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BACKGROUND PAPER

SENTENCING IN CANADA

Publication No. 2020-06-E
22 May 2020

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Parliamentary Information and Research Service

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This publication was prepared as part of the Library of Parliament's research publications program, which includes a set of publications, introduced in March 2020, addressing the COVID-19 pandemic. Please note that, because of the pandemic, all Library of Parliament publications will be released as time and resources permit.

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(Background Paper)

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Ce document est également publié en français.

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EXECUTIVE SUMMARY

The appropriate sentence for a crime is a hotly contested topic. Some people feel that more weight should be given to the objectives of deterrence and punishment, while others want to focus on rehabilitation, for example. While judicial discretion is an essential element of judicial independence in a democracy, how much discretion is appropriate continues to be a big part of the debate. Unlike countries such as the United Kingdom and the United States, Canada does not have sentencing guidelines or a sentencing commission, both of which generally provide additional limits on judicial discretion. The lack of such measures has been criticized by some commentators for creating a situation where the data required to assess disparities in sentencing across the country is not available.

There are a broad range of sentences available to a sentencing judge in Canada, and this Background Paper explores each of them in turn. (Issues relating specifically to the sentencing of Indigenous offenders are addressed in a companion Library of Parliament publication by Graeme McConnell, entitled *Indigenous People and Sentencing in Canada*.) At the lower end of the sentencing spectrum are alternative measures such as community service, counselling, treatment and mediation where the accused does not end up with a criminal record. Various other sentences are available, up to life imprisonment. The appropriate sentence depends generally on a variety of factors outlined in the *Criminal Code* and other statutes, although judicial discretion is limited by a maximum sentence for each offence and, for some offences, by a mandatory minimum sentence.

Mandatory minimum sentences are one of the most controversial components of sentencing. Mandatory minimum fines and periods of imprisonment now exist for dozens of offences in Canadian criminal law. Unlike in some countries, such as the United Kingdom, judges in Canada are not granted discretion to provide a lesser sentence in exceptional circumstances if an offence is subject to a mandatory minimum sentence. The only exceptions to this rule are with respect to certain drug- and alcohol-related offences outlined in the *Criminal Code* and the *Controlled Drugs and Substances Act*.

Proponents of mandatory minimum sentences say that they act as a deterrent, prevent future crime by removing the offender from society for longer, hold people accountable, promote clarity and reduce disparities in sentencing. Opponents hold that, by limiting judicial discretion, they may prevent just sentences "proportionate to the gravity of the offence and the degree of responsibility of the offender," as required by section 718.1 of the *Criminal Code*. In addition, the deterrent effect of mandatory minimums has been questioned, and the increased costs to the criminal

justice system have been critiqued. It is also argued that mandatory minimum sentences do not remove discretion but rather transfer it to prosecutors. These critics are concerned that prosecutorial discretion is not reviewable and is conducted behind closed doors instead of in a public courtroom.

When mandatory minimum sentences have been challenged in court, the results have been mixed. The result of each challenge to mandatory minimum sentences based on the *Canadian Charter of Rights and Freedoms* depends on the specific minimum and offence, as there is no general rule about whether mandatory minimum sentences are constitutional.

Conditional release prior to the end of a sentence of imprisonment is also a topic that causes strong reactions. When an offender is sentenced to a period of imprisonment, they generally do not spend the entire time in a prison or penitentiary. Conditional release for federally incarcerated offenders (imprisonment for two years or more) includes various types of release, such as a temporary absence, day parole, full parole and statutory release. Unlike the sentence, which is determined by a court, conditional release decisions are made by the Correctional Service of Canada (CSC) (for some temporary absences) or the Parole Board of Canada (all other decisions about release). Approximately 7 out of 10 first requests for parole are denied. In contrast, statutory release is generally automatic, although offenders become eligible after having spent a longer period of incarceration than when they are applying for parole. The aim of statutory release is to allow for structured and supportive supervision of the offender upon release, with the objective of increasing their chances of successful reintegration into society. CSC can request that an offender remain imprisoned until the end of their sentence, but this then means that the offender is released into the community without any supervision. The release system is different for offenders in provincial prisons.

The determination of sentencing and release decisions involves weighing many factors and considerations. The appropriate balance of factors and considerations remains a topic of debate and is likely to continue to do so in the future.

SENTENCING IN CANADA

1 INTRODUCTION

The appropriate sentence for a crime is a hotly contested topic. Some people feel that more weight should be given to the objectives of deterrence and punishment, while others want to focus on rehabilitation, for example. This Background Paper will discuss the objectives of sentencing in Canadian law and explain the different types of sentences available.[1] Issues relating specifically to sentencing of Indigenous offenders are addressed in a companion Library of Parliament publication by Graeme McConnell, entitled *Indigenous People and Sentencing in Canada*.[2]

2 SENTENCING AND JUDICIAL DISCRETION

Judicial discretion is an essential element of judicial independence in a democracy.[3] However, how much discretion is appropriate continues to be a matter of debate. Starting with the 1969 *Report of the Canadian Committee on Corrections*[4] (known as the Ouimet Report), several studies of Canadian sentencing have been published. This series of studies culminated in 1996 with the coming into force of a sentencing code for Canada (Part XXIII of the *Criminal Code*[5] [Code]).

The 1996 amendments were generally seen as codifying existing practice and largely maintaining judicial discretion in sentencing.[6] Unlike countries such as the United Kingdom and the United States, Canada does not have sentencing guidelines or a sentencing commission, both of which generally provide additional limits on judicial discretion. The Canadian approach has been criticized by some commentators. For example, Professor Gerry Ferguson critiqued the current system and called for a sentencing commission in a 2016 report for the Department of Justice:

> A statement of purposes and principles can accomplish very little by itself. It is an important starting point and a first level of guidance in imposing a fit sentence … the sentencing package enacted in 1996 only provided part of the solution to the major problems in Canada's sentencing regime. … But the most important proposal for solving many of our other sentencing problems was the creation of a permanent sentencing commission which would (1) collect and disseminate important information on sentencing to all interested parties, (2) develop presumptive or advisory sentencing guidelines for all major offences, and (3) conduct research and make recommendations on the most problematic areas of sentencing.

> Without a sentencing commission, some of our most challenging sentencing issues remain unanswered. …
>
> Unwarranted disparity in sentencing continues to exist. How widespread and how substantial is the disparity? Nobody knows for sure because there is no sentencing commission or other body to study that issue. There is no reason to believe that sentencing disparity has significantly decreased since 1996.[7]

In contrast, as will be discussed in more detail in section 5.6.2.4 on mandatory minimum sentences, many judges and others argue that maintaining judicial discretion to adapt the sentence to the specifics of the case is essential.[8]

A final point regarding discretion in sentencing needs to be mentioned: discretion is not only in the hands of the judge. Most cases do not go to trial, meaning that most sentences are the result of joint submissions made to the judge by the Crown prosecutor and defence counsel. Judges usually accept such submissions. For this reason, prosecutors are key players in exercising discretion regarding sentences as well.[9]

3 PURPOSES AND PRINCIPLES OF SENTENCING

The purposes and principles of sentencing are set out in sections 718 to 718.3 of the Code and in other laws as outlined below.

3.1 PURPOSES OF SENTENCING

Section 718 of the Code states as follows:

> The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for 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:
>
> a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
>
> b) to deter the offender and other persons from committing offences;
>
> c) to separate offenders from society, where necessary;
>
> d) to assist in rehabilitating offenders;
>
> e) to provide reparations for harm done to victims or to the community; and
>
> f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

As noted by the Supreme Court of Canada in *R. v. Nasogaluak*, "No one sentencing objective trumps the others";[10] however, there are some offences for which certain objectives are to weigh more heavily. Amendments made to the Code in 2005, 2009, 2015 and 2019 added sections 718.01, 718.02, 718.03 and 718.04, respectively, to specify that the objectives of denunciation and deterrence are primary considerations in relation to the following offences:

- abuse of a minor under age 18;
- offences against peace officers and justice system participants;
- killing or injuring a law enforcement or military animal;[11] and
- abuse of a person who is vulnerable because of personal circumstances, including because the person is Aboriginal[12] and female.

Sentencing purposes for drug offences are outlined in section 10 of the *Controlled Drugs and Substances Act* (CDSA),[13] and section 15(1) of the *Cannabis Act.*[14]

3.2 PRINCIPLES OF SENTENCING, INCLUDING AGGRAVATING AND MITIGATING CIRCUMSTANCES

In addition to the general purposes outlined above, there are also principles of sentencing. The fundamental principle of sentencing, outlined in section 718.1 of the Code, is that a sentence be "proportionate to the gravity of the offence and the degree of responsibility of the offender." In addition, section 718.2 outlines a number of other principles to be followed in sentencing, and aggravating and mitigating circumstances to be considered in determining the sentence.[15] While a number of specific examples are listed, the list is not exhaustive.

For example, an alleged breach of the offender's rights under the *Canadian Charter of Rights and Freedoms* (Charter)[16] may also be a relevant mitigating factor at sentencing.[17] Aggravating and mitigating circumstances are also found elsewhere in the Code for specific offences.

Where an offence involves the abuse of an intimate partner, section 718.201 requires the court to consider the increased vulnerability of female persons who are victims, with particular attention to the circumstances of Aboriginal female victims, when sentencing. This is a new requirement introduced in 2019.[18] Additional sentencing factors to consider are outlined in section 718.21 of the Code, where the accused is an organization, and in section 320.22 for impaired driving offences; in section 10(2) of the CDSA or section 15(2) of the *Cannabis Act*, where the offence is drug-related; and in sections 52.1(10) and 53(7) of the *Competition Act*,[19] regarding telemarketing and deceptive notice that an individual has won a prize.

Section 718.3 provides guidance relating to judicial discretion and when multiple sentences should be concurrent or consecutive, as discussed in further detail in section 5.6.2.3 of this Background Paper. An amendment introduced in 2019 by Bill C-75[20] added section 718.3(8), which allows the court to impose a sentence above the maximum sentence for an indictable offence where violence was used, threatened or attempted against an intimate partner, and the accused has previously been convicted of an offence for the use, threat or attempted use of violence against an intimate partner. The new provision outlines the maximum increases allowed in such cases, which vary depending on the normal maximum penalty for the offence.

In addition, where criminal organization offences outlined in sections 467.11 to 467.13 of the Code take place, the sentence imposed must be served consecutively to any other punishment received for an offence arising out of the same event or series of events and to any sentence the person is subject to at the time of sentencing for the criminal organization offence.[21] Similar provisions exist with respect to terrorism offences as well.[22]

Where there are collateral consequences related to a sentence, courts have said that a sentence can be reduced as long as the sentence remains proportionate to the gravity of the offence and the offender's responsibility. In *R. v. Pham*, for example, the Supreme Court of Canada reduced the offender's sentence from two years to two years less a day because of the immigration implications of a two-year sentence.[23]

4 SENTENCING AND THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

Section 12 of the Charter is the provision discussed most often in relation to sentencing, as it recognizes the "right not to be subject to any cruel and unusual treatment or punishment." Other provisions, such as section 7 (the right to life, liberty and security of the person) and section 15 (the right to equality), have also been the basis of Charter challenges related to sentencing.[24]

To violate section 12, a punishment must be "so excessive as to outrage standards of decency."[25] In the past, judges sometimes gave constitutional exemptions in cases where section 12 was violated but they thought the law should stay in place. However, the Supreme Court of Canada has made it clear that this is not permitted. Instead, the law is to be struck down where the law violates the Charter in the case before the court or in reasonably hypothetical circumstances.[26] The primary focus of legal challenges on the basis of section 12 of the Charter in recent years has been mandatory minimum sentences, as discussed in section 5.6.2.4 of this paper.

5 TYPES OF SENTENCES

This section outlines the types of sentences that can be imposed once an offender has been convicted, either through a guilty plea or a finding of guilt at trial. The court may request that a probation officer provide a report to assist in sentencing.[27] Sentencing may also be delayed for the offender to undergo an approved treatment program.[28] If the offender successfully completes the program, they may receive a reduced sentence.[29]

5.1 ALTERNATIVE MEASURES

Alternative measures were introduced in the Code in 1996 and are defined in section 716 as "measures other than judicial proceedings."[30] Section 717 of the Code allows alternative measures to be used to deal with a person alleged to have committed an offence if certain conditions are met and their use would not be inconsistent with the protection of society. The objective is to divert individuals from the criminal justice system while still holding them responsible for their actions. Alternative measures can be used before or after a charge has been laid. The person in question must consent to participate and accept responsibility for the act or omission in question. No charges are laid, or charges that have been laid are dropped, if the person in question complies with the terms and conditions of the alternative measures. Although the person who agrees to alternative measures does not receive a criminal record, information regarding their involvement in the matter will be available for a period of two years to certain officials, such as police.[31] Programs of alternative measures vary considerably across Canadian jurisdictions, but such programs must be authorized by the attorney general or other authorized person. They can include community service, mediation, referrals to specialized counselling programs, treatment, education, victim-offender reconciliation programs, restorative justice initiatives, letters of apology and other similar measures.[32] Some programs are for specific populations, such as Indigenous people.[33]

5.2 REMEDIATION AGREEMENTS

Part XXII.1 of the Code was introduced in 2018 and outlines the rules for remediation agreements, which are defined in section 715.3 as an agreement, between an organization accused of having committed an offence and a prosecutor, to stay any proceedings in relation to that offence if the organization complies with the terms of the agreement.

These agreements have multiple objectives, as outlined in section 715.31, including to denounce the wrongdoing and harm and to reduce the negative consequences for those who did not engage in wrongdoing, such as employees, customers and pensioners.

5.3 ABSOLUTE AND CONDITIONAL DISCHARGES, SUSPENDED SENTENCES AND PROBATION

5.3.1 Absolute and Conditional Discharges

Absolute and conditional discharges were introduced into Canadian criminal law in 1972 in response to the 1969 Ouimet Report mentioned in section 2 of this paper. That report called for changes to the criminal law that would avoid the damaging consequences of a criminal record for first-time offenders who had committed a minor offence.[34] Once an accused is found guilty, section 730 of the Code permits the court to order an absolute or conditional discharge if there is no mandatory minimum sentence for the offence and the maximum punishment is less than 14 years' imprisonment. This option must be in the best interests of the accused and not be contrary to the public interest. While an absolute discharge has no conditions, a conditional discharge requires that specific rules relating to the accused's offence be respected for a period of time (referred to as the probationary period). A fine cannot be imposed where an accused receives a discharge, since no conviction is registered (a fine is considered part of a sentence).[35]

Where an accused on conditional discharge is convicted of another offence during the probationary period, including the offence of failing to comply with a probation order, the conditional discharge can be revoked, the accused convicted and a sentence imposed.[36] The court may also change or add conditions to the order instead of revoking the discharge.[37] If an accused receives an absolute discharge, it cannot be revoked because the offender has committed another offence.[38]

5.3.2 Suspended Sentences

Where an accused is found guilty, the court may delay sentencing and release an offender on probation for a period of one to three years. While similar to a conditional discharge in that the accused is subject to probation and no fine may be imposed, a suspended sentence results in a conviction and, thus, a criminal record.[39] Prior to 1969, a suspended sentence was only permitted in limited circumstances. Changes to the Code in that year opened up suspended sentences for any offence with no mandatory minimum sentence. The judge must have regard for the age and character of the accused, the nature of the offence and the circumstances surrounding its commission in making the decision as to whether a suspended sentence would be appropriate.[40]

Under a suspended sentence, if an offender breaches the conditions at any point during the probationary period, they can be required to serve the full term that would have been appropriate for the offence. The appropriate sentence is determined at the time of the breach of conditions, not when the suspended sentence is originally imposed.[41]

5.3.3 Probation

Probation can be imposed for a maximum of three years.[42] While probation may be imposed as part of a conditional discharge or suspended sentence, as noted above, it can also be added at the end of a sentence of up to two years' imprisonment. Probation is allowed where a fine or imprisonment is imposed, but not where both are imposed.[43] An offender on probation is supervised by a provincial or territorial probation officer, and the management of probation is under provincial jurisdiction.[44]

Some conditions of probation are mandatory, while others are optional.[45] A breach of the conditions is a criminal offence with a maximum term of imprisonment of four years.[46] Since it is a criminal offence, a breach of probation must be established beyond a reasonable doubt.[47]

5.4 FINES, VICTIM SURCHARGE AND FORFEITURE

5.4.1 Fines

A fine given as a sentence for a criminal offence results in a criminal record. Prior to 1996, a fine could be imposed only for an offence punishable with a maximum of five years' imprisonment or less. Now, a fine may be imposed if there is no mandatory minimum period of imprisonment. A fine may only be imposed where the court is satisfied that the offender is able to pay the fine or discharge it under a fine option program. Such programs allow an offender to work off the fine.[48] They are available, with variable eligibility criteria, in all provinces and territories except British Columbia, Ontario, and Newfoundland and Labrador.[49]

A minimum fine is mandatory for some offences, such as impaired driving. In such cases, fines can be used as a penalty alone or along with another punishment, such as imprisonment.[50] A fine cannot be combined with an absolute or conditional discharge or a suspended sentence, since the accused in such situations has not been sentenced.[51]

There is no specific limit on the amount of the fine that can be imposed for an indictable offence, but the amount must be reasonable considering the offence and the offender's ability to pay or discharge it via a fine option program. For a summary conviction, unless otherwise specified, the maximum fine is $5,000 for an individual and $100,000 for an organization.[52]

If a fine is not paid, there are several options. A provincial government or the federal government can refuse to issue or renew a licence or permit or can suspend either if already issued. Imprisonment for non-payment of fines is also provided for in section 734 of the Code.[53]

5.4.2 Victim Surcharge

An offender must pay a victim surcharge of $100 for a summary conviction offence, $200 for an indictable offence or, where the sentence includes a fine, the surcharge is an additional 30% of the amount of the fine. The amount can be increased further where appropriate.[54] The funds are used for victim services.[55]

Until 2013, the court had discretion to exempt an offender from paying the victim surcharge where undue hardship would result for the offender or their dependants. Such exemptions were often granted. In 2013, the possibility of an exemption was removed from section 737 of the Code, and the amounts of the fine were increased to their current amounts.[56] In 2018, in *R. v. Boudreault*, the Supreme Court of Canada concluded that the victim surcharge provisions as amended in 2013 violated section 12 of the Charter and were of no force and effect.[57] Bill C-75 amended section 737 in 2019 to reflect the Supreme Court's decision. Section 737(2.1) currently allows judicial discretion regarding the imposition of a victim surcharge where it would cause undue hardship or be disproportionate to the gravity of the offence or the degree of responsibility of the offender. Reasons are required where the court grants an exemption.[58]

5.4.3 Forfeiture

The Code includes provisions for the forfeiture of property under certain conditions. For example, the attorney general can make an application to the Federal Court for an order of forfeiture in respect of property owned or controlled by or on behalf of a terrorist group or property that has or will be used to facilitate or carry out terrorist activity. A judge decides, on a balance of probabilities, whether the property satisfies either criteria.[59] There are also provisions for the seizure of counterfeit money, tokens and associated equipment and the forfeiture of proceeds of crime and offence-related property in the Code.[60]

5.5 RESTITUTION

Restitution is compensation for money a victim has lost because of an offence. The *Canadian Victims Bill of Rights* requires that the court consider whether to issue a restitution order in all cases, although the court is not obligated to grant one.[61] Unlike a fine, a victim surcharge or forfeiture, where funds are paid to the state, restitution is paid directly to the victim of a crime (the victim surcharge also benefits victims, but indirectly, through the funding of services). Restitution can be granted for easily measurable losses such as lost wages, damaged property or bodily injury, but not for damages such as pain and suffering or emotional distress that would require assessment by a civil court. The victim must document their losses so that they can be reported to the court at sentencing (e.g., keeping pay stubs, receipts, etc.).[62]

The offender can be expected to pay restitution immediately or they can be given a period of time in which to pay. If restitution is not paid on time, the victim can file the order in civil court, and civil enforcement methods become available for them to collect the amount owed. Some victim services organizations help victims with this process.[63]

5.6 CONDITIONAL SENTENCES AND IMPRISONMENT

5.6.1 Conditional Sentence

The court can decide that a sentence of less than two years be served in the community.[64] This form of sentence was introduced as part of the reforms in 1996 and is called a conditional sentence. It is more often referred to as "house arrest," because the offender must generally spend all or part of the sentence in their home.[65] The Supreme Court of Canada has stated that, while probation is primarily a rehabilitative tool, a conditional sentence has both punitive and rehabilitative aspects.[66] The judge must be satisfied that serving the sentence in this way would not endanger the community and that such a punishment would respect the purpose and principles of sentencing.[67]

An offender is not eligible for a conditional sentence if any of the following apply:

- They are subject to a minimum term of imprisonment for the offence.
- The offence has a maximum of 14 years or life.
- The offence is one of those listed in sections 742.1(d) and 742.1(e) of the Code, and prosecuted by way of indictment, with a maximum of 10 years' imprisonment or more (e.g., where there is bodily harm or certain terrorism and criminal organization offences).
- The offence is one of the 11 listed in section 742.1(f) and prosecuted by way of indictment (e.g., sexual assault and theft over $5,000).[68]

An offender serving a conditional sentence is subject to conditions, as outlined in section 742.3 of the Code, and may be subject to a probation order once the conditional sentence is completed. If an offender breaks the conditions, a judge may require them to serve the rest of the sentence in a prison or penitentiary. A breach of conditions for a conditional sentence must be established on a balance of probabilities.[69]

5.6.2 Imprisonment in a Prison or Penitentiary

Imprisonment is the most serious sentence in our legal system today. All offences have a maximum sentence, and some, as outlined in further detail in section 5.6.2.4 of this paper, also have a mandatory minimum period of incarceration. The maximum

sentence for the most serious crimes, such as murder, is imprisonment for life. Since changes made to the Code in 2019, the general maximum penalty for summary conviction offences is two years less a day where the offence does not specify another maximum.[70] Offenders sentenced to less than two years serve their sentence in a provincial prison, while those with sentences of two years or more are sent to a federal penitentiary.[71]

5.6.2.1 Impact of Pre-sentence Custody on Sentence

Section 719(3) of the Code allows a court to consider time spent in pre-sentence custody when calculating an offender's sentence. In the past, judges gave double or even triple credit for each day of pre-sentence custody. This is because, in many cases, parole eligibility criteria do not take that period into account. This means an offender who was in pre-sentence custody would be in jail longer than someone out on bail for the same offence. Also, local detention centres generally have fewer programs and more difficult living conditions, so time spent in pre-sentence custody is seen as more onerous.[72] Amendments made to the Code in 2009 limited credit for pre-sentence custody to one day per day spent in custody or, in some circumstances, to 1.5 days for each day.[73] In 2014, in its decision in *R. v. Summers*, the Supreme Court of Canada concluded that circumstances justifying granting 1.5 credits are actually quite common:

> The loss of early release, taken alone, will generally be a sufficient basis to award credit at the rate of 1.5 to 1, even if the conditions of detention are not particularly harsh, and parole is unlikely. Of course, a lower rate may be appropriate when detention was a result of the offender's bad conduct, or the offender is likely to obtain neither early release nor parole. When the statutory exceptions within s. 719(3.1) are engaged, credit may only be given at a rate of 1 to 1. Moreover, s. 719 is engaged only where the pre-sentence detention is a result of the offence for which the offender is being sentenced.[74]

5.6.2.2 Intermittent Sentence

If a sentence of imprisonment is 90 days or less, the court may order that it be served intermittently (e.g., on weekends).[75] When this is done, the offender is subject to a probation order during the periods when they are not imprisoned and can also be subject to a probation order after the end of the intermittent sentence. In making the decision to grant an intermittent sentence, the court must consider "the age and character of the offender, the nature of the offence and the circumstances surrounding its commission, and the availability of appropriate accommodation to ensure compliance with the sentence."[76]

5.6.2.3 Consecutive and Concurrent Sentences

Where an offender is sentenced for more than one offence, those sentences can be served concurrently (at the same time) or consecutively (one after the other). Concurrent sentences are far more common.[77] Section 718.2(c) of the Code requires that, where consecutive sentences are imposed, the combined sentence not be "unduly long or harsh." Sections 718.3(4) and 718.3(7), which were introduced in 2015, outline specific rules regarding when a sentence should or must be served consecutively.

5.6.2.4 Mandatory Minimum Sentences

Mandatory minimum fines and periods of imprisonment exist for various offences in Canadian criminal law. When the Code was first enacted in 1892, there were six offences triggering a mandatory minimum sentence of imprisonment.[78] There are now dozens of mandatory minimum sentences. Unlike in some countries, such as the United Kingdom, judges in Canada are not granted discretion to provide a lesser sentence in exceptional circumstances if an offence is subject to a mandatory minimum sentence.[79] The only exceptions to this rule are with respect to certain drug- and alcohol-related offences outlined in the Code and the CDSA. Where the offender undergoes approved treatment in such cases, the court is not required to impose the minimum punishment.[80]

Mandatory minimum sentences are one of the most hotly contested components of sentencing. Proponents of mandatory minimum sentences say that they act as a deterrent, prevent future crime by removing the offender from society for longer, hold people accountable, promote clarity and reduce disparities in sentencing. Opponents say that, by limiting judicial discretion, they may prevent just sentences "proportionate to the gravity of the offence and the degree of responsibility of the offender," as required by section 718.1 of the Code. In addition, the deterrent effect of mandatory minimums has been questioned, and the increased costs to the criminal justice system have been critiqued. It is also argued that mandatory minimum sentences do not remove discretion but rather transfer it to prosecutors, who decide which charge to lay and whether to proceed by summary conviction or indictment, both of which affect whether an offender may be subject to a mandatory minimum. These critics are concerned that prosecutorial discretion is not reviewable and is conducted behind closed doors instead of in a public courtroom.[81]

When mandatory minimum sentences have been challenged in court, the results have been mixed. The first case before the Supreme Court of Canada addressing mandatory minimum sentences was the 1987 case of *R. v. Smith (Edward Dewey)*,[82] where the court struck down the mandatory minimum in question as being cruel and unusual punishment. In cases such as *R. v. Morrisey* and *R. v. Latimer*, the court had become more deferential towards mandatory minimum sentences.[83] Recently, however, in cases such as *R. v. Nur* and *R. v. Lloyd*, the court has struck down mandatory minimum sentences for violating section 12 of the Charter.[84]

The result of each Charter challenge depends on the specific minimum and offence, as there is no general rule about whether mandatory minimum sentences are constitutional. The results for a specific offence can be confusing where decisions have not reached the Supreme Court of Canada level. Mandatory minimum sentences are being applied for certain offences in some parts of the country, while in other Canadian jurisdictions they are not being applied because the courts have found them to be unconstitutional. This has meant, "inconsistent jurisprudence across the provinces and uncertainty as to which mandatory minimums are valid and which are vulnerable to challenge."[85]

5.7 DANGEROUS AND LONG-TERM OFFENDER DESIGNATIONS

5.7.1 Dangerous Offender

While there were similar prior designations, the dangerous offender regime known today was created in 1977. It has been amended since then, including significant changes made in 2008.[86] The current regime was found to be constitutional by the Supreme Court of Canada most recently in 2018.[87]

A person who commits a "serious personal injury offence," as defined in section 752 of the Code, may be declared a dangerous offender and given an indeterminate sentence if the court is satisfied that the criteria outlined in section 753 of the Code are satisfied. Essentially, such a sentence is found to be necessary for public safety, and the offender is either incarcerated or on parole for their entire life.[88] To be given this designation, the offender must be a threat to life, safety or physical or mental well-being of other persons based on

- a pattern of behaviour by the offender showing a failure to restrain their behaviour and the likelihood of causing death or injury or inflicting severe psychological damage on other persons;
- a pattern of persistent aggressive behaviour by the offender showing substantial indifference regarding the reasonably foreseeable consequences of their behaviour; or
- any behaviour by the offender of such a brutal nature as to compel the conclusion that their future behaviour is unlikely to be inhibited by normal standards of behavioural restraint.[89]

A person who commits a sexual assault under sections 271 to 273 of the Code and whose conduct has demonstrated a failure to control their sexual impulses and is likely to cause injury, pain or other evil to other persons because of that will also be found to be a dangerous offender.[90] Approximately two-thirds of those designated as dangerous offenders have at least one current conviction for a sexual offence.[91]

A dangerous offender designation must be requested prior to sentencing unless certain exceptions are satisfied.[92] A dangerous offender is given an indeterminate penitentiary sentence unless there is a reasonable expectation that a shorter period of incarceration of two years or more plus a long-term supervision order for up to ten years or a regular sentence will adequately protect the public against murder or serious personal injury by the offender.[93] If an offender is not found to be a dangerous offender, they can be found to be a long-term offender or sentenced normally.[94]

The Parole Board of Canada (PBC) reviews the case for the first time seven years after the offender is taken into custody and every two years thereafter unless the sentence was imposed before 15 October 1977, in which case they are eligible for annual review of their detention.[95]

5.7.2 Long-Term Offender

The long-term offender designation was created in 1997 primarily for sexual offenders but also for violent offenders who do not meet the criteria for a dangerous offender designation but require specific attention.[96] The Supreme Court of Canada has noted that the period of supervision is not a factor when considering how long the offender should be incarcerated since incarceration and supervision have different objectives.[97] It is necessary to notify the attorney general when an application for long-term offender designation is made (but not when an application for dangerous offender designation is made).[98]

The offender must have been convicted of a serious personal injury offence or an offence under section 753.1(2)(a), which lists various sexual offences.[99] To receive such a designation, it must be appropriate to impose a sentence of two years or more for the offence; there must be a substantial risk that the offender will reoffend; and there must be a reasonable possibility of eventual control of the risk posed by the offender in the community.[100] If the court concludes that an offender is a long-term offender, they must generally receive a sentence of at least two years' imprisonment and up to 10 years of supervision in the community.[101] It is possible to later request a reduction in the period of supervision if the offender is no longer at substantial risk of reoffending.[102] Breaching a long-term supervision order is a hybrid offence with a maximum of ten years' imprisonment.[103]

6 CONDITIONAL RELEASE

6.1 TEMPORARY ABSENCES

Temporary absences may be escorted or unescorted and may be granted for a variety of reasons, including community service, contact with family, personal development and medical reasons. Eligibility for unescorted temporary absences varies depending on length of sentence, time served and security level.[104] Temporary absences are

either at the discretion of the Correctional Service of Canada or require the approval of the PBC, depending on the situation.[105]

6.2 PAROLE

The PBC, not a court, determines whether an offender should be released on parole. Quebec and Ontario have their own parole boards for offenders serving less than two years in those provinces. The PBC says that parole "contributes to the protection of society by allowing some offenders to continue to serve part of their sentence outside of the institution … and subject to conditions."[106]

Section 119(1)(c) of the *Corrections and Conditional Release Act* (CCRA)[107] states that an offender with a sentence of two or more years, other than an indeterminate sentence, is eligible for day parole after six months before the date on which full parole may be granted or after six months, whichever is later. Eligibility for day parole for offenders with an indeterminate sentence is outlined in sections 119(1)(b) and 119(1)(b.1) and is generally three years prior to eligibility for full parole. Section 119(1)(d) states that offenders with a sentence of less than two years are eligible for day parole after serving half of the portion of their sentence to be served before they are eligible for full parole. The PBC is not required to review applications for offenders with sentences of less than six months.[108] When on day parole, an offender must return to the penitentiary, provincial correctional facility or halfway house at night, and they are subject to conditions.[109]

Full parole permits an offender to live in the community while subject to conditions. Generally, offenders are eligible for full parole after serving the lesser of one-third of the sentence or seven years.[110] Parole eligibility is set by the court at the time of sentencing for offenders with a life sentence (automatically 25 years for first-degree murder and between 10 and 25 years for second-degree murder).[111]

Parole is not automatically granted because an offender is eligible to apply. The PBC denies approximately 7 out of 10 requests at the first parole review date.[112]

6.3 STATUTORY RELEASE

According to the PBC, "[s]tatutory release aims to provide offenders structure and support before their sentence expires to improve the chances of their successful integration into the community."[113] Statutory release is automatic for most offenders with a sentence of two years or more after serving two-thirds of their sentence (but not for those serving life or indeterminate sentences). The offender is subject to conditions upon release.[114] The PBC only becomes involved if special conditions of release are required or if the Correctional Service of Canada refers a case to them requesting that the offender with a sentence of two years or more be detained

until the end of the sentence. If the offender is detained, that detention must be reviewed annually.[115]

The *Prisons and Reformatories Act* provides for "remission," the predecessor to statutory release, which is still used by the provinces.[116] Provincial inmates are generally credited 15 days remission for every month they spend incarcerated, providing that they respect institutional rules and are involved in the relevant programming. This can result in a decrease of up to one-third of the sentence for those not already released on parole.[117] Upon release on remission, the offender is free of conditions unless a probation order was also ordered by the judge, which is common.

6.4 "FAINT HOPE" CLAUSE

Section 745.6 of the Code allows a person convicted of murder or high treason with a sentence of life in prison with eligibility for parole after more than 15 years served to apply for earlier parole eligibility at the 15-year mark, where certain criteria are met. This is known as the "faint hope" clause. Bill S-6, which received Royal Assent in 2011, repealed the faint hope clause.[118] However, in *R. v. Dell*, the Ontario Court of Appeal concluded that the change could not be made retroactively, and the Supreme Court of Canada refused to hear an appeal.[119] Now, anyone who committed murder or high treason prior to 2 December 2011, when the relevant changes came into force, can apply for early parole after serving 15 years, subject to certain rules. Those who committed the offence after that date cannot.[120] An offender convicted of more than one murder is not permitted to make an application under the faint hope clause.[121] Finally, a judge must first assess, on a balance of probabilities, whether there is a "substantial likelihood" that the application will succeed before a judge and jury hear the application.[122]

7 SEX OFFENDERS, DNA AND PROHIBITION ORDERS

When a court convicts a person of certain designated offences, it must make an order requiring them to comply with the *Sex Offender Information Registration Act*.[123] That Act's purpose is to help police prevent and investigate sexual crimes by requiring the registration of information relating to sex offenders. The offender must provide certain information, including their home and work addresses, their driver's licence number, licence plate number and their physical description (height, weight and distinguishing marks). There are specific rules for the management of the information outlined in the *Sex Offender Information Registration Act*.

The RCMP maintains a databank of DNA profiles.[124] Offenders may be ordered to provide a sample if they have committed certain designated offences, many of which are sexual offences. Depending on the offence, the order is mandatory or optional for the court to impose.[125]

The court can, and in some situations is required, to issue prohibition orders as well, depending on the offence. Such orders can include prohibitions on possession of certain weapons, use of the Internet or driving a vehicle, for example.[126]

8 DISABILITIES TO CONTRACT

A person who holds an office under the Crown or other public employment and receives a sentence of two years or more of imprisonment also loses their employment. During that person's sentence or until they are pardoned, they also cannot run for Parliament or a legislature and cannot vote. If convicted of one of several offences, including various forms of fraud against the government, the offender cannot contract with the government, receive any benefit from a contract with the government or hold office (although there is a process to restore those capacities).[127]

NOTES

1. Due to space constraints, several issues related to sentencing are not dealt with in this publication. Further information on those topics can be found as follows:

   - For the role of victims and communities in sentencing, see Lyne Casavant, Christine Morris and Julia Nicol, *Legislative Summary of Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*, Publication no. 41-2-C32-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 18 December 2014.
   - On the topic of accused who are found unfit to stand trial or not criminally responsible, see Tanya Dupuis, *Legislative Summary of Bill C-14: An Act to amend the Criminal Code and the National Defence Act (mental disorder)*, Publication no. 41-2-C14-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 14 January 2014.
   - On the sentencing of young offenders, see Lyne Casavant, Robin MacKay and Dominique Valiquet, *Youth Justice Legislation in Canada*, Publication no. 2008-23-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 21 November 2012; and Laura Barnett et al., *Legislative Summary of Bill C-75: An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, Publication no. 42-1-C75-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 25 July 2019.
   - On sentencing in the military justice system, see Lyne Casavant, Julia Nicol and Stéphanie Le Saux-Farmer, *Legislative Summary of Bill C-77: An Act to amend the National Defence Act and to make related and consequential amendments to other Acts*, Publication no. 42-1-C77-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 15 April 2020.
   - For information on criminal records reforms, see Julia Nicol, *Legislative Summary of Bill C-93: An Act to provide no-cost, expedited record suspensions for simple possession of cannabis*, Publication no. 42-1-C93-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 20 April 2020.
   - On the immigration implications of criminal convictions, see *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, ss. 35–37; Sandra Elgersma and Julie Béchard, *Legislative Summary of Bill C-43: An Act to Amend the Immigration and Refugee Protection Act (Faster Removal of Foreign Criminals Act)*, Publication no. 41-1-C43-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 3 October 2012; and *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 (CanLII).

2. Graeme McConnell, *Indigenous People and Sentencing in Canada*, Publication no. 2020-46-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 22 May 2020.

3. Lincoln Caylor and Gannon G. Beaulne, *Parliamentary Restrictions on Judicial Discretion in Sentencing: A Defence of Mandatory Minimum Sentences*, Macdonald-Laurier Institute, May 2014, p. 7.

4. *Report of the Canadian Committee on Corrections – Toward Unity: Criminal Justice and Corrections*, 31 March 1969.

5. *Criminal Code* [Code], R.S.C. 1985, c. C-46.

6. Anthony N. Doob and Cheryl Marie Webster, "Weathering the Storm? Testing Long-Standing Canadian Sentencing Policy in the Twenty-First Century," *Crime and Justice: A Review of Research*, Vol. 45, No. 1, 2016, pp. 372 and 374.

7. Gerry Ferguson, "E. Problematic Aspects with the Current Statement of Purposes and Principles," *A Review of the Principles and Purposes of Sentencing in Sections 718–718.21 of the Criminal Code*, Research and Statistics Division, Department of Justice Canada, 10 August 2016, p. 10.

8. For a discussion of these issues in the American context, where there are sentencing guidelines, see Matthew Van Meter, "One Judge Makes the Case for Judgment," *The Atlantic*, 25 February 2016.

9. Doob and Webster (2016), p. 364.

10. *R. v. Nasogaluak*, 2010 SCC 6, para. 43.

11. Ferguson (2016), p. 7. The author questions whether killing or injuring a law enforcement or military animal should be treated differently than other equally serious offences and calls for a "more generic way to prioritize sentencing objectives," such as sentencing guidelines.

12. While the term more frequently used now is "Indigenous," the Code uses "Aboriginal," which is the term that has been used in this paper.

13. *Controlled Drugs and Substances Act* [CDSA], R.S.C. 1996, c. 19.

14. *Cannabis Act*, S.C. 2018, c. 16.

15. Section 718.2 of the Code states:

> A court that imposes a sentence shall also take into consideration the following principles:
>
> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
>
> (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
>
> (ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family,
>
> (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
>
> (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
>
> (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
>
> (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
>
> (v) evidence that the offence was a terrorism offence, or
>
> (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act* shall be deemed to be aggravating circumstances;
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (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 and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

16. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

17. *R. v. Nasogaluak*, paras. 40 and 47–52.

18. Barnett et al. (2019), p. 11.

19. *Competition Act*, R.S.C. 1985, c. C-34.

20. Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, 1st Session, 42nd Parliament (S.C. 2019, c. 25).

21. Code, s. 467.14.

22. Ibid., s. 83.26.

23. *R. v. Pham*, 2013 SCC 15, paras. 11–22.

24. Raji Mangat, *More Than We Can Afford: The Costs of Mandatory Minimum Sentencing*, British Columbia Civil Liberties Association.

25. *R. v. Smith (Edward Dewey)*, [1987] 1 SCR 1045, para. 84.

26. See, for example, *R. v. Nur*, 2015 SCC 15.

27. Code, s. 721.

28. Ibid., ss. 320.23 and 720(2); section 10(4) of the CDSA; and section 15(4) of the *Cannabis Act*.

29. Public Prosecution Service of Canada, "6.1 Drug Treatment Courts," *Public Prosecution Service of Canada Deskbook*, 3 March 2020.

30. Besides the Code, other statutes provide for alternative measures. See, for example, the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, ss. 295–309.

31. Code, s. 717; and Joel M. Wonnacott, *An Out-of-Court Option: The Alternative Measures Program*, Canadian Bar Association, 15 June 2018.

32. Public Prosecution Service of Canada (2020), "3.8 Alternative Measures."

33. See, for example, Justice Québec, *Alternative Measures Program for adults in Aboriginal communities*. Also note that there are specific alternative measures in Acts other than the Code, such as sections 295 to 309 of the *Canadian Environmental Protection Act, 1999*. *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.

34. R. E. Salhany, *Canadian Criminal Procedure*, 6th ed., Thomson Reuters Canada, 2019, para. 8.1450. While discharges do not result in a criminal record, there may be a record of the discharge for one year for an absolute discharge and three years for a conditional discharge. Those records are supposed to be automatically purged at the end of the applicable period. See *Criminal Records Act*, R.S.C. 1985, c. C-47, ss. 6.1 and 6.2.

35. Salhany (2019), para. 8.1470.

36. Code, s. 730(4). For more on absolute and conditional discharges, see Salhany (2019), starting at para. 8.1450.

37. Code, s. 732.2(5).

38. Salhany (2019), para. 8.1560.

39. Ibid., para. 8.1270; Department of Justice, *How sentences are imposed*; and Legal Aid Ontario, "Suspended sentence," *LawFacts*.

40. Code, s. 731(1).

41. Ibid., s. 731(1)(a); and Salhany (2019), para. 8.1190.

42. Code, s. 732.2(2)(b).

43. Ibid., s. 731(1)(b). For a discussion of how multiple probation orders interact, see *R. v. Knott*, 2012 SCC 42.

44. Government of Canada, *Parole Decision-Making: Myths and Realities*.

45. Code, ss. 161 and 732.1–732.2; Department of Justice, *How sentences are imposed*; and Salhany (2019), para. 8.1270.

46. Code, s. 733.1.

47. *R. v. Proulx*, 2000 SCC 5, para. 38. Note that this is a different standard of proof than for a breach of a conditional sentence, which requires a lesser standard of a balance of probabilities, as noted in section 5.6.1 of this Background Paper.

48. Code, ss. 734 and 736; and Salhany (2019), para. 8.1020.

49. Tanya Dupuis, *Legislative Summary of Bill C-28: An Act to amend the Criminal Code (victim surcharge)*, Publication no. 42-1-C28-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 25 July 2017, p. 3.

50. Code, s. 320.19.

51. Legal Aid Ontario, "Fine," *LawFacts*.

52. Code, ss. 787 and 735(1)(b), respectively.

53. Ibid., ss. 734 and 734.5–734.7; and Department of Justice, *How sentences are imposed*.

54. Code, s. 737.

55. Tanya Dupuis, *Legislative Summary of Bill C-37: Increasing Offenders' Accountability for Victims Act*, Publication no. 41-1-C37-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 11 April 2013, p. 2.

56. Ibid., p. 5.

57. *R. v. Boudreault*, 2018 SCC 58.

58. Barnett et al. (2019), p. 22.

59. Code, ss. 83.14–83.17.

60. See section 462 of the Code regarding counterfeit money; sections 462.331(7.1), 462.37 to 462.46, and 462.49 to 462.5 regarding proceeds of crime; and sections 490.1 to 492 regarding offence-related property. For further information, see Salhany (2019), paras. 8(14), 8(14.1) and 8(14.2).

61. Casavant, Morris and Nicol (2014), p. 8.

62. Department of Justice, *Victims' Rights in Canada*. Restitution orders are addressed at sections 737.1 to 741.2 of the Code.

63. Department of Justice, *Victims' Rights in Canada*.

64. For more about how to assess whether a conditional sentence is appropriate in a given case, see *R. v. Proulx*, particularly paragraph 127.

65. Legal Aid Ontario, "Conditional sentence ('house arrest')," *LawFacts*.

66. *R. v. Proulx*, para. 127.

67. Code, s. 742.1(a).

68. See section 742.1 of the Code for more details.

69. Ibid., s. 742.6. For a comparison of how breach of probation and breach of a conditional sentence are addressed in the criminal law, see *R. v. McIvor*, 2008 SCC 11, paras. 13–19.

70. For more about the change from six months to two years less a day and the exceptions that remain, see Barnett et al. (2019), pp. 7–8.

71. Code, s. 743.1.

72. Salhany (2019), para. 8.892.

73. Code, s. 719(3.1). For further details about the changes, see Lyne Casavant and Dominique Valiquet, *Legislative Summary of Bill C-25: Truth in Sentencing Act*, Publication no. LS-638E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 25 January 2010, pp. 5-8. The changes were the subject of various constitutional challenges, and Bill C-51 amended section 719(3.1) of the *Criminal Code* in 2018. For further information about how the changes have been interpreted and the legislative amendment, see *R. v. Safarzadeh-Markhali*, 2016 SCC 14; *R. v. Summers*, 2014 SCC 26; *R. v. Meads*, 2018 ONCA 146; *R. v. Romanchych*, 2018 BCCA 26; and Lyne Casavant et al., *Legislative Summary of Bill C-51: An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act*, Publication no. 42-1-C51-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 18 December 2018, pp. 7–8.

74. *R. v. Summers*, para. 71.

75. A conditional sentence cannot be served intermittently. See *R. v. Middleton*, 2009 SCC 21, paras. 25–27.

76. Code, s. 732(1).

77. Salhany (2019), para. 8.850.

78. Department of Justice, "1.2 A Brief History of MMPs in Canada," *Mandatory Minimum Penalties in Canada: Analysis and Annotated Bibliography*.

79. See, for example, section 51A of the United Kingdom's *Firearms Act 1968*, which provides for a minimum mandatory sentence for certain firearms offences, "unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so." United Kingdom, *Firearms Act 1968*, 1968, c. 27, s. 51A(2). More information about this topic can be found in Yvon Dandurand, Ruben Timmerman and Tracee Mathison-Midgley, *Exemptions from Mandatory Minimum Penalties: Recent Developments in Selected Countries*, Report prepared for the Department of Justice Canada, March 2016.

80. CDSA, s. 10(5); and Code, s. 320.23(2).

81. For more on the arguments for and against mandatory minimum sentences, see Mary Allen, "Mandatory minimum penalties: An analysis of criminal justice system outcomes for selected offences," *Juristat*, Statistics Canada, Catalogue no. 85-002-X, 29 August 2017; Caylor and Gannon (2014); and Kari Glynes Elliott and Kyle Coady, "Section. 2.0: Debate," *Mandatory Minimum Penalties in Canada: Analysis and Annotated Bibliography*, Research and Statistics Division, Department of Justice Canada, March 2016.

82. *R. v. Smith (Edward Dewey)*.

83. *R. v. Morrisey*, 2000 SCC 39; and *R. v. Latimer*, 2001 SCC 1.

84. *R. v. Nur*; and *R. v. Lloyd*, 2016 SCC 13.

85. Elizabeth Sheehy and Isabel Grant, "Senator Kim Pate's bill freeing judges from the constraints of mandatory minimum sentences will help address overincarceration and court delays," *Policy Options*, 8 May 2018. See also Sean Fine, "Mandatory-minimum sentencing rules unravelling into patchwork," *Globe and Mail*, 4 March 2018.

86. Laura Barnett, Robin MacKay and Dominque Valiquet, *Legislative Summary of Bill C-2: An Act to amend the Criminal Code and to make consequential amendments to other Acts*, Publication no. LS-565E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 29 October 2007, pp. 43-52.

87. *R. v. Boutilier*, 2017 SCC 64.

88. Salhany (2019), para. 8.1570.

89. Code, s. 753(1)(a).

90. Ibid., s. 753(1)(b).

91. Public Safety Canada, *2018 Annual Report: Corrections and Conditional Release – Statistical Overview*, August 2019, p. 107.

92. Code, s. 753(2).

93. Ibid., s. 753(4); and *R. v. Boutilier*.

94. Ibid., s. 753(5).

95. Ibid., s. 761. For more details concerning dangerous offender designations, see Salhany (2019), paras. 8.1570–8.1615.

96. John Howard Society of Ontario, "The Law and High-Risk Offenders," Fact sheet No. 21, January 2005, p. 2.

97. Salhany (2019), para. 8.1619.

98. Code, s. 753.2(4).

99. See also Salhany (2019), para. 8.1617.

100. Code, s. 753.1(1).

101. See section 753.1(3) of the Code and the exceptions listed at section 753.1(3.1).

102. Ibid., s. 753.2(3). Notice must be given to the attorney general, as per section 753.2(4).

103. Ibid., s. 753.3. A "hybrid offence" can be pursued as an indictable or summary offence.

104. Government of Canada, *Types of conditional release*.

105. See, for example, sections 17, 17.1 and 116 of the *Corrections and Conditional Release Act* for granting authorities in different situations. *Corrections and Conditional Release Act* [CCRA], S.C. 1992, c. 20.

106. Government of Canada, *What is parole?*

107. CCRA, s. 119(1)(c).

108. Ibid., s. 119(2).

109. Government of Canada, *Parole Decision-Making: Myths and Realities*.

110. CCRA, s. 120. There are some exceptions to this general rule. For example, section 743.6 of the Code outlines several situations where full parole is available only after either half of the sentence is served or 10 years, whichever is less.

111. Government of Canada, *Types of conditional release*.

112. Government of Canada, *Parole Decision-Making: Myths and Realities.*

113. Government of Canada, *Types of conditional release*.

114. CCRA, s. 127.

115. Ibid., ss. 129–132; and Government of Canada, *Types of conditional release*.

116. *Prisons and Reformatories Act*, R.S.C. 1985, c. P-20, s. 6.

117. The rules may vary somewhat by jurisdiction. For example, British Columbia regulations provide for the granting of different numbers of days depending on the level of good or bad behaviour, rather than just having the options of 15 or 0 days of remission per month served. British Columbia, *Procedures and Rules – Remission for Industrious Behaviour*, B.C. Reg. 291/78 (CanLII).

118. Robin MacKay, *Legislative Summary of Bill S-6: An Act to amend the Criminal Code and another Act (Serious Time for the Most Serious Crime Act)*, Publication no. 40-3-S6-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 April 2011.

119. *R. v. Dell*, 2018 ONCA 674 (CanLII). Leave to appeal to the Supreme Court of Canada was refused. See *Her Majesty the Queen v. Cherrylle Margaret Dell*, 2019 CanLII 6092 (SCC).

120. Section 745.6(1)(a.1) of the Code limits the applicability of the faint hope clause to those who committed the murder or high treason prior to the entry into force of that paragraph. They may reapply if refused but generally need to wait five years (sections 745.6(2.2) to 745.6(2.7) of the Code). Correctional Service Canada, "Frequently Asked Questions," *Bill S-6: Legislation to Repeal the Faint Hope Clause*.

121. Code, s. 745.6(2).

122. Ibid., ss. 745.61 and 745.63.

123. *Sex Offender Information Registration Act*, S.C. 2004, c. 10.

124. Legal Aid Ontario, "DNA orders," *LawFacts*.

125. Code, ss. 487.04–487.092.

126. Regarding weapons prohibitions, see sections 109 to117.01 of the Code; for driving prohibitions see sections 320.24 to 320.25; and for prohibitions on the use of the Internet, see section 162.2.

127. Code, s. 750.