9 From Sentencing to Release

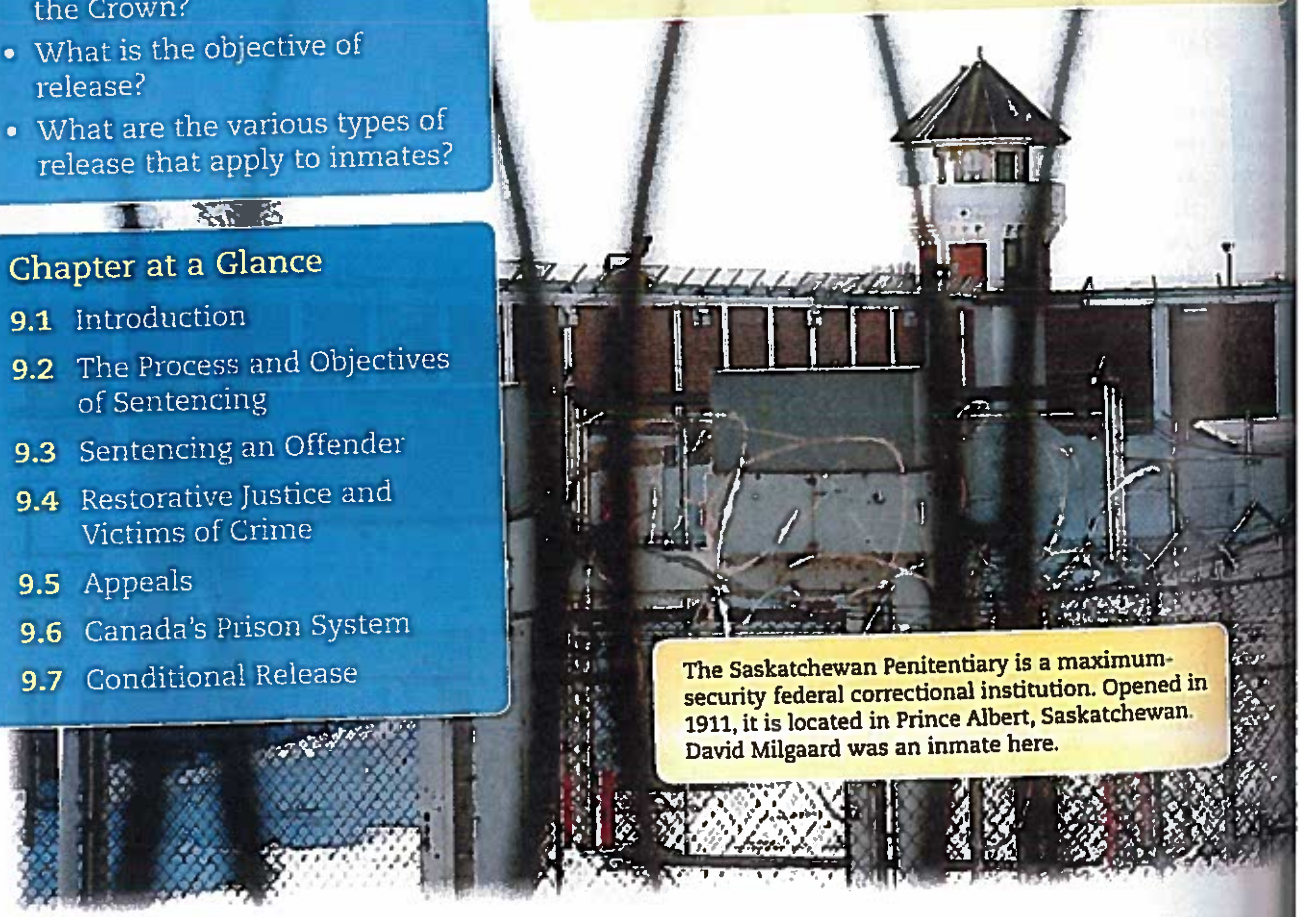
What You Should Know

- What are the objectives of sentencing in the *Criminal Code*?
- What sentencing options are available to a judge?
- What rights does a victim have in the criminal law process?
- What appeal processes are available to the offender and the Crown?
- What is the objective of release?
- What are the various types of release that apply to inmates?

Chapter at a Glance

Selected Key Terms

absolute discharge
appellant
community service order
conditional discharge
conditional sentence
dangerous offender
general deterrence
incarceration
long-term offender (LTO)
parole
probation
respondent
specific deterrence
statutory release
suspended sentence
victim impact statement



The Saskatchewan Penitentiary is a maximum-security federal correctional institution. Opened in 1911, it is located in Prince Albert, Saskatchewan. David Milgaard was an inmate here.

9.1 Introduction

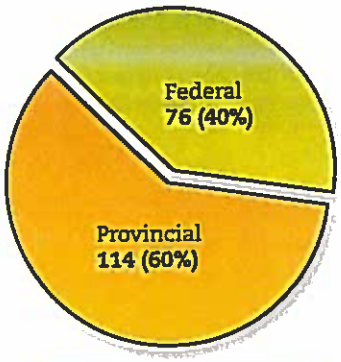
Imposing a sentence is one of the most difficult tasks facing a judge. It involves a delicate balance of weighing many factors such as the severity of the crime, the offender's background, and society's views on punishment. It can be called a sentence, a penalty, a disposition, or a sanction. The terms all refer to imposing a punishment and holding an offender accountable for his or her actions.

Once a sentence has been set, either the accused or the Crown may appeal that sentence to a higher court for review. Eventually, the offender may enter a correctional facility. In Canada, this may involve time in a federal penitentiary or provincial jail, depending on the nature and severity of the crime.

In this chapter, you will examine the sentencing and release of offenders. These areas of the law are controversial. Some people seek to punish offenders and want to keep them in prison as long as possible. Others believe that employment, education, and social programs can help offenders to reform and return to the community rehabilitated. In all cases, these theories must be balanced with the concern for public safety.

Most offenders eventually return to society. The system of **conditional release** allows offenders to serve part of their sentence in the community while under supervision. Although the law provides for conditional release, not all inmates qualify for it. Those who do are usually successful in completing their sentences in the community.

Correctional Facilities in Canada, 2005



In 2005, there were 190 correctional facilities in Canada.

conditional release a discharge from custody into the community under terms and conditions

Factors a Judge Must Consider

Judges must consider many factors when determining an appropriate sentence.

Did You Know?

The cost of penitentiaries per capita (per inmate) across Canada ranges from a high of $417 in Chilliwack, British Columbia, to just $55 in Calgary, Alberta.

9.2 The Process and Objectives of Sentencing

Sentencing reflects social values. Some people believe that Canadian prisons are too "soft" on inmates and provide too many privileges. Others believe that prisons have many problems. For example, prisons are expensive to run and fail to reform certain criminals. Some people think that non-violent offenders should pay their debt to society in ways other than spending time in jail.

Sentencing may take place right after the accused has been found guilty or many weeks later. A judge may order a probation officer to prepare a **pre-sentence report** about the offender's situation. The report will include interviews with the offender and others who are familiar with the person's history and potential future conduct, and individuals acting as character references. These may include teachers and employers. The judge will consider the report when passing sentence.

re-sentence report a document bout the accused's background, sed for sentencing

The defence and the Crown have the right to call witnesses to testify about the offender's background. The Crown may raise the offender's previous criminal record. The convicted person may also make a statement. If the Crown and the offender disagree on the information presented at the time of sentencing, the judge can listen to sworn evidence.

When passing sentence, the judge must refer to the *Criminal Code*. It specifies the objectives on sentencing and the penalties available. Of course, the judge must also consider that Canadians have the right not to be subjected to "cruel and unusual punishment" according to section 12 of the *Charter of Rights and Freedoms*.

Did You Know?

As of April 30, 2008, all federal correctional facilities have a total smoking ban.

You Be the Judge

Maljkovich v. Canada, 2005 FC 1398 (CanLII)

For more information, Go to Nelson Social Studies

Vlado Maljkovich was serving a sentence for second-degree murder in the Fenbrook Correctional Institution in Gravenhurst, Ontario. He suffered from an allergy to cigarette smoke. Exposure caused him to get headaches, nausea, and throat irritation. He presented medical evidence to Corrections Canada about his allergies. He also made several complaints, but no action was taken. Maljkovich claimed that Corrections Canada failed to protect him from second-hand smoke. Prisoners had to smoke in designated areas, but the ventilation system did not prevent second-hand smoke from reaching other inmates. Maljkovich argued that this amounted to cruel and unusual punishment under section 12 of the Charter. Maljkovich sued Corrections Canada for damages.

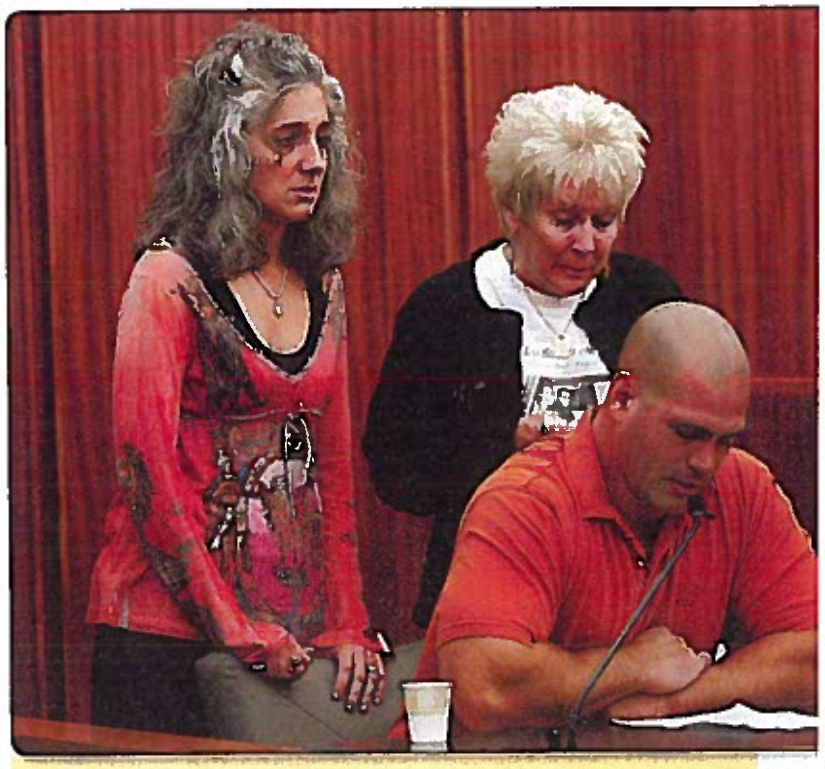
The Federal Court of Canada ruled that Corrections Canada failed to provide Maljkovich with a healthy and safe environment. It awarded him $5000 for the stress and discomfort he suffered. However, the court ruled that the exposure to second-hand smoke was not intended to be a deliberate form of cruel and unusual treatment. Therefore, his exposure was not a Charter violation.

- Do you think an award of damages was appropriate in this case? Why or why not?

Imposing a Sentence

Judges in Canada have a good deal of freedom in imposing sentences. For some offences, there are mandatory minimum sentences, as you will see below. For most, judges have more leeway. For example, someone found guilty of aggravated assault that carries a maximum penalty of 14 years can receive any term up to the maximum. In deciding on a suitable penalty, judges often refer to previous similar cases (precedents). However, judges are not required to follow sentences imposed in similar cases. These are simply guidelines to consider.

When sentencing, a judge may also consider the time spent in custody awaiting trial or sentencing, the circumstances of the convicted person, and the potential for rehabilitation. The victim may also be considered. The judge may ask for a **victim impact statement**. This is a declaration by the victim and others affected by the offence. It describes the impact of the offence on their lives. Victim impact statements are especially significant in cases that may result in lasting harm to the victim or the victim's family.



Victims are able to read their victim impact statement in court.

In recent years, Parliament has toughened its position on certain offences. These include crimes such as harassment or sexual assault. Organized crime is another such area. In these instances, penalties have been increased or mandatory minimum sentences have been set out in the *Criminal Code*.

Parliament has amended the *Criminal Code* to allow for sentences to be served in the community under supervision. Parliament also introduced the label **long-term offender (LTO)**. These are criminals who repeatedly behave in ways that could injure or harm others. People who are likely to reoffend are often labelled LTOs. In its concern for violent crimes, Parliament has also created **mandatory minimum sentences** that must be imposed in certain circumstances. For example, if a weapon is used during a criminal offence, the mandatory minimum prison sentence is four years.

In February 2008, the federal government of Canada passed the *Tackling Violent Crime Act*. This act increased the number of offences that carry mandatory minimum sentences and took aim at serious drug offences. See Agents of Change, Chapter 7, page 230.

victim impact statement a statement made by the victim that describes the effect of the offence on his or her life

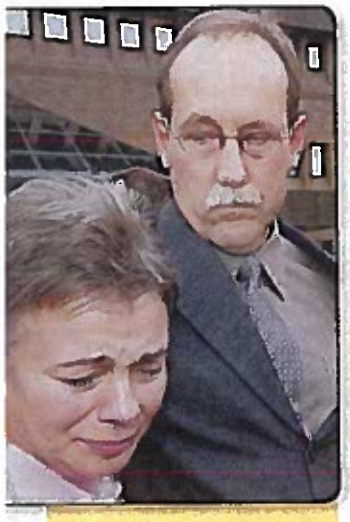
long-term offender (LTO) a criminal who repeatedly behaves in a way that could cause serious harm to others and who would likely reoffend

mandatory minimum sentence a minimum punishment imposed by law

Case

R. v. Ferguson, 2008 SCC 6 (CanLII)

For more information, Go to Nelson Social Studies



Michael Ferguson leaves the courthouse on September 30, 2004, after being found guilty of manslaughter.

Michael Ferguson, an RCMP constable, was involved in an altercation with a detainee, Darren Varley. On October 3, 1999, in a cell at an RCMP detachment in Pincher Creek, Alberta, Ferguson shot and killed Varley. The first gunshot hit Varley in the stomach, and the second hit him in the head. Ferguson claimed that he had acted in self-defence and that the gunshots were accidental. He maintained that Varley had attacked him when he entered the cell. The prisoner pulled Ferguson's bulletproof vest over his head and face and grabbed his firearm from the holster. However, earlier at trial, Ferguson said that he had fired the gunshots *after* he regained control of the gun. Expert evidence verified this fact. Further evidence also indicated that there was a three-second delay between the first and second shots.

Ferguson was charged. In the fall of 2004 at the Alberta Court of Queen's Bench, a jury convicted Ferguson of manslaughter. Section 236(a) of the *Criminal Code* sets out a mandatory minimum sentence of four years for the offence of manslaughter with a firearm. The trial judge held that the firing of the second shot was instantaneous and instinctive. He felt that there was no intent to murder Varley. The judge concluded that applying the four-year mandatory minimum sentence amounted to cruel and unusual punishment and a violation of section 12 of the *Charter of Rights and Freedoms*. This is known as a "constitutional exemption." The trial judge imposed a conditional sentence of two years less a day. (A conditional sentence is a penalty for a crime of a term of less than two years that can be served in the community if the offender meets certain expectations.) In May 2006, the Alberta Court of Appeal overturned the original sentence and imposed the mandatory minimum four-year sentence.

Ferguson appealed his case to the Supreme Court of Canada. In a 9–0 decision in February 2008, the court dismissed the appeal and upheld the four-year minimum jail sentence. The court concluded that the mandatory minimum was not out of balance with the harm done in this case. The court did not allow a constitutional exemption from the required minimum sentence. This was consistent with the *Latimer* case discussed in Chapter 7.

For Discussion

1. What was the original sentencing decision?
2. How did the Alberta Court of Appeal decide the case?
3. Summarize the decision of the Supreme Court of Canada.
4. Do you think the *Criminal Code* should set out mandatory minimum sentences? Why or why not?

Purposes of Sentencing

In 1995, Parliament amended the *Criminal Code* to give judges some direction in sentencing. The changes were based on the idea that appropriate sentencing promotes respect for the law. It also helps to maintain a just, peaceful, and safe society. Judges must consider various sentencing objectives and balance these with the circumstances of the criminal case before them. Sentences must have one of the objectives on the next page.

Objectives of Sentencing under the *Criminal Code*

- denounce unlawful conduct
- deter the offender and others from committing offences
- separate offenders from society, where necessary
- assist in rehabilitating offenders
- provide reparations for harm done to victims or to the community
- promote a sense of responsibility in offenders

Judges must consider many of these objectives before imposing a sentence on a convicted offender.

Denouncing Unlawful Conduct

Part of denouncing unlawful conduct is condemning the crime from society's viewpoint. A judge should consider the offender's character and his or her past criminal behaviour. As we saw in Chapter 4, retribution is the idea of giving someone a just reward for her or his actions. It is not a sentencing objective according to Canada's *Criminal Code*. Revenge is also not an appropriate objective in sentencing.

You Be the Judge

R. v. Kobelka, 2007 ABPC 112 (CanLII)

For more information, Go to Nelson Social Studies

In January 2006, Chad Kobelka pleaded guilty to theft, dangerous operation of a motor vehicle causing bodily harm, and flight from police officers. Kobelka was 19 years old at the time he stole an SUV from his uncle. He led police on a lengthy high-speed police chase and finally crashed his vehicle into another, seriously injuring a young couple. The female in the vehicle was 20 weeks pregnant. She delivered her baby prematurely at 36 weeks. It had permanent mental and physical impairments.

In April 2007, a Provincial Court of Alberta judge sentenced Kobelka to 10 years in prison. That was the longest sentence ever given in Canada for these offences. The judge noted that Kobelka had at least 14 opportunities to stop during the police chase but chose not to.

- What sentencing principles do you think the judge considered in determining the sentence in this case? Why? Do you think the judge's sentence was appropriate? Why or why not?

Deterrence

Under the *Criminal Code*, the fundamental purposes of sentencing are: 1) to promote respect for the law; and 2) to maintain a just, peaceful, and safe society. This is accomplished by imposing fair penalties. The Code states that sentencing should deter (prevent) an offender from committing crimes in the future (**specific deterrence**). In addition, all other members of society should be discouraged from committing similar crimes (**general deterrence**). Thus, general deterrence is a sentencing objective for adult offenders under the *Criminal Code*. However, in 2006, the Supreme Court ruled in *R. v. B.W.P.*; *R. v. B.V.N.* (see the case on page 294) that general deterrence had no role with regard to youth criminals. It should not be used to justify harsher punishments for criminals under the age of 18. See Chapter 10 for more about sentencing principles for youth criminals.

specific deterrence that which discourages the specific criminal from reoffending

general deterrence that which discourages people in society from committing a particular crime

Case

R. v. B.W.P.; R. v. B.V.N., 2006 SCC 27 (CanLII)

For more information, Go to Nelson Social Studies

The Supreme Court of Canada heard the following two appeal cases together in 2006. In 2003, B.W.P. pleaded guilty to manslaughter after another man died from serious head injuries sustained during a fight. When it came to sentencing, the trial judge reviewed the youth's background. He examined B.W.P.'s Aboriginal identity and his minimal criminal record. The judge also noted the positive comments from his family, school, and coaches. Also, tests showed that B.W.P. had a low risk of reoffending.

B.W.P. had served more than three months in pretrial custody. He was sentenced to another 15 months. The Crown wanted B.W.P. to serve two-thirds of the sentence (10 months) in open custody (a group home). The remaining one-third would be served under supervision in the community. Instead, the judge sentenced him to serve just one day of open custody. The remainder would be served in the community. The judge stated that general deterrence (discouraging others from committing the same crime) was not a factor in sentencing youth offenders under the *Youth Criminal Justice Act (YCJA)*. In 2004, the Manitoba Court of Appeal dismissed the appeal. It agreed with the original trial judge. The Crown appealed the decision to the Supreme Court of Canada.

In 2004, B.V.N. pleaded guilty to a charge of aggravated assault related to his involvement with drug trafficking. The judge reviewed B.V.N.'s background. He noted that the accused had an unfortunate family history. He had no convictions for violent crimes. However, he had been suspended from school and then expelled for assault and drug trafficking. Psychological tests revealed that B.V.N. had a high risk of reoffending.

B.V.N. had spent two and a half months in pretrial custody. In addition, he was given a nine-month sentence. The trial judge concluded that general deterrence is only a small factor to be considered in sentencing. The Crown appealed, and the British Columbia Court of Appeal dismissed it, agreeing with the original sentencing judge. Then, B.V.N. appealed his case to the Supreme Court of Canada. He argued that his sentence should be reduced because general deterrence should not be a factor in sentencing.

In June 2006, the Supreme Court of Canada concluded that general deterrence should not be considered when sentencing youths under the *YCJA*. The principles of the *YCJA* allow judges to look at the circumstances surrounding the youths' behaviour. This includes opportunities for rehabilitation and to enable youths to reintegrate into society. As well, youths should be held accountable for their actions. This is done through appropriate penalties that address the harm done. The concept of deterrence is neither mentioned in the *YCJA*, nor did Parliament intend for it to be considered.

The Supreme Court dismissed the appeal in the B.W.P. case. It agreed with the Manitoba Court of Appeal and the trial judge that general deterrence should not be a factor in youth sentencing. In the B.V.N. case, the court concluded that general deterrence did not play a significant role in the sentencing decision by the British Columbia Court of Appeal. Therefore, it did not change the original sentence. Further, B.V.N. had already served his nine-month sentence by the time the Supreme Court had issued its decision.

For Discussion

1. Explain the concepts of general and specific deterrence.
2. Outline the factors considered in determining an appropriate sentence in the B.W.P. and B.V.N. cases.
3. What should judges take into consideration when sentencing youths under the *Youth Criminal Justice Act*?
4. According to the decision in this case, deterrence cannot be used to justify imposing a harsher sentence on a youth offender. Do you agree or disagree with this decision? Why or why not?

Separation of the Offender from Society

According to the *Criminal Code*, one purpose of sentencing is to separate offenders from society. Canada's incarceration (imprisonment) rate is not as high as that of Russia or the United States. However, for some critics, the rate is still too high. In recent years, the Canadian government has moved to reduce the number of offenders who are imprisoned. While the 2008 incarceration rate in Canada showed a slight decline, some of these figures are due to the number of adults incarcerated while awaiting their trial or sentencing hearing.

incarceration imprisonment or confinement

International Incarceration Rates, 2008

Country	Number of Prisoners per 100 000 People
Nepal	24
Japan	63
Sweden	79
Canada	108
MEDIAN	125
England and Wales	151
Russia	627
United States	751

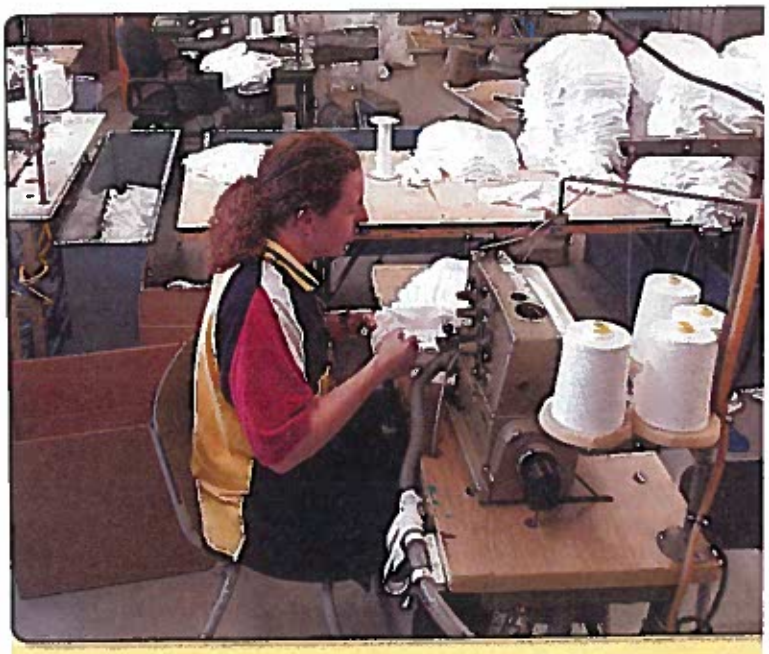
Canada has a below-average incarceration rate compared to other countries.

rehabilitate to help an offender successfully reintegrate back into society

recidivism the act of recommitting crimes

Rehabilitation

The *Criminal Code* also states that sentencing should help to rehabilitate offenders. This involves restoring a person to good mental and moral health, through treatment and training and addressing the root causes of the criminal activities. Over the years, society has come to view it as an important goal of sentencing. Today, for example, inmates are provided with job counselling and training so that they will be able to reintegrate back into society when they are released. Supervised parole helps offenders prepare for this return to society. This should reduce recidivism (repeat offenders committing an offence after release from prison and returning to prison after being convicted of a new offence).



An inmate at the Joliette Institution in Joliette, Québec, learns work skills by sewing underwear in a workshop.

Other Objectives of Sentencing

ations repayment for done to victims and the nunity

Section 718 of the *Criminal Code* outlines other sentencing objectives. It directs judges to consider **reparations** (repayment) for harm done to victims and the community. It provides alternatives to imprisonment. The *Criminal Code* also states that sentences should reflect the harm done to victims and to the community. Judges should also consider whether offenders have shown any remorse (deep regret) for their conduct.

Considerations in Sentencing

The Criminal Code states that a sentence must be proportional. That means that the severity of the punishment must reflect the harm committed. For this reason, the most severe sentences are handed down for offences that are most harmful to society, such as kidnapping or murder.

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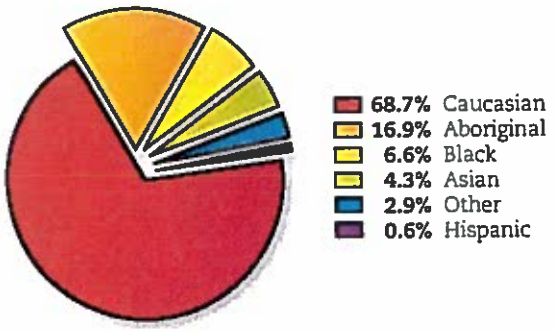
avating circumstances rs that demonstrate the shment should be more severe

The *Criminal Code* also directs judges to increase or reduce a sentence under certain conditions. For instance, there may be **mitigating circumstances**. These are facts or details that lessen the responsibility of the offender. For example, mitigating circumstances could include whether the crime involved a first-time offender. In other cases, the offender may have a good character or a good employment record. In such cases, the penalty may be reduced. The opposite is true of **aggravating circumstances**. These are details about the crime that increase the responsibility of the offender. In such cases, the penalty may be increased. For example, aggravating circumstances could include evidence showing that an offender abused a position of trust or authority in relation to the victim, or committed the crime in association with a criminal organization.

Federal Offender Population by Race, 2007



In 2007, the vast majority of offenders in federal prisons were Caucasian. Between 1993 and 2006, the rate of incarceration in federal institutions decreased 5 percent for Aboriginal offenders and 3 percent for Black offenders.

Lastly, in section 718(2), the *Criminal Code* directs judges to do the following:

- give similar sentences for similar offenders committing similar offences in similar circumstances
- not impose consecutive sentences that are unduly long or harsh
- not deprive offenders of their liberty if less restrictive options are available such as serving a sentence in the community
- consider all options other than imprisonment that are reasonable, especially for Aboriginal offenders, who are overrepresented in prisons

R. v. Gladue, 1999, is a landmark judgment for the way in which Aboriginal offenders are sentenced by the courts (see the case on the next page).

Case

R. v. Gladue, 1999 CanLII 679 (S.C.C.)

For more information, Go to Nelson Social Studies

On June 3, 1996, Jamie Gladue, an Aboriginal, was charged with second-degree murder and pleaded guilty to manslaughter after jury selection. At age 19, she suspected that her fiancé was having an affair with her sister. She stabbed her fiancé with a knife after being provoked. At that time, she had a blood-alcohol content of between 155 and 165. (Double the legal limit is 160.) Gladue was also pregnant with her second child at the time of the murder. She had been raised by her father from age 11, after her mother left the home.

At the sentencing hearing, the judge considered a number of factors about Gladue. She was a young mother, and her only prior offence was an impaired driving conviction. At the time of the offence, she had a hyperthyroid condition, which caused her to overreact to emotional situations. She had shown signs of remorse and had entered a guilty plea. Her family had supported her, and she had attended alcohol abuse counselling and upgraded her education while on bail. She was pregnant with her third child at the time of sentencing.

The sentencing judge also considered a number of factors concerning the incident. She had stabbed her fiancé twice, the second time while he was fleeing. The remarks that she made before and immediately after the stabbing left no doubt that she intended harm. She was the aggressor. During the time she was on bail, Gladue pleaded guilty to having breached her bail on one occasion by consuming alcohol.

Gladue was sentenced to three years' imprisonment and a 10-year weapons prohibition because the judge considered it to be a very serious offence. Her appeals to both the British Columbia Court of Appeal and the Supreme Court of Canada were dismissed. The trial decision was in February 1997, and Gladue was sentenced in October, 17 months after the stabbing. The 7–0 Supreme Court of Canada judgment was released in April 1999.

Photo by Chris Bolin/*National Post*

Following the 1999 Gladue decision, a new court was established in Toronto. Named after Jamie Gladue, the Gladue court is more sympathetic to the mitigating circumstances of Aboriginal offenders. Assistant Crown Attorney Fred Bartley (left) and Duty Counsel Eugene O'Kanne (right) are shown on the steps of the Toronto courthouse where the Gladue court operates.

For Discussion

1. What are the mitigating circumstances in this case?
2. What are the aggravating circumstances in this case?
3. If you were sentencing Gladue, what sentencing objectives would you consider? Explain your choices.
4. What sentence would you have imposed on Gladue? Explain.

Review Your Understanding

1. What is the purpose of a pre-sentence report? What might such a report contain?
2. What is a victim impact statement, and what is its purpose?
3. Briefly explain four main objectives of sentencing.
4. What is a proportional sentence?
5. Distinguish between aggravating and mitigating circumstances.

9.3 Sentencing an Offender

version program a sentence at keeps offenders out of prison

For most people, the word "sentencing" means imprisonment. However, society's views about appropriate sentencing have been changing. The prison system is extremely expensive to maintain. That is why diversion programs have become more popular. These are the types of sentences that keep offenders out of the prison system. Diversion programs are less costly than prison and avoid the problem of the accused socializing with other convicts. These programs also allow the accused to repay society in a more meaningful way.

You Be the Judge

R. v. Millar, 1994 CanLII 7558 (ON S.C.)

For more information, Go to Nelson Social Studies

Scott Millar was charged with first-degree murder in the killing of his father. In a frenzied state and blind with rage, Millar struck the fatal blow. For over 25 years, Millar had been dominated and humiliated by his father. The court found that Millar had been physically, sexually, and psychologically abused in ways that can only be described as cruel, insensitive, inhumane, and unthinkable. The judge noted that this case stood out as one of the most tragic in more than 20 years of criminal law practice. Shortly before the killing, Millar's father cruelly criticized him for his inadequacies and threatened him with a knife. The father's rage was due to Millar's failure to respond to his father's suggestion that it would "be nice to have a glass of milk." If found guilty of first-degree murder, Millar's maximum sentence would be life imprisonment.

- If you were on the jury in this case, would you convict Millar of first-degree murder? Why or why not? What sentence would you impose if you were the judge?

Absolute or Conditional Discharge

absolute discharge a release without conditions, with no criminal record

For a crime that carries a sentence of less than 14 years, the offender may receive a discharge. These can be either absolute or conditional. An **absolute discharge** is effective immediately, with no conditions attached,

A conditional discharge means that the accused can avoid a record of conviction provided he or she follows certain conditions laid out by the judge in a probation order at the time of sentencing. (Probation is discussed below.) In either case, no conviction is recorded against the offender. Generally, a discharge is granted when it is the offender's first offence, or when the publicity attached to the case is so negative that it becomes a kind of penalty or deterrent.

conditional discharge a release with terms, which, if successfully completed, results in no criminal record

suspended sentence a punishment that is not carried out as long as the offender complies with conditions

probation a punishment that allows the offender to live in the community under conditions and supervision

Suspended Sentence and Probation

A judge may give a **suspended sentence** after considering certain factors. These include the character of the accused and the circumstances surrounding the offence. When a sentence is suspended, it is postponed. If the offender meets certain conditions, the sentence will never be served. However, the offender still has a record of conviction and could be placed on **probation** for up to three years. Probation orders can be used in addition to fines and in addition to sentences of less than two years. A suspended sentence cannot be given when there is a mandatory minimum sentence required by the *Criminal Code*. For example, if the offender committed a break and enter with a gun, a mandatory minimum four-year sentence must be given for the weapons offence. Thus, no suspended sentence is possible.

A probation order requires that the accused behave. In other words, she or he must keep the peace. The accused must also appear before the court when required. In essence, the offender must do anything else the judge orders. For example, the offender usually reports to a probation officer and agrees to abstain from alcohol or drugs. If the offender breaches probation, the court might reinstate the sentence, and the offender may have to return to jail.

Did You Know?

In July 2006, Nova Scotia became the first area in Canada to allow the use of electronic ankle bracelets. These are used to track the movements of paroled offenders.

Conditional Sentence

If a sentence is less than two years and the crime carries no minimum sentence, the judge may impose a conditional sentence. In this case, the judge passes sentence but allows the offender to serve the time in the community. The judge must be satisfied that the offender will not endanger the safety of the community. A conditional order is issued, requiring the offender to keep the peace, be of good behaviour, and appear before the court when asked to do so. There may be additional orders to abstain from drugs or alcohol and not carry a weapon, depending on the circumstances of the case.

Allowing offenders to serve their sentence in the community has been hotly debated in Canada. Most prison sentences are less than two years, which is the maximum to be eligible for a conditional sentence. That means that most offenders are eligible. The result is that people who have committed some serious crimes, such as theft without a weapon or even sexual assault, can serve their sentences in the community.

Conditional sentences are intended to be heavier than suspended sentences. In reality, however, there is not much difference in their application by the courts.

Electronic monitoring devices such as this are used for non-dangerous offenders.

Case

R. v. Proulx, 2000 SCC 5 (CanLII)

For more information, Go to Nelson Social Studies

In November 1995, Jeromie Proulx had been at a party with friends where he consumed some alcohol. He decided to drive his friends home early in the morning. Proulx had been a licensed driver for only seven weeks when he drove his vehicle erratically, weaving in and out of traffic on the slippery roads. Eventually, he ended up in the oncoming lane of traffic and crashed his vehicle into another car. A passenger was killed in his own vehicle and another seriously injured in the oncoming vehicle. Proulx himself almost died from the injuries he suffered during the crash.

Proulx was charged with dangerous driving causing death and bodily harm. In June 1997, the Manitoba Court of Queen's Bench judge sentenced him to 18 months in jail. The defence argued for a conditional sentence. The judge disagreed, saying that a sentence served in the community would not deter others from committing similar crimes. Only a jail term would denounce the actions of the offender (condemn the crime on behalf of society).

Proulx appealed to the Manitoba Court of Appeal. In October 1997, the court decided that a conditional sentence was warranted as the offender was not a danger to the community. The Crown appealed this decision to the Supreme Court of Canada.

In its landmark decision, the Supreme Court set down a test for conditional sentences. First, the court concluded that a conditional sentence should be used only for terms of less than two years' imprisonment. Second, the offender should not be a danger if released into the community. Third, the court must consider the purposes and principles of sentencing such as denunciation and deterrence. Finally, conditional sentences cannot be used if a mandatory minimum sentence is required by the *Criminal Code*.

In January 2000, the Supreme Court allowed the appeal. It restored the original 18-month term, saying that the sentence was to condemn Proulx's actions and to deter others from committing the same offence.

Both the Manitoba Court of Appeal and the Court of Queen's Bench of Manitoba sit in courtrooms in the Law Court Building (shown here).

For Discussion

1. Why did the trial judge impose a period of incarceration?
2. What conditions must be met before a conditional sentence can be imposed?
3. Why did the Supreme Court of Canada allow the appeal?
4. Do you think conditional sentencing should be used in drinking and driving cases? Why or why not?

How Courts Apply Conditional and Suspended Sentences

Conditional Sentence	Suspended Sentence
Sentence of imprisonment is imposed, but offender is released on a conditional order.	Sentence is not imposed, but offender is released on a probation order.
Offender must remain within the territorial jurisdiction of the court.	Offender may be ordered to stay within the territorial jurisdiction of the court.
Offender may be ordered to attend a treatment program.	Offender may be ordered to attend a treatment program, but only if offender agrees.
Offender may immediately be imprisoned to serve original sentence if conditional order is breached.	Offender may be sent back to trial judge to be sentenced for original offence if probation is breached. Offender can also be tried for breach of probation.

Courts may consider **conditional sentences** and suspended sentences when sentencing offenders.

conditional sentence a prison term of less than two years that is served in the community under conditions

You Be the Judge

R. v. Law, 2007 ABCA 203 (CanLII)

For more information, Go to Nelson Social Studies

Barry Law was convicted of sexual assault. He received a conditional sentence of two years less a day to be served in the community. The conditions included house arrest for the first six months of the sentence. After that, there was a curfew whenever he was not at work for the following 12-month period. He also had to participate in sexual offender counselling. In passing sentence, the trial judge noted that the offender expressed remorse. He was suitable for community supervision because he was a low risk to reoffend. The Crown appealed this sentence. It argued that the seriousness of the offence justified a minimum three-year prison term, not a conditional sentence to be served in the community. In fact, Alberta case law precedents had established a three-year minimum sentence for serious sexual assaults. The Alberta Court of Appeal overruled the trial judge and sentenced Law to three years in prison. Since this was more than the two-year maximum, there was no question of a conditional sentence.

- Do you think conditional sentencing should be allowed in sexual assault cases? Why or why not?

Review Your Understanding

1. What is a diversion program? What are the benefits of diverting people away from prison?
2. a) What is probation, and what might a probation order involve?
   b) Discuss breach of probation.
3. a) What is the difference between an absolute discharge and a conditional discharge?
   b) What is the difference between a conditional discharge and a suspended sentence?
4. What is the objective of a conditional sentence?
5. What factors must be present for a judge to consider a conditional sentence?

Suspension of a Privilege

uspension a sentence that emoves a privilege, such as driving

Many offences call for the **suspension** of a social privilege. This includes such things as a driver's licence or a restaurant liquor licence. A person whose driver's licence has been suspended will usually have to surrender the actual licence to the court clerk before leaving the courtroom. In many areas, authorities can refuse to issue or renew a licence if a fine has not been paid.

Peace Bond

eace bond a court order requiring person to keep the peace

A **peace bond** is a court order requiring a person to keep the peace and be of good behaviour for up to 12 months. A peace bond is often used in minor harassment or assault cases. Under the *Criminal Code*, someone who reasonably believes that another person will injure him or her, harm family members, or damage property can apply to have that person enter a peace bond. Once the accused has entered a peace bond, charges may be withdrawn, but other conditions are imposed. Usually the accused has to avoid the person who asked that the bond be imposed and agree not to own any weapons.

Parliament has amended the *Criminal Code* with regard to peace bonds. Now, certain parties may be required to enter into a peace bond on the complaint of a citizen. For example, suppose a citizen swears that someone may commit a sexual offence against someone under the age of 14. The judge may order that person to refrain from having contact with persons of that age. The individual may also be banned from any public area such as a swimming pool or park where persons under that age are present.

ompensation something given o make amends for a loss

Someone who is found guilty of vandalism may be required to make restitution. This could involve either washing off the graffiti or repainting to cover it up.

Restitution or Compensation

Restitution or **compensation** requires the offender to repay the victim. The purpose of this penalty is to reduce the impact of the offence on the victim and to compensate him or her.

A victim may ask for restitution at the time of sentencing. The courts consider such compensation in all cases involving harm to property or expenses arising from bodily harm. In granting restitution, the judge may consider a victim impact statement along with the offender's ability to pay. If cash compensation is ordered, payments can be made over time. Restitution can also take the form of work. For example, a group of youths who destroy a homeowner's fence on a night of public mischief might be asked to repair or replace the fence. In addition, the victim can still sue the offender in civil court to obtain anything to which he or she feels entitled. (See Chapter 12 for a discussion on civil law remedies.) The penalty for ignoring a court order granting restitution is imprisonment.

Some communities have programs that bring together offenders and victims and let them work out the compensation themselves. For example, they can determine the type of work offenders can do for the victims. Supporters of this idea believe that it has a more positive effect on offenders than prison sentences would. These meetings also allow victims to tell offenders exactly how the crime has affected them.

Community Service Orders

A judge may sentence an offender to work a certain number of hours for a local organization or on a government project. This is known as a **community service order**. For example, a youth involved in public mischief could be ordered to do community service. This could involve working at a local library placing books on the shelves. Alternatively, it could mean cleaning floors at a town hall.

Community service may enhance the offender's self-worth. In addition, community service allows the offender to associate with upstanding people in the community rather than with criminals in jails. Finally, community service occupies much of the offenders' free time. That way, they do not have idle time to commit other crimes.

High-profile individuals are often sentenced to community service work. For example, a famous person convicted of impaired driving may have to do a presentation at a high school on the dangers of drinking and driving.

community service order a sentence that requires the offender to do specific work in the community under supervision

You and the Law

In the criminal court system, community service is a common sentence used by judges. What types of community services are performed in your community?

Pardon My Planet

Judges often include community service orders in sentencing. What do you think of community service orders?

Deportation

Non-citizens who commit a serious offence within Canada can be deported. They are usually returned to their country of origin but can also be sent to another country. Usually, the federal government applies to the courts for such a direction. This is known as a deportation order. Under the *Extradition Act*, Canadian residents who commit serious offences in other countries can be extradited (returned) to those countries. There, they will stand trial and receive punishment.

Fines

For individuals who commit summary conviction offences, such as causing a disturbance, the maximum fine under the *Criminal Code* is $2000 and/or six months in jail. No maximum fine is provided for indictable offences. If the penalty for an indictable offence is five years or less, the offender may be ordered to pay a fine instead of going to prison. Where the maximum penalty is more than five years, a fine may be imposed, but only in addition to imprisonment. The judge establishes the amount of the fine.

ine option program credit for doing community work instead of paying a fine

An offender may ask to have at least 14 days to pay the fine. A **fine option program** is also available for both provincial and federal offences. Instead of paying a fine, an offender can earn credits for doing work similar to community service. In several provinces such as Manitoba, an offender who cannot afford to pay the fine can register with the local community resource centre and "work off" the debt.

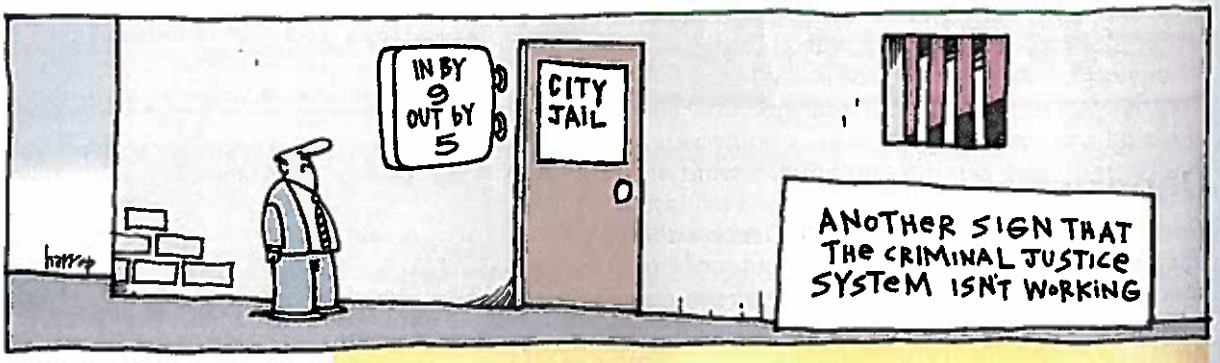
Imprisonment

In Canada, convicted offenders can go to jail for up to six months for most summary conviction offences. Imprisonment means losing your liberty. Some of these offences—such as uttering threats, sexual assault, and failure to comply with a probation order—carry a penalty of up to 18 months if the Crown proceeds by way of a summary conviction offence. Indictable offences carry sentences ranging from two years to life imprisonment, depending on the seriousness of the crime. For a fuller list of offences and their penalties, see Chapter 7.

A judge decides if the amount of time an offender has been kept in custody before trial will count toward the sentence. The standard rule is that pretrial custody is equal to twice the time when considering a penalty. Thus, a person who has been in custody three months awaiting trial will be considered to have served six months of the sentence. There are two reasons for doubling the pretrial time. First, the offender is not eligible for parole on that time served awaiting trial. Second, there are usually no rehabilitation or recreational facilities available in the pretrial detention facilities.

Did You Know?

Of all the inmates in federal prisons, 70 percent are high school dropouts, 70 percent have unstable job histories, and 80 percent have substance-abuse problems. Of all the youth in the system, 66 percent have two or more mental health problems.



The forms of custodial sentences available are often subject to public criticism.

For a jail sentence of 30 days or less, the offender is usually kept at the local detention centre. If the sentence is more than 30 days but less than two years, the offender is placed in a provincial prison or reformatory. Sentences of two years or more are served in a federal penitentiary.

People convicted of two or more offences may serve the sentence either concurrently or consecutively, at the judge's discretion. Offenders receive a **concurrent sentence** when they are convicted of two or more crimes and serve both penalties at the same time. Offenders receive a **consecutive sentence** when they are convicted of two or more crimes and the penalties are served one after the other. A sentence of three years for one offence followed by four years for another would result in a total of seven years in prison.

concurrent sentence a penalty for two or more offences, served at the same time

consecutive sentence a penalty for two or more offences, served one after the other

People convicted of two or more offences may be ordered to serve the sentence consecutively or concurrently.

Parliament wants to curb the activities of criminal organizations. That is why it has amended the *Criminal Code* to let judges impose a sentence of up to 14 years on offenders taking part in organized crime. This sentence is always served consecutively. That means that the time is added to any other sentence imposed, up to a total of 14 years. A sentence for an offence related to a terrorist activity must also be served consecutively to any other sentence given.

At the discretion of the judge, offenders may receive an **intermittent sentence**, serving it on evenings or weekends so they can still maintain a job and a family life. An intermittent sentence can be imposed only if the original sentence is less than 90 days. The court would also issue a probation order, outlining the conditions for the offender when not in prison. Conditions often include no alcohol or drugs, evening curfews, and so on.

The **principle of totality** guides sentencing. This means that someone who is convicted of several violations of the same offence usually does not receive an overly long prison term. For instance, for someone found guilty of 24 charges of passing forged cheques, a year's sentence for each violation (for a total of 24 years) would be severe. A more reasonable total penalty would be two years. However, the penalties should not be so lenient that people are encouraged to commit multiple crimes.

intermittent sentence a jail term of 90 days or less that is served on weekends or at night

principle of totality the rule of looking at all the circumstances to ensure that a fair sentence is given

Why do you think the prison population differs substantially in the various countries?

Prison Population Totals, 2006

Rank	Country	Population
1	United States	2 258 983
2	China	1 565 771
3	Russian Federation	892 330
4	Brazil	419 551
5	India	358 368
6	Mexico	217 436
7	South Africa	165 987
8	Thailand	165 316
9	Iran	158 351
10	Ukraine	149 690
...		
44	Canada	35 110

Sentencing Dangerous and Long-Term Offenders

dangerous offender an offender deemed to be a serious risk to public safety due to repetitive behaviours, and is therefore given an indeterminate sentence

Some criminals commit serious violent crimes. Someone who does this repeatedly may be declared a dangerous offender. These crimes include manslaughter, attempted murder, or aggravated assault. A dangerous offender must demonstrate one or more of the following conditions:

- a pattern of aggressive behaviour that is unlikely to change
- indifference to the effects of his or her behaviour
- brutality that is abnormal
- sexual impulses that will likely cause injury or pain to others

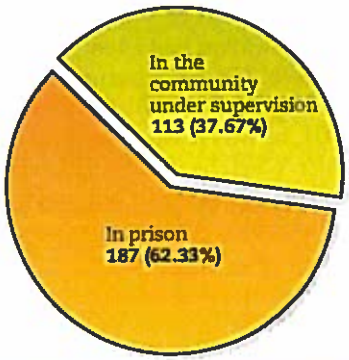
Marlene Moore was the first woman to be declared a dangerous offender in Canada. Some experts believe that she should never have been labelled a dangerous offender. She never killed anyone. In fact, she was prone to slashing herself and eventually committed suicide at the Kingston Penitentiary for Women.

A hearing is called to decide whether someone is a dangerous offender. Before this, the individual is given a psychiatric assessment. However, prospects for treatment or a cure are irrelevant. The offender is not sentenced on the original offence. He or she receives an **indeterminate sentence**. This means that the offender stays in an institution until authorities are satisfied that he or she is able to return to society and display normal behaviour. The National Parole Board reviews the situation of dangerous offenders regularly. Traditionally, Crown attorneys have used the "dangerous offender" provision for violent crimes (murder, sexual assault, and pedophilia). Recently, they have tried to use this designation for persons charged with reoccurring impaired driving offences.

A long-term offender is someone who behaves in ways that could harm others and is likely to offend again. The category of long-term offender was added to the *Criminal Code* in 1997. It was designed to protect society from sexual offenders. Sometimes the Crown applies for the long-term offender designation if it cannot prove the offender is dangerous. A long-term offender is sentenced for the original offence. That individual then receives an additional sentence of up to 10 years of community supervision.

indeterminate sentence a prison sentence without a fixed end date

Long-Term Offenders in Canada, 2005



In 2005, there were 300 active long-term offenders in Canada. The majority of these were sexual offenders. Others had been convicted of assault, arson, and even impaired driving causing bodily harm.

People in Red Deer, Alberta, protest the release of convicted sex offender Lorne Donald Mackenzie. Mackenzie was paroled in 2002. His current whereabouts are unknown.

You Be the Judge

Deacon v. Canada (Attorney General), 2006 FCA 265 (CanLII)

For more information, Go to Nelson Social Studies

Shaun Deacon had a long history of offences against children. He was diagnosed as a homosexual pedophile and named a long-term offender in 1998. In 2001, he was released under a long-term supervision order. When he breached the conditions of the order, he was sentenced to two more years in prison.

In 2004, Deacon was to be released, with conditions. One such condition was that he take medication to control his sexual impulses. Deacon challenged the National Parole Board decision to implement this restriction. He argued that he had a right to refuse to take the medication under section 7 of the Charter, which protects his right to life, liberty, and security of person.

The Federal Court of Appeal ruled that Deacon did have the right not to take the medication. However, the consequences would be that he would be breaking his long-term supervision order and therefore was likely to go back to prison. The court concluded that the medical treatment in this case followed principles of fundamental justice and therefore did not violate section 7 of the Charter.

- Do you agree with this decision? Why or why not?

Capital Punishment in Canada

1962

The law was amended to distinguish between capital and non-capital murder. Capital murders required the death penalty. These were murders that were: 1) planned and deliberate; 2) committed during a violent crime; 3) committed under contract; 4) of a police officer or prison guard while on duty.

1967

After 1962, all death sentences were commuted. In 1967, capital punishment was suspended for five years, except for convicted murderers of police officers and prison guards.

Capital Punishment

There has been much debate in Canada over **capital punishment** (the death penalty). Before 1962, murderers and other criminals in Canada were sentenced to death by hanging. The sentence could be commuted (changed to a lesser penalty) by the federal Cabinet. As the timeline below illustrates, the topic has come up often in Parliament since the 1960s. In 2001, the Supreme Court of Canada confirmed Canada's rejection of the death penalty. The case was *United States v. Burns*, 2001. It also condemned the use of capital punishment worldwide.

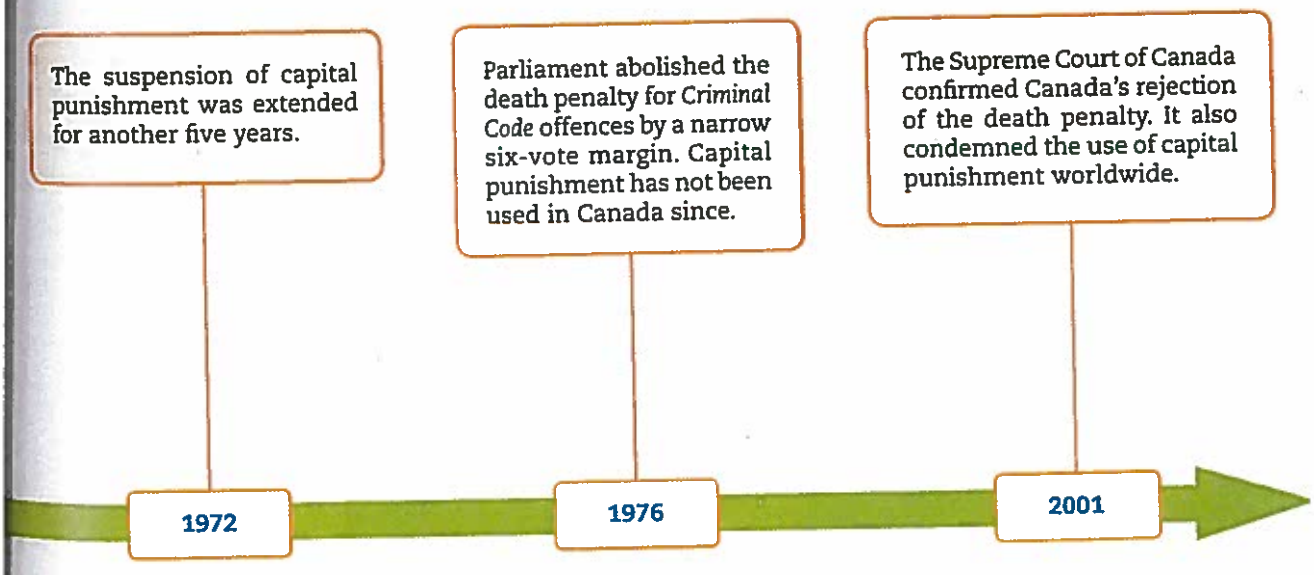
capital punishment
the death penalty

Review Your Understanding

1. When must a judge consider ordering restitution to a victim?
2. Why are community service orders used?
3. In what situations can a fine be imposed instead of imprisonment?
4. Distinguish among the following types of sentences: consecutive, concurrent, intermittent, and indeterminate.
5. What is the difference between a dangerous offender and a long-term offender?

Did You Know?

Between 1867 and 1962, 710 people were put to death in Canada. December 11, 1962, was the date of the last execution, which took place in Toronto.



The last execution in Canada was in 1962. Canada abolished the death penalty in 1976. In the case of *United States v. Burns*, 2001, the Supreme Court of Canada condemned the death penalty.

Did You Know?

The goal of restorative justice programs is to let victims and offenders meet. The situation must be non-threatening. The federal government changed the *Criminal Code* in 1996 to support restorative justice programs.

9.4 Restorative Justice and Victims of Crime

Restorative justice focuses on healing relationships. Rather than focusing on punishing the offender, it tries to deal with those who have suffered because of the crime, including the offender, the victim, and the community. Until quite recently, criminal law did not consider the suffering of victims of crime. The victim usually did not meet the offender after the criminal incident other than perhaps testifying at the trial. However, under restorative justice, the offender and the victim play major roles in resolving the conflict. Through mediation and discussion, program participants seek ways to fix the damage caused by a crime. For more information on restorative justice, see the Issue features on pages 106–107 and 322–323.

Sentencing, Healing, and Releasing Circles

estorative justice an approach to ime that emphasizes forgiveness nd community involvement

entencing circle a way of bringing ogether affected people to help ecide an offender's punishment

ealing circle a process to resolve onflicts between an offender and ne victim

eleasing circle a meeting to plan or the successful return of the ffender to the community

In Chapter 3, you learned that many Aboriginal communities have unique ways to resolve disputes. Some **sentencing circles** bring together the offender, the victim, and others. Together, they recommend a punishment for the offender. The victim and the community are able to express their views concerning the offence. They may even take part in developing the offender's sentence.

Healing circles are held to resolve the conflict between the offender and the victim. They allow both parties to voice their feelings and to indicate that they have undergone a personal healing.

Releasing circles are held in Aboriginal communities at the end of a sentence. Members of the National Parole Board, the community, and the offender meet. The purpose is to prepare a plan for the successful return of the offender to the community.

In this healing circle, Aboriginal people pay tribute to missing First Nations women. This tribute took place outside the Supreme Court in New Westminster, British Columbia, during Robert Pickton's mass murder trial in 2007.

Victims of Crime

The Crown prosecutes a criminal on behalf of society, not on behalf of the victim. The Crown decides on the charge to be laid, introduces the evidence, and asks for a penalty. Although victims assist by giving evidence, their role is usually limited, and they often feel left out of the process. New research has shown that when victims participate in the criminal process, they may recover from the event more quickly. As a result, changes have been introduced to give the victim a larger role.

The federal and provincial governments were concerned about victims of crime. That is why they endorsed the *Canadian Statement of Basic Principles of Justice for Victims of Crime* in 2003. The basic principles provide the following:

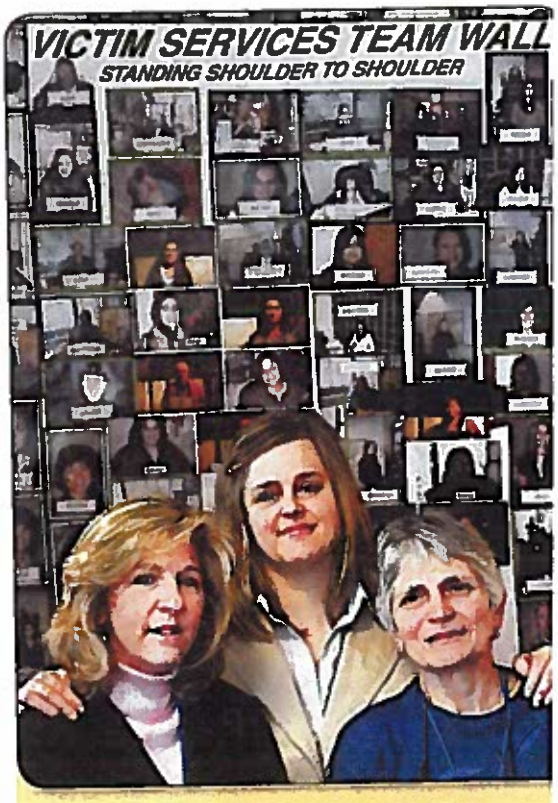
- Victims of crime should be treated with compassion and respect.
- The safety and security of victims should be considered at all stages.
- The privacy of victims should be respected.
- Victims are educated about what happens in the criminal justice process.
- Victims are provided with information about support programs available for victims of crime.

ombudsman a government official appointed to hear and investigate complaints made against the government

In March 2007, the federal government created the Federal Ombudsman for Victims of Crime. An **ombudsman** is an official appointed to hear citizen complaints. This official is impartial and independent of government. The Federal Ombudsman for Victims of Crime provides funding for victim support services. Those services are available across the country. That individual also focuses on specific problems. These include the sexual exploitation of children on the Internet.

Most provinces provide some victim support services. Some services are offence specific, such as sexual assault crisis centres. Others provide assistance to all victims of crime, such as 24-hour crisis and support lines. In some jurisdictions, victim/witness assistance programs provide information about the prosecution process and emotional support during the trial and sentencing. Crown attorneys keep the victims informed of the charges, plea, and sentencing.

Support staff may also assist with the preparation of a victim impact statement. This is a statement about the harm done to the victim and his or her family members. It is usually presented to the judge before sentencing. The statement cannot include any other commentary, such as a suggested sentence. The victim may be allowed to read the statement in court, and may also be called as a witness at a sentencing hearing.



Established in 1990, the Victims Services Program of Toronto provides immediate crisis response and support services to victims. Staff include (left to right) Bonnie Levine, Bobbie McMurrich, and Carolyn Moyer.

The *Criminal Code* lets the Crown request restitution for the victim. As we saw earlier, restitution is the act of restoring or repaying the victim in some way. The judge can also consider restitution without the formal application from the Crown. Restitution can be given for the following:

- damage
- loss or destruction of property
- bodily harm
- loss of income
- cost of support and psychological services

Restitution can even be ordered for "indirect" victims. If a stolen car is bought by someone in good faith, and the car is later seized as part of a criminal proceeding, restitution can be ordered to cover the purchaser's losses. Parliament takes restitution seriously. It has given judges the power to insist that the restitution order be paid before any fine that is imposed.

The *Corrections and Conditional Release Act* gives the victim the right to know the offence for which the offender was convicted. Victims are also informed about the length of the sentence and the penitentiary where the sentence is being served. The act also permits victims to attend parole sessions. There, they can provide a statement to help officials assess whether the release of offenders might pose a risk to society. Victims are told the date of the offenders' release, their destination, and any conditions attached to the release.

Other people may be able to show the parole board that they were harmed "as a result of an act of the offender." These include members of a victim's family. Such people may also receive information about the prisoner's release. In some provinces, a victim can register to be told about the movement of the offender within the prison system and if the inmate leaves or escapes. The former is an absence with permission, and the latter is without permission. Victims may also contact the probation officer dealing with community supervision.

Did You Know?

Between July 2001 and February 2007, 700 victims made statements. This represented 474 parole hearings. Three-quarters of the victims addressed the hearing in person, and the rest were recordings.

At a parole board hearing, the victim sits at the back of the room, away from the actual parole hearing.

Agents of Change

MADD Canada

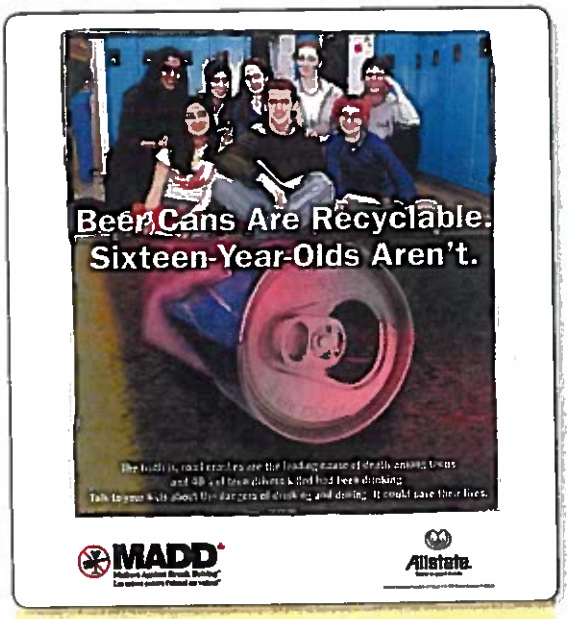
MADD Canada (Mothers Against Drunk Driving) is one of Canada's first victims' rights groups. It helps the victims of drunk drivers and their families. In 1980, Candice Lightner founded MADD in California. Founded in 1990, MADD Canada is the Canadian arm. In 2007, MADD Canada had 85 chapters with approximately 7500 volunteers across the country. MADD Canada works to reform laws against impaired driving and underage drinking. It also promotes safe, sober transportation. MADD Canada makes presentations at schools. In fact, 500 000 high school students and 150 000 elementary students see MADD Canada's presentations each year.

Drunk driving is a serious problem in Canada. Each day, impaired drivers kill nearly four Canadians and injure 187. Approximately 70 000 Canadians are impacted by impaired drivers each year.

In 1999, the federal government passed tougher drinking and driving laws. MADD Canada's lobbying efforts played a large role in these reforms. The government increased the minimum fine for impaired driving from $300 to $600. It also increased the penalty for someone convicted of impaired driving on a suspended licence from two to five years in prison. In 2000, the federal government passed legislation increasing the penalty to life imprisonment for people convicted of impaired driving causing death. Judges can now require convicted drunk drivers to enter treatment programs as part of their sentence. Victims of drunk drivers can read their impact statements in court.

MADD Canada continues to pressure the government for tougher impaired driving laws. MADD Canada supported the federal government's *Violent Crime Reduction Bill* in 2008. The organization believes that police should be able to lay charges at fatal crash scenes. Further, that same year, MADD Canada supported the Ontario government's decision to pass a new civil law. The law allows courts to confiscate (take away) vehicles from repeated drunk drivers. If the owner of a vehicle has had his or her licence suspended for impaired driving more than twice in the preceding 10 years, the vehicle can be taken and sold.

MADD Canada wants the government to lower the legal blood-alcohol concentration from 80 to 50. Some other countries have done this already. It is estimated that there are over 90 000 impaired driving convictions in Canada per year. However, MADD Canada recognizes that there is still a long way to go to put an end to impaired driving in Canada.



How does an organization like MADD Canada influence the law in Canada?

For Discussion

1. How has MADD Canada addressed the issue of impaired driving in Canada? How has the federal government responded?
2. What rights should a victim have in court?
3. What do you think can be done to reduce impaired driving in Canada?

Activity

To learn more about MADD Canada,

Go to Nelson Social Studies

Criminal Injuries Compensation Fund

All provinces have some form of victim compensation scheme. This is public money to compensate anyone who is injured in some way when a crime is committed. Victims sometimes turn to the fund because the criminal has no money or has not yet been caught.

The award is intended to cover specific situations, such as the following:

- lost pay
- pain and suffering from injuries
- medical bills and prescriptions
- loss of income by dependants if the victim dies (for example, funeral expenses)
- child support for the offspring of sexual assault

In fact, the fund can cover anything that the board feels is reasonable. Each situation must be verified. However, the victim must return the money if he or she successfully sues the offender for compensation.

Allowing victims to meet offenders in a non-threatening setting is the goal of restorative justice programs. The Centre for Restorative Justice is located in the School of Criminology at Simon Fraser University. It provides a number of programs and services to support and promote restorative justice. The Centre is funded by the Correctional Service of Canada.

Review Your Understanding

1. What are the purposes of sentencing circles, healing circles, and releasing circles? Why do you think these circles are successful in Aboriginal communities?
2. What programs are available to victims at the time of the offence?
3. What programs are available to victims during the trial and sentencing?
4. What programs are available to victims after the offender has been convicted?
5. Outline the right of a victim to receive restitution.

9.5 Appeals

appellant the party who requests an appeal (review) in a higher court

respondent in an appeal, the party who opposes the action sought by the appellant

The right to request an appeal of a court decision is an important part of criminal procedure in Canada. Both the accused and the Crown have rights of appeal, as outlined below. The party that makes the appeal request is called the **appellant**, and the other party is called the **respondent**. If the appeal is requested for a reason that is not set out in law, the request will be dismissed. For example, neither side can appeal simply because they did not like the decision. A legal mistake must have been made. Appeal courts were discussed in detail in Chapter 4.

Generally, a period of 30 days is allowed to apply for an appeal. During the appeal time, the accused may apply to be released. If the court agrees to a release, conditions may be imposed.

For appeals of summary conviction offences, the court examines the trial transcript. It may consider a statement of facts in which both

parties write down the facts as they see them and then agree about what actually occurred. It saves time arguing about things that were already agreed upon by the defence and the Crown. For appeals of indictable offences held in the higher courts, the appellant and the respondent present their arguments. New or "fresh" evidence is admitted only if it would have affected the results of the trial, such as evidence showing that another person did the crime.

Both the Crown and the defence can appeal a conviction, a verdict, a sentence, or rulings on fitness to stand trial for a summary conviction offence if any mistakes were made. The appeal can be based on a mistake about the law or the facts (a question of law or fact). An appeal on the basis of law may question a judge's interpretation of the law; an appeal on the basis of fact is usually based on whether evidence was relevant or credible.

Grounds for Appeal for Indictable Offences

By the Defence (appeal of a conviction)	By the Crown (appeal of a decision of not guilty)
• a question of law • a question of fact (if the court gives permission) • any other reason that the appeal court believes is worthy	• a question of law • the sentence (if the court gives permission) • a trial judge orders an indictment invalid, or stays the proceedings

An appeal court will consider reasons put forth by the Crown and the defence when deciding whether to grant an appeal.

When a case goes to appeal, the necessary information is collected. This includes a transcript of the evidence taken at trial, charges to the jury, reasons for the trial judge's decision, and possibly a report from the trial judge. The appeal court, which usually has three judges, votes on the final decision. The reason for the majority decision is disclosed, and any dissenting judges may state why they disagree. The court can also rule on which party will pay for the costs of the appeal.

The defence may be successful if the evidence does not support the guilty verdict, if there was an error of law, or if there has been a miscarriage of justice (for example, evidence indicating another person did the crime). The accused is then released. The appeal court may also change the verdict of the original court, change the sentence, or order a new trial. Based on the rule of precedent, the lower courts must follow the decisions of a higher court. For example, if a higher court decided that there was an error in law by the lower court and a new trial was necessary, there would be a new trial.

All About Law DVD

"Isabel Lebourdais" from *All About Law DVD*

Review Your Understanding

1. When can the accused appeal a summary conviction offence decision?
2. What is the difference between a question of law and a question of fact?
3. On what basis can the Crown appeal an indictable offence decision?
4. On what information does the appeal court base its decision?
5. Identify the options the appeal court has in making its decision.

9.6 Canada's Prison System

Canadians differ widely in their opinion of how prisons should operate. They also disagree on how offenders should be treated. Some people believe that offenders should remain in prison for as long as possible—the maximum time allowed by law. Others believe that since offenders are partially shaped by society, the prison system should work to rehabilitate them.

orrectional services government gencies responsible for offenders

losed custody the most secure orm of detention in a prison, vhich is under constant guard

›pen custody detention that s supervised and allows some upervised access to the community

Entering the Prison System

An offender who goes to prison comes under the jurisdiction of provincial or federal correctional services. Offenders sentenced to terms of less than two years serve time in provincial jails. Those with longer sentences serve them in federal penitentiaries, which are operated by the Correctional Service of Canada. Each province has its own correctional services regulations. It is responsible for offenders in provincial prisons.

Correctional services are responsible for the following:

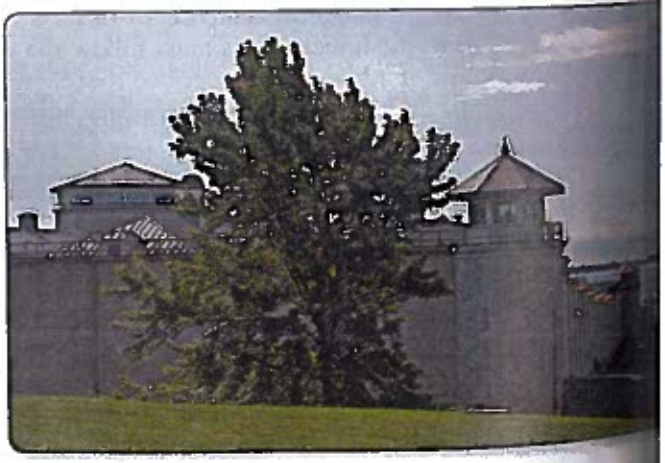
- incarcerating all offenders
- processing parole applications
- running probation services

Inmates in provincial institutions serve time in one of three types of facility. The first is a closed custody facility. These are reserved for offenders who are dangerous, likely to escape, or are hard to manage. The second is an open custody facility. These institutions provide an opportunity for inmates to work. The third type are community correctional centres. These centres offer less security than minimum-security prisons. Inmates in these facilities are allowed to work or go to school every day and return to the correctional facility at night. Many of the residents are inmates on day parole.

There are three levels of security at federal prisons:

1. maximum security (for the most dangerous offenders)
2. medium security
3. minimum security

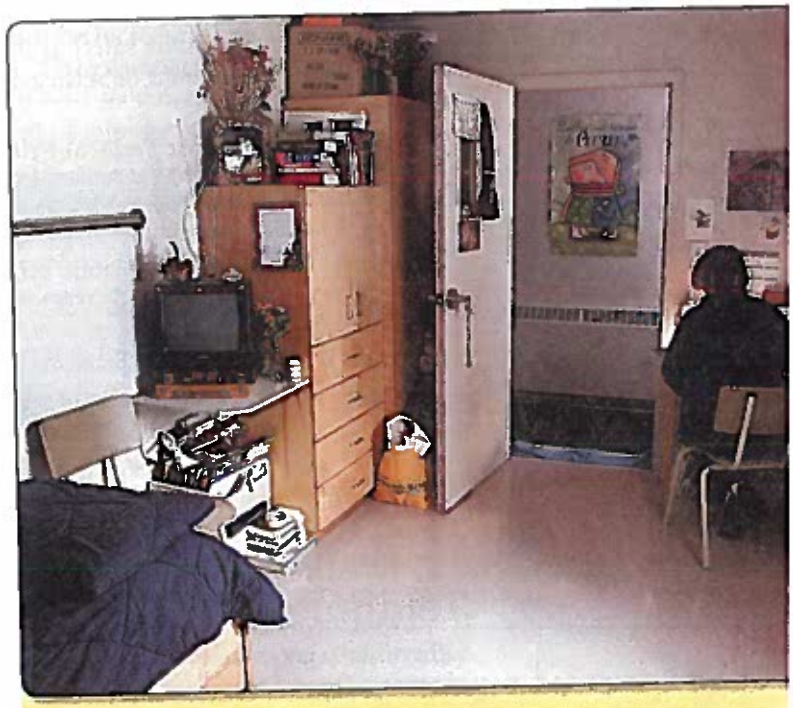
here are usually no fences r walls surrounding ıinimum-security facilities, uch as this one in Sainte-ınne-des-Plaines, Québec eft). Inmates are generally ıon-violent and pose limited isk to society. Maximum-ecurity facilities, such as the Kingston Penitentiary in Kingston, Ontario (right), are urrounded by high (6 metre) valls and fences with guard owers. The movement of nmates in maximum-ecurity facilities is rigidly ontrolled because inmates ›ose a serious risk to staff, ›ther inmates, and society.



How are offenders assigned to institutions? After sentencing, they are assessed to determine their level of risk and their need for rehabilitation. Next, an institution is selected. This is based on the type of crime the offender committed. Then, officials have to assess the risk of escape. Beyond that, the availability of rehabilitation programs in particular institutions is evaluated. Finally, the location of the offender's family is considered. Authorities also try to place offenders where they will have contact with their own culture and language. Those convicted of first-degree and second-degree murder have to serve at least two years in a maximum-security prison. After that, they can apply to move to a lower-security facility.

In prison, an inmate is assigned to a case management team. This group helps the inmate with rehabilitation. It also encourages him or her to broaden social contacts to include good influences and positive role models. Institutions offer a broad range of programs, including life skills and literacy programs, and treatment programs for substance abuse, sex offences, and family violence. Inmates are also encouraged to enroll in educational programs. They are paid a daily allowance, which can be used at the prison store.

The *Corrections and Conditional Release Act* outlines the discipline procedures of inmates in prison. The act governs the day-to-day management of inmates, including their placement and transfer. It also involves their general living conditions. The act details the discipline, searches, and health care of inmates.



An inmate reads in her room at the women's prison in Joliette, Québec. This is a medium-security facility.

Review Your Understanding

1. List the responsibilities of correctional services.
2. What is the difference between open and closed custody?
3. What is a community correctional facility, and what level of security is provided?
4. Identify the factors considered when assigning an offender to a correctional institution.
5. What determines the location in which an offender spends a prison term?

Did You Know?

In the 31-year period between 1975 and 2006, there were 513 homicides committed by 409 offenders on conditional release.

ole the release of an inmate
) the community before the
sentence is served

Activity

To learn more about parole,

Go to Nelson Social Studies

A variety of release programs are available to offenders, but they will not always be granted.

9.7 Conditional Release

Conditional release is often referred to as house arrest. It allows the offender to get out of prison and to serve the remainder of the sentence in the community while under supervision. The *Corrections and Conditional Release Act* outlines the rules governing conditional release. The goal of conditional release is to allow offenders to return to society under supervision. This helps to prepare them for the time when they will be released unsupervised. The National Parole Board is appointed by the federal government and has jurisdiction over parole for most of Canada. The exceptions are the provincial prisons in Québec, Ontario, and British Columbia. These provinces have their own parole boards. Public safety is the main consideration for determining whether an inmate should be released.

Release Programs for Federal Prison Inmates

Type of Release	When Granted	Duration
Escorted absences	Any time	5–15 days
Unescorted absences	After one-sixth of sentence is served, or six years, whichever is greater	2 days if in medium security 3 days if in minimum security
Day parole	Before full parole	Daily; return to halfway house
Full parole	After one-third of sentence is served, or seven years, whichever is less	Until completion of sentence if conditions are followed
Statutory release	After two-thirds of sentence is served	Until completion of sentence if conditions are followed

Temporary Absence

Officials may grant inmates absences. These may be either escorted or unescorted absences, depending on the inmate and the reason for the absence. Authorities may grant absences for a variety of reasons, such as the following:

- to participate in rehabilitation programs
- to obtain medical treatment
- to attend significant family events

All offenders are eligible for absences based on medical or humanitarian grounds. For other types of absences, offenders classified as maximum security are not eligible.

During escorted absences, prison staff accompany offenders. Sometimes citizen volunteers do this. From the time offenders enter prison, they are eligible for escorted absences. Those eligible for an unescorted absence also qualify for work release. As the name implies, that program allows inmates to be temporarily released in order to work outside the prison. The National Parole Board must grant permission for certain unescorted absences. These include anyone whose crime involved violence, children, or drugs. Maximum-security offenders are not eligible for unescorted absences.

Did You Know?

The National Parole Board conducts between 22 000 and 24 000 annual reviews. Of these, 1200 to 1500 involve provincial cases. The rest relate to federal cases.

To parole an offender means to release him or her after a portion of the sentence has been served. **Day parole** means releasing the offender during the day, but he or she must return to the institution each night. Day parole allows offenders to go to work or school to prepare for full parole or statutory release. An inmate serving a life sentence is eligible for day parole three years before full parole eligibility.

Full parole happens when an offender has served a minimum amount of his or her sentence. This is usually one-third of the sentence or seven years, whichever is less. The date for a review for full parole is automatically set at the beginning of an offender's incarceration. Any judge imposing a penalty of two or more years has the right to increase the minimum time that must be served before parole eligibility. It can be increased up to one-half of the sentence or 10 years, whichever is less. For example, a judge could increase a 20-year sentence by 10 years or a 10-year sentence by 5 years.

During the parole review, a great deal of information is compiled:

- What efforts at reform has the offender made in prison?
- What are the results of a personality assessment?
- Has the offender received and benefited from treatment?
- Does the offender understand the nature and seriousness of the offence?
- Does the offender have a place to live following release?
- Does the offender have any job prospects?

After this information is compiled, a parole hearing is set. The offender and observers may attend the hearing with the board's permission. The board reviews the information before it, which may include submissions from victims who have been harmed by the offender.

The parole board can grant parole, deny parole, or reserve its decision. If parole is denied, the board generally must review the case every two years. If parole is granted, a date is set, and a parole supervisor is assigned. Parole is a conditional system. The parolee is the person who has been granted parole. If that person violates any conditions set by the board, he or she may be brought back to serve the rest of the sentence. If the conditions are respected, parole ends when the original sentence would have ended.

day parole the temporary release from custody of an offender under specific conditions

statutory release an inmate's release from an institution as required by law

full parole an offender's complete release from custody into the community under specific conditions and supervision

Brenda Martin (left) is a Canadian woman who spent more than two years in a Mexican jail accused of fraud. She was transferred to a Canadian prison and paroled in May 2008.

Parole Statistics, 2003–2006

Day Parole

7500 (84%)	Completed successfully
1100 (12%)	Breach of conditions
400 (4%)	New offences

Full Parole

3250 (73%)	Completed successfully
800 (18%)	Breach of conditions
400 (9%)	New offences

While most parolees complete their parole successfully, some parolees do break their parole conditions or commit new crimes.

In February 2008, the National Parole Board granted Robert Latimer day parole. He served seven years in prison. He was convicted in October 1993 of second-degree murder in the death of his 12-year-old daughter, Tracy, who was severely disabled. (For a complete discussion of the *Latimer* case, see Chapter 7.)

Parole for Murder

Offenders who have committed murder are subject to different parole rules and conditions. The *Criminal Code* states that first-degree murderers sentenced to life in prison are not eligible for full parole for 25 years. Thus, a life sentence does not mean that the offender will spend life in prison. In fact, most who receive a life sentence are released. However, they do remain on parole and under supervision for the rest of their lives. Those convicted of second-degree murder have their parole eligibility established by the judge at the time of sentencing. This is usually between 10 and 25 years. In a trial by jury, the jury can recommend an appropriate time length for parole eligibility. The judge is not bound by the jury's recommendation. Other considerations when considering an offender's eligibility for parole include the character of the offender, the nature of the offence, and the circumstances in which the offence was committed.

Both groups may be eligible for unescorted temporary absences and day parole three years before their full parole eligibility date. As well, those sentenced to more than 15 years before being eligible for full parole may apply for a judicial review after 15 years. This is referred to as the **faint hope clause**. For example, someone who would not be eligible for parole for 20 years could apply for parole review after 15 years. This clause was introduced to recognize that an inmate may be rehabilitated. Offenders convicted of more than one murder, however, are not eligible for judicial review.

When such an appeal is made, a judge must consider several things:

- the character of the applicant
- the offender's conduct in prison
- the nature of the offence
- victim impact statements and other relevant information

If the judge approves the review, a superior court judge holds a hearing with a jury. The jury must unanimously decide that the parole eligibility period should be reduced. Also, a majority of jury members must decide by how many years.

ıint hope clause reconsideration f parole eligibility for an offender ıntenced to at least 15 years prison

ccelerated review a parole ɔard review of an offender's igibility after one-third of the ıntence is served

Accelerated Review

Some offenders are eligible for an accelerated review. These include those who are serving their first term in a penitentiary. They qualify if their offence did not involve violence, sex, drugs, or organized crime. These hearings determine the offender's eligibility for early parole. They must be released on full parole unless the parole board can find reasonable grounds to believe the offender is likely to reoffend.

Statutory Release

By law, prisoners are entitled to statutory release. That means that they are able to spend the final one-third of their sentence in the community under supervision. There are some exceptions, however. These include those serving life or indeterminate sentences. Although statutory release is usually automatic, the parole board can add conditions to the release. It can also deny parole to certain offenders.

Royal Prerogative of Mercy

The federal government has the power to grant a Royal Prerogative of Mercy. This dates from the days before democracy when the sovereign had the power of life and death over all. Applications are made to the National Parole Board. The board then investigates and makes recommendations to the solicitor general. Under a Royal Prerogative of Mercy, an inmate may have a fine or prison sentence rescinded (revoked). Alternatively, he or she may be issued a pardon. One of the most celebrated cases of a pardon in Canada involved Mi'kmaq Donald Marshall Jr. He spent 11 years in prison for a crime he did not commit. A royal commission cleared Marshall of any responsibility.

Royal Prerogative of Mercy the right to revoke a fine or prison sentence or issue a pardon

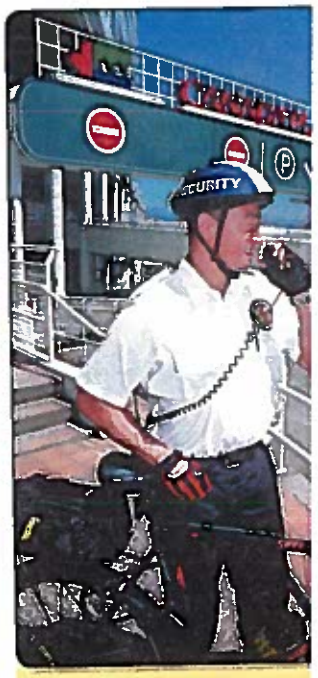
pardon being excused of a crime

bonding insurance that guarantees the honesty of a person who handles money or other valuables

Criminal Records

For some people, the penalty for having a criminal record may only be embarrassment. For others, it may seriously restrict their job opportunities and ability to travel to foreign countries. For instance, many jobs require bonding. Bonding is insurance that guarantees the honesty of a person who handles money or other valuables. A person with a criminal record usually cannot be bonded. Also, some countries, such as the United States, refuse to admit persons with a criminal record. For those with landed immigrant status in Canada, a criminal record could result in deportation.

As of July 24, 1992, the RCMP will remove from its computer system the record of anyone discharged following the court decision. For records prior to that time, the person must apply to the RCMP. Those with convictions can apply to the National Parole Board for a pardon. If successful, the offender's criminal record is kept separate from others. The offender must be free of other convictions during the waiting period. That is generally three to five years after completing the sentence. Provincial human rights legislation prohibits employment discrimination against anyone with a criminal record. The *Canadian Human Rights Act* forbids discrimination based on a pardoned conviction.



Security guards are bonded if they are required to work with cash or other valuables.

Review Your Understanding

1. Who has jurisdiction over conditional release? What factors are considered in a release review?
2. What is the difference between escorted and unescorted absences?
3. What is the purpose of the faint hope clause?
4. Explain the circumstances under which statutory release is allowed.
5. Who is eligible to have a criminal record erased?

ISSUE

Are Restorative Justice Programs Good for Victims?

Restorative justice emphasizes healing for the victim of crime. It also tries to establish accountability for the offender. This system provides a new way to resolve conflict. It emphasizes forgiveness and also involves the community.

Victims' rights have received much more attention in recent years than previously. Canadian governments at various levels have passed laws to protect the rights of victims. They have also tried to involve victims in what happens to those who caused them damage. In 2008, the federal government even created the first Federal Ombudsman for Victims of Crime. This was to give victims a larger role in the criminal justice system.

On One Side

Some Canadians believe that victims should play a major role in restorative justice programs. Corrections Canada has used such programs since the mid-1990s. These bring together victims, offenders, and community members after a crime has been committed. Through mediation and discussion, program participants seek ways to fix the damage caused by a crime.

Restoration programs emphasize healing, forgiveness, and community involvement. They reach out to victims, their families, and offenders. In an effort to prevent future crime, they try to discover why offenders committed the crimes. The process helps victims describe how the crime affected them and their family members. It also permits offenders to explain the reasons for their actions, express their remorse, and compensate the victims. Some victims feel that the process is very positive. It allows them to understand the incident and the offender better. The process also makes it easier for the victim to forgive the offender and feel safe again in the community.

The federal government changed the *Criminal Code* in 1996 to support these programs. It stated that there are other ways of dealing with criminals than simply throwing them in jail. All these alternatives should be considered. Aboriginal offenders should be included in restorative justice programs where possible. Both Aboriginal and non-Aboriginal offenders may participate. These programs seem to be meeting the needs of victims and the community.

On the Other Side

Many victims are afraid to meet their offenders and feel threatened when they do. Some victims say that the crimes committed against them are so terrible that they could never meet the offenders or work with them to find solutions.

Victims' rights groups say that restorative justice programs pay too much attention to offenders. They believe that victims are pressured to get involved with such programs. Instead, they would like to see governments take some of the money spent on restorative justice programs to increase compensation for victims of crime.

However, some of these critics applaud other changes made by the government. For example, amendments made to the *Criminal Code* in 1999 allow victims to read a victim impact statement in court. Judges can also order offenders to pay damages to victims. If an offender does not pay, the victim has the right to go to civil court and seize the assets and wages of the offender.

The goal of restorative justice programs is to let victims meet offenders in a non-threatening setting. Still, many victims decline to participate.

The Bottom Line

Restorative justice programs are useful to victims and offenders. They also benefit governments. These programs are designed to keep offenders out of prison. That reduces the number of cases before the courts, which saves the system money. Although many victims support these programs, they also want laws that punish offenders and prevent crime. Supporters of restorative justice programs think that people who commit less serious offences can benefit from these programs. They say that such offenders will only be hardened in prison. An emphasis on support and treatment programs can help these people rejoin society instead of turning to a life of crime.

What Do You Think?

1. Explain the term "restorative." What are the purposes of restorative justice programs?
2. What role do victims of crime play in these programs? How can they benefit?
3. What criticisms have been made of these programs?
4. How do restorative justice programs seem to be in conflict with victims' groups?
5. Outline your opinions of restorative justice programs and victims' groups. Discuss with a classmate.

Chapter Review

Chapter Highlights

- The defence and the Crown can both make submissions on sentencing.
- A judge uses a variety of information to establish an appropriate sentence.
- The *Criminal Code* outlines the objectives of sentencing.
- The *Criminal Code* directs judges to either increase or reduce a sentence if there are any relevant aggravating or mitigating circumstances.
- Sentences are to be proportional: they are to reflect the degree of harm caused.
- The principle of totality states that an offender should not be sentenced to an overly long prison term.
- Sentences for multiple offences may be served consecutively or concurrently.
- Violent offenders may be classified as dangerous offenders or long-term offenders.
- Restorative justice focuses on healing relationships.
- Sentencing circles are used as a means of healing the offender, the victim, and the community.
- Victims of crime have rights at the time of arrest, trial, sentencing, and parole.
- The rules for appealing judgments and sentences are very specific.
- There are many types of release available to inmates: day parole, escorted absences, unescorted absences, work release, full parole, statutory release, and a Royal Prerogative of Mercy.
- The time for parole eligibility for murderers is specified at the time of sentencing.
- Free pardons and ordinary pardons can be granted by the federal government.
- An offender can apply to have his or her criminal record removed from the police computer system.

Check Your Knowledge

1. Summarize the objectives of sentencing under the *Criminal Code*.
2. Outline the sentencing options available, and provide an example of each.
3. Explain the role of victims at the time of sentencing and during the parole application process.
4. Explain the various forms of conditional release, and provide an example of each.

Apply Your Learning

5. For each of the following situations, indicate whether or not you would impose a conditional sentence, and, if so, what additional requirements you would add on as part of the conditional sentence order. Give the reasons for your decision.
   a) In *R. v. Habib*, 2000, a babysitter was convicted of aggravated assault to an 18-month-old child. The child had a brain injury, a skull fracture, and serious injuries to her eyes, caused by shaken-baby syndrome. The babysitter had acted responsibly when it first appeared that the child required medical assistance. The babysitter was a first-time offender with exemplary reports about her child care. The child recovered well from her injuries.
   b) In *R. v. Dharamdeo*, 2000, a young man was convicted of impaired driving after his car split a lamppost in two and demolished a bus shelter. Later, he was found guilty of impaired driving causing bodily harm for another incident after his car became airborne and struck two other vehicles. One person was injured. In the first incident, he was in violation of his learner's permit, which required that he drive with a licensed driver.
6. For each of the following cases, decide upon a sentence for the offender. Outline the rationale for your decision, including

which sentencing objective is most important. (The maximum sentence allowed for the offence is shown in parentheses at the end of each case.)

a) Welch was 18 years old when he and several others robbed a grocery store of $3200. Weapons and disguises were used. He robbed a small country store 30 days later, and the victim was treated roughly. Welch was apprehended. While out on bail, he and others robbed two Calgary gas stations at gunpoint, departing from the crime scenes in Welch's car. Trial evidence indicated that Welch came from a stable, supportive family, and he had done well in school and in community activities. He had hung around with friends who had a bad influence on him, and he had been somewhat out of control for four years. (life imprisonment)

b) Travis, an M.B.A. student, was charged with the theft of pens, markers, and other items from the University of Western Ontario bookstore. The merchandise was worth just over $17. At the time of the offence, Travis had already purchased $125 worth of goods and had $36 in his wallet. He had been under emotional stress because of problems with his family and with his university studies. Before his trial, Travis apologized to the bookstore management. He also offered to work in the store on a voluntary basis as a penalty for his offence and as a form of compensation. (2 years)

Communicate Your Understanding

7. In recent years, victims have been given more access to the criminal justice system. They are provided with aid at the time of the incident. During the trial, they are kept informed. At sentencing, they are given the opportunity to provide input. They are kept informed of the inmates' imprisonment. As well, they are allowed to provide input at the time of a parole application. Summarize these rights by drafting your own victims' bill of rights. Outline rights that would provide recognition and support for victims at all stages of the criminal justice process.
8. In your opinion, should the correctional system be allowed to use electronic monitoring to track the location of offenders who are on parole? Explain.

Develop Your Thinking

9. A new federal crime law, the *Tackling Violent Crime Act*, was passed in February 2008 that announced tougher penalties for crimes, including more mandatory minimum sentences. Do you think that mandatory minimum sentences should be included for al *Criminal Code* offences? Why or why not?
10. Some people believe that too many inmates are given some form of conditional release. They also feel that there are too many offences committed by those on release. Is conditional release a valuable use of resources in preparing offenders to return to society? Use the data on release given in this chapter as well as other information to develop and support your opinion on this issue.
11. California has a three-strikes law by which a person convicted of three offences receives life imprisonment. Steven White, a two-time offender, stole a $146 videocassette. Rather than face life imprisonment, he committed suicide. Another person faced life in prison for having stolen four cookies. Do you think that Canada, like California, should institut more severe penalties for repeat offenders? Explain. Support your opinion by researchi rates of recidivism in Canada.