Policy:		
Sentencing – Adults		
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Following a finding of guilt or guilty plea, the judge is responsible for crafting and imposing a proportionate and lawful sentence. Crown Counsel have an important role to play in informing the judge of the relevant circumstances and law, and in advancing a Crown sentencing position that addresses the fundamental purpose and principles of sentencing.

Purpose and Principles of Sentencing

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

- to denounce unlawful conduct and the harm done to victims or the community that is caused by unlawful conduct
- to deter the offender and other persons from committing offences
- to separate offenders from society, where necessary
- to assist in rehabilitating offenders
- to provide reparations for harm done to victims or to the community
- to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or to the community[1]

1 *Criminal Code*, section 718

The principles of sentencing include:

- a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender
- a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender
- a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances
- where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh
- an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances
- all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Indigenous (First Nations, Métis, and Inuit) offenders[2]

Crown Sentencing Position

At a sentencing hearing, Crown Counsel should advance a position that addresses the applicable sentencing principles in light of:

- the proven (or provable) circumstances of the offence
- the impact of the offence on the victim(s) or the community
- the circumstances and background of the offender
- any aggravating or mitigating circumstances, including those enumerated in section 718.2(a) of the *Criminal Code*
- any applicable BC Prosecution Service policies (e.g., *Child Victims and Witnesses* (CHI 1), *Criminal Harassment* (CRI 1), *Dangerous Offenders and Long-Term Offenders* (DAN 1), *Elder Abuse – Offences against Elders* (ELD 1), *Firearms* (FIR 1), *Hate Crimes* (HAT 1), *Impaired Driving Prosecutions* (IMP 1), *Intimate Partner Violence* (IPV 1), *Resolution Discussions* (RES 1),

2 *Criminal Code*, sections 718.1, 718.2

Sexual Assaults – Adult Victims (SEX 1), *Victims of Crime* (VIC 1), *Vulnerable Victims and Witnesses* (VUL 1))

- relevant statutory provisions
- relevant case law

In formulating a sentencing position, Crown Counsel should be guided by ranges established by previous applicable cases. However, as the Supreme Court of Canada noted, "the determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation."[3] In appropriate cases, Crown Counsel may propose a sentencing position outside an established range in order to address the unique circumstances of the offence and the offender before the court.

For certain categories of offences, the *Criminal Code* or case law require the court to give primary consideration to the objectives of denunciation and deterrence:

- offences involving the abuse of a person under the age of eighteen years (section 718.01)
- certain offences against a peace officer or other justice system participant (section 718.02)
- offences against a law enforcement animal, military animal, or service animal (section 718.03)
- offences involving the abuse of a person who is vulnerable because of personal circumstances – including because the person is Indigenous and female (section 718.04)
- major frauds, serious firearms offences, impaired driving, and criminal contempt

When addressing such cases, Crown Counsel should also consider the other principles of sentencing, including rehabilitation. Denunciation and deterrence do not necessarily require incarceration and may be addressed through other types of sentences in appropriate cases. Conditional sentences, in particular, have been recognized by the Supreme Court of Canada as punitive sanctions capable of achieving the objectives of denunciation and deterrence.[4]

Numerous studies, inquiries, and commissions have also concluded that "incarceration is costly, frequently unduly harsh and 'ineffective, not only in relation to its purported rehabilitative goals, but also in relation to its broader public goals.'"[5]

3 *R v Lacasse*, 2015 SCC 64 at para 58
4 *R v Proulx*, [2000] 1 S.C.R. 61 at para 22
5 *R v Proulx*, [2000] 1 S.C.R. 61 at para 16

While Crown Counsel must inform the court of the offender's previous convictions, the fact of a criminal record does not dictate or preclude any sentence that may be appropriate in the circumstances. If the principles of sentencing, including the protection of the public, could be adequately addressed by a non-custodial sentence, Crown Counsel should seek a non-custodial sentence. Even for offenders who have previously received custodial sentences, imprisonment should be seen as a sanction of last resort.[6]

In particular, when the established sentencing range could support a custodial sentence of less than two years, Crown Counsel must consider seeking a community-based sentence, unless:

- the offender poses a danger to the victim or community
- a community-based sentence is not available at law

When Crown Counsel do seek a community-based sentence, they should propose only those conditions that are reasonably necessary to prevent future offences, protect society, and facilitate the offender's successful reintegration into the community.

Indigenous Persons

Numerous government commissions and reports, as well as the judgments of the Supreme Court of Canada, have recognized that discrimination experienced by Indigenous persons, whether as a result of overtly racist attitudes or culturally-inappropriate practices, extends to all parts of the criminal justice system.

Parliament has recognized an evolving societal consensus that these problems must be remedied by accounting for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views.[7]

The history of colonialism, displacement, and residential schools continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous persons.[8] The rates of victimization of Indigenous persons, especially for Indigenous women and girls, are also significantly higher than those for non-Indigenous persons.[9] These circumstances must inform the Crown's sentencing position in any case involving an Indigenous person as an offender or victim.

Indigenous Offenders

6 *R v Gladue*, [1999] 1 S.C.R. 688 at para 40
7 *Ewert v Canada*, 2018 SCC 30 at paras 57 and 58; *R v Barton*, 2019 SCC 33 at paras 198-200
8 *R v Ipeelee*, 2012 SCC 13
9 *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016

Section 718.2(e) of the *Criminal Code* requires that "all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of [Indigenous] offenders." This is a remedial provision, designed to address the serious problem of over-representation of Indigenous persons in Canadian prisons and penitentiaries and to encourage restorative approaches to sentencing.[10] It should be given a "fair, large and liberal construction and interpretation."[11]

As the Supreme Court of Canada noted in *R. v Gladue*, "for many if not most [Indigenous] offenders, the current concepts of sentencing are inappropriate because they have frequently not responded to the needs, experiences, and perspectives of [Indigenous] people or [Indigenous] communities."[12]

In sentencing proceedings concerning an Indigenous person as an offender, Crown Counsel should:

- ensure that the Court is aware the offender identifies as an Indigenous person
- not oppose any reasonable request to adjourn proceedings to allow for appropriate materials to be prepared, including the preparation of a Gladue Report, or the marshalling of related information or evidence
- consider requesting a Gladue Report or a pre-sentence report addressing the offender's Indigenous background if adequate information concerning the offender, the community, or unique systemic or background factors would not otherwise be available to the court

In formulating a sentencing position with respect to an Indigenous offender, Crown Counsel must apply the principles established in *R. v Gladue* and, in particular, consider:

- the unique systemic and background factors that may have played a part in bringing the particular Indigenous offender before the courts
- the types of sentencing procedures and sanctions that may be appropriate for the offender because of their particular Indigenous heritage or connection
- the contents of a Gladue Report or any other related information or evidence submitted concerning the offender, the community, or unique systemic or background factors that may have played a part in bringing the offender before the court

10 *R v Ipeelee*, 2012 SCC 13 at para 59
11 *Interpretation Act*, R.S.C. 1985, c. I-21, s. 12, as amended
12 *R v Gladue*, [1999] 1 S.C.R. 688 at para 73

Crown Counsel should also consider:

- remoteness of the community in which the offender resides
- local conditions for employment and education in the offender's community
- unique cultural connections or traditions within the offender's community, which may include an urban Indigenous community such as Indigenous housing, Friendship Centres, or Indigenous organizations
- availability of appropriate rehabilitative programming and community support, regardless of locality
- any collateral consequences arising from the commission of the offence, the conviction, or the sentence imposed

All these considerations bear on the ultimate question of what is a fit and proper sentence,[13] and should be addressed by Crown Counsel in their sentencing submissions.

Indigenous Victims

Crown Counsel should ensure that their sentencing positions reflect the gravity of the problem of violence against Indigenous persons in our society, particularly Indigenous women and girls, and the serious injustices they have faced.[14] Crown Counsel should also recognize that in cases that involve the abuse of a person who is vulnerable because of personal circumstances, including because the person is Indigenous and female, the court shall give primary consideration to the objectives of denunciation and deterrence, pursuant to section 718.04 of the *Criminal Code*. Furthermore, section 718.201 of the *Code* requires the court to consider the increased vulnerability of female persons when they are victims of intimate partner violence offences, giving particular attention to the circumstances of Indigenous female victims.

Where there is evidence that the offence was motivated by bias, prejudice, or hate towards the victim as set out in section 718.2(a)(i), Crown Counsel should refer to *Hate Crimes* (HAT 1) and consider all relevant aggravating circumstances.

Notice to Seek Greater Punishment

In considering whether to rely on a notice of intention to seek a greater punishment by reason of a previous conviction, Crown Counsel should consider:

13 *R v Gladue*, [1999] 1 S.C.R. 688 at para 66
14 *R v Barton*, 2019 SCC 33 at para 198

- any applicable BC Prosecution Service policies (e.g., *Firearms* (FIR 1), *Impaired Driving Prosecutions* (IMP 1)
- the nature, number, and timing of prior convictions
- the circumstances of the present offence, including any aggravating and mitigating factors
- the background and circumstances of the offender
- the public interest in reducing the overrepresentation of Indigenous persons in Canadian prisons and penitentiaries

Ancillary Orders

At a sentencing hearing, Crown Counsel should remind the court of its obligation to make any mandatory orders required by the *Criminal Code* and should apply for any other ancillary orders appropriate in the circumstances, including those referred to in: *Child Victims and Witnesses* (CHI 1), *Criminal Harassment* (CRI 1), *Dangerous Offenders and Long-Term Offenders* (DAN 1), *Elder Abuse – Offences against Elders* (ELD 1), *Firearms* (FIR 1), *Hate Crimes* (HAT 1), *Impaired Driving Prosecutions* (IMP 1), *Intimate Partner Violence* (IPV 1), *Sexual Assaults – Adult Victims* (SEX 1), *Victims of Crime* (VIC 1), *Vulnerable Victims and Witnesses* (VUL 1).