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Canada



Research Reports  
of the  
Canadian  
Sentencing  
Commission

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## INTRODUCTION

The Department of Justice Canada is pleased to make available to the public and the criminal justice community, the Research Reports of the Canadian Sentencing Commission. These reports comprise the most systematic research initiative in the area of sentencing ever carried out in Canada. Each one focuses upon sentencing from a uniquely Canadian perspective. Before describing the research workplan of the Commission, a few words are in order to clarify the background of the Commission itself.

In 1984, the Sentencing Project in the Department of Justice initiated creation of a Commission of Inquiry. The Canadian Sentencing Commission was established by order-in-council in May of that year.

The mandate of the Commission was broad. Among other tasks it was enjoined to examine maximum penalties with a view to reviewing the relative seriousness of penalties, to study the feasibility and desirability of sentencing guidelines in Canada and to study the relationship between such guidelines and various aspects of criminal justice.

The breadth of the Commission's research workplan reflected this mandate. Under the direction of Professor Jean-Paul Brodeur from the School of Criminology, University of Montreal, original empirical work was undertaken both in-house and through contracts with professionals in the field.

In February 1987, the Chairman of the Commission, His Honour Judge J. R. Omer Archambault, submitted the Commission's report, *Sentencing Reform: A Canadian Approach*, which is available from Supply and Services Canada. The research reports that had been compiled were taken over by the Department of Justice for translation and publication when the Commission terminated its work in the spring of 1987.

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At that time, the authors had an opportunity to make minor revisions to their works. Some edited their reports down to a briefer document. The reports being released in this series are, however, the same documents that were at the disposal of the members of the Canadian Sentencing Commission.

Brief descriptions of the reports are provided in this document. Copies of all the reports are available from Communications and Public Affairs, Department of Justice Canada, Ottawa, Ontario K1A 0H8 (telephone: (613) 957-4222).

This body of research will prove an invaluable source of information as the criminal justice community considers the future of sentencing in Canada.

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## **1. EMPIRICAL RESEARCH ON SENTENCING**

### ***LA RECHERCHE SUR LA DÉTERMINATION DE LA PEINE***

Julian Roberts

This report contains a comprehensive review and summary of recent, empirical research on sentencing. Quantitative research in this area has employed a number of different approaches. Beginning with the issue of disparity, the report examines various topics relevant to sentencing reform. There is also a critical examination of recent research on public views of sentencing. As with all reports in this series, the emphasis is upon Canadian research.

## **2. ISSUES RELATING TO SENTENCING GUIDELINES: AN EVALUATION OF U.S. EXPERIENCES AND THEIR RELEVANCE FOR CANADA**

### ***QUESTIONS RELATIVES AUX LIGNES DIRECTRICES EN MATIÈRE DE DÉTERMINATION DE LA PEINE : ÉVALUATION DE DIVERS MODÈLES AMÉRICAINS ET DE LEUR PERTINENCE AU CANADA***

Aidan Vining

The issue of sentencing guidelines lies at the heart of recent attempts to reform the sentencing process. Sentencing guidelines have been instituted in several jurisdictions in the United States. This report analyses and evaluates these guideline systems, particularly those in Minnesota and Pennsylvania. Have the sentencing guidelines commissions in these locations achieved their stated objectives? What are the weaknesses of structuring sentencing decisions in this way? Professor Vining examines the critical questions in the area of sentencing guidelines, with particular reference to the implementation possibilities for Canada.

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### **3. SENTENCING STRUCTURE IN CANADA: HISTORICAL PERSPECTIVES**

#### ***STRUCTURE DE LA DÉTERMINATION DE LA PEINE AU CANADA : PERSPECTIVES HISTORIQUES***

Martin Friedland

Professor Martin Friedland provides a historical analysis of the current sentencing structure in Canada. The most significant trends over the past century are highlighted. An examination is made of the history of maximum penalties in Canada with a view to understanding how the current structure came into being. A history of sentencing cannot properly be examined without also studying the institutions where sentences are served. Thus, this paper is also necessarily the history of penal institutions in this country.

### **4. A PROFILE OF CANADIAN ALTERNATIVE SENTENCING PROGRAMMES: A NATIONAL REVIEW OF POLICY ISSUES**

#### ***PHYSIONOMIE DES PROGRAMMES OPTIONNELS D'ATTRIBUTION DE LA PEINE AU CANADA : UN COMPTE RENDU À L'ÉCHELLE NATIONALE DE LEURS CONSÉQUENCES***

John Ekstedt and Margaret Jackson

The authors of this report examined in some detail alternative sentencing programmes currently available in Canada. These include programmes employing fine options, community service orders, restitution, victim-offender reconciliation, attendance, temporary absence and intermittent sentences. This report summarizes their findings and provides descriptions of these programmes as they exist in different jurisdictions across the country.

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**5. ALTERNATIVES TO INCARCERATION /  
SENTENCING OPTION PROGRAMMES:  
WHAT ARE THE ALTERNATIVES?**

***PROGRAMMES DE MESURES DE  
REPLACEMENT DE L'INCARCÉRATION OU  
DE SOLUTIONS DE RECHANGE : QUELLES  
SONT LES OPTIONS?***

Margaret Jackson and John Ekstedt

What are the alternatives to incarceration? This paper provides a follow-up to report No. 4 in this series. It addresses more specific questions which were raised but not resolved by the first report. For example, does the use of the temporary absence programme diminish the authority of the court? Should the community service order be separate, that is, not attached to a probation order? In addition, the authors drew upon information collected in their first report to make recommendations regarding the future of these alternatives to incarceration.

**6. JUSTICE IN SENTENCING: OFFENDER  
PERCEPTIONS**

***LA JUSTICE DANS L'ATTRIBUTION DE LA  
PEINE : LA PERCEPTION DU  
CONTREVENANT***

John Ekstedt and Margaret Jackson

The views of offenders are all too seldom heard in discussions of sentencing reform. This report summarizes the findings from a survey of offenders. The respondents were individuals serving sentences in the province of British Columbia. Questions covered seven areas: purposes of sentencing, disparity, early release, sentencing guidelines, influence of extra-legal factors, the just deserts model and the relative importance of different actors in the sentencing process. It is one of several research initiatives undertaken by the Canadian Sentencing Commission that deal with the perceptions, experiences and opinions of incarcerated offenders.

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## **7. PLEA BARGAINING AND SENTENCING GUIDELINES**

### ***LA NÉGOCIATION DE PLAIDOYER ET LES LIGNES DIRECTRICES EN MATIÈRE DE DÉTERMINATION DES SENTENCES***

Simon Verdun-Jones and Alison Hatch

The implementation of sentencing guidelines inevitably raises the issue of plea bargaining. This paper considers the potential impact that plea bargaining would have on the introduction of sentencing guidelines in Canada. From a consideration of the U.S. literature, it was determined that plea bargaining is a complex and diverse phenomenon that varies greatly from jurisdiction to jurisdiction. Attempts to abolish or restructure it have failed or resulted in undesirable consequences. Any study, therefore, of the impact of sentencing reform should consider the role of plea bargaining, from arrest through to parole.

## **8. THE FINE AS A SENTENCING OPTION IN CANADA**

### ***L'AMENDE COMME OPTION DE DÉTERMINATION DE LA PEINE AU CANADA***

Simon Verdun-Jones and Teresa Mitchell-Banks

The fine is, for most offences, the most frequent disposition. This is true in all western industrialized nations. In Canada, over 90 percent of convictions for summary offences and one percent to one-third of convictions for indictable offences result in the imposition of fines. Notwithstanding this, the fine has not received anything like the attention from researchers that has been focused upon incarceration. This report explores the fine as a sentencing option. Various issues are described and discussed, such as imprisonment for fine default, which accounts for a significant percentage of admissions to provincial institutions. The report includes a series of recommendations.

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**9. SENTENCING: OPINION SURVEY OF  
NON-JURIST PROFESSIONALS AND  
PRACTITIONERS**

***LA DÉTERMINATION DE LA PEINE : LES  
PROFESSIONNELS ET LES PRATICIENS NON-  
JURISTES S'EXPRIMENT***

Samir Rizkalla, Sylvie Bellot and Anne Morissette

This report describes the findings of a survey of non-jurist practitioners and professionals in the area of sentencing. The survey consisted of a questionnaire (sent to 250 individuals) and in-depth interviews. The purpose of the questionnaire was to obtain trends of opinion, while more detailed qualitative information was gained from the interviews. The participants were practitioners who work with adult offenders in the fields of probation and parole, in custodial institutions and various community centres.

**10. SENTENCING AND CORRECTIONAL  
PRACTICES IN ATLANTIC CANADA: VIEWS  
OF PROBATION AND PAROLE PERSONNEL**

***PRATIQUES EN MATIÈRE DE  
DÉTERMINATION DE LA PEINE ET DE  
SERVICES CORRECTIONNELS DANS LA  
RÉGION DE L'ATLANTIQUE : POINTS DE VUE  
EXPRIMÉS PAR LE PERSONNEL DES  
SERVICES DE PROBATION ET DE  
LIBÉRATION CONDITIONNELLE***

James Richardson

This report presents a discussion of the findings from a survey of probation and parole officers in Atlantic Canada. Respondents were asked a series of questions about sentencing and early release. Many of the questions were similar to those posed to other participants in the sentencing process who were surveyed by the Canadian Sentencing Commission.

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**11. OPINIONS OF QUÉBEC INMATES  
REGARDING QUESTIONS RAISED BY THE  
MANDATE OF THE CANADIAN SENTENCING  
COMMISSION**

***POINTS DE VUE DE DÉTENUÉS ET DÉTENUES  
DU QUÉBEC SUR QUELQUES QUESTIONS  
SOULEVÉES PAR LE MANDAT DE LA  
COMMISSION CANADIENNE SUR LA  
DÉTERMINATION DE LA PEINE***

Pierre Landreville, Monique Hamelin and Sylvie Gagnier

Professor Landreville's research complements that of other researchers in the series: he examined the perceptions and opinions of a sample of inmates. As in other surveys, various aspects of sentencing were examined. This report presents the results of this qualitative survey conducted in the province of Quebec.

**12. NATIVE OFFENDERS' PERCEPTIONS OF  
THE CRIMINAL JUSTICE SYSTEM**

***LA PERCEPTION DES ABORIGÈNES DU  
SYSTÈME DE JUSTICE CRIMINELLE***

Brad Morse and Linda Lock

The problem of the over-representation of native offenders in inmate populations has been acknowledged for some time. Native offenders comprise a substantial percentage of admissions to custody in some provinces in Canada. Morse and Lock conducted a survey of native offenders in Canada, and this report summarizes their principal findings. Views of native inmates and parolees were derived from group discussions, personal interviews as well as questionnaires.

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**13. PROCESS, POLICY AND PREJUDICE: A  
SURVEY OF EDITORIAL POLICIES ON  
SENTENCING-RELATED NEWS**

***MÉTHODES, POLITIQUES ET SUBJECTIVITÉ :  
ÉTUDE SUR LA POLITIQUE  
RÉDACTIONNELLE DE CERTAINS MÉDIAS EN  
MATIÈRE DE DÉTERMINATION DE LA PEINE***

Erika Rosenfeld

The vast majority of the Canadian public derive their information about sentencing from the news media. No attempt to understand public views of the sentencing process will succeed unless attention is also focused upon news media treatment of sentencing. Accordingly, a number of research projects were undertaken in this area. This report deals with a qualitative analysis of the process by which sentencing information is conveyed to the public. It should be read in conjunction with the other research reports in this series that deal with this issue. Interviews were conducted with 38 reporters, editors and feature/editorial writers at 15 newspapers, radio and television stations across the province of Ontario.

**14. RESEARCH ON MÉDIA STRATEGIES AND  
PRACTICES IN THE FIELD OF LEGAL  
NEWS**

***RECHERCHE SUR LES STRATÉGIES ET  
PRATIQUES DES MÉDIAS EN MATIÈRE  
D'INFORMATION JUDICIAIRE***

Gaëtan Tremblay

This report summarizes the findings from a study of French-language media practice in the area of sentencing in this country. The interested reader is also directed to other reports in the series that deal with the news media. In-depth interviews were conducted with 14 individuals, of whom 12 were journalists.

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**15. INFORMATION SYSTEMS FOR  
SENTENCING GUIDELINES: RECENT  
EXPERIENCE**

***SYSTÈMES D'INFORMATION POUR  
L'ÉTABLISSEMENT DE LIGNES DIRECTRICES  
DANS LA DÉTERMINATION DE LA PEINE :  
EXPÉRIENCES RÉCENTES***

Robert Hann

Critical to the implementation of any sentencing guidelines system is the issue of information systems. Without adequate support systems, such guidelines would be destined to fail. The author of this report examines the role of information systems, particularly as they would apply in the Canadian context. The author begins by summarizing the current state of information systems maintained by law enforcement, court and corrections agencies in the jurisdictions currently using sentencing guidelines.

**16. THE ROLE OF THE VICTIM IN  
SENTENCING AND RELATED PROCESSES**

***LE RÔLE DE LA VICTIME DANS LA  
DÉTERMINATION DE LA PEINE ET LES  
PROCESSUS CONNEXES***

Irvin Waller

Over the past few years there has been an increasing number of calls, from various groups and individuals, for the criminal justice system to become more responsive to the needs of victims. Professor Waller examines the role of the victim in the sentencing process. This paper includes a survey of the role of the victim in criminal justice proceedings in foreign jurisdictions.

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## **17. LEGAL SANCTIONS AND DETERRENCE**

### ***SANCTIONS LÉGALES ET DISSUASION***

Douglas Cousineau

General deterrence is one of the most widely-cited aims of sentencing. As well, it is the aim of sentencing that has attracted the most empirical research. Professor Cousineau reviews the considerable body of research on the relation between penalties and crime rates. This includes discussion of the methodological and conceptual complexities surrounding research on general deterrence.

## **18. VIEWS OF SENTENCING: A SURVEY OF JUDGES IN CANADA**

### ***LA DÉTERMINATION DE LA PEINE : SONDAGE D'OPINION AUPRÈS DES JUGES CANADIENS***

Research Staff of the Canadian Sentencing Commission

No thorough survey has ever been undertaken of the views of the critical actors in the area of sentencing judges. A questionnaire was sent to all judges in Canada who sentence offenders; responses were obtained from a substantial proportion (over 400 respondents). This report presents a breakdown of responses to the survey of judicial opinion. For purposes of comparison, many of the questions in the questionnaire were also posed to other actors in the sentencing process.

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**19. PUBLIC OPINION AND SENTENCING: THE SURVEYS OF THE CANADIAN SENTENCING COMMISSION**

***L'OPINION PUBLIQUE ET LA DÉTERMINATION DE LA SENTENCE : LES SONDAGES DE LA COMMISSION CANADIENNE SUR LA DÉTERMINATION DE LA PEINE***

Julian Roberts

A substantial component of the Commission's research activities consisted of three nation-wide surveys of public opinion in the area of sentencing. Previous attempts to assess public attitudes have consisted of small samples, or simplistic questions, such as "Are the courts too harsh?" The work of the Commission included experimental manipulations of information, as well as more complex questions than have to this point been used with large samples of the general public. This report contains summaries of all three surveys carried out in 1985 and 1986.

**20. SENTENCING IN THE MEDIA: A CONTENT ANALYSIS OF ENGLISH-LANGUAGE NEWSPAPERS IN CANADA**

***LA DÉTERMINATION DE LA PEINE DANS LES MÉDIAS : UNE ANALYSE DE CONTENU DES JOURNAUX DE LANGUE ANGLAISE AU CANADA***

Julian Roberts

This report summarizes the major findings from a systematic content analysis of major English-language newspapers in Canada. Its aim is to uncover the picture of sentencing that is conveyed by newspapers. Knowing what the media disseminate is a necessary prerequisite to understanding public views. A sample of newspaper stories was coded by research assistants to uncover the kind of offences and sentences reported to the public. As well, analysis focused on the extent to which newspapers convey information about the sentencing process (statutory penalties, current practice, etc.).

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## **21. THE HANDLING OF CRIMINAL CASES BY DEFENCE LAWYERS**

### ***LA RÉOLUTION DES CAUSES PÉNALES PAR LES AVOCATS DE LA DÉFENSE***

Robert Poirier

In-depth interviews were conducted with a sample of defence lawyers in Montreal. The focus of the study was upon the practices and procedures involved in the resolution of criminal cases. What factors, for example, affect the accused's decision to plead guilty? What role does the defence counsel play in negotiations to resolve a particular case? The interviews conducted in this study generated insights into the bargaining that takes place regarding decisions influencing the eventual sentence given to the accused.

## **22. THE ROLE OF AN APPELLATE COURT IN DEVELOPING SENTENCING GUIDELINES**

### ***ÉLABORATION DE LIGNES DIRECTRICES EN MATIÈRE DE LA DÉTERMINATION DE LA PEINE : LE RÔLE D'UNE COUR D'APPEL***

Alan Young

This paper summarizes recent case law on sentencing in Canada. Professor Young completed several research studies for the Canadian Sentencing Commission. This recent volume summarizes his findings in the area. He has surveyed the case law as it pertains to sentencing with a view to evaluating the impact of appellate review of sentencing.

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**23. VIEWS OF SENTENCING: A SURVEY OF  
CROWN AND DEFENCE COUNSEL**

***VUES SUR LA DÉTERMINATION DE LA PEINE :  
L'OPINION DES AVOCATS DE LA  
COURONNE ET DE LA DÉFENSE***

Tammy Landau

A mail survey was undertaken of the views of defence and Crown counsel in Canada. This report provides insights into the opinions of lawyers, that can be compared to and contrasted with the views of other participants in the sentencing process, such as judges, offenders, probation and parole officers. The survey examined all important issues in the area of sentencing and early release.

**24. AN EMPIRICAL STUDY OF THE USE OF  
MITIGATING AND AGGRAVATING FACTORS  
IN SENTENCE APPEALS IN ALBERTA AND  
QUEBEC FROM 1980 TO 1985**

***UNE ÉTUDE EMPIRIQUE DES  
CIRCONSTANCES ATTÉNUANTES ET  
AGGRAVANTES DANS LES APPELS DE  
SENTENCES EN ALBERTA ET AU QUÉBEC  
ENTRE 1980 ET 1985***

Shereen Benzvy-Miller

This paper examines appellate jurisprudence to identify the variables that have become relevant in the sentencing process. It reviews appellate jurisprudence to derive a list of the most frequently cited aggravating and mitigating factors and explores the context in which they are used.

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**25. THE USE OF INCARCERATION AND THE  
PRINCIPLE OF RESTRAINT IN CANADA: AN  
ANALYSIS OF OFFICIAL DOCUMENTS**

***LE RECOURS À L'INCARCÉRATION ET LE  
PRINCIPE DE MODÉRATION AU CANADA :  
UNE ANALYSE DES DOCUMENTS OFFICIELS***

Alvaro Pires

Professor Pires has collected an inventory of references to the use of incarceration in Canada from the Brown Commission (1849) to recent years. This report summarizes this material and develops the analysis by proceeding methodically through official documents. Moreover, Professor Pires has analyzed the development of the principle of restraint and has documented the emphasis, from a variety of sources, upon the need for restraint in the use of sentences of imprisonment.

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