SENTENCING: OPINION SURVEY OF NON-JURIST PROFESSIONALS AND PRACTITIONERS

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ORGANIZATION OF RESEARCH WORK

I - ISSUES AND CONCERNS

The Canadian Sentencing Commission has undertaken an extensive consultation of workers in the field of criminal justice for the purpose of determining their views on various issues included in its mandate.

These issues include, among others, the severity of sentences, the advisability of prescribing maximum and minimum sentences in the Criminal Code, common practice regarding the imposition and administration of these sentences, the usefulness or necessity of developing guidelines for the exercise of judicial discretion in sentencing, imprisonment and its alternatives, post-judicial processes, etc.

Of the groups targeted by the Commission, this study is aimed specifically at non-jurist professionals and practitioners, i.e. criminologists, social workers, psychologists, psycho-educators and other workers in the areas of probation, parole, detention, as well as community and social services for adult offenders.

The objectives of this study are as follows:

1.- To identify and determine the types of non-jurist practitioners in the criminal justice system;
2.- To consult a selected sample of these practitioners on a variety of issues as mentioned above;

3.- To gather information from these practitioners on their perceived role and influence in the administration of justice; and

4.- From their comments, to determine their views on various reforms needed in legislation and in the administration of justice.

II - METHODOLOGY

A. Information Gathering

Given the initial objectives of this study, a combination of two information gathering techniques was required, one quantitative and one qualitative. Indeed, considering the complexity of the issues dealt with, a single approach would not have permitted a comprehensive study: strictly quantitative results would carry the risk of being too static, while strictly qualitative information would preclude any generalization. We therefore opted for two complementary techniques, namely an objective questionnaire and an interview. These tools are described briefly in the following paragraphs.

1. The Questionnaire

The questionnaire shown in Appendix 1 was developed to meet the needs of the Canadian Sentencing Commission. It was designed following a brief review of the literature and an analysis of other questionnaires developed for or by the Commission in the course of previous consultations. Although the themes used in this new questionnaire do not differ significantly from areas investigated in other studies conducted for the Commission, they had to be adapted to the special characteristics of our target group.

1.1 Questionnaire Themes

After consultation with the Commission, the following areas of investigation were selected:

- the severity of sentences
- maximum penalties
- minimum penalties
- disparity of sentences
- guidelines
- plea bargaining
- preventive detention
- imprisonment and its alternatives
- post-judicial processes.

Also, one section in the questionnaire was reserved for questions of a general nature such as: sex, age, education, area of activity and years of professional experience.

Each of the themes listed above was composed mostly of closed multiple-choice questions. However, when a question was too complex or when it was impossible to provide an exhaustive choice of answers, the question was left open, i.e. with no predetermined choice of answers.

1.2 Administration of the Questionnaire

We opted for the method of self-administration of questionnaires sent by mail. The questionnaire was pretested in Montreal; this allowed us to make refinements to ensure that the questions were clear, simple and in the right order.

Once the sample was established, the questionnaires were forwarded to various services throughout Quebec. Each was accompanied by two letters, a letter of accreditation from the Commission and a letter from the research team explaining the study, deadlines and other relevant information. A reminder was sent three weeks later.

2. The Interview

While the answers to the questionnaire provided valuable information on the prevalence of certain opinions and positions, the interviews, for their part, allowed the respondents to better explain and support their opinions and positions. For the research team, the additional information obtained through this approach provided important insight for the interpretation of the quantitative data.

2.1 Interview Guide

In this perspective of complementarity, the same themes were used in the interviews as in the questionnaire. The questions were of a general nature, less rigid, allowing for elaboration and detailed comments.

Respondents were encouraged to comment on all aspects of the themes of study. The interview guide merely served to steer the discussions and ensure that all questions were asked.

2.2 The Interview

A pretest carried out in Montreal enabled us to refine the guide: to ensure simplicity of language used, accessibility and comprehension of the questions asked and themes suggested, and uniformity of their interpretation.

All interviews were conducted at the respondents' workplace between January 20 and February 28, 1986. All were carried out on an individual basis and lasted between one hour and two and a half hours.

Each interview began with the presentation of a letter of accreditation from the Canadian Sentencing Commission and a brief statement of the objectives of the study. Respondents were assured

of the confidentiality of their comments and were advised that they were entirely free to refuse comment on any subject deemed to be of a delicate nature. It should be noted that no one refused to answer any of our questions.

At the end of the interviews, the respondents were asked to complete a very brief personal information form requesting age, education, professional experience, etc.

B. Selection of Participants

The sampling technique used to successfully conduct this study comprised two facets: planning and selection of the sample. The sample will be described following a brief explanation of the two facets.

1. Sampling Plan

Since the purpose of the study was to determine the views of non-jurist practitioners in the criminal justice system in Quebec, we selected four main areas of activity:

- the Probation Service, which comes under the Quebec Ministry of Justice,
- custodial facilities administered by the provincial government,
- federal penitentiaries, and
- the Parole Service attached to the Correctional Service of Canada.

To these, we added a fifth category which includes other areas of activity such as halfway houses, the service that administers the Fine Option Program, the Quebec Association of Social Rehabilitation Agencies, the Pinel Institute, etc.

Moreover, once we opted to use a questionnaire and an interview to gather information, we decided to send approximately 250 questionnaires to the various regions of Quebec and carry out approximately 45 interviews in Montreal and Quebec City.

In order to obtain a sample as representative as possible of non-jurist practitioners in Quebec, the sampling plan was developed from an estimation of their geographic distribution in the various areas of activity (see Table 1). Thus, the planned number of interviews in Montreal and Quebec City in the various areas of activity was determined in function of the estimated total number of non-jurist practitioners in these two regions and the set number of interviews, i.e. 45 (see Table 2). The same procedure was used for the questionnaire sampling plan (see Table 3).

Table 1

Estimated Geographic Distribution of Non-Jurist Practitioners in the Criminal Justice System in Quebec*

Area of Activity	Montreal Region	Quebec Region	Other Regions	Total Province of Quebec
Probation	55	20	85	160
Provincial detention	5		35	40
Penitentiaries	15		96	111
Parole	55	20	55	130
Other	10		10	20
TOTAL:	140	40	281	451

* These figures are approximate. They were supplied by the Direction générale des établissements de détention du Québec, the Direction générale de la probation du Québec and the Correctional Service of Canada.

Table 2

Interview Sampling Plan

Area of Activity	Estimated Number of Practitioners	% of Total	Planned Number of Interviews
Probation:			
Montreal	55	30%	13
Quebec	20	11%	5
Provincial Detention:			
Montreal	5	3%	2
Penitentiaries:			
Montreal	15	8%	4
Parole:			
Montreal	55	30%	13
Quebec	20	11%	5
Other:			
Montreal	10	6%	3
TOTAL	180	100%	45

Table 3

Questionnaire Sampling Plan

Area of Activity	Estimated Number of Practitioners	% of Total	Planned Number of Questionnaires to be Sent
Probation:			
Regions other than Montreal and Quebec	85	30%	75
Provincial Detention:			
Regions other than Montreal	35	12%	30
Penitentiaries:			
Regions other than Montreal	96	34%	85
Parole:			
Regions other than Montreal and Quebec	55	20%	50
Other:	10	4%	10
TOTAL	281	100%	250

2. Selection of Sample

2.1 For the Questionnaire

The selection procedure for the questionnaire was roughly similar to that for the interviews. Directors of local offices and wardens of institutions were first contacted by telephone at which time the purpose of the study and the questionnaire were explained to them. The directors and wardens were asked to cooperate by distributing a number of questionnaires to their officers. Cooperation was excellent; no one refused to cooperate. Not only was the sampling plan adhered to but the number of questionnaires sent slightly exceeded the initial number planned. Thus, 263 non-jurist practitioners were reached in various services throughout the province of Quebec (see Table 4).

The success rate associated with this type of survey is generally around 35%. We obtained a response rate of 53.2%, which clearly exceeded our expectations. This result can only be explained by genuine interest in our research, especially in view of the fact that we were unable to send a reminder to everyone due to lack of time (135 people, or 51.3% of the sample, did not receive a reminder). Our sample of 140 completed questionnaires therefore breaks down as follows: 56 in probation, 12 in provincial detention, 25 in penitentiaries, 39 in parole and 8 in the "other" category.

Table 4

Distribution of Questionnaires Sent to Non-Jurist Practitioners

by Area of Activity and Office or Institution

Area of Activity	Planned Number of Questionnaires to be Sent	Actual Number of Questionnaires Sent
Probation		
Baie-Comeau		1
Sept-Iles		1
Rimouski		3
Chandler		1
Chicoutimi		6
St-Joseph de Beauce		5
Drummondville		15
Arthabaska		2
Sherbrooke		6
Trois-Rivières		5
Joliette		4
Saint-Jérôme		3
Valleyfield		5
Granby		3
Longueuil		5
St-Hyacinthe		4
Sorel		3
Hull		10
Montreal		2
Rouyn-Noranda		7
Total:	75	90
Provincial Detention		
Detention Centre of Quebec		9
Prevention Centre of Montreal		5
Tanguay		4
Saint-Jérôme		2
Waterloo		3
Amos		1
Sorel		1
Hull		1
Roberval		1
Valleyfield		1
St-Hyacinthe		1
Cowansville		1
Total:	30	30

Table 4 (cont'd)

Area of Activity	Planned Number of Questionnaires to be Sent	Actual Number of Questionnaires Sent
Penitentiaries		
Archambault		11
Ste-Anne-des-Plaines		6
Regional Reception Centre		6
La Macaza		6
Drummondville		6
Cowansville		12
Leclerc		11
Laval		13
C.C.C.		7
Total:	85	78
Parole		
Décarie (Montreal)		8
Longueuil		8
Chicoutimi		2
Granby		5
Rimouski		2
Trois-Rivières		6
L'Annonciation		3
Hull		5
Laurentides		5
Rouyn-Noranda		2
Ste-Thérèse		7
Total:	50	53
Other		
Halfway Houses		6
Fine Option Program		3
Philippe Pinel Institute		2
Total:	10	11
TOTAL:	250	263

2.2 For the Interviews

The interviewees were selected as follows: First, we contacted by telephone the local service directors (local directors of the probation and parole offices, assistant wardens - socialization in penitentiaries, and assistant wardens - programs in provincial custodial facilities) to state the purpose of our research, the nature and length of the interview so that they may discuss this with their officers and later advise the names of those interested in meeting with us. This method proved to be very effective and enabled us to eventually meet with 41 people, 34 in the Montreal region and 7 in Quebec City. Table 5 gives an idea of the distribution of practitioners in the various areas of activity and shows that the sampling plan was generally well adhered to.

3. Description of Sample

The information for this study was therefore gathered from 181 non-jurists working in various areas of the criminal justice system for adult offenders. Thus, nearly 40% of them (see Table 6) worked for the probation service of the Quebec Ministry of Justice, 30% or so in parole offices, 16.6% in penitentiaries, and 8.3% in detention centres administered by the provincial government. A last group representing 6.6% of our sample worked in halfway houses, at the Philippe Pinel Institute, in the Fine Option Program and at the Quebec Association of Social Rehabilitation Agencies.

Table 5

Distribution of Non-Jurist Practitioners

Interviewed by Area of Activity

Area of Activity	Planned Number of Interviews	Actual Number of Interviews
Probation		
Montreal	13	11
Quebec	5	4
Provincial Detention		
Montreal	2	3
Penitentiaries		
Montreal	4	5
Parole		
Montreal	13	11
Quebec	5	3
Other		
Montreal	3	4
TOTAL:	45	41

Table 6

Characteristics of the Sample

6.1 Sex		
Male	106	65%
Female	57	35%
	163	100%
No response	18	
Total:	181	

6.2 Age		
25 yrs and under	7	4.4%
26 to 35 yrs	91	56.9%
36 to 45 yrs	49	30.6%
46 yrs and over	13	8.1%
	160	100 %
No response	21	
Total:	181	

6.3 Education		
Criminology	97	60.2%
Social work	23	14.3%
Psychology	14	8.7%
Law	1	0.6%
Other	16	9.9%
Criminology and other	10	6.2%
	161	100 %
No response	20	
Total:	181	

6.4 Experience		
Less than 1 year	10	6.2%
1 to 3 years	24	14.9%
More than 3 years	127	78.9%
	161	100 %
No response	20	
Total:	181	

6.5 Area of Activity		
Probation	71	39.2%
Provincial detention	15	8.3%
Penitentiaries	30	16.6%
Parole	53	29.3%
Other	12	6.6%
Total:	181	100 %

6.6 Function		
Officer	144	85.2%
Director/warden	24	14.2%
Other	1	0.6%
	169	100 %
No response	12	
Total:	181	

Moreover, one of the respondents was a consultant, 14 were local directors and 144, or the great majority (85.2%) were clinical officers or resource persons, i.e. either probation officers (Probation Service), welfare workers (provincial detention), case management officers - institutions (penitentiaries), or case management officers - community (parole).

As far as other more general characteristics are concerned, such as sex, age, education and experience, we should mention that we do not have this information for everyone; 11% of the respondents did not supply this information.

Based on available information, it appears that two thirds were men; women represented 35% of the sample. Moreover, more than half of the respondents (56.9%) were 26 to 35 years of age and nearly one third were aged 36 to 45. Only a minority were 46 and over or 25 and under, i.e. 8.1% and 4.4% respectively.

With respect to education, nearly two thirds had a degree in criminology, 14.3% in social work, and 8.7% in psychology. The "other" category, which represented 9.9% of the respondents, referred to other disciplines such as sociology, anthropology, psycho-education, psychotherapy as well as philosophy, theology, education, guidance counselling, social animation, and even physical education.

With respect to experience in the area of adult delinquency, nearly three quarters of the sample had more than 3 years of experience, 14.9% had 1 to 3 years, and 6.2% had less than one year.

C. Treatment of Information and Analysis of Results

Most of the information gathered by means of the questionnaire was coded and processed by computer using S.P.S.S. software (Statistical Package for the Social Sciences). Answers to open questions were compiled according to the themes of study so as to bring out the most frequently expressed opinions and views while retaining more specific views.

The analytical plan was developed from the compilation of two types of data; the analysis per se was based on both quantitative and qualitative data.

D. Comments on the Methodology

Consistent with the heterogeneous character of our sample, we found varying degrees of familiarity with some of the themes investigated in both the questionnaire and the interviews. For example, probation officers had a very vague knowledge of certain post-judicial processes such as mandatory supervision and the federal administration of parole. Similarly, case management officers (institutions) and case management officers (community) were sometimes hesitant to comment on the real impact of the pre-sentence report and on conditions of probation generally prescribed in Quebec.

We should also comment on the representativeness of the sample. Case management officers - institutions (penitentiaries) are underrepresented probably due to the fact that a reminder was not sent to them. Because of intangible factors, the questionnaires for this category of practitioners were sent only in mid-February. The final sample therefore does not fully agree with the sampling plan.

PART TWO: SENTENCING

III - THE PRESENT SITUATION

This part will present the views of non-jurist practitioners regarding the provisions of the Criminal Code on sentencing, pre-sentence steps and procedures like plea bargaining, and the sentences usually imposed by courts in Quebec.

A. Provisions of the Criminal Code

In Canada, the courts enjoy wide discretion in matters of sentencing. Nevertheless, the Criminal Code prescribes maximum penalties and sometimes minimum penalties for individual offences when an accused is found guilty.

1. Maximum Penalties

Although the majority of the non-jurists interviewed were not very familiar with the notion of maximum penalty, they agree that maximum penalties provide an indication of the gravity of the offence. One of them said:

> "...They give an idea of the seriousness attributed to the offence by the legislator (...) Its an indicator of relative seriousness..." (5)

However, opinions were very divided on whether maximum penalties are based on specific criteria of proportionality. In fact, slightly more than half of the respondents who expressed an

opinion (57.4%) believe that this is rarely or never the case and attribute it to the obsolete character of the statutes. Accordingly, one of them said:

> "...I have never understood on which criteria these penalties are based. The problem is aging legislation. These laws were passed in 18.., they are relics (...) I don't see any continuity there..." (32)

Another explained:

> "...The penalties are attached to values (...) We have to adapt the laws to the values of society..." (05)

The case of breaking and entering a dwelling house is particularly explicit. Indeed, the maximum penalty provided by the Criminal Code for this offence is imprisonment for life; this was deemed disproportionate by many respondents.

Another group representing 4.1% of the respondents went so far as to say that maximum penalties are never based on specific criteria of proportionality. They believe that these penalties are simply unrealistic and totally theoretical.

At the other end of the spectrum, nearly 40% of the respondents (39.3%) believe that maximum penalties often correspond to certain criteria of proportionality without, however, indicating which

ones. (See Table 7)

While our respondents were relatively divided on the issue of criteria of proportionality, almost all (94.9%) agree that maximum penalties are rarely, indeed never, imposed by the courts, except in the case of exemplary sentences (see Table 8). This de facto situation affects the deterrent value of maximum penalties; 82.7% of the respondents believe that it is greatly diminished and even nonexistent (see Table 9). The majority of the respondents explained that, for offenders, the deterrent is the actual sentence, not the maximum penalty which is rarely imposed and remains a vague and theoretical notion removed from reality. The following comments reflect well the general view held by the respondents on this issue:

> "...When a guy decides to commit an offence, he doesn't give any thought to the maximum penalty. He only sees the possible benefits he might derive from the offence..." (40)
>
> "...They have no deterrent value. Perhaps for the socially adjusted, but not for offenders..." (05)
>
> "...The fact that a person goes before a court and receives a sentence is a deterrent in my opinion. Whatever the sentence. For the general public, the deterrent is more the possibility of receiving a sentence. For offenders, the sentence received is the deterrent and not the maximum penalty..." (04)

Moreover, the majority of the interviewees acknowledged that the public in general is unaware of the existence of maximum

Table 7

Correlation Between Maximum Penalties and Specific Criteria of Proportionality

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Very often	4	2.9	4	3.3
Often	48	34.3	48	39.3
Rarely	65	46.4	65	53.3
Never	5	3.6	5	4.1
Don't know	18	12.9	--	--
Total:	140	100.1	122	100.0

Table 8

Imposition of Maximum Penalties by the Courts

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Very often	1	0.7	1	0.7
Often	6	4.3	6	4.4
Rarely	119	85.0	114	86.9
Never	11	7.9	11	8.0
Don't know	3	2.1	--	--
Total:	140	100.0	137	100.0

Table 9

Deterrent Value of Maximum Penalties

Given That They are Rarely Imposed

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Remains strong	23	16.4	23	17.2
Is diminished	72	51.4	72	54.1
Nonexistent	38	27.1	38	28.6
Don't know	5	3.6	--	--
No response	2	1.4	--	--
Total:	140	99.9	133	99.9

Table 10

Belief That There are Very Different Serious Offences

That Carry Identical Maximum Penalties

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Yes	77	55.0	77	81.1
No	18	12.9	18	18.9
Don't know	43	30.7	--	--
No response	2	1.4	--	--
Total:	140	100.0	95	100.0

penalties. Those who do not deal with them in their work were not always completely familiar with them. Thus, to the question "Do you believe there are very different serious offences that carry identical maximum penalties?", 30.7% of the respondents said they did not know and only 40.7% were able to name a few. The offences most often mentioned were breaking and entering a dwelling house, robbery and murder which carry a penalty of imprisonment for life.

Of the respondents who expressed an opinion, 81% believe that identical penalties are provided for very different serious offences (see Table 10).

2. Minimum Penalties

Reaction to the issue of minimum penalties was strong among the non-jurists interviewed. Some maintained that it is the only way to achieve equity in the justice system; others argued that it precludes individualization of sentencing. Nevertheless, the interviews produced a certain consensus of opinion.

First, it should be remembered that, currently in Canada, very few offences carry a minimum penalty: carrying a firearm and importing drugs are punishable by a minimum term of imprisonment of one year and seven years respectively.

One of the first observations made by the practitioners was that the minimum term of 7 years for importing drugs leads to abuse. Indeed, charges are laid by the police and, depending on the police force involved, the charge may be drug trafficking or importing. Trafficking does not carry a minimum penalty. Therefore, the police hold very important discretionary powers which, incidentally, they share with the Crown prosecutor who also has the power to maintain or change the charge. Here is what one interviewee thought of this:

> "...The 7 years for importing is very discretionary. If a guy has no money, he'll get 7 years; if he does, the Crown will reduce the charge to trafficking and the guy will get less than 7 years and maybe only probation..." (07)

Another commented that the decision to impose 7 years of imprisonment for importing drugs is purely political and not very effective. One practitioner said:

> "...In my opinion, it's a matter of politics (...) to silence public protest..." (05)

It is generally maintained that although the purpose of this penalty, in theory, is to eliminate drug trafficking, it is quite different in practice because the small-time traffickers are the ones who get slapped with this penalty. The statements in this regard were eloquent:

> "...It should make traffickers think twice but the mules are the ones who get caught. Too bad for them..." (30)
>
> "...Some go on a two-week trip to Jamaica and return with a small load. Their trip is generally paid for, they're mules..." (35)

Furthermore, it would appear that these "mules" are often people with no criminal record who are relatively well integrated in society. Many practitioners believe that a minimum penalty of 7 years of imprisonment in such cases is an aberration. Here are some of their comments in this regard:

> "...It amounts to introducing someone to a life of crime..." (04)
>
> "...A first offence at 45 does not mean a delinquent way of life (...). It's not always the best way to help someone..." (23)
>
> "...Some people do not necessarily deserve prison..." (08)

Many practitioners also pointed out that the minimum penalties always call for imprisonment. They asked why other types of measures such as probation and community service orders are not used.

B. Pre-Sentence Steps and Procedures

The pre-trial period and plea bargaining are two steps in the sentencing process that can be crucial depending on their consequences.

1. Pre-Trial Period

While the pre-trial period may unfold without any significant happenings for many people, it can be synonymous with preventive detention for others. The non-jurists interviewed in this study generally agree on the criteria that should be used to justify preventive detention. These criteria are the ones currently applied, such as the protection of society (threat posed by the accused, probability of recidivism), the gravity of the offence (offence against the person or against property), the victim's circumstances, the accused's criminal record, previous breach of commitment by the accused (e.g. violation of probation or parole) and, of course, doubt that the accused would appear for his trial.

However, the decision to grant bail often appears to be discriminatory:

> "...Many people are released on bail and should not be. The courts are too liberal in this respect, for example when organized crime or the Hell's Angels are involved..." (33)

"...Solvency, in my opinion, is a bad criterion, it's much too discriminatory..." (31)

2. Plea Bargaining

According to the practitioners interviewed, plea bargaining is a very common judicial practice: only 3 of the 140 respondents did not think so (see Table 11). Since there are many types of plea bargaining, we should define them clearly in order to better understand the comments made by our respondents. The most frequent type of bargaining is called the "fix" in legal jargon. It is an agreement between Crown and defence counsel involving a single individual who agrees to plead guilty to a lesser offence than that with which he was charged; the Crown and defence then agree on the sentence they will recommend to the judge. The other type of bargaining does not involve only one individual but several; it is a kind of exchange of favours between Crown and defence attorneys. The Crown agrees to certain proposals from the defence regarding one or more specific individuals in exchange for which the defence agrees to let the Crown have specific other things in one or more other cases.

Regardless of the type of bargaining between the two attorneys (Crown, defence), criticism abounded from our respondents. In fact, 71.8% oppose this practice while 28.2% approve of plea bargaining (see Table 12).

The supporters of this type of agreement emphasize the saving of public expense and the saving of time in the proceedings.

> "...The advantage is that it unclogs the courts somewhat (...). Without it, the inmates would probably be doing their time at Parthenais. I think that it is a necessary evil, that we have to work with it..." (35)

> "...It's all right if it is done to avoid delays, loss of time. It saves taxpayers money..." (12)

Those who disapprove consider it a "parody of justice", justice reduced to a "game" played in the hallways:

> "...The sentence no longer has any impact for a guy who sees justice as a farce. Justice can be bought; this confirms his perception of the system..." (20)

Opponents believe that, in addition to tarnishing the image of justice, plea bargaining profits the structured criminal more than the less experienced offenders. The following comments reflect well this opinion:

> "...It's a real epidemic. All the guys with experience go for the "fix". They bargain with the police and jump on the "fix"..." (32)

> "...A smart offender will find a way to profit from that. The "fix" for stoolers, for example, (...). Those who get burned are the least experienced offenders..." (36)

Many practitioners believe that plea bargaining amounts to ignoring the individual for the benefit of the system. Moreover, it can backfire on the accused who agreed to the deal. Indeed, the judge does not always go along with the "fix". Also, the evidence against an individual may be weak and the "fix" makes it possible to obtain a conviction in a devious sort of way.

> "...It's common and it doesn't necessarily help the guy. He can plead guilty whereas, if the evidence is too slim, he might be discharged. It is not to the guy's advantage and 7 out of 10 times, it is offered to him as a favour..." (22)

The great majority of the non-jurist practitioners therefore believe that plea bargaining shows a lack of professional ethics on the part of the Crown and defence attorneys. They further believe that it obstructs justice and tarnishes the image of justice.

Table 11

Perception of Plea Bargaining as a Common Practice

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Yes	129	92.1	129	97.7
No	3	2.1	3	0.3
Don't know	8	5.7	--	--
Total:	140	99.9	132	100.0

Table 12

Attitude Toward Plea Bargaining

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Favourable	35	25.0	35	28.2
Unfavourable	89	63.6	89	71.8
Don't know	16	11.4	--	--
Total:	140	100.0	124	100.0

3. Pre-Sentence Report

The pre-sentence report is a tool likely to aid the sentencing judge in his decision and, if we believe the probation officers interviewed in this study, the recommendations included in the report are generally followed by the judge. Thus, 53.6% of the probation officers said that judges often take pre-sentence reports into consideration and 46.4% went so far as to say very often. These percentages are 64.4% and 25.8% respectively for all other practitioners, including probation officers (see Table 13). Some still have reservations about the real influence of the pre-sentence report:

> "...It's a good source of information (...), but I have doubts about the influence of the report other than for information gathering..." (36)

> "...I obviously only see the pre-sentence reports of those who are incarcerated (this person works in a custodial institution). I have observed that, in 40% of cases, the officer's recommendations deal with things other than incarceration..." (03)

Furthermore, although the majority of the practitioners consider the pre-sentence report to be a wealth of information of all kind, they find fault with its content.

First, a good number of the practitioners say that it is too descriptive and that it lacks a statement of position on the part of the officer who writes it. Also, the recommendations to the judge are often vague and imprecise. The following statements are particularly expressive:

> "...In terms of describing the facts, they are very interesting. But they are flawed with respect to the solutions recommended which are quite vague. The officers have relatively little discretionary power and take few risks. They have little knowledge of resources. They remain vague, somewhat like the supervision they exercise..." (04)

> "...The reports are overly prudent. The pre-sentence report has been diluted over the past few years. The recommendations are sometimes very vague..." (02)

Another criticism relates to the evaluative aspect of the report:

> "...The reports are deficient mostly in the evaluation of the offence. They have trouble identifying potential offenders on their way to becoming structured criminals. In these cases, they sometimes recommend community service; it's an aberration..." (29)

Finally, many practitioners deplore the fact that the recommendations of pre-sentence reports mostly call upon programs administered by the probation service and that other available resources are ignored.

Despite these few criticisms, the majority of the practitioners agree that the pre-sentence report is very useful as a special means of informing the judge. Many mentioned, however, that the report is sometimes misused as in certain cases where plea bargaining is involved. Indeed, the probation officer may learn that an agreement has been reached between the Crown and the defence after he has submitted his report; his report is then no longer a consideration and, when all is said and done, becomes useless. Another example of misuse of the report is where it is requested by defence attorneys for the sole purpose of delaying proceedings; when an accused is free and there is a strong likelihood that he will be convicted and sentenced to imprisonment, the defence, by requesting a pre-sentence report, allows his client to remain free for a few extra months. One of the interviewees had this to say:

> "...It helps attorneys get adjournments of 3 to 4 months sometimes. It's the last postponement mechanisms and the attorneys use it. Not all judges are taken in. Some will ask the attorney to justify his request. But then again, once the attorneys know the judge and his requirements, they prepare themselves accordingly..." (28)

On the whole, the major flaws of the pre-sentence report at present are in the evaluation of the offence and the recommendations to the judge. The only other real problem is with the use of the pre-sentence report by defence attorneys.

Table 13

Consideration of the Pre-Sentence Report by Judges

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Very often	34	24.3	34	25.8
Often	85	60.7	85	64.4
Rarely	13	9.3	13	9.8
Never	--	--	--	--
Don't know	8	5.7	--	--
Total:	140	100.0	132	100.0

C. Sentences Imposed

The perceptions that non-jurist practitioners have of the sentences usually imposed by the courts enabled us to determine the prevailing situation in sentencing today. Two themes were selected for consideration: the severity and disparity of sentences.

1. Severity of Sentences

The quantitative analysis of the questionnaires revealed that 65.4% of the respondents believe that the sentences handed down by courts in Quebec are generally about right. Another group representing 21.5% of the respondents claims that the sentences imposed in Quebec are generally not severe enough. The other respondents (13.1%) state, on the contrary, that the sentences imposed in Quebec are generally too severe.

As for the sentences imposed in Canada as a whole, nearly 40% of the practitioners did not respond stating simply that they did not know. However, 37.1% said that they seemed to be about right, compared to 13.6% who found them not severe enough and 10.7% who found them too severe.

Table 14 shows that the respondents who expressed an opinion on the severity of sentences are similarly distributed among the various categories for Quebec and Canada. Thus, approximately

two thirds find that the sentences are generally about right, while the other third are dissatisfied, 21-22% find them not severe enough and approximately 15% find them too severe.

Table 14

Perceived Severity of Sentences

Generally Imposed in Quebec and Canada

	In Quebec				In Canada			
	All Respondents		Respondents Who Expressed an Opinion		All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%	N	%	N	%
Too severe	17	12.1	17	13.1	15	10.7	15	17.4
About right	85	60.7	85	65.4	52	37.1	52	60.5
Not severe enough	28	20.0	28	21.4	19	13.6	19	22.1
Don't know	8	5.7			53	37.9		
No response	2	1.4			1	0.7		
Total:	140	99.9	130	100.0	140	100.0	86	100.0

2. Disparity of Sentences

The current sentencing system favours an individualized sentencing approach under which the judge can take into account a number of factors specific to the accused, aggravating and mitigating circumstances of the offence, etc. This necessarily leads to a certain degree of disparity in sentencing and, as stated by one of the practitioners interviewed in this study:

> "...It's the price to pay for individualized sentencing where all significant factors are taken into account..." (20)

As another practitioner mentioned, it is also important to keep in mind that:

> "...Disparities work both ways. They can be advantageous or disadvantageous for the offender..." (02)

In spite of everything, disparity in sentencing does not always seem warranted. While 61.3% of the questionnaire respondents believe that variations in the sentences imposed in Quebec for similar offences are warranted, 38.7% believe the opposite (see Table 15). The interviews revealed that all the practitioners observed unwarranted disparities in sentences at one time or another and some more frequently than others.

In order to learn more about the disparities observed, a list of factors likely to explain variations in sentencing was included in the questionnaire and respondents were asked to give their opinion on each item (see Tables 16 and 17). This enabled us to draw a list of factors in order of priority as indicated by the non-jurist practitioners.

Thus, we find in first place the offender's criminal record which 93.9% of the respondents believe is likely to influence the sentence.

The judge's subjectivity is another factor indicated by 86.8% of the practitioners. This refers to the judge's personality, his personal characteristics such as openmindedness or strictness, etc. Incidentally, as one of the interviewees mentioned:

> "...We must not forget that the system is administered by humans and that judges are human like everyone else..." (30)

The attorneys' skills come in third place having been chosen by 86.7% of the respondents.

The judge's desire to protect society, especially when a certain type of offence is on the rise, was deemed likely to influence the sentence by 85% of the practitioners. Indeed, this factor can result in exemplary sentences that are often more severe than the usual sentence for that type of offence.

Other factors deemed important by the respondents in proportions ranging from 84.5% to 74.6% are the objective and factual circumstances of the offence, the judge's desire to individualize the sentence, and temporal variations in social reaction to a given offence. The list does not end here however. The interviews enabled us to determine many other factors likely to explain variations in sentences.

We should first mention geographic location which is considered a determining factor by many practitioners. One of them stated:

> "...There's a geographic disparity between sentences imposed in Western Canada, the United States and Quebec. In Quebec, we are very lenient compared to other places..." (36)

Along the same lines, many practitioners spoke of unwarranted discrepancies between major urban centres and rural areas, disparities apparently attributable to differences in culture and mentality. One said: "...Outside (in the rural areas), the normative and normal are commingled..."(02). Another pointed out:

> "...There is disparity between Montreal and the regions. The sentences are less severe in urban centres (...) in cities, perhaps because the judges are more used to seeing horrors..." (16)

Another frequently mentioned factor is the type of court. It would seem, according to many practitioners, that the sentences imposed by municipal court judges are much more severe than those imposed by judges of the Court of Sessions of the Peace.

Many of the other factors mentioned are related to the personal situation of the accused. The offender's financial situation seems to be a significant factor for a good number of practitioners; the wealthier the accused, the more he can afford a good lawyer and the greater the likelihood that he will get off lightly. The offender's mental capacity and social status are other significant factors indicated by many, as well as his personality per se. One practitioner said:

> "...Swindlers, for example, are very good at manipulation and theatrics, and often so are their relatives. Sometimes, the mother will appear before the judge crying, etc..." (30)

Another pertinent factor, according to many respondents, is the offender's experience with the system in the sense that:

> "...If it's his first offence, he'll get pushed around by the system. But later, he'll know how to deal with the police, the attorneys..." (32)

We must not overlook the case of informers who, despite an impressive criminal record, actually manage to get preferential treatment from police and judicial authorities.

Finally, many practitioners pointed out that serious offences are more subject to disparity in sentencing than less serious offences.

> "...For serious offences like manslaughter, I think that there is a great deal of discrepancy in sentencing. Some get 2 years, others 10 years, 12 years..." (40)

> "...What's the difference between 2 years minus one day and 9 years for manslaughter? The sadistic nature of the act? (...) That's a large gap that is difficult to explain..." (39)

The foregoing list of factors is by no means exhaustive but it gives an idea of the disparities observed by the non-jurist

practitioners interviewed or consulted by questionnaire. On the whole, the majority consider disparities in sentences to be warranted. Nearly 40% consider them unwarranted and, finally, all admitted having found them unwarranted at one time or another.

Table 15

Perceived Variations in Sentences Imposed in Quebec for Similar Offences

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Warranted	76	54.3	76	1.3
Unwarranted	48	34.3	48	38.7
Don't know	16	11.4	--	--
Total:	140	100.0	124	100.0

Table 16

Factors Likely to Explain Variations in Sentences Imposed in Quebec (All Respondents)

Factors		Yes	No	Don't Know	No Response	Total
Offender's criminal record	N	124	8	3	5	140
	%	88.6	5.7	2.1	3.6	100.0
Objective and factual circumstances of the offence	N	109	20	5	6	140
	%	77.9	14.3	3.6	4.3	100.0
Judge's subjectivity	N	105	16	12	7	140
	%	75.0	11.4	8.6	5.0	100.0
Attorneys' skills	N	104	16	11	9	140
	%	74.3	11.4	7.9	6.4	100.0
Judge's desire to protect society in a particular situation	N	102	18	12	8	140
	%	72.9	12.9	8.6	5.7	100.0
Judge's desire to individualize the sentence	N	92	27	7	8	140
	%	70.0	19.3	5.0	5.7	100.0
Temporal variations in social reaction to a given offence	N	91	31	11	7	140
	%	65.0	22.1	7.9	5.0	100.0

Table 17

Factors Likely to Explain Variations

in Sentences Imposed in Quebec

(Respondents Who Expressed an Opinion)

	YES		NO		
Factors	N	%	N	%	TOTAL
Offender's criminal record	124	93.9	8	6.1	132
Judge's subjectivity	105	86.8	16	13.2	121
Attorneys' skills	104	86.7	16	13.3	120
Judge's desire to protect society	102	85.0	18	15.0	120
Objective and factual circumstances of the offence	109	84.5	20	15.5	129
Judge's desire to individualize the sentence	98	78.4	27	21.6	125
Temporal variations in social reaction to a given offence	91	74.6	31	25.4	122

IV - REFORM PROPOSALS

In this part, we will present the practitioners' views on selected reform proposals as well as their suggestions for changes to particular Criminal Code provisions, pre-sentence steps and procedures, and approaches to sentencing.

A. Provisions of the Criminal Code

1. Maximum Penalties

The various practitioners were very divided on the prospect of changing maximum penalties. Indeed, 45.6% of the respondents would favour reducing the maximum penalties while an almost equal proportion (43.2%) would like to maintain the status quo (see Table 18). Those in favour of a reduction first argue that the courts might impose maximum penalties occasionally if they were more realistic. Two practitioners had this to say:

> "...Yes, why not reduce them so that we could use them, especially in the case of exemplary sentences..." (07)

> "...We could reduce them to increase their deterrence and bring them closer to reality. Then, they would be used more often..." (25)

Furthermore, many respondents believe that maximum penalties should be reduced especially for offences against property. The offences most often mentioned in this regard are still

breaking and entering a dwelling house and robbery which, like murder, currently carry a maximum penalty of imprisonment for life.

The proponents of the status quo believe that it is important to give the judge latitude so that he may truly be able to individualize the sentence. The following statement reflects this view:

> "...No, no changes. Judges have freedom of action, broad discretionary powers and it is important to let them have these. They can thus judge each case individually..." (03)

Moreover, some would prefer to leave things as they are for fear of abuse in imposition of severe sentences. One practitioner stated:

> "...The danger with reducing them is that judges would impose the maximum penalties more often and, therefore, sentences would become more severe (...). Actually, we could leave things as they are..." (12)

Finally, a minority representing 11.2% of the respondents would favour an increase in maximum penalties, especially for certain offences against the person. This is what one practitioner said:

> "...The penalties are often not severe enough for sexual offences. They should

> be reviewed. Distinction should be made between violent and non-violent offences..." (31)

The practitioners also expressed their opinion on criteria for the imposition of maximum penalties in the prospect of reform. While all or nearly all of the respondents agree on certain criteria, they are very divided on others (see Table 19). The gravity of the offence and public protection are two criteria that should be taken into consideration in the imposition of maximum penalties according to 99.3% and 94.9% of the respondents respectively. Damages resulting from the perpetration of the offence was mentioned by only 64.8% of the respondents. The sample is completely divided on the criterion of deterrence with 51.5% of the practitioners in favour and 48.5% against. Finally, the usual practice of the court was rejected as a criterion for imposing maximum penalties by a majority of 69.4% (see Tables 19 and 20).

The practitioners mentioned other criteria that could be applied in the imposition of maximum penalties, such as the offender's criminal record, increased seriousness of the offence relative to previous offences, and degree of planning and premeditation of the offence.

Table 18

Contemplated Changes to Maximum Penalties

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Increase	14	10.0	14	11.2
Reduction	57	40.7	57	45.6
No change	54	38.6	54	43.2
Don't know	13	9.3	--	--
No response	2	1.4	--	--
Total:	140	100.0	125	100.0

Table 19

Criteria That Should be Considered
in the Imposition of Maximum Penalties
(Respondents Who Expressed an Opinion)

	YES		NO		
Criteria	N	%	N	%	TOTAL
Gravity of offence	138	99.3	1	0.7	139
Public protection	129	94.9	7	5.1	136
Damages resulting from perpetration of the offence	81	64.8	44	35.2	125
Deterrence	67	51.5	63	48.5	130
Usual practice of the court	34	30.6	77	69.4	111

Table 20

Criteria That Should be Considered
in the Imposition of Maximum Penalties
(All Respondents)

Criteria		Yes	No	Don't Know	No Response	Total
Gravity of offence	N	138	1	--	1	140
	%	98.6	0.7	--	0.7	100.0
Public protection	N	129	7	2	2	140
	%	92.1	5.0	1.4	1.4	100.0
Damages resulting from perpetration of the offence	N	81	44	6	9	140
	%	57.9	31.4	4.3	6.4	100.0
Deterrence	N	67	63	5	5	140
	%	47.9	45.0	3.6	3.6	100.0
Usual practice of the court regarding various offences	N	34	77	17	12	140
	%	24.3	55.0	12.1	8.6	100.0

2. Minimum Penalties

Minimum penalties limit judicial discretion and 57.4% of the practitioners consider this undesirable. In their opinion, judges are perfectly able to administer the power they have and it is imperative to maintain an individualized approach to sentencing. Here is what one practitioner had to say in this regard:

> "...It limits judicial power too much. We should have more confidence in judges. They should be able to impose the sentence they deem appropriate. They are no longer responsible for the decision..." (28)

On the other hand, a group representing 42.6% of the respondents consider it desirable to limit the discretionary power of judges through minimum penalties (see Table 21).

Moreover, in the prospect of reform, the practitioners gave their opinion on the advisability of providing minimum penalties in all cases (12.9%) or at least in some cases (51.5%) such as the importation of cocaine and/or heroin, certain sexual offences like rape, sexual abuse of children and violent crimes in general (see Table 22). One interviewee suggested that they should be prescribed for property offences of a particularly reprehensible nature, such as fraud and fraudulent bankruptcies, in the hope that this would create a deterrent.

According to 35.1% of the respondents, criminal law should not provide minimum penalties for any offence (see Table 22).

The following comments illustrate well the position of the 13.4% of respondents who favour minimum penalties:

> "...Ideally, there should be a maximum penalty and a minimum penalty for each offence. Indeed, people find it hard to understand disparities in sentences for the same offence. At the same time, they want an individualized sentence..." (40)

> "...There should be a fixed penalty for each offence with variations depending on the person's criminal record, whether it's his first offence, second offence, etc... Ultimately, extenuating circumstances could be taken into account. This would raise fewer problems for the judge as well as the offender..." (31)

Therefore, there was no consensus of opinion on future changes that may be required.

Table 21

Limitation of Judicial Discretion

Through Minimum Penalties

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Desirable	55	39.3	55	42.6
Undesirable	74	52.9	74	57.4
Don't know	10	7.1	--	--
No response	1	0.7	--	--
Total:	140	100.0	129	100.0

Table 22

Advisability of Providing Minimum Penalties

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Yes, for all offences	18	12.9	18	13.4
Yes, for some offences	69	43.3	69	51.5
No, for all offences	47	33.6	47	35.1
Don't know	4	2.9	--	--
No response	2	1.4	--	--
Total:	140	100.0	134	100.0

B. Pre-Sentence Steps and Procedures

1. Pre-Trial Period

At present, the time spent in preventive detention by offenders sentenced to imprisonment is not taken into account in the determination of the sentence to be served. According to 64.4% of the practitioners, the judge should consider this factor in his decision. The other respondents were divided on this issue; 19.7% believe that the law should provide for consideration of this factor and 15.9% feel that this matter should be the responsibility of post-judicial authorities (see Table 23).

Table 23

Authority That Should Take Into Consideration
the Time Spent in Preventive Detention
in Determining the Exact Length of the Sentence to be Served

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
The law	26	18.6	26	19.7
The sentencing judge	85	60.7	85	64.4
Post-judicial authorities	21	15.0	21	15.9
Other	2	1.4	--	--
Don't know	5	3.6	--	--
No response	1	0.7	--	--
Total:	140	100.0	132	100.0

2. Plea Bargaining

Considering the criticism directed at plea bargaining, the practitioners were asked to give their opinion on the advisability of providing a legislative framework for plea bargaining (see Table 24). Results show that a very large majority of the practitioners, i.e. 86%, favour such a framework mainly to prevent abuse and obtain greater consistency in sentencing. One practitioner explained:

> "...As long as something exists, we might be better off to provide for it in law in order to prevent abuse, blackmail, money, bribery..." (40)

Those who object to a legislative framework for plea bargaining (14% of the respondents) argue firstly that formalizing this practice would burden the administration of justice. Also, many practitioners are convinced that a legal framework would not prevent irregularities. The following two statements illustrate this:

> "...If we legislate, it won't change a thing. It's a matter of education. We must rely on the lawyers' sense of responsibility..." (04)

> "...I'm not sure that a legislative framework would reduce irregularities..." (01)

Finally, one practitioner believes that "it would be preferable to establish mechanisms for exchanging information" between the

two parties rather than making statutory provisions for plea bargaining.

In any event, it is clear that the vast majority of the practitioners would prefer a legal framework for plea bargaining.

3. Pre-Sentence Report

One reform proposal would require the court to order a pre-sentence report when a sentence of imprisonment is being considered for an offender who has never been incarcerated. In the same line of thought, the practitioners were asked about the advisibility of ordering a pre-sentence report whenever the Crown seeks a sentence of imprisonment. While 44.6% of the respondents favoured a mandatory pre-sentence report when a sentence of imprisonment is sought, 28.6% objected and 26.6% gave a vague response which amounted to a "maybe" (see Table 25).

The practitioners were also asked about the possibility and advisability of including in the pre-sentence report elements relating to the victim's opinion about the sentence. The majority (68.1%) favoured this but 31.9% disapproved (see Table 26).

Table 25

Mandatory Pre-Sentence Report Whenever the Crown Seeks a Sentence of Imprisonment

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Yes	62	44.3	62	44.6
Maybe	37	26.4	37	26.6
No	40	28.6	40	28.8
Don't know	1	0.7	--	--
Total:	140	100.0	139	100.0

Table 26

Inclusion in the Pre-Sentence Report of Elements Relating to the Victim's Opinion About the Sentence

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Yes	92	65.7	92	68.1
No	43	30.7	43	31.9
Don't know	5	3.6	--	--
Total:	140	100.0	135	100.0

C. Approaches to Sentencing

Before we broach the subject of sentencing guidelines and approaches, we will look at the factors to be considered in the determination of the sentence.

1. Factors to be Considered in the Determination of the Sentence

The practitioners gave their opinion on a number of factors likely to be determining in reaching a decision on a sentence. The results (see Tables 27 and 28) show that the objective and factual circumstances of the offence as well as the offender's criminal record are considered very significant factors by almost all the practitioners consulted, i.e. by 99.3% and 95.6% respectively. The judge's desire to individualize the sentence ranks third; 83.2% of the respondents consider this factor to be important in choosing a sentence. Only half of the practitioners (55.2%) believe that the judge's desire to protect society should be considered as a factor. As for temporal variations in social reaction to a given offence and the victim's satisfaction, they are dismissed by two thirds of the respondents, i.e. 66.4% and 67.2% of the practitioners respectively.

The interviewees also mentioned other important factors to be considered in reaching a decision on a sentence: specific

characteristics of the offender such as his age, family and employment status, degree of social integration, his general and specific reasons for committing the offence and, finally, his needs such as those related to drug or alcohol problems.

Table 27

Factors to be Considered in
Reaching a Decision on a Sentence
(Respondents Who Expressed an Opinion)

Factors	YES		NO		TOTAL
	N	%	N	%	
Objective and factual circumstances of the offence	139	99.3	1	0.7	140
Offender's criminal record	131	95.6	6	4.4	137
Judge's desire to individualize the sentence	109	83.2	22	16.8	131
Judge's desire to protect society in a particular situation (rise in a given offence)	69	55.2	56	44.8	125
Temporal variations in social reaction to a given offence	42	33.6	83	66.4	125
Victim's satisfaction	40	32.8	82	67.2	122

Table 28

Factors to be Considered in

Reaching a Decision on a Sentence

(All Respondents)

Factors		Yes	No	Don't Know	No Response	Total
Objective and factual circumstances of the offence	N	139	1	--	--	140
	%	99.3	0.7	--	--	100.0
Offender's criminal record	N	131	6	1	2	140
	%	93.6	4.3	0.7	1.4	100.0
Judge's desire to individualize the sentence	N	109	22	4	5	140
	%	77.9	15.7	2.9	3.6	100.0
Judge's desire to protect society in a particular situation	N	69	56	9	6	140
	%	49.3	40.0	6.4	4.3	100.0
Temporal variations in social reaction to a given offence	N	42	83	10	5	140
	%	30.0	59.3	7.1	3.6	100.0
Victim's satisfaction	N	40	82	9	9	140
	%	28.6	58.6	6.4	6.4	100.0

2. Guidelines

The practitioners were asked about the need to establish guidelines to provide a framework for sentencing. Fifty-eight percent (58%) of the respondents would support the establishment of guidelines, 33.3% tended to agree with the proposal and 8.7% totally disagreed (see Table 29).

The practitioners who support this proposal generally consider that it is probably a good way to reduce unwarranted disparities. One of them explained as follows:

> "...Yes, to prevent such great disparities, I think that individualization is sometimes carried too far..." (40)

Those who lean in favour of establishing guidelines to provide a framework for sentencing have reservations regarding the nature of these guidelines. They fear that guidelines, in many cases, would become a yoke that would be more a burden than an aid. The following comments are explicit in this regard:

> "...Guidelines would not be a bad thing but they should not be too much of a burden for the judges. Judges must not become technocrats. It is essential that they retain their latitude..." (29)

> "...Yes, but we must be careful not to overregulate. The Parole Board, for example, is overregulated, it is bogged down in regulations..." (02)

The practitioners who oppose the establishment of guidelines believe that judges should have all the latitude they desire. They fear that guidelines would prevent judges from individualizing the sentence.

They also believe that the right to appeal a sentence is sufficient for controlling disparities. One practitioner said:

> "...Anyway, if there really is injustice or disparity, there's still the appeal. It's a good control mechanism, review mechanism..." (28)

Having evaluated the need to establish sentencing guidelines, the practitioners were proposed a number of models ranging from a tariff system of sentencing to giving the judge full discretionary power (see Tables 30 and 31). It appears that only one of the five proposed models received the support of a wide majority of practitioners (82.8%): a legislative provision stating the purpose and principles of sentencing and the weight to be given to various factual elements (such as the gravity of the offence, damages incurred, the circumstances of the offence, etc.).

More than half of the respondents, i.e. 57.6% are in favour of another model under which the judge would have full discretionary power but would be required to state, in the sentencing judgment, the reasons and purposes for his disposition of the case. In this regard, one practitioner said:

> "...The judge should explain his decision in understandable terms or should write it in words that an ordinary citizen can understand (...). The judge is too often alone in his decision..." (13)

The tariff system of sentencing with mathematical weighting factors was favoured by 38.1% of the respondents while 32.6% liked the system of directives issued by the provincial Court of Appeal and 25%, the establishment of average sentences based on the statistical analysis of current sentencing practice.

3. Approaches to Sentencing

The information gathered during the interviews on the subject of guidelines and maximum/minimum penalties, and the quantitative data produced by the questionnaire enabled us to identify several approaches to sentencing. The two most popular approaches with the majority of the practitioners are based on the individualization of the sentence, one group in favour of giving the judge full discretionary power and another in favour of collaboration between the judge and psychosocial practitioners. The third option, based on the principle of equity and consisting of a strict sentencing structure, is supported by a minority only. Each of these approaches is described in the following paragraphs.

3.1 Indiyidualization of the Sentence With Full Discretionary Power for the Judge

The supporters of this approach consider that the judge is solely responsible for sentencing and that he should have broad freedom of action so that he may truly be able to individualize the sentence. Accordingly, the only acceptable provisions in the Criminal Code are those that provide a maximum penalty for each offence. Minimum penalties appear to be senseless because they only take into account the offence committed, without consideration of the individual. The supporters of this approach also oppose the establishment of sentencing guidelines which, in their view, may be too binding on the judge thus limiting opportunities to individualize the sentence. The judge is therefore the only person who determines the sentence as he is the only one who can justify and explain his decision.

3.2 Individualization of the Sentence by the Judge With the Collaboration of Psychosocial Practitioners

The practitioners who prefer this approach consider that the sentence is not just a judicial decision but a social decision as well. As one practioner said: "...We must go beyond the legal boundaries into the social sphere..." (05). Accordingly, they favour the intervention of other professionals in sentencing and would like sentencing to become the responsibility of a multidisciplinary board within which the judge would be be responsible

for all legal aspects while the other professionals would be responsible for the psychosocial aspects including evaluation of the offender. They also agree with the principle of maximum penalties for all offences and minimum penalties for certain specific offences. This approach would enable the judge or board to retain a certain degree of latitude and thus individualize the sentence while avoiding excessive disparity in sentencing.

3.3 Strict Sentencing Structure

The supporters of this model place the principle of equity above all else; in their view, justice must be fair; that is the only criterion to be met. Accordingly, each offence must correspond to a set penalty. The individual is no longer a consideration but only the offence committed. The Criminal Code must therefore provide a minimum penalty for each offence. The tariff system of sentencing determines the sentence according to the offender's criminal record. Maximum penalties are useless with this approach. As for the judge, he alone decides, of course, but he really no longer has any discretionary power since he delivers sentences according to a schedule. This is the only way to avoid disparities according to the supporters of this approach.

Table 29

Need to Establish Guidelines

to Provide a Framework for Sentencing

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Yes	80	57.1	80	58.0
Maybe	46	32.9	46	33.3
No	12	8.6	12	8.7
Don't know	1	0.7	--	--
No response	1	0.7	--	--
Total:	140	100.0	138	100.0

Table 30

Guideline Models

Models	YES N	YES %	NO N	NO %	TOTAL
Legislative provision stating the purpose and principles of sentencing and the weighting of factual elements	101	82.8	21	17.2	122
Giving the judge full discretionary power	68	57.6	50	42.4	118
Tariff system of sentencing with mathematical weighting factors	45	38.1	73	61.9	118
System of directives issued by the provincial Court of appeal	30	32.6	62	67.4	92
Establishment of average sentences	29	25.0	87	75.0	116

Table 31

Guideline Models

odels		For	Against	Don't know	No response	Total
egislative provision tating the purpose nd principles of entencing and the eight to be given o various factual lements	N	101	21	10	8	140
	%	72.1	15.0	7.1	5.7	
iving the judge full iscretionary power ıile requiring clear statement of ıe reasons and ırpose for his ıoice of sentence	N	68	50	13	9	140
	%	48.6	35.7	9.3	6.4	100.0
evelopment of a ariff system of entencing with athematical weighting actors relative to ıe gravity of the ffence, the circum- tances of the offence ıd the characteristics f the offender	N	45	73	10	12	140
	%	32.1	52.1	7.1	8.6	100.0
stem of directives sued by the ovincial Court of peal	N	30	62	30	18	140
	%	21.4	44.3	21.4	12.9	100.0
stablishment of erage sentences sed on the statis- cal analysis of ırrent sentencing actice	N	29	87	10	14	140
	%	20.7	62.1	7.1	10.0	100.0

PART THREE

TYPES OF SENTENCES

V - IMPRISONMENT AND ITS ALTERNATIVES

The individuals in our target group had very different views on imprisonment. Nevertheless, we selected three themes that enabled us to better determine their views: the principle of detention per se, the purpose of sentencing and, finally, alternatives to imprisonment. Following is an overview of the results obtained.

A. Detention

The general trend emerging from the comments of the practitioners in the criminal justice system is that Quebec courts impose sentences of imprisonment too often. That was the opinion of 65.0% (80) of the practitioners who commented on this subject (see Table 33).

> "Imprisonment is overutilized, for non-payment of fines for example." (18)

Some interviewees expressed the wish that imprisonment be reserved for serious and violent offences and for habitual criminals. Even in these cases, they question the effectiveness of short sentences although they see no other alternative. Underlying their comments is a general criticism of the current system.

> "The guys get out too early. They feel like they have defeated the system, which reinforces their delinquent values." (28)

> "It has not been proven to be effective in terms of preventing recidivism. If it worked, it would be lower. In any case, it's not a cure."" (20)
>
> "A person who commits an offence is shirking his responsibilities, and he is further relieved of his responsibilities in prison." (40)

However, despite serious flaws identified in the use of imprisonment, some practitioners (26%) consider the current situation to be quite acceptable.

> "Right now, it's on the decline and that's because of the development of serious and interesting alternatives to imprisonment. It's much better than it used to be and that's fine with me." (14)
>
> "They don't send everyone to prison for every offence any more. The quality of the magistrates has greatly improved." (19)

Others justify the use of detention by the current lack of valid alternatives.

> "It can't be said that there are too many prison sentences. On the contrary, I find sometimes that community work, for example, is not appropriate at all." (09)
>
> "We don't always have an alternative and that's why prisons are full." (15)

Overpopulation of prisons is a problem according to the practitioners, irrespective of their position on imprisonment. They would like to see better coordination between the judicial system

and the correctional system. Few respondents (11.3%) believe that judges should take into consideration available prison space when they impose a sentence of imprisonment while 21.8% would like them to do so, especially for "light offences". This, they explained, would avoid certain problems "inside" (see Table 32).

A minority of respondents (9%) deplored the fact that sentences of imprisonment are not imposed frequently enough, especially for certain types of offences such as sexual assault and financial crimes (see Table 33). Some practitioners said that offenders deserve to be punished:

> "Those who deserve it must be sent to prison." (13)
>
> "They're not angels, they must understand." (29)

Opinions and perceptions about imprisonment seem to vary depending on the purpose of sentencing and the perceived "effectiveness" of non-custodial alternatives. Some practitioners see the relationship between the purpose of sentencing and the reality of imprisonment as inadequate.

Table 32

Advisability of Taking Available Prison Space

Into Consideration in the Determination of the Sentence

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Yes, for most offences	15	10.7	15	11.3
Yes, for certain offences only	29	20.7	29	21.8
No	89	63.9	89	66.9
Don't know	7	5.0	--	--
Total:	140	100.0	133	100.0

Table 33

Frequency of Imposition of

Sentences of Imprisonment in Quebec

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Too frequent	80	57.1	80	65.0
Just right	32	22.9	32	26.0
Not frequent enough	11	7.9	11	9.0
Don't know	17	12.1	--	--
Total:	140	100.0	123	100.0

B. Purposes of Sentencing

The protection of society is considered a primary purpose of sentencing by 80% of the questionnaire respondents. For some, it is the ultimate goal toward which many secondary goals converge. Others perceive the protection of society as one objective among many. The former consider that all sentences must aim to protect the public even when secondary objectives are pursued, such as treatment and rehabilitation of the offender, punishment, deterrence and incapacitation. If one or more of these objectives are met, society will ultimately be protected. On the other hand, others consider that public security is important but other objectives are just as important. For example, the treatment and rehabilitation of the offender, in this view, should be considered as guiding principles of sentencing and as goals in themselves, not secondary objectives aiming toward the protection of society.

Thus, 50% of the respondents (70 people) consider that rehabilitation is a primary purpose of sentencing, while 29.3% feel that deterrence inherently protects the public. Also, 27.3% (39) maintain that punishment of the guilty is essential in itself (see Table 34).

Of course, many variables can influence these perceptions. Unfortunately, we are unable to identify them all at this time. It is obvious, however, that the various principles associated with sentencing influence the way we look at various types of

sentences. For example, when the ultimate goal is to protect society, preference is given to detention if it appears that temporary separation will serve this purpose and vice versa. However, society would be protected only for a short period of time:

> "Imprisonment should be used only as a last resort. This should be specified in law and judges should even be prohibited from imposing it unless the need has been demonstrated." (19)
>
> "At present, imprisonment merely limits a guy's movements for a period of time. That's all it must do. Only those who represent a threat should be in prison. On the other hand, once released, the guy is likely to be just as dangerous as before." (12)

One of the most frequent criticisms of the prison system is the absence of treatment, especially when rehabilitation is specified as a purpose of the sentence. Almost all the practitioners agreed on the fact that, at present, imprisonment does not cure anything. While some view prison as an exceptional environment where various types of treatment could and should be offered, others do not believe so or view treatment as a secondary purpose. Regardless of whether treatment is desirable, many practitioners would like prisons to provide more resources and opportunities for rehabilitation.

> "At present, there are no social rehabilitation programs in prison. The programs are non-functional. There is very little coordination in treatment programs. This should be an

> objective (education, trade, career). Sometimes, incapacitation is required for pathological cases or habitual criminals." (01)
>
> "Prisons should provide the means to help the guys redefine their lives. This is not done at present." (29)

Most of the practitioners who favour both rehabilitation and protection of society as purposes of sentencing pointed out the aspect of conflict between the two. If imprisonment is absolutely necessary, its impact on the offender must be positive in the short as well as long term. Thus, non-recidivism becomes a purpose of the sentence of imprisonment.

> "Prison protects society from dangerous individuals but it must also rehabilitate them. Otherwise, they'll turn to crime again and it will have served no purpose." (25)
>
> "Imprisonment should help a guy to become autonomous, productive. Nothing is done for the individual at the present time." (08)
>
> "It should be an opportunity to rehabilitate oneself but it's not always so in practice." (15)

Slightly more than 25% of the questionnaire respondents indicated deterrence and punishment as purposes of the sentence of imprisonment. In fact, they said that deterrence is associated with protection of the community in two ways: individually, the offender receives a serious warning, and symbolically, the punishment imposed tells society that the behaviour will not be tolerated. To achieve this, however, detention must be taken more seriously:

> "We should incarcerate only as a last resort. On the other hand, once a person is incarcerated, it should really be a period of incarceration. At present, it's reduced too much and many return. We should have stricter prison conditions but also make use of other measures." (02)

Those who do not really believe in the deterrence of the sentence of imprisonment told us that punishment alone is insufficient. Changes must be made to the prison way of life and, in order to do this, social reorganization is essential. Some believe that detention, which temporarily restricts freedom of movement, does not seem to achieve the rehabilitation of true offenders. On the other hand, the threat of punishment should deter others from committing crimes. This effect, however, is not unique to imprisonment. Ideally, alternatives to imprisonment should also deter existing and potential criminals. From another point of view, punishment as the purpose of the sentence is perceived as a means of making a person think twice and allowing society to sanction intolerable acts. It is a way of giving an appearance of justice. The notion of deserved punishment is thus associated with it.

> "We are all responsible. If we tolerate violence, crime, it will continue." (19)

Finally, while the practitioners say that imprisonment, in many cases, does not achieve the purpose of the sentence, they admit that, in some cases, there is no alternative to protect society. They are concerned, however, with life after prison.

A significant number of practitioners wish that the panoply of sentencing measures were extended. At present, they deplore the fact that the sentence, whatever it may be, is often not adequately related to the offence. Extension of sentencing measures would make it possible to more fully achieve the purposes of sentencing:

> "The sentence must hit a guy where it hurts." (28)
>
> "The sentence must have a personal and specific impact on the offender." (14)

The interviewees deplored the judges' lack of imagination, their confinement to jurisprudence. This naturally affects the development and even the use of alternatives to imprisonment. The next section will provide an overview of these alternatives.

Table 34

Perceived Purposes of the Sentence of Imprisonment

	N	%
Protection of society	35	5.0
Punishment	3	2.1
Protection of society and punishment	9	6.4
Rehabilitation	19	3.6
Rehabilitation and protection of society	19	13.6
Rehabilitation, protection of society and punishment	7	5.0
Deterrence	2	1.4
Deterrence and protection of society	11	7.9
Deterrence, punishment and protection of society	5	3.6
Deterrence, rehabilitation and protection of society	10	7.1
All of the above	11	7.9
Other	2	1.4
Other and all of the above	7	5.0
Total:	140	100.0

C. Alternatives to Imprisonment

All the participants in this study knew of at least one alternative to imprisonment. The ones most often mentioned were: community service, fines, protection and compensatory work.

The vast majority of the practitioners (90%) approve of alternatives to imprisonment; this does not mean, however, that they do not have criticisms (see Table 35). Some practitioners (17%) object to either the alternatives themselves or to a particular program.

1. Advantages

Those who recommend the use of non-custodial measures see them as a way to speed up the social reintegration of offenders, to save public expense or to unclog the system:

> "It's less expensive than prison and it it can produce better results." (11)
>
> "It's interesting. Community work, for example, can help someone integrate into an environment where he has responsibilities, where he is confronted with certain realities." (09).
>
> "We must try to achieve social peace through the most economical means possible." (17)

The majority of the practitioners believe that alternatives to imprisonment are an excellent way of achieving the purposes of sentencing. The analysis of the interviews revealed, however,

that some participants think that these types of measures should be rationalized to be effective. They may be inadequate for hardened criminals.

> "I'm entirely for it for people who are not hardened criminals. It's very worthwhile." (31)

We have already indicated that many practitioners agree with the principle of individualization of sentences. It is not surprising that the same practitioners advocate a better evaluation of convicted offenders in order to determine the most appropriate alternatives. The alternatives are effective only if they are applied to the right individuals. Thus, it is in the evaluation of offenders that the practitioners' role becomes essential. Many interviewees expressed the wish for greater cooperation between judicial authorities and social practitioners.

The interviews also revealed that the practitioners would prefer a stricter definition of the scale of sanctions. Non-custodial sanctions would be at the bottom of the scale while imprisonment should be the ultimate sanction.

> "There should be a gradation in sanctions. Detention should be the last alternative." (18)
>
> "For a first offence, alternatives should be used as much as possible." (25)

While many practitioners favour the imposition of non-custodial

sanctions in principle, the current practice is sometimes criticized:

> "Better measures might produce better results." (15)

Indeed, many practitioners would like these types of measures to be further developed, better organized and structured and they deplore Quebec's backwardness in this area. Many innovative programs were proposed, for example, increased involvement of the victims is advocated, seizure of salary where possible, the participation of the education system and even a social sponsorship program involving the use of volunteers.

> "We must innovate and introduce measures adapted to the needs of the guys and society." (14)
>
> "I'm for developing these measures further. They have potential. However, it takes a lot of time and better supervision to make it work." (08)
>
> "At present, there's room for alternatives. This is not foreign to budgetary activities. But there is also room for other things yet to be defined." (38)

The view that many adjustments are required because the alternative program is relatively new is not shared by all the practitioners. Some believe that the disadvantages are so great that the effectiveness of the measures becomes questionable; others simply do not believe in them at all.

2. Disadvantages

The 17% who oppose the use of alternatives raised the following types of objections:

> "It does not and cannot serve as a deterrent." (30)
>
> "The ones who benefit from them must not get the impression that they have defeated the system. But the clients often do not appreciate the pertinence of these types of sentences." (18)
>
> "Results have not been outstanding in practice. The impact of sentencing is lost and it doesn't amount to very much." (22)
>
> "It means cheap labour for employers and that's not right. Some people can also escape responsibility by doing community work for example. And then, the work is often botched because the guys are not motivated." (40)

These respondents seem rather disillusioned with alternatives to imprisonment. The most frequent criticism is the absence of positive results. In their opinion, even the development of other measures or better administration of existing ones would not solve the problem. However, the fact that they disapprove of alternatives to imprisonment does not necessarily mean that they approve of detention. This acknowledgement leaves them rather perplex. They do not know what else to do and imprisonment is also not a miracle solution. They failed to identify measures that would effectively meet the purposes of sentencing.

On the other hand, some practitioners who support existing alternatives to various degrees mentioned major problems often related to their administration. The most frequent criticism is that the officers assigned to these cases have no real power:

> "There's a lack of control. The officers don't have enough authority and without it, it is difficult to combine assistance and supervision." (20)

Other practitioners fear that the increased number and use of these types of sanctions would lead to an even more punitive State. Instead of unconditionally releasing a person who does not pose a threat to society, it is very likely that a sanction of this type, quite useless in this case, would be imposed just to satisfy the public.

> "They are sometimes imposed instead of nothing. These measures can be misused. It happens frequently." (13)

> "We must not work ourselves to death trying to invent all kinds of measures. If the judge decides not to resort to imprisonment, he must make sure that an alternative is needed. It's not always necessary or pertinent." (17)

Under the current system, the practitioners responsible for the administration of alternatives to imprisonment do not have broad freedom of action. For example, one respondent told us that probation officers do not have enough authority. Indeed, if an individual who is sentenced to X number of hours of community

work or subjected to a probation order fails to comply with the conditions or performs unsatisfactory work, the officer can only turn to the court and present his evidence to obtain, in the end, a much reduced complementary measure after considerable delay and expenditure of energy:

> "The alternatives should be considered as objectives in themselves, not as a way of circumventing the system. Many beneficiaries think like that because officers do not have any real power." (12)
>
> "There's no real threat at the end of the line. If the guys don't comply, there's nothing else to do but go back to court, which doesn't lead to much, except perhaps a fine of $50. I'd rather pay $100 than serve 100 hours, wouldn't you?" (28)

Another criticism of non-custodial sanctions, particularly of community work and compensatory work, is the possible overburdening of participating resources. In principle, the beneficiaries should perform a service for the organizations where they execute their sentence, and not cause them extra work.

> "The guys must perform a service for the resource organizations and not complicate their lives. So now, they are only taking good cases where detention would not have been recommended anyway." (16)

Very few practitioners indicated that they are against non-custodial sanctions. However, we cannot say whether they oppose the entire range of alternative measures. They may object to

only a few programs. Unfortunately, this assumption is difficult to validate at present. Nevertheless, it is quite evident that, at the present time, non-custodial measures are far from perfect. There is still much room for improvement in their administration and organization. For example, some practitioners deplore the fact that community service orders must be recommended in a pre-sentence report. Probation officers already have a heavy workload and an increase in clientele would cause much delay. To remedy this problem, at least in part, the pre-sentence report is presently being revised. In Montreal, for example, liaison officers are informing probation officers of the court's content requirements for the pre-sentence report. This avoids unnecessary work.

Finally, the practitioners expressed the wish that the achievement of the objective of alternatives to imprisonment could be better evaluated, but this is a difficult task. While some believe that non-custodial measures should be recommended only when there is no threat to public security, others see them precisely as a means of protecting society. Moreover, it seems that probation and fines are no longer adequate alternatives and that programs like community and compensatory work are now predominant. These measures are still very new and can certainly be improved. For example, the community could be more actively involved, the organizational structure could be reviewed, etc. Many practitioners who observe the ineffectiveness of detention, particularly short-term detention, support the use of these types of measures but also advocate the development of new programs and better administration of existing ones.

Table 35

Position Regarding Alternatives to Imprisonment

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Totally approve	90	64.3	90	66.6
Mostly approve	43	30.7	43	31.8
Mostly disapprove	2	1.4	2	1.5
Totally disapprove	--	--	--	--
Don't know	5	3.6	--	--
Total:	140	100.0	135	100.0

Table 36

Position Regarding Increasing the Number of Alternatives to Imprisonment

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Can reduce the number of sentences of imprisonment a lot	45	32.1	45	32.8
Can reduce the number of sentences of imprisonment a little	68	48.6	68	49.6
Can reduce the number of sentences of imprisonment very little	23	16.4	23	16.8
Cannot reduce the number of sentences of imprisonment at all	1	2.1	1	0.7
Don't know	3	2.1	--	--
Total:	140	100.0	137	100.0

VI — EXCEPTIONAL SENTENCES

This section deals with two sentences that have raised much controversy, namely the penalty provided for first-degree murder and the indeterminate sentence.

A. Penalty Provided for First-Degree Murder

A person convicted of first-degree murder is subject to the Criminal Code provision that currently prescribes a minimum term of imprisonment of 25 years before eligibility for parole. This sentence, which replaced the death penalty in 1976, has produced much reaction. Two thirds of the practitioners interviewed favour a reduction of the current minimum penalty (43.9%) or even its abolition (23%), while 28.1% favour the status quo and 5%, an increase in the length of the sentence (for further details, see Table 37).

Those who favour a reduction or the abolition of the current minimum penalty offered many criticisms. First, they criticize the government for wanting to satisfy public opinion above all without concern for the possible consequences of its decision. One practitioner explained as follows:

> "...It's a political decision that makes no sense. It's there to satisfy public opinion but it doesn't stand up (...). It's a time-bomb..." (15)

Another said: "...They wanted to be more humane but it's worse than before..."(07) adding:

> "Murder is a very serious offence but 25 years is inhuman. We should bring back the death penalty rather than let someone rot for 25 years. They are ticking time-bombs inside, they become mad, they have nothing else to lose..." (01)

Finally, the practitioners find themselves in a bind. Those who work in penitentiaries don't know what to do for the inmates serving this sentence:

> "...It's very difficult to administer a sentence of imprisonment. We don't know what to do with them during all this time..." (13)
>
> "...How do you explain to someone that he should study so that he can find a job when he gets out at the age of retirement or close to it..." (29)

The practitioners who favour a reduction or the abolition of the current penalty agree on certain alternatives (see Table 38). A proportion of 53.3% would like to abolish the minimum 25-year term of imprisonment before becoming eligible for parole and would like the judge to determine the effective length of the sentence at his discretion. One practitioner said:

> "...These guys have social adjustment problems inside and will probably have some outside. We should revise the eligibility date (...), the judge could

set it at the time of sentencing when
he has all the information at hand..." (26)

Another proportion of the supporters of a reduction or the abolition of the current penalty (25.3%) favour a reduction of the current sentence to a term of 15 to 25 years during which the judge could set the parole eligibility date at his discretion, as is presently the case for second-degree murder.

The other 21.3% proposed various alternatives. Some would like to bring back the death penalty; others would reduce the sentence to a term of 15 to 25 years but believe that the parole eligibility date should be set by post-judicial authorities and not the judge.

Table 37

Changes Considered to the Minimum Term of Imprisonment to be Served by Inmates Convicted of First-Degree Murder Before Eligibility for Parole

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Maintain the current minimum penalty	39	27.9	39	28.1
Increase the minimum term of imprisonment before eligibility for parole	7	5.0	7	5.0
Reduce the minimum term of imprisonment before eligibility for parole	61	43.6	61	43.9
Abolish the minimum penalty	32	22.9	32	23.0
No response	1	0.7	--	--
Total:	140	100.0	139	100.0

Table 38

Types of Reduction Considered to the Minimum Term of Imprisonment to be Served by Inmates Convicted of First-Degree Murder

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Reduce the current term of imprisonment to a term of 15 to 25 years, with the parole eligibility date to be set by the judge at his discretion	19	13.6	19	25.3
Abolish the minimum 25-year term before eligibility for parole, with the effective length of the sentence to be determined by the judge at his discretion	40	28.6	40	53.3
Other	16	11.4	16	21.3
Not applicable	63	45.0	--	--
No response	2	1.4	--	--
Total:	140	100.0	75	99.9

B. Indeterminate Sentence

The indeterminate sentence provided for habitual criminals considered dangerous under section 688 of the Criminal Code does not form the subject of a consensus among the practitioners contacted in our survey. Indeed, 57.7% of the respondents think that it is appropriate to provide for this type of sentence while 42.3% totally disapprove of this practice (for further details, see Table 39).

Reality is perhaps not as clear and simple. Indeed, a good number of the practitioners object to this type of sentence but are unable to offer any alternatives. They end up accepting it as a last resort, especially for sexual offences. Here are some of their thoughts on the subject:

> "...We need an alternative to control the really dangerous criminals. On the other hand, it's not imposed very often so there is some discernment in this type of sentence..." (20)
>
> "...For incurable sexual offenders, it's not a bad solution. It separates them from society as long as they remain dangerous..." (33)
>
> "...I agree for people who are pathological provided that it includes true treatment. For habitual criminals, however, I think it's excessive..." (29)

Those who support this type of sentence believe that, unlike a sentence of life imprisonment, an indeterminate sentence gives

the inmate a chance because his case can be reviewed annually by the Parole Board. Some also indicated that the cases they knew of (inmates serving an indeterminate sentence) had impressive criminal records and seemed to deserve this type of sentence. One practitioner also mentioned that the person he knew had already received a sentence of 45 or 50 years and that, therefore, it did not change anything in actual fact.

Finally, some explained that they agree with the principle but doubt the effectiveness of the measure, as the following statement indicates:

> "...I agree with the principle but as for its effectiveness, we must look at the facts. I doubt that the environment allows the sentence to be effective. Moreover, even if the cases can be reviewed annually by the Board, the Board members are not very competent and are even incompetent, so..." (07)

The practitioners who object to indeterminate sentences find that there is too much arbitrariness in this type of measure, the criteria are not clearly defined, and the assessments are not always credible. The following statements are explicit in this regard:

> "...Not at all in favour of this. It is too arbitrary. In the present state of things, I don't think that a valid prediction can be made (...). It would be preferable to have a fixed sentence..." (35)

> "...It can become aleatory. We must look at what's being accomplished inside. Is detention playing a rehabilitative role? Are there specific criteria? I don't believe in the effectiveness of these sentences because the environment is inadequate. I don't agree especially when we know that informers are on parole..." (05)

> "...It's a farce. It's like life *imprisonment without eligibility*. The assessments are not necessarily valid. The people who make the assessments are not always qualified..." (21)

Moreover, many practitioners believe that it amounts to the system or society giving up on some people:

> "...It's like giving up on some people. Everyone should have a clear and specific sentence (...). It's as if they decided they would no longer do anything for some people..." (03)

> "...It amounts to saying: "I don't know what to do with you any more'. Habitual criminals are often people with serious social adjustment problems. These types of sentences don't solve anything. It would be preferable to have fixed sentences. These people need to know, especially offenders who need to be structured, including in time..." (09)

Many practitioners also criticized the lack of programs for inmates serving indeterminate sentences in penitentiaries. As one said:

> "...The institutions don't care about them. They wait for the inmates to prove themselves or make a personal request. They are less responsive to them..." (34)

Finally, it should be noted that very few practitioners had an idea of the number of offenders currently incarcerated in Canada who meet this criterion. A proportion of 41.4% of the respondents did not know; 54.3% gave grossly exaggerated figures in the high hundreds and even 1,000 and 2,000; only 4.3% mentioned a figure between 25 and 40, which is close to the actual figure.

Table 39

Appropriateness of Indeterminate Sentences for Habitual Criminals Considered Dangerous

	All Respondents		Respondents Who Expressed an Opinion	
	N	%	N	%
Yes	75	53.6	75	57.7
No	55	39.3	55	42.3
Don't know	9	6.4	--	--
No response	1	0.7	--	--
Total:	140	100.0	130	100.0