Dawn or Dusk : New Beginning or More of the Same?

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The question posed at the beginning of this conference was — is *Bill C-41* a new beginning or just the same old principles in a new package? Is it a mirage or is it really a new beginning? The answer to that question appears to be clear if one examines only *Bill C-41* and ignores the mixed signals emanating from the legislator including the tough repressive measures contained in *Bill C-55*. There are provisions in *Bill C-41* which provide the opportunity to change the existing paradigm — to change the existing sentencing model from a retributive one to a restorative one. The Bill is however cast in terms which make it equally possible for conservative elements in the justice system to maintain the status quo.

I want to briefly examine the historical development of sentencing in this country and the background which led, eventually to the passage of *Bill C-41*. I then propose to examine the possibilities for change and indeed the changes that are taking place from four perspectives :

1. The statement of principles and objectives;

2. Alternative measures;

3. Conditional sentence of imprisonment; and

4. The evidence of change — the experience to date.

I. BACKGROUND TO BILL C-41

Bill C-41 is the culmination of a long journey — a journey filled with inquiries and initiatives pertaining to sentence reform over the past 70 years.

Before dealing with the results of those sentence reform initiatives, I propose to set the stage leading up to the important changes contained in *Bill C-41*. I will do that by setting out a short history, a much abbreviated history, of the origin of imprisonment in this country and the reports of commissions and inquiries leading up to the passage of this Bill, which as will be seen, is as radical a change today in providing alternatives to imprisonment as the change to imprisonment as an alternative to capital punishment was in the late 19th century.

The Law Reform Commission of Canada noted in *Working Paper 11*[1] that imprisonment, as we know it in Canada today, began in 1885 with the building of the Kingston Penitentiary. The penitentiary sentence was invented by the Quakers in the United States in the late 18th century as an alternative to the harsh punishments of the day, hanging and flogging. The Quakers believed a sentence of imprisonment served in isolation, with opportunities for religious contemplation and hard work, would reform the offender. The penitentiary sentence was later adopted, with certain modifications, in New York — the Albany Model — with the objective to reduce the overall crime rate by hard work and training. The penitentiary sentence was exported from the United States to

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1. Law Reform Commission of Canada, *Imprisonment and Release (Working Paper 11)* (Ottawa : Information Canada, 1975).

England, where it was used as an alternative to exile and transportation of offenders to the colonies. The Albany Model was subsequently adopted in Canada at the Kingston Penitentiary, again as an alternative to the harsh penalties, hanging and flogging. In the 19th century in England there were some 200 offences for which capital punishment was the penalty.[2] Given that Canada adopted the English criminal law, capital punishment was also the primary sentence imposed in this country. It is against this background that imprisonment in Canada developed and the principles of sentencing evolved.

Imprisonment in Canada has been based on religious objectives and the provision of work and training, and more recently, deterrence and rehabilitation. It is clear that imprisonment, the retributive model, has failed to achieve the objectives of deterrence and rehabilitation in any meaningful way and serves simply as a means of denouncing certain aberrant behavior and as an expression of latent vengeance with few positive results. Notwithstanding that failure there are some offences and some offenders for which imprisonment is the only appropriate penalty because the only way to protect society is by removing the offender from the community. Those crimes which require incarceration are not hard to identify : murder, rape, armed robbery and those violent crimes where the offender's conduct is so reprehensible that imprisonment is the only alternative to achieve one of the fundamental goals of sentencing — protection of the public.

The latest parliamentary inquiry into sentencing *Taking Responsibility : Report of the Standing Committee on Justice and Solicitor General* on its review of sentencing, conditional release and related aspects of corrections,[3] summarized the recommendations of past inquiries and their reports. An examination of these recommendations reveals one constant theme : imprisonment should be avoided if possible and should be reserved for the most serious offences, particularly those involving violence. All the inquiries recognize that incarceration has failed to reduce the crime rate and recommend that it should be used with caution and moderation. Imprisonment has failed to satisfy a basic function of the Canadian judicial system which was described almost thirty years ago in the Report of the Canadian Committee on Correction entitled : *Toward Unity : Criminal Justice And Corrections*[4] as "to protect society from crime in a manner commanding

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2. For a more complete and detailed explanation see *infra* note 7 at 22 *et seq*. See also D. Hay *Albions Fatal Tree; Crime and Society in Eighteenth Century England* 1st Am. ed (New York : Pantheon Books, 1975). In particular, D. Hay, "Property, Authority and Criminal Law" at 17 *et seq*. for a complete discussion of the use of capital punishment as a means to protect private property in England in the 18th century.

3. Canada, Parliament, Standing Committee on Justice and Solicitor General, *Taking Responsibility : Report of the Standing Committee on Justice and Solicitor General on its Review of Sentencing, Conditional Release and Related Aspects,* Issue #65, (Ottawa : Queen's Printer, 1988) (Chair : D. Daubney, M.P.) [hereinafter, the *Daubney Report*]. For a summary of the recommendations and conclusions of the relevant commissions of inquiries dealing with sentencing see 29-53.

4. *Report of the Canadian Committee on Correction : Toward Unity : Criminal Justice and Corrections* (Ottawa : Queen's Printer, 1969) (Chair : R. Ouimet) [hereinafter the *Ouimet Report*]. The report identified the fundamental purpose of sentencing as protection of the public and identified five strategies by which that might be achieved. It identified the principles by which the court's discretion might be limited : proportionality, consistency, restraint, and limitations on the use of imprisonment.

public support while avoiding needless injury to the offender". The restraint referred to in all the reports of the inquiries and commissions is exemplified by the following overall sentencing policy proposed in the *Ouimet Report* :

> [...] *segregate the dangerous, deter and restrain the rationally motivated professional criminal, deal as constructively as possible with every offender as the circumstances of the case permit, release the harmless, imprison the casual offender not committed to a criminal career only where no other disposition is appropriate. In every disposition, the possibility of rehabilitation should be taken into account.*[5]

Nothing has changed fundamentally in the intervening 28 years between the publishing of the *Ouimet Report* and the coming into force of *Bill C-41*. The thrust of the recommendations of all the commissions of inquiry has been to use imprisonment as a last resort. Despite all those recommendations the reality is that Canada has one of the highest incarceration rates in the western world. It is very clear that the Canadian penalty of choice is imprisonment!

This is confirmed when one examines the Canadian incarceration rate and becomes even more clear when one examines the Saskatchewan incarceration rate. Canada, with an incarceration rate of 92 per 100,000 is the third highest in the western world behind only the United States, with an incarceration rate of 275 per 100,000 and Switzerland with 150 per 100,000.[6] In Saskatchewan the situation is much worse than the national average. The crime rate has increased steadily over the last 15 years for which statistics are available. Despite the imposition of progressively longer sentences, the Saskatchewan crime rate increased 24% overall between 1979 and 1994. The charge rate for *Criminal Code* offences in Saskatchewan is almost double the national average — 4,201 per 100,000 to 2,601 per 100,000 nationally; the incarceration rate is 920 per 100,000 to 530 per 100,000 nationally. Property offences rose during the same period by 28 percent from 4,544 per 100,000 to 5,818 per 100,000. In 1994, the Saskatchewan crime rate for *Criminal Code* offences was 18 % above the national average. That figure is even more startling when one considers that the crime rate nationally was reported as declining by 4.8%. Paradoxically, the national crime rate for all offences has remained almost flat during the same time frame, even declining slightly.[7]

It would appear, at least in Saskatchewan, that over the last 15 years, the length of sentences has increased and the crime rate has also increased but at a much faster rate. Longer sentences have had no material effect on reducing the crime rate. In fact, just the opposite is true. I conclude from all that, that what we, the judges, prosecutors, and corrections professionals are doing is not working.

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5. *Ibid.* at 185.

6. S. Mihorean & S. Lipinski, *International Incarceration Patterns, 1980-1990* (Ottawa : Statistics Canada, 1992) at 12, Juristat No. 3.

7. "Crime Statistics 1994", *The Daily* (Ottawa : Statistics Canada, 1995) and D. Hendrick, *Canadian Crime Statistics, 1994* (Ottawa : Statistics Canada, 1995) at 15, Juristat No. 12.

What we see is an over-reliance by the courts on the principles of general deterrence, retribution and denunciation with the result that imprisonment has become the norm rather than the last resort. The stark reality is that the punitive, retributive, carceral model has not worked. Far too many people are being put in jail for offences for which a term of imprisonment is not the appropriate penalty. The tough approach with longer sentences has not worked. The rehabilitative incarceral approach has not worked; pontificating about the need to punish and the need to remove offenders from society for the purpose of sending a message that aberrant conduct will not be tolerated has not worked; those approaches cannot work under the present model. Simply put — the system is not functioning. We have thrown money at it, built more jails, conducted commissions of inquiry into sentencing, riots, jail breaks and prison violence — all to no avail!

What do we have? We have a sentencing model which is the opposite of that recommended by every sentencing commission or inquiry held in this century — a system which incarcerates people who are not a danger to society, which tends to use imprisonment not as a punishment of last resort for the most serious offenders, the violent offenders, the professional criminal — but treats imprisonment as the norm. That is the reality!

II. STATEMENT OF PRINCIPLES

For the first time in Canadian history a codification of purposes and objectives of sentencing is contained in the Code. This codification, which is set out in sections 718, 718.1 and 718.2, is the result of the adoption by Parliament of the recommendations of the Canadian Sentencing Commission[8] and the *Daubney Report*.[9] The Canadian Sentencing Commission recommended that Parliament adopt a declaration of purposes and principles. The *Daubney Report* agreed that the purpose and principles of sentencing should be clarified and "established in legislation" to be contained in the Code.

It is beyond the scope of this paper to analyse the differences in approach of these two declarations of purpose and principle. Suffice it to say that both the Canadian Sentencing Commission and the *Daubney Report* recommended a legislated codification of principles and both state the paramount principle of sentencing is that the sentence be "proportionate to the gravity of the offence and the degree of responsibility of the offender". Both reports also agree that a central element of any sentencing model should be accountability of the offender rather than punishment. The declaration of principles and purposes finally adopted by Parliament is a mix of the recommendations of the Canadian Sentencing Commission and the *Daubney Report*.

What does the codification of the declaration of principles mean in practical terms? Will it change how judges impose sentences? Will judges change their approach to sentencing or will they continue to sentence as they always have? Will judges, in fact

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8. *Report of the Canadian Sentencing Commission : Sentencing Reform : A Canadian Approach* (Ottawa : Supply and Services Canada, 1987) (Chair : J.R.O. Archambault).

9. *Supra* note 3.

and in reality, only impose imprisonment as a last resort? Will alternatives to imprisonment be the norm rather than the reverse? That is the real question.

An examination of section 718 which contains the declaration of the purpose and objectives reveals nothing surprising — it is a restatement of the accepted principles of sentencing :

Section 718

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives, to :

a) Denounce unlawful conduct;

b) Deter the offender and other persons from committing offences;

c) Separate offenders from society, where necessary;

d) Assist in rehabilitating offenders;

e) Provide reparations for harm done to victims or to the community; and

f) Promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

In my opinion this is a legislated statement of the status quo. In and of itself it does not represent a new initiative.

Section 718.1 contains a declaration of the "Fundamental Principle" which reads as follows :

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

The inclusion of proportionality as the fundamental principle of sentencing appears to be an attempt to introduce a coherent sentencing theory, a theory of proportionality or a "just deserts" philosophy in which the goals of utilitarianism are to be discouraged. The problem, as with other sections of the Bill, is there is no guidance in the Code as to how the three sections containing principles and purposes are to be interpreted. The fundamental principle of sentencing in section 718.1 is placed between *Principles* and *Other Principles*. Section 718.2 contains five secondary principles of sentencing — three are a restatement of existing principles — aggravating and mitigating circumstances; similar crimes should attract similar sentences; and, a statutory enunciation of the totality principle — and the last two, which are new, and contain a ringing endorsement of the principle of restraint in the use of imprisonment. Those two subsections read :

718.2 A court that imposes a sentence shall also take into consideration the following principles :

[...]

d) An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

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.

Incarceration is to be used as a last resort and the offender is not to be deprived of his liberty if there is a more appropriate alternative to imprisonment. How one reconciles these purposes and principles will determine whether change occurs.

An opportunity exists for judges, if they are so disposed, to use alternatives to imprisonment. Whether the judges will change the retributive paradigm to a restorative one is the real question. There is, in this country, a predisposition to imprisonment, a presumption that imprisonment is the norm and that any sanction other than imprisonment is treated as lenient or a movement away from the norm.[10] The arrest and incarceration figures in Saskatchewan make one wonder whether such a change is possible.

In my opinion, the best hope for change from a carceral model to a restorative one lies in the two most important changes in *Bill C-41* :

1. Diversion, an alternative measures program to be developed and adopted by the Attorneys General in each province; and

2. Conditional sentences of imprisonment.

III. ALTERNATE MEASURES PROGRAMS

Section 717 of the Code provides for a system of diversion or alternate measures which permits non-judicial resolution of certain offences if it is not inconsistent with the protection of society and certain pre-conditions are met, that is :

717(1) Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met :

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10. See *R.* v. *McLeod* (1992), 81 C.C.C. (3d) 83, 109 Sask. R. 8 (Sask C.A.) for a discussion of the presumption of imprisonment. See A. Doob, "Community Sanctions and Imprisonment : Hoping for a Miracle and Not Even Bothering to Pray For It" (1990) 32 *Can. J. Criminology* 415.

a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council of a province;

b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;

c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;

d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;

e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;

f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and

g) the prosecution of the offence is not in any way barred at law.

The Code prohibits the use of a diversion program if the offender denies participation or involvement in the offence or wishes the matter to be dealt with by the courts. An overriding principle of a diversion program is that the alternative measure must not be inconsistent with the protection of society. The offender and the prosecutor must agree on the participation by the offender in the program. There must be sufficient evidence to proceed to trial and the offender must agree to accept responsibility for the offence. Those general principles are broad enough and flexible enough to permit the design and creation of programs which are restorative and therapeutic in nature rather than retributive or punitive.

There is also sufficient scope within the statutory framework to create judicially mandated programs with positive elements for change : to create an environment which contains both mechanisms for reconciliation of offenders, victims and communities and also provides mechanisms for the offender to make amends by compensating the victim; and, to create a system based on condemning criminal behaviour rather than condemning the offender and which provides for the re-integration of the offender into society. A restorative or therapeutic model will provide the means, which in the case of addicts for example would be treatment, where the offender can deal with his addiction and be held accountable for his actions. Punishment is not the objective — treatment is!

I am informed as of the writing of this paper, that four provinces, Alberta, Saskatchewan, Nova Scotia and Prince Edward Island have authorized the implementation of alternative measures programs. Saskatchewan as usual, was first off the mark. The Ministerial Order which authorizes the creation of alternative measures programs is however not open ended. Some offences are excluded from the program : sexual assault, violence against the person where the Crown has elected to proceed by way of indictment,

Criminal Code driving offences, family violence, sexual abuse of children, federal offences (these are to be covered by the Federal Diversion Program which will be operated by the province). The practical effect of this is that possession and possession for the purpose of trafficking will be among those offences which will be included as eligible offences for diversion.

In Regina the alternate measures program is delivered by Regina Alternate Measures Program (RAMP), a community based organization, which involves a collaborative effort among the Regina Aboriginal Human Services Cooperative (RAHSC) and the three levels of government. The community members and the governments are equal partners in developing a mutually agreed upon program. A detailed protocol and mandate has been worked out and the program is now operational.

The Regina City Police have informed me that since the program began operating in late December 1996, some 200 cases have been diverted. The Police now predict, based on the current rate of utilization, that 200 cases per month could be diverted if RAMP had sufficient staff. RAMP is unfortunately unable to handle that volume at the present time. The kind of offences which have been diverted to date include : prostitution; shoplifting; assaults other than domestic violence or spousal abuse; possession of a controlled drug and car theft.

There are also diversion programs operating in Saskatoon, Moose Jaw and Prince Albert. The creation of these program indicates, at least in Saskatchewan, a willingness by the Police and the Department of Justice to look at alternatives to imprisonment and to try to effect a change to the existing paradigm.

IV. CONDITIONAL SENTENCE OF IMPRISONMENT

The creation of the conditional sentence of imprisonment in section 742(1) of *Bill C-41* is a positive sign that the principle of restraint and a change from a carceral sentencing model to a therapeutic one is possible. This sanction provides an opportunity to move away from over-reliance by the courts on the principles of general deterrence, retribution and denunciation which has resulted in imprisonment being the norm rather than a last resort. The stark reality is that the punitive, carceral model has not worked.

Some jurists argue that conditional sentences of imprisonment are, in reality, just another form of suspended sentence. I do not agree with that submission. It is, as Moore C.J. of the Alberta Court of Queen's Bench said in *R.* v. *Lokanc*,[11] a *true alternative* to serving a prison term. It allows the offender to serve the sentence of imprisonment in the community, but only after the sentencing judge has first imposed a sentence of imprisonment as the appropriate penalty. It is not the suspension of the imposition of the sentence. It is a distinctly different concept from probation and suspended sentence.

The imposition of a conditional sentence of imprisonment must be approached in a principled way to ensure the sanction is used as a *clear alternative* to imprisonment

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11. *R.* v. *Lokanc*, [1996] A.J. No. 1191 (Alta. Q.B.) (Q.L.).

and not as a substitute for community based sanctions such as fines, probation, community service and absolute and conditional discharges. To achieve this, in my opinion, the following approach must be followed :

1. The sentencing judge must consider the appropriateness of all other alternatives to imprisonment such as fines, probation, community service and absolute and conditional discharges before deciding that a term of imprisonment is the appropriate penalty;

2. If imprisonment is the appropriate penalty, the sentencing judge must determine and impose the appropriate sentence of imprisonment, having regard to the circumstances of the offence and the offender, and in particular sections 718.1 and 718.2 of the Code;

3. If the appropriate sentence is less than two years, then the sentencing judge must be satisfied that serving the penalty in the community would not endanger the safety of the community.

This approach gives effect to the legislative scheme and choices made by Parliament in section 742 and is consistent with and gives effect to the purposes and objectives contained in sections 718.2(d) and (e) which direct a sentencing judge to consider all other available sanctions before depriving an offender of liberty or imposing a term of imprisonment.

If one approaches the conditional sentence of imprisonment in this way, that is, by using it as a true alternative to imprisonment and not as an alternative to existing community sanctions, the imprisonment of persons who would never have gone to jail otherwise is avoided. This approach has the further advantage of ensuring that imprisonment will be used only as a last resort.

The effect of the conditional sentence is to permit the accused to avoid imprisonment but not to avoid punishment. Section 742.3(2) specifically empowers a sentencing judge to impose punishment (i.e. community service, treatment and additional punishment such as house arrest). There can be more than one form of constraint or deprivation of liberty of the offender by which the purposes and objects of sentencing can be achieved.

Parliament did not intend, in my opinion, that the accused be liberated without the imposition of controls or constraints. This is made very clear by sections 742.6(9)(d) which gives the court the power to terminate the conditional sentence and order the offender "be committed to custody until the expiration of the sentence". The offender’s sentence, even though served in the community, remains in full effect. The offender remains under the control of the court. The offender’s liberty is restricted for the full term of the sentence but the offender has a greater degree of freedom and liberty because the conditions of his or her imprisonment are changed from the physical confinement of a prison to serving the sentence in the community. This is not unlike the situation that exists

when an offender is granted parole. In *R.* v. *M.* (C.A.),[12] Lamer C.J.C. described the current system of conditional sentence as representing a change in the conditions under which the sentence is served. He stated :

> *But even though the conditions of incarceration are subject to change through a grant of parole to the offender's benefit, the offender's sentence continues in full effect. The offender remains under the strict control of the parole system, and the offender's liberty remains significantly curtailed for the full duration of the offender's numerical or life sentence.*[13]

The codified principles of sentencing in *Bill C-41* clearly contemplate the importance of offenders accepting responsibility for their actions and acknowledging the harm they cause. The principles are broad enough to permit creativity and to permit the crafting of conditional sentences which can include judicially mandated treatment. Imprisonment is statutorily mandated to be used as a last resort. Conditional sentencing puts the onus on the offender, for example, to comply with a judicially mandated treatment order failing which the offender will be incarcerated. This kind of incentive works.

Other efforts at restorative justice are being utilized in both the mainstream justice system and in the aboriginal community. One has only to look at the use of sentencing circles and other attempts at healing. The comments of Bayda C.J.S. for the minority in *R.* v. *Morin*,[14] concerning a restorative approach to sentencing are instructive. They deal specifically with a sentencing circle but his comments apply generally with equal force to any non-traditional approach to sentencing. The Chief Justice said :

> *The circle was premised on two fundamental notions : first, the wrongful act was a breach of the relationship between the wrongdoer and the victim and a breach of the relationship between the wrongdoer and the community; and second, the well-being of the community and consequently the protection of its members and the society generally depended not upon retribution or punishment of the wrongdoer, but upon "healing" the breaches of the two relationships. The emphasis was primarily, if not entirely, upon a restorative or healing approach as distinct from a retributive or punitive approach. Given the transient nature of a hunting and gathering society and the communitarian ethos that is basic to the survival of a hunting and gathering society the restorative approach was bound to take root and become established as the appropriate one to deal with wrongdoers and their wrongful acts.*
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> *Inherent in the restorative approach is the willing participation of the wrongdoer, his victims and the community in the exercise. Important is the*

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

13. *Ibid.* at 545.

14. *R.* v. *Morin*, [1995] 9 W.W.R. 696, (1996), 101 C.C.C. (3d) 124 (Sask. C.A.).

> *capacity of each of these participants to participate in a way that is likely to result in a restoration or healing*.[15]

As the Chief Justice noted, it will be difficult to assess the fitness of a restorative sentence by comparing it to a fit sentence using the ordinary approach. This will cause some difficulties because of the principle of disparity but this difficulty must be viewed in the context of the new aims of sentencing and the need to change the excessive reliance by the courts on imprisonment as the norm in sentencing. We must be flexible and accommodating and geared to providing a fair and just result.

CONCLUSION

Our challenge therefore is to create an alternative to the present system of sentencing. Our challenge is to build a sentencing model in which all parts of the system — judges, police, prosecutors, health care professionals, social workers and corrections personnel — work together to ensure that the recommendations of the *Ouimet Report*, *Archambault Report* and the *Daubney Report* as contained in *Bill C-41* are followed. The challenge is to use *Bill C-41*, to make real changes by :

1. Ensuring that persons who commit offences where the protection of society is not an issue are diverted from the criminal justice system;

2. Altering the sentencing model, where appropriate, from a punitive one to a restorative therapeutic one; and

3. Using imprisonment as a last resort, as the appropriate penalty only when protection of society requires it.

The challenge is not easy. It requires : a commitment to change the current system built on retribution, denunciation and deterrence, to a restorative system; a commitment to a restorative model which is more complex and more difficult to administer, where only the most serious offenders are imprisoned; and, a commitment to the use of alternative measures to imprisonment both by diversion and the use of court imposed alternatives. Such a system is based less on the state's power to segregate and isolate the offender and more on the restorative therapeutic and community based response to dealing with the offender, albeit one which requires the offender to compensate and make amends to the victim. A restorative system is no more expensive than the failing current system and will likely be cheaper in the long term because there will be less recidivism, more productive people and hence, less crime.

We must not let conservative reluctance and misinformation prevent the reform contemplated in *Bill C-41*. Justice and Corrections must put in place the necessary therapeutic and restorative programs contemplated by the Bill and must then ensure the courts are aware of the initiatives. There must be collaboration between the judiciary and Corrections so that the judiciary are aware of what new programs have been created.

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15. *R.* v. *Morin* (1996), 101 C.C.C. (3d) 124 (Sask. C.A.) at 154.

These legislative changes are just opportunities. If the judiciary does not react, if Justice and Corrections do not put the necessary programming in place, nothing will happen. The challenge is to make sure that something happens — that the system changes.