



Sentencing Factors Part 1 by Sahaub Missaghi

In criminal law justice is served through punishment of those found to be guilty. The Criminal Code of Canada states that the purpose of sentencing is to impose just sanctions in order to establish respect for the law and maintenance of a just, peaceful and safe society.

But what constitutes just punishment? There are various factors, some more important than others, which determine the extent and severity of the punishment. Most of the factors fall under the two main principles of criminal law – the concepts of specific and general deterrence.

Obviously, the justice system is geared at preventing other crimes from happening. Specific deterrence works to change the behaviour of the person in question, i.e. the guilty party, making it less likely that they commit further crimes. General deterrence, on the other hand, prevents other persons from following the example of the guilty party. Together, these two principles discourage society from committing crime.

Sentencing is largely based on the above, but other factors are also considered in determining an

appropriate punishment. The fundamental principle of sentencing in the Criminal Code is for it to “[be] proportionate to the gravity of the offense and the degree of responsibility of the offender.” Proportionality is a two-fold concept. In dealing with the offense, crimes are split into the categories of summary conviction offenses and indictable offenses. Summary conviction offenses are often referred to as “petty crimes,” which include driving offenses, possession of marijuana and other crimes which although harmful to society are not the most harmful. Indictable offenses, such as murder, manslaughter and aggravated assault, are the most harmful crimes to society and therefore the punishment can be as strict as life imprisonment. Thus the type of crime is clearly a major factor in determining the proper sentencing, as society would want to see a serial rapist or killer locked up in prison rather than someone involved in a bar fight.

The degree of responsibility of the offender is also considered in determining a just sentence. This goes to the ideas of “blameworthiness” and “remorse.” Does the criminal

regret their act? Murder and manslaughter provide a good example of this. For instance, if someone went into a fist-fight with the intent to cause bodily harm to another, and ended up killing that person in the process, then punishment under the heading of manslaughter is deemed to be more fit because there was no intent to kill that person, especially if the guilty party shows sympathy and remorse for their actions. In contrast, serial killers generally pre-meditate how, where and when they plan to kill someone which shows the most obvious intent of killing someone, particularly if they portray no regret. The charge against them will be first-degree murder and they most likely would be sentenced to the maximum punishment of a life sentence.

Deterrence, the seriousness of the crime and the degree of responsibility are only some of the factors that determine a convicted criminal’s sentence. Next week we will cover some other important factors.