Welcome Remarks

The Honourable Madam Justice Carol M. HUDDART*

Il me fait grand plaisir de vous accueillir, tous et toutes, à ce colloque. Quand Messieurs les juges Vancise et Arnot ont proposé le thème de ce colloque à l'Institut au mois d'octobre dernier, le Conseil l'a accepté immédiatement en raison de l'actualité du sujet partout au Canada, soit la détermination de la peine.

Les modifications apportées au Code criminel au mois de septembre dans le domaine des sentences et deux arrêts de la Cour suprême — *Shropshire*[1] et *C.A.M.*[2] — ont présenté un défi à tous ceux qui sont impliqués dans l'administration de la justice pénale.

We are here because we have an interest in one of the most difficult tasks for all of us involved in the administration of justice. We are government policy makers, prosecutors, defence counsels, police officers, correction officials, academics, and a lot of judges — including three who lead courts — one whom I will introduce later, and two others on the front line : Chief Judge Metzger of the British Columbia Provincial Court and Madame la juge Raymonde Verrault de la Cour municipale de Montréal.

Few of our tasks require the balancing of so many factors, quickly and openly. For few of our decisions are we held so quickly accountable by the larger community.

Most people see the sentencing of a criminal as a judge's job. In *Shropshire*, Iacobucci J. spoke of "sentencing" as a "profoundly subjective process" by a trial judge not to be interfered with, if the trial judge applies correct principles and considers all relevant factors unless the sentence is clearly excessive or inadequate.[3] In *C.A.M.* Lamer, C.J. affirmed the Supreme Court's support for individualized sentencing by a trial judge saying "a sentencing judge also possesses the unique qualifications of experience and judgment from having served on the front lines of our criminal justice system. Perhaps more importantly, the sentencing judge will normally preside near or within the community which has suffered the consequences of the offender's crime. As such, the sentencing judge will have a strong sense of the particular blend of sentencing goals that will be 'just and appropriate' for the protection of that community. The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the

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1. *R.* v. *Shropshire*, [1995] 4 R.C.S. 227.

2. *R.* v. *M.(C.A.)*, [1996] 1 R.C.S. 500.

3. *R.* v. *Shropshire*, *supra* note 1 at 250.

circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community".[4]

Viewed from this perspective, the task of appellate courts becomes that of ensuring consistency by establishing ranges of appropriate sentences for different offences, and providing guidelines as to the "correct principles" and the relevant factors, including those that are categorized as mitigating and aggravating.

Some thoughtful commentators prefer to consider punishment for crime as a community responsibility, an opportunity for mending the tear in a community that the crime caused.

CIAJ's purpose in arranging and sponsoring this symposium is to provide a forum for voices of reasoned experience. It is our expectation that we who are here will learn from each other; but that is not the only purpose of this symposium — it is our hope that the ideas discussed here will be disseminated for discussion by all those who are interested in the sentencing process, including particularly members of the larger community concerned about their safety in their community. For assistance in that regard we are grateful to the Aboriginal Learning Network in the Department of Justice.

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4. *R.* v. *M.(C.A.)*, *supra* note 2 at 566.