

SENTENCING IN CANADA

Definition:

SENTENCE: punishment imposed on a person convicted of committing a crime.

Goals:

PROTECTION OF THE PUBLIC

- including person, property and individual rights and freedoms
- reaction to public's fears

RETRIBUTION

- punishment to avenge a crime, ensuring that offenders suffer the consequences of their actions ("an eye for an eye")

DETERRENCE

Specific - punishment to discourage criminals from re-offending

General - punishment to discourage people in general from offending

REHABILITATION

- punishment combined with treatment and training to help offenders function in society
- e.g. anger management; drug and alcohol programs; life skills (how to open a bank account, how to write a résumé)
- statistics indicate that **recidivism** (the tendency of a criminal to re-offend) is reduced by 50% when they participate in rehabilitation programs

RESTITUTION

- punishment that requires the offender to pay society back for the harm or loss suffered
- e.g. community service; payment to victim for damages (but not pain and suffering)

DENUNCIATION

- punishment designed to show condemnation of the offender's conduct

SENTENCING PROCEDURES

- after conviction, the sentencing process begins
- for **summary conviction** offences, sentencing usually takes place immediately
- for **indictable** or more serious offences, sentencing is more complex and is often delayed to allow more time for the judge to make an informed decision
- judge must look at three perspectives: offender, victim, and society

Offender - Pre-sentence Report

- prepared by a probation officer
- includes information about the offender's background, family, education, employment history, physical and mental health, social activities, potential ability, motivation, and friends
- report must be objective in order to provide "a picture of the accused as a person in society"
- possibly includes a psychiatric assessment prepared by a qualified psychiatrist, describing the mental history of the offender

Victim - Victim Impact Statement

- s.722 of the *Criminal Code* **requires** the court to consider any statement prepared by the victim of an offence
- describes the harm or loss experienced by the victim or the victim’s family
- may be read in the presence of the offender or in any other manner the court considers appropriate

Society

- once the accused has been found guilty, the Crown, as society’s representative, has the right to recommend an appropriate sentence
- Crown may introduce the offender’s previous criminal in arguing for a substantial prison term

THE SENTENCING HEARING

At the sentencing hearing, the judge considers all the facts about the crime, the offender, and the victim in order to determine the appropriate sentence. Both defence counsel and the Crown present their recommendations to the judge. The judge must examine the following factors:

- criminal record of the accused
- pre-sentence report findings
- nature and severity of the crime
- offender’s background
- circumstances leading to and surrounding the offence
- offender’s family and employment situation
- offender’s attitude toward his/her own conduct
- maximum and minimum sentences imposed by law
- precedents in sentencing
- aggravating factors (will increase the severity)
- mitigating factors (will decrease the severity)

Concerning the Offender	
Aggravating Factors: <ul style="list-style-type: none">• premeditation• previous criminal record• large profits from the offence• involving others in the offence• ring leader of the group• continuing offence over time	Mitigating Factors: <ul style="list-style-type: none">• impulsive act• young or first offender• guilty plea• co-operating with police• mental or physical disability• short life expectancy
Concerning the Offence	
Aggravating Factors: <ul style="list-style-type: none">• violent offence• number of victims• need for deterrent	Mitigating Factors: <ul style="list-style-type: none">• minor offence• time spent in custody• delay in trial