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The Role of Risk Assessment in Pre-Sentence Reports:
Perceptions and Experiences of Judges and Probation Officers

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**The Role of Risk Assessment in Pre-Sentence Reports:
Perceptions and Experiences of Judges and Probation Officers**

Rebecca Jesseman

Thesis submitted to the
Faculty of Graduate and Postdoctoral Studies
In partial fulfillment of the requirements for the
MA in Criminology

Department of Criminology
Faculty of Social Sciences
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Abstract

The purpose of this thesis is to examine the opinions of judges and probation officers on the inclusion of risk assessment information in pre-sentence reports. This thesis analyzes data related to opinions on risk obtained through interviews, questionnaires, and pre-sentence reports. This data was collected within a national project examining the overall use of pre-sentence reports in Canada. The introduction also provides a brief overview of the role of pre-sentence reports in the Canadian judicial system, the role of risk in criminal justice, and experience in England and Wales, New Zealand, and Australia relating to the implementation of guidelines for the use of actuarial risk assessments by probation offices.

Results indicate that both judges and probation officers strongly endorse the importance of information on an offender's risk of recidivism in the sentencing process, particularly in cases involving violence. Both judges and probation officers also expressed a preference for a narrative assessment process in interviews. However, actuarial assessments were used and identified as important in the majority of pre-sentence reports examined.

Despite agreement as to its importance, there is currently a great deal of variation in the presentation of risk information across Canada. This thesis concludes with recommendations on how to improve the use of risk information in pre-sentence reports.

Chapter 1: Introduction and Literature Review

1.1 Introduction

The quality of sentencing decisions in Canada is highly dependent on the quality of information put before the court. An understanding of the information put before sentencing judges is therefore a necessary part of ensuring the quality of sentencing decisions. One of the sources of information available to the sentencing judge is a Pre-Sentence Report (hereafter PSR). PSRs in Canada are prepared by probation officers at the request of the court following a guilty plea or finding of guilt and prior to the imposition of a sentence. Similar reports are prepared in other jurisdictions such as England and Wales, New Zealand, and Australia, providing valuable international context and comparative information. This thesis explores this most critical tool put before judges in sentencing: the pre-sentence report.

Section 721(1) of the Criminal Code of Canada states that probation officers shall, when required, prepare a report on an accused person in order to assist the court in imposing sentence or determining suitability for a discharge. Research conducted in the 1970's and 1980's demonstrated that these reports do have a considerable impact on sentencing outcomes in Canada (see Cole & Angus, 2003). The nature of that impact as well as the preparation and content of the PSR itself, however, have received very little research attention over the past twenty years.

One aspect of PSRs that is currently under debate is the inclusion of risk ratings based on actuarial assessment tools administered by the probation officer. Cole and Angus (2003) suggest that the expanding use of standardized risk assessments will be welcomed by the judiciary. Recent case law resulting in provincial policies prohibiting the inclusion of

assessment results in Nova Scotia and British Columbia, however, provides evidence that this trend has not been entirely uniform (see *R. v. Elliot* 2004, discussed below). Studies following the introduction of mandatory risk assessment policies in England and Wales reveal that the increased use of these sentencing tools is likely to prove a contentious issue within the probation service as well (Colombo & Neary, 1998; Robinson, 2003).

1.2 Probation and Pre-Sentence Reports

Section 40(1) of *The Correctional Services Act* outlines the role and responsibilities of the probation officer in Canada. According to this Act, probation officers are responsible for the supervision of offenders on probation, conditional sentences, or judicial interim release (bail), reporting to the court regarding the fulfillment of release conditions, and conducting investigations and providing reports to the court including pre-sentence, post-sentence, and judicial interim as required. In some provinces, probation officers may also supervise parolees serving sentences of imprisonment in the community. Workload is an issue of concern for probation officers in most jurisdictions, with average caseloads of over 100 offenders per officer in most provinces (Heads of Community Corrections, 2004).

The preparation of PSRs takes place in addition to regular supervision caseload and, ideally, within timelines set by the court, therefore placing considerable demands on the probation officer's time and schedule. Probation officers are also required to complete pre-sentence reports for youths; however, this thesis will deal exclusively with adult PSRs. The number of pre-sentence reports prepared per month varies considerably by jurisdiction, with an average of fewer than 20 in the Territories to an average of over 600 in Ontario and Saskatchewan (Heads of Community Corrections, 2004). Aside from obvious population

differences, provincial guidelines play a significant role in workload as well as other inter-provincial discrepancies related to PSRs.

The *Criminal Code* provides rather vague guidelines with respect to actual PSR content and practice:

721(3) Unless otherwise specified by the court, the report must, wherever possible, contain information on the following matters:

(a) the offender's age, maturity, character, behaviour, attitude and willingness to make amends;

(b) subject to subsection 119(2) of the *Youth Criminal Justice Act*, the history of previous dispositions under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, the history of previous sentences under the *Youth Criminal Justice Act*, and of previous findings of guilt under this Act and any other Act of Parliament;

(c) the history of any alternative measures used to deal with the offender, and the offender's response to those measures; and

(d) any matter required, by any regulation made under subsection (2) to be included in the report.

721(4) The report must also contain information on any other matter required by the court, after hearing argument from the prosecutor and the offender, to be included in the report, subject to any contrary regulation made under subsection (2).

Guidelines regarding the presentation and any additional information required in the PSR are left to the jurisdiction of the individual provinces and territories to devise:

721(2) The lieutenant governor in council of a province may make regulations respecting the types of offences for which a court may require a report, and respecting the content and form of the report.

With the exception of Prince Edward Island and the Northwest Territories, all provinces and Territories have set out regulations in accordance with section 721(2) of the *Criminal Code*.

A summary of these recommendations illustrating the diversity in some key areas such as sentencing recommendations and victim input follows in Table 1.1.

Generally, a PSR is prepared using interview data from the offender and any available collateral contacts as well as records relating to criminal history and previous supervision experiences. The structure of the reports varies but most begin with identifying information, conclude with a summary and recommendations (where applicable), and include sections on the offender's personal history, social interactions, education, employment, past involvement with the criminal justice system, and psychological/substance abuse concerns.

Table 1.1: Comparative Summary of Provincial/Territorial PSR Guidelines*

Province	Guidelines Dated	Sentencing Recommendations	Community Recommendations	Risk Assessment Included	Offense Information	Detailed Structure	Victim Input
Alberta	March 1997	No	Yes	Clinical/narrative	Only facts in police report	Yes	No
British Columbia	April 2004	No	Yes	No	Yes	Yes	Yes
Manitoba	March 2000	Yes	Yes	ORAMS	Yes	Yes	No
New Brunswick	April 2003			Can be – ie. LSI-R		No	
Newfoundland	October 2002	Yes	Yes	Can be (Manitoba instrument)		Depends on requisition	In serious cases
Northwest Territories	In Draft			No		Yes	
Nova Scotia	December 2003	No	Yes	Until 2004	Attitudes & context no details	Yes	Yes
Nunavut	Pre-June 2001	No	Yes			Yes	Yes
Ontario	Pre-July 2001	No	Yes	No	Facts entered & responsibility only	Yes	
Prince Edward Island	N/A: Currently youth only						
Quebec	March 2001	No	Yes	Clinical/narrative	Yes	Yes	
Saskatchewan	August 2000	No	Yes	ORAMS	No	Yes	Yes
Yukon	April 1998		Yes		Circumstances & Feelings	Yes	Yes

*Sections left blank indicate no clear policy/guidelines

1.3 Risk Assessment

The concept of risk is an integral part of criminal justice. Research, policy, and programming are based on the objective of reducing the risk of recidivism and subsequently, victimization. Clear and Cadora (2001) identify four factors that establish the need to measure risk in the correctional system. First, the field of corrections is based on the uncertainty of human behaviour. Risk rather than predetermined outcomes therefore guides program and policy development. Second, risk is not random. Correlates of risk can therefore be taken into account in order to improve outcomes. Third, the stakes faced by corrections in terms of potential consequences of failure vary widely; therefore the degree of acceptable risk must also play a guiding role. The consequences of unintended outcomes range from the inconvenience of rescheduling a missed probation appointment to violent recidivism. Finally, due to the hierarchy of the correctional system, decisions in one geographical area may impact a wide range of jurisdictions. This potential impact must be taken into account as a risk factor for both program innovation and correctional failure. An experimental program of probation supervision, for example, that has met with great national success may be shut down due to a single failure with tragic enough consequences to spark public outcry.

The assessment of risk is therefore common practice among criminal justice practitioners. The social service field usually conducts risk assessments whenever starting a new file: the caseworker gathers information through interviews and/or file reviews and, based on these findings, decides how best to manage the client. Bonta (1996) classifies this method of drawing general conclusions based on unstructured data collection as “first generation” risk assessment. The primary drawback of these assessments is the lack of

structure and the individual discretion that characterize them, resulting in high levels of subjectivity and variation (Bonta 1996).

Simon and Feeley's *New Penology* discusses the growing popularity of statistically-based assessment instruments within the development of "actuarial criminology" (1992 & 1994). They identify three areas that have led to this development: legal theory, systems analysis, and law and economics (1994). Within legal theory, there has been a shift in tort law from individual responsibility to accident management through insurance. Risk assessments, accompanied by a discourse of probability, represent a parallel shift in criminal law from concern for individual accountability and rehabilitation to statistical classification and prediction. Systems analysis and operations research gained popularity with the 1960's "war on crime" in the United States. Zero-tolerance policies encouraged the efficiency of control through mathematically-based systems theory over traditional individually-based control and rehabilitation. The sheer size of the expanding prison population necessitates the use of actuarial management as a means of controlling a high-risk population that would otherwise be impossible to deal with on the basis of individualized punishment and rehabilitation.

Under the *New Penology*, law and economics share a utilitarian approach to morals and a preference for quantitative over qualitative analysis, allowing the sharing of methodologies. Economic reasoning based on aggregates is therefore increasingly applied to criminal justice techniques traditionally based on individualization and equity. Simon and Feeley's (1992, 1994) discussion of risk assessment instruments focuses on their use in categorization for the purpose of detention and specifically states that they are not based on the ideas of rehabilitation or reintegration.

The statistical instruments discussed by Simon and Feeley are described by Bonta as “second-generation” assessments. Second-generation assessments resolve the issue of subjective variation found in first generation assessments by relying on specific factors statistically associated with the behaviour in question – most commonly offending behaviour in the corrections field (Bonta 1996). This more objective measurement of recidivism risk dates back to Burgess’ 1928 study of parolees that identified 21 factors linked to either parole successes or failures (Bonta 1996). Second-generation instruments rely on static historical factors that cannot be changed – examples include criminal record, age, and gender. Although reliable, these factors illustrate Simon and Feeley’s criticisms by failing to address the issue of rehabilitation (Bonta 1996). Because the factors cannot be changed, they do not suggest appropriate treatment targets for rehabilitative programming.

Moving forward, “third-generation” assessments address the rehabilitative shortcoming by adding dynamic factors that can be used to measure change and identify appropriate treatment for criminogenic needs (Bonta 1996). The importance of addressing these factors is outlined in Bonta’s “needs principle”, which states that the assessment of dynamic risks, or criminogenic needs, allows the identification of treatment targets that may contribute to a reduction in recidivism. Static factors remain a part of these assessments rather than being replaced because of their reliability in measuring risk. The importance of this measurement is outlined in the “risk principle”. The risk principle states that the level of intervention must be matched to the offender’s level of risk: lower-risk offenders should receive less intense intervention and higher-risk offenders more intense intervention (Bonta 1996). Most assessment instruments used in Canada today combine varying proportions of static and dynamic factors. These factors have been empirically validated to predict

recidivism; for example the “Big Four” identified in Andrews and Bonta’s personality and social learning theory are the following: criminal history, antisocial personality, antisocial attitudes, and social support for criminal behaviour (Bonta 2002). Other variables such as employment status, educational level, family structure, and the presence of substance abuse are also commonly included as indicators of pro-social or anti-social supports and behaviours (Bonta 2002).

1.4 The Use of Risk Assessment Instruments in Pre-Sentence Reports

In Canada, the use of risk assessment instruments in PSRs is not currently guided by either Federal legislation or nationally binding case law¹. Saskatchewan and Manitoba are the only provinces in which PSR guidelines require a discussion of actuarial risk assessment results, although Manitoba specifies that level of risk only, not the digital score or instrument itself, should be indicated. In Ontario, Nova Scotia, and British Columbia, actuarial risk assessments are conducted as a part of PSR preparation, but guidelines state that neither the results of the assessment nor the instrument can be directly referred to in the PSR itself. In Alberta and Quebec, guidelines require that PSRs include a clinical assessment of risk; an analysis based on the expertise of the probation officer which would be classified as a “first generation” assessment according to the breakdown presented earlier. The remaining provinces and territories do not clearly require or prohibit the inclusion of actuarial assessment results. The PSR guidelines in New Brunswick, for example, state that actuarial risk assessment results can be included to support or emphasize the offender’s needs as

¹ The recent *R. v. Elliot* case in Nova Scotia may soon change this situation and will be addressed later in this chapter.

identified in the body of the report. Table 1.2 provides a comparison of the different instruments currently used by probation services in the provinces and territories.

Table 1.2: Use of Actuarial Risk Assessments in PSRs by Province

Province	Instruments Used	Part of PSR Assessment	Included in PSR
Alberta	ORAMS	Not according to guidelines	No
British Columbia	CRNA, SARA, SORA, Static-99, SONAR	Yes - PSR based on a risk/needs format	Risk/needs ratings and recidivism prediction currently not reported due to Nova Scotia decision
Manitoba	ORAMS, PRA & SRA, Static-99, considering LSI-R for 2005	Yes – as appropriate to offence	Yes – but one justice has requested results be omitted.
New Brunswick	LSI, Static-99	Yes	Yes – can be used to substantiate or emphasize risk factors
Newfoundland	Manitoba Primary & Secondary Risk Assessments, potentially Static-99	Yes	Yes – with accompanying page describing assessment development, use, and validity
Northwest Territories	ORAMS	No	Unknown
Nova Scotia	LSI-R, DVI, SAQ	Yes	No – due to Provincial Court decision
Nunavut	ORAMS	Yes	Assessment instrument itself often appended to PSR
Ontario	LSI-OR	Optional	No
Prince Edward Island	LSI-R to be implemented	Not currently	No – LSI not yet implemented
Quebec	None identified	N/A	N/A
Saskatchewan	ORAMS, Static-99, SONAR	Yes	Yes
Yukon	LSI, SARA, Various sex offender instruments	Optional	Optional

Sources: Heads of Community Corrections 2004; Provincial Guidelines relating to the preparation of PSRs.

The question of whether and in what form risk assessment should be included in PSRs is becoming contentious. As indicated above, with the exception of Quebec, all provinces and territories train probation officers in at least one actuarial risk assessment

instrument for use in offender supervision (Heads of Community Corrections 2004). Recently, a challenge to the reliability of the LSI-R in the case of *R. v. Elliot* in the Provincial Court of Nova Scotia has resulted in a province-wide removal of actuarial risk assessment results from PSRs.

R. v. Elliot

The provincial court judge in this case ordered the preparation of a PSR after the accused pled guilty to counts of obstructing a peace officer, failure to provide breath/blood samples, and failure to comply with an undertaking or recognizance. Counsel for the defendant appealed against the inclusion of a paragraph in the PSR stating that the results of the LSI-R placed Mr. Elliot in the maximum range for re-offending. The court upheld the appeal, ruling that the portion of the PSR dealing with risk assessment should be expunged. British Columbia has also issued guidelines stating that risk/needs assessments and recidivism predictions are not to be included in PSRs in accordance with the Nova Scotia decision. As no appeal of the decision has been filed by the province, *R. v. Elliot* may trigger a move toward a more restrictive approach to the use of risk assessments in PSR preparation across Canada.

1.5 The Canadian Courts and Risk Assessments in PSRs

As identified by Cole and Angus (2003), most court challenges to the use of standardized risk assessment instruments in Canada have been concerned with the qualifications of the assessor rather than the nature, reliability, or validity of the instrument itself. The basis of concern in the Nova Scotia Provincial Court *R. v. Elliot* case (2004) was the training of the probation officer in the LSI-R. Although a Provincial Program Officer

testified that probation officers in Nova Scotia do in fact receive the training necessary to administer the questionnaire, the probation officer who completed the assessment and the PSR testified that he did not feel that he had received adequate training and was unsure of the interpretation of two questions in the assessment. The court therefore concluded that decisions regarding risk based on the assessment tool were “pure conjecture” and that, due to lack of training, the validity and legitimacy of the test’s interpretation are matters of concern and results should not be included in the PSR. The court also concluded that, in accordance with the principles of the *Criminal Code*, sentencing is based on the current offense; therefore comments as to recidivism are of questionable assistance and cannot be considered a matter of weight.

In the case of *R. v. Proulx* (2000), however, the Supreme Court ruled that the danger posed by an offender to the community, consisting of a combination of risk of re-offence and gravity of potential offence, is a precedent condition in the consideration of whether the court should impose a conditional sentence. Although the court did not specify the format that an assessment should take, the ruling clearly indicates that the concept of potential risk to the community is a valid sentencing concern - at least where a conditional sentence is under consideration. Section 742.1(b) of the *Criminal Code of Canada* in fact states that as a statutory pre-condition to imposing a conditional sentence, the court must be “satisfied that serving the sentence in the community would not endanger the safety of the community”. Several courts² have, however, subsequently ruled that an assessment of risk conducted by a probation officer does not in itself provide sufficient evidence on which to base either the granting or denial of a community-based sentence.

² See, for example, *R. v. Shore* 2002, *R. v. Helstrom* 1999

In a 2002 survey of the Canadian judiciary's opinions on conditional sentencing, Roberts, Doob and Marinos included a question on the perceived utility of a statistical tool for predicting offenders' risk of recidivism. Of 437 judges surveyed, 15.3% responded that this tool would be useful in all cases, 25.9% in most cases, 29.7% in some cases, and 14.4% in a few cases. Only 14.6% responded that the use of a statistical tool would never be useful to judges in assessing risk (Roberts, Doob and Marinos, 2000).

Although currently the case with the strongest impact, *R. v. Elliot* is by no means the first to question risk assessment information in court reports. Forensic psychologists testifying as experts in cases involving sex offenders, psychopathy, and long term or dangerous offender designations are often required to defend the reliability and/or validity of standardized assessments such as the PCL-R, Static-99, and RRASOR. The Nova Scotia Court of Appeal, for example, in *R. v. H. (J.T.)* (2002), concluded that "the results of actuarial testing offer the best prospect of predicting the future behaviour of sexual or other violent offenders" based on the testimony of a forensic psychologist. The British Columbia Superior Court, in *R. v. D.A.S.* (2000), concluded that "[t]he forensic psychology field has over the last 15 to 20 years spent increasing amounts of time developing and testing risk measurement instruments" and "the reliability among trained raters is acceptably high as well as the validity of the scales to predict recidivism".

Judicial interest in the factors on which risk ratings are based has also been manifested in several cases. Judges in Newfoundland, for example³, have overruled the high-risk ratings assigned by provincial policy to cases of violence in light of the actual risk factors examined in the assessment conducted by the probation officer and presented in the PSR. The decisions in these cases seem to indicate a greater confidence in the assessments

³See, for example *R. v. S.A.* 2001, and *R. v. Clarke* 2001 (dissenting)

themselves than in the current policy regarding their use. The general appeal of concluding that offenders who have committed violent offences are automatically at a high level of risk is understandable given the potentially high stakes involved. The presentation of assessment results to the contrary, however, leaves the court in the difficult position of choosing between conflicting sets of indicators in which the actuarial assessment, in an interesting turn, in fact provides the more individualized application.

Angus and Cole (2003) identify this potential for Ministry policy to over-ride actual assessment results as one of three dangers in the use of risk assessments. An additional danger is the potential for the instruments to be administered by someone with insufficient training. As discussed in *R. v. Elliot*, the qualifications of the assessor are an important component in ensuring the reliability of assessment results. A qualified assessor should be trained in the proper use of the instrument, the research supporting its predictive validity, and the theory behind its development (Bonta 2002). According to these criteria, there is nothing in the professional qualifications of a probation officer that would prevent him or her from being able to administer and interpret an actuarial assessment. Unfortunately, as identified by Cole and Angus (2003), the brief, often on-the-job training offered to many probation officers does present a potential cause for concern in the reliable use of actuarial instruments.

The final danger in the use of risk assessments discussed by Cole and Angus is the potential for the administrator to purposely affect the outcome of the assessment by selectively including or excluding information (2003). The idea behind any assessment, whether a first generation clinical analysis or a third generation actuarial risk/needs analysis, is to use the information at hand to improve the decisions or recommendations made

regarding the subject. As mentioned earlier, one of the advantages offered by second and third generation actuarial assessments over first generation clinical assessments is less opportunity for individual discretion and bias (Bonta, 1996). Because the accuracy of the assessment is dependent on the information entered, though, Cole and Angus' concern for probation officers intentionally biasing the outcome is valid and somewhat difficult to prevent. Once again, the problem is not with the assessment instrument itself but with its administration.

The inclusion of actuarial risk assessments in PSRs therefore remains at the discretion of Provincial guidelines or individual probation officers. Some courts have found the assessments useful⁴, some find the format "too mechanistic" (*R. v. Cook*, 2000), and some, as discussed above, are concerned with the qualifications of the assessor rather than the reliability or validity of the instruments themselves. Despite these concerns, the use of a risk-based approach to PSRs provides the probation officer with a role specific to his or her area of expertise by concentrating on criminogenic factors and avoiding issues that are best left to the court such as adhering to the principles of proportionality (Cole & Angus, 2003).

1.6 Research Evidence

Although the concerns discussed above focus on the reliability of actuarial assessment instruments, the validity of these instruments has by no means been overlooked. Validity testing is an integral component of designing standardized assessment tools such as the LSI, Manitoba, and ORAMS instruments used in Canada.

The question of how actuarial assessments compare to the professional evaluation of the probation officer is also worth considering. No matter how valid actuarial assessments

⁴ See, for example, *R. v. Hewitt* (2004), *R. v. McGrath* (2004)

are, if they are outperformed by clinical assessments their use is difficult to justify. The predictive accuracy of actuarial versus clinical assessments has therefore been the subject of much research inquiry. Grove and Meehl's meta-analysis, for example, evaluated the effect sizes of 136 studies comparing actuarial to clinical prediction methods in areas relating to health or human behaviour. The analysis found 64 studies in favour of the actuarial method, eight in favour of the clinician, and 64 with approximately equal predictive accuracy (Grove and Meehl, 1996). Although this study suggests that clinical assessments are often equal or close to actuarial assessments, the study also found that the availability of clinical interview data was a consistent predictor of poorer predictive accuracy in clinical assessments (Grove & Meehl, 1996; Grove et. al, 2000). This observation is important in considering the use of assessments in PSRs because virtually all probation officers conduct risk assessments based on clinical interview data obtained from meeting directly with the client and often from family and community references as well. Grove and Meehl (2000) also point out that considerations such as cost and replicability favour the use of actuarial over clinical assessments in the event that the two are evenly matched in terms of predictive accuracy.

A study by Weinrath (1999) specifically looking at pre-sentence reports also concluded that the use of actuarial assessments was more effective than the use of narrative (i.e., clinical) assessments. The study looked at the success rates of 206 adult offenders assigned to one year of probation in Alberta in 1978, 136 without PSRs and 70 with. The overall finding of the study was that offenders who received probation following the preparation of a PSR were more likely to re-offend severely than those sentenced without PSRs (Weinrath, 1999). This relationship does not indicate causality; although PSRs may encourage risk-taking by the judiciary, the effect may also simply be due to the retrospective

design of the study or to an increased likelihood that judges who favour rehabilitation are more likely to order PSRs than judges who favour incapacitation (Weinrath, 1999). Weinrath concluded that narrative PSRs contributed no predictive utility to the sentencing process and that public safety and offender rehabilitation would be better achieved through the use of actuarial assessment instruments and information on intensive rehabilitation programs available in the community (1999).

1.7 International Developments

Britain, Australia, and New Zealand have recently experienced changes in policy regarding the use of risk assessments by the probation service. The ways in which these changes were implemented, and their impacts, provide useful indications of how a similar change could be approached in Canada and the reactions that might be expected.

England and Wales: The 1991 *Criminal Justice Act*

In England and Wales, the 1991 *Criminal Justice Act* proposed the replacement of custodial with community sentences for most non-violent offenders. The *Act* also replaced the focus on social background of the Social Inquiry Report (SIR) with the more offense-focused Pre-Sentence Report (Cavadino, 1997). PSRs were to play a key role under the *Act* as they were to be mandatory before imposing custodial or highly restrictive community dispositions in most cases (Gelsthorpe & Raynor, 1995). In order to examine the potential impact of processing the greater number of probation reports required by the *Act*, the Home Office and Lord Chancellor's department implemented pilot studies just prior to the implementation of the new legislation in 1991. In these studies, probation offices were required to conduct a SIR in any case that would later require a PSR. Although some offices had changed the

report format in anticipation of new PSR guidelines, the documents were still predominantly considered SIRs (Gelsthorpe & Raynor, 1995).

Gelsthorpe and Raynor conducted an analysis of the content and quality of the 151 reports prepared during these pilots (1995). The analysis found the dominant category of information included in these reports was “Social History”, or, as dubbed by the authors, “Inappropriate Psychosocial Gossip” (Gelsthorpe & Raynor, 1995:194). Sentencers interviewed as part of the inquiry reported, however, that they were concerned with sentencing issues such as availability of appropriate community services. Sentencers also identified information on social background as important, but not to the extent that it dominates the report (Gelsthorpe & Raynor, 1995). The study therefore demonstrated that the probation officers’ traditional social work skill set would be of continued use to the judiciary in providing individualized information on social background, motivation, and attitudes. The more offense-focused approach of the PSR would also provide sentencers with the information specific to sentencing that they have requested (Gelsthorpe & Raynor, 1995).

The initial impact of the 1991 *Criminal Justice Act* was constrained by subsequently tabled bills; a change attributed by Gelsthorpe and Raynor to resistance by the judiciary to attempts to limit sentencers’ discretion (1995). Despite these revisions, the new PSR format remained. Cavadino conducted a comparison of 71 SIRs from 1991 to 71 PSRs from 1993, matched on age, gender, and type of offense (1997). Although PSRs were intended to take a risk-based rather than a social approach, the study found that only a minority of reports contained explicit mention of risk to re-offend; 11% in SIRs versus 10% in PSRs. SIRs were in fact significantly more likely than PSRs to contain implicit discussions of risk. Both

report styles contained comparable social background information, however less space was dedicated to its presentation in PSRs (average 23 lines of text) than in SIRs (average 39 lines of text).

Changes in presentation style, format, and focus of the PSRs such as the shortening of the social background section led Cavadino to conclude that the shift from SIRs to PSRs illustrated the potential success of a policy-driven method of report preparation (1997). He attributes this success to the extensive training and consultation with practitioners that accompanied the introduction of PSRs. Cavadino also stresses the importance of presenting the new legislation as guidelines rather than as rules in obtaining practitioners' co-operation (1997).

England and Wales: The Offender Group Reconviction Scale

Unfortunately, policy-driven changes in PSR preparation have not always been implemented as smoothly as those observed by Cavadino. The Offender Group Reconviction Scale (OGRS) is a second-generation actuarial risk assessment that was introduced by the Home Office through a probation services circular in 1996. The instrument was designed to provide nationally uniform guidance in terms of an offender's risk of recidivism. Although only intended as a guideline, the OGRS triggered a backlash resulting in a policy of non-cooperation by the National Association of Probation Officers (Colombo & Neary, 1998). This backlash was attributed to a lack of information surrounding the instrument's release. Probation services interpreted the OGRS as a mathematical tool that was being imposed by the Home Office to replace or overrule probation officers' expertise.

In a study examining the risk assessment tools being used by probation services in 1998, Colombo and Neary interviewed 40 probation officers about their perceptions of risk assessments. Probation officers with lengthy experience were most likely to view actuarial assessments as “de-skilling”, or shifting their role from skilled professional to administrator (Colombo & Neary, 1998: 217). Recently trained probation officers as well as senior officers were more likely to see the tools as “re-skilling”, or extending their skills to work with new data and collection methods (Colombo & Neary, 1998: 218). These findings again emphasize the need for adequate information and training when introducing the use of actuarial risk assessment instruments. In order to minimize the perception of “de-skilling” the probation service, a new instrument needs to be introduced as an opportunity to expand interviewing skills, analytical skills, and accountability (Colombo & Neary, 1998).

In the second phase of their research, Colombo and Neary conducted a survey of risk assessment tools being used in regional probation services. Only 19 of the 48 services responding were using the OGRS at the time of the survey. Thirteen services reported that they had moved on to third generation instruments such as the Oxford/Warwickshire Assessment Case Recording and Evaluation System (ACE) and the Level of Service Inventory Revised (LSI-R) in order to measure offender needs rather than focus strictly on risk. The majority of probation services reported the use of in-house assessments that had been developed locally with limited or no statistical methods, small sample sizes, and wide variations in factors identified as predictors of risk. Although regional specificity and flexibility made these in-house assessments popular, their variability and lack of demonstrated validity makes their use counterproductive to the ideal of uniformly applied national standards (Colombo & Neary, 1998). However, as noted by Colombo and Neary,

the interest in the development of in-house assessments marks a shift toward the use of actuarial tools that may lead to increased acceptance of a nationally developed and validated risk/needs assessment in England and Wales.

This shift was also observed in Robinson's 2001 interviews with 29 probation service personnel from 2 regions using the LSI-R. During these interviews, Robinson found that the LSI-R was generally welcomed by probation personnel as a means of improving consistency and quality, providing a sense of security, and informing spending on services to meet offender needs (Robinson, 2003). Further discussion around actuarial assessments reflected Colombo and Neary's findings five years earlier, though, and indicated that professional insecurity about potential 'de-skilling' was still widespread (Robinson, 2003). Respondents in Robinson's study did not directly identify concern for being replaced by an actuarial tool, but often expressed ambivalence toward the instrument itself and emphasized the professional skill necessary to interpret and corroborate assessment results (2003). In addition, although new instruments were generally enthusiastically received, commitment quickly declined and, in some cases, was replaced by resentment if their use was not accompanied by feedback or reinforcement (Robinson, 2003). Robinson's study shows particular promise for the use of actuarial tools in PSRs, though, as both probation areas surveyed required the inclusion of assessment results in all PSRs (2003). Robinson also points out that because the pre-sentence stage was the only case in which LSI-R preparation was monitored by the court system, this emphasis may not actually reflect voluntary prioritization by probation services (2003).

England and Wales: Offender Assessment System

Experience with the use of actuarial tools in England and Wales therefore demonstrates the importance of training and feedback emphasizing the professional skills required in conducting any risk assessment. As part of its *Effective Practice Initiative* in 1999, the Home Office announced the development of a new third generation risk/needs assessment for use by all prison and probation services. The resulting Offender Assessment System (OASys) was officially implemented in paper form across England and Wales in 2003 (National Probation Services, 2003). Following initial delays, the electronic version of OASys has now replaced the paper version (National Probation Services, 2004). Although all probation personnel received initial training in the use of the new instrument, the quality and consistency of the training and level of feedback to practitioners will be interesting to examine in comparison to the Home Office's previous experience with the OGRS. This analysis as well as the reception of OASys among probation personnel will undoubtedly provide useful lessons to other policymakers interested in implementing national risk assessment tools.

Western Australia

Western Australia is also in the process of implementing an electronic risk assessment and tracking system. Development of the new assessment instrument, known as the Adult Actuarial Risk Instrument (AARI) began in 1995 through a partnership between Western Australia Community Corrections and the University of Australia's Crime Research Centre (Maller & Lane, 2002). Unlike most instruments developed and validated using limited samples, the AARI uses ongoing statistical prediction modeling to determine and weight static risk variables (Daley & Lane, 1999). A separate portion of the assessment

targeting offender needs measures dynamic variables such as substance use, social supports, and employment. The AARI has been piloted and modified to reflect feedback from probation services, which, according to Cavadino (1997), will increase the chances of cooperation once fully implemented. As in England and Wales, Daley and Lane report that some probation personnel have expressed concern about the potential for the replacement of their skills by the electronic system (1999). In order to address these concerns, the AARI is being presented as a means of augmenting the classification skills of probation personnel as well as increasing consistency and accountability for the decisions made (Daley & Lane, 1999). Although not intended for use at the pre-sentencing stage, the AARI may be of interest to Canada in terms of its unique development, use of technology, implementation, reception by probation personnel, and in its attention to aboriginal concerns such as over-representation and socio-economic disadvantage.

New Zealand

New Zealand has just completed the development of a risk/needs instrument designed to address criminogenic needs and responsivity factors. The Criminogenic Needs Inventory (CNI) is an offense-focused cognitive behavioural assessment designed for use by non-specialized professionals. In order to ensure the validity of results, intensive training, guidelines, and ongoing professional supervision will accompany the implementation of the new assessment (Coebergh et al., 2004).

The CNI measures factors based on an operationalization of the principles outlined in Andrews and Bonta's *Psychology of Criminal Conduct* (Coebergh et al., 2004). The assessment is divided into pre and post-sentence components. The pre-sentence component is designed for use with high-risk offenders to provide the judiciary with rehabilitative

sentencing options (Coebergh et al., 2004). The assessment for the pre-sentence component consists of automatic ratings based on file information as well as a clinical interview. The clinical interview is structured to provide corroborating evidence for the automatic ratings and to provide information on the offender's offense chain, defined as "events identified as having taken the offender a step closer to committing the offence and keeping the offence going once it started" (Coebergh et al., 2004). Unfortunately the CNI has only just begun pilot trials, and no implementation data is currently available.

Summary: International Experience

Although the instruments and methods of implementation used in England and Wales, Australia, and New Zealand are diverse, they demonstrate an international move toward the use of actuarial risk assessments by probation services. International experience with changes to the preparation of sentencing reports provides a valuable means of informing Canadian PSR policy. The research accompanying these changes demonstrates that actuarial risk assessments can be supported by both the probation service and the judiciary.

1.8 Thesis Purpose and Outline

In 2002, the Corrections Research division of Public Safety and Emergency Preparedness Canada (PSEPC), then known as the Department of the Solicitor General, began a project designed to fill some of the gaps in knowledge surrounding the use of PSRs and sentencing in Canada. The overall purpose of the project was to examine the practices

of PSR requests, preparation, content, and use. Four basic research questions were initially identified for investigation (Bonta & Bourgon, 2002, p. 3):

1. What are the reasons for requesting a PSR?
2. What are the resource demands in preparing a PSR?
3. Is the content of the PSR helpful for sentencing and case management planning?
4. How does the PSR influence sentencing?

The research team was also particularly interested in cases involving Aboriginal offenders and cases involving conditional sentencing in order to provide an indication of the impact of recent Supreme Court decisions. In *R v. Gladue*, the Supreme Court ruled that the judiciary must take into account the unique circumstances faced by Canada's Aboriginal population when sentencing Aboriginal offenders. In the case of *R v. Proulx*, the Court outlined the circumstances under which a conditional sentence should be considered and the criteria that must be met in terms of severity and likelihood of potential future offenses.

Using the data collected from this project, this thesis will examine the use of risk assessments in PSR preparation. The central research question is: how do judges and probation officers in Canada differ in their opinions on the use of actuarial risk assessment information in pre-sentence reports? The context in which these assessments are used will also be investigated in order to provide a more complete picture of both their use and potential correlates of the opinions held by judges and probation officers. Additional areas of investigation therefore include existing guidelines regarding the use of risk assessment instruments in PSR preparation, risk assessment instruments themselves, comparable international research and experience, and an examination of the some of the opinions and actual practices expressed by judges and probation officers through analysis of both

questionnaire responses and PSR content. The analysis of this information will be guided by six research questions:

1. How important is risk related information in pre-sentence reports?
2. What kinds of information do judges and probation officers want in a PSR?
3. What differences exist between the perceptions of judges and probation officers regarding risk assessment in pre-sentence reports?
4. Do judges and probation officers agree on the importance of risk information within actual pre-sentence reports?
5. How might the use of risk assessments in PSRs contribute to sentencing?
6. How can the use of risk-related information in pre-sentence reports be improved?

Pre-sentence reports are often used again at the post-sentencing stage to inform offender supervision, either by probation staff or institutional intake officers. The primary function of the PSR is, however, to provide information relevant to the court for sentencing purposes. The PSR therefore needs to contain information that the judge is looking for and that may be of use in the sentencing process. Identifying differences between what probation officers and judges feel should be included in the PSR is therefore a key part of ensuring that probation officers are in fact providing information that is being sought and in a form that will be useful to the court.

The third-generation assessments currently used by most probation offices in Canada not only identify the offender's risk of recidivism, they identify the areas that can be addressed in order to reduce that risk. Areas in the PSR dealing with the offender's needs, treatment, and rehabilitation may therefore be impacted by the use and format of risk assessment information by the probation officer. The data analysis in this thesis therefore

addresses these areas as well in order to inform the discussion of potential correlates of opinion and potential impacts of changes to the use of risk assessments in PSRs.

Overview

This introductory chapter has provided an overview of the legal context and use of PSRs and risk assessments by the probation service in Canada, the development and current research support for the use of risk assessments, and comparable international experience with respect to the use of PSRs. The second chapter will outline the methodology used in the Pre-Sentence Report Project and explain how the data gathered in this project will be used to answer the thesis question. Chapter Three summarizes the findings of the data analysis. The data analysis uses a quantitative approach to look at the views of the judiciary and probation officers regarding the use of risk assessments in PSRs through both the general interviews and information submitted on actual PSR cases. Chapter Four will discuss the results of the data analysis, potential implications of the thesis results, and potential next steps for both research and policy relating to the use of risk assessments in pre-sentence reports.

Chapter 2: Methodology

In order to examine the perceptions of judges and probation officers regarding the role of risk assessments in Pre-Sentence Reports, this thesis will use data collected by the Department of Public Safety and Emergency Preparedness Canada as part of a project examining the use of PSRs in Canada. This thesis will draw data from three principle sources of information within the PSR project: a general survey of opinions held by judges and probation officers on PSRs; actual PSRs submitted; and feedback from judges and probation officers on the PSRs submitted. As all data have been coded, statistical analysis will look at issues such as relationships between opinions and regional and demographic factors. Statistical analysis will also permit comparisons between the perceptions of the judiciary and the perceptions of probation officers.

2.1 The PSR Project: Data Collection

The PSR Project was originally undertaken in 2002 in order to “provide a description and baseline of practice associated with the preparation and use of the PSR” (Bonta & Bourgon, 2002: 2). The project was undertaken in two phases, the first focusing on the use of PSRs within the general context of the courts, and the second looking in greater detail at the PSRs themselves. One court from each province was selected by representatives from the Heads of Community Corrections to determine the sample sites. The only jurisdiction that did not initially agree to participate in the project was the Northwest Territories; however a sample of court representatives in Yellowknife did agree to complete a self-administered mail-out questionnaire. Unfortunately, the sample is one of convenience and the survey data cannot be considered truly representative of the entire population of potential

respondents. The quantity of data received from across Canada does, however, enable a general commentary about the opinions of members of the court regarding the role, preparation, and content of PSRs.

The first phase of the project consisted of interviews with judges, probation officers, and counsel from each sample site. The interviews were administered on-site by contractors and consisted of open-ended questions about the context, use, and content of PSRs. Most interview questions were the same for all respondents, with some modifications tailored to specific interests and roles within the courts. Interviews for probation officers, for example, contained additional questions regarding the preparation of PSRs and their potential impacts on offender supervision. Counsel interviews contained additional questions relating to the frequency of, and reasons for requesting PSRs. A second section, included in all interviews, asked respondents to rate the importance on a ten-point scale of various pieces of information potentially included in PSRs⁵. A final section included in judge and probation officer interviews asked respondents to provide ratings for issues and statements relating to the justice system and the sentencing process.

Table 2.1 provides a breakdown of the interviews conducted. In order to obtain additional interviews with the judiciary, the interview was adapted into a self-report questionnaire that was distributed through the chief provincial court judge⁶ to members of the judiciary not fully participating in the study. These self-administered questionnaires provided a broader sample of the judiciary, and these responses were coded and analyzed with the responses obtained from the judges interviewed directly.

⁵ This scale is provided for reference in Appendix D.

⁶ Self-administered questionnaires were not sent to Prince Edward Island, New Brunswick, the Yukon, and Nunavut as all judges in these districts had already agreed to participate in the study.

Table 2.1: General Survey Respondents by Province/Territory

Province/ Territory	Judges (Self Report)	Judges (Interview)	Probation Officers	Crown Attorneys	Legal Aid	Private Defense	Total
Alberta	8	5	10	10	0	10	43
British Columbia	2	2	17	10	0	9	40
Manitoba	9	6	16	5	1	8	45
New Brunswick	0	4	9	3	0	1	17
Newfoundland	1	3	11	9	4	5	33
Northwest Territories	2	0	6	3	2	0	15
Nova Scotia	6	4	30	10	6	4	58
Nunavut	0	3	10	8	1	1	23
Ontario	6	4	37	7	0	10	64
Prince Edward Island	0	3	17	6	4	2	32
Quebec	11	6	15	10	1	9	52
Saskatchewan	10	5	12	7	7	0	41
Yukon	0	3	8	10	3	5	29
Total	55	48	198	98	29	64	492

The second phase of the PSR project required participating judges and probation officers to provide case-specific information on a selection of offenders for whom PSRs had been requested. For each PSR case, the judge and probation officer completed a brief questionnaire about the information being sought and the information provided in the individual report. Judges and probation officers were also asked to fill in the same information rating scales completed in phase one interviews, but now reflecting the importance of the pieces of information to the individual case. Judges were then asked to underline sections of the PSR that they found useful. Probation officers were asked to

underline the sections of the PSR that they thought would be important to the judiciary and to circle the sections of the PSR that they thought would be important for supervision purposes. The package submitted in a complete case therefore contained a judge questionnaire, probation officer questionnaire, a marked copy of the PSR from the judge, a marked copy of the PSR from the probation officer, and a case review summarizing information such as charge and disposition.

Judges were also asked to provide case reviews on ten non-PSR cases to be used as a control group. Non-PSR case reviews contained the same information as PSR case reviews, as well as a one-page checklist where the judge was asked to check off categories of information such as education, substance use, and financial status if they were presented in court during counsel submissions or other means. Finally, probation officers in Prince Edward Island, Ontario, Manitoba, Saskatchewan, Alberta, and the Yukon were also asked to fill in timesheets tracking the tasks and time demands involved in preparing each PSR. Table 2.2 on the following page summarizes the data collected in this second phase of the project.

As Table 2.2 illustrates, many respondents did not provide all of the information requested. In order to capture the greatest amount of information possible, cases were not required to be complete for inclusion in the database. Only 30 of the 35 judges who had initially agreed to participate in the project actually submitted data on PSR cases. The variation in response by regions reinforces the fact that these data cannot be considered nationally representative.

Table 2.2: Pre-Sentence Reports and Feedback Submitted by Province/Territory

Province/ Territory	Probation Officer Survey	Judge Survey	Probation Officer PSR	Judge PSR	Timesheet	Control Case	Total PSR Cases
Alberta	11	0	11	0	10	30	11
British Columbia	4	4	4	4	N/A	4	4
Manitoba	14	16	16	15	16	17	16
New Brunswick	28	23	28	22	N/A	19	28
Newfoundland	17	5	19	4	N/A	16	17
NW Territories	0	0	0	0	N/A	0	0
Nova Scotia	29	40	27	40	N/A	31	40
Nunavut	13	18	15	18	N/A	5	18
Ontario	17	17	17	13	16	12	19
PE Island	30	30	30	20	29	30	30
Quebec	36	11	35	2	N/A	0	37
Saskatchewan	3	0	3	0	2	0	3
Yukon	25	26	25	24	25	32	26
Total	227	190	228	162	98	196	249

2.2 Data Coding

Due to the open-ended format of most of the questions in the first phase of the project, statistical analysis required the coding of the original data. Data coding manuals were developed by reading through questions to identify common points, selecting a number of these points that were of interest to the project, and listing them as categories to be identified as present or absent (see Appendix A). Portions of the interviews dealing with ratings and yes or no questions were simply entered into a database either directly or using

representative numbers (i.e. 0=No, 1=Yes). In order to ensure reliability, a second rater coded a random sample of the data. Kappa ratings of inter-rater reliability were high, with means ranging from 0.897 to 0.917 depending on the type of respondent (i.e. counsel, judge, probation officer).

The case-specific interviews conducted with judges and probation officers in the second phase of the project were coded in much the same way as the interviews conducted in phase one. Open-ended questions were coded according to the presence or absence of categorized information (see Appendix B), and ratings and closed questions were again directly entered using numeric representation. The PSRs themselves required a more detailed coding scheme in order to capture as much potentially useful information as possible (see Appendix C). In addition to being marked present or absent, the information was also scored according to whether it was marked as important by the judge, and whether it was circled or underlined by the probation officer. Finally, most categories were also rated according to whether the information was presented in a positive or negative manner by the probation officer. The category of Previous Supervision, for example, would be rated as negative if the probation officer described a history of parole breaches, or positive if the probation officer described a history of compliance with probation conditions. As with the phase one data, a second rater coded a random selection of PSR case packages in order to ensure reliability. Kappa ratings again indicated a high level of inter-rater reliability with an overall mean of 0.961 for the case-specific interviews and a range from 0.943 to 0.981 for the four scoring aspects of the PSRs themselves.

2.3 Obtaining Information on Risk

Participants' perceptions of the role of risk assessments in PSRs were explored in a number of ways. In the interview phase of the PSR project, three variables relating to risk were among those rated by judges and probation officers from one to ten in terms of general importance in a PSR⁷: "Assessment of risk to re-offend"; "Assessment of risk to re-offend violently"; and "Assessment of risk to re-offend sexually". The open-ended question portion of the interview asked an additional two questions relating to risk:

4. (Judge) The *R. v. Proulx* decision requires the courts to consider the offender's risk to the community when considering a conditional sentence. In our preliminary discussions with Judges across the country, some have expressed satisfaction with the inclusion of formal risk assessment information in the PSR (e.g., results of a standardized risk assessment) and others have expressed their dissatisfaction. What do you think about risk assessment information being included in a PSR?

4. (Probation Officer) The *R. v. Proulx* decision requires the courts to consider the offender's risk to the community when considering a conditional sentence. In our preliminary discussions with criminal justice professionals across the country, some have expressed satisfaction with the inclusion of formal risk assessment information in the PSR (e.g., results of a standardized risk assessment) and others have expressed their dissatisfaction. What do you think about risk assessment information being included in a PSR? Should risk information be included for cases where a conditional sentence is being considered or for all cases where a PSR is requested?

5. (Judge & probation officer) Risk assessment information can be provided in different ways. One method is using a narrative approach describing many of the factors associated with re-offending but not explicitly linking it to risk. A second method is by completing a standardized risk assessment instrument and including the results in a special section of the report. Which method of conveying this information would you prefer and why?

Because there was considerable overlap in the answers to these two questions, they were coded together using the charts attached in Appendix A. Categories were quite specific with the intention of facilitating their later combination for general analysis while also

⁷ See Appendix D for the complete list of variables.

allowing for comment on details. Information that did not fit into the categories provided was noted in a residual 'other' category. After all answers had been coded and entered into SPSS, the specific variables were merged, where appropriate, in order to indicate: whether the respondent was in favour of, neutral to, or against the inclusion of risk assessments in PSRs; had concerns regarding the reliability of risk assessments; had concerns regarding the validity of risk assessments; preferred the narrative or standardized format; found that the narrative format provided more individualized information; found that the standardized was more efficient or objective; or believed that he or she lacked knowledge or training in the use or interpretation of standardized assessments. All statistical analyses performed on the open-ended questions in the general opinion interviews used these merged variables in order to increase reliability for the general concepts being examined.

The case-specific interviews in the second phase of the study did not include any direct questions regarding risk assessment. In the first portion of the questionnaire, however, the offender's risk to commit further offenses was among the determining factors that judges and probation officers were asked to identify if they had found the information important in the PSR⁸. Risk assessments were also mentioned in answers to open-ended questions regarding information sought in the PSR and information that was or was not useful. The inclusion of this information was again coded in order to allow statistical analysis.

The analysis of the PSRs themselves identified whether or not a risk assessment had been included, in what form, what level of risk was identified, whether or not related treatment factors were listed, and whether or not the offender's risk to re-offend had been circled or underlined by the judge or probation officer. This information was again coded and entered into a database for statistical analysis.

⁸ See Appendix E for this section of the questionnaire.

2.4 Statistical Analysis

Statistical analyses were conducted using the coded data described above within two databases created in SPSS. Because the sample was one of convenience and therefore not necessarily representative of the population, Cramer's V was used to measure strength of association rather than the usual Chi-Square tests of significance. Analysis was also somewhat restricted by the variance in respondents between questions. Not all respondents answered each question in the interviews and questionnaires. Many of the pre-sentence reports submitted contained feedback from only the judge or probation officer. The frequencies of responses were compared between groups and percent agreement was calculated for cases in which information from both judges and probation officers was available. The purpose of the statistical calculations is to identify potential areas in which the opinions of judges and probation officers differ, not to be able to draw or generalize definite conclusions about the sample or overall population. For these purposes, the restrictions posed on the analysis by the sample selection and variance in number of respondents between questions is acceptable.

Chapter 3: Data Analysis

The data analyzed in this thesis are taken from three principal sources within a research evaluation of the use of pre-sentence reports in Canada. The first source consists of a survey in which judges and probation officers expressed their views on the general use and content of pre-sentence reports. Although only two questions in these interviews asked directly about risk assessments, several other questions provided information relevant to the project through answers relating to risk. Other information collected (such as demographics and opinions regarding sentencing) also allowed the investigation of potential correlations between these variables and the respondents' opinions regarding the utility of risk-related information.

The remaining data provide examples of the actual preparation and use of pre-sentence reports. The second source of data is a sample of pre-sentence reports submitted by respondents for the evaluation. This source provides examples of the actual use of risk information within PSRs. The third source consists of feedback provided by judges and probation officers on the PSRs submitted and the cases for which they were prepared. This portion of the PSR project asked judges and probation officers to answer questions and identify important aspects of the pre-sentence reports prepared during the study period. Although none of the questions in the brief questionnaire asked specifically about risk assessments, answers to general questions did provide related information. In addition, the marked importance of risk in the PSRs submitted provides an indication of the actual use and reactions to risk assessment information by the judiciary and probation officers. In order to address the central research question, the analyses presented in this chapter focus on areas of difference between judges and probation officers.

3.1 General Opinion Interview Results

Opinions on the Inclusion of Risk Information

In the general opinion interviews, risk clearly emerged as an important piece of information in the pre-sentence report. Judges and probation officers were asked “What do you think about risk assessment information being included in a PSR”. The answers were coded according to the presence or absence of selected opinions or statements (see Appendix A). Overall, 65.9% of the total sample responded that risk assessment information should be included, 23.2% responded that it should not, and 10.9% were neutral. Judges and probation officers held quite similar opinions, with less than a five percent difference between the two groups.

Judges and Probation Officers Prefer a Narrative Assessment Format

Judges and probation officers were also comparable in their preference for type of assessment. Respondents were given the choice of “a narrative approach describing many of the factors associated with re-offending” and “completing a standardized risk assessment instrument and including the results in a special section of the report” and asked “Which method of conveying this information [they] would prefer and why”. Responses were again coded according to the presence or absence of selected opinions. Overall, 46.7% of respondents favoured the use of a narrative rather than standardized format. The only notable difference between the two groups was in regards to additional options: 18.3% of judges but none of the probation officer respondents expressed no preference between the narrative and standardized options. Table 3.1 provides a summary of the opinions expressed regarding risk.

Table 3.1: Comparison of Respondents' Opinions on Risk Information in PSRs

Variable	Judges (n=104)	Probation Officers (n=198)	Overall (n=302)
Risk information should be included in PSR	68.3%	64.6%	65.9%
Risk information should not be included in PSR	21.2%	24.2%	23.2%
No opinion of inclusion of risk information in PSR	10.6%	11.1%	10.9%
Preference for narrative assessment format	39.4%	50.5%	46.7%
Preference for standardized assessment format	20.2%	24.7%	23.2%
Should include both narrative and standardized format	20.2%	20.2%	20.2%
No opinion regarding assessment format	18.3%	0.0%	6.3%

Although respondents did not differ in their opinions on risk assessments based on their role as either judge or probation officer, analysis did indicate several other factors that appear to influence the opinions expressed. The respondent's province or territory appeared to be associated with support for the inclusion of risk assessment information, however low expected cell counts prevented meaningful statistical analysis. Respondents from British Columbia, Nova Scotia, and Ontario were less likely to favour the inclusion of risk information whereas respondents from Prince Edward Island, Quebec, Saskatchewan, and the Yukon were more likely to favour this information. Because PSR guidelines are provincially determined, further analysis investigated the role of legislation prohibiting the inclusion of risk assessment information. This legislation had a moderate association with the opinions of both groups ($V=0.264$), and a stronger influence on probation officers⁹ ($V=0.399$). Tables 3.2 and 3.3 illustrate these results on the following page.

⁹ Low cell counts prevent the meaningful statistical analysis of the effects of provincial legislation on the opinions of judges.

Table 3.2: Provincial Legislation and Opinions of Judges and Probation Officers on the Inclusion of Risk Information in PSRs

		What do you think about risk assessment being included in a PSR?			Total
		Should not be included	Neutral	Should be included	
Provincial legislation allows risk assessment information	Count	38	25	163	226
	Expected Count	52.4	24.7	148.9	226.0
	% (within row)	16.8%	11.1%	72.1%	100.0%
Provincial legislation prohibits risk assessment information	Count	32	8	36	76
	Expected Count	17.6	8.3	50.1	76.0
	% (within row)	42.1%	10.5%	47.4%	100.0%
Total	Count	70	33	199	302
	% (within row)	23.2%	10.9%	65.9%	100%

$\chi^2=20.999$, $df=2$, $p<0.01$

Table 3.3: Provincial Legislation and Opinions of Probation Officers on the Inclusion of Risk Information in PSRs

		What do you think about risk assessment being included in a PSR?			Total
		Should not be included	Neutral	Should be included	
Provincial legislation allows risk assessment information	Count	18	19	101	138
	Expected Count	33.5	15.3	89.2	138
	% (within row)	13.0%	13.8%	73.2%	100.0%
Provincial legislation prohibits risk assessment information	Count	30	3	27	60
	Expected Count	14.5	6.7	38.8	60.0
	% (within row)	50.0%	5.0%	45.0%	100.0%
Total	Count	48	22	128	198
	% (within row)	24.2%	11.1%	64.4%	100.0%

$\chi^2=31.593$, $df=2$, $p<0.01$

There was also a small association between years of experience and support for risk assessments. Unlike some of the international research indicating marked differences in opinion among more senior respondents (i.e. Colombo & Neary, 1998), respondents with fifteen or more years of experience were only slightly less likely to support the inclusion of risk assessment information in PSRs ($V=0.173$), as illustrated in Table 3.4.

Table 3.4: Opinions of Senior vs. Junior Judges and Probation Officers on the Inclusion of Risk Assessment Information in PSRs

		What do you think about risk assessment being included in a PSR?			Total
		Should not be included	Neutral	Should be included	
Less than 15 years experience	Count	40	24	152	216
	Expected Count	49.5	24.0	142.5	216.0
	% (within row)	18.5%	11.1%	70.4%	100.0%
More than 15 years experience	Count	28	9	44	81
	Expected Count	18.5	9.0	53.5	81.0
	% (within row)	34.6%	11.1%	54.3%	100.0%
Total	Count	68	33	196	297
	% (within row)	22.9%	11.1%	66.0%	100.0%

$\chi^2=8.927$, $df=2$, $p<0.05$

Concerns Regarding the Format of Risk Assessments in PSRs

Additional information on potential differences between judges and probation officers interviewed was provided in the explanations and discussions accompanying answers as to whether or not risk information should be included and in what format. This information was analyzed by coding the presence or absence of selected opinions or statements in the answers to either question 4 (inclusion of risk information) or question 5

(narrative or standardized format)¹⁰. Both judges and probation officers expressed concern with the validity (9.6%) and reliability (22.2%) of standardized risk assessments. As illustrated below in Tables 3.5 and 3.6, judges were somewhat more likely than probation officers to express concern with validity (V=0.26), and slightly more likely than probation officers to express concern with reliability (V=0.15). This difference may be attributable to concerns among the judiciary regarding the qualifications of probation officers in conducting standardized assessments. Some judges also expressed concern with the potential limitation of judicial discretion; for example 13.5% explained that they supported the narrative format because it allows the judge to draw his or her own conclusions. A small proportion of judges, 5.8%, stated that risk assessment should not be included in any form because the assessment of risk is solely the responsibility of the judge. When describing support for the standardized method, 15.4% of judges expressed the view that they found it more efficient and/or objective than the narrative method.

Table 3.5: Judges’ and Probation Officers’ Concerns with the Validity of Actuarial Risk Assessments

		Concerns about the Validity of Actuarial Risk Assessments		Total
		Not Present	Present	
Judges	Count	83	21	104
	Expected Count	94.0	10.0	104.0
	% (within row)	79.8%	20.2%	100.0%
Probation Officers	Count	190	8	198
	Expected Count	179.0	19.0	198.0
	% (within row)	96.0%	4.0%	100.0%
Total	Count	273	29	302
	% (within row)	90.4%	9.6%	100.0%

$\chi^2=20.492$, $df=1$, $p<0.01$

¹⁰ See Appendix A for coding sheets.

Table 3.6: Judges' and Probation Officers' Concerns with the Reliability of Actuarial Risk Assessments

		Concerns about the Reliability of Actuarial Risk Assessments		Total
		Not Present	Present	
Judges	Count	72	32	104
	Expected Count	80.9	23.1	104.0
	% (within row)	69.2%	30.8%	100.0%
Probation Officers	Count	163	35	198
	Expected Count	154.1	43.9	198.0
	% (within row)	82.3%	17.7%	100.0%
Total	Count	235	67	302
	% (within row)	77.8%	22.2%	100.0%

$\chi^2=6.770$, $df=1$, $p<0.01$

Probation officers' explanations for their opinions on risk assessments in PSRs were primarily concerned with the provision of information, training, and available resources. Approximately 40% of probation officers stated that they preferred the narrative assessment format because standardized assessments do not provide enough individualized information on the offender, for example by providing only numbers or categorizations. A small minority of probation officers (8.1%) identified concern with potentially having to defend standardized assessments in court. Approximately 15% of probation officers also expressed concern with time and resource limitations when conducting risk assessments for PSRs. Some of the advantages of including risk assessment information in the PSR discussed by probation officers included ensuring an appropriate disposition and assisting in the direction or supervision of the offender.

Two additional topics were discussed by comparable selections of both judges and probation officers. Just over fifteen percent of respondents expressed concern regarding the level of knowledge and training in the administration and interpretation of standardized risk

assessments. Sixteen percent of respondents specifically stated that if assessment results are to be included in PSRs, they cannot stand alone and must be accompanied by an explanation or discussion of the factors contributing to the offender's level of risk. This note is relevant in terms of format of the assessment conducted, as third generation risk/needs assessments place an increased focus on the identification of risk factors as opposed to older assessments focused on classification only.

Use of Pre-Sentence Reports with High-Risk Offense Types

The general opinion interview also examined the opinions of judges and probation officers regarding particular types of offences or offenders. Respondents were asked "Do you think that PSRs are particularly useful with certain types of cases/offenders (e.g. sex offenders, violent offenders)". Overall, respondents most frequently identified that PSRs are most useful for violent offences (37.7%), with some expressing specific concern for sexual offences (29.8%) and domestic violence (14.9%). Judges and probation officers were virtually identical in their responses to this question. The concern regarding violent offenders highlights the importance of not only risk information but the tools used in its determination. Many of the risk assessment instruments used in Canada are specific to or have subscales designed to identify the risk of sexual or violent recidivism. The PSR cases submitted for the project also reflect these priorities, as they were in fact more likely to involve violent offenses than the non-PSR control cases, at 48.6% and 28.5% respectively.

Although probation officers expressed greater concern with violent offenders, the concern was not necessarily punitive in nature. As illustrated in Table 3.7, probation officers

interviewed were asked to either agree or disagree with several statements reflecting various sentencing considerations¹¹.

Table 3.7: Probation Officers' Agreement with Statements on Sentencing

Statement	n	% Disagree	% Neutral	% Agree
The sentence imposed on the offender should be based on what he has done, and not on what sort of person he is, or what he may do in the future.	198	56.1	12.1	31.8
The most important single consideration in determining the sentence should be the nature and gravity of the offence.	198	39.9	13.1	47.0
Criminals should be punished for their crimes whether or not the punishment benefits the criminal.	198	46.5	17.7	35.8
In sentencing, the courts should be willing to accept a risk of further crime if there is a better chance of rehabilitation of the offender in the community than in prison.	197	21.3	17.3	61.4
In the present state of knowledge it is useless to try to rehabilitate most offenders.	198	85.3	6.6	8.1

Overall, the probation officers' responses to these questions were consistent with their mandate in indicating a preference for a rehabilitative rather than punitive approach to sentencing. Over half of the probation officers disagreed with the statement that sentencing should be based solely on the actions of the offender, indicating that most probation officers do see a role in the sentencing process for the provision of additional information such as that contained in the PSR. Approximately sixty percent of the probation officers interviewed agreed with the statement that the court should be willing to accept the risk of further crime if an offender stands a better chance of rehabilitation in the community. This finding captures the relevance of both risk and treatment considerations in the sentencing process. The offender's risk must be known in order to be weighed as acceptable or unacceptable to

¹¹ The original response options have been collapsed from a five-point scale of Strongly Disagree, Disagree, Neutral, Agree, and Strongly Agree to the three-point scale presented.

the community, and the offender’s needs must be known in order to evaluate whether or not they can be addressed in an institutional or community setting.

Levels of Satisfaction with Pre-Sentence Reports

Feedback regarding current PSR quality and use was examined in order to identify whether or not risk was raised as either a positive or negative factor as well as to provide context for any discussion of potential changes to existing guidelines. During the general opinion interviews, respondents were asked about their current level of satisfaction with PSRs¹². As illustrated in Table 3.8, judges and probation officers differed considerably in their levels of satisfaction with pre-sentence reports (V=0.471).

Table 3.8: Current Levels of Satisfaction with PSRs

		Current satisfaction with PSR preparation, policies, procedures, etc.			Total
		Unsatisfied	Neutral	Satisfied	
Judges	Count	4	9	91	104
	Expected Count	30.4	15.2	58.4	104.0
	% (within row)	3.8%	8.7%	87.5%	100.0%
Probation Officers	Count	84	35	78	197
	Expected Count	57.6	28.8	110.6	197.0
	% (within row)	42.6%	17.8%	39.6%	100.0%
Total	Count	88	44	169	301
	% (within row)	29.2%	14.6%	56.1%	100.0%

$\chi^2=66.727$, $df=2$, $p<0.01$

¹² The wording of the questions differed slightly for judge and PO interviews: judges were asked their level of satisfaction with “the current practices, quality and content of the PSRs that are provided to your court” and POs were asked their level of satisfaction with “the current policies, training, and procedures about completing a PSR”.

Probation Officers are not Satisfied with the Current Preparation of PSRs

The majority of judges (87.5%) but only a minority of probation officers (39.6%) interviewed expressed satisfaction with the current preparation of PSRs. Paradoxically, judges are apparently quite satisfied with a product that probation officers are less satisfied with producing. The province in which the PSR was prepared appears to be a fairly strong predictor of the probation officer’s level of satisfaction, with, for example, the majority of probation officers in British Columbia and Quebec expressing satisfaction while the majority in Ontario and New Brunswick expressed dissatisfaction¹³. As illustrated in Tables 3.9 and 3.10, probation officer dissatisfaction was also associated with concerns about the adequacy of training in PSR preparation (V=0.439) and concerns about current policies relating to PSR preparation (V=0.334).

Table 3.9: Probation Officer Satisfaction with PSR Preparation and Concerns with PSR Training

		Current satisfaction with PSR preparation, policies, procedures, etc.			Total
		Unsatisfied	Neutral	Satisfied	
Concerns with PSR training expressed	Count	68	17	13	96
	Expected Count	41.8	17.4	38.8	98.0
	% (within row)	69.4%	17.3%	13.3%	100.0%
PSR training not mentioned	Count	15	13	33	61
	Expected Count	26.0	10.8	24.2	61.0
	% (within row)	24.6%	21.3%	54.1%	100.0%
Satisfaction with PSR training expressed	Count	1	5	32	38
	Expected Count	16.2	6.8	15.0	38.0
	% (within row)	2.6%	13.2%	84.2%	100.0%
Total	Count	84	35	78	197
	% (within row)	42.6%	17.8%	39.6%	100.0%

$\chi^2=75.768$, $df=4$, $p<0.01$

¹³ Unfortunately low cell counts prevent accurate statistical analysis.

Table 3.10: Probation Officer Satisfaction with PSR Preparation and Concerns with Current PSR Policies

		Current satisfaction with PSR preparation, policies, procedures, etc.			Total
		Unsatisfied	Neutral	Satisfied	
Concerns with PSR policies expressed	Count	38	9	4	51
	Expected Count	21.7	9.1	20.2	51.0
	% (within row)	74.5%	17.6%	7.8%	100.0%
PSR policies not mentioned	Count	44	23	55	122
	Expected Count	52.0	21.7	48.3	122.0
	% (within row)	36.1%	18.9%	45.1%	100.0%
Satisfaction with PSR policies expressed	Count	2	3	19	24
	Expected Count	10.2	4.3	9.5	24.0
	% (within row)	8.3%	12.5%	79.2%	100.0%
Total	Count	84	35	78	197
	% (within row)	42.6%	17.8%	39.6%	100.0%

$\chi^2=43.871$, $df=4$, $p<0.01$

The following question in the interview asked respondents “If you could change any aspects of the PSR, what would you change and why”. The answers to this question provide additional indications of the sources of dissatisfaction with pre-sentence reports. As illustrated below in Table 3.11, despite their lower levels of satisfaction with PSRs, probation officers were only slightly more likely to suggest changes to the PSR format or preparation than judges (77.2% vs. 66.3% respectively, $V=0.116$). The changes suggested primarily involve organizational issues such as timing, flexibility of content, and resources. Predictably, judges were interested in reducing the amount of time required to complete a PSR while probation officers were interested in extending it. Judges, as well as probation officers, did however recognize that increased resources would be necessary to reduce preparation time. The issue of risk assessments was only raised by a handful of respondents in regards to the changes recommended. Most of these responses came from a rather

interesting source, though. Over one-quarter of the probation officers from Quebec, one of only two provinces whose probation service did not have a risk assessment instrument during the data collection period¹⁴, included the use of risk assessments as a recommended change to the preparation of PSRs.

Table 3.11: Judges and Probation Officers Recommending Changes to PSR Format or Preparation

		Recommended changes to PSR format/preparation		Total
		No	Yes	
Judges	Count	35	69	104
	Expected Count	27.6	76.4	104.0
	% (within row)	33.7%	66.3%	100.0%
Probation Officers	Count	45	152	197
	Expected Count	52.4	144.6	197.0
	% (within row)	22.8%	77.2%	100.0%
Total	Count	80	221	301
	% (within row)	26.6%	73.4%	100.0%

$\chi^2=4.077$, $df=1$, $p<0.05$

Utility of Pre-Sentence Reports

The opinions of judges and probation officers regarding the overall utility of pre-sentence reports provides a useful context for opinions on the inclusion of risk assessment information. The first question in the general opinion interview asked respondents “In your opinion, how does the PSR help the court in sentencing?”. The most common answer, identified by over seventy percent of respondents, was that PSRs assisted the court by providing general background information on the offender. Over forty percent of respondents identified the linking of the offender’s needs to treatment or rehabilitation strategies, and just under thirty percent identified contribution to the sentence or justice

¹⁴ Alberta did not have an assessment instrument at the time of data collection, but implemented one in 2004.

outcome as a primary role of PSRs. As illustrated in Table 3.12, there was a moderately strong relationship between type of respondent and the identification of justice outcome ($V=0.383$). Predictably, probation officers were more likely to discuss the needs and intervention aspect and judges were more likely to discuss the sentencing aspect. These differences are worth noting, though, as they indicate that probation officers are more likely to see the overall utility of the PSR not only in terms of sentencing but in relation to later supervision concerns.

Table 3.12: Type of Participant and Opinion that PSRs Assist Court through Contributing to Justice Outcome

		PSR contributes to sentencing/justice outcome		Total
		No	Yes	
Judges	Count	50	54	104
	Expected Count	74.7	29.3	104.0
	% (within row)	48.1%	51.9%	100.0%
Probation Officers	Count	167	31	198
	Expected Count	142.3	55.7	198.0
	% (within row)	84.3%	15.7%	100.0%
Total	Count	217	85	302
	% (within row)	71.9%	28.1%	100.0%

$\chi^2=43.344$, $df=1$, $p<0.01$

The pre-sentence report often has utility beyond the sentencing stage. The probation officers interviewed were asked how often they supervise an offender following the preparation of a PSR. The question was in a closed-response format and the responses are summarized below in Table 3.13.

Table 3.13: Frequency with which Probation Officers Supervise Offenders Following a PSR

Question: How often do you end up supervising the offender that you completed a PSR on?							
Options	Almost Never	Around 25%	50% of the time	Around 75%	Almost always	N/A	Total
Response % (n)	12.1 (24)	10.1 (20)	8.6 (17)	18.7 (37)	48.0 (95)	2.5 (5)	100 (198)

Most probation officers (66.7%) estimated that after preparing a PSR on an offender, they end up supervising that offender 75% of the time or more. Probation officers were also asked “Do you see any benefits of conducting a PSR assessment prior to supervising that offender?” This question was open-ended and responses were coded according to the presence or absence of selected information. Almost all probation officers (90.4%) reported seeing benefits to conducting a PSR on an offender prior to supervision. These benefits included already having the information needed to begin supervision and obtaining more information than a standard intake assessment. Many intake procedures at both the community and institutional supervision levels include risk assessments. Performing these assessments at the pre-sentence stage can therefore play a role in providing additional information and streamlining the intake process. A small number of probation officers (2.5%) did, however, express concern with potentially having to supervise an offender following the submission of a negative report, such as one identifying the offender as a high risk to re-offend.

Ratings of Factors Relating to Risk

The concluding portion of the general opinion interview consisted of a selection of short answer questions completed by the respondent. One of these questions asked judges and probation officers to rate 34 pieces of information on a scale of one to ten in terms of its

potential importance in a PSR (see Appendix D). Table 3.14 on the following page lists the top ten variables identified by each group. The ratings awarded to the list of factors were generally high, with an average score of 7.68. Of three items relating to risk, two were ranked in the top ten by both judges and probation officers. Both top ten variables, “Assessment of risk to re-offend sexually” and “Assessment of risk to re-offend violently” dealt specifically with the threat of serious crimes against the person. Although out of the top ten, the third, more general, item “Assessment of risk to re-offend” did receive relatively high ratings of 8.1 from judges and 8.4 from probation officers.

The top ten variables listed below have a moderately low measure of association, indicating that judges and probation officers do not agree in terms of the priority of information that should be contained in PSRs (Spearman’s $\rho = 0.200$). This lack of agreement is important as it indicates that probation officers may not be providing judges with the information they are looking for when preparing PSRs. This finding is critical in identifying a potential area for improvement in the preparation of PSRs that are useful to the court.

Table 3.14: Top Ten Items in Ratings of Specific Information by Respondent Type

Rank	Judge's Rating of Importance		Probation Officer's Rating of Importance	
	Information	Score (1-10) m(SD)	Information	Score (1-10) m(SD)
1	Offender's amenability and motivation for treatment	9.18 (3.36)	Domestic Violence Cases: Marital relationship & partner characteristics	9.14 (1.11)
2	Past response to supervision	9.05 (1.11)	Assessment of risk to re-offend sexually	9.07 (1.50)
3	Treatment availability and plans	9.01 (1.09)	Past response to supervision	9.05 (1.05)
4	Substance abuse history and present level of use/abuse	9.00 (1.14)	Assessment of risk to re-offend violently	8.94 (1.53)
5	Psychiatric history and diagnosis	8.96 (1.48)	Substance abuse history and present level of use/abuse	8.90 (1.17)
6	Domestic Violence Cases: Marital relationship & partner characteristics	8.95 (1.27)	Psychiatric history and diagnosis	8.82 (1.28)
7	Assessment of risk to re-offend sexually	8.93 (1.95)	Victim safety concerns including victim impact statement and notification concerns	8.75 (1.61)
8	Offender's perception of his/her substance abuse problem	8.80 (1.38)	Offender's perception of his/her substance abuse problem	8.72 (1.29)
9	Treatment recommendations	8.66 (1.33)	Offender's amenability and motivation for treatment	8.71 (1.08)
10	Assessment of risk to re-offend violently	8.64 (2.07)	Previous convictions	8.69 (1.26)

3.2 Risk Information Included in PSRs

The second data source consists of 249 pre-sentence reports submitted from across Canada for the evaluation project. In total, 59.1% of the PSRs submitted contained information on the offender's risk of recidivism. The fact that the majority of the reports submitted contained risk-related information despite the fact that this information was only required in approximately ten percent of cases clearly demonstrates the importance of risk in PSR preparation. The prevalence of the actuarial risk assessment format is also clearly demonstrated: approximately two-thirds of those cases containing risk information cited an actuarial risk assessment tool while less than fifteen percent were required by provincial guidelines to do so.

Of the cases citing actuarial risk instruments, the LSI-R was the most common primary assessment, used in 33.6% of the PSRs indicating risk, followed by the Manitoba Risk Assessment (also referred to as ORAMS), used in 28.1%. The Domestic Violence Inventory, Static-99, and FACS were each cited in 2.1% of PSRs indicating risk. Province appears to be highly associated with the use of actuarial assessments¹⁵. Not surprisingly, PSRs prepared in provinces whose guidelines include the use of risk assessments, such as Newfoundland and Manitoba, more frequently cited an actuarial instrument. PSRs prepared in provinces whose guidelines prohibit these instruments, such as Ontario, or whose probation services do not currently use risk assessments for PSRs, such as PEI and Quebec, less frequently cited an actuarial instrument. As illustrated in Table 3.15 on the following page, there was an association, although relatively weak ($V=0.222$), between PSRs for violent offenses and the inclusion of risk information.

¹⁵ Unfortunately low cell counts prevent meaningful statistical analysis.

Table 3.15: Inclusion of Risk Information According to Violent or Non-Violent Offence

		Risk Information Included in PSR		Total
		No	Yes	
Non-Violent Offence	Count	65	61	126
	Expected Count	51.5	74.5	126.0
	% (within row)	51.6%	48.4%	100.0%
Violent Offence	Count	36	85	121
	Expected Count	49.5	71.5	121.0
	% (within row)	29.8%	70.2%	100.0%
Total	Count	101	146	247
	% (within row)	40.9%	59.1%	100.0%

$\chi^2=12.176$, $df=1$, $p<0.01$

The majority of cases discussing risk (92.5%) identified the level of risk posed by the offender. The PSRs that did not include risk information were concentrated in a small selection of provinces¹⁶: Alberta (2), Nova Scotia (1), Nunavut (4), and Quebec (4). Provincial guidelines are a likely influence here, as Alberta did not have an assessment tool in place at the time, and Quebec still does not have an assessment instrument. Interestingly, though, Nunavut’s guidelines outline the inclusion of the ORAMS assessment in the PSR and often include the instrument itself as an appendix. Most offenders classified were assessed as medium risk (43.0%), with 28.9% classified as high risk and 28.1% as low risk. As illustrated in Table 3.15 on the following page, the type of risk assessment used had a low to moderate association with the offender’s level of risk, with cases in which an actuarial instrument was used more likely to identify the offender as medium risk ($V=0.316$). The majority of PSRs identifying risk (83.6%) also discussed the factors involved in the assessment.

¹⁶ Unfortunately low cell counts prevent meaningful statistical analysis.

Table 3.16: Level of Risk Identified and Format of Risk Assessment Presented

		Level of risk indicated			Total
		Low	Medium	High	
Narrative Assessment	Count	18	8	14	40
	Expected Count	11.3	17.2	11.6	40.0
	% (within row)	45.0%	20.0%	35.0%	100.0%
Actuarial Assessment Cited	Count	20	50	25	95
	Expected Count	26.7	40.8	27.4	95.0
	% (within row)	21.1%	52.6%	26.3%	100.0%
Total	Count	38	58	39	135
	% (within row)	28.1%	43.0%	28.9%	100.0%

$\chi^2=13.446$, $df=2$, $p<0.01$

Importance of Risk Information within Submitted Pre-Sentence Reports

This section of the analysis deals with the feedback provided by judges and probation officers on the content of the PSR itself. For each PSR case included, the judge conducting the sentencing and the probation officer who had prepared the PSR were asked to make an extra copy of the PSR. On this copy, judges were asked to underline the information in the PSR that they had found “important, useful and/or most salient in this case”.

Probation officers were asked to indicate:

- 1) The key information that [they] were trying to convey to the court by **underlining** it.
- 2) The key information that a Probation Officer who may supervise this offender would find most useful in their role as a Probation Officer by **circling** it.

For each completed PSR case, therefore, one marked copy of the PSR was submitted from the sentencing judge and one marked copy of the same PSR was submitted by the probation officer who had authored it. The submitted PSRs were then coded according to whether or not a piece of information was present (i.e. risk), whether or not it had been underlined by the judge on the judge’s copy, and whether it had been underlined or circled by the probation

officer on the probation officer's copy. A sample of the actual coding manual is provided for reference in Appendix C.

Unfortunately, not all respondents submitted the marked PSRs as requested, therefore some cases have only the judge's or only the probation officer's marked PSR. The limitations posed by the sample's response rates must be noted in regards to the analysis of risk information that judges and probation officers found useful in the PSRs submitted. Probation officers submitted feedback for 140 of the 146 PSRs (95.9%) discussing risk. Unfortunately, judges submitted feedback for only 94 cases (64.4%).

Both Judges and Probation Officers Identify Risk Information as Important

The importance of risk information in PSRs was again demonstrated by the feedback received from respondents. Overall, either the judge or probation officer identified risk information as important in almost ninety percent of the cases in which it was presented. The level of agreement between groups on which specific cases contained risk information important to the court was moderate, at 64%. This agreement was consistent for both cases with actuarial and cases with non-actuarial assessments. The significance of this agreement is limited, again, by the fact that feedback from both groups for cases involving risk was available in only 61.0% of the PSRs submitted.

Probation officers identified risk information as an important consideration for the court at a slightly higher rate than judges, at 73.6% and 68.1% respectively. An additional relationship examined was whether or not judges who had initially supported the inclusion of risk assessment information in PSRs in the general interviews were more likely to later identify risk information found in PSRs as important. This relationship was, in fact, not

significant, indicating that the general views expressed by judges may not translate into actual practice.

Probation officers were also asked to evaluate the information in the PSR based on its potential importance for supervision purposes. Probation officers remained more likely to indicate that risk was important for sentencing than for supervision, marking the risk information in 73.6% and 61.4%, respectively, of applicable PSRs. As illustrated in Table 3.17, the likelihood of the probation officer identifying importance to the court and importance for supervision within the same case was fairly high, with over seventy percent agreement ($V=0.390$). Looking only at cases in which actuarial assessments were conducted slightly improved this association, as seen in Table 3.18 on the following page ($V=0.465$). Based on these results, probation officers are more likely to agree on the importance of risk information for both sentencing and supervision purposes than they are to agree with the courts on the importance of risk information for sentencing purposes.

Table 3.17: Probation Officer Identification of Risk Information as Important to the Court and as Important for Post-Sentencing Supervision

		Risk information identified as important for supervision		Total
		No	Yes	
Risk not identified as important to court	Count	26	11	37
	Expected Count	14.3	22.7	37.0
	% (within row)	70.3%	29.7%	100.0%
Risk identified as important to court	Count	28	75	103
	Expected Count	39.7	63.3	103.0
	% (within row)	27.2%	72.8%	100.0%
Total	Count	54	86	140
	% (within row)	38.6%	61.4%	100.0%

$\chi^2=21.328$, $df=1$, $p<0.01$

Table 3.18: Probation Officer Identification of Risk Information as Important to the Court and as Important for Post-Sentencing Supervision for PSRs Citing Actuarial Assessments

		Risk information identified as important for supervision		Total
		No	Yes	
Risk not identified as important to court	Count	19	10	29
	Expected Count	9.5	19.5	29.0
	% (within row)	65.5%	34.5%	100.0%
Risk identified as important to court	Count	12	54	66
	Expected Count	21.5	44.5	66.0
	% (within row)	18.2%	81.8%	100.0%
Total	Count	31	64	95
	% (within row)	32.6%	67.4%	100.0%

$\chi^2=20.535$, $df=1$, $p<0.01$

3.3 Feedback in Relation to Specific PSR Cases

Are the Courts Looking for Risk Information when Requesting PSRs?

The final source of information for the data analysis is the feedback that judges and probation officers provided on the PSR cases submitted through a brief questionnaire. These questionnaires were distributed to judges and probation officers to be filled out and submitted along with the marked PSRs described above. Most questions were the same for both judges and probation officers, with some tailored to the opinions or experiences specific to each profession.

The questionnaire began by asking respondents to rate the importance to the specific case of a series of factors that may or may not have been present in the PSR (see Appendix E). Two items on this list related to risk: high probability of recidivism and low probability of recidivism. By listing these two items as opposite poles of the same factor rather than listing a single risk factor, the questionnaire is able to collect more specific information: the use of PSRs to keep low-risk offenders away from overly restrictive dispositions such as

prison and the use of PSRs to ensure that high-risk offenders receive dispositions ensuring that they will not pose a danger to society. Overall, approximately one-third of respondents identified each variable as important. Probation officers' ratings were consistent with the overall results, but judges rated having a high risk of recidivism as an important sentencing consideration at a slightly lower rate of approximately 25%. Feedback from both judges and probation officers was available for 163 cases. Of these, judges and probation officers had a fairly high level of concordance regarding the importance of the probability of recidivism variables, with agreement rates of approximately seventy percent.

The case-specific questionnaires asked respondents to identify the primary reason for the court's PSR request¹⁷. The answers to this question revealed that risk information was not often identified as the primary reason for conducting a PSR. The questionnaire also asked respondents to identify what information the court was looking for¹⁸. In approximately thirty percent of the cases submitted, one or both respondents identified that risk was one of the specific pieces of information sought by the court. Probation officers made this identification more frequently than judges, at 24.2% and 16.3% respectively. The level of agreement between judges and probation officers as to which cases the court was seeking risk information for was quite low. Of the applicable¹⁹ cases in which risk was identified by either judges or probation officers as being sought by the court, it was identified by both groups only 14.3% of the time. This lack of agreement as to the

¹⁷ Questionnaires varied slightly between interviews with the POs being asked "What do you think was the primary reason(s) for the court's request of a PSR" and the judge being asked "Please provide the primary reason(s) for your PSR request."

¹⁸ Again, the questionnaire for the PO asked "What information do you think the court was looking for" while the judges were asked "What information in the PSR were you specifically looking for".

¹⁹ This percentage does not include cases for which either judge or PO information was not submitted, leaving out 36 occurrences where at least one respondent had identified risk being sought by the court.

information sought by the court demonstrates that although both groups agree as to the importance of risk, they do not necessarily agree on the priorities of the courts.

Perceived Utility of the Pre-Sentence Reports Submitted

The case-specific questionnaire concluded by asking respondents to identify “what was the overall value of the PSR in this case”. Despite low levels of agreement regarding the purposes for requesting individual PSRs and the importance of the various pieces of information they contained, over 85% of both judges and probation officers reported that the PSRs submitted had been useful. In approximately forty percent of the cases submitted, either the judge or the probation officer identified that the PSR had directly influenced sentencing. Agreement between the two groups was again low, though, with both the judge and probation officer identifying a direct sentencing contribution within the same case only 23% of the time²⁰.

3.4 Summary

Overall, the data indicate a high degree of professional consensus between judges and probation officers on many aspects of risk assessment information in PSRs. However, the two professions held significantly different views with respect to a number of issues regarding risk information and overall PSR preparation. The majority of both judges and probation officers clearly feel that risk is an important consideration in the sentencing process, and support a narrative presentation of risk information. Respondents differed considerably, however, in their satisfaction with pre-sentence reports overall. Probation officers were quite dissatisfied with the current policies, training, and resources available for

²⁰ This percentage does not include cases for which either judge or PO information was not submitted, leaving out 42 occurrences where a respondent had identified a sentencing contribution.

PSR preparation. Predictably, probation officers were also more likely to focus on treatment and supervision related issues in the PSR while judges were more likely to focus on sentencing and justice issues. There were also discrepancies between the opinions expressed in surveys and the actual practice demonstrated in the PSRs submitted. Although judges and probation officers expressed a preference for a narrative risk assessment format, the majority of risk information found in the sample of PSRs submitted was based on an actuarial instrument. This discrepancy may indicate a misunderstanding of the interview question, or disparity between the opinions stated and the actual information valued. These possibilities will be further explored in the discussion chapter.

Table 3.19 highlights items on which there was a considerable difference of opinion (i.e., greater than 15%) between judges and probation officers.

Table 3.19: Key Differences Between Judges and Probation Officers

Variable	Judges	Probation Officers
Concerns about validity of risk assessments	20.2%	4.0%
No preference for risk assessment format	18.6%	0.0%
Narrative format provides more individualized information	22.3%	41.9%
Treatment recommendations in PSRs would help to inform the options/decision-making in the sentencing process	95.2%	51.0%
Presently satisfied with PSR format/preparation/quality	87.5%	39.6%
Overall rank of punishment out of 5 sentencing principles	2 nd	4 th
Primary purpose of PSR to determine criminogenic needs	12.7%	31.7%

Chapter 4: Discussion

The central purpose of this thesis was to examine the opinions of judges and probation officers on the inclusion of risk assessments in pre-sentence reports. This chapter returns to the research questions identified earlier in the thesis. These research questions guide the investigation and the discussion of the results of the data analysis presented in the previous chapter. This chapter also looks at the context in which the opinions on risk are expressed and discusses the potential application of the analysis results.

4.1 How important is risk-related information to PSRs?

Judges and probation officers alike clearly feel that information on an offender's risk of recidivism should be included in the pre-sentence report. Both groups also indicated that they felt risk information was particularly important in cases with a potential for violent and, more specifically, sexual recidivism. The concern with violent recidivism is reflected in the number of actuarial risk assessment instruments and sub-scales specifically designed to evaluate an offender's potential for future sexual or other violent offences. The risk information obtained through these instruments is therefore highly important in PSRs for sexual or other violent offenders. These conclusions were also consistent with the fact that risk information appeared more often in the PSRs submitted on offenders with convictions of violence.

Conversely, some respondents also held the view that risk information is important in cases involving offenders with low risk levels. Information stating that an offender is a low risk to recidivate plays an important role in the judicial consideration of whether to impose a community disposition. The judges participating in the PSR project identified incapacitation

as an important sentencing principle. The knowledge that an offender represents a low risk and is therefore unlikely to pose a threat to community safety, likely plays an important role in determining the necessity of considering incapacitation when determining sentence. As established by *R. v. Proulx* (2000), information on risk is particularly important in the consideration of a conditional sentence. In order for an offender to serve a custodial sentence in the community, the judge must be satisfied that he or she does not pose a danger to the community; in other words the judge must be aware of the offender's level of risk. The judges' determination of whether a community or custodial sentence is appropriate remains one of the most important decisions in the sentencing process (see Manson, 2001).

The fact that risk plays a central part in the sentencing process, as well as the responses provided by judges and probation officers on the inclusion of risk assessments, clearly indicates that risk-related information is very important to the utility of pre-sentence reports. Although an obvious concern in high-risk cases, the importance of risk information is not limited to cases involving violence. Judges are interested in risk information for both high and low risk offenders committing both violent and non-violent offences.

4.2 What kinds of risk information do judges and probation officers want in a PSR?

Despite the current proliferation of actuarial risk scales, both judges and probation officers expressed a preference for narrative risk information in pre-sentence reports. Probation officers want to ensure that the offender's individual characteristics and needs are fully addressed rather than simply lost in a categorization (low; high). As observed by Gelsthorpe and Raynor (1995) in England and Wales, judges are potentially concerned with losing a degree of discretion; for example through the elimination of community options if

an offender is classified as a high risk to re-offend. Judges and probation officers therefore both want a discussion of the factors examined, whether the assessment itself is in clinical (narrative) or actuarial form. The discussion of risk factors allows probation officers to use their expertise in the assessment of treatment and rehabilitation options, and allows judges to verify the decisions of the probation officer or draw their own conclusions based on the information provided.

The training of the probation officers may also play a role in their preference for the narrative format. Risk scales emerged from an academic, technical environment and reflect concepts such as reliability and validity. Probation officers may be less comfortable with the scientific nature of these prediction tools than with the more familiar social-work orientation characteristic of narrative assessments.

Despite the expressed preference for narrative risk assessments, probation officers are in fact primarily using actuarial tools when discussing risk in pre-sentence reports. This finding could indicate one of two methodological problems: difficulties in the wording and interpretation of the question or local preparation guidelines of which the researcher was unaware. In the first case, although a brief description of the two types of assessment was provided, respondents may have focused on the concept of a narrative description versus numeric categorization in regards to presentation only. This focus may have overlooked the fact that actuarial assessments can, and in fact should, be presented along with a discussion of risk factors. The question also specified that the results of a standardized assessment would be included in a special section of the report. Many respondents expressed concern about the standardized method placing too much emphasis on the assessment, potentially due to the noted 'special section' rather than the assessment instrument itself.

The validity of the question as an accurate indicator of the respondent's preference between narrative and standardized assessment forms is therefore open to debate. The answers to this question do, however, undoubtedly provide useful information regarding the opinions and concerns of judges and probation officers. The discussion of issues such as the validity and reliability of standardized assessments and the adequacy of training in their administration and interpretation highlight areas that should be addressed in order to ensure that these instruments are being used appropriately and with the confidence of the court.

In the second case, although provincial PSR guidelines were examined and probation services were contacted regarding official guidelines, unofficial preparation standards likely exist within individual probation offices. As probation services in all provinces and territories except Quebec and, at the time, Alberta, employ actuarial risk assessments as a supervision tool, these unofficial guidelines may encourage their use in PSRs as well. Some probation offices surveyed were also in the midst of adopting changes to policies regarding the use of risk assessments in PSRs. Nova Scotia, for example, was facing a challenge in the Provincial Court to the admissibility of risk information. Although this occurred at the end of the data collection period after the opinion interviews had been conducted, the opinions of both judges and probation staff may have been affected by awareness of the upcoming challenge to the validity and reliability of assessment tools.

The other possible explanation is quite simply that respondents' opinions may differ when asked about PSRs in general and when looking at actual cases, particularly when those cases involve violent crime (as a majority of the PSR cases submitted did). When asked in theory which method would be preferred, respondents may have been more concerned with issues such as the reliability and validity of the assessment instrument. When actually using

the information, though, respondents are likely concerned with practical issues such as ensuring public safety and identifying intervention needs, and therefore may appreciate any relevant information provided. The data seem to indicate, therefore, that although respondents may prefer one format of assessment or presentation over another, the primary concern is that the information is in fact provided when needed.

When probation officers do provide narrative assessments of risk, they more often identify high or low risk than medium. This pattern demonstrates some of the inconsistency and personal discretion associated with the use of clinical rather than actuarial assessments. Taking the time to conduct an actuarial assessment without including its results is rather pointless, regardless of whether the results are or are not what the probation officer was anticipating or seeking. Narrative, or clinical, assessments can be conducted on the basis of standard interview data. Therefore, if the probation officer, in the standard interview process, comes to the conclusion that the offender is either no risk to the community or a threat to public safety, this information would likely seem more relevant to the court than the finding that the offender is of moderate risk.

The lower likelihood of identifying moderate risk when using narrative assessments may also simply reflect the reality that the concepts of 'high' and 'low' are easier to identify. An offender with a long list of previous convictions is clearly high risk; an offender with no priors who commits an offense while suffering from psychological distress now resolved is often clearly low risk in terms of recidivism. Identifying 'medium' risk is far more nebulous and may therefore be seen by the probation officer as less informative. This discretion could in fact save court time by providing only the risk information that the probation officer finds important for sentencing. Because the discretion is based on the probation officer's personal

judgment, though, it may also introduce bias to the presentation of information that the court has clearly identified as important.

Judges and probation officers are therefore primarily concerned with risk-related information pertaining to the danger posed by the offender to the community and the factors contributing to the offender's level of risk. Predictably, due to the increased severity of consequences, judges and probation officers are most concerned with the offender's risk for sexual or other violent recidivism. This information should be presented in a narrative format explaining the risk factors examined and the options available to address them rather than as a simple number or rating. Although judges value efficiency and accuracy, the simple statement of a numeric or categorical risk finding does not provide enough information to properly inform the sentencing decision.

4.3 What differences exist between perceptions of judges and probation officers regarding risk assessment in PSRs?

As stated in chapter 3, the opinions of judges and probation officers in regards to risk assessments and PSRs in general are remarkably similar in some areas and dissimilar in others. Judges, for example, appear to be less influenced by provincial guidelines in their opinions about including risk information. Because these guidelines are set and enforced for the most part by probation services, judges are not bound by and are likely unaware of the specific guidelines set. Both judges and probation officers, though, held similar views regarding the importance of risk information, and the manner in which this information should be presented.

Differences emerged in the explanations provided by respondents for their opinions. Judges were more likely than probation officers to question the accuracy of the actuarial

instruments themselves. Whereas judges only see these instruments in court reports, many probation officers work with them on a regular basis for supervision purposes. Possible explanations for this finding could therefore be a higher level of trust due to greater experience using the actuarial instruments, greater familiarity with the instruments' validation process through training, or simply greater concern for the accuracy of information among the judiciary. Concerns regarding reliability focused both on inconsistencies between probation officers administering the assessments and the applicability of the assessments to different populations such as Aboriginals. These are concerns that are shared by both judges and probation officers and clearly need to be addressed. Their impact has been demonstrated in the removal of risk information in both Nova Scotia and British Columbia following the *R. v. Elliot* (2004) case. This case highlighted problems with reliability associated with inadequate probation officer training in the administration of risk assessments.

Some differences in opinion between judges and probation officers were associated with the groups' respective occupational priorities. Probation officers are generally more interested in issues relating to the offender's supervision whereas judges are more focused on immediate sentencing considerations. These different priorities may actually be interpreted as an indication of mutual interest in risk assessment providing information about the offenders' suitability for supervision in the community. In addition, both groups clearly emphasized the importance of rehabilitation in both supervision and sentencing, indicating a role for the identification of needs that characterize third generation assessments. Probation officers also more frequently identified criminogenic needs as important; most likely

reflecting their vocational experience and expertise rather than a lack of interest on the part of the judiciary.

The most striking difference between judges and probation officers was in their levels of satisfaction with PSR preparation. The areas of dissatisfaction discussed by probation officers have a potentially strong impact on their opinions of risk information. A perceived lack of training may influence the probation officers' level of confidence in administering, interpreting, and defending actuarial risk assessments. The structured format of these assessments may also threaten the flexibility for which many probation officers expressed a preference. Judges may, however, see this structure as beneficial. Although many probation officers identified the importance of flexibility and the need to provide complete individualized information, several judges identified the importance of brevity, relevance, and impartiality. Dissatisfaction regarding available time and resources may also limit probation officers' enthusiasm for conducting standardized assessments in addition to the standard background interviews when preparing the PSR. If the time available results in assessments being rushed or incomplete, the concerns regarding reliability would be well founded and the information contained in the PSR of questionable value.

Judges and probation officers therefore hold very similar opinions regarding the general inclusion and importance of risk information, but differ regarding the context of those opinions. Agreement as to the importance of risk information and its presentation provides useful common ground on which to establish potential guidelines for a more consistent approach. The differences indicate areas that need to be addressed to improve the delivery of risk information as well as the overall preparation and quality of the PSR.

4.4 Do judges and probation officers agree on the importance of risk information within actual PSRs?

Although judges and probation officers agree that risk information is important in a majority of cases, they have a more difficult time agreeing on exactly which cases. The low level of agreement between judges and probation officers in terms of when risk information was sought in a PSR particularly emphasizes the lack of communication between the court and the probation office regarding PSR content. As mentioned earlier, judges are also more likely than probation officers to find information on low risk important in the PSR. Again, this difference should be addressed in order to ensure that probation officers are in fact providing this information when it is available.

An important additional finding is the low correlation between the opinions expressed by judges regarding risk in the general interviews and their identification of risk as important in the actual PSRs submitted. The judges who stated that they did not think risk information should be included in the PSR when interviewed were in fact only slightly less likely to identify it as important when it was presented in an actual PSR.

Although overall opinions are informative, the application of those opinions provides a better picture of how information in PSRs is actually being used. The level of agreement between judges and probation officers regarding overall opinions on risk indicates that both types of respondent feel that risk information is important. The level of agreement as to the role of risk in actual cases, however, clearly indicates that there are in fact differences regarding exactly when information on risk is important.

4.5 How might the use of risk assessments in PSRs contribute to sentencing?

Overall, judges and probation officers share the perception that PSRs are useful to the court. The information within PSRs, including risk assessments, is therefore contributing to sentencing at least at a general level through informing judicial deliberations. A more direct means by which PSRs contribute to sentencing is through the inclusion of sentencing recommendations by the probation officer. Recommendations regarding custodial placement are contentious and prohibited by some provincial guidelines. The vast majority of judges and probation officers surveyed did however support the inclusion of recommendations regarding the offender's treatment needs and available options. These recommendations were also frequently identified by the judges as important in the sample of PSRs submitted, therefore do likely play a role in the sentencing process. Risk assessment can play an important role in the sentencing process by informing treatment recommendations. The majority of PSRs including information on risk included a discussion of the factors contributing to the offender's risk level. By identifying criminogenic needs such as unemployment and criminal associates, third generation actuarial assessments can identify areas that the offender needs to address in order to reduce his or her risk of recidivism. Factors such as these are often revisited when the probation officer makes recommendations for conditions of a community sentence such as vocational training and anger management programming.

Judges clearly value the expertise and experience of probation officers, particularly in the areas of treatment and supervision. Risk assessments can contribute to sentencing by adding further credibility to probation officer recommendations, provided of course that they are in line with the assessment results. Recommendations informed by actuarial assessments

have the benefit of being supported by a neutral, standardized, and validated instrument. Third-generation assessments in particular are designed to identify the areas in which the offender requires intervention. Recommendations informed by clinical assessments, when presented in full, at least provide the judge with a discussion of the offender's needs and how they may relate to future offending.

Risk information can also more directly influence sentencing by indicating whether or not an offender is suitable for supervision in the community. Offenders at high risk of re-offending, particularly in cases of violence, are clearly less suitable for community sentences than offenders who present minimal risk. As previously mentioned, information on risk is vital if the judge is considering the imposition of a conditional sentence. In order to impose this sentence, the judge must be satisfied that the offender will not pose a danger to the community.

The judiciary has the final word in determining whether the offender poses a sufficient risk to the community to warrant incarceration. The judiciary also has the final word regarding which conditions, if any, should be included in the sentence to address the offender's needs. Risk information in the pre-sentence report can contribute to the sentencing process by making sure that the judiciary is making these decisions based on accurate and thorough information about the offender's risk of recidivism and about the needs that must be addressed to control or reduce that risk.

4.6 How can the use of risk-related information in PSRs be improved?

Risk information in pre-sentence reports can be improved primarily through improvements to the context in which the reports are used. Most importantly, time,

resource, and training issues in the probation service need to be addressed. If probation officers do not have the training to properly conduct risk assessments, either actuarial or clinical, the risk information provided may mislead rather than assist the court. Probation officers also need the appropriate resources with which to properly conduct an assessment. Time is certainly one of these resources of great concern across probation offices in Canada (Heads of Community Corrections, 2004). A thorough risk assessment takes time to conduct and present. Information that is missed in the interview stage or left out of the report compromises the utility of the PSR to the court.

Probation staff also need the assessment resources themselves. Most provinces are using third-generation assessments such as the LSI-R to provide both risk and need information, and many also use specialized tools to address issues such as sexual and domestic violence recidivism. The tools available still vary widely by province, and have yet to be implemented in Quebec despite interest expressed by both judges and probation officers in their introduction.

Improving the training and resources available to probation officers conducting risk assessments for PSRs will improve the quality of the assessments and their likelihood of successfully being defended if challenged in court. In addition, training issues are not limited to probation staff. Familiarity with the construction and interpretation of actuarial assessments will improve judges' application of risk information in the sentencing process.

Improved communication between the court and the probation office would also improve the use of risk-related information in PSRs. Probation officers often do not know why a PSR was requested or what specific information was being sought by the court. They therefore also differ from the courts in identifying important information within the PSR.

Some courts include a brief description of the reasons for a PSR with the request form. The expansion of simple forms of communication such as these descriptions would help to ensure that the judge is receiving all of the information needed.

Communication would also help to ensure that risk information is being presented in a format that is useful to the court. Whether the preferred method of risk assessment is narrative or actuarial, the information it provides must be useful. Some of the appeals of narrative assessments to probation staff are flexibility and the opportunity to fully present information specific to the individual offender. Judges, however, emphasized the importance of brevity, relevance, and impartiality. The narrative assessments provided by probation officers must therefore restrict background to information that is relevant in addressing the offender's current needs and level of risk. Again, although the judiciary values the probation officer's expertise and judgment, impartiality is easily compromised when conducting clinical assessments. In order to ensure consistent and fair assessments, the probation officers conducting clinical assessments should base those assessments solely on the risk factors and needs of the offender. If actuarial risk assessments are being used, they should, whenever available, consist of validated third generation assessments in order to identify both the risk factors and the treatment needs that are important to the court in determining a sentence that meets both the need for public safety and the needs of the offender.

Addressing training issues and facilitating communication between the court and the probation office can therefore improve the use of risk assessment information in PSRs. Improved training in the administration and interpretation of risk assessments will improve

the quality of the information provided to the court. Improving communication will help to ensure that the court is receiving the information that it requires in a format that it can use.

4.7 Next Steps

The limited response rates among the judiciary limit the comparisons that can be made between judges and probation officers as well as the overall generalizations that can be made from the data results. Despite these limitations, though, the results of the data analysis suggest a number of potential next steps in PSR policy and guidelines regarding the use of risk assessments in pre-sentence reports.

Leaving PSR content to the determination of provincial legislation results in a very low level of consistency in report preparation across Canada. This inconsistency extends to the inclusion and presentation of information on the offenders' risk of recidivism. The level of importance that this information has to both judges and probation officers indicates that making an effort to implement a more consistent approach is justified. Once developed, adherence to this approach should also be monitored. The sample of PSRs analyzed suggests that provincial guidelines are not being uniformly followed. As suggested by international experience, monitoring by supervisors and regular 'refresher' workshops can help to maintain the quality and consistency of the reports prepared (Robinson, 2003).

Both judges and probation officers indicated a preference for narrative assessments. However, the dominant use of actuarial instruments in the actual PSRs and the fact that the information provided was still marked as important by both groups indicates that these assessments are already accepted at some level and do provide information of interest to the court. Many of the concerns expressed in regards to actuarial assessments, such as the

reduction to impersonal categories, are resolved by the correct administration and presentation of third-generation assessment tools. These tools are designed to identify both the risk to the community and the factors that must be addressed in order to reduce that risk. As identified earlier, though, resources such as training and adequate preparation time must be available to ensure the reliability and validity of these assessments. Also, if the identification of needs is to be meaningful to the sentencing process, options addressing those needs must be available to the offender.

Based on the findings of this thesis and international precedent, the trial implementation of guidelines, or 'best practices' for the use of actuarial risk assessments in pre-sentence reports would be a constructive step in improving the quality and consistency of risk information. Both judges and probation officers clearly indicated that the information on risk and rehabilitative needs provided by third-generation assessment instruments is an essential part of the PSR. Although some of the concerns found internationally, such as 'de-skilling' and overall lack of acceptance among more experienced professionals, were not found in this study, international experience in implementing similar guidelines provides a useful framework for potential changes to PSR policy.

International experience demonstrates that introducing the use of an actuarial assessment as a guideline rather than a legislated policy will help to reduce the perception of a loss or de-valuing of professional discretion. Providing training to both probation officers and the judiciary will help to ensure that the assessments are being administered correctly in the preparation of the PSR and applied effectively in the sentencing process. Providing feedback on the use of assessments by probation officers and providing training updates will help to ensure quality and maintain awareness of the guidelines following initial

implementation and training. Finally, contextual issues such as resources available to the probation office and communication between the courts requesting and the probation officers preparing PSRs need to be addressed. Increasing resources and communication will help to ensure that the probation officer is able to provide the information required by the court to make the PSR a useful contribution to the sentencing process.

4.8 Conclusion

Overall, judges and probation officers clearly find information on an offender's risk of recidivism important to the sentencing process. Both judges and probation officers expressed a preference for a narrative assessment process in interviews, however used and identified as important actuarial assessments in the majority of pre-sentence reports examined for this thesis. Both judges and probation officers express greater concern with the risk levels posed by offenders convicted of sexual or other violent offences, however judges are also interested in information on low-risk offenders. Risk information is therefore contributing to the sentencing process both by indicating the danger posed by higher-risk offenders and the suitability of lower-risk offenders for supervision in the community.

Although judges and probation officers expressed very similar opinions in regards to risk, they differed considerably in their levels of satisfaction with the overall preparation of PSRs. Probation officers are dissatisfied with current PSR training and policies, both of which may impact the quality and consistency of risk assessments included in these reports. Low levels of agreement between the risk information identified as important by judges and probation officers in actual PSRs indicate potential discrepancies between the content sought by the court and that provided by the probation officer.

Risk information in pre-sentence reports is an integral part of the sentencing process. The offender's level of risk is a mandatory consideration in the imposition of a conditional sentence. Information on the offender's rehabilitative needs that is obtained through the risk assessment can be used to inform sentencing conditions and post-sentence supervision. Probation officers can also use risk and needs information to inform and justify sentencing or supervision recommendations made to the court.

The provision of risk information can be improved through increased communication between the court and the probation service and increased resources. Communication can ensure that the probation officer is providing the information that the court needs in a format that is useful to properly inform the sentencing process. Communication between the court and the probation office can also ensure that probation officers are provided with adequate time to prepare quality reports. Time considerations are particularly relevant given competing concerns with high probation caseloads and reducing administrative delays within the justice system. Increased resources in the form of training can improve the quality of the administration and interpretation of risk assessments and the level of confidence in their use.

Risk information plays an important role for both probation officers and judges in the sentencing process. The current lack of consensus and consistency in the use and format of risk information in pre-sentence reports across Canada is therefore an issue that needs to be addressed. International experience demonstrates that guidelines for the use of standardized assessment instruments can be implemented and indicates several means of ensuring that they are implemented effectively. A potential next step for Canada would therefore be the

selection and trial implementation of training and guidelines for the use of a standardized assessment instrument in the preparation of pre-sentence reports.

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Appendix A: General Opinion Interview Open-Ended Question Coding Sample

Phase I: Questions 4&5, Probation Officer Interviews

Question 4: What do you think about risk assessment information (as per R. v. Proulx) being included in a PSR?	Score	
Information should be included	0-Negative 1-Neutral 2-Positive	
Should not include standardized information	0: Not Present	1: Present
Concerns about reliability of standardized tools		
Concerns about validity of standardized tools		
Inadequate time/resources – PSR essentially a risk assessment already		
Valuable to protect public safety		
Standardized scores can be challenged in court		
Narrative allows more information/detail		
Helps ensure appropriate disposition/conditions		
Concerns regarding knowledge/training in standardized test		
Useful for sex offenders		
Number does not provide enough details/individual information		
Standardized useful as it has been evaluated/recognized		
Directs intervention/assists supervision		
If included for some, should be included for all		
Other:		
Question 5: Which method of conveying risk assessment information (standardized or narrative) would you prefer and why?	Score	
Preference in way conveyed?	0 – Narrative 1 – Both 2 - Standard 3 –Neither	
Concerns with reliability of standardized	0: Not Present	1: Present
Concerns with validity of standardized		
Narrative allows inclusion of more information, better understanding of offender, more individual interpretation and options instead of just a standardized label		
Lack of training & qualified staff for standardized tests		
Standardized protects PO from having to defend in court - unbiased		
Narrative can be defended in court/ Standardized subject to challenge and difficult to defend		
Standardized more efficient – quicker & easier		
Other:		

Phase I: Questions 4&5, Judge Interviews

Question Number	Code		Question Number	Code	
Q#4: Risk assessment included in PSR?			Q#5: Narrative & Standardized Risk Assessment?		
Wants risk assessment information included in PSR?	0 = Negative 1 = Neutral 2 = Positive		Preference in way conveyed?	0 = narrative 1 = both 2 = standard 3 = no preference	
Concerns about reliability of risk assessment?	0 = not present	1 = present	Narrative allows me to make my own judgements, opinions about risk	0 = not present	1 = present
Concerns about validity of risk assessment?			Risk assessment is the responsibility of the judge?		
Concerned about effects on PSR (Too much focus) or effects on offender (self-fulfilling prophecy)			Standardize is not individualized?		
Other (specify)			I lack education/information on interpreting standardized risk assessment information		
			Standardized risk assessment is more accurate/objective.		
			Standardize risk assessment just labels offender and does not provide enough details.		
			Other Info: (specify)		

Appendix B: Case-Specific Questionnaire Open-Ended Question Coding Sample

Question 2: What information do you think the court was looking for?	Score:
	0: Not Present 1: Present
Level of risk – to commit further offenses or to pose a danger to him/herself or the community	
Suitability for community supervision – can and/or under what conditions could the offender be supervised within the community; presence of community supports/ties	
Explanation of criminal behaviour – motivation for offense, accountability, mitigating circumstances, remorse, accountability, attitude toward justice system, police, etc.	
Historical Family Background – information regarding the offenders’ family in the past-entry to Canada, job history, residential history, childhood, etc.	
Current Family Situation – information regarding the offender’s family situation currently – parents dead or alive, location of other family members, etc.	
Education or employment information – is the offender educated, does the offender have stable employment or employment potential, plans for future education, etc.	
Financial information – is the offender financially independent, able to provide restitution, etc.	
General attitude – pro/anti-social, maturity, character, etc.	
Treatment/rehabilitation needs or potential – past experience with treatment programs, programming needs, motivation for participation, etc.	
Psychological issues – mental health or anger issues	
Substance use – use of alcohol, illicit drugs, inhalants, or non-prescribed medication	
Not known	
Other:	

Appendix C: PSR Coding Sample

Substance Abuse Coding Chart

Variable	Criteria	Present 0: No 1: Yes	Judge 0: No Mark 1: Marked	PO 0: Nothing 1: Lined 2: Circled 3: Both	+/- 0:n.a 1: -ve 2: n/s 3:+ve
wassub	<p>Substance Use History Description of past alcohol, drug, or other intoxicant use</p>				
nowsub	<p>Current Substance Use Description of current alcohol, drug, or other intoxicant use</p>				
subtx	<p>Past Substance Use Treatment Description of past intervention for the use of alcohol, drugs, or other intoxicants</p>				
txplan	<p>Plans for Substance Use Treatment Description of future plans or motivation for attending treatment for the use of alcohol, drugs or other intoxicants</p>				
subother	<p>Other: Specify</p>				

**Appendix D: Ratings of Specific Information
Table Given to Interviewed Respondents**

1	2	3	4	5	6	7	8	9	10
Not at All Important									Most Important
Rating	Information				Rating	Information			
	Age					Employment history and stability			
	Gender					Substance abuse history and present level of use/abuse			
	Race in GENERAL					Offender's perception of his substance abuse problem			
	Aboriginal Status in particular					Psychiatric history and diagnosis			
	Education level achieved					Other unique personal stressors or problem areas (e.g., suicidal)			
	Behaviour in school					Offender's remorse			
	Intentions regarding continuing education					Level of responsibility the offender accepts			
	Childhood maladjustment					Offender's attitude towards offense, sentence and supervision			
	Previous convictions					Assessment of risk to re-offend			
	Past response to supervision					Assessment of risk to re-offend violently			
	Residence plan, area of housing, and with whom offender resides					Assessment of risk to re-offend sexually			
	Financial situation, such as debts, income, and dependants					Victim safety concerns including victim impact statement and notification concerns			
	Leisure and recreation activities					Offender's amenability and motivation for treatment			
	FOR GENERAL CASES - Marital relationship and partner characteristics					Treatment recommendations			
	FOR DOMESTIC VIOLENCE CASES - Marital relationship and partner characteristics					Treatment availability and plans			
	Relationship with peers and friends as well as peer group characteristics					Specific recommendations regarding placement in community versus custodial			
	Relationship with parents and their characteristics					Specific supervision recommendations and conditions			
Any other specific information desirable? Please specify.									

Appendix E: Factors Potentially Important in Determining Sentence

Instructions. The following is a list of factors that are often considered in determining sentence. You are asked to indicate which of the various factors provided helpful information to you with a check mark (✓). Check only those factors found in the Presentence Report prepared for this specific case. After completing this, rank **ONLY** the top three factors that were of overriding importance in assisting sentencing with a “1”, “2”, and “3”. **DO NOT** indicate more than 3 factors.

Step 1. Indicate which of the various factors provided helpful information to you with a check mark (✓). Check only those factors that were found in the Presentence Report prepared for this specific case.

Step 2. Rank the top three factors in order of importance in reaching your sentencing decision by numbering them 1, 2, and 3. **DO NOT** indicate more than 3 factors.

RANK 1-2-3 ONLY	Determining Factors	PSR Helpful? (check)
	Number of offences that the offender now stands convicted of.	
	Value of property stolen, damaged, or destroyed.	
	Degree of personal injury resulting from this offence.	
	Culpability of the offender in this offence.	
	Lack of culpability of the offender in this offence.	
	The minor nature of the act committed.	
	Absence of a significant criminal record.	
	Length of the offender's criminal record.	
	Recency of the offender's last conviction.	
	Offender's need for psychiatric treatment.	
	Offender's need for counselling in personal or family problems.	
	Offender's need for educational, vocational, or occupational training.	
	Offender's need for supervision.	
	Offender is likely to respond to treatment.	
	Offender is not likely to respond to treatment.	
	The availability of appropriate treatment services.	
	The lack of appropriate treatment services.	
	The failure of the offender to respond to treatment in the past.	
	Probability of the offender <i>not</i> committing further offences if released.	
	Probability of the offender committing further offences if released.	
	Serious nature of offences that the offender might commit if released.	
	Prevalence of this type of offence in the community.	
	Expectation made by community that this offence be punished.	
	Absence of any real problems needing help.	
	Other (please specify)	