Keynote Address : Crime, Punishment and Public Expectations

The Honourable Allan ROCK*

My first words must be of gratitude to the Institute for its invitation to speak today. I want to express my admiration for the work that it is doing, and to communicate on behalf of the Government how very much we profit from the partnership we have with the Institute, and how much we learn from its work. In the process of making public policy over the years, the Canadian Government, and the Department of Justice in particular, have gained a great deal from the balanced and insightful advice that the Institute has given on issues of the day.

May I also congratulate the organizers of this conference for bringing together such an extraordinary collection of people to address matters of urgent importance, and in such beautiful surroundings.

Looking at the topics you are addressing and at the people on the panels, one really has the sense that good things will come of these few days. Perspectives will be broadened; things will change.

As you know, that is not always true of conferences. A cynic once said that "[a] conference is a collection of people who, individually, can do nothing but who, together, can decide that nothing can be done". But that is not what is going on here.

You have taken on difficult issues, and you have brought together people with very different viewpoints. That is going to help.

It is clear to me that as part of your agenda for the week, you have chosen to examine subjects that are both thought-provoking and contemporary. For this reason, I am sure that this conference will be very productive and stimulating, in terms of ideas and the exchange of viewpoints, for all its participants.

You have also assembled an extraordinary roster of people comprised of those who draft the laws, journalists who write about them, people who enforce them, those who teach the law, and individuals who champion the rights of the victims.

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I have been asked to speak today about crime and punishment and public expectations. That is a very weighty topic. In fact, it took Dostoïevsky over 800 pages and he didn't even get to public expectations. Imagine if he had to include all the polling graphs and the focus group reports!

Of course, Dostoïevsky wrote novels, not laws. He produced literature, not legislation, and he was able to take his time about it. Governments, on the other hand, are pressed to deliver immediate solutions to complex problems : to provide quick answers to questions of enduring difficulty. The great value of conferences like this one is that they provide us with an opportunity to reflect and to take the longer view.

The people in this room know better than most the extent to which Canada's justice system has come under criticism in recent years. The public feels that its expectations of the relationship between crime and punishment are simply not being met. Public confidence in the system has fallen.

The disaffection has manifested itself in many ways. It is reflected in the tens of thousands of letters I receive in my office every month. Very few of those are letters of congratulations. It is reflected in the protest rallies that are organized by victims' rights groups. It also is reflected in what you hear on talk radio programs as people call in to express their anger.

Many Canadians are very upset by the perceived laxness in the system. They question whether there is any justice at all. One desperate person was heard to say recently that it has gotten to the point where justice must not only be seen to be done, it must be seen to be believed. As the public's confidence in the justice system has declined, their fear and their sense of being unsafe has increased.

Now, although it is of very little comfort, we should remember for the most part that the level of public concern about the incidence of crime is not matched by the actual crime rates. Clearly, there is a gap between perception and reality. Two-thirds of Canadians believe that crime rates have risen over the last 5 years. In fact, they have generally remained stable and, indeed, the overall crime rates have declined in the past 2 years.

While most Canadians believe that homicides are increasing more than any other crime, the homicide rate actually has not changed over the last 30 years. A majority of Canadians believe that the recidivism rate is over 40%. In fact, only 12% of parolees have been reconvicted after 10 years. The gap between perception and reality is large and growing. It is not going to do any good, however, to try and narrow that gap by rhyming off batches of statistics. All the numbers in the Statistics Canada computers do not, by themselves, add up to a greater feeling of security or comfort with the system. If people feel afraid to walk on the streets at night, the effect on their lives is the same whether they simply believe there is a problem or are actually living through a crime wave.

The public's perceptions, moreover, are very important. In analysing those perceptions, we will find certain contradictions, as well as certain encouraging signs.

For example, although Canadians are strongly concerned about what they perceive to be increased levels of crime nationally, they tend to view their own

neighbourhoods as safe places in which to live. The apparent contradiction may be explained by the fact that they see their neighbourhoods through their own eyes, while they see the nation through a television lens. Attention is drawn in newspapers and on the television to violent, even gruesome crimes. It is entirely normal that the media will focus on the unusual and the atypical.

Our responsibility as policy makers, as participants in the criminal justice system, as citizens, is to focus on the entire story. It is important to acknowledge that none of us, including government, should be surprised about the gap of which I have spoken. Not only is much of the real information about crime not made readily and broadly available, but we tend to pull out those statistics at the worst of times : when it looks as though we are trying to explain away an individual tragedy that can never satisfactorily be explained. This tends to polarize the debate, rather than to advance it.

Broad public consensus about where we are going in the criminal justice system and in sentencing, in particular, will only be possible when we make reliable information about the system widely available, in a usable fashion and on a continuous basis. In this way the chances increase that members of the public will see themselves engaged as partners in the discussion, not just as people who are being selectively informed for an ulterior purpose.

I sincerely believe that the public is prepared to engage in that kind of constructive dialogue about crime, its connection with community safety, and the connection between crime and poverty and social and family problems. More than 80% of Canadians, according to a recent poll, say that the courts and the justice system are too soft in dealing with law breakers. Nevertheless, Canadians are more likely to blame the economy and unemployment for increases in crime, rather than the perceived leniency of the courts.

I am, therefore, convinced that Canadians do not want merely to punish criminal acts, but rather to reduce their number. They also want to take steps to prevent the causes of crime. This requires a justice system that is clearly both very strict and humane.

Well, how can we enhance the respect that people in Canada have for the justice system? The first step towards achieving and building the confidence of the public is to deserve it. If we are to deserve the confidence of the public we must squarely address some of the outstanding problems. It seems to me one of the most effective ways to address the public's concern about crime is to persuade them that we are taking the right approach toward punishment.

Yesterday, and this morning, you heard Priscilla de Villiers eloquently and passionately speaking from her perspective as someone who lost a member of her family to crime. She has devoted her life to constructive efforts to deal with problems as she perceives them.

You have also heard from Tony Doob whose original and valuable work has exploded some of the myths about sentencing in the courts.

I hear daily from a wide variety of sources on the topic of crime including angry opposition members posing questions in the House of Commons, and victims groups demanding that we toughen the laws. Over the summer I had a vivid demonstration of the frustration felt in some quarters when I spent time in the squad room of police stations in seven cities. I met quietly behind closed doors with police officers, between shifts, asking them for their perceptions of the justice system. It was anecdotal, but it was very educational. I urge all participants in the criminal justice system to do exactly the same.

It won't surprise you to know that police officers believe the number one problem is sentencing. It is not just the fact that custodial sentences, where appropriate, are too short or that there is no truth in sentencing. They are equally concerned about the disparity among sentences. I was told of some career criminals who have arranged to commit their last crime in a province of choice so that they could plead guilty, combine the other charges at the same time, and get a penalty that they know will be far less onerous than they would have received in their original jurisdiction.

The Canadian Government has some of these issues under consideration, including the whole question of truth in sentencing, and whether the approach we now take is the one with the greatest integrity. Let me touch upon some elements of the sentencing process that Parliament has already addressed, however imperfectly or incompletely. I want to deal with three major concerns about sentencing that I know are close to your minds.

First, during the past dozen years, parliamentary committees, royal commissions and the Law Reform Commission have all suggested that we codify the principles and the purposes of sentencing, to add clarity and achieve a greater degree of uniformity.

Second, there is the issue of disparity in sentencing. This sometimes is a concern not just in different regions of the country but in different court rooms in the same building.

Third, we must consider the effectiveness of various forms of sanctions available and whether there should be a broader range of options open to sentencing judges.

These three factors are clearly interrelated. The absence of consistent policy encourages disparity. It may also reflect the lack of meaningful options for a sentencing judge.

Greater clarity, less disparity and more room for innovation were three of the reasons that we introduced Bill C-41[1] — the new sentencing provisions of the Criminal Code. Before C-41, the role of Parliament and of the people it represents has been largely limited to setting maximum sentences, and rarely minimums, for specific offenses. Through this bill for the first time, however, Canadians, through Parliament, have

1. *An Act to amend the Criminal Code (Sentencing) and other Acts in Consequence Thereof*, L.C. 1995, c. 22.

provided a clearer direction on the principles that should come into play when sentences are being determined.

The Bill recognizes that sentencing and the public's understanding of that process has a role in shaping the public's attitudes towards the criminal justice system. Indeed, the policy of Parliament, as set forth in the Bill, is reflected in the purpose of sentencing : namely, to contribute, along with crime prevention initiatives, to building respect for the law and maintaining a peaceful society.

The statement sets out objectives for sentencing. Many of them are so familiar that they are trite : denunciation, deterrence, separation from society where appropriate, reparation to victims, and instilling a sense of responsibility. We have included the traditional ideas drawn from the jurisprudence : proportionality and the existence of aggravating or mitigating circumstances. We have also attempted to move beyond the traditional formulations, at least so far as statute is concerned. We have provided expressly that an offender should not be deprived of liberty except if there are no less restrictive sanctions that may be appropriate, particularly for non-violent offenses. We have said that where there is non-violence, sanctions other than jail should be considered. This is particularly appropriate in circumstances involving aboriginal offenders.

In Parliament, these proposals were met in some quarters with derision. Some contended that they were not sufficiently "tough" for what is needed in Canada. Instead, they suggested, we should throw away the key; we should take a sterner approach. It was suggested that such measures, by themselves, would work, and it is not difficult to develop a public movement in favour of such an approach.

But, you know, as Will Rogers once said : *There's lots of things that everybody knows that just ain't so.*

The answer is not always more jail time. Punishment should fit the crime and the criminal. It makes little sense to throw first time non-violent offenders into prison with long-time violent offenders. That is the equivalent of giving them a post graduate course in crime. It makes more sense to provide a basic course in civil behaviour.

Bill C-41 contains, I believe, both promise and challenge. In a real sense, the principal challenges are facing you as the key players in the justice system. For example, the Bill requires that the sentencing judge should give reasons for a sentence in each case. This will enable the public to relate the policy of sentencing, as approved by Parliament, to the disposition for a particular offender. The challenge will be for judges to express cogent reasons for a sentence : making that link evident and setting forth the predominant principles and the objective in each case. Perhaps, with such reasons, we can build a foundation for better communication to the public of the reasons for some of the results in the criminal justice system, and we can provide police officers with the rationale for the disposition in those particular cases.

Second, the Bill provides the provinces with the authority to establish alternative measures programs : non-criminal alternatives for dealing with appropriate offenders. We are dealing with first-time, non-violent, relatively less serious offenses. Alternatives will

be available for dealing with such people in an innovative way. The challenge will be for the provinces and the courts to use those measures in all appropriate cases, to invest sufficient resources to make them available and meaningful.

I hope that the provinces do a better job with that challenge than they have done with the *Young Offenders Act*.[2] Its promise has been left unfulfilled largely as a result of the failure to deliver on the alternative measures that were contemplated from the outset. That approach will also free up space and correction's dollars for the sort of high risk offenders who should be incarcerated.

The Bill also makes more effective measures available for dealing with restitution. The challenge will be to use those measures to address, at least in part, the widely held perception that the victim is forgotten in the process.

The Bill modifies several aspects of probation. It provides for an alternative to incarceration in the conditional sentence, and it says that incarceration is to be used as a last resort when dealing with the enforcement of fines.

Overall, the options and the improvements in Bill C-41 will allow the courts, I believe, to be tough where they ought to be and to be flexible where they should be. Moreover, the options build on the general policy of this government which is — to distinguish sharply between violent and non-violent crimes. We should put as many resources as possible at the front end to deal with crime prevention, alternative measures, and restorative, community-based, constructive dispositions where appropriate, while investing resources at the back end for the violent high risk offenders, where it is necessary for community protection.

Now let me say a few words about the issue of high risk offenders because it too relates to the sentencing process. These are the offenders in respect of whom there is the most intense degree of public concern. These are offenders who have already committed violent crimes, who are serving definite sentences, and who are bound to be released. How can we minimize the risks to society in such cases? How can we diminish the prospect that someone will slip through the seams? The Solicitor General and I have been working for some time on a wide variety of measures, some policy and some statutory, to come to grips with this challenge. Some of these measures have already been put in place. Others may be introduced later this fall as statutory amendments.

We have encouraged our provincial counterparts, wherever possible, to use the provisions of Part XXIV of the Criminal Code. If there are people who match the profile for which the dangerous offenders provisions have been designed, the provisions will be invoked. We will also propose a number of amendments to Part XXIV. First, we will remove the prospect of a definite term of imprisonment for someone who has been judged dangerous. Second, we will provide for a new and expanded risk assessment procedure, in place of the current requirement of one psychiatrist for each of the prosecution and defense. There has already been put in place a national flagging system which picks up cases of individuals who are looking like they might fit the profile, and tracks them. This will make sure that the prosecuting Crown has all the information necessary to make the

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2. *Young Offenders Act*, R.S.C. 1985, c. Y-1.

judgement regarding the dangerousness of the offender at the appropriate moment. We are providing for assessing risk early in the process. We are also considering amending Part XXIV to provide for a window of opportunity of one year after the person has been before the court, within which the dangerous offender application may be brought. This will ensure that there is additional time to conduct assessments which might justify such an application.

In addition, we are examining favourably the recommendations of the Federal/Provincial/Territorial Task Force on high risk offenders. This Task Force proposed that a category called the long-term offender be created in the *Criminal Code*. This category would be somewhat broader than the dangerous offender category. In respect of long-term offenders, the courts would be empowered to order supervision for periods as long as 10 years after the end of the period of incarceration. We are looking as well at elaborating upon the provisions in Section 810.1 of the *Criminal Code* which now provides a narrow category of offenses in respect of which the courts may make what amounts to a restraining order limiting the freedom of movement of the person. It broadens the jurisdiction to include a wider category of high risk offenders.

Herb Gray and I expect to go to Cabinet this fall with the proposals that involve statutory change. Money will be an issue in that decision because the proposals we make will involve the spending of more correctional dollars. That is why it makes such great sense to free up dollars for these important protective purposes by de-incarcerating people who should not be in jail, by taking more intelligent, more creative, innovative and constructive approaches to offenders who don't pose a physical risk to society and who can be dealt with in a different way.

Now let me conclude by addressing a somewhat broader point. It seems to me that one of the reasons for the diminished confidence among members of the public in Canada's system of criminal justice is that the system is too often seen in isolation. The person wagging a finger at me across the floor of the House of Commons on a typical afternoon seems to assume that just changing the law or ratchetting up the penalties is going to solve the problem.

Well, the criminal justice system cannot succeed in isolation. I think we all know that the justice system by itself cannot make a society just. It is incapable of doing that because it deals with effects and not with causes. By the time the justice system becomes engaged, people are in trouble, charges have been laid, and the harm has been done.

More law or even better law will never be the complete answer. If we are to deal successfully with the manifestation of the problem, we cannot lose sight of its origins. That is why I have taken every opportunity to emphasize that, in the long run, the surest protection for society lies in efforts in crime prevention. When the goal is preventing crime, the things we do within the justice system must be only part of a wider strategy, pursued by society as a whole. It was Clemenceau who said "war is too important to be left to the generals", and crime prevention is too important to be left to the lawyers, or the justice ministers, or even the judges.

Making streets safer has as much to do with literacy as it does with the law; with the strength of families as with the length of sentences; and with early intervention as with mandatory supervision. If crime prevention is going to be effective, it has to be based on linkages between law enforcement and social agencies, between the educational system and families, and between community workers and health care professionals. Successful crime prevention means communities taking responsibility for themselves. Instead of wringing their hands, people should be invited to roll up their sleeves and work to do something about the problem. Crime prevention means recognizing connections between the crime rate and the unemployment rate, between how a child behaves at school and whether that kid has had a hot meal that day. In the final analysis crime prevention has as much to do with Paul Martin in Finance, John Manley in Industry, and Lloyd Axworthy in Human Resources Development, as it does with Allan Rock at the Department of Justice.

To some people, crime prevention is code language for going soft on crime. I don't care what they say, I am interested in what works. It is easy to bring a crowd to its feet by demanding harsh retribution for the most brutal of murderers, but let me describe what I think is going to make us safer in the long run.

I was in Edmonton yesterday and met with two groups. One was the City of Edmonton Youth Council. Their job is to conscript young people throughout the city to work with members of City Council to ensure that programs administered by the municipality are sensitive to the needs of young people, show an awareness of the difficult circumstances in which young people live, try to support them when their families won't, and provide a back stop when they have nothing better to do but break windows and steal cars.

Also, I met with a group called Partners for Youth. It is an umbrella organization of over 30 social agencies at the municipal, provincial and federal level. They work with young people in schools and on the streets. They provide one stop shopping for the police officer who picks up a kid who is in trouble and wants to know where that kid can go to get the most help in the fastest way possible.

These are only two small examples of a number of programs that the City of Edmonton has put in place in the last two years in its safer city initiative. And do you know what? They are working. You will never read about the crimes that the programs prevented, or the children that they have saved. But those two examples provide the direction in which we must move. If we are to narrow the gap between crime and punishment on the one hand and public expectations on the other, I suggest that it is the direction we should take.

I don't pretend that I have an answer that is going to provide better results next week, or next month. I have no doubt that future Ministers of Justice are going to be standing here over the next few years grappling with these same challenges. The direction has to be right and surely this is the right direction : to draw the public's attention more effectively and more continuously to true facts in respect of crime; to enhance public education through making results in the courtroom more understandable, more comprehensible to the average person; to strengthen the sentencing process by enshrining clear principles and working towards a greater degree of uniformity by satisfying the need

for public safety; to deal effectively with the high risk offender; and, while doing all of that, to focus on effective and broadly based methods to prevent crime in the long run.

Those are the challenges to which I turn, as Minister of Justice, with enthusiasm and commitment and in partnership with this Institute, and I thank you for your help.