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)

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)