Appendix III — List of Some of the Cases Forming Basis for High Risk Offenders' Debate

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I. PROFITS AVAILABLE FROM THE CRIME

In the case of economic crimes, it is important to assess the profit available as part of an understanding of the seriousness of the crime. This discussion is most often seen in drug cases but it applies in any number of situations. In *Pearce*[1] the court noted that, with a view to increasing profits, the appellant's scheme had eliminated the usual layers of middle-men. In *Robert : Schacher* the Ontario court of Appeal cited with approval a passage from a judgment delivered by Lord Justice Cairns in an English case :

> *What must be taken into consideration is that the profits available from this kind of traffic are so substantial that the courts will not be doing their duty if they fail to impose such sentences as will make it clear to these young men and to others who might think of following their example, that this kind of crime will not be allowed to pay*.[2]

The court noted that in cases of drug-trafficking, unlike other crimes, this was not merely a consideration but the paramount consideration. There, the existence of a substantial commercial aspect may make a difference between a custodial and non-custodial sentence.[3] The general rule can be applied to any crime which has a commercial aspect to it. But the use to which the money was put may disclose a mitigating circumstance. There is a distinction between money spent on hight living, and money spent for other purposes such as an attempt to pay debts.[4]

In *Raber*,[5] the fact that the ransom request was for millions of dollars in this particular kidnapping was an aggravating factor.

II. MOTIVE

Motive is always important :

> *The motive of the man is quite immaterial on the question of guilt or innocence; though, of course, of much moment on the question of the penalty to by paid, if guilty*.[6]

> *[T]here is a vast difference between a case where the accused intends to steal from his victim and cause him immediate loss with no real intention of repayment and a case such as the present, where the object of the accused was to obtain a loan by deceit and not to cause any loss to his victim*.[7]

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1. *R.* v. *Pearce* (1974), 16 C.C.C. (2d) 369 (Ont. C.A.).
2. *R.* v. *Raber* (1983), 57 A.R. 360 (C.A.).
3. *R.* v. *McLay* (1976), 17 N.S.R. (2d) 135 (C.A.).
4. *Basilian* (1989), 11 Cr. App. Rep. 42 (C.A.).
5. *Supra* note 2.
6. *R.* v. *St. Clair* (1913), 21 C.C.C. 350 at 352 (Ont. C.A.).
7. *R.* v. *Schell and Moran* (1982), 32 B.C.L.R. 334, at 342 (C.A.).

Our courts seem prepared and ready to deal with ordinary motives for crime, but there is a special disdain for crimes committed with certain particular motivations. In *Ingram and Grimsdale*,[8] two accused had engaged in a racially motivated attach upon a non-white immigrant to Canada. The Court of Appeal stated firmly that the racial motivation for the cowardly attack was an aggravating factor to be taken into consideration.

> [...] *Just as it would be an aggravating factor if the victim were elderly, feeble or retarded. It is a fundamental principle of our society that every member must respect the dignity, privacy and person of the other. Crimes of violence increase when respect of the rights of others decreases, and, in that manner, assaults such as occurred in this case attack the very fabric of our society.* [...] *An assault which is racially motivated renders the offense more heinous. Such assaults, unfortunately, invite imitation and repetition by others and incite retaliation. The danger is even greater in a multicultural, pluralistic urban society*.[9]

The fact that an assault exemplifies and flows from prejudice is an aggravating factor; such violence should always be dealt with severely, and the idea of the deterrent sentence in such cases[10] is strong.

In *Lelas*[11] the accused spray-painted a synagogue and a hebrew school with Swastikas and anti-semitic slogans. The offender belonged to white supremacists groups, and was the leader in Ontario of the Klu Klux Klan. He co-operated and admitted he committed the offense to "get attention from my friends and show off". He apologized to the Jewish community. The court professed not to sentence Lelas for his political or social beliefs, but did take them into account, to explain his actions. The court noted that such offenses "invite imitation and incite retaliation". They "cause emotional upset and injury" beyond the damage to the buildings. The offender was "not merely intending to damage property but, to use his words, he wanted to ‹enrage the Jewish community'".

> *When mischief is racially or religiously motivated and is done to cause emotional injury or shock to a particular segment of Canadian society, it calls for a far mote severe penalty than mischief which is done merely to damage property.*[12]

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8. *R.* v. *Ingram and Grimsdale* (1977), 35 C.C.C. (2d) 376 (Ont. C.A.); *Simms* (1991), 60 C.C.C. (3d) 499 (Alta C.A.); *R.* v. *Cameron* (1989), 73 Nfld. & P.E.I.R. 111 (P.E.I. S.C.).

9. *R.* v. *Ingram and Grimsdale, ibid.* at 379, Dubin J.A.

10. *R.* v. *McKay*, [1975] Crim. L.R. 591; *Atkinson, Ing and Roberts* (1978), 43 C.C.C. (2d) 343 (Ont. C.A.).

11. *R.* v. *Lelas* (1990), 74 O.R. (2d) 552 (S.C.).

12. *Ibid.* at 558, Houlden J.A.

The sentence was increased to show society's abhorrence of the acts.

Religion is another motive that finds its way into the criminal courts. The Doukhobors had a lengthy career int he courts and exemplary sentences have been imposed mostly to protect the public from persons with "misguided" religious motives which are "subject to the greater right of society to expect that freedom of religion will be exercised by lawful means".[13] Earlier, the motive of religion could trigger mitigating aspects of sentencing. The courts, having become frustrated with the inability of deterrent sentences to deter these particular offenders, gave suspended sentences in the hope that leniency might achieve what severity had not.[14] A socially appropriate motive, impelling a criminal act, can mitigate the crime. In *Lawrence*[15] where environmental concerns motivated the offense of causing a disturbance and resisting arrest, a discharge was imposed taking the motive into account.

Some crimes by their nature strike more deeply than others at the fabric of law itself. For example, in *Phillips*, the prisoner appealed from sentence upon a charge of having his face masked by night without a lawful excuse. One of a group of some 50 to 75 men, disguised with hoods extending from the top of their heads to their knees, took a woman from her house by intimidation. Of this crime the court said :

> *The accused and his companions took it into their own hands to interfere with her rights. In doing so they not only committed an illegal offense as regards her, but also a crime against the majesty of the law. Every person in Canada is entitled to the protection of the law and is subject to the law.* [...] *The attack* [...] *was an attempt to overthrow the law of the land, and in its place to set up mob law, lynch law, to substitute lawlessness for law enforcement which obtains in civilised countries. The greatest calamity that can befall a country is the overthrow of the law. Without it there is no security for life or property. Mob law such as is disclosed in this case is a step in that direction, and, like a venomous serpent, whenever its horrid head appears, must be killed, not merely scotched. It is the duty of the court to protect the authority of the law* [...].[16]

Accordingly the court set aside the fine and imposed a period of imprisonment.

The evidence in support of a crime may disclose that the prisoner does not accept one particular law, and in fact repudiates its authority. "such an attitude is not one that

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13. *R.* v. *Switlishoff* (1950), 97 C.C.C. 132 (B.C.C.A.).

14. *R.* v. *Koodrin* (1981), 25 B.C.L.R. 1 (C.A.).

15. *R.* v. *Lawrence* (1992), 74 C.C.C. (3d) 495 (Alta. Q.B.).

16. *R.* v. *Phillips* (1930), 38 O.W.N. 323 (C.A.); see also *R.* v. *Ingram and Grimsdale, supra* note 8.

forms a sound base for leniency. On the other hand, it indicates what a potential danger he may be to young people until he changes his attitude and outlook".[17]

Offenses committed by police not only involve the element of breach of trust, but also strike at the nature of law itself. They are treated particularly severely because "[t]he administration of justice depends on the fidelity and honesty of the police".[18]

Where the object of the crime is an attempt to defeat the ends of administration of justice, this is a most serious aggravating factor. For example, in *Mountain*[19] a Crown appeal was allowed and a sentence raised from eight years to 15 years upon a man with an extensive record who was convicted of attempted murder. He severely beat a female acquaintance with a chain in an alley following a drinking session in a Skid Row hotel. She had earlier witnessed the injuring of a man who subsequently died; that death was then the subject of a police investigation. The respondent was present at the earlier offense and the court inferred that the reason for the attempt to murder her was that she should be unable to testify or give information to the police concerning the earlier crime.

One wonders whether an offender who is influenced by another is likely to be more capable of reform than one who entered upon the crime uninfluenced.[20] In *LeSarge*[21] the court said : "If the appellant were the person who engineered and planned this crime, I would have thought the sevent-year sentence to be appropriate, but the evidence convinces me that he is merely one of the underlings in the scheme." In *A.-G Que.* v. *Charbonneau*,[22] upon a charge of contempt of court, it was noted in mitigation that the evidence disclosed that the accused "were under external pressure from union superiors which is probably quite difficult to withstand". When a wife commits an offense out of loyalty to her husband, and without giving the matter sufficient thought, this will be taken into account in mitigation. Psychological pressure from any source, for example, by an older brother, will be viewed realistically.[23]

Crimes motivated by certain personal circumstances of a temporary nature are often viewed as mitigating. Financial difficulties,[24] marital and family problems,[25]

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17. *R.* v. *DeJong*, (1971) 1 C.C.C. (2d) 235 at 237 (Sask. C.A.).

18. *R.* v. *McClure* (1957), 26 C.R. 230 at 237 (Man. C.A.).

19. *R.* v. *Mountain*, January 6, 1978 (B.C.C.A.) (unreported).

20. *R.* v. *Kosch* (1971) 1 C.C.C. (2d) 290 (Sask. C.A.); *R.* v. *Andreou*, (1977) Crim. L.R. 366; *R.* v. *Johnston*, June 22, 1976 (Ont. C.A.) (unreported); *R.* v. *Iwaniw; R.* v. *Overton* (1960), 127 C.C.C. 40 (Man. C.A.); *R.* v. *McAllister* (1976), 1 C.R. (3d) S-46 (Ont. C.A.).

21. *R.* v. *LeSarge* (1976), 26 C.C.C. (2d) 388 at 397 (Ont. C.A.).

22. *A.-G Que.* v. *Charbonneau* (1974), 13 C.C.C. (2d) 226 (Que.C.A.).

23. *R.* v. *Brown* (1984), 53 A.R. 1 (C.A.).

24. *R.* v. *Stein* (1974), 15 C.C.C. (2d) 376 (Ont. C.A.); see also *R.* v. *Johnston and Tremayne*, (1970), 4 C.C.C. 64 (Ont. C.A.); *R.* v. *Bates* (1977), 32 C.C.C. (2d) 493 (Ont. C.A.).

25. *R.* v. *Stein*; *R.* v. *Zehr*, June 26, 1975 (Ont. C.A.) (unreported).

emotional problems,[26] medical problems,[27] and youth[28] all have been accepted in mitigation of sentence. Of particular importance are the "twin plagues" of domestic misfortune and sorry economic conditions.[29]

Motives that are normally considered laudable may lead to the commission of offenses. In minor cases, that factor is a reason for viewing the conduct with less alarm. Where the offenses are very serious, it may have little effect.[30]

III. THE VICTIM : CONDUCT, CHARACTER, LIFESTYLE AND VULNERABILITY

The morality or immorality of the victim is in some cases irrelevant. In *Cutbill*[31] the court made it clear that the fact that the victim of the blackmail attempt was a prostitute was no ground for mitigation. So too, bad character was held to be irrelevant in a case of having sexual intercourse with girls under 14 years of age.[32] The fact that the victim of a robbery was a vendor of hashish, who was robbed of some of his merchandise and a small quantity of cash, was irrelevant.

> *The character of a victim of a crime does not affect his right to be protected from robbery and possible violence.*[33]

In *Spiller*[34] the accused stole $492,000 from her employer, a chartered bank. The court rejected the suggestion that if the bank had been more alert she would have been caught sooner, and should be sentenced less harshly.

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26. *R.* v. *Young*, November 15, 1974 (Ont. C.A.) (unreported).

27. *Cavanaugh* v. *R.* (1953), 106 C.C.C. 190 (N.S.C.A.).

28. *R.* v. *McGregor*, February 7, 1975 (Ont. C.A.) (unreported); and *R.* v. *Paquet* (1977) 3 C.R. (3d) S-11 (P.E.I. C.A.).

29. *R.* v. *Gunnell* (1951), 14 C.R. 130 (Que. C.A.).

30. *R.* v. *Belmas* (1986), 27 C.C.C. (3d) 142 (B.C.C.A.).

31. *R.* v. *Cutbill* (1982), 4 Cr. App. 1.

32. *R.* v. *Petrovich* (1981), 24 C.L.Q. 156 (Sask. C.A.); *R.* c. *Taylor*, (1971) 1 W.L.R. 612.

33. *R.* v. *Winters, Knox and Palmer* (1974), 16 C.C.C. (2d) 551 at 555 (N.S.C.A.) : *R.* v. *Savard* (1981), 55 C.C.C. (2d) 286 (Que. C.A.).

34. *R.* v. *Spiller*, [1969] 4 C.C.C. 211 (B.C.C.A.).

The conduct and lifestyle of the victim will be taken into account, however, where it in some way contributes causally to the offense.[35] In *Simmons, Allen and Bezzo,* an evening of conviviality between three men and a woman was conducted in such a manner that the judge decided she had "put herself in a position where these three must have assumed that the end of this evening was to result in intercourse for everyone [...]". The court also said :

> *The complainant's character is not without significance in the total picture. She was 29 years old, married and separated and living in a common law relationship* [...] *She admitted to having relations with men with whom she met at bars and with whom she would dance.*[36]

But it is hard to imagine this kind of analysis being adopted today.[37]

It is important that the courts carefully assess the role of the victim, so as not to place fault where none is due. The victim may be responsible in part for the crime. But an assault upon a police officer was not mitigated because "discretion being the better part of valour, he might have waited for some additional police company before going into the hotel". No police officer should have to assume that he is going to be assaulted for doing his duty.[38]

The good character of the victim may, it seems, be an aggravating factor. Cogent factors in a rape case are the age of the victim and the fact, if it is the case, that she is a virgin. In this sort of victim tends to produce severe and deterrent sentences,[39] at least where these facts were known to the offender.

The conduct of the victim may become relevant both at trial and upon appeal where there have been delays which are not explained. In *Cunningham,*[40] a case of theft by a solicitor, the court noted the "unusual circumstance" in that the charges were not laid for more than a year after the accused was disbarred and that some charge of a similar nature had been laid and withdrawn earlier. In the meantime the accused had achieved significant rehabilitation; a Crown appeal from a lenient sentence was dismissed. The rationale must simply be that the conduct of the victim, in delaying the bringing of the

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35. *R.* v. *Dash* (1948), 91 C.C.C. 187 (N.S.C.A.); *R.* v. *Hardy* (1976), 33 C.R.N.S. 76 (Que. S.C.); *R.* v. *Linda* (1924), 42 C.C.C. 110 (Alta. C.A.).

36. *R.* v. *Simmons, Allen and Bezzo,* (1973), 13 C.C.C. (2d) 65 at 70 (Ont. C.A.).

37. *R.* v. *Kirby* (1976), 24 Nfld. & P.E.I.R. 260 (Nfld. Prov. Ct.); *R.* v. *Petrovich, supra* note 32; *R.* v. *Gehue* (1975), 12 N.B.R. (2d) 564 (N.B.C.A.).

38. *R.* v. *MacKay, Thompson and Secord* (1970), 16 C.R.N.S. 11 (Ont. C.A.); *R.* v. *McCormack et al.* (1980), 2 A. Crim. R. 405.

39. *R.* v. *Wilmott*, [1967] 1 C.C.C. 171 (Ont. C.A.).

40. *R.* v. *Cunningham* (1960), 34 C.R. 40 (Ont. C.A.).

charge, puts the accused at a special disadvantage which ought to be taken into account in a sentence. It may amount to a "Sword of Damocles"[41] hanging over his head.

Not all crimes have victims, but where there is a victim, his or her relative's vulnerability will be considered an aggravating factor. The general principle has been stated by the Ontario Court of Appeal in *Major*.

> *Society has a special responsibility for those who are unable fully to look after themselves : children, infirm, aged and the blind, and those who took advantage of persons unable to protect themselves are particularly vicious.*[42]

Similar remarks were made by the trial judge with regard to those who preyed upon persons suffering from a hearing loss in a fraudulent scheme to sell hearing aids.[43] The mere fact of a vulnerable victim will not lead to an increased sentence as readily as might be the case where there was a premeditated choice of a vulnerable victim.[44] In *Rogers (no. 2.)*[45] the Prince Edward Island Court of Appeal increased sentence upon a charge of defrauding the public, where the members of the public defrauded were persons on welfare; and in *Rooney and Rooney*,[46] the Court noted as an aggravating factor that the assault had taken place upon a man who was lying on the ground at the time. In *Roy*[47] on a charge of manslaughter, the Court noted that there was something "particularly repugnant" about the killing of a sleeping victim.

The setting where the offense takes place may also be indicative of the vulnerability of the victim :

> *This offense involves the invasion of a private home, a place of security, for the purpose of an attack on the person of this woman. In these days of large population, high density living, the people are vulnerable and the law must protect them* [...] *the sentence must reflect the need for protection and the complete repudiation by the public of such conduct.*[48]

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41. *R.* v. *Fireman* (1971), 4 C.C.C. (2d) 82 (Ont. C.A.).

42. *R.* v. *Major* (1966), 48 C.R. 296 at 297; *R.* v. *Quindamo* (1983), 19 M.V.R. 44 (Ont. C.A.).

43. *R.* v. *Riordan* (1974), 15 C.C.C. (2d) 219 (N.S.C.A.).

44. *Attorney General's Reference Nos. 19 and 20 of 1990* (1990), 12 Cr. App. Rep. (S.) 490 at 492.

45. *R.* v. *Rogers (no. 2.)* (1972), 6 C.C.C. (2d) 107.

46. *R.* v. *Rooney and Rooney* (1967), 51 Cr. App. Rep. 62.

47. *R.* v. *Roy* (1975), 18 C.L.Q. 17.

48. *R.* v. *Thompson* (1975), 20 C.C.C. (2d) 100 at 103 (Ont. C.A.).

Where the victim is an internationally protected person such as a foreign diplomat, or a visiting head of state, the sentence will be particularly harsh.[49] A taxi driver is an "easy victim" because if he is to retain his employment he must go where he is directed — even to a secluded place.[50] Other categories include waiters[51] and proprietors of stores.[52]

The fact that the victim of a crime is a police officer or prison guard acting in the execution of his duty will ordinarily tend to increase sentence because of the necessity of protecting the police and the importance of upholding respect for the law.[53] Where the crime is an assault upon police in the execution of their duty and the accused is under the influence of alcohol, this may not always be the case.[54] However, where the charge is assault causing bodily harm, the fact that the victim is a police officer should be ignored in sentencing. If the Crown wished to urge upon the court the circumstance that the victim was a peace officer engaged in the execution of his duty when the assault took place as a reason for more serious punishment, the appropriate charge could have been laid under the section of the *Criminal Code* involving those factors. To take such a factor into account would be in fact to sentence the offender for an offense for which he had been neither tried nor convicted.[55] This rationale fails when the facts do not permit the laying of a charge that contains the special ingredient of the victim's identity as a peace officer. An opposite view was taken, without argument on the point, in *Hodgins; Wedge*.[56]

An ordinary citizen can, by his actions, fall into the position of someone who needs to be specially protected. A "good samaritan" who stopped to help some people, stranded in a car in an isolated area, was robbed for his trouble.

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49. *R.* v. *Matral* (1972), 6 C.C.C. (2d) 574 (Ont. C.A.); *R.* v. *Cossette-Trudel* (1979), 11 C.R. (3d) 1 (Que. S.C.); *R.* v. *Maltby* (1986), 30 C.C.C. (3d) 317 (Ont. C.A.).

50. *R.* v. *Iwaniw; R.* v. *Overton* (1959), 127 C.C.C. 40 (Man. C.A.); *R.* v. *Lamass* (1981), 5 A. Crim. R. 230; *R.* v. *Keast* (1980), 22 C.L.Q. 431 (Ont. C.A.); *R.* v. *Doughty* (1978), 4 C.R. (3d) S-29 (P.E.I. C.A.); *R.* v. *McGlone* (1974), 10 N.S.R. (2d) 247 (C.A.).

51. *R.* v. *Evans* (1975), 24 C.C.C. (2d) 300 (N.S.C.A.) *R.* v. *Piche, Caplette and Jones* (1978), 21 C.L.Q. 25 (Alta. S.C.).

52. *R.* v. *Holland*, May 10, 1981 (Ont. C.A.) (unreported); *Attorney General's Reference Nos. 3,4,8,9,10,11 and 16 1990* (1990), 12 Cr. App. R. (S.) 479 at 482.

53. *R.* v. *Sherwood* (1958), 122 C.C.C. 103 (B.C.C.A.); *R.* c. *Barrette*, July 11, 1978 (B.C.C.A.) (unreported); *R.* v. *Littletent* (1985), 17 C.C.C. (3d) 520 (Alta. C.A.).

54. *R.* v. *Chingee*, May 18, 1977 (B.C.C.A.) (unreported); *R.* v. *Smith*, November 15, 1977 (B.C.C.A.) (unreported).

55. *R.* v. *James* (1971), 3 C.C.C. (2d) 1 (P.E.I. C.A.).

56. *R.* v. *Hodgins; Wadger* (1962), 132 C.C.C. 223 (N.B.C.A.); see also *R.* v. *Luciens* (1975), 18 C.L.Q. 18 (Ont. C.A.).

In this province, with its many isolated areas, stranded motorists must rely on other motorists to come to their assistance. People who stop to give aid to said motorists must be protected from [such] acts. [...].[57]

IV. THE GRAVITY OF THE OFFENSE

As Stein indicated, the offenses which require a prison sentence for first offenders grow fewer as more humane and more varied types of punishment are developed.

Still there are many offenses that are so serious that a custodial term is required : serious gross indecency with a nine-year-old step-daughter,[58] serious drug trafficking,[59] large scale fraud[60] and certain robberies.[61] Even in the case of serious offenses for which imprisonment is required, the fact of being a first offender will mitigate the severity of the punishment. Noting that rehabilitation for a youthful offender is unlikely in a penitentiary as opposed to a reformatory, a sentence of eight years for violent armed robberies was reduced to two years less a day.[62]

In *Garcia and Silva*,[63] the two accused appealed sentences of 18 months definite and 12 months indeterminate for a breaking and entering offense. A third man had pleaded guilty to this offense and the Court of appeal ordered his sentence to be suspended and that he be placed on probation for two years. They refused, however, to follow this pattern for the two appellants because they had a greater involvement and "their circumstances and reputation" were not quite as favourable. Nevertheless, the chances of rehabilitation were not reflected sufficiently in the sentence, in that 18 months' imprisonment for a young first offender would "tend to destroy whatever hope he had of rehabilitation" and the court varied the sentence to one of three months definite and 12 months indeterminate.[64]

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57. *R.* v. *Dumais et al.* (1982) 17 Sask. R. 378 (C.A.).

58. *R.* v. *Wood* (1975), 26 C.C.C. (2d) 100, at 107 (Alta. C.A.).

59. *R.* v. *Basha et al.* (1979), 23 Nfld. & P.E.I.R. 286 (Nfld. C.A.); *R.* v. *Kotrbaty* (1978), 5 C.R. (3d) S-13 (B.C.S.C.); *R.* v. *Bengert (No. 14)* (1979), 15 C.R. (3d) 97 (B.C.S.C.).

60. *Supra* note 46.

61. *R.* v. *McDonald and Reynolds* (1958), 28 C.R. 197 at 198 (N.B.C.A.).

62. *R.* v. *Dunkley* (1976), 3 C.R. (3d) S-51 (Ont. C.A.).

63. *R.* v. *Garcia and Silva*, [1970] 3 C.C.C. 124 (Ont. C.A.).

64. *Ibid.* This case is also one of the rare Canadian examples of "taking other offenses into consideration" and the sentence of imprisonment here may reflect that factor as well.

The case of *Willaert*[65] also shows that being a first offender and being of previous good character are not the same thing, though they are often found together. There is no reason why they should not be viewed separately as different circumstances to which regard can be given in determining the appropriate sentence.

As a general rule, it is undesirable that a first sentence of immediate imprisonment should be very long, disproportionate to the gravity of the offense or imposed for reasons of general deterrence as a warning to others.

V. CIRCUMSTANCES REQUIRING SERIOUS PENALTY

Circumstances requiring a harsh penalty may be found in cases such as *Dorkings*,[66] where 30 days' imprisonment was imposed for the theft of three air-conditioners, the property of a former employer. The element of breach of trust was an important consideration and the Court felt that it would uphold a short custodial sentence. However, in an attempt to minimize the impact of imprisonment on a first offender, the sentence was varied to be served intermittently on weekends. In *Trask* the court said :

> *It is a principle of sentencing often acted upon by this Court that in ordinary circumstances a custodial sentence should be avoided when practicable in the case of a first offender. In the case of a serious offense involving violence to the person, however, that principle must yield to the necessity of a sentence which gives emphasis to the factor of general deterrence to like-minded persons.*[67]

This was a case where two years less one day was imposed on a charge of indecently assaulting a female. In this case the woman was kidnapped and repeated threats of death were made.

Similarly, the prevalence of a particular crime in the community amounting to "an alarming increase" will justify a serious penalty even on first offenders. In *Erdlyn*, the Ontario Court of Appeal in reviewing a sentence of three months on a first offender for keeping a common betting-house said :

> *Counsel urges, because this is the first occasion on which the accused has been convicted of an offense, that it would be appropriate to sentence the accused to a fine. We cannot accede to that argument. We think that the learned Magistrate, with great experience and knowledge of conditions in the particular locality (and that is a matter which properly may be taken into consideration), and with full knowledge of the seriousness of this kind of*

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65. *R.* v. *Willaert* (1953), 105 C.C.C. 172 (Ont. C.A.).

66. *R.* v. *Dorkings*, October 15, 1974 (Ont. C.A.) (unreported).

67. *R.* v. *Trask* (1974), 28 C.R.N.S. 321 at 323 (Ont. C.A.).

offense, was quite warranted in the exercise of his discretion in imposing a term of imprisonment.[68]

An offender with a lengthy juvenile record who committed "a rash of crimes" was for this, among other reasons, sentenced to a period of imprisonment.[69]

68. *R.* v. *Erdlyn* (1956), 117 C.C.C. 207 at 213 (Ont. C.A.).

69. *R.* v. *Egyed* (1981), 14 Sask. R. 341 (Sask. C.A.).