

*Legal rights:* the offender's exercise of his [or her] legal rights should never be considered as an aggravating factor. (Rec. 11.9)

- (d) the establishment of a Judicial Advisory Committee which would act in an advisory capacity to the permanent sentencing commission, in the formulation of amendments to the original sentencing guidelines... [A majority of] the membership of the Judicial Advisory Committee should be composed of trial court judges from all levels of courts in Canada. (Rec. 11.11)

### C. Minimum Sentences

Were presumptive or mandatory sentencing guidelines to be adopted, much of the public demand for mandatory minimum sentences would be satisfied by appropriate guidelines for specific offences. Also, some members of the Committee feel strongly that either presumptive guidelines or minimum sentences are required to achieve the denunciatory requirements of the community posed by certain violent criminal conduct. A review of the limited statistical sentencing information available, as well as some sentencing data provided to the Committee by witnesses, reveals that not only is there a wide range of sentences given for certain serious offences (attempted murder, manslaughter, criminal negligence causing death, serious sexual assaults, etc.), but also that a good number of sentences for these offences do not appear to reflect the gravity of the offence to the extent that the Committee members feel is appropriate.

Other witnesses have strongly opposed the expansion of minimum sentences and supported the recommendations of the Law Reform Commission of Canada and the Canadian Sentencing Commission that mandatory minimum sentences be abolished for all offences except murder and high treason. Likewise, some Committee members doubt the effectiveness, and deplore the social and financial costs, of mandatory minimum sentences, which in their view are an overreaction to present excessive judicial discretion in sentencing. Such sentences increase court time (defendants fight hard to avoid conviction) and cause distortions in charging practices and plea negotiations. Moreover, they preclude the possibility of responding to cases in an individualized manner.