REPORT OF PRELIMINARY RECOMMENDATIONS BY THE WORKING GROUP ON HIGH RISK OFFENDERS

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PREFACE

On the Fifth day of March, 1993, the Solicitor General of Canada, the Honourable Doug Lewis, appointed a Working Group to review a summary of legislative provisions proposed for the control of high-risk violent offenders, and to make recommendations for the improvement of those provisions, as necessary.

As background to its work, members of the Working Group reviewed a substantial number of documents, detailed in Appendix "A", and met with numerous persons who provided a broad range of perspectives and insights into the issues facing the Working Group in discharging its mandate. A detailed list of those met with is set out in Appendix "B". In addition, a number of written briefs and comments were received and reviewed by the Working Group, from those persons listed in Appendix "C". The comments and submissions received were often contradictory, but always thoughtful and have formed part of our deliberations and report. In drafting the report we also have drawn heavily and extensively in factual matters from briefing documents that were provided. It should be noted, however, that the conclusions and recommendations of this report are solely those of the Working Group members.

TABLE OF CONTENTS

CHAPTER 1

CHAPTER 1

DANGEROUS OFFENDERS AND PUBLIC PROTECTION

The protection of the public through crime prevention is now unquestionably a matter of great and ever increasing priority in this country. Indeed, there has probably never been greater public focus on specific cases which illustrate flaws in our criminal justice system. The challenge from these cases, and for these times, is to analyze the errors, learn from them and then respond in a fashion which is balanced but effective.

Growing public concern about high-risk violent offenders has resulted in a number of reviews of various ways to improve the federal correctional system's ability to identify, manage, detain and supervise such offenders. Gaps in the system have been identified; for example, certain offenders perpetrating sexual offences against children have not been kept detained until the end of sentence; offenders demonstrating a continuing high risk of violence or danger of reoffending upon completion of the sentence have not met the criteria for confinement under provincial mental health laws; offenders have been able to commit additional crimes without suffering any delay in their parole eligibility.

Public concern in response to several tragic incidents involving released offenders has heightened the call for measures to impose additional controls on high-risk offenders who have completed their sentences yet are regarded likely to commit further violent crimes. Such offenders, while often suffering from personality disorders, have seldom met the criteria for commitment to provincial mental health systems at the end of their criminal sentences.

It is clear from these cases and the tragedies they have involved, that the public interest is not being served by the current system of legislation and procedures governing the release of offenders.

The machinery of the criminal justice system must implement procedures throughout the system that recognizes and acts to correct and prevent the harm caused to society as a whole, the harm caused to victims, and the long-term costs to individuals and service systems.

The primary function of the criminal justice system should be to protect the public. Where it can do so through the re-motivation and rehabilitation of an offender, society clearly gains; however, the system must regain the intellectual and moral courage to recognize that it is not always so. To continue to ignore the clear and obvious danger posed by those who commit anti-social acts over and over again is simply irresponsible.

Some American jurisdictions, for example Washington State, have adopted the approach of a civil commitment process for such high-risk criminal offenders. While such a model has attracted interest from the Canadian public, its viability in this country is seen as problematic, given differing constitutional responsibilities for criminal justice and mental health, as well as the existence of the Charter of Rights and Freedoms. While greater cooperation and collaboration between the criminal justice and mental health sectors is an ongoing goal, a more immediate response to public concerns would be seriously compromised by pursuing the Washington State prototype.

High-risk offenders who prey on children, a particularly vulnerable sector of society, should be targeted. It is within the context of a system which operates with little or no regard for victims of violence that we express a deep concern about the fact that perceptibly dangerous offenders, with a strong likelihood of reoffending, are released to the community. There have been many instances in the past few years where sex offenders have been released with little or no supervision into the community and have committed new crimes of violence against women and children, with tragic results, including the death of the victim(s).

There is growing awareness that the legal system, as it is presently constructed and administered, often acts against the interests of women and children, as well as against the interests of disabled people, aboriginal people, black persons and other visible minority people and other vulnerable groups. It acts against their interests in a number of ways; by failing to protect them against crime, by prosecuting them more vigorously than others when they commit a crime, and by frequently persecuting them when they report a crime - especially a crime of violence against them.

The Inquest jury into the death of Christopher Stephenson made it quite clear that the federal and provincial governments must break down jurisdictional barriers and devise a concerted approach to the problem of violent offenders who do not seem to fit the current definitions of mental illness and/or who remain dangerous at the end of sentence.

The Dangerous Offender provisions of the *Criminal Code* allow a judge to impose a period of definite or indefinite imprisonment.

They have withstood Charter challenges. They are limited in

scope, and in fact have been used very little, resulting in approximately eight (8) successful applications per year. At the present time, their use is limited by the fact that such applications can only be brought at the time of sentencing. Many high-risk offenders are not, however, identified as posing a substantial threat to reoffend until shortly before release. Consequently, a viable Canadian alternative to managing such offenders could be to amend the Dangerous Offender scheme so as to allow for such designation prior to the expiration of the offender's definite sentence.

The purpose of the new initiatives must be to provide the best guarantee possible, of public safety. The only way in which that can be accomplished, given that not all offenders are rehabilitated during their period of confinement, is to prevent the release of some offenders.

More recently, along with the rest of the public, courts have lost their innocence concerning the extent of child sexual abuse in our society and the devastating consequences it has for its victims. As well, there is growing realism about what the psychiatric treatment of such offenders can be expected to achieve. We do not delude ourselves any longer about the possibility of curing those child molesters diagnosed as pedophiles, but rather see the aim of treatment as assisting those so diagnosed to control their behaviour. There should be a new recognition that the importance of denunciation and both specific and general deterrence in the sentencing of pedophilic sex offenders is limited. The same recognition would apply to diagnosed psychopaths and drug addicts: they offend on the same principles.

It is apparent that we need to apply a new philosophy when approaching the high risk offender who is sexually motivated. The effects of violent sexual assault are devastating to the human psyche regardless of physical evidence of harm.

There is a growing understanding that what constitutes a major sexual assault is its effect on the victim. According to Mr. Justice Kerans in R. v. Sandercock (1985) 22 C. C .C (3d) 79 at page 85:

> *".....harm generally is inferred from the very nature of the assault. This harm includes not just the haunting fear of another attack, the painful struggle with a feeling that somehow the victim is to blame, in the sense of violation or outrage, but also in the lingering sense of powerlessness. What we mean by this last is that, while we*

are all aware in an intellectual way about the fragility of normal existence, to experience a sudden and real threat to one's well-being, a threat so intense that one must beg to be spared, tends to destroy that sense of personal security which modern society strives to offer and humanity so obviously wants. It matters little in this respect whether that threat comes from a robber, a rapist or any swaggering bully."

There are no suitable alternatives to imprisonment for dangerous sex offenders which have been successfully developed and implemented in Canada, and until there are, imprisonment will be necessary.

The Temporary Absence Report identified in 1992 the need to deal effectively with sex offenders and to carefully control their risk. To this end, the panel was of the opinion that a data system should be established to track them, their treatment and their progress while in the correctional system. A pilot project was recommended to introduce assessment techniques and processes to provide pre-sentence information for sentencing judges, as this is a matter falling within the provincial sphere of responsibility.

Our committee, too, feels that, although legislative steps at this time are important, they represent but a step toward a national strategy for breaking the cycle of violence.

The court cannot gamble on the safety of children in the community particularly when there is no evidence that a pedophilic sex offender's proclivity can be brought under control within any specified period; on the contrary, the strong indication is that he may never be able to do so.

Although the prediction of future violent or sexual behaviour is not perfect, enough is now known about the relationship of offender characteristics to recidivism, to permit meaningful assessment of risk.

Risk appraisal is most accurate when guided by actuarial models that predict likelihood of reoffending from the offenders's past criminal history and present characteristics, used together with other measurements of risk.

The urge to protect the public against dangerous people is laudable. The question to be addressed is whether present knowledge allows this end to be achieved compatibly with just treatment of offenders unless the likelihood of offending is very compelling. Where it is, additional detention may spare injury to likely victims, and spare offenders the consequences of further offending. **The right of the vulnerable members of the public to enjoy society's protection should be considered before the expectations of persons reliably considered dangerous eventually to be free.**

Any measures taken with respect to crime prevention must be a blend of long - run and immediate measures. The very priority of this issue demonstrates that we cannot just wait another generation to see if some new theory is applied more successfully than the last ones. The short run of immediate answer is also not just to get better locks and see Canadians retreat farther behind them in a search for security. An essential part of our modern democratic society is the most basic right of citizens to be safe in it, at the very least from identifiable and more preventable harm. What is required is the moral courage to assert and ensure the balance between the individual rights we all claim, and public responsibility.

CHAPTER 2

A THE LEGISLATIVE BACKGROUND

In Canada, both the criminal justice system and the mental health system provide various measures to deal with individuals who represent a danger to themselves or others. For example, the provisions in the *Criminal Code* are relied on to identify offenders who are not criminally responsible by reason of mental disorder and together with those who are determined to be dangerous mentally disordered persons, become the responsibility of the provincial mental health system. The Code also provides for indefinite sentences for those determined by a court to be dangerous offenders. The mental health systems of the provinces and territories provide for the civil commitment of mentally disordered individuals who are considered dangerous. These civil procedures are non-criminal in nature and non-punitive in intent

Despite the range of measures available, in certain cases the correctional system finds itself in the quandary of facing the release of an offender who is nearing the completion of his or her sentence with the strong likelihood that the offender will commit further violent crimes. Frequently these are offenders with a history of serious violent offences, often involving sex offences against children. These offenders are considered to represent a high risk of committing further, similar offences. Measures have been introduced over the years to deal more effectively with such offenders while they are under sentence, including mandatory supervision, gating, the detention provisions of Bill C-67, and, since November 1, 1992, restrictions on those detained under the provisions of the *Corrections and Conditional Release Act* (CCRA).

1. SENTENCING INITIATIVES: DANGEROUS OFFENDER PROVISIONS

Historically, no single group of offences carries with it an additional provision for indeterminate incarceration. However, certain offenders can be detained for an indeterminate period under at least three types of sanctions. First, there are life sentences imposed for crimes such as murder. Second, being found unfit (incompetent) to stand trial, or not criminally responsible by reason of mental disorder, and a determination of being a dangerous mentally disordered person pursuant to the provision of the *Criminal Code*, can all lead to indefinite confinement. Third, some jurisdictions have employed Habitual or Dangerous Offender legislation to provide for the indefinite incarceration of a repeat or dangerous offender, with an extensive or violent criminal record.

While the legality of indeterminate sentences has been challenged on many occasions in Canada, on the grounds they constitute "cruel and unusual punishment", the courts have upheld their constitutionality. However, the courts have found their application in certain cases to be inappropriate.

A) Habitual Offenders

In 1947, Parliament enacted the habitual criminal provisions of the *Criminal Code.* Under these provisions a person found to be an habitual criminal could be sentenced to preventive detention for life. An habitual criminal was defined as someone who, since attaining the age of 18 years, on at least three separate and independent occasions, had been convicted of an indictable offence for which he was liable to imprisonment for five years or more and was persistently leading a criminal life.

In 1969, the report of the Canadian Committee on Corrections (Ouimet Report) found that in a substantial percentage of cases the legislation had been applied to persistent offenders who, while constituting a serious social nuisance, were not dangerous. Moreover, the Committee found that the legislation had been applied very unevenly across Canada. More than half of the persons sentenced to preventive detention were sentenced in the lower mainland of British Columbia.

Both the Ouimet Report and the Senate Report on Parole (Goldenberg Report, 1974) recommended that the habitual criminal legislation be repealed. In 1977 these recommendations were acted upon, in large measure, when the habitual offender legislation was replaced by dangerous offender and dangerous sexual offender legislation.

b) Dangerous Sexual Offenders (DSOs)

Criminal Code provisions were enacted for the preventive detention of Criminal Sexual Psychopaths in 1948. In 1958, the provision was added to the habitual criminal provisions of 1947 to form Part XXI of the *Criminal Code.* The same year, the description of sexual offenders sentenced to preventive detention was changed to "Dangerous Sexual Offenders (DSO)" at the suggestion of a Royal Commission (McRuer).

c) Dangerous Offenders (DO's)

From 1958 on, the dangerous sexual offender legislation was criticized for its ambiguous definition. In 1969, the Ouimet Committee suggested that the DSO legislation was capturing many non-dangerous sex offenders and was missing dangerous ones.

This criticism, coupled with the need to reform the habitual offenders legislation, led ultimately to the modification of the *Criminal Code.* In 1977 the provisions of Part XXI of the *Criminal Code* which provided for the indefinite detention of Dangerous Sexual Offenders and Habitual Criminals, were repealed and the Dangerous Offender (DO) legislation was enacted. The *Criminal Law Amendment Act* was proclaimed on October 16, 1977 and provided for the preventive detention of dangerous offenders.

The Dangerous Offender legislation provides a more generic definition of dangerousness as pertaining to "serious personal injury" which need not be sexual in nature.

d) Mental Disorder Amendments

Mental disorder amendments to the *Criminal Code,* proposed by the Department of Justice, came into force on February 4, 1992.

The previous *Criminal Code* provisions for the mentally disordered offender ("not guilty by reason of insanity") contained inconsistencies and omissions and were seen to lack clarity. Much of the law dated back to 1892 or earlier. The language used to describe mental disorder was archaic and, in some cases, the authority it gave to the court and the Lieutenant-governors of the provinces was inappropriate.

The amendments establish an outer limit or "cap" on the length of time a person can be held, except in cases of murder. There is an equivalency between this limit and the possible sentence the person would have been subject to, should he have been found guilty and sentenced for the offence. The introduction of maximum limits does not mean that an accused who is still dangerous would be released from all restraint at a definite point. At that time, the person could be involuntarily committed to a secure hospital under the authority of provincial mental health legislation.

The new provisions enable the court, on the application of the Attorney General after a verdict of not criminally responsible, to find a person a "dangerous mentally disordered accused" on the basis of criteria similar to those in the current dangerous offender provisions. Where the court makes such a finding, it can order that the individual be held in strict custody (in a mental health facility) indefinitely, until ordered released by a Criminal Code Review Board. About 1,100 Canadians are now being held in custody in this fashion.

2. POST-SENTENCING INITIATIVES: THE DETENTION LEGISLATION

Any measures available to the corrections system or contracted to the judicial or sentencing system, must, by definition, be contained within the limits of the original sentence handed down by a judge. The correctional system cannot alter the length of the sentence nor can it hold the offender in custody without the authority of a valid warrant. Even where the offender is believed to suffer from a mental, emotional or character disorder, entrance to provincial mental health systems is usually barred by the narrow definition of mental illness in provincial mental health statutes and/or the absence of sufficiently secure provincial facilities. In addition, given that persons so committed are entitled to reasonably frequent reviews of their status (every 30-60 days), there is no guarantee of long term confinement. Various measures to deal more effectively with these most problematic offenders have met with varying degrees of success.

As outlined above, these measures have variously included mandatory supervision, gating, and detention. These are further detailed as follows:

a) Mandatory Supervision (MS)

Since 1959, the National Parole Board (NPB) has had authority to grant, revoke and set conditions for the parole of persons in penitentiaries (and in reformatories in those provinces without provincial parole boards). Offenders released on parole have always been supervised, and subject to return to custody for misbehaviour.

The remission program was modified over the years since its creation in 1868, but essentially consisted of a remission of one-third of the sentence. Unlike parole, for over 100 years the portion of the remitted sentence spent in the community was unsupervised and not subject to any controls.

In 1970, following the recommendation of the Ouimet Committee the year before, the *Parole Act* was tightened to provide that inmates released as a result of remission credits would be subject to supervision by the National Parole Service (except those inmates released with less than 60 days of remission), now commonly referred to as "mandatory supervision". The Board was given authority to set conditions for this release, as well as the power to revoke the release and have the offender returned to custody.

b) Gating

As a result of a number of high-profile offences committed by offenders released on MS, concerns were increasingly voiced about the virtually automatic release of inmates as a result of remission. There was a view that offenders released on MS were presenting a clear danger to the public safety upon MS release (indeed, they were by definition inmates who had been deemed unsuitable for parole release), and yet because they had earned remission as a result of good institutional conduct, they were automatically entitled to be discharged from custody.

Although the public generally over-estimated the number of inmates who posed such a risk, correctional officials agreed there was a very small number of MS releases that posed such a high and demonstrable risk that they should remain in custody as long as possible.

Similar concerns were echoed by a number of Parliamentary and governmental studies and committees. All favoured a period of supervised transition for offenders not granted parole, but all expressed concern about the small group of offenders who constitute an imminent danger to public safety but had to be released by law.

In 1982, the NPB proactively began "gating" a small number of inmates. In these cases, the inmate was "released" on MS, but upon reaching the gate of the institution a warrant of apprehension and suspension of the MS was executed, thereby suspending the MS and returning the inmate to custody. It was clear that the decision to issue such a warrant was being made on the basis of the inmate's conduct prior to release.

After eleven inmates were gated. The Supreme Court of Canada ruled against the practice on May 17, 1983. The court ruled that the Parole Board's power to suspend an inmate's release under MS only arises subsequent to the inmate's release from prison and must relate to the post-release conduct of the inmate.

c) Detention - Bill C-67

In July 1986, a legislative response to the gating initiative was proclaimed in force. Bill C-67 contained several key features:

- the NPB, upon referral by the Correctional Service of Canada (CSC), could order violent offenders detained beyond their normal statutory release date;
- the criteria for detention are different from those set out to declare a person a dangerous offender and were: (a) the offender was serving a sentence for an offence on a newly-created Schedule to the *Parole Act*, (b) the offence caused death or serious harm to the victim, and (c) there were reasonable grounds to believe that the inmate was likely to commit, before warrant expiry date, an offence causing death or serious harm;
- an inmate reviewed for detention but not detained could be released subject to a condition of residency in a community-based residential facility;
- "one-chance statutory release" would apply upon revocation for any reason, in respect of those inmates referred for a detention review but not detained.

Most witnesses before the Parliamentary Committee reviewing C-67 five years after its passage, expressed a recognition of the necessity of maintaining a mechanism to deal with a limited number of very serious and dangerous offenders. At the same time, there was criticism that detention only delays

the re-occurrence of violent acts and does not reduce their likelihood. It was also suggested that the legislation did not deal with necessary reforms of the whole system, that there was still a lack of adequate and effective programming and treatment and that there should be a system in place to allowthe gradual reintegration of all offenders. This could be accomplished by providing for a mandatory supervised release period in a community facility for all detained inmates prior to warrant expiry.

d) Bill C-36: The Corrections and Conditional Release Act

The *Corrections and Conditional Release Act*, proclaimed in force November 1, 1992, contained additional measures to focus on violent offenders and to respond to the Standing Committee's recommendations respecting detention. For example, such offenders were excluded from the new accelerated review for parole program, and offenders classified as maximum security were excluded from the unescorted temporary absence program. Violent offenders were made subject to the new "judicial determination" program, whereby judges could set parole eligibility at one-half of the sentence rather than one-third. As well, a number of sex offences were added to the Schedule.

B REVIEW OF DANGEROUS OFFENDER LEGISLATION IN OTHER JURISDICTIONS

The review by the Working Group of the initiatives of some other jurisdictions has been valuable and provided much general guidance. However, we are satisfied that the most appropriate way to deal with the difficult issues inherent in balancing the individual rights of an offender convicted of a serious crime and manifesting continuing risk to the community, against the individual and collective rights of the community to be reasonably free of risk, we cannot simply adopt some other jurisdiction's scheme: our traditions, legislative framework and constitutional divisions of power are uniquely Canadian. Therefore, it is our approach to rely substantially on existing definitions and statutory language, where appropriate, and to build on existing procedures and processes, where possible and practicable to do so.

One particular legislative approach reviewed in some great detail was that of Washington State. We wish to detail our findings regarding this legislative model, given the high degree of public interest in that legislation, and the suggestion that it might form the basis for similar policy and legislative approaches in Canada.

THE WASHINGTON STATE LEGISLATION

The legislation was enacted by Washington State in 1990 to permit the indefinite detention of certain dangerous persons beyond their warrant expiry date. It applies to offenders who are serving a sentence for a sexually violent offence and who, because of a mental abnormality or a personality disorder, are likely to commit another similar offence. The review of such offenders is conducted by a court and is subject to a variety of procedural protections. This program was created as a civil, rather than a criminal process, both of which, unlike Canada, fall under single State jurisdiction. The State's Department of Social and Health Services is financially responsible for both the review process and all the costs associated with the 32 bed facility set up to house these offenders. Detained offenders are entitled to yearly reviews by a court, which can continue the detention or order the offender released. There is no provision for a gradual reintroduction of an offender by way of conditional release.

This legislation has been challenged on the grounds that:

- it is not a valid use of the medical model of civil commitment, because the definition of mental illness is not psychiatrically recognized, and because a truly therapeutic model would require treatment to begin immediately, rather than insist that the punishment be served first.
- there is no adequate proof required of future dangerousness, so that it is likely that many people who will not in fact commit further offences will be improperly detained; and
- the criteria for detention are too broad and cannot be consistently and fairly applied by prosecutors, mental health authorities and the courts.

Two other aspects of the operation of the legislation bear noting. First, treatment is provided to many sex offenders while they are serving their criminal sentences. Since the treating prison therapists may testify at a subsequent detention hearing, many offenders simply refuse to participate in treatment programs while in prison. However, this situation arises in any system where treatment is offered. Second, the lack in Washington of graduated release after detention means that, in that State, risk management is extremely difficult, and therefore, risk assessment is even more difficult.

Unfortunately, as well, placement of offenders with severe character disorders in facilities intended to treat persons suffering from major mental disorders, results in stigmatization of the mentally ill, and possible danger to them and treating staff. The alternative is either to lodge the mentally ill in facilities unduly secure for their needs, or to create a new separate system of secure mental health facilities solely for the character disordered.

Given these problems and particularly the significantly higher population of Canada which may result in higher numbers of offenders likely to warrant detention across Canada, the Washington model seemed neither jurisdictionally achievable, nor capable of delivering secure detention or risk reduction in a cost effective manner.

C STATISTICAL INFORMATION ON DANGEROUS OFFENDERS

The following was provided by the Research and Statistics Branch of Correctional Service of Canada, as of October 1992, with regard to the current status of those individuals who are presently constituted Dangerous Offender (D.O.).

According to the legislation, an individual must have been convicted of a "serious personal injury offence" prior to the application for a Dangerous Offender status being made. The *Criminal Code* of Canada defines such an offence as:

a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving:

   (i) the use of or attempted use of violence against another person, or

   (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person, and for which the offender may be sentenced to imprisonment for ten years or more, or

b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

The consent of the Attorney General of the province in which the offender was tried is required to hear an application for DO status. At the hearing of application, psychiatric evidence is heard from both the prosecution and defence as to whether the offender has "shown a failure to control sexual impulses" or "constitutes a threat to the life, safety or physical or mental well-being of other persons". A single act of brutality may qualify the individual as a dangerous offender.

Whereupon a court finds an individual to be a dangerous offender and imposes a sentence of detention in a penitentiary for an indeterminate period, the National Parole Board reviews the case for parole three years from the day the offender was taken into custody and every two years thereafter.

The use of such provisions has led to a variety of questions ranging from concern over the effectiveness of indeterminate sentencing in controlling those individuals thought to represent the most dangerous of all criminals, to the general characteristics of those individuals declared to be dangerous offenders.

The following is an overview of some of the statistical information available on dangerous offenders.

OVERVIEW OF DANGEROUS OFFENDER POPULATION

- On 17 December 1992, a review of CSC's offender information system yielded a total of **121 dangerous offenders** with indeterminate sentences under federal jurisdiction.
- There were nine (9) dangerous offenders who died while in custody. Six (6) of the deaths were due to natural causes and the remaining three (3) were suicides.
- There has been one (1) dangerous offender who was paroled for deportation.

a) The Current Situation

- The actual number of dangerous offenders currently under federal supervision is **111** and comprise less than **.5%** of the total federal offender population.

  (i) Incarcerated Dangerous Offender Population

- On 17 December 1992, there were **106** dangerous offenders incarcerated in federal institutions and **one (1)** was incarcerated in a provincial facility.
- About one half of these federally incarcerated dangerous offenders were in **maximum** security institutions, and slightly **over a third** were in **medium** security institutions. More specifically:
  - minimum security: **7.5%** of all dangerous offenders;
  - medium security: **36.8%** of all dangerous offenders;

- maximum security: **45.3%** of all dangerous offenders; and
- regional psychiatric/ treatment centres: **10.4%** of all dangerous offenders.

(ii) Conditionally Released Dangerous Offender Population

- On 17 December 1992, there were **4 dangerous offenders** on conditional release. More specifically:
  - 1 was on day parole; and
  - 3 were on full parole.

b) Regional Distribution of Dangerous Offenders

- Regionally, the **Ontario** and **Pacific regions** have the **most dangerous offenders,** with each being responsible for about **one half** and **one quarter** of the dangerous offender population, respectively.
- In a comparison of the proportion of dangerous offenders in each region with the proportion of general offenders, the **Ontario** and **Pacific regions** have **larger proportions** of dangerous offenders than general offenders. The **Quebec region** has no dangerous offenders. **More** specifically:
  - Atlantic: **7.2%** of dangerous offenders, and **10.6%** of all offenders (proportionately fewer dangerous offenders);
  - Quebec: **0.0%** of dangerous offenders, and **29.2%** of all offenders (no dangerous offenders declared);
  - Ontario: **48.7%** of dangerous offenders, and **27.3%** of all offenders (proportionately more dangerous offenders);

- Prairies: **19.8%** of dangerous offenders and **20.3%** of all offenders (about the same proportion of each); and
- Pacific: **24.3%** of dangerous offenders, and **12.6%** of all offenders (proportionately more dangerous offenders).

c) Dangerous Offender Population Trends

(i) Admissions

- The dangerous offender population has grown steadily over the last 15 years at an average rate of **eight (8)** new admissions per year.

(ii) Releases

- From 1985 to 1992, the number of annual releases of dangerous offenders has remained constant at about **one (1).**

d) Recidivism and Return Rates

- With the exception of **one (1)** case granted parole for deportation, all of the **eight (8)** other dangerous offenders were released on day parole. A follow-up of these cases revealed that **three (3)** cases were revoked, **one (1)** case was a regular expiry, **three (3)** were granted full parole, and **one (1)** dangerous offender is **currently on day parole.**

e) Characteristics of Dangerous Offenders

(i) Gender

- On 17 December 1992, a review of CSC's offender information system revealed that **all dangerous offenders listed to date are male.** There was one (1) case of a female offender for whom an application for Dangerous Offender status was put forward but records indicate that the designation was never made.

(ii) Age

- On 17 December 1992, the **average age** of dangerous offenders under federal supervision was almost **40 years old.** The oldest dangerous offender was 66 years old and the youngest was 23 years old.
- The average age of dangerous offenders as a group is increasing. The average age at admission was about 34 years old. The oldest admitted was 70 years old and the youngest was 19 years old.

(iii) Ethnicity

- On 17 December 1992, the **majority of dangerous offenders (85%) were Caucasian.**
- In a comparison of the proportion of dangerous offenders in each ethnic group with the proportion of general offenders, there was somewhat of a larger proportion of Caucasian dangerous offenders than general offenders. More specifically:
  - Caucasian: **85.1%** of dangerous offenders, and **80.2%** of all offenders (proportionately more dangerous offenders);
  - Native: **10.7%** of dangerous offenders, and **9.8%** of all offenders (about the same proportion);
  - Black: **3.3%** of dangerous offenders, and **3.7%** of all offenders (about the same proportion);
  - Asiatic: **0.0%** of dangerous offenders, and **0.9%** of all offenders (no dangerous offenders declared); and
  - Other: **0.8%** of dangerous offenders, and **5.4%** of all offenders (proportionately fewer dangerous offenders).

(iv) Previous Federal Incarcerations

- About **one half** of dangerous offenders have been in federal custody on two or more previous occasions, and slightly over **one quarter** are under federal supervision for the first time. **More** specifically:
  - no previous federal incarcerations: **28.1%**
  - one previous federal incarceration: **22.3%**; and
  - two or more federal incarcerations: **49.6%.**

f) Provincial Distribution of Dangerous Offender Declaration

- Nearly **one half** of dangerous offenders were declared in Ontario and slightly over **one quarter** were declared in British Columbia. The provinces of **Quebec and P.E.I.** as well as the **Yukon** have not declared any dangerous offenders. A breakdown of the declaration of Dangerous Offenders by province/territory follows:

• British Columbia	32	(26.4%)
• Alberta	12	(9.9%)
• Saskatchewan	2	(1.7%)
• Manitoba	4	(3.3%)
• Ontario	59	(48.8%)
• Quebec	0	(0.0%)
• Nova Scotia	3	(2.5%)
• New Brunswick	2	(1.7%)
• P.E.I.	0	(0.0%)
• Newfoundland	6	(5.0%)
• Yukon	0	(0.0%)
• Northwest Territories	1	(0.8%)

g) Nature of Offence

- Categorizing dangerous offenders by their major admitting offence (the offence which received the longest sentence), one finds that approximately one half are sex offenders. However, the actual number of dangerous offenders who have sexual offences on record is understated using this definition. A closer look at CSC's offence base revealed that 90% (or 9 in 10) of all dangerous offenders had sexual offences in their background. The remaining group consisted of dangerous offenders with diverse offences, including assault with weapon, assault causing bodily harm, assault, set fire, attempt murder and break and enter and commit.

Recognizing that approximately one half of all existing offenders declared dangerous offenders are sex offenders, and that 90% had sex offences in their background, it was determined to be necessary to acquire data with regard to sex offenders under federal supervision in Canada. Additionally, it is recognized that sex offences are viewed by much of the public as representing particularly repugnant offences which can cause lasting psychological damage to victims of a type and degree only now being recognized. Finally, research data tells us that repetitive, psychopathic and certain other sex offenders, tend to recidivate frequently.

D STATISTICAL INFORMATION ON SEX OFFENDERS

THE CURRENT SITUATION

a) Total Sex Offender Population

- On 31 October 1992, a review of CSC's offender information system yielded a total of **2,647** offenders with a major admitting sex offence and comprise **12.1%** of the total federal offender population.

Note: The actual number of sex offenders incarcerated or under some form of conditional release is understated. Offenders are identified by their major admitting offence (the offence which received the longest sentence).

- Regionally, the **Ontario and Prairies regions** have the most sex offenders, with each being responsible for about one quarter of the sex offender population.
- In a comparison of the proportion of sex offenders in each region with the proportion of general offenders, the **Prairies and Pacific regions** have **larger proportions** of sex offenders than general offenders. More specifically:
    - Atlantic **11.1%** of sex offenders, and **10.3%** of all offenders (about the same proportion of each)
    - Quebec **16.6%** of sex offenders, and **29.3%** of all offenders (proportionately fewer sex offenders);
    - Ontario **28.7%** of sex offenders, and **27.3%** of all offenders (proportionately more sex offenders);
    - Prairies **25.4%** of sex offenders, and **20.3%** of all offenders (proportionately more sex offenders); and
    - Pacific **18.3%** of sex offenders, and **12.6%** of all offenders (proportionately more sex offenders).

b) Incarcerated Sex Offender Population

- On 31 October 1992, there were **1,814** offenders incarcerated in federal institutions with a major admitting sex offence who comprised **14.5%** of the incarcerated population.
- About **one half** of these federally incarcerated sex offenders were in **medium** security institutions, and **one quarter** were in **maximum** security institutions. More specifically:
  - minimum security — **26.2%** of all sex offenders;
  - medium security — **51.5%** of all sex offenders; and
  - maximum security — **22.3%** of all sex offenders
- Regionally, the **Ontario** and **Prairie regions** have the **most** sex offenders incarcerated, with each being responsible for about **one third** and **one quarter** of the incarcerated sex offender population, respectively.
- In a comparison of the proportion of sex offenders incarcerated in each region with the proportion of general offenders incarcerated, only the **Quebec region** has a **smaller proportion** of incarcerated sex offenders than general offenders. More specifically:
  - Atlantic — **11.1%** of sex offenders, and **8.9%** of all offenders (proportionately more sex offenders);
  - Quebec — **13.5%** of sex offenders, and **27.7%** of all offenders (proportionately fewer sex offenders);
  - Ontario — **32.2%** of sex offenders, and **29.9%** of all offenders (proportionately more sex offenders);
  - Prairies — **25.0%** of sex offenders, and **20.9%** of all offenders (proportionately more sex offenders); and
  - Pacific — **18.1%** of sex offenders, and **12.5%** of all offenders (proportionately more sex offenders).

c) Sex Offender Population Trends

(i) Admissions

- As of 31 October 1992, the **average rate of admission** for sex offenders over the previous 24 months was **65.8** per month.

(ii) Releases

- As of 31 October 1992, the **average rate of release** on Full Parole and Mandatory Supervision over the previous 24 months was **42.8** per month. (Note: releases on day parole not included).

d) Characteristics of Sex Offenders

(i) Gender

- On 31 October 1992, a review of CSC's offender information system revealed that the **overwhelming majority (99.5%)** of sex offenders listed were **male.** There were fourteen (14) female offenders with a major admitting sex offence and as a group comprised less than **.5%** of the sex offender population.

(ii) Age

- On 31 October 1992, the **average age** of sex offenders under federal supervision was almost **40 years old.**
- In a comparison of the proportion of sex offenders by age groupings with the proportion of general offenders, the **50 to 64 and 65 years old and over** groupings had a larger proportion of sex offenders than general offenders.

(iii) Ethnicity

- On 31 October 1992, the **majority** of sex offenders (76%) were **Caucasian.**
- In a comparison of the proportion of sex offenders in each ethnic group with the proportion of general offenders, there was a somewhat **larger** proportion of **native** sex offenders than general offenders. More specifically:

- Caucasian **76.4%** of sex offenders, and **79.4%** of all offenders (proportionately fewer sex offenders);
- Native **17.2%** of sex offenders, and **9.9%** of all offenders (proportionately more sex offenders);
- Black **3.3%** of sex offenders, and **4.1%** of all offenders (about the same proportion);
- Asiatic **0.6%** of sex offenders, and **0.9%** of all offenders (about the same proportion); and
- Other **2.4%** of sex offenders, and **5.6%** of all offenders (proportionately fewer sex offenders).

(iv) Previous Federal Incarcerations

- About one quarter of sex offenders have been in federal custody on one or more previous occasions, and slightly over **three quarters** are under federal supervision for the first time. More specifically:
  - no previous federal incarcerations **76.1%;**
  - one previous federal incarceration **11.8%;** and
  - two or more federal incarcerations 12.1%.

e) Characteristics of Victims

- According to the National Sex Offender Census (Porporino & Motiuk, 1991), **adults (particularly females)** are more frequently the victims of sex offenders. The sex offender census found that an **adult** was the victim in about **half** the cases, **a child (under 12)** was the victim in about **one third** and an **adolescent (12 to 17)** in about **one third.** More specifically:
  - child only **21.8%;**
  - child and adolescent **8.9%;**
  - child and adult **1.5%;**
  - child and adolescent and adult **1.5%;**
  - adolescent only **18.9%;**
  - adolescent and adult **3.7%;** and
  - adult only **43.6%.**

E STATISTICS ON DETENTION

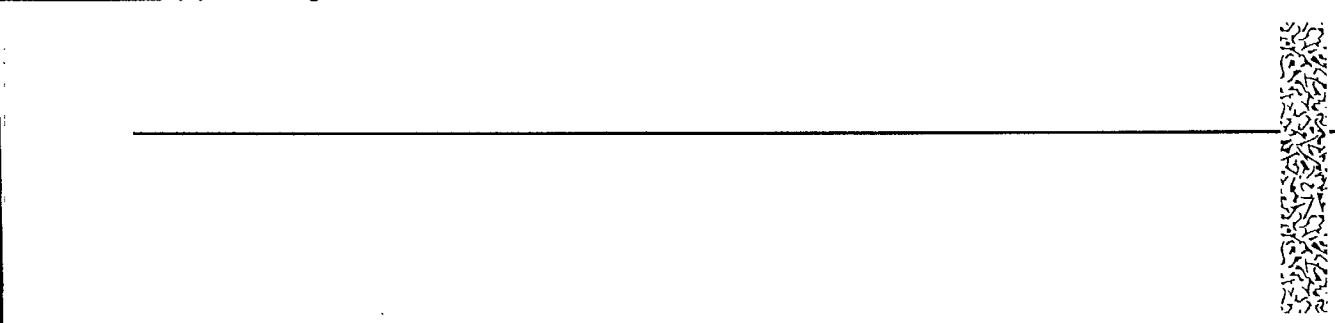
USE OF DETENTION

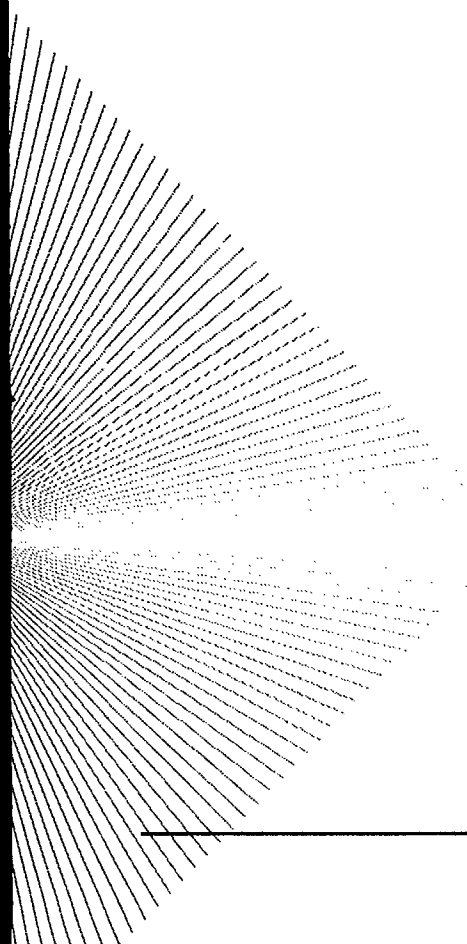
a) Referrals

- National Parole Board statistics gathered over the last five (5) years yield a total of **922 referrals** for detention. Of these, nearly half **(448 cases or 48.6%)** were referred with sexual assault offences.
- About **three quarters** of detention referrals with sex assault offences are detained.

b) Detentions

- Since the detention legislation was implemented, **half of all offenders detained have been sex offenders,** a highly disproportionate number. More specifically, **52.6%** of all offenders (419 out of 765) detained since 1986 have been **sex offenders.**
- Averaged over a seven (7) year period, there have been **60** sex offenders detained each year.





CHAPTER 3

A OPERATION OF EXISTING DANGEROUS OFFENDER PROVISIONS

The existing dangerous offender legislation is found in Part XXIV of the *Criminal Code*. Its application in any particular case has to meet several criteria and overcome some procedural hurdles. Perhaps more fundamentally, however, because there is a need for substantial investment of time to conduct a proper background investigation and to prepare for the prosecution itself, the threshold question often becomes whether it would be possible to achieve another equally appropriate sentence by other means. This is unfortunate. And, while it is certainly not suggested that a substantial term of imprisonment requires a Dangerous Offender application, it is also not prudent to take the two dispositions as interchangeable. As has been stated above, Part XXIV of the *Criminal Code* should be used for its intended purpose: to protect society from dangerous offenders by having them detained for an indeterminate period.

This report cannot provide an exhaustive guide to the Dangerous Offender application procedure. Nevertheless, in light of the Recommendations which will follow, it is important to give at least an outline of its most important elements:

1. An application can be made only for an offender convicted of an offence enumerated in section 752 of the *Criminal Code*. It is noteworthy that the section captures two distinctive types of harmful conduct. One arises out of use or attempted use of violence or conduct that endangers life and safety of individuals and for which the imprisonment may be ten years or more. The other relates to three enumerated sexual offences for which, somewhat surprisingly perhaps, no minimum sentence is necessary.

The section is reproduced below.

> *752 "serious personal injury offence" means*
>
> *(a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving*
>
> *(i) the use or attempted use of violence against another person, or*
>
> *(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,*
>
> *and for which the offender may be sentenced to imprisonment for ten years or more, or*

(b) *an offence or an attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).*

2. The Attorney General of the province in which the offender was tried for the substantive offence has consented to the application.

3. The person who is subject to the application has been given appropriate notice which outlines the basis on which the prosecutor intends to make the application. Although there are only minimal statutory requirements with respect to the content of the notice, at least the following information should be included:

   a) a description of the application,

   b) time and place of the application,

   c) the substantive charge,

   d) an outline of the grounds for the application including references to the serious personal injury offence or offences, previous conduct, the effect of such conduct on the victims and the manner in which all this will be proven, and

   e) a reference to the psychiatric, psychological or criminological evidence that will be called.

4. Part XXIV of the *Criminal Code* requires that the court hear evidence of at least two psychiatrists. This is not surprising since the court has to concern itself not only with the elements of section 753 (whether, for example, the offender is showing a substantial degree of indifference with respect to the reasonably foreseeable consequences to other persons of his behaviour), but also with an assessment of the risk of future harm. Somewhat reluctantly perhaps, psychiatrists have become indispensable witnesses at the hearings. Their proper role and function, however, is described in the following:

"The final decision in all matters must rest with the judge but he is entitled to the opinions of the psychiatrists, which he may accept or reject in whole or in part. In his reasons for judgment, Legg, D.C.J., gave full consideration to all of the other evidence at the hearing as he was required to do, and came to his conclusion on the totality. Psychiatry in its present stage is far from an exact science in predicting human behaviour, whether the behaviour is to be given such treatment in the future as may be thought to help abberations, or is to be allowed to go unchecked. The Court draws such help as it can from the testimony of the psychiatrists in the light of the whole case, as Legg, D.C.J., expressly did."

(*R. v. Dwyer* (1985) 34 C.C.C. (3d) 293 (Alta. C.A. at p. 304)

5. Section 753 sets out all available requisites for a finding that an offender should be declared a dangerous offender, and is reproduced below.

753. *Where, on an application made under this Part following the conviction of a person for an offence but before the offender is sentenced therefore, it is established to the satisfaction of the court*

(a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

(i) a pattern of repetitive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behaviour and a likelihood of his causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his behaviour,

(ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his behaviour, or

(iii) any behaviour by the offender, associated with the offence for which he has been convicted, that is of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint, or

(b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses,

the court may find the offender to be a dangerous offender and may thereupon impose a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted.

6. If all of the foregoing is met, the court may find the offender to be a dangerous offender and then **in lieu** of any other punishment impose a sentence of detention in a penitentiary for an indeterminate period. And, although the court may declare someone a dangerous offender, determinate sentence does remain available.

B JURISPRUDENCE RELATING TO PART XXIV OF THE CRIMINAL CODE

Although there has been a fair bit of judicial comment on virtually all sections of this Part of the *Criminal Code*, the present task of the Working Group requires that only *R. v. Lyons* (1987) 37 C.C.C. (3d) 1 (S.C.C.) be mentioned. Although this case is notable for a variety of reasons, two stand out as most significant.

First, in rejecting the argument that it would be unsafe to predict future dangerousness based on psychiatric evidence and that, as a result, innocent persons would be sacrificed for the public good, the Court said that:

"Similarly, Floud and Young, supra, reject the notion that in enacting dangerous offender legislation Parliament unfairly sacrifices innocent persons in favour of the public good (at pp. 48-9):

> *This argument is misconceived. Errors of prediction do not represent determinable individuals. It is not that we have difficulty in identifying the subjects of predicted error with the methods available to us; it is that they are in principle indeterminable. There are no hidden individuals identifiable in principle, but not in practice, who certainly would or would not reoffend. In this sense there are no innocent or guilty subjects of predictive judgment... The question is not "how many innocent persons are to sacrifice their liberty for the extra protection that special sentences for dangerous offenders will provide?" But "what is the moral choice between the alternative risks: the risk of harm to potential victims or the risk of unnecessarily detaining offenders judged to be dangerous?" The essential nature of the problem of preventing wilful harm is misrepresented by talk of balancing individual and social costs. The problem is to make a just redistribution of risk in circumstances that do not permit of its being reduced. There is a risk of harm to innocent persons at the hands of an offender who is judged likely to inflict it intentionally or recklessly - in any case culpably - in defiance or disregard of the usual constraints. His being in the wrong by virtue of the risk he represents is what entitles us to consider imposing on him the risk of extraordinary measures to save the risk of harm to innocent victims.*
>
> *(Emphasis added.) I agree with this reasoning." (pp.50-1)*

Second, according to the Supreme Court of Canada, the Dangerous Offender parts of the *Criminal Code* do not violate the Canadian Charter of Rights and Freedoms. Briefly, Part XXIV does not result in a deprivation of liberty contrary to the principles of fundamental justice in section 7 of the Charter since the sentence which is applied not only relates to a particular offence and conviction, but is also imposed in lieu of any other punishment. Law and common sense thus coincide.

Part XXIV of the *Criminal Code* also does not amount to cruel and unusual punishment contrary to section 12 of the Charter because there is an appropriate balance between the effects of the punishment and the reasons for imposing punishment in the first place. To put it differently, this part of the *Criminal Code* strikes an appropriate balance between the particular circumstances of the offence, characteristics of the offender and the particular purpose sought to be accomplished by the manner of the (indeterminate) sentence.

Part XXIV of the *Criminal Code* also does not violate section 9 of the Charter since it cannot be said that it authorizes arbitrary detention. The legislation defines quite narrowly a class of offenders which may be subject to the legislation. Furthermore, the conditions under which an offender may be declared dangerous are also carefully set out. The mere fact that there is variation among the prosecutors and provinces in the application of Part XXIV does not turn the whole process into something of such discretionary nature that the Charter ought to prohibit it. Finally, Dangerous Offender provisions of the *Criminal Code* also withstood scrutiny pursuant to section 11 of the Charter.

The constitutional validity of this legislation, therefore, seems to have been established.

C CONCERNS REGARDING THE PRESENT APPLICATION OF PART XXIV OF THE CRIMINAL CODE

Any Dangerous Offender application is hinged on a timely identification of an offender whose risk warrants a Dangerous Offender application by the prosecutor. This presupposes that the Crown is aware of the full particulars of the offence for which an offender is about to be tried as well as any history of a pattern of violence, indifference to consequences, brutality, or a failure to control sexual impulses. Obviously, there is a need to access as wide a source of investigative agencies and documents as possible. Court transcripts, Judges' reasons and Crown Attorneys' reports from previous trials will prove invaluable, but police reports, documents in possession of the Correctional Service of Canada, provincial correctional and other social agencies are of equal importance. Victims of past offences (or if they are not available, victim impact statements) of course give the most compelling and persuasive evidence with respect to the harm done by the offender subject to a Dangerous Offender application. It is obvious that this process entails significant preparation time and that it also carries less than complete certainty of success in obtaining a declaration, and indeterminate sentence. Should the application for a declaration that an offender is a dangerous offender fail, however, it is reasonable to believe that the judge rendering a determinate sentence will have a better idea of the risk presented by the offender, and figure that into the sentence.

Notwithstanding that the Dangerous Offender legislation has been in existence in Canada for quite some years, the Working Group notes the following gaps in the legislation or the application which do not fully provide safety to the public:

1. The list of offences contained in section 752 (b) enumerates what we believe to be an incomplete list of offences properly considered to cause serious personal injury. It is noted that, although incest (section 155), bestiality involving a child (section 160), and a parent or guardian procuring sexual activity by a child (section 170), can cause devastating harm to the victims, and that the perpetrators of such crimes may well represent a continuing risk of causing future harm, none of these sections in fact appear on the face of the definition of a "serious personal injury offence". Therefore persons convicted of those crimes are not clearly liable to a declaration that they are dangerous offenders. We do not believe this is acceptable.

RECOMMENDATION 1

Section 752 (b) of the *Criminal Code* should be amended to include, in the definition of a "serious personal injury offence", the offence of incest (section 155 of the *Criminal Code*), bestiality in the presence of a person under the age of fourteen years (section 160(3) of the *Criminal Code*), and parent or guardian procuring sexual activity (section 170 of the *Criminal Code*).

The Working Group recognizes that increasing the number of persons considered for Dangerous Offender application by enumerating incest offences as "serious personal injury offences", means that a pool of offenders whose offence is associated with a low risk of recidivism would be merged with that of offenders whose risk of recidivism is high. The problem then arises with respect to the proper identification of individuals who are not only in the low risk group, but who also on an individual basis present a similar low risk. To put it differently, there will be a need to guard against "false positives" and "false negatives".

The solution to these concerns lies in bringing forward Dangerous Offender applications only when there is good evidence that an offender is in fact high risk, despite his having committed a type of offence such as incest, which offence type is known to be associated with a very low likelihood of recidivism. Such evidence would be personal to the offender, and could include a history of other kinds of sex offences, criminal versatility, a high Psychopathy Checklist score and so on.

Eventually, however, legislators will have to decide whether or not dangerous offenders should continue to be identified on the basis of their offences (for which they had been convicted) instead of the characteristics of the offender himself. To put it differently, a decision will have to be made whether assessment of risk should be offence or offender driven. The Working Group supports a move to the offender driven assessment of dangerousness and risk, but recognizes that an immediate solution to a present problem requires working within the present legislative scheme.

2. There are significant regional differences in the application of Part XXIV of the *Criminal Code* for which we have found no satisfactory explanation. British Columbia, Ontario and Alberta have significantly more declared dangerous offenders, while some Atlantic provinces are much more reluctant to access this part of the *Criminal Code*. Quebec has no dangerous offenders so declared. Similarly, there are also regional differences in the type of offences that attract applications. This lack of consistent approach to the dangers presented by high risk and violent offenders is unacceptable. In our highly mobile society, an offender released in one jurisdiction can be in another province within hours. To put it bluntly, people in one jurisdiction should not suffer the consequences of inaction on the part of some other jurisdiction over which they have no control.

RECOMMENDATION 2

Federal and Provincial governments should jointly develop a set of guidelines to ensure consistency among various jurisdictions in the use of the dangerous offender provisions. In the interim, Provincial Attorneys General should immediately commit to identifying and approving applications for Dangerous Offender status in appropriate cases.

3. In some instances, Dangerous Offender applications seem to have been abandoned in favour of a plea bargain. This is indeed unfortunate. Not only is the true purpose of the available procedure entirely lost, the sentencing judge also will not be fully informed of all relevant facts that should be taken into account in fashioning an appropriate sentence. To put it differently, regardless of whether or not a Dangerous Offender application succeeds, it will have resulted in a very comprehensive setting out of the facts that should be known by the sentencing judge in any event.

RECOMMENDATION 3

If a Dangerous Offender application is abandoned in favour of a guilty plea, the trial judge should, at the sentencing stage, nevertheless receive the information that would have been used in the application and that is properly admissible at the sentencing stage of a trial.

4. Although psychiatrists are required to appear at the applications not only because of the provisions of the *Criminal Code*, but also because judges rely on their opinion, some regions lack sufficient number of adequately trained and experienced forensic psychiatrists.

5. As was suggested above, there is an absolute need to gather as much information as possible with respect to any person who is subject of a Dangerous Offender application. The Working Group has determined that, due to different record keeping systems, internal policies, or perhaps even a lack of notice that certain information would be useful at the application, and therefore required, appropriate information exchange among various agencies simply does not occur.

RECOMMENDATION 4

All parts of the justice system (the police, the prosecutors, provincial and federal detention facilities, social agencies and others) must cooperate in the exchange of information concerning dangerous offenders or those who by virtue of their high risk, appear to be candidates for a Dangerous Offender application.

6. Some offenders show very early in their criminal careers that they have every potential of becoming a significant risk to public safety. The Working Group is not aware of any informational system (whether in federal or provincial jurisdiction) that would "flag" developing dangerous offenders or track their movements through the correctional system. This results in a loss or failure to collect valuable information, delays when a Dangerous Offender application is finally undertaken and, most importantly, prejudices public safety.

RECOMMENDATION 5

The Working Group recommends a feasibility study of a national information system which would "flag" all offenders who could (based on their criminal conviction history) become the subject of a Dangerous Offender application. A similar recommendation is made with respect to a national information system that would track such offenders in their movement through the correctional system.

7. Because witnesses or victims are sometimes difficult to find years after their matters have been disposed of, evidence surrounding previous convictions may be difficult to collect. Although proper and complete documentation and recent judicial interpretations of the rules of evidence may address this problem, Dangerous Offender applications have often been judged impossible to conduct.

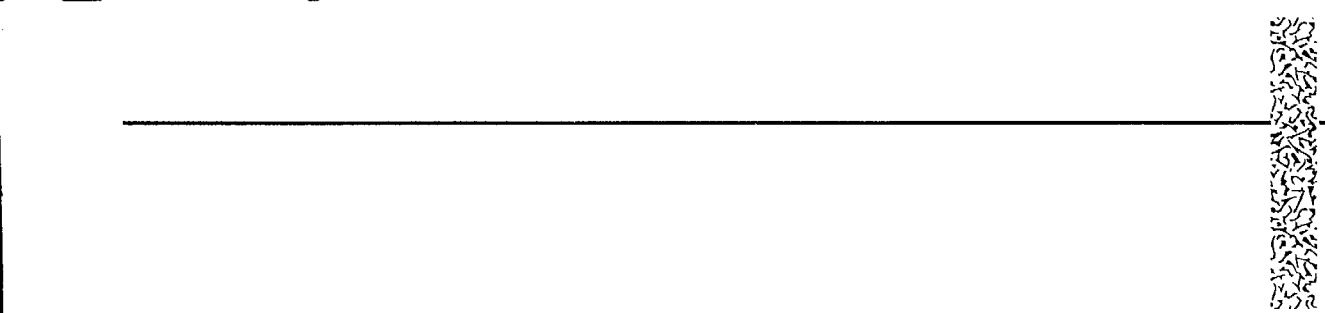
8. New information with respect to impact on victims or other consequences may not become apparent or available until years after the conviction and sentencing.

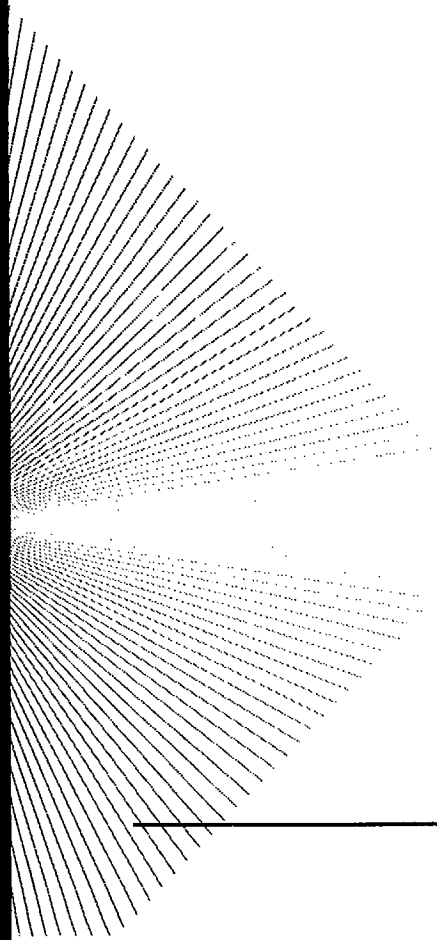
9. There is no legislative, regulatory or other process through which victims could contact the regional Crown to convey information that could be used in the application for a dangerous offender. As a result, some dangerous offenders "fall through the cracks" by not being made subject of an application.

RECOMMENDATION 6

The Working Group recommends that a procedure be established whereby victims of violent offenders, or anyone who has relevant information showing why an offender should be subject to an application to be declared a dangerous offender, be informed of the manner in which such information could be conveyed to the local Crown prosecutor for his or her assessment of whether, with respect to a particular offender, a Dangerous Offender application is deemed in the public interest.

Notwithstanding the difficulties experienced as above noted, the Working Group is of the opinion that these problems have arisen as much in the implementation of the existing legislation, as from the actual legislation itself. Clearly, in those jurisdictions where the Provincial Attorney General has been willing to approve applications to declare an individual a dangerous offender, many applications have been successful. We are advised that, in particularly, recent judicial decisions regarding the laws of evidence, have addressed many of the evidentiary problems adverted to when the existing legislation was being criticized. One Crown Attorney suggested that all that was required to ensure that applications were brought in all appropriate instances, and prepared in a way that provided some significant probability of success, was to have a set of guidelines specifying which cases warranted an application, together with a directive from the Attorney General to Crown Attorneys that all cases meeting those guidelines be pursued.





CHAPTER 4

A LEGISLATIVE INITIATIVES REGARDING HIGH RISK OFFENDERS

The Working Group has concluded that the current Dangerous Offender legislation suffers not so much from any drafting or statutory imprecisions as it does from under-use. It has been held to be constitutionally valid, has a body of experience in its usage built up in at least some jurisdictions, and provides an existing tool by which public safety could, and should, be better protected. Moreover, subsequent detailed considerations will have to be undertaken to develop specific measures to better secure public safety through the sentencing proceedings of a convicted person who demonstrates a high risk to commit a further violent offence.

For the purposes of this first report, it is sufficient to state that the legitimate need of the public to be reasonably protected from violent, dangerous, and predatory offenders could, in our judgment, be significantly better met through appropriate usage of the existing provisions of Part XXIV of the *Criminal Code*, regarding the identification and designation of dangerous offenders.

Finally, the Working Group was made acutely aware of the widely expressed concern that existing sentencing often does not accurately reflect or appropriately control the risk presented by an offender. Particularly, we note the incongruity in the fact that offenders sentenced for proportionately less serious provincial offences can be subject to an order for probation subsequent to completion of their determinate custodial sentence, while judges sentencing at a level which warrants Federal committal do not have the authority to order such probation. We believe that the risk of some offenders who have completed a determinate sentence may still need to be controlled in the community; an order for probation could provide adequate supervision of, and proper support for, the offender at the completion of a determinate sentence.

RECOMMENDATION 7

Judges who are passing a sentence which warrants Federal committal should be permitted to provide for a period of probation subsequent to the completion of a determinate sentence, and to impose any conditions on that probation that are reasonable and necessary to protect society and to facilitate the successful reintegration into society of the offender.

Additionally, we have earlier identified an amendment to the *Criminal Code* which we recommend be drafted and tabled at the earliest possible opportunity. This amendment would add three offences to the provisions of Section 752 (b) of the *Criminal Code*, so as to include in the definition of "serious personal injury offence" for the purposes of a declaration that an offender is a dangerous offender, the offences of incest (section 155), bestiality involving a child (section 160), and procuring sexual activity by a child by a parent or guardian (section 170). We believe these to be necessary additions to properly reflect the harm that is only now being recognized as resulting from crimes such as these, and the concomitant danger presented to children by the perpetrators.

However, the bulk of the improvements that could be made to identifying and designating dangerous offenders, and committing them to an indeterminate sentence, do not require legislative amendments: they require only a commitment to public safety as a first priority, and determination to make the necessary changes to existing procedures. The Working Group takes uneasy note of the fact that at least one recent report, that of the Temporary Absence Review Panel, outlined steps that could lead to the identification of offenders and sex offenders who are assessed as presenting the highest risk (and who could therefore be subject to a dangerous offender application prior to sentencing), and make that information available to the prosecuting Crown Attorney, and the trial judge for their use. Recommendations 21, 23, 25, and especially 22, identified a procedure by which this could be accomplished. It is hoped that the necessary steps will be committed to by the Judiciary, the Provincial Attorneys General, and the Commissioner of Corrections at the earliest possible opportunity.

1. DETENTION AFTER WARRANT EXPIRY DATE

This report turns then to the issue of recommendations to deal with the offender who, although approaching the end of a determinate sentence, is still dangerous to the public, and who presents a real and present threat to public safety.

It is the conclusion of the Working Group that these offenders should be subject to an application for **preventive indeterminate detention,** brought prior to the warrant expiry date of the last determinate sentence being served. Because the offenders who would be

subject to this application for preventive indeterminate detention should be no less dangerous than those subject to such an application prior to sentencing, (recognizing our recommendations above to add three additional offences against children to the definition of "serious personal injury offence"), and since they deserve the same procedural safeguards as those other offenders declared dangerous at sentencing, it is recommended as follows:

RECOMMENDATION 8

An offender who is serving a determinate sentence, but who is considered to meet the criteria set out in sections 752 and 753 of the *Criminal Code* for a declaration that he is a dangerous offender, should be referred to a Court consisting of a judge sitting with a jury, before the expiration of his sentence, for a determination as to whether or not he should be declared a dangerous offender.

There was some discussion as to how best to identify those offenders who could be considered for such an application. One suggestion was that the potential "pool" of offenders who could be subject to such an application be restricted to those already detained under the provisions of Section 129 of the *Corrections and Conditional Release Act*. The Working Group does not agree with this restriction, since it could arbitrarily exempt offenders who missed being detained but who met the criteria of Section 753. Additionally, such a restriction would require awaiting arrival of a statutory release date for offenders who clearly met the criteria earlier, as well as forcing any offender thought a possible candidate for declaration as a dangerous offender through detention proceedings under Section 129 of the *Corrections and Conditional Release Act*. It should be noted that that section has criteria different from that of the Dangerous Offender section of the *Criminal Code*, both for those who might be considered for detention, and for the standard of risk which they present. Given that preventive detention at the end of a sentence would be indeterminate, it seems only just and reasonable to apply the standards required to support an indeterminate sentence at trial.

Additionally, since the necessary information regarding dangerousness can reside with either Parole Board or Corrections officials, either should be able to identify a potentially dangerous offender. Finally, the public should be permitted to make representations to the Minister responsible, being the Solicitor General, that a particular offender be considered for an application to be declared a

dangerous offender and subject to preventive indeterminate detention.

RECOMMENDATION 9

The Solicitor General should be authorized to refer an offender to a Court for such a determination, and may do so at the request of the National Parole Board, the Commissioner of Corrections, or at his or her own discretion.

At the present time, provincial Attorneys General must approve bringing any application for a declaration that an offender is a dangerous offender. Therefore, it would seem reasonable to permit the opportunity for the provincial Attorneys General to continue to consider that issue. However, to avoid the risk which presently results from uneven application of this approval authority across the country's various jurisdictions, we believe appropriate cases must be brought before the Court for a determination.

RECOMMENDATION 10

The Solicitor General shall request the provincial Attorney General of the jurisdiction in which the offender was tried to approve and initiate the application to declare the offender a dangerous offender. If such application has not been approved by that provincial Attorney General for initiation within 60 days of the request, then the Solicitor General may approve and initiate the application at his or her discretion.

One possible explanation advanced for the failure of some provinces to pursue any or all appropriate dangerous offender applications at trial, was that provincial Crown Attorneys lacked the resources required to properly prepare to meet the heavy requirements of Section 753. In recognition of this, and in evidence of the commitment of the federal government to public protection, we believe the federal government should adopt the same approach as exists for drug prosecutions, and appoint, train and support special federal Crown prosecutors to pursue these applications. In addition to rapidly creating a body of experience and expertise in such applications, federal prosecutors would provide consistent approaches to these applications across the country.

Finally, the type of evidence and information that would most

likely be relevant to these applications would largely reside with federal agencies such as Corrections Canada and the National Parole Board. Identification, retrieval and coordination of that information could be greatly enhanced by charging a federal prosecutor with the task of procuring and presenting that evidence.

RECOMMENDATION 11

The basis for a possible declaration that an offender is a dangerous offender should include information not presented to the sentencing court that has come to light and is relevant to the dangerousness of the individual offender. This includes any information of conduct on the part of the offender evidencing undue risk that the offender constitutes a threat to the life, safety, physical or mental well being of other persons, or information received from psychiatrists, psychologists, or others charged with treating, confining or disciplining the offender.

RECOMMENDATION 12

Any application brought to declare an offender a dangerous offender for the purposes of preventive indeterminate detention should be prosecuted by a special Federal Crown Attorney.

In certain circumstances, and particularly when information of conduct evidencing undue risk comes only very near an individual's warrant expiry date, the offender should not be released to the community simply because the application for a dangerous offender declaration and preventive indeterminate detention has not yet been determined.

RECOMMENDATION 13

The Court shall also have the power to detain an offender past warrant expiry date, pending completion of the proceedings for a declaration that the offender is a dangerous offender, subject to a show cause hearing similar to that for judicial interim release under the *Criminal Code*.

Given that the whole reason for such a proceeding is to prevent death, injury, severe psychological damage, pain or other evil to persons as a result of an offender's failure to "restrain his behaviour"

or "control his sexual impulses", we believe it necessary to place additional controls on a person once found to meet the standards for declaration as a dangerous offender. Although it was suggested by some that a term of probation might be an immediately appropriate restraint, we cannot agree: it is ludicrous to suggest that someone declared dangerous could be released immediately into a community setting, albeit with intense supervision. We believe it appropriate that that person be in secure custody until his dangerousness is reduced.

RECOMMENDATION 14

Where the judge and jury make a finding at this stage that the offender is a dangerous offender, the Court shall order that he be subject to preventive indeterminate detention.

RECOMMENDATION 15

When a dangerous offender is made subject to an order of preventive indeterminate detention, the offender shall be subject to placement in a level of secure custody appropriate to his designation as a dangerous offender.

Again, however, it seems appropriate to mimic the procedures applying to those declared dangerous offenders at trial and given an indeterminate sentence: those spend some greater or lesser amount of time in secure custody as their dangerousness dictates; some never leave that secure custody, while others gradually progress to less secure surroundings, with additional controls as required to mitigate risk. In order to gauge the level of risk presented by an individual from time to time, annual reviews should be available. This also provides the same protection as is provided to dangerous offenders so declared at time of conviction, and speaks to the Working Group's firm belief that, no matter how difficult, society must remain committed to the principle that rehabilitation is possible for some, even if not for all. We are equally firm, however, in our belief that the only limit on what controls should be considered appropriate is the necessity to protect society, while attempting to facilitate a safe and successful reintegration of the offender into society.

RECOMMENDATION 16

For an offender thus placed in secure custody as the result of a determination that the offender is a dangerous offender, the Parole Board shall review within one year, and on an annual basis thereafter, the placement and any conditions of placement. Subsequent to the first annual review, "placement" may include placement in a community setting under intense supervision and be subject to any "conditions of placement" considered necessary or appropriate. "Conditions of placement" can include any conditions the Parole Board considers reasonable and necessary to protect society and to facilitate the successful reintegration into society of the offender, keeping in mind the risk, by reoffending, that the dangerous offender presents to the public. The Parole Board may also vary "conditions of placement" as it considers reasonable and necessary.

RECOMMENDATION 17

Should any offender declared a dangerous offender and made subject to preventive indeterminate detention breach any condition of placement, then the National Parole Board shall immediately review the placement and all conditions of placement, and may alter the placement and may revoke or amend any condition of placement.

The Working Group recognizes that these recommendations represent a significant addition to the present structure. We therefore wish to participate further in the process leading to the actual drafting of, and final revisions to, any legislation to give effect to these recommendations, since we are anxious that our intentions be captured in the legislative language. Flowing from this, and as an aid to understanding both for the general public and for those who will later have to apply or interpret the legislation, we believe a preamble is necessary.

Finally, we can only reiterate our theme that any legislation, any process and any system is only as good as the information and the dissemination of that information to all who make judgments, render opinions or hand down decisions. Moreover, the value of that information is only reflected by decision makers who are properly trained, rigorous in their conduct, and committed to the protection of society as a first priority.

RECOMMENDATION 18

That as part of the drafting of the necessary legislation to give effect to these recommendations, a preamble be created to set out the danger the legislation is intended to address, and to make clear the intent of the amendments.

RECOMMENDATION 19

That this Working Group review and comment upon the draft legislation to ensure that our intentions set out herein, to the degree possible, have been accomplished.

2. AMENDMENTS TO THE DETENTION PROVISIONS OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT

One additional area of recommendation flows from the recognition that some offenders who are likely to sexually victimize children are released at their statutory release date, and not detained until their warrant expiry date. In certain cases, the requirements of section 129 of the *Corrections and Conditional Release Act* cannot be met, in that evidence is not available that the offence for which the offender has been convicted has caused "serious harm", defined at section 99 as "severe physical injury or severe psychological damage". Particularly with child victims, it may take years for the severe psychological damage to become manifest. In the absence of such evidence, there is no basis to detain an offender whose risk in the community is considered to be unacceptably high. Therefore, to detain these offenders, (who might later prove eligible for a further preventive indeterminate detention), we believe the detention legislation should be amended to eliminate the serious harm criterion for all cases involving the sexual victimization of children.

This would resolve difficulties both in assessing when severe psychological harm has been caused to children, and in determining when it is likely to be caused by further criminal activity. The National Parole Board, to detain an offender who has committed a sexual offence against a child, would only need to be satisfied that he will likely commit a sexual offence against a child prior to sentence expiry. For the purposes of this amendment, a sexual offence against

a child should be defined as any offence in Schedule 1 of the *Corrections and Conditional Release Act* involving the sexual victimization of a person under 18 years of age.

RECOMMENDATION 20

That the provisions of the Corrections and Conditional Release Act providing for detention during the period of statutory release, and any other sections requiring consequential amendment, be amended to eliminate the requirement to establish whether "serious harm" was caused by a sexual offence in Schedule 1 against a person under 18 years of age, and whether serious harm will be caused by any future sexual offence against a person under 18 years of age, committed before the expiration of the offender's sentence.

The Working Group discussed at great length and in detail our belief that offenders who present a risk equal to that of those who sexually victimize children might also escape detention on the same basis as above, merely because their victims were adult. We were not able, in the time available, to arrive at a satisfactory method of identifying those offences which were so serious as to reasonably attract the sanctions of section 129, while at the same time avoiding catching any offence, simply on the basis that it had a sexual component. Moreover, we were particularly heartened by the recent recognition in judicial comment that sexual assault could be understood to inherently cause severe psychological harm. (R. v. McCraw, 1991 66 C.C.C. (3d) 517 (S.C.C.). Perhaps this realization on the part of all decision makers who must consider whether or not serious harm has resulted, will obviate the need for extensive proof. In any event, we strongly recommend this matter be studied further.

B PROPOSALS FOR OTHER LEGISLATIVE AMENDMENTS

The Working Group was made aware that other possible legislative initiatives might include revisions to the method of sentence calculation, as well as a number of technical amendments to clarify wording problems, match French and English texts, and clarify meanings. Given both the technical nature of these initiatives, and the fact that the draft legislation was not available for review, we offer no comment.

Finally, although not specifically part of a summary of possible legislative initiatives reviewed by the Working Group, we were aware of the discussion regarding a possible Registry of Dangerous High Risk Sexual Offenders, and particularly Recommendation 44 of the jury in the Stephenson inquest. Unfortunately, the jury's decision sheds no light on the type of information to be kept by the Registry, the specific purposes for which the information lodged therein should be used, or the method by which it would be accessed. The concept of requiring convicted offenders to register in some fashion, in addition to, or in lieu of ensuring adequate information on their history is readily available to those who properly require it, rises complex issues that cannot be addressed without significant further information and consideration. We are confident this matter will be subject to that future debate.

CHAPTER 5

BREAKING THE CYCLE

1. EXPANDING THE KNOWLEDGE

Our growing social awareness about the magnitude and consequences of sexual crime is a recent phenomenon. Unfortunately, much of what the public learns and feels is fuelled by media reports which tend to focus only on the most sensational cases. This exacerbates public concern about the frequency of sexual assault, while not giving a full understanding of the seriousness of the crime. Serious scientific study of sexual crime is also a recent phenomenon. Unfortunately, what scientists and clinicians learn about sexual offenders may also not be complete because the subject of their research is usually the arrested and convicted offender. Everyone in the system learns about sexual crime from a different perspective that is essentially related to his function and is limited in scope.

The problem of the "dark number" has also been widely discussed but little has been done about scientifically assessing the ramifications of unreported assault or attempting to consider the effects of these "dark numbers" on other data gathered. The lack of continuity and consistency in gathering and disseminating information, and the lack of uniform protocol in the processing of offenders, is well recognized. In addition, statistics and data gathering vary widely across the country and even more so on the international scene.

In summary, we know a lot more about sexual offenders and their victims now than in the past, but this knowledge is scattered amongst different fields or agencies, each having its own biases and truths. No one has yet developed a broad comprehensive and systemic body of knowledge. It is therefore impossible to assess the impact of new policies on the overall protection of the public. As a result, too often policy creation is driven by the media, public opinion or political correctness, or even scientific ideology.

One method by which this lack of coordinated knowledge could be addressed would be the creation of some centralized body, which could also link what is known about what creates offenders, how best to manage their risk, and how best to assist victims, to creation of policy.

It is clear that this mandate is very conceptual. However, we are satisfied of the need for a forum for thinking about sexual crimes that is objective, systemic in its approach, and dedicated to the goal of protection of society.

2. UNDERSTANDING HARM

Sexual assault is a catch-all phrase which collectively describes a great variety of crimes with sexual connotations, although each has its own set of conditions.

The Working Group was constrained from making decisions requiring distinctions between degrees of the seriousness of harm inflicted by perpetrators of sexual crime, due to the lack of a cohesive, authoritative body of evidence, which would put the problem into a Canadian context.

We need a more informed understanding of the various degrees of seriousness, both of risk, and of the consequences to the victim based on the harm inflicted by the perpetrator of sexual crime, if we are to continue to use degrees of seriousness as criteria in legislation.

Such a comprehensive, scientific study of the variety of offences would also assist in establishing the constitutionality of legislative initiatives where the main criterion for seriousness is the harm perpetrated by the offender, rather than the type of offence itself. It would also serve to focus funding, research, therapy and preventive initiatives where they would be most effective.

As well, it must be recognized that criteria for dangerousness have been developed from a perspective that recognizes the harms of physical assault much more clearly than the harms of many sexual violations. Therefore if we are to understand risk, we have to understand harm. A clearer, greater recognition of the harms, and risks of harms, that abusers pose to women and children is one of the most effective ways to ensure their safety. There must be a recognition that much of the violence is preventable and will be prevented when public safety interests are adequately upheld. We note with concern that the pressing need for a centralized, coordinated approach to information gathering and sharing has been expressed on many occasions, including the Stanton Enquiry, the Ruygrok, Yeo and Stephenson Inquests and most recently, in Recommendation #24 by the Temporary Absence Review Panel, March 1992, namely:

> "That to ensure the most expeditious implementation of the above (risk assessments of offenders) and realization of the mandate of the National Sex Offender Coordinating Committee, a Coordinator of Sex Offender programs within the C.S.C. should be appointed."

Particularly, we are aware that many independent agencies and groups across the country have data collection initiatives which are not presently capable of being integrated and shared.

RECOMMENDATION 21

That a National Coordinator be appointed to seek, assemble and collate existing data and to initiate protocols for studies on victims of sexual crime.

CONCLUSION

There is no easy solution to the problems generated by sexual and violent offenders. We have come a long way, but we have yet to recognize the magnitude of the problem and all of its consequences on victims and Canadian society. The choices that we are making now are driven by multiple forces: political, media, scientific, special interest advocates and ideology. As a society, we assume (or hope) that we are making the right choices, but at best, we are making educated guesses. We must move to a better understanding, since the choices being made have a direct impact on real people: the victims, the offenders, their families and society.

LIST OF RECOMMENDATIONS

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RECOMMENDATION 1

Section 752 (b) of the *Criminal Code* should be amended to include, in the definition of a "serious personal injury offence", the offence of incest (section 155 of the *Criminal Code*), bestiality in the presence of a person under the age of fourteen years (section 160(3) of the *Criminal Code*), and parent or guardian procuring sexual activity (section 170 of the *Criminal Code*).

RECOMMENDATION 2

Federal and Provincial governments should jointly develop a set of guidelines to ensure consistency among various jurisdictions in the use of the dangerous offender provisions. In the interim, Provincial Attorneys General should immediately commit to identifying and approving applications for Dangerous Offender status in appropriate cases.

RECOMMENDATION 3

If a Dangerous Offender application is abandoned in favour of a guilty plea, the trial judge should, at the sentencing stage, nevertheless receive the information that would have been used in the application and that is properly admissible at the sentencing stage of a trial.

RECOMMENDATION 4

All parts of the justice system (the police, the prosecutors, provincial and federal detention facilities, social agencies and others) must cooperate in the exchange of information concerning dangerous offenders or those who by virtue of their high risk, appear to be candidates for a Dangerous Offender application.

RECOMMENDATION 5

The Working Group recommends a feasibility study of a national information system which would "flag" all offenders who could (based on their criminal conviction history) become the subject of a Dangerous Offender application. A similar recommendation is made with respect to a national information system that would track such offenders in their movement through the correctional system.

RECOMMENDATION 6

The Working Group recommends that a procedure be established whereby victims of violent offenders, or anyone who has relevant information showing why an offender should be subject to an application to be declared a dangerous offender, be informed of the manner in which such information could be conveyed to the local Crown prosecutor for his or her assessment of whether, with respect to a particular offender, a Dangerous Offender application is deemed in the public interest.

RECOMMENDATION 7

Judges who are passing a sentence which warrants Federal committal should be permitted to provide for a period of probation subsequent to the completion of a determinate sentence, and to impose any conditions on that probation that are reasonable and necessary to protect society and to facilitate the successful reintegration into society of the offender.

RECOMMENDATION 8

An offender who is serving a determinate sentence, but who is considered to meet the criteria set out in sections 752 and 753 of the *Criminal Code* for a declaration that he is a dangerous offender, should be referred to a Court consisting of a judge sitting with a jury, before the expiration of his sentence, for a determination as to whether or not he should be declared a dangerous offender.

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The Solicitor General should be authorized to refer an offender to a Court for such a determination, and may do so at the request of the National Parole Board, the Commissioner of Corrections, or at his or her own discretion.

RECOMMENDATION 10

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RECOMMENDATION 11

The basis for a possible declaration that an offender is a dangerous offender should include information not presented to the sentencing court that has come to light and is relevant to the dangerousness of the individual offender. This includes any information of conduct on the part of the offender evidencing undue risk that the offender constitutes a threat to the life, safety, physical or mental well being of other persons, or information received from psychiatrists, psychologists, or others charged with treating, confining or disciplining the offender.

RECOMMENDATION 12

Any application brought to declare an offender a dangerous offender for the purposes of preventive indeterminate detention should be prosecuted by a special Federal Crown Attorney.

RECOMMENDATION 13

The Court shall also have the power to detain an offender past warrant expiry date, pending completion of the proceedings for a declaration that the offender is a dangerous offender, subject to a show cause hearing similar to that for judicial interim release under the *Criminal Code.*

RECOMMENDATION 14

Where the judge and jury make a finding at this stage that the offender is a dangerous offender, the Court shall order that he be subject to preventive indeterminate detention.

RECOMMENDATION 15

When a dangerous offender is made subject to an order of preventative indeterminate detention, the offender shall be subject to placement in a level of secure custody appropriate to his designation as a dangerous offender.

RECOMMENDATION 16

For an offender thus placed in secure custody as the result of a determination that the offender is a dangerous offender, the Parole Board shall review within one year, and on an annual basis thereafter, the placement and any conditions of placement. Subsequent to the first annual review, "placement" may include placement in a community setting under intense supervision and be subject to any "conditions of placement" considered necessary or appropriate. "Conditions of placement" can include any conditions the Parole Board considers reasonable and necessary to protect society and to facilitate the successful reintegration into society of the offender, keeping in mind the risk, by reoffending, that the dangerous offender presents to the public. The Parole Board may also vary "conditions of placement" as it considers reasonable and necessary.

RECOMMENDATION 17

Should any offender declared a dangerous offender and made subject to preventive indeterminate detention, breach any condition of placement, then the National Parole Board shall immediately review the placement and all conditions of placement, and may revoke the placement and may revoke or amend any condition of placement.

RECOMMENDATION 18

That as part of the drafting of the necessary legislation to give effect to these recommendations, a preamble be created to set out the danger the legislation is intended to address, and to make clear the intent of the amendments.

RECOMMENDATION 19

That this Working Group review and comment upon the draft legislation to ensure that our intentions set out herein, to the degree possible, have been accomplished.

RECOMMENDATION 20

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RECOMMENDATION 21

That a National Coordinator be appointed to seek, assemble and collate existing data and to initiate protocols for studies on victims of sexual crime.

APPENDICES

APPENDIX "A"

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- Various Jurisdictions.

APPENDIX "B"

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Ms. S. McCrae Vander Voet,
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Ms. P. Freeman-Marshall,
Co-chair, Canadian Panel on Violence Against Women