

Wrap-Up & Closing Remarks

Deputy Minister of Justice George M. THOMSON*

Il me fait plaisir de me joindre au juge Vancise en disant quelques mots pour clore ce programme. Il est un peu présomptueux de ma part de prendre la parole car je n'ai malheureusement pu assister à une grande partie du programme. Mais, malgré cette absence, il y a deux choses que je peux affirmer sans risque de me tromper. Premièrement, le moment choisi pour réaliser ce programme était, à mon avis, parfait, puisque l'intérêt manifesté à l'égard du Projet de loi C-41 et des mesures de rechange en matière de détermination de la peine est particulièrement intense. Les discussions que vous avez eues ici sont d'après moi extrêmement importantes parce que, autrement, il y a un risque, un risque réel, que notre analyse des nouvelles approches en matière de détermination de la peine ne dépasse pas une discussion rétrospective, cas par cas, de chaque décision des cas controversés.

The second thing that I would say is that it is evident that innovation in this field is very much dependent upon the commitment and perseverance of individual champions — particularly those who come from within the system itself, from within the mainstream justice system. As a simple example, I think it is extremely important that there is broad representation from the police community in this room as you discuss this issue. You have obviously heard, over the last 2 1/2 days, from a lot of people who fall into the category of champion. The existence of people who are prepared to fight hard for these issues and to be strongly heard, particularly from within the system is, I think, enormously important.

Now I thought I would say a few other things that I hope are relevant and build on what I heard this morning. Many people have pointed out that the title of your conference, "Dusk or Dawn, Armageddon or Brave New World" is obviously illustrative of the fact that there is a real question about whether it is possible to pursue alternatives to incarceration, to pursue unique sentencing options in the last half of the 90's. There is clearly evidence that the answer to that could be "no". If you look at prison population growth in this country, it is worthwhile noting that, even if we got back to the conservative growth of the late 1980's, and early 1990's, we would still be moving over the next ten years from about 15,000 up to 20,000 people in the prisons of this country. It is worthwhile, I think, noting that the bulk of that is due to length of sentence and time served than anything else. I looked yesterday at some preliminary statistics relating to the *Young Offenders Act* for 1995 and 1996 which said that 58% of the young persons placed in custody were placed there for property offences or YOA offences, such as failure to comply with a judge's order. It also said that close to half those custody sentences were for one month or less, which shows an enormous reliance on short, sharp sentences.

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Another reason for pessimism has been the tendency to move to reduced discretion — to take away discretion from those who make decisions in this field — a direction that has obviously been wholeheartedly embraced in the United States. We have been nibbling at that here as well.

There is evidence one can point to that suggests the "dusk" part is accurate. I also think, though, that there is some real evidence that the "dawn" part is accurate as well, and will potentially have the upper hand. There are lots of reasons for that.

It is a simple point, and I know that we have often talked about it, but this is an area where good criminal justice and fiscal policies, in fact, merge. There are a number of jurisdictions across Canada that have endorsed an approach that focuses our use of incarceration on serious, violent offenders while, at the same time, placing major emphasis upon alternatives to incarceration for low-risk, non-violent offenders. It is worth noting that there is good evidence that, if well explained, the public is quite prepared to accept this policy direction. I know much of the discussion is about the public's perception of the sentencing of serious offenders, but there is a lot of evidence that, once they understand and are made partners in policy and program decision making, they do strongly embrace the use of innovative alternatives, particularly ones that involve the community.

There are some examples of progress being made. A good one is that which you have been talking about over the last couple of days, the new sentencing Bill. I don't have many chances to say this in public so I will do it now : the Bill is very much the result of the personal commitment and strong work of a small number of people. One of those who really stands out has been David Daubney and the different roles he has played over the last several years.

You have talked a lot about the principles in the Bill, a lot about the directions that it moves in and, of course, a most important aspect, the introduction of the conditional sentence. Judge Vance mentioned that there was an amendment introduced a couple of weeks ago, and passed this week through the Senate, that makes a change to 742.1(b). I know that you have already talked about it. Just to reinforce what has been said, in my view, this amendment does reinforce that which most courts are already saying, that you look at the section and the criteria in the section and also ask whether the sentence is consistent with the fundamental purposes and principles of sentencing. In large measure, I agree with what has been said here already about this amendment.

There are other examples, it seems to me, such as the pioneer work that has been done in the area of aboriginal justice. There are people in this room who have been part of that. We are excited about the Aboriginal Justice Learning Network. It is a way to share the learning which has been taking place here over the last couple of days and elsewhere. It was started under David Arnot's leadership and is being carried on by Romola Trebilcock. I think it is a real way to build up understanding across the system.

The new diversion policy was discussed this morning and I found the session very interesting. We have not yet, as David pointed out, put out the federal diversion policy or guidelines that will be our policy for federal offences and in those areas where the federal Crown prosecutes all Criminal Code offences. It is a little embarrassing to be one of the last ones to develop and publish our policies in relation to a law that we

introduced and passed. I can say that it is because we continue to have a lot of discussion about the policy. David talked about the issue of defining which are those cases where there should be no discretion to divert. This is a very difficult issue. How do you give a clear message while not taking away discretion, where it should exist? I freely admit this is a debate that we have been having and continue to have. But I hope that we will have our guidelines out soon.

Do you need this policy in order to do a number of things we have talked about? I think that is a really important question. For example, we have been developing a litigation strategy with respect to drug offences that we hope to implement this year, that I think can be implemented quite independently of the guidelines. Our Crown policies regarding such things as screening, and negotiations about sentence can have a major impact, quite apart from the diversion guidelines.

There is more work being done. We are working very hard to develop a restorative justice policy framework. Restorative justice as a concept depends for its success upon being embraced by those within the system and those in the community. But it matters that governments are clear in their position of support for restorative justice approaches.

Two days ago the Justice and Legal Affairs Committee released not one but three reports on reform of the *Young Offenders Act*, because at the end they were unable to come to consensus. There is a fair amount of distance between the positions taken on some issues in those reports. One area where there doesn't seem to be a lot of disagreement, and where a lot of learning seems to have been done by the Committee, has been on the issue of innovative alternatives with respect to young offenders who have not engaged in serious violent offences. They have embraced a number of the initiatives that exist in some places in this country and in other countries, as you have heard already in this conference.

There are, I think, some very good examples of strong and sometimes courageous policy development at the provincial level. I think Quebec has been setting a remarkable example in extending an already established policy in favour of quite focused use of incarceration with heavy emphasis upon diversion, particularly for young persons. They have even engaged in an active policy of closing a number of jails, which acts as a powerful incentive for alternatives to incarceration for less serious offenders. Other provinces have also taken important steps. We heard today about the good work being done in Saskatchewan. You can't read that remarkable book *Satisfying Justice* and listen to the discussion in this room, without being excited about what is being tried in many communities across this country. I am very encouraged by that.

I would like to say something briefly about the debate over conditional sentences which has been raging daily up in the city I come from. I don't mean to discuss individual cases, but I think it is important to stress that the issue or question whether, over time and overall, it is an important additional tool for judges. It is not a question of deciding whether it is a good measure because of the decision in a particular case. The question is whether, over time, we see this as a valuable tool to place in the hands of judges as they make their sentencing decisions. For those who would replace this with an approach that would take away discretion altogether in this area, and define exactly what should happen as a sentence, I would say that I think the process through which the judiciary and others

debate how to use the conditional sentence is perhaps as valuable, if not more so, than the actual tool itself. I am really struck by the quality, the nature of the discussion that is going on, the debate that is occurring. You may have strong views one way or the other about whether the particular decision of the Ontario Court of Appeal, recently, in a particular case was right or wrong but you can't read through Mr. Justice Rosenberg's decision without being excited at the kind of debate which is occurring within himself as well as among others, and the use that is being made of non-legal materials that have much to contribute in this area. That process of discussion in itself is almost as important as the opportunity to use this new sentencing tool.

It is important, secondly, to acknowledge that restorative justice techniques may not always be appropriate. In the area of domestic violence, as you know, the representatives of women's groups and others, have pointed out that processes aimed at mediation and conciliation of those disputes and the avoidance of incarceration, may result in the continuation of an existing power imbalance in a way that could be unfortunate and inappropriate in particular cases. It is worthwhile recognising that as we work out how to implement these policies. It is also important to recognise that serious violent offenders cannot necessarily be included; there is a real debate to be had about their inclusion in restorative justice programs, remembering though the discussion of this issue that took place earlier today.

Lorsque je pense aux débats dont nous serons témoins lors de la prochaine campagne électorale, ainsi qu'aux différents rapports présentés hier par le monde de la communauté de la justice sur la *Loi sur les jeunes contrevenants*, je me rends compte du travail que nous avons à faire pour favoriser les discussions publiques sur cette question — discussions qui devraient être fondées sur une bonne connaissance des répercussions du système actuel et des possibilités offertes par certaines des approches uniques que vous-mêmes et d'autres personnes avez élaborées et appuyées. Les ressources nécessaires en terme de travail pour fournir cette information au public et pour amener les communautés à appuyer les approches de justice réparatrice sont souvent celles qui sont les premières à disparaître en cette période de restriction budgétaire. I think it is important that we protect the resources that enable discussion, and make it possible to educate and help people understand laws like *Bill C-41*.

So, those are the things I wanted to say. I must say that I am an optimist and I feel that the factors that point to the possibility of real gains in this area outweigh those that point in the opposite direction. There is a great deal yet to be done to build on the progress that you see and discussions such as those taking place here. There is further work to be done in the area of sentencing. I think of our ongoing work, for example, on the possibility of presumed sentences for particular behaviour, that could reduce our reliance on short sentences for non-violent offenders, and could focus more on the innovative alternatives that exist. I think we need to make real progress on the initiatives to assist aboriginal communities and young offenders, seeing these approaches as models for the system as a whole. And we need to put much more emphasis on public education.

It is also essential to our overall success that we increase our focus on prevention. There are some wonderful examples from other countries of the private sector assisting communities and of really good community-based prevention activities that focus on decreasing the opportunity to commit crimes.

I think there is real potential for major gains in this country that advance both legitimate policy and financial objectives and are acceptable to the public. At the same time, I need to acknowledge the potential for the opposite. I think it is important to remember that doing nothing, aided perhaps by changing demographics, means that there will be a major growth in provincial and federal populations in our jails over the next few years. That is the result of doing nothing. That is why I think the debate you and others are having is so important. I think it will take active, visible and strong championing of these issues if we are going to have real success.