

PURPOSE AND PRINCIPLES OF SENTENCING AND THE RECENT HISTORY OF SENTENCING REFORM IN CANADA

ARE WE GOING MADLY OFF IN ALL DIRECTIONS?
(OR IS IT JUST ME?)

Gregory J. Fitch, Q.C.
Director, Criminal Appeals and
Special Prosecutions

Canadian Institute for the Administration of Justice – Vancouver, 2010

The sentence is the gist of the proceeding. It is to the trial what the bullet is to the powder.

Sir James Fitzjames Stephen (1863)

WHY WE NEED TO BE CLEAR ABOUT THE PURPOSE AND PRINCIPLES OF SENTENCING

- We have to know the answer to this question:

WHY DO WE PUNISH?

- In order to be able to answer this question:

HOW SHOULD THIS OFFENDER BE PUNISHED?

PURPOSE OF SENTENCING: Section 718

- To promote respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
 - denunciation;
 - specific and general deterrence;
 - isolation;
 - rehabilitation;
 - to provide reparations for harm done;
 - to promote individual responsibility.

WHY CODIFY THE PURPOSE AND PRINCIPLES OF SENTENCING?

- Transparency
- Clarity
- Uniformity in Approach: Structuring Sentencing Discretion
- Reducing Unjustifiable Disparity
- As a means of Attaining Remedial Objectives

“The enactment of the new [Criminal Code of Canada] sentencing regime was a watershed, marking the first codification and significant reform of sentencing principles in the history of Canadian criminal law.”

Regina v. Gladue
Supreme Court of Canada (1999)

THE REMEDIAL OBJECTIVES OF SENTENCING REFORM

- to mandate restraint in the use of incarceration as a sentence;
- s.718.2(d) – offenders should not be deprived of liberty if less restrictive sanctions may be appropriate;
- s.718.2(e) – all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders;
- the conditional sentence of imprisonment was designed to facilitate achievement of this objective.

PROPORTIONALITY AS THE ORGANIZING PRINCIPLE

- s.718.1 – A sentence must be proportionate to the gravity of the offence and the degree of responsibility [moral culpability] of the offender.

1996 – 2010: MADLY OFF IN ALL DIRECTIONS?

- maintenance of the general principle of restraint in resorting to incarceration;
- increasing reliance on mandatory minimum sentences;
- restricting the availability of conditional sentences of imprisonment;
- increasing maximum sentences to enable longer terms of imprisonment, including for non-violent offences.

WHERE ARE WE NOW?

- Are the applicable sentencing principles easier to identify in individual cases?
- If not, what are the implications for appellate review for “fitness”?
- Both the volume and severity of police-reported crime fell in 2009, continuing a downward trend seen over the past decade. (Statistics Canada)
- Although relatively stable, the incarceration rate rose modestly in 2008/2009 – the fourth straight annual increase after a decade of steady decline. (Statistics Canada)