more than $26,000. Approximately 35 per cent of orders resulted in no payment, four per cent in partial payment and 61 per cent in full payment. About two-fifths of the total dollar amount of restitution ordered was collected. However, if the two large orders are excluded, the collection rate increases to 53 per cent.

An examination of the demographic and offence characteristics of offenders ordered to make restitution a condition of probation, revealed that the majority of restitution orders involved males (86 per cent). Natives accounted for 54 per cent of the orders, non-natives 43 per cent, and the race of four per cent was unknown. Property offences dominated both natives and non-natives. The offence distribution by race was similar; there was little difference in rates of completion with 59 per cent of the native group and 64 per cent of the non-native group making full payment.

One of Zapt's major conclusions was that the goals and objectives of restitution programs should be clearly defined and articulated to allow for meaningful evaluation. Consistent policy on enforcement of restitution orders, the inclusion of a reporting condition, a period of review time with each order, and consideration of a compensation scheme, were other important recommendations.

c) Yukon Territory: Reparative Sanctions Follow-up Project

The Yukon Reparative Sanctions Project (reparative sanctions being the more generic term from which restitution is derived) emerged in response to Bill C-19, which encouraged the development and implementation of reparative sanctions. The main objectives of this follow-up study by Prentice were:

- to examine issues emerging from the Zapt restitution study (described above) with a view to facilitating the implementation of the recommendations;
- to develop a policy and procedures manual for use in assessing the appropriateness of restitution programs for an individual offender/offence;
- to develop methods for use in educating the public and victims in order to encourage realistic expectations of the restitution program and promote its acceptance;
- to design a research strategy which would ensure the consistency and sufficiency of data collection; and
- to ensure the maintenance of data collection procedures in order to allow the restitution program to be reviewed and/or evaluated after a specified period of time.

From 1983 to 1986, the annual amount of restitution ordered varied between $23,760 and $78,066. The mean dollar value varied according to whether the order was reporting or nonreporting, (i.e., in each year, reporting probation orders involved much higher dollar amounts than did nonreporting orders). More than half of the total

amounts ordered were collected in 1983 to 1985 but collection rose to 79 per cent in 1985 to 1986.

There was no clear trend in the rate of compliance by the type of order. In 1985 to 1986, the rate was the same for reporting and nonreporting orders. In 1984 to 1985 more payments were made for reporting orders whereas in 1983 to 1984 the situation was reversed.

The offender and offence profiles for the years under review revealed that offenders were primarily male, native, single, unemployed, and living in Whitehorse. Break, enter, and theft were the offences for which orders were usually made, but in 1985 to 1986 this was replaced by wilful damage.

The difficulties in the delivery of programs in the rural or isolated areas of the Yukon Territory were similar to those in other isolated Canadian regions. To a great extent, program success depended on the dedication of the probation officers, consistency of coverage and the network of community resources developed within the area.

Since 1985, the Probation Service has developed new policies and procedures that involve more direct contact with the victim, primarily through inclusion of a victim impact statement in the presentence report. The usefulness of this information in restitution cases is diminished, however, by the low number of presentence reports requested by the courts.

d) Northwest Territories: Sentencing Alternatives, Feasibility, Needs and Impact of a Proposed Victim-Offender Program

The purpose of the study by Thomas and Thomas was to determine the feasibility, needs and impact of a proposed victim-offender program.

Restitution orders for all regions in the Northwest Territories between January 1, 1986 and September 3, 1986 were examined. These included all orders for restitution in respect of section 725, and paragraph 737 of the Criminal Code. However, only 23 probation orders contained restitution conditions and were supervised by probation officers. In addition to analyzing restitution orders and literature reviews, a key informant survey of criminal justice officials and community people were undertaken.

The study found a consensus that restitution would enhance the sentencing options available to the courts and, ultimately, benefit all community members. According to key informants, restitution (where perceived as an alternative to custody) was viewed as cost-effective in regard to institutional cost, transportation, and redress to victims. The study recommended that an awareness campaign be initiated to educate the public about the objectives and principles of restitution.

## 3. FINE OPTIONS

The fine is the most common penalty imposed by the courts. In Canada, more than 90 per cent of convictions for summary offences, and up to one-third of convictions for indictable offences, result in the imposition of fines.

Present Criminal Code provisions for the use of fines as a penalty preclude courts from imposing a fine for an indictable offence punishable by more than five years imprisonment, except in conjunction with either a term of imprisonment or a probation order. For federal offences that were not Criminal Code offences and for all offences in the territories (other than under territorial ordinances), an appropriate agreement with the federal government about the use of fines must be in place. Fines for provincial offences or municipal violations may be used in some jurisdictions but are provided for separately under provincial legislation.

At present, the Criminal Code does not require the court to know the financial means of the offender before determining the amount of fine. Many courts do, however, automatically order a period of incarceration in the event of a default. The "quasi-automatic" nature of the use of imprisonment for fine default has resulted in a large percentage of offenders being admitted to provincial/territorial correctional institutions.

In 1975, Saskatchewan implemented the first fine option program in Canada followed by Alberta and New Brunswick in 1976. Fine option programs for Criminal Code offences have now been implemented in six jurisdictions: New Brunswick, Manitoba, Saskatchewan, Alberta, and the Northwest and Yukon Territories. Newfoundland, Nova Scotia, and Ontario do not currently offer programs, although Ontario undertook two fine option pilot projects and Prince Edward Island a fine option feasibility project during the Sentencing Alternatives Initiative.

In general, programs objectives are described in terms of providing an opportunity for offenders to discharge fines through community work. An additional objective of the Alberta and Northwest Territories programs is to avoid the use of incarceration and, in Manitoba, to avoid suspension of a driving license or loss of vehicle registration. Other programs have objectives such as:

-- humanizing the criminal justice system (Saskatchewan, Quebec);

-- encouraging community participation in the criminal justice system (Quebec);

-- providing a benefit to the community (Northwest Territories, Alberta, New Brunswick); and

-- reducing the costs to the criminal justice system (a general objective of all jurisdictions).

Two program delivery models have been implemented in Canada: the point of sentence model and the point of default model. The basic distinction between the two is that under the point of sentence model, an offender is notified following sentencing that the opportunity to discharge the fine through community service work is available. Under the point of default model, an offender is notified of the program either on default of payment of a fine or when it appears that default is imminent.

During the course of the Sentencing Alternatives Initiative pilot fine option projects were carried out in three jurisdictions: Prince Edward Island, Ontario, and Manitoba. A description of these projects follows.

a) Prince Edward Island Feasibility Study: Fine Option Program

In examining the feasibility of implementing a fine option program in P.E.I., Lord and Dodd used both quantitative and qualitative approaches. Quantitatively, they found that in the two main P.E.I. courts in Charlottetown and Summerside, 854 offenders were fined for a total of 1,143 offences under the Criminal Code during fiscal year 1984 to 1985. Seventy-seven per cent (77 per cent) of these offenders paid their fines while 199 (23 per cent) defaulted and spent an average of 12.5 days per offender in custody. The total cost to the province was $188,742. The fines paid were generally less than $500 with about one quarter being between $50 and $199.

Almost one-half of those admitted to custody had been convicted of a drinking and driving offence. The majority of admitted offenders (58.2 per cent) were between 16 and 30 years of age. A comparison of offender age and highest offence category showed that those in the 16 to 20 age group were most likely to commit the offence of drinking and driving.

In the qualitative component, key justice personnel (clerks of the court and probation officers), community organizations and inmates responded favourably to, and supported the concept of, a fine option program. Probation officers identified certain offender characteristics that they considered important in deciding whether to recommend an offender for such a program. These included attitude, responsibility, age, willingness and ability to do the work, type of crime, availability of transportation, existence of a drug or alcohol problem and previous performance.

The problems cited most frequently with respect to completing the work placement were the availability of placements, lack of adequate supervision and uncertainty among agencies as to the extent of their authority. According to clerks of

the court, most offenders requested time extensions to pay fines. Clerks noted that certain problems with the present system of making fine payments needed to be resolved.

As a result of the feasibility study, the researchers recommended that offenders be given a fine information and notice form at the time of sentencing. It was also recommended that a fine option pilot project be implemented in the Charlottetown court jurisdiction for Criminal Code offences. Finally, it was suggested that impaired driving offenders be properly assessed to determine their ability to succeed in fine option programs, so as to decrease jail admissions.

b) Prince Edward Island Fine Option Program: Design and Pilot Project

A simulated fine option program, using a modified point of sentence model, was designed for P.E.I. by Dodd during the Charlottetown pilot project from November 1, 1986 to March 31, 1987. The two major research activities of the fine option project were program design and data collection.

Information was obtained on fined offenders, trends in incarceration for fine default, enforcement or alternative programs in other jurisdictions, community organization interest and outstanding fine information.

The offenders who received fines tended to be male, approximately 32 years of age, married, with some high school education, and seasonally employed or presently without paid work. Ten people applied and were accepted in the fine option pilot project. They were predominately male, with an average age of 33 years; reported average monthly income was $735. Impaired driving was the most frequent offence. The average fine was $688 and the average number of work placement hours required to satisfy the fine was 147 at $5.00 per hour.

Ten community organizations provided work to fine option project participants. Work done by participants included: supervision of children, rink maintenance, general maintenance, painting, repairs and carpentry, stocking shelves, unskilled office work, and packing and moving.

By March 31, 1987, four fine option participants had settled their fines (i.e., two by fine option, one by payment, and one by combined fine option and payment). The remaining six requested and received extensions. By the end of the pilot project, only one of the six had discontinued contact with the program. A primary motivation for offenders participating in the fine option pilot project was their financial situation which made it difficult to pay the fine imposed. For offenders who chose not to participate in the pilot project, lack of transportation was a major barrier, particularly for those who had been convicted of impaired driving resulting in suspension/cancellation of driving privileges.

The researcher recommended that the province implement a province wide fine option program for federal and provincial offence fines based on the program design presented and managed by probation services. A notice of fine form should be issued to offenders who are given time to pay at the time of sentence and an information brochure about fines, intended to encourage voluntary compliance by fined offenders, should be published and
distributed, once the province determines an approach to fine payment and default. An evaluation of the fine option program was recommended at the end of years one and five.

c) Ontario Feasibility Study: Fine Option Program

This study was conducted by Doorly in 1987 in the Northern Ontario regions of Thunder Bay, Kenora, and Rainy River. The researcher examined offender and offence distribution, fine imposition and range, admission rates for fine default and a sampling of potentially eligible offenders. These activities were undertaken to obtain information on possible program use and to determine whether fine option would be an appropriate alternative for offenders who default on payments of fines.

Court and correctional facility records revealed that fines were imposed for a total of 3,468 Criminal Code or other federal offences during the 1984 to 1985 fiscal year. Drinking and driving constituted the offence category for which fines were most often imposed, comprising 38 per cent of all offences receiving fines. The study revealed that the fine defaulter is typically a 20 to 29 year old, single, male, unemployed or working as a labourer, and claims not to have an alcohol problem. Although accurate data on ethnicity were not available for this study, the author noted that previous research by the Ontario Native Council on Justice found that 80 per cent of native offenders serving time in Ontario in 1984 were doing so for fine default.

It was found that the majority of fines were paid within the "time given to pay" period and a substantial number were paid after a warrant of committal was issued. Approximately 13 per cent of the fines were defaulted, resulting in incarceration. Admissions for fine defaults were more common for provincial than for Criminal Code or federal offences.

With respect to qualitative findings, most of the offenders serving time for fine default would have agreed to participate in a fine option program if given the choice. Key justice personnel, probation officers and representatives from community agencies responded favourably to the fine option concept and considered the program to be of value to both the offender and the community.

Respondents voiced concern about the level of community support for the fine option program in the northern region. It was felt that local factors, which vary from

one community to another, would have to be considered more carefully if the program was to be effective. Difficulties with program initiatives were perceived to result from the failure to include the community in the program design and implementation.

The report did not recommend a pilot fine option program in the northern region of Ontario until certain conditions had been met. Communities and band councils should be informed of the concept and objectives of the program, encouraged to conduct a "needs assessment" and when there is some consensus, a pilot project should be considered. The report suggested that the successful use of a fine option program in the northern region of Ontario would be directly related to the degree to which it is considered an alternative to incarceration and understood by offenders; and the degree to which it is developed, administered, and supported in each community.

d) The Manitoba Fine Option Program: An Evaluation

In 1987 Sloan conducted a review of the Manitoba Fine Option Program. The issues to be addressed emerged from interviews with program and other justice system personnel, and a review of available documentation.

Manitoba's Fine Option Program was implemented in 1983 within the Corrections Division of the Department of Community Services and Corrections. A network of Community Resource Centres and Work Centres provide the direct service element of the program. Community Participation Agreements were signed with municipalities, band and tribal councils, community committees, and private nonprofit organizations. Municipalities, band and tribal councils are most often recruited in rural and remote areas, and the Salvation Army, YM/YWCA's, Friendship Centres, John Howard and Elizabeth Fry Societies in urban centres.

According to the Manitoba Fine Option Policy Manual, the guidelines for program registration are broad; the only limitation is that an individual can register only once for the same offence. If the offender fails to comply with the fine option program, he or she will be terminated and cannot re-register. The intent of the program is to provide low income persons with an opportunity to work off the fine rather than serve time in jail for default.

Within the study population, 143 offenders received fines. Offences ranged from breach of city by-laws to assault causing bodily harm to speeding, parking tickets, possessing liquor on a dry reserve, hunting out of season etc.

The review found that 70 per cent of offenders completed their hours of community work, and an additional eight per cent worked off part of the hours and paid the remainder of the fine. Slightly less than one-fifth (19 per cent) of the cases were closed because the offenders never attended the work placement or were otherwise

unsuccessfully terminated. A small percentage, (three per cent), were closed for "other" reasons, (i.e., cases were transferred to another community resource centre).

The research showed that 71 per cent of the program participants were unemployed, 11 per cent were students, and 55 per cent reported that they depended on some form of public assistance. The majority of clients (68 per cent) had completed grade nine to 12; 25 per cent finished before grade eight; and seven per cent had completed university, or technical or trade school. Almost four-fifths (79 per cent) of participants were male and about 60 per cent of those registering for the fine option program were persons of native Canadian origin.

The majority of offences were for violations of the Criminal Code (36 per cent) and provincial offences (Highway Traffic Act, 38 per cent, and Liquor Control Act, 18 per cent.

## 4. OTHER PROJECTS

Although the activities of the Sentencing Alternatives Initiative described so far have clearly focused on specific alternatives, such as community service orders, restitution and fine options, there were three additional research projects that were undertaken during the Sentencing Alternatives Initiative period. Because these projects do not fit neatly into the three models, they are presented as discrete activities.

### a) Sentencing in Prince Edward Island: An Exploratory Study of Criminal Cases Disposed of by Provincial Courts, 1978 to 1982

A study to review sentencing patterns during a five year period in Prince Edward Island was conducted by Sloan in 1986. The objective of the study was to describe community differences in the type of offences disposed of by the provincial courts, changes over time, and most frequent sentences imposed for the most prevalent offences. The study was based on 12,393 cases involving charges under federal statutes from 1978 to 1982.

The research found that there was little variation by year in the types of offences disposed of by provincial courts in Prince Edward Island, and 10 offences made up 81 per cent of the 12,393 cases. Drinking and driving offences ("over 80" and "refusal to provide a sample") made up 40 per cent of the caseload in all five courts on the Island.

Seventy-six per cent (76 per cent) of individuals charged were first time offenders. Available information showed that most offenders (72 per cent) were between the ages of 16 and 30. From 1978 to 1982, 11,028 sentences were imposed in 12,393 cases, and sentencing practices remained fairly consistent during the five year period. Fines were

the most frequently imposed sentence and ranged from under $50 to $3,500 (one case). Three-fifths of the fines were for $200 or less, with only three per cent over $500.

Probation was used in about 13 per cent of sentences, and was most often combined with either a suspended sentence or a conditional discharge. Approximately 43 per cent of all sentences that involved probation included either restitution or a community service order. Offenders under the age of 23 years were most likely to receive probation (77 per cent).

While the study showed that restitution orders were made in 0.9 per cent of disposed cases, it was difficult to determine the extent to which restitution was used as a sanction because, as the author notes, "the court records appear to be routinely incomplete with respect to restitution as a condition of probation" (1986:35). This penalty was most frequently imposed for offences involving mischief, break and enter, theft under $200, and other theft or fraud offences. As was the case with fines, the dollar amount of restitution orders was frequently low; fifty-four per cent of the orders involved less than $100 and only 12 per cent exceeded $500.

As with restitution, it was difficult to obtain an accurate percentage of sentences that involved community service orders. However, these were most often given for offences involving theft under $200 and break and enter. Almost three-quarters of the CSOs required the offender to work 40 hours or less and 30 per cent involved 20 hours or less.

Of the total sentences imposed, 11 per cent involved incarceration up to two years less a day. Forty six per cent (46 per cent) of all jail sentences were for 15 days or less. More than one third (36 per cent) of the jail sentences involved impaired driving offences and 31 per cent involved property offences.

In general, Sloan found sentencing practices to be relatively consistent within and between courts during the five year study period. Although one court might use probation more frequently and jail less frequently than another, all courts tended to use fines most often (66 per cent), probation (13 per cent) and jail (11 per cent). Finally, he points out that the resources needed to administer a sentence had a major impact on sentencing decisions. Probation, for example, carries with it a much greater administrative burden than does a fine.

b) New Brunswick Adult Alternative Measures (Diversion): A Feasibility Study

Poel and Walker (1986) attempted to examine the use of diversion as a sentencing option in New Brunswick by determining the feasibility of introducing an adult pretrial, alternative measures pilot program in Saint John, New Brunswick.

The researchers conducted interviews with judges, crown attorneys, probation officers, correctional institution personnel, representatives from large retail stores and community group representatives. A survey of police detachments was conducted. The researcher found that a community-based adult diversion program would be accepted, at least initially, but without enthusiasm.

Police were undecided about the utility of the approach. Judges expressed considerable interest in the opportunity for pretrial alternative measures because they did not believe existing post trial alternatives gave them sufficient flexibility to respond to offenders. Crown attorneys were divided in their views. Their reservations focused on concerns about the impact of diversion on deterrence, its potential bias in favour of the more privileged, and, possible opposition by the victims of crime to such options. Probation officers responded in a similar fashion but with fewer reservations.

The author attributed these mixed responses to minimal experience with the program. He believed, however, that this should not be seen as a barrier to implementing a pilot project which had the following objectives: increasing offender responsibility; providing alternatives to post trial sentencing alternatives; providing the potential for community participation and decreasing probation caseloads.

Other recommendations included: one crown attorney to handle all diversion cases so as to ensure program consistency and support; a two year, pilot diversion project for the region jointly implemented by the Department of Justice Canada, and a small advisory committee to assist the project with community relations, project development, and program reviews. The project would be administered by a full-time program coordinator and appropriate administrative support staff who could work with the screening committee.

c) Fact Books on Community Service Order, Restitution, and Fine Option Programs in Canada

Three fact books on the use, policies, process and experiences of community service, restitution and fine option programs in Canada were compiled by Peat, Marwick and Partners in July 1986 for the Policy, Programs and Research Branch, Department of Justice Canada.

In general, the same categories are included in all three reports, the objective of the exercise being to provide as comprehensive an overview as possible of each of the alternative programs. All three include program status (use of program), program objectives, eligibility or criteria for participation, administration and program experience. The CSO and fine option books contain sections on program liability and jurisdictional transfers. The fine option book includes sections on extensions of completion date,

program models, and credit system and work completion date. Information sources are provided for each of the program types in jurisdictions where programs exist.

The fact books provide useful and comprehensive information that complements the information acquired during the Sentencing Alternatives Initiative. What is perhaps most helpful about the former is they provide frameworks within which to locate the initiative projects. The contractor also included a section at the end of each of the fact books that set out areas for further study or workshops. These are listed below as they should be considered in any future development work in these program areas.

The reader might note that the issues or questions, that reflect communities, are the same for the three alternatives measures:

STIMULATING COMMUNITY INTEREST IN THE PROGRAM

- Does the community want to be an active participant in the criminal justice system in terms of convicted offenders performing work in the community?

- Is advertising of the program in the community essential to locating work placement?

- How should the CSO program be promoted in the community and who should promote it?

Some of the specific Community Service Order issues/questions are:

CONSISTENCY IN THE PROGRAM POLICY AND PROCESS

- What are the effects of disparities in program policy and/or process between: judges? Court Services Branch and Corrections Branch? regions/territories within one jurisdiction? the various jurisdictions?

- Is localization of procedures a necessity for programs in rural areas where there are limited administrative bodies and work placements?

- What are the advantages/disadvantages of centralized versus decentralized program administration?

SUPERVISION OF PROGRAM PARTICIPANTS

- What amount and quality of supervision are appropriate?

- Should volunteers be responsible for the supervision of offenders in the disposition of their sentence?

- Are supervisors of program participants ultimately accountable to the program administrators, or to the community at large?

- What should be done with or how should those who do not complete programs be dealt with?

APPROPRIATE WORK OPTIONS

- What is a "credible" or "meaningful" work option?

- Who judges the appropriateness of a work option: the administrative agency? the nonprofit community agency? the offender? the community?

- Do the criteria for "credible" work options limit the feasibility of finding work options, and the program in certain communities?

SETTING AND EVALUATING OBJECTIVES

- What are the objectives of the correctional system: retribution? deterrence? rehabilitation? incapacitation?

- What are the objectives of the CSO program: reduction of crime rate? reduction of recidivism rate? reduction of costs? reduction of prison population)?

- What specific method of measurement will be used to evaluate the extent to which each objective has been achieved?

- What is the specific time frame for measuring each objective?

- Who are the persons responsible for measuring each objective?

Some of the Restitution issues/questions are:

ABILITY TO PAY

- Should offenders who are unable to pay be sentenced to restitution?

- Are indigent offenders more likely to be sentenced to the fine option and community service order programs that may be more restrictive and time-consuming than restitution?

INFORMING THE VICTIM ABOUT RESTITUTION ORDERS

- Should the victim be informed of the availability of the restitution order?

- Should the victim participate in negotiating the provisions of the restitution order?

HARM ASSESSMENT IN RESTITUTION ORDERS

- Who should participate in the assessment of the harm done to the victim?

- How should the harm to the victim be assessed?

- Should standardized "harm assessment models" be developed?

CONSISTENCY IN PROGRAM POLICY AND PROCESS

- What are the effects of inconsistencies, if any, in the application of the sentence by: judges? Court Services Branch and Corrections Branch? regions/territories within one jurisdiction? the various jurisdictions?

- What are the advantages/disadvantages of centralized versus decentralized program administration?

SUPERVISION OF PROGRAM PARTICIPANTS

- What amount and quality of supervision is appropriate?

- Should volunteers be responsible for the supervision of offenders in the completion of their sentences?

PROGRAM GOAL-SETTING AND EVALUATION

- What are the objectives of restitution: retribution? deterrence? rehabilitation? incapacitation?

- What are the goals of restitution?

- Should the objectives of the restitution order be specified at sentencing?

- What specific method of measurement should be used to evaluate the extent to which each program objective has been achieved?

- What is an appropriate time frame for measuring the extent to which each goal is attained?

- Who is responsible for measuring program effectiveness?

Some of the Fine Option issues/questions are:

STIMULATING COMMUNITY INTEREST

- Does the community want to be an active participant in the criminal justice system?

- What is the current attitude of the general public toward convicted offenders performing work in their communities?

- Should the presence of offenders working off their sentences in the community be advertised or downplayed?

- Is advertising of the program in the community essential to locating work placements?

- How should the fine option program be promoted in the community and by whom?

MEANS TO PAY

- Should the indigent be fined?

- Should a "means-to-pay" report be required before imposition of a fine sentence?

- Should fine option program participation be the right of anyone who is fined, regardless of financial status?

- Does restricting participation in the fine option program to indigent offenders discriminate against those with means to pay, or those willing to pay for their crime with community work?

CONSISTENCY IN PROGRAM POLICY PROCESS

- Is localization of procedures a necessity for providing the program in rural areas where there are limited administrative bodies and work placement?

- What are the advantages/disadvantages of centralized versus decentralized program administration?

PROGRAM MODEL: POINT OF SENTENCE VERSUS POINT OF DEFAULT

- Which program model is more administratively and cost efficient?

- Does the point of sentence program model reduce the number of offenders who pay fines with cash?

- Is the point of default model discriminatory against those who are able to pay and willing to perform the work?

LOSS OF FINE REVENUE

- How are fine revenues used?

- Is loss of fine revenue a valid philosophical criticism of the fine option program?

- Does the program defer fine payment, or does it defer incarceration?

SUPERVISION OF PROGRAM PARTICIPANTS

- What amount and quality of supervision is appropriate?

- Should volunteers be responsible for the supervision of offenders in the disposition of sentences?

- Are supervisors accountable to the program administrators, or to the community at large?

## APPROPRIATE WORK OPTIONS

- What is a "credible" or "meaningful" work option?

- Who is the judge of the appropriateness of a work option: the agency that administers the program? the nonprofit community agency? the offender? the community?

- Do the criteria for "credible" work options limit the feasibility of finding work options, and the program, in certain communities?

## PROGRAM GOAL-SETTING AND EVALUATION

- What are the objectives of the correctional system: retribution? deterrence? rehabilitation? incapacitation?

- What are the goals of the fine option program: reduction of crime rate? reduction of recidivism rate? reduction of costs? reduction of prison population?

- What specific method of measurement will be used to evaluate the extent to which each goal has been achieved?

- What is the specific time frame and who are the responsible people for measuring each goal?

## CONCLUSIONS

This overview of the Sentencing Alternatives Initiative project is intended to provide information about the range of activities undertaken. Clearly, the diversity of these activities served not only to provide specific information about certain projects in select jurisdictions, but to raise in a more general way, some of the outstanding issues relating to alternatives programs. However, the expansion on the use of alternatives and a clear acceptance of their utility in the criminal justice process, still remains open to debate and speculation. These debates have a long history.

Probation orders started in Canada in 1889, but the Fauteux and Ouimet Committees recognized the ability of probation to include supervision of work in the community. The community service order emerged during the late 1970s as a solution to prison overcrowding and during a period when community integration for offenders was fostered. Indeed, the concept of reconciliation between the community and the offender was an integral part of the work of the Law Reform Commission on guidelines for

dispositions and sentences (1977) and is at the heart of restitution, compensation and victim/offender reconciliation programs.

The federal government's criminal law policy was set out in 1982 in The Criminal Law in Canadian Society. One of its cardinal principles of sentencing was the use of restraint, (i.e., a sentence should be the least onerous sanction appropriate in the circumstances). In addition, it stated that "wherever possible and appropriate, the criminal law and the criminal justice system should also promote and provide for:

(i) opportunities for the reconciliation of the victim, community, and offender;

(ii) redress or recompense for the harm done to the victim of the offence; and

(iii) opportunities aimed at the personal reformation of the offender and his/her reintegration into the community" (The Criminal Law in Canadian Society, 1982:25).

Despite the various calls for sentencing alternatives, their development and implementation throughout the Canadian provinces and territories have been inconsistent at best. One of the rationales of the Sentencing Alternatives Initiative was to provide more information about programs and to stimulate further developmental activities.

The most recent analyses of the use and effectiveness of sentencing alternatives is provided in the Report of the Canadian Sentencing Commission, Sentencing Reform: A Canadian Approach and in the Report of the Standing Committee on Justice and the Solicitor General, Taking Responsibility. What is stressed in these reports is the need for better information about costs and utility of these programs. The Report of the Sentencing Commission notes that one of the major problems in the use of sentencing alternatives is the general lack of knowledge among system personnel about the existence and availability of programs. Both reports strongly encourage the expanded use of sentencing alternatives to imprisonment, but also argue for community penalties to be penalties in their own right and described in appropriate legislation, and not perceived simply as "alternatives".

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