

# Introduction – Purpose and Principles of Sentencing

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Thomas CRABTREE\*

Welcome to the session on the purpose and principles of sentencing and the recent history of sentencing reform in Canada.

To a large extent sentencing in Canada continues to be a discretionary process. Section 718.3 of *The Criminal Code of Canada* provides in part that the punishment to be imposed is, subject to the limitations prescribed in the Act, within the discretion of the court.

In 1964, at a criminal law conference held in Toronto, Justice Cartwright of the Supreme Court of Canada stated:

I do not think it is an overstatement to say that not only the public but the courts and counsel are disturbed by the apparent inconsistencies between the sentences imposed in many cases, where not only is the crime the same, but the surrounding circumstances are, on their face, very similar. Bench and Bar are also concerned of the difficulty of finding a uniform and authoritative statement as to all the factors, and the relative importance of these factors, which should influence the decision of the tribunal of first instance in imposing sentences, and those which should guide the appellate in reviewing sentences.<sup>1</sup>

In 1987, the Sentencing Commission found that one of the deficiencies in the process continued to be the disparity in sentencing. In 1996, *The Criminal Code* was amended to include a statement of purpose, objectives and principles which are found in section 718 to 718.2. These provisions are not simply a codification of accepted principles but a direction that all sentencing options should be considered and imprisonment imposed when other available options do not satisfy these principles.

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\* Chief Judge, Provincial Court of British Columbia, Vancouver, British Columbia.

<sup>1</sup> Allan Manson, *The Law of Sentencing* (Toronto: Irwin Law, 2001) at 61.

Within the general framework provided in the *Criminal Code*, discretion continues to be a distinctive feature of the sentencing process in Canada. The Panel will explore the purpose and principles of sentencing and examine the recent history of sentencing reform in Canada with a view to considering whether or not the codification of the purpose, objectives and principles has assisted in reducing the disparity in sentences identified by Mr. Justice Cartwright in 1964.

This morning, we have five eminently qualified people to assist in this examination:

1. Madam Justice Bennett will discuss the history of punishment as it relates to the sentencing process;
2. Professor Doob will examine the recent amendments and framework within which the sentencing process now occurs, and offer his thoughts and comments;
3. Mr. Greg Fitch, Q.C., will explore whether or not the codification of the sentencing purpose, objectives and principles have achieved clarity and uniformity in sentencing;
4. Mr. Nadon will further the analysis with an examination of the sentences imposed in connection with three specific type of offences; and
5. Chief William Blair will offer his thoughts with respect to public confidence in the current sentencing process.