

*Application of Federal Laws*

crowded, no adequate training programs are in place in the prisons, and where probation supervision being imposed by the other judge in an area where the correctional facilities are overcrowded, no adequate training programs are in place in the prisons, and where probation supervision is sufficient to assure the safety of the public.

● (1710)

It is clear, Mr. Speaker, that much of what is referred to as disparity may arise from an awareness on the part of judges of the conditions in the local area of prison overcrowding, or of overworked probation officers. Further disparity may arise where a program is not available at all to the judge. For example, there are many areas in Canada where there are no programs of community service or of supervised restitution to the victim.

Another illustration may be found in fine option programs. These programs permit an offender who cannot pay a fine to work instead of going to prison. Judges who have fine option programs in their area can, with more confidence, sentence an offender to be fined, knowing that if he eventually cannot pay, he can still serve the community, working off his sentence in the community. Judges who do not have access to this program may decide it is in the offender's interest to send him straight to prison for a period commensurate with the fine which might have been imposed, rather than delay the inevitable. In such a case, the offender may benefit by having the matter concluded as quickly as possible.

The variation in the availability of these different sentencing options, and others, such as intermittent or weekend prison sentencing, or psychiatric or psychological services to probationers or prisoners, leads inevitably to variations in sentencing practice from one area to another. These variations can be reduced only by the provision of the support programs on which they are based. This may itself be impractical, by reasons of geography, population, local working conditions and so forth. Nonetheless, we can welcome the extension of the programs to different areas, as their value is demonstrated and as facilities become available, as one further way to reduce certain disparities in sentencing.

Thus far, Mr. Speaker, I have referred to variations in sentencing which, when all the facts become known, are explainable in rational, principled terms. There are, however, some residual cases where the sentences imposed are, apparently, widely different, and where the sentences are so extreme that they are not, apparently, explicable in terms of the normal variation. If the sentence seems too severe, of course, the offender can, and with the advice of his legal adviser would, appeal against the sentence. On the other hand, if the sentence is so light or inadequate as to be wholly out of proportion to the seriousness of the crime, the Crown may feel obliged to appeal. There seems little doubt that the appeal courts can, in such cases, do much to smooth out unwarrantable disparity. And, to judge by reported cases, appeal courts do, indeed, vary sentences when it is clear that the judge at first instance has gone wrong in the principle of the sentence imposed. The

capacity of appeal courts in the provinces to remedy errors of principle is a most important guarantee in our system of criminal justice, one of which we can be justly proud.

Some people may still object that, despite the efforts of the courts of appeal, there are still a proportion of sentences imposed or confirmed on appeal which may show evidence of unwarrantable disparity. If such cases exist, I am convinced that they form only a very tiny proportion of cases in which sentences are imposed. So far as we can tell, there is only a very small proportion of appeals against sentence; naturally, from this one can infer that the group of cases which might be classed after an appeal as still unwarrantably disparate is indeed very small.

We may be assured, Mr. Speaker, that the judges themselves are very conscious of their responsibilities in sentencing. To ensure so far as possible that appeals are not required, because the sentences at first instance are warranted, understandable, and in accordance with clear and definite principles, judges across Canada are holding seminars in which they discuss sentencing problems. In this way, the judges can reflect on the problems and have the benefit of the advice of all other judges in the province on the most appropriate sentence to be imposed in particular types of cases. To assist judges further, I understand a sentencing handbook is in preparation, and this will be available to assist all judges by providing an account of the services available in their areas, and the programs and training facilities to which offenders may be referred.

On the basis of the information we have at present, Mr. Speaker, it seems that we in Canada are very far from the problems which are reported to be found in some jurisdictions in the United States. Sentences there are, of course, not usually subject to appeal. Often the sentences are indeterminate in length, between wide lower and upper boundaries set by the judge. Naturally, with so much latitude left to the judge, unwarrantable disparities have been described. Some jurisdictions have attempted to deal with the problem by mandatory or fixed term sentences. If an offender is convicted of a crime, say robbery, he serves the statutory sentence—perhaps, ten years. This system takes no account of the circumstances of the robbery; it might range from a well thought out, planned raid on a bank, with many thousands stolen, to a spur of the moment wallet snatch in the street where the victim is pushed over and only a few dollars stolen. For each of these crimes of robbery, the same sentence would be imposed under a mandatory sentence scheme.

This seems to be far worse than a sentencing process where all factors in the crime can be considered. Other jurisdictions in the United States have legislated guidelines where the discretion of the judge is narrowed. Sentences may vary only by a few months, no more than a year or so. These schemes, too, have run into problems and have, in some areas, had to be abandoned, often because of overcrowding in the prisons. It seems to me, Mr. Speaker, that the Canadian position is a good balance at present.

It is extremely unfortunate that we do not have at the moment enough information to satisfy ourselves that all is