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**Concern with Leniency:
An Examination of Sentencing Patterns in British Columbia**

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Executive Summary

There is no question that the topic of sentencing is controversial in Canada, generally, and in British Columbia in particular. As just one illustration of this issue, 69% of all Canadians and 74% of British Columbians indicated that they believed that sentences in criminal matters are too lenient. Such responses are best thought of as 'beliefs' since nobody in Canada has completely adequate data on which to evaluate such a statement since completely adequate data on this issue do not exist. The difference between there being *some* sentences that are demonstrably wrong and *sentences generally* being too lenient is, of course, important. 'Fixing' incorrect sentences is a routine activity of Courts of Appeal. It is most likely that if asked about evidence that sentences were too lenient, people would, at best, give a few examples of apparently lenient sentences rather than systematic data about sentencing patterns.

British Columbians may believe sentences are too lenient in part because they, like most Canadians, undoubtedly believe that if the severity of sentences was 'turned up', rates of crime would decrease. Compared to the rest of Canada, British Columbia has a relatively high crime rate as measured by crimes reported to the police. However, it is important to note that victimization is not, uniformly, associated with the view that sentences are too lenient. Indeed, in British Columbia those who were victimized in the 12 months prior to being asked their views on the severity of sentences were *less* likely to say that sentences were too lenient than were those who had not been victimized. Nevertheless, British Columbians are more likely than people in other regions to hold relatively poor views of the criminal courts. However, British Columbians also appear less favourable about other criminal justice institutions - prisons and parole, and the police. It is possible that the special concern that British Columbians have about sentences reflects deeper distrust, in British Columbia than elsewhere in Canada, in the effects of public institutions.

One likely explanation for people's views that sentences are too lenient is that they may believe that judges, at sentencing, could reduce crime if they would only hand down harsher sentences. But there are other reasons. Given that close to three-quarters of Canadians think that sentences are too lenient, this view is seldom challenged. Indeed, in British Columbia, a statement in the Speech from the Throne in February 2008 may easily have been interpreted by the public as suggesting that sentences *across all offence categories* are more lenient in British Columbia than in other parts of Canada. Publicly available data (from Statistics Canada) certainly support the actual statement that appeared in the Throne Speech. However, if one looks at these data in detail – across all categories of offences – the measures of severity of sentences do not show such a consistent picture. More importantly, the measures that most people may think of when they think about sentence severity do not give an adequate picture of the complexity of the problem. We need to understand the nature of sentences being handed down before we can evaluate their severity.

There is no doubt that there is what might be called 'unexplained' variation in sentences across judges, court locations, and provinces and territories. Part of the reason for this variability is that the sentencing structure contained in Canada's Criminal Code does not lay out specific sentences that are appropriate for individual cases. Hence individual judges, interpreting the sentencing provisions of the Criminal Code, might well hand down different patterns of sentences. But there is another important consideration. People often talk about 'short' and 'long' sentences as if the only relevant dimension of sentences is the average (median or mean) length of a prison sentence that is imposed. It is not that simple.

To illustrate the inadequacy of the 'average length of a prison sentence' as a measure of sentence severity, one could look at some Statistics Canada data tables presenting the median and mean length of prison sentences for *all offences* imposed in 2003. These measures were almost identical for British Columbia and for Canada as a whole. One might conclude, on the basis of these comparisons, that sentencing in British Columbia and in Canada, more generally, was of equal severity. However, approximately 40% of cases in British Columbia resulted in a prison sentence as compared to about 35% of cases in all of Canada. Is British Columbia harsher than the rest of Canada? Looking at the proportion of cases with a finding of guilt resulting in a prison sentence, one would easily arrive at this conclusion. Looking at the average length of these prison sentences, one would not.

The problem of 'scaling' the severity of sentences becomes even more salient when these two indicators – prison sentence length and percent receiving a prison sentence – directly conflict with one another. Take for example, the offence category of "uttering threats." Statistics Canada reports that in 2003, the average (median and mean) prison sentences in British Columbia were shorter than for Canada as a whole. The mean prison sentence in Canada was reported to be 83 days, whereas for British Columbia it was 61 days. One could easily conclude, therefore, that prison sentences were 'shorter' in British Columbia and that sentences for this offence were more lenient in British Columbia than in Canada as a whole. But in British Columbia, 41% of the cases of 'uttering threats' resulted in a prison sentence compared to 35.5% of cases in Canada as a whole.

What may be happening in British Columbia, therefore, is that cases of uttering threats are receiving relatively short prison sentences that, elsewhere in Canada, would have received a

non-custodial sentence. By averaging in a number of relatively short sentences for British Columbia that are not part of the calculation elsewhere in Canada, British Columbia's average prison sentence decreases *because* more people convicted of this offence are being sent to prison.

We strongly believe that what is needed to compare sentencing patterns across jurisdictions is a comprehensive picture that does not reduce overall sentencing in a jurisdiction to a single number. Hence we have suggested that there be multiple measures of sentencing patterns and that one should look at *all* available categories of offences. It is natural – and not necessarily inappropriate – to find that there is some variation in sentencing across jurisdictions. After all, under our current law, judges have to decide, within the context of their own jurisdictions, how serious offences are, and what the goals of sentencing should be in determining the sentence.

Notwithstanding the ease with which sentences can be described by the average length of a prison sentence, we conclude that these measures (mean or median sentence) have too high a probability of failing to accurately describe sentencing to justify their use. We demonstrated in the full report, for example, that one could have a situation in which five jurisdictions all had the same mean and median sentences for a particular offence category, but the proportion of those found guilty who were given harsh sentences could simultaneously vary, in our hypothetical example, from 1% of those found guilty to 35% of those found guilty. If 1% of all guilty findings in a jurisdiction were to result in a penitentiary sentence and 35% of all guilty findings in another resulted in a penitentiary sentence, we argue that a description of the mean and median sentences of these two jurisdictions as being identical is not terribly helpful, nor descriptive.

In order to understand variation in sentencing across Canada, we concluded that it was important to look at data in as much detail as possible. First of all, this meant looking at individual offence groupings as well as comparisons between British Columbia and individual provinces, rather than 'Canada' as a single unit. Second, it meant using multiple measures of sentence severity that acknowledge that the distribution of sentences can vary in a number of different ways.

The core of our analysis, therefore, presents comparisons between British Columbia and other individual provinces. For various reasons described in the full report, we felt that comparisons between British Columbia, on the one hand and the three territories, Manitoba, and Quebec, on the other hand, should not be made. The most compelling reason for not including the territories in our analysis is their small sample sizes. Comparisons with Manitoba and Quebec were excluded because of the (in)completeness of the data from these two jurisdictions. Hence we present comparisons of British Columbia with each of the remaining 7 provinces.

We present five inter-related measures of sentence severity for each offence grouping:

- the percent of all guilty findings resulting in a prison sentence;
- the percent of prison sentences that are greater than 3 months in length;
- the percent of prison sentences that are greater than 6 months in length;

- the percent of all *guilty findings* that resulted in a prison sentence of greater than 3 months in length; and
- the percent of all *guilty findings* that resulted in a prison sentence of greater than 6 months in length.

While the first question is simply describing the proportion of offenders found guilty of this offence who are handed down a custodial sentence, the second and third questions are interested in answering the question: “What proportion of offenders handed down custodial sentences for this offence get (relatively) harsh sentences?”. In contrast, the last two measures can be seen as answering the question: “What proportion of offenders found guilty of this offence get (relatively) harsh sentences?”.

In the table below, we looked at the largest possible grouping of offences – all cases for 2005/6 in which a person from one of the named provinces was found guilty. In effect, as can be seen by looking at this table, the simple question, “Is sentencing in British Columbia more lenient than sentencing elsewhere in Canada” is expanded into 35 separate comparisons between British Columbia and the other provinces (comparisons between British Columbia and each of the 7 provinces on 5 separate measures). The table below presents these findings. To facilitate comprehension, we have – for each of the tables in which we present data - **highlighted** those figures for which the designated province appears to be harsher in its sentencing than is British Columbia on that particular measure.

All offences					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	36.4	24.6	8.8	12.4	4.4
Newfoundland/Labrador	31.4	21.8	6.7	10.3	3.2
Prince Edward Island	57.2	10.1	5.7	4.6	2.6
Nova Scotia	21.5	25.2	5.4	16.7	3.6
New Brunswick	25.5	27.8	7.1	18.0	4.6
Ontario	34.5	13.4	4.6	7.0	2.4
Saskatchewan	24.9	36.3	9.0	17.7	4.4
Alberta	36.1	17.5	6.3	10.5	3.8

Box Score: Of the 35 comparisons, British Columbia is harsher on 25, equal on 1, and more lenient on 9.

This table should be read as follows. In the first column, we have listed British Columbia in the first row, followed by the 7 comparison provinces (excluding Manitoba and Quebec as noted above). In the first column of numbers (“Percent Prison”), we have listed the percentage of those cases involving findings of guilt that resulted in a prison sentence. In British Columbia, 36.4% of all cases resulted in a prison sentence. Only in Prince Edward Island did a higher proportion of those found guilty end up in prison.

The second column of numbers “% Prison > 3 months” looks only at those cases resulting in a prison sentence and indicates, for British Columbia, that 24.6% of the prison sentences were for greater than 3 months. The next column (% guilty with > 3 months prison sentence) looks at all of those cases with a guilty finding and asks what percentage of all of the guilty cases resulted in a prison sentence of over 3 months.¹ The final two columns repeat the analysis carried out for > 3 months for prison sentences of 6 months or more. Hence the final column in the table shows that for all cases in British Columbia in which there was a guilty finding, 4.4% had a prison sentence of greater than 6 months.

Though we have some concerns about doing so, one could - from tables like this one - create a kind of “box score” for each of the seven comparisons between British Columbia and the other provinces in each column. In this table (and in most of the tables that we present), this approach leads to 35 *non-independent* comparisons. As such, one can then answer the question of “in how many of these comparisons is British Columbia more lenient?” If sentencing in British Columbia is more or less the same as in the other seven provinces, we

¹ For the numerically inclined, it should be noted that the third column of figures *should be* the product of the second times the third. The fact that it differs from this value is explained in the full report. Specifically, some of the cases in the CCJS dataset were noted as having a prison sentence of unknown length. These cases were included in the percentage with a prison sentence. However, the percentage of cases with a prison sentence of > 3 months (or > 6 months) could only look at the prison sentences of known prison lengths.

would, generally, expect there to be about 17 or 18 comparisons in which British Columbia is more lenient. For the above table, the results show that in 35 comparisons, British Columbia sentencing judges were more lenient in 9 of 35 comparisons.

Statistics Canada divides all criminal offences into about 31 categories. Because of small sample sizes for some of these groupings, we were able to look at only 23 specific offence groupings, and in some cases even for these, we were not able to make comparisons between British Columbia and some provinces. As we have already noted, we have a certain level of unease with the 'box score' approach. Its only real advantage is that it allows one to make overall statements. Generally, it appears that in a minority of the smaller offence group comparisons (237 of 716 comparisons or 33.1%), British Columbian sentences were found to be more lenient than sentences in the other provinces for which sufficient relatively comparable data are available. Specifically, in three of the 23 'specific' offence groupings (and in none of the larger groupings that we presented), the majority of the comparisons suggested more lenient sentences in British Columbia. Said differently, in 426 of 716 comparisons (or 59.5%), British Columbian sentences were harsher than those handed down in the seven jurisdictions under study on the five indexes that we have presented. In an additional 53 comparisons (or 7.4%), British Columbia was the same as these jurisdictions on one of the measures.

Within this context, we suggest that it would be safe to conclude - on the basis of the most recent data that we have been able to examine carefully - that British Columbia does not stand out as being either exceptionally lenient or as exceptionally harsh in its sentencing practices. This is not to say that for some measures for some offences in comparison to some provinces, British Columbia is not more lenient. Nor is it to say that for some measures for some offences in comparison to some provinces, British Columbia is not harsher. We are simply concluding that - overall - *British Columbia in its sentencing does not look dramatically out of line* with the portion of the rest of Canada for which we have comparable data.

Obviously, the comparison between British Columbia and each of the other provinces assumes that 'all other things are equal.' There is every reason to believe that there are some differences across jurisdictions in various factors which influence sentencing - prosecutorial policies, the overall use of pre-trial detention and the offences that lead to pre-trial detention, practices of the reduction of charges in exchange for a guilty plea, offence seriousness within offence groupings, etc. Unfortunately, the quality of data in Canada does not allow for more detailed analysis which would include such variables.

But there are also other limitations. We focused, in our major analyses, on prison sentences. There may well be variation in the severity of non-custodial sentences as well. In our analysis - again largely because of lack of data - we have not been able to look at details of the large proportion of cases (63.6% in British Columbia) that do not result in a prison sentence.

In sum, our findings are not without limitations. Indeed, they must be interpreted within the context of broader factors described here and in more detail in our full report. In the end, the question about whether sentences in British Columbia are out of line with other Canadian provinces in terms of their severity/leniency is a legitimate question to be asked by

British Columbians. What we have done in this key section of the report is to give the best possible answer, given the data currently available to us. Certainly within the context of these data (with their inherent limitations), we are confident in our conclusion that sentences in British Columbia are not – overall – more lenient than sentences, generally, in Canada. Indeed, the best empirical evidence available supports this conclusion. Further, we could find no compelling evidence to the contrary. Specifically, affirmations that sentences in British Columbia are more lenient than sentences in Canada generally appear to us to be either simply anecdotal or selective in nature.

We are left, then, on the one hand with the belief held by many that sentences in British Columbia are more lenient than sentences in Canada as a whole. On the other hand, we have presented detailed data in our full report which are summarized above and suggest otherwise. The difference between these two views is not surprising. We ourselves, before we started this work, had little idea of what sentencing patterns looked like across Canada even though one of us had been carrying out research for years, and the other for decades, on sentencing in Canada. Public views about sentencing are best thought of as beliefs formed largely on the basis of statements about sentencing rather than on a systematic study of sentencing patterns.

Why then is there so much concern about sentencing? Part of the problem may be that Canadians look to the sentencing judge to solve the problem of crime in our society. Specifically, members of the public could legitimately believe that a substantial reduction in crime in Canada could be accomplished through two mechanisms – deterrence and incapacitation. Each of these is listed as a purpose of sentencing in Section 718 of the Criminal Code. Unfortunately, however, detailed analysis of the empirical data on the efficacy of these two approaches to crime control suggests that they are not very effective.

With respect to general deterrence, the data are, we believe, quite clear. Overall reductions in crime are not going to be accomplished through the threat of increased punishment within the range of what would be plausible in our society. Over the past four decades, there has been an enormous amount of research on this topic. Though specific findings could be found which suggest that harsher sentences do reduce crime, these unusual findings are very much the exception rather than the rule and sometimes are the result, themselves, of selective use or reporting of data.

Part of the controversy that surrounds empirical findings related to deterrence may relate to the intuitive appeal of general deterrence. Simply put, the theory is based on the notion that if the costs of an action are increased (in the form of increased punishment), the likelihood of offending will decrease. However, for an increase in sentence severity to have an additional deterrent effect, the following steps need to occur:

- People need to be thinking of the consequences of their actions rather than acting ‘in the heat of the moment’ or, more broadly, without thinking about consequences.
- People need to have a reasonably accurate view of what the penalty is likely to be.
- Potential offenders need to weigh the consequences of offending carefully in light of not only what the actual penalty might be but also what the likelihood is of being apprehended.

- Potential offenders need to believe that there is a reasonable likelihood of being apprehended for the offence, and still decide that they would commit the offence if they were likely to receive the sentence that had been in place before the increased sentence was implemented.
- There needs to be a pool of potential offenders who would commit the offence believing that they would be likely to be caught and would receive the lesser penalty but would not commit the offence if they thought that they would be subject to the harsher penalty.

Within this context, then, it is understandable that harsher sentences do not lead to lower crime rates.

Incapacitation has quite different problems. Though it is logically true that a person who is incarcerated is not offending in the community, this crime control strategy has its own limitations. In the first place, incapacitation (as well as deterrence) generally only becomes relevant as a crime control strategy when the proposal is that a sentence be disproportionately harsh. Second, even if policy makers were willing to violate the requirement of proportionality in sentencing, the problem that is then faced is that of identifying in advance those people who are likely to be, in the future, high rate offenders deserving of sentences based on incapacitation.

It turns out that predictions of this kind are likely to result in large numbers of both false positives (identifying people as likely to be high rate offenders or to continue as high rate offenders when they are not) and false negatives (failing to identify people as high rate offenders when they turn out to be). It is easy, in hindsight, to identify those who have committed offences; predicting the future is more of a challenge. Jurisdictions in which this strategy has been attempted have generally found that the procedure fails because of poor accuracy in prediction.

As such, it would seem appropriate to look elsewhere for effective strategies to reduce criminal behaviour in society. While undoubtedly bleak in its prospects for the role of the criminal justice system in crime reduction, this conclusion does not, in any way, challenge the fundamental nature of this institution and the crucial functions that criminal law and law enforcement still fulfill within the broader purpose of the maintenance of a just, peaceful and safe society. Indeed, research has shown that public perceptions of fairness and justice provided by the criminal justice system through the imposition of just responses to offenders and offending is a fundamental cornerstone in the preservation of the legitimacy of the law as well as the promotion of respect for it.

Nor does this conclusion suggest that the criminal justice system has no role at all to play in crime-reduction strategies. On the one hand, continued efforts in rehabilitation are arguably an obligation by the state to ensure - at a minimum - that offenders do not return to the community worse off than before conviction. On the other hand, a comprehensive governmental crime prevention strategy that has no reliance on the criminal justice system would clearly be incomplete and provide insufficient protection to the public.

Indeed, an increasing awareness of the modest effects of the criminal justice system on rates or patterns of criminal activity may be key to opening up the debate to all sectors of society.

Within this context, we can begin to focus on broad-based prevention rather than limited responses to crime after the fact. More importantly for the current discussion on public attitudes, this recognition of the limits of the effects of criminal justice interventions on reducing criminal behaviour may also be fundamental in changing the public's expectations. Specifically, the courts – and particularly judges – can be 'evaluated' according to the (realistic) task of handing down sentences which are just and fair rather than by utilitarian concerns which have been found to be largely beyond their reach.

Nature and Scope of the Project

Concern about sentencing is widespread in Canada. In fact, attention given to this stage of the criminal justice system has interested politicians, the media, interest groups and the public, as well as legal and criminological scholars. In particular, concern has frequently arisen with respect to sentencing leniency whereby criminal sanctions are seen as insufficiently harsh. Indeed, there appears to be a generalized belief that many of the current problems of crime in contemporary society are rooted – at least to some extent – in lenient sentencing practices.

This concern would seem to be especially salient in British Columbia. Specifically, a seemingly widespread notion exists that sentencing patterns in this province are different from the rest of Canada. In particular, sentences handed down in criminal court are believed to be more lenient in British Columbia than in other Canadian jurisdictions.

This report examines this concern. Specifically, we look at patterns of sentencing in British Columbia as compared with the rest of Canada. The central purpose of this examination is to determine whether any empirically demonstrable differences exist. While sentencing leniency is arguably the dominant view held by many British Columbians, this notion is better understood as a perception or a belief rather than a factual statement. Indeed, almost no one – including most people who have a professional interest in sentencing – has detailed systematic evidence about overall ‘sentence severity’ in any province/territory, much less in multiple provinces/territories which would permit inter-jurisdictional comparisons.

In fact, neither of us had any idea – before we began this project – whether sentencing practices in British Columbia were more (or less) lenient than elsewhere in Canada. Importantly, this ignorance existed despite considerable ‘experience’ within this area of inquiry. Notably, one of us has been studying and carrying out research on sentencing for about 30 years; the other has ‘only’ been systematically studying issues related to sentencing for about 8 years. We have been working with Statistics Canada sentencing data throughout this decade. In particular, we have been studying imprisonment trends in Canada (and elsewhere) for more than five years.

Within this context, our report focuses on the empirical evidence supporting the notion of sentencing leniency in British Columbia. In particular, we examine the most recent national data on sentencing patterns that were available to us at time we began our analyses. These datasets were obtained from the Adult Criminal Court Survey project of the Canadian Centre for Justice Statistics (CCJS). To render them useful for our current purposes, we used several of the measures of sentence severity presented by CCJS as well as developed a number of others which could be employed for inter-jurisdictional comparisons.

The overall report is structured in the following manner. In Part I, we explore the context for this review. Specifically, we look at the circumstances in which the special concern with sentencing leniency may have arisen in British Columbia. To this end, we focus on several of the potential sources of this belief as a means of better understanding the nature and the extent of the concern about sentencing in this jurisdiction. In particular, we examine actual crime rates as well as victimization data; perceptions of crime and personal safety; the

manner in which the criminal justice institutions are seen by residents of this province; and the messages transmitted to the general public about sentencing practices and patterns. Each of these ‘sources’ of the current concern in British Columbia is considered in relation to the rest of Canada, permitting inter-jurisdictional comparisons between British Columbia and the other Canadian provinces/territories.

Part II explores the empirical data available on sentencing patterns. Specifically, we examine what are probably the most easily accessible data on sentencing variation across Canadian provinces/territories – the 2003 Adult Criminal Court Survey tables that are available on Statistics Canada’s website. These data begin to challenge the notion of sentence leniency in British Columbia. In particular, they serve to demonstrate the inadequacy of single measures of sentence severity as a means of describing a jurisdiction’s relative leniency in comparison with the rest of Canada.

In Part III, we explore various alternative measures of relative severity. These multiple measures are subsequently used to analyse what were – at the time of the preparation of the report – the most recent detailed data available to us on sentence severity – the 2005-6 Adult Criminal Court Survey data tables. More complex inter-jurisdictional comparisons between sentencing patterns in British Columbia and other Canadian provinces further challenge the belief in sentence leniency in British Columbia. This part concludes with a discussion of the inherent difficulties – in any cross-jurisdictional comparisons – of drawing meaning from variation in sentence severity.

Part IV addresses several of the wider issues raised by an examination of sentencing patterns across Canada. Specifically, we attempt to make sense of the differing pictures of sentencing patterns in British Columbia relative to other Canadian jurisdictions as perceived by the general public and portrayed in the empirical data. To this end, we look at the challenges in interpreting public views of sentencing and – more importantly – in changing them. In particular, we consider the role of additional information on sentencing decisions, laws and purposes. Special emphasis is given to the potential role of the judge in combating crime.

Part I - Context for Concern with Sentencing Patterns in British Columbia

a) The ‘Crime’ Context

The special concern of British Columbians vis-à-vis the sentencing practices in their jurisdiction may arguably be rooted – at least to some extent – in their ‘special’ relationship to crime. As Table 1 shows, their province has one of the highest crime rates in the country. Excluding the territories, only Manitoba had a slightly higher rate of criminal code (non-traffic) offences than did British Columbia in 2006. Further, the self-reported victimization rate for British Columbia was the highest in Canada (territorial data are not available) in 2004 (the most recent year of available data).

Table 1: Crime Rates

Province	UCR – Criminal code Non-traffic rate per 100K, 2006	Victimization Rate (self- report, 2004)
Newfoundland and Labrador	6,055	17.3%
Prince Edward Island	6,793	20.8%
Nova Scotia	8,069	27.0%
New Brunswick	6,111	22.1%
Quebec	5,909	19.8%
Ontario	5,689	27.1%
Manitoba	11,678	34.3%
Saskatchewan	13,711	34.4%
Alberta	9,523	32.9%
British Columbia	11,365	36.9%
Canada (total)	7,518*	27.4%

* Includes the territories

Perhaps not surprisingly, we also find that British Columbians are considerably more likely than people elsewhere in Canada to think that their neighbourhoods have a higher than average amount of crime (Table 2)². While the majority of Canadians – including British Columbians – think that crime in their own neighbourhood is ‘lower’ than elsewhere, a higher proportion of residents of British Columbia (13.1%) perceived crime to be higher in their neighbourhood than those in other regions in Canada (in which proportions range from 3.6% in the Atlantic region to 9.6% in Ontario).

² Data are taken from the most recent General Social Survey (GSS) from 2004. The findings from this dataset summarize the responses of 23,766 Canadians who participated in the survey. When weighed appropriately, these respondents constitute a reasonably representative sample of non-institutionalized Canadians over the age of 15 living in the 10 provinces (but not the territories). Within this context, data specific to British Columbia not only may be considered to accurately reflect the opinions of all residents of this province but can also be directly compared to the data from the other regions which we have presented. While data on each province in Canada are available, we simply grouped them by ‘region’ for ease of presentation.

Table 2: Regional Variation in Assessment of Crime in One's Own Neighbourhood

Row Percents		Compared to other areas in Canada, do you think your neighbourhood has a higher, same, lower amount of crime			Total
		Higher	About the same	Lower	
Region of residence of the respondent.	Atlantic region	3.6%	19.6%	76.8%	100.0%
	Quebec	7.8%	40.6%	51.6%	100.0%
	Ontario	9.6%	26.3%	64.1%	100.0%
	Prairie region	8.3%	28.2%	63.5%	100.0%
	British Columbia	13.1%	29.5%	57.4%	100.0%
Total		9.0%	29.9%	61.1%	100.0%

Similarly, we find that British Columbians are also more likely than residents of the other regions in Canada to think that crime has increased in their neighbourhoods over the last 5 years (Table 3). While still over half of Canadians in each region – including British Columbia - believe that crime in their neighbourhood has stayed about the same, 39% of those in British Columbia feel that it has risen, compared to 24% - 36% in the other regions.

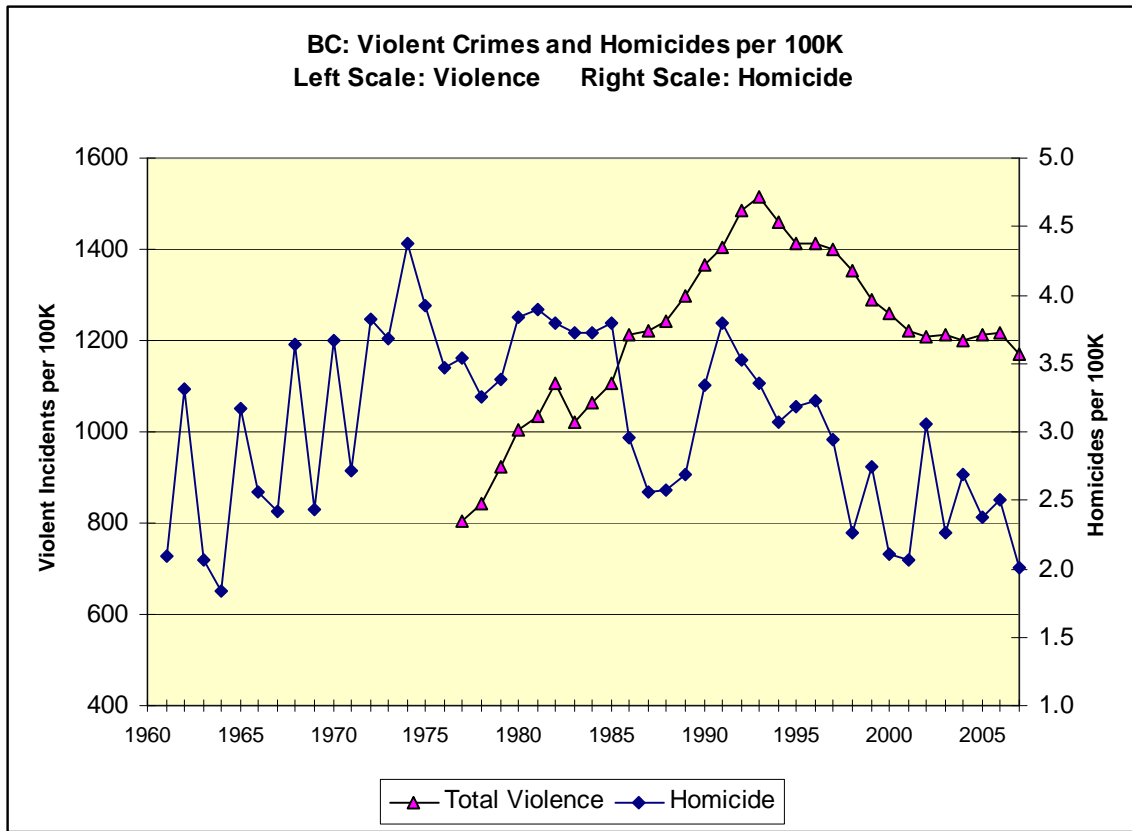
Table 3: Regional Variation in Assessment of Whether Neighbourhood Crime has Increased

Row Percents		During the last 5 years, do you think that crime in your neighbourhood has increased, decreased, same			Total
		Increased	Decreased	About the same	
Region of residence of the respondent.	Atlantic region	27.4%	6.1%	66.4%	100.0%
	Quebec	24.3%	8.5%	67.2%	100.0%
	Ontario	33.4%	5.3%	61.4%	100.0%
	Prairie region	36.3%	4.4%	59.4%	100.0%
	British Columbia	39.3%	6.0%	54.8%	100.0%
Total		32.0%	6.1%	62.0%	100.0%

It is worth remembering that perceptions of crime, and measures of actual crimes reported to the police, are, of course, quite different phenomena. In Table 3, we see that approximately six times as many British Columbians in 2004 thought that crime was increasing as thought that crime was decreasing. Without going into great detail about levels

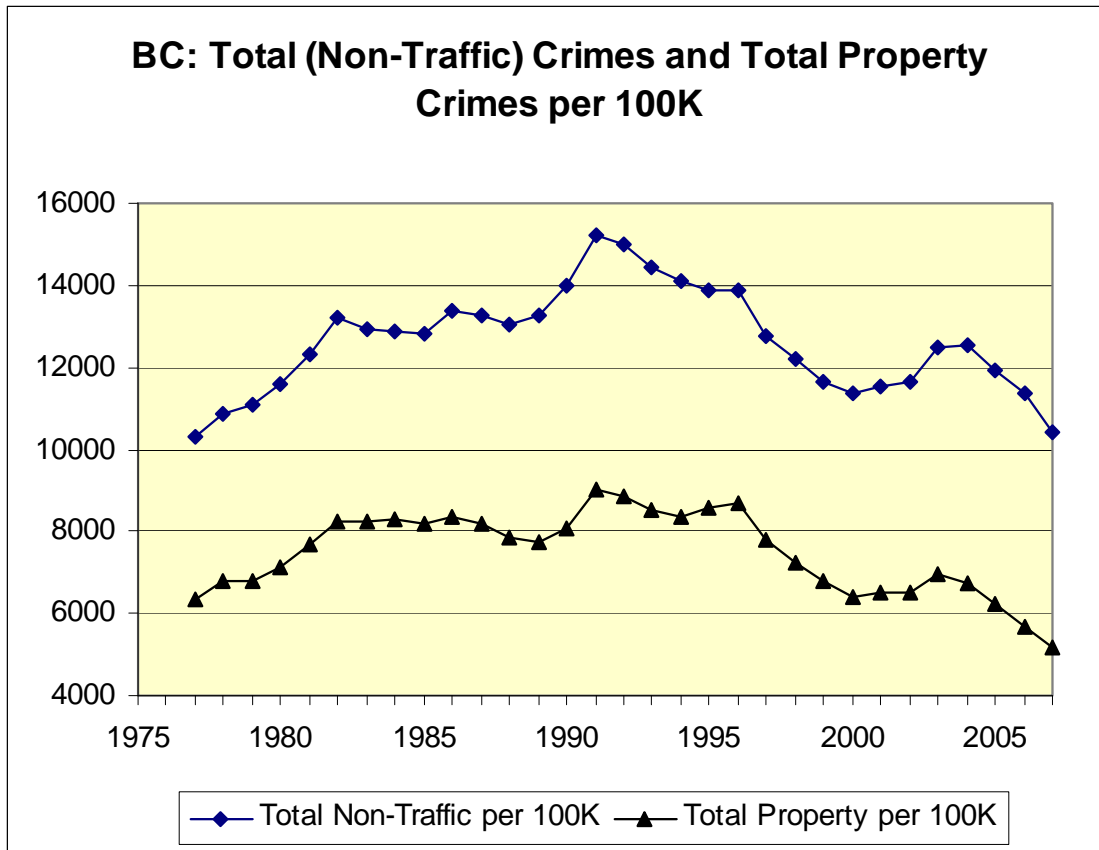
of crime in British Columbia, it is noteworthy that actual crime rates generally have decreased in British Columbia – as in Canada generally - since the mid-1990s. Figure 1 presents official (police recorded) crime rates for two measures which are typically of greatest concern to ordinary citizens: violence, generally, and homicide, specifically. Figure 2 presents the trends over time for overall crime (excluding Criminal Code traffic offences³) and property offences. In all four cases, there has been a general decrease over the past 10-15 years.

Figure 1: Rates per 100,000 Residents of Reported Violent and Homicide Incidents, British Columbia



³ Criminal Code Traffic offences are typically considered separately from other Criminal Code offences because the rate is seen as being, in large part, a reflection of enforcement efforts, rather than offending patterns.

Figure 2: Rates per 100,000 Residents of Reported Criminal Code (Non-Traffic) and Homicide Incidents, British Columbia



Despite this drop in actual levels of (reported) crime, it is – as criminologists often remind us - the perceptions of crime trends which tend to influence behaviour. Perhaps not surprisingly within the context of British Columbians’ view of increasing crime in their own neighbourhood – which may or may not reflect the overall recent trends in crime rates - we also find that when compared to residents in the other four regions of Canada, British Columbians are more likely to report:

- that - when walking alone in their neighbourhoods at night – they feel (very or somewhat) unsafe (Table 4);
- that they are (very or somewhat) worried in the evening when home alone (Table 5); and
- when awaiting public transportation at night (if available and if they use it) they feel very worried (Table 6)⁴.

⁴ Note that the differences between British Columbia and several other regions on these measures are not large and depend - somewhat - on whether the ‘very’ and ‘somewhat’ groups are pooled.

These survey questions appear to be capturing Canadians' sense of personal safety. While the majority of Canadians – including residents of British Columbia – continue to feel safe in each of these scenarios, it is notable that British Columbians might be seen as reporting a slightly higher level of overall concern when compared with residents in the other regions in Canada.

Table 4: Regional Variation in Fear of Walking Alone in Neighbourhood at Night

		How safe do you feel from crime walking alone in your area after dark				Total
		very safe?	reasonably safe?	somewhat unsafe?	very unsafe?	
Region of residence of the respondent	Atlantic region	53.1%	36.6%	7.8%	2.5%	100.0%
	Quebec	38.1%	45.3%	11.3%	5.3%	100.0%
	Ontario	39.1%	45.2%	11.1%	4.7%	100.0%
	Prairie region	42.8%	43.3%	10.2%	3.7%	100.0%
	British Columbia	36.7%	44.7%	14.4%	4.2%	100.0%
Total		40.2%	44.2%	11.2%	4.4%	100.0%

Table 5: Regional Variation in Fear of Being Home Alone at Night

		When alone in your home in the evening or at night, do you feel			Total
		...very worried?	...somewhat worried?	...not at all worried about your safety from crime?	
Region of residence of the respondent.	Atlantic region	1.1%	13.8%	85.1%	100.0%
	Quebec	1.6%	19.1%	79.3%	100.0%
	Ontario	2.1%	18.2%	79.7%	100.0%
	Prairie region	1.4%	17.0%	81.6%	100.0%
	British Columbia	1.4%	20.2%	78.5%	100.0%
Total		1.7%	18.2%	80.2%	100.0%

Table 6: Regional Variation in Fear when Waiting for Public Transportation at Night

		While waiting for or using public transportation alone after dark, do you feel			Total
		Very worried	Somewhat worried	Not at all worried about your safety from crime	
Region of residence of the respondent.	Atlantic region	3.5%	29.3%	67.2%	100.0%
	Quebec	4.9%	34.3%	60.7%	100.0%
	Ontario	6.8%	38.3%	55.0%	100.0%
	Prairie region	6.2%	42.9%	50.8%	100.0%
	British Columbia	7.9%	38.4%	53.7%	100.0%
Total		6.3%	37.8%	55.9%	100.0%

Given the previous findings, it is not surprising that residents of British Columbia are less likely to say that they are satisfied with their personal safety from crime than are residents of the other regions in Canada (Table 7). While over 90% of all Canadians – including residents of British Columbia – report that they are either very satisfied or somewhat satisfied with their personal safety from crime, 6.5% of British Columbians are somewhat or very dissatisfied with their personal safety from crime compared to those in the other four regions (which range from 2.8% in the Atlantic region to 5.7% in Quebec).

Table 7: Regional Variation in Satisfaction with Personal Safety from Crime

		How satisfied are you with your personal safety from crime?				Total
		Very satisfied	Somewhat satisfied	Somewhat dissatisfied	Very dissatisfied	
Region of residence of the respondent.	Atlantic region	62.6%	34.5%	2.1%	.7%	100.0%
	Quebec	27.7%	66.7%	4.5%	1.2%	100.0%
	Ontario	49.5%	45.8%	3.7%	1.1%	100.0%
	Prairie region	48.8%	46.3%	3.9%	1.0%	100.0%
	British Columbia	46.0%	47.5%	5.2%	1.3%	100.0%
Total		44.7%	50.2%	4.0%	1.1%	100.0%

b) A ‘Special’ Concern with Sentencing

This distinct context of higher crime rates, as well as lower levels of perceived personal safety relative to other jurisdictions in Canada may constitute an important backdrop to British Columbians’ special concern with their sentencing practices. Indeed, people naturally associate (perceived) levels of crime with the criminal justice system. Specifically, we intuitively assume that harsher responses to criminal activity will reduce crime rates. As a consequence, sentencing judges are seen – in particular – as holding the key to reducing criminal activity. By handing down harsher sentences, it is believed that (potential) criminals will be effectively deterred or incapacitated and crime rates will naturally fall.

In fact, the purpose and principles of sentencing in Canada are often viewed in simplistic ‘crime reduction’ terms whereby the public naturally looks to the courts – and especially to judges – to control criminal behaviour. Indeed, the justifications for sentences as reported by the sentencing judge or in the media will often focus on utilitarian purposes (e.g., deterrence or public safety), clearly linking crime to sentencing in the public’s minds. Not surprisingly, when the general public feels that crime is increasing, the blame is naturally placed on lenient sentences.

In fact, this ‘natural’ perception of the sentencing judge as a ‘crime fighter’ is not only implicit in the utilitarian principles of our sentencing laws. Rather, it is also publicly promoted – either implicitly or explicitly - by criminal justice agencies, politicians, and academics. For instance, the police will frequently express the view that sentences are too lenient and, as such, crime continues to occur. This authoritative statement may have a particularly powerful impact on ordinary citizens who may well listen to and trust the police more on criminal justice matters than others involved in the system.

Similarly, we have witnessed – over the last several decades - the rise of a new law-and-order agenda in most western democratic countries. Tough-on-crime policies have been increasingly seen as an effective strategy for combating criminal activity. Harsh criminal sanctions such as mandatory minimum sentences and ‘three-strikes’ legislation have been introduced – to a large extent – as solutions to crime, reinforcing the ‘natural’ association in the public’s minds between sentence severity and crime.

Even some criminologists would appear to support the relationship between harsher sanctions and levels of crime. For instance, a recent report⁵ on current challenges facing the criminal justice system in British Columbia prepared by academics in the field of criminology suggested – among other things – that “those who are inclined to commit crimes – both neophytes and old hands – learn that the consequences will be minimal and the deterrent effect evaporates. The criminal justice system and its personnel become, in effect, a ‘joke’” (p.33). While the report did not present systematic data on sentences, the implication was that overall leniency occurring within the criminal justice system - including at sentencing – was one of the root causes of high crime rates in British Columbia.

⁵ *The Progress Board Report: Reducing Crime and Improving Criminal Justice in BC: Recommendations for Change* (prepared by Rob Gordon and Bryan Kinney, 2006, for the B.C. Progress Board)

Within the context of this ‘natural’ – or, at least, frequently affirmed - association between crime and sentencing leniency, it is not surprising to find that the view of sentences as too lenient is not the exception but rather the rule in Canada. Indeed, the perception of sentencing leniency is widespread, shared by the majority of people in every Canadian jurisdiction. In fact, the data from the most recent GSS show that the majority of respondents from the 5 principal regions in Canada⁶ who ventured an opinion about sentencing felt that the sentences handed down by the courts were not severe enough. Fewer than 2% of all those surveyed reported that sentences were too severe, with approximately 25%-35% indicating that sentences were about right (Table 8).

Table 8: View of Sentencing

Row Percents		In general, would you say that sentences handed down by the courts are too severe, about right or not severe enough			Total
		Too severe	About right	Not severe enough	
Region of residence of the respondent.	Atlantic region	1.7%	36.3%	62.0%	100.0%
	Quebec	1.1%	27.3%	71.6%	100.0%
	Ontario	1.5%	32.3%	66.2%	100.0%
	Prairie region	1.3%	29.4%	69.3%	100.0%
	British Columbia	1.0%	25.4%	73.6%	100.0%
Total		1.3%	29.9%	68.7%	100.0%

More importantly for our current purposes, British Columbians stand out in terms of their negative appraisal of sentence severity. Of those who answered this question on the survey, 74% indicated that they thought that sentences in their province were too lenient. This proportion is slightly higher than that in any other region of Canada (whose proportions range from a low of 62% in the Atlantic region to a high of 72% in Quebec). Indeed, it would seem that British Columbians – relative to residents in other Canadian jurisdictions – have a ‘special’ concern with sentencing leniency in their province. In fact, the call for an independent study of sentencing patterns announced in the February 12, 2008 Speech from the Throne in British Columbia may well constitute a symptom of this preoccupation.

While the relationship between crime (measured by either actual crime/victimization rates or perceptions of crime/personal safety) and views of sentencing leniency is not always as

⁶ The ‘aggregate’ data presented by region are a close approximation of the findings for individual provinces included in each region. For instance, the 62% of respondents from the ‘Atlantic region’ who believe that sentences handed down by the courts are not severe enough constitute a reasonably accurate estimate of the findings for each of the four jurisdictions encompassed in this ‘region’. Indeed, looking at the 10 provinces, residents of British Columbia were more likely to indicate that sentences were too lenient than were residents of any of the other 9 provinces.

direct or clear as one might assume⁷, the negative appraisal of sentencing practices by residents of British Columbia would seem to be part of a wider dissatisfaction with the criminal justice system more broadly. Specifically, British Columbians – when compared to residents of other regions in Canada – also appear to have less confidence that their courts generally (Table 9) and their correctional system (including the paroling authorities) are doing a good job (Table 10)⁸.

Table 9: Regional Variation in the Ratings of the Courts

		Ratings of courts, 4 questions				Total
		Worst	Average	Good	Best	
Region of residence of the respondent.	Atlantic region	19.0%	33.6%	14.3%	33.1%	100.0%
	Quebec	18.0%	36.2%	15.4%	30.5%	100.0%
	Ontario	24.2%	35.6%	12.5%	27.7%	100.0%
	Prairie region	25.4%	36.4%	12.3%	25.9%	100.0%
	British Columbia	31.2%	34.6%	12.3%	21.9%	100.0%
Total		23.3%	35.6%	13.3%	27.8%	100.0%

⁷ For instance, the victimization rates in British Columbia appear to be almost completely independent of the public's views of sentencing. Although there is a small overall relationship (pooled across Canada) between whether a person had been victimized and his/her view of sentences, we found that this relationship did *not* hold within all regions. In fact, if one looks only at British Columbia, those who had been victimized in the previous 12 months were no more likely to see sentences as being too lenient as compared to those who had not been victimized. It would appear that the small effect across provinces (which suggested that those who had been victimized are more likely to say that sentences were too lenient) may simply be a result of regional differences. That is, those in eastern Canada are less likely to have been victimized and are less likely to say that sentences are too lenient while those in British Columbia are more likely to have been victimized and more likely to think that sentences are too lenient. In other words, victimization per se does not appear to be the root of British Columbia residents' perceptions of sentencing leniency. Indeed, beliefs in sentencing leniency by residents of British Columbia may be rooted to a greater extent in their perceptions - rather than their actual experiences – with crime.

⁸ These scales were created simply by adding the responses to the questions concerning 'how good a job' the courts are doing (4 questions), 'how good a job' corrections and parole are doing (4 questions) and 'how good a job' the local police are doing (6 questions). On each dimension, respondents indicated whether they thought that the performance was poor, average, or good.

Table 10: Regional Variation in the Ratings of Prisons and Parole

Row Percents		Rating of prison and parole				Total
		Poor	Below average	Average and above	Good	
Region of residence of the respondent.	Atlantic region	20.0%	13.2%	35.7%	31.1%	100.0%
	Quebec	23.5%	14.0%	35.1%	27.4%	100.0%
	Ontario	33.3%	14.5%	30.6%	21.7%	100.0%
	Prairie region	34.6%	15.0%	30.5%	19.8%	100.0%
	British Columbia	36.7%	15.6%	30.4%	17.3%	100.0%
Total		30.2%	14.5%	32.2%	23.1%	100.0%

Even when looking at the views of the police – views which, across the country are *very* favourable – British Columbians are less favourable toward the police (Table 11) than are residents of most other regions in the country. Indeed, it would seem that residents of British Columbia have a generalized belief that their criminal justice system – in general – is not doing a particularly good job. In fact, other studies (Roberts, 2004) have shown that residents of British Columbia have less confidence in public institutions generally than those in other regions in Canada. The findings reporting on the perceptions by British Columbians of their criminal justice system may be an extension of this generalized lack of faith.

Table 11: Regional Variation in the Ratings of the Police

Row percents		Ratings of Police				Total
		Average or worse	Above average	Good	Good on all dimensions ⁹	
Region of residence of the respondent.	Atlantic region	16.6%	13.3%	31.7%	38.4%	100.0%
	Quebec	13.5%	13.4%	38.2%	34.9%	100.0%
	Ontario	18.4%	13.8%	33.0%	34.7%	100.0%
	Prairie region	21.7%	14.5%	33.8%	30.0%	100.0%
	British Columbia	19.7%	17.3%	33.4%	29.6%	100.0%
Total		17.8%	14.2%	34.3%	33.6%	100.0%

c) A ‘Legitimate’ Concern with Sentencing Leniency

Clearly, the data on the general public’s views of sentencing can only be understood as ‘beliefs’ rather than fully formed (or informed) attitudes. Few people (if any) could have a clear idea of the actual sentences handed down in their region. Indeed, the current reality of sentencing - that is, the difficulty in obtaining actual sentencing data in Canada; their tendency to be incomplete; and the complexity as well as the inconsistent nature of sentencing patterns across measures and offences) – precludes any real ‘knowledge’ of actual sanctions, particularly in terms of inter-jurisdictional comparisons. However, the fact that more than 90% of Canadians are content to express the view that sentences are too lenient may arguably underline the strength of this belief. Specifically, only 8.7% of respondents indicated that they did not know whether sentences were too lenient (8.4% in British Columbia).

While it is unfortunate that surveys of this kind do not include any follow-up questions which ask about the reasons or justifications for respondents’ views of sentencing, we should not be surprised by these findings. Indeed, it would seem that the public is continually being told – from multiple sources – that sentences in their province are too lenient. Within this context, concern with sentencing patterns in British Columbia is arguably not only ‘natural’ but legitimate.

Most obviously, public opinion surrounding sentencing leniency is likely formed – at least to some extent – by what most people hear. Given that nearly three quarters of British

⁹ Respondents were asked to rate the police – as doing a poor, average or good job – on each of six dimensions. For the ratings of the police, but not the other criminal justice institutions, there were a substantial number of respondents who rated the police as being ‘good’ on all dimensions; hence this category.

Columbians believe that sentences are too lenient, this view of sentencing is unlikely to be challenged through daily interaction. Indeed, casual conversations that any single person would have with others would necessarily reinforce rather than question or dispute this belief.

In addition, more formal sources of public information – predominantly the media – ensure that this belief in sentence leniency is supported, if not strengthened. Illustratively, an editorial in the *Province* on February 14, 2008 noted that “BC judges come in for a lot of criticism in the media these days for being soft on criminals...” (p.A20). Indeed, one of the difficulties with media presentations of sentencing is that most crime stories which are worthy of public comment are ‘unusual’ in nature. Commonly, this quality translates into (what appear to be) unusually lenient sentences¹⁰. With little to no detailed information presented about these cases which may, in fact, justify the actual sentence, the public’s view of the sentence as too lenient is left unchallenged.

In contrast, the ‘usual’ – that is, ordinary, routine, unremarkable - sentences which might correspond more closely to people’s notions of appropriate severity are unlikely to be reported on television/radio or in the newspapers. The result is generally an over-representation of negative portrayals of sentencing patterns. For instance, a quick scan of some of the British Columbian newspapers¹¹ - particularly in the editorial sections - underlines the multitude of affirmations about sentencing leniency in this province. Indeed, statements such as “We are tired of seeing criminals hauled before court only to be ‘punished’ by the imposition of a laughably lenient set of conditions which amount... to a mere “inconvenience”” (Editorial, *The Province*, Oct. 5, 2007: A24) reinforce the notion – for the general public - that sentences in British Columbia are not severe enough.

Ironically, one of the potential contributors to this consistent belief in the ‘leniency’ of sentences may reside in the purpose and principles of sentencing in Canada. Specifically, the Criminal Code permits a sentencing judge to choose amongst an array of sentencing objectives – several of which may be in opposition with each other. Indeed, Canadian judges are given an enormous amount of discretion when determining the ‘appropriate’ sentence for adults. The problem arises in those cases in which two judges could – for defensible reasons – focus on different aspects of the same case and, as such, give greater attention to different legally prescribed purposes in handing down their sentences.

Quite legitimately, these judges could arrive at two very different outcomes. Each of these sentences could be justified in terms of our sentencing law even though one might be considerably more lenient than the other. It is likely that while the ‘ordinary’ sentence would not be reported in the news, the ‘unusual’ – in most cases, the lenient – sentence would be covered. Unless the general public happened to focus on the same aspects of the case and happened to give preference to the same sentencing purposes as the second judge in arriving at his/her more lenient sanction, the latter sentence is seen as inappropriately too lenient.

¹⁰ The exception to this generalization is, of course, the disproportionately severe sentence, such as the now famous California ‘pizza thief’ who was given a sentence measured in decades.

¹¹ This scan was provided to us by the Ministry of the Attorney General of British Columbia. It constituted a cross-sample of articles reflecting reaction to sentences taken from the *Vancouver Sun* and the *Province*. The coverage period extends from roughly October of 2007 to March of 2008.

Further, sentences are rarely accompanied by a discussion of the complexities of the questions and the basis on which inferences are drawn. Illustratively, the City of Vancouver Police recently released a study on the sentencing of high volume offenders which was covered nationally in *Macleans*. An ordinary person reading the story would be hard pressed to fully understand the sentences that were discussed and might, without a full knowledge of the law on sentencing and the context in which these sentencing decisions were made, conclude that many sentences for high volume offenders were too lenient.

Similarly, in the face of criticism levied against our courts (or the criminal law, more broadly), it is seldom that our political leaders will either support or explain the reasons for particular sentences or will argue that - in certain instances - the courts may even be too harsh. In fact, the past several years have shown that the three national political parties have largely been in agreement about the 'need' for tougher criminal justice legislation as an effective strategy for reducing crime. Although the opposition parties in the federal parliament sometimes challenge certain aspects of legislation, provisions like mandatory minimum penalties have - in recent years - generally received broad political support. Arguably, this 'collective' political agenda not only reinforces the 'natural' association in the public's minds between sentence severity and crime but also implicitly encourages the view that current sentences are not harsh enough.

On a more local - albeit equally public - scale, the Government of British Columbia - in its February 12, 2008 Speech from the Throne - noted that "British Columbians want to understand why sentences in their province tend to be shorter than in other provinces for crimes such as homicide, theft, property crimes, fraud, impaired driving and drug possession." Such an authoritative statement may arguably encourage - or, at a minimum, reaffirm - the belief that sentences are generally too lenient in this province. Indeed, it is difficult to know what to make of this particular list of offences in terms of the average length of certain offences in British Columbia relative to 'other provinces'. Specifically, people might assume that they are merely examples of a larger problem. For instance, the statement did not suggest that sentences in British Columbia might, in fact, be harsher than in other provinces for other offences. As a result, a reasonable British Columbian might assume that *in general* sentences in his/her province were more lenient than elsewhere in Canada.

Part II – A Preliminary Look at Sentencing Patterns in British Columbia

Clearly, there is widespread belief that sentences in British Columbia are too lenient in comparison with those handed down in other Canadian provinces. While this view is arguably natural or 'legitimate' given the special context in British Columbia, its empirical verification or corroboration is more problematic. Specifically, sentencing data are not readily available or accessible in Canada. Further, they are often incomplete and not directly comparable across all measures and offences. In fact, we are criminologists who have been doing research on the courts and on sentencing for years. Nevertheless, when we are asked - as we often are - for 'sentencing data' for Canada which would permit statements about

comparative sentencing patterns across jurisdictions and offences¹², we are hard pressed to recommend a simple authoritative source. Statistics Canada's reports (e.g., its *Juristats*) that present court data often do not present detailed enough information to answer specific policy related questions.

a) Data Sources and Measures

Clearly what most people legitimately expect when they ask for 'sentencing' data comparing jurisdictions in Canada is something that might be thought of as being a two dimensional table. Specifically, the entries in the body of this table would be some kind of 'severity measure'. The offences in the criminal code (or groupings of offences) might be listed as rows, and Canada and the 13 jurisdictions (provinces and territories) might be listed as columns. Reasonable people would assume that 'severity' can be reduced to a single number and that, in 2008, we would have reasonably up-to-date, comparable, and certainly complete, data on 'sentence severity' across offences for each of Canada's 13 jurisdictions. Although not exactly always reported in this way, this format is more or less the manner in which 'crime rates' can easily be - and often are - presented.

Arguably because of its close approximation to this conceptualization, perhaps one of the most widely consulted (and readily accessible) sources of data which would permit (rudimentary) inter-jurisdictional comparisons of sentencing patterns may be found on the Statistics Canada's website. Specifically, one could (relatively easily and at no cost) locate - as we did in the spring of 2008 - public data from 2003 which present simple descriptive statistics on sentencing patterns (e.g., the median or mean length of prison sentences handed down in adult criminal court) for almost all Canadian jurisdictions and for approximately 40 different offence categories¹³. Until very recently, 2003 was the most recent year for which criminal court information was broadly and easily available.

b) Initial Support for Sentence Leniency

If one were to take the six offence categories which were referred to in the Speech from the Throne as an illustrative example, one can easily construct a table which would provide (at least partial) empirical support for the government's claim of sentence leniency in British Columbia. Specifically, this tabular presentation of actual sentencing data would permit a comparison of the length of prison sentences handed down in British Columbia with those imposed in Canada as a whole (Table 12). For this purpose, we have focused on 'average and median length of prison sentence'. Arguably, they constitute the most intuitive - or at least

¹² For example, one of us was asked for sentencing data for aggravated sexual assault for various provinces. Often these questions include a 'time' component. For example, we might be asked, "How have sentences for aggravated sexual assault changed over time in different provinces?" Though these questions are typically quite legitimate and important, they are seldom answerable from publicly available data.

¹³ See, for example, <http://www40.statcan.ca/101/cst01/legal21j.htm> for the data relative to British Columbia. This information is part of what is, in effect, Statistics Canada's Table 252-0021 (under the more general heading of 'criminal courts') which was available on the web until at least the 22nd of May, 2008 when we consulted it.

the most commonly used - measures of 'sentence length' in the general public. Indeed, even the media tends to refer to the average or the median sentence lengths when describing criminal sanctions (particularly in terms of their leniency/severity). As such, they may be the closest approximation of that which the general public thinks when hearing the reference to 'sentence length.'

Table 12: Statistics Canada Data from 2003, only
 (“Old” Case Definition) – Downloaded 22 May 2008

Offence	Location	Median	Mean	Percent Prison
Homicide ¹⁴	BC	1825	3824	90.2
	Canada	2555	4112	86.7
Crimes against property	BC	30	93	48.4
	Canada	42	113	40.6
Theft	BC	21	40	47.6
	Canada	30	56	39.2
Fraud	BC	30	91	39.4
	Canada	45	109	34.3
Impaired Driving	BC	14	59	6.4
	Canada	30	71	12.4
Drug Possession ¹⁵	BC	1	10	21.4
	Canada	10	23	20.2

- “known prison length” excludes “indeterminate prison sentences”
- “Percent no prison” calculated from “no prison sentence” in Table 252-0018 and Guilty decision (Table 252-0015).
- “Canada” includes all reporting jurisdictions, including British Columbia.
- Comparisons in which British Columbia appears to be more lenient than Canada as a whole are highlighted.

¹⁴ It should be noted that ‘homicide’ sentences in this context are quite problematic. Specifically, it is difficult – if not impossible – to know how to interpret them. In particular, first and second degree murder have mandatory sentences of life in prison. We were unable to determine how these sanctions were calculated into ‘sentence length’. It might be reasonable to assume that they were simply called ‘indeterminate sentences’ since life is, after all, of an indeterminate length. In this case, first and second degree murder cases would be included with other indeterminate sentences (e.g., dangerous offenders). Within this context, it may be that the category ‘homicide’ should really be more accurately labelled as ‘manslaughter and infanticide.’ However, we were unable to find any reference to the way(s) in which the sentences for murder offences were classified to either confirm or refute this interpretation. Within this context, we would argue that any interpretation of this offence category is problematic. Further, even if we were to (cautiously) assume that this broad offence category includes murder, manslaughter and infanticide, we would suggest - within the context of examining *sentencing* decisions - that it continues to be unproductive to examine ‘homicide’ given the enormous variation within this broad offence category. Indeed, the combination of murder (with mandatory life sentences); manslaughter (with a discretionary sentence of anything up to life in prison - though there are mandatory minimum sentences for certain manslaughter cases); and infanticide cases (with a maximum sentence of five years in prison) makes no sense when one is looking at sentencing. Unfortunately, the way in which CCJS makes their data available, it is impossible to look at manslaughter cases (or, for that matter, many other single offences) on their own.

¹⁵ It is worth noting that CCJS states – relative to drug offences - that “With the introduction of new drug legislation, some drug offences have been coded to the “residual federal statutes” category. This inflates the residual federal statutes category and undercounts drug offences. This will be corrected with changes to data collection programs” (footnote 22 to Table 252-0015). We have no idea how serious a problem this practice is in terms of affecting inter-jurisdictional comparability. There appear to have been, in 2003, 1449 cases with guilty findings in British Columbia in this category and 24,708 cases across Canada. If a substantial number of them are drug offences, the distortion could consequently be considerable.

As we have explained above, these data focus largely on two measures of ‘central tendency’ - the median (i.e. the midpoint in a set of values, when the scores are sorted by size, or in normal language, the sentence which represents the point at which half of the sentences are harsher and half are more lenient) and the mean (i.e. the arithmetic average). Based on these two measures, we have highlighted the cells in which offenders in British Columbia appear to have received ‘shorter’ or more lenient sentences than offenders in Canada as a whole. Whether one uses the ‘mean’ or the ‘median’ as a measure of sentence severity, the results are the same for these offence groupings¹⁶. That is, British Columbian offenders sentenced to prison appear to be getting shorter sentences for all 12 comparisons (6 offence groupings times two measures of central tendency).

c) Caveats to Initial Support

While apparently compelling empirical support exists for the view that sentences in British Columbia are shorter than in Canada generally, it would also seem relevant – within the context of this study on sentencing leniency - to note two important caveats to this interpretation. First, while all six of these offence categories have shorter (mean and median) sentence lengths in British Columbia than Canada as a whole, it is equally notable that in 5 of the 6 cases (the exception being for impaired driving), offenders in British Columbia were also more likely to go to prison than in Canada generally. Indeed, the final column of the table indicates the percentage of convicted cases which are handed down a prison sentence.

This observation would be particularly important if one were to find that British Columbia sends ‘marginal’ cases to prison at a higher rate than in Canada as a whole. If this were the case, one might expect that these ‘marginal’ cases (i.e., cases on the margins between a custodial and non-custodial sentence) may be getting rather short prison sentences in British Columbia which would tend to bring down the mean and – to some extent – the median prison sentence in this province. In other parts of Canada in which they might be given non-custodial sentences, the mean and (to a lesser extent) the median would not be affected by these (presumably) more minor cases.

And, in fact, there would appear to be some preliminary support for this hypothesis. Taking the offence category of theft as an example, we see from Table 12 that 47.6% of those found guilty in British Columbia went to prison compared to only 39.2% of those in all of Canada. Indeed, it would appear that in British Columbia some cases ended up in prison for this offence that might have received a non-custodial sentence elsewhere. Within this context, it is not surprising to find that in British Columbia there were also more very short sentences

¹⁶ It should be noted that these ‘offences’ are, in fact, all *groupings* of offences. Even impaired driving includes the ‘family’ of impaired driving offences as well as those being sentenced for the first or subsequent times – a distinction which makes a substantial difference in the sentence that is handed down since second and subsequent offences have mandatory prison sentences of at least 14 days. Further, drug possession maximum sentences vary dramatically according to the type of drug. Finally, the groupings of offences - in many instances - include both hybrid and indictable offences and, for the hybrid offences do not allow one to determine the impact of the Crown’s decision to proceed summarily or by way of indictment.

of one month or less for this offence. While 70% of those going to prison for theft got sentences of a month or less in this province, ‘only’ 64% of those handed down a custodial sanction in Canada as a whole received sentences of one month or less.

Consequently, it is probable that the surplus of these short sentences accounts for a substantial amount of the difference in mean and median sentence length between Canada and British Columbia for theft. In fact, this illustration underlines the need to examine both measures – the proportion of convicted offenders who are given prison sentences and the length of the custodial sanction – simultaneously. Indeed, if one focuses on the median or mean sentence length alone, judges in any jurisdiction could, ironically, look *harsher or more severe* than other jurisdictions by giving large numbers of non-custodial sentences rather than short sentences of imprisonment.

The second caveat to the conclusion that sentences in British Columbia are more lenient resides in the observation that the six offence categories listed in Table 12 do not constitute an exhaustive list of all crimes, nor – for that matter – even the most serious offences (with the exception of homicide). Rather, they represent only a small subset of offence groupings - one of which is a subset of another (i.e., *theft* is part of the larger offence category of *property crimes*). Within this context, we thought it advisable to put these data in a larger context. Specifically, we began by examining the largest groupings of offences in the Criminal Code (Table 13).

Table 13: Sentencing for Large Groupings of Crimes¹⁷

Offence	Location	Median	Mean	Percent Prison
Total Offences	BC	30	114	39.9
	Canada	30	115	35.4
Total Criminal Code	BC	30	115	41.2
	Canada	30	112	36.7
Total Criminal Code (non-traffic)	BC	30	118	46.9
	Canada	30	115	40.9

Again, we have highlighted the cells in which offenders in British Columbia appear to have received ‘shorter’ or more lenient sentences. When one looks at these comparisons, it is clear that at least from this very broad perspective, there is very little suggestion that British Columbian sentences – on the whole - are more lenient than those in all of Canada. Even including the one comparison in which British Columbia might be seen as being more lenient (i.e. the mean length of sentence for ‘total offences’), the overall evidence appears to show that the mean and median sentences in British Columbia are more or less on the Canadian average. When one adds the data on the proportion of convicted cases handed down a prison sentence – in which a higher percentage of offenders in British Columbia

¹⁷ Data from 2003, only (“Old” Case Definition) – Downloaded 22 May 2008

Note: Those instances in which British Columbia is more ‘lenient’ on a given measure are bolded and shaded.

than in Canada as a whole receive custodial sanctions – sentencing in British Columbia begins to look – if anything - more severe than elsewhere.

Arguably, these findings appear to challenge the overall conclusions of sentencing leniency that one might draw from the offence categories listed in Table 12. Indeed, the picture of sentencing patterns in British Columbia relative to Canada generally may, in fact, be more complex than our initial (simplistic) illustration suggested. In an attempt to (begin to) unravel this seeming contradiction of findings, we decided to further break down these three overall offence groupings into the traditional or standard broad classifications of offences – that is, offences against the person, property offences, administration of justice offences, other non-traffic criminal code offences, criminal code traffic offences, other federal statutes offences (Table 14). Similar to the prior tables, the cells in which offenders in British Columbia appear to have received ‘shorter’ or more lenient sentences have been highlighted.

Table 14: Sentencing for Broad Offence Categories¹⁸

Offence	Location	Median	Mean	Percent Prison
Crimes Against the Person	BC	60	322	36.1
	Canada	60	223	35.0
Crimes Against Property	BC	30	93	48.4
	Canada	42	113	40.6
Administration of Justice	BC	7	17	61.1
	Canada	14	26	51.1
Other Criminal Code	BC	30	103	35.4
	Canada	30	131	31.4
Criminal Code Traffic	BC	15	64	11.1
	Canada	30	77	17.8
Other Federal Statutes	BC	60	99	31.0
	Canada	60	165	23.9

From this table, the same ambiguities emerge surrounding sentencing practices in British Columbia. While most of the broad offence classifications show the mean sentence length as being more lenient (read: shorter) in British Columbia, this pattern is not found for what is arguably the most serious category of offences – crimes against the person. When looking at the median sentences, British Columbia is the same as Canada as a whole for three categories, and more lenient for three others. In contrast, those convicted were more likely to go to prison (final column of Table 14) in British Columbia than in Canada generally for five out of the six offence groupings. When one looks at all three columns, the overall findings suggest an equal split between comparisons in which British Columbia appears as more lenient (9 comparisons) and those in which Canada as a whole and British Columbia

¹⁸ Data from 2003, only (“Old” Case Definition) – Downloaded 22 May 2008

Note: Those instances in which British Columbia is more ‘lenient’ on a given measure are bolded and shaded.

are either the same (3 comparisons) or British Columbia is harsher (6 comparisons). Once again, the findings do not appear to support a simple or clear conclusion of sentencing leniency in British Columbia when compared to Canada as a whole.

As a final – more complete – illustration of the complexities of the question of sentencing leniency in British Columbia, we examined the full 31 ‘groupings’ of offences for which sentencing data are available (Table 15). These ‘groupings’ are mutually exclusive. Further, they are – for the most part – groupings of offences rather than individual criminal code offences. For example, the ‘theft’ offence category includes all forms of thefts - most importantly, thefts under and over \$5000. They are described using the same measures as adopted in the prior tables (i.e. median and mean sentence length as well as the percentage of convicted cases which are given prison sentences).

Table 15: Sentencing Patterns across 31 Offence Groupings¹⁹
 [Part 1 of 3 parts]

Offence	Location	Median	Mean	Percent Prison
Homicide	BC	1825	3824	90.2
	Canada	2555	4112	86.7
Attempted Murder	BC	2,301	2,276	100
	Canada	1,320	1,670	70.4
Robbery	BC	730	762	79.3
	Canada	540	670	72.9
Sexual Assault	BC	365	611	44.2
	Canada	360	480	45.3
Other Sexual Offences	BC	540	434	22.2
	Canada	360	520	46.0
Major Assault	BC	90	176	47.7
	Canada	75	155	44.1
Common Assault	BC	30	45	22.8
	Canada	30	57	23.9
Uttering threats	BC	30	61	41.0
	Canada	32	83	35.5
Criminal Harassment	BC	11	42	30.6
	Canada	50	116	31.4
Other Crimes Against Persons	BC	540	658	46.5
	Canada	180	407	45.5
Break and Enter	BC	180	256	67.3
	Canada	150	262	58.4

¹⁹ Data from 2003, only (“Old” Case Definition) – Downloaded 22 May 2008

Note: Those instances in which British Columbia is more ‘lenient’ on a given measure are bolded and shaded.

Table 15: Sentencing Patterns across 31 Offence Groupings
[Part 2 of 3 parts]

Offence	Location	Median	Mean	Percent Prison
Theft	BC	21	40	47.6
	Canada	30	56	39.2
Fraud	BC	30	91	39.4
	Canada	45	109	34.3
Mischief	BC	14	26	18.6
	Canada	15	45	19.7
Possession Stolen Property	BC	60	114	60.6
	Canada	60	93	50.6
Other Property Crimes	BC	30	181	52.6
	Canada	60	186	35.2
Failure to Appear	BC	1	9	60.8
	Canada	7	20	51.1
Breach of Probation	BC	7	18	64.2
	Canada	15	30	50.9
Unlawfully at Large	BC	15	22	86.3
	Canada	30	37	82.9
Fail to Comply With Order	BC	7	13	52.4
	Canada	7	21	48.9
Other Admin. Justice	BC	13	54	26.2
	Canada	30	70	31.7
Weapons	BC	30	96	34.0
	Canada	40	130	31.9
Prostitution	BC	1	1	12.4
	Canada	3	51	22.9
Disturbing the peace	BC	1	5	20.6
	Canada	6	16	14.5
Residual Criminal Code	BC	30	115	40.3
	Canada	35	144	34.7

Table 15: Sentencing Patterns across 31 Offence Groupings
 [Part 3 of 3 parts]

Offence	Location	Median	Mean	Percent Prison
Impaired Driving	BC	14	59	6.4
	Canada	30	71	12.4
Other Criminal Code Traffic	BC	30	70	35.7
	Canada	30	85	44.0
Drug Trafficking	BC	90	129	42.3
	Canada	90	220	43.1
Drug Possession	BC	1	10	21.4
	Canada	10	23	20.2
YCJA	BC	7	12	38.4
	Canada	14	23	35.4
Residual Federal Statutes	BC	15	40	11.1
	Canada	90	193	14.9

To facilitate comprehension of this table, we have summarized the information in Table 16. Specifically, we have collapsed a number of the offence categories into broader classifications to reduce the amount of information presented in the table. Further, we have created sub-totals of the number of offences within each of the 3 measures for which British Columbian sentences are more lenient than Canada as a whole. Given that one would expect some normal variability across offences and measures, one might anticipate that simply 'by chance', British Columbia would be less severe approximately half of the time (i.e., on roughly 15 or 16 of the 31 offences for each measure). Such a finding would suggest that the average length of sentences in British Columbia is 'on par' or similar to that handed down in Canada generally.

Table 16: Overview of British Columbia compared to Canada as a Whole (2003 data)

Offence Category	Number of times on this measure that BC sentences appear more lenient		
	Median sentence length	Mean sentence length	Imprisonment rate for this offence
Person (homicide, attempted murder, robbery, sexual assault, other sexual offences, major assault, common assault, uttering threats, criminal harassment, other crimes against persons)	3 of 10	5 of 10	3 of 10
Property (break and enter, theft, fraud, mischief, possession of stolen property, other property crimes)	4 of 6	5 of 6	1 of 6
Administration of Justice (failure to appear, breach of probation, unlawfully at large, failure to comply with an order, other administration of justice)	4 of 5	5 of 5	1 of 5
Drinking and drugs (impaired driving, other criminal code traffic, drug possession, drug trafficking)	2 of 4	4 of 4	3 of 4
Other criminal code and other federal statutes (weapons, prostitution, disturbing the peace, residual criminal code, YCJA offences, residual federal statutes)	6 of 6	6 of 6	2 of 6
Total	19 of 31	25 of 31	10 of 31

Treating these values as sampling estimates of a larger population of comparisons that one could make, it would appear that the only substantial difference from what might be best explained as chance variation is the “mean” sentence figure. However, as we have already pointed out, this finding could be influenced by the fact that British Columbia may use prison more liberally than does Canada as a whole. Across all of Canada (as represented in this dataset), 35.4% of those found guilty received a prison sentence, compared to British Columbia in which 39.9% went to prison. Indeed, even an examination of more detailed categorizations of offences suggests similar findings as those already alluded to in the previous tables. Specifically, the story is more mixed than it may initially have appeared to be. Further, it would certainly be difficult – at least based on these data - to draw the simple inference that sentences in British Columbia are more lenient than in Canada generally.

Part III – A More Detailed Examination of Sentencing Patterns in British Columbia

The leitmotif which seems to flow through our initial analyses is one of the complexity of the issue. Indeed, there would appear to be no *simple* answer to the question of whether sentencing in British Columbia is more lenient than in the rest of Canada. However, this conclusion should not come as any real surprise. Specifically, sentences are – themselves – multidimensional and given the structure of the our Criminal Code and the variation that exists on many relevant dimensions across provinces, the recourse to simplistic summary measures such as the mean or the median is unlikely to reflect – or begin to unravel – these complexities²⁰.

a) Complexities of Measurement

Indeed, we have already observed the potential that summary measures like the mean or median have to bias or mask underlying complexities in the sentencing data. A focus exclusively on the mean or the median length of prison sentence handed down in British Columbia in 2003 would clearly lend strong support to the notion that sentences in this province are shorter than those in Canada as a whole. However, the addition of a third measure – the proportion of cases found guilty receiving a prison sentence – already begins to qualify or temper this conclusion. Specifically, measures of central tendency have the advantage of summarizing data in a single value. However, the very fact of reducing a substantial amount of complex data into one single measure naturally presents an over-simplified picture of the reality under study.

More problematic is the fact that measures of central tendency – particularly the mean – are very sensitive to extreme scores (in our case, either very long or very short prison sentences). As we have already seen with our prior analyses, one possible explanation for the substantial number of offences in British Columbia whose average prison sentence lengths are shorter than those in Canada generally is that this province may simply send a higher proportion of marginal cases (i.e., those which could either receive a short custodial sentence or a more onerous community sanction) to prison than is done elsewhere in Canada.

²⁰ The only instance in which the central question of whether sentencing in British Columbia is more lenient than elsewhere could potentially be answered in a simple fashion would be in an extreme case. We are thinking specifically of a case in which one province turned out consistently (across all or most offence groupings) to send people to prison at a higher rate and for longer periods of time than other provinces. The problem in inferring that this finding reflects a ‘sentencing’ difference is that it could be that in this particular province or territory there were many high rate offenders who had built up impressive criminal records. What would look to be ‘harsh’ sentences, then, could simply be that a higher proportion of crime was committed by people with long criminal records, and ‘comparable’ offenders might be treated no differently from the manner in which they are treated elsewhere. In addition, such a distribution of sentences could theoretically be produced by a jurisdiction that used some form of ‘alternative measures’ for all but the most serious instances of all offence groupings. This would mean that the only people to be formally sentenced would be those convicted of very serious instances of each offence and/or those with substantial criminal records.

Indeed, these measures of central tendency tell us nothing about the distribution of sentences. However, the variability across jurisdictions in the lengths of prison sentences may be yet another relevant dimension of sentence leniency/severity. Specifically, provinces may have the same mean and/or median length of prison sentence but display very different sentencing patterns of non-equivalent severity in terms of the distribution of these custodial sanctions across short, medium and long prison sentences. To illustrate this additional limitation of measures of central tendency, Table 17 presents hypothetical distributions of sentences in 500 hypothetical cases in four hypothetical jurisdictions.

Table 17: Hypothetical Distributions of Sentences in Five Jurisdictions

Jurisdiction	Number of cases	Cases with no prison sentence	Cases with prison sentences	Number of prison sentences of this length			Average prison sentences:	
				2 months	16 months	30 months	Mean prison sentence	Median prison sentence
A	500	100	400	175	50	175	16 mo.	16 mo.
B	500	100	400	20	360	20	16 mo.	16 mo.
C	500	400	100	45	10	45	16 mo.	16 mo.
D	500	400	100	5	90	5	16 mo.	16 mo.

For our purposes, the most notable point with this hypothetical scenario is that all four jurisdictions have identical mean and median prison sentence lengths. While one could easily assume – based on these measures – that these four jurisdictions also display the same sentencing patterns, this conclusion would be completely erroneous. Specifically, jurisdictions B and D hand down predominantly medium-length prison sentences for those sentenced to prison while jurisdictions A and C are more likely - for those who are sent to prison - to sentence convicted offenders to either short or long custodial sanctions. For purposes of describing sentencing severity, it is equally important to note that the proportion of prison sentences which are long in both jurisdictions A and C is much higher than that in jurisdictions B and D. In fact, a comparison of jurisdictions A and D – for instance – would show that the proportion of those sentenced who receive long custodial sanctions goes from a high of 35% (175/500) in jurisdiction A to a low of 1% (5/500) in jurisdiction D.

To further complicate this picture, it is equally notable that a full 80% of sentences handed down in jurisdictions A and B are custodial sanctions while only 20% of those handed down in jurisdictions C and D are prison sentences. Indeed, a focus on the mean or median length of prison sentence also completely misses the issue of (the proportion of) non-custodial sanctions as an additional measure of sentence severity/leniency. In other words, sentence severity is a multi-dimensional construct which cannot be adequately or accurately captured by gross or rudimentary measures such as the mean or median sentence length. Clearly in the current hypothetical example, we doubt that many people would argue that these four jurisdictions display similar sentencing patterns of equivalent severity.

Within this context, we would suggest that a more detailed analysis of sentencing data in British Columbia should avoid such simplistic, summary measures. Rather, we would argue that a much more thoughtful reflection is needed on the most appropriate measures of sentencing leniency/severity. However, this issue is further complicated when one attempts to determine what it is that people think about when they refer to ‘the severity of sentences’. In fact, we have no clear idea which ‘measure’ of sentence severity the general public (or for that matter, the media or politicians) are envisioning when they suggest that sentences in British Columbia are not harsh enough. Our best guess would be that most people have no real measure of sentence severity in mind. Indeed, we would suggest that their answers to questions from polling companies reflect ‘beliefs’ rather than informed (much less empirically-based) attitudes derived as a result of careful consideration of the evidence. As such, severity is no more than just that – an abstract indication of what people believe.

Having said this, we would also expect that if one were to ask people what they believe ‘harshness’ is – forcing them to give some thought to the issue of sentence severity - they would probably give some answer related to prison. Specifically, the general public might define ‘sentence severity’ as something to do with whether or not a person goes to prison. More likely, ‘severity’ might be conceptualized in terms of the length of time that offenders would spend in prison. Indeed, most people would probably not even consider the fact that for many offences, substantial proportions of offenders do not even receive a custodial sentence. Illustratively, we see this same tendency expressed in the Throne Speech. Specifically, the Government of British Columbia noted that sentences in this province were *shorter* than in other provinces. The implication of this statement is that sentence severity should best be measured in terms of length of – presumably – prison sentences.

It is equally noteworthy – in this regard – that CCJS uses, as its measure of how serious different offences are, one which appears to disregard completely the likelihood that a person receives a prison sentence (versus a non-custodial sanction). Instead, our understanding is that CCJS – within broad offence categories - relies solely on the average length of prison sentences to determine the relative severity of an offence. Hence if one were to compare across broad offence categories using the 2003 data presented earlier, an offence such as simple impaired driving is - on this measure - more serious than common assault (with the average custodial sentence length being 71 days for impaired driving and 57 days for common assault) even though the proportion getting a prison sentence for common assault is almost twice that of impaired driving (23.9% vs. 12.4%, respectively). Whether or not this is the appropriate conclusion is not our point. At the same time, we expect - returning to Table 17 - that most people would conclude on the basis of the information in this table that sentencing in Jurisdiction A is considerably harsher than is sentencing in Jurisdiction D even though the mean and median prison lengths are identical.

We would argue that it would be important to include both of these ‘perceptions’ of sentence severity (i.e., proportion of convicted offenders given a prison sentence and length of custodial sentence) when measuring this theoretical construct. This proposal is rooted not only in the belief that these ‘elements’ of sentencing arguably best approximate that which the general public thinks about when speaking of lenient or harsh sentences. Rather, it also reflects the fact that each of these measures will capture a slightly different component or dimension of sentence severity. For purposes of this report, these varying ‘perspectives’ on

sentencing patterns may shed more detailed light on our central question of whether sentencing in British Columbia is more lenient than elsewhere in Canada.

Clearly, we are suggesting that multiple (rather than single) measures are better descriptors of the complexities involved in assessing relative severity of sentences. To illustrate this advantage, we use an actual example from the 2005-2006 (national) sentencing data that have recently been released by Statistics Canada. Specifically, we compare sentencing patterns for two jurisdictions: British Columbia and Alberta.

We begin with the number of people found guilty of ‘Crimes against the person’ – essentially violent crimes for each of these two provinces. Certainly in terms of this measure, both British Columbia and Alberta appear to be fairly similar.

Number found Guilty:

BC: 5381

AB: 5045

However, differences quickly emerge when we look at the sentencing patterns of these two jurisdictions. For instance, the proportion of those found guilty in each of these provinces who were sent to prison for this type of offence varies considerably.

Percent of guilty offenders sent to prison

BC: 28.3%

AB: 36.2%

From these two “rate of imprisonment figures,” one might infer that Alberta courts are more severe than British Columbia courts in their sentences for “Crimes against the person.” Said differently, this measure might constitute empirical support for the view that sentencing in British Columbia is, in fact, more lenient than elsewhere in Canada (or, at least relative to its neighbouring province).

However, a person can be sent to prison for one of these offences for a day or for years. Indeed, the way in which cases are distributed across different prison lengths is also a central measure of sentence severity. Within this context, we initially examined the proportion of prison sentences that were handed down a custodial sentence of one month or less²¹ in these two provinces.

²¹ It should be noted that for most provinces there were some missing data on sentence length. Hence the proportions in this analysis and in all other analyses in this report were calculated by considering these cases to be missing data. Thus, for example, for the proportion of those who were handed down a custodial sanction whose sentence was over 3 months, the figure was calculated by taking the number of sentences of greater than three months and dividing by a figure consisting of the total number of prison sentences minus the number of sentences of unknown length. Similarly, when we looked at the proportion of those with guilty findings with sentences of over three months, the numerator was the number of sentences of more than three months and the denominator was the number found guilty minus the number of sentences of unknown length. In this way the ‘theoretical’ maximum was, in all cases, 100%. Had the number of sentences of unknown length been ignored, the theoretical maximum for each of these figures would have been something less than 100%. These problems of missing data did not appear to us to be very important, but they do create a minor irregularity that the numerically obsessive reader might notice. The percentage going to prison is based on all of those who are

Percent of Prison Sentences for One Month or Less

BC: 29.8%
AB: 41.9%

Looking only at ‘sentence length’ for those sent to prison for one month or less, one could argue that British Columbia is considerably harsher than Alberta. Specifically, a greater proportion of sentences in Alberta than in British Columbia would appear to be given the most lenient prison sentence. And, in fact, this finding receives support. When one looks at the proportion of those who receive prison sentences which are for longer periods - over three months, or over six months – for ‘crimes against the person’, sentences in British Columbia look relatively harsh. In both cases, the proportion of relatively long prison sentences in British Columbia is higher than that in Alberta.

Percent of prison sentences over 3 months

BC: 45.4%
AB: 34.4%

Percent of prison sentences over 6 months

BC: 32.9%
AB: 23.1%

Based on these data, we have - at this point - two separate findings. First, people sentenced in British Columbia for crimes against the person are less likely to go to prison than are people sentenced for these same offences in Alberta. However, in the case in which the British Columbian offender does, in fact, go to prison, he or she will be given a longer sentence than an offender receiving a custodial sentence in Alberta. Indeed, the answer to the question of whether sentencing in British Columbia is more lenient than elsewhere in Canada becomes substantially more complicated. In essence, the answer depends – in large part – on the way in which one chooses to measure ‘sentence severity’.

In fact, the answer may be rendered even more complex. The measures of custodial sentence length that we have presented above only include those cases which were sent to prison. That is, the denominator represents all cases for which a prison sentence is handed down. The numerator constitutes the number of cases (for which a prison sentence is handed down) that were given a custodial sentence of 1 month or less, over 3 months and over 6 months. Certainly in light of the findings from the 2003 data and the hypothetical example in Table 17, it could be argued that severity is expressed not only in the length of a prison sentence of all those receiving custodial sanctions but also in the proportion of all convicted cases in which an offender is handed down a certain custodial sentence. In this case, the denominator represents all cases for which an offender is found guilty. The numerator constitutes the number of cases (for which an offender is found guilty) that were given a custodial sentence of 1 month or less, over 3 months and over 6 months.

found guilty, but the percentages that involve sentence lengths are based only on those for which CCJS had sentence length data.

In this case, we are now asking a different question. Specifically, we are asking “In which province is a person *who is found guilty* more likely to get a relatively harsh sentence?” For these purposes, we are obviously defining “relatively harsh” as a sentence of over three months or over six months²². This question may be contrasted with the questions from the prior findings. Indeed, in the previous examples, we were asking in which province a person *who is sentenced to prison* is more likely to get a relatively harsh sentence.

Within this new context, we examined the proportion of all of those who were found guilty (including those who were handed down prison sentences and those who were not) in terms of the length of prison sentence handed down for offenders in both provinces. On these two measures, British Columbia and Alberta look very similar.

<u>% of all of those found guilty who are given a sentence of...</u>		
	<u>> 3 months</u>	<u>> 6 months</u>
BC	12.6%	9.1%
AB	12.4%	8.3%

In other words, we currently have not only 3 different types of measures of sentencing leniency but also three different findings. Specifically, British Columbia appears more lenient than Alberta in terms of the proportion of guilty offenders sent to prison. In contrast, Alberta appears more lenient than British Columbia in terms of the proportion of prison sentences which are relatively long (i.e. receiving greater than 3 or greater than 6 months). However, the two provinces appear relatively equal on the lenient/harsh dimension defined as the proportion of those sentenced (i.e., found guilty) who are given relatively long prison sentences (i.e., prison sentences of greater than 3 or greater than 6 months).

Our point in presenting these findings on a rather important category of offences is largely to point out the complexity of the theoretical construct of ‘sentence severity’ and the corresponding multiplicity of measures which are needed to capture its various dimensions. On the one hand, this illustration reiterates the problematic nature of relying on simplistic (single) summary measures like the mean or median. On the other hand, it also underlines

²² Clearly, it would have been interesting to include a subsequent category of custodial sentences of 2 years or more – corresponding to sentences served in federal penitentiary. However, only 3-4% of cases in the data set under examination received a prison sentence of greater than 6 months. As such, we would only have tiny differences across provinces on this measure if we were to look at the percentage of those found guilty who were given penitentiary sentences. Certainly within this context, one would also worry about whether the findings would be particularly meaningful. For instance, it is not clear what would follow – in terms of evaluating relative sentence severity - if we discovered, for example, that ‘only’ 0.5% of sentences of a particular type of offence get penitentiary sentences in one jurisdiction while 1% of sentences in another jurisdiction receive the same sanction. Further, one would be concerned that people would be tempted to draw misleading conclusions – based on this type of finding – of the sort that the rate of penitentiary sentences in jurisdiction A is twice as lenient as that in jurisdiction B. Finally, this measure would also be problematic from a different perspective. Specifically, those cases receiving a prison sentence of 2 years or more are considerably more likely to be for very serious offences – a potentially significant proportion of which may be resolved in Superior Court. As certain jurisdictions in Canada do not report Superior Court data to CCJS, this lack of standardization across provinces renders any comparisons based on this measure is especially problematic.

the need for multiple measures in order to provide a more complete – and, as such, more accurate – description of sentencing patterns in British Columbia in comparison with other provinces or regions of Canada²³. Indeed, it is based on these 3 different types of measures that we conclude with some confidence that at least in the case of crimes against the person, it would appear that the sentences in British Columbia are more varied than those in Alberta. Specifically, British Columbia seems to be both more ‘lenient’ (i.e., more *non*-prison sentences) and more severe (i.e. more long prison sentences) than Alberta.

Finally, it is also noteworthy that these multiple measures of ‘sentence severity’ have the advantage of being focused exclusively on the sentencing process. Specifically, they capture the ways in which judges influence the leniency/severity of sentences. Indeed, this report focuses on an examination of sentencing severity as reflected at the level of the courts – more specifically, the final event of the court process. This focus contrasts with other approaches which might examine other stages of the criminal justice system that also impact on the leniency of sanctions.

To illustrate this difference, one might consider using imprisonment rates (i.e., the number of people in prison on an average day per 100,000 residents) as an overall measure of sentencing severity in a jurisdiction. The difficulty with this option is that ‘imprisonment’ is the result of a multitude of decisions – many of which are not under the control of sentencing judges. Specifically, incarceration rates reflect the following decisions:

- The rate at which offences are brought to the attention of the police by members of the public, or by institutions such as schools;
- The policies of the police to pursue, proactively, those offenders likely to be imprisoned (e.g., those who engage in drug offences or impaired or dangerous driving);
- Decisions by the police to detain accused people for bail hearings;
- The speed at which those offenders who are detained in custody awaiting trial are able to have their cases resolved or charges dropped;
- Decisions by the police to charge offenders rather than deal with them informally;
- Decisions by Crown Attorneys to prosecute rather than deal informally with the offender;
- Decisions by the province/territory to set up ‘alternative measures’ programs under Section 717 of the Criminal Code, and decisions by prosecutors or others to use such programs;
- Decisions by prosecutors on ‘hybrid’ offences to proceed by way of indictment;
- Decisions by prosecutors to accept pleas on lesser charges;
- Decisions by correctional authorities on temporary absences from prison;
- Decisions by paroling authorities on day parole, parole, and detention past the statutory release date;
- Sentence severity.

²³ The only obvious exception to this generalization might be an offence like second degree murder for which there is a mandatory sentence of life imprisonment. As such, ‘sentence severity’ could be accurately measured by the number of years of parole ineligibility that the offender faces.

Within this context, a simple example may illustrate the difficulty in using imprisonment rates as a measure of sentence severity. In the United States²⁴, 3479 of 4749 convicted drug offenders were sentenced to prison in the federal courts in 1980. Based on these values, the percentage of offenders receiving a custodial sanction would be 73%, with an average sentence of 38.7 months. In 2001, 25,854 defendants were convicted of drug offences in the same courts of whom 23,785 were sent to prison. As such, the percentage of offenders receiving a custodial sanction would be 92%, with an average sentence of 73.8 months. By using the rate at which convicted offenders are sent to prison to measure 'punitiveness', one would likely conclude that there had been a relatively substantial increase of 26% (that is, $92\% - 73\% / 73\% = 26\%$). By using the average sentence length for the same purpose, one would conclude that the degree of punitiveness would have increased by about 91% (that is, $73.8\% - 38.7\% / 38.7\% = 91\%$).

However, the really substantial increase that occurred between these two years is that there were 5.4 times as many people convicted of drug offences in 2001 than there had been in 1980. Looking only at their sentences, federal drug offenders would appear to be responsible for 146,278 beds in 2001 (assuming that they served their full sentences) as compared to 11,220 in 1980 - a 13-fold increase in the imprisonment (count) rate. Clearly most of this increase is as a result of the American 'War on Drugs' which brought many more drug offenders into the criminal justice system (i.e., 5.4 times as many) rather than - in comparison - the rather modest increases in the probability of going to prison or the average sentence. But one would not want to use a 540% increase in prison beds as an index of increasing harshness of sentencing when, in fact, sentencing decisions were responsible for increases of (only) 26% or 91%, depending on one's choice of measures.

In the Canadian context, British Columbians only have to look slightly eastwards to understand one of the ways in which imprisonment rates can reflect decisions other than sentencing patterns by judges. In Ralph Klein's first full year as Premier of Alberta (1993), the provincial imprisonment rate for Alberta was 102 per hundred thousand residents. By 1997, the rate was 69 per hundred thousand. In order to eliminate the budget deficit, Alberta - quite explicitly - reduced its dependence on imprisonment. The various methods by which this reduction was accomplished are, undoubtedly, complex. However, although the government policy under Klein was to look for alternatives to prosecution and imprisonment for non-violent offenders, one suspects that Alberta judges did not, in a three-year period, simply - and collectively - reduce the length of their provincial sentences by 30% or send 30% fewer convicted offenders to prison. Rather, it is more likely that Alberta prosecutors looked for alternatives to imprisonment for minor offences.

Similar problems arise with other factors which affect imprisonment rates but that are beyond the control or influence of the sentencing judge. Most obviously, decisions by correctional authorities regarding temporary absences, parole or detention beyond statutory release will naturally affect levels of incarceration but have nothing whatsoever to do with sentencing judges. Indeed, we have argued elsewhere (Doob and Webster, 2006) that

²⁴ This illustration is taken from footnote 9, page 306 of Webster, Cheryl Marie and Anthony N. Doob (2007) Punitive Trends and Stable Imprisonment Rates in Canada. In Tonry, Michael (ed.). *Crime and Justice: A Review of Research*. Volume 36. Chicago: University of Chicago Press, pp. 297-369.

imprisonment rates – as a measure of severity – constitute a more appropriate proxy of overall punitiveness *of the criminal justice system* than of the sentencing phase *per se*. Specifically, levels of incarceration capture the degree of leniency/severity at the level of the police (*e.g.*, policy shifts in apprehension and targeting of certain offences), the courts (*e.g.*, bail decisions, prosecutorial decisions to screen cases out of the formal court system, rates at which offenders are convicted and sentenced to prison as well as the length of custodial sanctions) and corrections (*e.g.*, conditional release and parole recommitment). For our current purposes, sentence-based measures would appear to us to be the most appropriate indication to capture sentence severity.

As one final note, it is important to recall that inter-jurisdictional comparisons based on incarceration rates would not be possible for federal inmates. Within Canada, provincial incarceration rates do not include those offenders sentenced to two years or more (who go to federal penitentiaries). Unfortunately, information on the province in which federal inmates were sentenced is not normally available.

b) Nature and Scope of the Dataset

Within this context, we have opted to analyse sentencing data from CCJS. Specifically, we chose the most recent (at least until very recently²⁵) dataset – reporting on the fiscal year of 2005-2006 - that was available publicly. These data have the advantage of presenting national data and, as such, permitting inter-jurisdictional comparisons. Further, this dataset employs a new definition of ‘case’ which has only very recently been implemented by CCJS. In contrast to the 2003 data which we used in this report as a preliminary examination of sentencing severity in British Columbia, the 2005-2006 dataset no longer defines a ‘case’ as all charges completed on the same date against the same individual. Rather, the new definition – all charges against the same individual processed concurrently in court (but not necessarily with the same end date) – presents a more exact picture of sentences²⁶. Further, it permits more accurate inter-jurisdictional comparisons²⁷ as well as estimates of conviction rates²⁸.

²⁵ After starting work on this report, the Juristat on 2006/7 adult court data was released. The data presented in this CCJS document do not appear to us to differ in any substantial way from the 2005-2006 data that we analyse in this report. Specifically, this Juristat reports that – overall - 39% of cases in British Columbia were sentenced to prison for the most serious charge in the case. The only jurisdictions with higher proportions sentenced to prison were Prince Edward Island (55%), Yukon (42%) and Northwest Territories (40%). British Columbia was comparable to Alberta (38%). These two provinces (British Columbia and Alberta) each provide both Provincial Court and Superior Court data to CCJS. CCJS reports that across Canada 34% of those found guilty were sentenced to prison for the most serious charge in the case, but this figure is problematic given that it includes Quebec (which is apparently missing 25% of the low end cases) as well as some jurisdictions without Superior Court data. We saw no reason to believe that the findings that one would draw from these more recent data would dramatically differ from those which we draw from the 2005-2006 dataset.

²⁶ Under the old definition, charges that were processed concurrently against an individual were occasionally broken into a number of separate cases. As such, sentencing outcomes (which would take into account all charges in the case, independent of their differing completion dates) were difficult to interpret as they were only associated with part of the case as created by CCJS. With the new definition, all charges are kept together in a single case. In this way, sentencing outcomes reflect the entire case.

²⁷ Specifically, this new case definition reduces the impact of administrative practices and procedures specific to a jurisdiction on case counts. Particularly in jurisdictions with a higher use of stays and withdrawals (which

An additional advantage of this data set is its coverage. Specifically, data are available for all 13 Canadian jurisdictions. However, it is notable that crime and the use of imprisonment in the three territories are both quite different from the ten provinces. Furthermore, because of the small population in each of the territories, breakdowns by offence are based - often - on very small numbers of cases and, therefore, can be unstable.²⁹ Hence we will not be focusing on comparisons of British Columbia with the three territories.

Despite increased comparability and statistical stability, an examination of the offence categories available to us from CCJS for the ten provinces suggests a further limitation. In particular, the data from the two largest provinces are not strictly comparable to those from British Columbia. Specifically, Quebec data are problematic because of their incomplete coverage. On the one hand, CCJS reports (*Juristat*, Volume 28, Number 5, page 10) that municipal court data - which they suggest constitutes about a quarter of the Criminal Code *charges*³⁰ - are not available. It is our understanding that the municipal courts tend to be responsible for some of the less serious cases. As such, the severity figures for Quebec would be dramatically over-estimated for many of the broad categories of offences that are available from CCJS.

On the other hand, Superior Court data are also not available for Quebec. The absence of these data would tend to under-estimate severity for the more serious cases. While it is our understanding from previous work that relatively few cases go to Superior Court in Quebec (since, among other things, cases before a judge alone are typically heard by the Cour du Quebec), we are still somewhat uncomfortable in making comparisons involving Quebec. As such, we have opted to eliminate this jurisdiction from our analyses.

A similar problem arises with data from Ontario (as well as Saskatchewan). These jurisdictions also do not report Superior Court activity. Consequently, any sentencing data for the more serious cases would likely be under-estimated, reducing the comparability of inter-jurisdictional comparisons with British Columbia. Having said this, we are less concerned with comparative analyses in the case of certain large offence categories.³¹ For

would – under the old case definition – frequently result in the creation of 2 separate cases, albeit with only one person case), case counts would be higher than in jurisdictions with a lower use of stays and withdrawals even when the number of persons and charges processed by the 2 jurisdictions were actually the same.

²⁸ Under the old definition, stays and withdrawals occurring prior to convicted charges in the same case would constitute a separate case. As such, the number of convicted cases as a proportion of all cases was artificially lowered with the old definition. With the new case definition, stays and withdrawals associated with a multiple-charge case would remain part of the same person case. As such, not only does this process produce a lower (and, as such, more accurate) overall case count but it also results in a higher (and more accurate) proportion of convicted cases.

²⁹ Our estimate is that the three territories (pooled) constitute about 1.1% of the total court caseload reported by CCJS.

³⁰ Given that CCJS does not have access to these data, they are not able to estimate the portion of *cases*, in contrast with *charges*, that these missing data would constitute.

³¹ In particular, offence categories in which few cases go to Superior Court are obviously less affected by the missing Superior Court data.

example, because CCJS uses rather broad offence groupings, comparisons of British Columbia with Ontario (or Saskatchewan) are probably not distorted too badly since the proportion of even moderately serious offences that are sentenced in Superior Courts is relatively low. The distortion would be more serious if one were to look at small, very specific, very serious cases (such as the category of ‘homicide’) in which only manslaughter and infanticide cases could be disposed of in provincial court, leaving all murders for the Superior Court.

The final limitation of this dataset is that data on one other province could not be used. Specifically, information on sentence lengths in Manitoba was not available to us³², rendering this jurisdiction inapplicable for the purposes of this report. As a final dataset, we included the seven other provinces (i.e. Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Saskatchewan, and Alberta) as comparators to British Columbia. Our belief is that comparisons - for most offence groupings - with these remaining seven provinces constitute reasonable estimates of what is occurring. While they are clearly not perfect for the task, they are – in any case - the best comparators that we have. The alternative would be to constrain our analysis to the point that it becomes almost meaningless. As such, we have chosen to look broadly, understanding that the comparisons are not perfect³³.

As one final methodological note, we strongly believe that comparisons between British Columbia and the other provinces *pooled* is not the best way to approach this task. The reason is a simple one. Specifically, recourse to pooling the other provinces obscures provincial variation which we know to be large. More importantly, it gives enormous weight to the findings of two provinces (Alberta and, even more so, Ontario). In effect, given the relative sizes of these two provinces, they would swamp the remaining jurisdictions. To put these numbers in context, our principal comparisons are between the sentencing patterns for British Columbia and *each* of the other seven provinces. For all offences, Ontario constitutes

³² For the purposes of this report, the exclusion of Manitoba is automatic as we would have no sentencing data upon which to compare with British Columbia. However, we note that even had this jurisdiction included information on sentence length, there are other questions in the CCJS data which would require further exploration. For instance, we noted in the *Juristat* on “Adult Criminal Court Statistics, 2006/2007” - released by Statistics Canada in May 2008 – an endnote (endnote 24, page 11) which stated that Manitoba, among other provinces, does not report Superior Court data. As such, the decision category of “other” (in contrast with “found guilty,” “stay/withdrawn,” and “acquittal”) in a table (Table 4, page 14) entitled “Cases by decision, adult criminal court, Canada, 2006/2007” “includes charges having a committal for trial in Superior Court as the decision on the final appearance in provincial court.” This classification is perfectly reasonable, although we were surprised to see that the category of “other” – which includes several decisions in addition to a committal for trial in Superior Court - showed only four cases in 2006/7 (and only two cases in 2005/6) that *might* have been committed for trial in Manitoba’s Court of Queen’s Bench. The category of ‘other’ also includes other outcomes such as being found unfit to stand trial, being found not criminally responsible, or situations in which the case was waived to another court in or outside of the province. We have no way of independently verifying this number but we did notice that Saskatchewan - which also does not provide CCJS with Superior Court data, and which has a total caseload only slightly larger than that of Manitoba (17,390 vs. 16,230 in 2006/7) - showed 88 cases under the category of ‘other.’

³³ A more in-depth assessment of some of the principal limitations of our current dataset will be carried out in the final section of this part of the report (entitled ‘A Final Note’). These caveats will be considered in light of the findings.

about 56.9% of the total caseload for these seven provinces. Said differently, the Ontario pattern would overwhelm the other provinces. Ontario and Alberta (combined) constitute 79% of the overall caseload, with the other five provinces obviously sharing the remaining 21% of the caseload.

c) Principal Findings

We begin by presenting the findings for large ‘groupings’. From this starting point, we will subsequently look at smaller classifications of offences for which the numbers are sufficiently large to have statistical confidence in the findings. To facilitate immediate comprehension, we have – for each of the tables in which we present data - highlighted those figures for which the designated province appears to be harsher in its sentencing than is British Columbia on that particular measure. In other words, the shaded values reflect instances in which British Columbia appears to hand down more lenient sentences than a particular other jurisdiction.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	36.4	24.6	8.8	12.4	4.4
Newfoundland/Labrador	31.4	21.8	6.7	10.3	3.2
Prince Edward Island	57.2	10.1	5.7	4.6	2.6
Nova Scotia	21.5	25.2	5.4	16.7	3.6
New Brunswick	25.5	27.8	7.1	18.0	4.6
Ontario	34.5	13.4	4.6	7.0	2.4
Saskatchewan	24.9	36.3	9.0	17.7	4.4
Alberta	36.1	17.5	6.3	10.5	3.8

Box Score: Of the 35 comparisons, British Columbia is harsher on 25, equal on 1, and more lenient on 9.

This table should be read in the following manner. In the first column, we have listed British Columbia in the first row, followed by the 7 comparison provinces (excluding Manitoba and Quebec for reasons identified above). In the first column of numbers (“Percent Prison”), we have listed the percentage of those cases involving findings of guilt that resulted in a prison sentence. In British Columbia, 36.4% of all cases resulted in a prison sentence. Only in Prince Edward Island did a higher proportion of those found guilty end up in prison.

The second column of numbers “% Prison > 3 months” looks only at those cases resulting in a prison sentence and indicates the percentage of them receiving a custodial sentence of more than 3 months. For British Columbia, we can note that 24.6% of the prison sentences were

for greater than 3 months. As such, there were three other provinces which had higher proportions than British Columbia (i.e. Nova Scotia, New Brunswick and Saskatchewan).

The next column (% guilty with > 3 months prison sentence) examines all of those cases with a guilty finding and asks what percentage of all of the guilty cases resulted in a prison sentence of over 3 months.³⁴ On this measure, 8.8% of convicted cases in British Columbia were handed down a custodial sanction of greater than 3 months. Only in Saskatchewan did a higher proportion of guilty cases receive this sentence.

The final two columns repeat the analyses carried out for the second and third columns. The only differences are that we are now considering only custodial sentences of greater than 6 months rather than 3 months. For instance, the final column in the table shows that for all cases in British Columbia in which there was a guilty finding, 4.4% had a prison sentence of greater than 6 months. New Brunswick was the only province which handed down a higher proportion of custodial sanctions of more than 6 months for convicted cases.

Though we have some concerns about doing so, one could - from tables like the one above - create a kind of “box score” for each of the seven comparisons between British Columbia and the other provinces in each column. In the previous table (and in most of the tables that follow), this approach would lead to 35 *non-independent* comparisons. As such, one can then ask the question of “in how many of these comparisons is British Columbia more lenient?” If sentencing in British Columbia is more or less the same as in the other seven provinces, we would, generally, expect there to be about 17 or 18 comparisons in which British Columbia is more lenient. For the above table, the results show that in 35 comparisons, British Columbian judges were more lenient in 9 of 35 comparisons.

Alternatively, each column of the table could be looked at in isolation. Specifically, one could sum the number of highlighted figures within each measure for a more detailed examination of the individual measures of severity. As shown in Table 19 below, British Columbia was more lenient than only one other province in terms of both the proportion of all cases handed down a prison sentence (column 1), as well as the proportion of guilty cases which received a prison sentence of either more than 3 months (column 3) or more than 6 months (column 5). In contrast, British Columbia was more lenient than three (of the seven) other jurisdictions in terms of the proportion of cases handed down a prison sentence which was for either greater than three months (column 2) or greater than six months (column 4).

³⁴ For the numerically inclined, it should be noted that the third column of figures *should be* the product of the second times the third. The fact that it differs from this value was explained earlier in this report. Specifically, some of the cases in the CCJS dataset were noted as having a prison sentence of unknown length. These cases were included in the percentage with a prison sentence, but, as previously discussed, the percentage of cases with a prison sentence of > 3months (or > 6 months) could only look at cases with custodial sentences of known prison lengths.

Table 19: All offences – British Columbia compared to each of 7 other provinces					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia more lenient	1	3	1	3	1
British Columbia the same	0	0	0	0	1
British Columbia harsher	6	4	6	4	5

Box Score: Of the 35 comparisons, British Columbia is harsher on 25, equal on 1, and more lenient on 9.

In the end, we think that it is more useful to look at the actual comparisons (including the size of the differences) than to rely on Box Scores or summary tables of this nature. As such, we have not created an equivalent table (to Table 19) for inter-column comparisons for any of the other offence categories that we examined. Indeed, the interested reader can quickly add each column him/herself. However, we have continued to indicate the total ‘box score’ for each table.

Table 20: Criminal Code – Non-traffic					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	45.9	22.7	10.3	11.7	5.3
Newfoundland/Labrador	38.1	22.3	8.4	11.1	4.1
Prince Edward Island	49.9	15.8	7.8	7.9	3.9
Nova Scotia	27.6	24.2	6.7	15.9	4.4
New Brunswick	31.9	28.6	9.1	18.6	5.9
Ontario	37.6	12.5	4.7	6.6	2.5
Saskatchewan	30.2	36.4	11.0	17.1	5.2
Alberta	42.7	15.3	6.5	8.4	3.6

Box Score: Of the 35 comparisons, British Columbia is harsher on 26 and more lenient on 9.

The findings from the first 2 tables (Tables 18 – All Offences and 20 – Criminal Code – Non-Traffic) – as the broadest ‘groupings’ of offences – certainly do not show any indication that British Columbia is more lenient than the other seven jurisdictions under study. In both tables, British Columbian judges handed down more lenient sentences in only 9 of the 35 comparisons. Further, for none of the five measures used in this analysis was British Columbia found to sentence more leniently than the majority of the other provinces.

Even a comparison with Alberta – presumably one of its closest comparators – British Columbia did not appear to be more lenient. Indeed, British Columbia does not appear – overall - to sentence more leniently than any of the other seven provinces when one looks at all of the measures in these tables.

Similar findings are noted when we break down these overall or ‘all-inclusive’ groupings into the six traditional, mutually exclusive classifications of offences (i.e. offences against the person, property offences, administration of justice offences, other non-traffic criminal code offences, criminal code traffic offences, other federal statutes offences). In none of these classifications do we find that British Columbia is more lenient on the majority of the 35 comparisons. In fact, the overall ‘box score’ would suggest that the sentences in this province are more lenient in only 65 of 210 comparisons (31%). The only broad offence category which shows slightly more leniency in sentencing compared to the other five classifications is ‘Other Federal Statutes’. Even in this case though, any leniency seems to be predominantly in terms of the proportion of those cases with a custodial sentence which is greater than 3 or 6 months in length. In contrast, British Columbia sends a higher proportion of these offences to prison than any of the other seven jurisdictions under study.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	28.3	45.4	12.6	32.9	9.1
Newfoundland/Labrador	34.6	32.3	11.0	19.1	6.5
Prince Edward Island	58.1	20.3	11.8	11.4	6.6
Nova Scotia	21.3	46.3	9.9	34.0	7.2
New Brunswick	25.5	48.1	12.2	36.7	9.3
Ontario	29.2	22.5	6.6	14.0	4.1
Saskatchewan	26.6	64.9	17.3	40.7	10.8
Alberta	36.2	34.4	12.4	23.1	8.3

Box Score: Of the 35 comparisons, British Columbia is harsher on 22 and more lenient on 13.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	49.7	27.4	13.5	11.6	5.7
Newfoundland/Labrador	34.4	30.3	10.3	13.3	4.5
Prince Edward Island	41.2	18.4	7.5	10.3	4.2
Nova Scotia	27.0	26.7	7.2	16.6	4.5
New Brunswick	34.9	33.3	11.6	19.7	6.8
Ontario	37.1	14.7	5.5	6.6	2.4
Saskatchewan	32.1	43.5	14.0	18.2	5.9
Alberta	44.7	18.5	8.3	8.7	3.9

Box Score: Of the 35 comparisons, British Columbia is harsher on 25 and more lenient on 10.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	61.7	2.8	1.7	0.7	0.4
Newfoundland/Labrador	60.8	3.2	1.9	0.7	0.4
Prince Edward Island (95)	61.1	3.6	2.2	0.0	0.0
Nova Scotia	40.1	2.2	0.9	0.4	0.2
New Brunswick	42.1	2.6	1.1	0.3	0.1
Ontario	50.7	2.2	1.1	0.5	0.2
Saskatchewan	32.0	10.0	3.2	1.6	0.5
Alberta	46.2	1.6	0.7	0.4	0.2

Box Score: Of the 35 comparisons, British Columbia is harsher on 25, equal on 2 and more lenient on 8.

³⁵ This category includes such offences as failure to appear, breach of probation, unlawfully at large and failure to comply with an order.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	39.2	28.5	10.9	13.0	5.0
Newfoundland/Labrador	17.4	19.4	3.0	16.1	2.5
Prince Edward Island (46)	43.5	20.0	8.7	5.0	2.2
Nova Scotia	21.8	34.0	7.4	18.9	4.1
New Brunswick	21.2	28.6	6.0	17.3	3.6
Ontario	32.2	16.5	5.3	9.7	3.1
Saskatchewan	27.0	38.3	10.4	12.3	3.3
Alberta	38.3	15.4	5.9	8.6	3.3

Box Score: Of the 35 comparisons, British Columbia is harsher on 28 and more lenient on 7.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	8.6	34.7	3.0	19.7	1.7
Newfoundland/Labrador	30.6	14.8	4.5	3.4	1.0
Prince Edward Island	80.9	3.9	3.2	1.3	1.1
Nova Scotia	10.7	17.8	1.9	6.3	0.7
New Brunswick	14.4	11.4	1.6	2.6	0.4
Ontario	22.4	12.9	2.9	5.5	1.2
Saskatchewan	13.2	33.3	4.4	15.6	2.1
Alberta	16.1	22.8	3.7	13.8	2.2

Box Score: Of the 35 comparisons, British Columbia is harsher on 23 and more lenient on 12.

³⁶ This category includes such offences as certain weapons offences, prostitution offences, and a wide range of other crimes such as disturbing the peace.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	30.3	35.1	10.5	14.7	4.4
Newfoundland/Labrador	5.6	46.9	2.4	25.0	1.3
Prince Edward Island (67)	10.4	16.7	1.5	0.0	0.0
Nova Scotia	8.2	60.0	4.9	54.7	4.5
New Brunswick	12.6	51.6	6.5	41.9	5.3
Ontario	26.6	26.1	6.9	14.6	3.9
Saskatchewan	14.0	43.5	6.1	33.3	4.7
Alberta	22.2	49.0	10.9	43.7	9.7

Box Score: Of the 35 comparisons, British Columbia is harsher on 20 and more lenient on 15.

Subsequent to this initial ‘broad’ examination, we looked at smaller aggregations of offences using the same methodology. However, given that percentages based on small numbers can be deceptive, we have included only those offence groupings in which the three largest provinces for which we have data – British Columbia, Alberta and Ontario – had at least 100 cases in which the offender was found guilty.³⁸ In cases in which any other province had fewer than 20 cases with guilty findings, we have simply not reported the findings for that province. Finally, we have noted (in parentheses in the first column) the number of cases on which people were found guilty for those instances in the smaller provinces in which the number of guilty findings was fewer than 100.

³⁷ This classification would include - most notably - drug offences, but would also include all other federal offences other than the Criminal Code (e.g., offences under the Canada Elections Act).

³⁸ In addition, we have not reported for “residual federal statutes” that are not included in the two drug offences precisely because it is difficult to know of what they consist.

Table 27: Robbery					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	71.7	93.3	66.7	81.9	58.5
Newfoundland and Labrador (22)	100.0	95.2	95.2	85.7	85.7
Nova Scotia (79)	86.1	100.0	86.1	92.6	79.7
New Brunswick (46)	80.4	97.3	78.3	97.3	78.3
Ontario	72.8	73.4	53.5	59.4	43.3
Saskatchewan	71.3	96.1	68.5	94.8	67.6
Alberta	80.1	94.5	75.6	86.6	69.4

Box Score: Of the 30 comparisons, British Columbia is harsher on 5 and more lenient on 25.

Table 28: Sexual Assault					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	36.5	95.0	34.3	81.7	29.5
Newfoundland and Labrador (31)	54.8	70.6	38.7	41.2	22.6
Nova Scotia (39)	30.8	100.0	30.8	91.7	28.2
New Brunswick (53)	32.1	87.5	26.9	81.3	25.0
Ontario	43.2	52.7	22.8	40.5	17.5
Saskatchewan (87)	49.4	95.3	47.1	86.0	42.5
Alberta	45.0	76.3	34.4	67.8	30.5

Box Score: Of the 30 comparisons, British Columbia is harsher on 18 and more lenient on 12.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	37.0	44.5	16.3	24.3	8.9
Newfoundland/Labrador	44.4	33.3	14.6	18.5	8.1
Prince Edward Island (23)	65.2	20.0	13.0	6.7	4.3
Nova Scotia	33.5	40.7	13.7	26.9	9.0
New Brunswick	32.2	43.9	14.1	35.4	11.4
Ontario	44.4	20.4	9.1	10.1	4.5
Saskatchewan	35.4	70.2	24.9	42.6	15.1
Alberta	47.5	35.2	16.7	19.6	9.3

Box Score: Of the 35 comparisons, British Columbia is harsher on 21 and more lenient on 14.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	13.9	13.0	1.7	2.9	0.4
Newfoundland/Labrador	20.8	8.8	1.8	2.9	0.6
Prince Edward Island (66)	53.0	0.0	0.0	0.0	0.0
Nova Scotia	6.5	15.7	1.0	0.0	0.0
New Brunswick	12.4	17.6	2.2	2.0	0.2
Ontario	16.4	3.1	0.5	0.4	0.1
Saskatchewan	14.8	40.1	6.0	13.2	2.0
Alberta	24.9	12.2	3.0	2.4	0.6

Box Score: Of the 35 comparisons, British Columbia is harsher on 18, equal on 1 and more lenient on 16.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	34.8	12.4	4.2	2.9	1.0
Newfoundland/Labrador	35.4	16.7	5.7	4.2	1.4
Prince Edward Island (22)	54.5	16.7	9.1	0.0	0.0
Nova Scotia	24.2	10.8	2.6	2.4	0.6
New Brunswick	25.2	26.9	6.8	7.5	1.9
Ontario	31.4	7.3	2.3	1.2	0.4
Saskatchewan	27.0	50.6	13.6	15.7	4.2
Alberta	41.3	13.2	5.5	3.5	1.4

Box Score: Of the 35 comparisons, British Columbia is harsher on 14 and more lenient on 21.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	49.7	12.4	6.1	3.2	1.6
Newfoundland/Labrador	27.9	19.0	5.3	0.7	0.2
Prince Edward Island (84)	42.9	0.0	0.0	0.0	0.0
Nova Scotia	25.6	3.7	1.0	1.6	0.4
New Brunswick	34.1	18.3	6.2	7.2	2.4
Ontario	36.4	4.9	1.8	1.2	0.4
Saskatchewan	31.8	25.6	8.2	5.2	1.7
Alberta	40.9	7.1	2.9	2.6	1.1

Box Score: Of the 35 comparisons, British Columbia is harsher on 26 and more lenient on 9.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	63.9	70.3	44.7	45.6	29.0
Newfoundland/Labrador	62.1	67.5	41.5	42.5	26.2
Prince Edward Island (29)	79.3	47.8	37.9	30.4	24.1
Nova Scotia	47.9	69.9	33.5	48.7	23.3
New Brunswick	58.7	70.5	41.3	52.3	30.7
Ontario	61.2	39.6	24.2	22.9	14.0
Saskatchewan	50.4	78.8	39.7	47.5	23.9
Alberta	68.0	50.8	34.5	34.0	23.1

Box Score: Of the 35 comparisons, British Columbia is harsher on 27 and more lenient on 8.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	40.9	30.0	12.0	9.2	3.7
Newfoundland/Labrador	27.8	6.5	1.8	1.6	0.4
Prince Edward Island (48)	35.4	18.8	6.4	6.3	2.1
Nova Scotia	23.9	30.5	7.3	16.9	4.0
New Brunswick	27.7	26.7	7.3	6.7	1.8
Ontario	31.4	16.5	5.2	5.6	1.8
Saskatchewan	27.0	46.2	12.5	14.3	3.9
Alberta	43.8	20.6	9.0	8.9	3.9

Box Score: Of the 35 comparisons, British Columbia is harsher on 26 and more lenient on 9.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	21.7	7.7	1.6	1.3	0.3
Newfoundland/Labrador	24.4	5.1	1.2	0.0	0.0
Prince Edward Island (38)	15.8	20.0	2.7	0.0	0.0
Nova Scotia	11.5	10.7	1.2	3.6	0.4
New Brunswick	16.8	15.6	2.6	12.5	2.1
Ontario	14.6	3.4	0.5	0.8	0.1
Saskatchewan	12.9	11.1	1.4	0.0	0.0
Alberta	26.6	5.6	1.5	0.3	0.1

Box Score: Of the 35 comparisons, British Columbia is harsher on 23 and more lenient on 12.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	61.1	34.9	21.2	9.9	6.0
Newfoundland/Labrador (76)	48.7	19.4	9.3	0.0	0.0
Nova Scotia	29.5	15.7	4.6	5.9	1.7
New Brunswick	38.0	20.4	7.8	10.2	3.9
Ontario	44.8	9.6	4.3	2.4	1.1
Saskatchewan	39.3	42.4	16.7	13.9	5.5
Alberta	56.9	21.0	12.0	6.4	3.6

Box Score: Of the 30 comparisons, British Columbia is harsher on 27 and more lenient on 3.

Table 37: Fail to Appear					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	58.5	0.8	0.4	0.0	0.0
Nova Scotia (40)	30.0	0.0	0.0	0.0	0.0
New Brunswick (62)	59.7	0.0	0.0	0.0	0.0
Ontario	43.9	1.5	0.7	0.6	0.2
Saskatchewan	19.5	1.7	0.3	0.0	0.0
Alberta	44.0	1.3	0.6	0.4	0.2

Box Score: Of the 25 comparisons, British Columbia is harsher on 9, equal on 6 and more lenient on 10.

Table 38: Breach of Probation					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	69.5	3.0	2.1	0.4	0.3
Newfoundland/Labrador	59.4	4.4	2.6	1.3	0.7
Prince Edward Island (57)	68.4	5.4	3.6	0.0	0.0
Nova Scotia	37.9	4.7	1.8	1.0	0.4
New Brunswick	37.3	3.3	1.2	0.0	0.0
Ontario	58.5	2.0	1.2	0.4	0.2
Saskatchewan	34.8	11.0	3.8	1.7	0.6
Alberta	48.4	2.7	1.3	0.5	0.2

Box Score: Of the 35 comparisons, British Columbia is harsher on 19, equal on 1, and more lenient on 15.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	87.3	4.6	4.0	2.3	2.0
Nova Scotia (51)	62.7	0.0	0.0	0.0	0.0
New Brunswick (34)	67.6	0.0	0.0	0.0	0.0
Ontario	75.6	5.0	3.8	0.2	0.2
Saskatchewan	81.4	14.5	11.8	1.5	1.2
Alberta	78.4	1.1	0.8	0.3	0.2

Box Score: Of the 25 comparisons, British Columbia is harsher on 22 and more lenient on 3.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	45.1	1.3	0.6	0.8	0.3
Newfoundland/Labrador	60.8	0.0	0.0	0.0	0.0
Prince Edward Island (21)	42.9	0.0	0.0	0.0	0.0
Nova Scotia	41.4	0.5	0.2	0.0	0.0
New Brunswick	45.9	1.1	0.5	0.0	0.0
Ontario	42.0	1.3	0.6	0.3	0.1
Saskatchewan	25.0	5.5	1.4	0.7	0.2
Alberta	41.7	0.8	0.3	0.2	0.1

Box Score: Of the 35 comparisons, British Columbia is harsher on 29, equal on 2, and more lenient on 4.

Table 41: Weapons					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	41.3	37.6	15.2	18.0	7.3
Newfoundland/Labrador (48)	27.1	25.0	6.4	16.7	4.3
Nova Scotia	29.3	36.6	10.7	12.2	3.6
New Brunswick	14.7	36.8	5.4	21.1	3.1
Ontario	38.6	22.2	8.6	13.3	5.1
Saskatchewan	36.4	55.1	20.1	19.6	7.1
Alberta	44.2	20.6	9.1	11.4	5.0

Box Score: Of the 30 comparisons, British Columbia is harsher on 25 and more lenient on 5.

Table 42: Prostitution					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	31.8	0.0	0.0	0.0	0.0
Nova Scotia (26)	15.4	0.0	0.0	0.0	0.0
Ontario	15.3	1.9	0.3	1.9	0.3
Alberta	14.5	0.0	0.0	0.0	0.0

Box Score: Of the 15 comparisons, British Columbia is harsher on 3, equal on 8, and more lenient on 4.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	16.1	0.0	0.0	0.0	0.0
Newfoundland/Labrador	6.7	0.0	0.0	0.0	0.0
Nova Scotia (36)	2.8	0.0	0.0	0.0	0.0
New Brunswick (75)	9.3	0.0	0.0	0.0	0.0
Ontario	8.5	0.0	0.0	0.0	0.0
Saskatchewan (73)	8.2	16.7	1.4	0.0	0.0
Alberta	14.6	0.0	0.0	0.0	0.0

Box Score: Of the 30 comparisons, British Columbia is harsher on 6, equal on 22, and more lenient on 2.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	42.0	28.1	11.5	12.3	5.1
Newfoundland/Labrador (93)	19.4	17.6	3.3	17.6	3.3
Prince Edward Island (28)	50.0	14.3	7.1	7.1	3.6
Nova Scotia	21.1	35.0	7.4	25.0	5.3
New Brunswick	29.3	29.6	8.6	18.3	5.3
Ontario	34.2	14.0	4.8	8.1	2.8
Saskatchewan	25.3	26.4	6.7	7.1	1.8
Alberta	41.7	14.0	5.8	7.9	3.3

Box Score: Of the 35 comparisons, British Columbia is harsher on 27 and more lenient on 8.

³⁹ This is a residual category that includes all of the offences not otherwise covered in the earlier groupings.

Table 45: Impaired Driving Offences					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	4.1	17.3	0.7	9.1	0.4
Newfoundland/Labrador	26.3	14.2	3.7	2.4	0.6
Prince Edward Island	85.7	1.0	0.9	0.5	0.4
Nova Scotia	7.2	10.9	0.8	5.0	0.4
New Brunswick	9.5	9.5	0.9	2.9	0.3
Ontario	12.6	8.4	1.0	3.6	0.4
Saskatchewan	6.5	11.5	0.7	7.0	0.5
Alberta	7.2	8.8	0.6	4.4	0.3

Box Score: Of the 35 comparisons, British Columbia is harsher on 17, equal on 4, and more lenient on 14.

Table 46: All Other Criminal Code Traffic Offences					
	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	33.9	46.7	15.8	27.0	9.1
Newfoundland/Labrador (94)	53.2	16.3	8.6	6.1	3.2
Prince Edward Island (52)	59.6	22.6	13.5	6.5	3.8
Nova Scotia	31.3	27.4	8.6	8.2	2.6
New Brunswick	37.6	13.6	5.1	2.3	0.9
Ontario	56.5	16.4	9.3	7.0	3.9
Saskatchewan	31.0	45.5	14.1	20.4	6.3
Alberta	50.3	30.5	15.4	19.0	9.6

Box Score: Of the 35 comparisons, British Columbia is harsher on 29 and more lenient on 6.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	26.3	1.8	0.5	0.0	0.0
Newfoundland/Labrador	3.4	0.0	0.0	0.0	0.0
Prince Edward Island (20)	5.0	Sentence Length Unknown for the 1 prison sentence			
Nova Scotia	3.3	0.0	0.0	0.0	0.0
New Brunswick	7.1	12.5	0.9	0.0	0.0
Ontario	12.3	3.8	0.5	1.8	0.2
Saskatchewan	7.8	2.8	0.2	0.0	0.0
Alberta	13.2	4.9	0.6	1.8	0.2

Box Score: Of the 31 comparisons, British Columbia is harsher on 12, equal on 9, and more lenient on 10.

	Percent Prison	% prison >3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	40.7	49.8	20.1	21.0	8.5
Newfoundland/Labrador (89)	24.7	61.9	14.8	38.1	9.1
Nova Scotia	38.3	81.5	31.2	75.9	29.1
New Brunswick	42.8	78.0	33.3	66.1	28.3
Ontario	48.8	37.1	18.1	20.9	10.2
Saskatchewan	27.8	91.8	25.5	76.7	21.3
Alberta	49.2	76.6	37.7	69.9	34.3

Box Score: Of the 30 comparisons, British Columbia is harsher on 7 and more lenient on 23.

It should be noted that the ratio of the number of cases in which there was a guilty finding for drug possession and drug trafficking differed in a rather peculiar way for British Columbia in comparison with the other provinces. These data are presented in the next table. For reasons that we do not fully understand, it would seem that in British Columbia there are, relatively speaking, more cases of drug trafficking. One possibility is that in this jurisdiction - in comparison with the other provinces - charging practices for drug matters are different.

	Drug Possession	Drug Trafficking	Ratio: Drug Possession to Drug Trafficking
British Columbia	1085	1898	0.57
Newfoundland and Labrador	118	89	1.33
Prince Edward Island	20	15	1.33
Nova Scotia	242	141	1.72
New Brunswick	224	138	1.62
Ontario	3691	2661	1.39
Saskatchewan	463	263	1.76
Alberta	1238	722	1.71

	Percent Prison	% prison > 3 months	% guilty with > 3 months prison sentence	% prison > 6 months	% guilty with > 6 months prison sentence
British Columbia	35.7	2.2	0.7	2.2	0.7
Nova Scotia (27)	29.6	0.0	0.0	0.0	0.0
New Brunswick (43)	32.6	0.0	0.0	0.0	0.0
Ontario	37.6	2.8	1.0	1.4	0.5
Alberta	23.6	2.4	0.6	0.0	0.0

Box Score: Of the 20 comparisons, British Columbia is harsher on 16 and more lenient on 4.

As we have already noted, we have a certain level of unease with the ‘box score’ approach. Its only real advantage is that it allows one to make overall statements. Generally, it appears that in the majority of comparisons involving the smaller offence group comparisons (426 of 716 comparisons - or 59.5%), British Columbian sentences were found to be harsher than sentences in the other provinces for which sufficient relatively comparable data are available. In an additional 53 comparisons (7.4%), the levels of severity were the same and in 237 comparisons (33.1%), sentencing in British Columbia was more lenient. Looked at somewhat differently, in 3 of the 23 ‘specific’ offence groupings (and in none of the larger groupings that we initially presented), the majority of the comparisons suggested more lenient sentences in British Columbia.

⁴⁰ It is likely that the majority of these offences are ‘failure to comply with an order’ or ‘failure to comply with a disposition.’ If a person committed an offence when under age 18, but failed to comply after age 18 with an order or disposition handed down under the YCJA, the charge could be a YCJA charge.

Within this context, we suggest that it would be safe to conclude - on the basis of the most recent data that we have been able to examine carefully - that British Columbia does not stand out as either exceptionally lenient or as exceptionally harsh in its sentencing practices. This is not to say that for some measures for some offences in comparison to some provinces, British Columbia is not more lenient. Nor is it to say that for some measures for some offences in comparison to some provinces, British Columbia is not harsher. We are simply concluding that – overall – *British Columbia in its sentencing practices does not look dramatically out of line* with the portion of the rest of Canada for which we have comparable data.

d) A Final Word

While we are confident in the methodology that we have employed, it is important to show some caution in interpreting our findings as definitive statements of inter-jurisdictional variability in the degree of punitiveness or harshness shown by sentencing judges. Specifically, it is essential to place our findings within the context of a number of broader factors which also influence sentence severity but are largely beyond the influence of the judiciary⁴¹. The most fundamental limitation of the conclusions drawn about sentencing patterns in British Columbia relative to elsewhere in Canada is rooted in the assumption – throughout our analyses – of the principle of *ceteris paribus* - ‘all things being equal’. Most obviously, the severity of the sentence handed down is principally a reflection of the seriousness of the offence and the blameworthiness of the offender. Our analyses have assumed that these factors or characteristics – on an aggregate level - are the same across provinces, permitting direct comparisons of sentence severity.

However, there is *no* reason to believe - for most of the offence categories that we have examined – that the seriousness of the cases is equal across the eight jurisdictions under study (i.e., British Columbia and the seven provincial comparators). Indeed, inter-jurisdictional differences in sentence severity may simply be a reflection of initial differences in the nature of the offences being committed across provinces. Illustratively, we note that the proportion of cases withdrawn in 2005/6 does, in fact, vary considerably across our eight provinces. In British Columbia, CCJS data suggest that 26% of cases ended up with a “stay/withdrawn” as the most serious decision. On this same measure, the seven comparison jurisdictions varied from a low of 16% for New Brunswick and 23% for Newfoundland & Labrador to a high of 33% for Nova Scotia and 38% for Ontario. Clearly, our findings may be affected by such inter-provincial differences.

Further, sentence severity is also influenced by procedural factors such as the practices of police charging or of Crown Attorney discretion. For instance, the police may choose to focus a greater proportion of their resources on certain types of offences in one jurisdiction than in another. In the case that the police in the former province – in contrast with the latter - decide to prosecute a larger proportion of the minor offences that come to their attention (e.g., cases involving possession of very small amounts of marijuana clearly for

⁴¹ The impact of these wider factors on sentencing severity is beyond the scope of this report.

personal use), this practice will likely have the effect of lowering the severity of sentences for that offence in this jurisdiction (relative to that in the other jurisdiction).

Similarly, Crown Attorneys in one province may be more willing to accept pleas for lesser offences (e.g., a plea of guilty for common assault when the facts would likely have supported a charge of assault causing bodily harm) than those in another province. In this particular example, the result would be a larger proportion of relatively serious common assaults in the former jurisdiction relative to the latter jurisdiction, simultaneously raising the sentence severity for common assault as well as that for assault causing bodily harm. Indeed, even assuming that the nature of the original offences that come to the attention of the police are the same across provinces (and there is no reason to believe that they are), and even assuming that police charging practices are similar (and, again, there is no reason to believe that they are), there may well be different decisions made by Crown Attorneys about which cases are in the public interest to prosecute which would differentially affect sentence severity across jurisdictions.

The second problematic assumption of ‘all things being equal’ underlying our findings relates to pre-trial detention. The severity of the sentence handed down after an individual has been found guilty is also affected by the punishment that the offender experienced as a result of his or her legitimate treatment by the criminal justice system. We are referring – of course – to the controversial practice of taking into account the length of time that a convicted offender spent in pre-trial detention.

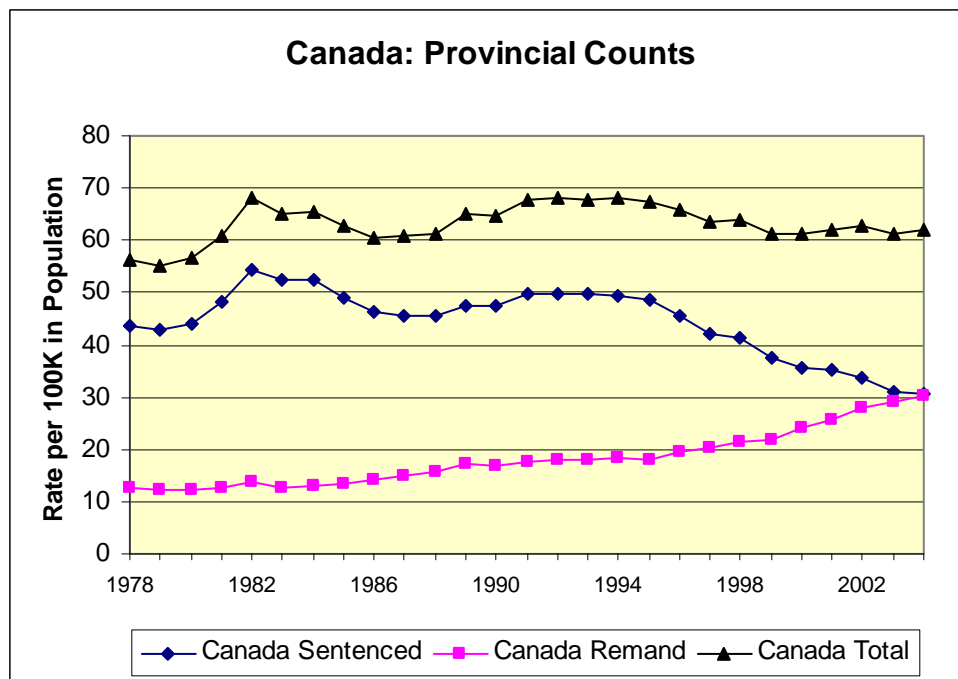
For our current purposes, we do not need to consider the delicate question of the amount of credit that a person should receive for time in pre-trial detention. It is sufficient to point out, simply, that because most convicted prisoners do not spend their full sentence in prison, judges have generally given more than a day’s credit toward the actual sentence for each day served in pre-trial detention. As such, actual sentences are distorted – to some degree – by this practice. Indeed, under our rules, the sentence which is handed down in court (and which is reported in CCJS datasets such as the one that we are examining) is, in fact, the sanction that the convicted offender would serve, already including any reduction or ‘credit’ for time spent in pre-trial detention. As such, sentences look more lenient than they actually are precisely because part of the sanction is, in effect, served prior to the finding of guilt. The problem with this ‘distortion’ in sentences – at least for inter-jurisdictional comparisons of sentence severity – is twofold.

First, there may be some jurisdictional variation in the way in which ‘credit’ is calculated for convicted individuals who have served time in pre-trial detention. It is the responsibility of the judge to reduce the sentence by the amount equivalent to the time that the convicted offender had served in pre-trial detention. As such, any inter-provincial differences in the determination of the ‘equivalent to the time served’ factor reduce – to some extent – the comparability of sentence severity across jurisdictions. For instance, while two judges from two different provinces may agree on the appropriate sentence (e.g., 12 months in prison) – given the offence, the offender’s criminal record and any other factors that were relevant – the actual sentences that they hand down (and are recorded) may be different. Specifically, the ‘standard’ established in one jurisdiction for equivalence to time served in pre-trial detention (e.g., ‘two for one credit’) may be higher than that adopted in the other

jurisdiction. The result would be an apparent – albeit artefactual - difference in sentence severity between these two provinces⁴².

This initial problem is further exacerbated by inter-jurisdictional variation in the rate of detention of offenders prior to trial. This variability across provinces can be illustrated in Figures 3 – 6 (below) which present longitudinal data of the rate of the remand population for Canada as a whole as well as for British Columbia, Ontario, and Alberta. The top line represents the total imprisonment rate for provincial prisons and – for our current purposes – is less important than the two bottom lines. The first of these latter lines constitutes the rate of (provincial) sentenced offenders while the second reflects the rate of remand offenders.

Figure 3: Provincial Imprisonment Rates



⁴² Additional inter-jurisdictional variation in the impact of pre-trial detention on sentencing may occur through procedural (versus purely judicial) practices. For instance, it appears to that at least in some locations, prosecutors seem to be more willing to drop charges after a suspect has spent a certain amount of time in pre-trial detention.

Figure 4: British Columbia – Provincial Imprisonment Rates

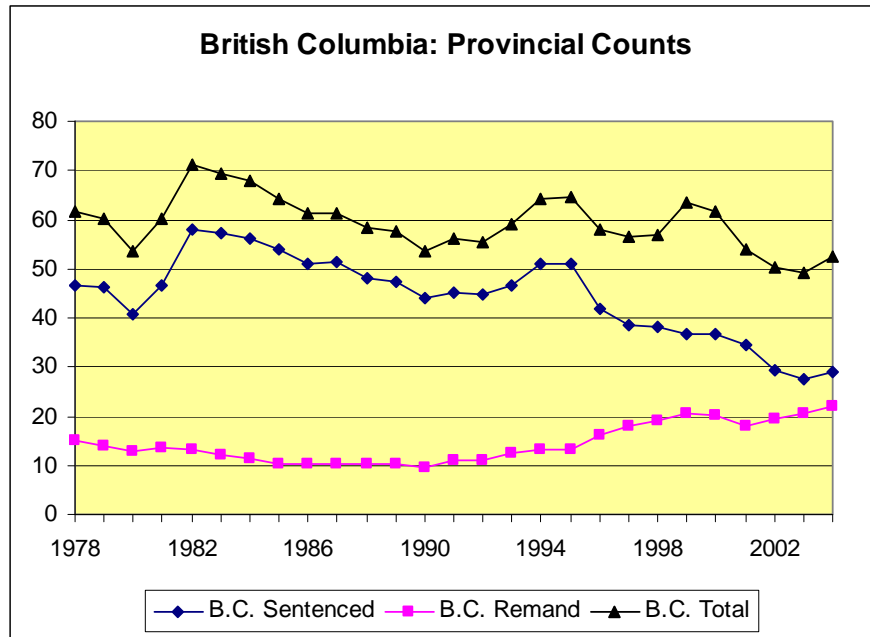


Figure 5: Alberta – Provincial Imprisonment Rates

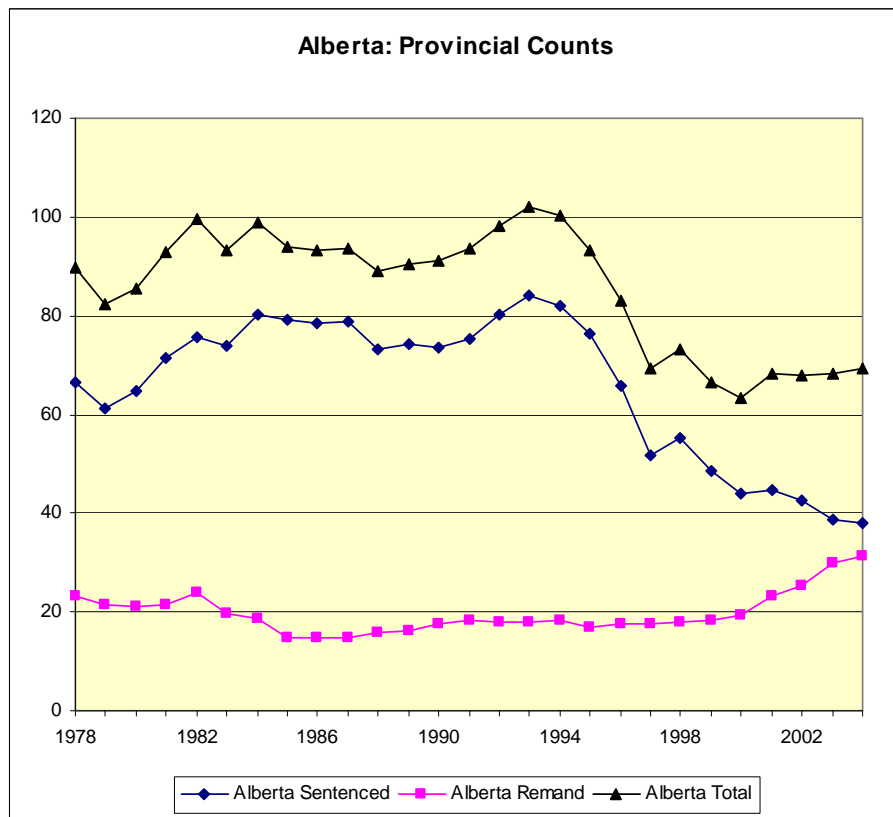
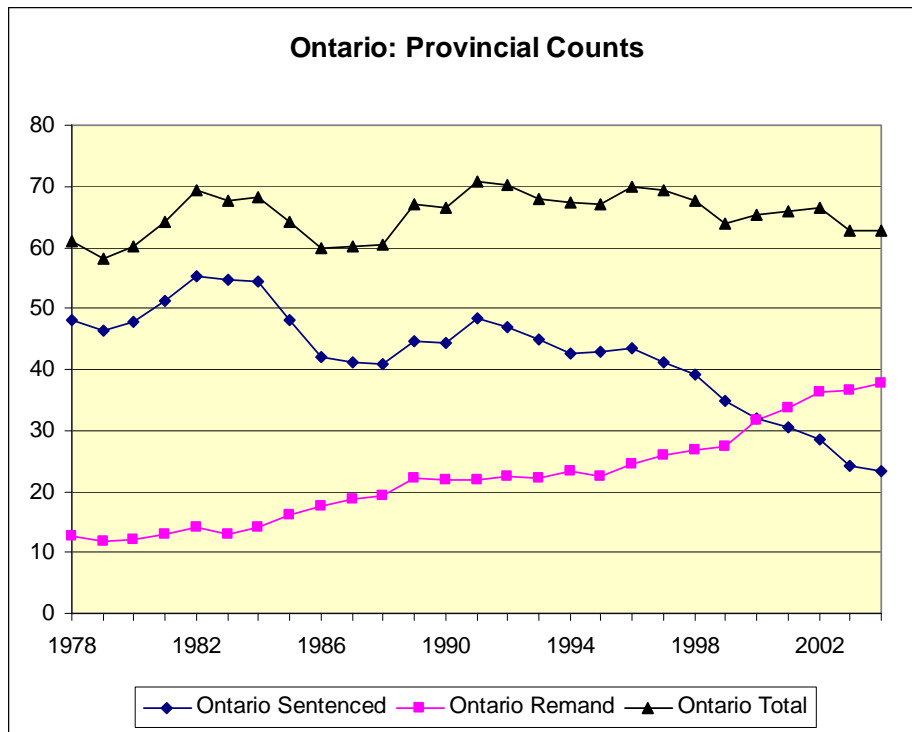


Figure 6: Ontario – Provincial Imprisonment Rates



Most notably, there appears to be a compensatory effect for Canada overall as well as for each of these three provinces. Specifically, an increase in the pre-trial remand population appears to be ‘counter-balanced’ – albeit not perfectly in many cases - by a decrease in the sentenced population in provincial prisons. Indeed, this finding would seem to (indirectly) corroborate the notion of ‘equivalence for time served in pre-trial detention’. More importantly for our current purposes, while one also notes a rise over time in the remand population for every province, the size of the increase varies considerably across jurisdictions.

Illustratively, there were approximately 30 people being held in pre-trial detention per hundred thousand in the general population for Canada as a whole in 2004. The equivalent figure for Alberta was about 30 while it was close to 40 for Ontario for the same year. The rate for British Columbia was roughly 22. These rates can be contrasted with that – for instance – of Nova Scotia in which there were approximately 12 people being held in pre-trial detention per hundred thousand in the general population. Indeed, the rates of detaining people prior to trial seem to vary rather dramatically across jurisdictions.

Given these inter-provincial differences, the effect on sentencing of this remand population is also going to vary from province to province. Specifically, the higher the rate of pre-trial detention, the more distortion there is likely to be in the severity of the sentences. Any attempt to estimate this impact is further complicated by the fact that we are unable to break down these overall figures by offence, nor do we have any idea how many of those who

were in pre-trial detention were eventually found guilty or how many would normally have received a prison sentence. And, of course, the impact of this factor on a given offence or offence category is going to depend on exactly who is being kept in pre-trial detention. In the case that the growth in pre-trial detention in one province is more or less the same across all offences for all types of offenders, whereas the growth in another jurisdiction is concentrated in a particular offence category (e.g., violence, or drugs), the impact of pre-trial detention or of changes in the rate of pre-trial detention on sentencing severity would be different in these provinces.

Finally, we suggest that there is one additional caveat which needs to be considered when interpreting our findings. In the analyses presented in this report, we have focused largely on prison sentences. Specifically, we present figures on the proportion of those who are found guilty who are given prison sentences, the proportion of those prison sentences that are over 3 or 6 months, the average prison sentence, etc.

We have used this approach for one good, and one unfortunate, reason. The advantage of this focus on custodial sentences is one that we have already discussed. Specifically, we suspect that when people think of sanctions for criminal offences, they probably think of prison sentences. We acknowledge that it is likely that most people – if pressed – would probably guess that many of those found guilty of minor offences do not go to prison. However, crime is generally associated with prison and when people are concerned about sentence severity, they are probably concerned largely with the more serious offences which are more likely to result in prison sentences. Therefore, at the top end of the severity scale, a focus on prison sentences as a measure of sentence leniency/severity obviously makes sense. Conditional sentences of imprisonment, for example, are meant to be substitutes only for sentences of up to two years. Hence one can be confident that a three-year sentence is harsher than a two-year sentence.

However, a focus on prison sentences becomes considerably more problematic at the bottom end of the severity scale – precisely where most sentences fall. For example, it becomes debatable whether many people of modest means would trade a \$30,000 fine for a 30-day prison sentence. Similarly, it is not clear that people would generally trade a sentence of 12 months of house arrest (involving continuous confinement in one's home except for previously arranged doctors' visits or religious services) for a 30-day 'straight' prison sentence. Indeed, it is not certain – we expect – that prison would necessarily be perceived as more severe in these examples, at least for all people.⁴³

Within this context, the variation in the use of non-prison sanctions across jurisdictions can easily distort sentence severity measures based solely on prison sanctions. Illustratively, one can imagine a situation in which judges in one jurisdiction are willing to craft quite punitive conditional sentences instead of - for example - sentences of 6-18 months in prison. Such a non-prison sanction might include a large fine and a conditional sentence of imprisonment of two years less a day (that included house arrest for all periods of time other than when the

⁴³ In fact, criminological research has shown that members of some (ethnic/racial) groups are more likely than members of other (ethnic/racial) groups to choose a prison sentence over a community sanction. This choice reflects - in large part - their lack of confidence that a community sanction would not lead to a breach and, by extension, simply a longer prison sentence.

offender was working) as well as the payment of all of the money received from employment as restitution for the victim. This hypothetical sanction can be compared to that handed down in a different province in which the offender might have received an 8-month prison sentence - 4 of which were served in prison, and 4 of which were served in the community with few restrictions.

For our purposes of inter-jurisdictional comparisons of sentence severity, the problems raised by this hypothetical scenario are twofold. On the one hand, our focus on custodial sanctions would automatically consider the prison sentence to be harsher than the non-custodial sanction. Given the onerous conditions placed on the conditional sentence, it is not entirely obvious that a jurisdiction which uses such punitive non-custodial sentences should be considered more lenient than one which uses relatively light prison sanctions.

On the other hand, our focus on prison vs. non-prison equates, in effect, the fairly punitive 'non-custodial' sentence with any other non-prison sanctions such as a small fine. In other words, we have no ability to scale 'non-custodial' sentences in terms of varying degrees of severity/leniency. Clearly, provinces may also differ in the severity of non-custodial sentences handed down to convicted offenders. It is not implausible to imagine jurisdictions which use 'a heavy hand' for the more serious offences (for which custodial sanctions are given) while treating less serious offences with considerably more leniency. These sentencing patterns may be different from other provinces which hand down relatively equally harsh (or lenient) sanctions to all offences.

In a small scale study, one could conceivably imagine getting members of the public to rate the seriousness of a large number of different non-custodial sentences in order to be able to place them all on a single dimension. Unfortunately, such an exercise is not possible – even in theory - in the case of a study such as this one. Indeed, we were not able to obtain any conditions associated with sentences that did not result in imprisonment, rendering it impossible for us to rank-order them in terms of severity.

This problem of scaling becomes more problematic when one considers those sentences which have both a custodial and non-custodial component. The available data on sentences only describe the most serious sanction (in the case of multiple sanctions) handed down for a particular offender. As such, an individual who is given a 3-month custodial sentence as well as a fine or probation following completion of the prison sanction would only be described in the dataset as having received a 3-month prison sentence.

This inability to examine 'aggregate' sentences can easily distort sentence severity as well. For instance, one can imagine a scenario in which judges from different jurisdictions agree on the amount of severity that a particular offender should receive. However, this same degree of harshness can be crafted in a number of different ways. In one province, judges may prefer to use straight custodial sentences (for instance, a hypothetical sanction of 6 months). In another jurisdiction, judges may be more likely to combine a slightly shorter custodial sentence (e.g., 4 months) with more onerous non-custodial sanctions (e.g., fine, probation with multiple conditions, restitution). Our dataset would only record the length of the custodial component of each sentence. As such, we would consider the first province to be harsher than the second one. This distinction may not be entirely accurate.

Clearly, we are left in a situation in which we are forced to equate all non-prison sanctions and have only the length of prison sentences to distinguish varying degrees of harshness.⁴⁴ It is precisely in recognizing the limitations of this approach that we have presented five different measures of sentence severity - two of which (proportion of those found guilty getting prison sentences of more than 3 months, and proportion of those found guilty getting prison sentences of more than 6 months) combine whether or not a person is sentenced to prison with the length of that prison sentence. These two measures might be abbreviated as ‘the proportion of sentenced prisoners who get relatively long prison sentences’.

In sum, our findings are not without limitations. Indeed, they must be interpreted within the context of these broader factors. In the end, the question about whether sentences in British Columbia are out of line with those in other Canadian provinces in terms of their severity/leniency is a legitimate question to be asked by British Columbians. What we have done in this section of the report is give the best possible answer, given the data currently available. Certainly within the context of these data (with their inherent limitations), we are confident in our conclusion that sentences in British Columbia are not – overall – more lenient than sentences, generally, in Canada. Indeed, the best empirical evidence available supports this conclusion. Further, we could find no compelling evidence to the contrary. Specifically, affirmations that sentences in British Columbia are more lenient than sentences in Canada generally appear to us to be either simply anecdotal or selective in nature.

Part IV – Conclusions

Overall, we are left with dramatically different stories. Certainly in terms of the public’s view of sentencing, British Columbia is perceived to be more lenient than elsewhere in Canada. In contrast, the best available empirical data would suggest that British Columbia does not appear to stand out as either exceptionally lenient or as exceptionally harsh – overall – in its sentencing practices when compared with the rest of Canada. Perhaps the best way of integrating these two pictures of sentencing practices in this jurisdiction would be to highlight a little of our own ignorance of sentencing patterns across the 13 jurisdictions in Canada.

Specifically, one of us has been studying and carrying out research on sentencing for about 30 years; the other has ‘only’ been systematically studying issues related to sentencing for about 8 years. We have been working with Statistics Canada sentencing data throughout this decade. In particular, we have been studying imprisonment trends in Canada (and elsewhere) for more than five years. Despite this ‘experience’, neither of us had any idea - before we started this project - how British Columbia would compare with other provinces on the measures we have presented in this report.

⁴⁴ The issue of “interchangeability” of punishment, in principle and in practice, is discussed in detail in Morris, Norval and Michael Tonry (1990) *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System*. New York: Oxford University Press.

Particularly given our own degree of prior (lack of) knowledge of these comparisons, it is extremely unlikely that a measurable proportion of British Columbians who suggest that sentences are too lenient have much systematic information on which to base their conclusion. We are not being critical of residents of this jurisdiction who hold these beliefs. As we have pointed out, views of sentencing are best seen as ‘beliefs’ rather than inferences or judgments based on a careful analysis of the facts of sentencing.

a) Interpreting Public Views of Sentencing

In fact, it is well known within the criminological field that public opinion polls – in general - are problematic as a reflection of formed attitudes on criminal justice issues for a number of different reasons. Most obviously, findings from polls such as those reporting that Canadians generally – and British Columbians, in particular – think that sentences are too lenient are often a reflection of the methodologies employed. Specifically, the questions assume that the respondent is knowledgeable about the topic and, by extension, his/her answers are informed.

Illustratively, Roberts, Crutcher and Verbrugge (2007)⁴⁵ report that respondents to a nationally representative survey of Canadians were given a detailed definition of a ‘mandatory minimum sentence’ and subsequently were asked to name which offences - other than murder - had mandatory minimums. 43% could not name any of the 31 offences that carry mandatory minimums, and only 19% mentioned impaired driving offences. Further, only 6% mentioned any of the firearms offences that currently have these penalties. Nevertheless, 58% of the respondents in the national poll indicated that they thought mandatory minimum sentences were a ‘good idea’ – a finding that echoes similar research in the U.S. and Australia.

Similarly, respondents are rarely given a choice between harsher sanctions and other more lenient alternatives. For instance, Roberts (2003)⁴⁶ notes in his study of Canadian opinions regarding mandatory minimum sanctions that public opinion polls do not generally give the respondents the ability to choose between mandatory sentences and the obvious alternative (i.e. allowing judges to determine sanctions). In fact, Roberts, Crutcher and Verbrugge (2007) reported that respondents to a nationally representative survey in Canada were asked whether they “agree or disagree that there should be some flexibility for a judge to impose less than the mandatory minimum sentence under special circumstances” (p. 96). The results show “strong support for the concept of judicial discretion” (p.96): 74% agreed with the idea (30% strongly agreed, and 44% somewhat agreed). Similarly, 72% agreed with the idea that a court should be allowed to impose a lesser sentence as long as the judge has to provide a written justification for a decision in which he or she goes below the mandatory minimum sentence. Further, 68% agreed with the idea that judges should be able to sentence below the

⁴⁵ Roberts, Julian V., Nicole Crutcher and Paul Verbrugge. (2007) Public Attitudes to Sentencing in Canada: Exploring Recent Findings. *Canadian Journal of Criminology and Criminal Justice*, 49, 75-107.

⁴⁶ Roberts, Julian V. (2003). Public Opinion and Mandatory Sentencing. *Criminal Justice and Behavior*, 30, 483-508.

mandatory minimum term “if Parliament had outlined clear guidelines for the exercise of discretion...” (p. 97).

Indeed, it would seem that the Canadian public wants Parliament to give some guidance on sentencing. If told that there are only two choices – no guidance on minimum sentences or mandatory minimums – they will choose the latter. On the other hand, if the public is given a middle ground option of what is, in effect, a presumptive minimum sentence – an option similar to those available in other countries – Canadians clearly prefer a sentencing structure that blends guidance and discretion.

Further, the questions on opinion polls are typically asked in such a way that thoughtful answers are not possible. Specifically, the use of general questions masks more thoughtful and nuanced attitudes which emerge from more specific questions about particular cases. For instance, respondents are generally not asked to consider the actual or opportunity costs of harsher sanctions or the fact that many sentences (in particular, mandatory minimum sentences) violate the principle of proportionality in sentencing. As Doob (2000)⁴⁷ notes, a survey of Ontario public attitudes on adult and youth crime issues demonstrated that by reminding Canadians that an offender would – if imprisoned – be released after a few months, prison became a less attractive sentence. Further, when Canadians are told the cost of incarceration, the preferred sanction shifts somewhat away from imprisonment.

Corroborating this limitation of public opinion polls, Roberts (2003) makes reference to a study on the public’s views of mandatory sentencing laws which found that part of the popular support for 3-strikes sentencing laws is derived from people who only think about this legislation in broad, abstract terms. For instance, 88% of respondents supported the notion of harshly punishing third-time felony offenders. In contrast, only 17% of these same people indicated support for concrete sentences presented to them that would be imposed as a result of 3-strikes laws. Clearly, it would appear that people may not be thinking of actual cases when indicating support for harsh mandatory sentences. In other words, “[t]he mandatory sentence appeals to the public in principle, but once confronted with actual cases, people quickly [abandon] their position and express a preference for less punitive punishment” (p.501).

This phenomenon may be explained – in part – by the fact that consideration of mandatory sentences for individual cases calls attention to violations of proportionality – a principle that the public has been shown to strongly support. An equally plausible explanation may be rooted in what is referred to as the “human face of sentencing”. When people are forced to see the guilty individual as a real person rather than an abstract (faceless) ‘offender’, they tend to be less punitive. In fact, one experiment with public opinion (Varma, 2006⁴⁸) found

⁴⁷ Doob, Anthony N. Transforming the Punishment Environment: Understanding Public Views of What Should be Accomplished at Sentencing. *Canadian Journal of Criminology*, 2000, 42, 323-340.

⁴⁸ Varma, Kimberly N. (2006) Face-ing the Offender: Examining Public Attitudes Towards Young Offenders. *Contemporary Criminal Justice Review*, 9 (2), 175-187.

that respondents who were given *any* physical description of the offender were less likely to recommend imprisonment.

While we can arguably ‘explain away’ the public’s negative opinions of sentencing, we are clearly not suggesting that they can – nor should – be ignored. Indeed, if having confidence in public institutions like the criminal justice system is important – which we think that it is – these attitudes (despite likely being largely uninformed, superficial, incomplete and, in some cases, misrepresented) need to be conceptualized as an area of concern in their own right. In fact, the research on the methodological limitations of opinion polls can be useful in mapping out potential avenues to address the public’s unfavourable ratings of the criminal justice system in general and sentencing practices, in particular.

b) Changing Public Views

As we already briefly discussed in the first section of this report, it is not surprising that residents of British Columbia believe that sentences in their province are too lenient. Indeed, this message is being communicated to them through multiple sources (e.g., media, politicians, academics, etc.), further engraining its ‘validity’. As this report has demonstrated, this ‘information’ may not always be accurate. Simplistic comparisons of single cases or comparisons on single measures across aggregated provinces may provide only a partial (and, as such, distorted) picture of sentencing patterns in British Columbia. However, the problems with the ‘message’ being given to the public extend well beyond this limitation.

i) Additional Information on Sentencing Decisions

Most obviously, the members of the public receive a substantial amount of their ‘knowledge’ from the media. Unfortunately, this source of information is routinely selective in nature. Particularly in terms of articles reporting sentences handed down to convicted offenders, the information is often presented in a manner that turns what might otherwise be an ordinary event into a ‘story’ – that is, it suggests that the sentence was not harsh enough. With only a very limited description of the case itself, any reasonable person would likely conclude that the sanction was, in fact, inappropriately too lenient.

In fact, this hypothesis was explored in detail in a series of criminological studies conducted in the 1980s within the Canadian context⁴⁹. Essentially what was done in a number of these studies was to create equivalent groups of people who were given different kinds of information on sentences being handed down by the court. For our current purposes, several of these studies took the descriptions of sentences as well as the justifications for them from ordinary Canadian newspapers. They were presented to a first group of people who were asked to read these reports and to evaluate the appropriateness of the sentence. A second - but equivalent - group of individuals was given a different set of information.

⁴⁹ Doob, A. N. and J.V. Roberts. An analysis of the public's view of sentencing. A report to the Department of Justice, Canada. October, 1983. Doob, A. N. and Roberts, J. V. Public punitiveness and public knowledge of the facts: Some Canadian Surveys. In Walker, Nigel and Hough, Mike (eds.) *Public attitudes to sentencing: Surveys from five countries*. Cambridge Studies in Criminology, LIX.(Gower: 1988) Roberts, J. V. and Doob, A. N. (1990) Media influences on public views of sentencing. *Law and Human Behaviour*, 1990, 14(5), 451-468.

Specifically, they were asked to read material from the actual court hearings – e.g., transcripts of the ‘reasons for sentence’ from the judge. The findings showed that those who read the judge’s own explanation for the sentence tended to view the sanction in a more favourable light than did those who read the report of the sentence as filtered through the eyes and ideology of the newspaper reporter.

Within this same context, a more elaborate – and more informative – study on this topic was recently carried out in Victoria, Australia⁵⁰. The working assumption of this research was not only that people do not have the same information that the judge had when sentencing. Rather, it was also assumed that people do not understand the framework in which sentences are handed down. As such, this study attempted to educate ordinary members of the public about sentencing before presenting the information about the sentence. The goal was to examine whether people actually are more punitive than judges when given ‘the whole story’.

Actual cases were presented to ordinary members of the public by the judge who handed down the sentence. Cases were chosen that involved serious offending (i.e. an armed robbery with minimal violence with an unloaded gun, rape at knifepoint by a neighbour of the victim, multiple stabbings, and a theft of a million dollars worth of goods from a company by two employees). Employees in 32 workplaces participated in this study by attending two sessions, typically a week apart. In the first, the employees listened to a 70-minute general talk about sentencing. In the second, the judge presented his sentencing judgement which included the facts of the case, the circumstances of the offender, and information about the law and current sentencing practice. The judge did not point to a particular sentence or possible range of sentence. Participants were told that they were not bound by sentencing law or practice.

In three of the four cases, the median of the sentences imposed by over 100 participants per case was *less* than the court’s actual sentence. In these three cases, between 63% and 86% of the respondents would have handed down a sentence that was more lenient than the sentence of the court. In the fourth case (in which only 35% suggested a sentence more lenient than the actual sentence), the median sentence recommended by ordinary people was 3.2 years compared to the court’s sentence of 3 years. The researchers of this study concluded that “[t]he results cast doubt on the populist view of judicial sentencing as lenient, and, hence, the wisdom of increasing the severity of sentences to satisfy what was believed to be a harsher public” (p. 779). For our current purposes, it underlines the impact of more complete – versus partial or selective – reporting of sentencing on the public’s view of the appropriateness of the sanction.

ii) Additional Information on Sentencing Laws

Within the Canadian context, this study may also serve a secondary function in terms of suggesting avenues to address the public’s unfavourable ratings of the criminal justice system generally and sentencing practices, in particular. Specifically, this study calls attention to the importance of educating the public not only about the details of a particular case, but also

⁵⁰ Lovegrove, Austin (October 2007). Public Opinion, Sentencing and Lenience: An Empirical Study Involving Judges Consulting the Community. *Criminal Law Review*, 769-781.

about the framework in which sentencing takes place. The ‘natural’ or common tendency to compare sentences across jurisdictions as a means of evaluating their ‘appropriateness’ ignores or – more accurately - misreads Canadian sentencing law as it currently exists. In fact, there is no reason to be surprised that the pattern of sentences for any given offence or offence groupings is not the same across Canada. More importantly, any inter-jurisdictional differences whereby one province is found to be more lenient than another would not necessarily suggest that the former should alter its sentencing structure to be more in line with the latter any more than it would suggest that sentencing in the harsher-sentencing province should become more lenient.

Legally, sentencing in Canada is governed by Part XXIII of the *Criminal Code*. More specifically, the sections entitled Purpose and Principles of that part of the *Criminal Code* (Sections 718 through 718.2) give broad general guidance to the court on the way(s) in which sentences should be determined. Specifically, one can read them as follows:

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.

Objectives — offences against children

718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

Fundamental principle

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

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, colour, 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,

(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,

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or

(v) evidence that the offence was a terrorism offence

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.

Most obviously, this legislation highlights the complexity of sentencing. Specifically, Parliament concluded that the purpose of sentencing was to *contribute to respect for the law and the maintenance of a just, peaceful and safe society*. The fact that the terms “respect for the law” and “just” (along with “peaceful and safe”) are contained in the same sentence is clearly designed to underline that sentences are meant to be “just” and fair. Furthermore, as noted in S. 718.1, sentences must be proportionate to what the offender has done (and his or her responsibility for that offence).

The problem – of course – lies in the fact that there is no clear ‘correct’ sentence identified in this legislation for criminal offences. Rather, judges are given the responsibility of crafting a sentence in line with a number of conflicting purposes and principles. Although Parliament laid out - for the first time in 1996 - a statement of purpose (and some principles) to determine the sentence of the court, these sections do not give guidance as to the way(s) in which those purposes are to be accomplished and how the conflicting principles should be reconciled.

This observation is fundamental in understanding both variation in sentences handed down in seemingly similar cases within jurisdictions and variation across jurisdictions. Precisely because the Criminal Code does not specify what the purpose of sentences should be – other than listing a number of purposes, one or more of which should be invoked – and because the *quantum* of sentences is not specified, it is reasonable to expect that there would be variability. Indeed, even the proportionality requirement – that sentences must be proportionate to the seriousness of the offence and the offender’s responsibility for the offence – does little to ensure that the quantum of sentences will be the same for similar offences across provinces. Specifically, the ordering of offence seriousness might be the same, but jurisdictions could vary both in the level (or severity) of sentences overall and/or the variability across categories of offences. Said differently, one jurisdiction could have a higher average sentence than the other. Alternatively, they could have identical “average” sentences, but one jurisdiction could have greater variability than another.

Within this context, we can see no reason to expect - given the current sentencing structure outlined in the Criminal Code and the role of the Courts of Appeal in governing sentencing - that there would be ‘orderly’ differences in sentencing severity across this country. Indeed, our flexible sentencing laws naturally permit – and arguably even encourage - inter-jurisdictional variation. For the most part, one could easily expect that comparisons of two jurisdictions would lead to differences of various sorts. These divergences might ‘add up’ to an overall difference, but the overall difference would not be descriptive of anything. As such, we are not convinced that it is particularly meaningful to talk about a given province in Canada being ‘on average’ more lenient or more severe than others. Indeed, we would argue that it would only be at the extremes that such a conclusion might be meaningful in certain circumstances (e.g., if on all or most of the important dimensions, one province stood out as being different from others).

iii) Additional Information on Sentencing Purposes

Potentially the final relevant point to make about public opinion vis-à-vis sentencing patterns relates to the evidence suggesting that residents in British Columbia – in comparison to those of other regions in Canada – are more likely to give unfavourable ratings of their criminal justice institutions. We do not know why this is the case. However, given that the difference between British Columbia and the rest of Canada appears to be larger in the ratings of the courts (and perhaps corrections) than it is with the police, it may be that British Columbians are more likely to believe that crime is largely controlled by the criminal justice system. Specifically, we expect that the public’s frequent calls for harsher sentences are often rooted in a belief in the ability of the courts – and sentencing judges in particular – to reduce crime. In effect, lenient sentencing practices are being blamed for crime.

This belief in the relationship between crime and sentencing severity is rooted – in large part – in the theories of general deterrence and incapacitation. The former proposes that harsh punishment will dissuade potential offenders from criminal behaviour. Indeed, those who are considering committing crime will perceive the costs or pain inherent in the sanction as greater than any presumed benefit or pleasure reaped from the criminal act. Consequently, this threat of punishment will discourage them from crime. The latter argues that harsh sentences which incarcerate offenders for lengthy periods of time will reduce criminal activity. Specifically, potential offenders – particularly criminal recidivists with a pattern of frequent or chronic offending - will be deprived of the opportunity to commit criminal acts while incarcerated.

The problem with these theories is their lack of empirical support. While these promises of criminal reduction are certainly attractive – particularly in their simplicity and immediacy by merely convincing judges to hand down more severe sentences – they have not received convincing support from empirical research and evaluations. In fact, repeated examinations of these traditional utilitarian ways through which criminal justice prevention is seen as operating have not produced encouraging findings. On the contrary, a growing body of academic literature examining the impact on crime rates of these strategies has found – in most cases – either non-existent, transient or only modest effects.

1) The Effectiveness of General Deterrence

With specific reference to the notion that harsher sentences will deter potential offenders, numerous reviews on this topic have been carried out over the past 30-40 years. These comprehensive summaries examined a substantial number of studies on the deterrent effect of sentence severity and have concluded – almost unanimously - that no convincing evidence exists to suggest that harsher sentences deter. The few reviews which have claimed that severe sanctions do, in fact, reduce crime are based on a highly selective group of papers of questionable value. Despite these findings, most scholars have been reluctant to claim definitively that variation in the severity of sentences (within ranges that are plausible in western democratic countries) does *not* have an impact on crime rates. Instead, the majority have suggested that more evidence is needed before a firm conclusion can be drawn.

Within this context, we carried out a review several years ago (Doob and Webster, 2003⁵¹) which re-examined many of the principal summaries on this topic as well as a substantial number of more recent studies. Similar to prior conclusions, we found no conclusive evidence that supports the hypothesis that harsher sentences would reduce crime through the mechanism of general deterrence. Particularly given the significant body of literature from which this conclusion is based, the consistency of the findings over time and space and the multiple measures and methods employed in the research conducted, we suggested that “[i]t is time to accept the null hypothesis” that “variation in the severity of sanctions is unrelated to levels of crime” (p.143). Although the existence of the criminal justice system as a whole and the perception of an increased likelihood of apprehension appear to deter crime,

⁵¹ Doob, Anthony N. and Cheryl Marie Webster (2003). Sentence Severity and Crime: Accepting the Null Hypothesis. In Michael Tonry (ed.). *Crime and Justice: A Review of Research, Volume 30*. Chicago: University of Chicago Press, pp. 143-195.

no consistent and convincing evidence has emerged over the last quarter century to justify the claim that increases in sentence severity have a deterrent effect on criminal activity.

This conclusion is couched in the recognition that we cannot logically “prove” that harsher sentences do not deter. Strictly speaking, one cannot prove the absence of a phenomenon. It may exist somewhere, but research may not have (yet) identified where this is. Having said this, we argued that one can still conclude that no consistent body of literature has developed over the last 30-40 years indicating that harsh sanctions deter. While one must always reserve judgment for the possibility that - in the future - someone may discover persons or situations in which the relative severity of sentences does, in fact, have an impact on crime, it would seem reasonable to conclude that at the present time in western populations and with the current methods and measures available, variation in sentence severity does not affect the levels of crime in society as we ordinarily describe it.

This overall affirmation is based – in part – on an examination of the major published reviews of the deterrence literature (11 summaries in total). With two exceptions - neither of which purports to be comprehensive - these reviews of the deterrence literature are pessimistic about the possibility that harsher sentences handed down in criminal courts would decrease crime. Indeed, our assessment of general deterrence was found to be consistent with the views expressed by most criminologists who have reviewed the current body of literature and concluded that the evidence does not support the hypothesis that variation in sentence severity will differentially affect crime rates. Further, the summaries which challenge this conclusion not only constitute sporadic anomalies but also do not address most of the relevant research literature on the topic.

Subsequent to this examination of many of the major reviews of the deterrence literature, we also looked at the individual research which is held out, occasionally, as evidence that harsher sentences deter crime. These studies were found to be relatively few in number. Additionally, they suffer from one or more methodological, statistical or conceptual problems which render their findings problematic. In some cases, causal inferences between sentence severity and crime cannot be drawn because of the basic nature of the data under analysis (*e.g.*, a simple comparison of crime and punishment in two locations). In other cases, alternative explanations (*e.g.*, incapacitation) are more plausible than deterrence⁵². In still others, there are data selection, measurement, or methodological questions that raise

⁵² An interesting illustration of this limitation to the research heralded as support for the general deterrent effect of harsher punishment on crime is a recent study by Wagenaar and Moldonado-Molina (2007) on the effects of drivers' license suspension policies on alcohol-related crash involvement. This paper has been used to demonstrate that 'deterrence works' in the context of impaired driving. It examines the impact of immediate administrative (i.e. pre-conviction) suspension of driving privileges on those who fail to pass an alcohol breath test. The implied comparison is not with a penalty of lesser severity. Rather, it is simply a test of whether *immediate* suspension – as opposed to a later court-ordered penalty – has an impact on subsequent behaviour. The problem with this paper from the perspective of the deterrent impact of sentence size is largely twofold. On the one hand, it has absolutely nothing to do with the severity of punishment. On the other hand, it cannot rule out the possibility that the main effect (i.e. a reduction in alcohol-related fatal crash involvement) is not – in fact – rooted in incapacitation rather than deterrence. Specifically, this reduction in the principal dependent measure of this study could simply reflect the fact that administrative or pre-conviction drivers' license suspensions remove the future opportunity of offenders to drive while impaired. Precisely because they no longer have a drivers' license, they are, in essence, 'incapacitated' from driving.

sufficient doubt about the generality of the findings that inferences become dangerous. Finally, while some findings do, in fact, seem to support a deterrent effect, they appear in unstable and inconsistent ways (*e.g.*, for some offenses but not others, in some locations but not others). In brief, we suggest that the data held out as supportive of the general deterrent impact of sentence severity are not strong enough to allow one to conclude that there is a relationship between the severity of sanctions and crime. A strong finding would be one that appears to be reliable across time, space, and, perhaps, offense. The research examined in this review which is favourable to the conclusion that there is a deterrent impact of the severity of sentences clearly does not fulfill these criteria.

Simply as an illustrative example, Kovandzic, Sloan and Vieraitis (2004)⁵³ examined the deterrent impact of harsh state-level sentencing laws on crime using data from 188 US cities with populations of 100,000 or more. These scholars report that “Of the 147 estimated impacts of the [three strikes] law on crime rates (21 states by seven crime categories), 42 represented statistically significant decreases in crime on passage of the laws and 44 represented statistically significant increases. Overall [the results show that there were] 73 decreases and 74 increases in crime” (p. 229). Analogous findings are reported by Schiraldi and Ambrosio (1997⁵⁴). Without any theoretical basis to justify a deterrent effect in some states but not others or with some offences and not others, this type of finding simply underlines the unreliability of isolated support for deterrence. One would look for other events occurring at the same time as the passage of the new laws which may explain the changes in crime rates.

Indeed, the lesson appears to be that little weight – in general - should be placed on single ‘case studies’ in concluding whether increases in the severity of sentences have an impact on crime. This paper (as well as numerous others) would suggest that the careful choice of comparisons could “demonstrate” any desired result. In fact, Piquero (2005⁵⁵) reiterates this observation – in another context – by warning us that researchers frequently choose simply to attribute a change in crime to one particular event which took place during the relevant time period without ruling out other possible situations or circumstances which may have occurred simultaneously with the targeted intervention.

This generalized lack of support for the marginal deterrent effect of harsher sentences on crime is rendered even more compelling with a review of the most recent studies conducted within the context of the United States. This latest body of literature is not only impressive in its scope and number but also in its ability to take advantage of dramatic sentencing changes that have occurred, particularly with respect to three-strikes legislation. In fact, these studies were frequently conducted in almost ideal research conditions in which one would, in fact, expect to find a deterrent effect. In particular, there was generally a substantial amount

⁵³ Kovandzic, Thomislav V., John J. Sloan, III, and Lynne M. Vieraitis. (2004). “Striking Out” as Crime Reduction Policy: The Impact of “Three Strikes” Laws on Crime Rates in U.S. Cities. *Justice Quarterly*, 21(2), 207-239.

⁵⁴ Schiraldi, Vincent and Tara-jen Ambrosio (1997). *Striking Out: The Crime Control Impact of “Three-Strikes” Laws*. Washington, D.C.: Justice Policy Institute.

⁵⁵ Piquero, Alex R. (2005). Reliable Information and Rational Policy Decisions: Does Gun Research Fit the Bill? *Criminology and Public Policy*, 4(4), 779-798.

of publicity surrounding the introduction of these new sentencing laws. Hence, people would be likely to know (or at least believe) that harsh sentences would follow conviction for the offenses covered by these laws. Further, these studies of sentencing changes have been replicated in different countries and with different units of analysis (*e.g.*, states, counties, cities, *etc.*) and have produced similar findings. Finally, some of these studies were able to break down “punishment” into its various components (*i.e.*, apprehension, conviction, sentencing), permitting an assessment of the separate or unique effects of sentence severity.

Even under these (ideal) conditions, sentencing levels were not found to be important in determining crime. Indeed, we continue to find no consistent and plausible evidence that harsher sentences deter crime. This conclusion is potentially even more dramatic when one notes the scope of the studies which were reviewed. Specifically, the findings were consistent across not only simple descriptive comparisons of crime rates between harsh “3-strikes” sentencing states and those without these severe sentencing laws but also studies examining the effects of variation in the implementation of 3-strikes legislation. In addition, similar conclusions were drawn from research on the impact of changes in sentencing policy, more generally, as well as studies on the specific effect of mandatory minimum penalties or the impact of habitual offender laws in deterring crime. Further, research on offenders’ thought processes was found to corroborate these same findings.

The problem – we would argue – is no longer the lack of criminological research supporting the notion that variation in sentence severity has no deterrent effect on crime. Rather, the current challenge is not only publicizing these findings more broadly but also – and perhaps especially – breaking down the natural rejection of this conclusion. Indeed, these findings defy the intuitive (simplistic) appeal which is inherent in the logic of deterrence. Specifically, we seem to naturally (want to) accept the notion that any reasonable person – like ourselves – would be deterred by the threat of a more severe sanction. To this end, we have suggested that the simplistic form of reasoning underlying our continued belief in the deterrent effect of harsh sentences – even in the face of consistent evidence to the contrary – should be challenged. On the one hand, it may be important to separate the effects of certainty of apprehension and severity of punishment in our minds as we often continue to think of the latter largely within the context of a high likelihood of the former. As research has shown us (see Ross 1982⁵⁶, for a pertinent example), the assumption that the majority of offences have a high probability of apprehension is clearly not a safe one.

On the other hand, it may be equally useful to break down the actual process by which deterrence works. Indeed, many people may not be aware of the complex sequence of conditions which must be met in order that variation in sentence severity can potentially affect levels of crime. As von Hirsch *et al.* (1999⁵⁷, p.7) have outlined, for a harsher sanction to have an impact, individuals must first be aware that the punishment has changed in order for harsher sentences to deter. It does no good to alter the sanction if potential offenders do

⁵⁶ Ross, H. Lawrence. (1982). *Detering the Drinking Driver: Legal Policy and Social Control*. Lexington, Mass.: Lexington Books.

⁵⁷ Von Hirsch, Andrew, Anthony E. Bottoms, Elizabeth Burney, and per-Olof Wikström (1999). *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research*. Oxford: Hart.

not know that it has been modified. Indeed, consequences that are unknown to potential offenders cannot affect their behaviour.

Unfortunately for deterrence approaches to crime prevention, it has been shown that this requirement (i.e. that people know about penalties (or penalty changes)) lacks empirical support. As Roberts and Stalans (1997⁵⁸) report (also noted elsewhere in this report), public opinion studies have found repeatedly that the majority of citizens are generally unable to correctly identify the maximum sanction for most offences. Even more notable within the context of harsh penalties, Roberts (2003) found that even fewer people are aware of those crimes for which mandatory minimum sentences are assigned.

In a similar vein, a study by Kleck, Sever, Li and Gertz (2005⁵⁹) compared criminal justice processing measures with estimates from members of the general public of these same measures in 54 of the largest counties in the United States. In general, respondents to the survey underestimated the proportion of offenders who received prison sentences, but were reasonably accurate on the length of the average sentence. However, those individuals living in more punitive locations did not perceive their locations to be more punitive than those of people living in less punitive areas – a finding inconsistent with deterrence notions. Ironically, this result is consistent with other criminological research which has shown that people are largely ignorant of punishment levels in their communities. As such, changes in actual penalties being handed down are not accompanied by changes in the proportion of citizens who think that sentences are too lenient.

Second, the theory of deterrence assumes that potential offenders rationally weigh the consequences of their actions before engaging in criminal activity in order for there to be a deterrent effect of harsher sanctions. In fact, many offences - particularly those of a violent nature - tend to be committed in the heat of the moment rather than based on rational decision-making processes. For instance, a Canadian study on homeless male youth in Edmonton by Baron and Kennedy (1998⁶⁰) suggested that serious crimes committed on the street “are guided more by impulse and the sway of emotion than by reflection or rational judgement, or premeditation” (p.48). More broadly, research conducted in three Canadian penitentiaries by Benaquisto (1997⁶¹) found that when describing their ‘crime story’, only 13% of inmates explicitly spoke of their actions in terms of costs and benefits.

Third, this criminal justice strategy is equally dependent on the potential offender perceiving the actual increased penalty as costly or punitive. Even in the case that rational decisions are, in fact, being made, general deterrence is ultimately perceptual in nature whereby an

⁵⁸ Roberts, Julian V. and Loretta S. Stalans (1997). *Public Opinion, Crime and Criminal Justice*. Boulder, CO: Westview press.

⁵⁹ Kleck, Gary, Brion Sever, Spencer Li, and Mac Gertz. (2005). The Missing Link in General Deterrence Research. *Criminology*, 43 (3), 623-659.

⁶⁰ Baron, Stephen W. and Leslie W. Kennedy. Deterrence and homeless male street youths. *Canadian Journal of Criminology*, 1998, 40 (1), 27-60.

⁶¹ Benaquisto, Lucia The Non-Calculating Criminal: Inattention to Consequences in Decisions to Commit Crime. Unpublished paper. Montreal: Department of Sociology, McGill University.

individual's assessment of criminal justice costs associated with illicit activity may not correspond to those projected by legislation (Doob and Webster, 2003). Corroborating this premise, the research conducted in Edmonton on street youth by Baron and Kennedy (1998) concluded that "[h]arsher penalties would not deter those most at risk for criminal behaviour, [precisely] because [this population is] involved in a lifestyle that reduces the perceptions of risk and provides an environment [in which] criminal behaviour is required and rewarded" (p.52). In other words, punishment - less or more severe - is frequently seen simply as a rite of passage or part of the 'normal' course of life events.

Similarly, Foglia (1997⁶²) found in her study of the perceived likelihood of arrest on the behaviour of inner-city teenagers in a large American north-eastern city that "... the threat of formal sanctions means little to young people from economically depressed urban neighbourhoods... The irrelevance of arrest is understandable considering these young people have less to lose in arrested" (p.433). Simply put, if penalty structures are irrelevant to potential offenders, it does not matter how severe they might be.

Fourth, individuals must also believe that there is a reasonable likelihood that they will be apprehended for the offense and receive the punishment that is imposed by a court in order for harsher sanctions to deter crime. In fact, potential offenders rarely even think about getting caught and when they do, they generally assume that the likelihood of being apprehended is low. In one study by Tunnel (1996⁶³), 87% of offenders interviewed who had been in prison twice or more (at least once for armed robbery or burglary) reported that they never thought that they would be caught.

Similarly, Pogarsky, Kim and Paternoster (2005⁶⁴) examined data from a panel study of American young people who were interviewed when they were 17-23 years old and again four years later. It was found that the number of times that the respondent was arrested between the two interviews was unrelated to the respondent's estimate of the change in the perceived certainty of apprehension. This finding was true for both theft and violence-related offences. In other words, being arrested did not change a person's view of the likelihood of arrest in the future. Furthermore, this lack of effect was found both for those with relatively high rates of offending prior to the first interview and those with relatively low rates of offending. Indeed, this finding that arrests do not affect certainty perceptions contradicts one of the central tenets of deterrence theory. Punished individuals should be less apt to recidivate at least partly because they increase their estimate of the certainty of punishment" (p. 20).

⁶² Foglia, Wanda D. Perceptual deterrence and the mediating effect of internalized norms among inner-city teenagers. *Journal of Research in Crime and Delinquency*, 1997, 34, 414-442.

⁶³ Tunnell, K.D. (1996) Choosing Crime: Close your Eyes and Take Your Chances. In *Criminal Justice in America: Theory, Practice and Policy*, Edited by Barry W. Hancock and Paul M. Sharpl. Upper Saddle River, N.J.: Prentice Hall.

⁶⁴ Pogarsky, Greg, KiDeuk Kim, and Ray Paternoster (2005). Perceptual Change in the National Youth Survey: Lessons for Deterrence Theory and Offender Decision-Making. *Justice Quarterly*, 22 (1), 1-29.

Fifth, deterrence-based strategies assume that potential offenders not only know about the change in punishment, perceive that there is a reasonable likelihood of apprehension and rationally weigh the general consequences of their actions but also conduct sophisticated analyses of the relative costs of various penalties. Indeed, in order for harsher sentences to be an effective deterrent, individuals must be willing to commit a crime for which they think that there is a reasonable likelihood of serving the current sanction (for instance, 4 years in prison - the minimum sentence for a number of the most serious gun-related offences until earlier this year) but would not do so if they thought that the penalty would be harsher (for instance, a 5-year custodial sentence contained in the change in penalties that came into effect as a result of Bill C-2 (39th Parliament, Second session) for those who carry out certain offences with a handgun or prohibited weapon). In fact, the Canadian study of three federal penitentiaries to which we have already referred above (Benaquisto 1997) found that the vast majority of inmates interviewed never even considered the possible consequences of their actions, much less distinguished fine gradations between them.

When viewed from this strictly logical perspective, the lack of evidence in favour of a deterrent effect for variation in sentence severity may gain its own intuitive appeal. Clearly, the number of intervening processes that must take place between (a) the change in the severity of penalties for a crime and (b) the possible impact of that alteration on the population of potential offenders may be considerably greater than most of us imagine. When one factors in the perceptual element at the root of deterrence, the complexity of the process only increases. In fact, the very logic upon which deterrence rests may break down.

Having said this, it is important to note that this conclusion does not – in any way - challenge the notion that the criminal justice system as a whole inhibits or deters most people from committing crime. Indeed, we know that the mere criminalization of certain behaviour and the knowledge that an array of sanctions is imposed with some regularity is sufficient to dissuade most people from illicit activity. Rather, it simply questions whether the size or severity of legal sanctions – within a range that would be plausible in our society – can be used above and beyond this overall effect to achieve additional crime reduction. Within this more restricted context, it would be necessary to demonstrate that for those individuals who are not inhibited by the general threat of the criminal justice system as it currently operates, the introduction of specific changes in the severity of criminal laws would, in fact, discourage them from criminal acts. Despite extensive testing, little empirical support has been found for this latter supposition. In fact, this conclusion is consistent with the growing notion that politicians – through the enactment of harsher legislation - are generally not well placed to reduce crime. A similar statement may be made for judges – through the act of handing down harsher sentences.

2) The Effectiveness of Incapacitation

The empirical evidence in favour of an incapacitation effect on crime is slightly more optimistic but only in the sense that a small impact has been found. As a criminal justice strategy, incapacitation – particularly selective incapacitation of high rate offenders – arguably constitutes yet another intuitively attractive goal in sentencing. Indeed, as long as a person is incapacitated – typically imprisoned – he/she is logically unable to commit most normal offences in the community. Especially in light of the criminological research which suggests that a small number of very active offenders appear to account for a

disproportionately large number of crimes committed, there is little question that the incarceration – for long periods of time – of these high rate criminals will have *some* impact on crime.

However, the strategy of incapacitation as an approach to crime control has two fundamental limitations. On the one hand, incapacitation – and selective incapacitation in particular – is predicated on the belief that high-rate offenders can be prospectively identified and incarcerated sufficiently early in their careers to reap the incapacitative benefit of crime reduction. Unfortunately, no convincing evidence exists that this offender pool can be isolated⁶⁵. For instance, one study examining the re-offending of inmates after release in New Zealand found that retrospective classification of this population as either ‘serious violent’ or ‘other’ offenders had very low accuracy rates in predicting subsequent criminal behaviour⁶⁶. In fact, the proportion of both false positives (*i.e.* the erroneous identification of an inmate as a serious offender) and false negatives (*i.e.* the failure to identify a serious offender) was alarmingly high⁶⁷.

Within the Canadian context, we examined some of Correctional Service Canada’s (CSC) research which shows the reality of predictions about re-offending. Assuming that the more information which is available about an offender, the greater the likelihood of successfully predicting his/her offending behaviour, it is important to note that CSC has just about every imaginable piece of data about those residing in its facilities and has been able to observe them for months, if not years. Several years ago, CSC did a study of its revised “Statistical Information on Recidivism” scale used to predict recidivism. Because the researchers wanted a large sample, the initial study was carried out on male federally sentenced non-Aboriginal inmates.

We have no doubt that the scale that is the subject of this paper⁶⁸ is as good as any scale currently being used in correctional systems, and is likely to be better than most. They used their statistical scale (described in their report which is available on the CSC website) to group prisoners according to risk. They subsequently examined “any return to custody with a new offence” (p. 10) as the outcome measure. The findings are reproduced in Table 51.

⁶⁵ See, for example, S.D. Gottfredson and D.M. Gottfredson (1994). Behavioral Prediction and the Problem of Incapacitation. *Criminology*, 32:441-474.

⁶⁶ Mark Brown (1998). Serious Violence and Dilemmas of Sentencing: A Comparison of Three Incapacitation Policies. *Criminal Law Review*, 710-722.

⁶⁷ Obviously this limitation of incapacitation as a crime control strategy does not apply to instances in which high-rate offenders are identified – subsequent to their convictions - for treatment or intervention purposes. Indeed, there is a body of criminological literature which demonstrates that programs which target specific types of offenders (e.g., those assessed as high risk/need) are more likely to be successful in reducing their subsequent criminal activity. The criticism being raised in this report against selective incapacitation relates exclusively to the belief that longer sentences can be used as a crime reductionist strategy.

⁶⁸ Specifically, Nafeekh and Motiuk: The Statistical Information on Recidivism – Revised 1 (SIR-R1) Scale: A Psychometric Examination, Correctional Service Canada, November 2002).

Table 51: Statistical Information on Recidivism Group and Actual Recidivism⁶⁹

Prediction:	Actual Outcome		Total
	Successes	Failures	
SIR-R1 Risk Group			
Poor	866 (56%)	673 (44%)	1539 (100%)
Fair/Poor	583 (69%)	265 (31%)	848 (100%)
Fair	768 (76%)	246 (24%)	1,014 (100%)
Good	765 (84%)	142 (16%)	907 (100%)
Very Good	2,382 (94%)	141 (6%)	2,523 (100%)
Total	5,364 (79%)	1,467 (21%)	6,831 (100%)

The table is to be read as follows. Each of the rows (e.g., “Poor”, “Fair/Poor”) describes a group. On this scale, a total of 1539 people were described as being ‘poor’ risks – i.e. they were the group seen as having the highest likelihood of recidivism (a ‘failure’). One can then look at this poor prognosis group (who constitute 23% of a sample of obviously serious offenders since they were in penitentiary). We find that 56% did not reoffend, and 44% did reoffend. At the other end of the scale (the “Very Good” group), we find that only 6% are described as parole failures.

The report suggests that there is a “strong relationship with general recidivism amongst the SIR-R1 [statistical measure of risk] groupings ($r=0.36$, $p<.0001$)” (p. 10). The word “strong” is a term used by the authors that we would not have chosen. Correlation coefficients go from zero (no relationship between the two variables - in this case, the risk assessment and outcome) to 1.0 (a perfect relationship between risk assessment and outcome). Many quantitative researchers would not describe a correlation coefficient of 0.36 as ‘strong’. A correlation of 0.36 indicates that about 13% (.36 squared) of the total variability (technically: the variance) in outcome is predictable by the scale. Whether this is ‘strong’ or ‘weak’ is - in the end - in the eye of the beholder and the words are not very important. However, the ability to account for only 13% of the variance in offending does not appear to us to be a ‘strong’ relationship.

Putting aside questions of semantics, this table suggests that even those who are seen as having the highest risk of re-offending - using data considerably more reliable and complete than are normally available to a sentencing judge - more than half of the ‘worst’ offenders do not, in fact, re-offend. In other words, our ability – even under the most favourable conditions – to prospectively identify high-rate offenders early enough to take advantage of the incapacitative impact on crime reduction is not very accurate. In fact, this conclusion is reiterated by one of the leading authors on this topic⁷⁰ who notes that “The major obstacle to the successful implementation of such proposals is that no convincing evidence exists that this is possible” (p. 726).

⁶⁹ This table is reproduced from Nafekh and Motiuk, November 2002 Table 2, p. 11, The Statistical Information on Recidivism – Revised 1 (SIR-R1) Scale: A Psychometric Examination.

⁷⁰ Specifically, Auerhahn, Kathleen (1999). Selective incapacitation and the problem of prediction. *Criminology*, 37 (4), 703-734.

This conclusion was derived from this criminologist's attempt to construct a prediction model of those offenders whom should be selectively incapacitated. The results of her "new and improved" study are simple to summarize. Using California prison data, only 36% of those who were predicted to be high rate offenders actually turned out to be high rate offenders. Moreover, about one third of the actual high rate offenders were not identified as such by the model. As the author – herself – summarizes, "We simply cannot [prospectively identify high rate re-offenders] with any reliable accuracy" (p.727).

Despite this serious limitation, incapacitation continues to have tremendous appeal as an idea. As Auerhahn (1999) astutely notes, "Given that we have every reason to believe that a small subset of criminal offenders contribute disproportionately to the total volume of crime in a society, a strategy that promises to locate and incapacitate this group is almost irresistible in its elegance." (p.727). As such, we should not be surprised or – for that matter – overly critical of those who are drawn to it. In fact, it has been suggested that the seductive simplicity – particularly of selective incapacitation – "leads otherwise conscientious researchers to conclude that it works, despite the total lack of evidence to support such a conclusion" (Auerhahn: 727).

Within this context, one would expect that the powerful attractiveness of this model would be especially strong for those who find themselves face-to-face with offenders and believe that they can identify those who are likely to reoffend. Indeed, the belief that one can identify those offenders who are likely to reoffend is reinforced constantly since those who do reoffend are memorable and those who do not re-offend are forgotten. Hence, those working in the criminal justice system can legitimately say - of a high rate offender who has just been arrested - that they 'knew' that the person would offend when they saw the person at the time of the last arrest. What is not salient - of course - is the fact that they may have seen other high rate offenders in the past whom they never see again⁷¹.

Indeed, the problem is one of the denominator. When one is faced with a group of high rate re-offenders, it is easy to assume that they could have been identified prior to becoming chronic offenders. However, one forgets that there was undoubtedly a substantially larger number of first-time criminals during the initial period of offending – many of whom never re-offended. For instance, imagine - for a group of 50 high rate offenders in 2008 – that they began their criminal careers in 2000. At this point, there were 200 individuals who committed their first offence. Over the course of the next 8 years, only 50 of them re-offended at a high rate. According to an incapacitation model, one would have to have been able – already in 2000 - to distinguish these 50 re-offenders from the 150 who never re-offended or did not re-offend at a high rate. For those who work in the criminal justice system and see the same faces multiple times, it is easy to forget that there were many more individuals whom they also saw only once or twice but who would also be part of the denominator (read: the pool of potential high-rate offenders).

⁷¹ We would suggest that this same 'error' in perception is found in a report recently released by the Vancouver Police Department. Specifically, they believe that they have succeeded in identifying a group of high risk offenders for whom significant prison time should be attributed.

In other words, people working in the criminal justice system fail to include those who desist from crime when assessing their ability to identify high-rate recidivists. As Sampson and Laub (1993⁷²) have already noted with regard to this common error, “looking *back* over the careers of adult criminals exaggerates the prevalence of stability [of offending]. Looking forward ... reveals the successes and failures” (p.14). Precisely by excluding the successes (read: those who did not re-offend), those who find themselves face-to-face with repeat offenders artificially reduce the size of the denominator, falsely inflating their perceived ability of identifying career criminals.

This limitation is coupled with yet another. Specifically, there is the question of opportunity costs – that is, the relative impact of incapacitation as compared to other uses of resources and the other ‘costs’ of the policy. Clearly, we can predict better than chance that certain groups of people (e.g., high rate offenders) will have a future offending rate higher than other groups (e.g., non-offenders). However, criminological research on incapacitation would suggest that crime reduction benefits from this strategy are very small compared to their cost.

Indeed, the cost of incapacitating someone through imprisonment is non-trivial. It is estimated that in British Columbia the cost of imprisonment in a provincial institution averages about \$130 a day. When considering public safety, there is a tendency to suggest that “if one life were saved, it would be worth it” when the referent for the “it” could be any large amount of money. However, such a statement is short-sighted, fiscally imprudent, and irresponsible. With only a limited amount of public money available to improve public safety, “it” clearly would not be worth “it” if - for the same amount of money - two or three lives could have been saved. Given that a number of ‘crime prevention’ strategies have already been repeatedly shown to significantly reduce crime but with lower costs, incapacitation approaches may not constitute the ‘biggest bang for one’s buck’ from the perspective of the prudent taxpayer.

Further, return on investment for every dollar expended on incarceration is reduced even further by the fact that all criminals – including high rate offenders - appear to age out of crime. Specifically, incapacitation assumes that offenders will continue to commit crimes indefinitely unless incarcerated, justifying lengthy prison sentences. In fact, recent criminological research has shown that the process of desisting from crime is gradual but universal. Indeed, offending rates decrease with age for all identifiable groups. As such, almost any group of offenders who are identified as ‘high risk’ on the basis of their (recent) offending rates will show a decrease over time, independent of any intervention. In this light, it is often the case that by the time that enhanced prison sentences are carried out, offenders are generally already nearing the end of their criminal careers and would be unlikely to commit (a non-trivial amount of) crime anyway. In this way, incapacitation as a crime control strategy is rendered inefficient, given its negligible return on crime reduction.

Finally, this financial cost is coupled with a more ‘principled’ cost. Specifically, an incapacitation approach would – almost certainly – involving handing down sentences which are harsher than would be justified in a proportionality model. Indeed, incapacitation as a

⁷² Sampson, Robert and John Laub (1993). *Crime in the Making: Pathways and Turning Points through Life*. Cambridge, MA: Harvard University Press.

crime control strategy is rooted in the notion of incarcerating offenders based not on what they did but what they may do in the future. Obviously within the Canadian context, such a model would necessarily violate S. 718.1 of the Criminal Code (i.e. the requirement that sentences be proportionate to the crime).

In brief, we would argue that beliefs and attitudes about sentencing are based – at least in part – on theories of crime control which have been demonstrated to be inadequate. In fact, crime has been shown – empirically – to be more or less independent of sentence severity within the range that is plausible in our society. Indeed, despite the obvious appeal inherent in the notion that the problem of crime can be resolved - at least in part - by simply encouraging judges to impose more severe sentences, strategies based on models of general deterrence or incapacitation do not appear to hold the key to the solution of crime. In fact, the mistake seems to be in always thinking that crime can somehow be reduced - if only we can figure out how - by the courts, in particular, or the criminal justice system, more generally. Clearly, the criminal justice system plays a crucial role in maintaining a just and fair society, particularly through the criminalization of certain behaviour and the imposition of appropriate sanctions. Unfortunately, tinkering with this system is simply not likely to reduce crime, particularly tinkering with sentencing practices.

In fact, we suggest that we would do well to propagate this message. Indeed, it might have positive repercussions on public opinion. Particularly given the widespread lack of confidence in public institutions generally expressed by residents of British Columbia, more realistic expectations of the ability (or lack therefore) of sentencing judges to reduce crime may contribute – at least in some small way - to greater confidence in the criminal justice system.

iv) Combating Crime

Having said this, this strategy would seem to us overly simplistic. The general public are ultimately looking for solutions to crime. In the case that sentencing judges do not, in fact, hold the key to reducing criminal activity, alternative strategies need to be proposed and implemented. Indeed, no level of government can afford to ignore the problem of crime. And, in fact, there is a multiplicity of opportunities for effective crime reduction. Our mistake may simply be in focusing our resources solely on ‘criminal justice’ interventions such as correctional programming, the reintegration of prisoners into the community, rehabilitative programs for those given community sentences or those who are diverted from the justice system or crime prevention programs in the community. Indeed, despite our intuitive expectations, the political appeal and the seductive promise of quick-fixes, the criminal justice system has serious limitations as an instrument for crime control. Clearly, its contribution to the reduction of criminal activity appears to be little more than a scratch on the surface.

Within this context, it would seem appropriate to look elsewhere for effective strategies to reduce criminal behaviour in society. While undoubtedly bleak in its prospects for the role of the criminal justice system in crime reduction, this conclusion does not, in any way, challenge the fundamental nature of this institution and the crucial functions that criminal law and law enforcement still fulfill within the broader purpose of the maintenance of a just, peaceful

and safe society. Indeed, research has shown that public perceptions of fairness and justice provided by the criminal justice system through the imposition of just responses to offenders and offending is a fundamental cornerstone in the preservation of the legitimacy of the law as well as the promotion of respect for it⁷³.

Nor does this conclusion suggest that the criminal justice system has no role at all to play in crime-reduction strategies. On the one hand, continued efforts in rehabilitation are arguably an obligation by the state to ensure - at a minimum - that offenders do not return to the community worse off than before conviction. On the other hand, a comprehensive governmental crime prevention strategy that has no reliance on the criminal justice system would clearly be incomplete and provide insufficient protection to the public. Indeed, public safety is a core responsibility of multiple public sectors of government. As a former Canadian Minister of Justice appropriately noted, “crime prevention has as much to do with [the Minister of] ... Finance, [the Minister of] ... Industry, and [the Minister of] ... Human Resources Development, as it does with [the Minister of] ... Justice”⁷⁴.

Indeed, an increasing awareness of the modest effects of the criminal justice system on rates or patterns of criminal activity may be key to opening up the debate to all sectors of society. Within this context, we can begin to focus on broad-based prevention rather than limited responses to crime after the fact. More importantly for the current discussion on public attitudes, this recognition of the limits of the effects of criminal justice interventions on reducing criminal behaviour may also be fundamental in changing the public’s expectations. Specifically, the courts – and particularly judges – can be ‘evaluated’ according to the (realistic) task of handing down sentences which are just and fair rather than by utilitarian concerns which have been found to be largely beyond their reach.

In conclusion, we would suggest that all levels of government have an active role to play in efforts – outside of the criminal justice system – to reduce crime. At the same time – and quite separately – we believe that there are changes that could be made in the manner in which sentencing is carried out that would not only focus on making sentencing decisions more predictable and understandable. Rather, they would simultaneously render sentencing more realistic in terms of that which can be achieved. We do not have to look far for suggestions as to what such models of sentencing would look like. More than 20 years ago, the Canadian Sentencing Commission presented a comprehensive set of proposals on how sentencing in Canada could be improved. More recently, the Youth Criminal Justice Act sentencing provisions require, unambiguously, that a sentence be proportionate to the

⁷³ On this relationship between perceptions of fairness and legitimacy, see, for example, Raymond Paternoster; Robert Brame; Ronet Bachman and Lawrence W. Sherman (1977). Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault. *Law and Society*, 31(1): 163-204; Scot Wortley (1999). Justice for All? Race and Perceptions of Bias in the Ontario Criminal Justice System – a Toronto Study. *Canadian Journal of Criminology*, 439-467; Ronald Weitzer and Steven A. Tuch (1999). Race, Class and Perceptions of Discrimination by Police. *Crime and Delinquency*, 45:494-507; Tom Tyler (2001). Public Trust and Confidence in Legal Authorities: What do Majority and Minority Group Members Want from the Law and Legal Institutions? *Behavioural Sciences and the Law*, 19: 215-235; Tom Tyler (1990), *Why People Obey the Law*. New Haven: Yale University Press.

⁷⁴ The Honourable Allan Rock (1996). Crime, Punishment and Public Expectations in Jean Maurice Brisson and Donna Greschner (eds.). *Public Perceptions of the Administration of Justice*, 185: 191-192.

offence seriousness and the offender's responsibility for that offence and, at the same time, is more realistic than are the adult Criminal Code provisions on what can be achieved at sentencing. Perhaps the special concern about sentencing described in Part I of this report which ultimately led to the decision to examine sentencing in British Columbia should now be directed toward improving the manner in which sentences are determined in Canada.