

Sentencing

Summary

A **sentence** is the punishment imposed by the court on any person who pleads guilty to or is found guilty after trial of a criminal offence.

These basic principles usually guide the sentencing process:

1. Deterring the offender and others from criminal activity;
2. Rehabilitating the offender;
3. The separation of offenders from society, where necessary;
4. The promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims and the community;
5. Demonstrating society's disapproval of the behaviour; and
6. Repairing harm caused to the victim and community.

Key Factors

In deciding the appropriate **sentence** in an individual case, the judge may consider several factors, including:

1. The nature of the offence, including the character and seriousness of the act itself, and whether it was committed on impulse or in a planned and deliberate way;
2. The age, background and family circumstances of the offender;
3. The previous criminal record (if any) of the offender, length of time since last conviction and any indication of lenient treatment in the past;
4. Any unusual circumstances that appear from the evidence;
5. Any mitigating factors, like a plea of guilty and cooperation with police;
6. Any aggravating circumstances, such as the abuse of a spouse, common-law partner, a person under the age of 18 or a position of trust or authority in relation to the victim;
7. A pre-sentence report (if one is ordered by a judge) that is prepared by a probation officer and contains information regarding all aspects of the offender's background;
8. The penalties assigned by law to the offence including minimum and maximum sentences; and
9. Consistency in the sentencing of different individuals who participate in the same crime.

The *Criminal Code* also states that all available sanctions other than imprisonment should be considered where reasonable for adult offenders, and particular attention should be given to the circumstances of Indigenous offenders.

The *Youth Criminal Justice Act* states that all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of Indigenous young persons.

For both adults and youths, pre-sentence reports may be helpful to canvass background issues such as substance abuse, poverty, racism and family or

Lesson Plan Overview

Criminal law is an area of law that deals with criminal offences and consequences when someone is found guilty.

This lesson plan introduces students to how judges arrive at appropriate sentences and various sentencing options.

Activities & Discussion Questions:

- 1) Take a look at the [Try Judging](#) website to get a better idea about how judges make their decisions.
- 2) Read the *R. v Suter* case summary that deals with mitigating and aggravating factors for sentencing and answer the discussion question.
- 3) Find out more about the Manitoba Fine Option Program.
- 4) Complete the Quiz.

Glossary

Absolute Discharge – accused has been found guilty, but not convicted of the offence.

Breach of Probation – offenders who do not obey the conditions of a Conditional Discharge can be charged with an additional offence – Breach of Probation.

Concurrent Sentence - when an accused person is convicted of more than one offence and sentenced to more than one term of imprisonment at the same hearing, the court has the option to order that the terms be served concurrently (at the same time).

Conditional Discharge - has the same result as an absolute discharge except that the person who is sentenced must obey a set of conditions contained in a probation order for a specified period of time.

community breakdowns.

Options in Sentencing

A judge who is imposing a **sentence** has a wide range of options from which to choose. This range is limited to a certain extent by the minimum and maximum penalties set out in the *Criminal Code*, but essentially it is the facts of each individual case that will determine the nature of the **sentence** that will be imposed. However, the court must also impose a **sentence** that is similar to **sentences** imposed on similar offenders for similar offences committed in similar circumstances in previous cases (known as the **principle of parity**).

A list of some of the sentencing options follows, ranging from least to most severe.

Discharge

The granting of an **absolute discharge** means that the accused has been found guilty but has not been convicted of the offence. A court cannot revoke an **absolute discharge**.

A **conditional discharge** has the same result as an **absolute discharge** except that the person who is sentenced must obey a set of conditions contained in a **probation order** for a specified period of time. Failure to obey the conditions can result in the revocation of the discharge and the substitution of a more severe penalty. Offenders who do not obey the conditions can also be charged with a new charge – **breach of probation**. Revocation may also occur where the offender is convicted of a subsequent criminal offence during the probationary period.

Discharges are usually reserved for first offenders who are judged to be of good character and who have committed minor offences. They can only be imposed on adults where:

1. There is no minimum term set out in the Criminal Code and the maximum sentence for the offence is less than 14 years;
2. It is in the best interests of the offender; and
3. It is not contrary to the public interest.

Probation

After making a finding of guilt and recording a conviction, the court may impose a **probation order**, either as a stand-alone suspended **sentence** or in conjunction with a **fine** or jail **sentence**. This means that the offender will be placed on probation. The **probation order** contains certain conditions that the offender must abide by. These conditions must be followed as specified in the **probation order**. This time period, which cannot be more than three years, begins to run from the date on which the order is made or following a jail term of no more than two years.

All **probation orders** contain the conditions that the accused keep the peace and be of good behaviour, appear before the court as required and inform the court of any change of name, address or employment. In addition, the offender may be required to do any of the following:

1. Report to a probation officer for supervision;
2. Not use alcohol or drugs;
3. Not own, possess or carry a weapon;
4. Make **restitution** for the loss suffered by any person injured as a result

Conditional Sentence – a sentence of imprisonment served in the community.

Consecutive Sentence - when an accused person is convicted of more than one offence and sentenced to more than one term of imprisonment at the same hearing, the court has the option to order that the terms be served consecutively (one after the other).

Extrajudicial Measures – Under the *Youth Criminal Justice Act*, ways used to deal with a young person alleged to have committed an offence, other than through the court system.

Fine – punishment in the form of money that must be paid.

Indictable Offence – More serious offence.

Principle of Parity – the court must impose a sentence that is similar to sentences imposed on similar offenders for similar offences committed in similar circumstances in previous cases.

Probation Order – an order containing certain conditions the offender must follow.

Restitution – an order providing compensation to the victim.

Sentence - the punishment imposed by the court on any person who pleads guilty to or is found guilty after trial of a criminal offence.

Summary Conviction Offence – less serious offence.

Relevant Law:

Criminal Code of Canada

Youth Criminal Justice Act

- of the crime;
5. Seek and maintain employment;
 6. Not associate with certain individuals;
 7. Take alcohol, drug, anger management or other such counselling as the probation officer may order;
 8. Not attend at certain locations (for example, at the residence of the complainant);
 9. Complete community service work hours; and
 10. Obey any other reasonable conditions imposed by the court.

This is not an exhaustive list.

Both the offender and the Crown Attorney have the right to apply to change the conditions of the **probation order** at any time. The court will usually only make the change if there has been a change in circumstances.

Breach of Probation

An offender who does not obey a specified condition can be charged with the offence of failing or refusing to comply with a **probation order**. The penalties for such an offence can include the imposition of further conditions, an extension of the order, a fine, or imprisonment. If the offender is convicted of another offence at any time during the probation period, the court may revoke the **probation order** and impose any **sentence** which could have been imposed for the original offence (if imposed as a suspended **sentence**), change the optional conditions of the order, or extend the length of the **probation order** by up to one year (in all circumstances).

Eligibility for Probation

It is not necessary that the court impose a suspended **sentence** before the offender is put on probation. Probation can also be combined with another form of **sentence**:

1. A fine or term of imprisonment not exceeding two years;
2. An intermittent term of imprisonment not exceeding 90 days; or
3. A **conditional sentence** order.

Firearms Prohibition

Convictions for certain **indictable offences** that involve violence or threats of violence where a person may be sentenced to imprisonment for ten years or more and certain specified firearms and drug offences will lead to a mandatory order from the sentencing judge that prohibits the offender from possessing firearms, cross-bows, prohibited weapons or firearms, restricted weapons or firearms, prohibited devices, ammunition, prohibited ammunition, or explosive substances. These prohibitions remain in effect a period of ten years, or in certain circumstances, for life.

There are also discretionary prohibition orders that can be imposed on convictions for certain weapons and violence-related offences that can be imposed for a period of up to ten years.

In addition, upon application by a peace officer, a Provincial Court judge may make an order prohibiting a person from possessing firearms, ammunition, explosives and other weapons for up to five years, with or without the person being charged with a criminal offence, where there are justifiable grounds for so imposing.

Fines

A **fine** is punishment in the form of money that must be paid. A **fine** can be imposed alone or in addition to a term of imprisonment or other form of **sentence**, like probation. The order for a **fine** will include the time by which it must be paid. Civil means of enforcement will be used in the event of non-payment. **Fines** imposed under the *Criminal Code* can be worked off through the Fine Option Program.

Amount

Unless otherwise specified for individual offences, the *Criminal Code* limits the amount of the **fine** imposed for a **summary conviction** offence to a maximum of \$5,000 for individuals. There is no limit to the amount of a **fine** imposed for an **indictable** offence.

Victim Fine Surcharges

The court imposes an additional penalty on an offender who has been convicted or discharged of a federal offence under the *Criminal Code*, the *Controlled Drugs and Substances Act*, or the *Cannabis Act*. The money goes into a trust account to provide services for victims of crime. The surcharge is 30% of any **fine** imposed, or if no **fine** is imposed, \$100 for a **summary conviction** offence and \$200 for an **indictable** offence. The court may decide to waive or reduce the surcharge amount if it would cause undue hardship on the offender or would be disproportionate to the offence.

For a provincial offence, the surcharge is 25% of any **fine** imposed, or up to \$100 if there is no **fine** imposed. Depending on the offender's financial circumstances, the court may waive or reduce the surcharge.

Restitution

The court may order that the offender compensate the victim for such things as property loss or damage, loss of income, support as a result of injuries suffered, or for moving and temporary housing expenses to help leave the offender's household (for example in cases of domestic violence).

Conditional Sentence

A **conditional sentence** is a **sentence** of imprisonment that is served in the community. Generally, a **conditional sentence** is an option where the offence has no minimum term of imprisonment, a **sentence** of imprisonment of less than two years is imposed and the safety of the community would not be endangered. However, the *Criminal Code* prohibits the imposition of a **conditional sentence** for certain types of offences.

An offender receiving a conditional sentence order must comply with the following mandatory conditions:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so;
3. Report to a supervisor as directed;
4. Remain within the jurisdiction of the court; and
5. Notify the supervisor of any change of name, address or employment.

In addition, the court may order that the offender obey additional conditions,

such as obeying a curfew, abstaining from alcohol or drugs, not possessing any weapons, performing community service work hours, attending a treatment program, providing support for dependants, or such other reasonable conditions as the court considers desirable for securing the good conduct of the offender and preventing further offences.

Imprisonment

Most criminal offences are potentially punishable by a term of imprisonment. The length of the term imposed, the place of imprisonment and the manner in which the time is to be served will vary with the circumstances of each case. A sentence of two years or more, for example, must be served in a federal penitentiary, while a sentence of less than two years is served in a provincial institution.

Maximum and Minimum Terms

The *Criminal Code* sets out maximum terms of imprisonment ranging from two years to life for all **indictable** offences, and, unless otherwise specified, six months for **summary conviction** offences. These maximum terms provide a guideline to the court as to how seriously Parliament and society regard the particular crime. It is only in the most serious of circumstances that the maximum penalty is imposed. For certain offences, such as impaired driving, robbery with a firearm and some sexual offences, the *Criminal Code* imposes minimum terms of imprisonment. In such cases, the court cannot sentence the offender to a lesser term.

Consecutive and Concurrent Terms

Sometimes, an accused person is convicted of more than one offence and sentenced to more than one term of imprisonment at the same hearing. In such cases, the court has the option to order that the terms be served either consecutively (one after the other) or concurrently (at the same time). Generally, **concurrent sentences** are ordered where the offences were committed together or within a short period of time. Where the offences are totally unrelated and took place at different places and times, **consecutive sentences** are generally imposed. In such cases, the court must ensure that the total term is not excessive.

Intermittent Terms

Where the total term of a jail **sentence** does not exceed 90 days, the court has the discretion to order that the time be served intermittently (at distinct intervals, such as on weekends). Such **sentences** allow the offender to remain employed, continue with educational pursuits or otherwise avoid financial hardship.

Indefinite Terms

An application can be made to have an accused person (usually a habitual offender or dangerous sexual offender) declared a “dangerous offender”. If this is done, the offender can be sentenced to an indeterminate (indefinite) period of imprisonment.

There are also “long-term offender” designations given to persons convicted of serious personal injury offences who are found to be likely to re-offend. Someone found to be a long-term offender must be given a **sentence** of at least two years and long-term supervision in the community for a period not

exceeding ten years.

Capital Punishment

Capital punishment (the death penalty) was abolished in Canada by Parliament in 1976.

Youth Criminal Justice Act Sentencing

The *Youth Criminal Justice Act* applies only to violations of federal laws (including the *Criminal Code*) by young persons between the ages of 12 and 17. The *Youth Criminal Justice Act* recognizes that young persons should be held responsible for their actions, yet they should not be held accountable in the same way or face the same consequences as adults in all instances.

Extrajudicial measures may be used rather than judicial proceedings to deal with a young person. **Extrajudicial measures** are ways used to deal with a young person alleged to have committed an offence, other than through the court system. If judicial proceedings do take place, a youth court may impose one or more of the **sentences** outlined in the *Youth Criminal Justice Act*. These include reprimands, discharges, deferred sentences, fines, **restitution**, community service work, prohibitions, custody, and community supervision orders.

Under the *Youth Criminal Justice Act*, a youth justice court is the only court that can deal with an offence committed by a young person. In some cases, adult **sentences** can be imposed on young persons who are convicted of certain serious offences.