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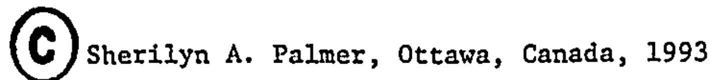
A REVIEW AND ANALYSIS OF COMMUNITY-BASED SANCTIONS IN CANADA

SHERILYN A. PALMER

Submitted to the Department of Criminology
University of Ottawa
In Partial Fulfillment of the Degree of

Master of Arts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ISBN 0-315-83834-5

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ACKNOWLEDGMENT

I would like to express my deep appreciation to Dr. Robert R. (Bob) Ross for the dedicated support and assistance he has provided throughout my years of study with the Department of Criminology. And a very special thank you for his continued guidance in the realization of both my first degree, (M.C.A.), and, finally, the completion of the M.A. (Criminology).

ABSTRACT

Sentencing reform in Canada has been the subject of extensive examination and debate. In 1982 the Government released a policy paper on the purpose of criminal law in Canada **The Criminal Law in Canadian Society (CLICS)**. In 1984, the Government released a White Paper entitled **Sentencing.** The Government's White Paper proposed substantive and procedural changes to sentencing and built upon the principles established in **CLICS**. The White Paper led to the creation of a Royal Commission on Sentencing and to the tabling of the proposed **Criminal Law Reform Act (Bill C-19)**. **Bill C-19** contained proposals which were designed to establish a coherent framework of criminal law policy in sentencing matters, and to bring consistency, and accountability to the sentencing process. Bill C-19 followed more than several decades of criticism from various groups advocating reform in sentencing matters. The package of sentencing reform proposals in Bill C-19 represented the most significant sentencing reform since the enactment of the **Criminal Code** in 1892. Included in **Bill C-19** was the provision for the Sentencing Alternative Research Program.

"Concerns have arisen about the piecemeal approach that has, in the past, often characterized changes to sentencing".[1] Although the sentencing process is one of the most important aspects of the criminal justice process, it is, in the history of the criminal law reform, one component that has unfortunately been neglected during the past several decades.

The process of sentencing offenders has become a major focus of political and academic attention. During the past two decades there has been a growing sense of disillusionment in that penal measures have failed to deliver anticipated results. Currently, little information exists about sentencing practices in Canadian criminal courts. Research indicated that criminal sanctions have only a limited effect on such traditional goals as rehabilitation, deterrence and incapacitation. The lack of clearly stated policies and principles in sentencing matters has raised concerns about the kinds of sentences imposed by the courts. It has been the perception that offenders who have committed similar offences in similar circumstances may receive very different sentences.

The search for effective community-based sentencing alternatives has been ongoing for a long time. However, despite the overwhelming interest, we know relatively little about the conditions under which alternatives can be effectively applied to meet specific objectives, how obstacles to their effective implementation can be overcome, and how they can be rooted on a systematic basis. The research program that was approved as part of **Bill C-19**, concentrated on community service orders, restitution and the proposed fine option programs. To support the jurisdictions in the research program, federal resources were approved for research in these areas. However, most of the research carried out was in the area of fine option programs.

Despite the various calls for the use and expansion of community-based sanctions, their development and implementation throughout the jurisdictions have been inconsistent. One of the rationales of the Sentencing Alternative Initiative was to provide more information about programs, and, to stimulate

further interest in community-based sanctions. The purpose of this thesis was to provide information on what led up to the Government's significant initiative in sentencing reform, and, to discuss the results of the research activities during the **Sentencing Alternatives Initiative.**

The Sentencing Alternatives Initiative served to augment and enhance some of the sentencing alternative projects already in existence across the country, and to stimulate interest in areas where alternatives were not available. As a result, the activities of the Initiative were varied and ranged in type from program reviews to feasibility studies, pilot projects, surveys in jurisdictions and compilation of fact books on the use of alternatives in Canada. Perhaps this eclectic approach was the most distinctive feature of the Initiative, and suggested the need for flexibility in considering the role of sentencing alternatives in the criminal justice process.

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Willaert (1953), 105 C.C.C. 172.
Wilmott, [1967] 1 C.C.C. 171, [1966] 2 O.R. 654, 49 C.R. 22, 58 D.L.R. (2d) 33 (C.A.).
Zelensky (1978), 41 C.C.C. (2d) 97 (S.C.C.).

Sentencing is the climax of the criminal justice process. It serves as the focus of the criminal law and the criminal trial, and constitutes the point at which the criminal justice system most consciously and visibly expresses its denunciation of criminal behaviour, attempts to deter or incapacitate people from future wrongdoing, or orders reparation or redress of the harm done.

(Government of Canada, 1984)[2]

CHAPTER 1

INTRODUCTION

The purpose of this chapter is to describe the context in which the research took place that served as the framework for this thesis. The focus of this thesis is on the research that was conducted in Canada during the **Sentencing Alternatives Initiative between 1984 and 1989,** (also referred to in this thesis as the Sentencing Alternatives Research Program).[3]

During the 1980s, the Government of Canada published two major policy papers: The **Criminal Law in Canadian Society** (hereinafter referred to as CLICS)[4] in 1982, and during 1984 a White Paper entitled **Sentencing.**[5] These policy papers served to introduce the proposed **Criminal Law Reform Act (1984) (Bill C-19)**[6] (hereinafter referred to as **Bill C-19**). **Bill C-19** followed more than several decades of discussion and criticism from various groups advocating reform in policy and in law with respect to sentencing issues.[7] To facilitate the research program that was created as part of **Bill C-19**, Cabinet established the **Sentencing Alternatives Initiative.**

To support the jurisdictions in this initiative, federal resources were approved for:

> **1. transitional assistance to the provinces and territories in the form of project support;**

2. training and education directed both at the criminal justice community, and more generally, the public at large; and

3. research and evaluation activities integral to the implementation of sentencing reform initiatives.[8]

The Sentencing Alternatives Initiative served to augment and enhance some of the projects and programs already in existence in Canada, and, to stimulate interest in areas where community-based alternatives were not available. The research program during this Initiative, concentrated on alternatives such as: community service orders, restitution and the proposed fine option programs. The research activities included feasibility studies, pilot projects, programs reviews and a province-wide program evaluation in Manitoba.

Resources were devoted to research projects developed in cooperation with the provinces and territories. All jurisdictions were encouraged to submit research proposals focusing on: the use of restitution, community service orders and fine option programs. Each proposal submitted was based on the research needs of that jurisdiction. In all, twenty-five separate studies were conducted in eight jurisdictions between 1984-87; and, all research projects concluded during 1989. In addition, all jurisdictions participated in the compilation of information that described program policy and objectives in each jurisdiction in respect of fine option, restitution and community service order programs.[9]

1.0 Framing the Issues

The **Sentencing Alternatives Research Program** had three major objectives:

> **1. to provide support to the provinces and territories in the development and implementation of community-based sentencing options such as: fine option, community service order and restitution;**
>
> **2. to promote community-based sanctions sensitive to the needs of victims and natives; and**
>
> **3. to maintain provincial/territorial interest in a fundamental sentencing reform.[10]**

Although the purpose of the Sentencing Alternatives Initiative was to concentrate on three community-based sentencing options, most of the interest in the jurisdictions was the feasibility and implementation of fine option programs. Most of the studies that were carried out during the Initiative, was in respect of fine option programs, therefore, the core of the research conducted for this thesis was also in the these areas.

1.1 Research Objectives of This Thesis

Building upon the objectives of the Sentencing Alternatives research program, the objectives of this thesis are:

1. to describe some of the research projects undertaken in cooperation with the jurisdictions as a result of the Sentencing Alternatives Initiative; and

2. to summarize and describe some of the correctional programs in the jurisdictions in respect of fine option, restitution, and, community service order programs;

The secondary objectives of this thesis are:

3. to review some of the issues raised and the recommendations made by law reform commissions and others which subsequently led to Bill C-19 in respect of community-based sanctions; and

4. to review some of the more significant statements made by the courts in respect to sentencing alternatives during this same time frame.

It is difficult to isolate the topic of this thesis from other significant events that led to, and subsequently played an integral part of the proposed **Criminal Law Reform Act (Bill C-19)**. The Sentencing Alternative Initiative was a minor research component of **Bill C-19**. Probably the most significant accomplishments of the Government was the creation of a Royal Commission on sentencing, the Canadian Sentencing Commission.[11] Many people have stated that the Canadian Sentencing Commission's Report to Parliament in 1987, included the most comprehensive research every to be carried out in Canada. This, undoubtedly is very true. To some extent, whenever possible, these events have been acknowledged, but it would be a separate topic to discuss the many recommendations made by the Canadian Sentencing Commission that probably

will impact on future planning of community-based sanctions in Canada for a very long time.

The writer is a Senior Criminologist with the federal Department of Justice. At the time of the **Sentencing Alternative Research Program**, the writer's role in this position included the responsibility for most of the research projects carried out during the research program. This included designing the research objectives, consulting with the jurisdictions, supervising the researchers responsible for carrying out each study, and writing the final report. All research carried out was in conjunction with correctional officials in each jurisdiction. In addition, the writer was closely responsible for the feasibility studies conducted in Ontario[12] and Prince Edward Island[13] in the area of fine option programs. This responsibility included the design of the methodology, supervision of the persons responsible for collecting the data, the final analysis of the data, and writing the final report.

1.2. Methodology

This thesis is an empirical descriptive study of government policy and behaviour. It is not intended to examine the possible theoretical accounts of why government developed policy. The research objectives for this thesis was based on the studies conducted during the Sentencing Alternatives Initiative. In addressing the research objectives, the methodology for this study will be described in two parts:

PART 1

1. an analysis of some of the research projects undertaken in cooperation with the jurisdictions, including:

(a) summarizing the research questions and issues, and providing an overview of how the research questions were addressed; and

(b) analyzing the major findings and conclusions of the studies.

2. a review of program and policy manuals for all correctional programs in each jurisdiction during the time frame of this research, including a review of annual reports and program evaluations; and

3. interviews were conducted with correctional officials in each jurisdiction to supplement (2).

PART 2

4. texts, reports and caselaw were reviewed by using the standard digest (Canadian Abridgment and Canadian Current Law); unreported Canadian cases were assessed through the weekly Criminal Bulletin, Quicklaw and CanLaw databases; and

5. reviewing recommendations made by law reform commissions and other committees insofar as the recommendations related to community-based sanctions in Canada.

See **Appendix "A"** for a list of the research activities undertaken for the Department of Justice under the responsibility of the author during the **Sentencing Alternatives Initiative**. Also see **Appendix "B"** for a list (by year)

of the law reform commissions, committees and task forces referred to in this thesis.

1.3 Thesis Structure

PART 1

Chapter 1: provides the framework for this study, including: the background, the purpose, the methodology, the research questions and the structure of the thesis;

Chapter 2: reviews the sentencing process in Canada from an historical context and discusses the role of the courts in establishing the traditional theories of punishment;

Chapter 3: reviews the past and more recent history of law reform initiatives in Canada, and, specifically as they related to sentencing alternatives.

PART 11

This section of the thesis provides a synthesis of the Government's Initiative in respect of the **Sentencing Alternatives Initiative.**

Chapter 4, 5 and 6: review the legislative history of fines, and fine option programs, and discusses the major research conducted during the Sentencing Alternatives Initiative;

Chapters 7: reviews the background and legal framework for community service orders and describes program objectives and policies in some jurisdictions;

Chapters 8, 9 and 10: review the background and legislative history for the use of restitution in Canada, describes the current status of restitution programs, and finally, provides an overview of the major results of the research conducted; and

Chapter 11: presents some conclusions and/or recommendations for further research.

One of the major components of the research for this thesis was under the "umbrella" of the Sentencing Alternatives Initiative. Due to the eclectic approach the Department of Justice took with the jurisdictions, most studies conducted during the Initiative were very unique to the concerns of a particular jurisdiction. Therefore, in this thesis no attempt is made to compare the results of the studies conducted among the jurisdictions. In addition, it seems more useful to include a separate conclusion for each study analyzed as part of this research. Therefore, the concluding chapter of this thesis provides more general conclusions addressing some of the judicial and law reform issues that were discussed in the Chapter 1, 2 and 3 of this thesis.

CHAPTER 2

HISTORICAL FRAMEWORK

2.0 Introduction

It is the position of this writer that it is important to describe the significant contributions made by the courts in establishing the jurisprudence in respect of sentencing dispositions from 1892 to present.

The imposition of sentence is probably one of the most difficult tasks that a judge is called on to perform: the guidelines have been few; the aims have been frequently contradictory and conflicting; the interests to be satisfied have been often irreconcilable; and, the judgments of the appellate courts have been sometimes inconsistent.[14] Mr. Justice Haines in **Turner**[15] described this dilemma when he stated these concerns: it has been seldom that a judge can feel completely certain that he has imposed the right sentence. Although a newly appointed judge looks for reliable information that would enable him to sentence with assurance, he soon realizes that this is impossible and that he must be satisfied with his own insight into human behaviour, his understanding of offenders, and his knowledge of the efficacy of the different forms of punishment that are available to him.[16]

The sentencing process, as we know it in this country, is characterized by two factors: first, there is little if anything in the way of formally prescribed procedures that govern sentencing; and, second, apart from the few instances when the **Criminal Code** ordains a fixed penalty for a particular offence, the trial judge has a wide discretion to impose a sentence.[17] In this context, with few exceptions, the courts have indeed been left on their own and provided with an almost unfettered discretion to determine an appropriate sentence. In fact, the sentence provided may vary from an absolute discharge at the minimal point on the scale of justice, to a long term of imprisonment at the most severe point on the scale. However, within that latitude, a difficulty arises from the fact that there exists considerable vagueness and ambiguity in respect of the principles of sentencing and the purposes to be achieved in sentencing matters. As few legislative guidelines exist for the courts to rely on for guidance, judges have been forced, or, have been free, to develop and apply their own sentencing principles and philosophies.[18] In fact, it has been suggested by one writer that: ". . . judges, actually make law, rather than merely administering it. . . ".[19]

2.1 Background

Following Confederation in 1867, death, imprisonment, fines, whipping, and binding-over were categories of punishment permitted by Parliament. Other provisions in certain cases authorized the imposition of fines or binding-over orders as alternative punishments to imprisonment. Whipping was made a discretionary penalty for three or four offences against the person. Additional discretionary penalties under the **Criminal Code** included the imposition of hard labour and solitary confinement. Imprisonment was the principal sentence under

the **Criminal Code**, with terms judicially fixed within statutory limits and except for one or two capital offences, all indictable offences were punishable by imprisonment.[20] In 1892, the **Criminal Code** included provisions for binding-over orders, suspended sentence, probation and fines but as a general rule, the judges had no discretion as to kind of punishment, and a large discretion in selecting an appropriate prison term. However, no where in 1892 did the **Criminal Code** include a statement of philosophy or criteria to assist judges in determining sentences.[21]

Tracing the history of sentencing in Canada is complex. However, most historians agree that one of the key factors must be the construction of Kingston Penitentiary during 1835.[22] Before then, imprisonment was not the primary disposition in sentencing matters.[23] The decline in the use of capital punishment, coupled with a decreasing use of transportation and banishment were among the reasons for the construction of Kingston Penitentiary.[24] Upon a recommendation made in 1831 by the **Biggar Committee,**[25] in 1835 Kingston Penitentiary was constructed:

> **[i]t is well protected by an effective Garrison and extensive fortifications--the situation is healthy, and land can be purchased at a moderate price. In addition to these recommendations, the materials for building are abundant, and of the most substantial kind, and the inexhaustible Quarries of stone, which exist in every direction within the township of Kingston, will afford convicts that description of employment which has been found by actual experiment to be the most useful in institutions such as your committee recommend.**[26]

The intent of the penitentiary was to be so harsh that it would deter potential offenders, and "possibly, make them repent for their sins", the Committee further emphasized:

> **[a] penitentiary, as its name imports, should be a place to lead a man to repent of his sins and amend his life, and if it has that effect, so much the better, as the cause of religion gains by it, but it is quite enough for the purposes of the public if the punishment is so terrible that the dread of a repetition of it deters him from crime, or his description of it to others. It should therefore be a place which by every means not cruel and not affecting the health of the offender shall be rendered so irksome and so terrible that during his after life he may dread nothing so much as a repetition of the punishment, and, if possible, that he should prefer death to such a contingency. This can all be done by hard labor and privations and not only without expense to the province, but possibly bringing it a revenue.[27]**

However, very soon, serious allegations of cruelty were reported by the media and in 1848 a **Royal Commission**[28] (chaired by George Brown) was established to look into the alleged statements of cruelty inflicted on prisoners The **Brown Commission** supported the media allegations and emphasized in its report:

> **[a]s many as twenty, thirty, and even forty men, have been flogged in one morning, the majority of them for offences of the most trifling character; and the truth of the complaint resting solely on the word of a Guard or Keeper, subject at best to all the frailties of other men. The exasperation which such a system could only produce, must have bid defiance to all hope of reform. To see crowds of full grown men, day after day, and year after year, stripped and lashed in the presence of four or five hundred persons, because they whispered to their neighbour, or lifted their eyes to the face of a passerby, or laughed at some passing occurrence, must have obliterated from the minds of the unhappy men all**

perception of moral guilt, and thoroughly brutalized their feelings.[29]

In addition, the Committee stated:

> **[t]he vast number of human beings annually committed to prison in every civilized country, and the reflection that they may receive fresh lessons in vice or be led into the path of virtue that, after a brief space, they are to be thrown back on their old habits, ,more deeply versed than before in the mysteries of crime, or return to society with new feelings, industrious habits, and good resolutions for the future--must ever render the management of penal institutions a study of deep importance for the Statesman as well as the Philanthropist.**
>
> **[i]n Canada--we have but one penal institution of which the aim is reformation, and the little success which has as yet attended its operations, it has been our painful day to disclose.**[30]

Since the 1800s several different philosophies have influenced the criminal justice system. Two centuries ago, the purpose of sentencing offenders was straightforward with the sole goal of the punishment and segregation of offenders.[31] However, there were others in the 19th century who believed that the ultimate solution lay in the reformation of offenders rather than in punishment. This view found voice in Canada as early as 1938 in the **Archambault Report,** the **Royal Commission to Investigate the Penal System of Canada**[32] (hereinafter referred to as the Archambault Commission), which recommended "that the punishment emphasis within the prisons be de-emphasized and replaced with attention to reformation and rehabilitation of the offender".[33] As the courts changed their emphasis from sentences imposed primarily as a reflection

of retribution to sentences which looked toward the future and the rehabilitation and reformation of offenders, the results were often in the nature of a compromise that attempted to serve seemingly conflicting purposes.[34]

2.2 Some Traditional Theories of Punishment 1892-1992

Any attempt to assess past positions on sentencing practices in Canada can only result in the conclusion that early sentencing policy was vindictive and retributive.[35] The 1892 **Criminal Code** was based on deterrence and punishment. The views of **James Fitzjames Stephen**, who had drafted the **English Code** from which the **Criminal Code** was taken stated: "[v]engeance affects, and ought to affect, the amount of punishment".[36] The infliction of punishment by law was the "definite expression and a solemn ratification and justification to the hatred which is excited by the commission of the offence".[37] Stephen further emphasized:

> **I think it highly desirable that criminals should be hated and that the punishments inflicted upon them should be so contrived as to give expression of that hatred, and to justify it so far as the public provision of means for expressing and gratifying a healthy natural sentiment can justify and encourage it. These views are regarded by many persons as being wicked, because it is supposed that we never ought to hate, or wish to be revenged upon, anyone ...The expression and gratification of these feelings is however only one of the objects for which legal punishments are inflicted. Another object is the direct prevention of crime either by fear, or by disabling or even destroying the offender, and this which I think commonly put forward as the only proper object of legal punishments is beyond all question distinct from the one just mentioned, and of**

> **coordinate importance with it. The two objects are in no degree inconsistent with each other, on the contrary, they go hand in hand, and may be regarded respectively as the primary and secondary effects of the administration of criminal justice.**[38]

However, as early as 1938, in the report of the Archambault Commission, the Commission stressed: ". . . the revengeful or retributive character of punishment should be completely eliminated, and that the deterrent effect of punishment alone. . . [was] practically valueless."[39] The Commission further emphasized that the "task of the prison should be. . . the transformation of reformable criminals into law-abiding citizens. . . ".[40] However, in achieving this end, the Committee cautioned:

> **...[we] have taken a somewhat skeptical attitude towards the claim that the rehabilitation of offenders is a sufficient justification for imposing punishment. ...The place for operation of the rehabilitative ideal is not in determining what kinds of conduct should be made criminal. However, once a decision to punish has been made and justified on other grounds, the rehabilitative ideal should be fully used in deciding what kinds of punishment should be imposed. To put it another way, the rehabilitative ideal deserves consideration in evaluating not the propriety of punishment but its severity.**[41]

The principle of retribution, though once accepted by the courts, has now been rejected as instrumental in present-day sentencing practices. Indeed, during 1946, the Ontario Court of Appeal recognized that retribution in the sense of revenge was of little or no significance in the course of Canadian sentencing practices. In **Warner** the court emphasized:

> **[i]t should be said at once that the purpose of punishment for crime is not that, through the medium of a judge who is authorized by law to impose it, vengeance may be wreaked upon the guilty for their crime, as though a crime was private in character. Punishment...is the expression of the condemnation by the State of the wrong done to society. There must, therefore, always be a right proportion between the punishment imposed and the gravity of the offence. It is in that sense that it is said that certain crimes 'deserve' certain punishments, and not on any theory of retribution.[42]**

The assumption was, and continues to be, that threats or examples of punishment would discourage criminal behaviour. Deterrence as one of the goals to be achieved in sentencing dispositions was considered to be both general deterrence and specific or individual deterrence. General deterrence was meant to demonstrate to potential offenders the consequences of wrongdoing in committing similar crimes. Specific deterrence was meant to deter the offender, that the particular act committed was wrong and to remind the offender of the consequences of repeating such an act.[43] However, the difficulty in attempting to reconcile what was needed to deter that offender and what was needed to deter potential offenders became the source of much aggravation for the courts in determining the length and severity of the imposition of sentences.[44] This conflict was expressed by the Saskatchewan Court of Appeal in **Morrissette**[45] and the conflict continues to be expressed in much the same language today as it was then. **Morrissette**[46] has become a fundamental reference when the courts discuss this dilemma. Therefore, because of its contribution, the case has been summarized in part, as the court stated: the problem was different if the purpose of sentence was to deter the offender from repeating the offence from that if the purpose was to deter others who may be inclined to commit the same offence. In

neither case did it necessarily follow that a long sentence was required to achieve the purpose. Deterrence should be considered from an objective view if the purpose was to deter others who may be inclined to commit the same offence. In such case, the gravity of the offence, the incidence of the crime in the community, the harm caused by it, either to the individual or to the community, and the public attitude toward it, are some of the matters to be considered. If the purpose was to deter the offender from the offence, then greater consideration must be given to the individual, his record and attitude, his motivation and his reformation and rehabilitation. If both purposes are to be achieved, then there must be a weighing of all the factors and a sentence determined that gives a proper balance to each of them.[47]

During the latter part of the 1960's, the courts appeared to have given general endorsement to the principle of protection of society.[48] This was probably due to the significant contribution of an Ontario case that has since become the leading case and one of the most quoted references in respect of the principles of sentencing.[49] The oft-cited case of **Wilmott**[50] addressed the issue of the purposes to be achieved in sentencing matters and because of the significance of this case it has been summarized in part: the fundamental purpose of any sentence of whatever kind was the protection of society. That this was the real purpose of a sentence could not be overemphasized. Where the sentence was one of imprisonment, the protection of society was accomplished in an absolute sense by preventing the offender from repeating his crime. But this was not the only purpose of imprisonment, for the sentence was designed also to deter the offender from committing other offences on his release, and, also, to deter others from committing the same or different offences. Imprisonment also provided an

opportunity for the reform and rehabilitation of the offender. Undoubtedly, if reform was accomplished as a result of an appropriate prison sentence, the protection of society was accomplished as far as that offender was concerned, not only by removing a source of danger to the persons, lives and property of the members of society, but as a positive benefit by reducing the cost of maintaining the offender in prison. So far as such offenders are concerned, the benefit to them of reform and rehabilitation was obvious. Where that effect was achieved the common interest of society and the individual was most apparent[51]

Although the protection of society was said to be the primary or fundamental purpose of sentencing the distinction was often "blurred" by the courts because protection of society had a twofold aspect: the protection of society from this particular offender; and, the protection of society from the commission of this type of offence. The general purpose of the criminal law was to preserve the well-being and order of society, and sentencing formed an essential part of this process. Therefore, when reference was made to "protection of society", it was usually the second aspect that was being referred to.[52] During this period of time, in keeping with this basic principle, the **Canadian Committee on Corrections**[53] (hereinafter referred to as the **Oulmet Report**) agreed that the primary purpose of sentencing must be the protection of society. Protection of society was accomplished through deterrence (both general and specific) and through rehabilitation of the offender Use of these means should, however, be devoid of any connotation of vengeance or retribution.[54]

The **Oulmet Committee** also cautioned that while the principle of rehabilitation of offenders may be a valid sentencing objective of the court, this objective probably

could not be met within the confines of the prison. In fact, many persons now believe that the potential of rehabilitation at best is extremely limited and may only be effective with those offenders who appear to be motivated and seeking assistance from the correctional authorities. The promise of rehabilitation which held out so much hope in the past, has now been accepted by the judiciary as only one consideration to be taken into account.[55]

The balancing or weighing of factors to be achieved in sentencing offenders has become one of the most difficult problems that the Canadian courts have had to grapple with. Indeed, this concern was echoed by the Nova Scotia Court of Appeal in 1973 as the court concluded: **"the main problem [was] to reconcile what [was] needed to deter the convict with what [was] needed to deter others".**[56] This has become a source of discussion and disagreement from jurisdiction to jurisdiction and within jurisdictions because rarely did the two concepts coincide and most often the courts in Canada were in conflict with the need for a short sharp sentence to emphasize specific deterrence and the requirement of a longer harsher sentence to illustrate the need for general deterrence to the public.[57]

The subsequent weight that the courts tended to place on sentences imposed primarily as a reflection of retribution to sentences which looked toward the future and rehabilitation of offenders often resulted in the imposition of compromise sentences that attempted to serve seemingly conflicting purposes of deterrence and rehabilitation. For example, in practice, the classical principles of deterrence and rehabilitation were treated as concomitant circumstances, each modifying the other, and, often resulting in a compromise sentence. The purpose of the

sentence imposed was meant to reflect both of these principles. However, these two philosophies were largely inconsistent, and possibly incompatible.[58]

During the 1970s, it became evident to the courts that the quest for the rehabilitative ideal collapsed as many influential writers questioned its validity as playing an instrumental role in sentencing practices. The courts agreed that the promise of "rehabilitation" which appeared to hold out so much hope in the past decades was only one consideration to be taken into account when arriving at an equitable disposition.[59]

As referred to at the beginning of this chapter, the imposition of sentence is a legal mechanism through which the values of society are upheld; and, the courts are required to provide for a disposition that will ultimately protect the community by rehabilitating the accused, and at the same time deterring the offender as well as potential law-breakers from committing similar-type offences.[60] With few exceptions, other than when the **Criminal Code** states otherwise by establishing minimum sentences for certain crimes, the courts have been basically left on their own and provided with an almost unfettered discretion to determine an appropriate sentence.[61]

The basis for such discretion was the belief that Parliament could not possibly foresee and make explicit statutory provision for the infinite variety of circumstances and cases that come before the courts in sentencing, and, it is precisely the need to take into account this unforeseeable variety that is one of the most important elements in the sentencing process today.[62] One of the most complex and difficult tasks facing the courts is the process of arriving at a fair and

just sentence. The courts are no longer concerned with the narrow issue of determining either innocence or guilt but become engaged in the complex issue of determining the appropriate penalty that may be appropriate for the particular offender. The imposition of sentence is an essential legal mechanism through which the values of society are upheld through a form of social control. The law requires the courts to provide for a disposition that will ultimately protect the community by rehabilitating the accused, and at the same time deterring the offender as well as potential offenders from committing other similar-type offences. The sentence provided may vary from a suspended sentence to a long term of imprisonment[63] Within this range of sentence, the community and its victims are treated to an exhibition of sentences that become confusing and perhaps meaningless to all those concerned. As a result, the public as well as the offender and potential offenders may lose confidence in the purpose of the criminal law. Some members of society may not fully comprehend that with particular offenders, the proper protection which is due to society must be sacrificed in order to give primary concern to the rehabilitation and reintegration of the accused. In other cases, perhaps for a similar-type offence, the courts recognize that the community must be protected from this offender and the commission of this type of offence. In this case, the rehabilitation of the offender becomes a secondary matter and the protection of society is a predominant measure. As members of the courts attempt to harmonize the interests of society with the needs and interests of the accused, the results are often paradoxical and are explicable only on the theory that in different cases, different judges tend to place different emphasis on different factors. In reality, the real problem occurs because the courts are expected to impose a sentence meant to serve conflicting interests.[64] Mr. Justice Haines, in **Turner**[65] expressed his concerns as to the

"Impossibility" of the task that the laws placed on the judiciary: "the imposition of sentence [was probably one of the most difficult tasks that a judge [was] called on to perform; the guidelines [were] few, the aims [were] frequently contradictory and conflicting, the interests to be satisfied [were] often irreconcilable and the judgments of the appellate courts [were] sometimes inconsistent. Being required to be all things to all men meant that judges [found] themselves in the position of attempting to serve conflicting interests. Therefore, sentences often hurt those they intended to serve."[66]

The concept of unequal sentences for similar-type offences has become a subject of much debate and disagreement during the past several years. In this respect, the public, as well as the offender, and potential offenders may lose confidence in the purpose of sentencing and the purpose of criminal law because instead of consistently protecting society, the criminal law may appear to discharge that responsibility only occasionally.[67]

The **Ouimet Committee**[68] addressed disparity in sentencing and quoted from a paper that was delivered at the Ninth Alumni Conference on Crime and Punishment at the University of Manitoba:

> **[m]uch is heard nowadays of the disparities in sentencing with the underlying assumption that justice would be better served if divergencies in judicial assessments of the appropriate penalty were to be eliminated altogether. To a certain extent this approach is very understandable but 'it would be folly to suppose that sentencing can ever be reduced to a scientific equation' In some respects, however, Canada displays a marked absence of uniformity in the principles of sentencing and this is to be regretted.**[69]

The reported cases are replete with examples in which the appellate courts emphasized that uniformity of sentence was probably impossible to achieve, and, furthermore undesirable, that the most significant principle to achieve, was a uniformity of approach. In the judgment of the Saskatchewan Court of Appeal summarized in part previously in this chapter, the court stated: "being the final court in dealing with appeals in respect to sentence, the court had a responsibility for stating principles of sentencing that underlie the imposition of sentence so that at least a uniformity of approach can be achieved. In recognizing that there is no such accomplishment as a uniform sentence, it is incumbent upon the courts of appeal to see that disparity in sentences for the same or similar offences can be rationalized".[70]

A review of the leading cases that have made significant contributions in sentencing matters indicated that some judges were of the opinion that society was best protected through the reformation and rehabilitation of the accused, while in other cases, perhaps for a similar-type offence, the courts emphasized that the community must be protected through the separation of the offender from society. In this case, the rehabilitation of the offender became a secondary concern, and the protection of society was the ultimate consideration in arriving at a fair and equitable sentence. However, in recent years, there has been growing concern that the wide discretion enjoyed by the members of the judiciary may, in fact, be contributing to inconsistencies in the outcome of sentences.[71]

In addition to the contributions made by the judiciary since the enactment of the **Criminal Code** in 1892, probably, just as significant are the contributions made by the law reform commissions and committees.

Chapter 4 of this thesis, reviews some of the major recommendations that impacted on the creation or enhancement of community-based sanctions in Canada.

CHAPTER 3

LAW REFORM IN CANADA

3.0 Introduction

For more than two decades law reform commissions and others have debated the following major and inter-related issues:

1. **perceptions of disparity in the sentencing process;[72]**
2. **the perceived overuse of prison sentences;[73]**
3. **the lack of stated principles and objectives of sentencing;[74]**
4. **the lack of sentencing guidelines;[75] and**
5. **the lack of community based sentencing options.[76]**

Calls for sentencing reform have been echoed during the past several decades by law reform commissions, committees, non-government groups, as well as numerous other researchers.[77] Various reports and studies have dealt with the inadequacies of our current system which relies entirely on the common law.[78] Common concerns are shared by all levels of government in Canada due to the many criticisms about alleged failings of the criminal justice system.[79] Some people have argued that serious fragmentation in knowledge, mandates and responsibilities may have contributed to persisting problems and lack of action of how to address the problems.[80] Since the construction of Canada's first major penitentiary,[81] federal commissions, committees and task forces unambiguously

recommended the use of community-based sentencing alternatives over the use of imprisonment.[82] The two most persevering phenomena for this period of time are the numerous public statements on the need to decarcerate those offenders convicted of non-violent property offences[83] and, the ever-growing statements of concern about the increasing prison population.[84] The following section in this chapter reviews briefly some of the issues raised by law reform commissions and others which subsequently led to the first major sentencing statement made by the federal Government in establishing the legislative provisions of **Bill C-19.** **Appendix "B"** describes the law reform commissions, committees and task forces referred to in this thesis.

The criminal justice system is a complex and interrelated process that includes three major components: the police, the courts, and corrections. These components have their foundations in the criminal law. Sentencing occupies a central position in this system. Decisions made at this time have significant consequences not only for offenders, but also for society, as well as having a significant impact on the criminal justice system.

It has become apparent through the past several decades that there may be many difficulties with the present system of justice.[85] Many people now argue that the criminal justice system in Canada needs a complete **"overhaul"**.[86] Indeed, following a thorough review of the criminal justice system,[87] the **Canadian Sentencing Commission**[88] reported to Parliament[89] and concluded: **"there [were] serious problems with sentencing in Canada and that these problems [could not] be eliminated by tinkering with the current system or**

exhorting decision-makers to improve what they [were] doing. The system [was] in need of fundamental changes in its orientation and operation."[90]

3.1 Historical Aspects of Canadian Law Reform: 1892-1992

Since 1892, with the enactment of the **Criminal Code**, amendments have been considered by most writers to be largely **"piecemeal"** in nature.[91] In describing this state of affairs, during 1990, the Minister of Justice stated: **"Canada's Criminal Code reflects centuries of common law and nine decades of piecemeal and patchwork amendment".**[92] As early as 1947, the **Criminal Code** was described in much the same language as it is today:

> **. . . by 1947 the Code was a remarkable collection of prohibitions, punishments, and procedures. It was a jungle of verbiage, its language drawn from nineteenth-century British style, and in many respects it dwelt more upon detail than upon principle.**[93]

Although some minor amendments were enacted in 1906, it was not until 1955, that the **Criminal Code** was first revised. However, although the 1955 revision was applauded by many people, it still appeared to be a little more than a tiding up of certain sections of the **Code.**[94] The **Archambault Commission** dealt at length with the **Criminal Code**, its history, and its provisions. Although the Commission did not examine matters involving the revision to the **Criminal Code** or amendments to the criminal law, the **Archambault Commission**[95] did quote a statement made by the **Canadian Bar Association** from one of the Association's reports during that year:

> [s]ince 1892, the Code has been amended. . .here and there, something added to one section, something taken away from another, with many entirely new sections and even new statutes of a criminal nature added. One is reminded of an ancient edifice to which additions have been made, planned by many architects and carried out with little regard to the appearance of the complete structure; [t]he so-called revision of 1906 was a consolidation rather than a revision. We therefore recommend that representations be made to the Minister of Justice urging on him the necessity of a complete revision.[96]

Similarly, in 1967, Mewett added:

> [t]he numerous amendments presents a shocking indictment of the process of criminal legislation. Maximum penalties have been fixed without the slightest regard for the objectives in mind; major alterations have been based upon the panic induced by isolated criminal activities; compromises between the Senate and the House have resulted in legislation supportable on no grounds; and absurd formulas adopted which disguise real aims. The only revision, that of 1955, should not be underestimated for the Commissioner's did, indeed, remove anomalies, rationalize punishments and make procedural reforms. But their terms of reference were limited in the extreme and did not change the fundamental reflection of the Code. Thus, tampered with and tinkered with it remains the monument of the eminent Victorian, Sir James Stephen.[97]

In respect of non-carceral sanctions, in its Report, the Archambault Commission specifically dealt with fines, and more particularly, the issue of those persons being committed to institutions for the non-payment of fines. The Archambault Commission referred to statistics for 1936 that indicated 9,593 offenders were sentenced to jail for non-payment of fines. The Archambault Commission

emphasized that "[i]mprisonment for non-payment, when the convicted person has not the means or ability to pay, [was], in fact, imprisonment for poverty. The injustice of such a law [was] patent. The poverty-stricken man [was] punished more severely for the commission of the same offence than the man with means."[98] Recommendations made by the **Archambault Commission** included:

> **1. a revision to the Criminal Code particularly in respect of imprisonment for the non-payment of fines;**
>
> **2. the reorganization of the penal system;**
>
> **3. the establishment of an adult probation system (based on the British system);**
>
> **4. the expanded use of parole; and**
>
> **5. habitual criminal legislation.**[99]

The Ouimet Committee[100] was given the responsibility to study "the broad field of corrections, in its widest sense, from the initial investigation of an offence through to the discharge of a prisoner...".[101] The Ouimet Committee presented its comprehensive report in March, 1969 and dealt with sentencing, parole and statutory conditional release. In its Report, the Ouimet Committee emphasized that the purpose of sentencing must be the **"protection of society"**. The absence of clearly articulated sentencing policy and the inadequacy of non-carceral programs available to the courts was a major obstacle in the development of sentencing dispositions in Canada:

[t]he overall views of the Committee may be summed up as follows: segregate the dangerous, deter and restrain the rationally motivated professional criminal, deal as constructively as possible with every offender as the circumstances of the case permit, release the harmless, imprison the casual offender not committed to a criminal career only where no other disposition is appropriate. In every disposition, the possibility of rehabilitation should be taken into account.[102]

Probably one of the most significant contributions of the **Ouimet Committee** was the recommendations made in respect of the expansion of non-carceral sanctions. Recommendations included: greater use of probation, fines, restitution, suspended sentences and the introduction of absolute and conditional discharges and intermittent sentences.

The **Ouimet Committee** also addressed the lack of legislated statement of sentencing principles in the **Criminal Code** and recommended:

[t]hat the Criminal Code be amended to provide Canadian courts with statutory direction on their approach to sentencing and that this legislation be framed to encompass the principles contained in section 7 of the Model Penal Code.[103]

A further recommendation led to the creation of the Law Reform Commission of Canada as the Ouimet Committee stated:

[t]hat the Government of Canada establish in the near future a Committee or Royal Commission to examine the substantive criminal law. The Committee or Royal Commission should also direct its attention to the

classification of crimes that would distinguish between illegal acts on a more realistic basis.[104]

In 1970, Parliament responded to the **Ouimet Committee** recommendations by enacting legislation which created the **Law Reform Commission of Canada** (hereinafter referred to as the Law Reform Commission), whose mandate ranged from "the removal of anachronisms and anomalies in the law" to "the development of new approaches to, and, new concepts of the law, in keeping with and responsive to the changing needs of modern Canadian society and of individual members of that society" [105]

During 1971, the Minister of Justice referred the reform of the criminal law to the newly established Law Reform Commission. During its early work, the Law Reform Commission turned its attention to sentencing, and produced a range of study papers, background volumes and working papers, culminating in the 1976 report ***Guidelines: Dispositions and Sentences in the Criminal Process.***[106] In its report, the Law Reform Commission recommended legislative changes in addition to significant changes to sentencing practices. The suggested changes ranged from the abolition of the parole board, and its replacement by a board of judges called the "sentencing supervision board", to the creation of new types of community-based sanctions. The Commission also recommended an increased emphasis on the use of sentencing alternatives such as restitution, whether directly to the victim, or to the community at large. The Commission emphasized that restitution to the victim, community service, and fines are much more humane, are at least equally effective in preventing recidivism, and are far

cheaper ways of dealing with offenders who are only minimally involved in criminal activity and who are not so dangerous as to necessitate incarceration.[107]

In addition, during 1976, the Law Reform Commission submitted a report to Parliament with recommendations on the principles of criminal law. In its report: ***Our Criminal Law***[108] the Law Reform Commission indicated that the law was fundamental to the criminal justice system in Canada as it formed the framework for all decision-making. It was the subject-matter of judicial matters, and it authorized and regulated all activities of the criminal justice system.[109] The Law Reform Commission described the proper role of the criminal law as a moral system that served to underline the basic values that were essential to society: "[w]hen acts occurred that seriously transgressed essential values, society must speak out and reaffirm those values".[110]

> **[c]riminal law operates at three different stages. At the law-making stage it denounces and prohibits certain actions. At the trial stage it condemns in solemn ritual those who commit them. And at the punishment stage it penalizes the offender. This, is what we get from criminal law - an indirect protection through bolstering our basic values.[111]**

In respect of sentencing matters, the major recommendations made by the Law Reform Commission during the 1970's in its working papers, studies and reports were:

> **1. Imprisonment must be used as a last resort for the most serious offences;[112]**

2. a sentence imposed on an offender should promote a sense of responsibility;[113]

3. diversion must be used whenever possible;[114]

4. greater use should be made of non-carceral sanctions, such as probation, restitution, community work orders, fines and discharges;[115]

5. the purpose of all sentences must be fairness to all individuals concerned, including both the offender and the victim;[116]

6. maximum sentences are far too lengthy, and should be reduced to a term more appropriate to the gravity of the offence;[117] and

7. there is an urgent need for sentencing criteria and the development of legislative guidelines.[118]

More specific proposals with respect to non-carceral sentencing dispositions included:

1. all alternative sentences should be recognized in the Criminal Code as separate sanctions, each serving a distinct, specified purpose;[119]

2. the Criminal Code should provide for some form of restitution, appropriate to the offence, the offender, and the victim wherever possible;[120]

3. no term of imprisonment should automatically ensue upon default of payment of fine;[121]

4. all fines above $50 should be handled on a day-fine basis;[122] and

5. the range of sentence alternatives should include good conduct orders, reporting orders, residence orders, performance orders, community service orders,

restitution, compensation orders, fines and hospital orders.[123] and

6. preference should be given to the least restrictive alternative adequate and appropriate in the circumstances.[124]

The recommendations made by the Law Reform Commission became the starting point for the work carried out later by the Department of Justice,[125] the many research studies of the Canadian Sentencing Commission,[126] and the response to these reports in 1988, carried out by the Standing Committee on Justice and Solicitor General on its Review of Sentencing, Conditional Release and Related Aspects of Corrections (chaired by David Daubney, M.P.) (hereinafter referred to as the Daubney Report).[127]

As a significant chapter in Canadian history concluded, on February 25, 1992, the Government of Canada announced in its budget statement that the Law Reform Commission of Canada was abolished. In the budget statement in the House of Commons, it was stated:

[s]ince its creation in 1971, the Law Reform Commission has played a useful role in coordinating non-governmental research on legal issues and in providing independent advice to the Minister of Justice. The Commission has done useful work on a wide range of issues, including family and administrative law, and amendments to the Criminal Code.

[t]he Government has concluded that these functions can be adequately fulfilled by assigning responsibility for commissioning non-governmental research to the Department of Justice, and by having the Minister and Department seek the views of researchers and practitioners in universities and elsewhere. The Law

> **Reform Commission will be wound up and any necessary continuing resources transferred to the Department of Justice.[128]**

After conducting an extensive study of the penitentiary system in Canada during 1977, and in its **Report to Parliament,[129]** the **MacGuigan Sub-Committee** concluded:

> **[i]f successful re-integration of offenders into the community is one of the objects of the criminal justice system--and it surely must be--then the criminal courts must have available to them a wide range of dispositions in addition to imprisonment....If we continue to conceive of imprisonment as a sort of universal solvent to the problems of crime in our society, we will do nothing more than repeat old prescriptions for failure.[130]**

The MacGuigan Report[131] agreed with the 1956 report of the Committee Appointed to Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada[132] (hereinafter referred to as the **Fauteux Committee)** and emphasized that one of the major problems facing criminal corrections in Canada was the jurisdictional split between the provincial and federal penitentiary systems. The report indicated that the jurisdictional split impeded the development of a coherent system of correctional treatment in Canada, since programs existing in federal institutions may or may not be available in provincial institutions and vice versa. One of the recommendations made by the MacGuigan Sub-Committee was that "the federal government should commence discussions with the provinces with a view to establishing standardized correctional operations across the country."[133]

In the Spring of 1981, the federal Department of Justice, in cooperation with the Ministry of the Solicitor General, and in close consultation with the jurisdictions, embarked on the **Criminal Law Review**[134]. The Criminal Law Review was designed initially to consider the work of the Law Reform Commission and make proposals for legislation to the Minister of Justice (and the Solicitor General where appropriate). To pursue the work of the Criminal Law Review, the government approved the **Criminal Law Reform Fund.**[135] The purpose of the fund was to promote legislative and non-legislative reform of the criminal law by:

> **1. facilitating discussion with and obtaining the assistance of authorities and experts outside the department; or**
>
> **2. promoting consultation upon and disseminating information about new approaches to specific criminal law problems; or**
>
> **3. establishing experimental projects to test these new approaches; or**
>
> **4. providing baseline information prior to legislative reform of the criminal law; and**
>
> **5. assessing the impact of legislative reform of the criminal law.**[136]

In August, 1982, the Department of Justice published a policy paper entitled: The ***Criminal Law in Canadian Society***[137] (hereinafter referred to as CLICS). This policy paper for the first time articulated a comprehensive statement of the Government's policy regarding the objectives and principles of the criminal law. **"As such, it [was] unique in Canadian history. Never before [had] the Government made such a statement concerning its view of the**

philosophical underpinnings of criminal law policy."[138] **CLICS** relied on the background work completed by the Law Reform Commission, in particular, reports such as ***Our Criminal Law*** [139], the Ouimet Report[140] and the work of numerous other committees, and task forces. The general principles emanating from all of these sources have been summarized as follows:

> **1. the criminal law and its process should be used with restraint: the harsher the punishment, the slower we should be to use it; this applies especially to punishments of last resort;**
>
> **2. there is a need for increased availability of sentencing alternatives or community-based sanctions; specifically, the Law Reform Commission noted that positive sanctions such as restitution and community service orders should be substituted for sentences of imprisonment; and**
>
> **3. there should be support for overall discretion in the criminal justice system in combination with a greater focus on the need for explicit mechanisms to ensure accountability in the use of that discretion.**[141]

Recognizing that the principles and law of sentencing were at the heart and objectives of the criminal law, the following significant concerns in sentencing were identified in **CLICS**:

> **1. lack of clear, understandable sentencing policies or principles;**
>
> **2. an apparent or perceived disparity in the dispositions given for somewhat similar offences committed in seemingly similar circumstances; and**

3. lack of knowledge about the effectiveness of various sanctions and considerable room for greater innovation in sentencing practices.[142]

Specifically, on the subject of sentencing alternatives, **CLICS** identified a shortage of community-based sanctions in Canada. **CLICS** also stated that guidelines applicable to sentencing and post-sentencing processes would be developed, with a view to reflecting such concerns as:

1. assuring fairness and predictability in sentencing while maintaining the flexibility needed to take into account certain specified aggravating and mitigating factors;

2. recognizing the importance of imprisonment, and its alternatives in the formulation of sentencing guidelines;

3. establishing means of evaluating the effectiveness of sentencing policy and actual use of sentencing powers;

4. establishing means of training judges and other justice system officials in the meaning, interpretation, and use of sentencing guidelines;

5. developing appropriate guidelines for Crown prosecutors governing the laying of charges and negotiation of pleas, in recognition of the extent to which these processes affect the severity and consistency of sentences;

6. preventing increased demand on prison capacity or increased average time served in prison as a result of the use of such policies, by establishing that imprisonment should be used only when lesser sanctions are inadequate or inappropriate, by reflecting developments in behavioural science and by taking account of present sentencing practice and resource availability.[143]

As referred to in Chapter 1 of this thesis, subsequent to the publication of **CLICS**, the federal government published a white paper on sentencing entitled ***Sentencing***[144] The purpose of this policy paper was to describe the context, issues and concerns within which the proposed **Criminal Law Reform Act, 1984 (Bill C-19)**[145] was developed.

Three major issues served as benchmarks for the consideration of reform proposals that were identified by the Government of Canada in 1982[146] and 1984.[147] These concerns were described by the Government as:

> **1. the lack of clearly stated policies or principles;**
>
> **2. the existence of apparent or perceived disparity; and**
>
> **3. the lack of knowledge about the effectiveness of sanctions, and the apparent room for greater innovation and effectiveness in both the availability and use of sentencing options.**[148]

The proposed legislation **(Bill C-19)**, was intended to provide the basis for more "effective, equitable, realistic and appropriate" sentencing of offenders. The Minister of Justice proposed to Parliament a "comprehensive set of provisions for inclusion in the **Criminal Code**, to bring together previously dispersed and unorganized provisions, and to expand them significantly to form a complete and self-contained part of the criminal law governing sentencing. This consolidation and expansion of sentencing provisions was designed to respond to the principles set out in **CLICS** that **"the criminal law should clearly and**

accessibility set forth the rights of persons whose liberty was put directly at risk through the criminal law process."[149]

The sentencing provisions of **Bill C-19** provided a broader and more clearly defined range of sentencing options. Within this range, emphasis would be given to non-carceral sanctions, with imprisonment for cases where such non-custodial sanctions were inappropriate. The provisions would also expand or create sanctions to allow for tough and effective penalties to be imposed without having to resort to imprisonment. In addition, increased emphasis and legitimacy would be given to victims' concerns through wider and higher priority use of reparative sanctions such as restitution and community service orders. The clarification, consolidation and expansion of the restitution provisions would constitute a major change in emphasis in criminal sentencing. The sentencing legislation provisions of **Bill C-19** had five major parts:

> **1. an explicit statement of the purpose and principles of sentencing;**
>
> **2. provisions governing procedural and evidentiary rules;**
>
> **3. a broader range of sentencing options for the court;**
>
> **4. provision for the forfeiture of property used in the commission of, or being the proceeds of crime; and**
>
> **5. fundamental changes relating to provisions dealing with dangerous offenders.[150]**

On the subject of sentencing alternatives, **Bill C-19** recognized that increased emphasis should be given to sentencing alternatives such as restitution and community service orders. In addition, legislative proposals addressed

deficiencies in the current usage of the fine provisions in the **Criminal Code** which appeared to limit the use of fines as an effective non-carceral sentencing option.[151]

As previously referred to in Chapter 1 of this thesis, simultaneous with the tabling of **Bill C-19**, the Minister of Justice announced the creation of the **Canadian Sentencing Commission.**[152] The Sentencing Commission's mandate included making recommendations on the relationship between sentencing guidelines and other aspects of criminal procedure, as well as advising on the feasibility and use of guidelines in the Canadian context.[153] Unfortunately, **Bill C-19** died on the order paper with the dissolution of Parliament on July 9, 1984.

The proposed **Criminal Law Amendment Act, 1985 (Bill C-18)** (hereinafter referred to as Bill C-18).did not include the extensive sentencing legislative package that had been previously included in **Bill C-19.** However, it did contain provisions designed to allow for the discharge of fines imposed in respect of **Criminal Code** offences. The proposed amendment was perceived as an effective alternative to imprisonment for offenders who would otherwise face a term of imprisonment for non-payment of fines. The **Criminal Law Amendment Act** was adopted by the House of Commons and proclaimed on December 4, 1985.

The major provision allowing for fine option programs is central to the subject-matter of this thesis. The subject of fines, fine option programs, and the research that was conducted in respect of fine option programs is discussed at length in Chapters 4, 5 and 6 of this thesis.

CHAPTER 4

FINES

4.0 Background and Legislative History

This chapter reviewed the history and some of the problems associated with the use of fines as a sentencing disposition that subsequently led to the legislative provisions in **Bill C-19** that were later reintroduced in **Bill C-18.**[154] Chapter 5 described the history and background (including policy and program objectives) of fine option programs in Canada (before and after **Bill C-19 and Bill C-18**), and, chapter 6 reviewed some of the major studies that were carried out during the Sentencing Alternative Initiative.

Fines are the most prevalent sanction imposed by the courts. In Canada, over 90% of the convictions for summary offences, and up to one-third of all convictions for indictable offences resulted in the imposition of fines.[155] It has been suggested that perhaps the explanation for this was that the fine was simple, uncomplicated, adaptable, and popular, because it involved no expense to the public, no burden on the prison system, no social dislocation and less stigma than most other criminal sanctions.[156]

Following Confederation in 1867, fines were included in the dispositions that were permitted by Parliament. Fines were expressly provided for offences that were of a more trivial nature, but fines were not applied as an additional penalty for any offence with a maximum more than five years imprisonment. In some circumstances the court had the discretion of imposing a probationary term with a fine.[157] The fine itself was for a fixed amount. The courts held that where the **Criminal Code** prescribed a fine and imprisonment, the judge had the power to impose either; yet where the **Code** provided for this disposition with a further term of imprisonment in default of payment of the fine, it was held that both fine and imprisonment must be imposed initially. Imprisonment in default of payment of the fine was the usual statutory provision under the **Criminal Code** in 1892, however, it was also considered to be one of the most unjust. In his doctoral dissertation, a thorough review of sentencing practices between 1892 and 1965, Jobson stated: **"[o]nce again, the poor received the brunt of the criminal law, while the rich slept in comfort"**[158]. However, in 1892, **Criminal Code** provisions did exist for recovery of fines by a civil action.[159]

In 1959, a long awaited **Criminal Code** amendment provided for a requirement that the court inquire into "means to pay" when imposing a fine to be paid "forthwith". Conversely, the amendment provided that the court may impose a fine (without inquiring into 'means to pay') if the court allowed the offender "time to pay". The **Criminal Code** provided the court with discretion to order that upon default of the fine imposed, a term of imprisonment shall be served:

> **[a] duty is to be imposed on the sentencing court to satisfy itself that the convicted person has the means to pay a fine before sending him to prison for failure to pay. The objective of these amendments is to eliminate, so far as our criminal law is concerned, to the greatest extent**

possible any remnant of imprisonment for debt. We hope that the result of the amendment will be that imprisonment for failure to pay a fine will only occur where there has been a contempt of court.[160]

The following principles emerged from an examination of the reported cases and unreported judgments in respect of the fines and fine default provisions in the **Criminal Code**:

> **1. the amount of the fine imposed cannot be excessive;**[161]
>
> **2. the amount fined should reflect the severity of the offence;**[162]
>
> **3. the offender must not profit from the crime committed;**[163] **and**
>
> **4. the amount of the fine must be in accordance with the offender's ability to pay.**[164]

An examination of the caselaw supported the view that some courts disagree with the imposition of "default days" for non-payment of fines. The courts have emphasized that the default term should not form part of the sentence.[165] For example, in **Tomlinson** the **British Columbia Supreme Court** considered the matter and concluded:

> **[i]t appears to me that the sentence, in this context, is the fine itself; any term of imprisonment in default of payment is simply the fixing of one of several means open to the Crown of enforcing the fine. . .".** [166]

In an earlier decision, the **Quebec Court of Appeal** also arrived at a similar conclusion"

> **[i]nstead of imprisoning the convicted person for one or two years, the Court may impose a fine, which takes the place of all other punishments, but to enforce the payment of the fine, imprisonment may be ordered for a definite period. The imprisonment is the mode of enforcement. . . .[167]**

One of the earlier articles written on the injustice of the **Criminal Code** fine default provisions was during 1970 by Jobson in his article **Fines**[168] stated:

> **Certainly, in some magistrates' courts it is routine practice to impose a fine with "x" number of days in default. In some cases persons are imprisoned for failure to pay, but how many persons had the money and refused to pay and how many did not have the money but were imprisoned as an alternative is not known. As a working hypothesis it can be assumed, however, that persons who have the money do pay their fines; people do not go to jail out of choice. Meanwhile, imprisonment of persons who do not have the means to pay is commonplace for convictions under provincial statutes, and undoubtedly, as indicated by the Nova Scotia cases, imprisonment for failure to pay fines occurs under the federal criminal law as well. Whether or not imprisonment in default is rationalized on the ground that the imprisonment is not a punishment of the offence, but merely an enforcement device for collection of fines, until the law prohibits imprisonment as a routine alternative to payment of fines, and bars the use of imprisonment as a routine response to failure to pay, the penal law will continue to be used as an instrument of oppression against the poor.[169]**

During 1986, the **Criminal Code** provision allowing for imprisonment for fine default was ignored by the Ontario court as Scullion, J. (Senior Provincial Court) dealt at length with the sentencing hearing of two offenders.[170] In these cases before the court, the Crown had recommended to the court a fine as the appropriate dispositions, with a period of imprisonment in the event of non-

payment of fines.[171] In these particular cases, the court ignored the **Criminal Code** provision and went on emphasize that imprisonment in default of fine was simply an enforcement mechanism for collection of unpaid fines and should only be considered where unusual and exceptional circumstances warrant imprisonment. In arriving at the court's sentence, Judge Scullion read into the transcript exerpts of a paper delivered by the Honourable Ian G. Scott, Attorney-General for the Province of Ontario as he addressed the John Howard Society Conference in Toronto:

> **[s]entencing should reflect the social mores of the time. Questions of contemporary morality, of right and wrong, of fairness, and of deeply held beliefs about human conduct and human nature, are inevitably encountered in attempts to reform the law.**
>
> **. . . I believe that the community has an extremely powerful influence on the positive reïntegration of an offender. *I do believe that the search and identification of alternatives to incarceration must continue.*** [172]

One of the sources also relied on by the Ontario provincial court was statistics provided by the Ministry of Corrections describing the relationship between admissions rates for fine defaulters and time served in provincial institutions. He stated: "**[i]t was evident that 32.4% of the admissions to our provincial institutions are fine default admissions. In fact, what the courts have been doing is creating a debtors prison.**" In arriving at its sentencing decision, the court referred to a 1972 case before the British Columbia Court of Appeal, in **Natrall**[173] wherein Mr. Justice Tysoe stated: "**I agree that no one should be imprisoned for non-payment of a fine if in truth he is so devoid of means that he is quite unable to pay it.**"[174] Further, "**[t]he spirit and the intention of the section is that, when it comes to imposing a fine and imprisonment in**

default of payment thereof, consideration shall be given to the means of the particular accused, and the amount of the fine, and the terms of payment shall not be such that they are beyond his ability to meet. Indeed, in some cases the Judge may leave the matter in the position that imprisonment is not to follow default in payment but recovery of the fine is to be left to civil proceedings by the Crown.".[175]

For a full review of the authorities and procedures followed when fine default occurs and the consequences of non-payment of fines, the court further relied on an article written by Jobson and Atkins[176] wherein the authors reviewed the equality provisions under the Charter of Rights. The authors argued that the automatic use of imprisonment for non-payment of fines was a gross injustice for certain offenders. Jobson and Atkins conducted a study in British Columbia on a sample of the population of offenders who were imprisoned in default for non-payment of fines. The authors made a strong argument that the imposition of imprisonment as an alternative to paying a fine may be in breach of the Charter of Rights. The authors noted that in British Columbia, during 1983: 400 persons were imprisoned for fine default. This represented 14% of total admissions into the B.C. provincial correctional system down from the 1978 high of 24%, but not out of line with experience over the last five years. Imprisonment for failure to pay fines was even higher in other parts of Canada, ranging from 32% of prison admissions in Ontario to 48% in Quebec and 29% across Canada as a whole. Of more significant concern, however, was the "**fundamental inhumanity, injustice and illegality of the practice both at common law and under the Charter.**"[177]

The authors recommended that consideration be given to abandoning the use of imprisonment as a primary method of fine collection: **"that more emphasis be placed upon civil procedures with imprisonment to be used only as a method of last resort."**[178] In view of the foregoing, the authors further recommended that upon default, the offender be summoned to court for a show cause hearing. If he is adjudged to have wilfully refused to pay his fine in full at the expiration of the payment period, he should be considered to be in contempt of court. Upon conviction, the fine should be satisfied through civil proceedings. If imprisonment for fine default is to be retained in its present form, the **Criminal Code** should be amended so that in every case, the offender will be brought before the court, prior to committal for a show cause hearing to determine whether he is incapable of paying the fine (in which case, the sentence can be adjusted) or, if he is merely unwilling to pay his fine.[179]

In addition, the authors indicated that there was a wide disparity in the length of prison sentences that offenders are serving in default of payment of fines of the same amount. Some offenders are serving their fines at the rate of $3 per day, while others are serving them at the rate of $70 per day.[180] Therefore, the authors also recommended that, if imprisonment for fine default is to be retained in our present system, the length of sentence should be commensurate with the size of the fine imposed. To this end, a formula (such as that employed in the day-fine system) should be devised so as to reduce the current problem of sentencing disparity in the per diem rates at which offenders are serving their sentences.[181]

In conclusion, the court also noted that there was no obligation on the court to order that imprisonment be used in default of payment of a fine.[182] However,

Section 722(4) does require that before imposing imprisonment in lieu of a fine being paid forthwith the court must be satisfied that the convicted person has sufficient means to pay the fine **where the offender is between 16 and 21 years of age.** In summary, the court emphasized: **"there should not be imprisonment in lieu of a fine at the time of the sentence unless there are unusual circumstances. The question as to whether there is a breach of the Charter of Rights may be addressed at another time."** Under Section 652 of the **Criminal Code** fines are recoverable by the Attorney-General by the use of civil proceedings but it appears this procedure is rarely used.[183]

Ontario Provincial Court judge, R.E. Kimball in his article argued: **"the imposition of days in default of a fine appears to be more a conditioned reflex than the result of any deliberate thought process".**[184] He further stated that the issuance of a warrant depriving a citizen of his liberty, should be the result of a careful thought-out and well considered judicial process. If it was determined that the accused was able to pay a fine but refused to do so, then grounds may exist for his arrest. If, however, it was determined that he was not able to pay the fine and yet desired to do so arrangements should be made for payment and his arrest should not occur. There was no authority for a court, per se, to enforce or ensure collection of a fine by threatening an accused with jail if he refused to pay. The collection of unpaid fines was a matter for the Crown as distinguished from the court, and the decision rests with the Crown and not the court as to how the debt will be collected. In many cases the Crown may prefer to pursue its civil remedies pursuant to s. 652 of the **Code** rather than in prison. In any event, the option should rest with the Crown and not the court. However, in either case the process must be judicial.[185]

The imposition of a "semi-automatic" term of imprisonment for fine default has been the subject of relentless criticism by some courts, law reform commissions and governments alike. The Law Reform Commission in its Working Paper 6, ***Fines*** discussed the discriminatory effect of fining and providing time in default and concluded: **"[c]ommissions and law reform bodies both in Canada and elsewhere have recommended that judges be prohibited from imposing a fine and simultaneously imposing a sentence of imprisonment to be served in the event that the fine is not paid".**[186]

The most recent research on fines was published as part of the work of the Canadian Sentencing Commission.[187] Verdun-Jones and Mitchell-Bank agreed with the results of an earlier study conducted by Jobson and Atkins[188] and concluded that there was little consistency in the relationship between the amount of fines and the number of days to be served in default.[189] While fine default admissions comprise a significant proportion of the correctional population, there was limited information on fine default admissions by type of offence, compared to amount of fine, or compared to days in default.[190]

The impact of the default term imposed on offenders who have been given fines to pay has become a concern that has been felt by all jurisdictions in Canada. As referred to in Chapter 4 under the discussion of law reform, one of the major proposals in **Bill C-19,** and reintroduced in **Bill C-18,** was to allow offenders to participate in a fine option program provided by the jurisdictions. In essence, this would thereby allow offenders to work in the community and avoid the stigma and hardship of incarceration. As mention previously, the injustice of imprisonment

for the non-payment of fines has been highly criticized by law reform commissions and others since the early 1900s and continues to be the subject of much concern in Canada.

As a result of non-payment of fines, imprisonment for fine default accounts for 29% of all admissions to provincial facilities, and in some jurisdictions, the admissions for fine default approach 50%.[191] It has been suggested by many people, that a considerable amount of money has been being spent to incarcerate offenders who were not meant to be imprisoned in the first instance. In view of the foregoing, law reform commissions and others have recommended that judges be prohibited from imposing a fine and simultaneously imposing a sentence of imprisonment to be served in the event that the fine is not paid.[192] The Law Reform Commission further emphasized that, as the court in imposing a fine must have considered this to be the appropriate penalty for the offence, every effort should be made to collect the fine before resorting to imprisonment or other forms of detentions and the final sanction of imprisonment should not be resorted to unless: (a). all other methods of enforcement have been unsuccessfully attempted or were unavailable or inappropriate, and (b) the defendant has the means or ability to pay. In its Working Paper ***Fines***,[193] the Law Reform Commission emphasized that approximately 50% of admissions to correctional institutions in certain parts of Canada have been for non-payment of fines. In particular the report noted that several studies indicated that the type of offences for which persons were imprisoned for non-payment of fines were typically poor people's offences such as vagrancy and drunkenness. In other words, the alternative jail term seemed to fall discriminatorily on the poor offender. In fact, the discriminatory effect of the alternative jail term has been

found in several provinces to weigh most heavily on the relatively poorer Indian population.[194] The Law Reform Commission further argued that "**[b]esides the discriminatory effect and cost of the days in default sentence, we believe that the whole system of criminal justice becomes suspect when the fine is seen not as a sanction but as a means of purchasing liberty."** [195]

If the allocation of default time is not part of the considered sentence, then poor people could be routinely fined and imprisoned in default unless there is a possibility of review. It is irrefutable that it is irrational to imprison an offender who does not have the capacity to pay on the basis that imprisonment will force him or her to pay. If the sentencing court chooses a fine as the appropriate sentence, it is obviously discarding imprisonment as being unnecessary under the particular circumstances. However, default provisions may be appropriate in circumstances where the offender may choose not to pay, presumably on principle, and would elect to spend time incarcerated rather than make a payment to the state. For the impecunious offenders, however, imprisonment in default of payment of a fine is not at alternative punishment--he or she does not have any real choice in the matter.

In acknowledgment of the legislative deficiencies previously discussed, and the various recommendations made, **Bill C-19** included provisions to address the following:

> **1. restrictions on the use of fines would be removed, subject only to any mandatory minimum penalty prescribed; and**
>
> **2. the maximum of fine the court may impose for summary conviction offences would be increased from**

$500 to $2,000 for an individual, and an increase to $25,000 for a corporation.

To reduce the evidence of fine default **Bill C-19** proposed:

> **1. a mandatory means enquiry will be conducted by the court before the fine is imposed in the event that the offender has not acknowledged his or her ability to pay a fine;**
>
> **2. fines could be discharged by an offender (other than a corporation through participation in a fine option program); and**
>
> **3. imprisonment for the non-payment of fines would be limited to those cases where it was indicated that default is without "reasonable excuse".**

As mentioned previously, after **Bill C-19** died on the agenda, the only provision to be reintroduced in the proposed **Criminal Law Amendment Act, 1985 (Bill C-18)** was the **Criminal Code** amendment allowing for fine option programs.

CHAPTER 5

FINE OPTION PROGRAMS IN CANADA

5.0 Background

As referred to previously, the **Criminal Law Amendment Act, 1985 (Bill C-18)** was adopted by the House of Commons, and proclaimed on December 2, 1985. The Act amended the **Criminal Code** to contain provisions whereby an offender who has been fined for a Criminal Code offence may discharge a fine by earning credits for community work performed in a program established by the province for that purpose. The legislative provisions in the **Criminal Code** which provide the authority for fine option programs are as follows:

> **[a]n offender, other than a corporation, against whom a fine is imposed in respect of an offence may, whether or not the offender is serving a term of imprisonment imposed in default of payment of the fine, discharge the fine in whole or in part by earning credits for work performed during a period not greater than two years in a program established for that purpose by the Lieutenant Governor in Council (a) of the province in which the fine was imposed; or (b) of the province in which the offender resides, where an appropriate agreement is in effect between the government of that province and the government of the province in which the fine was imposed.**
>
> **a program referred to in subsection (1) shall determine the rate at which credits are earned and may provide for the manner of crediting any amounts earned against the fine and any other matters necessary for or incidental to carrying out the program.**

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

where, by virtue of section 651, the proceeds of a fine belong to Her Majesty in Right of Canada, an offender may discharge the fine in whole or in part in a fine option program of a province pursuant to subsection (1) where an appropriate agreement is in effect between the government of the province and the Government of Canada.[196]

The provisions in the **Criminal Code** pertain to those offences only; for other federal offences, and for all offences in the territories (other than territorial ordinances) there must also be an appropriate agreement with the federal government. Fines for provincial offences or municipal violations may be discharged in some jurisdictions under the same program, but they are provided for separately under provincial legislation. Although the **Criminal Code** provisions provide the legislative basis to allow an offender who has been fined for a **Criminal Code** offence to discharge the fine by performing community work, the program established for that purpose is designed, and the responsibility, of the provinces/territories.[197]

Prior to **Bill C-18**, several jurisdictions implemented widespread fine option programs without legislative authority. However, for those jurisdictions operating fine option programs without the proper legislative authority. the only jurisdiction to be challenged was the Yukon Territory. For example, Saskatchewan implemented the first fine option program in Canada for **Criminal Code** offences during 1975. Programs were also implemented in the provinces of Alberta and New Brunswick in 1976. Currently, fine option programs have been implemented in all jurisdictions except Newfoundland. The Yukon Territory Fine Option

Program was originally established in 1981; however, in March 1982, the procedures for processing fine option applications were successfully challenged by the Yukon Supreme Court, and as a result, the program was discontinued at that time. During the Sentencing Alternative Initiative the Yukon Territory re-established the fine option program.[198]

5.1 Program Objectives

All fine option programs in Canada either expressly or implicitly stated the main objective as providing an opportunity for offenders to discharge their fine through community work. An additional formal aim of the Alberta and Northwest Territories programs was to avoid the use of incarceration for fined offenders, and, in the case of Manitoba, to avoid suspension of a driving license or loss of vehicle registration.[199] Other program objectives were:

> **1. to humanize the criminal justice system;**
>
> **2. to encourage community participation in the criminal justice system;**
>
> **3. to provide a benefit to the community and to the offender;**
>
> **4. to reduce the costs to the criminal justice system;**
>
> **5. to reduce "debtor's prison" phenomenon whereby offenders are incarcerated because of an inability to pay a fine; and**
>
> **6. to reduce the negative impact of incarceration.[200]**

5.2 Program Models

Two program delivery models have been implemented in Canada: the point of sentence model and the point of default model. The point of sentence model was further designed to include a pre-institutional or community phase. The point of default model included an institutional phase. The basic distinction between the two models was:

> <u>**point of sentence model:**</u>
>
> **a potential participant was notified following sentencing that the opportunity to discharge the fine through community service work was available at the time of sentence. Therefore, participation in the program was not dependent upon fine default; and**
>
> <u>**point of default model**</u>**:**
>
> **an offender was notified of the program either on default or when it appeared that default was imminent.**[201]

The point of sentence model (pre-institutional phase) allowed offenders who have had a fine imposed by the court, and have received "time to pay", the opportunity of participating in a fine option program and performing community work in lieu of paying their fines. Some jurisdictions offered this option to offenders at "point of sentence" and again later during the "time to pay" period imposed by the court. Some jurisdictions that offered entry into the fine option program at "point of default" solely, have now included the "point of sentence" or pre-institutional phase in their fine option programs. It appeared that the point of default fine option program model was directed toward the indigent defaulter. For example,

in New Brunswick, a probation officer determined the offender's financial status prior to program entry. Eligibility for participation then, was determined from an assessment of expenditures.[202]

5.3 Eligibility Guidelines

Participation in fine option programs relied upon generally uniform criteria. For example, it was a requirement that a participant has been assessed a fine and been given time to pay. The Northwest Territories program also stipulated that the amount of the fine be no greater than $1,000. In addition, offenders must be willing to participate in a community program. The only eligibility criterion which reflected differences in jurisdictional philosophy was the issue of the offender's "ability to pay". Manitoba and Saskatchewan explicitly stated that the ability of an offender to pay a fine was not an issue considered in determining eligibility for the program. Ability to pay, or lack of it, was not mentioned in the documentation of eligibility criteria, for the pre-institutional phases of the Alberta and Northwest Territories programs, thus implying that ability to pay was not a formal criterion. However, in New Brunswick and Quebec the "demonstrated" lack of adequate resources to pay the fine was an explicit requirement for program participation. Participation in the institutional phases of the Alberta and Northwest Territories programs required that offenders be incarcerated for fine default only, and that they voluntarily applied for the program.[203]

The guidelines of eligibility criteria for program participation for the point of sentence model were cited below as an example for the pre-institutional phase.

The following are the eligibility guidelines for the Saskatchewan fine option program:

Point of Sentence Model: Pre-Institutional Program Phase

1. the program was available to any adult assessed a fine by a Saskatchewan court and given time to pay with a non-payment penalty of incarceration;

2. entrance in the program required the presentation of the fine form to the fine option agency by the offender no later than the date of default;

3. participation in the program was not related to the offender's ability to make cash payment;

4. companies, corporations, societies or associations assessed fines were not eligible for participation in the program;

5. the offender assessed the fine must personally perform the work in the program. The work cannot be done by a substitute person.[204]

Alberta's system, cited below, offered an example of eligibility guidelines used for the point of default model (institutional phase):

Point of Default: Institutional Phase

Alberta was the first jurisdiction to introduce an institutional phase to its fine option program. Program eligibility requirements for offenders incarcerated for non-payment of fines in the Alberta Correctional Centres included:

1. no outstanding warrants or charges;

2. incarceration for fine default only;

3. no recent history of violence or escaping custody;

4. voluntary desire to participate in the program;

5. screening by correctional centre staff; and

6. interviews with the probation officer to assess interest in the program, employment opportunities, residential opportunities, medical suitability, and level of risk to the community and to offenders themselves.[205]

Some writers have described the Alberta and Northwest Territories fine option programs as the **"most innovative to date"**. The parameters of both fine option programs were such that terms of incarceration for the non-payment of fines may be either avoided (pre-institutional/community) or reduced (institutional).[206]

In addition, the Saskatchewan Fine Option Program, and, more recently, the Manitoba Fine Option Program have broad parameters which provided that the eligibility guidelines for participation indicated that the program was available to any adult assessed a fine, and give time to pay with a fine default penalty of a term of imprisonment. The uniqueness of both provincial programs was that the program was not limited to Criminal Code offences, but in fact, is applicable in the event of fines imposed for municipal violations and provincial offences.[207]

The point of sentence model (pre-institutional phase) allowed offenders who have had a fine imposed by the court, and have received "time to pay", the opportunity of participating in a fine option program and performing community work in lieu of

paying their fines. Some jurisdictions offered this option to offenders at "point of sentence" and later during the "time to pay" period imposed by the court. Some jurisdictions that offered entry into the fine option program at "point of default" solely, have now included the "point of sentence" or pre-institutional phase in their fine option programs.[208]

Following an examination of the guidelines and program policies of all jurisdictions in Canada,[209] Doorly stated: "[j]urisdictions operating on the point of sentence model have essentially broadened the purpose of the fine option program from a means of avoiding incarceration for fine default to an alternative to paying a fine."[210] Furthermore, Doorly reported that "[v]ariances in policy and procedures existed among and within the jurisdictions that used the point of sentence model. These discrepancies and inconsistencies could have a bearing on the offender's access to the program".[211]

CHAPTER 6

FINE OPTION PROGRAMS--STUDIES CONDUCTED

6.0 Background

As mentioned previously in Chapter 1 of this thesis, most of the research conducted during the Sentencing Alternatives Initiative was in the area of fine option programs. Seven of the eight jurisdictions participating in the research program concentrated on fine option programs. Due to the fact that some jurisdictions had considerable experience operating fine option programs prior to the federal government's Sentencing Alternatives Initiative, the research that was conducted between 1984 and 1989 reflected this experience. Considerable flexibility was demonstrated by the funding that was allocated to the jurisdictions by the federal Government. The following represented the flexible approach taken by the Department of Justice in working with the jurisdictions during the Initiative and describes the research conducted:

> **1. feasibility studies were carried out in the provinces of Ontario, and Prince Edward Island;**
>
> **2. program designs were developed in the province of Prince Edward Island, Ontario and in the Yukon and Northwest Territories;**
>
> **3. a pilot project was carried out in Prince Edward Island;**

4. a program evaluation design was developed in the province of Manitoba;

5. on the basis of the above evaluation design, a province-wide evaluation was carried out in Manitoba;

6. a review of the implementation of fine option programs in Canada (including a review of programs, policies, and credit systems) was conducted for the province of Ontario;

7. four two day Fine Option Program Workshops took place in Brandon, Winnipeg and Thompson, Manitoba;

8. all jurisdictions participated in the compilation of factual information in respect of fine option programs, restitution programs and community service order programs. From this information, three Fact Books were published.[212]

At the time of the Sentencing Alternatives Initiative, fine option programs had not been implemented in Prince Edward Island, Nova Scotia, Newfoundland, British Columbia and Ontario. However, Ontario did have two pilot projects implemented for provincial offences. Therefore, fine option feasibility studies were carried out in two jurisdictions--Ontario and Prince Edward Island. During this time frame, the correctional officials in Manitoba wanted to have Manitoba's province-wide fine option program evaluated. Therefore, a design was implemented that subsequently led to a province-wide evaluation. The results of the studies conducted in the three jurisdictions have been included as part of the analysis for this research.

Some of the research questions and issues addressed at the feasibility stage of our research in the provinces of Ontario,[213] and Prince Edward Island,[214] were also addressed in Manitoba's evaluation design. The following summarized the

research questions and issues of the studies carried out in the three jurisdictions. The purpose of the studies were:

> **1. to assess the feasibility of implementing a fine option program: (a) on a province-wide basis; and/or (b) in isolated communities;**
>
> **2. to determine the extent to which fine option was a viable alternative for the non-payment of a fine;**
>
> **3. to determine the community support for the fine option concept in general, and in particular, its application in isolated communities;**
>
> **4. to determine the capabilities of community agencies to provide supervised work placements; and**
>
> **5. to determine the support in the criminal justice system for the implementation of a fine option program (a) on a province-wide basis; and/or (b) in isolated and/or rural communities.[215]**

In order to address the above-mentioned research questions, the studies conducted involved an examination of:

> **1. the number of offenders fined;**
>
> **2. offender characteristics,**
>
> **3. offence characteristics, including: seriousness of the offence and the length of the sentence provided by the court;**
>
> **4. admission rates for fine default;**
>
> **5. the special issues pertinent to program utilization in rural or isolated areas; and**
>
> **6. an examination of the extent to which fine option was an appropriate alternative for offenders who default on**

the payment of fines, including: sampling of potentially eligible offenders to obtain a sense of likelihood of program utilization.[216]

Manitoba Fine Option Program: An Evaluation Design[217]

The purpose of the evaluation design phase of the research conducted in Manitoba was to develop research methodology and research questions to conduct a province-wide evaluation. The following analysis was based on a program evaluation design conducted by R.L. Sloan for the province of Manitoba.[218]

Manitoba implemented a fine option program in 1983. However, since its inauguration, there have been a number of policy, administrative, and service delivery refinements. For example, the initial purpose of the fine option program was to reduce the number of offenders being incarcerated for fine default. Later, the central purpose was modified to be the provision of an alternative to paying a fine for all offenders, regardless of their ability or willingness to pay a fine. Therefore, the central program purpose was broadened from representing only an alternative to jail to being an alternative to paying a fine. The program was widespread throughout the province with 117 community resource centres looking after its administration. The objective of the Manitoba program was to assist individuals who had defaulted in a fine and were unable to pay, were faced with possible imprisonment, suspension of driving licence, or loss of vehicle registration. **The Summary Convictions Act** allowed such a person the option of paying the fine in cash and/or electing to do unpaid community work. The

program was primarily a pre-institutional model, with introduction to the program at the "point of sentence". Although there was no formally recognized institutional phase, exceptions have been made to allow incarcerated offenders to participate in the program while released on a "temporary absence".[219]

In the 12-month period from January 1, 1984 to December 31, 1984 a total of 4,652 persons were registered in the program. Some 3,087 offenders (66% of total) had successfully completed the program during this time frame working off 176,888.5 hours of unpaid community work. The value of fines discharged during this period was $654,590.11. Approximately 62,632 institutional-default-days were saved through participation in the program. 1984 figures provided by the Manitoba Probation Service indicated that the greatest percentage of offences committed by participants in the program were under the **Highway Traffic Act** (38%), and **Criminal Code** offences (32%). According to the 1984 provincial client profile provided by Manitoba Probation Service, the greatest percentage of participants were: single, unemployed, males, between the ages of 22 and 29, with an education level of grade 8 or less.[220]

The evaluation design presented findings relevant to operational issues, and an assessment of effectiveness in achieving specific program objectives. The program evaluation was motivated primarily by provincial interest in assessing program performance; and, general interest in the model which relied on community participation in a government managed program. Evaluation issues focused on research questions, including:

1. to what extent was the community involved in the fine option program;

2. what issues arose when programs depended on a high level of cooperation between government and the community;

3. was the relationship between government and the community resources satisfactory to both parties;

4. were the means of problem-solving working;

5. what impact has participation in the criminal justice system had on community volunteers and agencies;

6. what adjustments in organization and management have been made by government to accommodate community participation;

7. what management and policy issues arose for a government program which relied on volunteer participation;

8. was there sufficient community interest to sustain the program; and

9. were the supervisory and administrative procedures typically used within government effective for a volunteer based program.[221]

The evaluation also included research questions which addressed fine option program performance. In this component the foci were:

1. what proportion of fine option program registrants were placed for work;

2. how long did it take to arrange a placement;

3. how long did it take to complete the required hours of work;

4. what types of work placements can be arranged;

5. what problems arose for community resource centres when arranging work placements;

6. what issues arose for the work centres in providing suitable work placements;

7. what issues arose in supervising fine option program registrants;

8. did registrants view the work as a reasonable alternative to jail;

9. do other elements of the criminal justice system view the fine option program as a reasonable and legitimate alternative to jail;

10. were there relationships between different registrant characteristics and completion rates;

11. were there relationships between different types of work and completion rates;

12. has there been a reduction in the number of offenders serving jail days in default of fines; and

13. why do some offenders select jail days rather than community service work to satisfy the court's sentence.[222]

The methodology for the evaluation design included the following:

1. interviews with fine option program personnel, correctional resource centre (CRC) volunteers, and other justice system representatives;

2. a review of fine option program documentation;

3. visits to selected correctional resource centres in each region; and

4. consultation with criminal justice officials.[223]

Manitoba: Program Description and Operations Analysis[224]

The evaluation of Manitoba's province-wide fine option program was conducted by R.L. Sloan during 1987-88 following the feasibility component of the study (described in the previous section of this chapter). The methodology for the evaluation, including the research questions and issues, was also described in the previous section of this chapter.

The primary objective of the research was to produce a description of Manitoba's fine option program. The study presented findings relevant to operational issues and an assessment of effectiveness in achieving prescribed objectives. The selection of registrant data was based on "closed" cases during the period May, 1986 and March, 1987. The data base consisted of 2,770 registration records.

There were 143 separate offences for which fine option program registrants were convicted and fined. Offences for which program registrants received a fine imposed by the courts were included primarily under the **Criminal Code, Highway Traffic Act,** and **Liquor Control Act**. Driving while impaired, and driving while disqualified, represented the two primary offences in the **Criminal Code** category. As a discrete offence, impaired driving represented the highest incidence within the population. Only two discrete offences represented more than 10 percent of the total study population, impaired driving (11.1 percent) and speeding (10.9 percent).[225]

Some offences were very minor in nature, (i.e. parking violations), while others were more serious (i.e. assault causing bodily harm). Most of the registrants were convicted of what may be categorized as victimless crimes. For example, minors consuming alcohol, possession of liquor, parking violations, traffic violations, hunting at night and other offences contained in the above categories qualified as victimless crimes for the purpose of this study. Relatively few were convicted of crimes against persons (i.e. 3.9 percent were convicted of assaulting another person). This was not a surprising finding because fines are a primary sentence for minor offences, and considered as only one sentencing option for more serious offences.[226]

To summarize, the following analysis describes some of the characteristics of the population studied:

> **1. most program registrants were male (79.1 percent).**
>
> **2. females were more likely to be reported as first offenders (47 percent) than were males (31 percent).**
>
> **3. fewer females had prior registrations (33 percent) than males (40 percent); and**
>
> **4. a slightly higher proportion of Treaty Indian (25 percent) and non-Treaty Indian (23 percent) registrants were female than in the ethnic groupings of Metis (18 percent) and other (17 percent).[227]**

In the province of Manitoba, unlike some of the other jurisdictions, "the basic eligibility criterion for program registration was being subject to a fine". The program's eligibility guidelines were very broad and the only limiting factor was that an individual can only register once for each offence. Therefore, if an offender failed to comply with the program guidelines, he or she will be

terminated and the individual cannot re-register to settle that fine. However, the same person can register for a different offence.

In conclusion, overall, 70.1 percent of the 2,770 study population cases were closed as a result of registrants completing their required hours of community service work. Another 8.4 percent of cases were successfully closed as a result of registrants working a portion of the required hours and paying the outstanding portion of their fines. Cumulatively, 78.5 percent of the cases might be seen as successful program completions. Within the category of unsuccessful completions were registrants who never attended their work placement, went missing or otherwise were terminated by the program. This unsuccessful category contained 18.9 percent of the closed cases. Another 2.5 percent of the cases were closed by reason of transfer to another correctional resource centre (i.e. closed at one correctional resource centre and opened at another) or some other unique circumstance.[228]

In addition, Sloan indicated that the analysis conducted suggested "weak relationships between various registrant characteristics and program outcome"[229] nevertheless, it was interesting to note that some patterns were discovered:

> **1. as the amount of the fine increased, the rate of successful completion decreased;**
>
> **2. repeat offenders were no more or less likely than first offenders to successfully complete the program;**
>
> **3. repeat registrants were slightly more likely to successfully complete the program than fist time registrants;**

4. unemployed registrants who were available to do community work anytime were more likely to be successful than employed registrants or others who could work only weekends or evenings;

5. among ethnic groups, Treaty Indians were most successful (86 percent) compared to Metis (76.7 percent), other (70.6 percent) and non-Treaty Indians (69.2 percent); and

6. no consistent relationship was apparent between the length of time necessary for placement and successful completion.[230]

Sloan reported that "[s]ince implementation of the fine option program in 1983, annual utilization has increased from approximately 4,700 registrations to nearly 6,000 registrations in 1986." This factor appeared to be an indication that a large number of offenders whom have received a fine imposed by the courts choose to satisfy the dollar value of the fine imposed (in whole or in part) through participation in community work program. Furthermore, Sloan stated that "[t]he overall successful completion rate of 78.5 percent suggested that the program model was valid".

While it appeared that a large number of offenders were participating in the program, Sloan reported that "... analysis of jail admission data indicated a very low impact of the [fine option program] on default admissions". However, in this context, Sloan concluded: "[t]here appeared to be, for whatever reasons, a proportion of fined offenders who will default and serve jail time rather than avail themselves of the opportunity to complete community service work". Although the objective of reducing the default population was reasonable, this objective might logically be a secondary rather than a primary program purpose. Offenders registered for the program through their own initiative. Since the program has no

control over the decision of offenders to register, pay the fine or default, the program may only indirectly, if at all, accountable for the number of default jail admissions.[231]

Feasibility Studies: Prince Edward Island and Ontario

As referred to in Chapter 1, the methodology for the study carried out in Prince Edward Island was designed by the writer in close consultation with Prince Edward Island correctional officials. The feasibility component of the research conducted in Prince Edward Island also included a program design for a pilot project that was carried out following the feasibility study. The methodology for the research conducted in Prince Edward Island was later used in the feasibility study conducted for the province of Ontario. In Ontario, the writer worked with officials from the Ministry of the Attorney-General and the Ministry of Correctional Services. Data collection were carried out in Prince Edward Island by Edna Lord and Julie Dodd. In Ontario Teresa Doorly carried out the data collection in the three sites selected by the province, and wrote the first draft of the final report.[232]

Prince Edward Island: Background

Prior to 1985, fine programs did not exist in Prince Edward Island. From the outset is should be mentioned, that provincial officials in Prince Edward Island were concerned with a perceived increase in admissions to correctional facilities. This concern was substantiated in 1983 as a result of the research findings of a **"sentencing trends"** study conducted by Sloan during 1983.[233]

In addition, in 1985 a brief study was conducted by Prince Edward Island Department of Justice. The researcher concentrated on the overall admissions to provincial institutions in Prince Edward Island. The study findings revealed that during 1984-85, the total number of offenders admitted to correctional facilities for drinking and driving offences were 27.4 percent or 257 out of 938 total admissions. Furthermore, 91 percent (234) of the population studied (257) were incarcerated for the non-payment of fines. Prince Edward Island provincial officials were concerned over the number of admissions, and, in particular the high number of admissions related to drinking and driving offences. Therefore, the provincial officials were interested in exploring options, such as the feasibility of implementing a fine option program to cope with the high incidence of admissions to provincial facilities for fine default. The two research sites selected for the Prince Edward Island feasibility study were: Charlottetown and Summerside. However, the study covered most (75 percent of the court activity in the province.[234]

Ontario: Background

At the time of the Sentencing Alternative Initiative, Ontario did not have a fine option program for **Criminal Code** offences. However, as mentioned in Chapter 5 of this thesis, Ontario did have two fine option pilot projects in the Hamilton-Wentworth area for offences under the **Provincial Offences Act**.

The research sites selected for the Ontario study were located in the northern region of the province: Kenora (District of Kenora), Fort Frances (District of

Rainy River), and Thunder Bay (District of Thunder Bay). Each district consists of the city, townships, Indian reserves, and unorganized territory.

In both studies conducted, information was gathered on all offenders (during 1984-85 fiscal year) who had received a fine imposed by the court as a penalty, as full or partial disposition for a **Criminal Code** offence. Data were also gathered on all offenders (within the study population), who paid at the correctional facility, or who served either full or partial time in satisfaction of the fine imposed.

The results of the studies conducted in both jurisdictions reported that drinking and driving offences were over-represented in each jurisdiction. In Ontario, in aggregate, drinking and driving offences represented 37.8% of all offences (3,468) for which a fine was imposed. In Prince Edward Island, in aggregate, they represented 57% of all offences (1,143) for which the courts imposed a fine

Due to the fact that court and correctional records were not constructed for research purposes, a limited amount of information was revealed in respect of offender characteristics in both jurisdictions. In Prince Edward Island, the majority, 58.2 percent, of the study population were between 16 and 30 years of age for all offence categories studied; the second largest age category was 30-39 years of age, which represented 18.4 percent of the total study population (1,143 offences). Comparing the age distribution of the highest offence category to the distribution of offence category by offender age, the most significant age group was the 16-20 age range at 51.8 percent.[235]

In addition, the majority of offenders, 57.7 percent, committed to provincial facilities for imprisonment in default of fines imposed, were again in the 16-30 age range. One factor that must be considered when determining the age range, is that as of April 1, 1985, offenders in the age range of 16 and 17 years were committed to Young Offender facilities. During the 1984-1985 fiscal year, there were five offenders that were committed to provincial facilities for fine default whom were 16 and 17 years of age. In aggregate, drinking and driving offences, were over-represented in the study population. Offenders ranging in age from 20-29 years of age were the most prevalent in the "drinking and driving" offence category, and in addition, in all other offence categories studied.[236]

In Ontario, the "typical" fine defaulter as compiled from institutional record data, and has been described as a 29 year old single, unemployed male who generally works as a labourer and according to himself (i.e. self-report), does not have an alcohol problem. Since ethnicity is no longer recorded at the time of admission, conclusions as to the differential incarceration rate of ethnic groups could not be drawn. However, a study conducted by the **Ontario Council of Native Justice** found that in 1984, 52% of all males and 61% of all females serving time in Northern Ontario correctional facilities were Native Indian. Eighty percent of these males and 78% of these females were serving time in default of payment of fines for provincial, **Criminal Code** and other federal offences.[237]

One of the major concerns of all correctional officials was the admission rates to correctional facilities for imprisonment for non-payment of fines.[238] Ontario and Prince Edward Island officials were also concerned with this issue. In this

context, jurisdictions with fine option program experience included two program objectives that reflected these concerns:

> **1. to reduce the overcrowding in correctional facilities due to fine default; and**
>
> **2. to reduce the associated costs in the criminal justice system due to overcrowding.**

Therefore, while it was essential to gain a fuller understanding about the number of offences for which fines are imposed in Ontario and Prince Edward Island, it was equally important to know whether or not a particular fine imposed resulted in imprisonment in default. In this context, we attempted to learn about: the range of fine imposition, under what conditions were fines paid or not paid, and, what were the admission rates for imprisonment in default.

In summary, the results from an examination of the offences for which a fine was imposed during 1984-85, revealed that (in all research sites Prince Edward Island and Ontario), the majority of offences studied were comprised of drinking and driving related offences. The number of offences for which a fine was imposed was the starting point of the feasibility studies; it provided the basis upon which the researchers were then able to examine the issues that were of the utmost concern to correctional officials: what were the admission rates for default days in respect of the non-payment of fines imposed for the offences studied, and, what are the associated costs of incarcerating offenders who default on fines.[239]

In Prince Edward Island, fines imposed for 245 offences remained unpaid; drinking and driving offences were over-represented in this category at 46.5% or

114 offences (fines). Therefore, at this point, 199 offenders were admitted to correctional facilities in respect of 245 offences for imprisonment in default. In Prince Edward Island, 199 offenders were admitted to provincial institutions sentenced to a total of 4,852 days for imprisonment in default; the average was 24.4 days in default per offender. The time served by the 199 inmates in our study population was 2,527 days; the average number of days was 12.5 days. The average days served was approximately half that of the average days sentenced by the courts. In addition to early release days, some of the sentenced time (default days) were reduced in respect of a partial payment of the fine, before or after admission to the institution.

In Ontario, (all research sites), the majority of fines imposed by the courts, were paid within the "time to pay" period Due to this factor, the admission rates to correctional institutions for offenders who failed to pay their fines imposed by the courts, were not significant of the population studied. Furthermore, the majority of inmates whose records were examined for the purposes of this study, were serving time for more serious offences as well as for fine default. Approximately 4% of inmates were serving time solely for defaulting on payment of a fine for a **Criminal Code** or other federal offence. Of this population, the majority had served time prior to the default term for a more serious offence. The fact that sentences for fines emanated from **Criminal Code** and other federal offence convictions were, for the most part, served concurrently. This appeared to encourage offenders to request that all outstanding warrants be served against them once they have been committed to an institution. In this way, the inmate can avoid paying the fines and was rarely obliged to serve significantly more days as a result.

In the provinces of Ontario, and Prince Edward Island most criminal justice personnel responded favourably to the concept of the fine option program. Key justice personnel were defined as: clerks of the court, provincial court judges, Crown prosecutors, superintendents of correctional facilities, classification officers, and probation officers. In addition, Prince Edward Island key justice personnel included: chief superintendent R.C.M.P. and Chiefs of Police. In summary, the major concerns expressed in Prince Edward Island were the availability of placements at community service organizations and the need for resources such as coordination and supervision.[240]

It was generally held among provincial court judges and Justices of the Peace that clients for a fine option program should be referred by the sentencing Judge. In addition, the concerns raised by the judiciary focused on the need to determine 'ability' to pay in open court. It was agreed that poverty, while not solely instrumental for fine default, was the major contributing factor. It was generally felt therefore, that what was at issue was not an unwillingness to comply with the sentence, but rather the "inappropriateness of the sentence itself".

Community response to the fine option program was measured by way of a questionnaire distributed to organizations currently supervising community service order clients. Although there was a limited community response in Prince Edward Island, generally the same conclusions were reached in both jurisdictions, that while enough work tasks could be secured to accommodate fine option clients, supervision due to the limited number of staff at most of the organizations, may be inadequate. The inability of organizational staff to

adequately supervise fine option clients and to attend to the related administrative tasks, led most respondents to believe that only moderate support would be given to the fine option program. In the interviews conducted the following factors were considered of great importance in regards to the restriction of work placement opportunities:

(a) the offence committed:

(i) the severity of the offence; and/or
(ii) the nature of the offence (i.e. drinking/driving)

(b) the distance between the offender's residence and the work placement.

(c) handicaps the offender may possess.

Interviews were conducted with ten (10) inmates (Prince Edward Island) and twenty-eight (28) inmates (Ontario). Although the inmate population sampled were relatively small, the study results did not vary significantly from the findings of an unpublished study conducted by Jobson and Atkins during 1985 and previously discussed in Chapter 4 of this thesis. In our studies, in Prince Edward Island, all inmates interviewed were English Canadian; in Ontario, nineteen (19) of the inmates were Native and nine (9) were English Canadian; all of those interviewed were male. The age span was between 21-56 years of age (Prince Edward Island) and between 21 and 61 years of age (Ontario). With the exception of one (1) inmate interviewed (Prince Edward Island) who indicated that he had completed one year of education at the university level, all inmates interviewed stated that their educational level was less than grade 12. The range of fines was between $150 and $2000, with a total of 404 default days, in the range of 6-80 days. In Ontario, the range of fines was between $100 and $2000,

with the default days in the range of 10 to 70 days. Six of those interviewed stated that under most circumstances, they were "regularly employed"; however, at the time of the interviews, two of the six inmates were employed; four of those interviewed indicated that at the time of committal, they were unemployed, and that they were receiving unemployment insurance benefits or were receiving "welfare" assistance.

In Ontario, twenty of those interviewed were unemployed, although seven reported that they did have seasonal employment "in the bush". Three of the sample were employed, three had employment arranged prior to committal, one of those interviewed reported that he was employed at the sentencing hearing, but he was unemployed at the time of his committal to the institution. Research indicated that among the reasons given by those inmates interviewed for the non-payment of their fines, were the following:

1. seventeen stated that they had no money to pay.

2. two stated that they had more pressing financial concerns i.e. pregnant girlfriends, re-payment of loans.

3. two inmates refused to pay, one claiming that he had paid his lawyer $1,000 and he felt that was punishment enough. The other admitted being annoyed with "the system".

4. one claimed he was unaware of the fine imposition because he was in the bush on his court date;

5. one felt that he would end up in jail eventually anyway and could have all outstanding warrants against him served at that time.

6. one admitted wanting to go to jail for the winter.

7. one claimed he forgot to pay the fine.

8. three inmates admitted playing the "lottery" (system) which they defined as one where a warrant may or may not ever be executed by the police.

In conclusion, much groundwork was needed before a fine option program would be feasible in the Northern Region of Ontario. The delivery of social programs was a challenging and complex endeavour when coordinators were faced with variances in social, economic and cultural patterns. These patterns translated into "special needs", which if not acknowledged and integrated into the delivery model, may compound, if not undermine the effectiveness of the program. Perhaps the degree of success of a fine option program may vary from one community to another, and was considered to be a function of the following variables: level of supervision, level of visibility, and hence, credibility of the program, and the availability, and potential, for development of work placements to accommodate program participants. Therefore, in conclusion, the success of a fine option program in rural northern Ontario would depend on the specific level of cooperation in each community. Resistance on the part of the Band Councils and/or municipal governments would result in continuous conflict and frustration in administering the program. This in turn would serve to undermine the objectives of the program".

Due to the over-representation of drinking and driving offenders in the population sampled, it was also recommended that: consideration be given to drinking and driving offenders and their role in a fine option program. Since the objectives of the program did not include a rehabilitative orientation, it was further recommended that the extent to which this orientation could be contained in a work placement should be discussed. It would seem that drinking and driving

offenders, as well as alcohol and substance abusers would "benefit the community" more substantially by attending counseling sessions and workshops. Such support and treatment mechanisms could be considered "work placements" under the program and could be attended in lieu of community service work or in addition to it. Participation in such a scheme would also relieve much of the stress many communities experience in trying to secure work placements.

However, as a result of the feasibility study conducted in Prince Edward Island, it was recommended that a pilot project be implemented in Charlottetown. It was recommended that the pilot project be carried out over a twelve month period to further determine the feasibility and costs associated with a province-wide, or perhaps, selective fine option program implementation on a continuing basis.

In Prince Edward Island, a fine option program would provide an opportunity for offenders unable to pay their fine to repay the community by service work; it would provide a service to the community that might otherwise not be done; and, it would reduce the number of people committed to institutions, thereby relieving the stress on the correctional system, and the cost to the taxpayer.

In addition, considering the over-representation of drinking and driving offenders in the study sample, it was also recommended that the provincial government create a structure to coordinate a comprehensive approach to the issue of dealing with alcohol related offences.

Research studies carried out at the second stage of our research program (Phase II) in both jurisdictions were concerned with program design and costs

associated with implementation. Included at this stage, were the development of program objectives, program policies and procedures. In the province of Prince Edward Island, and to some extent Ontario, the research conducted concentrated on specific program concerns, and, in particular, relied on the experiences of other jurisdictions in fine option program implementation. Although each jurisdiction had specific research objectives, in general, the broader program objectives that were developed in the program design phase were summarized as follows:

> **1. to develop mechanisms within the criminal justice system to encourage the payment of fines.**
>
> **2. to encourage community participation in the criminal justice system.**
>
> **3. to reduce the disparity between those who have money and those do not, by providing an alternative to incarceration for fine defaulters.**
>
> **4. to decrease the number of days served by fine defaulters in correctional facilities.**
>
> **5. to provide a personal benefit to the offender and to the community through the performance of community work.**
>
> **6. to alleviate the overcrowding of inmates in correctional facilities; and**
>
> **7. to reduce the costs and the workload in the criminal justice system (including, the execution of warrants and the subsequent transportation and imprisonment of offenders).**

On the basis of the above-mentioned program objectives, a 12 month pilot project was carried out in Charlottetown, Prince Edward Island. During 1990, the province implemented a fine option program for **Criminal Code** offences.[241]

In the province of Ontario, no further implementation plans were anticipated at that time. However, during 1991, a fine option pilot project was implemented in the Northern Region of the Province.[242]

CHAPTER 7

COMMUNITY SERVICE ORDER PROGRAMS IN CANADA

7.0 Background

Although community service order programs were an integral part of the Sentencing Alternatives Initiative,[243] minimal research activities took place during this time frame.[244] The thrust of the research in this area included an analyses of program and policy manuals from all jurisdictions in Canada, and a review of the program evaluations that had been conducted previously by some of the jurisdictions. However, as a result of this research, a **Fact Book on Community Service Order Programs in Canada**[245] was published as part of the Initiative to describe the program and policy status in Canada up to 1986.

The community service order gained popularity as a community-based sentencing option during the 1970's. It was viewed as an answer to a problem of overcrowding in correctional facilities.[246] However, many judges were uncertain of the legality, and, perhaps, credibility, of the community service order as a proper sentencing disposition to be considered by the courts. This uncertainty was lessened when the Ontario Court of Appeal in **Shaw and Brehn**[247] upheld the legality of the community service order. In delivering the court's judgment, Mr. Justice Dubin stated: "[n]ot only do I think that the provision in the probation order relating to this matter is valid, but in appropriate cases should be more extensively used."[248]

As a sentencing option, a community service order is imposed by a court as a condition of a probation order. Probation was introduced in Canada in 1889 as a conditional release for first offenders who had committed minor or less serious offences. However, supervised probation was not provided for until a 1921 legislative amendment, and during the period from 1921 to 1967, the provincial and territorial jurisdictions enacted legislation providing for probation services.[249] Originally, probation was made available to a very limited number of offenders.[250] However, today, probation can be ordered by a court for most offences (excluding those for which a minimum penalty is prescribed). Typically, a community service order requires the offender to work in a community-based program or to perform some type of designated community work for a specific number of hours. The number of hours are specified by the court as a requirement of the disposition.

Community service orders are considered "a major non-carceral alternative"[251]. The Law Reform Commission described the community service order as follows: "[t]he court may require the offender to carry out work or perform some service for the benefit of the community over a fixed period of hours. Generally, this work should be done during the offender's free time."[252]

In it report, ***Guidelines: Dispositions and Sentences in the Criminal Process,***[253] the Law Reform Commission stated that the objectives of a community service order were:

1. **to achieve reconciliation between the community**

and the offender by repairing directly or in-directly the harm done;

2. to take the place of a fine, either wholly or in part; and

3. to apply a positive form of censure to an offence, even though the offence has not caused any direct form of damage.[254]

With the popularity of a community service order as a sentencing option during the 1970s, the provinces and territories implemented community service order programs with formalized program objectives and administrative structures.[255] For example, the Ontario Community Service Order program was introduced by the Ministry of Correctional Services in 1978 through six pilot projects operating in selected areas of the province.[256] The community service order program is now widespread throughout Ontario. The popularity and widespread use of the Ontario program was examined in 1986 by Menzies. In this respect, the author stated: "...[c]ommunity service appeals to people through a wide variety of rationales: punishment, deterrence, reformation, jail alternatives, and, reparation (both in terms of allowing the offender to make amends to the community, and, of allowing the community to see the offender as a useful and worthwhile member)".[257]

More recently, in a study conducted for the Canadian Sentencing Commission, Ekstedt and Jackson stated that the popularity of the community service order emerged during the late 1970's and early 1980's "as the answer to the problem of jail overcrowding and the concern that offenders should be reintegrating better into the community".[258] The philosophy behind community service work came

from a shift in correctional outlook from an emphasis on the institutionalization of inmates toward more community-oriented forms of sentencing.[259]

The first community service order program was implemented in British Columbia during 1974. In 1976, the provinces of Quebec, Prince Edward Island, Nova Scotia and the Northwest Territories also implemented programs; in 1978, New Brunswick, Alberta, Ontario and the Yukon Territory followed suit.[260] During the 1980's, Newfoundland (1980), Saskatchewan (1983) and Manitoba (1984) implemented programs.[261] Each of the jurisdictions has its own unique set of program objectives. There is, however, one aim that is common to all the programs: providing an alternative to imprisonment. An example of program objectives was:

> **1. to provide offenders with program opportunities conducive to active, self-determined participation;**
>
> **2. to provide opportunities for offenders to exercise responsible decision-making;**
>
> **3. to assist the offender in understanding that his/her sentence is a result of his/her infringement upon the rights of others;**
>
> **4. to reduce the number of persons imprisoned for short sentences; and**
>
> **5. to increase the perception that the justice system is dealing with offenders in an appropriate manner.** [262]

An examination of the documentation on community service order programs indicated two prevalent eligibility criteria: offender willingness and non-violent

offender behaviour. In addition, some jurisdictions explicitly stated that the basic criterion for participation in a community service order program was the imposition, by the court, of a community service order as a condition of a probation order. Willingness to work on the part of the offender was an explicit criterion for participation in the Quebec, Northwest Territories, British Columbia and New Brunswick programs. The absence of a history of violent behaviour was required for participation in the community service order programs of Newfoundland, Nova Scotia, New Brunswick, Saskatchewan, British Columbia and the Northwest Territories. The Quebec program required that the offender shall not be heavily involved in criminal activities, but does not expressly exclude crimes of violence.[263]

CHAPTER 8

RESTITUTION IN CANADA

8.0 Background

Restitution is one of the most widely accepted in both criminal and non-criminal matters, and it has its roots in the ancient past. In recent years, the responsibility of the offender to **"redress harm done"** has once again become a focus of the criminal justice system. Therefore, in the context of the emphasis on victims of crime, and the role of the victim in the criminal justice system, the offender is in a central position of restoring harm done, not only to a victim, but to the community at large.[264]

The Law Reform Commission of Canada in its Working Paper ***Restitution and Compensation*** described restitution as follows:

> **[r]estitution is a sanction permitting a payment of money or anything done by the offender for the purpose of making good the damage to the victim. Since the purpose is to restore, as far as possible, the financial, physical or psychological loss, restitution could take many forms including an apology, monetary payment, or a work order. Restitution refers to the contribution made by an offender toward the satisfaction of his victim. It moves from the offender to the victim and it is personal.**[265]

Pursuant to the provisions in the **Criminal Code**, financial payment by the offender to the victim was described as follows:

> **1. compensation was monetary payment to redress property loss; and**
>
> **2. restitution was financial reimbursement for either property damage or for physical injury.**

Prior to 1985, the term "restitution" was used in the **Criminal Code** to refer to two different concepts: the power of the court to order the return of property to the victim, and, the power of the court, as a condition of probation, to order payment of money to the victim for actual loss or damage suffered as a result of the commission of an offence. In 1921, the provision for restitution as a condition of a probation order was originally introduced in the **Criminal Code. Bill C-18** replaced the provisions respecting the return of property with new provisions dealing with the return of things seized by the police as part of a criminal investigation, and with the return of property obtained by the commission of an offence.[266]

The 1985 **Criminal Code** amendments further provided that the court may order the accused to pay the person who has suffered loss of or damage to property as a result of the offence an amount by way of "satisfaction or compensation". This order may only be made if an application was made by the person aggrieved at the time the sentence was imposed. If the accused failed to pay the amount so

ordered, the court order may be filed with a superior court of the province and be enforced in the same way as a judgment in a civil proceeding.[267]

The power of the court to order the payment of money to the victim, which was not affected by the 1985 **Criminal Code** amendments, was limited to those cases in which the court specified as a condition of probation order that the accused "make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof".[268] However, probation was only available as part of a suspended sentence, a fine or a sentence of imprisonment for two years or less (ninety days or less when the sentence was observed intermittently).[269]

Neither a compensation order nor a restitution order will be made by the court unless it is relatively easy to assess the loss or damage suffered, and there is no serious contest about legal or factual issues relating to the claim.[270] Such questions must be left to be determined in an action in the civil courts. The **Criminal Code** provided for the return of property by the offender to the victim;[271] and, as a condition of a probation order, a payment of money to the victim can be ordered as a result of the commission of the offence.[272] The provisions allowing a court to order an offender "to make financial redress" to the victim (for injury or damages suffered) as a result of the commission of the offence, remains in the **Criminal Code.**[273] The **Criminal Code** provisions for restitution are used in few cases; when the provisions are used, it is often a corporation that appears as the victim requesting compensation. As a condition of a probation order, restitution is frequently imposed by a court. In accordance with this provision, a court is not required to wait for a victim to proceed with an

application for restitution, in fact a court can initiate the process, and in addition, a court is not limited in ordering the dollar value of the restitution to be paid by the offender.[274]

In **Groves** the Ontario Court of Appeal examined the meanings of the words "restitution" and "compensation", and stated that the language used in the sections of the **Criminal Code** are "confusing". Mr. Justice O'Driscoll has attempted to analyze the meanings as follows:

> **[a]n examination of the language of these sections indicates that Parliament viewed the term "restitution" as dealing with the return of identical property obtained as a result of the commission of an offence to its owner, while the term "compensation" covers the making of a financial payment as a replacement for property so taken, or as payment for damage to property as a result of the offence.[275]**

O'Driscoll further stated that it was necessary to justify the relevant sections of the **Criminal Code** "constitutionally" as part of the jurisdiction of the federal government, and, "not merely to rely on a practical justification from the point of view of the victim".[276] O'Driscoll further relied on the Law Reform Commission's study on ***Restitution and Compensation*** as he described the "concept" of restitution: restitution involved acceptance of the offender as a responsible person with the capacity to undertake constructive and socially approved acts. It challenged the offender to see the conflict in values between himself, the victim, and society. In particular, restitution invited the offender to see his conduct in terms of the damage it has done to the victim's rights and expectations. It contemplated that the offender has the capacity to accept his full or partial

responsibility for the alleged offence and that he will in many cases be willing to discharge that responsibility by making amends.[277]

To the extent that restitution worked towards self-correction, and prevented or at least discouraged the offender's committal to a life of crime, the community enjoys a measure of protection, security and savings. Depriving offenders of the fruits of their crimes or ensuring that offenders assist in compensating victims for their losses should assist in discouraging criminal activity. The offender, too, benefits in a practical way from a sentencing policy that emphasizes restitution. He is treated as a responsible human being; his dignity, personality and capacity to engage in constructive social activity are recognized and encouraged. Rather than being further isolated from social and economic intercourse he is invited to reconciliation with the community. While he is not permitted to escape responsibility for his crime his positive ties with family, friends and community are encouraged, as are opportunities for him to do useful work.[278]

A lack of understanding of the **Criminal Code** sections would be a "temptation" to reduce the penalty "that otherwise would have been imposed by virtue of payment". In **Inwood** the Court of Appeal held that the purpose of restitution orders was not "to enable the convicted to buy themselves out of the penalties of the crime".[279]

In a landmark decision, **Zelensky**,[280] the constitutional validity of "compensation" orders as a criminal sanction was upheld by the Supreme Court of Canada. In reviewing the matter before it, the Supreme Court also referred to the work of the Law Reform Commission by quoting the following passage:

[r]ecognition of the victim's needs underlines at the same time the larger social interest inherent in the individual victim's loss. Thus, social values are reaffirmed through restitution to victim. Society gains from restitution in other ways as well. To the extent that restitution works toward self-correction, and prevents or at least discourages the offender's committal to a life of crime, the community enjoys a measure of protection, security and savings. Depriving offenders of the fruits of their crimes or ensuring that offenders assist in compensating victims for their losses should assist in discouraging criminal activity. Finally, to the extent that restitution encourages society to perceive crime in a more realistic way, as a form of social interaction, it should lead to more productive responses not only by Parliament, the courts, police and correctional officials but also by ordinary citizens and potential victims.[281]

The Supreme Court stated that "an order for compensation should only be made with restraint and caution", and suggested specific factors to be observed before imposing an order:

1. whether civil proceedings had been taken, and, were being pursued;

2. the means of the offender to pay was a proper consideration;

3. if the amount claimed was in dispute and was not readily ascertainable, the court "should not act to order compensation if it will be required to interpret written documents in order to arrive at a sum of money sought through an order of compensation;

4. a plea of guilty was to be considered a mitigating factor; and

5. the provision for compensation was not to be used "as a substitute for or a reinforcement for civil proceedings".

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CHAPTER 9

RESTITUTION PROGRAMS/AND OR PROCESSES IN CANADA

9.0 Background

As mentioned previously, the **Sentencing Alternative Research Program** included a major component of research that involved all jurisdictions in Canada. Each jurisdiction was asked to provide the Department of Justice with factual information that would describe restitution programs and policies. From the information provided, a **Fact Book on Restitution Programs in Canada**[282] was compiled which described the applicable restitution program or process in that particular jurisdiction. While it is beyond the purview of this thesis to describe all programs in each jurisdiction, to some extent examples have been used.

For the purpose of the analysis of the information supplied by the individual jurisdictions, a "program" was considered to exist where there was the following criteria:

> **1. a formally documented set of procedures and policies;**
>
> **2. a separate allocation of resources, including a budget and personnel; and**
>
> **3. an administrative structure, including specified responsibilities for personnel and a hierarchy of authority.**

A formal "process" existed where only the first component was present; that was, a formally documented set of procedures and policies for administering restitution orders. Where these were also absent, an "informal process" was said to exist, even though restitution orders may still be imposed by the court and administered through the court clerk's office.[283]

The province of Saskatchewan has the only formal restitution program in Canada.. The program is currently operating province-wide. There were two other "types" of restitution "programs". The first was more correctly described as a "process" but with those formal policies and/or procedures that usually accompany a program. This type of restitution process was found in six jurisdictions: Prince Edward Island, Quebec, Ontario, Manitoba, Alberta and the Yukon Territory. The second type of restitution process, but without any formal policies and/or procedures was operating in Newfoundland, New Brunswick, Nova Scotia, British Columbia and the Northwest Territories.

The objectives of the Saskatchewan program, as the single formal program of its kind in Canada were as follows:

> **1. to provide the courts with the information required to assist in the ordering of restitution;**
>
> **2. to increase the effectiveness and use of restitution by establishing an administrative system which enables monitoring and enforcement of restitution orders;**
>
> **3. to assist the offender in complying with the condition of the restitution order; and**

4. to provide information to victims who may be considered for compensation of their loss or damage through restitution.

Eligibility for participation in the Saskatchewan program was determined by the judge who was assisted, when requested, by a pre-sentence report. The court looked the following factors when considering a restitution order:

1. **the offender's ability to pay;**
2. **the degree of risk to the community;**
3. **the existence of an identifiable victim; and**
4. **actual loss or damage.**

CHAPTER 10

RESTITUTION STUDIES CONDUCTED

10.0 Background

In addition to the work carried out that was described in the previous chapter, three jurisdictions participated in research projects:

YUKON TERRITORY

> **An Examination of Ordering, Monitoring and Compliance Patterns for the Practice of Restitution in the Yukon Territory; (Michael Kim Zapf) and**
>
> **A Statistical Review of Restitution (Joe Prentice, Yukon Department of Justice)**

NORTHWEST TERRITORIES

> **A Statistical Review of Restitution (Lee Seto Thomas and Ian Thomas)**

NEWFOUNDLAND

> **A Review of the Use of Restitution in Newfoundland (Kathleen Burford)**

Two of the above-mentioned studies have been included in the analysis for this thesis: the study conducted in the Yukon by Zapf and the study carried out in

Newfoundland by Burford. The studies have been analyzed separately in this thesis.

As a result of the **Bill C-18**, amendments were made to the restitution provisions. However, because the researchers in Yukon and Newfoundland were working with "closed" files, the study time periods were prior to the **Criminal Code** amendments. In this context, prior to December, 1985, the **Criminal Code** contained four "mechanisms" for ordering restitution:

> **1. restitution could be ordered as a condition of a restitution order;**
>
> **2. an order could be made for an offender to pay direct compensation for property damage less than $50;**
>
> **3. at the time of sentencing the victim could make an application to the court; and**
>
> **4. stolen property held by police or purchased by third parties could be ordered restored to the lawful owner.**

The objectives of both of the studies discussed in his thesis were generally consistent as the Newfoundland study used the same methodology as the Yukon study. The research objectives were:

> **1. to examine and describe the restitution process across a wide spectrum of criminal and civil processes utilized by the courts to order restitution to the victim by the offenders;**
>
> **2. to determine the efficiency of the various restitution processes utilized; and**
>
> **3. to assess the feasibility of introducing a formal restitution and/or victim-offender program.**

On the basis of the research objectives described, research for both studies was guided by the following research questions:

1. for whom was restitution ordered or not ordered;

2. what were the characteristics of offenders who receive restitution as a condition contained in a probation order, including age, sex, marital status, level of education, employment status and income status;

3. under what conditions did the restitution process operate;

4. what criteria did judges apply in selecting restitution as a sentencing option; and, what criteria were utilized in determining whether or not the restitution order should be supervised/unsupervised;

5. what criteria did judges rely on in determining the amounts, methods and timing of payment(s); what patterns or variations were evident;

6. under what conditions did the terms of restitution succeed or fail;

7. what was the frequency with which the terms of restitution were met or not met;

8. what were the characteristics of offenders who met or do not meet the conditions of restitution orders; and

9. What were the particulars of the orders which were met or not met.[284]

Newfoundland: A Review of the Use of Restitution[285]

In Newfoundland, the use of restitution was considered a "process" rather than a "program" (with program objectives, policies and procedures). One of the sentencing objectives in respect of restitution was to "make reparation towards the victim". This objective was achieved through a legal, administrative and enforcement process with various persons in the restitution process having distinct roles and responsibilities. The use of the restitution process was reviewed during the 1983-84 fiscal year. The focus of this study was on the process of restitution as it occurred from the sentence imposed by a court to a final payment by the offender to the victim. In the province of Newfoundland, except in very rare circumstances, restitution was always imposed by the courts as a condition of a probation order.

During the time frame of this study, 2,587 probation orders were imposed by the courts in Newfoundland. 854 (33.01%) of 2,587 probation orders were orders for supervised probation and 1,733 (66.98%) were orders for unsupervised probation. Of the total 854 supervised orders, 230 included restitution conditions, and of the 1,733 unsupervised orders, 418 orders included restitution conditions. Therefore 648 probation orders included restitution conditions during the 1983-84 fiscal year. Fifteen files were incomplete and therefore, deleted from the database. Thus, the database comprised 633 restitution files--219 (34.6%) reporting or supervised, and 414 (65.4%) unreporting or unsupervised In the province of Newfoundland, except in very rare circumstances, restitution was always imposed by the courts as a condition of a probation order.[286]

The breakdown of the offence category indicated that 75.7 percent of all offences, for which a restitution condition was imposed, could be categorized as "property-related" offences, with fewer falling in the "fraud" category (17 percent), and "other" category (7.3 percent). The range and frequency between supervised and unsupervised orders were similar to the overall results. The following summarized some of the major findings of the Newfoundland study:

> **1. males were more likely to be sentenced for property-related offences, whereas females were more likely to be sentenced for crimes involving small theft and fraud. .the majority of offenders were male (90%), ten percent were female, and most were between the ages of 19-21 years (30%);**
>
> **2. the offender characteristics for supervised probationers with restitution conditions indicated that;**
>
> **(a) the majority were single (65%), most had completed some high school (44%), or had grade 8 or less education (42%), were unemployed (63%), unemployed with no income (33%), or unemployed in receipt of unemployment or veteran's benefits (54%);**
>
> **(b) forty-two percent of probationers had previous dispositions with most (69%), having had one or two. Although in 30% of the cases the previous disposition was unknown, in the majority of others, incarceration occurred most frequently (19%), followed by suspended sentence and probation (15%); and**
>
> **(c) in 8% of the cases, supervised probationers had prior restitution experience. Compliancy rates for payments paid in full was at the rate of 31%.**
>
> **(d) age accounted for little variation in payment among both supervised and unsupervised orders; and**
>
> **(e) the sex of the probationer (supervised and unsupervised) made little difference in the compliance rates.**

The majority of cases (86.6 percent), offenders were required to pay the amount imposed by the court within a time frame of less than one month to over six months. In fewer cases, a judge required an offender to make monthly instalments (6.1 percent), or in (5.4 percent) cases, forthwith. In very few cases (1.9 percent) was an offender given the full length of the probation period to pay. The total sum of restitution ordered (supervised and unsupervised) was $184,839.00; the total sum paid was $88,625.00 or (47.9 percent).[287]

The research indicated that for 622 restitution orders which could be assessed (11 files were incomplete), the dollar value of restitution ordered ranged from a minimum of $2.00 to a maximum of $11,000.00. However, overall it appeared that 83 percent of the total sum of $184,839.00 was in a category less than $350.00, and, whereas 90 percent of the total amount ordered was less than $1000.00.

The majority of restitution orders were paid directly to the court. Fewer payments (15.4 percent) were made "to the victim", and (0.2 percent) to "another source". Although the majority of both supervised and unsupervised orders were paid to the court, payments "to the victim" occurred twice as often (19.3 percent) for unsupervised probationers as compared with supervised (8.2 percent).

The overall outcome or compliancy rates of restitution paid indicated that 59.8 percent restitution orders were paid, and 7.7 percent were partially paid, with few cases 0.4 percent in progress. However, 28.8 percent of the restitution orders were not paid; "more of the supervised probationers 67.6 paid in full as compared with 55.6 unsupervised probation orders. Also, twice as many unsupervised

probationers did not pay at all (35.2 percent) as compared with (16.4 percent) supervised orders.[288]

The following summarized other research findings in the Newfoundland study:

Recommendations were made with respect to clarification of some roles in the restitution process, particularly those having to do with education of the victims in the use of the civil and small claims court, and other options available to victims when they do not receive restitution payments. Other recommendations sought more standardized "means testing"; closer involvement of probation officers prior to sentencing; more efficient means of tracking and monitoring payments; verification of insurance claims; enforcement of those orders in which the probationer was non-compliant; and, further research and planning efforts. In some of the interviews conducted, members of the judiciary indicated that victims should be personally compensated in relation to what they have lost, particularly in cases of property damage.

In conclusion, two positive aspects of the "principle" of restitution were cited as: the role of the victim in the overall criminal justice system was recognized in a way that victims were being compensated for the harm done and the loss suffered; and the criminal justice system was responding to the above, and the concern expressed was evident "by obliging the offender to restore the damage done to the victim in a rightful manner".

The role of restitution in the sentencing process, was a "meaningful" role and conveying an important message to both the offender and a victim. In this role,

the offender has "accepted" his/her role in the criminal justice system and repaid a debt to the victim, and to society as well.[289]

Yukon Territory: An Examination of Ordering, Monitoring and Compliance Patterns for the Practice of Restitution in the Yukon Territory[290]

A study was conducted for the Yukon Department of Justice by Zapf. Although this study was conducted immediately prior to the Sentencing Alternatives Initiative, it was considered to be part of the background work of the Criminal Law Review which provided the lead-in to the Initiative. The study involved an analysis of all probation orders imposed by the courts for the fiscal years 1981-83. From the outset, it should be mentioned that all restitution orders in the Yukon were dealt with as a condition of probation. During this time frame of this study, 1,473 probation orders were imposed by the courts; 323 included a restitution order as a condition of the probation order. Four files were incomplete, and therefore not included in the study. 319 probation orders with restitution conditions comprised the data base of the study. For the total number of probation orders imposed by the courts for the study period (n=1,473), 71.2% had reporting conditions; 23.3% did not require the offender to report; and, 5.5% were ambiguous. Of the 319 probation orders with restitution conditions, 187 were reporting orders; 117 were considered non-reporting orders; and, 15 were ambiguous. Therefore, the database was further categorized 187 restitution orders=reporting and 117 restitution orders=non-reporting.[291]

The research indicated that restitution was ordered as part, or as a separate disposition for 13 major offences with a lesser number 17 Or 5.3 percent included

in the category "other". The most significant offence for which restitution was ordered (between 1981-1983) was mischief 76 or 23.8 percent with restitution ordered in 17.9 percent or 57 of the dispositions in respect of break, enter and theft. Males were more frequently associated with property offence-related crimes, whereas females appear to be represented in higher categories in the minor theft offences.

Zapf described offender/offences profiles as follows: the total probation orders imposed (n=1,473) during the study period reflected a distribution of 84.6 percent male and 15.4 percent female offenders. The 319 probation orders with restitution as a condition revealed a similar distribution, with 273 or 85.6 percent male and 46 or 14.4 percent female offenders.

Zapf reported that the time to pay restitution ranged from a minimum of 0 months (forthwith) to a maximum of 24 months, with a mean of 6.6 months. Of the 319 restitution "orders", the highest frequencies were: 12 months (n=46 or 14.4 percent); 6 months (n=45 or 14.1 percent); 3 months (n=44 or 13.8 percent); and, 1 moth (n=41 or 12.9 percent).

In the Yukon, Zapf reported that of the 319 probation orders with restitution conditions, (n=5) or 1.6 percent were for "direct service" to the victim; 314 or 98.4 percent required "financial payment". The dollar value for restitution ordered ranged from a minimum of $3.00 to a maximum of $15,073.00, with a mean value of $400.00. The total amount of restitution ordered for the study period, 1981-1983, was $127,909.00. The most frequent "dollar values" for restitution ordered were $50 or less (23.2 percent) to the $151 - $200 category (10.9 percent).[292]

Zapf indicated that of the study population sampled (319 restitution orders), 194 or 60.8 paid in full; a partial payment was made with 12 probation orders or 3.8 percent. Thus, while the total sum of restitution ordered was $127,909.00 for the study period, the total sum collected was $55,195.00 (this figure, represented both full and partial payments). Therefore, in conclusion, $72,714.00 or 56.8 percent (out of a total sum of $127,909.00) remained unpaid.

In light of the heightened emphasis on the role of the victim in the criminal justice system, Zapf recommended that some improvements were necessary in the Yukon Territory to improve the line of communication with victims. In addition, following a review of the literature, Zapf emphasized that the primary aim of a restitution process or program was related to the offender, and not the victim. "[t]here is a movement now towards victim services, yet new programs can only lead to increased dissatisfaction if goals are stated in terms of victim services which are not possible to provide under existing criminal law." Therefore, in conclusion '[c]lear, **full and honest aims must be articulated for any future restitution programs to allow for meaningful evaluation and realistic public expectations".**[293] The following summarized some of the research findings of the study:

> **1. reporting conditions appeared less frequently in the restitution cases of 319 orders than in the overall probation caseload of 1,473 orders imposed;**
>
> **2. the total amount of restitution ordered came to $127,909;**
>
> **3. full payment rate (reporting and non-reporting) was 60.8%;**

4. partial payment rate was 3.8%;

5. the overall unpaid rate was 35.4%;

6. 43.2% (of $127,909--the total restitution money ordered) was collected;

7. full payment was made in 58.3% of the cases with reporting conditions;

8. the category of non-reporting orders showed a 63.3% compliance rate;

9. the "ambiguous" reporting category boasted a 73.3% compliance rate;

10. the 319 restitution orders reflected a distribution of 273 male and 46 female probationers;

11. of the total probation orders with restitution conditions, 171 of the probationers were Native, 137 were white, and 11 were unknown;

12. restitution was primarily ordered for property offences;

13. more Natives (53.6%) received restitution orders than did non-Natives (42.9%);

14. the distribution of offences was similar for Natives and non-Natives, except for the offence of false pretences which accounted for 16.8% of the non-Native offenders and only 2.3% of the Native offenders;

15. non-Native offenders with restitution conditions showed a slightly higher rate of full payment (64.2%) than did Natives (58.5%);

16. males are more frequently associated with property offence-related crimes, whereas females appear to be represented in higher categories in small theft.

The difficulties in program delivery within rural and/or isolated area of the Yukon Territory was not much different from the difficulties in other rural, isolated

regions having similar topography and limited access. To a great extent, the success of these programs depended on the probation officer covering the area, the consistency of coverage, and the network of community resources developed within the area.

CHAPTER 11

CONCLUSIONS

As mentioned in chapter 1 of this thesis, separate conclusions were reached in each of the studies analyzed. It is not the intention to further review those conclusions in this chapter.

As mentioned previously in this research, to a great extent, the **Criminal Code** today appears very much as it did in 1892. However, while the information made available to the courts has not increased a great deal during the past decades, we continue to have unrealistic expectations about the goals to be achieved. We anticipate that a court should possess the ability to arrive at a fair and equitable sentence without legislative guidance in the matter. Sentencing of offenders should be appropriate bearing in mind the circumstances of the offender, and the offence committed. Amidst this, today the court has a wide range of sentencing options available to it.

Since the enactment of the **Criminal Code** in 1892, our courts may have been guided to some extent by popular correctional theories. For instance, early correctional philosophy in Canada was based on deterrence and punishment; sentencing had but one major goal. The courts in the first decade or so following the turn of the century, considered that the purpose of sentencing was to punish offenders in a manner that society would ultimately be protected. Therefore, the

overall process of sentencing was brief, and offenders were imprisoned, and sometimes for lengthy periods. However, in the next several decades, the sentencing of offenders became a more complex matter. Perhaps in response to social sciences, the courts attempted to respond to "models" meant to "treat" offenders, and, simultaneously, correct offenders, and, of course, protect society. The problem with such apparent complexity of goals, and frequently, contradictory goals, was that the courts had few "guidelines" for guidance.

One of the questions that must be considered in sentencing matters was whether the basic assumptions which led to our current law continued to be valid today, or whether the changes which have occurred during the past century required a reassessment of the objectives and goals in sentencing offenders during the 1990's. Since the early 1980's, questions such as this have been asked--and answers proposed by law reform commissions, committees, and governments alike. In a study that was conducted for the Canadian Sentencing Commission (discussed in Chapter 5), the authors concluded: "the decade of the 1980's has seen a reaction to the intensity of effort during the 1970's to deinstitutionalize and de-emphasize the disposition of imprisonment".[294]

Not only have we progressed in correctional thinking, but we have also progressed with the availability of correctional programs, and community alternatives. Sometimes it appears that "the wheels turn slowly", and, this may be so, but, in fact, we must consider that the availability of a wide range of sanctions, is a "giant step" from the time that imprisonment was viewed as the primary sanction available to the courts. Bearing in mind this premise, the role of sentencing alternatives plays and, will continue to play, an important role in the

overall sentencing process. However, it was evident from our studies, that for some communities, the participation of the community in the criminal justice system may be a key factor in the future success of community-based sanctions.

Despite the various calls for community-based options, their development and implementation throughout Canada have been inconsistent. One of the goals of the Sentencing Alternatives Research Program was to provide more information on existing programs in Canada, and, to stimulate further developmental activities. One of the research tasks was to determine what further research, if any, was required in the area of sentencing alternatives. The following categories are the areas of interest raised by the correctional officials across Canada:

Stimulating Community Interest

1. **Does the community want to be an active participant in the criminal justice system;**

2. **What is the current attitude of the general public toward offenders performing work in their communities;**

3. **How should community-based programs be promoted in the community;**

4. **Who should promote community-based sentencing alternatives in the community.**

Means to Pay

1. **Should the indigent be fined;**

2. **Should fine option program participation be the right of anyone who is fined, regardless of financial status;**

3. **Does restricting participation in the fine option program to indigent offenders discriminate against those with the means to pay, and the willingness to pay for their crime with community work.**

Program Goals and Evaluation

1. What are the objectives of the correctional system (i.e. retribution, deterrence, rehabilitation);

2. What are the goals of community-based alternatives such as community service order programs and fine option programs;

3. What specific method of measurement will be used to evaluate the extent to which each goal has been achieved; and

4. What is the time frame for measuring objectives.

During the past several decades, interest in the use of community-based sentencing alternatives appears to have increased. This was most likely as a result of the several issues. One overriding concern has been the concern of overcrowding in institutions, as evidenced in the current interest in fine option programs. Associated with that issue of course, are the ever-increasing costs to imprison offenders. During the past several decades policy-makers have been questioning the efficacy of sentencing more offenders to prison. The value community-based sanctions has been debated by various law reform commissions and others for a long period of time. The first definite movement was probably the notable report of the Ouimet Committee, followed immediately by the extensive work of the Law Reform Commission that firmly established the need for alternatives to imprisonment. Since that time, a number of government studies and law reform commissions have expressed strong concern that there are serious and perceived problems in the use or perhaps, lack of use, of community-based sanctions sentencing in Canada. The correction of these problems requires a concerted effort at both the federal and provincial/territorial levels of government.

ENDNOTES

CHAPTER 1

1 Canada (1990) Directions for Sentencing Reform. Statement made by Minister of Justice A. Kim Campbell at iii.

2 Canada (1984) Sentencing at 6.

3 Ibid. To establish a research component of Bill C-19, the proposed Criminal Law Reform Act, (1984), the Government approved the funding of the Sentencing Alternative Initiative (Research Program).

4 Canada. The Criminal Law in Canadian Society (1982); and Canada (1984) Sentencing.

5 Supra note 2.

6 In February, 1984, the Government of Canada introduced the proposed Criminal Law Reform Act (Bill C-19) which included a package of Criminal Code amendments, some of which have now been enacted (in original or revised form) and some of which died on the Order Paper. One section of the amendments concerned major changes to sentencing: those matters related to the purpose of sentencing were subsequently referred to the Canadian Sentencing Commission. Other amendments related to victims and restitution were later enacted by Parliament (in modified form) as Bill C-89.

7 Supra note 2. See also, Canada (1982) The Criminal Law in Canadian Society..

8 Palmer, Sherilyn A. (1990) Sentencing Alternatives Research Program: A Synthesis Report..

9 Three Fact Books were published that included a review of program and policy objectives for community service order programs, restitution and fine option programs for each jurisdiction. See Peat, Marwick and Partners,(1986) Community Service Order Programs in Canada; Fine Option Programs in Canada; and, Restitution Programs in Canada.

10 Supra note 8.

11 The Canadian Sentencing Commission was created as per Order-in-Council P.C. 1984-85 May 10, 1984, established under Part 1 of the Inquiries Act, R.S.C. 1970, c. I-13.

12 Supra note 8.

13 Ibid.

CHAPTER 2

14 Turner, [1970] 2 All E.R. (C.A.) 281.

15 Ibid.

16 Ibid. at 296.

17 Supra note 2.

18 Ibid.

19 Cressey, Donald R. (1980) "Sentencing: Legislated Rule Versus Judicial Discretion" in Grosman, Brian A. in New Directions in Sentencing at 64.

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23 Ibid. See also Chapter 2 of the Sentencing Commission's Report for a thorough discussion of the penalty structure in Canada.

24 Ibid.

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26 Ibid. at 209.

27 Ibid.

28 Brown Commission (1849) Second Report of the Commissioners of the Penitentiary Inquiry. Appendix B., 12 Victoria, A.

29 Ibid. at 15.

30 Ibid.

31 Supra note 2.

32 Archambault Commission (1938) Report of the Royal Commission to Investigate the Penal System of Canada.

33 Ibid. at 40.

34 Palmer, Sherilyn A. (1983). Principles of Sentencing: The Role of the Courts of Appeal. (Unpublished Masters of Criminology (Applied)).

35 Ibid.

36 Stephen, J.F. ,(1874) Liberty, Equality, Fraternity (2nd ed.).

37 Ibid. at 152.

38 Ibid.

39 Supra note 32 at 29.

40 Ibid.

41 Ibid. at 35.

42 Warner, [1946] O.R. 808 at 815 (Ont. C.A.).

43 (1971) 1 C.C.C. (2d) 307 at 309.

44 Ibid.

45 Ibid.

46 Ibid.

47 Ibid.

48 Wilmott, [1967] 1 C.C.C. 171; 49 C.R. 22 (Ont.C.A.).

49 Ibid.

50 Ibid.

51 Ibid.

52 Supra note 34.

53 Canadian Committee on Corrections (1969) Report of the Canadian Committee on Corrections Toward Unity: Criminal Justice and Corrections.

54 Ibid.

55 Ibid.

56 Fairn (1973), 12 C.C.C. (2d) 423 (N.S. Co. Ct.).

57 Ibid. See also, Canadian Association of Provincial Court Judges (1982). Canadian Sentencing Handbook at 24.

58 Supra note 14.

59 Supra note 57.

60 Supra note 34.

61 Supra note 2.

62 Supra note 2.

63 Ibid.

64 Supra note 14 at 296.

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[65] Ibid.

[66] Ibid.

[67] Supra note 2.

[68] Supra note 53.

[69] Edwards, J. (1966) Paper delivered at the Ninth Alumni Conference on Crime and Punishment University of Manitoba, March 19, 1966 at 9 and quoted in the Report of the Canadian Committee on Corrections. Supra note 53 at 205.

[70] Supra note 48.

[71] Supra note 2.

CHAPTER 3

[72] Supra note 2. See also, note 4.

[73] Ibid.

[74] Ibid.

[75] Canada (1987). Sentencing Reform: A Canadian Approach. The Report of the Canadian Sentencing Commission.

[76] Supra note 2 and note 4.

[77] See for example, Supra note 1 and note 2.

[78] Ibid.

[79] Ibid.

[80] Ibid.

[81] Ibid.

[82] Supra note 4.

[83] See for example, Canada, Law Reform Commission (1975) (Working Paper 11) Imprisonment and Release, and, more recently, see note 1 and note 7.

[84] Ekstedt, John and Jackson, Margaret (1988) A Profile of Canadian Alternative Sentencing Programmes: A National Review of Policy Issues. (A Report of the Canadian Sentencing Commission).

[85] Supra note 2. See also note 75.

[86] Ibid.

[87] Ibid.

[88] Ibid.

[89] Ibid.

[90] Ibid. at xxi.

[91] See note 1. See also, MacLeod, A.J. (1976) "Criminal Legislation " in Crime and Its Treatment in Canada. (ed) McGrath, W.T. at p. 112-3.

[92] Supra note 1.

[93] Supra note 91.

[94] Ibid.

[95] Supra note 32.

[96] Mewett, A.W. Can. Bar Rev. 45 (1967) at 735.

[97] Ibid. at 740.

[98] Supra note 32 at 167-68.

[99] Ibid.

[100] Supra note 53

[101] Ibid. at p. iii.

[102] Ibid. at 185.

103 Ibid. at 191.

104 Ibid. at 50.

105. Canada, Law Reform Commission (1990-91) Annual Report.

106 Canada, Law Reform Commission (1976) Guidelines: Dispositions and Sentences in the Criminal Process.

107 Ibid.

108 Canada, Law Reform Commission (1976) Our Criminal Law.

109 Ibid.

110 Ibid.

111 Ibid. at 3.

112 Canada, Law Reform Commission (1974) The Principles of Sentencing and Dispositions.

113 Ibid.

114 Canada, Law Reform Commission (1975) The Permission to be Slightly Free.

115 Canada, Law Reform Commission.(1974) Studies in Diversion.

116 Ibid, at 51.

117 Canada, Law Reform Commission (1975) Imprisonment and Release.

118 Ibid.

119 Canada, Law Reform Commission (1976) Guidelines: Dispositions and Sentences in the Criminal Process.

120 Canada, Law Reform Commission (1974). (Working Paper 5) Restitution and Compensation.

121 Canada, Law Reform Commission (1974) (Working Paper 6) Fines.

122 Ibid.

[123] Supra note 106.

[124] Ibid.

[125] Supra note 4.

[126] Supra note 75.

[127] Canada, Standing Committee on Justice and Legal Affairs. Report to Parliament by the Sub-Committee on the Penitentiary System in Canada (Chaired by Mark MacGuigan). Second Session of the Thirtieth Parliament, 1976-77.

[128] During the fiscal year 1992-93, the Department of Justice assumed the responsibility of winding up the former Law Reform Commission and all work in progress.

[129] Supra note 127.

[130] Ibid., at 31.

[131] Ibid.

[132] Fauteux Committee (1956) Report of the Committee Appointed to Inquire into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada.

[133] Supra note 129.

[134] Supra note 4.

[135] Supra note 8.

[136] Ibid.

[137] Supra note 4.

[138] Ibid. at iii.

[139] Canada, Law Reform Commission (1977) Our Criminal Law.

[140] Supra note 53.

[141] Supra note 8.

142 Ibid.

143 Supra note 4.

144 Supra note 2.

145 Supra note 6.

146 Supra note 4.

147 Supra note 2.

148 Supra note 2; and, Supra note 4.

149 Supra note 4.

150 Supra note 2.

151 Ibid.

152 Supra note 11.

153 Supra note 75

154 The proposed Criminal Law Reform Act (Bill C-19) contained a provision that allowed offenders the opportunity to work off their fines at a given rate per hour by performing work in the community rather than being imprisoned for fine default. This provision was later contained in the Criminal Law Amendment Act (Bill C-18). See Section 718.1 Criminal Code.

155 Verdun-Jones, Simon and Mitchell-Banks, Teresa (1988). The Fine as a Sentencing Option in Canada, at 2. (A Report of the Canadian Sentencing Commission).

156 Samuels, Alec,: "The Fine: The Principles", [1970] Crim. L.R. 201.

157 Supra note 22.

158 Ibid.

159 Ibid.

160 Ibid.

161 Edwards, [1979] 4 W.W.R. 751 (Sask. Prov. Ct.).

162 Stein (1974), 15 C.C.C. (2d) 376 (Ont. C.A.).

163 Neilson (1978), 5 C.R. (3d) S-36 (Ont. H.C.).

164 Gollop (1980), 28 Nfld. & P.E.I.R. 443.

165 Tomlinson (1984), 14 C.L.Q. 271 (Ont. Prov. Ct.).

166 Ibid.

167 Ibid.

168 Jobson, K.B. (1970) "Fines" 16 McGill L.J. 633-644.

169 Ibid. at 644.

170 Deeb; Wilson 28 C.C.C. (3d) 257.

171 Ibid.

172 Ibid.

173 (1972), 9 C.C.C. (2d) 390 at 397, 32 D.L.R. (3d) 241. 20 C.R.N.S. 265 (B.C.C.A.).

174 Ibid.

175 Ibid. at 297.

176 Jobson, Keith and Atkins, Andrew "Imprisonment in Default and Fundamental Justice 28 C.L.Q. 251 (March, 1986).

177 Ibid.

178 Ibid.

179 Ibid.

180 Ibid.

181 Ibid.

[182] Section 722 was the relevant section in accordance with R.S.C. 1970, c. C-34. This sections is now section 787 R.S.C. 1985, c. C-46.

[183] Supra note 176.

[184] Kimball, R.E. "Comment" 19 C.L.Q. 29 (1976-77)

[185] Ibid.

[186] Canada, Law Reform Commission (1974) Fines.

[187] Supra note 155.

[188] Supra note 176.

[189] Supra note 155.

[190] Ibid.

[191] Supra note 8.

[192] Ibid.

[193] Supra note 186.

[194] Sloan, R.L.(1986) Fine Option: Program Description and Operation Analysis.

[195] Supra note 186.

Chapter 5

[196] Section 646.

[197] Supra note 8.

[198] Supra note 9.

[199] Ibid.

200 **Ibid.**

201 **Ibid.**

202 **Ibid.**

203 **Ibid.**

204 **Ibid.**

205 **Ibid.**

206 **Ibid.**

207 **Ibid.**

208 **Ibid.**

209 **Doorly, Teresa (1989) A Review of Fine Option Programs in Canada.**

210 **Ibid.**

211 **Ibid.**

CHAPTER 6

212 **Supra note 8.**

213 **Ibid.**

214 **Ibid.**

215 **Ibid.**

216 **Ibid.**

217 **Sloan, R.L.(1987) Fine Option Program: Evaluation Design.**

218 **Ibid.**

219 **Ibid.**

220 Ibid.

221 Ibid.

222 Ibid.

223 Ibid.

224 Supra note 194.

225 Ibid.

226 Ibid.

227 Ibid.

228 Ibid.

229 Supra note 194 at 46.

230 Ibid.

231 Ibid.

232 See Lord Edna and Dodd, Julie (1987) Feasibility Study Fine Option Program; see also Doorly, Teresa (1987) Fine Option Feasibility Study (Northern Region of Ontario).

233 Sloan, R. (1986) Sentencing in Prince Edward Island.

234 Ibid.

235 Ibid.

236 Ibid.

237 Supra note 232.

238 Supra note 8.

239 Ibid.

240 Ibid.

241 Ibid.

242 Ibid.

CHAPTER 7

243 See Chapter 1 of this thesis for a discussion of the objectives of the Sentencing Alternatives Research Program.

244 Two statistical program reviews were undertaken in Yukon and Northwest Territories.

245 Peat, Marwick and Partners (1986) Fact Book on Community Service Order Programs in Canada.

246 Menzies, Ken. (1986) "The Rapid Spread of Community Service Order Program in Ontario "Can. J. Crim., Vol. 28 No. 2, 1986.

247 36 C.R.N.S. 358, 20 C.L.Q. 27.

248 Ibid. at 29.

249 Supra note 13.

250 Ibid.

251 Canada, Law Reform Commission (1976). Guidelines: Dispositions and Sentences in the Criminal Process 23 at 24.

252 Ibid. at 24.

253 Ibid.

254 Ibid.

255 Supra note 145.

256 Ibid.

257 Supra note 146.

258 Supra note 16.

259 Ibid. at 27.

260 Supra note 145.

261 Ibid.

262 Ibid. at 32.

263 Ibid.

264 Ibid.

265 Supra note 120 at 16.

266 Supra note 8.

267 Ibid.

268 Ibid.

269 Ibid.

270 Ibid.

271 Section 655 Criminal Code.

272 Ibid.

273 Ibid.

274 Ibid.

275 (1980), 52 C.C.C. (2d) 468 (Ont. C.A.).

276 Ibid.

277 Ibid.

278 Ibid.

279 Ibid.

280 Zelensky (1978), 41 C.C.C. (2d) 97 (S.C.C.).

281 Ibid.

282 Peat , Marwick and Partners (1986). Fact Book on Restitution Programs in Canada. Ottawa: Department of Justice.

283 Ibid.

284 Ibid.

285 This section of the thesis was based solely on the study conducted by Kathleen Burford in Newfoundland.

286 Ibid.

287 Ibid.

288 Ibid.

289 Ibid.

290 Zapf, Michael Kim (1988) An Examination of Ordering, Monitoring and Compliance Patterns for the Practice of Restitution in the Yukon Territory.

291 Supra note 8.

292 Ibid.

293 Ibid.

294 Supra, note 87.

Appendix "A"

Sentencing Alternative Research Program Reports

NEWFOUNDLAND

Burford, Kathleen	A Review of the Use of Restitution in Newfoundland

NEW BRUNSWICK

Poel, Dale H. and Walker, Daniel S.	Adult Alternative Measures: A Feasibility Study

PRINCE EDWARD ISLAND

Sloan, R.L.	Sentencing Trends in Prince Edward Island
Lord, Edna and Dodd, Julie	Feasibility Study: Fine Option Program
Dodd, Julie	Fine Option Program: Program Design and Pilot Project

ONTARIO

Doorly, Teresa	Fine Option Feasibility Study: Northern Region of Ontario
Doorly, Teresa and Palmer, Sherilyn A.	Fine Option Program Design and Implementation in Canada

MANITOBA

John Howard Society	Manitoba Community Service Order and Fine Option Program Workshop
Sloan, R.L.	Fine Option Program: An Evaluation Design
Sloan, R.L.	Fine Option Program Description and Operations Analysis

YUKON TERRITORY

Zapf, Michael Kim	An Examination of Ordering, Monitoring and Compliance Patterns for the Practice of Restitution in the Yukon Territory
Prentice, J.	Reparative Sanctions Project: A Follow-Up Study (Restitution)
Prentice, J.	Reparative Sanctions Project: Fine Option Program Feasibility Study
Prentice, J.	Reparative Sanctions Project: A Review of the Use of Community Service Orders

NORTHWEST TERRITORIES

Thomas, Lee Seto and Thomas, Ian	Sentencing Alternatives in the Northwest Territories: Feasibility Study--Fine Option
Thomas, Lee Seto and Thomas, Ian	Sentencing Alternatives in the Northwest Territories: A Review of the Use of Community Service Orders
Thomas, Lee Seto and Thomas, Ian	Sentencing Alternatives in the Northwest Territories: A Restitution Study

In addition, Peat Marwick and Partners developed three Fact Books on the programs use in Canada of three community-based sanctions: fine option, community service orders and restitution.

Appendix"B"

LAW REFORM COMMISSIONS, COMMITTEES AND TASK FORCES

1892-1992

1831 Committee of the House of Assembly. Report in the Journal of the House of Assembly (Biggar Committee) at 211-212.

1849 Second Report of the Commissioners of the Penitentiary Inquiry (Kingston) (Brown Commission). Appendix B., 12 Victoria, A.

1938 Report of the Royal Commission to Investigate the Penal System of Canada (Archambault Commission)

1956 Report of the Committee Appointed to Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada (Fauteux Committee).

1969 Report of the Canadian Committee on Corrections (Ouimet Committee).

1970-1992 Law Reform Commission of Canada.

1977 Report of the Sub-Committee to Investigate the Penitentiary System in Canada (MacGuigan Committee).

1984-1987 Canadian Sentencing Commission (Archambault Commission).

1988 Standing Committee on Justice and Solicitor General (Daubney Committee)

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Burford, Kathleen (1988). **A Review of the Use of Restitution in Newfoundland**. Canada: Department of Justice.

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Canada (1969). **Report of the Canadian Committee on Corrections: Toward Unity--Criminal Justice and Corrections (Ouimet Committee)**. Ottawa: Information Canada.

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