

3. Fundamental Purpose of Sentencing

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

The proposed correctional philosophy of the Correctional Law Review Working Group followed an approach consistent with *The Criminal Law in Canadian Society*. It identified five strategies by which corrections contributes to public protection. These reflect the multi-faceted nature of corrections in modern society as well as the previously-described dual nature of criminal justice goals. In doing so, the Correctional Law Review Working Group recognized that society demands more than the pursuit of a single strategy in such complex matters and that the differences in the risks and needs presented by different offenders demand a flexible approach.

The Committee was drawn to this multi-faceted approach in developing its proposed sentencing purpose. Following is a discussion of concepts which might be formulated in strategies for inclusion in such a statement of purpose.

B. Offender Accountability/Responsibility, Rather than Punishment

A number of witnesses who appeared before the Committee argued that *a*, if not *the*, purpose of sentencing was punishment. For these witnesses, the principle of just deserts or proportionality was important. They tended to feel that present sentencing practices for some of our most serious offences (e.g., any offence where a life is taken or aggravated sexual assault takes place) do not reflect the principle of proportionality. (Proportionality means that the type and duration of the sentence shall be directly related to the gravity of the offence committed and to the degree of culpability of the offender. The maximum penalty specified in the *Criminal Code* may be said to reflect the gravity of the offence.)

The Sentencing Commission noted that while sentencing is punitive in character, it is not the same as punishment. Moreover, punishment purposefully meted out by the criminal justice system is distinguishable from the unintended harshness of its operation. The Commission also took the position that not all sentences impose such a severe measure of deprivation