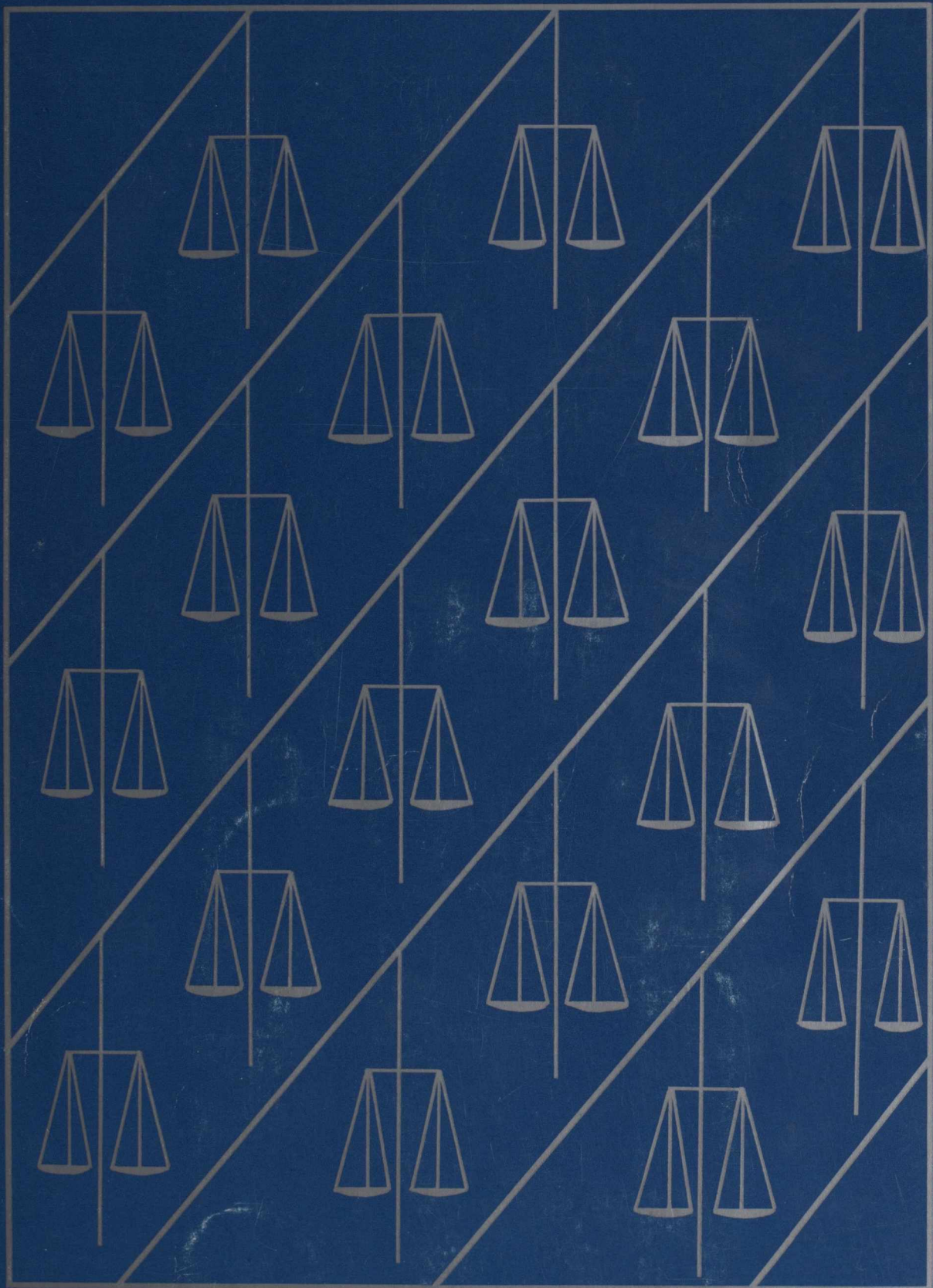




T A K I N G R E S P O N S I B I L I T Y



*Report of the Standing Committee
on Justice and Solicitor General on its review
of sentencing, conditional release
and related aspects of corrections.*

DAVID DAUBNEY, M.P.
Chairman

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CANADA

TAKING RESPONSIBILITY

Minister of Justice and Solicitor General
Standing Committee on

Justice and Solicitor
General

Justice et du
Soliciteur général

RESPECTING

In accordance with its mandate under Standing
Order 96(7) the committee has held public hearings
regarding conditional release and related
aspects of the correctional system.

INCLUDING

The Staff Report to the House

Report of the Standing Committee
on Justice and Solicitor General
on its Review of Sentencing,
Conditional Release and Related
Aspects of Corrections

DAVID DAUBNEY, M.P.,
Chairman

August 1988

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HOUSE OF COMMONS

Issue No. 65

Tuesday, August 16, 1988
Wednesday, August 17, 1988

Chairman: David Daubney

CHAMBRE DES COMMUNES

Fascicule n° 65

Le mardi 16 août 1988
Le mercredi 17 août 1988

Président: David Daubney

*Minutes of Proceedings and Evidence of the
Standing Committee on*

Justice and Solicitor General

*Procès-verbaux et témoignages du Comité
permanent de la*

Justice et du Solliciteur général

RESPECTING:

In accordance with its mandate under Standing
Order 96(2), consideration of its inquiry into
sentencing, conditional release and related aspects
of the correctional system

INCLUDING:

The Sixth Report to the House

CONCERNANT:

Conformément à son mandat en vertu de l'article
96(2) du Règlement, étude de la détermination de la
peine, de la mise en liberté sous condition et des
aspects connexes du système correctionnel

Y COMPRIS:

Le Sixième Rapport à la Chambre

Second Session of the Thirty-third Parliament,
1986-87-88

Deuxième session de la trente-troisième législature,
1986-1987-1988

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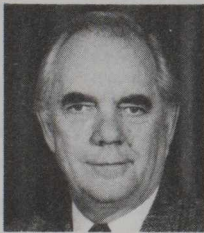
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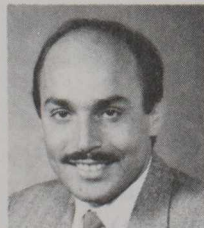
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**THE STANDING COMMITTEE ON
JUSTICE AND SOLICITOR GENERAL**

has the honour to present its

SIXTH REPORT

In accordance with its mandate under Standing Order 96(2) and its Terms of Reference dated November 3, 1987 concerning a review of sentencing, conditional release and related aspects of corrections, the Standing Committee on Justice and Solicitor General has adopted the following report and urges the Government to consider the advisability of implementing the recommendations contained herein.

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CHAPTER ONE

INTRODUCTION

A. Background

The House of Commons Standing Committee on Justice and Solicitor General began its review of sentencing, conditional release and related aspects of the correctional system in the spring of 1987, about the time the national debate on capital punishment was coming to an end. Many of the issues raised in the House of Commons and across the country during that debate went beyond the question of capital punishment. They demonstrated that public confidence in many aspects of our criminal justice system had seriously eroded in recent years. Many Canadians now feel that they are not being fully protected and that crime is out of control. The Committee believes that this public perception, whether well-founded or not, must be addressed and the issues raised by it must also be faced. The Committee undertook this study partly as a result of this sense of public unease.

Shortly before the Committee began its review, three events occurred which provided a focus for the study. In July 1985, Celia Ruygrok, a night supervisor at a community residential centre in Ottawa, was murdered by a resident who was on parole for an earlier non-capital murder conviction. (In the spring of 1987, a Coroner's Inquest into this murder drew a number of conclusions and made recommendations dealing with issues of sentencing, conditional release, information-sharing and co-ordination among different components of the criminal justice system. These recommendations were largely adopted by a Task Force set up to advise the Solicitor General on the policy implications of the Ruygrok Inquest.) In the spring of 1987, the Canadian Sentencing Commission released its Report, after several years of intensive study and consultation. About the same time, the Correctional Law Review released its working paper, *Conditional Release*.

The Committee's Terms of Reference¹, adopted in the fall of 1987, refer directly to these three events as a way of targeting, but not limiting, the Committee's review of sentencing, conditional release and related aspects of the correctional system.

The Committee received hundreds of briefs and expressions of opinion from many members of the public and representatives of all participants in the criminal justice system. It heard from lawyers, inmates, victims, helping professionals, parole officers, unions, correctional staff, judges, academics and many other interested Canadians.² It held public hearings and *in camera* meetings across the country as well as in Ottawa. It visited institutions and met with people working directly in the conditional release system. Many witnesses before the Committee not only addressed the issues raised in its Terms of Reference, but also ranged well beyond them at times with their insights and experiences.

The Committee's work has been inspired by several witnesses. For example, Gerald Ruygrok, the father of the halfway house worker murdered in Ottawa, has shown how one may come to terms with a personal tragedy with dignity and by becoming personally involved in criminal justice issues as a community volunteer. (Coincidentally, one witness, whose husband was murdered by an offender, is also a volunteer in corrections.) Andrejs Berzins, Q.C., the Crown Attorney who conducted the Ruygrok Inquest, cautioned the Committee against taking information at face value and urged it to go beyond generalities to seek out the front-line workers in the criminal justice system — people who can tell what really happens every day. Spurred on by Gerald Ruygrok's example, and by the pain of all victims who have appeared before it, the Committee has adhered as closely as possible to the urgings of the Crown Attorney.

B. Framing the Issues

The issues the Committee has set out to address are difficult, complex and interrelated. They are difficult because they deal with basic philosophical questions. Is it the purpose of sentencing to exact retribution for the breach of fundamental rules and norms? Should sentencing be attempting to rehabilitate offenders? Should it be inspired by a philosophy of just deserts? How should victims' needs and interests be addressed? Assuming agreement can be reached on the basic philosophical questions, the means must still be considered for them to be attained in practical, day-to-day terms: incarceration, community service orders, treatment, restitution and compensation to victims.

One of the major problems which must be faced directly in addressing these general philosophical questions and the specific issues that grow out of them is the level of serious public concern which sometimes amounts to

fear and panic. The high degree of public outrage expressed earlier this year indicates the degree of fear felt by many Canadians at the failings of the criminal justice system. In Toronto, Melvin Stanton, an offender nearing the end of his sentence who was permitted to serve an unescorted temporary absence at a halfway house, brutally raped and murdered Tema Conter; in Brampton, Ontario, an offender with an extensive psychiatric and violent criminal history has been charged with the murder of eleven-year-old Christopher Stephenson; in British Columbia, Alan Foster, a paroled lifer, committed suicide after murdering his wife, her daughter and the daughter's friend.

Many Canadians get much of their information about crime from American sources; yet our crime rates and the rate of violence are lower than those in the United States. Prior to the events described above, it might have been argued that public fear of crime could be discounted by contending that Canadians are reacting to spill-over from the American media, or by saying that the media do not report accurately and completely on the criminal justice system — they tend to focus on spectacular violent crimes and lenient sentences. Finally, public fear may also be challenged by saying that Canadians do not know about or understand the workings of the criminal justice system. Recent research shows that the more Canadians know about a particular criminal case, the more likely they are to propose a sentence very much like that of the sentencing judge.

Discounting fears does not dispel them, however. At present, public confidence in the criminal justice system is very fragile. Any reform of the criminal justice system — whether of sentencing, conditional release or related aspects of the correctional system — must address public perceptions directly and seek to restore public confidence in its efficacy. The challenge, then, is twofold: to address the Canadian situation as it actually is and to deal with the perceptions Canadians have of it.

The Committee is convinced that the criminal justice system must be explained to Canadians by means of public education and that the community must be given opportunities to be more involved at all levels. Reforms must address real weaknesses in the system. However, they must also recognize that public concern and the lack of confidence in the system is one of those weaknesses.

In the Committee's view, there appear to be several points of principle relating to the criminal justice system about which there is general

concurrence. First, the protection of society is a goal of criminal justice on which everyone agrees. Opinion divides on the methods of achieving this goal. Some propose more crime prevention strategies; others suggest sentencing reforms (such as reducing unwarranted disparity in sentencing, or giving longer sentences); still others recommend more effective alternatives to incarceration (both at the sentencing and release stages), etc. Although all share a belief in the principle of social protection, there are many ways to achieve it.

Agreement also exists on the concept of offender accountability — that is, if one breaks the law, one must accept responsibility for the action. Opinions differ on the methods of assuring offender accountability — by more or less punishment, by compensation and restitution to the victim, by offender reconciliation with the victim and community, and/or by opportunities for rehabilitation. Again, the principle of holding offenders accountable is shared by all, but there may be many ways to achieve it.

There is also concurrence on the principle of using alternatives to incarceration for non-violent offenders or offences. Differences of opinion occur in attempting to determine who are non-violent offenders and how best to deal with them (to minimize their likelihood of re-offending).

Dissidence occurs when specific issues are considered. For example, the issue of sentencing begs a number of questions. Are sentences too disparate? Are sentencing disparities necessarily undesirable? Are sentences adversely affected by the presence of conditional release and remission? Is this desirable? Is the so-called "truth in sentencing" approach (i.e., precluding conditional release in the early parts of the sentence) the way to go? Are there sufficient and effective alternatives to incarceration? Should sentencing guidelines be adopted? If so, should they be mandatory, presumptive or advisory? What types of aggravating and mitigating factors should be attached to such sentencing guidelines? What impact would sentencing guidelines have on the criminal justice and correctional systems? How can victims and members of the community be given opportunities to feel a greater stake in the sentencing process?

The issue of conditional release raises other questions. Should it be retained in any or all of its forms? Is it possible to assess adequately the risk of re-offending, particularly by those likely to do so in a violent way? Are offenders being effectively reintegrated into society? Should certain types of offenders not be eligible for early conditional release? Are inmates being

adequately prepared for conditional release? Are the methods used to determine eligibility for conditional release effective and fair? Does the public understand and have confidence in the way conditional release now functions? What is the role of halfway houses in the conditional release system — is there adequate community involvement? Are there certain types of offenders who should not be sent to halfway houses? If so, how should they ultimately be safely reintegrated into society?

A number of other questions underlie these issues. How can the participation of victims in sentencing and conditional release be improved? Is there adequate staff training and program evaluation in the criminal justice system? Do the various components of the criminal justice system mesh well together or are there gaps? How can Canadians become more involved in all parts of the criminal justice system?

These are just some of the scores of questions, upon which there is great divergence of opinion, that the Committee has struggled to address. While complete answers have not been found to all questions, this report attempts to set a direction for reaching positive conclusions. The Committee hopes that its report and recommendations will, if accepted and implemented by government, improve our system of sentencing and conditional release, and reassure Canadians that the operation of these components of the criminal justice system contributes to public security.

The Committee adopted the following principles as the basis of its recommendations:

- (1) There must be greater community involvement and understanding at the successive stages of sentencing, corrections and conditional release.**
- (2) Sentencing, correctional and releasing authorities must be accountable to the community for addressing the relevant needs and interests of victims, offenders and the community.**
- (3) Sentencing, corrections and conditional release should have reparation and reconciliation built into them — a harm has been done and should be repaired (the victim's loss must be redressed), and most offenders will be (ultimately) reintegrated into the community.**

- (4) Sentencing, correctional and releasing authorities must provide opportunities for offenders to accept and demonstrate responsibility for their criminal behaviour and its consequences.
- (5) Opportunities must be provided for victims to participate more meaningfully in the criminal justice system through the provision of:
 - (a) full access to information about all stages;
 - (b) opportunities to participate at appropriate stages of decision-making in the criminal justice system; and
 - (c) opportunities to participate in appropriate correctional processes.
- (6) Educational, vocational, treatment and aftercare services must be improved and accorded greater resources at the successive stages of sentencing, corrections, and conditional release, to ensure that offenders are effectively reintegrated into the community either as an alternative to incarceration or after incarceration.
- (7) Sentencing and conditional release must function with public visibility and accountability in such a way as to contribute to the protection of society.
- (8) To ensure sentencing disparities are not (and are not perceived to be) unwarranted, sentencing should be structured in some manner with adequate, appropriate provisions for the consideration of aggravating and mitigating factors in specific cases, and with the requirement that reasons be given in all cases.
- (9) Carceral sentences should be used with restraint; there must be a greater use of community alternatives to incarceration where appropriate, particularly in cases not involving violence or recidivism.

(10) Conditional release in some form should be retained with adequate safeguards to ensure that those who benefit from it have earned that privilege and that they do not constitute an undue risk to the community.

(11) All participants in the criminal justice system must put greater emphasis on public education.

C. Structure of the Report

As the Committee considers that all components of the criminal justice system must strive to increase public education about criminal justice processes and issues, Chapter Two discusses a Canadian study of public attitudes towards sentencing and identifies other areas of misunderstanding which contribute to lack of public confidence in the criminal justice system. Similarly, as a means of reinforcing its view that criminal justice reforms must take place in a context responsive to victims and the community, the Committee has devoted Chapter Three to a discussion of the needs and interests of victims, which for too long have been neglected by the criminal justice system.

Chapters Four to Seven review the recent history of proposed sentencing reforms in Canada and present the Committee's proposals for sentencing reform. Chapters Eight to Ten identify the present forms of conditional release, review the recent history of proposed reforms, and explain how the release process functions. Chapters Eleven to Thirteen describe the Committee's proposals for conditional release reform. Chapters Fourteen to Sixteen outline the Committee's proposals for correctional program reform with particular emphasis on Native and women offenders.

Notes

- (1) See Appendix A.
- (2) A list of witnesses who appeared before the Committee can be found at Appendix C. A list of submissions sent to the Committee can be found at Appendix D.

CHAPTER TWO

PUBLIC ATTITUDES

In recent years there has been a decline in public confidence in the criminal justice system in general, and the sentencing, correctional and conditional release processes in particular. Public attitudes toward the criminal justice system, as well as to other aspects of Canadian society, are influenced, and at times reinforced, by the all-pervasive presence of the mass media. People's understanding of sentencing and conditional release practices is largely based on what is contained in the media. Not everyone has regular contact with the criminal justice system.

One of the essential issues that must be assessed in any attempt at criminal justice reform is the impact of media coverage and other information on public attitudes. Where these attitudes appear to be the result of incomplete or inaccurate information, strategies for change must not be confined to legislative reform.

The Committee heard from Dr. Anthony Doob and Dr. Julian Roberts with respect to their study of public attitudes based on Gallup polls conducted in 1982, 1983, 1985 and 1986. The study concludes that Canadian views concerning sentencing are not as harsh as they might seem to be. This study was referred to by many witnesses and the Committee believes it is important to the development of Canadian public policy in the criminal justice field. A summary of the results of this study precedes a discussion of its policy implications and the Committee's recommendation.

A. Severity of Sentence

A substantial majority of Canadians polled believed that sentences were not severe enough, particularly those for violent sex crimes and for drunk driving offences. Yet, while hardly any people polled believed sentences were too severe generally, almost one-fifth and one-half of the respondents thought sentences for Native Canadians and poor people, respectively, were too harsh. In addition, most favoured spending money on developing sanctions other than imprisonment.

These apparent contradictions may be explained in a number of ways. The researchers proposed two: the desire for harsher sentences may not be strongly held; or, alternatively, people may have been thinking about quite different things when they responded to the two questions.

B. Knowledge of Crime

The views of most Canadians appear to bear little resemblance to the facts of (official) crime. Almost three-quarters of people polled substantially overestimated the amount of crime involving violence. Similarly, they overestimated the likelihood of recidivism for violent offenders. In 1982, most thought that murder had increased since the abolition of capital punishment, although this was not the case. In addition, Canadians were found to have little knowledge of statutory maximum penalties, of which offences had minimum penalties, nor of actual levels of penalties imposed by the courts. Finally, they perceived parole boards to be releasing more inmates than, in fact, was the case. Thus, it may be said, Canadians have a distorted view of crime and it is reasonable to question their calls for greater harshness in sentencing.

C. Use of Incarceration

Those who think sentences are too lenient are more likely to be thinking of violent or repeat offenders than are those who think sentences are appropriate or too harsh. It seems that punishments are not perceived to fit the crime.

For minor offences, imprisonment was not seen as a useful way to protect the public, although for serious offences a significant minority of Canadians called for greater use of incarceration. Few approved of the use of incarceration for first offenders who break and enter a dwelling (the most serious property offence). When the option of a community service order was suggested to people polled, the majority selected that choice in most cases rather than probation, fine or imprisonment. (Those initially proposing imprisonment were somewhat less likely than others to opt for a reparative sanction "in most cases", although few of them opposed its use.)

Doob and Roberts conclude that Canadians' views of appropriate penalties for at least some crimes are not strongly held. While calling for increased use of incarceration, in response to one question, those polled

selected imprisonment to a much lesser extent than other available sentencing options in response to another question. Moreover, most Canadians do not look exclusively to the sentencing process to solve the problems of crime (almost half of those polled suggested reducing unemployment). Those who viewed sentences as too lenient were more likely to see harsher sentences as the most appropriate punishment, but this was not seen as the best way of controlling crime.

D. Sources of Information About Sentencing

The vast majority of Canadians receive information about sentencing from the media, particularly television. Single case information appears to have more impact on them than statistical information. Most respondents recalled a sentence which was too lenient — often it involved homicide or sexual assault.

A Canadian Sentencing Commission study of over 800 sentencing stories in newspapers found over one half of them dealt with violence — one quarter with homicide. (These, of course, represent only a tiny portion of offences before the courts.) No reasons for the particular sentence were reported in most cases, making it difficult for the public to evaluate the judges' reasons in these important cases.

Doob and Roberts found that opinions varied as to appropriate sentences, depending on the type and extent of the account of a particular sentencing hearing. In one study, respondents felt a particular sentence was too lenient based on the newspaper account and too harsh based on court-based information made available to them. Both the offender and the offence were seen as "worse" by those whose source of information was the newspaper. It would appear, then, that people react not only to the actual sentence, but also to the context in which the sentence is placed.

E. Conclusion — Policy Implications

The Canadian public has a complex view of sentencing. Canadians seem to react with severity when asked simple questions about sentencing, especially involving violent offenders. They respond in quite a sensitive way when provided with more complete information and asked questions about sentencing in a more appropriate way.

While policymakers and politicians are wise to heed public opinion, they must be particularly cautious in the criminal justice field about acting on an inadequate or incomplete interpretation of public opinion. Ultimately, the evolution of sound government policy — one that has broad public support — is dependent on an informed public.

The laws and practices related to sentencing and conditional release are not simple — they are both complex and interrelated. News reporting, particularly on radio and television, is compressed. There is not enough time to provide sufficient detail and background about offenders and the criminal justice laws or practices which apply to them. It is not surprising, then, that the public may be confused about how the criminal justice system operates.

Recommendation 1

The Committee recommends that all federal participants in the criminal justice system (Department of Justice, the RCMP, the Correctional Service of Canada, the National Parole Board, and the Ministry Secretariat of the Solicitor General of Canada) make public education about the operation of the criminal justice system, including the myths and realities which surround it, a high priority through:

- (a) the effective use of their own communication capacities (print, radio, video and TV); and
- (b) their financial and other support of the voluntary sector, so that citizens in local communities may be more actively engaged in activities which increase their understanding of the criminal justice system.

CHAPTER THREE

THE NEEDS AND INTERESTS OF VICTIMS

In modern times, the role of the victim has declined to the point where some victims feel the criminal justice system has no real interest in them. Initially victimized by the offender, many have subsequently felt victimized by "the system" — the very agencies from which they expect support, compassion and action. Since the 1970s, interest in the role of the victim has increased. Many factors — often complex and interrelated — contributed to this development. Victims in Canada and elsewhere, and the groups they have organized, have brought public and political attention to the failings of our criminal justice system.

A. What Canadian Victimologists Have to Say

The Committee had the benefit of the insights of two prominent Canadian victimologists, Dr. Irvin Waller and Dr. Micheline Baril. Following is a summary of their written and oral submissions to the Committee.

1. Victims' Interests

It is victims who suffer as a result of crime. Their personal interests are affected by sentencing and related decisions; thus their views should be considered. The prevailing notion that a crime is against the state fails to recognize the victim's suffering and feelings of injustice.

The degree of trauma the victim suffers depends on the nature of the crime and the extent to which he or she can tolerate post-traumatic stress. The victim is likely to suffer "secondary victimization" in the criminal justice system, unless his or her needs are attended to.

There are five main things necessary to allow victims to restore their sense of worth and get on with their lives:

- (1) *Information* about the offender and the offence can contribute to a victim's understanding and eventual acceptance of the crime.
- (2) *Support* from the community as well as from family and friends is crucial to help the victim deal with feelings of isolation and vulnerability. Community support can be shown through victim assistance and compensation programs, as well as through the helpfulness and concern of criminal justice personnel whose actions can minimize the trauma of participation in the criminal process itself.
- (3) *Recognition of harm*. It is important to the victim that the criminal justice system recognize the harm done through the imposition of an appropriate penalty. It is also important that the offender recognize, and acknowledge, the harm done to the victim. This is important to assist the victim in coming to terms with the fact of his or her victimization.
- (4) *Reparation for the harm*, which can include financial compensation or other action by the offender designed to make redress, constitutes a concrete acknowledgement of the harm done, and may also be important to restore the victim's sense of self-worth.
- (5) *Effective protection* from re-victimization or retaliation is crucial to alleviate the victim's feelings of vulnerability. This is particularly important where victims know, or have a continuing relationship with, the offender. Victims also express concerns about the protection of other members of the community.

Waller identified two generally accepted principles of natural justice which may be said to apply to victims' personal interests in criminal procedure: the duty to give persons specially affected by the decision a reasonable opportunity to present their cases; and the duty to listen fairly to both sides and to reach a decision untainted by bias.

The following are the issues that most directly affect victims of crime:

- notification of dates, time and place of significant hearings where reparation is being sought or where the release of the accused could affect their safety or depreciate the seriousness of the offence;
- access to information about the workings of the criminal justice system, particularly as it affects victims;
- an opportunity to be present at hearings and observe justice being done;
- an opportunity to tell the court directly about the harm done, to ask for restitution, and to express concerns about the release of the offender;
- explicit criteria for decisions taken by the court and reasons for the decisions; and
- recourse (e.g., appeal) where proper procedures are not followed.

2. Victim Impact Statements

Documents submitted by Waller provide an overview of developments in other jurisdictions. A summary of those most relevant to Canada appears below.

a. The United States

Grassroots victim groups have become increasingly well-organized in recent years. Recognition of the role of the victim at sentencing has been gained in many jurisdictions. Such participation influences sentencing decisions — sometimes making the sentence harsher, sometimes more lenient. More than 34 states and the U.S. federal legislative process require courts to consider victim impact statements. In some jurisdictions, judges must give reasons if restitution is not ordered. The U.S. Presidential Task Force on Victims of Crime (1983) recommended a constitutional amendment to give victims “in every criminal prosecution the right to be heard at all critical stages of judicial proceedings”. Guidelines and training programs have been developed for judges, including Recommended Judicial Practices regarding the fair treatment of victims and witnesses and victim participation.

California was the first state to have systematically prepared victim impact statements (1974). Studies seem to suggest that:

- victims are generally more satisfied with the way their cases are handled when they are informed and have access to a caring listener;
- victims prefer to receive restitution rather than have the offender sentenced to prison; and
- victims related to offenders tend to seek mitigated sentences.

District Attorneys' offices in *Massachusetts* have victim assistance workers who explain the criminal justice process to the victim and prepare the written part of the victim impact statements.

In *Minnesota*, victims have been largely ignored in the sentencing guideline system which was introduced to reduce disparity of prison sentences greater than one year. Victim impact statements seem to influence judges to reduce sentences but not to increase them as the severity of the offence is considered to have been taken into account in establishing the "grid". Victims are permitted to express an opinion as to the appropriate sentence and to speak at the hearing.

The mitigating and aggravating factors recommended for departing from the proposed *New York State* sentencing guidelines permitted increasing sentences beyond the proposed "grid" where the foreseeable consequences of the crime were likely to be more painful to the victim than usual. A New York Crime Victim Board survey of other jurisdictions using victim impact statements concluded that they led to an increase in the use of restitution.

The use of victim impact statements in *South Carolina* seems to have increased sentences where the victims are surviving family members of slain victims and decreased them where the victim and offender know each other. The dramatic increase in prison population is considered to be attributable to a harsher prosecutorial policy, rather than to victim participation in sentencing.

b. France

Victims may join their civil action against the offender to the state's criminal action as the "partie civile". Victims are able to present views on prosecution, have access to the investigative file, and speak to sentence when requesting restitution. Legal aid is available to victims.

c. An Approach to Victim Impact Statements

The U.S. Model Statute on Victim Impact Statements lists the following purposes of sentencing: protection of the public, restitution to the crime victim and his or her family, and just punishment for the harm inflicted. Waller suggests the following purpose: protection of the public and the promotion of respect for the law through the imposition of sentences that are "just" for the victim, offender, and community. The principles should reflect the foreseeable consequences to the victim, and the possibility for redress and reconciliation.

Waller also identifies:

- the obligation of the court to consider victim impact statements regarding the impact of the crime, the victim's concerns for safety, and his or her opinion on reparations (substantiated by receipts);
- the offender's right of cross-examination on victim impact statements regarding reparations;
- the opportunity for the victim to be heard at sentencing regarding the victim impact statement, prior to the accused;
- the obligation of the court to give reasons for the sentence; and
- the desirability of enforcing restitution orders in the same way as fines.

Waller proposes that victim impact statements be prepared immediately after the crime and updated prior to sentencing. Police and prosecutors should consult with victims during plea negotiations and victims

should have the right to express to the judge their viewpoints about an appropriate charge when dissatisfied with the plea consultation. An aggravating factor to be considered at sentencing should be the likelihood of the offender returning to threaten the victim.

Baril points out that victim impact statements have two main objectives: one is to give the victim a role in the criminal justice process; the other, to make sure the court has complete information about the circumstances surrounding the crime and its impact on the victim. Her experience is that very few victims actually want to express an opinion about the sentence itself. The preliminary research results from an evaluation of the Montreal victim impact statement pilot project showed very little evidence of revenge-seeking. What Baril expects to result from more widespread use of victim impact statements is more orders restricting certain offenders' movements in areas frequented by their victims and more reparative sanctions.

3. Recommendations Made to the Canadian Sentencing Commission Regarding the Victim's Role in Sentencing and Related Processes

In a paper prepared for the Sentencing Commission (and recently published by the Department of Justice), Waller recommended four areas for improvement in the role of the victim in sentencing [some of which are now addressed in Bill C-89]: redress from the offender (restitution), provision of information by the police, unimpeded and expeditious access to justice, and protection from further victimization.

Judges, he says, should be required by the *Criminal Code* to order restitution unless reasons why it is inappropriate to do so are given. The prosecutor would introduce a written report on the extent of the damage done to the victim and the victim would have a right to present additional information if necessary. Complex cases could be referred to the civil courts.

He proposes that police provide victims with information and explanations about the criminal justice process, including the right to participate in the sentencing process and to have claims for restitution considered, and about victim compensation or other assistance programs.

Victims' needs should be respected when victims are witnesses. They may require separate waiting areas and consideration with respect to the

scheduling of hearings. The victim should be given an opportunity to be present and heard whenever the victim's interests will be affected by a court decision. Prosecutors could present to the court a statement of the victim's views on the issues. In some instances a separate lawyer should be provided.

In Israel and some American jurisdictions evidence procedures have been modified to permit video-taped and commissioned evidence to reduce the number of times a victim may have to give evidence or to avoid a traumatized victim having to face an accused from whom she or he fears retaliation. [Canada has recently modified evidence procedures for children who are victims of sexual abuse.]

4. Approaches to Crime Prevention

Crime victims want to avoid further victimization of any sort; they want to live in a safer and more peaceful society. The issue is: What crime prevention strategies work best?

Waller argues that doing more of the same (more police, more prisons, etc.) has no effect on crime. The exceptions to this are saturating an area with police (a police officer on every corner reduces crime) and targeting special groups of offenders, particularly those not used to being arrested (spouse abusers, drinking and driving offenders, etc.), which have some effect on crime. Intersectoral approaches (e.g., where police and social services collaborate) seem to have the potential to affect crime.

Police-based crime prevention programs aimed at reducing opportunities for crime (Neighbourhood Watch, Stoplift, and Block Parents) may improve the public's image of the police but have not shown significant reductions in crime (at least, not beyond the short term). However, systematic responses have had very positive effects on crime. Surveillance and "eyes on the street" approaches have the potential to affect crime.

Waller suggests that primary prevention (housing, education, equal rights, etc.) which is not directed at specific social problems has unclear effects on crime. He argues that secondary social prevention which targets those groups that are at risk has enormous potential.

Longitudinal studies now show that persistent and serious offenders tend to differ from other persons in many ways, such as the care and consistency in their upbringing, housing situation and education. Caring and

consistent parenting can be promoted, particularly among single, teenage mothers through:

- increased child care;
- job creation; and
- parent skill training in the home,

all of which reduce the stresses on mothers which may lead to violence. Waller presented other examples of targeted secondary prevention to the Committee. He proposed that locally-based approaches to crime prevention emphasizing socio-economic programs focused on secondary prevention hold potential for crime reduction. He discussed the local crime prevention councils operating in 400 French cities.

B. The Present Canadian Situation — Bill C-89

Recently passed amendments to the *Criminal Code* (Bill C-89) will allow the court to consider at the time of sentencing a victim impact statement outlining the extent of the harm done to, or loss suffered by, the victim. Under the new sections 662(1.1) and 662(2), the statement will be in writing and subject to the normal rules of evidence. Until now, there has been no uniformity in the preparation or reception of victim impact statements. Nor is it known what impact they have on the sentencing process and/or on the attitudes of victims. (Recently completed evaluations of victim impact statement pilot projects in six Canadian cities are expected to be released soon by the Department of Justice.)

Other provisions of Bill C-89 facilitate the return before trial of recovered property, which might otherwise be detained by the police throughout court proceedings. This should ease a major aggravation to victims of property offences where the property has been recovered.

Clause 6, which expands and strengthens the restitution provisions of the *Code*, is the core of the amendments. It repeals the requirement that the victim apply for restitution. The new section 653 of the *Code* requires the court to consider restitution in cases involving damage, loss or destruction of property, and money lost or spent because of bodily injuries resulting from another's crime. Where these property or personal damages are readily ascertainable, the court will be required to assess the loss incurred by the victim (the new section 655 establishes a procedure for so doing) and the

offender's ability to pay — both at the time of sentencing and in the future. The offender may be required to disclose details of her or his finances for the purposes of preparing a report. An order of restitution will be given priority of enforcement over other monetary sanctions such as fines.

The court would be able to extend the order to pay restitution, vary the time of payments, or impose new conditions if the offender has a reasonable excuse for failure to pay as ordered. (There is no provision for reducing the amount of restitution to be made.) If the offender does not have a reasonable excuse, the court could impose a prison term (from which there appears to be no right of appeal) and/or facilitate civil enforcement.

Under the amendments, a court sentencing an offender convicted (or discharged under section 662.1) of an offence under the *Criminal Code*, Part III or IV of the *Food and Drug Act*, or the *Narcotic Control Act*, would generally impose a victim fine surcharge. (The amount of the surcharge would not exceed 15 percent of any fine that is imposed, or where no fine is imposed, \$10,000. A court may decide not to impose the surcharge where to do so would cause "undue hardship", but the reasons for this decision must be given in writing or entered into the record of proceedings.) The proceeds from the victim fine surcharge are to be used for victim services.

Finally, the amendments provide some protection against publicity to victims. Under the previous law, a ban on the publication of the identity of the victim could only be ordered where the accused was charged with the offences of incest, gross indecency or sexual assault. The amendments extend the discretionary and mandatory bans to cases involving extortion and sexual offences and to witnesses testifying in the prosecution of these offences.

C. The Committee's Response

1. Bill C-89

Many members of the Committee also sat on the Legislative Committee on Bill C-89. **In the Committee's view, proclamation of Bill C-89 will go a long way towards making the criminal trial and sentencing process more responsive to the needs of victims. The provisions related to the submission of victim impact statements and the enhancement of restitution respond directly to the principles adopted by the Committee in Chapter One of this report.**

Bill C-89 was originally welcomed and supported in principle by all parties. Some have suggested that it does not go far enough — that it should include a statement of principles, and that it should be mandatory for police to inform victims of their rights to restitution/compensation, to prepare a victim impact statement for the court, and to be kept informed about the status of the investigation and court proceedings. The major criticism of Bill C-89 was that the proceeds of the victim fine surcharge are to be turned over to the provinces without any guarantee that these funds actually will be used to provide victims with more and better services, and that non-residents of a province will also be eligible for services. Waller recommended that Bill C-89 be amended to provide, in the proposed section 655.9(4) of the *Criminal Code*, that:

- surcharge revenues not be used to supplement money that the provinces [/territories] have already committed to victim assistance;
- provinces establish a more comprehensive network of victim services available to non-residents and residents alike; and
- surcharge revenues be used in a manner consistent with a statement of principles agreed upon by the federal and provincial [/territorial] governments.

In the Committee's view, these concerns can be addressed without legislation.

The Committee recognizes that, although there are increasing numbers of victims' compensation programs and victim services across Canada, the value of benefits available under them, as well as the scope and availability of services, varies from one province to another. However, the Minister of Justice has advised the Committee that federal-provincial discussions are contributing to the development of national standards, and that the Ministers responsible for criminal justice have now reached agreement on a policy statement of principles.

2. The Provision of Information to Victims

Almost all studies of victims highlight victims' informational concerns as their highest priority. **In the Committee's view, participants in all stages of**

the criminal justice system must respond to this need. Victims have questions about the criminal process and the offender. Not only must suitable print and audio-visual materials be readily available to victims, victims must be treated courteously and compassionately by all participants in the system.

At present there is no uniformity about the provision of information or even any agreement about which component of the system should hold that responsibility — in some cases the information is provided by police, in others by Crown attorneys; in many cases, no information is provided.

Keeping victims informed about the status of their cases at pre-trial and trial stages of the criminal justice process, and providing victims with information about particular offenders throughout their involvement with criminal justice systems (including corrections), prevent the sense of being further injured by the process and may contribute to victims' capacities to put the crime behind them. Victims may need information about the offence, the offender, and criminal justice processes in order to make sense of what has happened to them and to re-establish control over their lives. Moreover, it is believed that they will experience the administration of justice in a more personal and favourable way where suitable and timely information is provided. Such notification should help alleviate the confusion and alienation victims may feel and encourage victim cooperation in prosecution.

The Correctional Law Review Working Group, in its Working Paper *Victims and Corrections*, noted that, while there has been an improvement in the provision of information to victims concerning the trial process, early access to correctional information is still a problem. The working group also identified a number of options for improving the distribution of general correctional information to victims. **The Committee prefers the option whereby pamphlets which are already being distributed by the police, would contain a reference as to where the victim may obtain information about corrections. This could be supplemented by the availability of more detailed information at police stations, Crown attorneys' offices, and at court houses.**

In considering what access victims might be given to case-specific information concerning federally-sentenced offenders, the Correctional Law Review Working Group identified four principles to be considered:

- ° offenders, like other Canadians, have the right not to have personal information about them released unless there is justifiable reason to do so;

- victims (and perhaps the general public), on the other hand, have a competing right to obtain case-specific information about offenders under certain circumstances, including a reasonable apprehension of a threat to personal security, the reasonable right of the public to scrutinize the activities of government and its agencies, and the fact that the information may already be a matter of public record and obtainable elsewhere;
- in the absence of a clear and legitimate connection between the victim's "need to know" and the information sought, the privacy rights of the offender should prevail;
- where there is such a connection, the victim's "need to know" should be balanced against the possibility that release of the information would subject the offender or another person to harm or expose anyone unfairly, would disrupt the offender's program or reintegration, or would disclose information which was given with a reasonable expectation that it would be held in confidence (pp. 16-17).

In the Committee's view, the third principle would be strengthened if it were worded in such a way as to recognize the role that information about the offender, and his or her acknowledgement of the harm done, may play in contributing to the victim's emotional recovery from the effects of the crime (as described at the beginning of this Chapter). If we fail to recognize this legitimate need, it is likely that the offender's right to privacy will tip the scale against the victim in his or her pursuit of information. In this context, the Committee believes that, in many cases, close family members of deceased or seriously injured victims may also have case-specific informational needs similar to direct victims of serious crimes.

The Working Paper also considered how victims might be kept apprised of various correctional or release decisions concerning an offender. **The Committee favours a "form" approach whereby a form completed by the victim requesting certain types of information as it becomes available could be appended to the Crown's file and then be forwarded to the appropriate correctional authority.** As it is likely that only a few victims will want to continue to have access to information about an offender beyond the sentencing stage, it should not be difficult to respond to such requests.

The Committee believes that access to appropriate information in a supportive criminal justice environment is vital to greater victim satisfaction with sentencing and correctional processes. In many cases, information will be all that victims require. In other cases, suitable information may provide a foundation for other meaningful and responsible involvement.

Recommendation 2

The Committee recommends that all participants in the criminal justice process give high priority to the provision of general and appropriate case-specific information to victims and their families.

Recommendation 3

The Committee recommends that, at a minimum, general information include the victim's right to seek compensation and restitution, the right to submit a victim impact statement and the right to be kept informed about various pre-trial, trial, and post-trial proceedings. Basic information should identify who is responsible for providing it and where further information may be obtained.

Recommendation 4

The Committee recommends that the provision of case-specific information to victims and, in appropriate cases, to their close family members be facilitated by the use of a form on which the victim may check off the various kinds of information he or she would like to receive. Such forms should be appended to Crown attorneys' files and subsequently forwarded to correctional authorities.

3. Making Maximum Use of Victim Impact Statements

a. At Plea and Sentencing

The submission of a victim impact statement ensures that the sentencing judge has sufficient information about the impact of the crime on the victim (physical and emotional pain suffered, loss of wages or property, damage sustained, and other expenses incurred as a result of the crime) to determine a fair and proper sentence. Judges should consider all relevant information about both offenders and victims in order to reach a "just" sentence. In some cases, judges are provided with relatively extensive information about the offender (through pre-sentence reports or representations by defence counsel), but less accurate or less up-to-date information about the impact of the crime on the victim. This is particularly so where the offender pleads guilty or negotiates a guilty plea to a lesser

charge (in such cases, only a simple summary of the facts may be presented to the judge).

Some victims feel that they ought to be consulted by Crown attorneys about plea bargaining and sentencing recommendations. When the Crown accepts a guilty plea to a charge which is likely to result in a lesser sentence than that for which the offender was originally charged, chances are the victim may feel the offender got something he or she shouldn't have and the victim may feel further victimized by the criminal justice system. This appears particularly unjust when the Crown attorney is unfamiliar with some of the facts.

Some of victims' "feelings" may be addressed by attending better to the informational needs of victims. Others assert, however, that providing victims with an opportunity to be heard at plea and sentencing is helpful in the process of recovery from victimization. In such cases, mere information may not be enough; greater participation may be required.

The Canadian Sentencing Commission rejected the concept of victims becoming independent parties in plea negotiations, but suggested that there was considerable room for improving the flow of information between Crown counsel and the victim during plea negotiations. It recommended that prosecutorial authorities develop national guidelines directing Crown counsel to keep victims fully informed of plea negotiations (and sentencing proceedings) and to represent their views, and that, prior to acceptance of a plea, Crown counsel be required to receive and consider a statement of the facts of the offence and its impact upon the victim (Rec. 13.1 and 13.2).

The victim's opinion about an appropriate sentence may be particularly important where the offender and victim are known to, or closely associated with, one another and there is reason to believe the offender may pose a continuing threat to that victim, although not to anyone else. In such a case, it is important that the victim have an opportunity (on the record) to recommend conditions of probation or release which would limit the offender's access to the neighbourhoods where the victim lives and works. The Committee believes such recommendations could be incorporated in victim impact statements.

b. Use of Victim Impact Statements (and Other Sentencing Information) by Correctional Authorities

In addition to providing valuable information to sentencing judges and releasing authorities, victim impact statements are of importance also to offenders themselves and to members of correctional staff who work with them.

Victim impact statements, together with other sentencing information, should be forwarded to correctional authorities in order to assist them in making the most sensible case management decisions about offenders. They should also be used to assist case management workers and others working closely with offenders in helping the offenders come to terms with their offences and to acknowledge responsibility for them, where they have not already done so.

Paradoxically, correctional systems often have great difficulty obtaining from courts what would appear to be the most basic information about offenders and their offences. Proceedings on sentencing (which may include the gist of a victim impact statement) are not generally transcribed unless there is an appeal. Yet it is unlikely that a full and proper administration of the sentence can take place without a clear understanding of the offence which occurred and the purpose of the sentence.

As a result of several murders committed in recent years by federal offenders on conditional release, greater efforts are now made by federal correctional authorities to obtain sentencing information and reasons, where they exist. (In addition, of course, victims may always make written submissions directly to correctional and release authorities about individual offenders.) It is not clear what sentencing information, if any, probation officers and provincial institutions receive where pre-sentence reports have not been prepared. The Canadian Sentencing Commission recommended that judges provide written reasons in some circumstances and that a transcript of the sentencing judgement be made available to the authorities involved in the administration of the sentence (Rec. 11.1 and 12.3).

The Committee believes that the routine transcription of the proceedings of sentencing hearings and the transmission to correctional authorities of such transcripts and exhibits filed would assist correctional authorities in placement and program decisions, as well as pre-release

planning. (Such a recommendation is made in Chapter Eleven.) **Equally important, it would enhance the capacity of both custodial and community correctional authorities to engage offenders in meaningful discussions about the nature and consequences of their offences, steps which might be taken to acknowledge responsibility and to make amends for the behaviour, and opportunities the offender might take advantage of in order to prevent a recurrence of the criminal conduct.**

How victim impact statements might be used in the parole process is discussed in Chapter Eleven.

CHAPTER FOUR

THE RECENT HISTORY OF SENTENCING REFORM IN CANADA

No basic changes in sentencing philosophy or the structure of sentencing set out in our *Criminal Code* have been made since the late nineteenth century. In fact, Canadian criminal legislation has been criticized frequently for its lack of sentencing goals and principles. Legislative changes in Canadian criminal law have characteristically been *ad hoc* and short-term in nature.

This chapter examines some of the proposals for law reform relating to sentencing that have been made over the years. They constitute the backdrop against which the Committee makes its recommendations.

A. Ouimet Report

Established in June 1965 by Order-in-Council to study "the broad field of corrections, in its widest sense, from the initial investigation of an offence through to the discharge of a prisoner...", the Canadian Committee on Corrections, under the Chairmanship of Mr. Justice Roger Ouimet, presented its comprehensive report to the Solicitor General in March 1969. The Committee started from the basic premise that the proper function of the criminal justice system is to protect society from crime in a manner commanding public support, while at the same time avoiding needless injury to the offender. The Committee indicated that there was a need for an overall sentencing policy. It proposed to:

... segregate the dangerous, deter and restrain the rationally motivated professional criminal, deal as constructively as possible with every offender as the circumstances of the case permit, release the harmless, imprison the casual offender not committed to a criminal career only where no other disposition is appropriate. In every disposition, the possibility of rehabilitation should be taken into account.¹

The Committee observed that the best long-term protection of society is secured by the ultimate rehabilitation of the sentenced individual.

The Ouimet Committee expressed the view that sentences of imprisonment should be resorted to only where the protection of society clearly requires the imposition of such a penalty. Long terms of imprisonment should be imposed only in special circumstances. The Committee recommended that the *Criminal Code* be amended to authorize the courts to deal with a person without imposing a sentence of imprisonment, unless the nature of the crime and the offender make imprisonment necessary because the offender may repeat the crime during the non-carceral sentence, because some correctional treatment of the offender in confinement is required or because a lesser sentence would depreciate the seriousness of the crime. It also recommended that dangerous offender legislation be introduced to provide for indeterminate sentences (with regular assessments and Parole Board reviews to ensure that offenders who are no longer dangerous are released).

The Ouimet Committee felt it might be difficult to eliminate entirely the disparity in sentences — at the least, however, the sentencing authority should give reasons for imposing a particular sentence. The Committee concluded that sentences should be individualized and that a range of alternatives should be made available to the sentencing judge: absolute discharge, with or without conditions; probation; fines; suspended sentence; restitution, reparation or compensation to the victim; confinement (weekend detention, night detention with programs of compulsory or voluntary work in the community, or full-time detention in reform institutions or penitentiaries or other places of segregation).

The Ouimet Committee made the following statement as a general guide for applying sentencing alternatives:

The primary purpose of sentencing is the protection of society. Deterrence, both general and particular, through knowledge of penalties consequent upon prohibited acts; rehabilitation of the individual offender into a law-abiding citizen; confinement of the dangerous offender as long as he [or she] is dangerous, are major means of accomplishing this purpose. Use of these means should, however, be devoid of any connotation of vengeance or retribution.²

For there to be a rational and consistent sentencing policy, the Committee concluded that a number of deficiencies needed to be corrected. These were:

- (1) the lack of readily available information about existing sentencing alternatives and services and facilities to implement sentencing dispositions;

- (2) the lack of comprehensive information about the character and background of the offender; and
- (3) the lack of information about the reasons for imposing certain sentences.

The report urged the federal government to prepare (in conjunction with the provinces) and issue a guide to dispositions, which would be made available to all in the correctional system and which would contain the information identified above as then lacking. The Committee recommended that fines only be imposed after a means study of the offender had been done; that, except for murder, minimum sentences of imprisonment be repealed; and that whenever there was to be a sentence of imprisonment, it be preceded by a pre-disposition report on the offender and accompanied by a statement of the reasons for such imprisonment.

B. Hugessen Report

Established in June 1972 by the Solicitor General of Canada, the Task Force on the Release of Inmates, under the Chairmanship of the Honourable Mr. Justice James K. Hugessen, released its report in November 1972. While the focus of the report was on the release of inmates, it contained an Appendix which described "A Proposal for Statutorily Fixed Sentences". The main recommendation was the abolition of fixed-term sentencing to penitentiaries and the adoption of statutorily fixed maximum sentences (for sentences of two years or more) with no discretion in the sentencing court to fix minimum terms.

Under these proposals, a judge would have three sentencing options after conviction of an offender:

- ° non-custodial sanctions (including semi-custodial sanctions such as probation and residency at a halfway house);
- ° short-term determinate custodial sentences of less than two years to be fixed by the court; or
- ° penitentiary sentences, the maximum length of which would be statutorily determined (three, five or ten years, or life).

In the case of penitentiary sentences, institutional authorities would make recommendations, within one to three months after sentence, in most cases, to a regional or local board about the proposed minimum length and place of incarceration based on the program, educational and other needs of the offender and the degree of custodial risk the offender poses. Each case would be reviewed at least annually at which time the board might reduce (or, exceptionally, increase) the minimum term. After serving the minimum term, offenders would be released on parole with supervision for a fixed term of approximately 18 months. Offenders would be discharged from parole about one year after discharge from supervision. (This proposal is similar to a form of indeterminate sentencing used in some American jurisdictions.)

C. Goldenberg Report

Pursuant to a motion in October 1971, the Standing Senate Committee on Legal and Constitutional Affairs, under the Chairmanship of Senator Carl Goldenberg, tabled its report on parole in 1974. In Chapter III, it reviewed the conflicts between parole and sentencing.

In contrast with the Hugessen Report, the Senate Report recommended that the present role of the courts in sentencing be maintained, although it noted the desirability of reducing the wide discretion of judges. Cautioning that redesigning parole should be accompanied by "an overhaul of sentencing", it suggested that sentencing guidelines be incorporated into the *Criminal Code*. Furthermore, it recommended that the indeterminate sentences provided for at that time in the *Prisons and Reformatories Act* be abolished except for dangerous offenders.

The Senate Committee was of the view that imprisonment should not be used unless the judge was satisfied that it was necessary for the protection of the public on at least one of three grounds. The Committee also identified 12 factors which, among others, should influence the court in the exercise of its discretion in deciding to withhold a sentence of imprisonment. In addition, it noted that the U.S. Model Sentencing Act procedure for sentencing hearings could usefully be incorporated into the *Criminal Code*.

The Senate Committee concurred with the Ouimet Committee in condemning the intrusion of sentencing courts into parole by adding probation terms to prison sentences of less than two years. It recommended the repeal of this provision in the *Criminal Code*. In addition, it

recommended that the Code be amended to provide for a limit on the cumulation of consecutive sentences.

D. Law Reform Commission of Canada Report

The Law Reform Commission of Canada published a report on dispositions and sentencing in 1976. It started from the basic premise that the coercive powers of the criminal law and its agents must be used in such a way as not to further damage the social fabric. Based on this general principle, the Commission enunciated a number of other criteria and guidelines.

Some of the other principles underlying the Commission's approach were:

- (1) The criminal process should be used with restraint;
- (2) Intervention via the criminal law should be proportionate to the harm done;
- (3) The most effective means for restoring peace should be selected: those responsible for such decisions should be accountable for them;
- (4) Sentences should encourage a sense of responsibility on the part of the offender and enable that person to understand the impact of his [or her] actions on the victim and society;
- (5) Mediation and arbitration are preferable ways of arriving at a proper disposition or sentence; and
- (6) Reconciliation of victim and offender, including reparation of the damage done, are desirable.

The Commission also indicated that, in its view, mechanisms other than the criminal justice system should be used wherever possible to deal with criminal acts. This could be done by mediation, arbitration or diversion. If a case proceeds to trial, and a conviction is entered, the court should order an absolute or conditional discharge wherever possible. In the Commission's view, this would especially be the case if the offender and the offence should have been dealt with at the pre-trial stage or if any more severe sanction would cause unnecessary social costs and hardships.

The Commission then set out in its report a range of sentences:

- (1) Good Conduct Order: the offender would be required to keep the peace for not more than 12 months — to be imposed where an absolute or conditional discharge would not be adequate.
- (2) Reporting Order: the offender would be required to report to a person, named by the court, at designated times — to be imposed where the court feels that certain limitations on liberty and some supervision of the offender may be necessary.
- (3) Residence Order: the offender would be required to reside in a particular place for a determinate period of time — to be imposed where the court feels that this type of limitation needs to be imposed on the offender.
- (4) Performance Order: the offender would be required to undertake educational, training or employment activities to reduce the likelihood of continued criminal activities.
- (5) Community Service Order: the offender would be required to perform a fixed number of hours of community service during free time — the purposes are to take the place of a fine, to censure the criminal act and to reconcile the offender with the community.
- (6) Restitution and Compensation Order: the offender would be required to reimburse the victim as far as possible for the damage.
- (7) Fine: the offender would be required to pay a fine where the offence is detrimental to society as a whole or restitution is inappropriate.
- (8) Imprisonment: this exceptional sanction would be used only to protect society by separating offenders who constitute serious threats to life and personal security, to denounce behaviour society considers a serious violation of basic values or to coerce offenders refusing to submit to other sanctions. Imprisonment is not justified by rehabilitation but, once

sentenced, an offender should benefit from social and health services. Courts should only resort to imprisonment if less severe sanctions are unlikely to succeed. The length of imprisonment should be determined in light of the nature of the offence, the circumstances in which it was committed and the objectives of imprisonment. A prison sentence to protect society by separation should not exceed 20 years. A prison sentence for the purpose of denunciation should not exceed three years. A prison sentence imposed because of wilful disregard of other sanctions should not exceed six months.

- (9) Hospital Order: where the offender is in need of medical treatment, a court should be able to order that a term of imprisonment be served in part in a medical facility.

The Commission recommended that judges should develop sentencing criteria and should meet periodically to ensure that they are being properly applied or to change them if such is deemed to be necessary. Finally, the commission recommended that the Guidelines outlined in its report be incorporated into the *Criminal Code*.

E. The Criminal Law Review

The Criminal Law Review process was initiated by the Government of Canada in 1981 in recognition of the need for a comprehensive review of the criminal law and the development of integrated proposals for change which were consistent with a criminal justice policy. The Sentencing Project, one of 50 individual projects, was launched in 1982 and was one of the first areas of priority identified by the Review.

1. *The Criminal Law in Canadian Society*

Published in 1982 by the Department of Justice, *The Criminal Law in Canadian Society* sets out the policy of the Government of Canada with respect to the fundamental purpose and principles of the criminal law. It forms the framework for the ongoing work of the Criminal Law Review, including the Sentencing Project and Correctional Law Review Project (discussed later in this chapter).

The document presented crime trends, reviewed various explanations offered for the phenomenon of crime and policy responses to crime by

governments, and identified the factors which are likely to continue to influence the general shape of future events in Canada. It identified seven major concerns that encompass the wide range of specific criticisms, problems and complaints with respect to criminal law and the criminal justice system (including the effectiveness of alternatives and corrections, the role and the needs of victims, and sentencing and post-sentencing processes).

The document concluded that the criminal justice system must pursue both "justice" and "security" purposes, that criminal sanctions are understood by the public and offenders to be primarily punitive in nature, that criminal law should be distinguished from other forms of social control by use of the criterion, "conduct which causes or threatens *serious* harm", and that considerations of justice, necessity and economy should determine the means that the criminal justice system may employ to achieve its goals.

This policy recognized that Canada has guaranteed certain rights and freedoms and undertaken international obligations to maintain certain standards. While criminal law is necessary for the protection of the public and the maintenance of social order, it involves many of the most serious forms of interference by the state with individual rights and freedoms.

The Criminal Law in Canadian Society defined the purpose of the criminal law as:

...to contribute to the maintenance of a just, peaceful and safe society through the establishment of a system of prohibitions, sanctions and procedures to deal fairly and appropriately with culpable conduct that causes or threatens serious harm to individuals or society.

It recommended that this purpose be achieved through means consonant with the Canadian Charter of Rights and Freedoms and in accordance with 12 principles, the following six of which may be said to relate directly or indirectly to sentencing and are relevant to the Committee's study:

- ...
- (f) the criminal law should provide sanctions for criminal conduct that are related to the gravity of the offence and the degree of responsibility of the offender, and that reflect the need for protection of the public against further offences by the offender and for adequate deterrence against similar offences by others;

- (g) wherever possible and appropriate, the criminal law and the criminal justice system should also promote and provide for:
 - (i) opportunities for the reconciliation of the victim, community, and offender;
 - (ii) redress or recompense for the harm done to the victim of the offence;
 - (iii) opportunities aimed at the personal reformation of the offender and his [or her] reintegration into the community;
- (h) persons found guilty of similar offences should receive similar sentences where the relevant circumstances are similar;
- (i) in awarding sentences, preference should be given to the least restrictive alternative adequate and appropriate in the circumstances;
- (j) in order to ensure equality of treatment and accountability, discretion at critical points of the criminal justice process should be governed by appropriate controls;
- ...
- (l) wherever possible and appropriate, opportunities should be provided for lay participation in the criminal justice process and the determination of community interests.

2. Bill C-19 and Accompanying Policy Statement on Sentencing

In February 1984, the Government introduced Bill C-19, a package of *Criminal Code* amendments, some of which have now been enacted (in original or revised form) and some of which died on the Order Paper. One section of the package concerned sentencing: those matters related to the purpose of sentencing were referred to the Canadian Sentencing Commission; others related to victims and restitution recently were enacted by Parliament (in modified form) as Bill C-89.

Bill C-19 identified the fundamental purpose of sentencing as protection of the public and identified five strategies by which that might be achieved. It identified the principles by which the court's discretion might be limited: proportionality, consistency, restraint, and limitations on the use of imprisonment. Accompanying the Bill was a policy on sentencing issued by the Department of Justice to set out the context of issues and concerns within which the sentencing provisions of that Bill were developed.

The Sentencing Project drew heavily on the work of the Ouimet Committee, the Law Reform Commission of Canada and other domestic and international sources. Recommended Canadian themes included restraint in the use of criminal sanctions (especially imprisonment); increased use of non-carceral sentencing alternatives; and acceptance of judicial discretion combined with a greater focus on explicit mechanisms to ensure accountability. In contrast, a number of American jurisdictions focused on creating greater uniformity and certainty in sentencing (limiting disparity) and a shift from rehabilitation theory to retribution (or "just deserts").

As identified in *The Criminal Law in Canadian Society*, three major issues have particular application to sentencing: the lack of clearly stated policies or principles in existing law; the presence of apparent or perceived disparity; and the lack of knowledge about the effectiveness of sanctions. Bill C-19 included, for the first time in Canadian legislative history, an explicit statement of the purpose and principles of sentencing and a clear set of procedural and evidentiary provisions to govern the sentencing hearing. It provided a broader and more clearly defined range of sentencing options, reserving imprisonment for cases where non-custodial sanctions are inappropriate. It increased the legitimacy of victim concerns by accordng wider and higher priority to the use of reparative sanctions and by consolidating and expanding the restitution provisions of the *Criminal Code*.

3. The Canadian Sentencing Commission

Concurrently with the introduction of Bill C-19 in the House of Commons, the government announced the establishment of the Canadian Sentencing Commission to consider and make recommendations upon sentencing guidelines, realigning maximum penalties within the *Criminal Code* in respect of the relative seriousness of offences, proposals to minimize unwarranted sentencing disparity, and mechanisms to provide more complete and accessible sentencing data.

The Canadian Sentencing Commission's report was tabled in Parliament at the end of March 1987. The Commission recommended that Parliament establish in legislation the purpose of sentencing and the principles which would affect the determination of sentences. To address the problem of unwarranted sentencing disparity, it recommended that a permanent sentencing commission be established to develop presumptive sentencing guidelines which would be tabled in Parliament. To provide greater clarity in sentencing, it recommended that parole be abolished and

that maximum and actual sentences be reduced: this, it said, would provide "truth in sentencing" or "real time sentencing", without increasing the prison population. It also recommended that greater use of sentencing alternatives be encouraged. Overall, it recommended that the sentencing system be equitable, clear and predictable, features which it does not have today.

The Sentencing Commission observed that sentencing itself does not resolve the major social problems that cause crime, but so long as such a system exists, the principles of justice and equity must prevail. Because the sentencing process has as its goal the accountability of the offender, rather than punishment *per se*, the least onerous sanction appropriate in the circumstances should be applied. Imprisonment should not be imposed for rehabilitation purposes but should be resorted to only in order to protect the public from violent crimes, where another sanction would not adequately reflect the gravity or repetitive nature of the offence, or where no other sanction would adequately protect the public or the administration of justice.

The Commission recommended that mandatory minimum sentences be abolished because they are inconsistent and unfair — their effect is to restrict the sentencing judge's discretion and to force a specific sentence. (See Chapter Six for further discussion of this.)

The Sentencing Commission identified two problems with maximum sentences — they often do not reasonably correspond with the seriousness of the offences to which they apply and they do not relate to what should happen to someone convicted of the offence. The Commission recommended that there be a 12-year maximum ceiling on sentences, which would apply primarily to violent offences resulting in serious harm to victims — manslaughter, aggravated sexual assault, kidnapping, etc. Nine-year, six-year, three-year, one-year or six-month sentences would apply to other offences, depending on the seriousness of the offences. The Commission ranked the seriousness of each *Criminal Code* offence and assigned each to the appropriate sentence category.

The Commission recommended that indeterminate sentences applicable to dangerous offenders be replaced by enhanced, definite sentences where special circumstances so warrant. Such an enhanced sentence would be available for offences carrying a maximum penalty of 9 or 12 years, when the offence involved serious personal injury committed in brutal circumstances.

To reduce indeterminacy in sentencing, the Commission recommended that parole be abolished and that earned remission amount to no more than 25 percent of the sentence imposed. (These recommendations are described in greater detail later in this report.) The elimination of parole and the reduction of earned remission would have the effect of ensuring that the sentence served approximates more closely the sentence imposed than is now the case.

The effect of all these proposals would be that many offenders would not be imprisoned, and those who were imprisoned would serve shorter, more definite terms and would spend a greater proportion of these sentences than is presently the case in a carceral setting. In the Commission's view all of this would lead to greater certainty in sentencing.

The Commission recommended that the sentencing judge be empowered to determine the security level of the facility in which an offender is to serve a sentence. The Commission recommended that sentencing guidelines be issued — they would be presumptive, not binding. The judge could sentence outside the guidelines if it were appropriate to do so and if reasons were given. The guidelines would also have a non-exhaustive list of aggravating and mitigating factors to be taken into account by the sentencing judge. The Commission recommended that a Permanent Sentencing Commission be established which would work in consultation with a Judicial Advisory Council to develop and monitor sentencing guidelines to be tabled in Parliament.

Community sanctions (any sanctions other than imprisonment) should be more widely used. The Commission recommended that fines be imposed only where it has been determined that the offender has the means to pay — there should be no imprisonment for inability to pay a fine. Restitution should be employed more frequently.

4. Continuing Consultations by the Department of Justice and the Ministry of the Solicitor General

The Department of Justice has been consulting with the provinces and territories, as well as other interested individuals and groups, on the recommendations of the Canadian Sentencing Commission. It is anticipated that a discussion paper on sentencing reform will be forthcoming.

The Ministry of the Solicitor General has been engaged for several years in the Correctional Law Review, a project reviewing all federal legislation related to corrections and conditional release. Its review of conditional release must, of course, take into account the recommendations of the Sentencing Commission.

The Department and the Ministry have established a joint working group for the purposes of cooperating in their consultations and reviews.

Notes

- (1) Canadian Committee on Corrections, *Toward Unity: Criminal Justice and Corrections*, Information Canada, Ottawa, 1969, p. 185.
- (2) *Ibid.*, p. 194.

CHAPTER FIVE

THE SEARCH FOR A SENTENCING PURPOSE AROUND WHICH CONSENSUS CAN BE BUILT

With a few specific exceptions, the Canadian sentencing process is discretionary in nature. Courts of appeal interfere with the dispositions of sentencing judges only when they feel inappropriate weight has been given to various factors. "Undue disparity" may be said to occur when no reason is available to rationalize "a marked departure" from sentences customarily imposed in the same jurisdiction for the same or similar crimes.

There is general consensus that unwarranted disparity should be eradicated. Research on sentencing disparity demonstrates that the most frequently alleged cause for unwarranted variation is confusion about the purposes of sentencing. No sentencing goals are now set out in legislation. Conflicts and inconsistencies in case law appear to arise from the fact that it is often impossible to blend the elements of public protection, punishment, denunciation and deterrence; frequently, they are contradictory and inconsistent. It is important, therefore, to achieve consensus on a sentencing rationale for the guidance of the judiciary and the enlightenment of the general public.

A number of proposals have been made as to what the goals and principles of sentencing should be. The Law Reform Commission of Canada proposed that primary emphasis be placed on the principles of denunciation, proportionality and restraint in a rational and consistent sentencing policy. (Restraint in sentencing means using the least coercive measure necessary, consistent with the principles of denunciation and proportionality. Denunciation and proportionality are defined later.)

A good many witnesses appearing before the Committee subscribed to the view of the Sentencing Commission and the Law Reform Commission that proportionality should be the major principle affecting the nature and length of sentences. Many of these witnesses favoured the development of mandatory or presumptive sentencing guidelines to control unwarranted disparity.

As a starting point, the Committee agrees with the Canadian Sentencing Commission that the purpose and principles of sentencing should be clarified and established in legislation. In its search for a sentencing rationale, the Committee looked for commonalities in the submissions it received, particularly in the underlying meaning of the positions taken as well as in the words which were actually spoken or written. This chapter sets out the various sentencing rationales upon which the Committee has drawn in developing the goals and principles it recommends be adopted in legislative form.

A. Public Protection

The most frequently articulated goal of sentencing is the protection of the public. Yet this is also said to be the overall purpose of the criminal law itself.

The Sentencing Commission was concerned that combining the purpose of the whole criminal justice system with the goal of one of its components could lead to serious misunderstandings. In particular, establishing public protection as the fundamental purpose of sentencing creates unrealistic expectations about what can be achieved by sentencing (p. 149, 153). The Sentencing Commission also argued that, while sentences may have protective effects, the sentencing courts do not have the primary responsibility for achieving this goal. However, the Commission was prepared to include public protection (albeit at a relatively low level of importance) as a principle which should affect the sentence.

The Committee agrees with the purpose of the criminal law as set out in *The Criminal Law in Canadian Society* (see page 36 above). The Committee notes that the federal government, through this policy document, recognizes that the criminal law is only one avenue for public protection: hence, it “contribute[s] to the maintenance of a just, peaceful and safe society.” Alone, the whole criminal justice system cannot guarantee public safety. The Committee was urged by many witnesses to conclude that no criminal justice system alone could meet public expectations of safety and protection. The Church Council on Justice and Corrections stated:

[C]ommunities must get involved in solving their moral problems. . . . Official institutions can only assist, they cannot bring about [a just, peaceful and safe society] . . . [G]iving Canadians a more realistic perception of crime, and ways of resolving conflicts more positively, would . . . diminish the helplessness which most people now experience in the face of crime (Brief, p. 2)

Nevertheless, the Committee does not agree with the Sentencing Commission that public protection should not be established as the goal of sentencing. In fact, many witnesses with varying perspectives on criminal justice issues urged the Committee to adopt public protection as the fundamental purpose of sentencing. While recognizing that sentencing is only one component of the criminal justice system, and therefore may be limited in what it can achieve, the Committee believes that public confidence in the criminal justice system demands that public protection be considered as the fundamental purpose of each of its components. In this respect, sentencing is no exception.

The mission statements of the Correctional Service of Canada (proposed in 1984) and the National Parole Board (adopted in 1986), and the tentative purpose of corrections proposed by the Correctional Law Review (Working Paper #1, 1986), quite rightly in the Committee's opinion, incorporate "to contribute to the maintenance of a just, peaceful and safe society" or "contributes to the protection of society" in their statements of purpose. The Committee believes that a statement of the purpose of sentencing should do no less.

The criminal law purpose established by the federal government in *The Criminal Law in Canadian Society* includes the strategy by which this purpose is to be achieved: "through the establishment of a system of [fair and appropriate] prohibitions, sanctions and procedures..." This dual formulation of the purpose of the criminal law recognizes that the criminal law should continue to have two major aspects — security goals (related to public protection) and justice goals (equity, fairness, guarantees of rights and liberties, etc.). The Sentencing Commission seems to have focussed on the first aspect in its formulation of the purpose of the criminal law and on the second in its formulation of the purpose of sentencing:

2. Overall Purpose of the Criminal Law

It is hereby recognized and declared that the enjoyment of peace and security are necessary values of life in society and consistent therewith, the overall purpose of the criminal law is to contribute to the maintenance of a just, peaceful and safe society.

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

as to be called punishment, although most of them are coercive. In recent years, the notion of retribution has fallen into disfavour, except where extreme violence is involved and as a means of limiting punishment.

The Committee was urged by some witnesses to conclude that punishment has little to commend it. It was argued that punishment neither encourages people to take responsibility for what they have done, nor does it provide opportunities for making reparations to the victim or the community. Much worse, it tends to encourage people to avoid accepting responsibility by lying (or self-denial) or by not getting caught. On the other hand, some witnesses clearly believed that severe punishment itself would achieve either specific or general deterrence, possibly both. (Deterrence means the sentence has the capacity to inhibit the offender from repeating the sanctioned conduct [specific deterrence] or to discourage others from doing so [general deterrence].) While there may be some evidence to support their claims with respect to some offences and some offender groups, there is a serious lack of supporting evidence about general deterrence. Yet Canadian courts seem to attribute value to it uncritically. **Nevertheless, to ignore punishment is to ignore generally accepted public attitudes about sentencing.**

However, most witnesses who talked about punishment seemed to be looking for a way of holding offenders accountable for their criminal conduct and for expressing the community's abhorrence of that behaviour (denunciation). Moreover, many witnesses identified offenders acknowledging/accepting responsibility for their criminal conduct as pivotal in turning them away from a life of crime.

The Committee was struck by the potential of this concept of offender responsibility or accountability. In addition to being a key component of diversion programs and many alternative measures, it is one that is generally supported by victims. The proponents of the concept of restorative justice have long recognized the importance to both the victim and the offender (and thereby, ultimately, to the community) of offenders accepting responsibility for their actions and taking steps to repair the harm done. **The Committee believes that it is the responsibility of the community to ensure that offenders are confronted with the consequences of their actions and challenged to accept responsibility and make reparations.**

C. Victim Reparation

In the case of minor property offences, an offender might demonstrate this acceptance of responsibility by returning stolen goods to the victim, repairing damage to the victim's property, or repaying the victim for expenses incurred in the repair or replacement of the victim's property. In some cases, in lieu of financial restitution, the offender may provide personal services to the victim¹ or do volunteer work for a community agency.

Where the status quo cannot be restored (e.g., where a life has been taken), it is likely to take offenders a considerable amount of time to come to terms fully with such offences and to truly accept and acknowledge responsibility. When this has occurred, it is important that the offender be given a way to demonstrate his or her remorse and to make some kind of symbolic restitution as a step towards the goal of healing the "brokenness" in the community and between specific people. ("Brokenness" refers to the breach in harmonious community relations which has occurred because of the criminal incident — the peace has been broken.)

D. Incapacitation and Denunciation

It is also asserted that increasing the frequency or severity of a sanction for the purposes of incapacitating offenders will reduce crime. However, prison populations and crime rates seem to rise at the same time. Moreover, prisons themselves are not crime free; expanding their use may not actually decrease crime. In addition, the Sentencing Commission concluded that incapacitation was not a suitable *overall* sentencing goal because it is achieved primarily through the use of custodial sanctions — there would be no place for community sanctions if incapacitation were the only goal of sentencing.

Denunciation is the statement of values concerning forms of behaviour that are socially unacceptable. Denunciatory sentences are currently considered to play an important part in maintaining society's values; they are generally harsher than those which are based on general deterrence. While denunciation is a consideration of great importance for sentencing, the Sentencing Commission took the position that it cannot be characterized as a goal. Denunciation uses language to express condemnation. Thus the degree to which denunciation is achieved depends upon the publicity of the condemnation.

In the most serious cases of violence, where members of the community are likely to continue to be at risk of harm by the offender, public protection will require some form of incapacitation of the offender. In many cases, the community will require a mechanism for denouncing the criminal conduct which has occurred, whether or not there continues to be a risk to others.

Nevertheless, the Committee is convinced that offenders who are simply "locked up" (or for that matter, kept under house arrest through electronic surveillance) are unlikely to accept responsibility for their behaviour. They simply "trade time for crime", and when this exchange has been completed, offenders may reoffend. Therefore, the Committee outlines elsewhere in this report the sorts of reforms which must take place in correctional institutions if they are to make any long-term contribution to public protection.

E. Alternatives to Incarceration

The Committee reached a consensus early in its deliberations about the desirability of using alternatives to incarceration as sentencing dispositions for offenders who commit non-violent offences. Using incarceration for such offenders is clearly too expensive in both financial and social terms.

Canada relies more heavily on imprisonment as punishment for crime than do many other Western nations. Among 16 European countries and the United States, only Poland and the U.S. have higher rates of incarceration than Canada. From 1982 to 1986, Canada's rate of criminal charges has declined, while its incarceration rate has increased.² (Penitentiary populations increased by 43 percent between 1972 and 1983 and by 20 percent between 1982/83 and 1986/87.³ Despite this reality, the Committee senses that the Canadian public seems to think that fewer offenders are being incarcerated for shorter periods of time and that early release is easier to get. Generally speaking, the Canadian public is not as well-informed about sentencing practices as it should be and therefore sees a leniency in the system that is not borne out by reality.

Too many people are sentenced to incarceration for non-violent offences and non-payment of fines — this creates overcrowding and results in a violation of the proportionality principle in sentencing. Moreover, the

growth in prison populations does not appear to have reduced crime. In the Committee's view, expensive prison resources should be reserved for the most serious cases. Other than in exceptional situations, the use of incarceration for non-payment of fines should be restrained. Insofar as minor offenders are concerned, all non-carceral options should be exhausted before there is recourse to incarceration.

While few would disagree with the lengthy imprisonment of dangerous, violent criminals or some recidivists, there is a case to be made for alternative forms of sentencing for many offenders who do not pose a threat of physical harm, nor endanger the safety of individuals. Not surprisingly, then, the Sentencing Commission, following the leads of the Ouimet Committee and the Law Reform Commission of Canada, recommended that sentences of imprisonment be used with restraint and that they be reserved normally for the most serious offences, particularly those involving violence. These recommendations are consistent with the resolution on Alternatives to Imprisonment passed at the Seventh U.N. Congress on Crime Prevention and the Treatment of Offenders.

Nevertheless, the Committee is aware that some offenders incarcerated for property offences have long criminal records and in some cases do pose a risk (of violence, as well as of general recidivism) to the community. The Committee believes it is unlikely that many of these offenders have really been held accountable, other than "doing time", or have accepted responsibility for their criminal behaviour. The Committee does not wish to give the impression that it considers property offences trivial. It knows that such offences may be extremely upsetting to the victims who are affected by them. Moreover, not sanctioning such behaviour seriously can give both offenders and the public the impression that such conduct is tolerable. In the Committee's view, it is not.

In supporting the expansion and development of alternatives to incarceration, the Committee is of the view that one of the primary foci of such alternatives must be on techniques which contribute to offenders accepting responsibility for their criminal conduct and, through their subsequent behaviour, demonstrating efforts to restore the victim to the position he or she was in prior to the offence and/or providing a meaningful apology.

In the Committee's view, this notion should be uppermost in sentencing judges' minds. The issue should be addressed by both defence and

Crown counsel. The victim's views and needs should be ascertained and presented, after disclosure to the defence, to the sentencing judge. Wherever possible, victim-offender reconciliation services and, in more serious cases, alternative sentence planning services — both of which are discussed in Chapter Seven — should be engaged at the earliest opportunity to provide appropriate support to victims and to assist all parties in reaching or proposing sentencing dispositions responsive to the needs of both victims and offenders.

F. Offender Rehabilitation

The Committee is aware that some (perhaps many) offenders will not easily accept responsibility for their offences. In some cases, their "criminal thinking" will be deeply ingrained and their denial of their own responsibility will be strong. In these and other cases, offenders' own needs may be so great that they may be unable to make any meaningful restitution or efforts to repair the harm done until they have been rehabilitated. (Many witnesses used the word "habilitation" rather than "rehabilitation" to draw attention to the deficiencies in some offenders' development. These are said to be so great as to require corrections to provide basic opportunities for personal, social, educational and vocational skill development. It is not so much a matter of restoring what has been lost, but of providing what the offender has never had.)

The sentencing and correctional processes must acknowledge this and provide opportunities for offender habilitation, not simply because (as some suggest) such offenders may have themselves been victims. In the absence of so doing, it is unlikely that these offenders will be able to acknowledge their own roles in their behaviour, demonstrate to their victims and the community their efforts to restore the social balance which was disrupted by their conduct, and change their subsequent attitudes and behaviour so as to avoid criminal conduct in the future.

The rehabilitation of offenders was recommended, generally in conjunction with other goals, by a number of witnesses as the purpose of sentencing. Some witnesses suggested it as a mechanism for protecting the public from recidivistic crime; for others it had "purer" humanistic origins.

Although it is generally recognized that prisons are not suitable for rehabilitating offenders, some courts continue to sentence offenders to imprisonment for rehabilitative purposes. It has become well understood in

recent years that prisons cannot be expected to rehabilitate unwilling offenders. Hence Bill C-19 (which was never enacted) and the Sentencing Commission proposed that imprisonment not be imposed *solely* for the purpose of rehabilitation.

Unfortunately, this view has come to be associated with the view that rehabilitation should be ignored in prisons. What is intended is the following: if the primary goal of the sentence is the rehabilitation of the offender, then an appropriate community sanction should be chosen. Where a custodial sanction must be chosen (for reasons not related to rehabilitation), correctional authorities should provide opportunities for rehabilitation. This view is reflected in the strategies identified for the purpose of corrections in *Correctional Philosophy*, the first working paper of the Correctional Law Review.

Needs will vary from offender to offender and thus the range of programs and services to be provided will be large. In some cases, it will involve literacy training; in others, opportunities for vocational or post-secondary education; in many cases, addictions treatment programs will be necessary; often life skills and pre-employment counselling will be needed. These are but a few of the services and programs which have been identified for and reviewed by the Committee.

While the Sentencing Commission would permit consideration of the offender's prospects for rehabilitation as a low-level sentencing principle, it argued against rehabilitation as a sentencing goal on the ground that evaluations of various programs showed that little effect could be expected from them in lowering recidivism — particularly, in the custodial context. This view has recently been reiterated in an article by one of the commissioners and the Commission's research director.⁴

The Committee has been convinced by its hearings and institutional visits that a wide range of appropriately targeted programs and services may positively benefit offenders. The Committee believes that people can and do change; it rejects the notion that "nothing works". However, the Committee is concerned about the research which suggests that some programs may be harmful and that many appear to offer no positive benefits. Nevertheless, there appears to be no constructive way to foster positive changes in offenders beyond making the attempt. In light of the research, it is imperative that programs continue to be evaluated regularly and that new

ones build on approaches which have demonstrated success. (This will be discussed further in Chapter Fourteen.)

G. Preserving the Authority of and Promoting Respect for the Law

Ultimately the Sentencing Commission concluded that the majority of people do not need to be deterred from serious criminal behaviour, nor do they need to be rehabilitated or incapacitated. However, they do need to perceive that there is accountability for seriously blameworthy behaviour. It is the fact of holding people accountable by sanctions for behaviour which betrays core values of their community which should outline the overall purpose of sentencing. In its absence, the community will become demoralized, as individuals flout the law believing that the benefits of unlawful behaviour outweigh its costs. **The Committee agrees with the focus on accountability.**

H. Canadian Sentencing Commission Suggestions

There are genuine inconsistencies between traditional penal goals as they have been interpreted in case law to date. To avoid inconsistencies, the Sentencing Commission proposed that goals or principles which are clearly antagonistic should be excluded from the formulation of a sentencing rationale. It was of the view that principles (factors which would affect the determination of a particular sentence) should be ranked as a way of resolving dilemmas arising from the need to consider competing principles. Furthermore, it said, goals and principles which are repugnant to the nature of the sentencing process should not be assigned to it. Finally, even if a goal agrees in theory with the sentencing process, it should not be subscribed to in a fundamental way if there can be no reasonable expectation that it will be achieved to any significant degree.

The sentencing purpose proposed by the Sentencing Commission was set out earlier in this chapter. The Commission also proposed a set of principles to guide judges in the determination of specific sentences. The Committee relied on the language of these principles, to the extent they were not inconsistent with the purpose it expressed, in developing its own.

I. Summary of Committee's Views

In summary, the Committee believes that the formulation of a sentencing rationale in Canada must emphasize the contribution of

sentencing to public protection and should reflect the value of opportunities for:

- offenders to accept and demonstrate responsibility for their criminal behaviour and its consequences;
- victim reparation and victim-offender-community reconciliation;
- offenders to become "habilitated" or rehabilitated; and
- denunciation and incapacitation, where necessary.

The Committee further believes that, except where to do so would place the community at undue risk, the "correction" of the offender should take place in the community and imprisonment should be used with restraint. Finally, the Committee believes that wherever possible victims and the community should have greater involvement in sentencing and corrections.

The Committee also agrees with the President of the Law Reform Commission of Canada that sentencing must be part of an integrated, overall approach to the formulation of criminal justice policy. In the Committee's view, its proposed approach to sentencing is consistent with the purposes and principles proposed in *The Criminal Law in Canadian Society*.

Moreover, the Committee believes that criminal justice work should be grounded in the human dimension of crime (actual hurt or harm caused by offenders to victims, their families and their communities). Currently, decision-makers have little knowledge of the results of their decisions and whether or not they are achieving their desired goal. It has been suggested that the present criminal justice system is irrelevant to the human experience of crime. If this is true, it no doubt contributes to cynicism and a demoralizing lack of purpose for those who work in the field, as well as to public dissatisfaction. While there may be disagreement as to the extent that these notions are true, the Committee considers that its approach to sentencing would begin to remedy these problems.

Recommendation 5

The Committee recommends that the following be enacted in legislation as the purpose of sentencing:

The purpose of sentencing is to contribute to the maintenance of a just, peaceful and safe society by holding offenders accountable for their criminal conduct through the imposition of just sanctions which:

- (a) require, or encourage when it is not possible to require, offenders to acknowledge the harm they have done to victims and the community, and to take responsibility for the consequences of their behaviour;
- (b) take account of the steps offenders have taken, or propose to take, to make reparations to the victim and/or the community for the harm done or to otherwise demonstrate acceptance of responsibility;
- (c) facilitate victim-offender reconciliation where victims so request, or are willing to participate in such programs;
- (d) if necessary, provide offenders with opportunities which are likely to facilitate their habilitation or rehabilitation as productive and law-abiding members of society; and
- (e) if necessary, denounce the behaviour and/or incapacitate the offender.

Recommendation 6

The Committee recommends that the following principles form part of a legislated sentencing policy and be considered in the determination of an appropriate sentence:

In endeavouring to achieve the sentencing purpose, the court shall exercise its discretion in accordance with the following principles:

- (a) The sentence should be proportionate to the gravity of the offence and the degree of responsibility of the offender; further, it should be consistent with the sentences imposed on other offenders for similar offences committed in similar circumstances (including, but not limited to, aggravating and mitigating circumstances, relevant criminal record and impact on the victim);

- (b) The maximum penalty should be imposed only in the most serious cases;
- (c) The nature and duration of the sentence in combination with any other sentence imposed should not be excessive;
- (d) A term of imprisonment should not be imposed without canvassing the appropriateness of alternatives to incarceration through victim-offender reconciliation programs or alternative sentence planning;
- (e) A term of imprisonment should not be imposed, nor its duration determined, solely for the purpose of rehabilitation;
- (f) A term of imprisonment should be imposed where it is required:
 - (i) to protect the public from crimes of violence, or
 - (ii) where any other sanction would not sufficiently reflect the gravity of the offence or the repetitive nature of the criminal conduct of an offender, or adequately protect the public or the integrity of the administration of justice; and
- (g) A term of imprisonment may be imposed to penalize an offender for wilful non-compliance with the terms of any other sentence that has been imposed on the offender where no other sanction or enforcement mechanism appears adequate to compel compliance.

Recommendation 7

The Committee recommends that judges be required to state reasons for the sentence imposed in terms of the proposed sentencing goal and with reference to the proposed sentencing principles, and salient facts relied upon, so that victims, offenders, the community, correctional officials and releasing authorities will understand the purpose of the sentence and appreciate how it was determined.

Notes

CHAPTER SIX

- (1) In British Columbia, an effort was made to expand community service to provide direct service to the victim. Investigation revealed, however, that the large majority of citizens did not want victim assistance through direct service by offenders: Darryl Plecas and John Winterdyk, "Community Service: Some Questions and Answers", *Provincial Judges Journal*, March 1982, p. 11-12 and 19.
- (2) Law Reform Commission of Canada brief, pp. 16-18.
- (3) Correctional Service of Canada, *Third Report of the Strategic Planning Committee*, Solicitor General Canada, 1983; Solicitor General Canada, *Solicitor General, Annual Report, 1986-87*, Ministry of Supply and Services, Ottawa, 1988, p. 60.
- (4) J.P. Brodeur and A.N. Doob, "Rehabilitating the debate on rehabilitation", forthcoming.

Earlier in this report, there was a discussion of the over-reaction of voters to crime by the public and the likelihood of retribution for violent offenders. The fear of criminal violence has become heightened in recent years. While the Committee considers that the perception of the seriousness of violent crime is not reflected in reality, it does believe that the fear is real and must be addressed by all levels of the criminal justice system.

The Committee attributes much of the public impatience with crime to media reports which sensationalize violent cases and which often deal with multiple offences in a limited time or space. Moreover, the Committee recognizes that in recent years there has been increased reporting to police of certain offences (e.g., sexual assault) as well as changes in criminal justice record-keeping practices, both of which have also contributed to the perception of increasing violence.

Nevertheless, there has been a number of serious cases in recent years where offenders on conditional release who had been previously convicted of non-violent offences subsequently took another life. While these incidents are few in number, they are dramatic, and it is not surprising that they have contributed to public fear and a lack of confidence in the custodial, sentencing and supervision systems.

3. Public Mistrust of the Criminal Justice System

The four Howard Society of Canada members that are members of the fact of public mistrust in our criminal justice system result from both internal and external sources. In their view, each component of the criminal justice system (e.g., police, judiciary, personnel, etc.), operating within its own

CHAPTER SIX

SENTENCING REFORM: SENTENCING GUIDELINES AND MINIMUM AND MAXIMUM SENTENCES

A. Background to Reform

1. Violence: Perception and Reality

Earlier in this report, there was a discussion of the overestimation of violent crime by the public and the likelihood of recidivism for violent offenders. The fear of criminal violence has become heightened in recent years. **While the Committee considers that the perception of the prevalence of violent crime is not reflected in reality, it does believe that the fear is real and must be addressed by all levels of the criminal justice system.**

The Committee attributes much of the public misperception of crime to media reports which sensationalize violent cases and which often deal with complex situations in a limited time or space. Moreover, the Committee recognizes that in recent years there has been increased reporting to police of certain offences (e.g., sexual assault), as well as changes in criminal justice record-keeping practices, both of which have also contributed to the perception of increasing violence.

Nevertheless, there has been a number of serious cases in recent years where offenders on conditional release who had been previously convicted of homicidal offences subsequently took another life. While these incidents are few in number, they are dramatic and it is not surprising that they have contributed to public fear and a lack of confidence in the correctional, releasing and supervision systems.

2. Public Mistrust of the Criminal Justice System

The John Howard Society of Canada suggested that the problem of the lack of public trust in our criminal justice system results from both internal and external sources. In their view, each component of the criminal justice system (e.g., police, judiciary, corrections, etc.), operating within its own

particular mandate and with its own resources, has publicly expressed its inability to do its job effectively in terms of the failure of another component of the system. According to the Society, the overall impression left with the public is that the system as a whole is totally ineffective. External factors which affect public distrust, they say, are the influences of mass communications (both in the news — we get it quickly and in colour — and in entertainment), the proliferation of security system companies (which, by implication, casts doubt upon the trust we can place in the criminal justice system), and the development of crime prevention initiatives (which imply we need protection).

While the Committee agrees with the general tenor of these remarks, it is concerned that areas of the criminal justice system genuinely in need of reform be identified and proposals for reform be considered. This chapter of the report sets out a consideration of sentencing reforms.

B. Sentencing Guidelines

The perception of the prevalence of violence and the growing public mistrust of the criminal justice system have led some witnesses appearing before the Committee and some other segments of the community to call for, among other things, an increase in the availability and the quantum of mandatory minimum sentences or mandatory sentencing guidelines. The Committee was provided with evidence with respect to sentences in various parts of the country for certain offences (child abuse in Ottawa, and sexual assault in Toronto and Newfoundland, for example) which gave the Committee the impression that some judges at times do not seem to rank these offences as seriously as the Committee would have expected. Alternatively, the principle of proportionality did not seem to be the overriding factor affecting the sentences given in these cases. Impressionistic evidence with respect to spousal assault seemed to lead to the same conclusion. **The Committee believes that these particular offences should be reviewed carefully by the judiciary, Crown attorneys and, in the event a permanent sentencing commission is established, by that body.**

Not all witnesses agreed with the Sentencing Commission's view that proportionality should be *the* primary consideration at sentencing. Many took the position that sentencing is and should remain a human process. While acknowledging the importance of proportionality, these witnesses were more inclined than those who espouse the "just deserts" philosophy to place a higher value on other factors which might affect the sentencing decision.

Such witnesses tended to oppose the introduction of sentencing guidelines, except perhaps those which would be advisory only.

Other witnesses tried to take a middle course. While supporting the importance of reducing unwarranted disparity, the Canadian Psychological Association, for example, asserted the necessity of some measure of judicial discretion which would allow the individualization of the sentence. It supported in principle the development of sentencing guidelines designed to reduce *unwarranted* disparity but underlined the requirement of further consideration regarding structure. It suggested the need for a clear articulation of the social purposes of sentencing, the systematic collection and dissemination of normative sentencing data, evaluation of proposed sentencing guidelines, and further research on sentencing disparity. It also proposed that education of those judges whose decisions are erratic be a priority.

The Committee believes that sentencing guidelines have much to commend them. (In particular, it would expect to see different sentencing patterns for sexual assault, child abuse, and spousal assault under sentencing guidelines.) **However, the Committee is concerned that such guidelines are unlikely to respond adequately to the sentencing goal and principles proposed earlier in this report by the Committee and does not support their introduction at this time.**

The Committee has been persuaded of the value of offenders acknowledging responsibility for their criminal conduct and coming to terms with what has happened through positive steps designed to make reparations to the victim and/or community and to rehabilitate themselves. This strategy requires a more individualized approach to sentencing than that offered by sentencing guidelines, which are likely to be a more useful tool where the underlying goals are retributive and punitive, or perhaps where denunciation needs to be the primary consideration.

Where restoration of community harmony is paramount, sentencing guidelines, in other than an advisory form, are unlikely to be very helpful. By their very nature, they can only classify cases according to the in/out (custodial or community) nature of the sanction and the quantum of the sanction (generally, time or amount of fine or restitution). It is unlikely that they could be designed to deal with the complex variables which may determine the components of a sentencing package designed to address the sentencing philosophy proposed in the preceding chapter of this report. Such

a philosophy may actually be incompatible with the in/out and quantum issues of sentencing guidelines.

Moreover, there is some evidence that guidelines have had the undesirable effect of contributing to rapidly increasing prison populations in the United States. (The U.S. Sentencing Commission anticipates that its guidelines will lead to a doubling of the federal prison populations.) Minnesota and Washington State have calibrated their guidelines so as to prevent an increase in prison populations. In addition, guidelines which are only advisory do not seem to accomplish the desired results and some presumptive guidelines are being challenged in American courts.¹

Canadian appellate courts have greater powers to review sentencing decisions than do their American counterparts, thereby negating to some extent, in the Committee's opinion, the need to adopt guidelines in order to eradicate unwarranted sentencing disparity. The Committee also believes that current technology permits the development of sentencing data banks which could be accessed by sentencing judges.

Dr. John Hogarth appeared before the Committee to explain the Sentencing Data Base, a computerized information-storage system he designed at the University of British Columbia with support from I.B.M. Canada, the B.C. and federal governments, private foundations and the legal profession. Used by judges in a number of court buildings in British Columbia, it provides (as of March 1988) sentencing information about B.C. *appellate* cases decided over 15 years (a summary of each judgment can be called up on the screen) and about the frequency of use of various sentences (suspended sentences, with and without probation, fines and prison) and the range and frequency of custodial sentences or fines, given at *trial* over four years for various offences, categorized by gender, age, marital status and criminal record, if requested. The system also includes information about general sentencing principles, procedures and evidence, and aggravating and mitigating factors recognized in the B.C. Court of Appeal from 1982 to 1986 (full text of cases available), as well as regionally identified resources for assisting offenders. The system is continually being expanded.

While each case must obviously be decided on its own facts, the Data Base is a useful tool for trial judges; it provides quick access to basic sentencing information. Hogarth suggests that widespread use of the system will reduce unwarranted sentencing disparity without imposing guidelines. (He feels that if research does not prove this assumption correct, one will be

able to conclude that the provision of reasonably complete and simple-to-use information cannot itself promote more consistent sentencing decisions.)

One limitation on the data base is that, at present, it includes only British Columbia cases. Given the absence of sentencing appeals at the Supreme Court of Canada, sentencing policy is essentially set by provincial courts of appeal. Depending on how easy it is to retrieve existing data from provincial courts and other trial court registries, the system could be expanded to include all Canadian sentencing jurisdictions. Implementation of the Committee's previous recommendation requiring judges to state reasons for sentences could facilitate compilation of relevant sentencing information for the evolution of a more sophisticated national sentencing data base.

Moreover, the system is currently able to sort cases in relation only to a few standardized offender characteristics — gender, age range, marital status, and presence or absence of a criminal record. Determining an appropriate sentence by comparing it with other similar cases may require more sophisticated data entry, sorting and retrieval mechanisms. To reduce unwarranted disparity effectively, judges may need to know more about the nature of the criminal record, circumstances related to the offence and offender characteristics, other than gender, age, and marital status, as well as what community sanctions have been used in various circumstances. The existing system does not permit retrieval of such information. In fact, in many trial decisions, because of the absence of reasons, such information is not readily available.

A different approach has been developed by Dr. Doob and Norman Park, president of Norpark Computer Design, Inc., who submitted information to the Committee. They contend that, even with sentencing guidelines, judges need information about the use of the ranges of sentences that fall within the guidelines and about the kinds of cases that fall outside the ranges, along with the reasons for departures.

Doob and Park, in conjunction with sentencing judges, developed a data collection sheet on which sentencing judges check off the relevant attribute of sex offender and offence characteristics (all but one of which are related to the Committee's proposed principles to be considered in the determination of an appropriate sentence):

- ° criminal record (i.e., none, inconsequential or unrelated;
some but not serious; substantial);

- relative severity of this particular offence as compared to other instances of the same offence (i.e. less severe than most; about the same as most; more severe than most);
- involvement of the offender;
- aggravating or mitigating circumstances;
- impact on victim; and
- prevalence of the offence in the community.

Judges may also record additional comments on the sheet. These sheets provide a sentencing data base with respect to offences proceeded with by indictment. Court of appeal summaries have been added to the system.

The computer program gives feedback on thirty-four of the most common *Criminal Code* and *Narcotic Control Act* offences dealt with in provincial courts. The distribution of sentences given to a judge using the system is divided into up to ten categories and presented in four columns — the distribution of sentences ordered at trial in each of the judge's own province and the participating provinces collectively (initially, B.C., Saskatchewan, Manitoba, P.E.I. and Newfoundland), as well as those made in the courts of appeal in each judge's own province and the participating provinces collectively. The frequency of distribution is given for various forms of sentences: discharge, probation, restitution, compensation; community service order; fine; six lengths of imprisonment less than two years and imprisonment for two years or more; and composite sentences (one sentence for more than one offence). Judges may review individual cases or subsets of cases on the screen or have them printed. They may also print sample distributions or the full information recorded by the sentencing judge on any case.

Seventy-nine percent of 414 trial judges surveyed by the Canadian Sentencing Commission indicated that it would help them to have better information about current sentencing practices. Seventy percent felt a computerized system providing information about individual cases would be helpful. Currently judges have too little information in an easily usable form and too much in a form that cannot be used effectively.

Nevertheless, the Committee believes that useful work on the collection of sentencing data can begin and that much work can be done

towards developing sentencing guidelines. Such information would assist the judiciary whether or not formal guidelines are ever implemented. Moreover, the Committee also takes the position, contrary to that of the Sentencing Commission, that the use of sentencing guidelines for the purpose of reducing unwarranted sentencing disparity which occurs because of judicial practices is not inconsistent with maintaining a well-structured conditional release system. (However, the Committee acknowledges that some disparity occurs at present because offenders with longer sentences who obtain parole seem to do so at an earlier stage in their sentences than those with shorter sentences.)

While opposing the introduction of presumptive or mandatory sentencing guidelines at this time, the Committee favours the development of *offence rankings*, as described on p. 39. It is in general agreement with the groupings of offences proposed by the Sentencing Commission on pages 494 to 515 of its report (but does not agree with the proposed maximums). Furthermore, the Committee believes that the Department of Justice should consult widely on the specific proposals before adopting them, particularly with respect to offences which constitute sexual assault, child abuse and spousal abuse. Similarly, the proposed aggravating and mitigating factors ought to have more community input.

These tasks should be carried out by a permanent sentencing commission. There is a need for an independent body to collect and disseminate sentencing information. It should also fulfill an important role with respect to public education about sentencing. It has also been suggested that it study increasing community involvement in sentencing, that it gather sentencing data with respect to race and gender, and that women and Natives be included in the membership of the commission.

Recommendation 8

The Committee recommends that only advisory guidelines be developed at this time and that priority be given to developing first those which would be applied to the most serious offences.

Recommendation 9

The Committee recommends implementation of the following recommendations of the Sentencing Commission as to the

development of such guidelines and the operation of a permanent sentencing commission:

- (a) that four presumptions be used to provide guidance for the imposition of custodial and non-custodial sentences:
 - (i) unqualified presumptive disposition of custody;
 - (ii) unqualified presumptive disposition of non-custody;
 - (iii) qualified presumptive disposition of custody; or
 - (iv) qualified presumptive disposition of non-custody. (Rec. 11.5)
- (b) that the following list of aggravating and mitigating factors be adopted as the primary grounds to justify departures from the guidelines:

Aggravating Factors

1. Presence of actual or threatened violence or the actual use or possession of a weapon, or imitation thereof.
2. Existence of previous convictions.
3. Manifestation of excessive cruelty towards [the] victim.
4. Vulnerability of the victim due, for example, to age or infirmity.
5. Evidence that a victim's access to the judicial process was impeded.
6. Existence of multiple victims or multiple incidents.
7. Existence of substantial economic loss.
8. Evidence of breach of trust (e.g., embezzlement by [a] bank officer).
9. Evidence of planned or organized criminal activity.

Mitigating Factors

1. Absence of previous convictions.

2. Evidence of physical or mental impairment of offender.
3. The offender was young or elderly.
4. Evidence that the offender was under duress.
5. Evidence of provocation by the victim.
6. Evidence that restitution or compensation was made by [the] offender.
7. Evidence that the offender played a relatively minor role in the offence. (Rec. 11.8)

(c) ... that the following principles respecting the use of aggravating and mitigating factors be incorporated to the sentencing guidelines:

Identification: when invoking aggravating and mitigating factors, the sentencing judge should identify which factors are considered to be mitigating and which factors are considered to be aggravating.

Consistency: when invoking a particular factor, the judge should identify which aspect of the factor has led to its application in aggravation or mitigation of sentence. (For example, rather than merely referring to the age of the offender, the judge should indicate that it was the offender's *youth* which was considered to be a mitigating factor or the offender's *maturity* which was considered to be an aggravating factor. This would prevent the inconsistent use of age as an aggravating factor in one situation and as a mitigating factor in a comparable situation.)

Specificity: the personal circumstances or characteristics of an offender should be considered as an aggravating factor only when they relate directly to the commission of the offence. (For example, a judge might consider an offender's expertise in computers as an aggravating factor in a computer fraud case but the above principles would preclude the court from considering the lack of education of a convicted robber as an aggravating circumstance.)

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.

The Committee is aware that mandatory minimum sentences are now constantly subject to Charter challenge. While some, relatively short minimum sentences have been upheld, the Supreme Court of Canada in *R. v. Smith*, held in 1987 that section 5(2) of the *Narcotic Control Act*, providing for a mandatory minimum sentence of seven years for importing a narcotic, constituted cruel and unusual punishment, thereby breaching section 12 (and not justified under section 1 of the Canadian Charter of Rights and Freedoms. In assessing whether penalties are grossly disproportionate (as opposed to merely excessive), so as to constitute cruel and unusual punishment, Chief Justice Dickson and Mr. Justice Lamer suggested considering the gravity of the offence, the personal characteristics of the offender, and the particular circumstances of the case, as well as the effect of the sentence (including nature, length and conditions under which it is served), whether it is necessary to achieve a valid penal purpose, whether it is founded on recognized sentencing principles and whether valid alternative punishments exist.

The Court found that section 5(2) of the *Narcotic Control Act* failed the proportionality test, for it led to the imposing of a totally disproportionate term of imprisonment in that it covered many narcotic substances of varying degrees of danger, totally disregarded the quantity imported and treated as irrelevant the reason for importing and the existence of any previous convictions. In the Court's opinion, it is not necessary to sentence the minor offender to seven years in prison to deter the serious offender. The means employed to achieve the legitimate government objective of controlling the importation of drugs impairs the right protected by section 12 of the Charter to a greater degree than necessary. The seven-year minimum sentence becomes cruel and unusual because it must be imposed regardless of the circumstances of the offence or the offender; its arbitrary imposition results in some cases receiving a legislatively ordained grossly disproportionate sentence (e.g. for importation of a small quantity of cannabis for personal use).

Mr. Justice LeDain did suggest, however, that section 5(2) of the *Act* might be restructured in such a manner, with distinctions as to the nature of the narcotic, quantities, purpose, and possibly prior conviction, as to survive further challenge. He supported the test set out by the dissenting Mr. Justice McIntyre:

A punishment will be cruel and unusual and violate section 12 of the Charter if it has any one or more of the following characteristics:

- (1) The punishment is of such character or duration as to outrage the public conscience or be degrading to human dignity;
- (2) The punishment goes beyond what is necessary for the achievement of a valid social aim, having regard to the legitimate purposes of punishment and the adequacy of possible alternatives; or
- (3) The punishment is arbitrarily imposed in the sense that it is not applied on a rational basis in accordance with ascertained or ascertainable standards.

At present, the Committee does not recommend the abolition of minimum sentences. Specifically, it believes that minimum life sentences should be retained for murder and high treason and it does not agree with the Sentencing Commission's recommendations that parole ineligibility periods for first and second degree murder be reduced from 25 years to 15-25 years and from 10-25 years to 10-15 years, respectively. Nevertheless, the Committee does not generally support the introduction of further minimum sentences. For the most part, it prefers the use of advisory sentencing guidelines to address concerns related to specific offences. However, the Committee believes that the public interest requires that repeat violent sexual offenders be sentenced to severe minimum periods of imprisonment. The Committee wishes to ensure that sentences for repeat violent sexual offenders result in such offenders serving at least ten years in prison.

Although the majority of the Committee believes that the number of minimum sentences *per se* should not be increased, there is consensus that both public protection and the expression of public revulsion for such conduct (denunciation) require that the minimum time to be served in prison by offenders who have more than once sexually assaulted others with violence be subject to legislative rather than judicial and administrative control. While recognizing that all sexual assaults constitute serious violations of the person and are likely to have long-lasting consequences, for this purpose, the Committee intends not to include in its meaning of violence those offences which are committed through enticement or advantage, but to focus on the more brutal offences.

The Committee is of the view that properly structured amendments to the *Criminal Code* could meet the tests described in *R. v. Smith*. Given the nature and circumstances of the offence, particularly its repetition, the Committee believes that the public conscience would not be outraged, nor would human dignity be degraded, especially when considered in light of other sentences currently provided for in Canadian law and the seriousness of the offence. In the Committee's opinion the proposed amendment does not

exceed what is necessary for the achievement of the valid social aims of protecting the community, at least temporarily, by incapacitating the offender, demonstrating society's abhorrence of the offence, and communicating to the victim and the community that such conduct will be dealt with severely. (To the extent that it is possible to achieve deterrence in such circumstances, the sentence would also support the traditional sentencing aim of deterrence.) Public confidence in present sentencing practices in this area, particularly among women who as a class are invariably the victims of such attacks, has been eroded. Existing alternatives appear to be insufficient to ensure public protection from these repeat violent sexual offenders for reasonably long periods of time and demonstrating the community's disapproval of such offences. No other alternative appears to be appropriate to achieve the desired results. The proposed punishment is not arbitrary — it would apply to a narrowly defined class of offenders in narrowly defined circumstances for a very grave offence. The sentencing judge would retain control of determining the total sentence, so that more serious offences may be distinguished from those which appear less brutal, although still violent, and to take account of various offender characteristics. The proposed penalty is consistent with the sentencing purpose and principles proposed by the Committee in Chapter Five. In the Committee's opinion, the rationale for the present penalty for second degree murder should suffice in supporting the proposed penalty for repeat violent sexual offenders.

Recommendation 10

The Committee recommends that the minimum sentence for all offenders convicted of the second or subsequent offence for sexual assault involving violence be ten years and that the parole ineligibility period be established legislatively as ten years, regardless of sentence length.

Recommendation 11

To reach a public consensus on which offences or offenders should be subject to the aforementioned minimum parole eligibility period, the Committee recommends that the Department of Justice consult widely on this issue.

D. Maximum Sentences

Maximum sentences are required to limit the maximum deprivation of liberty that the state may impose on an offender. This concept is fundamental to democratic societies.

Most, but not all, witnesses agreed that the present maximum sentences need to be reviewed and, for the most part, reduced. The Committee agrees with the Sentencing Commission that the present maximums, with unstructured judicial discretion, contribute to wide sentencing variation, judge shopping and lack of certainty. Moreover, in the context of the Sentencing Commission's recommendations for the abolition of parole and the reductions of the duration of day release and the remitted portion of the sentence, the Sentencing Commission's proposed maximums make sense.

However, unlike the Sentencing Commission, the majority of the Committee feels that parole has considerable value for both the public and offenders, even though the Committee holds that the availability of day parole and full parole early in the sentence seems to undermine the meaning of a sentence of imprisonment and to contribute to public confusion, and ultimately public distrust, about sentencing and release. For this reason, the Committee has been concerned about the suitability of the present legislative parole ineligibility periods. (Its comments with respect to this are to be found in Chapter Twelve.)

Therefore, it is the opinion of the Committee that public confidence in the criminal justice system would not be enhanced by a reduction of maximum sentences.

Recommendation 12

The Committee recommends that the Department of Justice continue to consult with the public (not just those with a particular interest in criminal justice issues) with respect to the Sentencing Commission's recommendations in this area and that interested individuals and organizations be encouraged to comment on the specific rankings proposed by the Sentencing Commission.

Notes

- (1) Andrew von Hirsch, "Structuring Sentencing Discretion: A Comparison of Techniques", a paper presented to the Conference on the Reform of Sentencing, Parole and Early Release, Ottawa, August 1-4, 1988.

A. The Goals and Failure of Imprisonment

It is now generally recognized that imprisonment has not been effective in rehabilitating or reforming offenders, has not been shown to be a strong deterrent, and has achieved only temporary public protection and given retribution, as the lengths of prison sentences handed down for the same type of crime.

Some imprisonment generally offers the public protection from original behaviour for only a limited time, rehabilitation of the prisoner is of great importance. However, prisons have not generally been effective in reforming their inmates, as the high incidence of recidivism among prison populations shows.

The use of imprisonment as a main response to a wide range of offences against the law is not a tenable approach in practical terms. Many offenders are neither violent nor dangerous. Their behaviour is not likely to be improved by the prison experience. In addition, their presence in jails and penitentiaries entails serious problems of safety and administration, and possibly increased future risks to society. Moreover, modern technology may now permit the monitoring of the conduct of some offenders who previously might have been incarcerated for rehabilitation or denunciation purposes. Alternatives to imprisonment and intermediate sanctions, therefore, are increasingly viewed as necessary developments. The Commission supports this view and reflects it in its proposed sentencing principles.

B. Alternatives and Intermediate Sanctions

A number of such alternatives are now in use. Some, such as parole and probation, date back to the 19th century, while others are of relatively recent origin. (Boxes of further background information.) Sentencing alternatives being used in Canada include diversion, fines, absolute and

CHAPTER SEVEN

SENTENCING REFORM: SENTENCING ALTERNATIVES AND INTERMEDIATE SANCTIONS

A. The Goals and Failure of Incarceration

It is now generally recognized that imprisonment has not been effective in rehabilitating or reforming offenders,¹ has not been shown to be a strong deterrent,² and has achieved only temporary public protection and uneven retribution, as the lengths of prison sentences handed down vary for the same type of crime.

Since imprisonment generally offers the public protection from criminal behaviour for only a limited time, rehabilitation of the offender is of great importance. However, prisons have not generally been effective in reforming their inmates, as the high incidence of recidivism among prison populations shows.

The use of imprisonment as a main response to a wide variety of offences against the law is not a tenable approach in practical terms. Most offenders are neither violent nor dangerous. Their behaviour is not likely to be improved by the prison experience. In addition, their growing numbers in jails and penitentiaries entail serious problems of expense and administration, and possibly increased future risks to society. Moreover, modern technology may now permit the monitoring in the community of some offenders who previously might have been incarcerated for incapacitation or denunciation purposes. **Alternatives to imprisonment and intermediate sanctions, therefore, are increasingly viewed as necessary developments. The Committee supports this view and reflects it in its proposed sentencing principles.**

B. Alternatives and Intermediate Sanctions

A number of such alternatives are now in use. Some, such as parole and probation, date back to the 19th century, while others are of relatively recent origin. (Fines, of course, originated even earlier.) Sentencing alternatives being used in Canada include diversion, fines, absolute and

conditional discharges, suspended sentences, supervision of offenders in the community by means of probation, community service orders, fine option programs, restitution, temporary absence passes and victim-offender reconciliation programs. Community dispute mediation centres, community resource centres, halfway houses and therapeutic communities, such as facilities for alcoholics, are also in operation. These programs, developed more extensively in some parts of the country than in others, have met with varying degrees of success.

Over the last 15 years, the use of restitution and community service orders for non-violent offenders has met with considerable approval. These forms of sentences recognize the involvement and grievance of the victim and provide some measure of redress, at the very least in a symbolic way. Moreover, they appear to offer more hope than does imprisonment of achieving the eventual rehabilitation of the offender. More recently, intensive probation supervision, home confinement and alternative sentence planning and management have offered opportunities in the form of intermediate sanctions which permit the diversion from incarceration, or the release back to the community earlier, of offenders who might otherwise be, or who have been, incarcerated. Processes which bring victims and offenders together seem to offer both the greatest hope of sensitizing offenders to the impact of their criminal conduct on their victims and the best opportunities for them to take responsibility for their behaviour. As such, they are consistent with the Committee's proposed purpose of sentencing.

Nevertheless, our knowledge about how to select the most appropriate community sanctions for individual offenders remains at a relatively rudimentary state. The Canadian Sentencing Commission identified the need for further research to be conducted with respect to the use and evaluation of community sanctions. In particular, it was concerned about the "widening of the net effect" whereby the introduction of a new sanction (for example, home confinement) might not act as an alternative to incarceration if it were to be applied to offenders who would have been subject otherwise only to probation, rather than to imprisonment. When net widening occurs (as it appears to have done with respect to the use of community service orders), costs of community sanctions are increased, prison populations (and, therefore, costs) do not decrease, and the liberty of offenders who remain in the community may be more severely constrained than previously.

The Canadian Sentencing Commission recommended that guidelines be developed for the use of community sanctions in their own right as

alternatives to incarceration. Such guidelines would assist the judiciary in the selection of a particular community sanction in two aspects of decision-making: choosing a community sanction, as opposed to incarceration (Rec. 12.10); and choosing one community sanction instead of another (Rec. 12.11). These recommendations are rooted in the notions that:

- broad discretion, not guided by explicit standards, is a bad thing;
- punishment should be graduated to reflect the degree of reprehensibility of the conduct being sanctioned; and
- maintaining proportionality requires the ability to compare the severity of sanctions.

Important as these notions are, they, like sentencing guidelines, do not adequately fit the Committee's concept of a sentencing purpose.

Some witnesses encouraged the Committee to consider whether a particular alternative:

- constitutes a true alternative to imprisonment or whether it is more likely to be used as an "add-on" to existing community sanctions, thereby "widening the net" rather than reducing reliance on incarceration;
- is a viable alternative for special groups, such as mentally disordered offenders and persistent, petty offenders;
- is likely to be more effective than incarceration in terms of cost, risk of re-offending before and after sentence expiry, public and victim perception of justice, and humane treatment of the offender; and
- requires the threat of imprisonment as a backup to the community sanction and, if so, what the implications of that are.

In considering alternatives to incarceration, generally, the Committee is aware that the following issues must also be considered:

- whether judges will use the full range of alternatives;

- whether all alternatives are uniformly available; and
- whether a proliferation of options provides opportunities to “tailor” appropriate sanctions for particular offenders or leads to confusion as to which sanction a judge should choose in particular circumstances.

It has been suggested that a proliferation of sentencing alternatives leads to creative individualized sentencing, which is good insofar as it decreases the reliance on incarceration but harmful in the sense that the broad discretion to choose punishment, in the absence of explicit standards, leads to sentencing disparity. Those who hold this view maintain that punishment must be graduated to reflect the degree of reprehensibility of the offender's conduct. Proportionality requires an ability to compare the severity of penalties, and highly individualized sentences are difficult, if not impossible, to compare. They recommend concentrating on a few kinds of standardized non-custodial sentences, such as the use of “day fines” (scaled to offenders' incomes) and community service (where the number of hours ordered can be scaled according to offence severity).³ Others argue, however, that all we can really achieve in sentencing is a sense of “rough justice”. They ask whether the pain of one year's imprisonment for a 30-year old is equivalent to that for a 70-year old; or, how different is one year in a minimum security camp compared to one year in a maximum security prison.⁴

A number of sentencing alternatives are discussed in this chapter, some in more detail than others. Community service orders are discussed extensively because of the prevalence of their use, the availability of literature on the subject, and because a number of witnesses before the Committee raised particular issues concerning their use and proposed recommendations. Alternative sentence (or client specific) planning and victim-offender reconciliation programs are also treated in depth because the Committee is convinced that they present opportunities to hold offenders accountable for their behaviour consistent with the principles the Committee has adopted, although their present use is far from widespread. Similarly, intensive probation supervision and home confinement offer promise as mid-range sanctions. Other sentencing alternatives the Committee feels are particularly valuable are discussed in a more concise manner. (In doing so, the Committee does not intend to imply that other alternatives not mentioned here are without merit.)

The Committee feels it is important to describe sentencing alternatives and intermediate sanctions in this report because it anticipates the readership will be relatively broad and few previous national reports have highlighted these options. Moreover, the approaches described in this chapter are not limited to being used as sentencing options. They have much to commend them in the release context as well.

1. Community Service Orders

a. Historical Perspective

Community service as a punishment for crime may be said to have originated in a British slavery statute which provided that able-bodied vagrants who would not work would be enslaved to their former masters (or, in their absence, to the municipality) for a period of two years.⁵ Other forms of "community service" used instead of imprisonment included impressment for service in the navy or army, or transportation to a penal colony for settlement, such as Australia. In modern times, the substitution of work for penal sanctions has taken the form of public or community work. Today the use of community service is widespread, although there is still considerable discussion about its usefulness and desirability.

b. What is Community Service?

As an alternative to jail terms, sentences involving community service require offenders to perform without pay prescribed work in the community for specific periods of time. Offenders may be required, for example, to help the underprivileged or disadvantaged, to shovel snow, clean parks, work in children's centres or deliver meals on wheels to the elderly. The essential characteristic of the work required is that it be of benefit to the community.

Opportunities for community service now exist in all Canadian provinces and territories except New Brunswick. Generally funded by provincial correctional authorities, these services may be coordinated by probation agencies themselves or contracted through them to private agencies or individuals.

c. Advantages of Community Service Orders

There are many advantages for the offender in the community service program. They include the possibilities for new relationships, new learning and job training, and the chance to develop good work habits and to make constructive use of time. There is also an important economic advantage for the taxpayer when community service is used as a true alternative to incarceration, rather than as an "add on" to some other community sanction which would have been selected by the judge instead of imprisonment. Community service punishes offenders, in that their free time is restricted, as well as offering them a chance to reform themselves.

From the beginning, this sentence has enjoyed a wide measure of support both from the public and people involved in the criminal justice system. Over the years, it has attracted little controversy. Experience in British Columbia and in Ontario bears out reports that community service appears to be reasonably successful wherever it is carried on.⁶

Research in British Columbia in 1981 indicated that the large majority of offenders sentenced to community service (CS) felt that they were getting something out of the program, that their work was appreciated, "that CS will help them stay out of trouble, and that they are paying back the community for having committed an offence". It was found that the attitudes of offenders were changed through participation in community service and that, regardless of type of offence, the offenders with the most positive attitudes were those who had completed the greatest number of hours of service.

In Ontario, increasing use has been made in recent years of community service orders for people convicted of a wide range of offences. The Correctional Services Minister of Ontario stated in November 1984 that 20 percent of offenders sentenced to do community work actually had done more than ordered, staying on either to finish a job or becoming personally involved in volunteer efforts. In addition, it has been found that this work experience has led to subsequent job opportunities for some individuals.

d. Relationship of Community Service to Sentencing Goals

Community service does not incapacitate the offender to any serious degree. Although it is to an extent punitive, it is not designed as a form of retribution or intended to cause suffering. Rehabilitation of the person

sentenced is only part of the intent of this program. Offenders are required to be responsible not merely for themselves but also for the effect of their behaviour on others. This form of sentence, therefore, represents not only a change in method of punishment but also a change of goals:

[Community service fosters] an *awareness of the needs of others*, an awareness "that the members of society are interdependent" ... in short, ... [the object is] to change the offender's basic moral attitudes toward his [or her] society.⁷ (our emphasis)

This goal represents a desire not merely to repair damage done but to express the principle of justice in social relations.

The Community Service Order is *a means of providing restitution to society* for the harm caused by the offender. ...

This form of penalty, a very useful alternative to the traditional methods of sentencing, *emphasizes the offender's responsibility to society* in a direct way.⁸ (our emphasis)

These goals are entirely consistent with the sentencing goal proposed by the Committee.

e. Issues of Concern

i. Legislative Authority for Community Service Orders in Various Jurisdictions

The sentence of community service was adopted in Canada during the late 1970s after its legislated introduction in England, although no specific legislative provision for it exists here. It has been regarded as an appropriate disposition for offenders convicted of a wide range of less serious offences, and is ordered, generally on consent (as in other Commonwealth countries), pursuant to section 663(2)(h) of the *Criminal Code* as a condition of probation. The use of the condition must, of necessity, be based on practical considerations relative to the ability of the offender to perform the work and the community to provide the avenues of enterprise.

Community service was introduced by legislation in Georgia in 1982. It was intended to "pointedly impress upon the probationer the collective concern of society over his [or her] criminal activity," and to promote a "work-ethic approach to punishment".⁹ The responsibilities of the community agency, the community service officer, the offender and the

judiciary are all clearly specified. Those of the latter include setting out the number of hours of community service, approving agencies for whose benefit the work may be done, and determining the appropriate action to be taken in the event that either the offender or community agency violates the court order or work agreement.

Some community service advocates have suggested that provision be made for a community service order to be a separate sanction, instead of a condition of a probation order. Bill C-19 (which died on the Order Paper in 1984) endeavoured to make a community service order an independent sentencing option, consistent with the recommendations of the Law Reform Commission of Canada and the Sentencing Commission. If this were to take place now, it would focus on the reparative function, in contrast to the control and rehabilitative functions of probation. The argument may also be supported on the basis that, in the existing practice, some administrative inconsistencies about eligibility, duration and type of service have created a potential threat to the equality of justice.

ii. Maximum Number of Hours of Community Service

In Canada, there is no ceiling on the number of hours which may be ordered by the sentencing judge; nor are there any guidelines with respect to specific offences. Consequently, sentences vary considerably for similar offences (sentencing disparity) and some sentences are, in the opinion of the Community Service Order Coordinators' Association of Ontario (hereafter, "the CSO Association"), onerous on the offender and a burden to the community.

Most American states do not limit the number of hours which may be ordered. The CSO Association advised the Committee that excessive hours (in the thousands) have been ordered there and cautioned that this trend could be followed in Ontario. (Adult offenders in Ontario have received orders as high as 800, 1,000 and 3,000 hours.) It feels that performance of more than 200 hours of community service per year is unrealistic.

The CSO Association fears that community agencies which accept offender-volunteers will be less inclined to do so where a large number of hours has been ordered. Furthermore, excessive hours may decrease the offender's motivation and ultimately contribute to a poor attitude towards placement or a decrease in reliability.

In Quebec, as in Britain and a number of other countries, a limit has been placed on the term of duration.¹⁰ Most of the American states that have adopted community service do not specify such a limit. The latter arrangement is said to permit flexibility to relate the severity of the order to the seriousness or extent of harmfulness of the offence to the community.

iii. Disparity

The Kingston chapter of the John Howard Society submitted a brief to the Committee in which it identified the great disparity in the number of hours of community service required of different offenders. Judges have full discretion to impose any number of hours they wish. They receive no guidelines in this regard. The result, therefore, is a wide disparity of orders from judge to judge and even great inconsistency by the same judge. Research tends to suggest that the number of hours ordered is unrelated to age, socio-economic status, etc. The only variable found by Dr. Ken Pease, a British researcher who appeared before the Committee, that did have some effect on the length of community service orders issued was employment: unemployed offenders tended to receive longer orders than employed offenders.

There may also be regional or other disparities in how frequently community service orders are used and in their enforcement.

iv. Assessing/Excluding Some Offenders

The CSO Coordinators' Association of Ontario indicated to the Committee that some sexual offenders have received community service orders, although it is a rare occurrence for *serious* sexual offenders to be so referred. Nevertheless, the community is not receptive to receiving such offenders to perform community service, even though the offender may be suitable in terms of attitude and other criteria.

The CSO Association fears that inappropriate referrals to community service placements will affect the credibility of the whole program. It suggests that offenders found guilty of sexual assault, or other sexual or violent offences, should be assessed by CSO programs for their suitability *prior* to sentencing. (In fact, it would prefer that *all* possible CSO candidates be assessed prior to sentencing.)

Currently, inappropriately sentenced offenders are either not given a placement or they may be placed. In the former case, the sentence may be neither completed nor enforced. In the latter, the community is placed at risk.

The John Howard Society of Kingston had similar concerns. Its brief noted that judges rarely request an assessment to determine whether it would be appropriate to sentence a particular offender to a community service order. The Society has had experiences with people who have long-term, severe drinking problems and who show up at their placements while intoxicated.

Another example of difficulties with such orders is their impact on mothers with limited incomes. The need for childcare arrangements in these cases may seriously limit a person's ability to participate in the program. Similarly, a person who works long hours at his or her job and has family responsibilities can also find such an order stressful and may resent it. Many people in this situation prefer to pay a fine. The Society argues that, in many cases, a fine is more appropriate than probation or imprisonment.

v. Prison Alternative or Net Widening?

In theory (and, in some cases, in law), community service orders are to be regarded as alternatives only to imprisonable offences. Therefore, no one is supposed to be sentenced to a community service order who otherwise would not have received a comparable prison sentence, had such orders not been available. However, sometimes community service appears to be used as an "add-on" to probation, thereby "widening the net".

Although in the past the John Howard Society of Kingston has supported community service orders as alternatives to incarceration, it now feels the original purpose of the programs has not been achieved:

It is our belief that judges have, for the most part, used Community Service Orders to expand the intensity of community sanctions. Generally, they do not use Community Service Orders as an alternative to incarceration. (Brief, p. 2)

In fact, it states, between 1977 and 1983 while the number of community service order hours has increased, prison populations have not declined.

Pease also pointed out that there is a considerable gulf between the rhetoric and the reality of community service orders. He cited numerous studies that examined this question from different perspectives, in various legal systems, and he found:

There is ... remarkable consensus, wherever the proposition has been put to the test, that community service orders do not replace custody in a clear majority [45%-55%] of cases in which they are imposed, even where it is clearly stated that the order was introduced for such a purpose.¹¹

In some jurisdictions, community service orders are explicitly stated to be an alternative to incarceration. Georgia considers community service, which is to be completed in addition to regular employment, to represent a middle-ground punishment between probation and incarceration. To ensure that such an order is used as a true alternative, it has been suggested that offenders should be selected using a "prison risk-assessment model", as they are in North Carolina. It has also been suggested that community service orders of more than a certain amount (e.g., 100 hours) should clearly be an alternative to custody, while those of a lesser amount need not be.¹²

In some jurisdictions, community service orders have been developed as an alternative to fines (particularly in the form of fine option programs).¹³ Pease suggested that there would be no need for community service orders if a fair fining system, which affected both rich and poor equitably, could be devised. (He suggested that the Swedish system of day-fines, which calculates the penalty based on the offender's income and severity of offence, might be one such system.) Until such a system is devised, however, community service orders should exist alongside inefficient fining systems. **The Committee believes that community service orders have a different kind of value than fines and should be used on their own or in combination with other community sanctions, even where they are not true alternatives to incarceration, provided that the judge is satisfied that a discharge, restitution, fine, or simple probation order alone would not achieve the purpose of sentencing proposed by the Committee.**

vi. Evaluation

Pease attempted to assess the success of community service orders by looking at public attitudes towards such orders (discussed previously) and the rate of reconviction of offenders receiving such sentences. In one of the few studies which looked at the reconviction rates of offenders sentenced to

community service orders, Pease noted that offenders sentenced to such orders tended to have a lower rate of recidivism than those receiving other sentences. Nevertheless, he considered the results to be inconclusive.

Recommendation 13

The Committee recommends that legislation be enacted to permit the imposition of a community service order as a sole sanction or in combination with others, provided that the judge is satisfied that a discharge, restitution, fine or simple probation order alone would not achieve the purpose of sentencing proposed by the Committee.

Recommendation 14

The Committee recommends that guidelines for the number of hours of community service which should be imposed in various circumstances be developed to decrease sentencing disparity.

Recommendation 15

The Committee recommends that a legislated ceiling of between 300 and 600 hours (over three years) be established for community service sentences for adult offenders, provided that judges be permitted to exceed the ceiling where a greater number of hours is agreed to by the offender as a result of victim-offender reconciliation or an "alternative sentence plan" proposal and reasons are provided by the judge.

Recommendation 16

The Committee recommends that legislation be adopted to exclude sexual and violent offenders from eligibility for community service orders unless they have been assessed and found suitable by a community service program coordinator.

2. Alternative Sentence Planning

a. The Canadian Experience

Alternative Sentence Planning is a unique Canadian project of the Children's Home of Winnipeg, an agency built upon "a commitment to community-based alternatives to prevent institutionalization, to assist the institutionalized to re-enter society and to work together with individuals to help them develop their potential". The project receives demonstration project funding from federal, provincial and municipal sources. Andrew Smith, the Executive Director of the Project, appeared before the Committee.

The goal of Alternative Service Planning is to reduce imprisonment by providing a detailed alternative acceptable to the court and the offender. The Service is based on the belief that many people are imprisoned simply because of a lack of realistic alternatives being presented to the court. Alternative sentence plans are based on six principles:

- sentencing should promote *responsibility* by the offender (for his or her actions by encouraging him or her to be accountable for the harm resulting from the offence) and by the community (for the management of the criminal behaviour);
- sentencing should be *restorative* — it should correct the imbalance, hurt or damage caused by the offence;
- the sentence should be *reparative*, attempting to repair the physical, emotional or financial harm caused by the offence;
- the sentence should, wherever possible, attempt to bring *reconciliation* between the victim and the offender;
- sentencing should be *rehabilitative* by providing the offender with opportunities to deal with the issues that have contributed to the offence; and
- there should be a *democratization* of the criminal justice system to return justice to the community and place it in the immediate context of both the victim and the offender.

The agency's program is to present alternative sentence plans to sentencing judges for adult and young offenders. It accepts cases on the basis of three criteria:

- the offender can reasonably expect to receive a prison sentence of three months or more (so the plan serves as a true alternative to prison, not an "add-on");
- the offender has pleaded guilty or intends to do so (the offender must accept responsibility for the offence); and
- the offender has demonstrated a willingness to participate in an alternative sentence plan.

The staff prepares a detailed social and criminal history of the offender and advocates on his or her behalf for such social and treatment services, if any, that may be required and obtained on a voluntary basis. A specific course of action is then prepared (including a statement of what actions have already been taken) and proposed to the sentencing judge:

Typically, such proposals try to provide appropriate reparation or restitution to the victim of the offence or the community, and present to the sentencing judge, options, consistent with recognized sentencing practices, that would satisfactorily resolve the offence and satisfy the Court as being an appropriate sentence for the specific offence. (Brief, p. 6)

Alternative Sentence Planning suggests that victims will be best served:

- by an approach which does not protect the accused from the suffering of the victim;
- when a sentence contains a consequence for the offender that attempts to restore either the physical or emotional damage suffered by that victim; and
- when the sentence enables the offender to deal with the issues that led to the offence.

b. The American Experience

Alternative Sentence Planning is somewhat more widespread in the U.S. where it is known as Client Specific Planning. Herb Hoelter, Director of

the Client Specific Planning Program of the National Center of Institutions and Alternatives, based in Washington, also appeared before the Committee to explain its approach.

Client Specific Planning requires the offender to be held accountable for the crime. Controls and "paybacks" are two aspects of each plan. Each plan *must* demonstrate the means by which the offender's actions will be monitored (e.g., urinalysis, supervision, etc.), so that any deviations from the court's order will be immediately detected. "Paybacks" may be restitution directly to the victim or indirectly to the community. In no case is the public safety to be compromised. When necessary, the Center may recommend some form of incarceration. (This occurs in about 15 percent to 20 percent of cases.)

The sentencing goal of retribution is achieved through long-term, unpaid labour (community service), financial restitution to the victim or substitute victim, and/or payments to victim compensation funds.

Rehabilitative goals are also established in the plan. Although this goal is given a secondary emphasis (compared to accountability and retribution), it is addressed comprehensively. It may involve in-patient or out-patient treatment (for addictions or other serious problems) and/or counselling for financial, marital, employment or other difficulties. These rehabilitative components are coordinated with other elements of the plan.

The Center claims that its clients have a lower re-arrest rate than offenders whose cases are disposed of otherwise. Compliance with the plans is high.

c. The Committee's Opinion and Recommendations

The Committee was impressed with these approaches to sentencing alternatives. Their goals are consistent with the purpose of sentencing the Committee has proposed. The Committee has considered the balance which must be struck in utilizing alternatives to incarceration wherever appropriate and ensuring that sentencing dispositions communicate to all offenders and the community the seriousness of breaches of the criminal law. **The Committee would like to see further application and evaluation of these approaches in Canada.**

Recommendation 17

The Committee recommends that the federal government, preferably in conjunction with provincial/territorial governments, provide funding to community organizations for alternative sentence planning projects in a number of jurisdictions in Canada on a pilot project basis.

Recommendation 18

The Committee recommends that the federal government, preferably in conjunction with provincial/territorial governments, provide funding and technical exchange to community organizations to promote sound evaluation of such pilot projects.

3. Victim-Offender Reconciliation Programs¹⁴

a. In General

i. What is Victim-Offender Reconciliation?

Victim-offender reconciliation is a process whereby offenders and victims are brought together by a trained (often volunteer) mediator to achieve a resolution to the criminal event which is satisfactory to both parties. Victim-offender reconciliation seeks to:

- effect reconciliation and understanding between victims and offenders;
- facilitate the reaching of agreements between victims and offenders regarding restitution;
- assist offenders in directing payment of their "debt to society" to their victims;
- involve community people in work with problems that normally lead into the criminal justice process; and
- identify crime that can be successfully dealt with in the community.

Reconciliation has been used effectively in many North American communities since the birth of the concept in Kitchener/Waterloo, Ontario in 1974. The Committee heard from representatives of programs operating in Ontario, Manitoba, Saskatchewan and British Columbia. Generally, such programs deal with minor offences (e.g., property offences, assault and causing a disturbance, etc.), particularly where the parties know one another; but victim-offender reconciliation can be used in more serious cases. (This is further discussed later in this chapter.) Many victim-offender reconciliation programs also handle dispute resolutions where no criminal charges have arisen or are likely to arise.

ii. How it Works

Reconciliation helps break down the stereotyped images victims and offenders have of one another by bringing them together. When they meet face-to-face, there can be a mutual understanding and agreement as to what can be done about the offence. The assistance of an objective third party is useful in facilitating interaction at such meetings. These mediators do not impose settlements, but rather assist the victim and offender in arriving at their own settlement — a settlement which is agreeable to both.

Victim-offender reconciliation techniques:

- help victims face painful emotions and to feel personally empowered by gaining control of their lives again;
- help offenders feel empowered by taking responsibility for their actions; and
- help victims, offenders and others learn effective conflict resolution strategies which can be used in other situations.

iii. Benefits of Victim-Offender Reconciliation

First, and most important, *victims* benefit through reconciliation by: participating throughout the process; receiving restitution and reparation (losses may be restored through cash or service); receiving information about the crime itself (motive/method/background), about the offender (stereotypes dissolve) and about the criminal justice system and its processes; and peacemaking. Access to information allays fears, anxiety, frustration and a sense of alienation, and positively affects attitudes toward the system. Because

victims and offenders are often neighbours or members of the same community, mediation facilitates the finding of common-sense solutions today which enable living together peacefully tomorrow.

Equally important, *offenders* benefit by: gaining an awareness of the harm suffered by victims (the human cost and its consequences); participating in a process that allows for "making it right"; receiving information (especially about the victim, thereby breaking down stereotypes); receiving a sentence which is an alternative to incarceration (victim-offender reconciliation can provide an escape from the damaging effects of incarceration without providing an escape from responsibility); and participation (which yields ownership in, and commitment to, the agreement, resulting in high contract-fulfillment rates).

In addition, reconciliation provides the following benefits to the *criminal justice system* and the *community*:

- appropriate alternative sanctions are available to judges;
- low cost;
- provision of a mechanism for the establishment of losses;
- effective means of intervention in cases that resist or defy solution in the traditional criminal justice process;
- increased understanding about the criminal justice system (community education);
- assistance to victims, thereby reducing the hostility many project upon the system itself;
- empowerment: Community members are provided with an opportunity to develop skills which they can apply to the resolution of the conflicts which arise in the community;
- reduction of levels of conflict within a community; and
- deterrence from further irresponsibility: While more research will be required to demonstrate this conclusively, offenders who meet their victims face-to-face in this manner are believed to be less likely to re-offend.

iv. Evaluation of Mediation Services and Other Reconciliation Programs

The Mediation Services program in Winnipeg was recently evaluated by the Attorney-General of Manitoba. Highlights of this evaluation were included in its brief to the Committee: 90 percent of 500 cases resulted in agreements; 90 percent of participants rated the service as either good or excellent; and 80 percent would mediate again if the need arose (Brief, p. 2).

Four Indiana reconciliation sites were evaluated in 1984. Following are highlights from their evaluation report:¹⁵

- 83 percent of the offenders and 59 percent of the victims expressed satisfaction with the process (another 30 percent of victims were "somewhat satisfied");
- 97 percent of the victims reported that they would choose to participate if they had to do it over again and that they would recommend it to other victims;
- both victims and offenders saw "being responded to as persons" as the greatest strength of the program;
- most of the offenders interviewed by the evaluators seemed to have a better sense, than did a matched sample of offenders who had not been referred, that what they did hurt people and required a response;
- for those who participated in face-to-face meetings, completion of restitution was quite high;
- offenders experienced reconciliation as punishment and many victims viewed it as a form of legitimate punishment in which they had an opportunity to participate; and
- victim-offender reconciliation may be used along with incarceration as a means of reducing reliance on incarceration.

b. Oklahoma Post-Conviction Mediation Program¹⁶

Mediation hearings held in Oklahoma prisons may be conducted to reach an agreement between the victim and offender which may then form the basis of recommended sentence modifications which are taken back to the judge. (The mediation service may also be used as part of case pre-sentence investigation to propose an appropriate punishment prior to sentencing.) Both violent and non-violent cases are handled, although larceny-related crimes are the most common.

Mediation facilitators inform the parties of the limits and the parameters of the hearing (which are established by the judge, prosecuting attorney and Department of Corrections, with a view to maintaining overall consistency). The sentencing judge and prosecutors are contacted prior to the mediation meeting so that their concerns, as well as the victim's, can be addressed. Mediation agreements generally address: length of incarceration/supervision, community service, rehabilitative programs for either the victim or offender, and restitution.

The process encourages and facilitates the sharing of the victim's feelings and emotions about the criminal incident and its impact. Offender accountability and responsibility is emphasized; it results in a structured plan going beyond incarceration.

In the first 18 months of the program, 1,400 victims provided direct input into sentencing plans. Seventy-two percent of those victims wished to meet the offender(s) to mediate; 97 percent of the mediation meetings resulted in agreements which were satisfactory to the victims. These agreements generated \$20,000 for the state Crime Victims' Compensation Fund, 50,000 hours of community service (valued at \$165,000), and \$650,000 for restitution. Mediated offenders are reportedly "model" probationers while under supervision — less than eight percent failed to carry out their mediated agreements or were involved in new crimes.

c. Genesee Justice — Dealing with Violence¹⁷

Almost all witnesses before the Committee who talked of victim-offender reconciliation referred to the Genesee County, New York model when queried about the applicability of reconciliation in situations where offenders had committed crimes involving violence. Initially, the

Committee was sceptical about the possibility of applying reconciliation techniques in such cases. (In fact, a few witnesses themselves agreed.)

The Committee heard from Doug Call who, when Sheriff of Genesee County, in 1983 introduced victim-offender reconciliation for violent offences as part of his program of victim assistance services, and from Dennis Whitman, Coordinator of the Genesee County Community Service and Victim Assistance Programs. They described examples of various "violent" cases in which their victim assistance program contributed to community-based sanctions.

The first 13 offenders referred into their reconciliation program were convicted of the following offences:

- 3 criminally negligent homicide
- 2 armed robbery
- 1 criminal possession of a deadly weapon
- 1 rape
- 1 assault and battery
- 1 sodomy
- 1 reckless endangerment
- 1 attempted manslaughter
- 1 grand larceny
- 1 unspecified misdemeanour.

Genesee County claims to have matched justice with fairness for victims, offenders and their communities. Its services consist of adult and juvenile community service, intensive victim assistance, victim-directed sentencing, victim-offender reconciliation conferences, victim-oriented pre-sentence conferences, affirmative agreements, intensive felony and second felony offender diversion, felony reparations, and uniform cemetery and school vandalism sentencing guidelines.

The Sheriff's Department urges victims to "fight back" by reporting crime and demanding their rights and privileges under the law. By supporting victims in a comprehensive and ongoing way, the Sheriff's Department encourages victims to use their pain as motivation to go through the court process. The Department has dramatically increased services and

support to victims, decreased the jail population (both regular and weekend sentenced days), obligated offenders to help themselves and others, and increased the involvement of victims and the community in the criminal justice system.

This innovative criminal justice initiative has been developed for several reasons. Primarily, there is a need for significant and serious change in our criminal justice system to provide a human and personal dimension for the victim as well as the offender. Humanizing the system brings a far more direct accountability between the offender and the victim.

Victims are included at every stage of the process and offenders are made accountable to them, as well as to society. With the cooperation of chiefs of police and judges, this central focus serves to "integrate" the criminal justice system. The Genesee County Community Service/Victim Assistance Program has shown that reconciliation between victims and offenders can take place even in cases of the most serious crimes and is especially important in these cases.

Preparation of both victims and offenders must be done carefully and systematically; it can involve many different kinds of third parties. The victim is the key person as to whether or not victim-offender reconciliation takes place. It is not an easy decision for a victim or surviving family member to make. The victim is visited immediately, or at least within two to three days, after the offence occurs and is kept fully informed of the situation and the process with at least a monthly report. After charges have been laid, the victim meets with the prosecutor and a victim impact statement is prepared. The victim is visited by members of a victims' group as well as by victim assistance officers of the police force who are specially trained in mediation, with a view to reducing trauma and anxiety. Program staff meet separately with the victim and the offender prior to the reconciliation meeting to build a bond of trust between the mediator and each party. (It is not uncommon for the program staff to hold up to 90 meetings with the victim.) The offender is prepared for a meeting with the victim between conviction and sentence.

The meeting between victim and offender can be a cause of great relief to the victim: an emotional burden is lifted, victims gain confidence in the system, and they begin to see the offender as a human being rather than as an evil monster. In Genesee County, judges increasingly order victim-offender meetings and they consider the effect of the crime on the

victim in determining the sentence. Victims' suggestions, when constructive, may be incorporated in the sentence.

d. The Committee's Opinion and Recommendation

The Committee found the evidence it heard across the country about the principles of restorative justice compelling and is particularly attracted to the notion that offenders should be obligated to "do something" for their victims and for society. The Committee believes it is essential that offenders be held accountable for their behaviour. The Committee was also impressed by the evidence of some of the victims who appeared before it of their capacity to come to terms with some of the most serious offences which could be perpetrated against them (murder of a loved one, incest, etc.) through reconciliative meetings with offenders or other avenues opened up through victim services which operate on the principles of restorative justice.

At the same time, the Committee was profoundly moved by the pain of other victims who had been further victimized and essentially left out of the criminal justice process. While it can never be known whether another approach could have made more bearable the pain these victims experience, it appears that the humanizing of the criminal justice process which restorative justice necessarily entails at least offers that hope. **The Committee was particularly impressed by the Genesee County Victim Assistance Program which is clearly and unequivocally focussed on the needs of victims — a victim service which is prepared to meet 60, 90 or 100 times with a victim cannot be accused of trying to manipulate victims for the benefit of offenders.**

The Committee believes that the sentencing purpose it has proposed puts the onus on offenders to do something for victims and society. It maximizes the opportunity to humanize the sentencing and, ultimately, the correctional processes. It respects the interests and needs of victims and increases community involvement in criminal justice. In the Committee's view, achievement of the sentencing purpose proposed by the Committee is likely to be enhanced where victims, offenders and the courts have access to services which employ the techniques of victim-offender reconciliation.

Recommendation 19

The Committee recommends that the federal government, preferably in conjunction with provincial/territorial governments,

support the expansion and evaluation throughout Canada of victim-offender reconciliation programs at all stages of the criminal justice process which:

- (a) provide substantial support to victims through effective victim services; and
- (b) encourage a high degree of community participation.

4. Restitution

Restitution is often a central feature of alternative sentence planning and victim-offender reconciliation. An old concept, going back to biblical times, it is based on the principle that the offender should restore stolen property to its owner or repay the victim and his or her "community" for the harm or damage done. Restitution may take many forms — an apology, monetary payment, or victim or community service. In many jurisdictions, restitution involves the community (police, prosecutor, or judge and/or diversion or reconciliation project volunteers), as well as the victim and offender, particularly where criminal prosecutions are avoided by prompt payment of restitution.

In recent history, the traditional right of the victim (or the victim's family) to receive reparations from the offender (or the offender's family) was almost entirely replaced by the payment of compensation by the offender to the state in the form of fines. In recent years, victims have focussed considerable public attention on their interests and sought changes to restitution laws to ensure recompense for their losses.

Another important aspect of restitution is its correctional potential for the person who commits a crime. In many cases, the constructive accomplishment of making restitution improves the offender's self-esteem and behaviour. It "gives the offender a chance to earn and repay honestly what he [or she] stole or destroyed... . The lack of a connection between a small theft and months in prison deprives most offenders of an understanding of justice and leaves them feeling a sense of having been wronged. Restitution relates what they did to what they must do."¹⁸ Moreover, in its absence, offenders take little or no responsibility for their behaviour.

a. Canadian Law

Until recently modern criminal law in Canada has not paid a great deal of attention to the victim or to restitution in sentencing practices. Recently-enacted amendments to the *Criminal Code* (in Bill C-89) endeavour to address this problem by, among other things:

- requiring judges to impose an additional penalty of restitution in appropriate cases; and
- expanding the scope of restitution to include reasonably ascertainable pecuniary losses for bodily injury, as well as property damages.

These innovations respond to the Law Reform Commission of Canada's suggestion that restitution be made central to sentencing theory and practice, and the recommendations of the Canadian Sentencing Commission that:

- (1) a restitution order be imposed as a first community alternative when the offence involves loss or damage to an individual victim (Rec. 12.16 and 12.17); and
- (2) priority among pecuniary sanctions be given to restitution where the offender has limited means (Rec. 12.21).

However, they fail to address the latter's recommendation that restitution be available as a sole sanction, as well as in combination with others (Rec. 12.31). Nor do they require judges to give reasons for failing to order restitution, although victim groups have requested this.

Moreover, the provisions, as drafted at present, with respect to pecuniary damages for the victim's lost wages, etc. (section 653(b) of the *Code*), would seem to be limited to an all-or-nothing proposition. That is, where a victim has incurred pecuniary damages as a result of bodily injury, it appears that the restitution order has to be "an amount *equal to* all pecuniary damages...". Where a judge ascertains, pursuant to section 655 that an offender would not be able to pay full restitution, it would seem that the judge might have to decline making an order of restitution related to personal injury, when determining whether restitution "is ... appropriate in the circumstances." (In cases of property damage, it would appear that judges

have discretion to order restitution in "an amount *not exceeding* the replacement value of the property...".) This flaw seems unfortunate, given that victims have lobbied for years for a provision which might permit partial or full restitution for such losses.

b. Restitution in Conjunction with Victim-Offender Reconciliation Programs

In addition to the sentencing judge ascertaining the amount of restitution to be made, reference has already been made to the role victim-offender reconciliation programs might play in this regard. Where offenders have been referred to such programs prior to sentencing, the judge may include the restitution terms of the agreement in the sentence. In addition to the value of a freely and fairly-negotiated settlement, reconciliation programs offer the opportunity of supervision of completion of the agreement. (Such a role may also be played by probation officers or other officers of the court, as described below.)

c. Enforcement

Saskatchewan has a province-wide restitution program. Restitution coordinators provide pre-sentence reports (when requested by the court) and monitor the payment performance of offenders. Where necessary, they enforce restitution orders. To aid offenders in the successful completion of their orders, restitution coordinators may provide personal or financial counselling and assistance in obtaining employment or retraining. Some restitution centres in the U.S. also help offenders who lack the means to make restitution to find jobs and budget their earnings.¹⁹

Aside from the support for enforcement of restitution provided by the program in Saskatchewan and through victim-offender reconciliation projects, mechanisms for enforcing restitution in Canada have been weak. Bill C-89 provides little new in the way of enforcement other than incarceration for default in certain circumstances (section 655.6), although, as recommended by the Canadian Sentencing Commission (Rec. 12.31), it does provide that the enforcement of restitution have priority over the enforcement of other monetary sanctions (section 655.8(5)). However, it does not go as far as the Sentencing Commission recommendation that, in appropriate cases, after a show cause hearing in the criminal court, the court be able to order wage attachments or property seizure (Rec. 12.30 and 12.25).

d. Committee Recommendations

The Committee has previously indicated its support for Bill C-89 which it believes makes a significant improvement in the present situation regarding restitution. The Committee received few representations with respect to the enforcement of restitution, but it feels that civil enforcement mechanisms which might be initiated by the state on behalf of victims should be explored further.

Recommendation 20

The Committee recommends that section 653(b) of the *Criminal Code* (contained in Bill C-89) be clarified to ensure that restitution for bodily injuries may be ordered in an amount *up to* the value of all pecuniary damages.

Recommendation 21

The Committee recommends that the federal government enact legislation, and/or contribute support to provincial/territorial governments, to enhance civil enforcement of restitution orders with a view to relieving individual victims of this burden.

Recommendation 22

The Committee recommends that the following recommendations of the Sentencing Commission be implemented:

- (a) that a restitution order be imposed when the offence involves loss or damage to an individual victim. A fine should be imposed where a public institution incurs loss as a result of the offence or damage caused to public property (Rec. 12.17); and
- (b) that where the limited means of an offender permits the imposition of only one pecuniary order, priority be given to an order of restitution, where appropriate (Rec. 12.21).

5. Enhanced Probation Services

Probation, one of the older and now the most common form of correctional placement, consists mainly of supervising offenders in the community through social work methods. Ideally, probation involves an element of consent — that the offender wishes to work constructively with the probation officer. In practice this may not always be the case. Moreover, probation may now give the appearance of doing something with offenders when, in reality, very little is being done.

a. What is Probation?

Probation traditionally combines both control (supervision) and care (opportunity to overcome personal and social problems associated with their criminal behaviour). In Canada, supervision is usually carried out either by professional social workers employed by government correctional agencies or by volunteer probation officers. (Ontario, Nova Scotia and Alberta have programs which utilize volunteer probation officers.) In Canada, the maximum period of probation is three years; no minimum is established in law, although few orders are for less than six months. Excessively short periods of supervision are generally considered to be insufficient to rehabilitate offenders.

Jack Aasen and Stephen Howell, two probation officers from B.C. who appeared before the Committee, proposed that probation, which has proven itself to be a versatile sanction, could, with some improvements, link the Sentencing Commission's objectives of making greater use of community sanctions with adoption of a "justice model" of sentencing:

If "justice" is really about restoring broken relationships it is doubtful if any other sanction has a better chance of success than probation. (Brief, p. 1)

The witnesses suggested that for community sanctions to be accepted by the public as appropriate dispositions, three things are required: the support and advocacy of innovative leaders, adequate funding, and a legislative structure which ensures enforceability.

There is a need for greater political support for the use of probation, they argued. At present, perceived public fears about and frustration with crime are exploited to promote harsher penalties. The witnesses felt the public's misperceptions arise out of a lack of knowledge about sentencing:

This suggests that leaders who are prepared to educate the public and engage them in a process of developing alternatives could help build a consensus for humane, cost-effective community sanctions. (Brief, p. 2)

More funding is needed for an adequate probation service: present probation caseloads in B.C. exceed 100. Aasen and Howell also proposed that additional funding should support new and innovative programs, such as supervision of victim restitution or service, and of community service; specialized supervision for mentally ill and sexual offenders; probation hostels; and intensive supervision for serious offenders (see section e. below). The federal government might fund demonstration projects.

The Canadian Sentencing Commission reported the following concerns with probation (p. 363):

- a feeling among probation officers that the size of their caseloads (averaging 80-100 cases in Atlantic Canada) precluded effective supervision;
- a majority of judges indicating that their impressions of the quality of supervision of particular community sanctions affected their willingness to assign particular community dispositions; and
- a feeling among probation officers that some judges grant probation to inappropriate clients (some offenders didn't require probation; others, had abused it in the past).

It is generally recognized that probation is more overcrowded than imprisonment and that probation caseloads are too large to permit probation officers to do any serious work with most offenders.

The concerns of the Sentencing Commission could be alleviated by two of its recommendations:

- greater federal and provincial commitment to the development and financing of community dispositions (Rec. 12.1) — to reduce workloads; and
- the development of principles respecting the imposition of individual community sanctions (Rec. 12.10) — the greater use of community sanctions is inherent in the Commission's

proposed sentencing guidelines (which identify those offences that should carry a presumption of community sanctions).

The Committee is in general agreement with these recommendations.

b. Probation in Conjunction with Conditional Discharges and Suspended Sentences

As to whether or not probation should constitute an independent sanction or be used in conjunction with other sentences, there is considerable debate. In Canada, it may be used only in conjunction with other sanctions, such as a conditional discharge, a suspended sentence, a fine, or in addition to a period of incarceration.

The *Criminal Code* now requires that certain conditions be, and permits a range of others to be, included in a probation order. To emphasize that some conditions may serve a distinct, separate purpose, the Law Reform Commission of Canada recommended in 1976 that probation be replaced by six separate sentences (good conduct order, reporting order, residence order, performance order, community service order, restitution and compensation order), which might be ordered separately or in conjunction with one or more others or with some other type of order, such as a fine. These distinct sentences would reduce the scope and content of orders to clearly stated performance criteria. Although recommending that community sanctions be developed as independent sanctions (Rec. 12.8), the Sentencing Commission made no specific recommendations with respect to probation.

Aasen and Howell also recommend that probation orders be made in conjunction with "true suspended sentences" by which the sentencing judge would make an order of imprisonment for a specific period of time, suspend the enforcement of the order and substitute in lieu thereof a period of probation. Should the conditions of probation be breached, a simple revocation hearing, with due process safeguards, could be held and the original sentence enforced.

c. Enforcement of Probation Orders

Aasen and Howell identified for the Committee the inadequacy of the present provisions for enforcing probation orders. They recommended that section 666 of the *Criminal Code* be amended to provide for a simple hearing to revoke probation, as exists in most English-speaking countries of

the world, when probation has been breached. As it stands, a charge of breach of probation now requires a trial and proof "beyond a reasonable doubt": this situation gives the probationer "... a panoply of legal protections and a range of defences which make a mockery of the system" (Brief, p. 3). For example, identity may be in doubt because the accused never reported to the probation officer, and the officer cannot identify him or her; the probationer is, therefore, not convicted of breach of probation. Similarly the defence of forgetfulness is often used to escape conviction on the "willful" aspect of the charge. The result, therefore, is not only that the rate of conviction is low (only 15.3 percent of not guilty pleas in B.C. are convicted), but, also, many reports of breaches of probation are never forwarded to prosecutors by probation officers because of the impossibly high standard of proof required (in Vancouver, 42 percent of charges requested were not laid).

The Committee is sympathetic to the arguments made by these witnesses on the basis that remedying the enforcement problem would create greater public confidence in the sanction of probation.

d. Special Conditions/Services Associated with Probation

Probationary conditions are generally designed to fulfill either control or rehabilitative functions. Some which the Committee feels warrant further encouragement are described on the following pages.

i. Alcohol or Drug Treatment or Abstinence

Probation conditions related to abstaining from alcohol may be made pursuant to section 663(2)(c) or (h) of the *Criminal Code*. Such an order usually arises where the offender was under the influence at the time of the offence and is likely to recidivate while using alcohol.

Alcohol and drug treatment orders (residential or otherwise), or those requiring the attendance of offenders at self-help addictions programs, are usually made when the offender has acknowledged addiction and proposes to seek treatment as a means of conquering the addiction and avoiding recidivism. Such orders may be made to "encourage" the offender to commence or maintain treatment. Orders to specific treatment programs generally require the consent of the offender and the program. They usually arise from recommendations in a pre-sentence report.

ii. Employment Orders

Where an offender is unemployed, the judge may order that he or she seek employment pursuant to section 663(2)(g) of the *Criminal Code*. Such offenders often require the assistance of probation officers in identifying suitable employment leads or community-based programs designed to assist them in job searches, acquiring basic job training readiness skills, or retraining; such programs may also provide vocational assessment and counselling.

A number of employment assistance programs throughout Canada, most funded by the Canada Employment and Immigration Commission, often operated by private agencies, assist special target groups (youth, low-income women, immigrants, probationers and parolees, etc.) in seeking employment. Some programs include academic upgrading, but usually the focus is on attitudes, skills and opportunities. Some programs offer a protected work environment, to permit either work adjustment or employment experience. Clientele in such programs are not limited to offenders.

iii. Personal Counselling and Life Skills

Personal counselling is available through probation services directly or by referral from probation authorities to private criminal justice or mental health agencies (e.g., Family Service Associations, John Howard and Elizabeth Fry Societies, Salvation Army, etc.), or hospitals. Such services have historically been available to individuals, couples, or families. In recent years, more specialized counselling has become available to address specific experiences (incest, sexual assault, addictions, etc.). Increasingly, such services are available not only to individuals, but also to groups.

Group work has gained increasingly positive recognition in recent years as a mechanism for changing attitudes, empowering victims and the disadvantaged, and facilitating learning — both knowledge and skill development. Life skills programs are perhaps the best known form of group work. They have been used successfully with disadvantaged women, youth, students on the verge of dropping out of school or re-entering educational institutions, prisoners and people re-entering the community from closed settings.

Life skills programs are commonly operated by private agencies or individuals on contract to various governmental or quasi-governmental agencies. Programs vary greatly, but often teach clients how to access resources they may require (e.g., subsidized housing, food banks, social assistance, government benefits, education and training programs, etc.). They may teach clients how to manage money wisely, and how to eat nutritiously. In addition, and most important, they help clients build self-esteem and develop assertiveness.

iv. Shoplifting Counselling

Counselling programs for shoplifters have been established in several communities in Canada. They are specifically directed at offenders with a history of shoplifting, but may also be of benefit to some offenders with a fraud or theft history. The best-known programs are operated by Elizabeth Fry Societies in Vancouver, Calgary and Brampton, although some are offered through probation offices in Ontario and Manitoba.

These programs are a specialized form of group work with integrated educational, therapeutic, self-help and life skills approaches. Group work is usually supplemented by individual counselling. The programs aim to get at what is presumed to be the underlying social and psychological problems which contribute to the shoplifting behaviour. While clients are predominantly adult women, some men attend, and one program has a special group for adolescents.

Elizabeth Fry Societies from which the Committee heard identified shoplifting programs as important sentencing options for female offenders.

v. Treatment for Assaultive Males

From 1981 to 1984, treatment programs for assaultive males increased from four to over 30 across Canada. Today there are well over one hundred.²⁰ These programs reflect a trend towards preventive, rather than reactive, measures to combat the problem of domestic violence.

The emphasis in most programs is on the assaultive behaviour as a learned response to a man's anger problems and not necessarily on the relation to marital difficulties. The programs aim to teach their clients to accept responsibility for their violent behaviour, to recognize and confront it,

and to replace it with appropriate non-violent and interactive responses. (One Alberta treatment program is also directed towards the family as well as the offender.)

Dr. Anthony Davis, a Board member of the Tearman Society of Nova Scotia, a transition hostel for battered women, encouraged the Committee to recommend court-ordered counselling for assaultive spouses in addition to their maintaining employment and supporting their families, who would be adversely affected by the sanction of incarceration. It is not known to what extent such programs are used at present as sentencing options.

vi. Evening/Weekend Attendance Centres

Reference has been made above to a range of Canadian counselling and employment preparation services which may be used voluntarily by probationers. Aside from these and an out-patient alcohol treatment program in Toronto for impaired drivers, the Committee did not receive specific evidence with respect to attendance centres.

In the state of Victoria in *Australia*, four Attendance Centres may be used as conditions of probation, as an alternative to incarceration for one to twelve months. Offenders must usually attend the Centre two evenings per week and Saturdays, for about 18 hours per week. The evening sessions may involve job skills training, and group and individual counselling; Saturdays are generally devoted to community service. Such Centres can accommodate 40 to 50 offenders. Abstention and tardiness are considered breaches and may result in return to court where the offender may be subject to incarceration of up to 12 months.²¹

An experiment in New South Wales in 1976 permitted some offenders who might otherwise have been imprisoned to remain in the community, but required them to work in the prison, or some other designated location, from 3:30 p.m. to midnight, the time when most crimes are committed.²²

New Zealand recently introduced the innovative sentence of "community care" as a partial replacement for the probation order. Its purpose is to put the offender into a community environment where he or she will be "subject to influences and example expected to have a beneficial and supportive effect." It requires an offender to take part in a residential or non-residential program which is offered by an individual or agency in the community. The sentence may not exceed 12 months and the residential

component must not exceed six months. A report on the nature and conditions of the program (in practice, a fairly specific written contract negotiated by the offender and the sponsor) must be presented to the court through a probation officer.

While retaining an emphasis on an individualized (rehabilitative) approach designed to identify and deal with an offender's specific problems, the sentence recognizes that such problems can only be successfully solved in a community environment. The sentence actually leaves the direct responsibility for the implementation and satisfactory completion of the sentence in the hands of the community.

Warren Young, Director of Criminology at the Victoria University of Wellington, in a paper presented to the Conference for the Reform of Sentencing, Parole and Early Release in Ottawa in August 1988, identified four problematic features in the concept of community care:

- the concept of "community" in the rhetoric of "community participation" has been left largely undefined — the number of available and suitable programs for offenders may be relatively few;
- most people in the community may feel that the state should retain responsibility for offenders;
- few additional resources have been made available to voluntary agencies to offer programs to offenders; and
- community care may widen the net of social control.

Nevertheless, the Committee is of the view that such a sentence offers a wide range of possibilities consistent with the principles it has adopted. Sentences of community care resulting from alternative sentence planning or victim-offender reconciliation might provide useful enhancements to probation.

vii. Probation Hostels and Community Residential Centres

Probation hostels were developed in *England* to address the contribution of homelessness and "bad homes" to delinquency. Hostel

residency requirements attached to a probation order were usually for 12 months. These probation hostels are somewhat similar in concept to Canadian community residential centres or halfway houses and young offender "open custody" facilities — residents work or study in the community during the day and may be given passes on evenings or weekends.²³

Probation hostels are also found in *New Zealand*. Many are operated by churches; ideally, they are small establishments. They are generally used when home conditions are considered to be inadequate or likely to contribute to an offender's criminal behaviour, or when the offender is homeless. Staff generally help offenders find work or improve their education.²⁴

Denmark's attitude towards imprisonment has led to a range of "custodial" options. Many people sentenced for seven days to six months are housed in "open institutions": they participate in work and social activities in the community, purchase food outside the institution and furnish their own rooms. The Prison and Probation Administration also runs some short-term "institutions" for probationers and parolees who stay there voluntarily or by way of probation order.²⁵

Japan has over 200 halfway houses for adult and juvenile offenders, operated by voluntary agencies. Financial support for them was strengthened by the 1950 Law for Aftercare. Although a person cannot be ordered to a halfway house by a court, probationers may be referred there by their supervising officers. Each hostel accommodates between nine and 100 people (the average being 23). Offenders generally work in the community, but some halfway houses have their own workshops. One halfway house is attached to a psychiatric hospital.²⁶

Georgia has established "diversion" or restitution centres to confine non-violent offenders who need more supervision than regular probation, but do not require secure custody. Offenders work full time and pay room and board, restitution, fines and taxes. Thus, the cost is shifted from the taxpayer to the offender. Since 1973, the number of centres has expanded to 14 (two of which are for female offenders); others are planned. Each centre houses 44 residents.

The program permits offenders to stabilize their lives and to remain productive members of society throughout their sentences. Moreover, family and community interaction is maintained, although visits at the centres are

quite restrictive. The centres provide individual and group counselling, work ethics, consumer education, educational upgrading and recreation. The minimum stay is four months (average, four to five months). Offenders remain on regular probation after leaving the centre.

A security officer does hourly rounds. Those absent without leave may be held in jail, pending return to court. Judges may re-sentence to prison those offenders who breach the terms of their probation.

The cost of the centres is about \$21.75 per day of which offenders contribute \$6.50. (Offenders also pay a probation fee and contribute to daily transportation costs.) The grounds and buildings are maintained by residents, each of whom is expected to do 30 to 50 hours of community service. Of 1,569 residents in 1985, 1,059 were terminated successfully.²⁷

A number of voluntary agencies and churches (Elizabeth Fry Society, John Howard Society, St. Leonard's Society, Salvation Army, Seventh Step, etc.) operate community residential centres in *Canada*. While primarily funded to house offenders released from provincial prisons and federal penitentiaries, a few beds may be used to strengthen probation orders where prison is inappropriate and the agency and offender consent. Unfortunately, the availability of such facilities varies dramatically across the country. (For example, there is only one for women west of Sudbury, Ontario — in Vancouver!)

Most community residential centres are designed for residents who will either be working or attending school or a training program. A few "special interest" ones have developed in recent years: some for Natives, some operated by ex-offenders, some specializing in alcohol/drug treatment programs, and one in Montreal for "dangerous offenders". Local Elizabeth Fry Societies urged the Committee to encourage the use of halfway houses as sentencing alternatives for female offenders to avoid them being incarcerated far from families and children and to permit them to benefit from suitable community programs.

In 1976 the Law Reform Commission of Canada recommended that one of the dispositions which should be available to judges be a requirement that an offender reside for a specific period of time in a given residence. The Canadian Sentencing Commission recommended that judges be permitted to sentence offenders to "open custody" (Rec. 10.14 and 10.15). **The Committee agrees with these recommendations.**

e. Intensive Probation Supervision

About 30 American states have adopted some form of intensive probation supervision²⁸, either as a means of providing early release from prison or as a means of maintaining safely in the community offenders who might otherwise be incarcerated. Intensive probation supervision programs usually include community service, restitution and more frequent surveillance by probation officers than normal (including random visits). Supervision conditions may also include strict curfews, mandatory attendance at a training centre or drug/alcohol treatment program, or residence in a halfway house.²⁹

i. The Georgia Program

One of the strictest programs has been operating in Georgia since 1982.³⁰ Its twin goals are to provide rehabilitative services to the offender and to monitor closely his or her activities. Eligible probationers are those who normally would have been sentenced to prison, but do not pose an unacceptable risk to society. (It has been suggested that offenders who would have been incarcerated in Georgia would not have been incarcerated in many other jurisdictions.)

Probationers are subject to curfews, unannounced visits from their probation officers, spot urinalysis or breathalyzer tests, and at least 132 hours of community service to be done on weekends. (This aspect of the Georgia program is said to be resented most by offenders.) Offenders may enter the program directly by order of the sentencing judge or may request the judge to amend the prison sentence and substitute intensive probation (post-sentence diversion). The latter mechanism, in particular, permits expeditious return of an offender to prison if necessary.

Each probationer is assigned to two probation officers: one performs primarily surveillance functions; the other, more traditional probation services. (The maximum caseload of each team is 25 probationers.) Additional surveillance is provided by:

- ° notifying law enforcement agencies that the offender is subject to intensive supervision, and by placing his or her name on the state-wide computer, so that the probation officer may be notified quickly if the probationer is arrested;

- checking arrest records weekly; and
- supplementing spot checks by using community monitors.

Curfews (10 p.m. to 6 a.m. unless restricted by the court, or varied to permit shift work) are checked at least twice per month.

The Georgia program claims a 78 percent success rate, defined as completing the term of intensive probation supervision and being returned to regular probation or discharged. While those who complete the program commit new crimes after completion at a rate slightly higher than those who were on regular probation, they do so at a much lower rate than ex-prisoners.

The costs of the program, about \$1,080 per offender for eight months (about one-fifth the cost of state prison), are borne entirely by a fee of between \$10 and \$50 per month levied against all probationers by the sentencing judges. The program can accommodate about 1,400 offenders for 6-12 months.

The minimum supervision standards which have been developed for the three phases of the program are outlined below. In exceptional circumstances, deviation from them may be approved by the chief probation officer and/or the sentencing judge.

Phase I (minimum 3 months)

The probation officer meets with the probationer's family members to explain the program and elicit their cooperation. In a face-to-face meeting with the offender, the probation officer conducts a risk assessment which determines whether the offender will be seen at least three or five times per week; these visits may be at the offender's home, place of work, or at the probation office, and occur during daytime, evenings, and on weekends. The probationer's employment or education is verified once each week; the employer is contacted once each month to verify that the probationer's work is satisfactory. Unemployed probationers have their job searches verified; the first contact is expected to be at 8 a.m. each day. At least 50 hours of community service is to be performed in this phase. Unemployed probationers are expected to participate in community service daily.

Phase II (3-12 months)

A probationer who has responded positively to supervision in the first phase, completed the specified community service, remained arrest- and alcohol/drug-free, and established or maintained stable employment may move to Phase II. Face-to-face contacts may be reduced to two per week (one day, one evening). The curfew may be extended from 10 p.m. to 11 p.m. At least 30 additional hours of community service is to be completed.

Phase III

Unless it is recommended to the judge that the probationer be transferred to regular probation, the third phase permits reduction of face-to-face meetings to one per week (including once a month in the evening), relaxation of the curfew in the discretion of the probation officer, and completion of the balance of the 132 hours of community service.

Transfer to Regular Probation

Upon completion of the requirements of intensive probation supervision and application to the sentencing judge, the probationer may be transferred to regular probation. He or she will be supervised according to maximum or high standards of regular probation supervision and reassessed after six months.

ii. The Swedish Model

The Swedish approach to intensive supervision in the 1970s was considerably different. The Sundsvall and Stockholm Experiments demonstrated that close contact between supervisor and client was associated with lower recidivism. The Swedish model increased this contact by providing accommodation (halfway houses and temporary residences), lay (volunteer) supervisors, chosen whenever possible by the client, and professional mental health care.³¹

iii. Canadian Proposals

Almost a combination of the Swedish model and Alternative Sentence Planning (described earlier in this chapter) is the intensive supervision program developed by Gateway Correctional Services in British Columbia in

the early part of this decade. Its Executive Director, Bob Kissner, provided the Committee with information about this comprehensive, individualized program for young adult offenders, generally on probation. Programs are a combination of one-to-one supervision, structuring, counselling and special casework services. Individual programs may include referral to and coordination with other agencies, depending on client needs.

Program combinations may include:

- one-to-one counselling;
- employment assistance;
- accommodation assistance;
- addictions counselling;
- financial counselling;
- family counselling;
- educational upgrading;
- psychological counselling;
- medical assistance; and
- recreational services.

Several probation officers in B.C. have developed other proposals to provide intensive supervision for high-risk offenders, more along the lines of the Georgia model. In one, the offender's suitability for the program would be assessed as part of the pre-sentence report. The offender would be sentenced to prison and within 48 hours released into the community; this process would permit swift enforcement.³²

Aasen and Howell urged the Committee to support the introduction of intensive probation supervision in Canada. In a discussion paper which Howell prepared for the Adult Probation and Community Service Advisory Group, and subsequently submitted to the Committee, he proposed seven minimum criteria for an intensive supervision program:

- a rigid set of admission criteria based on some sort of scoring system;
- specific judicial authorization;

- offender consent, so that the offender may choose incarceration;
- a maximum caseload of 50 offenders for two officers;
- a minimum of two face-to-face contacts with each client per week, including at least one random non-office contact;
- weekly contact with at least two collateral sources; and
- an enhanced enforcement mechanism.

Intensive probation supervision offers an intermediate sanction, between the extremes of imprisonment (which is both harsh and expensive) and the relatively lenient sanction of simple probation, for offenders whose criminal behaviour may be controlled through intensive supervision. When combined with alcohol and drug treatment programs and testing, it may reduce the incidence of street crime. **The Committee would like to see Canada explore the use of this sanction further.**

Recommendation 23

The Committee recommends that probation be replaced by seven separate orders (good conduct, reporting, residence, performance, community service, restitution and intensive supervision), which might be ordered separately or in conjunction with one or more others or with some other type of order.

Recommendation 24

The Committee recommends that the *Criminal Code* be amended to provide a more efficient mechanism than is now the case for dealing with breaches of probation or other orders in a way which respects the offender's due process rights.

Recommendation 25

The Committee recommends that more extensive use be made of group work in community correctional programs and that adequate resources be provided so that these might be made available to offenders on a voluntary basis or pursuant to a performance order.

Recommendation 26

In particular, the Committee recommends that greater use be made of probation conditions or performance orders which require assaultive spouses to participate in specialized treatment or counselling programs.

Recommendation 27

The Committee recommends that consideration be given to the New Zealand sentence of community care and the Gateway Correctional Services model of intensive supervision.

Recommendation 28

The Committee recommends that funding be made available to voluntary and charitable agencies to establish or expand community residential and related programs.

6. Home Confinement, House Arrest and Electronic Surveillance

The idea of confining certain offenders to their homes is appealing because it has the potential to accomplish some aspects of the incapacitation which prison offers (primarily monitoring movement) without major disruption to employment and family life, and without the dehumanizing outcomes and costs associated with imprisonment. Technology now makes such dispositions viable: an electronic transmitter may be strapped to an offender's wrist or ankle, alerting a central computer if he or she moves more than a specified distance from the receiver in the house. (Some technology requires the person monitoring the computer to call offenders randomly. Other, more expensive technology sends an automatic signal to the computer whenever the offender moves more than a certain distance from the transmitter.) Home confinement, of course, need not be accompanied by electronic surveillance (it is not in Australia, for example), but it appears likely that it will be in North America.

Electronic bracelets are being used experimentally in 20 American states (Virginia, Michigan, New Mexico, Oregon, Delaware and Florida, among them) and in B.C. to assist in the supervision of parolees, probationers and those on remand or serving intermittent sentences. Ontario

and Alberta have also considered use of the device. Saskatchewan has decided not to use it.³³ The B.C. experiment is a voluntary program permitting the offender to serve an intermittent sentence for impaired driving (either as a court-ordered condition of probation or by way of temporary absence after an order of imprisonment).

Critics say, at a minimum, the use of electronic monitoring in response to impaired driving should be accompanied by family and substance abuse education and counselling. They also caution that the use of electronic bracelets is likely to widen the net and not serve simply as an alternative to incarceration, and that it may lead ultimately to more intrusive surveillance, such as the use of implants to monitor alcohol and drug levels.³⁴ In addition, some devices in the U.S. have demonstrated that they do not work consistently: some have set off false alarms and others have failed to detect unapproved absences.³⁵ Moreover, the use of electronic bracelets is costly. (The centralized equipment may cost \$100,000 in addition to the \$10 a day per offender cost.) It has been suggested that offenders could be required to contribute to the cost of the equipment.³⁶

Also, consideration needs to be given to the length of sentence of home confinement. As an alternative to incarceration (intermittent or otherwise), should the term of home confinement be the same, less or longer than that of incarceration? (In one Australian state, and some American jurisdictions, it appears, the judge makes an order of imprisonment for a fixed period of time, execution of which is suspended and home confinement of a lesser period substituted.) Presumably where home confinement is used as a condition of probation in support of intermittent sentences to be served in prison (discussed further in the next section of this Chapter), the term of home confinement could expire when the prison portions of the sentence have been completed.

With respect to the B.C. experiment, the Canadian Bar Association Committee on Imprisonment and Release recommended (Brief, p. 20) that:

- the Association supports in principle the use of electronic monitoring as an alternative to imprisonment where imprisonment is not considered necessary in the public interest;
- other Canadian jurisdictions be encouraged to initiate similar programs;

- the bail and probation provisions of the *Criminal Code* be amended to enable courts of law to impose such orders only as an alternative to incarceration (not for the purposes of “widening the net”) in appropriate circumstances; and
- provincial/territorial correctional legislation [with respect to temporary absences] be amended to expressly authorize electronic monitoring and that the content of such legislation expressly clarify
 - the eligibility criteria;
 - the application process and procedure;
 - the suspension, termination and revocation process and procedure; and
 - the penalties for violation

so as to comply with section 7 of the Canadian Charter of Rights and Freedoms.

The Committee supports the use of home confinement, with or without electronic monitoring, as an intermediate sanction and agrees with the recommendations of the Canadian Bar Association set out above. In the Committee’s view, home confinement may be a suitable alternative to incarceration in situations where the goals of denunciation or deterrence are considered to be necessary and achievable, and where public protection does not seem to require the financial and social costs associated with incarceration. In the Committee’s view, however, it would be inappropriate to “widen the net” of social control through this mechanism. Moreover, it must be recognized that the sanction offers monitoring, not prevention; it should not be used with offenders who are dangerous and require incarceration. Nor should it be used as a substitute for appropriate rehabilitative services which may be provided in accordance with other forms of probation (or related orders). Finally, as a sole sanction, it does not further the sentencing goal proposed by the Committee.³⁷

Recommendation 29

The Committee recommends that home confinement, with or without electronic monitoring, be made available as an intermediate sanction, probably in conjunction with other

sanctions, for carefully selected offences in appropriate circumstances.

Recommendation 30

The Committee recommends that legislative changes required to permit the use of home confinement as a sentencing option provide reasonably efficient enforcement mechanisms which do not infringe basic due process rights of offenders.

Recommendation 31

The Committee recommends that consideration be given to requiring the consent of the offender and his or her co-residing family members to an order of home confinement.

Recommendation 32

The Committee recommends that in making an order of home confinement, the court consider appropriate collateral conditions (e.g., addictions counselling where appropriate).

7. Sentencing Alternatives That Shorten or Re-arrange the Period of Imprisonment — Periodic, Intermittent or Weekend Detention

Attempts have been made to reduce reliance on incarceration by providing sentencing options that permit judges to use short periods of incarceration in combination with longer periods of probation supervision. Such options usually provide mechanisms for returning the offender to detention expeditiously should that be required. Unlike traditional conditional release schemes, which are discussed later in the report, these "split sentences" are judicially controlled. Some occur directly as a result of sentencing; others, by re-sentencing upon application by the offender.

Intermittent sentences appear to be used most commonly in relation to impaired driving sentences but, in Canada, they are available for any prison sentence not exceeding 90 days. Generally, such sentences are served on weekends (hence the name "weekend detention" in some jurisdictions); the offender remains on probation until all the periods of incarceration have been served. They are useful sanctions where the purposes of denunciation or

deterrence need to be addressed, but where little is to be gained by interrupting an offender's employment.

Intermittent sentences enable offenders to maintain their jobs or education, and family and social relationships. They may be used in some jurisdictions to ensure an offender's attendance for certain rehabilitative activities. As previously noted with respect to attendance centres, offenders may be required to attend at a facility several evenings per week as well as on weekends. It is believed that such sentences serve as an incentive for offenders not to breach the terms of their probation, as well as to deter them from further criminal activity. The Tearman Society of Nova Scotia recommended this form of sentence for assaultive males so that they may continue to support their families.

In *New Zealand*, where the concept originated in the 1960s, no single continuous period of intermittent custody may exceed 60 hours. The sentence must specify the number of periods to be served each week, the length of sentence, and the date and time the offender is to report for the first time. The offender must consent to this form of sentence. Each detention centre has developed a unique approach. Each has an advisory committee, with representatives from the courts, business, labour and the community at large, who advise on staff appointments, work programs and general policy matters. It is claimed that between 64 percent and 67 percent of probationers subject to intermittent sentences remain successfully in the community after two years.³⁸

In *Canada*, the judge's order must specify when the detention periods are to be served. The period of probation expires when the periods of detention have been served. It is unclear whether a subsequent period of probation may be ordered (as it could be in relation to a continuous period of imprisonment of two years or less). Recently, there have been problems with offenders showing up intoxicated at jails or prisons to serve their intermittent sentences; probation orders may specify that offenders must be sober when they arrive at detention facilities. Another problem is that there is currently insufficient space at jails and provincial prisons to accommodate the number of offenders serving intermittent sentences. In such circumstances, the prospect of home confinement becomes attractive to correctional authorities. (Some European jurisdictions deal with the overcrowding problem by delaying service of the sentence until there is space.) Finally, it should be noted that occasionally such sentences have been

used for sexual offenders; the Committee recognizes that the public has been outraged by this.

In the Committee's view, intermittent sentences are useful to achieve the purposes of denunciation and deterrence, particularly in cases of impaired driving and spousal abuse where the assaulted victim may not wish to be deprived of spousal support. However, the Committee is concerned about the financial costs and the disruption to prison/jail routines associated with such sentences in many other sorts of cases. Moreover, the Committee is of the view that such sentences are generally inappropriate in cases of sexual assault.

Recommendation 33

The Committee recommends that intermittent sentences not generally be used with respect to sexual offences, where public protection, when necessary, should be secured through incarceration or where denunciation might be secured through home confinement, community residential orders, or short periods of continuous incarceration.

Recommendation 34

The Committee recommends that community residential settings be used for intermittent sentences.

Recommendation 35

The Committee recommends that consideration be given to combining intermittent sentences with performance orders or probationary conditions which are restorative or rehabilitative in nature.

8. Fines

Except for the fact that too many people, particularly Natives, are incarcerated in Canada for default of fine payments, few representations were made to the Committee concerning fines. The Committee received recommendations that a day fine system be implemented or that fine options programs be utilized to avoid this problem. **The Committee basically favours avoiding incarceration in lieu of fine payment.**

Recommendation 36

The Committee recommends that the following recommendations of the Sentencing Commission be implemented:

- (a) that once it has been decided that a fine may be the appropriate sanction, consideration be given to whether it is appropriate to impose a fine on the individual before the court. The amount of the fine and time for payment must be determined in accordance not only with the gravity of the offence, but also with the financial ability of the offender. Further to the above principle, prior to the imposition of a fine, the court should inquire into the means of the offender to determine his or her ability to pay and the appropriate mode and conditions of payment. (Rec. 12.20)
- (b) that where the limited means of an offender permits the imposition of only one pecuniary order, priority be given to an order of restitution, where appropriate. (Rec. 12.21)
- (c) that the use of imprisonment for fine default be reduced. (Rec. 12.22)
- (d) that a quasi-automatic prison term not be imposed for fine default and that offenders only be incarcerated for wilful breach of a community sanction. (Rec. 12.23)

C. General Recommendations of the Committee

Recommendation 37

The Committee recommends that the following recommendations of the Canadian Sentencing Commission be implemented:

- (a) that the federal and provincial governments provide the necessary resources and financial support to ensure that community programs are made available and to encourage their greater use (Rec. 12.1);

- (b) that mechanisms to provide better information about sentencing objectives to sentence administrators be developed (Rec. 12.2);
- (c) that a transcript of the sentencing judgment be made available to the authorities involved in the administration of the sentence (Rec. 12.3);
- (d) that mechanisms to provide better information about alternative sentencing resources to the judiciary be developed (Rec. 12.5);
- (e) that feedback to the courts regarding the effectiveness of sanctions be provided on a systematic basis (Rec. 12.6);
- (f) that prior to imposing a particular community sanction, the sentencing judge be advised to consult or obtain a report respecting the suitability of the offender for the sanction and the availability of programs to support such a disposition (Rec. 12.7);
- (g) that [existing] community sanctions be developed as independent sanctions,... [and] that additional proposals be examined by the permanent sentencing commission and by the federal and/or provincial governments for further review, development and implementation (Rec. 12.8);
- (h) that the permanent sentencing commission *consider* the feasibility of developing criteria and principles which permit the comparison of individual community sanctions and which attempt to standardize their use (e.g., X dollars is the equivalent of Y hours of community service) (Rec. 12.10 and 12.11); and
- (i) that the judiciary retain primary control over the nature and conditions attached to community sanctions (Rec. 12.12).

Recommendation 38

The Committee also recommends:

- (a) that federal and provincial authorities develop, support and evaluate alternatives to incarceration and intermediate sanctions;
- (b) that greater recognition and financial support be given to non-governmental agencies to develop alternative programs; and
- (c) that greater linkages be developed between the criminal justice system and other social and mental health services in the society.

Notes

- (1) Some studies have indicated that "custodial sentences tend to increase the likelihood of recidivism rather than reduce it": C. Van der Werff, "Recidivism and Special Deterrence", *British Journal of Criminology*, Vol. 21, No. 2, April 1981, p. 136-146, at p. 146.
- (2) Studies on deterrence have led to the conclusion that, generally speaking, there may be little difference in the deterrent effect of various penal measures. Some research has suggested that "longer expected sentences do not significantly deter prospective offenders from committing property crimes": Kenneth L. Avio and C. Scott Clark, "The supply of property offences in Ontario: Evidence on the deterrent effect of punishment", *Canadian Journal of Economics*, February 1978, p. 1-19, at p. 14.
- (3) A. Von Hirsch, "Creative Sentencing: Punishment to Fit the Criminal", *The Nation*, June 25, 1988, p. 901-2.
- (4) N. Morris, addressing the Conference for the Reform of Sentencing, Parole and Early Release in Ottawa, August 1988.
- (5) Ken Pease, "Community Service Orders", in Michael Tonry and Norval Morris (eds.), *Crime and Justice: An Annual Review of Research — Volume 6*, University of Chicago Press, 1985, p. 56.
- (6) D. Plecas and J. Winterdyk, "Community Service: Some Questions and Answers", *Provincial Judges Journal*, March 1982, p. 11; April Lindgren, "Community work helps turn young offender's life around", *The Citizen*, Ottawa, 20 November 1984, p. A5.

- (7) S.A. Thorvaldson, "Justifying Community Service", *Provincial Judges Journal*, March 1982, p. 9.
- (8) Judge J.B. Varcoe, "The Misuse of Community Service Orders", *Provincial Judges Journal*, March 1982, p. 13.
- (9) Georgia Department of Corrections, "Sentencing Options: State of Georgia", mimeographed, undated.
- (10) Canada's *Young Offender's Act* limits community service sentences to 240 hours to be completed within one year. In Quebec, community service orders for adult offenders range from 20-120 hours, pursuant to provincial guidelines; in New Zealand, the legislated (?) range is 8-200 hours; in Georgia, the limit is 250 hours to be completed within one year for misdemeanors and 500 hours within three years for felonies; in the U.K. and Australia, the limit is 208 hours: S. Divorski and J. Holland *et al.*, *Directory of Adult Alternative Programs in Canada* [User Report No. 1986-7], Research Division, Programs Branch, Ministry of the Solicitor General, Ottawa, 1986, p. 14; J. Leibrich, "Use of Community Service in New Zealand", *Australia and New Zealand Journal of Criminology*, Vol. 18, June 1985, p. 85; Georgia Department of Corrections (Probation Division), "Community Service", mimeographed, undated; Australia Law Reform Commission, *Sentencing of Federal Offenders* [Report No. 15, Interim], Australian Government Publishing Service, Canberra, 1980, p. 241.
- (11) Pease, *op. cit.*, Note 5, p. 69. In 1975, only 45 percent of English probation orders were a direct alternative to incarceration: C.R. Dodge, *A World Without Prisons: Alternatives to Incarceration Throughout the World*, Lexington Books, Lexington, Mass., 1979, p. 119-123.
- (12) G. Danziger, "Prison Crowding", *Editorial Research Reports*, 7 August 1987, 394-407 at p. 404; Pease, *op. cit.*, Note 5, p. 71.
- (13) The Law Reform Commission of Canada (LRCC) appeared to consider community service as a fine alternative: LRCC, *A Report on Dispositions and Sentences in the Criminal Process: Guidelines*, LRCC, Ottawa, 1976, p. 24. The province of P.E.I. permits offenders to pay off the CSO at the rate of \$5 per CSO hour: J.W. Ekstedt and M.A. Jackson *et al.*, *A Profile of Canadian Alternative Sentencing Programmes: A National Review of Policy Issues*, Communications and Public Affairs, Department of Justice Canada, Ottawa, 1988, p. 50.
- (14) The Committee relied on material submitted by the Mennonite Central Committee and the Victim-Offender Reconciliation Program in Langley, B.C., in preparing this section of the report.
- (15) Extracted from *Peace Section Newsletter*, Vol. 16, No. 1, January-February 1986, a publication of the Mennonite Central Committee Peace Section, Akron, Penn., p. 7 and 12.
- (16) Holly Darwin, In Service Training Coordinator, Oklahoma Department of Corrections, "Oklahoma Department of Corrections Post-Conviction Mediation Program: Highlights", Appendix 2 in *National Associations Active in Criminal*

Justice, *Criminal Justice and Victim-Offender-Community Reconciliation*, Seminar Proceedings, Ottawa, September 1985.

- (17) Print and audio-visual materials concerning the wide range of services incorporated in "Genesee Justice" are available from the Community Service/Victim Assistance Program, Genesee County Sheriff's Department, County Building # 1, Batavia, N.Y., U.S.A. 14020-3199.
- (18) Ruth Morris, "Creative Alternatives to Prisons", paper presented to Conference on Prison Overcrowding, Toronto, 1985, p. 6.
- (19) Divorski and Holland, *op. cit.*, Note 10, p. 63; G. Danziger, *op. cit.*, Note 12, 394-407 at 397.
- (20) See *Canadian Treatment Programs for Men Who Batter*, National Clearinghouse on Family Violence, Health and Welfare Canada, Ottawa, 1988; and Ekstedt and Jackson, *op. cit.*, Note 13, p. 33, 51, 63, 74, 90, 101, 124 and 138.
- (21) Australia Law Reform Commission, *op. cit.*, Note 10, p. 241; Dodge, *op. cit.*, Note 11, p. 50.
- (22) Dodge, *op. cit.*, Note 11, p. 50.
- (23) J. Sinclair, *Hostels for Probationers*, Her Majesty's Stationery Office, London, 1971, p. 1; Dodge, *op. cit.*, Note 11, p. 124-6.
- (24) Dodge, *op. cit.*, Note 11, p. 55.
- (25) *Ibid.*, p. 103, 109 and 110-112.
- (26) *Ibid.*, p. 188.
- (27) K. Sawyer, "The Alternative to Prison", *The Washington Post*, National Weekly Edition, 2 September 1985; D.C. Evans and V. Fallins, "Georgia Diversion Centers", Georgia Department of Corrections, July 1985; Georgia Department of Corrections, "Sentencing Options: ...", *op. cit.*, Note 9.
- (28) R. Lacayo, "Considering the Alternatives: Crowded prisons spark less confining punishments", *Time*, 2 February 1987, p. 60.
- (29) Danziger, *op. cit.*, Note 12, p. 395 and 405.
- (30) Sawyer, *op. cit.*, Note 27; "Intensive Probation Supervision" and "Sentencing Options: ...", both mimeographed and undated publications of the Georgia Department of Corrections.
- (31) Dodge, *op. cit.*, Note 11, p. 203-6.
- (32) Ekstedt and Jackson *et al.*, *op. cit.*, Note 13, p. 148.

- (33) *Ibid.*, p. 96 and 128.
- (34) "Electronic Surveillance: Turning Homes into Jails", in *Liaison*, November 1987, p. 4-8.
- (35) Danziger, *op. cit.*, Note 12, p. 405.
- (36) Lacayo, *op. cit.*, Note 28, p. 60; Danziger, *op. cit.*, Note 29, p. 402.
- (37) For a consideration of how home confinement might facilitate reintegration into the community, see R.A. Ball and J.R. Lilly, "Home Incarceration: An International Alternative to Institutional Incarceration", Vol. 9, No. 2 (1985) *International Journal of Comparative and Applied Criminal Justice*, p. 85-97.
- (38) Dodge, *op. cit.*, Note 11, p. 55-6.

CHAPTER EIGHT

CURRENT FORMS OF CONDITIONAL RELEASE ¹

A. Introduction

This chapter provides a description of the different current forms of conditional release: temporary absence, day parole, full parole and earned remission/mandatory supervision. It also sets out the mandatory terms and conditions of release deemed to have been imposed by the National Parole Board on any inmate released into the community under supervision.

These various forms of conditional release permit federal and provincial adult inmates to be in the community during part of a sentence of imprisonment. Such inmates are subject to supervision as well as to mandatory and special release conditions.

Conditional release is believed by many both to promote the reintegration of the offender into the community and to protect the community from *undue* risk. These ends are achieved both by supervising the offender and providing assistance. To ensure that an inmate under supervision is properly controlled and receives appropriate assistance, he or she must report periodically to a parole officer, to the police, or to both. The parole officer has the dual responsibility to assist the offender to reintegrate into the community and protect the safety of the community. All forms of conditional release may be terminated if the offender exhibits behaviour that poses an undue risk to the community by breaching a condition of release or by committing a new crime, or if there is suspicion that he or she may do so.

B. Forms of Conditional Release

Offenders become eligible for different forms of release after serving various prescribed periods of incarceration, depending on the length of sentence and the nature of the offence. Eligibility for release generally means the offender is eligible to *apply* for the privilege of release. Only release on mandatory supervision may be automatic and, since 1986, its availability to the most serious offenders has been restricted.

1. Temporary Absence

A temporary absence from custody is usually the first release an inmate will be granted. It is a brief period of release for a specific purpose and usually has very strict conditions. A temporary absence may be given at any time for medical and humanitarian or, after a certain point in time, for rehabilitative reasons. It may be with or without escort. Successfully completed escorted temporary absences are often required before unescorted temporary absences are granted.

a. From Federal Penitentiaries

Escorted temporary absences mean that the inmate, either alone or as a member of a group, is accompanied by an escorting officer. The escort may be a correctional officer (from either the security or resocialization staff) or, where appropriate, a community volunteer specially selected by the Correctional Service of Canada for the purpose.

The decision to grant a temporary absence with escort is generally made by the institutional authorities, except for offenders sentenced for murder, whose absence with or without escort for humanitarian or rehabilitative reasons may not be granted without the approval of the National Parole Board and then not until the expiry of all but three years of the period of ineligibility for parole (10 to 25 years). Although there are otherwise no legislated minimum periods of imprisonment that must be served before a grant of temporary absence with escort may be authorized, they are not usually granted for rehabilitative purposes until a specified portion of the sentence has been served.

Unescorted temporary absences for rehabilitative or humanitarian purposes have been the responsibility of the National Parole Board since 1978. They are used for occasional intermittent release (e.g., to apply for a job, attend family functions, or to visit relatives or friends). The Board may delegate its authority regarding medical or humanitarian reasons, as it considers appropriate (subject to any conditions it deems advisable and for such periods as it sees fit), with respect to an inmate or a class of inmates, to the Commissioner of Corrections or to the Warden or Superintendent of a penitentiary. The latter is done in most cases of inmates serving sentences of less than five years.

Except for medical emergencies, penitentiary inmates are generally ineligible for temporary absences prior to serving at least six months or one-sixth of sentence (longer in some cases).

The *frequency and duration* of unescorted temporary absences vary. Usually, inmates from maximum- and medium-security institutions may be granted temporary absences that together do not exceed 48 hours per month; inmates from minimum-security institutions may be granted up to 72 hours per month. Other forms of temporary absence may be granted in the same month if the Board or institutional authorities consider they are necessary.

Temporary absences, with or without escort, for humanitarian reasons or to assist in the rehabilitation of the inmate may be granted by the Board for a period not exceeding 15 days. Temporary absence for medical reasons may be granted by the Board or Commissioner (when delegated) for an unlimited period, and by an institutional director (when delegated) for up to 15 days.

Generally, no consecutive unescorted temporary absences are allowed. Releases of an ongoing nature are more appropriately considered in the context of day parole.

b. From Provincial Prisons

Inmates confined in provincial institutions are not within the jurisdiction of the National Parole Board in the case of temporary absences, with or without escort. They are subject to the authority of provincially designated correctional officials, who may grant absences of an unlimited period for medical reasons and up to 15 days for humanitarian or rehabilitative purposes. The practice of 15-day back-to-back unescorted temporary absences has evolved to provide for extended periods of work release, particularly in provinces which do not have a provincial parole board or prior to day parole eligibility. No minimum period of incarceration is prescribed prior to eligibility.

2. Parole

The term "parole" includes "day parole" and "full parole". Parole is an authority for an inmate to be under supervision outside of prison during his or her sentence.

The National Parole Board may grant parole to an inmate, subject to any terms or conditions it considers reasonable, if the Board considers that:

- in the case of full parole, the inmate has derived the maximum benefit from imprisonment;
- the reform and rehabilitation of the inmate will be aided by the grant of parole; and
- the release of the inmate would not constitute an undue risk to society.

The Board is deemed to have imposed such mandatory terms and conditions as may be prescribed by the regulations unless it has relieved the inmate of compliance with (or has varied) any of them. In addition, it may also impose special conditions.

British Columbia, Ontario and Quebec have provincial parole boards which deal with almost all applications for parole from inmates of provincial institutions.

a. Day Parole

Day parole is a form of conditional release usually granted for four to six months (although it may be granted for up to 12 months) to penitentiary inmates who are considered by the National Parole Board to be good candidates for full parole. Most inmates are eligible to apply for this type of release after serving one-sixth of the sentence. (Where actual violence or the threat of violence was involved in the crime, it is unlikely to be granted until later.) The inmate must return, usually every night, to a minimum-security institution, to a community correctional centre, operated by the Correctional Service of Canada, or to a community residential centre, a halfway house, operated by a voluntary organization.

Day parole is usually granted for one of the following reasons:

- to allow an inmate to seek further education or training when the facilities are not available in the institution;
- to provide the opportunity to participate in community service or employment projects such as forestry or harvesting;

- to help an inmate re-adjust to life outside prison; and
- to re-establish or strengthen family relationships.

For inmates who are not successful in obtaining parole, day parole may be granted later in the sentence, just prior to release on mandatory supervision, to provide greater control and support than that available during mandatory supervision.

b. Full Parole

i. Generally

Full parole is the full-time conditional release of an inmate for the remainder of his or her sentence. Those who have served at least one-third of their sentence (more for special categories such as lifers) are eligible to apply; those who have persuaded a parole board that they are determined to lead law-abiding lives may be granted full parole.

Unless the parolee fails to adhere to the conditions of parole or returns to criminal activities and is thereby re-imprisoned, he or she will remain in the community under parole until the expiry date of the sentence (or discharge of parole).

Only about 32 percent of federal releases are on full parole. Of these, the majority has served from 46 percent to 49 percent of their sentences before being granted full parole, although many will have been released somewhat earlier on day parole.

ii. Special Categories of Offences and Offenders

◦ Violent Conduct Offences

A "violent conduct offence" for parole purposes is one carrying a maximum penalty of 10 years or more, for which a sentence of five years or more was actually imposed, and which involved conduct that seriously endangered the life or safety of any person or resulted in serious bodily harm or severe psychological damage to any person. An inmate convicted of a violent conduct offence within 10 years of the expiration of a sentence for a previous violent conduct offence is not eligible for full parole until one-half of the sentence has been served, or seven years, whichever is the lesser. This

provision is seldom used because of a technical interpretation of the legislation that the previous sentence must have *expired* prior to the commission of the subsequent offence. (In some cases, the subsequent offence will have been committed while the inmate was still serving the previous sentence in the community under conditional release.)

◦ **Murderers**

Since July 1976, there have been two categories of murder: first and second degree. First degree murder covers all planned and deliberate murders and certain others such as contracted murders, murder of a police officer, a prison employee or any other person authorized to work in a prison, when he or she is on duty. The mandatory minimum period to be served before being considered for full parole is 25 years. Persons who have committed second degree murder (i.e., any murder that is not first degree murder) can be considered for parole after serving between 10 to 25 years of their sentences, as determined by the court. Anyone convicted of murder who must serve more than 15 years before parole eligibility may apply after 15 years for a judicial review by a Superior Court judge and a jury to either reduce the remaining period before eligibility, or to be declared eligible for parole immediately.

◦ **Dangerous Offenders**

Since October 1977, the courts, *upon application by the Crown*, have been able to impose indeterminate sentences on certain individuals they consider to be dangerous offenders: those who have been convicted of serious personal injury offences and have backgrounds of persistent aggressive or violent behaviour.

A dangerous offender becomes eligible for full parole three years after being taken into custody and must have a case review at that time and every two years thereafter. The Board is required to review, once a year, the cases of inmates sentenced, *before* October 1977, to an indeterminate term as habitual or dangerous sexual offenders.

iii. Parole by Exception

Provided the inmate otherwise meets the statutory criteria for parole, with some exceptions, parole boards may grant full parole or day parole "by

exception" to an inmate before he or she has served the portion of the prescribed term of imprisonment in circumstances such as those where:

- the inmate is terminally ill;
- the inmate's physical or mental health is likely to suffer serious damage if he or she continues to be held in confinement;
- there is a deportation order made against the inmate under the *Immigration Act, 1976* and the inmate is to be detained under that Act until deported; or
- in the case of provincial inmates, the inmate has completed a program recommended by the sentencing court or satisfied specific, expressly stated objectives of the sentence.

Inmates ineligible for parole by exception are those serving sentences of life imprisonment, of detention for an indeterminate period, or in respect of a "violent conduct offence".

3. Mandatory Supervision

a. Generally

Most penitentiary inmates who have not been released on parole (or whose parole has been revoked) are eligible to serve in the community, under supervision, the portion of the sentence for which they have accumulated earned remission. (Inmates whose penitentiary terms began before July 1970 and provincial inmates are released at that time without supervision.) Most releases (57.5 percent in 1986/87) from penitentiary are those on mandatory supervision.

The terms "remission" and "mandatory supervision" are often confused. *Remission*, which has been in effect for over 100 years, allows the majority of inmates to earn eligibility to serve a portion of their sentences in the community. Commonly known as "time off for good behaviour", remission can be as much as one-third of an inmate's sentence. Mandatory supervision, which has been in place since 1970, is compulsory supervision which federal inmates must accept if they accept release on their remission date. An inmate is not required to accept release under mandatory

supervision and may choose to remain in the institution until the sentence expiry date.

The purpose of mandatory supervision is:

- to provide the same degree of control and assistance to federal inmates released as a result of remission as to those released on parole; and
- to assist the offender in making the transition to law-abiding behaviour upon return to the community and to allow relatively quick and easy return to penitentiary of those who violate conditions of release or who commit new crimes.

The National Parole Board has the authority to set conditions and to revoke mandatory supervision. It can thus send individuals back to prison to serve the remaining portion of their sentences if the conditions of the release are violated or if the inmates commit new crimes.

**b. Detention Orders, Residency and One-Chance
Mandatory Supervision (Bill C-67)**

While parole has always been a discretionary decision by the National Parole Board, release under mandatory supervision prior to the passage of Bill C-67 in 1986 was an unqualified entitlement. Bill C-67 now authorizes the National Parole Board, in accordance with criteria (including a schedule of offences) and procedures established by the legislation to detain in custody until sentence expiry date those inmates otherwise eligible for mandatory supervision who are considered likely to commit an offence causing death or serious harm to another person before the end of their sentence. These inmates forfeit their remission.

Cases must be referred to the National Parole Board six months prior to eligibility for mandatory supervision if the Correctional Service of Canada finds that:

- the inmate's current term is for a *Criminal Code* offence that had been prosecuted by indictment and is mentioned in the schedule;
- the commission of the offence caused the death of or serious harm to another person; and

- there are reasonable grounds to believe that the inmate is likely to commit a similar offence prior to sentence expiry.

Those offences mentioned in the schedule for which there must have been a prosecution by indictment and a conviction are:

Current Criminal Code Offences:

- causing injury with intent (paragraph 79(2)(a))
- use of a firearm during commission of an offence (section 83)
- pointing a firearm (subsection 84(1))
- prison breach (section 132)
- manslaughter (section 219)
- attempt to commit murder (section 222)
- causing bodily harm with intent (section 228)
- overcoming resistance to commission of offence (section 230)
- assault (section 245)
- assault with a weapon or causing bodily harm (section 245.1)
- aggravated assault (section 245.2)
- unlawfully causing bodily harm (section 245.3)
- assaulting a peace officer (section 246)
- sexual assault (section 246.1)
- sexual assault with a weapon, threats to a third party or causing bodily harm (section 246.2)
- aggravated sexual assault (section 246.3)
- kidnapping (section 247)
- robbery (section 303)
- arson (section 389)
- setting fire to other substance (section 390)
- setting fire by negligence (section 392)

- conspiracy to commit murder (paragraph 423(1)(a))

Criminal Code Offences Committed Prior to 4 January 1983:

- rape (section 144)
- attempt to commit rape (section 145)
- indecent assault on female (section 149)
- indecent assault on male (section 156)
- common assault (section 245)
- assault with intent (section 246)

In addition, the Commissioner of Corrections may refer to the Board any inmate where there is reason to believe that, prior to sentence expiry, the inmate will commit an offence causing death or serious bodily harm.

The National Parole Board has the option of ordering that certain inmates may be detained until warrant expiry, or that they may be placed under strict residential conditions if they are released under mandatory supervision. Detained inmates are entitled to an annual review. Inmates subject to strict residential conditions will have only one chance in the community, and, if their releases are revoked, will be detained until warrant expiry.

4. Mandatory Terms and Conditions of Release

The mandatory terms and conditions that the National Parole Board is deemed to have imposed in respect of any inmate released on parole or subject to mandatory supervision are that the inmate:

- (1) on release, travel directly to the inmate's place of residence, as noted on the parole or mandatory supervision certificate;
- (2) report to the parole supervisor immediately on release and thereafter as instructed by the parole supervisor;
- (3) remain at all times in Canada, within territorial boundaries prescribed by the parole supervisor;
- (4) obey the law and keep the peace;

- (5) inform the parole supervisor immediately on arrest or being questioned by the police;
- (6) report to the police as instructed by the parole supervisor;
- (7) advise the parole supervisor of the inmate's address of residence on release and thereafter report immediately
 - (a) any change in the address of residence,
 - (b) any change in the normal occupation, including employment, vocational or educational training and volunteer work,
 - (c) any change in the family, domestic or financial situation, and
 - (d) any change which may reasonably be expected to affect the inmate's ability to comply with the terms of conditions of parole or mandatory supervision; and
- (8) not own, possess or have the control of any weapon, as defined in the *Criminal Code*, except as authorized by the parole supervisor.

In addition, the National Parole Board may impose special conditions such as to abstain from intoxicants and to participate in programs such as drug or alcohol rehabilitation.

Breach of conditions can lead to suspension and revocation (discussed in Chapter Ten).

C. Unconditional Release

About 7.3 percent of releases from penitentiaries in 1986/87 occurred at the end of inmates' sentences. These offenders either had no earned remission, were detained until warrant expiry date pursuant to Bill C-67, or they refused to accept release on mandatory supervision.

Notes

- (1) This chapter is based in large part on the relevant provisions of the *Parole Act*, *Parole Regulations*, *Penitentiary Act*, *Criminal Code*, the National Parole Board's *Policy and Procedures Manual*, and the 3-volume *Briefing Book* prepared for the Committee by the National Parole Board.

CHAPTER NINE

THE RECENT HISTORY OF CONDITIONAL RELEASE REFORM IN CANADA

A. Early Days

Conditional release began to develop in the United Kingdom in the mid-nineteenth century. Ticket of leave programs were established whereby offenders would be released from prison before the end of a term of imprisonment if they applied themselves industriously while incarcerated. Community supervision did not exist but offenders not respecting agreed-upon terms of release were returned to prison. Similar developments were taking place in Germany in the 1860s. In the 1870s, the ticket of leave approach was imported to the United States with the opening of the parole system at Elmira Reformatory in New York State.

Prior to 1899, the Royal Prerogative of Mercy was used as a releasing mechanism in Canada. In 1899, Parliament enacted the *Ticket of Leave Act* which, for the first time, established the system of conditional release in Canada. In 1901, the Dominion Parole Office was created as part of the Remission Service within the Department of Justice. By the late 1950s, the Remission Service had developed a number of regional offices to provide supervision to offenders.

In 1956, the Committee appointed to Inquire into the Principles and Procedures followed by the Remission Service of the Department of Justice (the Fauteux Committee) released its Report. The Fauteux Committee saw parole as a transition for offenders from institutions to the community. In its view, parole had a dual role — integrative and supervisory: both would benefit the offender and society. In part as a response to the Fauteux Report, Parliament in 1959 enacted the *Parole Act* and established the independent National Parole Board. The Board, initially made up of five members, was given authority to grant conditional release to offenders.

The next part of this chapter will deal with developments since 1969. This period has been characterized by a number of proposals for reform and their implementation, in whole or in part.

B. Proposals for Reform and Other Developments Since 1969

1. Ouimet Report

As will become apparent from the following outline of the 1969 recommendations of the Report of the Canadian Committee on Corrections (Ouimet Committee), many of its proposals have been implemented since they were first made public.

The Ouimet Committee saw parole as a treatment-oriented correctional measure — a method of surveillance coupled with assistance to the offender to reintegrate into society. It considered the primary objective of parole to be social re-education of the offender: society is protected by the degree of surveillance to which the offender is subjected. Parole was seen as a less burdensome and less expensive form of correction than incarceration. The Ouimet Committee suggested that the burden of showing that more costly and more burdensome correctional alternatives are more effective rests on those making such propositions. The Ouimet Committee named two measurement criteria to determine the success of parole — whether the offender successfully completed the parole period and whether the offender's total correctional experience led to his or her not committing further offences.

The Ouimet Committee recommended that federal/provincial parole jurisdiction be clarified, with each level of government being responsible for the parole needs of those in its correctional institutions. At the time its report was released, the National Parole Board and the National Parole Service operated as a unit, with the latter providing parole investigatory and advisory services to the former quasi-judicial body. Consequently, the Ouimet Committee recommended that these two institutions be separated to preserve the quasi-judicial independence of the National Parole Board. Most of the parole investigatory and supervisory functions formerly performed by the National Parole Service are now performed by the Correctional Service of Canada.

The Ouimet Committee also recommended that the National Parole Board have more members (it had five at the time) and that they be representative of many disciplines and sectors of the community. It recommended that offenders be able to appear at Parole Board hearings, that such Boards be comprised of three-member panels and that decisions be rendered expeditiously with reasons being given.

The Ouimet Committee did not recommend that the eligibility for parole after one-third of sentence has been served be changed. The Ouimet Committee urged that the automatic forfeiture of the balance of an offender's parole upon conviction for an indictable offence committed while on parole be subject to over-ruling by the National Parole Board in extraordinary circumstances.

In certain circumstances, the Ouimet Committee urged that the National Parole Board should be empowered to recommend to a court that it terminate a sentence before expiry where an offender has been on parole successfully for a long period of time. This would apply in cases of sentences to preventive detention or to imprisonment for life.

At the time the report was released, there was provision for inmates to have 25 percent of their sentences remitted statutorily — this could only be lost for misbehaviour. In addition, inmates accumulated earned remission at a rate of three days per month if they applied themselves industriously — this could not be lost. In 1969, such offenders were released into the community without supervision of any kind. The Ouimet Committee recommended that all offenders released under statutory or earned remission be subject to what it called "statutory conditional release" — such an inmate would be subject to the same type of supervision as those on parole in the community. A variant of this proposal was subsequently enacted by Parliament in the form of mandatory supervision. (In 1976, the concept of statutory remission was repealed by Parliament.)

Some of the other changes adopted partly as a result of the Ouimet Report were the increase in the number of National Parole Board members from five to nine and the authorization of the establishment of regional divisions of two or more members.

2. Hugessen Report

The 1972 Hugessen Task Force report started from the premise that the National Parole Board was too centralized and should establish five Regional Boards across the country. Each of these Regional Boards would consist of a Chairperson, an independent person not involved in the correctional system, a judge, a senior police officer, a psychiatrist or psychologist, a criminologist or sociologist, a person with responsibility for programs in a correctional institution and a person with responsibility for

supervision of offenders in the community. Where the workload required, it was recommended that part-time members or short-term full-time members should be appointed to Regional Boards.

The Task Force also recommended that there be Local Boards set up for institutions within each region. These Local Boards would be made up of senior institutional personnel, senior parole personnel and an independent citizen from a local community. Local Boards would have jurisdiction over offenders with less than five-year sentences; Regional Boards would be empowered to review decisions of these Local Boards and would deal with all other parole matters.

The Task Force recommended that there be a National Commissioner for Parole who would coordinate the work of the Regional Boards and make recommendations for appointments to Regional and Local Boards. The Task Force urged that a National Parole Institute be established to collect and analyze statistics and other forms of data.

The Task Force suggested that the confusion between temporary absences for rehabilitation purposes and day parole was undesirable. At that time, temporary absence decisions were made by the correctional institution and day parole decisions were made by the National Parole Board. In the past, the different authorities, taking into account the same factors, had made inconsistent decisions about the same inmate. The Task Force recommended that temporary absences be abolished, and that they and day parole be combined into what it would call "temporary parole". Such "temporary parole" would be granted by the National Parole Board. Under this proposal, the correctional authority would only be able to authorize essential temporary absences for medical or humanitarian purposes.

It was recommended that the offender should be able to apply for temporary parole six months after a sentence begins. The eligibility date to apply for parole would not change — offenders would be eligible after one-third of the sentence had been served or four years, whichever was less.

The Task Force recommended that clear criteria for granting parole should exist in legislation. The legislation should also, under these proposals, indicate specific conditions and limitations applicable to those on parole — these should be designed to prevent the parolee from committing a new offence or repeating a previous offence.

The Task Force indicated that, due to parole, temporary absences and remission, virtually no offender spends the entire length of a sentence in prison. It expressed the view that remission had lost much of its value as a device to control offenders — parole was seen as a much more effective device to control inmates because it involved months and years of time rather than days or weeks as remission did. It thus recommended that both earned and statutory remission be abolished and that the last third of a sentence be served on what it called “mandatory parole”.

The Task Force proposed that all forms of parole should be reviewable after 18 months by a Regional Board, and if that time had been successfully completed in the community, the balance of the offender’s sentence should be forgiven.

The recommendations made by the Task Force were, in the main, not adopted but its concerns relating to due process were largely addressed in subsequent legislative amendments and changes to policy.

3. Goldenberg Report

The 1974 Goldenberg Committee report started from the basic premise that parole must be a procedure for the benefit of society and the offender, in which inmates would be released from incarceration in a systematic manner, under regulated conditions. It was observed that parole supervision needed to be intensified — brief and infrequent contact with the parolee was seen as insufficient to protect society adequately or to assist the parolee effectively. The Goldenberg Committee asserted that parole must be seen as a positive step in the correctional system — not as a reward, a right or as a prison management function.

The Goldenberg Committee recommended that the provisions related to statutory remission, earned remission and mandatory supervision be repealed and replaced by an entitlement to “minimum parole” for the last third of a sentence. It proposed that “discretionary parole” be available after an inmate had served one-third of the sentence or seven years, whichever is the lesser. Any recommendation on parole eligibility made by a court would, under these proposals, have to be taken into account in making the parole decision. It also recommended that the criteria under which parole is granted be set out in legislation.

Under the Goldenberg Committee recommendations, the parole authority would be authorized to grant "temporary parole" to an inmate if one-half of the time prior to the eligibility date for "discretionary parole" (that is, one-sixth of the sentence or three and one-half years, whichever is lesser) had been served, if the release was not an undue risk to the community, and if the reason for the release was part of the inmate's plan for social reintegration.

Many of the recommendations contained in the Goldenberg Report with respect to organization and procedure have been put into effect by means of legislation or as National Parole Board policy.

4. Law Reform Commission Report

The Law Reform Commission, in its 1976 report, *Dispositions and Sentences in the Criminal Process - Guidelines*, recommended that a "Sentence Supervision Board" replace the National Parole Board. This Board would have the following duties:

- consult with prison officials, courts and police, and formulate and publish policies and criteria affecting conditions of imprisonment and release;
- automatically, or upon request, review important decisions relating to conditions of imprisonment and release; and
- hear serious charges and determine the process for such charges against prisoners arising under prison regulations.

Under this proposal, the Sentence Supervision Board would be empowered to:

- refuse a first temporary absence at the prescribed time or any other temporary absence provided by regulations;
- refuse to permit a prisoner to begin the next stage at the prescribed time;
- grant additional temporary absences to prisoners who request them or to shorten or disregard a stage, in compliance with the criteria stated in the regulations;

- impose special conditions of personal restraint at any stage where the offender does not accept them voluntarily;
- return prisoners to a former stage through revocation of day release, community supervision, or through transfer to maximum security conditions; and
- serve as a disciplinary court for serious violations of regulations, or for offences that entail severe punishment such as solitary confinement for a period exceeding one week, or fines or compensation involving large sums of money. In the case of serious offences violating the criminal law, the prisoner should be prosecuted in court.

The Commission also recommended that statutory remission be abolished.

The great bulk of the Law Reform Commission's report dealt with disposition and sentencing guidelines as described earlier in this report. The major thrust of the Law Reform Commission's recommendations in relation to conditional release, as set out above, has not been accepted or implemented by government.

5. Peace and Security Legislation

In July 1976, Parliament enacted Bill C-84. This legislation abolished capital punishment as the penalty for murder. It established parole eligibility dates at 25 years for first degree murder and at between 10 and 25 years for second degree murder.

Parliament enacted Bill C-51 in October 1977. Legislation dealing with habitual criminals and dangerous sexual offenders was replaced by dangerous offender legislation allowing for the judicial imposition of indeterminate sentences. Statutory remission of sentence was abolished and replaced by an equivalent amount of earned remission. The National Parole Board was relieved of its responsibility for the National Parole Service. The Parole Service became a responsibility of the Commissioner of Corrections because it was believed that such a reorganization would lead to better systemic coordination and service or program delivery. The National Parole Board was increased in size from 19 to 26 members — provision was made for the appointment of temporary board members to help with the case

workload and for the appointment of community board members to vote on cases where life sentences or sentences of preventive detention are involved.

In 1978, legislation was enacted to allow for the establishment of provincial Parole Boards, as recommended in the 1974 Goldenberg Report.

6. Nielsen Task Force

In November 1985, the Study Team on Justice Issues submitted its report to the Task Force on Program Review. Among other issues, this report dealt with membership of the National Parole Board, parole guidelines, "provincialization" of the parole system and mandatory supervision.

Insofar as membership of the Board is concerned, the report expressed some concern about the qualifications and calibre of its members. It urged consideration of a system whereby the Chairman and members would be nominated by a screening committee of seven federal, provincial and private sector officials whose recommendations would be based on objective criteria.

The Study Team expressed some concern about the unfettered decision-making discretion of the National Parole Board, leading to possible disparity and inequity in decision-making. It noted the existence of parole decision-making guidelines in other jurisdictions and that the adoption of a similar approach might lead to more equitable decisions.

The Study Team carried out an extensive analysis of the possible benefits that might result from a transfer of the responsibility for parole to the provinces. The report reviewed the advantages and disadvantages of total provincialization, total federalization, federalization based on a local staff presence and administration of parole by prison staff. It anticipated that results would be most positive from "provincialization" and put forth its view that parole supervision carried out by provincial officers under agreement with the federal government would be more efficient and cheaper than the current arrangement. It felt that privatization of parole supervision was premature.

Mandatory supervision was described by the Study Team as a program that had failed and should either be abolished or significantly amended. On the related issue of remission, the Study Team presented five options, possibly favouring the *status quo*, saying that its abolition would lead to

increased prison population and added costs, and that its abolition would also result in the loss of a tool for encouraging positive behaviour.

7. Bills C-67 and C-68

Parliament amended the *Parole Act* in July 1986 by adopting Bills C-67 and C-68. The legislation enables the National Parole Board to detain beyond the mandatory supervision date those offenders who have committed certain serious offences and who there are reasonable grounds to believe will commit a similar offence before sentence expiry. Such an application for detention is made by the Correctional Service of Canada and the Board can either order detention until warrant expiry date or one-chance release on mandatory supervision.

These amendments also provide offenders with a mandatory panel review of their cases at the one-sixth day parole eligibility date with the intention of releasing those who are not dangerous as early as possible.

8. Canadian Sentencing Commission

The Canadian Sentencing Commission recommended in its 1987 report that parole be abolished. It concluded that conditional release adds uncertainty to the sentencing system — two offenders sentenced to the same term for the same offence may be returned to the community at different times, depending on their institutional performance while incarcerated. This uncertainty as to when an offender may be released, stated the Commission, may have an effect on the practices of sentencing judges. The Commission also observed that parole has the (unintended) effect of “equalizing sentences” — those serving long sentences on average serve a smaller portion of them in prison than those serving shorter sentences.

The Commission recommended that earned remission be retained as a relatively non-coercive method of administrative control that offers an incentive to inmates to engage in constructive behaviour and activity. Because the Commission believed that Canada should move closer to “real time” sentencing (that the prison sentence served should more closely approximate the sentence imposed), it recommended that no more than 25 percent of a sentence should be subject to earned remission.

9. Correctional Law Review

In March 1987, at about the same time as the Canadian Sentencing Commission released its report, the Ministry of the Solicitor General Correctional Law Review released Working Paper No. 3 on conditional release. The Working Paper set out the broad issues raised by conditional release and examined the implications of conditional release, without drawing any conclusions. Since the publication of this Working Paper, a series of consultations on its contents and that of other Working Papers has been held.

10. Solicitor General's June 1988 Proposals

The Solicitor General of Canada made a number of proposals for changes in the system of conditional release when he appeared before the Committee on June 15, 1988. He proposed that the *Parole Act* be amended so that it would be clear that the assessment of public risk is the sole criterion in all decisions relating to the conditional release of offenders. Under these proposals, public protection, he said, would be promoted by facilitating the timely integration of the offender into the community as a law-abiding member.

It was proposed by the Solicitor General that parole eligibility not be available until one-half of a sentence or 10 years had been served, whichever of the two is the lesser. He proposed that earned remission be abolished and that offenders be eligible for presumptive release when the lesser of one-third or 12 months remains to be served in a sentence, constituting essentially a shorter period of mandatory supervision. The detention provisions of Bill C-67 would still apply to the proposed presumptive release scheme.

Under these changes offenders would not be eligible for day parole until six months before their parole eligibility date. The purpose of day parole would be to prepare offenders for reintegration into the community. The first parole hearing would, under these proposals, take place not prior to the six months preceding the date an offender is eligible for parole. There would be an annual parole review hearing.

Temporary absences would, under the Solicitor General's proposals, only be allowed if they relate directly to correctional programs, rather than preparation for release. They would still be allowed for limited humanitarian

reasons. The eligibility dates and procedures would remain approximately as they are now.

After consultations, the Solicitor General of Canada indicated, in an August 3, 1988 address to an international conference held in Ottawa on the reform of sentencing, parole and early release, that he would be refining his June 15, 1988 proposals. He said, in particular, that he would be exploring ways to target only those inmates who show a propensity to commit violent offences for longer periods of incarceration before becoming eligible for parole.

1. The National Parole Board

a. Organization

The National Parole Board is an agency within the Ministry of the Solicitor General. The Board is independent of government in its decision-making role, except, of course, for the ultimate control exercised by Parliament through its legislative and oversight functions.

In addition to its headquarters in Ottawa, the Board has five regional offices (Atlantic, Quebec, Ontario, Prairie and Northwest Territories, and Pacific) where cases are studied and decisions made to grant or deny conditional release to eligible inmates in federal penitentiaries, or provincial prisons outside Quebec, Ontario and British Columbia. The decision-making process is initiated in the region.

National Parole Board members at Headquarters in Ottawa are asked to examine certain negative decisions and to report to the Governor-in-Council concerning the granting of parole.

b. Composition

The Board comprises 26 full-time members, including a Chairman and Vice-Chairman, who are appointed for terms not exceeding 10 years. Board members come from a wide range of backgrounds -- among others, scientists, social workers, criminology, law enforcement, journalism and the arts. When required, temporary board members are appointed to help the Board through periods of stress.

When the Board is reviewing the case of an inmate serving an indeterminate sentence or a sentence of life imprisonment, a minimum

CHAPTER TEN

THE RELEASE PROCESS

A. Jurisdiction of Parole Boards

1. The National Parole Board

a. Organization

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In addition to its headquarters in Ottawa, the Board has five regional offices (Atlantic, Quebec, Ontario, Prairies and Northwest Territories, and Pacific) where cases are studied and decisions made to grant or deny conditional release to eligible inmates in federal penitentiaries, or provincial prisons outside Quebec, Ontario and British Columbia. This decision-making process is initiated in the region.

National Parole Board members at Headquarters in Ottawa are called upon to re-examine certain negative decisions and to make recommendations to the Governor-in-Council concerning the granting of pardons.

b. Composition

The Board comprises 36 full-time members, including a Chairman and Vice-Chairman, who are appointed by the Governor-in-Council for terms not exceeding 10 years. Board members come from a wide variety of backgrounds — among others, corrections, social work, psychology, criminology, law enforcement, journalism and law. From time to time, as required, temporary board members are appointed for a period not exceeding three years to help the Board through periods of heavy case loads.

When the Board is reviewing the case of an inmate serving an indeterminate sentence or a sentence of life imprisonment as minimum

punishment, two community board members appointed for that purpose must review the case with three members of the Board.

2. Provincial Parole Boards

Provincial parole boards with limited powers have existed in Ontario and British Columbia for some years. Since 1978, Quebec, Ontario and British Columbia have established parole boards with jurisdiction over all inmates serving definite sentences in their respective provincial institutions, including those federal inmates serving sentences of two years or more pursuant to Exchange of Service Agreements.

Specific parts of the *Parole Act* and *Parole Regulations* govern the operation of provincial boards. Provinces may develop their own rules and regulations provided they do not conflict with the federal legislation.

B. Federal Release and Termination Processes

1. The Obligations of the National Parole Board

The National Parole Board has exclusive jurisdiction and absolute discretion to grant, deny or revoke day parole and full parole for inmates in both federal and provincial prisons, except for cases under the jurisdiction of provincial parole boards (Quebec, Ontario and British Columbia). The Board is ultimately responsible for the granting of unescorted temporary absences to penitentiary inmates; however, in some instances, the Board delegates this authority to directors of institutions. The Board also has the authority to specify conditions governing mandatory supervision release, and to revoke it, or to order certain offenders detained until warrant expiry.

In addition, the Board is obliged to notify all offenders sentenced to imprisonment for two years or more of their eligibility dates for full parole, day parole and temporary absence. Generally, inmates may have their applications for temporary absence or day parole reviewed once every six months, and for full parole, once every two years (the Solicitor General has recently proposed that full parole review be held at one-year intervals).

2. Obligations of the Correctional Service of Canada

a. Provision of Programs

The Penitentiary Regulations indicate the sort of programs which are to be made available to federal inmates to prepare them for release:

- s. 13 The inmate shall, in accordance with directives, be confined in the institution that seems most appropriate having regard to:
 - (a) [the required or desirable custodial control], and
 - (b) the program ... most appropriate for the inmate.

- s. 20(1) There shall be, at each institution, an appropriate program of inmate activities designed, as far as practicable, to prepare inmates ... [for release].
 - (2) ... the Commissioner shall, so far as is practicable, make available to each inmate capable of benefitting therefrom academic or vocational training, instructive and productive work, religious and recreational activities and psychiatric, psychological and social counselling.

- s. 35(1) Every inmate is required to work in a position at an occupation or activity that is calculated to assist in his [or her] reformation and rehabilitation.

- s. 42 Penitentiary industry shall be organized and developed with the objective of ensuring that inmates
 - (a) will be fully, regularly and suitably employed at tasks that will train them to obtain and hold employment when they return to society.

...

b. File Preparation

The Correctional Service of Canada is responsible for obtaining or preparing all reports for the National Parole Board on all cases the Board will review. The file will consist of available police reports, psychological and psychiatric reports, the pre-sentence report, judge's comments, Crown Attorney's comments, the inmate's criminal record, victim impact statement, institutional reports and assessments of the offender's potential for successful parole. Except for that which should not be disclosed on security or privacy grounds, the Board is required to share all information with the inmate. Even then, it is generally necessary to share "the gist" of the withheld information.

The case preparation officer also prepares a recommendation in favour of or opposed to the application with supporting reasons.

c. Release Supervision

The Correctional Service of Canada is responsible for the direct or indirect supervision of all federal inmates released on parole or under mandatory supervision, except in Alberta where parole supervision has been "provincialized".

3. File Study by the National Parole Board

The Board makes a comprehensive study of the inmate's file. All reports gathered by the Correctional Service of Canada are normally part of the investigation by the Board prior to any decision to grant or deny conditional release.

4. A Hearing

A full review of the application for day or full parole or detention review by the National Parole Board includes a hearing with the inmate to obtain as accurate a picture as possible. The hearing gives Board members an opportunity to talk with the inmate to seek important clarifications, to clear up any misconceptions that may have been created by the files, reports and other documentation, and to give the inmate a chance to put forward any additional information that may be important to the case.

Correctional Service of Canada representations are made in the presence of the inmate, but Board members may discuss the case and vote in the absence of the inmate.

The offender is entitled to be assisted at the hearing by a person of his or her choice, who may address the Board and advise the inmate how to answer questions. As this is not an adversarial process, the hearing is conducted informally, without becoming bogged down in technical procedural and evidentiary issues.

5. Decision Making

a. Criteria and Risk Assessment

This section of the report focuses on the present policy of the National Parole Board. The next chapter includes a more general discussion of the problems associated with risk assessment.

In February 1988, the National Parole Board published its newly-adopted *Pre-Release Decision Policies*. This policy has divided criminal offences into three categories and standardized the risk assessment process.

The Board considers all information, including the offence and the circumstances surrounding it, to determine the level of risk to society should that offender be released. As well, it examines the key factors which may have contributed to the criminal behaviour to determine whether these factors have been adequately addressed through individual initiative and participation in institutional programs and/or release plans.

As indicated above, criminal offences have been divided into three categories. Those in the *first category* may be summarized as those causing injury/death with intent to do so. Those in the *second category* include a number of serious offences (such as hijacking, use of firearm during commission of an offence, and prison breach/escape), those considered sexual offences and offences against public morals, offences against the person and reputation (such as abandoning child, impaired driving causing bodily harm/death, uttering threats, assault, etc.) and arson. The *third category* includes accessories and over 200 wide-ranging offences, including high treason, firearms offences, offences against administration of law and justice (such as bribery, perjury, public mischief, indecent acts, causing a disturbance, etc.), invasion of privacy, disorderly houses, all property and currency offences, etc. Offenders incarcerated for attempt or conspiracy will be reviewed within the category of offences relating to the substantive offence.

Specifically, the following offences are included in the first and second categories (all other offences are in the third category):

CATEGORY ONE OFFENCES

CRIMINAL CODE SECTION

79	Causing Injury with Intent
203	Causing Death by Criminal Negligence
204	Causing Bodily Harm by Criminal Negligence
218	Punishment for Murder
219	Punishment for Manslaughter
220	Punishment for Infanticide
221	Killing Unborn Child in act of Birth
222	Attempt to Commit Murder
228	Causing Bodily Harm with Intent
229	Administering Noxious Thing
230	Overcoming Resistance to Commission of Offence
231	Traps Likely to Cause Bodily Harm
232	Interfering with Transportation Facilities
245.2	Aggravated Assault
245.4	Torture
246.1	Sexual Assault
246.2	Sexual Assault with a Weapon, Threats to a Third Party or Causing Bodily Harm
246.3	Aggravated Sexual Assault
247	Kidnapping
247.1	Hostage Taking
Former offences:	Rape: 144 Attempt Rape: 145 Indecent Assault: 149, 156 Assault with Intent: 245 Dangerous Sexual Offenders/ Dangerous Offenders: 688

CATEGORY TWO OFFENCES

CRIMINAL CODE SECTION

75	Piracy
76	Piratical Acts
76.1	Hijacking

- 76.2 Endangering Safety of Aircraft
- 76.3 Offensive Weapons and Explosive
Substances - civil aircraft
- 83 Use of Firearm During Commission of Offence
- 84 Pointing a Firearm
- 85 Possession Weapon or Imitation
- 132 Prison Breach
- 133 Escape and Being at Large Without Excuse

Sexual Offences, Public Morals

- 146 Sexual Intercourse with Female Under Fourteen
- 150 Incest
- 151 Seduction of Female Between Sixteen and Eighteen
- 152 Seduction under Promise of Marriage
- 153 Sexual Intercourse with Step-daughter, etc.,
or Female Employee
- 154 Seduction of Female Passengers on Vessels
- 155 Buggery or Bestiality
- 157 Acts of Gross Indecency
- 166 Parent or Guardian Procuring Defilement
- 167 Householder Permitting Defilement
- 176 Common Nuisance
- 195 Procuring

Offences Against Person and Reputation

- 197 Duty of Persons to Provide Necessaries
- 200 Abandoning Child
- 224 Counselling or Aiding Suicide
- 226 Neglect to Obtain Assistance in Childbirth
- 227 Concealing Body of Child
- 233 Dangerous Operation of Motor Vehicles,
Vessels and Aircraft
- 239(2) Impaired Driving Causing Bodily Harm
- 239(3) Impaired Driving Causing Death
- 243.2 Impeding Attempt to Save Life
- 243.3 Duty to Safeguard Opening in Ice
- 243.4 Uttering Threats

245	Assault (former Common Assault - 245)
245.1	Assault with Weapon or Causing Bodily Harm
245.3	Unlawfully Causing Bodily Harm
246	Assaulting Peace Officer
281.1	Advocating Genocide
303	Punishment for Robbery (offence 302)
304	Stopping Mail with Intent
305	Extortion
380(1)(a)(b)	Criminal Breach of Contract
381.1	Threat to Commit Offence Against Internationally Protected Person
387(2)	Mischief Causing Danger to Life
387(5.1)	Willfully Do or Omit to Do, Endangering Life
387.1	Attack on Premises, Residence or Transport of Internationally Protected Person
Arson and Other	
389	Arson
390	Setting Fire to Other Substance
392	Setting a Fire by Negligence
393	False Alarm of Fire
FORMER	Habitual Offenders

The preliminary assessment of risk (“low” or “not low”) focuses on the risk of re-offending and provides the framework for further examination of the case with respect to risk reduction and management. Offenders in the first two categories of offences must satisfy the criteria in the policy to be granted release. Offenders in the third category who constitute a “low” risk of re-offending are to be released; the criteria are applied to those whose risk is assessed as “not low” to determine whether or not their releases would constitute an undue risk.

i. Psychiatric and Psychological Assessments

Offenders in the *first category* shall have psychiatric and/or psychological assessments completed prior to their first review by the Board if they were sentenced to two years or more or if their behaviour since sentencing indicates a need for such an assessment. Those in the *second and third categories* require such assessments if they have been incarcerated

previously for a first category offence unless the Correctional Service of Canada recommends, and the Board concurs, that they not be completed.

ii. Risk Assessment

Provided that offenders accept all conditions necessary for the protection of the public, *category one offenders* will be released if the risk assessed is not undue based on:

- (1) A preliminary assessment of risk based on offender and offence-specific factors, specifically:
 - (a) a review of the statistical information on recidivism,
 - (b) the case-specific factors,
 - (c) psychiatric and/or psychological assessments completed to address the likelihood of recidivism,

and

- (2) A review of the specific policy requirements to ensure that the offender satisfies the following considerations:
 - (a) other available information and professional opinion do not lead the Board to conclude that release would be inconsistent with the protection of society;
 - (b) where a professionally diagnosed disorder which likely contributed to the offence has been identified, the offender has received appropriate treatment, or the release plan provides for such treatment in the community, and release would not constitute an undue risk to society;
 - (c) the offender has participated in and benefited from other programs which are likely to enhance reintegration as a law-abiding citizen, such as life skills, Native spirituality and elder counselling, literacy training, substance abuse programs, employment or other programs appropriate to the offender, including those responding to social and cultural needs;

- (d) the offender has a sufficient understanding of the offence, its gravity and impact, and the factors surrounding its commission;
- (e) there is a release plan with appropriate control and support;
- (f) in the event of an offender not meeting the specific criteria found in (a) through (d) above, where there are other significant circumstances which indicate that the offender will not constitute an undue risk on release, the Board may release the offender.

Category two offenders will be assessed similarly subject to the previously noted restraint on psychiatric and psychological evaluations. *Category three offenders* will be assessed according to the criteria set out in point two above if their preliminary risk assessment based on point one is "not low".

The Board is required to inform the inmate of the decision as soon as it is practicable, and to give written reasons to the inmate for denial or for the imposition of conditions other than the mandatory ones.

b. Voting

In cases where inmates are serving life sentences as minimum punishment, death sentences commuted to life, indefinite sentences or preventive detention, four members of the National Parole Board must vote and a majority of positive votes are required for the parole to be granted. For all other cases, a minimum of two votes is required, and all the votes must be in favour of conditional release if full parole, day parole or the first unescorted temporary absence is to be granted. In the absence of the required majority or unanimity, four (or two) new panel members shall be assigned to the case. (On subsequent unescorted temporary absences, the authority may be delegated to the Warden of the institution for a specific period of time (usually one year). For inmates serving sentences of five years or less, the power to grant unescorted temporary absences is delegated to institutional Wardens or Superintendents.)

c. Suspension or Revocation of a Conditional Release

A serious violation of the conditions of release generally results in suspension. Suspension refers to the interim removal of the offender from the community, pending a review to consider whether the offender's release should be revoked or whether the offender should be permitted to return to the community. Suspension may also be imposed if it is felt that a continuation of conditional release will mean a risk to the public. For instance, there may be signs that an individual is depressed or having trouble coping with community life, and that these troubles may lead to crime. Any parole board member or person designated by the National Parole Board Chairman (senior correctional and parole staff) may suspend the release.

Once release is suspended, the individual is returned to custody and a full investigation begins. The inmate is entitled to be advised of the reasons for suspension and has 14 days to provide an explanation as to why the release should not be revoked. In situations where further investigations show the case is not as serious as originally thought, the offender can be returned to his or her pre-suspension status. Serious cases, where the reviewing officer feels a risk to the public may arise, are referred to the National Parole Board which can, generally after 15 days and after a hearing if the offender so desires, either cancel the suspension and reinstate the release or revoke the release and order the inmate be returned to prison. Revocation occurs after the Board has considered that it would be inappropriate to return a suspended parolee to the community. The offender is entitled to written reasons for revocation and for decisions not to re-credit him or her with remission lost due to revocation.

Eligibility for future release for those returned to prison depends on the seriousness of the violation and whether it resulted in a new offence and additional custodial sentence. Remission is earned on the remainder of the revokee's sentence from the date of re-incarceration. Those who are revoked under mandatory supervision may be eligible for parole, unless they fall within the mandate of Bill C-67.

In the instance where a new sentence has been imposed, it is combined with the remainder of the previous sentence for the purpose of calculating remission and revised parole eligibility dates.

d. Re-examination where Parole Denied or Revoked

A federal offender whose release (other than temporary absence) has been terminated or revoked while he or she is at large, may request that the Board re-examine its decision; the offender is entitled to a hearing. Termination occurs in cases where the reason for conditional release no longer exists. When a school term ends, for example, the inmate's day parole for the specific purpose of attending a course will be terminated. Requests by offenders for re-examination when parole has been denied are normally considered without a hearing. Should the Board decide to hold a hearing, it is required to exercise its powers in accordance with the principles of fundamental justice. The offender is entitled to written reasons for the decision.

Although neither victims nor the public can ask for a re-examination, the chairperson of the Board has been known to have a new hearing convened so that subsequently received information may be fairly considered.

e. Judicial Review of National Parole Board Decisions

Although parole board decisions are not subject to review by or appeal to a court or other authority, the Federal Court may review the manner in which the National Parole Board has exercised its jurisdiction in certain circumstances (i.e. where an offender can demonstrate that the Board has not acted in conformity with either the common law duty to act fairly or the Charter of Rights). For any party (such as a victim) to be granted legal standing before the Federal Court to have a Board decision reviewed, it must be clearly shown that the decision had a direct impact on the interests of that party. To date, only offenders have brought applications to the Federal Court.

6. The Role of a Parole Supervisor

The parole supervisors employed by the Correctional Service of Canada or private agencies play an important role in the inmate's integration into the community. They provide advice and guidance to the inmate, obtain approvals for initiatives designed to help with reintegration or, when appropriate, suggest to the Board amendments to the conditions governing an inmate's early release.

A parole supervisor may be an officer of the Correctional Service of Canada, a representative of a private aftercare agency, such as the John Howard Society or Elizabeth Fry Society, or a volunteer in the community. When the direct parole supervisor is not a Correctional Service of Canada employee, a Correctional Service of Canada employee provides indirect parole supervision.

The Correctional Service of Canada has minimum standards of supervision (and is currently developing new conditional release supervision standards). The frequency of the interviews the parole supervisor has with the offender depends on the supervision category in which the offender has been placed (intensive, active, or periodic) and on the needs of the offender. Changes in an offender's release plans and sensational violations of release conditions are reported to the Board.

Parole supervisors employed by the Correctional Service of Canada may recommend to the National Parole Board the termination, suspension, or revocation of parole where conditions are not being honoured or there is a perceived increase of the risk to the community posed by the parolee. Private agency parole supervisors must make such recommendations to the indirect supervisor.

CHAPTER ELEVEN

IMPROVING THE QUALITY OF RELEASE DECISIONS

A. In General

The National Parole Board is an independent, quasi-judicial body that makes release decisions in relation to federal offenders and parole decisions for provincial inmates in provinces that do not have their own parole boards. Established in 1959, its full-time and temporary members are appointed by Order-in-Council, and its community members are appointed by the Solicitor General on the recommendation of the Chairman of the Board.

The Committee has had the benefit of public hearings with members and staff of the National Parole Board and has also met with many Board members and staff during its *in camera* meetings across Canada. It has also sat in on some actual Board hearings and examined sample anonymous parole files.

In recent years, the National Parole Board has taken a number of steps to improve its efficacy and the public understanding of its role in the criminal justice system. It has adopted and distributed widely a "mission statement" which sets out the goals and principles that guide its day-to-day activities. It has prepared and widely distributed a number of informational packages, including the three volumes of briefing books it has prepared for this Committee to assist in its deliberations. After wide consultation, the Board has developed a policy on victim representation and a risk assessment policy for release decisions. It has also encouraged and facilitated attendance at parole panel hearings by members of the media and others, including members of this Committee. The National Parole Board is to be commended for these laudable efforts at making its activities more visible to the public.

The Committee believes that the National Parole Board is now *generally* performing its functions effectively. However, the Committee believes that a number of further steps are necessary to make the Board still more effective.

The National Parole Board is only as good as its decisions. The quality of these decisions depends in large part upon the expertise of Board members, the quality of training and retraining available to them, the information available to them, the relationship between the Board and parole supervisors, and the quality of the risk assessment instruments they apply to the cases that come before them.

B. Appointment of Board Members

Many of those who appeared before the Committee expressed concern about the qualifications of those named as members of the National Parole Board. Not all of those appointed in the past to the Board have had appropriate qualifications or experience, nor, it is said, have all shown the required sensitivity to its mission or the necessary commitment to its work.

Criminologist Dr. Justin Ciale of the University of Ottawa, for one, made the following comment to the Committee on the practice of appointments to the National Parole Board:

I think the nomination of Parole Board members is not done on the basis of experience or on the basis of qualifications, but on the basis of political issues, and every party is guilty of that. (33:10)

Witnesses who appeared before the Committee in *in camera* sessions indicated that there have been problems with Board members who do not understand what the job entails, who are not committed to its mission or who are not willing to put sufficient effort into the job. In the colourful expression of one witness at an *in camera* meeting, some members have felt they were "anointed rather than appointed".

The effect of some inappropriate appointments has been to make scheduling of parole panels difficult and to increase the workload of other Board members who have been forced to take up the slack. These witnesses urged that appointees to the Board either have an understanding of the criminal justice system or an ability to acquire such an understanding. In their view, Board members need not necessarily be criminal justice experts or professionals.

As of September 1987, 46.7 percent of all permanent and temporary Board members had held criminal justice-related occupations prior to their appointments. In 1977, 85 percent of all Board members (in 1983, 62.7

percent; and in 1986, 52.1 percent) had previous criminal justice-related occupations. There has been a dramatic decline since 1977 in the number of Board members whose previous occupations were criminal justice-related.¹

The Hugessen Task Force recommended in its 1972 report that "regional" parole boards should be made up of an independent person not involved in the correctional system, a judge, a senior police officer, a psychiatrist or psychologist, a criminologist or sociologist, a person with correctional responsibility and a person with parole supervision responsibility. The Goldenberg Committee recommended in its 1974 report that Parole Board members should be selected for their broad range of experience, their knowledge of the criminal justice field and their maturity.

The Nielsen Task Force also expressed, in its November 1985 report, some concern about the qualifications and calibre of National Parole Board members. It urged consideration of a system whereby the Chairman and members of the Board would be nominated by a screening committee of senior federal, provincial and private sector officials whose recommendations would be based on clearly-established objective criteria. It urged as one of its options that the *Parole Act* be amended to include these changes.

The Board can only be as good as its decision-makers. If those who are appointed as decision-makers do not have the requisite qualifications or experience, their decision-making is unlikely to be as effective as it should be. The National Parole Board has developed a Board Member Profile that sets out a number of criteria (including criminal justice experience) to be met by those who are appointed to the Board.

The Committee commends the Board for taking this initiative and the Government for acting upon it. The Committee believes that all those appointed to the National Parole Board should meet the criteria set out in the Board Member Profile. In addition, the Committee believes that the Chairman and the Vice-Chairman of the Board and the senior member in the region should be consulted on all appointments to the National Parole Board.

C. Training of Board Members

Another element in effective risk assessment and decision-making is the training received by Board members and the refresher courses available to them. In response to a number of questions put to members of the

National Parole Board by the Committee in both public and *in camera* meetings, the present training regime was described. It seems that Board members receive a short period of training at National Headquarters followed by parole hearing observation. This training is completed by new members participating in "in office" decisions and then going out with a more experienced Board member.

Training is often on-the-job because the documentation on which it is based is at times outstripped by rapid developments. It appears that, at times, workload pressures lead to the orientation and training available to members being compressed even more than they already are. Finally, the training and orientation given to members appears to deal largely with the Board and its policies — all members receive essentially the same training whether they have been previously involved in the criminal justice system or not.

Concern was expressed by some witnesses who appeared before the Committee at *in camera* sessions that the present training of new Board members was inadequate. It was felt that the "baptism of fire" approach could not prepare Board members (particularly temporary and community members) to meet the job to be done in assessing sometimes complex cases and files where the issues involved were often of great seriousness.

Although this approach seems to have been reasonably successful so far, the Committee believes that Parole Board member training can be improved. Board members must receive more intensive training based not only upon Board policies and correctional and release philosophy, but also on the evolving behavioural sciences. This training should take into account the previous experience, or lack thereof, that Board members have had in the criminal justice system.

Training will become increasingly important as public pressure for better risk assessment develops and as more complex risk assessment tools are applied.

Recommendation 39

The Committee recommends that members of the National Parole Board receive more intensive training upon appointment and as regular refresher courses. This training should be based not only upon Board policies and correctional and release philosophy, but

also upon behavioural sciences, and should take into account the members' previous experience in the criminal justice system.

D. Information Exchange

The quality of risk assessment, and hence of decision-making, is dependent upon the quality and completeness of information furnished to the National Parole Board by the Correctional Service of Canada. At the present time, the Board is totally dependent on the information provided to it by the Correctional Service of Canada which in turn is dependent on information provided to it by provincial authorities, police, private agencies and others. Unfortunately, on a number of occasions, the information provided to the Board has not been as complete as it should have been. As a result, the decisions taken in a thankfully small number of cases have had disastrous consequences. In the past year, Information Co-ordinators have been named by the Correctional Service of Canada and the National Parole Board to gather the required data for effective correctional and release decision-making.

Although this has been an important initiative, witnesses have told the Committee that there are still information gaps. One of the reasons for this is undoubtedly the fact that the information provided to the National Parole Board by the Correctional Service of Canada must pass from one organization to another with all the attendant risks of misunderstanding inherent in such an arrangement. In addition, the information on file is at times incomplete.

Incomplete or non-existent information has been a serious concern in the recent past. Both the Ruygrok coroner's inquest jury recommendations and those of the Pepino inquiry have addressed this issue. The recommendations of these two bodies have been accepted and implemented, and yet the Committee has been informed by different witnesses appearing before it that important information is still not always in inmates' files.

All the program planning and case preparation in the world will not assist the National Parole Board in properly assessing risk and making good decisions if the files before it are incomplete. **What is required is a concerted effort by all participants in the release process, at both the federal and provincial levels, in both the public and private sectors, to put in place the necessary mechanisms to ensure that inmates' files are as complete as they can be.**

One of the major problems in parole decision-making appears to be ensuring that the Correctional Service of Canada obtains relevant court information. In spite of negotiations the Ministry of the Solicitor General appears to be carrying on with the provinces and territories, this information is still not being consistently and reliably received.

Recommendation 40

The Committee recommends that the *Criminal Code* be amended to require courts to provide the Correctional Service of Canada with sentencing information (pre-sentence reports, victim impact statements, etc.) and the judge's reasons for sentence. The federal government should be prepared to pay the reasonable costs associated with this for sentences of two years or more.

E. Public Parole Hearings

Parole hearings at the present time are held in private within various penitentiaries. Throughout its report the Committee has put the emphasis upon the necessity of public education, as well as making more visible and understandable the sentencing, correctional and conditional release processes.

One means of rebuilding confidence in the conditional release system is to open parole hearings to the public. There are, however, competing interests which must be balanced. The privacy concerns of those providing information to the Correctional Service of Canada may at times override the principle of public access. In other circumstances, there may be security concerns that must be taken into account in allowing public access to parole hearings in prison. Finally, and a matter that has been considered extremely important in the past, is the idea that it is detrimental to the successful reintegration of an offender to permit the disclosure of past failings or problems. Such an offender may be subjected to discrimination in unrelated areas of his or her life (such as the unjustified denial of employment or housing) by the public revelation of parole information.

Despite these legitimate concerns, a majority of the Committee believes that parole hearings should be public. The pre-trial, trial and sentencing stages of criminal proceedings are in most cases open to the public. The determination of when and under what conditions an offender is to be conditionally released is of equal interest to the community.

There should be provision for the possibility of an inmate or witness to make an application to the Parole Board for the exclusion of the public from part or all of the hearing if there are serious privacy or security concerns.

Where parole hearings are held in prisons remote from population centres which, because of distance, are not easily accessible to the public, steps should be taken to hold them in court houses or in other appropriate facilities.

Recommendation 41

The Committee recommends that parole hearings be open to the public unless, on application to the Parole Board, it is decided to close a hearing to the public, in whole or in part, for reasons of privacy or security. The reasons for acceding to an application for a closed parole hearing should themselves be made public.

F. Victims and the Parole Board

1. Victim Information Considered at Parole Hearings

The National Parole Board has adopted a policy on victim representation in its decision-making processes. This policy clarifies a victim's right to make oral or written representations to the Regional Director or Director of Communications of the National Parole Board. Similarly, the victim may submit a copy of a victim impact statement considered by the sentencing judge to the same representatives of the National Parole Board. Any such documents are included in the inmate's file to be considered by parole panels. Under this policy, victims can be advised, on request, of the following matters:

- inmate's admission;
- inmate's eligibility review dates;
- release decisions and reasons;
- number of votes cast for release;
- type of release, and terms and conditions; and
- general description of destination of release.

The Committee commends the Board for this initiative. Under Correctional Service of Canada policy, any written victim impact statement presented to the sentencing judge at the time of sentence is to be included as part of a parole applicant's file and is to be considered by a Board panel examining a release application. **In the Committee's view, any victim who wishes to be informed should be advised of an offender's parole hearing date and of the date of release into the community.** These notifications would allow the victim of the offence for which the offender was incarcerated to make whatever oral or written submissions to the National Parole Board the victim deems necessary.

2. Victim Participation at the Hearing

The Committee believes that victims have something to contribute to the decision-making process of the National Parole Board by expressing their concerns about release decisions. This is already provided for in part by the Parole Board's policy on victim representations which permits a victim to submit a copy of a victim impact statement considered by a sentencing judge and to make further oral or written representations to officials of the Parole Board. If parole hearings are generally held in public, as recommended by a majority of the Committee, victims would be able to attend them.

It has been proposed by some that victims be given the right to participate in parole hearings either as parties to them or witnesses. To give the victim a "right of allocution", a right to make oral representations, at a parole hearing will lead to an unduly litigious atmosphere in which flexible and timely decision-making practices will be sacrificed. In addition, hurts and passions that may have healed will be aroused anew. Finally, the victim would be unlikely to be in a position to contribute to the Parole Board's task at hand — that is, assessing what an inmate has done to prepare for an eventual return to the community. Therefore, the Committee does not believe victims should have any right to participate in the parole hearing itself.

G. Relationship of Correctional Service of Canada and National Parole Board

Prior to 1977, the National Parole Service was part of the National Parole Board. Consequently, there was, at that time, a closer relationship between those engaged in case preparation and those making release

decisions. At times, the National Parole Board may need information or reports for decision-making purposes and has difficulty obtaining them in a timely or complete fashion from the Correctional Service of Canada. Another practical problem is that as an inmate changes institutions or changes ranges within an institution, he or she may change case preparation officers with resultant delays and incompleteness of files.

The Committee was told by some witnesses during its *in camera* sessions that some case preparation staff at times feel they have dual loyalty problems. They may be torn between the need of the correctional institution to alleviate inmate crowding and a Parole Board imperative to make thoughtful release decisions based on a thorough assessment of both risk and the appropriateness of a release plan.

Another problem faced by the National Parole Board is that although it is the releasing authority, it does not actually provide release supervision. Frequently, the Board is faulted for supervision problems for which it is not responsible, but for which it is expected to be ultimately accountable.

Taking all of the above into account, it would appear appropriate to have one authority responsible for the release process, from the preparation of the release plan to the actual release decision and the provision of release supervision. Consequently, the Committee believes that the National Parole Board should assume responsibility for all aspects of release. This would ensure that the Board has as much high quality information as possible on which to base its decisions. This would also ensure that the releasing authority is responsible for the implementation of its release decisions.

Recommendation 42

The Committee recommends that the National Parole Board be given full responsibility for the release process including the preparation of release plans, the release decisions and the provision of release supervision.

H. Risk Assessment

1. Background

What most concerns the public is the prospect of *violent* recidivism when an inmate is released prior to sentence expiry. The assessment of risk is

the foundation upon which the work of releasing bodies such as the National Parole Board is based. Its use of risk assessment instruments is a recent development. The *Pre-Release Decision Policies*,² adopted by the National Parole Board after extensive consultations, was based on a number of earlier studies conducted by the Ministry of the Solicitor General.³ Information about these studies was prepared for the Committee by its research staff, and is available to the public through the office of the Clerk of the Committee, in a paper entitled *Success of Conditional Releases — Statistical Reviews* (30 December 1987).

The Committee believes that the following highlights from the *Solicitor General's Conditional Release Study* (1981) continue to be true and therefore merit serious consideration:

- "...a large body of empirical research which has been extensively assessed ... has shown a lack of evidence (or of consistent evidence) of positive effects on recidivism from any correctional program, either in (or of) prison, or in the community." (p. 21)
- "It is quite certain that there are no supervision activities or techniques of which we can say that we are reasonably certain a positive effect ... will result if the technique is applied to certain types of offenders under certain types of conditions." (p. 21)
- Because community supervision is cost-effective and "probably less harmful to those it harms and more helpful to those it helps, than is prison, ... [a] more serious commitment needs to be made to developing and evaluating the community programs of corrections, and to identifying those aspects of community corrections, if any, which will be effective with various types of offenders." (pp. 20-21)
- "Very little is known about the risk reduction effects of granting TAs to prisoners from time to time during incarceration." (p. 22) Federal offenders granted unescorted TAs are a little more likely to complete (or to continue) their parole supervision successfully than are those who did not obtain unescorted TAs. (p. 24) Similar (although overall lower) success rates were found for those released on MS. (p. 25) However, it is impossible to conclude that these differences in eventual success are attributable to participation itself. (pp. 24 and 27)

- Success rates for escorted TAs are over 99 percent and for unescorted TAs are over 95 percent. (p. 26)
- Participation in TAs and day paroles make a great deal of difference in the probability of receiving a full parole: a successful day parole raises the chances of obtaining full parole from 37 percent to 60 percent. However, the usefulness of “successes and failures on TA and day parole are somewhat overrated as factors which distinguish among offenders who will and will not eventually succeed on either full parole or MS, . . . as [t]he majority of offenders succeed on supervision anyway.” (pp. 27 and 29)
- Release authorities endeavour to “select an inmate’s release date based (among other things) on the progress over time of his [or her] attitude and participation in the penitentiary, such that he [or she] is released (other things being equal) at a time when he [or she] is ‘ready’”. It appears impossible to tell whether this factor is present in release decisions; it is also unclear whether the effect is true of all offenders and whether it is observable. (p. 29)
- “There is no way to measure precisely the degree to which inmates’ expectations of release consideration may encourage them to participate in penitentiary programs. Moreover, . . . any risk reduction that results from program participation has yet to be demonstrated. . . .” (p. 30)
- The “violence” of offenders under release in the community “appears, because of the visibility of failure cases, to be higher for the overall group than it actually is”. (p. 98)
- “The majority of offenders do not appear to become involved in new criminal activity during the period for which they are at conditional partial liberty in the community before the expiry of their sentence.” (p. 98)
- It would be desirable to be able to distinguish better those offenders who, upon conditional release, will be violators, especially the violent ones, from those who will not [reoffend] in order to detain the former group. (p. 98)
- Past violence appears in the records of offenders who commit “spectacular incidents” during supervised release, but not all offenders with records of past violence will commit

any violation after release, nor do all persons involved in violence have a violent past. (p. 106)

- Greater incidence of violence in the past is associated with higher probabilities of violence in the future, though the certainty of future violence is never assured. (p. 106)
- No accurate system for predicting violence (not even one which would be right more often than it would be wrong) has yet been developed. (p. 106)
- Violent recidivism among federal offenders is not frequent enough to permit accurate pinpointing of all or even most of the future violent recidivists. (p. 106)
- Available prediction systems pinpoint *some* of the future violence but mistakenly identify as future violent recidivists large numbers who will not turn out to be violent. (p. 106)

2. The Difficulties Associated with Predicting Violent Recidivism

The Committee has learned that risk prediction is at this time an imperfect science, although statistical prediction is apparently superior to clinical prediction. While statistical techniques may be used quite effectively to distinguish between "high" and "low" risk inmates and to identify large numbers of offenders who are extremely unlikely to be re-arrested for violent offences after release, they are unable to predict with much accuracy who will become involved in *violent* criminal activity.

Statistical predictors fail to identify most of the offenders who would recidivate violently (false negatives) and they incorrectly label large numbers of those who would not (false positives). This tendency, combined with the fact that out of a very large number of offenders, only a very few will recidivate violently, creates the inevitable tendency for over-prediction. (Rare events are always difficult to predict efficiently.)

Even if statistical predictors were accurate 95 percent of the time, we would still incorrectly label many people who would be unlikely to commit serious violence. For example, if it were true that one person in a thousand would kill someone and if 100,000 people were "tested", out of the 100 who would kill, 95 would be correctly identified (5 would be missed); but, out of the 99,900 who would not kill, 4,995 would be identified as possible killers. Since such statistical predictors are currently only accurate about 50 percent of the time, only about half of the potential 100 killers would be correctly

identified (half would be missed), and 49,950 out of the 99,900 who would not kill would be falsely identified.

Moreover, in terms of *general* recidivism, many of those released after serving sentences for property crimes tend to have lower success rates on parole than do those who have committed crimes against the person. This is demonstrated in Table 11.1, below, prepared by Dr. Nuffield in her 1982 study of parole decision-making in Canada.⁴

Table 11.1
Success Rates (No Re-Arrest Within 3 Years for an Indictable Offence),
By Pre-Release (Commitment) Offence
Construction Sample: 1,238 Cases)

Commitment Offence	N	Success Rate After Release
Non-violent sex offences	33	78.7
Narcotics offences	81	74.1
Homicide	33	72.8
Other crimes against the person	30	70.0
Unarmed robbery	170	67.0
Other crimes against property	17	58.9
Violent sex offences	35	57.1
Armed robbery	64	56.3
Assault	47	55.3
Fraud	116	55.1
Theft	65	50.7
Receiving or possession of stolen goods	60	50.0
Break and enter	395	45.5
Weapons offences	7	42.8
Escape	36	33.3
Other	47	70.3
Overall	1,238	56.1

Source: J. Nuffield, *Parole Decision-Making in Canada: Research Towards Decision Guidelines*, Table 8, p. 41.

More recent statistical work done by the National Parole Board seems to bear this out with respect to homicide — the most serious form of *violent* recidivism. Up to January 20, 1987, 130 of the 52,484 releases on full parole and mandatory supervision between 1975 and 1986 had resulted in convictions for murder or manslaughter.⁵ Some offenders were released more than once. The study identifies “releases”, not people. It should also be noted that these 130 homicides represent less than two percent of the 7,838 homicides committed during the study period. Absolutely preventing these homicides from occurring prior to the end of those offenders’ sentences would have required detaining tens of thousands of offenders in prison unnecessarily until sentence expiry. Even if we were prepared, and could afford to do that, these homicides might only have been delayed.

The Committee’s attention was drawn to the fact that only 15.4 percent (20) of the 130 homicides were committed by offenders who were at that time serving sentences in the community (on parole or mandatory supervision) for offences involving violence (although one-quarter [5] of these 20 homicides were committed by paroled murderers).⁶ Almost 65 percent (27) of the 42 homicides committed by parolees were committed by offenders serving sentences for robbery (most, but not all, for armed robbery or robbery with violence).⁷ It must be remembered, of course, that even the number of offenders serving sentences for robbery in the community who committed 59 of the 130 homicides⁸ represents an extremely small proportion (one half of one percent) of the more than 11,000 releases of robbery offenders during the study period. Surprisingly, 30 percent (39) of the 130 homicides were committed by offenders on release for sentences related to purely property offences, almost all of whom were on mandatory supervision.⁹

Unfortunately, no Canadian data is available comparing other forms of violence committed during conditional release with the types of offences for which those offenders are serving sentences. The Committee has been advised that “the literature” suggests that no useful correlation is to be found between the sentenced offences, or criminal history, and the propensity for violence during conditional release. (In fact, Dr. Nuffield’s literature review specifically noted that prior convictions for violent crimes are *not* good *predictors* of violent recidivism, although there may be some possible association between them (p. 55); age at the time of admission for the current offence or the presence of prior convictions for break and enter appeared to her to be the most powerful (but still very weak) predictors of violence — the younger the offender, the more likely a violent act after release (pp. 49 and 55).)

The Committee has no reason to doubt this, but feels the public interest would be well served by the production of Canadian data (similar to that produced for the "homicide study" referred to above). The Committee has already indicated that reforms should be based on the reality of crime, not just on public perception, if that perception has no basis in fact. The public cannot be adequately informed without the available "facts" and a strategy to educate them.

In spite of the difficulties associated with risk prediction, statistical research on Canadian released offenders is now providing valuable information about categories of offenders that appear more likely than others to complete their release successfully. By using such data, correctional agencies and parole authorities may reduce the risk associated with release of such offenders through the development and implementation of appropriate release plans (including prison and community programming and graduated releases).

Correctional and paroling authorities are faced with two types of risk to weigh in considering the release of offenders prior to sentence expiry: What are the risks of keeping an offender incarcerated until the end of sentence (particularly where the offender appears to pose no or little danger to the public or where release at the end of sentence will result in little support and supervision being given to the offender on release)? What are the risks of releasing to the community offenders who *may* pose a danger to the public?

The Committee recognizes that parole boards can do little to *eliminate* crime. However, the Committee believes they can and must strive to *contribute* to the protection of the public while offenders remain under their supervision. They can do this by focussing clearly on risk assessment when making conditional release decisions. **While risk assessment is often uncertain, the public can and should expect that Parole Board members exercise their best possible judgment on the best information available with the assistance of the best tools and assessments correctional staff are able to make.**

The risk assessment tool adopted by the National Parole Board recently is a direct result of the research conducted earlier this decade by Dr. Nuffield. It is understood by the Committee that Board members have been trained in and are applying this risk assessment policy. It is also understood

that the application of this risk assessment tool is subject to an on-going evaluation. The National Parole Board is to be commended for adopting this risk assessment policy and for building an evaluation into its application.

The risk assessment tool that the National Parole Board now has would appear, however, to apply only to the determination of risk of *general* recidivism. There is serious public concern about the high-risk, violent offenders in our correctional system. Because there are difficult cases in which the consequences of the failure of effective risk assessment can be quite severe, **the Committee believes that the National Parole Board must develop and apply a risk assessment instrument to address the high-risk, violent offenders that come before it.**

In the event that this is not possible, and this is what many witnesses have told the Committee, release plans and conditions should clearly identify high risk behaviours relevant to particular offenders so that, when these behaviours occur, there may be appropriate intervention. This, the Committee has been advised, can be done much more effectively than statistical or clinical prediction. The inquests into the murders committed by James Allan Sweeney and Alan Foster both revealed the presence of such behaviours which, had they been clearly identified for the significant persons associated with these offenders, might have permitted interventions which might have prevented the murders.

Recommendation 43

The Committee recommends that the National Parole Board develop and hold consultations on a risk assessment tool to be applied in cases where the offender is serving a sentence for, or has a recent criminal history of, violence.

Recommendation 44

Alternatively, or additionally, the Committee recommends that the following aspects of the jury recommendations 10 and 12 emanating from the inquest into the death of Celia Ruygrok be incorporated into National Parole Board policies and implemented:

10. If parole is granted, the inmate's [institutional] rehabilitation plan must be extended into a *Release Plan* clearly setting out how he or she is to be dealt with in the community. This

release plan must be clearly identified in a document and communicated to all persons who will have dealings with the offender in the community, including parole supervisors, police, community residential centre staff, and community resource persons.

- (a) In formulating the plan, consultation must take place with persons in the community who will be supporting the parolee such as girlfriends and wives. They must be given all relevant information about the offence and the offender and be fully aware of their role in the release plan.
- (b) The release plan must include all psychiatric and psychological information and must give clear guidelines to parole supervisors and community residential centre staff as to how to deal with the parolee. *There must be an identification of any danger signals to watch for and action to be taken if problems are encountered.*
- (c) Where drugs or alcohol have been related to the original offence, there must be included in the parole plan a special condition that the parolee will submit to random alcohol and/or drug testing.
- (d) Where psychiatric problems were identified as being present at the time of the offence, the parole release plan must include a special condition that the parolee will attend for professional counselling, psychiatric treatment and monitoring while on parole. In these cases, there should be periodic administration of psychological tests.

...

12. Parole supervision must take place in accordance with the release plan and there must be a full sharing of information between the various agencies working towards the same purpose.

- (a) The parole supervisor must be free to deal with problems encountered by the parolee and *intervene*

meaningfully when danger signals appear and at first sign of deterioration. The parole supervisor must concentrate on getting to the root of the problem rather than mere policing.

...

Notes

- (1) National Parole Board, *Briefing Book for Members of the Standing Committee on Justice and Solicitor General*, Volume II, Appendices, November 1987, Appendix B "Profile of Current Full Time and Temporary Board Members", Tables 6 and 7.
- (2) Described in Chapter Ten of this Report.
- (3) Solicitor General Canada, *Solicitor General's Study of Conditional Release: Report of the Working Group*, Ottawa, March 1981 (hereafter called the *Conditional Release Study*), and Solicitor General Canada, *Mandatory Supervision: A Discussion Paper*, Ottawa, March 1981.
- (4) J. Nuffield, *Parole Decision-Making in Canada: Research Towards Decision Guidelines*, Ottawa, Ministry of Supply and Services, 1982, p. 41.
- (5) National Parole Board, *Briefing Book*, Volume II, Appendix E, p. 4, Table 1.
- (6) National Parole Board, *Briefing Book*, Volume II, Appendix E, p. 9, Table 4.
- (7) National Parole Board, *Briefing Book*, Volume II, Appendix E, p. 5, Table 2.
- (8) National Parole Board, *Briefing Book*, Volume II, Appendix E, p. 9, Table 4.
- (9) National Parole Board, *Briefing Book*, Volume II, Appendix E, pp. 7 and 9, Tables 3 and 4.

CHAPTER TWELVE

THE FUTURE OF CONDITIONAL RELEASE

A. Introduction

Most criminal justice and correctional systems in the Western world have some type of early release regime in place to allow those who are incarcerated to be released into the community before the expiry of their sentences. In recent years, as public confidence in the criminal justice system has declined, early release programs and mechanisms have become the centre of controversy. Canada is not an exception to this rule — its release system has been made gradually more restrictive since 1970.

The issue to be dealt with in this chapter is whether conditional release in any or all of its forms should be retained. If it is to be retained, what, if any, improvements are required?

B. The Retention of Conditional Release

The first question to be considered, before proceeding to discuss the various reforms that might be made to early release, is whether the conditional release of those who are sentenced to prison should be retained at all. This question has been posed most recently by many because a number of sensational occurrences, resulting in serious injury and brutal death, have undermined the public confidence in the manner in which those sentenced to imprisonment are reintegrated into the community. The abolition of parole has also been recommended by various Canadian and American commissions and task forces.

Some people who are opposed to conditional release and who want it restricted or eliminated altogether say that those who commit criminal acts should be punished for their actions. Anyone who is sentenced to a term of imprisonment, this argument goes, should serve that punishment. They argue that public confidence in the criminal justice system will be restored by offenders being seen to serve their full terms of punishment.

In stating its reasons for recommending the abolition of parole as we know it, the Canadian Sentencing Commission did not oppose conditional release in all its forms, but rather presented a variation of the above argument. The Commission argued that parole, or discretionary release, adds uncertainty to the sentencing process. The judge who imposes a sentence, according to this argument, does not know how long an offender is actually going to spend in prison. The Commission also concluded that parole contributes to sentencing disparity because of the evening-out impact it has on the amount of time inmates actually spend in prison. In essence, then, these arguments are to the effect that public confidence in the criminal justice system is undermined by the uncertainty of the length of terms of imprisonment imposed by sentencing judges. This position was supported by the President of the Law Reform Commission in his brief to the Committee.

Other witnesses argued in favour of retaining parole. Ole Ingstrup, then Chairman of the National Parole Board, said to the Committee:

Therefore, I believe parole and conditional release in one form or the other is an important part of any criminal justice system. . . . *I believe society is better protected if the inevitable transition back to society from institutions is managed, is controlled, is supported* and is conducted in a way that gives us a possibility to bring people back into the institutions if we see signs of deterioration in their behaviour.

Therefore, conditional release is an important strategy, an important method in our attempts to reduce crime in our society. (our emphasis) (Issue 30:23)

Captain David Moulton of the Salvation Army of Canada made the following comments to the Committee:

First, we feel it [conditional release] gives a sense of hope to the inmates during their incarceration, something that is of a positive nature they can work with rather than just the negative sanctions that could be applied within an institution as far as behaviour is concerned. So it does allow staff as well as inmates that positive alternative to work toward.

Second, *I think the whole conditional release program also offers not only hope, but help for those individuals when they are released.* Working in an agency with people coming out from institutions after a number of months — or in the federal system sometimes after a number of years, seven, eight or ten years — and then coming back into the community, we find that it is a traumatic adjustment, and we see that daily as people are coming out and being released into the community. (our emphasis) (57:31)

A similar argument was also made by Gaston St. Jean, Executive Director of the Canadian Criminal Justice Association, when he told the Committee that:

We must stand behind the maintenance of parole, which can either recognize or lead to the occurrence of rehabilitation. The belief in a person's ability to change is deeply rooted, and to unduly prolong incarceration of a person who shows signs of rehabilitation cannot be justified. (our emphasis) (32:30)

Finally, the Infinity Lifers Group of Collins Bay Institution told the Committee:

It is our belief that conditional release be retained but it should be controlled and determined by the Parole Board. Conditional release for Lifers is an important factor in helping them reintegrate back into society and should in our view be expanded and encouraged. It should be set up as a structure for reintroduction into society and used as a mechanism for Lifers to establish some type of network to enable them to be successful in remaining in mainstream society as law-abiding citizens. (our emphasis) (Brief, p. 6)

Those who have argued against the retention of conditional release have not convinced the Committee that parole should be abolished at this time. As indicated earlier in this report, the Committee believes that the primary goal of the criminal justice system is to contribute to the protection of society. This goal can be buttressed in part through the sentencing process by taking the steps necessary to encourage those who have committed criminal acts not to repeat this behaviour. In some circumstances, this goal can be achieved by the use of appropriate community and intermediate sanctions. In other circumstances, this goal will be achieved (at least in the short term) by incarceration.

In instances where the protection of society is sought by incarceration, nearly all of those imprisoned will at some point in their lives be returned to the community. **As indicated in the principles set out in the Introduction to this report, the Committee believes that public protection will be enhanced by preparing inmates for release into society while they are still incarcerated and then providing them with the requisite degree of supervision and assistance once they are released into the community.**

Although the Committee believes that conditional release in its various forms should be retained, it does not believe that the system is functioning as well as it should. The conditional release system in its current form suffers from internal weaknesses and a lack of public confidence in its efficacy.

Much of the public confidence in the conditional release system has been weakened by a number of disturbing incidents of serious injury and tragic death, attributable to violent, sexual offenders on some form of early release.

The Committee believes that the proposals presented to it by the Solicitor General of Canada in his appearance before it on June 15, 1988 go some way in addressing some of the problems in the conditional release system as we know it, but even these proposals can be improved upon. In particular, these proposals failed initially to make a distinction between violent and non-violent offenders. In addition, other improvements which may not require parole legislation are needed.

Recommendation 45

The Committee recommends that conditional release in its various forms be retained and improved upon by the adoption of the recommendations that follow.

C. Full Parole

1. Decision-Making Criteria

At present, parole eligibility is available in most cases at the one-third stage of a sentence of imprisonment. Whether an inmate is to be released into the community, and the circumstances under which this release is to occur, are determined by the National Parole Board. The Board makes parole decisions based upon an inmate's institutional record, release plan and the degree of risk the inmate represents to the community, all of which is now relatively structured pursuant to the Board's recently adopted decision-making criteria. **The Committee supports this approach to discretionary release decision-making. It is important that these decisions be made on full information, with risk assessment as the core value. The approach would be strengthened by incorporating it in law.**

2. Eligibility

One of the sources of the lack of public confidence in the criminal justice system at present is the point in a sentence at which an inmate is eligible for release back into the community on parole — currently at the one-third stage of a sentence of imprisonment. **It is widely believed, and the Committee agrees, that in many cases the time which must be served in**

prison should more closely approach the length of the sentence than it does at the present time.

When appearing before the Committee on June 15, 1988, the Solicitor General of Canada proposed that, generally speaking, the parole eligibility date be increased from one-third to one-half of a sentence of incarceration. Such a later parole eligibility date would make the time served in a carceral setting more closely approach the sentence imposed by a judge than is now the case. This would provide greater clarity about the meaning of the sentence for the public, offenders and the judiciary. On August 3, 1988, the Minister indicated he was seeking ways of limiting these proposals to violent offenders.

The Committee commends the Solicitor General for making this change in his original proposal. However, it does have some concerns about how "violent offenders" will be defined. The first of these is that, unless violent offenders are clearly defined, it would make a dramatic change in the parole eligibility dates of many inmates, and not just in those of the offenders who cause the greatest concern to the community. Violent offenders are defined by the National Parole Board in statistical material provided to the Committee as those sentenced for murder, manslaughter, attempted murder, sexual assault, wounding, and assault. Those sentenced for robbery (which may be armed or with violence, as well as unarmed) are excluded. The *first category* of offences set out in the National Parole Board's *Pre-Release Decision Policies* (to be found in Chapter Ten of this report) provides a considerably broader enumeration of "violent offences." The schedule to Bill C-67 (to be found in Chapter Eight of this report) appears to provide a more appropriate enumeration of "violent offences".

The Committee believes that the later parole eligibility date should apply only to those who cause the greatest concern to society — inmates who have been convicted of violent offences. Although it is difficult to define what constitutes a violent offence, the Committee believes that the later parole eligibility date proposed by the Solicitor General should apply only to those who have been convicted of the criminal offences set out in the Schedule to Bill C-67. Inmates convicted of all other offences should retain the current eligibility dates for parole — generally, at the one-third point of their sentences.

3. Amount of Time Actually Served

The proposed later parole eligibility date of 50 percent of a sentence of imprisonment is close to the level at which most paroled inmates are released at present. According to statistics provided to the Committee by the National Parole Board, very few of those serving terms of imprisonment are at this time actually released at the one-third point of their sentences. In 1986/87, 56.7 percent of *all* releases from penitentiary were pursuant to mandatory supervision — that is, after offenders had served over 66 percent of their sentences. During the same year, 32.1 percent of paroled inmates served between 40 percent and 43 percent of their sentences before being released on parole. The majority of those released on parole (55.2 percent) served between 46 percent and 49 percent of their sentences before being released.¹

At present, “violent offenders” who are successful in obtaining parole serve, on average, 46 percent of their sentences.² This means they are serving 13 percent of their sentence after they become eligible for parole. Either the proposals will have little impact (these offenders will simply serve four percent more of the sentence in prison than they do now) or, if National Parole Board decision patterns remain unaffected by this change, these offenders may not be released until they have served about 63 percent of their sentences, on average. In the latter case, more inmates would remain in custody for a longer period of time, leading to a significant increase in the penitentiary population.

A similar problem may result if there is no change in the sentencing patterns of judges dealing with violent offenders. The argument is made by the Canadian Sentencing Commission, among others, that judges impose longer sentences of imprisonment to compensate for the date in a sentence at which an inmate becomes eligible for parole. For example, if a judge wants to ensure that an inmate will spend two years in prison, a sentence of six years incarceration will be imposed. In this case, if this argument is correct, such a judge might be expected to adjust his or her sentencing pattern by lowering sentences for violent offenders to account for the later parole eligibility date. If such a sentencing pattern adjustment does not take place, penitentiary overcrowding will result.

Moreover, the Committee is concerned that offenders serving sentences for “non-violent” offences do not seem to obtain parole at the present time, on average, until more than 50 percent of their sentences have been served.³ Although the Solicitor General has indicated that he would like to

distinguish between violent and non-violent offenders, it is unclear what action he plans to hasten the early release of non-violent offenders.

Despite these concerns, the Committee is reasonably confident that with appropriate directives and information-dissemination, both National Parole Board decision-making patterns and judicial sentencing practices will adapt to a later parole eligibility date for violent offenders.

4. Parole as a Privilege

Finally, the Committee believes that parole is a privilege that must be earned. The Committee agrees with the Honourable Brian Smith, former Attorney General of B.C., who said:

I do not mean that you earn parole because you happen to be a nice manageable inmate who handles the guards well and is polite. I do not mean it at all. I mean that you earn your entitlement to parole because you have demonstrated in some material way that you are prepared to change the way you behave and the way you interact with society. (our emphasis)

You may do that by demonstrating that you wish to learn a trade or an occupation. While you are in custody, you work at that. You demonstrate that when you get out, you do not intend to go back to pushing drugs or whatever you were in there for, but that you intend to work and want to work. It is not by telling a parole officer that you do, but you demonstrate it by having already shown that you can do so. (57:38)

The later parole eligibility date will allow the inmate convicted of a violent offence greater latitude to demonstrate that this privilege has been truly merited.

Recommendations 46

The Committee recommends that parole decision-making criteria be placed in law.

Recommendation 47

The Committee recommends that the eligibility date for full parole for those convicted of the violent offences set out in the Schedule to Bill C-67 be changed from one-third to one-half of a sentence of imprisonment.

Recommendation 48

The Committee recommends that appropriate directives and information be disseminated so that National Parole Board decision-making patterns and judicial sentencing practices are adapted to a later parole eligibility date.

D. Day Parole

At present, most inmates are eligible for day parole when they have served one-sixth of their sentences. Prior to 1986, few inmates were granted day parole at that stage. Since Bills C-67 and C-68 were enacted, it has been mandatory that all cases *must* be reviewed by the National Parole Board prior to the one-sixth point in the sentence. The Committee has been unable to determine what effect this has had on the actual earlier release of non-violent offenders. However, it is apparent that this has increased the workload of case preparation staff and the National Parole Board.

A number of problems have been identified with respect to the day parole program. For one thing, it has no identified legislative purpose. Moreover, the one-sixth point in a sentence of incarceration is said not to be enough time for an inmate with a sentence of less than 3 years to get into institutional programs or develop a proper release plan. It is often six months after the beginning of the sentence before institutional assessments and placements are completed and programs commenced. Even assessments may be delayed, given the difficulties experienced in obtaining court information.

In his June 15, 1988 appearance before the Committee, the Solicitor General of Canada proposed that the day parole eligibility date be set at six months before full parole eligibility. **The Committee agrees with this change in the day parole eligibility date. However, it feels it should be pointed out that in the cases of some offenders convicted of the violent offences set out in the schedule to Bill C-67, day parole eligibility could occur at or after the proposed point, but day parole supervision could last longer than six months.**

The purpose of day parole should be to enable the inmate to begin to prepare for reintegration into the community. It should consequently be made available for restitutorial, vocational, educational or employment purposes relevant to the possibility of eventual full parole. Day parole should

be an occasion for the offender to demonstrate that the privilege of full parole has been earned and the commitment to "righting the wrong" is real. In the Committee's view, six months should be enough time in most cases for an offender to demonstrate that he or she is a good candidate for more full-time reintegration into the community. However, in some cases it may be desirable to retain a longer period of relatively close supervision than that which day parole could offer.

The proposed later day parole eligibility would also provide more time for inmates to benefit from intensive institutional programs. Similarly, greater time would be available for case preparation leading to a more effective information base for appropriate risk assessment of these offenders and the development of viable release plans.

By shortening the amount of time an offender may spend on day parole and delaying his or her eligibility for it, the amount of the sentence actually served in prison will be more directly related to the total sentence lengths. This should help restore public confidence in the criminal justice system.

The Committee favours the retention of automatic day parole review prior to the eligibility date. This will ensure that offenders who appear to be ready to begin their reintegration into the community, especially non-violent offenders, are able to benefit from day parole.

Recommendation 49

The Committee recommends that day parole be available to inmates six months before full parole eligibility date for restitutional, vocational, educational or employment purposes related to possible full parole.

Recommendation 50

The Committee recommends that the provision for automatic review prior to the day parole eligibility date be retained.

E. Temporary Absence

The Committee is concerned about what it considers to be some inappropriate uses of the temporary absence program. It has been made

available to some who would appear to be high-risk inmates for the "rehabilitative" purposes of celebrating birthdays, attending sporting events and going on shopping excursions. In the Committee's view, these represent inappropriate uses of an otherwise highly successful program.

Citizens United for Safety and Justice made the following submission to the Committee on temporary absences:

We would agree that certain situations justify release of offenders for short periods of time for humanitarian reasons only, provided there is no undue risk to the public. Administrative policy and guidelines for correctional authorities should spell out the types of situations and the terms under which humanitarian release could be considered.

Definition of humanitarian reasons includes: visits to specialists for medical reasons, otherwise not obtainable to the offender; visit to a gravely-ill close relative (parent, brother, sister or grandparent); the funeral of any of these same close relatives. All visits to be escorted.

These should be the only reasons for TAs, and although it is stated in the handbook by the NPB, "A Guide to Conditional Release", that these are indeed the only reasons for this type of release, it is quite obvious that the Board's definition of "humanitarian" includes such frivolous activities as shopping trips, visits to art exhibitions, lectures, sports and even birthday (the offender's) celebration outings. The idea of a convicted violent sex offender, whom the Court has sentenced to five years to be spent in a penitentiary, on a TA for 48 hours after having served as little as six months, is too reckless and irresponsible to comprehend, let alone [be] understood and accepted by the public at large. (Brief, p. 3)

During his appearance before the Committee on June 15, 1988, the Solicitor General of Canada proposed that temporary absences be refocused to relate directly to inmate programs. **While the Committee welcomes the Minister's proposals for tightening up a generally successful program to ensure that it is more difficult for high-risk inmates to abuse it, the Committee does have some concerns.**

It is unclear how such temporary absences are to be used for reasons related to institutional programs and who is to make such a determination. It is also unclear from the Minister's proposal whether it will continue to allow temporary absences for such humanitarian reasons as the attendance at a funeral and, of course, medical emergencies. If this type of temporary absence is to continue to be available, it must be made clear who may benefit from it and who is to make this determination. At present, the National Parole Board delegates to the wardens its authority to authorize unescorted temporary absences for offenders serving sentences of less than five years. In the Committee's opinion, the Parole Board should retain this

power in relation to all offenders serving sentences for any offences involving any form of sexual assault or the taking of a life.

Recommendation 51

The Committee recommends that temporary absences be retained for purposes related directly to correctional programs and for clearly-defined humanitarian and medical reasons.

Recommendation 52

The Committee recommends that the National Parole Board be precluded from delegating to wardens the authority to authorize unescorted temporary absences for offenders serving sentences for offences involving any form of sexual assault or the taking of a life.

F. Earned Remission

At the present time, an inmate earns 15 days' remission of sentence for every 30 days served in prison. About one-third of the total sentence may be remitted. In theory, this is earned good time. In almost all cases, all remission time is automatically credited to an inmate and days are only deducted for institutional offences.

Those who support the continuation of earned remission argue that it acts as a series of rewards for good behaviour and is a technique available to correctional authorities to enable them to better manage the institutional population. Those who oppose earned remission say that inmates should not be rewarded for doing what they are supposed to do: that is, for respecting institutional rules and regulations.

In response to a question about earned remission, Ole Ingstrup, in his new capacity as Commissioner of Corrections, made the following observation:

Seen from the correctional point of view, I have my doubts, quite frankly, that a remission system does very much in terms of improving institutional behaviour. I know that it is necessary to have incentives and disincentives in an institution in order to manage an institution, but I believe the remission system has become more or less an automatic system. (64:27)

The abolition of earned remission is not a new proposal. In its 1972 report, the Task Force on Release of Inmates (Hugessen Report) observed that remission had by then lost much of its value as a device to control

inmates (parole was seen as a much better means to this end) and recommended that it be abolished.

The Solicitor General of Canada proposed on June 15, 1988 that earned remission be abolished and that inmates be statutorily released under supervision when the lesser of one-third or twelve months of their term of incarceration remains. Essentially, this represents a shorter form of mandatory supervision.

The Committee supports this proposal but has some concerns which arise from the uncertainty in the Minister's proposal as to the nature of the conditions of supervision to be attached to the statutory release. The Committee believes that the conditions attached to this release should be broader than the present mandatory conditions in some cases. The requirement that an offender who has not been paroled may be required to reside in a community correctional centre during part or all of this statutory release period, whether or not all the requirements of Bill C-67 apply, is one example.

Recommendation 53

The Committee recommends that the legislative provisions for earned remission be repealed and that offenders be statutorily released under appropriate conditions (including residential conditions where necessary) and supervision for a period of 12 months or one-third of sentence prior to warrant expiry date, whichever of these periods is shorter.

Recommendation 54

The Committee recommends that the detention provisions of Bill C-67 be retained and be applied in appropriate circumstances.

Notes

- (1) National Parole Board, *Briefing Book*, Volume III, Ottawa, June 1988, p. 11 and Figure 2.3.
- (2) *Ibid.*, p. 41-42 and Figure 3.11.
- (3) *Ibid.*, p. 117, Figure 6.3.
- (4) *Ibid.*

CHAPTER THIRTEEN

PAROLE SUPERVISION

An essential part of the reintegration of offenders into the community is the intensity and quality of supervision to which they are subjected. Parole supervisors must be properly qualified and trained, have the required resources to effect their dual duty of supervising and assisting offenders and must be effectively motivated to do their job as well as possible.

A. Employees of the Correctional Service of Canada

1. In General

The Committee met with parole supervisors employed by the Correctional Service of Canada at *in camera* meetings across the country. These people, who play an essential role in the criminal justice system, are seriously demoralized. There are several reasons for this demoralization. Their caseloads are getting heavier and, because of frequent legislative and policy changes in recent years, the demands on them for documentation and accountability have become more intense. The advent of a number of competing directives and new initiatives in policy in recent years has left them feeling directionless. The recent increase of privatization and introduction of provincialization of parole supervision, with the consequential loss in person-years, but sometimes the retention of ultimate responsibility for supervision, has led to a climate of insecurity.

These issues must be addressed by the Correctional Service of Canada (or National Parole Board if it assumes these functions). In particular, the morale of its parole supervisors must be improved.

2. Caseloads

The Burnaby coroner's inquest jury that investigated the deaths of Joan Pilling, Linda Brewer and Megan McCleary (the Foster case) made the following recommendation on parole officer caseloads:

That a review be undertaken to determine what an acceptable case load is for case workers and parole officers. It should be taken into consideration that different individuals will require varying amounts of their time.

The issue of parole officer caseload is one of particular concern to the Committee. Parole officers appear to have three types of cases — those including direct supervision, those involving indirect supervision (in which direct supervision is provided by private agencies) and those making up what one parole officer appearing before the Committee described as the “hidden caseload”. The “hidden caseload” was described to the Committee as involving those offenders who have completed their period of conditional release but who continue to see their parole officers for further advice and assistance. Parole officers having such a caseload, which does not appear to be included in the official statistics, feel that, in conscience, they still must assist these offenders, even though they are no longer under supervision.

Parole supervision is demanding on those who perform it and critical for the effective reintegration of offenders into the community. No two offenders are alike — each has to be provided with the appropriate degree of supervision and the right amount of assistance. How well and how smoothly parole supervision is going to go is unpredictable. Consequently, parole supervisors must be able to respond quickly and appropriately to developments in the lives of offenders whom they supervise. To do this, they must have an appropriate caseload level which will constitute an effective use of their time and skills, and still leave flexibility for them to respond appropriately to unexpected events.

The level of caseload to be carried by parole officers is difficult to determine. The Correctional Service of Canada has undertaken a study of human resource standards in a number of areas including Case Management Officers. It is expected that this study will be completed and the resulting standards will be implemented by April 1, 1989. The Committee commends the Correctional Service of Canada for undertaking this study and hopes it will result in the development of appropriate caseload standards for parole officers providing offender supervision.

3. Training Opportunities

Parole supervision is only as effective as those designated to perform it are able to make it. Consequently, parole supervisors must be properly trained and provided with opportunities for in-career refresher courses and retraining. Witnesses appearing before the Committee have suggested that those training and retraining opportunities that do exist are not always available to front-line parole supervisors. These opportunities, which are now available to middle management, should not only be increased but should also be made available to more parole supervisors.

B. Employees of Private Sector Agencies

In the past several years, the privatization of both parole supervision and the operation of community residential centres has been increased. There has always been some degree of private sector involvement in these aspects of the conditional release system, but what is new is the development of quotas to increase that involvement and the emergence of "for-profit" organizations in this sector.

The Committee has met with both the front-line staff and management of these private sector organizations in both public and *in camera* meetings. As a result of these encounters, the Committee has a number of concerns. The Committee has serious concerns about the qualifications of, and the training made available to, the staffs of privately-run halfway houses. Halfway house staff and private sector parole supervisors have often had inadequate access to information about the clients with whom they are dealing, e.g. Sweeney, Stanton. They also do not have (and some apparently do not want) direct access to the parole suspension power that is available to Correctional Service of Canada parole supervisors.

C. Halfway Houses

1. In General

The Committee supports the idea of halfway houses but recognizes that they have had some difficulties. Halfway houses are an appropriate means of reintegrating offenders into the community. By offering effective programming and facilitating offenders' access to various helping services, they serve as a support and assistance mechanism, as well as a place to live.

2. Halfway House Standards

Halfway houses, especially community residential centres operated by private agencies, have been severely criticized in recent years. In 1985, Celia Ruygrok was murdered by James Allan Sweeney, a resident of a halfway house in Ottawa. In 1988, Tema Conter was murdered by Melvin Stanton, a resident of a halfway house in Toronto. In each case, a public outcry followed and an investigation ensued. Serious weaknesses in the release preparation, release determination, release supervision and information exchange processes were identified and efforts were made to correct them.

The Coroner's Inquest Jury investigating the death of Celia Ruygrok in Ottawa made 29 recommendations, most of which were accepted and implemented by the Solicitor General of Canada. Similarly, the Pepino Inquiry into halfway houses in Toronto made 32 recommendations of which 31 were accepted by the Solicitor General of Canada and are being acted upon.

A number of the recommendations made by both inquiries have been implemented as part of the *Standards and Guidelines for Community Residential Facilities* adopted by the Correctional Service of Canada on May 30, 1988. These Standards and Guidelines deal with community residential centre organization, administration, programs, personnel policies, evaluation, physical plant and security, relationship to community and police, and relationship to the Correctional Service of Canada.

L.A. Drouillard, Executive Director of the St. Leonard's Society of Canada, had the following comments to make about the Standards and Guidelines in light of the Pepino recommendations:

In terms of responses to the recommendations of the Pepino report, there are a couple of standards that we feel are fairly intrusive, over-reactive in terms of being very detailed and very controlling. We think the whole issue of the partnership between the voluntary sector and government services is at issue, and we are actively pursuing those issues with the Correctional Service right now. Generally, we accept them in principle and the thrust is the correct way to go, supported by staff training. (55:13)

The Committee agrees with Mr. Drouillard that the Standards and Guidelines based in part on the recommendations of the Ruygrok and Pepino inquiries will help to ensure that halfway houses are run more effectively, more safely and have a greater degree of community acceptance. It also agrees with Mr. Drouillard that some of the Standards and Guidelines are detailed and intrusive. The Committee does not, however, see this as detrimental, particularly for offenders who have a history of violence. It must not be forgotten that the conditional release and release supervision processes deal with risk determination and risk management. The best way to manage risk is to set out clearly how it is to be done. That is what these Standards and Guidelines do.

3. Community Involvement

The Standards and Guidelines indicate how the community is to be involved in community residential centres. They require the centres to:

- inform geographically close neighbours of their programs and services;
- make their annual reports public;
- establish admissions committees, including geographically close neighbors, to process applications for residency;
- develop policies on responding to public inquiries, proposals and complaints; and
- develop plans for liaison with local police forces to facilitate communication.

These are laudable steps and should be taken in all cases. The difficulties faced by halfway houses once they are functioning in a community often can be traced to the way in which they have been established in a neighbourhood.

When setting up halfway houses, adequate steps have not always been taken by their sponsors to ensure that there has been effective community involvement in their establishment. From time to time, this has resulted in considerable resentment and fear of, as well as resistance to, the location of halfway houses in different communities. There must consequently be an effort on the part of agencies establishing halfway houses to involve the community from their inception. On the other hand, the community has a responsibility to accept these halfway houses if all standards have been met and precautions taken. The conditionally released offenders in halfway houses are at the last stage of their reintegration into the community — they need all the assistance the community can give them to succeed.

4. Special Classes of Offenders

Not all offenders should be in halfway houses operated by the private sector. There are some violent, recidivist offenders who should be kept in a community setting more secure than a halfway house, where the supervision is more appropriate to the risk these offenders may pose. To this end, these types of offenders should be kept in Community Correctional Centres or community-based minimum security institutions operated by the Correctional Service of Canada.

5. Programming

The Committee believes that halfway houses should not just be places for the conditionally released offender to live. All of them should provide various degrees of programming, counselling and assistance dependent on the nature of those who are resident in them.

6. Specialized Halfway Houses

The Committee believes that more specialized community residential centres are required across Canada. Specialized facilities should be developed in all parts of Canada for Natives, women, offenders with mental disorders and offenders with substance abuse problems. These types of specialized residential facilities would help to ensure that the offenders get intensive programming in a community setting.

Recommendation 55

The Committee recommends that the Correctional Service of Canada take all necessary steps to ensure that the *Standards and Guidelines For Community Residential Facilities* (incorporating the recommendations of the Ruygrok and Pepino Inquiries, among other conditions) are strictly adhered to by private agencies entering into contractual arrangements with it.

Recommendation 56

The Committee recommends that violent, recidivist offenders on conditional release be placed in community correctional centres operated by the Correctional Service of Canada with access to appropriate programs and supervision.

Recommendation 57

The Committee recommends that the Correctional Service of Canada, in partnership with private agencies, develop additional halfway houses to provide supervision and programming appropriate to the needs of Native offenders, female offenders, offenders with substance abuse problems and offenders with mental disorders.

CHAPTER FOURTEEN

OVERVIEW OF CORRECTIONAL PROGRAMS

A. In General

No study of sentencing and conditional release is complete without a review of what happens to offenders once they are incarcerated. The Committee came to this conclusion early in its work. Consequently, the Committee not only held public and *in camera* hearings, as mentioned earlier, it also visited a number of penitentiaries.

As indicated in the principles set out in the Introduction to this report, the Committee considers the delivery of and inmate participation in institutional programs as essential to preparing offenders for their return to the community. The more effective institutional programs are, and the more meaningful inmates' participation in them is, the more likely are offenders to complete successfully their conditional release into the community. The most important consequence of these developments would be the reduction of the likelihood of recidivism and the resultant protection of the community from the commission of further offences.

During its visits to penitentiaries, the Committee was able to observe a number of vocational, educational, lifeskills and substance abuse programs in action. Members of the Committee were able to talk with instructors and inmates in these programs, as well as those involved in a number of other programs. The commitment of both the instructors and inmates who were actively involved in these programs was obvious. This commitment was all the more striking in that it manifested itself in an environment where institutional security is often perceived to be of primary importance and where equipment and supplies are at times scarce or difficult to acquire.

B. Community Involvement in Programs

The Committee was impressed by the degree of community involvement in institutional programs by volunteers. This was especially striking in programs addressing illiteracy, substance abuse, chaplaincy and secular and religious-based prison fellowship programs across the country. The Committee believes that wherever possible community involvement in

institutional programs is essential. Such community involvement in institutional programs ensures that inmates are kept in touch with the society into which nearly all of them will some day return. This type of community participation also has the effect of humanizing and individualizing the inmates in the eyes of the community - the public perception of inmates as dangerous is dispelled by the contact the community has with them.

Recommendation 58

The Committee recommends that the Correctional Service of Canada facilitate a continued and even greater degree of community participation in institutional programs.

C. Citizens Advisory Committees

Part of the community involvement in institutions may be seen in the various Citizens Advisory Committees to be found across the country for each institution or district parole office. This initiative has much to commend it — the existence of these Citizens Advisory Committees must be made better known in the community and a broader degree of participation in them must be encouraged. They must also be given the required resources to perform their functions effectively.

The Committee heard evidence from a Citizens Advisory Committee which demonstrated an exemplary approach for members of the community to follow in working with offenders. The Niagara Citizens Advisory Committee, which was established in March 1981, incorporated a company called Absolute Pallet and Crate (A.P.C.) in the fall of 1985 with the assistance of the Correctional Service of Canada. The members of the Citizens Advisory Committee set up this program as a way of providing employment, job-skill training and different types of counselling to offenders with poor job skills, poor living habits and other problems.

Absolute Pallet and Crate produces pallets and crates, and operates an industrial woodworking plant on a competitive basis in the commercial market. It provides on-the-job training and counselling to federal and provincial offenders, social assistance recipients and others in the Niagara region. Job placement assistance is also available — this activity has met with a high success rate. These initiatives by volunteers from the community working with offenders deserve emulation elsewhere in Canada.

Recommendation 59

The Committee recommends that the Correctional Service of Canada allocate more resources to Citizens Advisory Committees so that community participation in their activities may be more widespread and so that they may more effectively perform their functions, particularly those which increase inmates' job skills.

D. Commissioner's Task Forces

When he appeared before the Committee on June 28, 1988, the newly-appointed Commissioner of Corrections, Ole Ingstrup, indicated that he had established a number of task forces to report to him by the end of August 1988. One of these task forces was given a mandate to examine the quality and availability of institutional and community programs. He also indicated that several private sector groups, in particular the Canadian Association of Elizabeth Fry Societies, would be invited to participate in this task force.

The Commissioner of Corrections is to be commended for taking these steps. The Committee looks forward to receiving the report of this task force, as well as those of the three other task forces established by him, which he said he would make available on their completion. The Committee anticipates not only receiving the task force reports and their recommendations, but expects to be reviewing their implementation in the months ahead.

Although the Committee has not reviewed particular correctional programs in depth, it has considered them within the broad sweep of its study of sentencing and conditional release. Its visits and the evidence it has received have raised a number of general concerns about institutional programs about which the Committee now wishes to make recommendations.

E. Program Resources

One of the concerns the Committee has is the resource imbalance between the requirements of security and the needs of programs. It appears to the Committee that inadequate resources are committed to programs. There is no doubt that bricks and mortar, fences and technology are important, but, in the long run, society will be more fully protected if all inmates are provided with the opportunity to develop the personal, educational and vocational skills which will enhance their chances for

success upon release into the community. More funds must be allocated to correctional programs. An increased budget would enable correctional authorities to offer a greater array of effective programs to assist offenders to return to the community as law-abiding citizens.

Recommendation 60

The Committee recommends that the Correctional Service of Canada devote a greater proportion of its resources to institutional programs, and that the government commit additional resources for it to do so.

F. Program Continuum

Offenders will be more successfully reintegrated into the community if the programs in which they are involved in the institutions are accessible to them in a continuous way in the form of their equivalents outside the penitentiaries. One of the rationales for removing parole supervision from under the aegis of the National Parole Board and placing it under the responsibility of the Correctional Service of Canada in the late 1970s was so that there would be a continuum of programs from the penitentiaries into the community. Unfortunately, in the Committee's view, although many institutional programs have their equivalents in the community, the situation can not be characterized as being a programming continuum.

Recommendation 61

The Committee recommends that the Correctional Service of Canada take the necessary steps to ensure that, whenever possible, offenders on conditional release may participate in programs that are continuous with those in which they have been involved while in institutions.

During its penitentiary visits, the Committee heard evidence of a related problem. It appears that some of the vocational programs in which inmates are involved while in prison do not always teach skills adequate to enable offenders to be licensed to take certain types of jobs in the community. This has been a source of frustration to inmates and has undermined their commitment to these vocational programs.

Recommendation 62

The Committee recommends that the Correctional Service of Canada ensure that its programs provide the requisite degree of skill development to enable inmates to be suitably certified where required for particular types of employment in the community.

Another continuity problem identified by the Committee is that of the availability of programs in institutions of different levels of security. This is especially a problem for inmates who may wish to take advantage of post-secondary educational programs available to them. If an inmate is transferred, he may discover that by moving to a lower-level security institution he has to forego the post-secondary education program in which he is involved. This has led to the ironic situation where such an inmate may refuse a transfer to a lower level security penitentiary so that he might continue with his post-secondary education program.

Recommendation 63

The Committee recommends that the Correctional Service of Canada take the necessary steps to ensure that inmates transferring from one institution to another, or from one security level of institution to another, do not thereby lose access to post-secondary education programs in which they are involved.

G. Long-Term Programs

During its visits to penitentiaries, the Committee met with a number of Lifers groups — these are groups of inmates serving life sentences and having parole ineligibility periods of anywhere from 10 to 25 years. The number of these inmates is growing at a steady rate. Unlike many other offenders, they are faced with long periods of incarceration before being eligible for any form of conditional release. Most institutional programs are designed for inmates spending a much shorter period of time (generally less than five years) in prison. There do not appear to be sufficient long-term programs to deal with the needs of lifers.

A number of Lifers groups made oral and written submissions to the Committee on this issue. The Infinity Lifers Group of Collins Bay Penitentiary put the issue in the following terms:

We are recognized as being a distinct group amongst the prison population, yet, no special considerations are made in that respect. It appears that rules and regulations are developed for the lowest common denominator. Most programs are developed and implemented for those with shorter and determinate sentences. It is a constant source of frustration for Lifers, who make up a large part of the static and stable population to be constantly reminded by C.S.C. officials that it is unfortunate but there is not much in the way of programs for them. We are however encouraged to create our own programs, which most often can be frustrating because of problems getting them recognized by these same officials. (Brief, p. 8)

The Committee believes that this is a serious issue and it must be addressed. It has come to this conclusion knowing that the solution to this problem is not an easy one.

Recommendation 64

The Committee recommends that the Correctional Service of Canada develop programs appropriate to the needs of inmates serving long periods of incarceration prior to their eligibility for conditional release.

H. Sex Offenders

One of those inmate groups that causes the greatest public fear and harm are sex offenders. There are a number of programs for sex offenders across the country. The Committee has met with the staffs of and visited some of these programs. There are currently more sex offenders in our prisons than the programs can handle — each program has a long waiting list. Each of the sex offender programs uses different techniques for teaching its patients how to control their behaviour.

Dr. William Marshall of the Department of Psychology at Queen's University, one of the founders of the first treatment program for sex offenders in 1973 at Kingston Penitentiary, told the Committee that:

Canada and North America... actually, particularly Canada, is at the forefront of the world in this. Probably of the 20 leading experts in the world in treating sex offenders, 5 or 6 are Canadians, or at least so I would say; and that is unusual. So we have an unusual opportunity in Canada to do something that would be exemplary for the rest of the world.

But we are at a stage where we can deliver a treatment program that will guarantee a remarkable reduction in recidivism versus untreated. I do not have any doubt about that. It is just the opportunity to do it, and do it properly and not in this piecemeal way that it is being done, that is standing in the way of effective treatment. (43:34)

Dr. Marshall identified several problems faced by sex offender treatment programs. One of these is the inadequate level of resources allocated to these programs. He expressed the view that these programs felt that their status was somewhat shaky and consequently took patients with whom they would be more likely to succeed in order to sustain their credibility as viable programs. He also indicated that sometimes security concerns over-ride treatment requirements.

Dr. Marshall's submissions to the Committee are somewhat disquieting. Some of the offences committed by sex offenders have had tragic consequences. The public expects that not only will sex offenders be apprehended, convicted and punished, but also that they will receive treatment to reduce the likelihood of their re-offending. This expectation is not being met as effectively as it should be.

The Ministry of the Solicitor General has recently developed terms of reference for an evaluation of sex offender programs across Canada — they are to be commended for doing this. The Committee hopes that this evaluation will be completed at an early date.

The Committee believes that the resources allocated to sex offender treatment programs must be dramatically increased. Full institutional support must be given to these programs so that they may be used as effectively as possible to reduce the possibility of recidivism by sex offenders.

Recommendation 65

The Committee recommends that the Correctional Service of Canada dramatically increase the resources allocated to sex offender treatment programs.

I. Special Groups of Offenders

It has long been recognized that Native offenders and female offenders have special programming needs. Many witnesses addressed the Committee on these concerns. The next two chapters of this report deal with the correctional programming needs of Natives and women.

J. Final Comments

It is the Committee's view that present programs must be improved upon and new ones must be developed. New programs must not be

developed at the expense of old ones. More specifically, programs aimed at particular classes of high risk offenders should not be developed to the detriment of the continued viability of programs already available to the general inmate population.

The Solicitor General of Canada and the Correctional Service of Canada must be commended for their recent efforts and, in particular, the development of programs for dealing with the serious problems of substance abuse and illiteracy. These are examples of the development of new programs to address long-standing problems among offenders. Substance abuse programs and educational programs must be more comprehensively available throughout the correctional system. More new programs like these must be developed, but not at the expense of effective existing programs.

Recommendation 66

The Committee recommends that new programs aimed at high risk offenders not be developed at the expense of existing programs available to the general inmate population.

One of the questions that the Committee put to many of those who appeared before it and whom it met on its penitentiary visits was whether the institutional or community programs in which they were involved had been evaluated to determine their effectiveness. The Committee was surprised and left somewhat unsettled at the small number of programs that had been evaluated.

One of the Committee's broad conclusions about programs is that some of them work for some offenders in some circumstances. Unless more programs are evaluated, it will be difficult to determine what will work under what circumstances.

Recommendation 67

The Committee recommends that programs offered to offenders both in institutions and in the community build in, where feasible, a requirement for and a capacity to effect evaluations.

These are the broad institutional program issues that the Committee has identified as part of its study. The Committee believes that these issues must be addressed to make the reintegration of offenders into the community more effective.

CHAPTER FIFTEEN

NATIVE OFFENDERS

A. Overview

Natives represent a disproportionate percentage of offenders in federal institutions compared with their proportion of the general population. Native people make up approximately two percent of the Canadian population. At the present time, Native offenders make up 9.6 percent of the inmate population. Native offenders make up an even greater proportion of the inmate population in Canada's west and north. Specifically, 31 percent of those incarcerated in institutions located in the prairies are of Native origin.¹ Since the early 1980s, the rate of growth in the Native proportion of inmates in federal institutions has exceeded the rate of growth of the inmate population as a whole.

Native offenders are less likely to participate in rehabilitative programs within federal institutions than the general inmate population. Natives are less familiar with the release preparation system and more likely to waive release eligibility opportunities than the general inmate population in federal institutions.² Native offenders have a lower probability of being released on parole than the general inmate population: in 1987, 42.1 percent of the general inmate population was released on full parole while 18.3 percent of the Native inmate population was released on full parole.³

The serious disruption of the Native culture and economy that has taken place in this century has had a devastating effect on the personal and family life of Native inmates. They are often unemployed, and have low levels of education and vocational skills. Many of them come from broken families and have serious substance abuse problems. Some Native inmates, especially Native women, are incarcerated at great distances from their home cities or towns, or their reserves.

B. Sentencing

One reason why Native inmates are disproportionately represented in the prison population is that too many of them are being unnecessarily

sentenced to terms of imprisonment. **The Committee believes that there should be a more widespread use of alternatives to imprisonment.** These alternatives are examined in Chapter Seven of this Report. As argued in that Chapter, these alternative sentencing techniques are meant to and have the effect of ensuring that the offender accepts responsibility for his or her action, repairs the harm done by the action and is not subjected to the destructive effect of imprisonment.

In the submissions it made to the Committee, the Native Counselling Service of Alberta urged that more Native-centred alternative sentence programs be developed. In particular, it expressed the view that such programs should address the low self-esteem of Native offenders by engaging them in positive work activities and teaching them interpersonal coping skills. Brad Morse of the University of Ottawa told the Committee that Native communities and organizations need financial and human resources, as well as the legal authority, to develop their own alternatives to incarceration.

The Committee agrees with these two submissions. Too many Native offenders are being incarcerated. Incarceration has a destructive impact on these offenders and their relationship with the community. The Committee believes that a greater variety of programs offering alternatives to incarceration for Native offenders must be developed and administered for Native people by Native people.

Recommendation 68

The Committee recommends that governments develop a greater number of programs offering alternatives to imprisonment to Native offenders — these programs should be run where possible for Native people by Native people.

C. Institutional Programming

As indicated earlier in this Chapter, Native offenders participate in institutional programs to a lesser degree than the general inmate population. The reasons for this are not always clear. One of the causes of this phenomenon appears to be that these programs are not always delivered in ways that are appropriate to the cultural background of Native inmates. In addition, those who deliver these programs often come from non-Native backgrounds with the result that there are at times cross-cultural difficulties.

The Committee believes that programs to be delivered to Native inmates must be done in a way that accepts and is adapted to cross-cultural differences between Natives and non-Natives. This is especially important in relation to programs of great importance to Native inmates such as substance abuse and vocational or educational upgrading. These types of steps will help to increase the participation of Native inmates in institutional programs.

Not only should these programs be so designed and delivered but, where possible, Native instructors and teachers should be hired. Although the Correctional Service of Canada has had an affirmative action initiative for several years and its modest goal has been met, there are still not enough Native professionals and workers in the system, especially in areas of the country where Natives are concentrated. All non-Natives who deliver such programs to Native offenders should be provided with opportunities to receive sensitivity training to enhance their ability to deliver institutional programs to Native inmates.

Recommendation 69

The Committee recommends that institutional programs be developed and delivered in a way that is sensitive to the needs of Native inmates.

Recommendation 70

The Committee recommends that, wherever possible, Native instructors and teachers be hired to deliver programs to Native inmates.

Recommendation 71

The Committee recommends that non-Natives involved in the delivery of programs to Native inmates be provided with opportunities to receive sensitivity training to enable them to understand the cultural backgrounds and needs of Native inmates.

In recent years, Native peoples across Canada have developed a greater sense of their history and their cultural heritage. This is all part of the Native self-government current. Native inmates have been caught up in this current. There are Native Brotherhoods and Native Sisterhoods in many

institutions. They provide a sense of community among Native inmates and permit them to discuss and build upon their historical and cultural roots.

A related development has been the increasingly widespread interest in Native spirituality among Native inmates. This involves the spiritual guidance in Native traditions offered by Elders and the observance of such practices as the sweat lodge. The effect of Native spirituality is to put the Native inmate in touch with the Native community and its age-old traditions.

Both Native Brotherhoods/Sisterhoods and Native spirituality are allowed to function within the correctional system (in fact there are Commissioner's Directives in support of this), but they are looked upon with cynicism and disdain in some circles. **The Committee believes that both Native Brotherhoods/Sisterhoods and Native spirituality have a rehabilitative impact on Native inmates and should not only be fully recognized but should also be provided with adequate resources so that they can function effectively.**

Recommendation 72

The Committee recommends that Native Brotherhoods/Sisterhoods be fully recognized and provided with the resources necessary to function properly.

Recommendation 73

The Committee recommends that Native spirituality be accorded the same recognition and respect as other religious denominations and that Native Elders be accorded the same treatment as other religious leaders.

D. Conditional Release

As indicated earlier in this chapter, Native inmates often waive their right to apply for early release or when they do apply for such early release, it is granted to them at a later point in their sentence. It appears that Native inmates are often not as familiar with release preparation processes and the conditional release system as other inmates.

Native inmates require more assistance in preparing and applying for early release. This can be done by either the Correctional Service hiring

more Native case preparation staff to assist Native inmates in preparing their release plans or engaging Native organizations to send Native workers into the institutions to assist Native inmates in preparing for release. While such functions fall within the mandate of the presently contracted-for Native liaison workers, the obligations of these workers continue to expand.

Recommendation 74

The Committee recommends that the Correctional Service of Canada either hire more Natives or enter into further contractual arrangements with Native organizations to assist Native inmates in preparing release plans and applications for early release.

It is felt by many Native inmates that the National Parole Board is not always sensitive to the needs of Native offenders or the environment to which they are to be conditionally released. This is demonstrated in two contexts. One of these is to refuse to accept a release plan because there is no parole supervision capacity in the area to which the inmate is to be conditionally released — often a reserve or remote village where the offender has come from or where there is a community willing to take him back. The other is to impose the standard dissociation condition of release saying that the offender is not to have contact with anyone with a criminal record.

Insofar as the first situation is concerned, the local community or the reserve is often willing to take back the Native offender and provide him or her with the necessary support and supervision. The Correctional Law Review suggested the following legislative provision to address this problem:

With the offender's consent, and where he or she has expressed an interest in being released to his or her reserve, the correctional authority shall give adequate notice to the Aboriginal community of a band member's parole application or approaching date of release on mandatory supervision, and shall give the band the opportunity to present a plan for the return of the offender to the reserve, and his or her reintegration into the community.⁴

Although it may not be necessary to put such a provision in statutory form, the National Parole Board should follow the suggested procedure it enunciates. This approach would enable the community to which the offender is to return to indicate that it wishes the offender to return and that it is willing to take responsibility for reintegrating him or her.

The dissociation condition of conditional release can be a serious problem to the Native inmate who may wish to return to his or her community or reserve. A dissociation clause preventing the conditionally released inmate from associating with those with criminal records may force the Native offender to break friendships or to stop associating with family members. Although a dissociation clause prohibiting a conditionally released inmate from dealing with most people with criminal records is generally desirable, its imposition upon a Native offender should be carefully examined before such a decision is made.

Recommendation 75

The Committee recommends that, where possible, the National Parole Board conditionally release a Native offender to his or her home community or reserve if that home community or reserve indicates that it is willing to and capable of providing assistance and supervision to the offender.

Recommendation 76

The Committee recommends that the National Parole Board carefully examine the implications of imposing a dissociation condition prohibiting association with people having criminal records before imposing it upon a Native offender.

There are a number of Native-run programs and halfway houses across Canada. The Committee believes that in most cases Native offenders are best served by Native-run programs that most appropriately respond to their particular needs. Unfortunately, there are not enough of these programs and they are often under-funded. The Committee believes that there should be more of these Native-run programs for Native offenders.

Recommendation 77

The Committee recommends that governments fully support the expansion of Native-run programs and halfway houses to accept Native offenders upon their conditional release from prison.

Many Native groups that appeared before the Committee expressed concern about not being consulted in advance of important policy

developments. Both the Correctional Service of Canada and the National Parole Board have advisory committees on Native offenders. Since the Parole Board and the Correctional Service are in reality, if not in bureaucratic terms, part of the same system, it would appear to make more sense to have one advisory body on Native offenders advising both the Parole Board and the Correctional Service at the same time. This advisory body should have as members, among others, representatives of the Native organizations involved in criminal justice matters.

Recommendation 78

The Committee recommends that the Correctional Service of Canada and the National Parole Board jointly establish an advisory committee on Native offenders upon which would be represented the major Native organizations involved in criminal justice matters.

E. Native Community Involvement

The Correctional Service of Canada has a Citizens' Advisory Committee at each institution and at each district parole office. Where there are significant numbers of Native offenders, steps should be taken to ensure that there is proportionate Native representation on these Citizens Advisory Committees.

Recommendation 79

The Committee recommends that where there is a significant number of Native offenders, the Correctional Service of Canada should ensure that there is proportionate Native representation on Citizens Advisory Committees attached to institutions and district parole offices.

Notes

- (1) Correctional Service of Canada, *Responses by the Correctional Service of Canada to Questions Raised by the Standing Committee on Justice and Solicitor General*, July 15, 1988, p. 49.
- (2) Solicitor General Canada, Ministry Secretariat, *Correctional Law Review, Correctional Issues Affecting Native Peoples*, Working Paper, No. 7, February 1988, p. 3-5.
- (3) *Op cit.*, Note 1.
- (4) *Op cit.*, Note 2, p. 36.

The Committee recommends that the Correctional Service of Canada and the National Parole Board jointly establish an advisory committee to advise on the development of a national parole board. The committee should be composed of representatives from the Correctional Service of Canada, the National Parole Board, and the public. The committee should report to the Minister of Justice and the Minister of Correctional Services. The committee should also advise on the development of a national parole board and the role of the National Parole Board in the correctional system.

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Note

(1) Correctional Service of Canada, Report of the Committee on the Review of the Correctional System, 1987, p. 15.

(2) Correctional Service of Canada, Report of the Committee on the Review of the Correctional System, 1987, p. 15.

(3) Correctional Service of Canada, Report of the Committee on the Review of the Correctional System, 1987, p. 15.

CHAPTER SIXTEEN

WOMEN IN CONFLICT WITH THE LAW

A. The Context

1. Women and Crime

Holly Johnson, a researcher for the Solicitor General of Canada, had this to say in *Too Few to Count: Canadian Women in Conflict with the Law*:

Canadian statistics suggest a link between the social and economic status and the criminality of women. ... In the experience of correctional workers, women who come into conflict with the criminal justice system tend to be young, poor, under-educated and unskilled. A disproportionate number are Native. Many are addicted to alcohol, drugs, or both. Large numbers have been victims of sexual abuse and many are emotionally or financially dependent on abusive male partners. This type of information about the lives of women offenders is essential for a better understanding of their needs for services, but is generally lacking in available statistical data.¹

Aside from annual statistical data concerning the offences with which women (and men) are charged, penitentiary data, and some prison data concerning sentence lengths, we know little about women in conflict with the law. Existing statistics (with respect to charges laid) confirm the commonly held belief that women are far less involved in criminal activity than are men and that the actual amount of violent crime committed by women is also small.

a. The Offences with which Women are Charged and for which they are Imprisoned

i. National Charges

In 1985, almost 54 percent of the criminal charges against women were for theft or fraud — over 65 percent of which were for theft under \$200 (primarily shoplifting). Other offence categories can be ascertained from Figure 16.1.

Figure 16.1

CRIMINAL CODE OFFENCES, 1985

WOMEN CHARGED

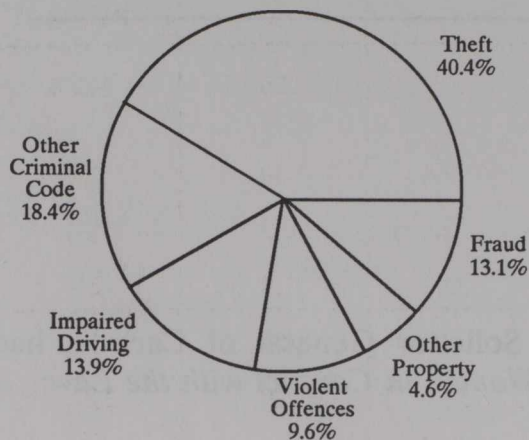
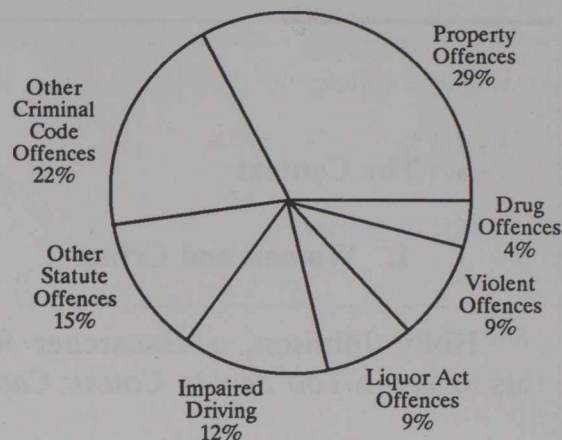


Figure 16.2

OFFENCE TYPE FOR WOMEN ADMITTED UNDER SENTENCE TO PROVINCIAL INSTITUTIONS, 1985



ii. Sentenced Admissions to Provincial/Territorial Institutions

In 1985, provincial and territorial institutions admitted about 8,000 women after sentence — one half of them for at least the second time that year. Their sentenced offence categories are set out in Figure 16.2.

iii. Penitentiary Admissions

Table 16.1 shows the offence types for which men and women were admitted to penitentiaries in 1985.⁴ (These statistics probably include admissions for release revocations, etc., not just sentenced admissions.)

b. Data Submitted to the Committee About Female Offenders in Saskatchewan

The Elizabeth Fry Society of Saskatchewan included in its brief some data it had collected from various sources about inmates at its provincial prison, Pine Grove Correctional Centre, in Prince Albert. This data provides an illustrative profile of women offenders in provincial institutions (section i below).

**Table 16.1
PENITENTIARY ADMISSIONS -- 1985**

Offence	MEN		WOMEN	
	#	Per Cent	#	Per Cent
Murder/Manslaughter	283	60%	20	14.2%
Attempt Murder/Wounding/ Assault	334	7.1	10	7.1
Rape/Other Sexual	132	2.8	2	1.4
Robbery	1051	22.2	18	12.9
Sub-total -- Violent	1800	38.3	50	45.6
B & E/Theft/Fraud	1833	38.8	29	20.7
Drugs	374	7.9	40	28.6
Other (Crim. Code and Fed. Stat.)	720	15.2	21	15
TOTALS	4727	100%	140	99.9%

i. Population Profile at Pine Grove in June 1986

In June 1986, women incarcerated at Pine Grove were serving sentences in relation to the following offence categories:

- 21 percent for drinking and driving;
- 25 percent for property crimes; and
- 45 percent for non-payment of fines.

With respect to length of sentence, 74 percent were serving sentences of less than 60 days — 60 percent, less than 30 days.

Johnson's research points out that with respect to sentenced admissions to provincial institutions in 1985, almost two thirds received sentences of less than a month (half, less than 14 days). This is consistent

with data supplied by the Elizabeth Fry Society of Montreal that 75 percent of sentenced admissions to Maison Tanguay were for less than 30 days.

ii. Characteristics of Pine Grove Inmates

The Society reported the following data with respect to a recently published population survey:

- 74.5 percent of the inmates were under age 30;
- 83.4 percent were of Native ancestry;
- 58.5 percent had at least one dependent child;
- 78 percent had more than two children (includes non-dependent children);
- 72 percent had a Grade 9 education or less;
- 89.4 percent were unemployed prior to incarceration; and
- 60 percent lived in either Regina or Saskatoon prior to incarceration.

An informal survey of just over half the population in November 1986 indicated that:

- 55.2 percent had been victims of sexual abuse; and
- 79.3 percent admitted to serious addictions problems.

A survey of all inmates with sentences of two years or more who were discharged from Pine Grove from April 1, 1985 to April 30, 1987 revealed that:

- all 17 had been serving sentences for crimes of violence (11 for manslaughter);
- more than half had been victims of violence, including sexual assaults (incest or rape);
- all had drug/alcohol addictions;
- 11 had children (6 were single parents); and
- more than 75 percent had been assessed as requiring a medium or maximum security setting for all or most of their sentences.

2. The Need for Research

It is no doubt because women pose much less of a threat to public safety than do men that women offenders have not been seriously studied in the past. Nevertheless, thousands of women are sentenced to prison each year. Yet no nationally collected sentencing data is available in Canada; provinces which do collect court data do not necessarily segregate the information by gender.

As the Elizabeth Fry Society of Montreal presented the situation:

Generally speaking, apart from penal data as such, there is little information collected and compiled which would provide a clear picture of the "female" client, and it would seem that such information is clearly necessary for proper action (Brief, p. 20).

Johnson suggests:

Little can be said with confidence about the type of counselling or treatment programs that would benefit women offenders. We need to know, in greater detail, the specific life situations of women who are charged with criminal offences. On the basis of this knowledge, programs could be designed to direct offenders into non-criminal life-styles and improve the life situations of thousands of would-be offenders.⁵

Recommendation 80

The Committee recommends that the Solicitor General of Canada and the Minister of Justice jointly convene a Female Offender Research Working Group, involving representatives from other relevant federal departments and inviting the participation of relevant private sector agencies and interested provincial/territorial governments and academics to coordinate current and planned research about female offenders (criminality, sentencing and corrections). Further, this working group should recommend priorities for research undertaken or funded by the Ministry of the Solicitor General and the Department of Justice.

B. Community Sanctions

In its brief to the Committee, the Canadian Association of Elizabeth Fry Societies pointed out that:

Women are sentenced to terms of incarceration both indirectly and directly. Indirect sentences of incarceration may result from the failure to pay fines because of poverty or the failure to complete a community service order because no one would babysit the children

One of the ways in which direct incarceration has become the sentencing "norm" for non-violent property offences is through the lack of community sanctions. Judges cannot be expected to exercise their discretion and use restraint if there are no available choices ... (Brief, p. 13)

For meaningful community sanctions to be a real "choice" available across the country, there must be an increase in the funding of community sanctions If there is no increase in funding ..., then only women in large centres or in provinces that recognize the need for this funding, will benefit There must be a federal commitment to ensure that women across the country will have access to a basic level of community programming. Anything less would clearly result in unwarranted disparity ... (Brief, p. 27)

Johnson suggests that the high rate of women being sent to jail more than once for minor offences is evidence of the failure of the penal system:

At a minimum, greater emphasis must be placed on programs and services to enable women to serve their sentences in the community, particularly those women unable to meet the requirements of a financial penalty. Programs for women in need of educational training, skills development, addiction counselling and the like are much more readily implemented and utilized in the community than during a few days or weeks of incarceration.⁶

The Committee has already indicated, throughout Chapter Seven, its support for increasing the use of community sanctions, particularly for non-violent offenders, which most female offenders appear to be. Given the nature of the offences committed by women, the status of women in Canadian society, the condition and scarcity of women's custodial settings, and the desirability of not separating dependent children from their parents unless necessary, greater restraint must be used in the incarceration of women in Canada.

1. Fine Options and Community Service

While it might not appear that a minor shoplifting charge could result in jail time, because of their inability to pay fines, many women do end up serving time. **The Committee has already expressed its view that less reliance should be placed on imprisonment for fine default. It agrees with the Canadian Association of Elizabeth Fry Societies that the resources now used to imprison fine defaulters would be better used in community programs.**

The economic position of many women who come into conflict with the law makes fines inappropriate in many cases. Some jurisdictions use fine options programs to convert the fine sanction into community service. Unfortunately, these programs are not widespread. This means that the impact of fines on women is very disparate across the country.

While calling for greater use of fine options, Elizabeth Fry Societies caution that some women may have difficulty completing such programs in the absence of suitable childcare arrangements.

Recommendation 81

The Committee recommends that those who are developing and funding community sanctions include appropriate provision of quality childcare so that all offenders may benefit from them.

Recommendation 82

The Committee urges governments to make fine options programs more widely available and, in the meantime, to encourage the judiciary to use community service orders or other community sanctions in lieu of fines for economically disadvantaged female offenders.

2. Education, Treatment and Self-Help Models

Elizabeth Fry Societies identify the value of group work in a wide range of areas: life skills, addictions, employment readiness/work adjustment and shoplifting. Programs they favour generally contain education and awareness components, counselling or treatment components, and self-help components which may be continued formally or informally by the participants when the initial program has been completed. The programs encourage women to look at all the circumstances in their lives to understand the underlying contributors to their criminal behaviour and to learn techniques to reduce stress and skills to change their behaviour and position in society.

a. Shoplifting

As can be seen from the statistical material presented earlier in this chapter, women are heavily involved in shoplifting crimes. A number of Elizabeth Fry Societies have developed shoplifting counselling programs to address this problem. In some jurisdictions, participation in the program may divert the offender from criminal justice processing; more frequently, participation may be a condition of probation or engaged in voluntarily in conjunction with other community dispositions. Regrettably, few of these programs have stable funding and only a few of them seem to be operating across the country at any particular point in time.

Recommendation 83

The Committee recommends that governments provide greater support to the establishment, evaluation and maintenance of shoplifting counselling programs throughout Canada.

Recommendation 84

The Committee encourages the business community to support shoplifting counselling programs.

b. Substance Abuse and Sexual Abuse

Both impressionistic and the limited statistical data available indicate the prevalence of addictions among women in conflict with the law. Moreover, common sense suggests that addicted people — particularly those who are young and have limited incomes — are at risk of coming into conflict with the law. In addition, the Committee has been advised that many women who are incarcerated have been victims of sexual abuse and/or incest.

The Kingston Elizabeth Fry Society suggests that:

For victims of society who suffer from physical/sexual/emotional abuse, it is often a vicious cycle of trying to ease and forget the pain through drugs/alcohol which then only exacerbates the situation (Brief, p. 2).

The Committee commends the present government for its initiatives in the substance abuse field generally. It would like to see, however, greater use

of addictions treatment programs by offenders who require them — preferably long before their criminal behaviour requires imprisonment.

As noted in Chapter Seven, it would be inappropriate to compel offenders to engage in treatment, and it is unlikely that treatment programs would waste their limited resources on involuntary clients. However, compelling addicted offenders to attend addictions awareness programs and providing greater resources for the voluntary clients of addictions treatment programs appropriate to the client's gender and culture are approaches that merit greater attention.

Recommendation 85

The Committee encourages criminal justice and addictions agencies to develop education/awareness programs suitable for use in conjunction with community sanctions. Such programs should be sensitive to the gender and culture of participants.

Recommendation 86

The Committee recommends that governments continue to expand their support for community-based addictions education/awareness and treatment programs and for sexual abuse counselling programs.

Recommendation 87

The Committee encourages Crown counsel, the defence bar and the judiciary to ensure that addictions treatment is explored with addicted offenders as a possible component of a community sanction where appropriate.

Recommendation 88

The Committee encourages breweries and distilleries to support innovative addictions education/awareness and treatment programs for offenders.

c. Work Adjustment and Employment Readiness

Many offenders are under-educated, poorly skilled, and lacking in stable work experience and habits. Many female offenders have all these handicaps. In addition, they have been socialized in a society that has relatively distinct expectations of and opportunities for men and women vis-à-vis work.

Women offenders generally need special assistance in understanding the kinds of occupational training available and the prospects for their successful employment. They may require intensive employment education, counselling and testing before they will be in a position to exercise a meaningful choice.

Recommendation 89

The Committee recommends that government departments with responsibilities for education, training, retraining and employment give priority to programs for female offenders and women at risk of coming into conflict with the law and that they provide adequate support to community initiatives which address the special needs of these women.

Recommendation 90

The Committee encourages Crown counsel, the defence bar and the judiciary, where appropriate, to consider the education, training and employment needs of female offenders in fashioning suitable community sanctions.

3. Community Involvement in Community Sanctions

The Canadian Association of Elizabeth Fry Societies proposed that sentences should have a "social value".

Social value suggests that there is some input, concern or responsibility on the part of society in defining what it would consider to be valuable service to the community. Without the involvement of communities, community sanctions will likely not succeed in replacing prisons. (Brief, p. 14)

Along the same lines, the Elizabeth Fry Society of Kingston noted that:

By using community corrections both the offenders and the community are active participants in rehabilitation, reconciliation and restitution. (Brief, p. 3)

The Committee has indicated in the principles set out in the Introduction, in its proposed sentencing purpose in Chapter Five, and in its discussion of sentencing options in Chapter Seven its support for victim-offender reconciliation and in particular its support for offenders accepting/taking responsibility for their criminal conduct by taking steps to repair the harm done. Hand-in-hand with this is the responsibility of the community to offer support to the offender to make constructive changes in her or his life which will reduce the prospects of further conflict with the law.

C. Halfway Houses

One of the most distressing problems the Committee encountered was the paucity of community residential settings for female offenders. Most are located in Southern Ontario, a couple in Quebec, and one in Vancouver. Not surprisingly, the need to establish more halfway houses for women was raised by Elizabeth Fry Societies in Halifax, Sudbury, Saskatchewan and Edmonton. **In the Committee's opinion, appropriate residential facilities for female offenders are crucial to reduce Canada's reliance on imprisonment and to ensure equality of services and opportunities to all offenders.**

Halfway houses may be used for a range of criminal justice purposes: for pre-trial custody and bail supervision, instead of remand centres; as a sentencing option, where a residential component is required; and for early release from custody. Halfway houses can provide specialized collateral support and programming for their residents (life skills, addictions awareness, parenting skills, etc.) and also permit a comfortable, hassle-free transition from in-house programs to community programs or work. In their absence, female offenders have less access to appropriate day parole than do their male counterparts (either they do not get day parole or temporary absences, or they are released to halfway houses far from their home communities) and may experience greater difficulty in reintegrating into the community.

The Correctional Service of Canada seems to recognize the seriousness of the problem, but appears unwilling to act in the absence of provincial

partners. The Committee understands the Service's initial reluctance to expand halfway houses: there are simply insufficient numbers of *federal* female offenders eligible for day parole in each province to make federal halfway houses for women cost-efficient. However, it appears that little progress has been made in obtaining commitments from provincial correctional authorities to guarantee "provincial beds". It is curious that the Service seems to have had more luck in building federal-provincial prisons than halfway houses. **In the Committee's opinion, it is unconscionable for the federal government to continue not to take remedial action in this important area.** This is all the more true given the housing problems generally experienced by low income women.

The Committee understands that a number of options have been tried and others are being considered. In some communities, for example, federal female parolees may reside in halfway houses originally designed for men. Given the negative experiences many female offenders have already had with some men in their lives and the importance of day parole programs assisting women to become economically independent, **the Committee has serious reservations about placing small numbers of women (often only one) in halfway houses inhabited predominantly by men.** The Committee would prefer to see female offenders integrated into other housing services for women. It understands that these facilities may sometimes lack the specialized supports that female offenders may require. Moreover, existing facilities (such as transition houses and temporary shelters) may already be operating at capacity. The concept of private home placements seems not to have caught on and, again, such placements are unlikely to offer the degree of support female parolees may require.

The Committee is also aware that it would be undesirable to widen the net of social control (and incur the additional cost of so doing) by making residential facilities available as components of sentencing options where the offender would not have been incarcerated previously. Similarly, the provision of such residential sentencing options should not replace the provision of basic housing. However, there are other needs which might be met in conjunction with day parole facilities for federal female offenders: satellite apartments for long-term day parolees and second stage housing for parolees or other women at risk. Finally, the Committee is aware that existing halfway houses make no provision for children.

Recommendation 91

The Committee recommends that the federal government, preferably in conjunction with provincial/territorial governments, should fund community residential facilities for federal female offenders in the Prairies, Northern Ontario and Atlantic Canada.

Recommendation 92

The Committee urges community groups interested in operating such facilities and government funders to plan residential facilities and programs that will serve a diverse group of women at risk, where provincial/territorial correctional authorities are unwilling to cost-share "traditional halfway houses".

Recommendation 93

The Committee recommends that future federal-provincial Exchange of Service Agreements include halfway houses for women in the negotiated package and that no further federal-provincial agreements with respect to prison construction be made without agreement to fund or establish halfway houses for women in provinces/territories where they do not now exist.

Recommendation 94

The Committee recommends that, in the expansion of halfway houses for women, consideration be given to the prospect of accommodating dependent children with their mothers.

D. Prisons for Female Offenders

1. Distribution and Size of Women's Prisons

The Committee visited Kingston Prison for Women, the only penitentiary in Canada for women serving sentences of two years or more. It also toured the old and new Forts Saskatchewan in Alberta which house male and female federally and provincially sentenced offenders. As it held hearings across the country, the Committee heard about a number of other women's prisons in Canada.

Prison for Women accommodates 100-150 federally sentenced women. Women's prisons in Vancouver, Saskatchewan and Manitoba house 60-100 women — most serving sentences of less than two years. Alberta has several co-correctional facilities which accommodate mostly provincially sentenced women and men. Pursuant to federal-provincial Exchange of Service Agreements, some federally sentenced women are housed in these Western provincial prisons. Federally sentenced women in Ontario serve their time at the Prison for Women; women with provincial sentences in Ontario generally serve them in a women's prison near Brampton. Unlike other provinces, Quebec keeps almost all of its federally sentenced women (with provincially sentenced women) in Montreal. Small provincial facilities accommodating 20-30 women exist in each of New Brunswick, Nova Scotia and Newfoundland. Women throughout Canada with very short provincial sentences often serve them in local lock-ups (police cells) or local or regional detention centres.

2. Classification of Female Prisoners

Many provinces have a number of facilities which meet the varying security needs of men. Because so many fewer women than men are incarcerated (their participation in crime being lower), with the exception of Alberta and B.C., there tends to be only one women's prison in each province, and there is only one penitentiary for women in Canada. This results in all women being kept at the same security level — higher than most of them require.

In its brief to the Committee, the Elizabeth Fry Society of Kingston points out about the Prison for Women that:

Although it is considered a multi-level security institution, historically speaking women are placed under high-level security on the grounds that this placement will be a motivator for them during their confinement. This means that over half of the women are classified as being high risk regardless of their real security risk. It has been believed that if the women are classified at their real security risk levels (considering that they have long sentences) and given the privileges that come with lower security levels that they will have no motivating factors to help them through their sentences. (Brief, p. 4)

Lorraine Berzins, previously the social services director at Prison for Women and later national policy coordinator for female offenders with the Correctional Service of Canada, in the late 1970s:

... made an accurate and detailed review of inmates at Prison for Women regarding issues such as level of danger to others, skills, education, and family status [C]ontrary to the existing assumptions, even the most dangerous women did not require maximum security⁷

A 1981 complaint to the Canadian Human Rights Commission by Women for Justice led to the introduction of a security matrix system at Prison for Women. While only 15 percent of the inmates were classified as maximum security, the rules and regulations governing their daily lives continued to be determined by reference to maximum security requirements. Since that time security at the prison has actually been increased. The recently introduced Case Management Strategies, according to a submission the Committee received late in its deliberations from the Canadian Bar Association, has resulted in only 12 percent of the Prison for Women population being designated as maximum security. The brief goes on to say that security continues to be given as the reason for lack of access to programs.

In its brief to the Committee, the Canadian Association of Elizabeth Fry Societies stated:

Since security levels are kept artificially high, the institutions in which women are incarcerated are not required to offer the quality of programming they would otherwise be required to offer.

... Although women in prison may "cascade" through security levels on paper, the reality is that the few institutions that house women are run as maximum security facilities, regardless of the paper requirements. (Brief, pp. 13-14)

The Elizabeth Fry Society of Kingston proposed that:

Women be classified at their actual security level, that they be promoted [down] through the classification system according to their real progress and that they be transferred to community correctional facilities ... according to that progress. (Brief p. 4)

The Committee is concerned that large numbers of women prisoners across the country are being detained in facilities which provide much higher security than most of them require and than most of them would be subjected to if they were men. This has an adverse impact on program opportunities and release planning, particularly since women are often housed far from family and friends.

3. Prison Programming

a. General Concerns

The briefs of the Canadian Association of Elizabeth Fry Societies and the Elizabeth Fry Society of Saskatchewan contain scathing attacks on Canadian prisons for women:

The current conditions under which women serve sentences of incarceration are sorely in need of attention. Because of their numbers, the needs of women who are serving time in jails, prisons and penitentiaries across the country are virtually ignored. For women serving lengthy sentences this is a serious problem. Prisons today are little more than warehouses. Women who enter with no skills generally leave with no skills. Women who enter illiterate generally leave illiterate. Those who enter in need of psychological care and support generally leave without ever being offered a "rehabilitation program." Those who enter with some skills or training have nothing to encourage or support them. (CAEFS Brief, p. 15)

Saskatchewan's present correctional system does nothing more than add to society's and the individual woman's problems. It also costs taxpayers a lot of money. We pay to have the woman put through an expensive court experience, we fly her to a correctional centre, we pay someone to care for her children while she is incarcerated and we return her in a demoralized condition to the identical situation that caused her conflict with the law initially. Often we pay the long range costs of her children's disrupted lives as well. All this for a crime which was probably non-violent in nature. (Brief, p. 2-3)

The Committee has already expressed its views in Chapters Five and Seven on the importance of restraint with respect to the use of incarceration. Given that some women will inevitably continue to be incarcerated (some, for relatively long periods of time), **the Committee supports the suggestions of the Elizabeth Fry Society of Saskatchewan that:**

Institutional programming must be relevant to offenders' life experiences. It must seek to address the underlying reasons why they commit offences. In order to do that, it must be culturally relevant. For women it must deal with sexual abuse and low self esteem. It must give women the concrete skills to help them work towards financial independence. (Brief, p. 15)

In addition, of course, it must deal with substance abuse. These suggestions are in line with those of Dr. Robert Ross and Elizabeth Fabiano, as set out in their research *Correctional Afterthoughts: Programs for Female Offenders*, that policy formulation and program development should be based on an objective and realistic assessment of the characteristics, needs and circumstances of the offender.

The Committee acknowledges that, since the Canadian Human Rights Commission's finding in 1981 with respect to women's unequal access to programs, Prison for Women offers a broader range of programs and services than do any of the provincial prisons and that attempts have been made to give federal female offenders housed there access to programs available to male offenders in the region. However, for whatever reasons, the actual participation by women in training and work placements which will ultimately contribute to the capacity of women offenders to obtain well-paid employment still appears to be very limited. In 1987 an inmate and parolee brought an action in the Federal Court of Canada seeking redress under sections 15 and 28 of the Charter of Rights and Freedoms. (The case is expected to go to discovery in the fall of 1988.)

The Committee supports the proposal of the Canadian Bar Association that the tentative statement of correctional goals and principles, which the Correctional Law Review Working Group proposes be established in legislation, include the following:

In administering the sentence imposed on women offenders, correctional programs and opportunities shall be responsive to the needs, aspirations and potential of women offenders.

b. Release Planning

i. Release Planning Services and Programs

Elizabeth Fry Societies proposed that "formalized pre-release planning" be implemented at Prison for Women and the provincial women's correctional centres. Some ask that a position of National Liaison Worker (implemented on a pilot project basis in 1985/86) be resumed at Prison for Women to facilitate the women's contacts with programs and services in all regions of the country. The Elizabeth Fry Society of Saskatchewan put it quite well:

... Solid plans on "the outside" are essential if a woman is not going to be drawn back into the cycle of street life, addictions and crime. It is impossible to formulate successful plans without a safe place for her to live upon her immediate return to the community and without someone to help her make the contacts with services on the outside. (Brief, p. 14)

It is also suggested that the Prison for Women pre-release program (weekly information and discussion group on topics relevant to release)

operate year-round, rather than for only 10 weeks per year as it does now, and that similar programs be developed in the provinces. In some cases, the Canadian Association of Elizabeth Fry Societies suggests:

The exit scenario of a woman released from prison ... entails an RCMP escort to the bus depot and the provision of one bus ticket. Pre-release planning and re-integration into the community call for more support upon release than a bus ticket — and more “community” to be released to than a bus depot. (Brief, p. 14)

Recommendation 95

The Committee recommends that additional resources be made available to private sector agencies serving women in conflict with the law to enhance pre-release programming and services for female offenders.

ii. Parenting as Women’s Work

A couple of Elizabeth Fry Societies suggested that provincial women do not obtain temporary absence passes to resume their work as mothers. While such passes are available to permit (generally male) offenders to maintain jobs and support their families there is a feeling that parenting responsibilities are not considered by institutional or paroling authorities as “real work”.

c. Native Women

i. Background

There is a shockingly high number of Native women in Canadian prisons. They are even more overrepresented than are Native men in our prison populations. Why this is so is commented upon by Johnson in *Too Few to Count*:

This high rate of criminalization of Native people is clearly linked to their bleak socio-economic profile. ... The situation is aggravated for Native women who suffer racial discrimination, gender discrimination and, until 1985, ..., legislated discrimination. ... (p. 39)

... [S]tatistics offer only a glimpse of the consequences of a near complete breakdown of the Native culture[s] and traditional way[s] of life. ... [L]ack of experience in an urban environment, poor support systems and visibility to police almost certainly increase their chances of coming into contact with the criminal justice system. ... (p. 41)

She also comments on the statistical data available from the Correctional Service of Canada with respect to Native women at the Prison for Women:

Native women admitted to federal terms of incarceration are more likely than non-Native women to have served a federal sentence previously, and are twice as likely to be incarcerated for crimes of violence. Sentences, however, were shorter overall for Native women owing to the minimum mandatory sentences given for the drug offence of importing (more often a white woman's offence) and the greater likelihood of Native women to be convicted of manslaughter which does not carry a minimum life sentence, compared to murder, which does.

Isolation from family and community support is even more severe for Native than non-Native women inmates. Three quarters of Native women who receive federal sentences are from the Pacific and Prairie regions, yet seventy per cent are incarcerated in the Prison for Women in Ontario, great distances from where they were admitted and presumably from where they will eventually return. This likely has a very negative effect on release plans and on chances for early release. Research has shown that Native women are less likely to be granted full parole, and those who are released early are more likely to have parole revoked, a situation which may be affected by isolation from families while incarcerated and poor support in home communities upon release. (pp. 42-43)

ii. General Program Implications

Thus, it may be seen, imprisoned Native women are triply disadvantaged: they suffer the pains of incarceration common to all prisoners; in addition they experience both the pains Native prisoners feel as a result of their cultural dislocation and those which women prisoners experience as a result of being incarcerated far from home and family. **The Committee believes that all of the recommendations it has made in the previous chapter with respect to Native prisoners generally apply also to Native women. In practical terms what this means, for example, is that programs of addictions counselling must be appropriate to Native female offenders in terms of both culture and gender.**

iii. Release Planning

Native women who are incarcerated have specialized release planning needs which must be addressed by both institutional authorities and community groups. It may be necessary for governments to provide support to Native organizations to work with incarcerated Native women.

d. Specific Concerns Related to the Possible Closure of the Prison for Women and to Federal-Provincial Exchange of Service Agreements

As was indicated by some of the statistics presented at the beginning of this chapter, most women in provincial correctional centres serve very short sentences. Programs, to the extent they exist, are generally geared to short-sentenced offenders and may be aimed at improving the offender's life skills or simply occupying her time. In such circumstances there is unlikely to be any training directed at making her economically independent.

i. Education

Educational programs may cover adult basic education and high school upgrading. (Post-secondary education is unlikely to be available except by correspondence courses.) Teachers may not be available, particularly not full-time. Given that many women in conflict with the law may have been learning disabled or had other school problems, self-directed learning is unlikely to be of significant benefit to them.

ii. Work Placements

Work placements in small provincial institutions may consist of laundry, kitchen, and cleaning. In some places, it may include gardening and yard maintenance. Occasionally, industrial sewing may be available. Almost all of these work placements continue to restrict women to low-paying jobs.

iii. Family Visiting

Women's correctional institutions vary considerably in their facilities for and attitudes towards family visits. For one thing, most institutions are far from home and thus the travelling costs and time may inhibit visits from children or other family members. (In Saskatchewan, for example, Pine Grove Correctional Centre is 150 kilometres north of Saskatoon and even further from Regina.) On the other hand, two institutions actually permit very young children to remain in prison with their mothers.

Contrary to the experience of imprisoned men, imprisoned women for the most part tend to have spouses or intimate friends who disappear from their lives when they are incarcerated. This is particularly problematic for

women given that an offender's rehabilitation is widely believed to be directly linked to the amount of support he or she has on the outside.

iv. Other Programming

It has also been suggested that recreational facilities, health care and counselling opportunities leave a great deal to be desired. The Committee's views on counselling and treatment programs for women has been expressed earlier in this chapter.

v. What Can Be Done?

Elizabeth Fry Societies suggest that institutions would be able to offer a broader range of specialized programs and services appropriate to short- and long-sentenced women by contracting for them. They caution that the motivation for this should be better, not cheaper, programming. They recommend that programs focus on:

- self esteem and assertiveness;
- substance abuse education, counselling, and self-help; and
- sexual/other abuse education and counselling.

They also suggest that Exchange of Service Agreements include program and service guarantees so that the federal government may be assured that all federal female offenders obtain a level of programs and services equivalent to each other and to that received by federal male prisoners.

Ultimately, the real question is how should the federal government plan for and accommodate federal female offenders? Closure of the Prison for Women has been called for by almost every study made of women prisoners — most recently, the Canadian Bar Association recommended that legislation be introduced to compel closure in a timely fashion. For the most part, this recommendation is supported by the recognition that the distant geographic separation of federal female offenders from their families and community supports not only makes the pain of imprisonment harsher than is reasonable, but also undermines their prospects for successful reintegration.

Exchange of Service Agreements to date appear not to have significantly improved the lot of federal female offenders, except to keep some women somewhat closer to family and community supports than would otherwise be the case. Only Quebec keeps most of its federally sentenced women. Nowhere is there any reason to believe that the programming available in the provinces to date has been adequate to meet the needs of long-sentenced women. Only co-correctional facilities (Alberta) or larger women's prisons (B.C.) seem to give any hope of offering program improvements. Yet Elizabeth Fry Societies have been reticent to support (in some cases they oppose) co-corrections. They do, however, support the concept of co-ordinate men's and women's prisons where the administration and certain basic services would remain separate, but where certain program facilities would be shared.

Moreover, there are presently 40 lifers at Prison for Women; one must ask seriously how their programming needs will be addressed in provincial facilities. On the other hand, many of these women do have relatively strong family ties which suggest the importance of accommodating them closer to home.

The Committee has been exposed to a range of issues related to female offenders (and, most dramatically, to federal female offenders). There is obviously no simple answer to the question of how the needs of federal female offenders should best be met. In the past, the Canadian Association of Elizabeth Fry Societies has proposed that the Correctional Service of Canada establish a sixth administrative region with responsibility for all federal female offenders in Canada, to be headed by a Deputy Commissioner as are the present five geographic regions. Ultimately, what seems to be required is a commitment to planning and carrying out sound decisions.

The Committee believes that the accommodation of federal female offenders must be addressed on an urgent basis. The Committee believes that the Prison for Women must be closed and that satisfactory alternative arrangements be made. (This opinion is not intended to imply any criticism of the present administration of the Prison.)

Recommendation 96

The Committee recommends that the Solicitor General convene a Task Force on Federal Female Offenders, composed of

representatives of appropriate federal government departments and agencies, the Canadian Association of Elizabeth Fry Societies and other relevant private sector agencies, and interested provincial/territorial correctional authorities, to:

- (a) plan for and oversee closure of the Prison for Women within five years;
- (b) propose at least one plan to address the problems related to the community and institutional accommodation of and programming for federal female offenders; and
- (c) develop a workplan for implementing the plan accepted by the Minister.

Recommendation 97

The Committee further recommends that the Task Force consult widely with inmates, women's groups and private sector correctional agencies, as well as with provincial correctional authorities, across the country at various stages of its work.

Notes

1. E. Adelberg and C. Currie (eds.), *Too Few to Count: Canadian Women in Conflict with the Law*, Press Gang Publishers, Vancouver, 1987, p. 26.
2. Calculations derived from data of Statistics Canada, *Canadian Crime Statistics*, Ministry of Supply and Services, Ottawa, 1986 (Annual #85-205), presented by H. Johnson; "Getting the Facts Straight", in Adelberg and Currie, *ibid.*, p. 27.
3. *Ibid.*, p. 34-35.
4. *Ibid.*, p. 37.
5. *Ibid.*, p. 43-44.
6. *Ibid.*, p. 36.
7. Lorraine Berzins, "The Diaries of Two Change Agents", in *ibid.*, p. 168.

The Commission of the European Communities has
the honor to acknowledge the receipt of your letter
of the 15th of June 1971 concerning the
proposals for a Council Directive on the
approximation of laws, regulations, administrative
provisions and judicial decisions in the
field of the law of the company. The Commission
has examined these proposals and has decided
to propose a Council Directive on the
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CHAPTER SEVENTEEN

CONCLUSION

The criminal justice system is complex, parts of it sometimes function at odds with other parts, and it is much misunderstood. In recent years, sentencing and conditional release have been the object of criticism at times well-deserved and, at other times, unfounded. Regardless of whether these criticisms are justified or not, they must be addressed and, where required, improvements in sentencing and conditional release must be offered. There is no other way to provide the criminal justice system with what it most needs to be truly effective — a higher degree of public confidence.

The Committee approached this study of sentencing, conditional release and related aspects of the correctional system with a seriousness of purpose based upon reality. There have been some severe problems in recent times which have had tragic consequences and which have had to be addressed. This study was not grounded in abstract, theoretical precepts, but rather upon a sincere attempt both to look at the reality of the criminal justice system and to develop proposals that will work for the greater protection of society.

The Committee does not accept the counsel of despair offered by those who subscribe to the view that “nothing works”. The Committee believes that some things work for some offenders in some circumstances. This report is grounded in this conclusion which underlies the principles set out in the Introduction.

The key to this report is the word “responsibility”. The offender must take responsibility for his or her actions and do what is necessary to repair the harm done and prepare for an eventual reintegration into the community. Sentencing judges must ensure that the appropriate penalty is imposed on the offender once guilt is determined. The correctional system must ensure that the necessary treatment and programs are available to the offender to facilitate reintegration into the community. The releasing authority must ensure that inmates are released into the community under proper conditions and supervision for the protection of society. The release supervision system must ensure that the offender is properly reintegrated into

the community and provided with the necessary assistance so that this goal is achieved. The community must do its part in assisting those who have offended to reintegrate into society and to not re-offend.

There is no perfect system. There are no panaceas. Everything that can be done must be done. The Committee believes that the adoption of the recommendations and proposals contained in this report will assist in restoring public confidence in the criminal justice system.

APPENDIX A

LIST OF RECOMMENDATIONS

Recommendation 1

The Committee recommends that all federal participants in the criminal justice system (Department of Justice, the RCMP, the Correctional Service of Canada, the National Parole Board, and the Ministry Secretariat of the Solicitor General Canada) make public education about the operation of the criminal justice system, including the myths and realities which surround it, a high priority through:

- (a) the effective use of their own communication capacities (print, radio, video and TV); and
- (b) their financial and other support of the voluntary sector, so that citizens in local communities may be more actively engaged in activities which increase their understanding of the criminal justice system.

Recommendation 2

The Committee recommends that all participants in the criminal justice process give high priority to the provision of general and appropriate case-specific information to victims and their families.

Recommendation 3

The Committee recommends that, at a minimum, general information include the victim's right to seek compensation and restitution, the right to submit a victim impact statement and the right to be kept informed about various pre-trial, trial, and post-trial proceedings. Basic information should identify who is responsible for providing it and where further information may be obtained.

Recommendation 4

The Committee recommends that the provision of case-specific information to victims and, in appropriate cases, to their close family members be facilitated by the use of a form on which the victim may check off the various kinds of information he or she would like to

receive. Such forms should be appended to Crown attorneys' files and subsequently forwarded to correctional authorities.

Recommendation 5

The Committee recommends that the following be enacted in legislation as the purpose of sentencing:

The purpose of sentencing is to contribute to the maintenance of a just, peaceful and safe society by holding offenders accountable for their criminal conduct through the imposition of just sanctions which:

- (a) require, or encourage when it is not possible to require, offenders to acknowledge the harm they have done to victims and the community, and to take responsibility for the consequences of their behaviour;
- (b) take account of the steps offenders have taken, or propose to take, to make reparations to the victim and/or the community for the harm done or to otherwise demonstrate acceptance of responsibility;
- (c) facilitate victim-offender reconciliation where victims so request, or are willing to participate in such programs;
- (d) if necessary, provide offenders with opportunities which are likely to facilitate their habilitation or rehabilitation as productive and law-abiding members of society; and
- (e) if necessary, denounce the behaviour and/or incapacitate the offender.

Recommendation 6

The Committee recommends that the following principles form part of a legislated sentencing policy and be considered in the determination of an appropriate sentence:

In endeavouring to achieve the sentencing purpose, the court shall exercise its discretion in accordance with the following principles:

- (a) The sentence should be proportionate to the gravity of the offence and the degree of responsibility of the offender; further, it should be consistent with the sentences imposed on other

offenders for similar offences committed in similar circumstances (including, but not limited to, aggravating and mitigating circumstances, relevant criminal record and impact on the victim);

- (b) The maximum penalty should be imposed only in the most serious cases;
- (c) The nature and duration of the sentence in combination with any other sentence imposed should not be excessive;
- (d) A term of imprisonment should not be imposed without canvassing the appropriateness of alternatives to incarceration through victim-offender reconciliation programs or alternative sentence planning;
- (e) A term of imprisonment should not be imposed, nor its duration determined, solely for the purpose of rehabilitation;
- (f) A term of imprisonment should be imposed where it is required:
 - (i) to protect the public from crimes of violence, or
 - (ii) where any other sanction would not sufficiently reflect the gravity of the offence or the repetitive nature of the criminal conduct of an offender, or adequately protect the public or the integrity of the administration of justice; and
- (g) A term of imprisonment may be imposed to penalize an offender for wilful non-compliance with the terms of any other sentence that has been imposed on the offender where no other sanction or enforcement mechanism appears adequate to compel compliance.

Recommendation 7

The Committee recommends that judges be required to state reasons for the sentence imposed in terms of the proposed sentencing goal and with reference to the proposed sentencing principles, and salient facts relied upon, so that victims, offenders, the community, correctional officials and releasing authorities will understand the purpose of the sentence and appreciate how it was determined.

Recommendation 8

The Committee recommends that only advisory guidelines be developed at this time and that priority be given to developing first those which would be applied to the most serious offences.

Recommendation 9

The Committee recommends implementation of the following recommendations of the Sentencing Commission as to the development of such guidelines and the operation of a permanent sentencing commission:

- (a) that four presumptions be used to provide guidance for the imposition of custodial and non-custodial sentences:
 - (i) unqualified presumptive disposition of custody;
 - (ii) unqualified presumptive disposition of non-custody;
 - (iii) qualified presumptive disposition of custody; or
 - (iv) qualified presumptive disposition of non-custody. (Rec. 11.5)
- (b) that the following list of aggravating and mitigating factors be adopted as the primary grounds to justify departures from the guidelines:

Aggravating Factors

1. Presence of actual or threatened violence or the actual use or possession of a weapon, or imitation thereof.
2. Existence of previous convictions.
3. Manifestation of excessive cruelty towards [the] victim.
4. Vulnerability of the victim due, for example, to age or infirmity.
5. Evidence that a victim's access to the judicial process was impeded.
6. Existence of multiple victims or multiple incidents.

7. Existence of substantial economic loss.
8. Evidence of breach of trust (e.g., embezzlement by [a] bank officer).
9. Evidence of planned or organized criminal activity.

Mitigating Factors

1. Absence of previous convictions.
 2. Evidence of physical or mental impairment of offender.
 3. The offender was young or elderly.
 4. Evidence that the offender was under duress.
 5. Evidence of provocation by the victim.
 6. Evidence that restitution or compensation was made by [the] offender.
 7. Evidence that the offender played a relatively minor role in the offence. (Rec. 11.8)
- (c) ... that the following principles respecting the use of aggravating and mitigating factors be incorporated to the sentencing guidelines:

Identification: when invoking aggravating and mitigating factors, the sentencing judge should identify which factors are considered to be mitigating and which factors are considered to be aggravating.

Consistency: when invoking a particular factor, the judge should identify which aspect of the factor has led to its application in aggravation or mitigation of sentence. (For example, rather than merely referring to the age of the offender, the judge should indicate that it was the offender's *youth* which was considered to be a mitigating factor or the offender's *maturity* which was considered to be an aggravating factor. This would prevent the inconsistent use of age as an aggravating factor in one situation and as a mitigating factor in a comparable situation.)

Specificity: the personal circumstances or characteristics of an offender should be considered as an aggravating factor only when they relate directly to the commission of the offence. (For example, a judge might consider an offender's expertise in computers as an aggravating factor in a computer fraud case but the above principles would preclude the court from considering the lack of education of a convicted robber as an aggravating circumstance.)

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 a majority of trial court judges from all levels of courts in Canada. (Rec. 11.11)

Recommendation 10

The Committee recommends that the minimum sentence for all offenders convicted of the second or subsequent offence for sexual assault involving violence be ten years and that the parole ineligibility period be established legislatively as ten years, regardless of sentence length.

Recommendation 11

To reach a public consensus on which offences or offenders should be subject to the aforementioned minimum parole eligibility period, the Committee recommends that the Department of Justice consult widely on this issue.

Recommendation 12

The Committee recommends that the Department of Justice continue to consult with the public (not just those with a particular interest in criminal justice issues) with respect to the Sentencing Commission's recommendations in this area and that interested individuals and

organizations be encouraged to comment on the specific rankings proposed by the Sentencing Commission.

Recommendation 13

The Committee recommends that legislation be enacted to permit the imposition of a community service order as a sole sanction or in combination with others, provided that the judge is satisfied that a discharge, restitution, fine or simple probation order alone would not achieve the purpose of sentencing proposed by the Committee.

Recommendation 14

The Committee recommends that guidelines for the number of hours of community service which should be imposed in various circumstances be developed to decrease sentencing disparity.

Recommendation 15

The Committee recommends that a legislated ceiling of between 300 and 600 hours (over three years) be established for community service sentences for adult offenders, provided that judges be permitted to exceed the ceiling where a greater number of hours is agreed to by the offender as a result of victim-offender reconciliation or an "alternative sentence plan" proposal and reasons are provided by the judge.

Recommendation 16

The Committee recommends that legislation be adopted to exclude sexual and violent offenders from eligibility for community service orders unless they have been assessed and found suitable by a community service program coordinator.

Recommendation 17

The Committee recommends that the federal government, preferably in conjunction with provincial/territorial governments, provide funding to community organizations for alternative sentence planning projects in a number of jurisdictions in Canada on a pilot project basis.

Recommendation 18

The Committee recommends that the federal government, preferably in conjunction with provincial/territorial governments, provide funding and technical exchange to community organizations to promote sound evaluation of such pilot projects.

Recommendation 19

The Committee recommends that the federal government, preferably in conjunction with provincial/territorial governments, support the expansion and evaluation throughout Canada of victim-offender reconciliation programs at all stages of the criminal justice process which:

- (a) provide substantial support to victims through effective victim services; and
- (b) encourage a high degree of community participation.

Recommendation 20

The Committee recommends that section 653(b) of the *Criminal Code* (contained in Bill C-89) be clarified to ensure that restitution for bodily injuries may be ordered in an amount *up to* the value of all pecuniary damages.

Recommendation 21

The Committee recommends that the federal government enact legislation, and/or contribute support to provincial/territorial governments, to enhance civil enforcement of restitution orders with a view to relieving individual victims of this burden.

Recommendation 22

The Committee recommends that the following recommendations of the Sentencing Commission be implemented:

- (a) that a restitution order be imposed when the offence involves loss or damage to an individual victim. A fine should be imposed

where a public institution incurs loss as a result of the offence or damage caused to public property (Rec. 12.17); and

- (b) that where the limited means of an offender permits the imposition of only one pecuniary order, priority be given to an order of restitution, where appropriate (Rec. 12.21).

Recommendation 23

The Committee recommends that probation be replaced by seven separate orders (good conduct, reporting, residence, performance, community service, restitution and intensive supervision), which might be ordered separately or in conjunction with one or more others or with some other type of order.

Recommendation 24

The Committee recommends that the *Criminal Code* be amended to provide a more efficient mechanism than is now the case for dealing with breaches of probation or other orders in a way which respects the offender's due process rights.

Recommendation 25

The Committee recommends that more extensive use be made of group work in community correctional programs and that adequate resources be provided so that these might be made available to offenders on a voluntary basis or pursuant to a performance order.

Recommendation 26

In particular, the Committee recommends that greater use be made of probation conditions or performance orders which require assaultive spouses to participate in specialized treatment or counselling programs.

Recommendation 27

The Committee recommends that consideration be given to the New Zealand sentence of community care and the Gateway Correctional Services model of intensive supervision.

Recommendation 28

The Committee recommends that funding be made available to voluntary and charitable agencies to establish or expand community residential and related programs.

Recommendation 29

The Committee recommends that home confinement, with or without electronic monitoring, be made available as an intermediate sanction, probably in conjunction with other sanctions, for carefully selected offenders in appropriate circumstances.

Recommendation 30

The Committee recommends that legislative changes required to permit the use of home confinement as a sentencing option provide reasonably efficient enforcement mechanisms which do not infringe basic due process rights of offenders.

Recommendation 31

The Committee recommends that consideration be given to requiring the consent of the offender and his or her co-residing family members to an order of home confinement.

Recommendation 32

The Committee recommends that in making an order of home confinement, the court consider appropriate collateral conditions (e.g., addictions counselling where appropriate).

Recommendation 33

The Committee recommends that intermittent sentences not generally be used with respect to sexual offences, where public protection, when necessary, should be secured through incarceration or where denunciation might be secured through home confinement, community residential orders, or short periods of continuous incarceration.

Recommendation 34

The Committee recommends that community residential settings be used for intermittent sentences.

Recommendation 35

The Committee recommends that consideration be given to combining intermittent sentences with performance orders or probationary conditions which are restorative or rehabilitative in nature.

Recommendation 36

The Committee recommends that the following recommendations of the Sentencing Commission be implemented:

- (a) that once it has been decided that a fine may be the appropriate sanction, consideration be given to whether it is appropriate to impose a fine on the individual before the court. The amount of the fine and time for payment must be determined in accordance not only with the gravity of the offence, but also with the financial ability of the offender. Further to the above principle, prior to the imposition of a fine, the court should inquire into the means of the offender to determine his or her ability to pay and the appropriate mode and conditions of payment. (Rec. 12.20)
- (b) that where the limited means of an offender permits the imposition of only one pecuniary order, priority be given to an order of restitution, where appropriate. (Rec. 12.21)
- (c) that the use of imprisonment for fine default be reduced. (Rec. 12.22)
- (d) that a quasi-automatic prison term not be imposed for fine default and that offenders only be incarcerated for wilful breach of a community sanction. (Rec. 12.23)

Recommendation 37

The Committee recommends that the following recommendations of the Canadian Sentencing Commission be implemented:

- (a) that the federal and provincial governments provide the necessary resources and financial support to ensure that community programs are made available and to encourage their greater use (Rec. 12.1);
- (b) that mechanisms to provide better information about sentencing objectives to sentence administrators be developed (Rec. 12.2);
- (c) that a transcript of the sentencing judgment be made available to the authorities involved in the administration of the sentence (Rec. 12.3);
- (d) that mechanisms to provide better information about alternative sentencing resources to the judiciary be developed (Rec. 12.5);
- (e) that feedback to the courts regarding the effectiveness of sanctions be provided on a systematic basis (Rec. 12.6);
- (f) that prior to imposing a particular community sanction, the sentencing judge be advised to consult or obtain a report respecting the suitability of the offender for the sanction and the availability of programs to support such a disposition (Rec. 12.7);
- (g) that [existing] community sanctions be developed as independent sanctions,... [and] that additional proposals be examined by the permanent sentencing commission and by the federal and/or provincial governments for further review, development and implementation (Rec. 12.8);
- (h) that the permanent sentencing commission *consider* the feasibility of developing criteria and principles which permit the comparison of individual community sanctions and which attempt to standardize their use (e.g., X dollars is the equivalent of Y hours of community service) (Rec. 12.10 and 12.11); and
- (i) that the judiciary retain primary control over the nature and conditions attached to community sanctions (Rec. 12.12).

Recommendation 38

The Committee also recommends:

- (a) that federal and provincial authorities develop, support and evaluate alternatives to incarceration and intermediate sanctions;

- (b) that greater recognition and financial support be given to non-governmental agencies to develop alternative programs; and
- (c) that greater linkages be developed between the criminal justice system and other social and mental health services in society.

Recommendation 39

The Committee recommends that members of the National Parole Board receive more intensive training upon appointment and a regular refresher course. This training should be based not only upon Board policies and correctional and release philosophy, but also upon behavioural sciences, and should take into account the members' previous experience in the criminal justice system.

Recommendation 40

The Committee recommends that the *Criminal Code* be amended to require courts to provide the Correctional Service of Canada with sentencing information (pre-sentence reports, victim impact statements, etc.) and the judge's reasons for sentence. The federal government should be prepared to pay the reasonable costs associated with this for sentences of two years or more.

Recommendation 41

The Committee recommends that parole hearings be open to the public unless, on application to the Parole Board, it is decided to close a hearing to the public, in whole or in part, for reasons of privacy or security. The reasons for acceding to an application for a closed parole hearing should themselves be made public.

Recommendation 42

The Committee recommends that the National Parole Board be given full responsibility for the release process including the preparation of release plans, the release decisions and the provision of release supervision.

Recommendation 43

The Committee recommends that the National Parole Board develop and hold consultations on a risk assessment tool to be applied in cases where the offender is serving a sentence for, or has a recent criminal history of, violence.

Recommendation 44

Alternatively, or additionally, the Committee recommends that the following aspects of the jury recommendations 10 and 12 emanating from the inquest into the death of Celia Ruygrok be incorporated into National Parole Board policies and implemented:

10. If parole is granted, the inmate's [institutional] rehabilitation plan must be extended into a *Release Plan* clearly setting out how he or she is to be dealt with in the community. This release plan must be clearly identified in a document and communicated to all persons who will have dealings with the offender in the community, including parole supervisors, police, community residential centre staff, and community resource persons.
 - (a) In formulating the plan, consultation must take place with persons in the community who will be supporting the parolee such as girlfriends and wives. They must be given all relevant information about the offence and the offender and be fully aware of their role in the release plan.
 - (b) The release plan must include all psychiatric and psychological information and must give clear guidelines to parole supervisors and community residential centre staff as to how to deal with the parolee. *There must be an identification of any danger signals to watch for and action to be taken if problems are encountered.*
 - (c) Where drugs or alcohol have been related to the original offence, there must be included in the parole plan a special condition that the parolee will submit to random alcohol and/or drug testing.
 - (d) Where psychiatric problems were identified as being present at the time of the offence, the parole release plan

must include a special condition that the parolee will attend for professional counselling, psychiatric treatment and monitoring while on parole. In these cases, there should be periodic administration of psychological tests.

...

12. Parole supervision must take place in accordance with the release plan and there must be a full sharing of information between the various agencies working towards the same purpose.

(a) The parole supervisor must be free to deal with problems encountered by the parolee and *intervene meaningfully when danger signals appear and at first sign of deterioration*. The parole supervisor must concentrate on getting to the root of the problem rather than mere policing.

...

Recommendation 45

The Committee recommends that conditional release in its various forms be retained and improved upon by the adoption of the recommendations that follow.

Recommendations 46

The Committee recommends that parole decision-making criteria be placed in law.

Recommendation 47

The Committee recommends that the eligibility date for full parole for those convicted of the violent offences set out in the Schedule to Bill C-67 be changed from one-third to one-half of a sentence of imprisonment.

Recommendation 48

The Committee recommends that appropriate directives and information be disseminated so that National Parole Board

decision-making patterns and judicial sentencing practices are adapted to a later parole eligibility date.

Recommendation 49

The Committee recommends that day parole be available to inmates six months before full parole eligibility date for restitutional, vocational, educational or employment purposes related to possible full parole.

Recommendation 50

The Committee recommends that the provision for automatic review prior to the day parole eligibility date be retained.

Recommendation 51

The Committee recommends that temporary absences be retained for purposes related directly to correctional programs and for clearly-defined humanitarian and medical reasons.

Recommendation 52

The Committee recommends that the National Parole Board be precluded from delegating to wardens the authority to authorize unescorted temporary absences for offenders serving sentences for offences involving any form of sexual assault or the taking of a life.

Recommendation 53

The Committee recommends that the legislative provisions for earned remission be repealed and that offenders be statutorily released under appropriate conditions (including residential conditions where necessary) and supervision for a period of 12 months or one-third of sentence prior to warrant expiry date, whichever of these periods is shorter.

Recommendation 54

The Committee recommends that the detention provisions of Bill C-67 be retained and be applied in appropriate circumstances.

Recommendation 55

The Committee recommends that the Correctional Service of Canada take all necessary steps to ensure that the *Standards and Guidelines For Community Residential Facilities* (incorporating the recommendations of the Ruygrok and Pepino Inquiries, among other conditions) are strictly adhered to by private agencies entering into contractual arrangements with it.

Recommendation 56

The Committee recommends that violent, recidivist offenders on conditional release be placed in community correctional centres operated by the Correctional Service of Canada with access to appropriate programs and supervision.

Recommendation 57

The Committee recommends that the Correctional Service of Canada, in partnership with private agencies, develop additional halfway houses to provide supervision and programming appropriate to the needs of Native offenders, female offenders, offenders with substance abuse problems and offenders with mental disorders.

Recommendation 58

The Committee recommends that the Correctional Service of Canada facilitate a continued and even greater degree of community participation in institutional programs.

Recommendation 59

The Committee recommends that the Correctional Service of Canada allocate more resources to Citizens Advisory Committees so that community participation in their activities may be more widespread and so that they may more effectively perform their functions, particularly those which increase inmates' job skills.

Recommendation 60

The Committee recommends that the Correctional Service of Canada devote a greater proportion of its resources to institutional programs, and that the government commit additional resources for it to do so.

Recommendation 61

The Committee recommends that the Correctional Service of Canada take the necessary steps to ensure that, whenever possible, offenders on conditional release may participate in programs that are continuous with those in which they have been involved while in institutions.

Recommendation 62

The Committee recommends that the Correctional Service of Canada ensure that its programs provide the requisite degree of skill development to enable inmates to be suitably certified where required for particular types of employment in the community.

Recommendation 63

The Committee recommends that the Correctional Service of Canada take the necessary steps to ensure that inmates transferring from one institution to another, or from one security level of institution to another, do not thereby lose access to post-secondary education programs in which they are involved.

Recommendation 64

The Committee recommends that the Correctional Service of Canada develop programs appropriate to the needs of inmates serving long periods of incarceration prior to their eligibility for conditional release.

Recommendation 65

The Committee recommends that the Correctional Service of Canada dramatically increase the resources allocated to sex offender treatment programs.

Recommendation 66

The Committee recommends that new programs aimed at high risk offenders not be developed at the expense of existing programs available to the general inmate population.

Recommendation 67

The Committee recommends that programs offered to offenders both in institutions and in the community build in, where feasible, a requirement for and a capacity to effect evaluations.

Recommendation 68

The Committee recommends that governments develop a greater number of programs offering alternatives to imprisonment to Native offenders — these programs should be run where possible for Native people by Native people.

Recommendation 69

The Committee recommends that institutional programs be developed and delivered in a way that is sensitive to the needs of Native inmates.

Recommendation 70

The Committee recommends that, wherever possible, Native instructors and teachers be hired to deliver programs to Native inmates.

Recommendation 71

The Committee recommends that non-Natives involved in the delivery of programs to Native inmates be provided with opportunities to receive sensitivity training to enable them to understand the cultural backgrounds and needs of Native inmates.

Recommendation 72

The Committee recommends that Native Brotherhoods/Sisterhoods be fully recognized and provided with the resources necessary to function properly.

Recommendation 73

The Committee recommends that Native spirituality be accorded the same recognition and respect as other religious denominations and that Native Elders be accorded the same treatment as other religious leaders.

Recommendation 74

The Committee recommends that the Correctional Service of Canada either hire more Natives or enter into further contractual arrangements with Native organizations to assist Native inmates in preparing release plans and applications for early release.

Recommendation 75

The Committee recommends that, where possible, the National Parole Board conditionally release a Native offender to his or her home community or reserve if that home community or reserve indicates that it is willing to and capable of providing assistance and supervision to the offender.

Recommendation 76

The Committee recommends that the National Parole Board carefully examine the implications of imposing a dissociation condition prohibiting association with people having criminal records before imposing it upon a Native offender.

Recommendation 77

The Committee recommends that governments fully support the expansion of Native-run programs and halfway houses to accept Native offenders upon their conditional release from prison.

Recommendation 78

The Committee recommends that the Correctional Service of Canada and the National Parole Board jointly establish an advisory committee on Native offenders upon which would be represented the major Native organizations involved in criminal justice matters.

Recommendation 79

The Committee recommends that where there is a significant number of Native offenders, the Correctional Service of Canada should ensure that there is proportionate Native representation on Citizens Advisory Committees attached to institutions and district parole offices.

Recommendation 80

The Committee recommends that the Solicitor General of Canada and the Minister of Justice jointly convene a Female Offender Research Working Group, involving representatives from other relevant federal departments and inviting the participation of relevant private sector agencies and interested provincial/territorial governments and academics to coordinate current and planned research about female offenders (criminality, sentencing and corrections). Further, this working group should recommend priorities for research undertaken or funded by the Ministry of the Solicitor General and the Department of Justice.

Recommendation 81

The Committee recommends that those who are developing and funding community sanctions include appropriate provision of quality childcare so that all offenders may benefit from them.

Recommendation 82

The Committee urges governments to make fine options programs more widely available and, in the meantime, to encourage the judiciary to use community service orders or other community sanctions in lieu of fines for economically disadvantaged female offenders.

Recommendation 83

The Committee recommends that governments provide greater support to the establishment, evaluation and maintenance of shoplifting counselling programs throughout Canada.

Recommendation 84

The Committee encourages the business community to support shoplifting counselling programs.

Recommendation 85

The Committee encourages criminal justice and addictions agencies to develop education/awareness programs suitable for use in conjunction with community sanctions. Such programs should be sensitive to the gender and culture of participants.

Recommendation 86

The Committee recommends that governments continue to expand their support for community-based addictions education/awareness and treatment programs and for sexual abuse counselling programs.

Recommendation 87

The Committee encourages Crown counsel, the defence bar and the judiciary to ensure that addictions treatment is explored with addicted offenders as a possible component of a community sanction where appropriate.

Recommendation 88

The Committee encourages breweries and distilleries to support innovative addictions education/awareness and treatment programs for offenders.

Recommendation 89

The Committee recommends that government departments with responsibilities for education, training, retraining and employment give priority to programs for female offenders and women at risk of coming into conflict with the law and that they provide adequate support to community initiatives which address the special needs of these women.

Recommendation 90

The Committee encourages Crown counsel, the defence bar and the judiciary, where appropriate, to consider the education, training and employment needs of female offenders in fashioning suitable community sanctions.

Recommendation 91

The Committee recommends that the federal government, preferably in conjunction with provincial/territorial governments, should fund community residential facilities for federal female offenders in the Prairies, Northern Ontario and Atlantic Canada.

Recommendation 92

The Committee urges community groups interested in operating such facilities and government funders to plan residential facilities and programs that will serve a diverse group of women at risk, where provincial/territorial correctional authorities are unwilling to cost-share "traditional halfway houses".

Recommendation 93

The Committee recommends that future federal-provincial Exchange of Service Agreements include halfway houses for women in the negotiated package and that no further federal-provincial agreements with respect to prison construction be made without agreement to fund or establish halfway houses for women in provinces/territories where they do not now exist.

Recommendation 94

The Committee recommends that, in the expansion of halfway houses for women, consideration be given to the prospect of accommodating dependent children with their mothers.

Recommendation 95

The Committee recommends that additional resources be made available to private sector agencies serving women in conflict with the law to enhance pre-release programming and services for female offenders.

Recommendation 96

The Committee recommends that the Solicitor General convene a Task Force on Federal Female Offenders, composed of representatives of appropriate federal government departments and agencies, the Canadian Association of Elizabeth Fry Societies and other relevant private sector agencies, and interested provincial/territorial correctional authorities, to:

- (a) plan for and oversee closure of the Prison for Women within five years;
- (b) propose at least one plan to address the problems related to the community and institutional accommodation of and programming for federal female offenders; and
- (c) develop a workplan for implementing the plan accepted by the Minister.

Recommendation 97

The Committee further recommends that the Task Force consult widely with inmates, women's groups and private sector correctional agencies, as well as with provincial correctional authorities, across the country at various stages of its work.

APPENDIX B

TERMS OF REFERENCE

It was agreed, - That pursuant to the decision of the House of Commons Standing Committee on Justice and Solicitor General to undertake a study of sentencing, conditional release and related aspects of the correctional system, the terms of reference be as follows:

That the Committee consider, among others, the following documents which have been released in 1987:

- the Report of the Canadian Sentencing Commission;
- the Correctional Law Review's Working Paper on Conditional Release and other relevant working papers; and
- the Report to the Solicitor General of the Task Force to Study the Recommendations of the Inquest into the Death of Celia Ruygrok.

That the Committee invite the expression of views from all participants in the criminal justice system, both governmental and nongovernmental, federal and provincial, including, but not restricted to, the judiciary, crown prosecutors, defence lawyers, police forces, victims, inmates, aftercare agencies, advocacy groups and academic researchers.

That the Committee consider and examine the efficacy, responsiveness and appropriateness of legislation, regulations, policies, practices, and institutional structures and arrangements now in place in relation to sentencing, conditional release and related aspects of the correctional system.

That the Committee examine the following issues, among others, in relation to sentencing:

- Sentencing principles and goals;
- Sentencing disparity;
- Reform of minimum and maximum sentences;

- Incarceration and alternatives to imprisonment;
- Role of community and victims in the sentencing process;
- Sentencing guidelines:
 - a) Sentencing in relation to violent and non-violent offences; and
 - b) Fixed term or discretionary sentences.

That the Committee examine the following issues, among others, in relation to conditional release:

- Objectives of remission and conditional release;
- Impact of conditional release and remission on sentencing practices and public perceptions;
- Differential impacts of remission and conditional release on federal and provincial inmates;
- Retention or abolition of remission or conditional release in any or all of its forms;
- Eligibility of violent, non-violent and recidivist offenders for conditional release;
- Participation of parole and correctional staff, inmates, police, judiciary, community and victims in conditional release decision;
- Effectiveness of supervision and social re-integration of conditionally released offenders; and
- Efficacy of legislation, regulations, rules, policies, practices, information exchange, and agency collaboration and interaction of National Parole Board, Correctional Service Canada and aftercare agencies in the preparation for, granting and supervision of conditional release in all its forms.

That the Committee examine the following issues, among others, in relation to the correctional system:

- Use of sentencing information in case management and preparation of offenders for release;
- Efficacy of legislation, regulations, rules, policies, practices, information exchange, and agency collaboration and interaction of National Parole Board, Correctional Service Canada and aftercare agencies in case management and planning (from reception to release) and delivery of correctional programs and services (including treatment where appropriate); and
- Role of community in corrections.

That the Committee hold public hearings and visit institutions and facilities to determine not only how sentencing, conditional release and related aspects of the correctional system should work, but to see for itself how this system works in practice on a daily basis.

That the Committee prepare a Report to the House of Commons in which it will recommend the changes it has concluded may be necessary to improve sentencing, conditional release and related aspects of the correctional system and a target date for completion of the Report be autumn, 1988.

1. The Commission is of the opinion that the present system of collection of fines for offences is not satisfactory and should be replaced by a more efficient system.

2. The Commission is of the opinion that the present system of collection of fines for offences is not satisfactory and should be replaced by a more efficient system. It is recommended that the Commission should be empowered to collect fines for offences and to enforce the payment of such fines. It is also recommended that the Commission should be empowered to issue warrants for the arrest of persons who fail to pay fines.

3. The Commission is of the opinion that the present system of collection of fines for offences is not satisfactory and should be replaced by a more efficient system. It is recommended that the Commission should be empowered to collect fines for offences and to enforce the payment of such fines. It is also recommended that the Commission should be empowered to issue warrants for the arrest of persons who fail to pay fines.

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7. The Commission is of the opinion that the present system of collection of fines for offences is not satisfactory and should be replaced by a more efficient system. It is recommended that the Commission should be empowered to collect fines for offences and to enforce the payment of such fines. It is also recommended that the Commission should be empowered to issue warrants for the arrest of persons who fail to pay fines.

8. The Commission is of the opinion that the present system of collection of fines for offences is not satisfactory and should be replaced by a more efficient system. It is recommended that the Commission should be empowered to collect fines for offences and to enforce the payment of such fines. It is also recommended that the Commission should be empowered to issue warrants for the arrest of persons who fail to pay fines.

APPENDIX C

WITNESSES

ISSUE NO.	DATE	WITNESSES
23	Oct. 20, 1987 <i>In Camera</i>	National Parole Board Ole Ingstrup, Chairman; Malcolm Steinberg, Senior Board Member (Ontario).
	Oct. 22, 1987 <i>In Camera</i>	National Parole Board Ole Ingstrup, Chairman; Malcolm Steinberg, Senior Board Member (Ontario); and other officials.
	Oct. 27, 1987	Ministry of Solicitor General of Canada John Tait, Q.C., Deputy Solicitor General of Canada.
24	Oct. 29, 1987	Correctional Service of Canada Rhéal LeBlanc, Commissioner; Gord Pinder, Deputy Commissioner, Offender Programs and Policy Development; Andrew Graham, Assistant Commissioner Corporate Policy and Planning; Irving Kulik, Executive Secretary; Terry Sawatsky, Director, Offender Management; Thomas Townsend, Acting Director General, Offender Programs; Dr. Jim Millar, Acting Director, General Health Care Services; Drury Allen, Director, Community Release Programs.
	Nov. 3, 1987	Correctional Service of Canada Gord Pinder, Deputy Commissioner, Offender Programs and Policy Development; Drury Allen, Director, Community Release Programs; Irving Kulik, Executive Secretary.
25	Nov. 5, 1987	Department of Justice Mr. Frank Iacobucci, Q.C., Deputy Minister of Justice; Mr. Daniel C. Préfontaine, Assistant Deputy Minister, Policy, Programs and Research; Mr. Julius Isaac, Assistant Deputy Attorney General - Criminal Law;

ISSUE NO.	DATE	WITNESSES
		Mr. Neville Avison, Senior Criminal Justice Policy Coordinator, Policy, Programs and Research.
26	Nov. 19, 1987	Andrejs Berzins, Q.C. , Crown Attorney for the District of Ottawa-Carleton; Gerry W. Ruygrok.
28	Nov. 23-25, 1987 Kingston, Ont. <i>In Camera</i>	Various Correctional Institutions, Management and staff, Inmate Committees, Lifers' Groups, and Union of Solicitor General Employees.
28	Dec. 3, 1987	Ken Hatt , Coordinator, Criminology & Criminal Justice Program, Associate Professor, Department of Sociology-Anthropology, Carleton University.
29	Dec. 8, 1987	Law Reform Commission of Canada The Honourable Mr. Justice Allen M. Linden, President; Josh Zambrowski, Consultant.
30	Dec. 10, 1987	National Parole Board Ole Ingstrup, Chairman; Daniel Therrien, Legal Counsel; Brendan Reynolds, Director, Corporate Development Services.
32	Jan. 26, 1988	Professor Renate Mohr , Department of Law, Carleton University. Canadian Psychological Association Dr. Paul Gendreau, President. Canadian Criminal Justice Association Gaston St. Jean, Executive Director; Réal Jubinville, Associate Executive Director; Professor Fred Sussman, Chairman, Legislative Committee.
33	Jan. 28, 1988	Dr. Justin Ciale , Director, Department of Criminology University of Ottawa; Dr. Jean-Paul Brodeur , School of Criminology University of Montreal.
34	Feb. 2, 1988	Professor Irvin Waller , Department of Criminology University of Ottawa.

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35	Feb. 4, 1988	<p>Professor Micheline Baril, School of Criminology University of Montreal.</p> <p>Dr. Anthony Doob, Director, Centre of Criminology University of Toronto.</p> <p>Dr. Julian Roberts, Senior Criminologist Department of Justice.</p>
36	Feb. 9, 1988	<p>Canadian Sentencing Commission His Honour Judge J.R. Omer Archambault, (Provincial Court of Saskatchewan), Chairman; The Honourable Judge Claude Bisson, (Quebec Court of Appeal), Vice-Chairman; Dr. Anthony Doob, (Director, Centre of Criminology, University of Toronto), Member; Dr. Jean-Paul Brodeur (School of Criminology, University of Montreal) Director of Research.</p>
37	Feb. 23, 1988	<p>Dr. Ken Pease Neuropsychiatric Research Unit University of Saskatchewan (Saskatoon)</p>
38	Feb. 24, 1988	<p>Andrew Smith Director, Alternative Sentence Planning (Winnipeg)</p> <p>Solicitor General of Canada The Honourable James F. Kelleher, Q.C. Ole Ingstrup, Chairman of the N.P.B. Rhéal Leblanc, Commissioner of the Correctional Service of Canada John Tait, Q.C., Deputy Solicitor General</p>
39	Feb. 25, 1988	<p>Herb Hoelter Director, National Centre on Institutions and Alternatives Washington, D.C. U.S.A.</p>
40	<p>March 1, 1988 Abbotsford, B. C. <i>In Camera</i></p>	<p>Mark Corrigan Director, National Institute for Sentencing Alternatives Boston, Massachusetts U.S.A.</p> <p>Various Correctional Institutions Management and Staff, Inmate and Patient Committees</p>

ISSUE NO.	DATE	WITNESSES
40 (morning)	March 2, 1988 Vancouver, B.C. <i>In Camera</i>	<p>Mayors of Matsqui, Abbotsford, Chilliwack and Kent and other community representatives (Abbotsford, British Columbia)</p> <p>Directors of C.S.C Parole Districts (Pacific) Parole Officers (Pacific) Union of Solicitor General Employees (Pacific) National Parole Board members and staff (Pacific)</p>
40 (afternoon)	March 2, 1988 Vancouver, B.C.	<p>Dr. John Ekstedt School of Criminology Simon Fraser University</p> <p>John Howard Society of British Columbia Willie Blondé, Executive Officer</p> <p>Joint Presentation: Stephen Howell Corrections Academy, Justice Insitute of B.C.; and Jack Aasen New Westminster Probation Office B.C. Corrections Branch Ministry of Attorney General</p> <p>Citizens United for Safety and Justice Inge Clausen, National Chairman</p> <p>Mothers Against Drunk Driving (M.A.D.D.) Sally Gribble, Executive Director</p> <p>Laren House Society B. Kyle Stevenson, Executive Director</p> <p>Fraser Correctional Resources Society Robert Kissner, Executive Director</p> <p>Laurier Lapierre, Journalist</p> <p>Neil Boyd, Director, School of Criminology Simon Fraser University</p> <p>Dr. John Hogarth, Faculty of Law, University of British Columbia</p>
41	March 3, 1988 Vancouver, B.C.	<p>Joint presentation: Dr. Stephen Duguid Director, Prison Education Program Simon Fraser University; and</p>

ISSUE NO.	DATE	WITNESSES
41 (cont'd)	March 3, 1988 Vancouver, B.C.	<p>Tim Segger Director of Contract Services Fraser Valley College (Abbotsford)</p> <p>Dr. Ezzat Fattah Department of Criminology Simon Fraser University</p> <p>Prisoners' Rights Group Claire Culhane</p> <p>Prof. Gerry Ferguson, Associate Dean, Faculty of Law University of Victoria</p> <p>Peter Leask, Barrister</p> <p>Native Justice Coalition and Allied-Indian Métis Society (Joint presentation)</p> <p>Canadian Bar Association John Conroy and Prof. Michael Jackson Special Committee on Imprisonment and Release</p> <p>Dr. Guy Richmond Citizen's Advisory Committee to C.S.C. Trish Cocksedge, Regional Representative (Pacific)</p> <p>M2/W2 (Man to Man/ Woman to Woman) Waldy Klassen</p> <p>Don Sorochan, Barrister</p> <p>Dave Gustafson Victim Offender Reconciliation Program (VORP) (Langley, B.C.)</p> <p>Richard Peck, Barrister</p> <p>Bernard Diedrich</p> <p>Georges Goyer, Barrister</p> <p>Glen Orris, Barrister</p> <p>Dan Pretula</p> <p>Doreen Helm</p>
42	March 15, 1988	<p>Patricia Lindsey-Peck, Barrister</p> <p>Children's Aid Society of Ottawa-Carleton Mel Gill, Executive Director; Ruth Bodie, Assistant Director, Family Services and Child Protection Department</p>

ISSUE NO.	DATE	WITNESSES
43	March 17, 1988	<p>Dr. J.S. Wormith Deputy Superintendent of Treatment Service/ Rideau Correctional & Treatment Centre</p> <p>Dr. Vern Quinsey Director of Research Mental Health Centre Penetanguishene</p> <p>Dr. William Marshall Department of Psychology Queen's University</p>
44	March 22, 1988 Toronto, Ont.	<p>Clayton Ruby, Barrister</p> <p>Criminal Lawyers' Association and Law Union of Ontario Mr. David Cole/ Prof. Allan Manson (Joint presentation)</p> <p>Mennonite Central Committee Dave Worth, Director, Offender Ministries</p> <p>Joint presentation :</p> <p>Doug Call Public Safety Commissioner for Monroe County (Rochester, New York) (former Sheriff of Genesee County) and</p> <p>Dennis Whitman Co-ordinator of Genesee County Sheriff's Department (Batavia, N.Y.) Community Service Program Victims' Assistance Program</p> <p>Barrie & District Rape Crisis Line Anne Marie Wicksted, Executive Director</p> <p>Canadian Training Institute John Sawdon, Executive Director</p> <p>Les Vandor, Barrister</p> <p>Dr. J.W. Mohr Director of C.S.C. Parole Districts (Ontario) Parole Officers (Ontario) Parole Supervisors, etc. (Operation Springboard)</p>
45	March 23, 1988 Toronto, Ont. <i>In Camera</i>	<p>Dr. J.W. Mohr Director of C.S.C. Parole Districts (Ontario) Parole Officers (Ontario) Parole Supervisors, etc. (Operation Springboard)</p>

ISSUE NO.	DATE	WITNESSES
45 (morning)	March 23, 1988 Toronto, Ont.	National Parole Board members and staff (Ontario)
45 (afternoon)		From Frontier College Jack Pearpoint, President Tracy LeQueyere, Director Beat The Street Program Guelph Correctional Centre Dr. Prem Gupta and Frank Morton Judge J.L. Clendenning John Howard Society of Ontario Hugh J. Haley, Executive Director The Bridge Mrs. Elda Thomas, Assistant Community Chaplain Prison Fellowship Canada Ian J. Stanley, Executive Director People to Reduce Impaired Driving Everywhere (PRIDE) John Bates, President Quaker Committee on Jails and Justice Colin McMechan, Coordinator Junction High Park Residents' Association Clarence Redekop
46	March 24, 1988 Toronto, Ont.	Metro Action Committee on Public Violence Against Women and Children Pat Marshall, Executive Director Dr. Ruth Morris Dianne Poole, M.P.P. High Park Homeowners & Residents Assoc. Stephen Magwood, President United Church of Canada Justice and Corrections Committee (Hamilton Conference) Dr. Guy Mersereau, Member M2/W2 (Ontario) (Man to Man/Woman to Woman) Rev. A.H. Vickers

ISSUE NO.	DATE	WITNESSES
46 (cont'd)	March 24, 1988 Toronto, Ont.	<p>Dr. Cyril Greenland Addiction Research Foundation of Ontario Toby Levinson, M.A., C.Psych, Program Coordinator, Treatment for Impaired Driving Offenders</p> <p>From Niagara Citizens' Advisory Committee (Niagara Falls) Robert Ciupa, Vice-Chairman Ron Dubciak, Employment Development Manager Derek Orr, Area Manager, C.S.C.</p> <p>Barbra Schlifer Commemorative Clinic Mary Lou Fassel, Legal Counsel</p> <p>International Halfway House Association Mike Crowley, Treasurer</p> <p>Exodus Link Corporation Paul Ivany, Associate Director</p> <p>Operation Springboard David Arbuckle, Executive Director</p> <p>Beverly Mallette, Kellie Symons and Kathryn McCleary</p> <p>Dahn Batchelor, Criminologist</p> <p>George Lynn</p> <p>Peter McMurtry</p>
47	March 29, 1988	<p>Dr. Don Andrews Psychology Department Carleton University</p> <p>Dr. James Bonta Chief Psychologist Ontario Ministry of Correctional Serv. Ottawa-Carleton Detention Centre</p>
48	April 12, 1988	<p>From the Office of the Correctional Investigator of Canada: Ron Stewart Correctional Investigator of Canada Ed McIsaac Director of Investigations</p>
50	April 19, 1988 Edmonton, Alta.	<p>John Howard Society of Alberta Brian Hougestal, President.</p>

ISSUE NO.

DATE

WITNESSES

50
(cont'd)

April 19, 1988
Edmonton, Alta.

Mennonite Central Committee (Manitoba)

From Open Circle

Reverend Melita Rempel

From Mediation Services

Dr. Paul Redekop

Grant MacEwan Community College

Keith Wright (Correctional Services)

Citizens for Public Justice

John Hiemstra, Alberta Director

Victims of Violence**Canadian Centre for Missing Children**

Robert Glushek, Vice-president

M2/W2 (Alberta)

Harry Voogd, Edmonton Co-ordinator

Mothers Against Abduction and Murder

Sharon Rosenfeldt, Coordinator

Prof. Joe Hudson, Faculty of Social

Welfare, University of Calgary

Native Counselling Services of Alberta

Chester R. Cunningham,

Executive Director.

Council for Yukon Indians (Whitehorse)

Rosemary Trehearne, Program Manager,
Native Courtworkers Program.

MacKenzie Court Worker Services**(Yellowknife)**

Lawrence Norbert, Chairman of the
Board.

Law Society of N.W.T.

Adrian Wright, Member of the Law
Reform Committee

Alberta Crown Attorneys' Association

Scott Newark, Vice-President

The Elizabeth Fry Society of Edmonton

Trisha Smith, Executive Director

**The Alberta Human Rights and Civil
Liberties Association**

John Kurian, Chairman

Saddle Lake First Nations

Henry Quinney, Counsellor,
Tribal Justice Program

ISSUE NO.	DATE	WITNESSES
50 (cont'd)	April 19, 1988	Dr. Tim Hartnagel , Department of Sociology, University of Alberta Criminal Trial Lawyers of Edmonton Mona Duckett and Mac Walker Seventh Step Society of Canada Pat Graham, Executive Director Gerald Martin.
50	April 20, 1988 Alberta <i>In Camera</i>	Various Correctional Institutions Management and staff, Inmate Committees and Lifer Groups
51 (morning)	April 21, 1988 Saskatoon, Sask. <i>In Camera</i>	Directors of C.S.C. Parole Districts (Prairies) Union of Solicitor General Employees (Prairies) National Parole Board Members (Prairies) Parole Officers (Prairies)
51 (afternoon)	April 21, 1988	Elizabeth Fry Society of Saskatchewan Janice Gingell, President of the Board of Directors John Howard Society of Manitoba Graham Reddoch, Executive Director Indian-Métis Friendship Centre of Prince Albert Eugene Arcand, Executive Director Manitoba Crown Attorneys' Association Peter Murdock, Crown Attorney Gabriel Dumont Institute of Native Studies Christopher Lafontaine, Executive Director Ray Deschamps Larry Bell Regional Psychiatric Centre (Prairies) Robert Gillies, Executive Director
52	April 26, 1988	John Howard Society of Ottawa Bruce Simpson, Past President Don Wadel, Executive Director

ISSUE NO.	DATE	WITNESSES
53	May 3, 1988 Montreal, Que. <i>In Camera</i>	<p>Directors of C.S.C. Parole Districts (Quebec)</p> <p>Parole Officers (Quebec)</p> <p>National Parole Board members and staff (Quebec)</p>
53	May 4, 1988 Montreal, Que.	<p>Société de Criminologie du Québec Samir Rizkalla, Secretary General Bernard Cartier, Senior Research Officer</p> <p>Association des services de réhabilitation sociale du Québec Johanne Vallée, Executive Director Martin Vaclair, Liaison Officer Ken Wager, Executive Director of Salvation Army and François Bérand, Executive Director of <i>Maison St. Laurent</i></p> <p>Prisoners' Rights Committee Stephen Fineberg and Jean Claude Bernheim</p> <p>Prison Arts Foundation Michel M. Campbell, President Earl D. Moore, Secretary of the Foundation.</p> <p>Ste-Anne-des-Plaines Citizens' Advisory Committee H. Claude Pariseau, Clinical Coordinator</p> <p>Jacques Casgrain, Crown Attorney</p> <p>Defence Lawyers' Association of Montreal David Linetsky, Attorney Milton Hartman, Attorney</p> <p>Native Alliance of Québec Martial Joly, Vice-President Edmund Gus, Vice-President; N.C.C. Paul Tumel, Executive Director, Native Para-Judicial Services of Québec</p>

ISSUE NO.	DATE	WITNESSES
53 (cont'd)	May 4, 1988 Montreal, Que.	<p>Le Mitan Women's Shelter Monique Pelletier, Social Worker</p> <p>Centre d'aide et de prévention d'assualts sexuels Alya Hadgen</p> <p>Elizabeth Fry Society of Greater Montreal Lyse Brunet, Executive Director Sylvie Durant, Member of the Board of Directors Nicole Bois, Lawyer Andrée Bertrand, Criminologist</p> <p>Church Council on Justice & Corrections (Quebec) Marie Beemans, Provincial President</p> <p>From the University of Montreal: Guy Lemire, Professor, School of Criminology Jean Dozois, Professor, School of Criminology Pierre Carrière, Faculty of Continuing Education</p> <p>Study Group on Penal Policies & Practices University of Québec Bruno Théroet Marie-Marthe Cousineau</p> <p>Mike Gutwillig, Victor Drury and Mike Maloney</p> <p>Anibal C. Tavares</p> <p>Gabriel Lapointe, Q.C.</p> <p>Mark Jaczyk</p> <p>Brian J. Rogers</p>
54	May 10, 1988	<p>Help Program (Kingston, Ontario) Bob Young, Executive Director; Paul Bastarache, Director, Help Freedom Farm</p> <p>Community Service Order Co-ordinators' Association of Ontario Russ Elliot, President Julie Connelly, Vice-President</p> <p>Canadian Psychiatric Association Dr. Frédéric Grunberg, M.D., F.R.C.P., Past President</p>

ISSUE NO.	DATE	WITNESSES
55	May 12, 1988	<p>St. Leonard's Society of Canada Michael J. Walsh, President L.A. Drouillard, Executive Director</p> <p>Church Council on Justice & Corrections Lorraine Berzins, Program Co-ordinator Research and Analysis Vern Redekop</p>
56	May 17, 1988	<p>Native Council of Canada Christopher McCormick, Vice-President</p> <p>Prof. Bradford W. Morse, Faculty of Law University of Ottawa</p> <p>John Howard Society of Canada James M. MacLatchie Executive Director</p>
57	May 26, 1988	<p>Citizens' Advisory Committee (National Executive) to the Correctional Service of Canada Philip Goulston, National Chairperson,</p> <p>Canadian Association of Elizabeth Fry Societies Felicity Hawthorne, President Bonnie Diamond, Executive Director</p> <p>Salvation Army of Canada Captain David Moulton Regional Co-ordinator (Ontario) Stewart King Director for Administration</p>
60	June 7, 1988 Halifax, N.S.	<p>Attorney General for the Province of British Columbia Hon. Brian R.D. Smith, Q.C.</p> <p>New Brunswick Probation Officers' Association Guillaume Pinet, Treasurer</p> <p>Provincial Advisory Committee on the Status of Women (Newfoundland and Labrador) Ann Bell, President</p> <p>Tearman Society for Battered Women (Nova Scotia) Dr. Anthony Davis, Chairperson Research Committee</p> <p>Elizabeth Fry Society of Halifax Maureen Evans, President Heather Hillier, Vice-President</p>

ISSUE NO.	DATE	WITNESSES
60 (cont'd)	June 7, 1988 Halifax, N.S.	Canadian Criminal Justice Association (New Brunswick Chapter) Eric Teed, Q.C., Secretary Gene Devereux, Barrister George A. Noble, Barrister Brian Howe and Sandra Lyth, Superintendent, Carlton Centre
61 (morning)	June 8, 1988 Halifax, N.S. <i>In Camera</i>	National Parole Board members and staff (Atlantic) Officials from the Correctional Service of Canada (Atlantic) Parole Officers (Atlantic) Paroled lifer
61 (afternoon)	June 8, 1988 Halifax, N.S.	Acadia Divinity College Dr. Charles Taylor, Program Director, Diploma and Prison Ministry. John Howard Society of Newfoundland Terry Carlson, Executive Director Victims of Violence (P.E.I.) George Bears, Director Bert Dixon Joint Presentation: John Howard Society of Nova Scotia C. Robert MacDonald, Executive Director Mary Casey, Board Member Judge Robert McCleave, Board Member and St. Leonard's Society of Halifax-Dartmouth Viki Samuels- Stewart, Executive Director and Coalition Supportive Services Alan Kell, Staff Person Christian Council for Reconciliation Sr. Agnes LeBlanc, Office Manager Rev. Alfred Bell, Regional Chaplain

ISSUE NO.	DATE	WITNESSES
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June 15, 1988

Canadian Association for Crown Counsel
William McCarroll, Q.C.,
Past President

Barbara Fuller

The Honourable James F. Kelleher,
P.C., Q.C., Solicitor General of
Canada.

John Tait, Q.C.,
Deputy Solicitor General
Ole Ingstrup, Commissioner of the
Correctional Service of Canada

64

June 30, 1988

Correctional Service of Canada

Ole Ingstrup,
Commissioner

APPENDIX D
WRITTEN SUBMISSIONS

Antoine, Hilda, Quesnel, British Columbia
Aasen, Jack, Vancouver, British Columbia
Acadia Divinity College
Addiction Research Foundation
Alberta Crown Attorneys Association
Alberta Human Rights & Civil Liberties
Allied Indian and Métis Society of B.C.
Alternative Sentence Planning
Andrews, Don, Ottawa, Ontario
Aslam, Syed, Campbellford, Ontario
Association des services de rehab. social du Québec
Association des substituts du procureur général (Québec)
Attorney General for the Province of British Columbia
B.C. Civil Liberties Association
Barbra Schlifer Commemorative Clinic
Baril, Micheline, Montréal, Quebec
Barrie & District Rape Crisis Line
Batchelor, Dahn, Rexdale, Ontario
Bell, Don, Mississauga, Ontario
Bonta, James, Ottawa, Ontario
Booth, William, Cobourg, Ontario
Bourque, Yves, Donnacona, Quebec
Boyd, Neil, Burnaby, British Columbia
Bridge (The)
Brooks, K., Fort St. John, British Columbia
Bunnah, Maureen, Quesnel, British Columbia
Calgary Sexual Assault Centre
Call, Douglas, Rochester, New York
Canadian Advisory Council on the Status of Women
Canadian Association for Adult Education
Canadian Association of Crown Counsel

Canadian Association of Elizabeth Fry Societies
 Canadian Bar Association
 Canadian Criminal Justice Association
 Canadian Pharmaceutical Association
 Canadian Psychiatric Association
 Canadian Psychological Association
 Canadian Sentencing Commission
 Canadian Training Institute
 Cape Breton Transition House
 Carrigan, Owen, Halifax, Nova Scotia
 Centre d'accueil de Cowansville
 Centre d'aide et de lutte contre les agressions à caractère sexuel
 Centre d'aide et de prévention d'assauts sexuels
 Children's Aid Society of Ottawa-Carleton
 Chitty, Philip, Ganonoque, Ontario
 Christian Council for Reconciliation
 Church Council on Justice and Corrections
 Ciale, Justin, Ottawa, Ontario
 Citizens United for Safety and Justice
 Citizens for Public Justice
 Citizens' Advisory Committee to the Correctional Service of Canada (National Executive)
 Clancy, Dorothy, Edmonton, Alberta
 Collins Bay Institution Infinity Lifers Group
 Coalition Supportive Services
 Comité Consultatif de l'Extérieur (Ste. Anne des Plaines)
 Community Service Orders Co-ordinator's Association of Ontario
 Conway, Neal L., Barry's Bay, Ontario
 Cooley, Dennis J., Ottawa, Ontario
 Correctional Service of Canada
 Council for Yukon Indians
 Craig, Neil A., North York, Ontario
 Criminal Lawyers Association of Ontario
 Criminal Trial Lawyers Association of Edmonton
 Czerny, Robert E., Ottawa, Ontario
 Darbyshire, Doris, Edmonton, Alberta
 Defence Lawyers Association of Montréal

Devereux, Gene J., Moncton, New Brunswick
Diedrich, Bernard, South Burnaby, British Columbia
Dixon, Bert, Dartmouth, Nova Scotia
Doob, Anthony, Toronto, Ontario
Duguid, Steve, Burnaby, British Columbia
Dyck, Diane A., Kingston, Ontario
Edmonton Penitentiary Lifers Group
Elizabeth Fry Society (Sudbury Branch)
Elizabeth Fry Society of Greater Montreal
Elizabeth Fry Society of Halifax
Elizabeth Fry Society of Kingston
Elizabeth Fry Society of Saskatchewan
Établissement Carceral Leclerc Groupe Vie-Plus
Exodus Link Corporation
Fattah, Ezzat A., Burnaby, British Columbia
Forst, Marc, Kingston, Ontario
Fraser Correctional Resources Society
Freisting, Edwin A., Prince Albert, Saskatchewan
Frontier College
Fuller, Barbara, Halifax, Nova Scotia
Gabriel Dumont Institute of Native Studies
Geltman, Harold, Montréal, Quebec
Goyer, Georges A., Vancouver, British Columbia
Grant MacEwan Community College
Greenland, Cyril, Toronto, Ontario
Gupta, Prem, Guelph, Ontario
Gustafson, Dave, Langley, British Columbia
Gutwillig, M.M., Montréal, Quebec
HELP Program
Hall, John E., Vancouver, British Columbia
Hartnagel, Tim, Edmonton, Alberta
Hatt, Ken, Ottawa, Ontario
High Park Homeowners & Residents Association
Hogarth, John, Vancouver, British Columbia
Howe, Brian, Halifax, Nova Scotia
Howell, Stephen D., Vancouver, British Columbia

Hudon, Robert, Donnacona, Quebec
Hudson, Joe, Edmonton, Alberta
Hurst, Sid, Windsor, Ontario
Husk, Gordon, St. John's, Newfoundland
Hyde, G.B., Tiverton, Ontario
International Halfway House Association
Irvine, A.G., Nepean, Ontario
Jacobson, Walter Garry, Campbellford, Ontario
Jaczyk, Mark, Montréal, Quebec
Janes, Randy, St. John's, Newfoundland
Jobson, Keith, Victoria, British Columbia
John Howard Society of Alberta
John Howard Society of British Columbia
John Howard Society of Canada
John Howard Society, Collins Bay Chapter
John Howard Society of Kingston and District
John Howard Society of Manitoba
John Howard Society of Newfoundland
John Howard Society of Nova Scotia
John Howard Society of Ontario
John Howard Society of Ottawa
Kelowna Secondary School (Communications 12 Class)
Kingston Penitentiary Lifers Program
Kinsella, Allan M., Campbellford, Ontario
Lapierre, Laurier, Britannia, British Columbia
Lapointe, Gabriel, Montréal, Quebec
Laren House Society
Law Reform Commission of Canada
Law Society of Northwest Territories
Leask, Peter, Vancouver, British Columbia
Lehnert, John H., Westmount, Quebec
Lilley, Brian, Innisfail, Alberta
Lindsey-Peck, Patricia, Ottawa, Ontario
Lingley, Robert M., Campbellford, Ontario
Lockie, Janie, Toronto, Ontario
Lynn, George W., Moffat, Ontario

MacNeil, Malcolm H., Fredericton, New Brunswick
 Maison d'accueil pour femmes (Le Mitan)
 Mallette, Beverley D., Palgrave, Ontario
 Maltby, Clifford David, Kingston, Ontario
 Man to Man (M2)/Woman to Woman (W2) (Alberta)
 Man to Man (M2)/Woman to Woman (W2) (B.C.)
 Man to Man (M2)/Woman to Woman (W2) (Ontario)
 Manitoba Crown Attorneys Association
 Marshall, W.L., Kingston, Ontario
 Martin, Gerald, Edmonton, Alberta
 Matsqui Institution Prisoner's Justice Initiative
 McMurtry, Peter A., Toronto, Ontario
 Mediation Services
 Mennonite Central Committee (Canada)
 Mennonite Central Committee (Manitoba)
 Metro Action Committee on Public Violence Against Women and Children
 Mid-Island Sexual Assault Centre
 Mohr, J.W., Gananoque, Ontario
 Mohr, Renate, Ottawa, Ontario
 Morse, Bradford, Ottawa, Ontario
 Morris, Ruth, Toronto, Ontario
 Morton, Frank, Guelph, Ontario
 Mothers Against Abduction and Murder
 Mothers Against Drunk Driving
 National Associations Active in Criminal Justice
 National Council of Women
 National Parole Board
 Native Alliance of Quebec
 Native Clan Organization of Manitoba
 Native Council of Canada
 Native Counselling Services of Alberta
 Native Justice Coalition
 Nelson, Eleanor, Wallace, Nova Scotia
 New Brunswick Probation Officers' Association
 Niagara Citizens' Advisory Committee
 Noble, George, Fredericton, New Brunswick

Northorp, Bruce L., Burnaby, British Columbia
O'Berton, William, Saskatoon, Saskatchewan
Office des droits des détenues
Olson, Clifford Robert, Kingston, Ontario
Olson, Margaret, St. Albert, Alberta
Ontario Native Council on Justice
Operation Springboard
Ottawa Rape Crisis Centre
Pappas, Steven, Ottawa, Ontario
Pease, Ken, Saskatoon, Saskatchewan
Peck, Richard, Vancouver, British Columbia
People to Reduce Impaired Driving Everywhere
Poole, Dianne, Toronto, Ontario
Prince, G., Renous, New Brunswick
Prison Arts Foundation
Prison Fellowship Canada
Prison for Women Institution Inmate Committee
Prisoners' Rights Group
Provincial Advisory Committee on the Status of Women (Newfoundland)
Quaker Committee on Jails and Justice
Quinsey, Vernon L., Penetanguishene, Ontario
Ray, A.R., Gloucester, Ontario
Reddecliff, Wes, Campbellford, Ontario
Regional Psychiatric Centre (Prairies)
Reid, Barbara E., Eastern Passage, Nova Scotia
Rempel, Melita, Winnipeg, Manitoba
Richmond, Guy, Port Coquitlam, British Columbia
Roberts, Julian, Ottawa, Ontario
Rockwood Institution Inmate Welfare Committee
Rogers, Brian J., Baie D'Urfé, Montreal
Ruby, Clayton C., Toronto, Ontario
Ruygrok, Gerry, Ottawa, Ontario
Saddle Lake First Nations
Salvation Army
Saskatchewan Action Committee Status of Women
Segger, Tim, Abbotsford, British Columbia

Seventh Step Society of Canada
Skinner, James, Toronto, Ontario
Smith, Judith, Victoria, British Columbia
Soci t  de Criminologie de Qu bec
Solicitor General for the Province of Nova Scotia
Solicitor General of Canada
Sorochan, Don, Vancouver, British Columbia
St. Leonard's Society of Canada
St. Leonard's Society of Halifax-Dartmouth
Summers, Gordon K., Innisfail, Alberta
Sutherland, Neil, Vancouver, British Columbia
Tatum, J.B., Victoria, British Columbia
Tavares, Anibal C., Montr al, Quebec
Tearman Society for Battered Women
Teed, David, Kingston, Ontario
Teed, Eric L., Saint John, New Brunswick
Tilson, Patricia, Scarborough, Ontario
Union of Solicitor General Employees
Vandor, L.A., Toronto, Ontario
Viau, Louise, Montr al, Quebec
Victims of Violence
Waller, Irvin, Ottawa, Ontario
Wittman, Dennis, Batavia, New York
Wormith, J.S., Burritts Rapids, Ontario

REQUEST FOR GOVERNMENT RESPONSE

TUESDAY, AUGUST 16, 1988

(11)

[Text]

Pursuant to Standing Order 99(2), the Committee requests that the Government table a comprehensive response to the Report within one hundred and fifty (150) days.

A copy of the relevant Minutes of Proceedings and Evidence of the Standing Committee on Justice and Solicitor General (*Issues Nos. 23 to 26, 28 to 30, 32 to 48, 50 to 57, 60 to 62, 64 and 65 which includes this Report*) is tabled.

Respectfully submitted,

DAVID DAUBNEY

Chairman

MINUTES OF PROCEEDINGS

TUESDAY, AUGUST 16, 1988

(111)

[Text]

The Standing Committee on Justice and Solicitor General met *in camera* at 9:35 o'clock a.m. this day, in Room 307 W.B., the Chairman, David Daubney, presiding.

Members of the Committee present: David Daubney, Bill Domm, Robert Horner and Jim Jepson.

Acting Member present: Girve Fretz for Rob Nicholson.

In attendance: From the Library of Parliament: Bill Bartlett, Marlene Koehler and Philip Rosen, Research Officers.

The Committee resumed consideration of a report to the House of Commons on sentencing, conditional release and related aspects of the correctional system.

At 11:30 a.m., the sitting was suspended.

At 12:15 p.m., the sitting resumed.

At 1:15 o'clock p.m., the Committee adjourned to the call of the Chair.

AFTERNOON SITTING

(112)

The Standing Committee on Justice and Solicitor General met *in camera* at 3:40 o'clock p.m. this day, in Room 307 W.B., the Chairman, David Daubney, presiding.

Members of the Committee present: David Daubney, Bill Domm, Jim Jepson and Rob Nicholson.

In attendance: From the Library of Parliament: Bill Bartlett, Marlene Koehler and Philip Rosen, Research Officers.

The Committee resumed consideration of a report to the House of Commons on sentencing, conditional release and related aspects of the correctional system.

At 5:55 o'clock p.m., the Committee adjourned to the call of the Chair.

WEDNESDAY, AUGUST 17, 1988

(113)

The Standing Committee on Justice and Solicitor General met *in camera* at 3:40 o'clock p.m. this day, in Room 307 W.B., the Chairman, David Daubney, presiding.

Members of the Committee present: David Daubney, Bill Domm, Robert Horner, Jim Jepson and Rob Nicholson.

Acting Member present: Joe Price for Allan Lawrence.

In attendance: From the Library of Parliament: Bill Bartlett, Marlene Koehler and Philip Rosen, Research Officers.

The Committee resumed consideration of a report to the House of Commons on sentencing, conditional release and related aspects of the correctional system.

It was agreed,—That the draft report, as amended, be adopted as the Committee's Sixth Report to the House and that the Chairman be authorized to make such editorial changes as may be necessary without changing the substance of the draft report and that the Chairman be instructed to present the said report to the House; and,

—that, in the event Parliament is dissolved prior to the presentation of the Committee's Report to the House, a copy of the Committee's Working Paper on sentencing, conditional release and related aspects of corrections be made an Appendix to this day's Minutes of Proceedings and Evidence; and that 5,000 copies of the said issue be printed.

It was agreed,—That, pursuant to Standing Order 99(2), the Committee request that the Government table, within 150 days, a comprehensive response to its Sixth Report.

It was agreed,—That, the Committee cause to be printed 5,000 copies of its Sixth Report to the House in tumble bilingual format with a distinctive cover.

At 5:10 o'clock p.m., the Committee adjourned to the call of the Chair.

Luke Morton
Clerk of the Committee