

COMMUNITY-BASED ALTERNATIVES TO INCARCERATION IN CANADA

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I. INTRODUCTION

Ten years ago Canada, like most other western nations, was experiencing explosive growth of its prison population. By the mid-1990's the annual growth rate in federal penitentiaries had reached 10% per year, outstripping by far the long-term average annual growth rate of under 2.5%. Prison capacity was seriously exceeded and about half of all federal offenders were double bunked in cells designed for single occupancy. Similar patterns of growth and crowding were also being experienced in provincial prisons.

Today, the size of Canada's prison population is comparatively low and is stable or dropping. This is due to complex interacting forces, including significant crime rate reductions, which are not fully understood.¹ However, one important aspect of this positive direction is the conscious efforts that have been made to utilize community-based alternatives to imprisonment to the extent possible, consistent with public safety.

This paper explores some of the characteristics of the Canadian system that support the use of community alternatives, and recent developments and innovations in that field. The extent to which community programmes have directly offset prison population levels is difficult to quantify. Nor is it possible to say with certainty what particular innovative programmes or policies turned the tide against prison crowding. Nevertheless it is arguable that a wide array of features of the Canadian criminal justice system support the safe use of community alternatives to reduce upward pressure on prison populations.

II. THE CANADIAN CONTEXT

Canada is a country of diversity, populated originally by nomadic Aboriginal people and later, beginning in the 15th and 16th centuries, by Europeans who originated primarily from the British Isles and France. Early settlement was followed by waves of immigrants from many countries: predominantly, but not exclusively, Scotland and Ireland in the 18th and 19th centuries, China and Eastern Europe during the late 1800s and a mixture of other East and West European, Asian, Far East and African countries during the last 50 years. Today about one-quarter of a million immigrants are welcomed to Canada each year, where their distinctive cultures mix and blend into what has often been referred to as a "cultural mosaic" in contrast to the assimilation of the "melting pot" that some believe characterizes the United States to our South.

Canada covers a vast expanse of territory: almost 10 million square kilometres touching the Pacific, Atlantic and Arctic Oceans and stretching about eight thousand kilometres from Atlantic to Pacific. Yet we are a sparsely populated nation. Thirty-one million people concentrated for the most part in a narrow band within two hundred kilometres of the U.S.-Canada border, and to a large extent clustered in a handful of major cities.

Canada was founded on a confederation of colonial entities. Its federal form of government reflects this diverse history and culture. There are fourteen major jurisdictions: the Government of Canada which is national in scope, 10 provinces and 3 northern territories.² There are thousands of municipal governments within the provinces and territories and over 600 Indian bands spread over 2400 Reserves

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¹ In 1995 the federal penitentiary population stood at 14,386, 5 years later, in 2000 it had dropped to 13,092, a decrease of 9%. This is particularly notable in that the prison populations of other countries such as the U.S and U.K. continued to rise during this period (as they continue to do) irrespective of significant reductions in the rate of crime.

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populated by Aboriginal First Nations people, but governed under a complex combination of shared federal-provincial jurisdiction.

Criminal justice responsibilities are shared among these various jurisdictions. Sections 91 and 92 of the *Constitution Act* (1867) assign to Parliament (i.e., to the federal level of government) responsibility for establishing the criminal law, while provinces are assigned responsibility for the administration of justice within their boundaries, including police and court administration. With regard to correctional programmes, the federal government is assigned constitutional responsibility for “penitentiaries” whereas provincial and territorial Legislatures are responsible for the maintenance of “prisons and reformatories”. These terms are not defined in the *Constitution Act*. Rather, they are distinguished from one and other in the *Criminal Code of Canada* (s.743.1), which assigns all sentences of less than two years (“two years less a day”) to provincial custody and all sentences of two years or more in length to federal penitentiaries. This is commonly known as the “two year rule”.

Probation is a good example of how the different levels of government must interact in the criminal justice field. Probation is a sentence that may be handed down by a court pursuant to the *Criminal Code*, which is established by Parliament, but it must be administered by the provincial or territorial jurisdiction where the conviction has taken place. It may be for a period of up to three years and may be combined with a custodial sentence of up to two years less a day, i.e., in a provincial prison.

Penitentiaries and parole supervision are administered by the Correctional Service of Canada (CSC) under the federal *Corrections and Conditional Release Act* (CCRA). The National Parole Board (NPB) is the conditional release decision-maker under the same *Act*. It is an independent administrative tribunal of government appointees who make case by case release decisions. The various forms of conditional release in the federal system are set out in the following Table and in Appendix C.

Table 1. Types of Conditional Release

Type of Release	Eligible after Serving
Escorted Temporary Absence	First Day of Sentence
Unescorted Temporary Absence	One-sixth or 6 months (the greater)
Work Release	One-sixth or 6 months (the greater)
Accelerated Day Parole	One-sixth or 6 months (the greater)
Day Parole (regular)	6 months before Full Parole Eligibility
Full Parole (& Accelerated F.P.)	One-third of the sentence
Judicial Determination (Full Parole)	One-half of the sentence (if ordered by a court)
Statutory Release	Two-thirds of the sentence (presumptive)

The Parole Board only rules on temporary absences for offenders sentenced to imprisonment for life, the others are delegated to the Correctional Service of Canada. Work Releases are granted solely under CSC’s authority. The National Parole Board is also the paroling authority for the territories and all but three provincial jurisdictions. Three provinces³ administer their own parole boards under authority delegated to them under the *Corrections and Conditional Release Act*.

Without going into greater detail, it is easy to see that the Canadian criminal justice and correctional systems are multi-layered and complex. They have been referred to as “fractionated” because of their many cross-cutting lines of jurisdictional division and layers of authority. In this

² Provinces from west to east: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. Northern Territories from West to East: Yukon, Northwest Territories and Nunavut.

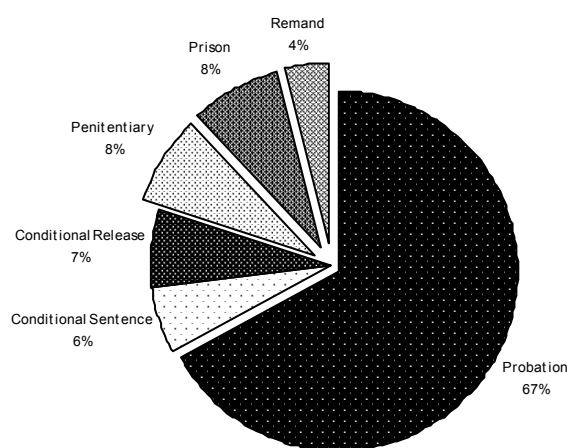
³ British Columbia, Ontario and Quebec.

context, it is difficult to talk about national programmes or policies, since there is little that can be simply directed by a central authority. More often national programmes result from extensive consultation, collaboration and coordination between and among jurisdictions.

III. KEY FEATURES OF THE CANADIAN SYSTEM

David Rothman (1971, 1980) provides accounts of the emergence first, of the American penitentiary at the beginning of the 19th century and then, 100 years later, of the start of the community correctional movement in the form of “aftercare”. Originally focused only on offenders *after* leaving prison, the concept of dealing with offenders in the community *instead of* in prison gave rise to the introduction of probation and parole. During the past century those notions have taken hold until today, in Canada, 80% of offenders under sentence (or on remand) are being dealt with in the community as depicted in the Figure below.

Distribution of Sentenced Adults in Canada 1999-2000



Source: Adult Correctional Services Survey, 1999/2000
Canadian Criminal Justice Statistics, Statistics Canada

A number of characteristics of the Canadian correctional system may be seen as providing a framework that is conducive to community correctional responses to criminal offending, in particular: a principles-based sentencing system, a research and risk-based correctional system, an active and committed voluntary sector and community corrections professionals – largely probation and parole officers – who can secure community acceptance while they implement and operate community programmes.

A. Principles-Based System

In 1982, Canada’s Constitution was patriated from England where it had originated as a statute of the British Parliament as the *Constitution Act* of 1867. In so doing, the earlier Act and subsequent amendments were reaffirmed and supplemented with the *Canadian Charter of Rights and Freedoms (Charter)*. The Charter codified certain rights long established under British Common Law and principles of natural justice, as well as contemporary Canadian human rights jurisprudence. The new *Constitution Act* (1982) provided a valuable framework for the protection of human rights. The *Charter* soon became the benchmark against which all Canadian law was measured.

The newly patriated Constitution and the *Charter* gave rise to an ambitious Criminal Law Review process led by the Department of Justice. Included within it were a Sentencing Review by a Royal Commission, and a Correctional Law Review conducted by the Ministry of the Solicitor General. From these reviews emerged a new *Corrections and Conditional Release Act* (1992), and in 1996, a Bill (C-41) to amend the *Criminal Code of Canada* to introduce sentencing reforms.

Consequently the new CCRA contained two statements of purposes and principles to guide application of the law in penitentiaries (sections 3 and 4) and for conditional release (sections 100 and

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101). Similarly, purposes and principles of sentencing were placed in s.718 of the *Criminal Code* (see Appendix A). Grown from the same root, all three statements have many similarities and parallels:

- All three statements declare their purpose to be to contribute to and maintain “...a just peaceful and safe society...”;
- The *CCRA* proclaims as a principle that “...the protection of society [is] the paramount consideration...” in the corrections process while the *Code* sets out as principles that it “denounce” and “deter” criminal conduct;
- To balance the immediately foregoing principles that might be interpreted as favouring incarceration, there are other integrative principles that would favour community-based measures: all three statements provide that the “least restrictive measures” available should be chosen, providing that they are consistent with public safety;
- Both statements of purpose in the *CCRA* refer to “rehabilitation of offenders and their reintegration into the community”, the *Criminal Code* states that one of its primary objectives is “...to assist in the rehabilitation of offenders”.

Taken together, these principles strike a balance that is supportive of community-based programmes as realistic alternatives to incarceration when consistent with public safety.

But perhaps the most important implication of a principles-based system is that it leaves discretion in the hands of the courts. Jurisdictions like the United States that have increasingly limited judicial discretion and come to rely on mandatory forms of sentencing (e.g., “three strikes” laws, mandatory minimum penalties), have effectively transferred discretion from judges to prosecutors. As a consequence, these nations have seen their prison populations grow out of control, and to continue to do so even in the face of steep and continuous drops in the crime rate (Garland, 2001, pp.208-209). In a principles-based system, judges are more able to tailor the sentence to the offence and the offender and in Canada’s case, to apply the least-restrictive principle on a case-by-case basis according to each unique set of circumstances.

B. Legislative Framework

In addition to leaving sentencing discretion in the hands of the judiciary, the *Criminal Code* of Canada provides a structured framework for community forms of sentences for courts to consider:

- Section 717 provides for “alternative measures,” in other words pre-trial diversion, to be used instead of judicial processing where a number of conditions are met including an admission of responsibility for the offence by the accused person and that “...the person considering whether to use the measures [usually the prosecutor] 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”; (see Appendix B)
- Sections beginning at s.720 provide for pre-sentence reports to be prepared by probation officers – perhaps the best opportunity to help courts understand the behavioural dynamics of the offender and to consider the appropriateness and feasibility of a community sentence;
- Section 730 creates absolute and conditional discharges. In the latter case a probation order with conditions may be issued to be supervised by a probation officer until the order expires (up to three years) and the conviction is discharged;
- Section 731 provides for probation orders of up to three years to be given as a sentence in and of themselves or in addition to a fine or sentence of imprisonment of two years or less; sections 732.1 and 732.2 establish a framework for conditions and enforcement of probation orders;

- Section 732.1(3)(f) specifies that a condition of probation may be to perform up to 240 hours of work in the community – known as a “community service order” or CSO – under the supervision of a probation officer;
- Section 732.1(3)(g) authorizes an enforceable condition of probation to require the probationer to attend a specified treatment programme in the community – known as “treatment orders”;
- Section 732 authorizes “intermittent sentences” of 90 days or less to be served several days at a time (usually week-ends) while the intervening periods are supervised by a probation officer;
- Section 736 allows provinces to establish “fine option programmes” so that offenders may work to discharge fines owed to the court, including work while in custody to shorten time being served in default of payment of a fine;
- Sections 738 and 739 provide for restitution orders to be made by courts and administered by probation officers where it is so ordered;
- Section 742, introduced in 1996, created a new form of sanction, the “conditional sentence”. It is similar to a suspended sentence or a probation order but is considered the equivalent of a custodial sentence although it is served in the community. It is therefore appropriate for more serious offences where there is no greater risk to the community than if the person were in custody.

C. Voluntary Sector

Canada is fortunate to have a very active voluntary sector. Community organisations, many of them national in scope, owe their longevity, values, energy and innovativeness to a base of members and leaders drawn from local communities. Today, in addition to other activities, they provide services on a non-profit fee-for-service basis to both provincial and federal correctional services by providing residential, parole supervision and other services to support the re-integration of the offender into the community. These voluntary organisations owe no particular allegiance to any single level or jurisdiction of government and their services are often shared among correctional systems, often on a shared-use basis with federal correctional services.

Although the *Criminal Code* and CCRA bring a degree of uniformity to the national scene, there are significant gaps in policies and practices of the various jurisdictions. Further uniformity and integration is achieved by agreement that is reached in a variety of *ad hoc* and continuing consultative bodies. Consequently there are regular meetings of the Heads of Corrections and Heads of Community Corrections from all jurisdictions, Canadian Association of Paroling Authorities (CAPA), and senior officials of Justice and Solicitors General to name a few. Ministers and Deputy Ministers meet on a regular basis to discuss matters of mutual interest. Similarly in the voluntary sector, national organisations such as the Canadian Criminal Justice Association and the National Associations Active in Criminal Justice bring together voluntary and official criminal justice workers on a national scale to share information, plans and priorities.

Not only are voluntary sector representatives important partners in implementing community based programmes today, but they have been perhaps the most effective innovators of new community programmes during the past century and longer. In the 1800s, voluntary organisations in Canada, as elsewhere, motivated by altruistic and religious values, invented the concept of “aftercare” in recognition that many offenders leaving prison could benefit from some support, guidance and assistance to adjust successfully to the community. Today the Canadian Criminal Justice Association, John Howard Society and Elizabeth Fry Societies are examples of direct descendents from those earliest organisations. They have been instrumental in the invention of probation, parole, court workers, half-way house residences and community service orders to name a few. Today, while continuing to innovate and create new programmes these organisations and many more (the Department of the Solicitor General provides core funding to 14 such National Voluntary sector groups) deliver residential, counselling and supervision programmes in partnership with federal and provincial/territorial government agencies.

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An active voluntary sector with a strong partnership with government agencies is one of the key ingredients for the mobilization of community-based programmes. They often provide the ideas and human resources to bring the programmes about, but as important, they provide a bridge to community acceptance that is essential to success. Some theorists make a distinction between community-based programmes that are simply “in” the community as opposed to those who are “of” the community (Fox, 1977 p.1, Lauen, 1990, p.12). Lauen discusses “community managed” programmes that are arguably the most effective because they are created and operated by the community for its members – both offenders and non offenders. Programmes that are simply operated in the community by the official correctional system are arguably less effective because they and their clients are less accepted, indeed may even be rejected by the community.

D. Research and Risk

Research is essential to understand what works best with which kind of offender. Actuarial assessment of risk helps us understand, among other things, which offenders can be managed in the community and what risk factors they need to work on to maintain a crime-free lifestyle.

Perhaps the most fundamental thing that has been learned from research over the past fifty years or so is that increased punishment does not produce increased deterrence. This appears counter-intuitive in societies, including Canada, that have long based their criminal justice systems on a firm belief in deterrence. However, recent meta-analyses that combine literally hundreds of studies and hundreds of thousands of subjects confirm this conclusion. Smith, Goggin and Gendreau (2002) compared the impact on recidivism of incarceration and of intermediate sanctions.⁴ They concluded that incarceration has no greater impact on recidivism than community sanctions and, in fact incarceration may actually increase later recidivism – by 2-3% overall and as much as 7% in some cases.

Cutting-edge research on the actuarial assessment of risk has a variety advantages. The ability to place offenders in risk categories, and to measure the outcome of different treatments with different risk categories, helps to greatly refine our knowledge of what works better with which groups. So, for example we are able to conclude with some degree of certainty that interventions with low risk offenders that are too intense, can actually increase their risk, while more intense treatments work best with the highest risk offenders. For example, a recent evaluation of electronic monitoring (EM) in three Canadian provinces (Bonta, Wallace-Capretta and Rooney, 1999) found that EM had no different effect on outcomes than did community supervision by itself when risk and criminogenic needs were controlled. However, in the one jurisdiction that a) included moderate risk offenders in its programme, and b) combined EM with a programme of treatment provided by a voluntary community organisation, positive results were found for this group.

Being able to better differentiate between more and less effective treatment programmes not only helps policy makers and programme managers decide where to invest their resources, it helps make more effective correctional decisions about programme placement, security classification and degrees of liberty that are appropriate for individual offenders. Perhaps most important, by helping to identify criminogenic need areas (factors associated with their pattern of offending) for individual offenders to work on, risk prediction techniques lead to more successful outcomes in terms of lowered recidivism.

A number of tools exist for this purpose – the Wisconsin Offender Classification System and LSI-R (Levels of Service Inventory – Revised) are two of the most widely used (Andrews and Bonta, 1998). In Canada today virtually all jurisdictions utilize one or a combination of risk prediction tools (with the Canadian-developed LSI-R being the most common) to help make risk-based decisions. While the degree of knowledge and understanding of risk prediction technology and its appropriate uses still varies across jurisdictions and across professional groups (e.g., judges, prosecutors, prison and parole officials), it nevertheless has been instrumental in helping chart a path that is more and more travelled in Canada’s criminal justice system.

⁴ Intermediate sanctions include: intensive supervision, arrest, fines, restitution, boot camps, scared straight, drug testing and electronic monitoring.

E. Community Correctional Professionals

A network of supportive and enabling criminal justice professionals⁵ is essential for community-based correctional programmes to become an established component of a criminal justice system. Some must be dedicated to such programmes, others at least accepting and supportive of them. In a federal system it is unrealistic to expect that these professionals would all be part of one national, internally consistent programme. Rather, they represent various roles and jurisdictions but are bound together by the concept of community corrections to which they all subscribe in varying degrees. Keeping in mind that personal philosophies differ and that some aspects of community corrections are controversial, it cannot be expected that the field is uniform and internally consistent. Nevertheless, the extent to which community programmes are used in Canada is evidence that the concept has been well accepted overall.

Judges, of course are crucial. They must see community alternatives as appropriate or they would simply not use them. And prosecutors are arguably the most crucial figures in “front end” (early in the judicial process) diversionary programmes. Without their initiative or at least their consent no pre-conviction diversion would be possible. To some extent, these actors may still be motivated by expediency as Rothman (1980) found them to be at the turn of the last century. Without recourse to community sanctions courts would arguably be burdened with more trials than they could handle. Similarly prosecutors (Crown Attorneys) would be overwhelmed with the workload of prosecuting many more contested cases. The offer of an agreed-upon community sanction is a welcome plea-bargaining tool to help deal efficiently with the less serious cases and to concentrate prosecutorial resources on those that are the most serious and contested. Writing in 1999, Jonathan Rudin still found that “...one of the major reasons for the increasingly widespread support of alternatives among these players in the justice system is the growing backlog of cases in many provincial courts” (p. 296). This pragmatism, combined with altruism and the search for effective correctional programmes, has proven to be fertile ground for community-based corrections.

Police too may see some expediency in supporting community-based programmes. “First offenders classes” and “john schools” (discussed below) allow for some intervention to take place with groups of low-risk, usually first-time offenders but without costly court procedures. But expediency alone does not explain the national policy of the Royal Canadian Mounted Police (Canada’s national police force) and widespread implementation of family group counselling techniques in their nation-wide Community Justice Forums (see below).

Many of the foregoing officials as well as others are committed to community-based programming which they see as the more effective and least harmful among potential options, particularly traditional incarceration. Probation services are operated by every provincial and territorial jurisdiction with the mission to work with appropriate offenders in the community. They usually work closely with voluntary sector service providers and match offenders with appropriate programmes to control their criminal behaviour and help them return to a crime-free lifestyle in the community. These same voluntary sector workers collaborate with institutional and paroling authorities as well to help ease offenders back into the community as soon as it is considered safe to do so.

Institutional officials, particularly at the federal level where sentences are longer and offenders most serious, recognize their first mission to be to maintain the safe and secure custody of offenders who are under sentence. But they also recognize their ultimate responsibility to be the return of inmates to the community in a safe and effective fashion. Therefore, institutional programming is geared to help offenders deal with their criminogenic needs. By matching cognitive-behavioural programmes to needs and levels of risk, research-tested programmes help reduce and manage risk so that ultimately release will be more successful. Gradually, therefore, more offenders are being managed in the community for longer periods of time with fewer new offences (Corrections and Conditional Release Statistical Overview, 2001).

⁵ The term “professional” is used here to include volunteer and paid employees of voluntary sector (not-for-profit) organisations as well as full-time officials of state organisations irrespective of their level of training.

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Parole officers and their voluntary sector partners assist offenders to develop and implement community release plans that address their residential, education, employment and criminogenic needs in the community. A variety of voluntary organisations operate over 190 halfway houses across Canada and are able to accommodate close to 2,000 offenders at a given time. They may offer programmes related to specific needs such as substance abuse, or simply basic room and board. In addition, over 10,000 individuals volunteer in various roles with the Correctional Service of Canada. They help provide pro-social role models and often continue to offer support and assistance in the community after release.

Support of the voluntary sector also extends beyond the end of the sentence. Established voluntary organisations founded in the traditions of aftercare have never regarded the boundaries of a sentence to confine their activities where there was a need. Recently, this philosophy has led to the creation of a new programme model called Circles of Support whereby groups of community members (usually faith groups) provide on-going friendship and practical support as well as setting limits and monitoring accountability targets for high-risk offenders. In some instances the Circles of Support collaborate with police who are also targeting the same high-risk offenders, and who have recruited local social agencies to assist. These support networks are very promising, especially with serious sex offenders. More will be known about them as they are evaluated.

In Canada, Aboriginal people face special challenges having been isolated on Indian Reserves for decades with unequal access to employment, education, health care and many other social and economic advantages. Today they represent under 3% of Canada's population but over 17% of its penitentiary inmates. In some provinces where they are concentrated, Aboriginal inmates approach 100% of the prison population. On average, Canada incarcerates Aboriginal people at eight times the rate of non-Aboriginals. Culturally appropriate community services and programmes are often lacking for Aboriginal people making their re-integration into both Aboriginal and urban communities. At the same time, Aboriginal culture has much to teach the non-Aboriginal culture, particularly about healing the spirit as well as the person. Restorative Justice (see below) is a new way of thinking about criminal justice that is both consistent with and inspired by the culture and traditions of Aboriginal people. Significant adjustment will be needed for the mainstream criminal justice system and processes to accommodate this promising new style of doing criminal justice, and increasing numbers of Aboriginal practitioners and programmes at all levels need to be further developed.

IV. COMMUNITY-BASED CORRECTIONAL PROGRAMMES

In 1994, it was estimated that if the then-current rate of growth were to continue, the penitentiary population would double its size within 10 years. Provincial and territorial jurisdictions were experiencing the same phenomenon and the future looked untenable. Concerted efforts were called for by all governments. In May 1995, federal, provincial and territorial Ministers of Justice and Solicitors General asked senior officials to consider ways that could reduce upward pressure on prison populations. Federally, a number of measures were introduced as discussed below. Jointly, the various jurisdictions formed a Working Group of the Heads of Corrections from all the jurisdictions and focused on what could be done jointly and individually, and four Annual reports were prepared for Ministers (1996-2000).

In the first *Population Growth Report* (1996) a set of principles were recommended to Federal, Provincial and Territorial Ministers at an annual meeting. The principles were derived from and consistent with similar statements in the *CCRA* and *Criminal Code* as well as U.N. international instruments⁶. The principles were significant because, irrespective of various differences of view and political philosophies, all jurisdictions at all senior bureaucratic and political levels agreed to support existing and innovative programmes based on these principles. While they do not carry the same weight as similar statutory statements and could be disavowed at any time by any jurisdiction, so far they have not been. Probably the greatest impact of the principles statement is the encouragement, even empowerment, it gave to correctional administrators to advance non-custodial programmes

⁶ For example the Standard Minimum Rules for the Treatment of Prisoners, the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

without (or at least with less) fear of being countermanded at higher levels of authority. The Statement of Principles read as follows:

While it is recognized that there are differential approaches to similar policy issues across jurisdictions, and such diversity must be respected, there are many principles and objectives that are held in common which could be made explicit and endorsed. Some of these would be:

- The criminal justice system is a social instrument to enforce society's values, standards and prohibitions through the democratic process and within the rule of law;
- The broad objective of the criminal justice system is to contribute to the maintenance of a just, peaceful and safe social environment;
- Public safety and protection is the paramount objective of the criminal justice system;
- The best long-term protection of the public results from offenders being returned to a law abiding lifestyle in the community;
- Fair, equitable and just punishment that is proportional to the harm done and similar to like sentences for like offences is a legitimate objective of sentencing;
- Offenders are sent to prison as punishment, not for punishment;
- Incarceration should be used primarily for the most serious offenders and offences where the sentencing objectives are public safety, security, deterrence or denunciation and alternatives to incarceration should be sought if safe and more effective community sanctions are appropriate and available. (*as amended in February 1997*)
- The criminal justice system is formed of many parts within and across jurisdictions that must work together as an integrated whole to maximize effectiveness and efficiency.⁷

The Population Growth project helped create an environment where emphasis was placed on maximizing the use of community-based corrections at all stages of the criminal justice process where possible, consistent with the foregoing principles. While the principles provided a policy framework to further amplify the statutory framework that existed at that time, strong motivation also came from the fact that correctional institutions everywhere were crowded and all the indicators were that this trend would continue and even worsen.

In 1997 the Canadian incarceration rate stood at a record high of 133 per 100,000 of the general population.⁸ Both institutional and community caseloads had been rising steeply since the mid-1980s and had increased by 29% and 40.8% respectively between 1985 and 1995 (*Population Growth Paper*, 1996, p. 2). Moreover, although the number of adults charged with crimes each year had declined by 11% during the previous five years, the rate of offenders admitted to custody increased by 30% (from 485 to 630 per 10,000 persons charged) – more people were being sent to prison and penitentiary even though the crime rate was beginning to decline (*Corrections Population Growth*, 1996, Summary Table 4).

The first Population Growth report made 11 recommendations to Ministers to promote non-carceral measures such as:

- Making greater use of diversion programmes (many of which already existed);
- Develop charge-screening policies to move appropriate cases into diversion programmes;
- Use risk prediction techniques more widely;

⁷ Amended as noted in 1997 in vol.2 of the Population Growth reports.

⁸ Includes youth as well as adults, and both sentenced and those on remand. Compares to the United Kingdom at 99 and Australia at 89.

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- Develop Aboriginal community pilot projects;
- De-incarcerate low risk offenders.

Over the next three years all jurisdictions contributed information about the measures they were taking to comply with these recommendations and the results they were achieving. By the time of the fourth report in 2000, there had been significant changes in the criminal justice environment. Although by no means attributable to these efforts alone, they surely made an impact if only by promoting a change of attitude that increasingly accepted incarceration as an extreme measure to be reserved only for the most serious cases that clearly required it.

By 2000, the incarceration rate had declined to 123 per 100,000 general population. And, while community caseloads continued to grow, institutional populations had begun a steady decline. The balance between community and custodial sentences had also begun to shift. Whereas about 77% of the combined federal, provincial and territorial correctional caseload was in the community in fiscal year 1994-95, it was about 79% in 1998-99 (*Corrections Population Report Fourth Edition, 2000, Summary Table 2, p.39*). Attention had shifted further toward community-based sentencing and correctional alternatives right across the spectrum of the criminal justice process.

A. Pre-Charge Diversion – Police

Diversion from the formal criminal justice system can begin as early as at the police investigative stage. Police may play a role by a) identifying appropriate candidates for diversion and b) operating diversion programmes. Such programmes may vary from one police agency to another. Normally, with the approval and/or participation of the Crown Attorney, cases are identified using established criteria. One of those criteria is always that the subject must be prepared to admit responsibility for the alleged offence. Section 717 of the *Criminal Code* (alternative measures, 1996 – see Appendix B) prohibits such an admission from being used as evidence in court should the case eventually go to trial. The prosecutor is also required to establish that the offence could be effectively prosecuted if it did go to trial. Then, when the offender has successfully fulfilled an agreed-upon course of action, the prosecutor will not proceed with the charges.

Two types of programmes police have introduced are First Offender Classes and John Schools. The former tends to be operated for youthful, first time offenders. It is usually in the form of a class that deals with the law and the consequences of law breaking, including the long-term consequences of having a criminal record, impact on family and friends, and on victims. John Schools are similar but are designed for men who attempt to solicit a prostitute in an unlawful manner (contrary to s. 213 of the *Criminal Code* – communicating for the purpose of prostitution). Again, in the form of classes, men are educated about the consequences of being convicted of such an offence, impact on their family and reputation, and public health implications – often with former prostitutes lecturing on the damage that women experience by a life of prostitution.

Police often partner with community organisations to help deliver these programmes. They are highly efficient in that they occupy a minimum of resources of the formal system because they are initiated so early in the process or, as it is sometimes called, at the “front end”. They are more efficient yet because they deal with groups of offenders rather than one case at a time. Some critics of these informal programmes question their effectiveness suggest they may simply “widen the net” by including very minor offenders who often would not be prosecuted in any event.

Perhaps the best recognized police-based diversion programme is Family Group Conferencing first established in New Zealand and Australia. In Canada, the Royal Canadian Mounted Police operate such programmes across the country under the name of Community Justice Forums. They have grown out of a Restorative Justice philosophy, which will be discussed later in this paper.

In appropriate cases, a trained facilitator (police officer or community volunteer) will convene a group of family members, victims and their support group, and other relevant community members to meet with the offender. As a group they consider the offence and the offender, and an appropriate course of action – often including restitution of some kind – to satisfy the victim and community as well as appropriately sanctioning the offender. Where the offender follows through in good faith, charges usually do not proceed. These programmes are more labour-intensive than many other police-based

programmes because they deal with single offenders and involve a wider range of participants than a normal court proceeding.

B. Post-Charge Diversion – Court Based

Court-based diversion programmes are normally coordinated by the Crown Attorney's office but frequently involve the local Probation Service and/or community groups. Such programmes were first developed by innovative Crown Attorneys and Judges who recognized that programmes did not exist to deal with minor offenders who were often basically pro-social and considered a low risk to re-offend but who might be driven further toward a criminal life style by formal processing by the criminal justice system. By agreeing to alternative measures such offenders can be diverted from the experience of the criminal justice system and can be diverted from the heavy workloads of that system at the same time.

Section 717 of the *Criminal Code* now provides for alternative measures to be used when:

- They are part of a programme authorized by the government of a province or territory and are authorized by the Attorney General or his or her delegate in a specific case;
- They are appropriate for the offender, the interests of society and of the victim;
- The person participates freely having been advised of his or her right to counsel; and
- The person accepts responsibility for the alleged act and the Attorney General's representative (the Crown Attorney) believes there is sufficient evidence to prosecute if that were necessary.

And there are extensive prohibitions against keeping and, or disclosing any record of the alternative measures proceedings.

Frequently, programmes are conducted in the community by voluntary organisations and clients provided by referral from the courts under the alternative measures procedures. In some cases these programmes look much like Community Service Orders that will be discussed below. Offenders may be required to provide assistance to the community or indirectly through a community agency. When completed, the Crown Attorney enters a stay of proceedings on the charge that had been laid and cannot proceed on them at a later time.

Some are concerned that the alternative measures provide a powerful plea-bargaining tool that could result in admissions of responsibility that are not necessary and could not be obtained through prosecution. For this reason there are safeguards in the *Criminal Code* that require the offence to be capable of prosecution and that the offender be aware of his or her ability to defend against it in court.

C. Pre-Sentence Diversion – Discharge

Conditional and absolute discharges have been authorized by the *Criminal Code* for over 20 years. In effect, a discharge order under s. 730 of the *Criminal Code* is neither a conviction nor a sentence. Although there is an admission or finding of guilt, once the judge decides to order the discharge of the offender, there is technically no conviction and no criminal record is created. The discharge may not be given if there is a minimum sentence required by law or if the maximum sentence that may be given is 14 years in prison or more. In the case of conditional discharges, a probation order may be created for a maximum of three years at the end of which the discharge takes effect. Failure to comply with the conditions of a probation order can result in a cancellation of the discharge order and its replacement with the sentence that would have otherwise been given.

D. Post-Sentence Diversion – Probation

Probation is perhaps the most valuable tool used to prevent offenders from being further drawn into the criminal justice process. By preparing pre-sentence reports "...for the purpose of assisting the court in imposing a sentence..." (s.721 (1) *Criminal Code*), the probation officer can be instrumental in proposing a feasible community-based alternative in appropriate cases.

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Moreover, it is frequently the existence of the probation service and programmes that it operates or facilitates, that make the alternative programmes viable. Community service orders, for example, are normally given effect as a condition of a probation order (732.1(3)(f) *Criminal Code*). More important, however, is the administration of the programmes based on this order. Numerous community agencies that can make use of volunteers must be recruited and probationers assigned, hours of participation and department monitored and recorded, as well as the normal counselling of the offender and liaison with the court. Similarly, the probation service is instrumental in administering other orders that may be handed down by the court such as restitution orders, conditional discharges, protection orders⁹ and conditional sentences.

Probation services operate a wide variety of support programmes for probationers from job-finding and life-skills development to sex offender and substance abuse programmes. Increasingly probation services utilize risk assessment instruments to help gauge the appropriate level of intervention from only infrequent and casual contact to intensive supervision and counselling. Probation services seldom directly operate halfway houses but they may help voluntary organisations develop them and then utilize their services.

E. Post-sentence Diversion During Incarceration – Conditional Release

An important purpose of imprisonment is to separate from the community those offenders who pose a threat to public safety. But where this consideration does not apply, i.e., where the risk is assessed as low and manageable, and where the sentence has accomplished its denunciatory purpose, the correctional system's primary purpose becomes the safe reintegration of offenders into the community and the adoption of a law-abiding lifestyle. To achieve this there are a variety of conditional release mechanisms set out in the *CCRA* as outlined earlier. Irrespective of their technical differences, they are all guided by common principles. Release decisions that are recommended by the Correctional Service of Canada and the release decisions made by the National Parole Board¹⁰ are based on an assessment of whether or not the offender poses an "undue risk" to the public that is, the potential risk the offender poses to the community by the commission of a new offence (s.100, *CCRA*). Institutional programmes are designed to reduce risk while community programmes and supervision following release are meant to manage and assess risk on an on-going basis. Increasing or unmanageable risk will result in a return to custody, hopefully before a new offence is committed.

V. RECENT INNOVATIONS

A. Accelerated Parole Review

In recent years countries such as the United States and, most recently the United Kingdom, have introduced presumptive sentences to increase the punitiveness of their systems in the avowed belief that greater deterrence of crime will result. In so doing they have only exacerbated their prison population growth while having no demonstrable effect on crime reduction¹¹. The most extreme example is the United States, which has increased its prison population by over 600% over the past 30 years, doubling it in just the past decade, with such measures. Canada to the contrary has chosen to resist presumptive penalties while introducing a presumptive form of conditional release to ensure the timely release of certain offenders from custody.

In 1992 when the *CCRA* was enacted, it included a provision for the "accelerated parole review" (APR) of offenders who were in penitentiary for the first time and convicted of a non-violent offence (i.e., not on a schedule of offences against persons that forms part of the Act) were *entitled* to be released upon reaching their eligibility date (one-third of the sentence) for full parole. In these cases they can be denied release only if the Parole Board finds reason to believe that they would commit a new crime of

⁹ Pursuant to s. 810 of the *Criminal Code* a court may issue an order against a person for the protection of the public; conditions are specified and may include supervision by a probation officer.

¹⁰ The National Parole Board is an independent administrative tribunal comprised of individual members appointed by the Government of Canada to make release decisions according to the *CCRA*.

¹¹ While crime rates and patterns are comparable in most G7 countries, they have dropped as much or more in those with less punitive characteristics; the same observation is true when comparing States to one another within the US (Zimring and Hawkins (1997), Macalair and Males (1999)).

violence if released. This is a significantly lower test when compared to the regular criteria, which are based on the threat to the community due to the commission of *any* new offence. Offenders in this group were observed to already be released at a fairly high rate and to succeed at a high rate after release. But that release was occurring about four or five months later than their first eligibility dates without any change in their risk levels.

When released upon reaching their first eligibility date, the APR group performed much as expected. When compared to “regular” parolees (parolees who were not eligible for APR and were released at various times after they reached parole eligibility), they re-offended at slightly higher rates over all, but with lower rates of violent re-offending. In view of the positive performance of this group, amendments to the CCRA in 1997 added accelerated *day parole* for this same category of offenders. This made these offenders eligible for presumptive release after serving six months or one-sixth of the sentence (the greater) using the same test as accelerated parole review (risk of violence). This change in the law resulted in an immediate transfer of about 500 inmates per year from federal custody to the community without increased risk.

Similarly, since 1971¹² offenders who have not been released earlier, or who have been returned to custody, have been entitled to be released under supervision during the last one-third of the sentence. This statutory release is also presumptive to ensure a transition period for offenders who are inevitably destined to return to the community.¹³ Both of these forms of presumptive release have their detractors because they are characterized as being automatic or, put another way, unearned. Nevertheless these offenders perform reasonably well and contribute to the approximately 40% of federal offenders who are in the community under all types of conditional release on any given day. In a given year, about 13% of these releases end in a new offence and about the same number are returned to custody due to a breach of a condition of release. During the past seven years, new violent offences committed by conditionally released offenders have dropped by over 60% (*Corrections and Conditional Release Overview*, 2002)

B. Conditional Sentences

Perhaps the most innovative sentencing measure in recent years has been the introduction of conditional sentences (s. 742 *Criminal Code*) in 1996. While similar in many ways to other forms of community sentences like a suspended sentence, probation order, or conditional discharge, conditional sentences are unique. It is a “...sentence of imprisonment...” (s.742.1(a)) that the judge may order be served in the community if he or she “...is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2” (s742.1(b)).

A sentence of *imprisonment* served in the *community*! This internally inconsistent and self-contradictory concept has taken considerable effort by the criminal justice community to grasp. Being a sentence of imprisonment for up to two years, the conditional sentence may be considered appropriate for more serious offences that would attract more serious sentences. On the other hand, being left at large in the community is seen by some to be inappropriately lenient for more serious offences, particularly crimes of violence and crimes that are sexual in nature. Consequently, there have been many calls to limit conditional sentences to less serious offences and offenders. Advocates of the conditional sentence point to the unnecessary cost and ineffectiveness of imprisonment for persons who do not require it to control their low level of threat to the community.

Two Supreme Court of Canada decisions have helped clarify the appropriate use of conditional sentences – *R v Gladue* (1999) and *R v Proulx* (2000). The latter in particular has made the important distinction that conditional sentences can and often should incorporate limitations of liberty that are

¹² Since 1868 inmates had been able to earn remission of their sentence through good behaviour; in 1971 this remission period of up to one-third of the sentence (and most inmates earned all of their remission) was converted to “mandatory supervision” during the remission period; in 1992 mandatory supervision was converted to “statutory release” which became an entitlement and no longer had to be earned.

¹³ Inmates can be detained until closer to or right up to the end of their sentence if there is reason to believe they will commit a new offence that will cause serious harm to another person. A small number of offenders are detained each year – about 200 out of about 4000 such releases.

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more punitive than other community sentences. Consequently such sentences now commonly contain conditions that amount to house arrest with strict curfews, limited reasons to be out of one's residence, restrictions of association and the like. Calls for scaling back the application of conditional sentences continue, while it is argued by the government that the current scheme should be properly evaluated after sufficient experience to determine whether and how successful it is, before contemplating any fundamental change.

- It remains premature to draw firm conclusions about the efficacy of this form of sentence but from the partial and preliminary data that has been collected so far, it may be tentatively concluded that:
- The use of conditional sentences has progressively increased since their introduction in 1997;
- Decreasing rates of sentences to custody have corresponded to increasing rates of conditional sentences;
- Conditional sentences have become progressively longer;
- Conditional sentences are most often combined with probation;
- The offences for which conditional sentences are given are inclusive but regional variations are noticeable with violent offences predominating in some areas and property offences in others. (CCJS, 2002).

While the application of conditional sentences is still evolving and our knowledge about their impact are still quite limited, these preliminary results are promising and appear to demonstrate a relationship between falling prison populations and this sentencing option (see Appendix B for full *Criminal Code* provisions).

C. Restorative Justice

This fascinating concept appears full of potential for improving criminal justice practices and engaging communities in real, practical and satisfying ways. It has been pioneered in New Zealand and Australia and is of rapidly growing interest in Canada. The fact that all three of our countries have large Aboriginal populations may account, at least in part, for the interest and almost intuitive belief in its promise. In Canada, the concept is informed by Aboriginal culture and healing traditions, and it is being applied in a growing number of Aboriginal communities as an alternative to the mainstream system.

While there are many shadings of emphasis that may be given to the restorative justice philosophy, the key principle all applications have in common, and the one that sets it apart, is its purpose to *restore the harm that has been done* by criminal conduct. Harm may have been done to a victim or victims, to the community in which the offence occurred, to family and friends of the victims and of the offender. Indeed, quite often the offence and circumstances surrounding it have also caused harm to the offender. Restorative justice approaches seek to repair and reduce all of these harms to the extent possible, rather than simply detecting, prosecuting and punishing the perpetrator as we tend to do in a typically adversarial process.

There are many methods and models to achieve restorative justice goals, each at various stages of maturity. Perhaps the most well-established model anywhere is the Family Group Conferencing approach of Australia and New Zealand. In Canada, as previously mentioned, this approach has also been adopted by the Royal Canadian Mounted Police, the Country's national police force. In their application of this approach in many widely dispersed communities, the RCMP's Community Justice Forums engage youthful offenders, families, community members and victims in a facilitated process to seek agreed upon resolutions that will satisfy the greatest number of injured parties to the greatest degree.

The earliest restorative justice programmes in Canada are generally recognized to have begun in 1974 when victim-offender reconciliation was introduced in the courts in Kitchener-Waterloo, Ontario.

Many other programmes are based on this victim-offender reconciliation or mediation model. Aboriginal variations are based on “the circle” a traditional Aboriginal method of group deliberation, decision-making, conflict resolution and community healing.

Whatever the programme differences among them, similar principles guide restorative justice applications:

- Both victim and offender must give and remain able to withdraw their free, voluntary and informed consent to participate in the restorative justice process; they must be fully informed about the process and its consequences;
- The offender must admit responsibility for the offence and both victim and offender must agree on the essential facts;
- Both can have legal advice at any point and can withdraw if they wish; any admission of responsibility cannot be used as evidence in any later legal proceedings;
- A restorative process can occur at any and all stages of the criminal justice process;
- Power imbalances between victim and offender must be considered and compensated for wherever necessary – neither should feel coerced, pressured, intimidated or inferior;
- All discussions are confidential unless by agreement between the victim and offender;
- Failure to reach agreement should not be used in any subsequent legal proceedings to justify a harsher sentence than would otherwise be given;
- The consequences of failing to honour an agreement should be clearly spelled out;
- Facilitators should be trained and evaluated to ensure competence.

In 1996, restorative justice principles were recognized in the *Criminal Code of Canada* in the sentencing principles

- “to provide reparations for harm done to victims or to the community” (s. 718 (e)), and
- “to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community” (s. 718 (f)).

More recently, Canada was instrumental in the development with other countries of principles similar to those above for consideration by the 11th Session of the Commission on Crime Prevention and Criminal Justice; in April 2002, the Commission took note of the proposed Basic Principles on Restorative Justice and encouraged Member Nations to consider their adoption.

While it is still a time of experimentation and demonstration of how these principles can be applied and what outcomes can be expected, there are many promising signs. Increasingly research confirms that those who engage in the process are more satisfied with the results than those who did not participate (Chaterjee, 1999; Umbreit *et.al.*, 1995). Nevertheless, it remains to be seen if victim participation rates can be increased. They are often reluctant to participate fearing that they are only being used to benefit the offender by lessening his or her penalty. It also remains to be seen whether restorative justice approaches can have any measurable impact on offender recidivism rates. But irrespective of the research knowledge that must yet be accumulated, there are many encouraging signs. In one programme known as Restorative Resolutions, a court-based, probation-run programme, enough prison-bound offenders were successfully maintained in the community to more than pay the cost of the programme out of the cost offsets (Bonta *et. al.*, 1998).

D. Hollow Water First Nation

Perhaps one of the most impressive among Aboriginal programmes was sponsored by the Hollow Water First Nation community in Manitoba. The programme called the Community Holistic Circle Healing (CHCH), set out to deal with serious sex offenders in the community, repair the damage they had done and were doing, while bringing their behaviour under control without banishment to prison away from the First Nation and in a predominantly non-Aboriginal environment. Imprisonment, in fact, was generally considered to increase the harm.

Community resources were mobilized by the project to identify victims and offenders and to bring them together by way of healing circles. During a 13 step process victims were offered a safe and supportive environment and offenders were called upon to take responsibility for the harm they had caused. Victims and offenders sought and found ways to make amends for past harm and to control their future conduct. The local police, court and Crown Attorney acknowledged the appropriateness of the proposed resolutions and community sentences were given to facilitate the agreements.

The costs that were offset by the programme were estimated to be considerably higher than the cost of running the CHCH programme (funded by federal and provincial governments and by the Hollow Water Band Council). The Federal Government, for example, estimated that in the order of 40 to 50 offenders were kept in the community and out of federal penitentiary custody, at an average cost saving of \$60,000 per year. But the benefits went far beyond the simple reduction of costs and prison populations.

In a 2001 evaluation of the CHCH programme (Couture, J. *et.al.*), a multitude of collateral benefits to the community were identified:

- Early childhood programmes are in operation (e.g., Headstart, day care);
- Children are happier, feel safer and more self-confident;
- Parents are more involved with raising children;
- About 50 children from other First Nations are in foster care in Hollow Water;
- No gang-related activities (a problem in many other places) are reported;
- Youth stay in school longer and remain in the community after graduation;
- High school completions and graduating class sizes have increased;
- Growing number of high school dropouts returning to school;
- Less out-migration and increased migration in from other First Nations;
- Alcohol abuse almost stopped and drug abuse among young being addressed;
- Health improved above provincial average;
- Life expectancy increased from 63 to 70 years.

When asked by evaluators what life would be like without CHCH a community member summed it up: “utter chaos” she replied.

VI. CONCLUSION

In 1994, the Government of Canada faced a penitentiary population growth rate that threatened to double the number of penitentiary inmates within 10 years if nothing changed. Today that population growth rate has subsided. Federal and many provincial correctional institutions are feeling some relief, the former has experienced progressive population drops over the last seven years. This was achieved in many ways that are possibly not yet fully understood. However, a common effort by federal and provincial governments has clearly made an important contribution. Legal changes across a broad front that encouraged community-based programmes as alternatives to incarceration made a strong impact on attitudes as well as criminal justice practices. While many of these changes were perhaps already under way, and demographic changes surely had a strong impact, comparisons between Canada and its closest neighbour make it clear that different policy choices are possible to purposefully obtain very different outcomes. In Canada a belief that community-based programmes are the more effective choice in the vast majority of cases led to policy choices that would encourage their greater use. This fabric of efforts has helped maintain a balanced and humane correctional system in Canada.

The success that has been obtained demonstrates the value of a common effort across lines of political, functional and operational division. But in addition, investment in community programmes and in more research and evaluation are important to continually learn about and improve community-based programmes. The Hollow Water experience is dramatic evidence that good community-based programmes for offenders also benefit the communities that are their hosts and sponsors. The evidence seems clear that not only are community-based correctional programmes safe, effective and affordable, they contribute to the overall health and well being of the community as well.

Most promising for the future is the expansion and refinement of restorative justice approaches. In the years ahead more domestic and international experience and research will help maximize the contribution of these initiatives right across the criminal justice landscape. In so doing, as Hollow Water has shown us, that contribution will also be to the health and well-being of the communities that have fostered these important initiatives.

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APPENDIX A: PURPOSE AND PRINCIPLES

Corrections and Conditional Release Act – Correctional Institutions:

*Purpose
and Princi-
ples*

[Purpose of
correctional
system](#)

3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by
- (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
 - (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programmes in penitentiaries and in the community.

Principles

[Principles that
guide the
Service](#)

4. The principles that shall guide the Service in achieving the purpose referred to in section 3 are
- (a) that the protection of society be the paramount consideration in the corrections process;
 - (b) that the sentence be carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, other information from the trial or sentencing process, the release policies of, and any comments from, the National Parole Board, and information obtained from victims and offenders;
 - (c) that the Service enhance its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication about its correctional policies and programmes to offenders, victims and the public;
 - (d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders;
 - (e) that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence;
 - (f) that the Service facilitate the involvement of members of the public in matters relating to the operations of the Service;
 - (g) that correctional decisions be made in a forthright and fair manner, with access by the offender to an effective grievance procedure;
 - (h) that correctional policies, programmes and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements;
 - (i) that offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programmes designed to promote their rehabilitation and reintegration; and
 - (j) that staff members be properly selected and trained, and be given
 - (i) appropriate career development opportunities,
 - (ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and
 - (iii) opportunities to participate in the development of correctional policies and programmes.

1992, c. 20, s. 4; 1995, c. 42, s. 2(F).

Corrections and Conditional Release Act – Conditional Release:

*Purpose
and Prin-
ciples*

[Purpose of
conditional
release](#)

100. The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens.

[Principles
guiding
parole
boards](#)

101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are

- (a) that the protection of society be the paramount consideration in the determination of any case;
- (b) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender;
- (c) that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programmes to offenders, victims and the general public;
- (d) that parole boards make the least restrictive determination consistent with the protection of society;
- (e) that parole boards adopt and be guided by appropriate policies and that their members be provided with the training necessary to implement those policies; and
- (f) that offenders be provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

Criminal Code of Canada:

[Purpose](#)

718. The fundamental purpose of sentencing is 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;
- (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 and to the community.

R.S., 1985, c. C-46, s. 718; R.S., 1985, c. 27 (1st Supp.), s. 155; 1995, c. 22, s. 6.

[Fundamental principle](#)

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

R.S., 1985, c. 27 (1st Supp.), s. 156; 1995, c. 22, s. 6.

[Other sentencing principles](#)

718.2 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, color, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
 - (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner or child,
 - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim, or
 - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organisation

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 should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

1995, c. 22, s. 6; 1997, c. 23, s. 17; 2000, c. 12, s. 95.

APPENDIX B: ALTERNATIVE MEASURES AND CONDITIONAL SENTENCES

Criminal Code of Canada

Alternative Measures:

When alternative measures may be used	<p>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:</p> <ul style="list-style-type: none">(a) the measures are part of a programme 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.
Restriction on use	<p>(2) Alternative measures shall not be used to deal with a person alleged to have committed an offence if the person</p> <ul style="list-style-type: none">(a) denies participation or involvement in the commission of the offence; or(b) expresses the wish to have any charge against the person dealt with by the court.
Admissions not admissible in evidence	<p>(3) No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of the person being dealt with by alternative measures is admissible in evidence against that person in any civil or criminal proceedings.</p>
No bar to proceedings	<p>(4) The use of alternative measures in respect of a person alleged to have committed an offence is not a bar to proceedings against the person under this Act, but, if a charge is laid against that person in respect of that offence,</p> <ul style="list-style-type: none">(a) where the court is satisfied on a balance of probabilities that the person has totally complied with the terms and conditions of the alternative measures, the court shall dismiss the charge; and(b) where the court is satisfied on a balance of probabilities that the person has partially complied with the terms and conditions of the alternative measures, the court may dismiss the charge if, in the opinion of the court, the prosecution of the charge would be unfair, having regard to the circumstances and that person's performance with respect to the alternative measures.

Conditional Sentence of Imprisonment:

Imposing of conditional sentence

742.1 Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

(a) imposes a sentence of imprisonment of less than two years, and

(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2,

the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

1992, c. 11, s. 16; 1995, c. 19, s. 38, c. 22, s. 6; 1997, c. 18, s. 107.1.

.....

Compulsory conditions of conditional sentence order

742.3 (1) The court shall prescribe, as conditions of a conditional sentence order, that the offender do all of the following:

(a) keep the peace and be of good behaviour;

(b) appear before the court when required to do so by the court;

(c) report to a supervisor

(i) within two working days, or such longer period as the court directs, after the making of the conditional sentence order, and

(ii) thereafter, when required by the supervisor and in the manner directed by the supervisor;

(d) remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor; and

(e) notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.

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Optional conditions of conditional sentence order

- (2) The court may prescribe, as additional conditions of a conditional sentence order, that the offender do one or more of the following:
- (a) abstain from
 - (i) the consumption of alcohol or other intoxicating substances, or
 - (ii) the consumption of drugs except in accordance with a medical prescription;
 - (b) abstain from owning, possessing or carrying a weapon;
 - (c) provide for the support or care of dependants;
 - (d) perform up to 240 hours of community service over a period not exceeding eighteen months;
 - (e) attend a treatment programme approved by the province;
- and
- (f) comply with such other reasonable conditions as the court considers desirable, subject to any regulations made under subsection 738(2), for securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of other offences.

APPENDIX C: TYPES OF RELEASE

By law, all offenders must be considered for some form of conditional release during their sentence. Just because an offender is eligible for release, however, does not mean that the release will be granted – release on parole is never guaranteed. Conditional release does not mean the sentence is shortened, it means the remainder of the sentence may be served in the community under supervision with specific conditions.

The National Parole Board must assess an offender's risk when they become eligible for all types of conditional release, with the exception of Statutory Release. That's because the protection of society is the most important consideration of any release decision.

Temporary absence:

- Usually the first type of release an offender may be granted.
- May be escorted (ETA) or unescorted (UTA).
- Granted so offenders may: receive medical treatment; contact with their family; undergo personal development and/or counselling; and participate in community service work projects.

Eligibility:

- Offenders may apply for ETAs any time throughout their sentence.
- UTAs vary, depending on the length and type of sentence. Offenders classified as maximum security are not eligible for UTAs.
- For sentences of three years or more, offenders are eligible to be considered for UTAs after serving one sixth of their sentence.
- For sentences of two to three years, UTA eligibility is at six months into the sentence.
- For sentences under two years, eligibility for temporary absence is under provincial jurisdiction.
- Offenders serving life sentences are eligible to apply for UTAs three years before their full parole eligibility date.

Day parole:

- Prepares an offender for release on full parole or statutory release by allowing the offender to participate in community-based activities.

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- Offenders on day parole must return nightly to an institution or a halfway house unless otherwise authorized by the National Parole Board.

Eligibility:

- Offenders serving sentences of three years or more are eligible to apply for day parole six months prior to full parole eligibility.
- First time penitentiary inmates serving a sentence for a non-violent offence are eligible for day parole after serving 6 months or 1/6th of the sentence (the greater) and must be released unless the Parole Board believes they will commit a violent offence.
- Offenders serving life sentences are eligible to apply for day parole three years before their full parole eligibility date.
- Offenders serving sentences of two to three years are eligible for day parole after serving six months of their sentence.
- For sentences under two years, day parole eligibility comes at one-sixth of their sentence.

Full parole:

- Offender serves the remainder of the sentence under supervision in the community.
- An offender must report to a parole supervisor on a regular basis and must advise on any changes in employment or personal circumstances.

Eligibility:

- Most offenders (except those serving life sentences for murder) are eligible to apply for full parole after serving either one-third of their sentence or seven years.
- First time penitentiary offenders serving a sentence for a non-violent offence must be released when first eligible unless the Parole Board believes they will commit a violent offence.
- Offenders serving life sentences for first-degree murder are eligible after serving 25 years.
- Eligibility dates for offenders serving life sentences for second-degree murder are set between 10 to 25 years by the court.

Statutory release:

- By law, most federal inmates are automatically released after serving two-thirds of their sentence if they have not already been released on parole. This is called statutory release.
- Statutory release is not the same as parole because the decision for release is not made by the National Parole Board.
- Offenders serving life or indeterminate sentences are not eligible for statutory release.
- The Correctional Service of Canada may recommend an offender be denied statutory release if they believe the offender is likely to commit an offence causing death or serious harm to another person; a sexual offence involving a child; or a serious drug offence before the end of the sentence.

In such cases, the National Parole Board may detain that offender until the end of the sentence or add specific conditions to the statutory release plan.

Offenders must agree to abide by certain conditions before release is granted. These conditions place restrictions on the offender and assist the parole supervisor to manage the risk posed by an offender who is on conditional release.

Whether on parole or statutory release, offenders are supervised in the community by the Correctional Service of Canada and will be returned to prison if they are believed to present an undue risk to the public. The National Parole Board has the authority to revoke release if the conditions are breached.

(Adapted from a *National Parole Board Fact Sheet, 1997*)