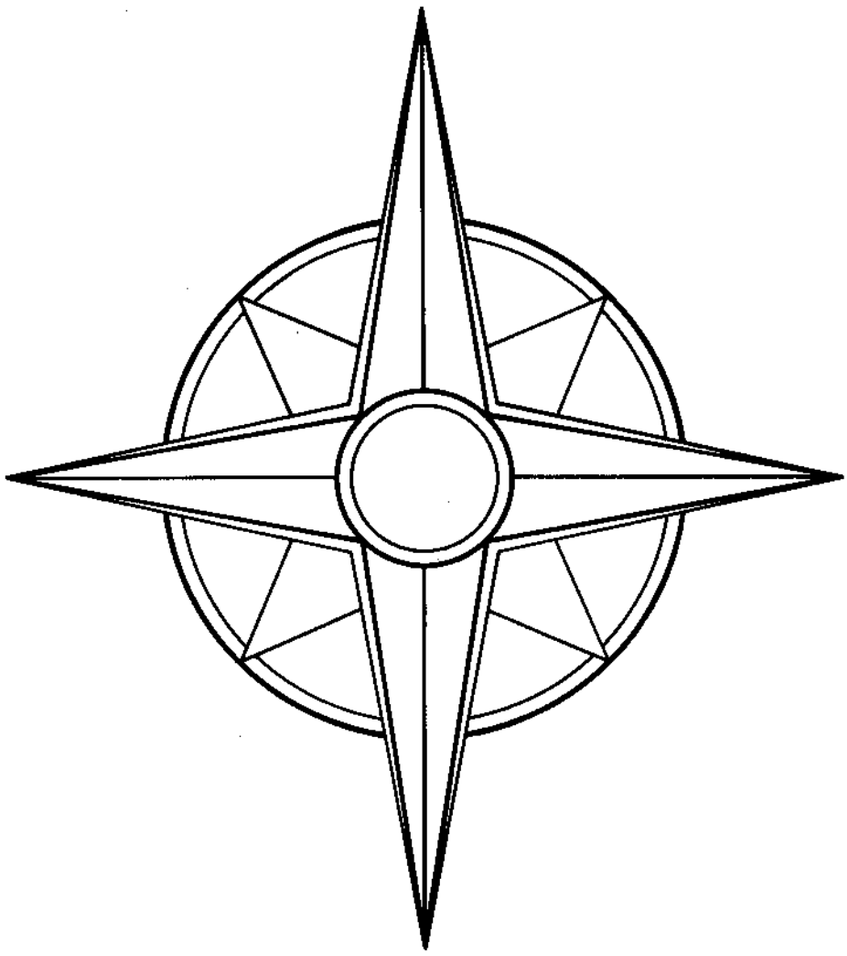

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A MESSAGE FROM THE MINISTER OF JUSTICE AND ATTORNEY GENERAL OF CANADA

The process of imposing appropriate sentences on criminals who have pleaded guilty to, or been found guilty of, crimes or offences is becoming increasingly more complex. The correct management of the offender once sentenced is also far from easy, whether the court sentence is served in the community or behind the walls of an institution.

The federal government is concerned, and has studied the problems involved in sentencing for many years. The intensity of this scrutiny has grown in the past decade, as the entire criminal law and criminal justice system has been placed under review. Members of the judiciary have shown that they are concerned by the difficulties that they must confront daily, and have suggested improvements. The public and its elected representatives, together with senior correctional managers, have also been expressing concern. Two major inquiries have published reports recently, and there have been previous commissions and studies whose findings can be taken into account. In addition, sentencing has been the topic of research, inquiry and discussion in other countries with similar systems of justice. In these foreign jurisdictions, problems have been noted that are similar to those in Canada. It is evident that the law relating to the sentencing of criminals is in need of revision if it is to meet the requirements of society in the coming years.

This document outlines the present situation, reviews some of the concerns expressed and problems identified, and indicates in some detail the thinking of the federal government about this very complex issue. Possible solutions to some of the problems are reviewed, and proposals that may form the basis of amendments to the law are put forward.

It is hoped that this paper will provide the foundation for an informed dialogue between policy-makers and practitioners, between experts and informed and concerned members of the public, so that the further development of the law on sentencing will successfully meet present concerns. It must be stressed that only with the involvement of the Canadian public can we be assured that the criminal law and the criminal justice system will attain the necessary balance between the rights of an individual and the power of the state.

A. Kim Campbell, P.C., M.P.

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INTRODUCTION

Any discussion of sentencing in Canada requires a brief introduction to what has been a relatively active area of policy consideration over the past several years.

The federal government and the provinces unanimously agreed in 1979 to a comprehensive review of the *Criminal Code*. This review, known as the Criminal Law Review, led to two particular publications dealing with different aspects of the criminal justice system. In 1982, the Government of Canada published *The Criminal Law in Canadian Society*, which provided a basic framework of principles within which the more specific issues of criminal law policy could be addressed. In 1984, *Sentencing*, a White Paper, was published as a result of the work of the Sentencing Project within the overall Criminal Law Review. This was followed by the presentation to Parliament of an extensive package of legislative amendments (Bill C-19).

The Correctional Law Review started at the same time as the Criminal Law Review but with its focus on the law and its reform in the correctional domain. It produced important work, particularly *Correctional Philosophy* (Working Paper No. 1), *A Framework for the Correctional Law Review* (working paper No. 2) and *Conditional Release* (working paper No. 3).

The C-19 process mentioned above was essentially halted by the 1984 election and the Bill died. One of the products of the Sentencing Project was the appointment of the Canadian Sentencing Commission. It reported in March 1987. The major recommendations were:

A. The incorporation into the *Criminal Code* of a legislated Declaration of Purpose and Principles of Sentencing.
B. The replacement of the current penal structure in the *Criminal Code*. Minimum penalties were to be abolished except for mandatory sentences of life imprisonment for murder and treason, and all other offences were re-ranked and inserted into a new structure of maximum penalties (12 years, 9 years, 6 years, 3 years, 1 year and 6 months of incarceration).
C. The removal from the *Criminal Code* of provisions concerning dangerous offenders.
D. The abolition of full parole. Offenders would be compelled to serve 75 per cent of their sentences.
E. The implementation of presumptive guidelines to specify when an offender should be incarcerated and for how long.
F. The creation of a permanent sentencing commission.
G. The increased use of community-based sanctions.

The Standing Committee on Justice and Solicitor General was established to examine a broad range of issues related to sentencing, conditional release and the correctional system. It reported in August of 1988. Its recommendations included:

a. The establishment of a legislated Statement of Purpose and Principles.
b. The establishment of advisory sentencing guidelines.
c. The retention of the National Parole Board with some restructuring of its operations.
d. Refinement and increased use of community sanctions.

The Committee did not endorse the elimination of minimum sentences. It did not recommend the revision of the maximum sentences in the *Criminal Code*. It did not endorse the removal from the Code of the Dangerous Offender provisions. The Committee made no specific recommendation concerning the creation of a permanent sentencing commission. The content of some of the key recommendations made by the Standing Committee is incompatible with some of the recommendations of the Canadian Sentencing Commission (e.g., respecting the Purpose and Principles of Sentencing, respecting the abolition of parole, and respecting the issue of maximum sentences).

It should be borne in mind that under the *Constitution Act, 1867*, the federal government is responsible for the making of criminal law in Canada, including the procedure in criminal matters. On the other hand, the provinces have been given the responsibility under our Constitution for the administration of the criminal law. The federal government can legislate, for example, to facilitate or encourage an increased use of intermediate sanctions and to encourage judges in their sentencing practices to use this option wherever possible. The actual ability of judges to sentence in this way, however, depends on the willingness and the ability of provincial governments to deliver and administer these programs for offenders.

It is almost trite to suggest that aboriginal issues have been pivotal in discussions of the criminal justice system recently. The Report of the Royal Commission into the Prosecution of Donald Marshall Jr. in Nova Scotia, the Inquiry into Policing on the Blood Reserve in Alberta, and Manitoba's Inquiry into the Administration of Justice and Aboriginal People serve to focus concern.

Changes respecting sentencing can deal only with a limited range of concerns relating to aboriginals and other interested groups. Those departments and agencies involved in the direct delivery of services, including the National Parole Board and the Correctional Service of Canada within the context of this package, offer other measures to deal with identified concerns. The reader is encouraged to consider the initiatives suggested in the companion document in this package, *Directions for Reform in Corrections and Conditional Release*, to see other types of policy and program initiatives that will have an impact on aboriginal concerns in criminal justice. Other developing initiatives in criminal justice, such as the development of the self-government arrangements, may be of even greater importance in the long run.

We do, however, acknowledge that the relationship between the administration of justice and aboriginal people is, if not already so, becoming severely strained. In

consulting, therefore, we will be particularly interested in the effect the proposals may have on the aboriginal community.

Neither should the intended consultation on these proposals for reform, as discussed below, be seen in isolation from many other extensive government initiatives. For example, with respect to women, the government is committed to the elimination of laws that violate equality rights. Financial support has been provided for numerous seminars and conferences to sensitize justice system professionals on sex equality issues. As well, policy development continues in many areas, including crime prevention, family violence and pornography. In 1983, amendments were made to the *Criminal Code* to change the law with respect to sexual assault. Further, research is being undertaken, for example, on treatment programs for men who batter their spouses or partners, and on identifying ways of informing aboriginal communities of the laws governing family violence and to develop programs to combat this problem in aboriginal communities.

With respect to victims of crime, it should be remembered that amendments were made to the *Criminal Code* in 1988, dealing with the protection of the identity of victims and witnesses of sexual and extortion offences, the use in judicial proceedings of photographs of recovered property, and the use of victim impact statements at sentencing hearings. The victim surcharge provisions of the *Criminal Code* were proclaimed into force on July 31, 1989. Revenue raised by this surcharge will remain in the province or territory for the purpose of providing services and programs to assist victims of crime. Negotiations with the provinces and territories are still ongoing in an effort to proclaim into force the restitution provisions of the *Criminal Code* as soon as possible.

This paper identifies areas of sentencing where reforms are being considered by the Department of Justice. Additional proposals in respect of conditional release and the administration of sentences are described in the companion document prepared by the Ministry of the Solicitor General.

OBJECTIVES AND PROCESS

This document outlines reforms intended to achieve the following objectives:

a. To provide a consistent framework of policy and process in sentencing matters.
b. To implement a system of sentencing policy and process approved by Parliament.
c. To increase public accessibility to the law respecting sentencing.

Following the release of this paper, the federal government will conduct consultations with concerned criminal justice parties prior to the implementation of any reforms. In order to focus the discussions that will occur during the consultation process, this paper sets forth six proposals for reform, and explains what problems these reforms are designed to meet and the manner in which they are expected to work. Once the consultations have been concluded, the comments received will be carefully considered and changes will be made to the proposed reforms where necessary.

THE PROPOSED REFORMS

Changes are proposed to the current sentencing regime in the following areas:

a. A legislated Statement of Purpose and Principles of Sentencing.
b. The establishment of a permanent Sentencing and Parole Commission.
c. A legislated Code of Evidence and Procedure for the sentencing hearing.
d. A new process for the imposition and collection of fines.
e. A restructuring of Part XXIII of the *Criminal Code.*
f. Intermediate sanctions.

The proposed text of Part XXIII incorporating these and other minor changes is found in the Appendix.

PURPOSE AND PRINCIPLES OF SENTENCING

There is no Statement of Purpose and Principles of sentencing in the *Criminal Code.* Indeed, there is no legislated statement of the purpose and principles that underlie the criminal law in general. Both the Standing Committee on Justice and Solicitor General and the Canadian Sentencing Commission recommended a Statement of Purpose and Principles of Sentencing.

The Canadian Sentencing Commission alleged ". . . that the primary difficulty with sentencing as it exists at the moment is that there is no consensus on how sentencing should be approached."[1] There is no clear, nationally applicable set of standards to be applied to the process of sentencing. This means that neither Parliament nor the provincial legislatures have directly addressed the sentencing aspect of a criminal justice system that cost Canadian taxpayers an estimated $6.79 billion throughout Canada in 1988-89. The Canadian Sentencing Commission gave an overview of the development of the penalty structure and reported on the use of incarceration. The report of the Standing Committee discussed the recent history of sentencing reform in Canada. Both are worth review for the interested reader.

A rationale for sentencing should clearly explain the basis for the imposition of legal sanctions. Such rationales have generally followed one of three approaches: to provide a moral ground; to provide a future-oriented goal (impose a sanction so that something can be done to minimize the likelihood of repeat offences by this individual or other like-minded individuals); to provide some redress for the victims of the prohibited act.

While a statement of the goals to be achieved would help justify the sanction, it does not deal with the issue of how much of the sanction should be imposed. A statement should also provide a foundation for understanding variations in sentences imposed. The Canadian Sentencing Commission wrote extensively about the issue of disparity in sentencing. It cited a number of the contributing factors in addition to the lack of

[1] The Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach,* 1987, p. 77.

legislated purposes and principles. These include the wide range of behaviours subsumed under one category of offence, the lack of unambiguous guidance from the Courts of Appeal, the large number of judges regularly imposing sentences in criminal matters across the country with little opportunity for mutual communication, and broad variation across and within provinces respecting the availability of many sanctions other than imprisonment. The analysis is compelling.

The *Criminal Code* sets out a range of sanctions generally available, but Parliament has given no guidance respecting either the type of sanction to be imposed or the appropriate range of such a sanction, except in respect of minimum and maximum sentences described in the Code. Even with minimum and maximum sentences, the Code generally describes a range of activities so large as to be of little use in determining sentence. The research done for the Canadian Sentencing Commission indicates that the actual sentences imposed often bore little relationship to the maximum sentence allowed in the statute.[2] Additionally, there is no guidance in the Code as to the objectives that should be pursued through sentencing policy.

As the Canadian Sentencing Commission noted, since appellate review of "fitness of sentence" began in 1921, "volumes have been filled with case law on sentencing, but by and large the principles that have been established are general in nature and have neither served as a structure for, nor limit upon, the vast discretion bestowed on the sentencing judge".[3] Additionally, case law may differ significantly from province to province, or from court to court within the same province. The case law is not normally accessible to the general public because, although the books are available and anyone can read them, the legal training necessary to interpret the decisions is not universally available to the population at large. Thus, one of the basic tenets of our law, that it should be available and understood by the population, is not well met in respect of sentencing law.

For the purposes of the development of a proposed Statement of Purpose and Principles of Sentencing, it was necessary for us to endorse some specific principles that would guide our efforts.

In *The Criminal Law in Canadian Society* (CLICS), it was stated:

> *. . . the criminal law has, and should continue to have, two major purposes:*
>
> 1. *preservation of the peace, prevention of crime, protection of the public - security goals; and*
>
> 2. *equity, fairness, guarantees for the rights and liberties of the individual against the powers of the state, and the provision of a fitting response by society to wrongdoing - justice goals. [CLICS p.40].*

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[2] *ibid.*, p. 63.

[3] *ibid.*, p. 79.

It was stated in 1984 in *Sentencing*:

> *Protection of the public has been identified as the overriding purpose of sentencing. This goal is to be understood in its broadest sense, as being in harmony with the overall purpose and principles of the criminal law as articulated in* The Criminal Law in Canadian Society.[4]

The role of Parliament was underlined:

> *Parliament has and must continue to have the sovereign authority (within the limits of the Constitution) to respond as it deems appropriate to societal problems and concerns. The process of law-making is a political process, in the best sense of the word, and must be responsive to public concerns. [CLICS p. 45].*

Restraint and balance are vital:

> *Restraint should be used in employing the criminal law because the basic nature of criminal sanctions is punitive and coercive, and, since freedom and humanity are valued so highly, the use of other, non-coercive, less formal, and more positive approaches is to be preferred wherever possible and appropriate . . . if the criminal law is used indiscriminately to deal with a vast range of social problems of widely varying seriousness in the eyes of the public, then the authority, credibility and legitimacy of the criminal law is eroded and depreciated . . . [CLICS, p. 42].*

The concept of "balance" is a metaphor fundamental to the approach taken on criminal law issues through the years.

> *The search for the appropriate balance point applies to a number of dimensions:*
>
> > *balance between individual liberties and the provision of adequate powers for the state to allow for effective crime prevention and control;*
> >
> > *balance among the various subsidiary aims of the system, such as denunciation, deterrence and rehabilitation; and*
> >
> > *balance between Parliament's role in leading public opinion and acting as custodian of important, if sometimes unpopular principles, and Parliament's role in reflecting and responding to public concerns. [CLICS p. 50].*

[4] Government of Canada, *Sentencing*. 1984, p. 34.

Additionally, we endorse the concept of rehabilitation. This encompasses the provision of opportunities for the offender to become a law-abiding member of the community. The word "opportunities" is intended to suggest that goals of individual reform and rehabilitation must be tempered with the recognition that the ability of the criminal justice system to markedly affect the behaviour of individuals is limited and that the success of rehabilitation depends on the personal commitment of those it was designed to help. The Standing Committee on Justice and Solicitor General said that it became convinced during its hearings that "a wide range of appropriately targeted programs and services may positively benefit offenders". We, like the Committee, reject the notion that "nothing works".

In recognizing these principles, we wish to reemphasize some other concepts: our system must be simple and understandable; our system must be accessible to the public; it must have intellectual integrity; it should lead to the least possible tension among its different parts; it should be more predictable - predictable to judges, the public, correctional officials and offenders.

There is a clear need for our system to work toward the reduction of risk. We accept that offenders who have already demonstrated their violent nature must be dealt with differently from other offenders. Unlike the Canadian Sentencing Commission, we embrace the concept of conditional release.

The Statement of Purpose and Principles of Sentencing will maintain flexibility while providing a more "principled" approach within an approved social policy context. It may lead to the development of jurisprudence supporting increased use of alternatives to incarceration without lessening the flexibility available to judges to consider the individual situation of the offender. Thus, the application of the statement is expected to allow for relevant differences in the circumstances of different offenders, and for sensitivity to the particular problems faced by women and aboriginal people.

Finally, any changes that are made within the criminal justice system must be made with one eye firmly on costs. In keeping with government-wide spending restraint, we cannot accept general solutions that lie in massively increased funding for criminal justice. As indicated earlier in this report, the estimated costs for the entire criminal justice system in 1989 exceeded $6 billion. Within such amounts can be found, we are convinced, sufficient resources for the implementation of the type of reforms we are proposing here.

The Statement of Purpose and Principles of Sentencing that we are proposing is as follows:

STATEMENT OF PURPOSE AND PRINCIPLES OF SENTENCING

1. The fundamental purpose of sentencing is to contribute to the maintenance of a just, peaceful and safe society through the imposition of just sanctions.

2. The court [shall/may] consider the following objectives in assessing the appropriate sentence to be imposed upon an offender:

a. denouncing blameworthy behaviour;
b. deterring the offender and others from committing offences;
c. separating offenders from society, where necessary;
d. providing for redress for the harm done to individual victims or to the community;
e. promoting a sense of responsibility on the part of offenders and providing for opportunities to assist in their rehabilitation as productive and law-abiding members of society.

3. In furtherance of the purpose set out above, a court that sentences an offender for an offence shall exercise its discretion within the limitations prescribed by this or any Act of Parliament, and in accordance with the following principles:

a. a sentence should be proportionate to the gravity of the offence, the degree of responsibility of the offender for the offence, and any other aggravating or mitigating circumstances;
b. a sentence should be the least onerous alternative appropriate in the circumstances;
c. a sentence should be similar to sentences imposed on other offenders for similar offences committed in similar circumstances;
d. the maximum punishment prescribed should be imposed only in the most serious cases of the commission of the offence;
e. the court should consider the total effect of the sentence and the combined effect of that sentence and the other sentences imposed on the offender; and
f. a term of imprisonment should be imposed only:

i. to protect the public from crimes of violence;
ii. where any other sanction would not sufficiently reflect the gravity of the offence or the repetitive nature of the criminal conduct of an offender, or adequately protect the public or the integrity of the administration of justice;
iii. to penalize an offender for wilful non-compliance with the terms of any other sentence that has been imposed on the offender where no other sanction appears adequate to compel compliance.

Specific comments are sought on the following issues arising from the proposed statement:

a. Do you believe that the court should consider all of the objectives indicated in Section 2 each time a sentence is imposed?
b. The principles indicated in Section 3 are considered to be in order of importance. Should the ordering of the principles be made explicit or altered in any way?
c. Will this purpose and these principles achieve the objectives set for this initiative?

SENTENCING AND PAROLE COMMISSION

The Canadian Sentencing Commission argued that many of the problems in sentencing stemmed from, or at least were exacerbated by, the lack of clear and coherent sentencing policies. The Sentencing Commission recommended the establishment of a permanent sentencing commission. Other functions contemplated for such a body included the development of guidelines for sentencing, and the examination of maximum penalties.

The Sentencing Commission recommended the abolition of full parole except in the case of sentences of life imprisonment. It argued that parole added uncertainty to the sentencing system, that it served to "equalize" sentences that should be determined by the judge on the basis of seriousness and culpability, and that equity, clarity and predictability require consistency of purpose from the start of the sentence through to its expiry. It also recommended major changes to the system of remission by which prisoners may reduce their sentences by means of good behaviour.

A public opinion poll done for the Department of Justice (Focus Canada 1989-1) suggests that only 7 per cent of Canadians support the idea of the abolition of parole. Eighty per cent advocate either leaving it as it is or making it more strict. Furthermore, Canadians favoured treating violent offenders differently from non-violent offenders. They supported giving non-violent offenders a second chance and having them released prior to serving 50 per cent of their sentences. While this appears significant, it is worth remembering that the Canadian Sentencing Commission documented significant public confusion respecting the operation of the criminal justice system.[5]

Preliminary consultations carried out by the Department of Justice following the release of the Commission's report showed no general support for the abolition of full parole among provincial representatives or the non-governmental groups contacted. While public opinion polls and the results of consultation may provide one level of reaction to the issue of sentencing and parole, there is another more important matter.

The Commission's recommendations were part of a package within which it was understood that full parole would be abolished, presumptive sentencing guidelines implemented, and a new system of maximum sentences effected together with a revised system of remission. The Standing Committee on Justice and Solicitor General endorsed the establishment of a legislated Statement of Purpose and Principles of Sentencing as did the Commission. It recommended, however, the retention of the National Parole Board with some restructuring. It did not endorse the restructuring of the sentence structure in the *Criminal Code*. It advocated advisory rather than presumptive guidelines.

It is necessary to deal with both the issues of sentencing and parole if the system is to be understandable and accessible. Trying to make sense of the sentencing process that delivers people to prison without also looking at release mechanisms is an

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[5] The Canadian Sentencing Commission, *supra.*, Chapter 4.

unbalanced exercise. The examination and consideration of both matters would lead to more defensible, workable and constructive practices.

It is clearly desirable to establish a system within which there is as much mutual influence, understanding and communication as possible between sentencing and parole. This will encourage development of a consistent policy framework for both sentencing and conditional release. There is no existing formal national forum for the development of sentencing policy in Canada or for communication and information exchange between sentencing and conditional release authorities.

A Sentencing and Parole Commission will provide the mechanism by which both sentencing and parole can be considered within a consistent policy framework. It will be based on the principle that sentencing and conditional release cannot be treated separately and still achieve the objectives set for this initiative. One of the purposes of the Commission will be to set guidelines for sentencing and to advise on decision-making policies respecting conditional release. Guidelines will address unwarranted disparities respecting race or gender. The stated objective respecting the encouragement and promotion of professional training should contribute to the elimination of cultural bias, should provide a vehicle by which the judicial and parole processes can increase their knowledge of the aboriginal communities in their various jurisdictions and should help to establish and maintain ongoing cross-cultural awareness, to the benefit of aboriginal people and the judicial and parole establishments. The proposed Commission will address openness, fairness, the reduction of disparity, and will assist in enhancing public confidence and trust. The Commission would also have a mandate to examine the relationship between sentencing guidelines and other aspects of the criminal justice system, and to ensure that an attempt to structure discretion at one point in the system does not adversely affect other points.

We propose the following model of a Sentencing and Parole Commission for discussion: the Commission would be established by an Act of Parliament; the members of the Commission would be drawn from the ranks of the judiciary and parole boards; the Chairman should be neither a judge nor a member of the parole establishment; all members except the Chairman would be part-time; appointment to the Commission would be by Order in Council; the Commission would be supported by a small secretariat (3-4 persons); and significant attention would be given to ensure that the work of the Commission does not overlap the ongoing responsibilities of the Department of Justice and the Ministry of the Solicitor General.

The Commission could comprise two panels, one dealing with sentencing, the other with parole. Each panel would have decision-making authority in respect of its particular mandate. There would be extensive overlapping membership between the two panels. The Chairman of the Commission would be a member of both panels.

The mandate of the Commission would be stated in terms of its broad purpose, perhaps with reference in a preamble, as follows:

> WHEREAS it is desirable to provide a consistent policy framework for sentencing and for conditional release;

WHEREAS there is no existing national forum for the development of sentencing policy in Canada, or for the communication and the exchange of information between sentencing and conditional release authorities;

WHEREAS unwarranted disparity in sentencing and conditional release is inconsistent with the principle of equity before the law;

and

WHEREAS it is necessary to increase public understanding and awareness of sentencing and conditional release;

the purpose of the Sentencing and Parole Commission shall be to promote fairness, certainty and consistency in sentencing and conditional release and to encourage the consistent application of interrelated sentencing and conditional release policy to achieve these ends.

The objectives of the Commission would be as follows:

a. to develop the work of the Canadian Sentencing Commission respecting sentencing guidelines;
b. to advise on decision-making policies, criteria and guidelines for parole;
c. to encourage and promote training and professional development for sentencing judges and parole board members on such matters as sentencing guidelines, procedure, the impact of sentencing alternatives, sentencing and related practices across Canada, conditional release and correctional programs, charging and plea negotiation practices, and other matters deemed important by the Commission;
d. to promote the proper exchange of information between sentencing judges and other criminal justice system agencies about cases and classes of offenders;
e. to evaluate the results of its policies in accordance with the current practices of the Government of Canada;
f. to make annual reports and any special reports deemed appropriate;
g. to consider any matter referred to it by the Minister of Justice or the Solicitor General.

Of specific concern to the discussion that the government will be carrying out respecting these proposals are the following:

a. Do you think that such a Commission would have a constructive effect on the identified issues of sentencing and parole as indicated in this section?
b. Are the objectives outlined the right ones?
c. Is the structure one that will promote and encourage the achievement of the stated objectives?

A LEGISLATED CODE OF EVIDENCE AND PROCEDURE AT THE SENTENCING HEARING

In criminal trials two important decisions must be made. First, there must be a determination of the defendant's guilt or innocence. Then, if the defendant is found guilty, the judge must determine which sentence to impose. The fact-finding rules and procedures surrounding the adjudication of guilt are elaborate and rigidly applied, while those governing the sentencing decision are sparse, not as well known, and unevenly applied. Both the Standing Committee and the Canadian Sentencing Commission made recommendations respecting information available to the courts.[6]

Although there appears to be a lack of common understanding and an ongoing debate as to the true nature of the sentencing hearing, the prevailing view is that it is neither exclusively adversarial nor inquisitorial but rather that it blends these two approaches. An examination of the jurisprudence on sentencing indicates that a sentencing hearing, while an integral part of the criminal justice process, is treated as an entity very distinct from the preliminary hearing and the trial.

At the trial, the protection of the interests and rights of the accused is of primary importance. The accused is protected under the *Canadian Charter of Rights and Freedoms* and presumed to be innocent until a finding of guilt is made. The sentencing process is only undertaken once an accused has been found guilty. The considerations that apply in protecting the rights of a person presumed to be innocent that are relevant to the conduct of a trial do not necessarily apply to the conduct of a sentencing hearing.

At present, there are no clear guidelines in the law to indicate to the courts how sentencing should be approached - what information should be made available to the court, the powers the court should have to obtain that information, or how that information should be assessed in determining the appropriate sentence. The case law may be referred to, but it offers limited guidance, and may differ significantly from province to province.

The decision of the court in imposing sentence is very important to both the offender and the public. The offender still has important procedural rights that must be protected, and the court must be concerned that the sentence imposed complies with a statement of purpose and principles of sentencing. We accept the conclusion of the Canadian Sentencing Commission cited above, to the effect that the primary difficulty with sentencing is the lack of consensus on how sentencing should be approached.[7]

In order to protect the rights of the offender, to ensure that the sentence imposed by the court is the most appropriate one in the circumstances, and to deal with unwarranted disparity, the federal government proposes to legislate a Code of Evidence and Procedure to govern the conduct of the sentencing hearing. Part of the problem in achieving a consistent approach is the lack of a structured information-

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[6] See Recommendation 37 of the Standing Committee and Recommendations 12.1-12.12 of the Canadian Sentencing Commission.

[7] See footnote 1.

gathering process during the sentencing hearing that is uniformly applied across Canada. If courts dealing with similar offenders who have committed similar offences in similar circumstances do not have information that in fact reveals that the offenders and offences are similar, then different sentences could be imposed, contrary to the principles of sentencing.

The *Criminal Code* provides in section 668 that where a jury finds an accused guilty, or where an accused pleads guilty, the presiding judge shall ask the accused whether he or she has anything to say before sentence is imposed. Failure to comply with this provision does not affect the validity of the proceedings. Therefore, the accused under the current provisions of the *Criminal Code* does not have an absolute codified right to speak to sentence. The proposed Code of Evidence and Procedure at the sentencing hearing will give such a right to an accused person.

There has been litigation regarding the burden of proof and the leading of evidence at the sentencing hearing. The proposed Code of Evidence and Procedure will settle the issues of proof and evidence in the sentencing hearing. There is no legislated guidance as to when judges should set out their explicit reasons for imposing a particular sentence in a particular case, and in many cases no such reasons are given. This lack of reasons lessens public understanding of the basis for the sentence, understanding on the part of the offender as to the court's reasons for the imposition of the sentence, understanding on the part of correctional officials who may have to administer the sentence imposed, and understanding on the part of any appeal court that has to review the case. The proposed Code of Evidence and Procedure will require the court to provide reasons for the sentence imposed, stated in terms of the legislated Statement of Purpose and Principles of Sentencing.

By specifying the process by which evidence respecting sentencing is considered, by providing a specific right to the offender to speak to sentence, and by requiring the reasons for judgment to be set out, the proposed code should encourage greater sensitivity to the particular circumstances of different types of offenders.

REFORMS IN THE IMPOSITION AND COLLECTION OF FINES

As a sanction, the fine is flexible and applicable to a wide variety of offences and offenders. It is the most commonly used disposition in the criminal courts, not only in Canada but also in other jurisdictions. The Canadian Sentencing Commission recommended changes to the system of fines (see recommendations 12.14-12.16). The report of the Standing Committee supported the recommendations of the Canadian Sentencing Commission respecting restitution and the use of imprisonment for fine default.

We believe that there are two major difficulties with the current legislation dealing with the imposition and collection of fines. First, a significant number of fines are never collected. This not only can bring the administration of justice into disrepute because offenders are not forced to comply with the sentence imposed against them, but also removes a source of revenue from the system. Second, upon a default in the payment of a fine, the courts have little discretion as to the next step in the process.

The imprisonment of the defaulting offender is the alternative to payment, and this step is usually undertaken without further enquiries as to the reason for the default. Once the court undertakes the process of committing to jail the defaulting offender, both offenders who are wilfully defaulting and those who are simply unable to pay the fine because of a lack of resources or a change in financial circumstances are treated in the same manner.

We believe that this situation is unjust, and results, in some cases, in economic imprisonment. Further, we believe that the imprisonment of defaulting offenders adds to the costs of the justice system, deprives the system of the revenue that would be obtained if the fine had been paid, and in effect imposes a sentence of imprisonment where the court originally deemed a non-incarcerative sanction as the most appropriate disposition. We are proposing reforms in both the imposition and collection of fines that will deal with these issues.

First, a means inquiry is to be required at the point of sentencing to ensure that when the court has decided that a non-incarcerative sanction may be appropriate, and is contemplating the imposition of a fine, there is a method to ensure that the offender has the resources to pay a fine.

Second, the courts will be given the power to collect the fines through the use of civil processes such as the seizure of assets and the garnishment of wages and salaries.

Third, in all cases where there has been a default in the payment of a fine and where the court is contemplating the imprisonment of the offender for non-payment of the fine, a further inquiry will be required of the court to ascertain the circumstances surrounding the default. Where it is established that the offender had a reasonable excuse for not paying the fine, the court may extend the period within which the fine is to be paid and alter any term of the sanction except the amount to be paid. The proposed legislation would only permit the imprisonment of offenders in circumstances where the court is satisfied that the offender does not have a reasonable excuse for not paying the fine, or has wilfully refused to do so. Further, consistent with the approach that imprisonment in these circumstances is an enforcement mechanism and not an alternative sentence, we are proposing that where an offender is imprisoned for the default in the payment of a fine, the serving of the jail term will not vacate the original fine order, and the offender will still be liable for the payment of the fine even after serving the term of incarceration.

These measures will remove a socio-economic bias from the system of penalties and will assist the economically disadvantaged in society, including aboriginal people and women. The process should better ensure that the non-incarcerative intent of the judge in imposing a fine is, in fact, the sanction that the offender receives, rather than the much more debilitating sanction of incarceration.

We believe that these reforms will enhance the effectiveness of the fine imposition and collection process, and therefore will increase the credibility of fines as a sanction.

RESTRUCTURING OF PART XXIII OF THE CRIMINAL CODE

The bulk of the current sentencing provisions in the *Criminal Code* are contained in Part XXIII, entitled Punishments, Fines, Forfeiture, Costs and Restitution of Property. Part XXIII is organized according to the following headings, in the following order:

punishments generally (including fines, compensation and costs);
imprisonment;
delivery of accused to keeper of prison;
absolute and conditional discharges;
suspended sentences;
intermittent sentences and probation;
imprisonment for life;
disability; and
pardon.

As the organization of the sections in this Part illustrates, no legislative consideration has been given to the ordering of current sentences normally available to the court. Largely as a result of piecemeal reform, there exists neither a clarity in organization, nor any general legislative direction to the court as to the priority of choice from the range of available sentences.

We propose to restructure Part XXIII of the *Criminal Code* so that the current provisions are reordered in a manner that is clear and that sets forth these sentences in order of seriousness, from least to most serious.

The following order is proposed for Part XXIII:

a. General [including Purpose and Principles].
b. Sentencing hearing.
c. Absolute and conditional discharges.
d. Economic sanctions that redress harm only (compensation, restitution).
e. Fines.
f. Community service orders.
g. Disability and prohibitory orders.
h. Forfeiture and confiscation.
i. Probation.
j. Intermittent sentences.
k. Imprisonment.
l. Miscellaneous provisions.

As well as the restructuring of Part XXIII, a number of substantive changes in the use of sanctions, supported by the Standing Committee, the Canadian Sentencing Commission, or both, are proposed. First, each type of sanction will be a sentence

in its own right, which can be imposed without the requirement of imposing an accompanying sanction. Second, community service orders, which are currently made under the terms of the probation provisions of the *Criminal Code*, will specifically be made a sanction in their own right.

Structurally, Part XXIII will include the forfeiture provisions from other parts of the *Criminal Code* where these forfeiture provisions are applied once a finding of guilt has been made by the court. Other forfeiture provisions that can be applied without the need of the finding of guilt have not been included in Part XXIII of the *Criminal Code*.

The restructuring of Part XXIII in this manner will make it more understandable and therefore more accessible to both criminal justice professionals and the public.

We are particularly interested in your comments on the following questions:

a. Are the proposals respecting evidence and procedure a reasonable means of dealing with the information and process concerns cited as objectives of this initiative?
b. Is the proposal respecting fines more likely to be an effective criminal justice sanction than the current use of incarceration in default of payment of a fine?
c. Will the proposed restructuring of Part XXIII of the *Criminal Code* increase understanding of, and access to, sentencing law?

INTERMEDIATE SANCTIONS

Introduction and Definition

Both of the recent major reports on sentencing made extensive recommendations respecting the use of sanctions other than incarceration. In this area, in particular, some clarification of terms is desirable.

The Canadian Sentencing Commission argued in its report that "all sanctions imply a deprivation of freedom which runs on a continuum from extreme deprivation (incarceration) to minimal coercion (absolute discharge)".[8] The term "non-custodial" has been criticized because it divides sanctions into custodial ones and all other sanctions, thus suggesting that all sanctions other than imprisonment are lenient, and because it is a vague phrase that gives no sense to the nature or character of the particular sanction.[9]

We have chosen the term "intermediate sanctions" to reflect dispositions between imprisonment and absolute discharge and to refer to those sanctions that involve both community programs and resources. Thus, the payment of a fine to the state, the return of goods through restitution, the financial payment to the victim for loss or

[8] The Canadian Sentencing Commission, *supra.*, p. 347.

[9] *ibid.*

damage, the performance of work for the community through either a fine option program or a community service order, are all examples of "intermediate sanctions". Other examples include compensation orders, and the following group of sanctions in which an order of restitution or community service may or may not form part of the probation order: conditional discharge, suspended sentence and probation order. While fine option programs and victim/offender reconciliation programs are not sentences *per se*, they nevertheless aim to restore community relationships disrupted by the commission of an offence; thus, they are considered here as intermediate sanctions.

Why Intermediate Sanctions?

Much of the recent, renewed interest in the use of intermediate sanctions in industrialized countries is a result of the ever-increasing prison populations. Coupled with the resulting shortage of space is the fiscal restraint experienced by most jurisdictions. Thus, policy-makers are questioning the efficacy of sending more offenders to prison and are examining alternative punishments that would be less costly while maintaining public safety. To compound the problem, policy-makers must try to reconcile intermediate sanctions with public opinion that wants longer, harsher sentences for violent offenders, an increased emphasis on crime prevention and fewer tax dollars spent on the construction and operation of new penal institutions.

Although Canada does not imprison as large a portion of its population as does the United States, we nevertheless imprison more people than most other western democracies. Imprisonment is expensive and it accomplishes very little, apart from separating offenders from society for a period of time. During the last decade, federally appointed commissions that have studied aspects of the criminal justice system have urged that imprisonment should be used as a last resort and reserved only for those convicted of the most serious offences.

In federal institutions, the percentage of offenders admitted for violent crimes has risen in recent years, although a significant percentage are still admitted for property crimes. Minor property or alcohol-related driving offences have accounted for the highest percentage of admissions to provincial institutions for the last several years. The offences of theft, possession of stolen goods and break and enter are the next highest offences on admission. The statistics consistently show that three out of every ten admissions are for fine default.

Concern has been expressed about the appropriateness of using incarceration for property and non-violent offenders. Crowded prisons are not schools of citizenship. Advocates of intermediate sanctions have suggested expanding the range of options available to provide for effective, tough, non-incarcerative penalties that would require offenders to take responsibility for their actions. Proponents argue that it is better that offenders should learn to exercise self-control than have controls imposed upon them.[10] This can provide the opportunity to include aboriginal communities in the court process. Sentencing practices that are community approved will have greater impact on the offender and on the community than does the all-too-prevalent current

[10] HMSO, *Punishment, Custody and The Community*, 1988. London, Home Office, p. 1.

practice of sending our problems "away". This means increasing the offender's sense of responsibility and understanding of the need to avoid crime in the future. It requires self-discipline and motivation. Such options as community service orders, restitution to victims or fine option programs to eliminate the imprisonment of those who are unable - as opposed to unwilling - to pay fines, offer more promising possibilities.

Recent Experience

The Nielsen Task Force Report recommended that the government initiate programs to reduce the use of incarceration.[11] More recently, the Canadian Sentencing Commission devoted Chapter 12 of its Report to the issue of "Community Involvement". The Standing Committee wrote and recommended extensively on sentencing alternatives, probation, home confinement, and intermittent sentences.

The Department of Justice promoted sentencing alternatives research, projects and evaluations during the period 1984-1987. As a result of a broad funding mandate, the projects were varied and ranged from program reviews to feasibility studies, pilot projects to surveys, and to the compilation of Fact Books on the use of the three sanctions in each jurisdiction.[12]

The Department concluded as a result of this exercise that the expansion of the use of intermediate sanctions and a clear acceptance of their utility continued to be an area for debate and speculation.[13] With regard to the projects funded during the exercise, it would appear that the eclectic approach taken was the most distinctive feature of the exercise, suggesting the need for flexibility in considering the future role of intermediate sanctions in the criminal justice process. Finally, it was concluded that despite the varied and numerous calls for such sanctions, their development and implementation across the jurisdictions have been inconsistent at best.[14] Traditionally, these sanctions have been tied to the reduction of prison populations. However, recent studies show that, in some jurisdictions, the number of people sent to prison has remained unchanged or increased while the numbers admitted to community programs has also increased.[15]

Intermediate sanctions programs are not equally available in all jurisdictions. Studies indicate a severe shortage of programs in remote and northern communities, especially aboriginal communities. A survey of sentencing judges done for the Sentencing Commission indicated that a majority of judges take the availability of programs into account in deciding whether to impose intermediate sanctions. A majority of these judges also thought that the availability of these programs should

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[11] Government of Canada, *The Nielsen Task Force Report on Government Programs*, 1985, p. 323.

[12] Department of Justice, *Sentencing Alternatives Initiative: An Overview*, 1990. Unpublished.

[13] *ibid.*, p. 48.

[14] *ibid.*, pp. 3, 4, 50.

[15] Ekstedt, John and Margaret Jackson. *A Profile of Canadian Alternative Sentencing Programs: A National Review of Policy Issues*. 1988, Department of Justice, p. 182.

influence whether such sanctions are given. Eighty-one per cent expressed the view that the variation in program availability among communities results in sentencing disparity.[16]

Following the release of the report of the Canadian Sentencing Commission, consultations were held with officials in each jurisdiction and with national associations involved in the criminal justice process. The consultations revealed widely differing opinions.

While, overall, there was much support in theory for the recommendations, some opposed the idea of expanding intermediate sanctions in favour of better managing the programs currently in place. Many identified a lack of funds to expand or create community programs. Others thought victims should play a role in implementing community programs; that the community's capacity to absorb more offenders needed rigorous study; that the federal government should give priority to funding community sanctions; that automatic imprisonment for fine default should be abolished; and that community sanctions should be greatly expanded and tested for their effectiveness in reducing the use of imprisonment before other fundamental proposals for change made by the Commission are acted upon. Although there was support for the need to increase the availability of intermediate sanctions, there was no consensus on how this should be achieved.

A Consultative Approach

The delivery and administration of these community sanctions are clearly within the jurisdiction of the provinces. This delivery and administration is vital to the aboriginal and female concerns that have been raised respecting criminal justice. The federal responsibility to legislate and to specify procedure must combine with the provincial responsibility to administer criminal justice in a way that benefits the aims of both. The lack of consensus regarding the method for expanding the use of these sanctions is at least partially a reflection of the financial concerns of the jurisdictions. Like their federal counterparts, all other jurisdictions are faced with diminishing resources and increasing demands on these scarce funds. Virtually all of the inmates who would be affected by reforms in the area of intermediate sanctions are under the jurisdiction of the provinces. Only the federal power to make changes in the law is directly under the authority of the federal government.

The purpose of intermediate sanctions is another area for further discussion and consultation. We share the concern that Canada relies heavily on incarceration as a sanction - both as a matter of choice and as a result of a default in compliance with a non-incarcerative sanction. Imprisonment is not the most effective punishment for most crime. Custodial sanctions have been of particular concern respecting aboriginal people. Greater use of intermediate sanctions offers greater opportunity to engage the aboriginal communities in the solution of common problems. It provides an opportunity to enlist the strong traditional and spiritual values practised in many aboriginal communities in helping their own offenders make a positive contribution to their culture and communities. In our view, custodial sanctions should be reserved

[16] Brodeur, Jean-Paul, Renate Mohr, Julian Roberts and Karen Markham. *Views of Sentencing: A Survey of Judges in Canada,* 1988. Department of Justice, p. 19.

for very serious offences, as we have suggested in the proposed Statement of Purpose and Principles, for those situations where there is a requirement to protect the public from crimes of violence, where any other sanction would not sufficiently reflect the gravity of the offence, or to penalize an offender for wilful non-compliance with the terms of any other sentence.

The cost implications of increasing the use of intermediate sanctions is one of the most important policy issues facing us. We believe that the use of these sanctions will provide a means of reparation to society for the harm done by the offender, and it may also assist in the reintegration of the offender into society. We believe that a wide range of community programs must be available for use by the courts.

We cannot move definitively, as the federal government, in the area of intermediate sanctions. It is crucial to develop a series of measures that will serve both the interests of the provinces and those of the federal government in the area of intermediate sanctions. We cannot impose requirements on the provinces that will have as their result major program expenditure, without close consultation. We cannot, at the same time, enter into any undertaking that will have as its effect major federal expenditures in support of such programs and still maintain our stance of fiscal responsibility. We need to consult extensively with the jurisdictions involved to find mutually attractive options.

If, through our consultations, we can clarify the objectives of intermediate sanctions, then we can develop and promote policies respecting the use of such sanctions, enhance integration among components in the system and help to promote a more coherent criminal justice policy in Canada.

Of particular concern to us is your view as to whether this consultative approach is the best means of dealing with this diverse area at this time.

CONCLUSION

It is intended that the proposals developed for sentencing reform in this consultation paper will result in a coordinated, coherent sentencing policy that reflects today's society and provides direction for the future. The proposed reforms address the areas of concern that have been raised consistently during the past two decades: over-reliance on the use of incarceration; unjustified sentencing disparity; lack of coherent policies governing sentencing practices; and public confusion regarding the role of sentencing in the criminal justice system. Public consultations on the proposed reforms will form part of our policy development process.

Consultations will assist in the evolution of sound government policy - policy that has broad public support. Such policy is dependent on an involved and informed public. Comments respecting this document should be sent to:

Department of Justice
Sentencing Project
Justice Building, Room 729
239 Wellington Street
Ottawa, Ontario
K1A 0H8

APPENDIX

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APPENDIX[1]

GENERAL

S. 1 *[Current* Criminal Code *Section 716]*

In this Part,
"accused" includes a defendant;
"court" means

(a) a superior court of criminal jurisdiction,
(b) a court of criminal jurisdiction,
(c) a justice or provincial court judge acting as a summary conviction court under Part XXVII, or
(d) a court that hears an appeal.

[Current Criminal Code *Subsection 718(12)]* "fine" includes pecuniary penalty or other sum of money.

S. 2 *[Current* Criminal Code *Section 717] [Except Subsections 717(3), (4)(a) (b)]*

(1) Where an enactment prescribes different degrees or kinds of punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence.

(2) Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

(3) Where an accused is convicted of more offences than one before the same court at the same sittings, and

(i) more than one fine is imposed with a direction in respect of each of them that, in default of payment thereof, the accused shall be imprisoned for a term certain,

(ii) terms of imprisonment for the respective offences are imposed, or

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[1] In this text:
Current Criminal Code sections are in this type face;
Current Criminal Code sections that are not proclaimed are in this type face;
Proposed new sections are in this type face.

(iii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence with a direction that, in default of payment, the accused shall be imprisoned for a term certain,

the court that convicts the accused may direct that the terms of imprisonment shall be served one after the other.

S. 3 *[Current* Criminal Code *Section 721]*

(1) A sentence commences when it is imposed, except where a relevant enactment otherwise provides.
(2) Any time during which a convicted person is lawfully at large on interim release granted pursuant to any provision of this Act does not count as part of any term of imprisonment imposed pursuant to his conviction.
(3) In determining the sentence to be imposed on a person convicted of an offence, a justice, provincial court judge or judge may take into account any time spent in custody by the person as a result of the offence.
(4) Notwithstanding subsection (1), a term of imprisonment, whether imposed by a trial court or the court appealed to, commences or shall be deemed to be resumed, as the case requires, on the day on which the convicted person is arrested and taken into custody under the sentence.
(5) Notwithstanding subsection (1), where the sentence that is imposed is a fine with a term of imprisonment in default of payment; no time prior to the day of execution of the warrant of committal counts as part of the term of imprisonment.
(6) An application for leave to appeal is an appeal for the purposes of this section.

S. 4 Statement of Purpose and Principles of Sentencing

(1) The fundamental purpose of sentencing is to contribute to the maintenance of a just, peaceful and safe society through the imposition of just sanctions.
(2) The court shall/may consider the following objectives in assessing the appropriate sentence to be imposed upon an offender:

(a) denouncing blameworthy behaviour;
(b) deterring the offender and others from committing offences;
(c) separating offenders from society, where necessary;
(d) providing for redress for the harm done to individual victims or to the community;
(e) promoting a sense of responsibility on the part of offenders and providing for opportunities for offenders to become law-abiding members of society.

(3) *In furtherance of the purpose set out above, a court that sentences an offender for an offence shall exercise its discretion within the limitations prescribed by this or any Act of Parliament, and in accordance with the following principles:*

(a) a sentence should be proportionate to the gravity of the offence, the degree of responsibility of the offender for the offence, and any other aggravating or mitigating circumstances;

(b) a sentence should be the least onerous alternative appropriate in the circumstances;

(c) a sentence should be similar to sentences imposed on other offenders for similar offences committed in similar circumstances;

(d) the maximum punishment prescribed should be imposed only in the most serious cases of the commission of the offence;

(e) the court should consider the total effect of the sentence and the combined effect of that sentence and the other sentences imposed on the offender; and

(f) a term of imprisonment should be imposed only:

(i) to protect the public from crimes of violence;

(ii) where any other sanction would not sufficiently reflect the gravity of the offence or the repetitive nature of the criminal conduct of an offender, or adequately protect the public or the integrity of the administration of justice;

(iii) to penalize an offender for wilful non-compliance with the terms of any other sentence that has been imposed on the offender where no other sanction appears adequate to compel compliance.

S. 5 *Unless otherwise provided the sentences provided for in this Part can be imposed,*

(a) as penalties in their own right;

(b) in conjunction with other sanctions;

(c) as an alternative to imprisonment.

SENTENCING HEARING

S. 6 General

(1) In determining the sentence to be imposed on an offender, the court

(a) shall, as soon as practicable after a determination of guilt, hold a hearing to determine the appropriate sentence to be imposed;

(b) shall, where the offender was determined to be guilty of two or more offences, consider at the same time all such offences and determine the sentence to be imposed for each such offence;

(c) shall consider where there are outstanding charges against the offender, with the consent of the offender and the Attorney General, all charges to which the offender signifies his consent to plead guilty and determine the sentence to be imposed for each such charge;

(d) may consider any facts of the offence for which sentence is to be imposed that could constitute the basis for a separate offence, if that court would otherwise have had jurisdiction to try such offences or charges;

(e) shall give reasons and state the terms of the sentence imposed. The reasons and the terms of the sentence shall be entered into the record of the proceedings, or where the proceedings are not recorded, shall be in writing.

S. 7 Procedure

(1) Before determining the sentence to be imposed, the court shall give the offender, if present, an opportunity to make representations with respect to sentence;

(2) In determining the sentence to be imposed the court shall

(a) consider any relevant information placed before the court including any representations or submissions made by or on behalf of the prosecutor or the offender;

(b) before making an order to pay a sum of money, and for the purpose of determining the amount to be paid, the time for payment and the method of payment, unless the offender acknowledges the ability to pay, conduct or cause to be conducted an inquiry concerning the ability of the offender to pay the amount;

(3) *The court shall ask for submissions by the prosecutor and the offender on the facts relevant to the sentence to be imposed on the offender, and if the facts are disputed, hear evidence presented by the prosecutor and the offender;*

(4) *Any witness called pursuant to subsection 7(2) may be cross-examined by the prosecutor or the offender as the case may be.*

(5) *[Current* Criminal Code *Subsection 735(1)]* Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, a probation officer shall, if required to do so by a court, prepare and file with the court a report in writing relating to the accused for the purpose assisting the court in imposing sentence or in determining whether the accused should be discharged pursuant to section 736.

(6) *[Current* Criminal Code *Subsection 735(2)]* Where a report or statement is filed with the court under subsection (1) or (1.2), the clerk of the court shall forthwith cause a copy of the report or statement to be provided to the offender or counsel for the offender and to the prosecutor.

S. 8 *Evidence*

In determining the sentence to be imposed upon an offender,

(1) *Where facts are disputed, the court shall hear evidence presented by the party in support of such facts and the party adducing such facts must prove their existence beyond a reasonable doubt;*

(2) *A court may accept as proved all facts essential to the finding of guilt, and any facts agreed upon by the prosecutor and the offender*

(3) *The court shall give effect to all evidentiary privileges and rules relating to competency and compellability of witnesses recognized by the rules of evidence that apply to criminal matters.*

S. 9 *[Current* Criminal Code *Section 665]*

(1) Subject to subsections 9(3) and 9(4), where an accused or a defendant is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, no greater punishment shall be imposed on him by reason thereof unless the prosecutor satisfies the court that the accused or defendant, before making his plea, was notified that a greater punishment would be sought by reason thereof.

(2) Where an accused or a defendant is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, the court shall, on application by the prosecutor and on being satisfied that the accused or defendant was notified in accordance with subsection (1), ask the accused or defendant whether he was previously convicted and, if he does not admit that he was previously convicted, evidence of previous convictions may be adduced.

(3) Where a summary conviction court holds a trial pursuant to subsection 803(2) and convicts the defendant, the court may, whether or not the defendant was notified that a greater punishment would be sought by reason of a previous conviction, make inquiries and hear evidence with respect to previous convictions of the defendant and if any such conviction is proved may impose a greater punishment by reason thereof.

(4) Where, pursuant to section 623, the court proceeds with the trial of a corporation that has not appeared and pleaded and convicts the corporation, the court may, whether or not the corporation was notified that a greater punishment would be sought be reason of a previous conviction, make inquiries and hear evidence with respect to previous convictions of the corporation and if any such conviction is proved may impose a greater punishment by reason thereof.

(5) This section does not apply to a person referred to in paragraph 742(a.1).

S. 10 *[Current* Criminal Code *Section 669]*

Where one sentence is passed on a verdict of guilty on two or more counts of an indictment, the sentence is good if any of the counts would have justified the sentence.

S. 11 *[Current* Criminal Code *Subsections 735(1.1) to (1.4)]*

(1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 736 in respect of any offence, the court may consider a statement, prepared in accordance with subsection (1.2), of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

(2) A statement referred to in subsection 11(1) shall be

(a) prepared in writing in the form and in accordance with the procedures established by a program designated for the purpose by the Lieutenant Governor in Council of the province in which the court is exercising its jurisdiction; and

(b) filed with the court.

(3) A statement of a victim of an offence prepared and filed in accordance with subsection 11(2)(a) does not prevent the court from considering any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or whether the offender should be discharged pursuant to section 736.

(4) For the purpose of this section, "victim", in relation to an offence,

(a) means the person to whom harm is done or who suffers physical or emotional loss as a result of the commission of the offence, and

(b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in

subsection 11(1), includes the spouse or any relative of that person, anyone who has in law or in fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

ABSOLUTE AND CONDITIONAL DISCHARGES

S. 12 *[Current* Criminal Code *Section 736]*

(1) Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable, in the proceedings commenced against him, by imprisonment for fourteen years or for life, the court before which he appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions prescribed in a probation order.

(2) Subject to the provisions of Part XVI, where an accused who has not been taken into custody or who has been released from custody under or by virtue of any provision of Part XVI pleads guilty of or is found guilty of an offence but is not convicted, the appearance notice, promise to appear, summons, undertaking or recognizance issued to or given or entered into by him continues in force, subject to its terms, until a disposition in respect of him is made under subsection 12(1) unless, at the time he pleads guilty or is found guilty, the court, judge or justice orders that he be taken into custody pending such a disposition.

(3) Where a court directs under subsection 12(1) that an offender be discharged of an offence, the offender shall be deemed not to have been convicted of the offence except that

(a) the offender may appeal from the determination of guilt as if it were a conviction in respect of the offence;

(b) the Attorney General and, in the case of summary conviction proceedings, the informant or the informant's agent may appeal from the decision of the court not to convict the offender of the offence as if that decision were a judgment or verdict of acquittal of the offence or a dismissal of the information against the offender; and

(c) the offender may plead *autrefois convict* in respect of any subsequent charge relating to the offence.

(4) Where an accused who is bound by the conditions of a probation order made at a time when he was directed to be discharged under this section is convicted of an offence, including an offence under section 740, the court that made the probation order may, in addition to or in lieu of exercising its authority under subsection 738(4), at any time when it may take action under that subsection, revoke the discharge, convict the accused of the offence to which the discharge relates and impose

any sentence that could have been imposed if the accused had been convicted at the time he was discharged, and no appeal lies from a conviction under this subsection where an appeal was taken from the order directing that the accused be discharged.

ECONOMIC SANCTIONS THAT REDRESS HARM ONLY (COMPENSATION, RESTITUTION)

S. 13 *[Current* Criminal Code *Section 194]*

(1) Subject to subsection 13(2), a court that convicts an accused of an offence under section 184 or 193 may, on the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount not exceeding five thousand dollars as punitive damages.

(2) No amount shall be ordered to be paid under subsection 13(1) to a person who has commenced an action under Part II of the *Crown Liability Act*.

(3) Where an amount that is ordered to be paid under subsection 13(1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

(4) All or any part of an amount that is ordered to be paid under subsection 13(1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute respecting ownership of or right of possession to those moneys by claimants other than the accused.

S. 14 *[Current* Criminal Code *Section 725]*

(1) A court that convicts or discharges under section 736 an accused of an offence may, on the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

(2) Where an amount that is ordered to be paid under subsection 14(1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

(3) All or any part of an amount that is ordered to be paid under subsection 14(1) may, if the court making the order is satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the accused and the court so directs, be taken out

of moneys found in the possession of the accused at the time of the arrest.

S. 15 *[Current* Criminal Code *Section 725]*

Where an offender is convicted or discharged under section 736 of an offence, the court imposing sentence on or discharging the offender shall, on application of the Attorney General or on its own motion, in addition to any other punishment imposed on the offender, if it is applicable and appropriate in the circumstances, order that the offender shall, on such terms and conditions as the court may fix, make restitution to another person as follows:

(a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable; or

(b) in the case of bodily injury to any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount equal to all pecuniary damages, including loss of income or support, incurred as a result of the bodily injury, where the amount is readily ascertainable.

S. 16 *[Current* Criminal Code *Section 726]*

(1) Where an accused is convicted or discharged under section 736 of an offence and any property obtained as a result of the commission of the offence has been sold to an innocent purchaser, the court may, on the application of the purchaser after restitution of the property to its owner, order the accused to pay to the purchaser an amount not exceeding the amount paid by the purchaser for the property.

(2) Where an amount that is ordered to be paid under subsection 16(1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

(3) All or any part of an amount that is ordered to be paid under subsection 16(1) may, if the court making the order is satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the accused and the court so directs, be taken out of moneys found in the possession of the accused at the time of his arrest.

S. 17 *[Current* Criminal Code *Section 726]*

(1) *Where an offender is convicted or discharged under section 736 of an offence and*

(a) any property obtained as a result of the commission of the offence has been conveyed or transferred for valuable consideration to a person acting in good faith and without notice, or
(b) the offender has borrowed money on the security of that property from a person acting in good faith and without notice,

the court may, where that property has been returned to the lawful owner or the person who had lawful possession of that property at the time the offence was committed, order the offender to pay as restitution to the person referred to in paragraph (a) or (b), on such terms as the court may fix, an amount not exceeding the amount of consideration for that property or the total amount outstanding in respect of the loan, as the case may be.

S. 18 *[Current* Criminal Code *Section 727]*

(1) *Before making an order to pay an amount as restitution under section 725 or 726 and for the purpose of determining the amount to be paid, the time for payment and the method of payment, the court shall, unless the offender acknowledges the ability to pay, conduct or cause to be conducted an inquiry concerning the present or future ability of the offender to pay the amount and, in so doing, the court shall consider*

(a) the employment, earning ability and financial resources of the offender at the present or in the future and any other circumstances that may affect the ability of the offender to make restitution;
(b) any benefit, financial or otherwise, derived, directly or indirectly, by the offender as a result of the commission of the offence; and
(c) any harm done to, or loss suffered by, any person to whom restitution may be ordered to be made.

(2) *The court may require the offender, for the purposes of subsection 18(1), to disclose to the court, orally or in writing, particulars of the financial circumstances of the offender in the manner and form prescribed by the court and that information shall not be used for any other purpose, except in a prosecution for perjury or giving contradictory evidence in any proceeding.*

(3) *A court may require that a written report be prepared and filed with the court containing information concerning*

(a) the financial status of the offender and, in particular, the ability of the offender to make restitution; and
(b) the amount to be paid to any person by the offender.

(4) *Where a report is filed with the court under subsection (3), the clerk of the court shall forthwith cause a copy of the report to be provided to the offender or counsel for the offender and the prosecutor.*

(5) *Where the court makes an order of restitution under section 725 or 726 in relation to an offender, the court may require the offender to comply with the order forthwith or within a specified period ending not later than, or in specified instalments ending not later than, three years after the day on which the order is made.*

(6) *Where a person to whom an amount is ordered to be paid under section 725 or 726 dies before the order is fully complied with, the amount shall be paid to the estate of such person.*

(7) **Moneys found on offender** *[Current* Criminal Code *Section 727.1]*
All or any part of an amount that is ordered to be paid under section 725 or 726 may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

(8) **Notice to interested persons** *[Current* Criminal Code *Section 727.2]*

(a) Before making an order of restitution under section 725 and 726, the court may direct that notice be given to any person who may be the beneficiary of such an order and to such other persons having an interest in the order as the court thinks fit.

(b) Where a court makes an order of restitution under section 725 or 726, it shall cause notice of the terms of the order or a copy of the order to be given to the person who is to be the beneficiary of the order.

(c) Any notice or copy of an order required to be given pursuant to this section or section 727.4 shall be given or served in such manner as the court directs or as may be prescribed by rules of court made under section 482.

(d) Where a court makes an order of restitution under section 725 or 726, it shall enter the terms of the order in the record of the proceedings or, where the proceedings are not recorded, the order and the terms thereof shall be in writing.

(9) **Priority to restitution** *[Current* Criminal Code *Section 727.3]*
Where the court finds it applicable and appropriate in the circumstances of a case to make, in relation to an offender, an order of restitution under section 725 or 726, and

(a) an order of forfeiture under this or any other Act of Parliament may be made in respect of property that is the same as property in respect of which the order of restitution may be made, or

(b) the court is considering ordering the offender to pay a fine and it appears to the court that the offender would not have the means and ability to comply with both the order of restitution and the order to pay the fine,

the court shall first make the order of restitution and shall then consider whether and to what extent an order of forfeiture or an order to pay a fine is appropriate in the circumstances.

(10) **Extension of time for payment of orders of restitution** *[Current* Criminal Code *Section 727.4]*

(a) Subject to subsection 18(10(b), where an order of restitution made under section 725 or 726 specifies a period within which or instalments in which payment is to be made, the court that made the order may, unless an information has been laid under section 727.6, on an application by or on behalf of the offender, extend the period or vary the instalments, subject to rules of court made under section 482.

(b) Before extending the period within which or varying the instalments in which payment is to be made pursuant to an order of restitution made under section 725 or 726, the court may direct that notice be given to, and may hear, the beneficiary of the order.

(c) A court shall not extend the period within which payment of restitution is to be made pursuant to subsection 18(10)(a) to a date later than the expiration of the fourth year after the day on which the order of restitution was made under section 725 or 726, as the case may be.

(11) **Enforcement of orders of restitution** *[Current* Criminal Code *Section 727.5]*

Where an order of restitution made under section 725 or 726 is not complied with forthwith, the beneficiary of the order may, by filing the order, enter it as a judgment in the superior court of the province in which the trial was held and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

(12) **Idem** *[Current* Criminal Code *Section 727.6]*

(a) Any person who, on reasonable grounds, believes that an offender has failed or refused to comply with, or defaulted under, an order of restitution made under section 725 or 726 may lay an information in writing and under oath before a justice who shall receive the information, and the matter shall be dealt with by the court that made the order or any other court that would, having regard to the mode of trial of the offender, have had jurisdiction to make the order or, with the consent of the prosecutor and the offender, by any other court of criminal jurisdiction or superior court of criminal jurisdiction.

(b) The payment of an amount by way of restitution is in default when any part of the amount is due and unpaid on the day fixed or provided for payment under the terms of the order of restitution.

(c) No proceedings under subsection 18(12)(a) shall be instituted more than six years after the date of the alleged failure or refusal to comply or alleged default.

(d) The justice who receives an information under subsection 18(12)(a) shall require the offender to appear before the court that, pursuant to subsection 18(12)(a), is to deal with the matter.

(e) At a hearing held pursuant to this section, the court shall hear the prosecutor and the offender and, where the court is satisfied that the

offender has failed or refused, without reasonable excuse, the proof of which lies on the offender, to comply with the order of restitution made in relation to that offender, the court shall

(i) direct that the order be filed and entered as a judgment for the unpaid amount of the order in the superior court of the province in which the trial was held; and

(ii) if it is appropriate in the circumstances, impose on the offender a term of imprisonment not exceeding two years, where the order was made in respect of an indictable offence, or not exceeding six months, where the order was made in respect of a summary conviction offence.

(f) A judgment entered in a court pursuant to paragraph 18(12)(e)(i) is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

(g) At a hearing held pursuant to this section, where an offender establishes that the offender had a reasonable excuse for failing or refusing to comply with the order of restitution made in relation to the offender, the court may, subject to subsections 18(12)(h) and 18(12)(i), extend any term of the order, including the period within which payment of restitution is to be made, and vary any other item of the order except the amount ordered to be paid.

(h) Before exercising any of the powers provided for in subsection 18(12)(g) the court may direct that notice be given to, and may hear, the beneficiary of the order of restitution.

(i) A court shall not extend the period within which payment of restitution is to be made pursuant to subsection 18(12)(g) to a date later than the expiration of the fourth year after the day on which the order of restitution was made under section 725 or 726, as the case may be.

(j) Any term of imprisonment imposed under this section shall be served consecutively to any other term of imprisonment that is being or is to be served by the offender unless the court orders otherwise.

(k) Where, under subsection 18(12)(g) the court makes any changes to additions to an order or the terms or conditions thereof or changes the period for which an order is to remain in force, it shall endorse the order accordingly and cause the offender to be informed of its action and to be given a copy of the order so endorsed.

(13) **Compelling Appearance** *[Current* Criminal Code *Section 727.7]*
The provisions of Parts XVI and XVIII with respect to compelling the appearance of an accused before a justice and with respect to release and detention apply, with such modifications as the circumstances require, to proceedings under section 727.6 and in particular, but without limiting the generality of the foregoing,

(a) a peace officer may arrest without warrant a person bound by an order made under section 725 or 726 who has contravened the order or who, on reasonable grounds, is believed to have contravened the order, where the peace officer has reasonable grounds to believe that, if the person is

not so arrested, the person will fail to attend court in order to be dealt with according to law; and

(b) as if the references in those provisions of Parts XVI and XVIII to an "offence" were references to a "contravention of an order to make restitution".

(14) **Reduction of imprisonment on partial payment** *[Current* Criminal Code *Section 727.8]*

(a) Where a term of imprisonment is imposed under section 727.6 for failure or refusal to pay an amount by way of restitution pursuant to an order made under section 725 or 726, the term shall, on the payment of part of the amount, whether the payment was made before or after the issue of a warrant of committal, be reduced by the number of days that bears the same proportion to the number of days in the term as the part paid bears to the total amount in respect of which the offender was imprisoned.

(b) No amount offered in partial payment shall be accepted unless it is sufficient to secure a reduction of sentence of one day, or a multiple thereof, and where a warrant of committal has been issued, no partial payment shall be received until any fee that is payable in respect of the warrant or its execution has been paid.

(c) Payment may be made under this section to the person who has lawful custody of the offender or to such other person as the Attorney General directs.

(d) Subject to subsection 18(14)(e), a payment under this section shall be applied first to the payment in full of the amount by way of restitution and thereafter to the payment in full of the costs and charges of committing and conveying the offender to prison.

(e) Where a term of imprisonment is imposed for failure or refusal to pay both a fine and a amount by way of restitution, a payment under this section shall be applied first to the payment in full of any part of the amount to be paid by way of restitution that remains unpaid, and thereafter to payment in full of any part of the fine that remains unpaid.

(15) **Victim fine surcharge** *[Current* Criminal Code *Section 727.9]*

(a) Subject to subsection 18(15)(b), where an offender is convicted or discharged under section 736 of an offence under this Act, Part III or IV of the *Food and Drugs Act* or the *Narcotic Control Act*, the court imposing sentence on or discharging the offender shall, in addition to any other punishment imposed on the offender, order the offender to pay a victim fine surcharge in an amount not exceeding

(i) fifteen per cent of any fine that is imposed on the offender for that offence or, where no fine is imposed on the offender for that offence, ten thousand dollars, or

(ii) such lesser amount as may be prescribed by, or calculated in the manner prescribed by, regulations made by the Governor in Council,

subject to such terms and conditions as may be prescribed by regulations made by the Governor in Council.

(b) Where the offender establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from the making of an order under subsection 18(15)(a), the court is not required to make the order.

(c) Where the court does not make an order under subsection 18(15)(a), the court shall

(i) provide the reasons why the order is not being made; and
(ii) enter the reasons in the record of the proceedings or, where the proceedings are not recorded, provide written reasons.

(d) A victim fine surcharge imposed under subsection 18(15)(a) shall be applied for the purposes of providing such assistance to victims of offences as the Lieutenant Governor in Council of the province in which the surcharge is imposed may direct from time to time.

(e) The Governor in Council may, for the purposes of subsection 18(15)(a), make regulations prescribing the maximum amount or the manner of calculating the maximum amount of a victim fine surcharge to be imposed under that subsection, not exceeding the amount referred to in paragraph 18(15)(a)(i), and any terms and conditions subject to which the victim fine surcharge is to be imposed.

(f) Subsections 718(3) to (11) apply and section 718.1 does not apply in respect of a victim fine surcharge imposed under subsection 18(15)(a).

FINES

General

S. 19 Order

(1) Where an offender, other than a corporation, is convicted of an offence, the court may order that the offender pay a fine in an amount, except where otherwise provided by law,

(a) that is in the discretion of the court, where the offence is an indictable offence; or

(b) not exceeding $_____, where the offence is a summary conviction offence.

(2) *A corporation that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence, to be ordered to pay a fine in an amount, except where otherwise provided by law,*

(a) that is in the discretion of the court, where the offence is an indictable offence; or

(b) not exceeding $_____, where the offence is a summary conviction offence.

(3) *Where a court makes an order under this section in relation to an offender, the court may require the offender to comply with the order forthwith or within a specified period of time or in specified instalments ending not later than three years after the day on which the order is made.*

(4) *Where an order made under section 5(36) specifies the period of time or instalments within which payment is to be made, the court that made the order may, on an application by or on behalf of the offender, extend the period or vary the instalments, subject to the rules of the court.*

S. 20 Inquiry Process

(1) *Means Hearing*

(a) Before making an order to pay an amount under section 5(36), and for the purpose of determining the amount to be paid, the time for payment and the method of payment, the court shall, unless the offender acknowledges the ability to pay, conduct or cause to be conducted an inquiry concerning the ability of the offender to pay the amount, and, in so doing, the court shall consider

(i) the employment, earning ability and financial resources of the offender and any other circumstances that may affect the ability of the offender to pay the fine; and

(ii) any benefit, financial or otherwise, derived directly or indirectly by the offender as a result of the commission of the offence.

(b) The court may require the offender, for the purposes of subsection 20(1)(a) to disclose to the court, orally or in writing,

particulars of the financial circumstances of the offender in the manner and form prescribed by the court and that information shall not be used for any other purpose, except in a prosecution for perjury or giving contradictory evidence in any proceeding.

(c) The court may require that a written report be prepared and filed with the court containing information concerning the financial status of the offender, and, in particular, the ability of the offender to pay a fine and any other penalty the court may impose.

(d) Where a report is filed with the court under subsection 20(1)(c) the clerk of the court shall forthwith cause a copy of the report to be provided to the offender or counsel for the offender and the prosecutor.

(2) All or any part of an amount that is ordered to be paid under section 19(1) may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

(3) Extension of Time to Pay

(a) Where an order made under section 19(1) specifies a period within which the payments or instalments in which payment is to be made, the court that made the order may, unless an information has been laid under section 20(5)(a), on an application by or on behalf of the offender, extend the period or vary the instalments, subject to the rules of court made under section 482.

(b) A court shall not extend the period within which payment is to be made pursuant to subsection 20(3)(a) to a date later than the expiration of the fourth year after the day on which the order was made under section 19(1).

(4) Default

(a) When the payment of an order made under section 19(1) is in default,

(i) the prosecutor or the clerk of the court that made the order, without further notice to the offender, may, by

filing the conviction, enter as a judgment the amount of the fine and costs, if any, in any court of competent jurisdiction in the province in which the trial was held, and a judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings,

(ii) the clerk of the court that made the order, without any further notice to the offender, may direct that the salary, wages or other moneys owned by or payable to the offender be garnished or attached forthwith, or

(iii) the clerk of the court that made the order, without further notice to the offender, may direct that the property of the offender be seized forthwith in the manner and to the extent provided by the laws governing such proceedings.

(b) The payment of an amount by way of a fine is in default when any part of the amount is due and unpaid on the date fixed or provided for payment under the terms of an order made by the court.

(5) Procedures upon default

(a) Any person who, on reasonable grounds, believes that an offender has failed or refused to comply with, or defaulted under an order made under section 19(1) may lay an information in writing and under oath before a justice who, if satisfied upon reasonable grounds that the offender has failed or refused to comply with or defaulted under the order, shall receive the information, and the matter shall be dealt with by the court that made the order or any other court that would, having regard to the mode of trial of the offender, have had jurisdiction to make the order or, with the consent of the prosecutor and the offender, by any other court of criminal jurisdiction or superior court of criminal jurisdiction.

(b) The payment of an amount ordered pursuant to section 19(1) is in default when any part of the amount is due and unpaid on the date fixed or provided for payment under the terms of the order of restitution.

(c) No proceedings under subsection 20(5)(a) shall be instituted more than six years after the date of the alleged failure or refusal to comply or alleged default.

(d) The justice who receives an information under subsection 20(5)(a) shall require the offender to appear before the court that, pursuant to subsection 20(5)(a) is to deal with the matter.

(e) At a hearing held pursuant to this section, the court shall hear the prosecutor and the offender and, where the court is satisfied that the offender has failed or refused, without reasonable excuse, the proof of which lies on the offender, to comply with the order made under section 19(1) in relation with that offender, the court may

(i) direct that the order be filed and entered as a judgment for the unpaid amount of the order in any court of competent jurisdiction in the province in which the trial was held;

(ii) direct that the offender, other than a corporation, against whom the fine is imposed, whether or not the offender is serving a term of imprisonment imposed in default of payment of the fine, discharge the fine in whole or in part by working in a fine option program pursuant to the provisions of section 718.1;

(iii) if it is appropriate in the circumstances, impose on the offender a term of imprisonment not exceeding two years, where the order was made in respect of an indictable offence, or not exceeding six months, where the order is made in respect of a summary conviction offence.

(f) A judgment entered in a court pursuant to subsection 20(5)(e)(i) is enforceable against the offender in the same manner if it were a judgment rendered against the offender in that court in civil proceedings.

(g) At a hearing held pursuant to this section, where an offender establishes that the offender had a reasonable excuse for failing or refusing to comply with the order made pursuant to section 19(1) in relation to the offender, the court may, subject to subsection 20(5)(h) extend any term of the order, including the period within which the payment of the fine is to be made, and vary any other term except for the amount ordered to be paid.

(h) A court shall not extend the period within which payment of fine has been made pursuant to subsection 20(5)(g) to a date

later than the expiration of the fourth year after the day on which the payment of the fine was made under section 19(1).

(i) *Any term of imprisonment imposed under this section shall be served consecutively to any other term of imprisonment that is being or is to be served by the offender unless the court orders otherwise, and any term of imprisonment imposed under this section, whether served by the offender or not, shall not relieve the offender of the obligation to pay the fine imposed pursuant to section 19(1).*

(j) *Where a judgment is entered against an offender pursuant to 20(4) or an order is made against the offender pursuant to section 20(5) upon the offender paying the full amount of the fine, and costs, if any, imposed pursuant to section 18, the offender may apply to the court that entered the judgment or made the order, or, with the consent of the prosecutor, to any other court of criminal jurisdiction or to a superior court of criminal jurisdiction, to have that order rescinded.*

(k) *Where, under subsection 20(5)(g) the court makes any changes or additions to an order or the terms and conditions thereof or changes the period for which an order is to remain in force, it shall endorse the order accordingly and cause the offender to be informed of its action and to be given a copy of the order so endorsed.*

(6) *The provisions of Parts XVI and XVIII with respect to compelling the appearance of an accused before a justice and with respect to release and detention apply, with such modifications as the circumstances require, to proceedings under section 20(5)(g) and in particular, but without limiting the generality of the forgoing,*

(a) *a peace officer may arrest without a warrant a person bound by an order made under section 19(1) who has contravened the order or who, on reasonable grounds, is believed to have contravened the order, where the peace officer has reasonable grounds to believe that, if the person is not so arrested, the person will fail to attend court in order to be dealt with according to law;*

(b) *as if the references to those provisions of Parts XVI and XVIII to an "offence" were references to a "contravention of an order to pay a fine".*

S. 21 *[Current* Criminal Code *Section 718.1]*

(1) An offender, other than a corporation, against whom a fine is imposed in respect of an offence may, whether or not the offender is serving a term of imprisonment imposed in default of payment of the fine, discharge the fine in whole or in part by earning credits for work performed during a period not greater than two years in a program established for that purpose by the Lieutenant Governor in Council

(a) of the province in which the fine was imposed; or
(b) of the province in which the offender resides, where an appropriate agreement is in effect between the government of that province and the government of the province in which the fine was imposed.

(2) A program referred to in subsection 21(1) shall determine the rate at which credits are earned and may provide for the manner of crediting any amounts earned against the fine and any other matters necessary for or incidental to carrying out the program.

(3) Credits earned for work performed as provided by subsection 21(1), shall, for the purposes of this Act, be deemed to be payment in respect of a fine.

(4) Where, by virtue of section 723, the proceeds of a fine belong to Her Majesty in right of Canada, an offender may discharge the fine in whole or in part in a fine option program of a province pursuant to subsection 21(1), where an appropriate agreement is in effect between the government of the province and the Government of Canada.

S. 22 *[Current* Criminal Code *Section 720]*

Where a fine that is imposed on a corporation is not paid forthwith, the prosecutor may, by filing the conviction, enter as a judgment the amount of the fine and costs, if any, in the superior court of the province in which the trial was held, and that judgment is enforceable against the corporation in the same manner as if it were a judgment rendered against the corporation in that court in civil proceedings.

COMMUNITY SERVICE ORDER

S. 23

(1) Where an offender is convicted of an offence other than one for which a minimum punishment is prescribed by law, the court, having regard to the nature of the offence and the circumstances surrounding its commission, where it is of the opinion that it would not be contrary to the public interest, may order the accused, upon reasonable conditions, to perform a community service for a specified number of hours that is not less than 40 or more than 240 if

(a) there is a program of community service in the area in which the service that is to be performed, approved by order of the Lieutenant Governor in Council of the province in which the court is sitting; and

(b) the court is satisfied after considering a report relating to the accused referred to in section [current Criminal Code *section 735] that the accused is a suitable person for such an order.*

(2) An order under subsection 23(1) comes into force on the date on which it is made but shall not continue in force for more than one year from such date unless it continues in force:

(a) pursuant to subsection 23(3); or

(b) by reason of an extension of this term under subsection 23(5), in which case it shall not continue in force for more than two years from such date.

(3) Subject to such changes in or additions to an order under subsection 23(1) as may be made by a court after a hearing under subsection 23(5), where an accused who is bound by such an order is convicted of an offence, the order continues in force except insofar as the sentence imposed renders it impossible for the accused for the time being to comply with the order.

(4) Where a court makes an order under subsection 23(1), it shall cause:

(a) the order to be read by or to the accused;

(b) a copy of the order to be given to the accused; and

(c) the accused to be informed of the provisions of subsection 23(6).

(5) Where a court has made an order under subsection 23(1), it may at any time, on application by the accused or the prosecutor, require the accused to appear before it and, after hearing the accused and the prosecutor, make any changes in or additions to the order that in its opinion are rendered desirable by a change in the circumstances since the order was made and, where any such changes are made, the court shall endorse the order accordingly and cause the accused to be informed of its action and to be given a copy of the order so endorsed.

(6) An accused who wilfully fails or refuses to comply with an order made under section 23(1) is guilty of an offence punishable upon summary conviction.

DISABILITY AND PROHIBITORY ORDERS

S. 24 *[Current* Criminal Code *Section 748]*

(1) Where a person is convicted of an indictable offence for which he is sentenced to imprisonment for a term exceeding five years and holds, at the time he is convicted, an office under the Crown or other public employment, the office or employment forthwith becomes vacant.

(2) A person to whom subsection 24(1) applies is, until he undergoes the punishment imposed on him or the punishment substituted therefor by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment, or of being elected or sitting or voting as a member of Parliament or of a legislature or of exercising any right of suffrage.

(3) No person who is convicted of an offence under section 121, 124 or 418 has, after that conviction, capacity to contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

(4) A person to whom subsection 24(3) applies may, at any time before a pardon is granted to whom under section 4 of the Criminal Records Act, apply to the Governor in Council for the restoration of one or more of the capacities lost by him by virtue of that subsection.

(5) Where an application is made under subsection 24(4), the Governor in Council may order that the capacities lost by the applicant by virtue of subsection 24(3) be restored to him in whole or in part and subject to such conditions as he considers desirable in the public interest.

(6) Where a conviction is set aside by competent authority, any disability imposed by this section is removed.

S. 25 *[Current* Criminal Code *Subsections 100(1), (2), (3), (12), (13)]*

(1) Where an offender is convicted or discharged under section 736 of an indictable offence in the commission of which violence against a person is used, threatened or attempted and for which the offender may be sentenced to imprisonment for ten years or more or of an offence under section 85, the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from having in his possession any firearm or any ammunition or explosive substance for any period of time specified in the order that commences on the day the order is made and expires not earlier than

(a) in the case of a first conviction for such an offence, five years and
(b) in any other case, ten years,

after the time of the offender's release from imprisonment after conviction for the offence or, if the offender is not then imprisoned or subject to imprisonment, after the time of the offender's conviction or discharge for that offence.

(2) Where an offender is convicted or discharged under section 736 of an offence involving the use, carriage, possession, handling, shipping or storage of any firearm or ammunition or any offence, other than an offence referred to in subsection (1), in the commission of which violence against a person was used, threatened or attempted, the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from having in his possession any firearm or any ammunition or explosive substance for any period of time specified in the order that commences on the day the order is made and expires not later than five years after the time of the offender's release from imprisonment after conviction for the offence or, if the offender is not then imprisoned or subject to imprisonment, after the time of the offender's conviction or discharge from that offence.

(3) For the purposes of subsections 25(1) and 25(2), "release from imprisonment" means release from confinement by reason of expiration of sentence, commencement of mandatory supervision or grant of parole other than day parole.

(4) Every one who has in his possession any firearm or any ammunition or explosive substance while he is prohibited from doing so by any order made pursuant to this section

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

(5) An order made pursuant to subsection 25(1) or 25(2) shall specify therein a reasonable period of time within which the person against whom the order is made may surrender to a police officer or firearms officer or otherwise lawfully dispose of any firearm or any ammunition or explosive substance lawfully possessed by him prior to the making of the order, and subsection (12) does not apply to him during that period of time.

S. 26 *[Current* Criminal Code *Section 259]*

(1) Where an offender is convicted of an offence committed under section 253 or 254 or discharged under section 736 of an offence committed under section 253 and, at the time the offence was committed or, in the case of an offence committed under section 254, within the two hours preceding that time, was operating or had the care or control of a motor vehicle, vessel or aircraft or of railway equipment or was assisting in the operation of an aircraft or of railway equipment, the court that sentences the offender shall, in addition to nay other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public

place, or from operating a vessel or an aircraft or railway equipment, as the case may be,

(a) for a first offence, during a period of not more than three years and not less than three months;
(b) for a second offence, during a period of not more than three years and not less than six months; and
(c) for each subsequent offence, during a period of not more than three years and not less than one year.

(2) Where an offender is convicted or discharged under section 736 of an offence under section 220, 221, 236, 249, 250, 251 or 252, subsection 255(2) or (3) or this section committed by means of a motor vehicle, vessel or aircraft or of railway equipment, the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel, an aircraft or railway equipment, as the case may be,

(a) during any period that the court considers proper, if the offender is liable to imprisonment for life in respect of that offence;
(b) during any period not exceeding ten years, if the offender is liable to imprisonment for more than five years but less than life in respect of that offence; and
(c) during any period not exceeding three years, in any other case.

(3) No order made under subsection (1) or (2) shall operate to prevent any person from acting as master, mate or engineer of a vessel that is required to carry officers holding certificates as master, mate or engineer.

(4) Every one who operates a motor vehicle, vessel or aircraft or nay railway equipment in Canada while disqualified from doing so

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
(b) is guilty of an offence punishable on summary conviction.

(5) For the purposes of this section, "disqualification" means

(a) a prohibition from operating a motor vehicle, vessel or aircraft or any railway equipment ordered pursuant to subsection (1) or (2); or
(b) a disqualification or any other form of legal restriction of the right or privilege to operate a motor vehicle, vessel or aircraft imposed

(i) in the case of a motor vehicle, under the law of a province, or
(ii) in the case of a vessel or an aircraft, under an Act or Parliament,

in respect of a conviction or discharge under section 736 of nay offence referred to in subsection (1) or (2).

(6) *[Current* Criminal Code *Section 260]* Where a court makes a prohibition order under subsection 259(1) or (2) in relation to an offender, it shall cause

(a) the order to be read by or to the offender;
(b) a copy of the order to be given to the offender; and
(c) the offender to be informed of subsection 259(4).

(7) After subsection (6) has been complied with in relation to an offender who is bound by an order referred to in that subsection, the offender shall endorse the order, acknowledging receipt of a copy thereof and that the order has been explained to him.

(8) The failure of an offender to endorse an order pursuant to subsection (7) does not affect the validity of the order.

(9) In the absence of evidence to the contrary, where it is proved that a disqualification referred to in paragraph 259(5)(b) has been imposed on a person and that notice of the disqualification has been mailed by registered or certified mail to that person, that person shall, after five days following the mailing of the notice, be deemed to have received the notice and to have knowledge of the disqualification, of the date of its commencement and of its duration.

(10) In proceedings under section 259, a certificate setting out with reasonable particularity that a person is disqualified from

(a) driving a motor vehicle in a province, purporting to be signed by the registrar of motor vehicles for that province, or
(b) operating a vessel or aircraft, purporting to be signed by the Minister of Transport for that purpose

is evidence of the facts alleged therein without proof of the signature or official character of the person by whom it purports to be signed.

(11) Subsection (10) does not apply in any proceedings unless at least seven days notice in writing is given to the accused that it is intended to tender the certificate in evidence.

(12) In subsection (10), "registrar of motor vehicles" includes the deputy of that registrar and any other person or body, by whatever name or title designated, that from time to time performs the duties of superintending the registration of motor vehicles in the province.

(13) *[Current* Criminal Code *Section 261]* Where an appeal is taken against a conviction or discharge under section 736 for an offence committed under any of sections 220, 221, 236 or 249 to 255 or 259, the court being appealed to may direct that any order under subsection 259(1) or (2) arising out of the conviction or discharge shall be stayed, pending the final disposition or the appeal or until otherwise ordered by that court.

S. 27 *[Current* Criminal Code *Section 446(5) and (6)]*

(1) Where an accused is convicted of an offence under Section 446(1), the court may, in addition to any other sentence that may be imposed for the offence, make an order prohibiting the accused from owning or having the custody or control of an animal or a bird during any period not exceeding two years.

(2) Every one who owns or has the custody or control of an animal or a bird while he is prohibited from doing so by reason of an order made under subsection 27(1) is guilty of an offence punishable on summary conviction.

FORFEITURE AND CONFISCATION

S. 28 *[Current* Criminal Code *Section 192]*

(1) Where a person is convicted of an offence under section 184 or 191, any electro-magnetic, acoustic, mechanical or other device by means of which the offence was committed or the possession of which constituted the offence, on the conviction, in addition to any punishment that is imposed, may be ordered forfeited to Her Majesty whereupon it may be disposed of as the Attorney General directs.

(2) No order for forfeiture shall be made under subsection 28(1) in respect of telephone, telegraph or other communication facilities or equipment owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of that person by means of which an offence under section 184 has been committed if that person was not a party to the offence.

S. 29 *[Current* Criminal Code *Section 206(5) and (6)]*

(1) Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending on or to be determined by chance or lot, is void, and all property so sold, lent, given, bartered or exchanged is forfeited to Her Majesty.

(2) Subsection 29(1) does not affect any right or title to property acquired by any *bona fide* purchaser for valuable consideration without notice.

S. 30 *[Current* Criminal Code *Section 327(2) and (3)]*

(1) Where a person is convicted of an offence under subsection (1) or paragraph 326(1)(b), any instrument or device in relation to which the offence was committed or the possession of which constituted the offence, upon such conviction, in addition to any punishment that is imposed, may be ordered forfeited to Her Majesty, whereupon it may be disposed of as the Attorney General directs.

(2) No order for forfeiture shall be made under section 327(2) in respect of telephone, telegraph or other communication facilities or equipment

owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person by means of which an offence under subsection (1) has been committed if such person was not a party to the offence.

S. 31 *[Current* Criminal Code *Section 462.37]*

(1) Subject to this section and sections 462.39 to 462.41, where an offender is convicted or discharged under section 736 of an enterprise crime offence and the court imposing sentence on the offender, on application of the Attorney General, is satisfied, on a balance of probabilities, that any property is proceeds of crime and that the enterprise crime offence was committed in relation to that property, the court shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.

(2) Where the evidence does not establish to the satisfaction of the court that the enterprise crime offence of which the offender is convicted, or discharged under section 736 was committed in relation to property in respect of which an order of forfeiture would otherwise be made under subsection (1) but the court is satisfied, beyond a reasonable doubt, that that property is proceeds of crime, the court may make an order of forfeiture under subsection (1) in relation to that property.

(3) Where a court is satisfied that an order of forfeiture under subsection (1) should be made in respect of any property of an offender, but that property or any part thereof or interest therein cannot be made subject to such an order and, in particular,

(a) cannot, on the exercise of due diligence, be located,
(b) has been transferred to a third party,
(c) is located outside Canada,
(d) has been substantially diminished in value or rendered worthless, or
(e) has been commingled with other property that cannot be divided without difficulty,

the court may, instead of ordering that property or part thereof or interest therein to be forfeited pursuant to subsection (1), order the offender to pay a fine in an amount equal to the value of that property, part or interest.

(4) Where a court orders an offender to pay a fine pursuant to subsection (3), the court shall

(a) impose, in default of payment of that fine, a term of imprisonment

(i) not exceeding six months, where the amount of the fine does not exceed ten thousand dollars,
(ii) of not less than six months and not exceeding twelve months, where the amount of the fine exceeds ten thousand dollars but does not exceed twenty thousand dollars,

(iii) of not less than twelve months and not exceeding eighteen months, where the amount of the fine exceeds twenty thousand dollars but does not exceed fifty thousand dollars,

(iv) of not less than eighteen months and not exceeding two years, where the amount of the fine exceeds fifty thousand dollars but does not exceed one hundred thousand dollars,

(v) of not less than two years and not exceeding three years, where the amount of the fine exceeds one hundred thousand dollars but does not exceed two hundred and fifty thousand dollars;

(vi) of not less than three years and not exceeding five years, where the amount of the fine exceeds two hundred and fifty thousand dollars but does not exceed one million dollars, or

(vii) of not less than five years and not exceeding ten years, where the amount of the fine exceeds one million dollars; and

(b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other term of imprisonment imposed on the offender or that the offender is then serving.

(5) Section 718.1 does not apply to an offender against whom a fine is imposed pursuant to subsection (3).

(6) The provisions of Section 19 apply with respect to the enforcement of an order made pursuant to this section.

S. 32 *[Current* Criminal Code *Section 491]*

(1) Where it is determined by a court that a weapon was used in the commission of an offence and that weapon has been seized and detained, the weapon is, subject to subsection (2), forfeited and may be dealt with as the court that makes the determination directs.

(2) If the court by which a determination referred to in subsection (1) is made is satisfied that the lawful owner of a weapon that, but for this subsection, would be forfeited by virtue of the determination, was not a party to the offence and had no reason to believe that the weapon would or might be used in the commission of an offence, the court shall order the weapon returned to the lawful owner thereof or the proceeds of any sale thereof to be paid to him.

(3) Where any weapon to which this section applies is sold, the proceeds of the sale shall be paid to the Attorney General or, where an order is made under subsection (2), to the person who was, immediately prior to the sale, the lawful owner of the weapon.

S. 33 *[Current* Criminal Code *Section 491.1]*

(1) Where an accused or defendant is tried for an offence and the court determines that an offence has been committed, whether or not the accused has been convicted or discharged under section 736 of the offence, and at the time of the trial any property obtained by the commission of the offence

(a) is before the court or has been detained so that it can be immediately dealt with, and
(b) will not be required as evidence in any other proceedings,

section 490 does not apply in respect of the property and the court shall make an order under subsection (2) in respect of the property.

(2) In the circumstances referred to in subsection (1), the court shall order, in respect of any property,

(a) if the lawful owner or person lawfully entitled to possession of the property is known, that it be returned to that person; and
(b) if the lawful owner or person lawfully entitled to possession of the property is not known, that it be forfeited to Her Majesty, to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.

(3) An order shall not be made under subsection (2)

(a) in the case of proceedings against a trustee, banker, merchant, attorney, factor, broker or other agent entrusted with the possession of goods or documents of title to goods, for an offence under section 330, 331, 332 or 336; or
(b) in respect of

(i) property to which a person acting in good faith and without notice has acquired lawful title for valuable consideration,
(ii) a valuable security that has been paid or discharged in good faith by a person who was liable to pay or discharge it,
(iii) a negotiable instrument that has, in good faith, been taken or received by transfer or delivery for valuable consideration by a person who had no notice and no reasonable cause to suspect that an offence had been committed, or
(iv) property in respect of which there is a dispute as to ownership or right of possession by claimants other than the accused or defendant.

(4) An order made under this section shall, on the direction of the court, be executed by the peace officers by whom the process of the court is ordinarily executed.

PROBATION

S. 34 *[Current* Criminal Code *Sections 737-740]*

(1) Where an accused is convicted of an offence, the court may, having regard to the age and character of the accused, the nature of the offence and the circumstances surrounding its commission,

(a) in the case of an offence other than one for which a minimum punishment is prescribed by law, suspend the passing of sentence and direct that the accused be released on the conditions prescribed in a probation order;
(b) in addition to fining the accused or sentencing him to imprisonment, whether in default of payment of a fine or otherwise, for a term not exceeding two years, direct that the accused comply with the conditions prescribed in a probation order; or
(c) where it imposes a sentence of imprisonment on the accused, whether in default of payment of a fine or otherwise, that does not exceed ninety days, order that the sentence be served intermittently at such times as are specified in the order and direct that the accused, at all times when he is not in confinement pursuant to the order, comply with the conditions prescribed in a probation order.

(2) The following conditions shall be deemed to be prescribed in a probation order, namely, that the accused shall keep the peace and be of good behaviour and shall appear before the court when required to do so by the court, and, in addition, the court may prescribe as conditions in a probation order that the accused shall do any one or more of the following things as specified in the order, namely,

(a) report to and be under the supervision of a probation officer or other person designated by the court;
(b) provide for the support of his spouse or any other dependants whom he is liable to support;
(c) abstain from the consumption of alcohol either absolutely or on such terms as the court may specify;
(d) abstain from owning, possessing or carrying a weapon;
(e) make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof;
(f) remain within the jurisdiction of the court and notify the court or the probation officer or other person designated under paragraph (a) of any change in his address or his employment or occupation;
(g) make reasonable efforts to find and maintain suitable employment; and
(h) comply with such other reasonable conditions as the court considers desirable for securing the good conduct of the accused and for preventing a repetition by him of the same offence or the commission of other offences.

(3) A probation order may be in Form 46, and the court that makes the probation order shall specify therein the period for which it is to remain in force.
(4) Where the court makes a probation order, it shall

(a) cause the order to be read by or to the accused;

(b) cause a copy of the order to be given to the accused; and
(c) inform the accused of the provisions of subsection 738(4) and the provisions of section 740.

(5) *[Current* Criminal Code *Section 738.(1)]* A probation order comes into force

(a) on the date on which the order is made; or
(b) where the accused is sentenced to imprisonment under paragraph 737(1)(b) otherwise than in default of payment of a fine, on the expiration of that sentence.

(6) Subject to subsection (4),

(a) where an accused who is bound by a probation order is convicted of an offence, including an offence under section 740, or is imprisoned under paragraph 737(1)(b) in default of payment of a fine, the order continues in force except in so far as the sentence renders it impossible for the accused for the time being to comply with the order; and
(b) no probation order shall continue in force for more than three years from the date on which the order came into force.

(7) Where a court has made a probation order, the court may at any time, on application by the accused or the prosecutor, require the accused to appear before it and, after hearing the accused and the prosecutor,

(a) make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in the circumstances since the conditions were prescribed,
(b) relieve the accused, either absolutely or on such terms or for such period as the court deems desirable, of compliance with any condition described in any of paragraphs 737(2)(a) to (h) that is prescribed in the order, or
(c) decrease the period for which the probation order is to remain in force, and the court shall thereupon endorse the probation order accordingly and, if it changes or adds to the conditions prescribed in the order, inform the accused of its action and give him a copy of the order so endorsed.

(8) Where an accused who is bound by a probation order is convicted of an offence, including an offence under section 740, and

(a) the time within which an appeal may be taken against that conviction has expired and he has not taken an appeal,
(b) he has taken an appeal against that conviction and the appeal has been dismissed, or

(c) he has given written notice to the court that convicted him that he elects not to appeal his conviction or has abandoned his appeal, as the case may be,

in addition to any punishment that may be imposed for that offence, the court that made the probation order may, on application by the prosecutor, require the accused to appear before it and, after hearing the prosecutor and the accused,

(d) where the probation order was made under paragraph 737(1)(a), revoke the order and impose any sentence that could have been imposed if the passing of sentence had not been suspended, or

(e) make such changes in or additions to the conditions prescribed in the order as the court deems desirable or extend the period for which the order is to remain in force for such period, not exceeding one year, as the court deems desirable,

and the court shall thereupon endorse the probation order accordingly and, if it changes or adds to the conditions prescribed in the order or extends the period for which the order is to remain in force, inform the accused of its action and to give him a copy of the order so endorsed.

(9) The provisions of Part XVI and XVIII with respect to compelling the appearance of an accused before a justice apply with such modifications as the circumstances require to proceedings under subsections (3) and (4).

(10) *[Current* Criminal Code *Section* 739]

(a) Where an accused who is bound by a probation order becomes a resident of, or is convicted or discharged under section 736 of an offence including an offence under section 740 in a territorial division, other than the territorial division where the order was made, the court that made the order may, on the application of the prosecutor, and, if both such territorial divisions are not in the same province, with the consent of

(i) the Attorney General of Canada, in the case of proceedings in relation to an offence that were instituted at the instance of the Government of Canada and conducted by or on behalf of that Government, or

(ii) in any other case, the Attorney General of the province in which the order was made,

transfer the order to a court in that other territorial division that would, having regard to the mode of trial of the accused, have had jurisdiction to make the order in that other territorial division if the accused had been tried and convicted there of the offence in respect of which the order was made, and the order may thereafter be dealt with and enforced by the court to which it is so transferred in all respects as if that court had made the order.

(b) Where a court that has made a probation order or to which a probation order has been transferred pursuant to subsection (1) is for any reason unable to act, the powers of that court in relation to the probation order may be exercised by any other court that has equivalent jurisdiction in the same province.

(11) *[Current* Criminal Code *Section* 740)]

(a) An accused who is bound by a probation order and who wilfully fails or refuses to comply with that order is guilty of an offence punishable on summary conviction.

(b) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but where the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province.

INTERMITTENT SENTENCES

S. 35 *[Current* Criminal Code *Section 737(1)(c)]*

(1) Where an accused is convicted of an offence, the court may, having regard to the age and character of the accused, the nature of the offence and the circumstances surrounding its commission, where it imposes a sentence of imprisonment on the accused, whether in default of payment of a fine or otherwise, that does not exceed ninety days, order that the sentence be served intermittently at such times as are specified in the order and direct that the accused, at all times when he is not in confinement pursuant to the order, comply with the conditions prescribed in a probation order.

IMPRISONMENT

S. 36 *[Current* Criminal Code *Section 730]*

Every one who is convicted of an indictable offence for which no punishment is specially provided is liable to imprisonment for a term not exceeding five years.

S. 37 *[Current* Criminal Code *Section 731]*

(1) Except where otherwise provided, a person who is sentenced to imprisonment for

(a) life,

(b) a term of two years or more, or

(c) two or more terms of less than two years each that are to be served one after the other and that, in the aggregate, amount to two years or more,

shall be sentenced to imprisonment in a penitentiary.

(2) Where a person who is sentenced to imprisonment in a penitentiary is, before the expiration of that sentence, sentenced to imprisonment for a term of less than two years, he shall be sentenced to and shall serve that term in a penitentiary, but if the previous sentence of imprisonment in a penitentiary is set aside, he shall serve that term in accordance with subsection 37(3).

(3) A person who is sentenced to imprisonment and who is not required to be sentenced as provided in subsection 37(1) or 37(2) shall, unless a special prison is prescribed by law, be sentenced to imprisonment in a prison or other place of confinement within the province in which he is convicted, other than a penitentiary, in which the sentence of imprisonment may be lawfully executed.

(4) Where a person is sentenced to imprisonment in a penitentiary while he is lawfully imprisoned in a place other than a penitentiary, he shall, except where otherwise provided, be sent immediately to the penitentiary, and shall serve in the penitentiary the unexpired portion of the term of imprisonment that he was serving when he was sentenced to the penitentiary as well as the term of imprisonment for which he was sentenced to the penitentiary.

(5) Where, at any time, a person who is imprisoned in a prison or place of confinement other than a penitentiary is subject to two or more terms of imprisonment, each of which is for less than two years, that are to be served one after the other, and the aggregate of the unexpired portions of those terms at that time amounts to two years or more, he shall be transferred to a penitentiary to serve those terms, but if any one or more of such terms is set aside and the unexpired portions of the remaining term or terms on the day on which he was transferred under this section amounted to less than two years, he shall serve that term or terms in accordance with subsection 37(3).

(6) For the purposes of this section, where a person is sentenced to imprisonment for a definite term and an indeterminate period thereafter, such sentence shall be deemed to be for a term of less than two years and only the definite term thereof shall be taken into account in determining whether he is required to be sentenced to imprisonment in a penitentiary or to be committed or transferred to a penitentiary under subsection 37(5).

(7) Where a person has been sentenced, committed or transferred to a penitentiary, otherwise than pursuant to an agreement made under subsection 18(1) of the *Penitentiary Act*, any indeterminate portion of his sentence shall, for all purposes,. be deemed not to have been imposed.

(8) For the purposes of subsection 37(3) "penitentiary" does not, until a day to be fixed by proclamation of the Governor in Council, include the penitentiary mentioned in section 82 of the *Penitentiary Act*, chapter 206 of the Revised Statutes of Canada.

S. 38 *[Current* Criminal Code *Section 732]*

(1) A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced, and a reference to hard labour in a conviction or sentence shall be deemed to be reference to the employment of prisoners that is provided for in the enactments or rules.

(2) A conviction or sentence that imposes hard labour shall not be quashed or set aside on the ground only that the enactment that creates the offence does not authorize the imposition of hard labour, but shall be amended accordingly.

S. 39 *[Current* Criminal Code *Section 733]*

(1) Where a young person is sentenced to imprisonment under this or any other Act of Parliament, the young person may, with the consent of the provincial director, be transferred to a place of custody for any portion of his term of imprisonment, but in no case shall the young person be kept in a place of custody under this section after he attains the age of twenty years.

(2) Where the provincial director certifies that a young person transferred to a place of custody under subsection 39(1) can no longer be held therein without significant danger of escape or of detrimentally affecting the rehabilitation or reformation of other young persons held therein, the young person may be imprisoned during the remainder of his term of imprisonment in any place where he might, but for subsection 39(1), have been imprisoned.

(3) For the purposes of this section, the expression "adult", "provincial director" and "young person" have the meaning assigned by subsection 2(1) of the *Young Offenders Act* and the expression "place of custody" means "open custody" or "secure custody" within the meaning assigned by subsection 24(1) of that Act.

S. 40 *[Current* Criminal Code *Section 734]*

A peace officer or other person to whom a warrant of committal authorized by this or any other Act of Parliament is directed shall arrest the person named or described therein, if it is necessary to do so in order to take that person into custody, convey that person to the prison mentioned in the warrant and deliver him, together with the warrant, to the keeper of the prison who shall thereupon give to the peace officer or other person who delivers the prisoner a receipt in Form 43 setting out the state and condition of the prisoner when delivered into his custody.

S. 41 *[Current* Criminal Code *Section 742]*

The sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be,

(a) in respect of a person who has been convicted of high treason or first degree murder, that he be sentenced to imprisonment for life without eligibility for parole until he has served twenty-five years of his sentence;

(a.1) in respect of a person who has been convicted of second degree murder where that person has previously been convicted of culpable homicide that is murder, however described in this Act, that he be sentenced to imprisonment for life without eligibility for parole until he has served twenty-five years of his sentence;

(b) in respect of a person who has been convicted of second degree murder, that he be sentenced to imprisonment for life without eligibility for parole until he has served at least ten years of his sentence or such greater number of years, not being more than twenty-five years, as has been substituted thereof pursuant to section 744; and

(c) in respect of a person who has been convicted of any other offence, that he be sentenced to imprisonment for life with normal eligibility for parole.

S. 42 *[Current* Criminal Code *Section 743]*

Where a jury finds an accused guilty of second degree murder, the judge who presiding at the trial shall, before discharging the jury, put to them the following question:

> You have found the accused guilty of second degree murder and the law requires that I now pronounce a sentence of imprisonment for life against him. Do you wish to make any recommendation with respect to the number of years that he must serve before he is eligible for release on parole? You are not required to make any recommendation but if you do, your recommendation will be considered by me when I am determining whether I should substitute for the ten years period, which the law would otherwise require the accused to serve before he is eligible to be considered for release on parole, a number of years that is more than ten but not more than twenty-five.

S. 43 *[Current* Criminal Code *Section 744]*

At the time of the sentencing under paragraph 742(b) of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 743, by order, substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five), without eligibility for parole, as he deems fit in the circumstances.

S. 44 *[Current* Criminal Code *Section 745]*

(1) Where a person has served at least fifteen years of his sentence

(a) in the case of a person who has been convicted of high treason or first degree murder, or

(b) in the case of a person convicted of second degree murder who has been sentenced to imprisonment for life without eligibility for parole until he has served more than fifteen years of his sentence,

he may apply to the appropriate Chief Justice in the province in which the conviction took place for a reduction in his number of years of imprisonment without eligibility for parole.

(2) Upon receipt of an application under subsection 44(1), the appropriate Chief Justice shall designate a judge of the superior court of criminal jurisdiction to empanel a jury to hear the application and determine whether the applicant's number of years of imprisonment without eligibility for parole ought to be reduced having regard to the character of the applicant, his conduct while serving his sentence, the nature of the offence for which he was convicted and such other matters as the judge deems relevant in the circumstances and the determination shall be made by no less than two-thirds of the jury.

(3) Where the jury hearing an application under subsection 44(1) determines that the applicant's number of years of imprisonment without eligibility our parole ought not to be reduced, the jury shall set another time at or after which an application may again be made by the applicant to the appropriate Chief Justice for a reduction in his number of years of imprisonment without eligibility for parole.

(4) Where the jury hearing an application under subsection 44(1) determines that the applicant's number of years of imprisonment without eligibility for parole ought to be reduced, the jury may, by order,

(a) substitute a lesser number of years of imprisonment without eligibility for parole than that then applicable; or

(b) terminate the ineligibility for parole.

(5) The appropriate Chief Justice in each province or territory may make such rules in respect of applications and hearings under this section as are required for the purposes of this section.

(6) For the purposes of this section the "appropriate Chief Justice" is

(a) in relation to the Province of Ontario, the Chief Justice of the High Court of Justice;

(b) in relation to the Province of Quebec, the Chief Justice of the Superior Court;

(c) in relation to the Provinces of Nova Scotia, Prince Edward Island and Newfoundland, respectively, the Chief Justice of the Supreme Court, Trial Division;

(d) in relation to the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, respectively, the Chief Justice of the Court of Queen's Bench;

(e) in relation to the Province of British Columbia, the Chief justice of the Supreme court;

(f) in relation to the Yukon Territory and the Northwest Territories, respectively, the Chief Justice of the Court of Appeal thereof.

(7) For the purposes of this section, when the appropriate Chief Justice is designating a judge of the superior court of criminal jurisdiction to empanel a jury to hear an application in respect of a conviction that took place in the Yukon Territory or the Northwest Territories, the appropriate Chief justice may designate the judge from the Court of Appeal or the Supreme Court of the Yukon Territory or Northwest Territories, as the case may be.

S. 45 *[Current* Criminal Code *Section 746]*

In calculating the period of imprisonment served for the purposes of section 742, 744 or 745, there shall be included any time spent in custody between,

(1) in the case of a sentence of imprisonment for life after July 25, 1976, the day on which that person was arrested and taken into custody in respect of the offence for which he was sentenced to imprisonment for life and the day the sentence was imposed; or

(2) in the case of a sentence of death that has been or is deemed to have been commuted to a sentence of imprisonment for life, the day on which that person was arrested and taken into custody in respect of the offence for which he was sentenced to death and the day the sentence was commuted or deemed to have been commuted to a sentence of imprisonment for life.

S. 46 *[Current* Criminal Code *Section 747]*

(1) Unless Parliament otherwise provides by an enactment making express reference to this section, no person who has been sentenced to imprisonment for life without eligibility for parole for a specified number of years pursuant to this Act shall be considered for parole or released pursuant to the terms of a grant of parole under the *Parole Act* or any other Act of the Parliament of Canada until the expiration or termination of his specified number of years of imprisonment without eligibility for parole.

(2) Notwithstanding the *Penitentiary Act* and the *Parole Act*, in the case of any person sentenced to imprisonment for life without eligibility for parole for a specified number of years pursuant to this Act, until the expiration of all but three years of his number of years of imprisonment without eligibility for parole, no absence without escort may be authorized under the *Penitentiary Act*, no absence with escort for humanitarian and rehabilitative reasons may be authorized under the *Penitentiary Act* without the approval of the National Parole Board and no day parole may be granted under the *Parole Act*.

MISCELLANEOUS PROVISIONS

S. 47 *[Current* Criminal Code *Section 723]*

(1) Where a fine, penalty or forfeiture is imposed or a recognizance is forfeited and no provision, other than this section, is made by law for the application of the proceeds thereof, the proceeds belong to Her Majesty in right of the province in which the fine, penalty or forfeiture was imposed or the recognizance was forfeited, and shall be paid by the person who receives them to the treasurer of that province.

(2) Where

(a) a fine, penalty or forfeiture is imposed

(i) in respect of a contravention of a revenue law of Canada,
(ii) in respect of a breach of duty or malfeasance in office by an officer or employee of the Government of Canada, or
(iii) in respect of any proceedings instituted at the instance of the Government of Canada in which that government bears the costs of prosecution, or

(b) a recognizance in connection with proceedings mentioned in paragraph (a) is forfeited,

the proceeds of the fine, penalty, forfeiture or recognizance belong to Her Majesty in right of Canada and shall be paid by the person who receives them to the Receiver General.

(3) Where a provincial, municipal or local authority bears, in whole or in part, the expense of administering the law under which a fine, penalty or forfeiture is imposed or under which proceedings are taken in which a recognizance is forfeited,

(a) the lieutenant governor in council may direct that the proceeds of a fine, penalty, forfeiture or recognizance that belongs to Her Majesty in right of the province shall be paid to that authority; and
(b) the Governor in Council may direct that the proceeds of a fine, penalty, forfeiture or recognizance that belongs to Her Majesty in right of Canada shall be paid to that authority.

S. 48 *[Current* Criminal Code *Section 724]*

(1) Where a fine, pecuniary penalty or forfeiture is imposed by law and no other mode is prescribed for the recovery thereof, the fine, pecuniary penalty or forfeiture is recoverable or enforceable in civil proceedings by Her Majesty, but by no other person.

(2) No proceedings under subsection 48(1) shall in instituted more than two years after the time when the cause of action arose or the offence was committed in respect of which the fine, pecuniary penalty or forfeiture was imposed.

S. 49 *[Current* Criminal Code *Section 728]*

The person in whose favour judgment is given in proceedings by indictment for defamatory libel is entitled to recover from the opposite party costs in a reasonable amount to be fixed by order of the court.

S. 50 *[Current* Criminal Code *Section 729]*

Where costs that are fixed under section 728 are not paid forthwith, the party in whose favour judgment is given may enter judgment for the amount of the costs by filing the order in the superior court of the province in which the trial was held, and that judgment is enforceable against the opposite party in the same manner as if it were a judgment rendered against him in that court in civil proceedings.

S. 51 *[Current* Criminal Code *Section 741.1]*

(1) Where a person is sentenced for an offence while subject to a disposition made under paragraph 20(1)(j) or (k) of the *Young Offenders Act*, on the application of the Attorney General or his agent, the court that sentences the person may, unless to so order would bring the administration of justice into disrepute, order that the remaining portion of the disposition made under the *Young Offenders Act* be dealt with, for all purposes under this Act or any other Act of Parliament, as if it had been a sentence imposed under this Act.

(2) Where an order is made under subsection 51(1), in respect of a disposition made under paragraph 20(1)(k) of the *Young Offenders Act*, the remaining portion of the disposition to be served pursuant to the order shall be served concurrently to the sentence referred to in subsection 51(1), where it is a term of imprisonment, unless the court making the order orders that it be served consecutively.

(3) For greater certainty, the remaining portion of the disposition referred to in subsection 51(2) shall, for the purposes of section 20 of the *Parole Act* and section 731 of this Act, be deemed to constitute one sentence of imprisonment imposed on the day the order is made.

S. 52 *[Current* Criminal Code *Section 749]*

(1) Her Majesty may extend the royal mercy to a person who is sentenced to imprisonment under the authority of an Act of Parliament, even if the person is imprisoned for failure to pay money to another person.

(2) The Governor in Council may grant a free pardon or a conditional pardon to any person who has been convicted of an offence.

(3) Where the Governor in Council grants a free pardon to a person, that person shall be deemed thereafter never to have committed the offence in respect of which the pardon is granted.

(4) No free pardon or conditional pardon prevents or mitigates the punishment to which the person might otherwise be lawfully sentenced on a subsequent conviction for an offence other than that for which the pardon was granted.

S. 53 *[Current* Criminal Code *Section 750]*

(1) The Governor in Council may order the remission, in whole or in part, of a pecuniary penalty, fine or forfeiture imposed under an Act of Parliament, whoever the person may be to whom it is payable or however it may be recoverable.

(2) An order for remission under subsection (1) may include the remission of costs incurred in the proceedings, but no costs to which a private prosecutor is entitled shall be remitted.

S. 54 *[Current* Criminal Code *Section 751]*

Nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy.