

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

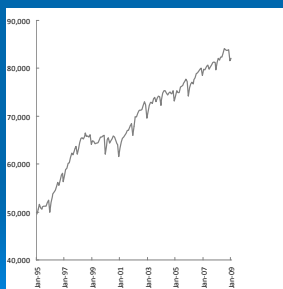
England

- 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.

Prison Population 1995-2009



Key developments, 1998-2010

- Sentencing Advisory Panel (1998-2010) and Sentencing Guidelines Council (2003-2010);
- Coroner's and Justice Act 2009;
- Sentencing Council
- Government Sentencing Review, -- Green Paper due in November.

Sentencing Council of England and Wales

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

Sentencing council in the news

Penalties could be erratic, professor fears
Concern whether will not have to justify decisions

sentencing Council will put more in jail

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

Guideline Prototype

I. Offence: Manslaughter s.219, Criminal Code

II. Maximum: 12 Years

III. Presumptive Disposition: Presumption of Custody (PC)

IV. Guidelines: Range: 4 – 6 Years

Advisory Information

V. Current Practice
 (These data reflect sentencing under the current system which includes full release on parole as early as one-third and remission based release after an inmate has served two-thirds of sentence. To get an idea of time actually served by inmates, these sentences must be discounted to a greater degree than would the ranges proposed by the Commission).

Criminal Code sections 215, 217, 219

	Percentiles (m = months, y = years)			
Source	25th	50th (Median)*	75th	90th**
Correctional Sentences Project	3.5y	5y	10y	10y
Sentencing Commission		5y	12y	

* The median sentence can be regarded as the sentence in the middle of the distribution of all cases resulting in custody, half are above (i.e. higher) and half are below it.
 ** The 90th percentile is that sentence below which 90% of cases can be found. To illustrate, the 90th percentile for manslaughter during this period was 12 years (Sentencing Commission). This means that of all offenders who were convicted of manslaughter and who were sent to prison, 90% received terms of imprisonment that were 12 years or below.

US Federal Sentencing Grid

SENTENCING TABLE
(in months of imprisonment)

Offense Level Criminal History Category Offense Level


Offense Level	1	2	3	4	5	6	7	8	9	10
1	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6
3	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6
4	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6
5	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6
6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6
7	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6
8	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6
9	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6
10	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6	0-6

-85- November 1, 1989

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

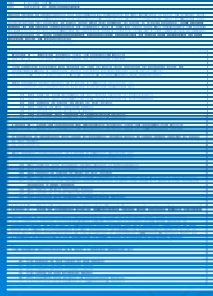


Sentencing Guidelines Council

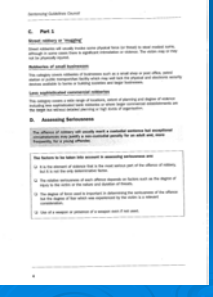
Robbery

Definitive Guideline

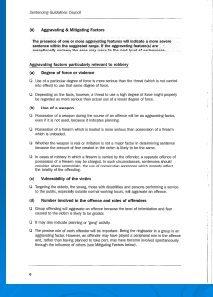
Determine level of seriousness



Definitions of



Consider Aggravating and Mitigating Factors



Street robbery or 'mugging'
Robberies of small businesses
Less sophisticated commercial robberies

Robbery is a serious offence for the purposes of sections 225 and 227
 Criminal Justice Act 2003

Maximum Penalty: Life Imprisonment

ADULT OFFENDERS

Type/nature of activity	Starting point	Sentencing Range
The offence includes the threat or use of minimal force and removal of property.	12 months custody	Up to 3 years custody
A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.	4 years custody	5-7 years custody
The victim is caused serious physical injury by the use of significant force and/or use of a weapon.	8 years custody	7-12 years custody

Additional aggravating factors	Additional mitigating factors
1. More than one offender involved. 2. Being the ringleader of a group of offenders. 3. Restraint, detention or additional degradation, of the victim. 4. Offence was pre-planned. 5. Wearing a disguise. 6. Offence committed at night. 7. Vulnerable victims targeted. 8. Targeting of large sums of money or valuable goods. 9. Possession of a weapon that was not used.	1. Unplanned/opportunistic. 2. Peripheral involvement. 3. Voluntary return of property taken. 4. Clear evidence of remorse. 5. Ready co-operation with the police.

Test for departure tightened....

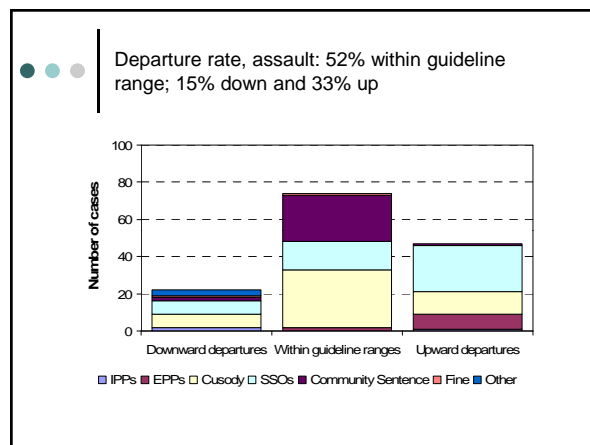
- o *CJA 2003*: "must have regard to any relevant sentencing guideline".

To.....

- o *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

- o 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

- o Failure to constrain prison population?
- o Wide sentence range;
- o Curiosity of 'Starting Point' feature -the anomalous offender;
- o Relationship with Court of Appeal
- o 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...