



Session 22

Criminal Law 5

Sentences

Plea bargain

Process in which the accused negotiates with the prosecution (i.e. the Crown) to plead guilty in exchange for a lesser charge and a recommendation for a lighter sentence.

The reason why a plea bargain is often used is that an accused may be convicted on multiple charges or may be faced with most serious potential charges. (comment)

Sentencing

Purposes (including of the reform) of sentencing include:

- Denounce unlawful conduct.
- Deter offender and other persons from committing offences.
- Separate offenders from society.
- Assist in rehabilitating offenders.
- Provide reparations for harm done to victims or to the community.
- Promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and the community.

In principle, sentencing is based on judicial discretion except for a statutorily prescribed minimum sentencing

*1st degree murder: life imprisonment with no parole eligibility up to 25 years;
2nd degree murder: life imprisonment with no parole eligibility up to 10 years;
robbery and aggravated sexual assault: 4 years; impaired driving: \$600 fine
on first conviction.*

R v Latimer shows that minimum sentencing does not amount to cruel and unusual punishment; the contrary, i.e. a very light sentence would be unfair for the victim or the victim's family inclusive of the society at large i.e. would see their rights be violated; this case shows the difficulty at arriving at a balance of rights when a crime has been committed.

The sentencing hearing, being less formal than trials, aims at crafting a sentence appropriate for the offender and the offence and is determined on information provided by the pre-sentence report prepared by a probation officer, a victim impact statement prepared by the victim or victim's family, and by questioning the lawyers during the hearing.

Restorative justice

Aims at settling the conflict to the satisfaction of the parties involved, by establishing a respectful relationship that helps offenders to be reintegrated in their communities while giving victims or the community the satisfaction required.

Circle sentencing

Sentencing circles aim at bringing together the offender, victim, family, community members, judge, lawyers and the police to recommend the sentence for the offender.

ACTIVITY: read case *R v. Moses* (pp333-336) to make out the differences between circle sentencing and typical courtroom sentencing.

Typical: formal structure; court officials do most of the speaking; public safety and retribution are main concerns; judge makes the sentencing decision.

Circle: informal structure; all those involved have a chance to speak; rehabilitation and protection of the community are main concerns; sentence decision is a consensus of those in the circle.

Sentencing options

Judicial discretion allows a choice among the following:

- Absolute discharges: frees the offender with no conditions and no criminal record— yet found guilty, usually for immigration or employment reasons.
- Conditional discharges: frees the offender with no criminal record but under particular conditions that are to be followed strictly.
- Probation: allows for correctional services to rehabilitate offenders; can be combined with imprisonment and fining; can be in effect up to 3 years.

Sentencing options (cont.)

- Fines: involves monetary penalties inclusive of garnisheeing wages (i.e. taking a sum of money directly out of the defendant's wages); occurs for summary convictions up to \$2000.- but there is no limit for indictable offences.
- Intermittent sentences: allows for flexibility when imprisonment is less than 90 days; used for offences with short mandatory minimum sentences.
- Conditional sentences: allows that a prison term of less than 2 years be served in the community so as to facilitate rehabilitation and reduce the use of incarceration; involves electronic monitoring.
- Imprisonment: used for serious offences.

Wrongful convictions

Wrongful convictions do happen; the consequence is a double failure: the innocent has been wronged while the guilty is free (i.e. It is better to let nine guilty persons free, than to convict one innocent person !)

For some the criminal justice has failed because it is not enough to claim that on the whole it works when it is not capable of guaranteeing that justice is made! (comment)