

Section 2: Criminal Law

Lesson Plan 2: Criminal Sentencing

SNAPSHOT

Grade Level	8-10
Duration	1-2 periods; more if conference or simulation is done

Introduction

Sentencing is one of the more controversial aspects of the Canadian criminal justice system. In determining the sentence to be imposed on a convicted offender, the courts have the difficult task of trying to balance the ideals of justice held by society with the needs of victims and offenders. In this lesson students will learn about Canada's justice system, with particular emphasis on the principles of sentencing, sentencing alternatives, purposes of sentencing and the constraints, and special sentencing considerations that are given to Aboriginal and young offenders. Students will also learn about alternative measures such as restorative justice, and that it takes the offender, victim, families, and the larger communities into consideration.

Objectives

By the end of the lesson, students will:

- Understand restorative justice, sentencing, and appeals
- Describe sentencing alternatives and the relationship between crimes and sentences
- Understand that there are special sentencing considerations given to Aboriginal and young offenders
- Adopt a position on the need for prisons and incarceration in the reform or rehabilitation of offenders
- The court system is adversarial and focuses on the actions of offenders
- Restorative justice takes into account not only the offender, but also the victim, the families, and the larger community

Focus Questions

1. What are the principles of sentencing?

2. What are some of the sentencing options that a judge can give?
3. What is “restorative justice” and how is it an alternative to court?
 - What are some of the ways that the court system is adversarial?
 - What role do offenders play in the court system?
 - What role do victims play in the court system?
 - If a criminal offender, victims, witnesses, authorities and interested community members all sit together to discuss a crime that was committed, what might be some of the outcomes?
 - What are some of the requirements for a restorative justice process to be effective?
4. Why are special sentencing considerations made? For whom?
5. What is a mandatory minimum sentence? Should they be used?

Teaching Summary

Topic 1: Principles of Sentencing

Topic 2: Process of Sentencing

Topic 3: Alternative Measures

Topic 4: Special Considerations

Activities 1 and 2 will cover the topics listed above. For Activity 1, students will begin by reading *Handout 1: Purpose and Principles*. Students will then break into groups and discuss the questions on *Handout 2: Principles of Sentencing: Read-React*. For Activity 2, students will conduct a debate on the subject of mandatory minimum sentencing. They will use the information on *Handout 3: Debate on Mandatory Minimum Sentences* and *Handout 4: Debate Information*.

For Activity 3 students will read *Handout 7: Alternatives to Criminal Court* and complete six questions on *Handout 8: Alternatives to Criminal Court- Quiz*.

CONTENT

Topic 1: Principles of Sentencing

The *Criminal Code of Canada* outlines the principles and purpose of sentencing in s. 718. These principles are placed in the *Criminal Code* as a clear guideline to judges and a statement of principles that give direction to our penal laws and sanctions.

The following sections from the *Criminal Code* are the codification in Canada of the principles which have governed sentences in the common law:

- Denunciation - making sure the punishment reflects society's abhorrence for the crime committed
- Deterrence (both specific for the accused and general for the population at large) - to reduce criminal conduct
- Rehabilitation - to change the behaviour of an offender and reconstitute them as productive citizens
- Protection of the public - through incarceration and/or the imposition of conditions to control the accused's behaviour in the community and to prevent the repetition of the criminal activity

In addition to these principles, the Code has added the principles of:

- Reparation - to repay, repair or compensate the victim or community loss and harm
- Responsibility - for the offender to acknowledge the harm done to the victim and the community

These principles are all shaped by the over-arching concept that any sentence must be proportional to the gravity of the offence and the degree of responsibility of the offender. The *Criminal Code* also mandates the consideration of aggravating or mitigating factors, similar sentences for similar crimes and offenders and special consideration for aboriginal offenders.

s. 718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- To denounce 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 acknowledgment of the harm done to victims and to the community

The fundamental principle of sentencing is as follows:

s. 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Other sentencing principles include the following:

s. 718.2 A court that imposes a sentence shall also take into consideration the following principles:

- A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing
 - evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor, or
 - evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim shall be deemed to be aggravating circumstances
- 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 should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders

Topic 2: Process of Sentencing

Presently the criminal law courts have several options when sentencing offenders. This gives the court considerable latitude to consider the nature of the crime, the offender, the victim, public safety and the society at large. The following options may be used.

1. **Absolute and Conditional Discharge:** An absolute discharge means the offender will be viewed as not having a conviction, whereas a conditional discharge means the offender must follow certain guidelines for a specified period of time. Upon successful completion the offender will be given an absolute discharge.
2. **Probation:** A court order for a term of up to 3 years which contains conditions to control an accused's behaviour in the community. These conditions generally include behaviour expectation, including consumption of alcohol or drugs or possession of weapons and may also impose community service hours. A probation order may stand alone, be in combination with a fine or in combination with a jail sentence of 2 years or less.
3. **Restitution:** This is a payment made by an offender to the victim to cover expenses arising from the crime.
4. **Fines:** Are monetary penalties which may be imposed alone or in combination with incarceration or with probation.
5. **Conditional Sentence:** A conditional sentence is a sentence of incarceration served in the community, with the conditions of the sentence (such as curfews, restricted movement or contact with named others) forming the "walls" of the prison.
6. **Intermittent Imprisonment:** For custodial or jail sentences of 90 days or fewer, an offender can serve the sentence intermittently and be bound by a probation order while at large between times in prison.
7. **Imprisonment:** The most serious sentencing option available and may range anywhere from one day to a maximum of life in prison.
8. **Long Term Offender:** Offenders found by the court to be at risk to re-offend but where there is a reasonable possibility of eventual control of the risk in the community will receive a sentence of imprisonment longer than two years and community supervision order for up to 10 years.
9. **Dangerous Offender Declaration:** Section 753 of the *Criminal Code* allows the court to categorize the most dangerous offenders (those whose past aggressive, violent or sexual behaviour establishes a pattern that is unlikely to be able to be changed) and sentence them to an indefinite period of imprisonment.

The *Criminal Code* can be viewed at www.laws.justice.gc.ca/en/C-46/.

Topic 3: Alternative Measures

Alternatives to Criminal Court

As society evolves, so does how society sees and deals with people who break the law. Crimes have changed over the centuries and today's crimes and criminals also need to be dealt with in a more evolved way.



Our criminal courts have begun to change and there are now alternatives for the varying degrees of crimes. Alternatives to courts such as diversions, restorative justice and community courts have begun to change the face of our justice system.

Diversion

Broadly speaking, it includes the community taking steps to deal with traditional criminal justice cases without involving police or Crown. It also allows police and Crown to make alternative processes to court. If courts are used, diversion allows judges to use absolute or conditional discharges, restitution, suspended sentences, probation and community service work. BC's Ministry of the Attorney General has developed a specific policy on diversion. Guidelines for Diversion in BC:

- Used as a pretrial procedure whereby Crown uses its discretion on a case-by-case basis.
- The offender is referred to an individual or agency where the offender takes the opportunity to demonstrate personal responsibility for the offence or harm done.
- It is voluntary.
- If an agreement is made, the Crown relinquishes its rights to prosecute.
- Helps negotiate resolution for the victim or society for suffering and includes various counseling programs.
- Crown has to have enough evidence that the case against the offender would have gone to trial.
- The offender would not be a threat to the community.
- Someone who has already been diverted, received a warning or a previous criminal record cannot be diverted again.
- Drunk drivers cannot be diverted again.
- Only in special circumstances can an accused be diverted who has committed an assault on family or any sexual assault.
- Diversion records are kept in case the offender offends again and the records may be needed for court.

Restorative Justice

Our court system is adversarial - one side argues against the other. While this seems to be a good method for settling many disputes, going to court can be time-consuming, expensive and take years to get a resolution. It can also leave people incredibly dissatisfied. When it comes to criminal courts, the victims do not play any role.

Criminal courts are for the protection of society and not to help victims of crimes. However, the justice system is beginning to change, as seen with the above alternatives to criminal courts. These new alternatives do take victims into account. Restorative justice is one of them. The concept of restorative justice comes from our First Nations people in Canada. It is a system where the offender, the victim(s) and the community members find a way to



“restore” the relationship between people, repair any damage done and prevent any future criminal acts, rather than simply punishing the offender. An important factor of restorative justice is that the offender must admit to having done the harm, accept responsibility for it and be personally involved in trying to make things better for the victim and the community.

Healing Circles

Healing circles are another form of restorative justice. It is a First Nations technique but is not solely for First Nations people. Anyone can participate in a healing circle. Not all offenders qualify for this type of program. The police, the Crown or the judge decides on a case-by-case basis if conferencing is appropriate for the crime. Healing circles can take many different forms depending on the needs of the parties and the community. They can be sentencing circles or healing circles. The focus is on the offender, the behaviour and the community taking on the problem. It is shared by all who have roots in the community. They require significant planning before the circle is held.

What Happens?

The conference facilitator arranges a meeting between the investigating police officer, the offender, the victim and people who are willing to support the victim and offender. They sit in a small circle and the facilitator leads them through a process that requires the offender to accept responsibility for what he or she did. Victims have an opportunity to tell the offender how the act has affected them. Others in the circle are allowed to do the same. Apologies from the offender are given to all who are concerned. The victim(s) may suggest ways the offender can fix the harm that they have done. For example, if the offender stole something, then maybe the offender would have to pay for it or replace the stolen item. Once the group has come to an agreement, the facilitator writes up an agreement which everyone signs.

What is the Result?

For the offender, the final settlement might appear less punitive than a result in a criminal court, but it requires a greater commitment on the part of the offender. Facing the victim and others in a circle is not easy for most offenders. Because the victim plays

a role in the conference, unlike in a criminal case, he or she gets more satisfaction; they may come to understand the motives of the offender, receive an apology and see remorse from the offender.

Topic 4: Special Considerations

Canadian sentencing laws recognize that some categories of people in society are different than others. This section considers how the *Criminal Code* and *Youth Criminal Justice Act* tailor sentencing principles to meet the needs of Aboriginals and youth respectively.

Aboriginal Sentencing

Section 718.2(e) of the *Criminal Code* addresses Aboriginal sentencing. The section requires a sentencing judge to pay particular attention to the circumstances of Aboriginal offenders and to consider all available sanctions other than imprisonment that are reasonable in the circumstances. An individual's Aboriginal status is considered in determining a sentence because his or her circumstances are different from non-Aboriginal offenders.

One reason why the *Criminal Code* treats Aboriginal people uniquely is because Aboriginal people are overrepresented in Canadian prisons. For example, in 1997, Aboriginal people constituted close to 3 percent of the population of Canada, yet amounted to 12 percent of all federal inmates.

To deal with the overrepresentation of Aboriginal people in prison, s. 718.2(e) directs judges to undertake the sentencing of Aboriginal offenders differently. First, the sentencing judge should consider “the unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts”. Some of these background factors include the low incomes, high unemployment, lack of opportunities, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation that lead Aboriginals to have a higher incidence of crime and incarceration. Systemic factors include the widespread discrimination that Aboriginals experience both in, and outside, penal institutions.

Second, the sentencing judge should consider “the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection”. This is because the traditional sentencing ideals of deterrence, separation, and denunciation do not accord with the understanding of sentencing held by Aboriginal offenders and their community. Most traditional Aboriginal conceptions of sentencing place a primary emphasis upon the ideals of restorative justice. Restorative justice is an approach to remedying crime in which it is understood that all things are interrelated and that crime disrupts the harmony which existed prior to a crime's occurrence. Restorative justice determines a particular sanction by considering the needs of the victims, and the community, as well as the offender. An example of this can be seen in circle sentencing.

In a circle sentencing, the judge, crown counsel, defence lawyer, victim, offender, police and community members discuss the crime. In this sense, the community participates in resolving the conflict. Those involved sit in a circle to break down the formality that can characterize a courtroom sentencing hearing. An emphasis is placed on healing and consensus building among all who are affected by the crime.

Youth Sentencing

The *Youth Criminal Justice Act* provides the legislative framework for Canada's youth justice system. It includes a separate sentencing regime because the needs and situations of youth are different from those of adults. Section 38 states the principles and purposes of youth sentencing:

38. (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.
- (2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:
- (a) The sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;
 - (b) The sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;
 - (c) The sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;
 - (d) 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 aboriginal young persons; and
 - (e) Subject to paragraph (c), the sentence must
 - (i) Be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),
 - (ii) Be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and
 - (iii) Promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community.

Lessons 3-6 in this section will discuss the *Youth Criminal Justice Act* in more depth. Youth Sentencing will be discussed further in Lesson 5 and 6.

ACTIVITIES

Activity 1: Purpose and Principles of Sentencing in Canada

Assign *Handout 1: Purpose and Principles of Sentencing in Canada* for pre-reading one class prior to this lesson or have the class conduct an active reading activity in class. Debrief the key concepts, emphasizing the complexity of sentencing offenders while balancing the various interests of victims, offenders and society. Provide each student with *Handout 2: Principles of Sentencing: Read-React* and have them separate into groups of four or five.

Assign the groups one or more of the statements for discussion, reflection and a reaction. Instruct the groups to read the assigned statement, discuss its meaning, take five minutes to write out their reflections and present the opinion to the class. Have each group question, critique or debate the statements made by other groups and encourage discussion while highlighting salient points or valuable insights.

The value in the activity comes when the students must think about the goals of sentencing offenders and move away from simplistic notions of punishment.

Activity 2: Mandatory Minimum Sentence

The students will conduct a formal debate on mandatory minimum sentences. Assign students to teams of six (double up roles if there are teams with fewer than six students). Once teams are set, provide students with *Handout 3: Debate on Mandatory Minimum Sentences* and *Handout 4: Debate Information*. You may also want to provide each team with one copy of the criteria for grading in *Handout 5: Debate Grading Rubric*.

Review the debate topic, process and grading with all students and instruct them to choose roles for the debate. Allow one to two classes for research and writing or adjust the time limits to the debate roles and adjust prep time accordingly. The process for the debate is outlined in the handouts but adjust as required for student ability, class time allotments or research time.

Activity 3: Alternative Measures

Introduction to Alternatives to Criminal Court

Present information regarding alternative approaches to criminal matters by giving students *Handout 7: Alternatives to Criminal Court*. Students will use the information on this handout to complete *Handout 8: Alternatives to Criminal Court - Quiz*. The reading and questions could also be assigned for homework from the previous lesson.

See Answer Key for *Handout 8* in the Assessment section.

RESOURCES

Activity 1: Purpose and Principles of Sentencing in Canada

Handout 1: Purpose and Principles of Sentencing in Canada

Handout 2: Principles of Sentencing: Read-React

Activity 2: Mandatory Minimum Sentence

Handout 3: Debate on Mandatory Minimum Sentences

Handout 4: Debate Information

Handout 5: Debate Grading Rubric

Handout 6: Group/Self Evaluation Rubric

Activity 3: Alternative Measures

Handout 7: Alternatives to Criminal Court

Handout 8: Test Your Knowledge on Alternatives to Criminal Court

ASSESSMENT

Activity 1: Purpose and Principles of Sentencing in Canada

The assessment piece for Activity 1 is informal and would target the completion of the assigned tasks and a successful presentation of an opinion. Participation of the students is more important than the depth, accuracy or knowledge demonstrated in their responses. Alternatively, you can collect the written copy of the group's reflections and assign a grade.

Activity 2: Mandatory Minimum Sentence

Two rubrics have been provided. *Handout 5: Debate Grading Rubric* can be used by you to grade each student's performance. *Handout 6: Group/Self Evaluation Rubric* can be given to the students to evaluate themselves and their group. You may also want to keep team scores and have bonus marks assigned to each winning team.

Activity 3: Alternative Measures

Introduction to Alternatives to Criminal Court

Handout 8: Alternatives to Criminal Court - Quiz can be discussed and marked as a class or be taken in for marks.

Answer Key: *Handout 8: Alternatives to Criminal Court*

1. What are some of the ways that the court system is adversarial?
The courtroom itself is often physically divided, with one side versus the other, and a judge in the middle (as referee). Crown argues the case against the accused. Trials are won or lost. The accused is guilty or not guilty. Courts are about crime and punishment.
2. What role do offenders play in the court system?
The sole purpose of a trial is to determine the guilt or innocence of the accused. The Crown presents witnesses and evidence to help determine if the accused violated the law. It's all about the offender.
3. What role do victims play in the court system?
Victims can submit a victim impact statement to the judge, which may affect sentencing. Unless they are witnesses, victims generally do not participate in the trial. Victims have a very limited role in the court system.
4. What do you think restorative justice means?
To restore means to bring back. Justice is a principal of fairness and the process of administering laws. Definition: Restorative Justice is a theory of criminal justice that focuses on crime as an act against the individual or community rather than

the state. Dialog between the offender and the victim is crucial to restorative justice. The person who has harmed takes responsibility for their actions and the person who has been harmed may take a central role in the process, in many instances receiving an apology and reparation directly or indirectly from the person who has caused them harm. (From Wikipedia)

5. If a criminal offender, victims, witnesses, authorities and interested community members all sit together to discuss a crime that was committed, what might be some of the outcomes?
 - *Dialog and understanding by showing how the offender's actions hurt others.*
 - *Learn how one individual action can impact many people.*
 - *Help offender understand why his conduct was wrong and why it should not be done again.*
 - *Help all participants confirm the values important to the community.*

6. What are some of the requirements for a restorative justice process to be effective?

The offender must admit guilt. Victims must be willing to publicly discuss the crime. A facilitator needs to direct discussions and community members need to be involved.

ENRICHMENT

Mandatory Minimum Sentence

1. Invite a guest speaker from L.I.N.C. (Long-term Inmates Now in the Community) to your classroom. L.I.N.C. members have served time in federal prisons and can speak frankly and directly about their experiences and the nature of sentencing. Prepare a list of questions or issues you would like them to address in the presentation. Reach L.I.N.C. at <http://www.lincsociety.bc.ca>. Note: Some of the guest speakers have committed serious crimes and you will want to discuss this with your school administration prior to making an invitation.
2. Conduct a research poll in your school on firearms control in Canada. Design a series of questions about firearms laws or gun control using information from <http://www.rcmp.grc.gc.ca> and circulate the survey to as many students as possible. A reasonable sample from which you could draw conclusions would require a random sample of at least 10% of the student body (your poll results will be accurate within 5% of the total school population if well designed). Upon completion of the survey gather the results and draft your conclusions.
3. Write a letter to the local newspaper editor or create a blog on the issue of mandatory minimum sentences for firearms and drug offences. If you choose a blog provide the URL to your teacher/classmates and have them respond. Visit the [Parliament of Canada's website](#) to find out more about this issue.

Alternative Measures

1. Begin a restorative justice program in your school by contacting the school administration. Introduce the idea of mediating victims and offenders and having offenders take responsibility for their actions through restitution, community service or reconciliation. For more information visit www.justice.gc.ca or www.restorativejustice.org
2. Peer Resolution Conferences use Aboriginal restorative justice practices and principles to offer a unique alternative to certain school discipline measures, including suspensions. Have students read about this conference on www.justiceeducation.ca/programs/peer-resolution-conferences. Then have them complete a short writing assignment on the pros and cons of this conference.
3. Use the following videos and activities to initiate discussion on victims and restorative justice
 - *For Angela* – A film on racism and harassment, with a focus on Aboriginal peoples (22 minutes). 1995, National Film Board of Canada.

- Through a Blue Lens – A film on the drug scene in Vancouver’s Downtown Eastside (52 minutes). 1999, National Film Board of Canada
- Suggest that each participant create a chart showing all the people impacted by one crime and use it to demonstrate to others what they have learned.