



Research and Statistics Division

Fact Sheet

Conditional Sentencing Series Fact Sheet # 1: What is a Conditional Sentence?

Some Canadians are confused about this new sentence which came into force in 1996. This fact sheet, one of a series, is intended to provide answers to the commonly-asked questions about a conditional sentence of imprisonment.

Where did the conditional sentence come from?

The conditional sentence was created to help reduce the use of imprisonment in a way that is safe and consistent with principles of justice. Several independent Commissions of Inquiry have demonstrated that the imprisonment rate is higher in Canada than many other countries. The goal of the conditional sentence is to reduce the use of incarceration by punishing offenders in the community. If the offender remains in the community (under supervision), he can continue to work, support his family and pay taxes. The taxpayer also saves money. Supervising offenders in the community costs about a quarter of the cost of imprisonment.

What exactly is a conditional sentence?

A conditional sentence is a term of imprisonment that is served in the community. Only some offenders are eligible. Here is how it works. A number of criteria have to be met before an offender can be sentenced to serve his term of custody in the community under supervision. First, the sentence cannot exceed two years less one day. This excludes offenders convicted of the most serious crimes that result in sentences served in a penitentiary. Second, if the offence carries a minimum penalty, the offender cannot receive a conditional sentence. Third, the judge must be convinced that the presence of the

offender in the community (rather than prison) does not pose a danger to the public. Finally, the judge must be convinced that a conditional sentence is consistent with the purpose and principles of sentencing that are contained in the *Criminal Code*.

Only if these conditions are met may a judge impose a conditional sentence. But the judge still has discretion to send the offender to prison. If the conditions are met, *and* if the judge feels it is in the interests of justice, the offender may be sent to serve his term of imprisonment in the community, provided that certain conditions are observed.

What kinds of conditions must the offender observe?

An offender serving a conditional sentence must abide by a number of conditions that apply to all such offenders. These compulsory conditions include reporting to a probation officer who will ensure that the order of the court is followed. As well, he or she must comply with a number of other conditions that are especially constructed for each individual case. These conditions may require the offender to remain at home (except for work or medical emergencies), or to stay at home in the evening and during weekends. The offender may also be required to pay back the victim for money stolen, and/or perform community service.

What happens to the offender if the conditions are violated?

If the offender violates his conditions, he will be arrested and brought back to court for a hearing. The judge has the power to send the offender to prison



for the remainder of the sentence. Thus if an offender serving a one-year sentence violates conditions after six months, the judge has the power to send him to prison for the remaining six months of the sentence.

How often are conditional sentences imposed?

The most frequent sentence in Canadian courts is a fine. A conditional sentence is imposed in approximately 6% of all cases.

What types of offenders have been sentenced to a conditional sentence?

People convicted of crimes involving property crimes are most likely to receive a conditional sentence. As well, conditional sentences are sometimes imposed for crimes of violence. Crimes involving property accounted for the largest percentage (39%) of conditional sentences. Crimes against the person accounted for under one-third of all conditional sentences. Offences against the administration of justice accounted for 11% of all such sentences and driving related offences, 4%.

Are offenders on conditional sentences a threat to the community?

Since a judge must be satisfied that the offender's presence in the community would not pose a threat to the public, it is not surprising that very few offenders have committed another crime while serving a conditional sentence in the community.

How long are most conditional sentences?

Since the conditional sentence is designed for the less serious offenders, most conditional sentences are relatively short. One-half of all conditional sentences imposed to date were under six months, $\frac{3}{4}$ were under one year in duration.

What have judges said about conditional sentencing?

A survey of judges across Canada found that most judges feel that the conditional sentence is particularly appropriate for offenders convicted of crimes involving property.

What have the Courts of Appeal said about the new sentence?

Courts of Appeal across Canada have handed down a number of important decisions relating to conditional sentencing. The appellate courts have supported the use of conditional sentencing, but have noted that the conditions of the sentence must be carefully constructed to make the new sanction work.

What did the Supreme Court recently say about conditional sentences?

This position was upheld by the Supreme Court of Canada in an important guideline judgement handed down in January 2000. The Court directed the trial judges to use the conditional sentence wherever appropriate, but also to ensure that the sentence imposed strict conditions on the offender. House arrest, or a strict curfew, should be the norm, rather than the exception.

Other Fact Sheets in this Series

Fact Sheet # 2: Conditional Sentencing and the Views of the Community

Fact Sheet # 3: Usage of Conditional Sentencing across Canada (1996-1999)

Further Reading

An Overview of Research on Conditional Sentencing (1996-1999). Ottawa: Department of Justice Canada. Report Available from the Research and Statistics Division, Department of Justice Canada.

Gemmell, J. (1999). Conditional Sentences. In: *Making Sense of Sentencing* Toronto: University of Toronto Press.

Roberts, Julian V., Doob, Anthony N. and Marinos, Voula (1999). *Judicial Attitudes to Conditional Terms of Imprisonment: Results of a National Survey*. Ottawa: Department of Justice Canada. Report Available from the Research and Statistics Division, Department of Justice Canada.

For more information on this fact sheet, or to obtain others in this series, contact

Research and Statistics Division
Department of Justice Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

Fax: (613) 941-1845

e-mail: rsd.drs@justice.gc.ca

Internet site: <http://canada.justice.gc.ca/en/ps/rs/index.html>

