DO JUDGES TAKE PRIOR RECORD INTO CONSIDERATION? AN ANALYSIS OF THE SENTENCING OF REPEAT OFFENDERS IN BRITISH COLUMBIA

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Introduction

A fundamental principle in nearly every common-law jurisdiction, such as the United Kingdom, Australia, New Zealand, Canada, and the United States, is that an offender's prior record should play a central role in sentencing. In fact, the importance of previous criminal history should only be surpassed by the seriousness of offence committed (Roberts, 1997; Ulmer, 1997; Vigorita, 2001). In Canada, the public has held the views that repeat offenders should be held more accountable for their offenses and should receive a harsher penalty (Roberts, 2008). This perspective is based on the notion that deliberate and persistent criminal activity indicates that the offender is a chronic and significant risk to society who consistently demonstrates a disregard for the rules and laws of society and its citizens. As Ruby et al. (2004: 311) stated, a "criminal record may show that the offender is committed to a criminal way of life and therefore a danger to society". Indeed, many legislators and courts have stated that an offender's second offence must be considered more serious than their first, and leniency should not be given to offenders with lengthy criminal histories (Ulmer and Kramer, 1996; Roberts, 2008). Although criminologists have questioned the general deterrent effect of custodial sentences for decades, several authors have pointed out its strong specific deterrent effect, especially with dangerous and repeat offenders (Gendreau, Goggin, & Cullen, 1999; Weinrath and Gartrell, 2001). Indeed, while looking at the overall effect of prison sentences on recidivism, Gendreau et al. (1999) maintained that the most important objective of prisons should be the targeted incapacitation of chronic and high-risk offenders.

In British Columbia, even a cursory review of sentencing practices suggests that prior criminal record has played little or no role in the sentencing decision of judges. To illustrate this point, data collected from police records in PRIME-BC was analyzed to examine the likelihood of being sentenced to a term in prison and the sentence length for offenders found guilty of either assault or break and enter. While it is apparent that judges in British Columbia treat first time offenders somewhat more leniently than repeat offenders, the data presented in this article clearly indicates that judges have not been taking prior record into consideration when sentencing repeat offenders.

LITERATURE REVIEW

Roberts and Cole (1999) identified two separate sentencing philosophies in Canada distinguished by past-oriented and future-oriented punishing rationales. The first category, highlighted by the 'just-deserts' theory, justifies punishment retrospectively in terms of the offense committed. Central to the just-deserts theory is that every crime needs to be punished in order to restore the balance lost when an offender breaks the social contract. In effect, all crimes deserve and must be punished. According to this perspective, a primary consideration in sentencing is proportionality or the idea that the severity of punishment should be based on the seriousness of the crime and the degree of culpability of the offender (Vigorita, 2001; Von Hirsch, 2007). Since the offender and the offences committed by the offender cannot be considered separately, most just-deserts theorists permit for one's prior record to be considered when determining an appropriate punishment. The general agreement here is that prior criminal activity corresponds to a greater level of culpability

and should result in harsher sentences (Roberts, 1997; Vigorita, 2001). The idea that repeat offenders have a greater degree of responsibility than first-time offenders originates from the Classical School of Criminology's perspective that offenders must be treated as moral and rational individuals capable of learning from their past mistakes. As Von Hirsch (1991) argued, punishment inflicted on a first-time offender expresses societal condemnation of the crime. Although the offender has broken the law, they should be given some consideration at sentencing on the grounds that all people are capable of making a mistake. By refusing to take seriously the societal disapproval for their previous transgressions, repeat offenders lose the privilege of a discount at sentencing and must be responded to more harshly (Roberts, 2008).

The second philosophy is best characterized by consequentialist theories, such as utilitarianism. According to utilitarian theory, punishment should only be used to achieve clear objectives, such as rehabilitation, harm reduction, and the protection of society. Rather than focusing on assigning blame for criminal behavior, utilitarian theory aims to benefit all of society by deterring future criminal activity through activities such as sentencing (Von Hirsch, 1983, Roberts, 1997; Vigorita, 2001). Proponents of this perspective view punishment as a means to an end or a method to improve both the offender and society. As Ewing (1970) pointed out, there are many positive societal outcomes that can be derived from punishment, most notably providing a method for society to protect itself against crime. As a result, there are many justifications for imposing longer sentences on repeat offenders, particularly the numerous empirical research findings that past criminal behavior is the best predictor of future criminal behavior (Roberts, 1997) and that long term incarceration correlates to lower rates of recidivism. Indeed, this link between prior criminal record and future criminal offending is noted by many criminologists, speaks directly to the importance of crime control approaches, and places an emphasis on the protection of society through sentencing (Ulmer, 2001; Crow, 2008). As Ruby (1987) noted, a lengthy criminal record indicates that the offender is committed to following a criminal path, despite past warnings or interventions.

In Canada, Bill C-41, the sentencing reform act, was adopted in 1996, and, according to Roberts (2003), was modest in scope as it was designed to serve a balance between the just-deserts and utilitarian goals of sentencing. Section 718 of the *Canadian Criminal Code* reflected this compromise by emphasizing the necessity of fair sanctions, as well as the promotion of a safe society. Section 718 outlines six specific objectives that criminal sentences should fulfill. These are denunciation of the criminal act, general and specific deterrence for offenders and society, incapacitation of offenders, rehabilitation, reparation for the harm caused to victims and the community, and the promotion of a sense of responsibility in the offender and an offender's acknowledgement of the harm they have caused to their victims and the wider community.

Unfortunately, as Roberts and Cole (1999) pointed out, the *Canadian Criminal Code* failed to create a hierarchy for these goals or to provide judges with adequate guidance for how they should consider or balance these objectives when determining an appropriate sanction. While Section 718 states that sanctions must serve one or more of the above mentioned objectives, the *Canadian Criminal Code* remains unclear on the critical issues of whether judges must consider just some of these objectives when handing down a sentence or whether certain objectives have primacy over others. As a result of this general lack of guidance, judges may decide on sentences based on their

personal intellectual and political values, attitudes, and beliefs, a belief in the merit of one sentencing objective over others, or by relying on precedents without specific consideration for all of the prescribed goals of sentencing. In other words, sentencing patterns may emerge from judges that have little relationship, over time, to the desired goals of the *Canadian Criminal Code* or the society it serves.

After identifying the goals of sentencing, Section 718.1 of the *Criminal Code* states that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender". One purpose of this mandate was to limit judicial discretion and to prevent judges from imposing sentences considered by case law to be too severe or too lenient. However, as Roberts and Cole (1999) predicted, this judicial constraint has not materialized, as judges have no specific guidelines for how to create a sentence that complies with all six of the sentencing objectives outlined in Section 718. Furthermore, the *Criminal Code* is extremely vague on the role of prior criminal record in sentencing, as it is mentioned only briefly in Section 727(1), (2), and (3). Here, it states that a more severe sentence *may* be imposed based on prior record, and does not provide any guidance for the conditions under which prior record should be considered, or the degree to which prior record should affect the severity of a sentence.

The uncertainty of how to approach previous criminal history does not exist in many other common-law jurisdictions. For example, the Sentencing Act of 2002 in New Zealand, a bill very similar to Canada's C-41, has prior criminal record on the list of aggravating factors that *must* be considered during sentencing. Moreover, New Zealand's Sentencing Act explicitly outlines that the number of prior sentences, the date, the seriousness of prior offences, the relevance, and the nature of all prior convictions must be taken into consideration by the judge (Roberts, 2003). England's Criminal Justice Act of 2003 uses a cumulative approach to prior criminal convictions by stipulating that each recent and relevant prior conviction *must* be considered an aggravating factor during sentencing (Ashworth and Player, 2005). The Criminal Justice Act also created a Sentencing Guidelines Council that required judges to abide by the Council's sentencing guidelines, unless the judge provided an acceptable statement of explanation (Von Hirsch and Roberts, 2004).

Many authors have pointed out that the role of previous criminal history in sentencing does have several clear limits, most notably, the relevance and similarity of previous offences to those before the court (Wasik, 1987; 1992; Roberts, 1997; Manson, 2001). Criminologists have argued that the significance given to prior criminal record during sentencing cannot be accurately gauged by simply looking at the total number of prior convictions. Rather, they contend that a number of factors should be considered. Wasik (1987; 1992) identified eight specific dimensions that should be relevant to judges when considering an offender's prior criminal record; (a) the total number of previous convictions, (b) the similarity of previous offences to the current offence, (c) the seriousness of prior offences, (d) the length and type of previous sentences, (e) the frequency of reoffending, (f) the staleness of prior convictions, (g) the offender's age at the time of the offences in question, and (h) how the prior record can be an indicator of the offender's character. However, Rodriguez (2003) noted that while all of these factors should play a role in the sentencing of repeat offenders, it is important to note that all of these variables effect sentence lengths in different ways. For instance, in Rodriguez's analysis, an offender's previous criminal history had a greater effect on

the sentencing of more serious crimes, such as armed robbery, than for minor offences, such as minor drug possession.

In effect, this brief literature review highlights some of the challenges facing Canadian judges as a result of having few or no guidelines for how to consider an offender's prior record, and how to interpret and apply the main objectives of sentencing outlined in the *Canadian Criminal Code*, especially when it comes to sentencing offenders with serious and lengthy criminal histories. While some concerns have been raised by scholars who have examined the role of prior record on sentencing in other common-law countries, it appears that Canada continues to lag behind the progress made in these countries. To move from the theoretical arguments around the role of prior record in sentencing in Canada, the authors conducted a series of analyses of sentencing in British Columbia using assault and break and enter offences as proxies for a consideration of judicial sentencing practices.

METHODS

In order to examine the extent that judges considered prior record in sentencing, a random sample of 5% of offenders who were suspect chargeable for break and enter and a 5% random sample of offenders who were suspect chargeable for assault in British Columbia in 2007 was drawn using the RCMP's Police Records Information Management Environment (PRIME) database. The year 2007 was selected to ensure that sufficient time had passed for all possible charges associated to those arrests to be handled by the courts. While each of these offence categories is made up of a number of more specific offence types, such as break and enter of a residence or break and enter of a business, the decision was that these 'like' offences would be combined to create the two samples of sentencing events.

Importantly, each offender's entire official criminal record was coded into a database to capture each instance where each offender in the assault group and each offender in the break and enter group had been sentenced previously for either an assault or break and enter respectively. In order to facilitate the type of analyses required, the offender's criminal history was coded chronologically so that all of their convictions and sentences could be considered. This made it possible to determine the number of times each offender had been convicted of either an assault or a break and enter, the date of each conviction, and the nature and length of each disposition associated to each conviction. Moreover, it was also possible to code this same type of information for every offence on the offender's record, regardless of the offence type. In effect, by analyzing an offender's official criminal history record from their Canadian Police Information Centre (CPIC) record, it was possible to know how many prior convictions each offender had, and for what type of offence, each time they appeared in court for sentencing. Additionally, it was possible to analyse both the nature and the length of each sentence award for any given offence type at any point in the offender's criminal career. As a result, it was possible for example to analyze whether an offender who appeared for sentencing on an assault conviction with five prior convictions was more likely to be sentenced to a period of incarceration and whether they were more likely to receive a longer term of imprisonment than an offender with a less extensive criminal history for similar offences. To the extent that judges are supposed to take prior record into consideration when sentencing, with this

methodology, it was expected that a general pattern would emerge in which increasing sentence lengths would be awarded to offenders as they appeared for sentencing with more prior convictions for the same type of offence and for those with a more extensive general conviction history.

To test the degree to which prior record overall influenced sentencing for a current offence, the data was analyzed examining the number of prior convictions for the same type of offence (assault or break and enter), and the total number of all prior convictions, regardless of offence type. In addition, for offenders who received a term of incarceration, the length of the term of imprisonment was analyzed and compared.

A further opportunity to consider the sentencing practices of judges in British Columbia was made possible by the fact that not all sentences handed down to the offenders sampled were the result of a sentencing event in British Columbia. Rather, some sentences were handed down by judges in other provinces. The number of such cases proved to be smaller than ideal for a comparative analysis, but is included here to the extent that the resulting analysis is clearly suggestive that sentencing practices in British Columbia are perhaps indicative of sentencing practices for Canada overall.

In effect, the sample for this study is a collection of 322 sentencing events associated to all break and enter convictions within the criminal histories of a random sample of 143 offenders arrested for break and enter in 2007 in British Columbia, and a collection of 292 sentencing events associated to all assault convictions within the criminal histories of a random sample of 136 offenders arrested for assault in 2007 in British Columbia. As Table 1 shows, with respect to the break and enter cases, 245 cases involved a sentencing event by a judge in British Columbia and 77 involved sentencing by a judge elsewhere in Canada (presumably because the break and enter in question was most likely committed in another province). With respect to assault cases, 229 involved a sentencing event by a judge in British Columbia and 63 involved sentencing by a judge elsewhere in Canada (again, presumably because the assault was most likely committed in another province.

TABLE 1: SPECIFICS OF SAMPLE SIZE

# of Like Priors on Offender's Record at Time of Sentencing *	Sentencing Events Involving a Judge in BC		Sentencing Events Involving a Judge Sitting Elsewhere in Canada		# of Overall Sentencing Events	Avg. Age of Offenders
	For a Conviction of B&E	For a Conviction of Assault	For a Conviction of B&E	For a Conviction of Assault	Combined	Avg. Age **
No Like Priors	116	110	27	25	278	24
1 Like Prior	40	53	9	14	116	26
2 Like Priors	23	29	8	7	67	27
3 Like Priors	19	15	6	5	45	27
4 Like Priors	9	8	7	5	29	29
5 or More Like Priors	38	14	20	7	79	29
Total Events	245	229	77	63	614	26

** "Like" priors meaning priors which were either convictions for break and enter offence (in the case of break and enter cases) or convictions for assault (in the case of assault cases).*

***The change in age with more priors is statistically significant at .001. Assault cases involved significantly older individuals with respect to both British Columbia (sig. at .02) and the rest of Canada (sig. at .001).*

RESULTS

This study examined the assumption that judges in British Columbia take the prior criminal record of an offender into account when determining the nature and length of a sentence. From this assumption, it was hypothesized that as an offender accumulated more convictions, especially for the same type of offence, the risk of incarceration and the custodial sentence length for each subsequent new offence would increase. Due to many criminologists (see Wasik, 1987; 1992; Roberts, 1997; Manson, 2001) arguing that the sentencing of repeat offenders should consider not just the total number of previous convictions, but, more importantly, similar and recent offences that might indicate an offender's character, the data was analysed with consideration to the number of prior offences of the same offence type (assault or break and enter) and the total number of all prior convictions on the offender's CPIC record at the time of sentencing. Table 2 presents the data from the 322 cases where offenders were convicted of break and enter. As shown in the table, and as would be expected, whether considering sentencing by judges in British Columbia or sentencing by judges in the rest of Canada, first time offenders are less likely to be sentenced to prison than those with prior convictions. At the same time, it would also seem that judges in British Columbia were somewhat attentive to like prior offending to the extent that 78% of offenders were awarded a custodial sentence when they had one like prior, and 84% were sent to prison when they had three like priors. On the other hand, there is little percentage difference between offenders with four like priors and those with five or more. Beyond that, it is interesting that, for the most part, offenders convicted of break and enter elsewhere in Canada were almost certainly being awarded a custodial sentence if they have any number of like prior convictions.

TABLE 2: FREQUENCY OF AN OFFENDER BEING SENTENCED TO A TERM OF IMPRISONMENT FOR A CONVICTION OF BREAK AND ENTER

# of Prior B&E's at Time of Sentencing	% of Time Sent to Prison in BC	% of Time Sent to Prison in the Rest of Canada
No Prior B&E's	57%	59%
One Prior B&E	78%	100%
2 Prior B&E's	70%	88%
3 Prior B&E's	84%	100%
4 Prior B&E's	89%	100%
5 Prior B&E's	90%	100%

The likelihood of judges awarding a custodial sentence aside, it would appear, as demonstrated in Table 3, that prior criminal history for the same exact same offence type was not being taken into account when judges determined the length of imprisonment to be awarded. In general, first-time break and enter offenders sentenced by a judge in British Columbia received, on average, more time in custody than offenders with two or three like priors, and not much less time than offenders with four like priors. Moreover, first time offenders had less than half as many prior conviction overall than offenders with two or more like priors. Offenders with five or more like priors did receive longer prison terms on average, although it is important to remember that this category includes offenders who had as many as 20 like prior convictions, and who, as a group, averaged 27 prior convictions each. Meanwhile, the situation was similar with respect to offenders sentenced by

judges outside British Columbia to the extent that there was no steady increase in the number of months awarded as the number of like priors increases. Further, as with offenders sentenced in British Columbia, first time offenders had substantially fewer prior offences overall than offenders with multiple like offences when appearing in court for sentencing. Arguably, the only notable difference between British Columbia and elsewhere in Canada with respect to the sentencing of break and enter cases was that offenders elsewhere in Canada would appear to be getting slightly longer prison sentences in general. However, these differences did not prove to be statistically significant.

TABLE 3: AVERAGE LENGTH OF PRISON TERM AWARDED IN MONTHS FOR OFFENDERS CONVICTED OF BREAK AND ENTER AND THE NUMBER OF LIKE AND OTHER PRIOR CONVICTIONS AT TIME OF SENTENCING

# of Like Priors on Offender's Record at Time of Sentencing *	Sentencing Events Involving a Judge in BC		Sentencing Events Involving a Judge Sitting Elsewhere in Canada	
	Avg. Length of Sentence Awarded in Months	Avg. # of All Prior Convictions at Time of Sentencing	Avg. Length of Sentence Awarded in Months	Avg. # of All Prior Convictions at Time of Sentencing
No Like Priors	7.5	7	9.7	5
1 Like Prior	8.2	13	5.7	8
2 Like Priors	5.7	21	12.3	13
3 Like Priors	5.5	19	14.5	19
4 Like Priors	8.4	16	7.6	24
5 or More Like Priors	12.0	27	16.1	19
Total Events	7.8	14	10.9	13

In examining sentencing with respect to assault convictions for the 292 sentencing events involving assault cases, the pattern that emerged was remarkably similar to that of break and enter cases. To begin, as demonstrated in Table 4, and again as would be expected, whether considering sentencing by judges in British Columbia or sentencing by judges in the rest of Canada, first time offenders are less likely to be sentenced to prison than those with prior convictions. At the same time, judges in British Columbia were somewhat attentive to like prior offending to the extent that the likelihood of an offender being sent to prison generally increased as offenders appeared in court with more like prior convictions on their record. On the other hand, there was little percentage difference between offenders with four like priors and those with five or more. Further, for the most part, the pattern apparent in the case of offenders sentenced for assault elsewhere in Canada was generally similar to that of British Columbia.

TABLE 4: FREQUENCY OF AN OFFENDER BEING SENTENCED TO A TERM OF IMPRISONMENT FOR A CONVICTION OF ASSAULT

# of Prior Assaults at Time of Sentencing	% of Time Sent to Prison in BC	% of Time Sent to Prison in the Rest of Canada
No Prior Assaults	55%	56%
One Prior Assault	66%	86%
2 Prior Assaults	72%	71%
3 Prior Assaults	87%	80%
4 Prior Assaults	88%	100%
5 Prior Assaults	86%	100%

Similar to the findings for chronic break and enter offenders, it would appear highly unlikely that judges gave serious consideration or weight to the prior record of repeat assault offenders during sentencing. While a first-time assault offender found guilty in British Columbia (with an average of seven convictions otherwise) could expect a custodial sentence of approximately 4.6 months if sentenced to prison, a highly recidivistic and chronic offender with four previous assault charges (and 31 convictions overall) could expect to be sentenced to essential the same amount of prison time (4.5 months), if sentenced to prison at all. As demonstrated in Table 5, there were very few differences in the length of a prison sentence, regardless of the offender's assault and non-assault conviction record. Moreover, this same pattern would appear to be generally true for sentencing events involving assault cases elsewhere in Canada. Specifically, as Table 5 shows, while a first-time assault offender found guilty elsewhere in Canada, and with seven prior convictions otherwise, could expect a custodial sentence of 4.2 months, an offender with three like prior convictions and 19 convictions overall, could expect to receive a sentence of just three months. Again, regardless of where an offender was sentenced in Canada, the sentence length awarded jumps upwards for the catchall group of offenders with five or more like priors. Considering Canada overall, these are offenders with an average of six like priors and 44 prior convictions overall (with some offenders having more than 70 convictions).

TABLE 5: AVERAGE LENGTH OF PRISON TERM AWARDED IN MONTHS FOR OFFENDERS CONVICTED OF ASSAULT AND THE NUMBER OF LIKE AND OTHER PRIOR CONVICTIONS AT TIME OF SENTENCING

# of Like Priors on Offender's Record at Time of Sentencing *	Sentencing Events Involving a Judge in BC		Sentencing Events Involving a Judge Sitting Elsewhere in Canada	
	Avg. Length of Sentence Awarded in Months	Avg. # of All Prior Convictions at Time of Sentencing	Avg. Length of Sentence Awarded in Months	Avg. # of All Prior Convictions at Time of Sentencing
No Like Priors	4.6	8	4.2	7
1 Like Prior	2.7	13	5.1	11
2 Like Priors	3.7	17	1.4	13
3 Like Priors	2.3	26	3.0	19
4 Like Priors	4.5	31	10.0	24
5 or More Like Priors	8.8	46	12.9	38
Total Events	4.1	14	10.9	14

DISCUSSION

When it comes to the sentencing of repeat offenders in British Columbia, there are several general trends that can be observed from the data. It is clear that judges showed leniency towards offenders when they were convicted for a specific offence type for the first time, even if they had prior convictions for other offence types. This practice is largely supported in sentencing literature, where it is often argued that the focus should be around diversion for less serious or habitual offenders (Roberts, 2008). The data also suggested that judges readily passed down sentences that included incarceration to repeat offenders in British Columbia. Unfortunately, it is also evident that judges gave very little, if any, consideration to previous criminal history when determining sentence length for repeat offenders. Whether it was an offender's second or sixth conviction for an assault or a break and enter, and whether they also had five or more than 30 other previous

convictions, there were very few differences, if any, in the length of incarceration awarded by judges when sentencing an offender to custody.

Although Section 348 (1) of the *Criminal Code* states that a break and enter offence committed in relation to a dwelling-house is punishable by life imprisonment, and a break and enter in relation to any other place, such as a business, is punishable by up to 10 years in prison, most offenders were sentenced to, on average, less than one year in custody, if they were sentenced to prison at all. Even an offender clearly committed to a criminal way of life based on their number of prior convictions received a very short prison term. While the purpose of this paper was not to debate the merits of a particular type of sentence, as mentioned previously, the *Canadian Criminal Code* outlines six specific goals for sentencing in Canada; denunciation, deterrence, incapacitation, rehabilitation, reparation, and a sense of responsibility in the offender. Given the criminal and sentencing histories of the offenders in this study, it is extremely difficult to see how the sentences awarded could achieve any of these goals. Although numerous criminologists have questioned the link between sentence severity and general deterrence (Nagin, 1998; von Hirsch et al., 1999; Doob and Webster, 2003), many have supported incapacitation and increased sentences for repeat offenders (Gendreau, Goggin, & Cullen, 1999; Weinrath and Gartrell, 2001). It is very difficult to understand how the average sentence lengths presented in this study, especially for this sample of offenders, can promote any of the stated Canadian goals of sentencing. More importantly, it is completely unreasonable to believe that a chronic offender could be effectively rehabilitated through programming and education during such a short sentence, even ignoring the fact that many offenders would be released from custody well before they served the entire amount of time awarded by the judge.

The findings presented in this article are not without limitations. For example, by combining all convictions for assault, the sample was likely skewed by those convicted of common assault, with fewer offenders convicted of the more serious forms of assault. This undoubtedly reduced the mean sentence length for offenders in the assault sample. Moreover, the research only considered two broad categories of offences. Further, the authors did not have details of the range of mitigating and aggravating factors (e.g. characteristics of offender, seriousness of individual like and other prior offences) that we would expect to go into judicial decision-making in sentencing events. Still, the results presented are stark and compelling. This is especially true given the average months of custodial time awarded individuals convicted of either break and enter or assault is relatively small regardless of the number of like priors or priors overall that they have on their record when they appear for sentencing. Although the arguments presented in this report are based exclusively on an analysis of assaults and break and enter convictions, there is no reason to believe that the general trends presented would not hold true for other types of criminal offences. In this regard, we are reminded again that despite the sample and sub-samples involved in the current analysis being relatively small, the average number of months awarded for any sub-sample of offenders considered is small. Accordingly, we should expect that further analysis with larger samples would produce results consistent with those presented here. Further, while the focus of this article has been on sentencing in British Columbia, the comparative analysis provided suggests that the failure of judges to take into account the offender's prior record is likely true across Canada. Still, it is not the intention of this article to be the definitive word on sentencing practices in British Columbia or Canada. Instead, hopefully, this article will serve as a catalyst for much more research, debate, and

discussion on the appropriate role of prior record in judicial sentencing decision-making and how the courts can best respond to chronic and serious offenders to achieve the goals of sentencing in Canada.

References

Ashworth, A. & Player, E. (2005). Criminal Justice Act 2003: The sentencing provisions. *The Modern Law Review Limited, 68*(5), 822-838.

Canadian Criminal Code (2011). Toronto: Thomson Carswell.

Crow, M. S. (2008). The complexities of prior record, race, ethnicity, and policy. *Criminal Justice Review, 33*(4), 502-523.

Doob, A. N. & Webster, C. M. (2003). Sentence Severity and Crime: Accepting the Null Hypothesis. *Crime and Justice, 30,* 143-195.

Ewing, A. C. (1970). *The Morality of Punishment with some Suggestions for a General Theory of Ethics,* Montclair: Patterson Smith.

Gendreau, P., Goggin, C. & Cullen, F. T. (1999). *The Effects of Prison Sentences on Recidivism*. Ottawa: Department of the Solicitor General Canada.

Manson, A. (2001). *The Law of Sentencing,* Toronto: Irwin Law.

Nagin, D. S. (1998). Criminal Deterrence Research at the Outset of the Twenty-First Century in *Crime and Justice: A Review of Research,* vol. 23, Edited by Tonry, M., University of Chicago Press.

Roberts, J. V. (1997). The role of criminal record in the sentencing process. *Crime and Justice, 22*, 303-362.

Roberts, J. R. (2003). Sentencing Reform in New Zealand: An analysis of the Sentencing Act 2002. *The Australian and New Zealand Journal of Criminology, 36*(3), 249-271.

Roberts, J. R. (2008). Punishing persistence: Explaining the enduring appeal of the recidivist sentencing premium. *British Journal of Criminology, 48*, 468-481.

Roberts, J. R. & Cole, D. P. (1999). Introduction to sentencing and parole in *Making Sense of Sentencing,* Edited by Roberts, J. V. and Cole, D. P., Toronto: University of Toronto Press.

Rodriguez, N. (2003). The Impact of "Strikes" in Sentencing Decisions: Punishment for Only Some Habitual Offenders. *Criminal Justice Policy Review, 14*(1), 106-127.

Ruby, C. C. (1987). *Sentencing,* Third Edition, Toronto and Vancouver: Butterworths.

Ruby, C. C., Copeland, J. Davies, B, Doucette, D., & Litkowski, R. (2004). *Sentencing,* Sixth Edition, Markham: LexisNexis Butterworths.

Ulmer, J. T. & Kramer, J. (1996). Court Communities under sentencing guidelines: Dilemmas of formal rationality and sentencing disparity. *Criminology, 34*(3), 383-408.

Ulmer, J. T. (1997). *Social Worlds of Sentencing: Court communities under sentencing guidelines.* Albany: State University of New York Press.

Ulmer, J. T. (2001). Symbol, substance and severity in Western penal policies. *Punishment and Society, 3*(4), 517-536.

Vigorita, M. S. (2001). Prior offense type and the probability of incarceration: The importance of current offense type and sentencing jurisdiction. *Journal of Contemporary Criminal Justice, 17*(2), 167-193.

Von Hirsch, A. (1983). Commensurability and crime prevention: Evaluating formal sentencing structure and their rationale. *The Journal of Criminal Law and Criminology, 74*(1), 209-248.

Von Hirsch, A. (1991). Commentary: Criminal record rides again. *Criminal Justice Ethics, 10*(2), 54-57.

Von Hirsch, A., Bottoms, A. E., Burney, E., & Wikstrom, P. (1999). *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research.* Oxford: Hart.

Von Hirsch, A. (2007). The "desert" model for sentencing: Its influence, prospects and alternatives. *Social Research, 74*(2), 413-428.

Von Hirsch, A. & Roberts, J. V. (2004). Legislating sentencing principles: The provisions of the Criminal Justice Act 2003 relating to sentencing purposes and the role of previous convictions. *Criminal Law Review,* 639-652.

Wasik, M. (1987). Guidance, guidelines, and criminal record, in *Sentencing Reform: Guidance or guidelines?* Edited by Wasik, M. & Pease, K. Manchester: Manchester University Press.

Wasik, M. (1992). Desert and the role of previous convictions, in *Principled Sentencing,* Edited by Von Hirsch, A. & Ashworth, A., Boston: Northeastern.

Weinrath, M. & Gartrell, J. (2001). Specific Deterrence and Sentence Length: The Case of Drunk Drivers. *Journal of Contemporary Criminal Justice, 17*(2), 105-122.

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