

SENTENCING FACT SHEET

Sentencing Objectives: The Criminal Code requires that a judge consider the following objectives in sentencing.

- Denunciation of unlawful conduct – whether a particular sentence will express society’s disapproval of the offence.
- General deterrence – whether people may be less likely to commit this type of offence if they know they will receive a certain penalty
- Individual deterrence – whether the accused needs to be deterred from committing further offences by a particular sentence.
- Protection of the public – whether the offender needs to be kept away from the public by imprisonment.
- Rehabilitation – whether a sentence could change an offender’s behaviour and prevent further offences.
- Reparation for harm to victims or the community and promoting a sense of responsibility in offenders – whether a sentence could achieve these goals

What are some factors the judge must consider when sentencing?

- The circumstances of the offence, its seriousness, and the offender’s degree of responsibility
- The offender’s circumstances, attitude and history, including the presence or absence of a criminal record

- the impact on the victim
- the sentences permitted by the Criminal Code for the offence
- sentences imposed for similar offences committed by similar offenders – a sentence must be within the range of sentences established by appeal courts and the Supreme Court of Canada

What types of sentences can be given?

Discharge: Discharges are not available for offences where the Criminal Code provides a minimum penalty or where the maximum penalty is fourteen years or more jail and where it is contrary to the public interest.

- Absolute Discharge: This may be granted to an offender if it is in the best interest of the offender and not against the public interest. It is granted immediately without terms or conditions and the effect is that the offender will not have a criminal record. While rare, this might happen in the case of a person with no criminal record who committed a minor crime, has already taken steps to rehabilitate themselves, has made restitution, and is unlikely to re-offend.
- Conditional Discharge: This has the same effect as an absolute discharge but the accused must comply with probation conditions set by the judge, such as completing community service hours, before the discharge becomes effective. If the conditions are not met, then the discharge can be revoked and the person can be re-sentenced.

Suspended Sentence with a Probation Order: The judge orders the offender to obey the conditions listed in a probation order and be of good behaviour for a period up to three years.

- **Probation Order:** It may also be imposed along with other types of sentences like a fine or jail. The conditions may include reporting to a probation officer, not consuming alcohol or drugs, living in a specific residence, not associating with the victim or others, a curfew, attendance at school, attendance at rehabilitation or addiction programs, making suitable efforts to find work, community service hours with a community agency, or any other conditions that are appropriate. It is a criminal offence to disobey the rules of a probation order.

Order for Compensation or Restitution: The offender may be ordered to compensate a victim for loss of or damage to property caused by the commission of the crime (compensation) or for the return of the property to its owner (restitution).

Suspension of Privilege: An offender's driver's licence *may* be suspended for certain driving offences and *must* be suspended for impaired driving and driving while prohibited. An offender must be prohibited from owning or being in possession of a firearm in some cases, and may be in other cases.

Fine: The offender must pay a fine at the court. Fines paid are deposited in the provincial government's General Revenues.

Imprisonment: The Criminal Code says an offender should not be deprived of liberty if less restrictive sanctions may be appropriate, and it requires a judge to consider all available sanctions other than imprisonment that are reasonable in the circumstances, before imposing a jail sentence.

- **Conditional Sentence Order:** For certain offences, if the judge believes a jail sentence of less than two years is required, the judge may order that it be served in the community unless to do so would endanger the safety of the community, or be inconsistent with the fundamental purpose and principles of sentencing.

- **Jail sentence:** Where the circumstances require, a judge may sentence an offender to a term of imprisonment. Less serious (summary conviction) offences may have a maximum sentence of six months or eighteen months in jail. More serious (indictable) offences may have a maximum of five, ten or fourteen years. The most serious indictable offences have a maximum term of life imprisonment. In some cases the maximum sentence available will depend on whether the prosecutor (Crown Counsel) has chosen to proceed with the charge by “summary conviction” or “indictable” procedure.

What is a pre-sentence report?

A pre-sentence report prepared by a probation officer states the age, education, family support, employment, health problems, addictions, and previous convictions of the offender. It may include interviews with the victim and people close to the offender such as family, friends, a teacher, or an employer. The report helps the judge to learn more about the accused before sentencing.

What is a victim impact statement?

Before deciding on the sentence, the judge will consider the victim’s statement about the effect of the crime, if it is presented by the prosecutor. The statement must be in written form and describe the physical or emotional harm, property damage or economic loss suffered by the victim as a result of the offence and the impact of the offence on the victim. If the victim is dead, ill, or incapable of making the statement, a relative may make the statement. An individual may also prepare a statement on a community’s behalf describing the impact of the offence on the community. Victims may read their written statement in court.

What is a “Gladue report”?

The Criminal Code requires that a sentencing judge pay particular attention to the circumstances of aboriginal offenders. The Supreme Court of Canada has interpreted this to mean that when sentencing an aboriginal offender, a judge must consider the unique systemic or background factors that may have influenced the offender and the

sentencing procedures and sanctions that may be appropriate, given the offender's particular aboriginal connection or heritage.

A "Gladue report" is a form of pre-sentence report tailored to the specific circumstances of aboriginal offenders. It will provide individualized information about how intergenerational and systemic effects of colonialism, displacement, residential schools, poverty, unemployment and substance abuse have affected an aboriginal offender. It should also include information about realistic restorative or rehabilitative programs available for the offender.

What is a sentencing circle?

Not a sentence, but a way of conducting the sentencing hearing, in which the offender, the victim, their families, and representatives of community groups that might assist in rehabilitating the offender and supporting the victim, meet to discuss the impact of the offence, and what might be an appropriate plan for a restorative, rehabilitative sentence. The circle then recommends a sentence to the judge. Sometimes, Crown and defence lawyers and the judge participate in the circle, in which every member is an equal participant, in contrast to the hierarchical structure of a hearing in court.