Sentencing in England and Wales: 
*Winds of Change*

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Outline
- A glimpse back 25 years…
- Context of reform in England;
- English Guidelines;
- Lessons for Canada?

Canada and England in the 1980s
- **Canada**
  - ‘CLICS’ and ‘Sentencing’, 1982-1984
  - Canadian Sentencing Commission, 1984-87
  - Daubney Committee, 1987-1988

- **England**
  - Advisory Council on Maximum Penalties
  - Crown court Sentencing Study

English Sentencing
- Jurisdiction divided between Magistrates and Crown courts (97% of sentences imposed at Mags level);
- Panels of 3 Lay magistrates (30,000) with a legal advisor;
- Custodial threshold based on seriousness;
- Prison population has escalated in recent years.


Key developments, 1998-2010
- **Sentencing Advisory Panel** (1998-2010)
  and **Sentencing Guidelines Council** (2003-2010);
- Coroners and Justice Act 2009;
- Sentencing Council
Sentencing Council of England and Wales

- Origins and background
- Composition
- Statutory Duties
- Definitive Guidelines

Sentencing council in the news

New sentencing council
detective says law expert

Council Membership

- Chair - Lord Chief Justice
- 8 judicial and 6 non-judicial members:
  - DPP;
  - Magistrate;
  - Victims’ Representative;
  - Solicitor;
  - Probation Rep; and
  - a sentencing Academic.

Principal Statutory Functions

- Prepare guidelines;
- Monitor effect of guidelines;
- Assess cost implications of government sentencing proposals;
- Publish:
  - resource assessment of guidelines;
  - information on local sentencing practices;
  - report on sentencing factors and non-sentencing factors
Guidelines methodology

- Determine seriousness of offence
- Match the offence to a category of seriousness (if possible);
- Impose a sentence within the total offence range, using a Starting point (first time offender, conviction following a contested trial) and moving up or down to reflect agg and mitigating factors such as guilty plea discount.

English Guideline

Definitions of

Consider Aggravating and Mitigating Factors
Test for departure tightened….
- **CJA 2003**: “must have regard to any relevant sentencing guideline”.
  
  To……………

- **CJA 2009**: “Every court must follow any sentencing guidelines which are relevant to the offender’s case….unless the court is satisfied that it would be contrary to the interests of justice to do so”.

…but with a less restrictive definition of compliance

- where the offence-specific guidelines describe categories of case, a duty to decide which of the categories most resembles P’s case in order to identify the sentencing starting point in the offence range;
  - but nothing in this section imposes on the court a separate duty to impose a sentence which is within the category range.

Some Problems/ issues with Guidelines

- Failure to constrain prison population?
- Wide sentence range;
- Curiosity of ‘Starting Point’ feature -the anomalous offender;
- Relationship with Court of Appeal
- Parallel sets of guidelines now inevitable for at least 5 years (SGC set; Sentencing Council set);

English Guidelines: Lessons for Canada?

- Sentencing Council a vital component of sentencing;
- Impact on sentencing practices – consistency, use of custody etc – still unclear;
- Represent a clear alternative to grid systems;
- Likely to prove acceptable to Canadian judiciary?
Coalition government sentencing review:

What next? Coalition Sentencing Review

- Green paper in November to contain:
  - Minimum-Maximum sentencing?
  - Abolition of statutory release at halfway point of sentence?
  - Creation of a conditional sentence of imprisonment?

Finally...

- Thanks for your time and attention…