THE FINE: AN ENIGMA

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The Fine: An Enigma

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ABSTRACT

The fine is the oldest surviving criminal sanction. In many nations, it is also the most frequently used disposition,being ordered for a wide array of offences of varying gravity. One would expect that such a sanction would have been the subject of considerable research. This is not the case. In fact, very little empirical research of either a descriptive or evaluative nature has been done to date. It is the objective of this thesis to gather together most of the available literature on the use and efficacy of the fine as a sanction with the intent of discovering just what is known, to identify those areas which require further research, and to discuss the policy implications that may be generated by such research.

This thesis begins with a brief summary of the history of the fine from the time of Hammurabi to the present day, tracing its evolution and transformation from a mode of compensating the victim and his family, in an attempt to avoid the destructive practice of the blood feud, to the fine's current role as a method of punishing the criminal offender.

As the fine is a legally imposed sanction and, since research may suggest amendments to current legislation, a chapter is devoted to the legal framework within which the sanction must operate. Pertinent sections of the Canadian Criminal Code are discussed as are precedent-setting Canadian and English cases, from which much of the current law has been derived.

A major portion of the thesis is concerned with a review of the literature concerning the fine, beginning with a description of how often it is used and for what offences through to imprisonment for default, fine option programs and recidivism rates. As so little research has been conducted in any one country, an international perspective has been taken.

In a similar vein, the available data and several unpublished articles,concerning the fine in British Columbia are described and reviewed in the hope of ascertaining the role of the fine in this Province and stimulating further research by bringing this information into the light of day.

Based upon the information which is currently available, it is concluded that only a partial description of the operation of the fine is possible and that no sound evaluation of the sanction can be made upon which new policies can be responsibly initiated. The thesis draws to a close with the suggestion that a study be conducted in which a number of offenders are followed throughout the sentencing process in order to obtain a continuous stream of intercorrelating information. Areas which are particularly under-researched are highlighted and suggestions for possible changes in the legislation and sentencing process are made dependent upon the results of future research.

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The credit belongs to many, the blame to only one. My love and thanks go to all my family, particularly to my parents whose love and support has been unconditional and unceasing, and to my daughter Rivcah who is not only my dearest friend but often my teacher of those things that are really important. To another friend and teacher, Dr. Simon Verdun-Jones, who has had a profound impact on my academic career, and to Dr. Ezzat Fattah, I can only extend my thanks and try as best I can to follow the standards of excellence they try to instill in all their students. I am indebted to Mr. Hal Philbrook of B.C. Court Services, and Mr. Greg Muirhead from B.C. Corrections, for their assistance in supplying data and documents and for their time and counsel. I am also very grateful to Mrs. Aileen Sams, for no graduate student could possibly hope to survive without her constant ministrations, encouragement, and rescue attempts. Several very special people have contributed in their own often quiet and always unique ways: to Eileen, Bob, Maureen, Roz, Don, Nick, Ron, Roger, Penny and Joe, my love and thanks go with you.

DEDICATION

For Rivcah, heart of my heart.

FRONTISPIECE

'I should like to have it explained,' said the Mock Turtle
'She can't explain it.' said the Gryphan hastily
'Go on with the next verse'.

Lewis Carroll, Alice's Adventures in Wonderland, 1965.

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I. Introduction

In modern western industrialized nations, more criminal offenders are sanctioned by way of a fine than any other disposition. In view of the frequency with which the fine is imposed and the wide variety of offences for which it is used, it is remarkable that so little investigative research has been performed into its application and efficacy as a sanction. This dearth of information is particularly pronounced in Canada although the research done in other nations is almost equally sparse.

The lack of empirical research concerning the fine is difficult to explain. The fine is our most ancient surviving criminal penalty and, as has just been noted, it is the most common. It may also be viewed by some as a fairly innocuous sanction since by itself it does not deprive or constrain the liberty of the offender through the use of incarceration or supervision. Thus, perhaps familiarity has bred contempt and researchers have overlooked the obvious. That which is commonplace does not often stimulate interest. Another, perhaps more generous explanation, is that in many countries including Canada, sentencing data upon which empirical research can be reliably conducted is virtually non-existent. It would seem that governments are not particularly interested in the fine either. When a process appears to be running smoothly, it is not often

that investigative work is conducted to see whether, in truth, things are as good as they seem.

Within the scope of an M.A. thesis, it is not possible to bridge the gaps left by past research into the fine or to satisfy the many unanswered questions that use of the fine engenders. Much of the thesis takes the form of a literature review, compiling most of the available information into a logical framework in an attempt to gain an overall, if not in-depth, perspective of the fine as a criminal sanction. In addition to published articles, government data and several unpublished papers are discussed in relation to the fine in British Columbia. It is hoped that by putting forward such information as is available and by pointing out what is not, further research into the use and efficacy of the fine will be stimulated.

Chapter 2 outlines the history of the fine. While the origins of the fine are unknown, prescriptions for fine use were detailed by Hammurabi in his code of laws and procedures approximately 2,000 years before the birth of Christ. The fine was also extensively used by many other early peoples, including the Romans, Germans, Angles, and Saxons. Fines were frequently used as a form of compensation to the victim or his family to avoid the chaotic social effects of the blood feud. With the evolution of the State, the introduction of Christianity, and the development of the criminal law, the fine underwent a gradual transition into its modern role as a source of revenue

to governments and a method of punishing offenders.

Chapter 3 describes the legal framework within which the fine is set. The major provisions of the Canadian Criminal Code, which regulate the use of the fine, are described and precedent setting English and Canadian cases which guide sentencers in their use of the sanction are discussed.

Chapters 4 and 5 review the current literature concerning the use and efficacy of the fine throughout the entire sentencing process. Because there is so little Canadian material, research has been drawn from several countries,in particular England, Australia, Sweden, and the United States. The frequency with which the fine is ordered, the range of offences for which it is used, and the types of offenders upon whom it is imposed, are described. Methods of calculating the amount of the fine such as the English tariff system, the Canadian 'No Rule' approach, and the day-fine system are discussed and compared. Literature concerning the impact of the fine on offenders' lifestyles, the length of time it takes offenders to pay their fines, the enforcement mechanisms that are instituted to induce payment from those who do not pay their fines on time, imprisonment for default, fine option programs, and recidivism rates, are discussed. Throughout these chapters, areas requiring further research are identified and the importance of such inquiries explained.

Chapter 6 focusses on the operation of the fine in British Columbia. Through the use of government data from B.C. Court

Services and B.C. Corrections, it was possible to derive at least a cursory description of the incidence of fine use, the offences for which it is imposed, the number of persons imprisoned for fine default and some of the major characteristics of this population, and any major changes during the course of the last nine years. An experimental fine option program was run in the Province from 1979 to 1980. The results of the project are analyzed and the possibility of a Province-wide program being initiated is explored.

It is apparent that the lack of empirical research into the fine is even more pronounced in British Columbia, where only one or two unpublished papers are available. The limitations of working with the available government data, owing to their methods of recording information and the incompatability of their data systems, are delineated and gaps in our knowledge of the fine are again pointed out.

The concluding chapter of the thesis discusses the importance of further research into those areas of fine use, which have been pointed out in the preceding chapters. It is stressed that, before policy recommendations can be responsibly instituted, they should be based on a sound evaluation of the fine in practice and not just in theory. Dependent upon the results of future research, several suggestions are made regarding the current procedures and practices of fining. Among these are recommendations that a thorough accounting of the offender's financial status be done prior to sentencing; that a

sentence of imprisonment for default not be simultaneously given with a sentence of a fine; that, prior to being incarcerated for default, the offender be brought back to court to explain his reasons for non-payment; that a day-fine system and fine option programs be initiated; and that in those cases, where defaulters are imprisoned, some rational system of calculating the number of days to be served in relation to the size of the fine be devised.

II. The History of the Fine

The fine is possibly the oldest surviving form of penal sanction in contemporary western criminal courts. Its origins are lost in antiquity, dating back many centuries before the birth of Christ.

One of the earliest written codes of laws and procedures is that of the Babylonian king, Hammurabi (circa 2130-2087 B.C.).[1] As the supreme religious and secular authority of his country, Hammurabi's stated objective was "to cause justice to prevail in the land, to destroy the wicked and the evil, to prevent the strong from oppressing the weak, to go forth like the sun...to enlighten the land and to further the welfare of the people.[2] To assist in this purpose, five forms of punishment were sanctioned by the code; death, mutilation, branding, banishment, and fines. The use of capital punishment was ordained for thirty-seven offences, including rape and kidnapping. Eight crimes were punishable by mutilation, including such offences as the false branding of slaves and disrespectful behaviour on the part of adopted sons. Slander was the only offence for which branding was specified and banishment was apparently reserved for cases of paternal incest. The vast majority of cases were dealt with

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[1] Richard R. Korn and Lloyd W. McCorkle, Criminology and Penology, (New York: Holt, Rinehardt, and Winston, 1959), p. 374

[2] Ibid., p.375

by fines.[3]

The ancient Romans practised an almost limitless variety of capital and non-capital punishments, many of which had been adopted from conquered nations within their empire.[4] Executions of every type varying from being eaten by wild beasts to enforced suicide were common. Methods of non-capital punishment were equally varied. Book-burning was practised, as was branding, demoting the offender to the status of a slave and imprisonment at hard labour. However, even amidst this myriad of 'sentencing options', fines were frequently used, most especially when "rulers sought to enrich themselves at the expense of prominent men out of favour.[5] For according to Korn and McCorkle, "Roman punishments were highly discretionary, varying with administrative or economic considerations and, frequently, with political expediency.[6] It was realized even then that fines were not only a lucrative source of income to the powerful, but if they were of a substantive enough nature, they could cripple an offender or opponent economically, socially, and politically.

In contrast to the Romans, the early German law-givers considered only treachery, desertion, cowardice and sexual

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[3]Ibid., p. 378.

[4]Ibid., p. 383

[5]Ibid.

[6]Ibid., p. 384

perversions serious enough crimes to warrant the death penalty.[7] In a militaristic society, fit fighting men were presumably considered too valuable to kill or mutilate for minor offences. According to Tacitus (60 A.D.), the convicted German murderer or thief paid a fine "in a stated number of oxen or cattle. Half of the fine was paid to the King,[8] half to the person for whom justice was being obtained or to his relatives.[9]

The major objective of the Teutonic fines was the placation of the injured party since the aggrieved plaintiff or his kindred could otherwise wreak vengeance upon the offender and his relatives. The ancient legislators desired that the peace be maintained and vendettas be discouraged. To this end, whenever possible, the plaintiff was compelled to accept the compensation to which the law entitled him.[10]

A similar system of compensation was being developed in Britain. After the fall of the Roman empire and the evacuation of Roman troops in 411 A.D., the country was invaded by bands of raiders, notably the Angles, Saxons, and Jutes. They settled in Britain, bringing with them their customs and their laws, and

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[7]Christopher Hibbert The Roots of Evil, (New York:Minerva Press,1963) p. 3

[8]Such payment to the king for a wrong committed within his rule was the forerunner of the"wite" paid in Anglo-Saxon law and represented the beginning of the notion that an offence was not merely the commission of an injury to an individual but also to the community, within which he lived.

[9] Op. cit. Hibbert, p.3

[10]George Ives, A History of Penal Methods: Criminals, Witches, and Lunatics,(Montclair: Patterson Smith,1970) pp. 2-3.

established a number of small kingdoms each independent of, and usually in conflict with, the other.[11] In 597 A.D., Saint Augustine and his party of missionaries from Rome came to Kent, established the first Christian church, and began the conversion of heathen England. From this time forth, the Church became a force to be reckoned with, in both the physical and spiritual sense, and the long relationship between law and religion was established.

The first written English laws were compiled by a Christian, Aethelbert, King of Kent, in approximately 600 A.D. Known as dooms (meaning judgements) these laws were written in English rather than the old languages and, therefore, as Windeyer has noted; "English literature begins with a law book."[12]

Aethelbert's dooms are almost entirely taken up with specifications of tariffs to be paid for various offences in order to avert blood feuds. The list is long, very particular, and varies according to the rank of the aggressor and his victim or kindred. For example, breaking an enemy's chin bone would require compensation of 20 shillings whereas the loss of a tooth would cost six.[13] Fighting in the presence of an archbishop was

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[11]W.J.V. Windeyer, Lectures on Legal History, (Sydney: The Law Book Company of Australia Pty. Ltd., 1957), p. 2

[12]Ibid., p.1.

[13]It should be realized that the burden of these fines or compensations was heavier than it would first appear for, in early Anglo-Saxon times, six shillings would buy an ox. For further information on this point see Ives, A History of Penal Methods, previously cited.

twenty-five times more expensive than fighting in the home of a commoner. The Church was entitled to receive twelve times the value of goods stolen from a consecrated place and, on occasion, a bishop's compensation was greater than a king's.[14]

Prior to Aethelbert's dooms, the acceptance of compensation was at the discretion of the victim. If the injured man did not wish to accept the settlement (known as bot) or, in the case of murder, the deceased's relatives refused the wer (the value attached to the dead man's life by the law), the blood feud could be pursued. Under Aethelbert's reign, acceptance of compensation became mandatory. However, in cases where the money or goods was not paid (and in many cases the tariff was beyond the offender's means), the blood feud could be resorted to. Hence the old proverb; "Buy off the spear or bear it.[15]

In modern criminal trials, the parties are 'our sovereign Lady, the Queen' and the prisoner at bar'. The defendant is charged with committing acts against the sovereign's peace. According to Windeyer, "The history of the development of criminal law is the history of the King's peace".[16] The Anglo-Saxons lacked a strong central government but they did have the concept of 'peace' which gave to the possessor(s) a right to security within their jurisdiction and authority to

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[14]Op. cit. Hibbert, pp. 3-5.

[15]Sir William Holdsworth, A History of English Law, vol. 2, (London: Methuen and Co. Ltd., 1966), pp. 44-45.

[16]Windeyer, op.cit., p. 19.

penalize violators. There existed many types of peace in addition to that of the king; the peace of the markets and fairs, meetings, and the indefinite peace of the community. Initially, the King's peace was probably only that of his household and existed in whichever neighbourhood he resided. It could be conferred by him on his servants and attendants and gradually became extended as the itinerant sovereign traversed the countryside. Until the time of Richard I, the King's peace died with him until it was again proclaimed by the new monarch. This lapse was of concern to the citizenry as the country was without a chief protectorate.[17]

In fact, it was not the principal intent of the King's peace to benefit the community but, rather, to provide a source of income. Jeudwine writes;

> The circle within which injury or disturbance was to be compensated to him was a privilege to him, a support of his dignity, a lucrative perquisite that he and his immediate surroundings should be free from disturbance. That was all. Each chief and king jealously guarded any interference with such immediate jurisdiction from without, and sought to increase its scope. Only the Catholic Church of Rome stood outside any such limits, claiming the whole Christian world as its parish for the punishment of sin.[18]

As the power of the Crown grew, the King and overlords were able to enforce obedience and demand a share of compensations made within their jurisdiction. Such payment was known as the _wite_ and

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[17]Ibid., p.20

[18]J.W. Jeudwine, _Tort, Crime, and Police in Medieval Britain: A Review of Some Early Law and Custom_ , (London: Williams and Norgate, 1917), pp. 101-102.

was paid to compensate the ruler for the disturbance of his peace. During the twelfth century, the old system of bot, wer and wite diminished, and gave place to one in which the sovereign exacted punishment, including fines, which were administered and collected by judges and sheriffs.

Concomitant with the extension of the King's peace, some crimes became botless. That is, they ceased to be regarded as civil disputes (torts) which could be settled by making compensation to the victim's family, but became regarded as offences against society at large to be prosecuted by the community's chief (crimes in the modern sense). The state began to assume the traditional role of the wronged kinsman, with compensation being paid to the Crown.[19] The old system of compensating the victim lapsed into near extinction and a fine was levied on the offender as a form of punishment, and more predominantly, as a source of profit to the powerful rulers and barons.

In 1066 A.D., after the Battle of Hastings, the first of a series of Norman kings, William the Conqueror, became king of England. While William left most of the English laws intact, he extended his peace throughout the land. According to Windeyer, "The main result of the Conquest was that Norman ideas of method and order, Norman learning, clerical skill and administrative

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[19] Ibid., pp. 84-89.

ability were brought to the service of the law of England.[20] Feudalism was introduced to England and with it each man owed his allegiance to the King. Norman lawyers developed land laws and feudal dues, taxes became the main, though not the sole, source of royal revenue.

William and his successors organized the kingdom and created a strong central administration. Central to their consolidation and maintenance of control, were the courts which served a major administrative role, not the least of which, was the levying of fines and fees. During the reigns of Henry II., Richard I., John, Henry III., and Edward I.,

> It appears that fines were paid on every imaginable occasion, especially on all grants of franchises, at every stage of every sort of legal proceeding, and for every description of official default, or irregularity, or impropriety. In short, the practice of fining was so prevalent that if punishment is taken as the test of a criminal offence, and fines are regarded as a form of punishment, it is almost impossible to say where the criminal law in early times began or ended. It seems as if money had to be paid to the king for nearly every step in every matter of public business, and it is impossible practically to draw the line between what was paid by way of fees and what was paid by way of penal fines.[21]

Heavy fines imposed on people and places became a major source of revenue to the Crown and lords of private jurisdiction. As Stubbs has commented; "So intimate is the connection of judicature with finance under the Norman Kings,

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[20]Windeyer, op.cit., p. 39

[21]Sir James Fitzjames Stephen, A History of the Criminal Law of England, 3 vols. (New York; Burt Franklin, originally published 1883), vol. 2, p. 198

that...it was mainly for the sake of the profits that justice was administered at all.[22]

Nearly all offences less than felonies (in which case the offender was subject to the death penalty or corporal punishment and the confiscation of all his lands and other assets) could be dealt with by fines.[23] Some misdemeanours (which to medieval lawyers merely meant a wrongful act of less import than a felony) were sporadically prosecuted in relation to the Crown's financial health. To illustrate, whenever a sovereign was in dire financial straits, he might send his legal secretary to the law courts, and should a mistake of even a trivial nature occur, he could cry "Error!" and promptly fine the unfortunate speaker.[24]

A further source of income to the Crown was derived by allowing the offender to substitute a money payment for a prison sentence. In some cases, the sentence for misdemeanours was indefinite incarceration. In practice, this could often be remitted by way of a fine if the offender was a man of means or had wealthy friends who would pledge for him.[25]

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[22]Op. cit. Ives, f. 1, p.10.

[23]Until 1948, felonies were rarely punishable by fines in England on the basis that a felon would be automatically stripped of all his assets immediately upon conviction. For information on this point, see Anthony Babington, The Power to Silence: A History of Punishment in Britain , (London: Robert Maxwell,1968), p. 110

[24]Op. cit. Korn and McCorkle, pp. 397-398.

[25]Op. cit. Ives, pp. 9-13.

During the Assizes of Clarendon in 1166, Henry II proclaimed that all counties in England should construct gaols and from this time forth any offender who did not pay his fine (and payment had to be immediate and in full) could be subjected to indefinite detention until such time as he made his fine.[26] However, the usual penalty for commoners in this predicament was still corporal punishment in such forms as whipping or the stocks.

In the first Statutes of Westminster, written in the reign of Edward I, penalties, such as one year of imprisonment and then a fine, and specified limits of imprisonment for default of a fine, were first ordained.[27]

However, imprisonment for fine default was not yet mainly used as a form of punishment against the errant offender but, rather, as a method of collection. According to Pollock and Maitland, "Imprisonment was, as a general rule, but prepatory to a fine. After a year or two the wrongdoer might make fine; if he had no money he was detained for a while longer.[28] Prisons were generally used to extort payment: "The justices do not wish to keep him in prison; they wish to make him pay money.[29]

The size of the fines imposed were left to the discretion of the courts with no prescribed maxima. The only restrictions

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[26]Ibid.

[27]Ibid.

[28]cited in Ives, loc. cit.

[29]Ibid.

in this regard were prescribed by the Magna Carta of 1215, which forbade fines of an excessive and unreasonable nature. However, abuse of this power lead to a reiteration of the point in the Bill of Rights in 1688. This hindrance to the pecuniary interests of the Crown was easily sidestepped. In 1803, writing of the courts' use of the fine in England, Blackstone explains that;

> ...it is never usual to assess a larger fine than a man is able to pay without touching the implements of his livelihood; but to inflict corporal punishment, or a limited imprisonment, instead of such fine as might amount to imprisonment for life. And this is the reason why fines in the kings court are frequently denominated ransoms, because the penalty must otherwise fall upon a man's person, unless it be redeemed or ransomed by a pecuniary fine...Yet where any statute speaks both of fine and ransom, it is holden, that the ransom shall be treble to the fine at least.[30]

As the English common law developed more fully in the sixteenth and seventeenth centuries, the criminal law became a vehicle for greater social control through legislative expansion of the number of misdemeanours, and the use of the fine increased accordingly.[31] Unlike the old common law misdemeanours, statutory misdemeanours had a fixed penalty which could not be exceeded for any reason whatsoever.[32] Similarly,

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[30]Sir William Blackstone, Commentaries on the Laws of England, 14th ed., 4 vols.,(London: T. Cadell and W. Davies, 1803), vol.4, Of Public Wrongs, pp. 379-380.

[31]Sol Rubin, The Law of Criminal Correction, (St. Paul: West Publishing Co., 1973), pp. 258-259.

[32]Anthony Babington,The Power to Silence: A History of Punishment in Britain, (London: Robert Maxwell, 1968), pp. 119-120.

they could not be mitigated, unless the accused admitted his offence before trial, in which case the fine could be assessed at less than the prescribed amount.[33] In the case of impoverished offenders or those whose potential fine was greater than their means, this manner of 'plea bargaining' was whenever possible accepted, as the traditional remedy for fine default was unchanged. In such a manner did the English courts fill the Treasury's coffers, while simultaneously expediting 'justice'.

This practice of making the fine payable in full the moment it was levied continued until 1879, when the position was changed with the passage of the Summary Jurisdiction Act.[34] Under this Act, magistrates were given the authority to allow defendants a period of time in which to pay the fine, and further allowed its payment to be made in installments. In addition, the practise of indefinite detention was mercifully stopped as the legislation laid down the maximum periods of time in relation to the size of the fine that a defaulter could suffer for nonpayment. These same provisions were preserved by later enactments until 1967.

The modern day fine was originally conceived as a form of compensation by a wrongdoer to his victim in an effort to avert the destructive practice of the blood feud. In later times (and sadly many commentators would argue this situation has not

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[33] Elizabeth Melling, gen. ed., Kentish Sources, 6 vols., (Maidstone: Kent County Council, 1969), vol. 6: Crime and Punishment, p. 197.

[34] Op. cit. Babington, p. 120.

changed), the interests of the victim became secondary to those of the State, as the value of the fine to the Treasury became paramount. In recent years, the fine has been levied as a penal sanction, largely as an alternative to incarceration, for both felonies and misdemeanours. Throughout history, the fine has always been a frequent sanction, growing in its usage and application, but probably never has it been more often used, for such a variety of offences, as in the contemporary courts of western nations today.

III. The Fine - General Legal Framework

In the vast majority of criminal convictions, the Canadian Criminal Code permits a sentence of a fine alone, or a fine in conjunction with another punishment. Summary offences may be dealt with by a fine not exceeding $500 and/or imprisonment for no more than six months. All indictable offences punishable by less than five years imprisonment may be sanctioned by a fine in addition to, or in lieu of, any other punishment.[1] A fine may not be used as a substitute punishment, where an offence has a specified minimum term of imprisonment prescribed.[2]

Where an offense is punishable by more than five years in prison, a fine may only be ordered in addition to, but not in lieu of, any other punishment.[3] This sentencing limitation was clearly illustrated in R. V. Wrixon and Carrol[4]. The two accused were convicted of attempted robbery. No violence was used and the defendants claimed that their threatening demand for money was "only a joke". Both defendants were sanctioned by a fine alone. Upon appeal by the Crown, terms of imprisonment were substituted as the offence was punishable by up to fourteen

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[1] S646(1).

[2] Ibid. .

[3] S. 646(2).

[4] (1959),32 C.R. 162, 30 W.W.R. 380, 126 C.C.C. 321 (Alta. C.A.).

years in prison and, therefore, the trial judge had erred in sentencing the defendants to a fine in lieu of, rather than in addition to, any other punishment. In cases where the sentencer prefers to make a fine the focal penalty, a nominal period of incarceration, such as one day, can be ordered in conjunction with a fine. This is apparently a fairly common practice.[5]

Difficulties may arise under this section (s. 646(2)), however, should a judge wish to sentence an accused to a fine and probation.[6] The issue revolves around whether the phrase "any other punishment" within the meaning of the section encompasses probation. Canadian courts have been divided on this question. In R. v. Desmarais [7] the Quebec Court of Appeal held that a probation order under S663(1)(b) constituted authorized punishment. Similarly, in R. v. Johnson,[8] the British Columbia Court of Appeal ruled that probation is a form of punishment under the Criminal Code and, as such, it is a legal sentence to order a fine and probation for an offence punishable by more than five years imprisonment. In R. v. Pretty,[9] the Prince Edward Island Court of Appeal, however, took the opposite point

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[5]Clayton C. Ruby, Sentencing, (Toronto: Butterworths, 1976), p. 241.

[6]Ibid., p.215, see also Roger E. Salhany, Canadian Criminal Procedure, (3rd ed) (Toronto: Canada Law Book Limited, 1978), p. 279.

[7](1971), 3 C.C.C. (2d) 523 (Que. C.A.).

[8]17 C.R.N.S. 254 (B.C.C.A.).

[9] (1971), 5 C.C.C. (2d) 232.

of view and ruled that such a sentence is not legal within the confines of s. 646(2). Not even legal scholars can agree on this point. According to Salhany; "Here the weight of authority has been to effect that a probation order does not constitute any other punishment.[10] Ruby, on the other hand, writes that "On balance, the weight of authority and reasoning would appear to be in favour of the position that probation in Canada, does constitute other punishment.[11] It is probably safe to say that the practice varies across Canada and a definite answer will have to wait until a sentence is appealed, on this ground, to the Supreme Court.

Once the court has decided that a fine is desired for the case at bar, the next task is to determine the amount of the penalty. Except for summary conviction offences and some automobile driving offences, there are no statutory limitations on the amount a defendant may be fined.[12] The Magna Carta and the Bill of Rights both prohibit excessive and unreasonable fines but, in general, the court is not limited in the amount of the fine it may impose. There are several principles which should guide the sentencer, however, in achieving a suitable sentence. Some such guidelines were delineated in the case of R.

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[10]Salhany, op.cit., p. 279.

[11]Ruby, op.cit., p. 218-219.

[12]K.B. Jobson, "Fines", McGill Law Journal, vol.16, 1970, p.364.

v. Lewis,[13] in which the Court of Criminal Appeal said:

> Once the Court has decided that a fine is proper then there are obviously in each case many factors which may follow, but amongst the factors which the Court must consider one can mention first the amount involved in the fraud,...secondly the amount obtained out of it by the accused if known...;thirdly his capacity to pay. It is in the view of this Court wrong in principle to impose such a fine as may be utterly beyond the accused's means and will only result in the prison sentence which is mentioned at the time of the trial as the sanction for failure to pay.

The amount of the fine should be proportionate to the offence committed and should not be influenced by other factors.[14] In the case of R. v. Fogarty,[15] The trial judge imposed a fine of $5000 upon learning that the accused had made approximately this amount from pool-selling operations on the Canadian Football League during the six and one-half years prior to the offence for which he was now indicted. Upon appeal, the sentence was reduced to a fine of $1000 on the grounds that the original fine was excessive under the circumstances and reflected other offences, for which the defendant had neither been tried nor convicted.

In crimes of avarice, the amount of the fine should be sufficiently substantive so that it is not regarded by the

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[13][1965] Crim. L. R. 121. The extract from the judgement of the Court of Criminal Appeal is taken from Sir Rupert Cross, The English Sentencing System , 2d ed., (London: Butterworths, 1975), p. 22.

[14]Ruby, op. cit. p.232-233.

[15][1974] B.N. 291 (Ont. C.A.); a very similar although much earlier case, is that of R. v. Harris, (1917), 41 O.L.R. 366, 30 C.C.C. 13, 40 D.L.R. 684.

accused as merely an overhead cost or license to do business. Some courts have rejected the fine as a useful sentence in these types of offences. In the case of Isherwood v. O'Brien,[16] the trial judge imposed a three month prison sentence for pretending to tell fortunes. The defendant appealed arguing that the sentence was excessive. The appeal court answered: "I quite agree that, in a case of this kind, where a great deal of money can be made with these illegal transactions, a fine would be more or less in the nature of a license to make money by improper means.[17] Similarly, in R. v.Dunton,[18] the trial judge imposed a sentence of 30 days imprisonment on a charge of theft of money under $50. Because the defendant was middle-aged and a first offender, the court substituted a sentence of a suspended sentence and probation for one year. In its judgement the court said:

> It was suggested that a fine might be imposed. This Court is not sympathetic to the idea of ordering fines to be paid in cases of theft unless the circumstances are very unusual. To do so might appear to be tantamount to the ordering of a license for committing theft.[19]

Not all courts have taken such a restricted perspective. R.

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[16](1920) 23 W.A.R. 10.

[17]The extract cited is taken from The Law Reform Commission, Sentencing: Research Paper No. 3, Alternatives to Imprisonment; The Fine As A Sentencing Measure, (Sydney:The Australia Law Reform Commission, Jan., 1979), p.1.

[18](1974), 24 C.R.N.S. 116 (Ont. C.A.).

[19]Ibid., p.117.

v. Covell[20] involved the theft of a vessel by a 38 year old respected businessman, who had never been convicted of a criminal offence and had apparently yielded to a foolish impulse on this occasion. Upon appealing a prison sentence of two months definite and one month indeterminate, the Ontario Court of Appeal imposed a fine instead because "the fine would serve the ends of justice more effectively than any other form of punishment."[21]

Some courts have found the fine to be appropriate in cases where the accused has profited monetarily from his crime and have calculated the amount of the fine in accordance with the desire that crime should not pay.[22] The Report of the Canadian Committee of Corrections has upheld this view; "The imposition of a substantial fine appears to be particularly appropriate where the offender has benefited financially from the commission of the offence."[23]

Owing to the nature of the penalty involved, the financial status of the defendant must be considered when sentencing. This is necessary in order to regulate the severity of the sentence being passed and because, in Canada, imprisonment for defaulting

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[20] [1973] B.N. 245 (Ont. C.A.).

[21] Reported in Ruby, op.cit., p. 233.

[22] For a discussion of this point see R. v. Fogarty [1974] B.N. 291 (Ont. C.A.); R. v. Lewis [1965] Crim. L.R. 121.

[23] Report of the Canadian Committee on Corrections, Toward Unity: Criminal Justice and Corrections. (Ottawa: Information Canada, 1969), p. 197.

on a fine is nearly automatic. In England, a similar point was made in Architects Registration Council v. Breeze,[24] in which the court ruled that "...whenever a financial penalty is imposed, regard must be had to a man's means to pay. If he is ordered to pay more than he can possibly pay, the sentence is inevitably in effect a sentence of imprisonment.[25]

The importance of inquiring into the means of the defendant was stressed in the Canadian case of R. v. Raspar.[26] Raspar was convicted of a betting offence and, at trial, was sentenced to three months imprisonment, a fine of $25,000, and twelve months in jail in default of payment. Speaking for the Ontario Court of Appeal, Martin, J.A. stated that "In our view, the trial judge erred in principle in imposing a fine of $25,000 without making any investigation to assure himself that a fine of that magnitude could be paid by the appellant.[27] The sentence was commuted to one of time served (approximately 21 days) and a fine of $5000 with three months to be served in prison for default. In commenting on the reduced amount of the fine, Justice Martin said; "I point out that the pre-sentence report indicated that the appellant is able to pay a fine of this amount, having at the time of the pre-sentence report some $5000

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[24](1973), 57 Cr. App. R. 654.

[25]Ibid., p.659.

[26](1978), 1 C.R. (3d) s. -45.

[27]Ibid., s. -46 .

in the banks.[28]

While it is neither necessary that a pre-sentence report be submitted prior to sentencing, nor that the defendant have the full amount of the fine at his fingertips, it is submitted that it is critical in the interests of justice that a means inquiry be held, prior to sentencing, to ascertain the defendant's potential capacity to pay the amount of the fine contemplated by the sentencer.

In R. v. Lewis, [29] a fine of 10,000 pounds sterling was imposed at trial; a sum that was clearly beyond the defendant's means. The Court of Appeal held that it was wrong to impose a fine that was utterly beyond the defendant's capacity to pay but, on the other hand, the court should not be deceived into necessarily thinking that such an incapacity is permanent. In addition, a large fine should not be levied with the expectation that a third party will pay it.[30] The court stated that:

> A fine should be within the defendant's own capacity (though not necessarily his present capacity) to pay, otherwise he may be saddled with a fine he cannot pay and have to go to prison and the impression may be given that he has been saved from a prison sentence by the wealth of his friends.[31]

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[28] Ibid.

[29] [1965] Crim. L.R. 121.

[30] British juges fine 46% of juveniles apparently with the expectation that if the child cannot pay the fine his/her parent will and will subsequently punish the child. For a discussion of this point see James A. Carter, and George F. Cole, "The Use of Fines in England: Could The Idea Work Here?", Judicature , vol. 63, No. 4, October, 1979, p. 157.

[31] The extract from the judgement of the Court of Criminal Appeal is taken from Ruby, op.cit., p. 232.

An equally important principle is that it is not permissible to imprison a wealthy man on the reasoning alone that a fine would mean nothing to him. In R. v. Johnson, [32] the court stated that "It matters not what the race, creed, colour, status in society, whether pauper or rich man, an accused must receive equality of treatment before the law". It is debatable whether the court in this case was concerned with the equivalency of sums rather than equality of punishment suffered.

Conversely, a heavy fine should not be imposed on a rich man for an offence for which a man of lesser wealth would be sent to prison. As Cross has quoted "legal justice ceases to be justice if it can be bought for a price".[33] A clear illustration of this principle is provided by R. v. Markwick. [34] The defendant was a wealthy man who was fined 500 pounds sterling for stealing 2s. 6d. from the pocket of a pair of trousers left in the changing room by a fellow golfer. Markwick appealed the sentence. Acting under an authority which has since been repealed, the appeal court imposed a sentence of two months imprisonment in lieu of the fine. A fine in this case was seen as inappropriate as it gave "persons of means an opportunity of

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[32] (1971), 5. C.C.C. (2d) 541 (N.S.C.A.) reported in Ruby, op.cit., p. 234). .

[33] Sir Rupert Cross, The English Sentencing System , 2d ed. (London: Butterworths, 1975), p. 23 .

[34] (1953), 37 Cr. App. Rep.125. Also reported in Cross, op.cit., P. 23 .

buying themselves out of being sent to prison.[35]

In R. v. Reeves, [36] the defendant was sentenced to nine months in jail for obtaining property by deception. The trial judge refused to order a fine as the prisoner was indigent. The judge stated, "You are in no position to pay a financial penalty. If you were a man of means I should make a heavy fine on you, but it is no good doing that in your present position.[37] The Court of Appeal held that this position was completely wrong in its reasoning and, while the learned justices considered a jail sentence appropriate for the type of offence committed,the sentence was commuted to a suspended sentence because of the defendant's "possible sense of grievance arising from the impression that he had been sent to prison solely because of his lack of means.[38]

Where a wealthy man is convicted of an offence for which a prison sentence is inappropriate regardless of the offender's means, how should a judge adjust the amount of the fine? The question appears to be open in Canada and rather unclear in England. In England, the poverty of the offender may be taken into account by reducing the amount of the fine and thereby bringing it within his ability to pay; however, the amount of

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[35]Cross, op.cit., p. 23. .

[36](1972), 56 Cr. App. R. 366. For a discussion of this case see Ruby, op.cit., p. 236, and Cross, op.cit., pp. 23-24.

[37]Cross, op.cit.,p. 23.

[38]Ruby, op.cit., p. 236.

the fine should not generally be increased beyond the usual penalty for the offence in question simply because of the defendant's wealth.[39] In other words, the rich man's fine should not be inflated since "equality of treatment requires equality of fine regardless of means.[40] English courts apparently often impose an identical fine on two joint, and criminally indistinguishable, offenders but give the less affluent accused longer to pay.[41]

Some courts have felt, however, that equality of treatment infers equality of pain of punishment. For these defendants, the cost of a fine has meant an equal proportion of resources for the affluent offender as for his less wealthy counterpart. This approach is recommended by the Advisory Council in its report Non-Custodial and Semi-Custodial Penalties:

> In general however, we think that fines should be assessed according to the offender's ability to pay, and that it is not enough to give effect to this principle solely by the exercise of mitigation. In our view, it is right that penalties for similar offences should as far as possible be designed to make an equal impact on offenders, and that the well-to-do should pay more than the less affluent. The fine will be equitable only if it is assessed in this way and constitutes something more than payment for a license to commit the particular offence.[42]

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[39]Alec Samuels, "The Fine: The Principles", [1970] Crim. L.R. pp. 201-210, pp. 268-272, p. 208. See also Cross, op.cit. p. 24.

[40]Cross, op.cit., p. 208.

[41]Ibid.

[42] Non-Custodial and Semi-Custodial Penalties: Report of the Advisory Council on the Penal System, (London: Her Majesty's Stationery Office,1970), p. 7.

Sir Rupert Cross argues, in a similar vein, that, at least in cases of acquisitive offences "the wealth of the offender aggravates the crime just as his poverty mitigates it"[43] and, therefore, the rich man is deserving of a heavier fine. Upon occasion, this philosophy has lead to very large fines for trivial offences. Cross, in the same article, cites the example of a civil servant who was fined 75 pounds sterling by a London magistrate for stealing one tube of toothpaste from a chemist's shop.[44]

Once the amount of the fine has been determined, the court may direct that the fine be paid forthwith or be paid at such time, and on such terms, as the court may fix.[45] The court should not order that the fine be paid in full, immediately, at sentencing unless;

1. the court is satisfied that the defendant has sufficient funds to enable him to pay the fine forthwith;
2. upon being asked if he requires time to pay the fine, the defendant indicates he does not need it; or
3. for any special reason, the court deems it expedient that no time be granted[46]

When considering whether the offender should be given time to pay his fine, and if so how long, the sentencing court should

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[43]Cross, op.cit., p. 24.

[44]Ibid.

[45]S.646(4)(a)(b).

[46]S.646(5)(a)(b)(c) .

consider any representations made by the convicted person. If time to pay is granted, the minimum period a judge can grant is fourteen clear days from the date of sentencing. [47]

At the time of sentencing, the court may also prescribe a period of imprisonment to be served if the offender does not pay his fine within the time frame set by the court.[48] In cases where the maximum punishment for the indictable offence at hand is less than five years imprisonment, the most severe sentence which may be passed for defaulting on a fine is two years in prison. For offences punishable by more than five years, the possible time to be served in cases of default may not exceed five years.[49] All the procedures outlined below also apply to summary convictions with the exception that defaulting on a fine in these cases is punishable by a maximum of six months in prison. [50]

Where time has been allowed to enable the defendant to pay his fine, he may make application to the court for an extension. [51] Upon the date of the expiration of the time allowed, if the fine has not been paid, the court may issue a warrant of

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[47] S.646(6).

[48] Ss.646(3) and 722(2).

[49] S.646(3)(a)(b) .

[50] S.722(2).

[51] Ss.646(11) and 722(10) .

committal.[52] However, following the decision of Mr. Justice Toy, in R. v. Yamelst [53] it seems that,even though the warrant has been executed, the prisoner may still make application to the courts for an extension of time in which to pay off his fine.

If the sentencing court orders a fine to be paid forthwith and the offender does not pay it, a warrant of committal may be executed immediately but the court must state its reasoning in the warrant.[54] However, in cases when the accused is between the ages of 16 and 21 and has been granted time to pay his fine, a warrant of committal for fine default may not be issued until the court has obtained and considered a report on his conduct and ability to pay the fine. [55]

The time at which an accused may be committed for defaulting on a fine is not solely within the command of the courts. At any time before the expiration of the time allowed for payment, an accused has the right to appear before the court and signify in writing that he prefers to be committed immediately. The court may then issue a warrant committing him forthwith to prison.[56] How many defendants actually 'take advantage of this opportunity' is unknown.

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[52] s.646(7).

[53] [1975] 22 C.C.C. (2d) 502 (B.C.S.C.).

[54] S.646(8).

[55] S. 646(10).

[56] S.646(9).

If an accused pays only part of his fine, either before or after the issue of the warrant of committal, the time to be served in default is to be reduced proportionately by the number of days which the payment made bears to the fine.[57] Before a partial payment may be accepted, however, it must be sufficient after deducting all costs and charges in respect of the warrant and its execution, to reduce the sentence by at least one day.[58] Payment may be made to the person who has lawful custody of the person or to an authorized agent of the Attorney-General.[59] In such a manner, a person who is already serving time for fine default, may pay his fine in part or in whole and reduce the time he must serve accordingly.

When sentencing an offender to a fine, the court is not obliged to make provisions in case of fine default; "there is no absolute requirement...that a term of imprisonment be imposed in default of payment of any fine to which an accused has been sentenced.[60] The legislation accomodating a prison term for default is then permissive rather than mandatory.[61]

According to Toy, J., it is preferable that sentencing judges consider several factors before setting a jail term for default:

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[57] S. 650(1).

[58] S. 650 (2).

[59] S.650 (3).

[60] R. v. Tomlinson, [1971] 2 C.C.C. (2d) 97 (B.C.).

[61] R. v. Yamelst, (1975), 3 W.W.R. (2d)551.

> In my respectful view, before applying S.722 (2) and ordering a jail term in default, Courts should give appropriate consideration to what, if any, reformation will occur, what deterrent effect will occur, or how society will be protected if a person serves 14 to 30 days in Lower Mainland Regional Correction Centre if the convicted person fails to meet the deadline to pay a fine when a fine is initially considered as the appropriate penalty.[62]

In R. v. Natrall,[63] the defendant alleged that the trial court did not have authority to imprison an offender for defaulting on a fine unless the judge had first held an inquiry to determine the ability of the accused to pay the fine and was satisfied that the accused did have such capacity. Upon the basis of the following excerpt of the trial,[64] the appeal court was satisfied that a suitable inquiry had been held:

The Court: "What sort of time do you require to pay that fine?"

The Accused: "Two months".

The Court: "Pardon?"

The Accused: "Two months".

The Court: "You are going to have to do better than that. Can you pay $125 by the 16th of August, 1971, and- You are nodding your head, does than mean yes?"

The Accused: "Yes, I can".

It is evident from this case that the courts do not feel than an in-depth inquiry into the offender's means is necessary

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[62]Ibid., at p.552.

[63](1972), C.R.N.S. 265 (B.C.C.A.).

[64]Reported in M.L. Friedland, Cases and Materials on Criminal Law and Procedure, 4th ed., (Toronto: University of Toronto Press, 1974),PP.899-904.

before an order for prison in default is passed. In fact, for many judges, the imposition of such a sentence is routine practice. [65]

It was further argued, in R. v. Natrall,[66] that the routine imposition of a fine with imprisonment in default, was discriminatory as it placed the rich and poor offender on an unequal footing. The appellant claimed that this violated the Canadian Bill of Rights. The court rejected this argument:

> I agree that no one should be imprisoned for non-payment of a fine if in truth he is so devoid of means that he is quite unable to pay it. But Criminal Code, s. 722 does not provide for routine imprisonment. It places upon the tribunal which proposes to act under it, and which contemplates imposing punishment by a fine instead of, or in addition to, imprisonment, a duty to have regard to the ability or lack of ability of the particular accused to pay whatever fine is proposed to be imposed. The power...is permissive and discretionary, not mandatory. The spirit and intent of the section is that, when it comes to imposing a fine and imprisonment in default of payment thereof, consideration shall be given to the means of the particular accused and the amount of the fine and the terms of payment shall not be such that they are beyond his ability to meet. Indeed, in some cases the Judge may leave the matter in the position that imprisonment is not to follow default in payment but recovery of the fine is to be left to civil proceedings by the Crown.

What then is the purpose of ordering a prison term in case the fine is not paid, at the time the fine is ordered? In the words of Justice Toy:

> I have concluded that the real reason that the 'in default' adjudication is made in the majority of cases is because the threat of jail in lieu of non-payment of a fine is a practical method for the Crown to force the

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[65] R. v. Yamelst (1975), 3 W.W.R. (2d) p. 551.

[66] Ruby, op.cit. p. 235 - 236.

collection of its financial penalties.[67]

The judge then went on to advise that, under S. 652 of the Canadian Criminal Code, the Crown had civil remedies available for the collection of unpaid fines. It seemed to be the judge's opinion that this course of action was preferable to routine imprisonment and that, in such cases, the Crown is a creditor like any other; "I, for one, am not convinced that it was Parliament's intention that s.722 (b) be utilized to give the Crown such a right, privilege or preference over other obligations that the convicted person may have.[68]

In Curley v. The Queen,[69] Justice Brossard quoted the Minister of Justice in his judgement. Regarding means and the availability of time to pay a fine, the Minister made it clear that it was Parliament's wish that imprisonment for fine default be used only in cases of wilful refusal to pay.

> The objective of these amendments is to eliminate, so far as our criminal law is concerned, to the greatest extent possible any remnant of imprisonment for debt. We hope that the result of the amendment will be that imprisonment for a failure to pay a fine will only occur where there has been contempt of court, that is a failure by the convicted person to pay a fine ordered by the court even though he has the means to pay it.[70]

In discussing whether imprisonment imposed in default of payment of a fine is punishment or merely a method of enforcing payment, some courts have held that the sentence of a fine is

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[67] R. v. Yamelst (1975), 3 W.W.R. (2d) 551, at 552.

[68] Ibid.

[69] (1969), 7 C.R.N.S. 108 (Que. C.A.).

[70] Ibid., p. 111.

the intended punishment, the prison term being merely one of several means open to the court of enforcing payment.[71] The court, in R. v. Davidson,[72] came to the contrary conclusion: "If the offender chooses not to pay the fine and prefers to go to gaol surely he is suffering punishment for his offence and not merely for non-payment of his fine.[73] The purpose of the 'time in default' provision would seem to mean different things to different judges and, as such, is the subject of much controversy amongst judges, lawyers, practitioners, and academicians.

Several principles involving the fine and imprisonment for default are clear, however. Where such a conjunctive sentence is imposed, the defendant must have a choice between paying his fine and going to prison. R. v. Hall[74] was an English case involving a defendant charged with 22 counts of fraudulent conversion and a request that 56 similar cases be taken into account. Hall was married with numerous children; his salary was barely adequate to provide the necessities of life; he was heavily in debt with additional fines to be paid and had several civil suits outstanding against him. The trial judge imposed concurrent terms of 30 months imprisonment on all counts but

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[71] R. v. Tomlinson [1971] 2 C.C.C. (2d) 97 (B.C.); Regimbald v. Chong Chow (1925), 38 Que. K.B. 440 (C.A.).

[72] (1917), 28 C.C.C. 44 (Alta. C.A.).

[73] The extract from the Alberta Court of Appeal is taken from Ruby, op. cit., p. 238.

[74] (1968), 52 Cr. App. R. 736.

one. The remaining charge was sanctioned by way of a 500 pound fine with an order of an additional twelve months in prison to be served consecutively to the other charge should the prisoner default. Upon appeal the Court said;

> If a fine is to be imposed with an alternative of imprisonment, there must be a true alternative and not an illusory one. Here there was really no alternative for a bankrupt facing such a sentence but to serve the supposedly alternative term of imprisonment.[75]

In this case, the sentence of a fine was struck and a prison term of the same severity accorded the other charges was substituted with the provision that it also be served concurrently.

The term of imprisonment imposed for defaulting on a fine must be in proportion to the amount of the fine itself. In Rex v. Sydorik and Zowatski,[76] the prisoners had been fined $100 for assault causing bodily harm with an alternative of three years in prison (the maximum sentence possible by statute) should the fine not be paid. The Saskatchewan Court of Appeal decided that the length of the prison term in this case was quite out of proportion to the size of the fine and this was an unacceptable practice.

In a similar vein, fine-in-default provisions may not be used to disguise a harsher sentence by imposing a fine that the defendant is unable to pay and thereby increasing his stay in

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[75]Ibid., p. 738.

[76][1926] 3 W.W.R.458 (Sask. C.A.).

prison. in Curley v. The Queen,[77] the defendant had been sentenced to four and one-half years in prisonf or numerous fraud and forgery charges. The sentencing judge further ordered Curley to pay a fine of $15,000, and, in default, an additional five years in prison. Upon appeal, Justice Brossard noted that "if the appellant could not pay the fine, the effect of the second portion of the sentence would be to increase his term of imprisonment from four and one-half years to nine and one-half years.[78] According to the court it was never Parliament's intention that these provisions be used to camouflage a more severe sentence through the use of fines. As a result, the defendant's appeal was successful and the fine was struck from Curley's sentence.

Unlike many other sanctions, it is not possible to order payment of fines on two or more different charges to be concurrent. Each offence must be fined individually. In R. v. Derdarian, Reycraft and Derdarian Ltd.,[79] the appellant had been sentenced to pay concurrent fines on two charges under the Income Tax Act. On appeal, the sentence on the second charge was set aside as the word "concurrent" could be taken to mean either that payment should be made simultaneously for both fines or that the payment of one fine would satisfy the punishment imposed for both convictions. As a single fine may not be

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[77] (1969), 7 C.R.N.S. 108 (Que. C.A.).

[78] Ibid., p. 114.

[79] [1965] 2 O.R. 724, [1966] 1 C.C.C. 271.

ordered as a penalty for several offences, the original sentence could not be supported. Similarly, where two persons are jointly convicted for the same offence, separate fines should be imposed on each of them.[80] It is incorrect to order a joint and several fine, and to provide for imprisonment of both accused until payment is made by either of them.[81] In R. v. Marcovich,[82] upon conviction for keeping liquor for sale each accused was ordered to pay a fine, and in default both were to be imprisoned for three months unless the fines and costs were sooner paid. The appeal court held that while the accused might be jointly tried, the imposition of a fine and imprisonment in default should be ordered severally. The punishment of each accused should be separate and independant of any action of a co-defendant. Thus, a fine is a distinctly personal experience related to each offender and offence.

Payment of fines must be made to the Crown in accordance with S. 651 of the Criminal Code. Monies from most fines are received by the treasurer of the province involved. In some cases, such as violations of revenue laws, fines are paid directly to the Receiver General and where a municipal by-law is involved the fine may be directed to the muncipality. It should

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[80] Ruby, op. cit.,p. 241; R. v. James (1917), 52 N.S.R. 244, 29 C.C.C. 204, 39 D.L.R. 377 (C.A.); R. v. Vroom; Ex parte Johnston (1919), 46 N.B.R. 336, 34 C.C.C. 53 (C.A.).

[81] Ibid., p. 234; R. v. Jarvis and Smith (1925), 44 C.C.C. 97 (Ont. C.A.).

[82] [1923] 2 W.W.R. 975, 40 C.C.C. 1 (Alta).

be noted that payment of a fine does not interfere with the defendants right to appeal.[83]

It is no longer possible to impose a fine and try to make it serve the function of restitution or compensation to the offender's victim.[84] In Rex v. Sperdake,[85] the accused was convicted of fraudulently abstracting electricity and was fined $1000, one-half of which was to be paid to the St. John Railway Co. The appeal court ruled that this sentence was erroneous in point of law and varied the sentence to six months in jail and a $500 fine to be paid to the provincial treasury. In Rex v. England,[86] the defendant was charged with wounding his neighbour's bull, which later died. At trial the judge ordered England to pay a $25 fine and $25 to be paid to the bull's owner as restitution. In point of fact, this sentence was incorrect on two grounds; the offence was punishable by more than five years in prison and so could not be sanctioned by a fine alone; and, secondly, the direction that a fine be paid to the victim as restitution was unlawful. The appellate court, however, maintained the basic wisdom of the original sentence by ordering the defendant to serve one day in jail, pay a $25 fine to the provincial treasury, and ordered $25 compensation under a separate order to be made to the bull's owner. The modern fine

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[83] S.753.(1).

[84] Ruby, op. cit., p. 241.

[85] (1911), 24 C.C.C. 210 (N.B.C.A.).

[86] (1925), 43 C.C.C. 11 (Sask. C.A.).

per se, now serves a different function than its original objective of righting the victim's injury.

IV. The Use of the Fine in Criminal Courts: An International Perspective

The fine is the most commonly used penal sanction in modern industrialized nations. Throughout Canada, in 1973 (excluding Quebec and Alberta), a fine was ordered in 34.3% of convictions for indictable offences and 92.7% of summary offences.[1] In the United States, it is estimated that fines constitute 75% of all sentences.[2] During 1977, as many as 95% of English offenders found guilty of non-indictable offences were fined.[3] Even in the Crown courts, where the most serious offences are heard, 15% of convictions result in fines.[4] In recent years, approximately 93% of all Dutch sentences have been fines with no conditions attached[5] and, as early as 1928, judges in the Federal Republic of Germany were ordering fines for 70% of all criminal

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[1]Curt T. Griffiths, John F. Klein, and Simon Verdun-Jones, Criminal Justice in Canada: An Introductory Text, (Vancouver: Butterworth and Co., Western Canada, 1980) pp. 172-173.

[2]Sol Rubin, The Law of Criminal Correction, 2d ed., (St. Paul, Minn.:West Publishing Co., 1973) p. 272.

[3]Mary Daunton-Fear, "The Fine As A Criminal Sanction", in The Australian Criminal Justice System, 2d ed., ed. Duncan Chappell and Paul R. Wilson. (Sydney: Butterworths, 1977) p. 389.

[4]James A. Carter and George F. Cole, "The Use of Fines in England: Could the Idea Work Here?",Judicature,vol. 63, No. 4, (October, 1979):155.

[5]Calvert R. Dodge, A World Without Prisons: Alternatives to Incarceration Throughout the World , (Lexington: Lexington Books, 1979), p. 143.

convictions.[6] In many of these countries the use of the fine is still increasing.[7]

In part, the popularity of the fine may be a consequence of the growing multitude of statutory and regulatory offences. Even in a country like Canada, with a relatively small population, it has been estimated that there are some 20,000 offences governing commerce, trade, and industry under federal acts alone.[8] In addition, each province has thousands of similar statutes and each municipality has its own set of by-laws. For many of these quasi-criminal offences, the fine is the most appropriate sanction. In 1973, Statistics Canada reported that 86.9% of summary convictions for violations of federal statutes and 93.7% of provincial statutes resulted in fines. Infractions of municipal by-laws are almost always sanctioned by way of a fine, which is used in 98% of such cases.[9]

In the last few years, there has also been a growing disappointment with the efficacy of incarceration of offenders for minor offences. The fine, as a non-custodial sentence, may seem an attractive alternative to beleaguered judges, especially for non-violent offenders, who in the judges' opinion, do not

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[6]Ibid., p. 162.

[7]Ibid.

[8]Law Reform Commission of Canada, Our Criminal Law, (Ottawa: Information Canada, 1976) p. 11.

[9]For more information on this point see: Statistics Canada, Statistics of Criminal and Other Offences, v. 85-201, Statistics Canada, 1973.

constitute a threat to the community, or warrant the severity of a prison sentence which may do more harm than good. The degree and conditions of punishment are within the control of the sentencer unlike probation and imprisonment. Furthermore, the fine is an expeditious sentence requiring little of the busy courts' time.

Possibly, the major reason the fine is so prevalent is its flexibility of application to a wide variety of offences. The Canadian Criminal Code, R.S.C. 1970, C-34 permits a fine in the overwhelming majority of offences. In addition, a fine may be ordered in conjunction with any other punishment. Summary convictions may be punishable by a maximum of six months imprisonment and/or a fine of up to $500.[10] Unless a minimum prison term is specified, all indictable offences punishable by less than five years in prison may be sanctioned by a fine alone.[11] In general, offenders convicted of offences in which a longer period of incarceration is permitted may also be fined, but only in addition to another sanction.[12] Where a judge is reluctant to impose a prison sentence, this provision may be essentially sidestepped by sentencing the defendant to one day in jail and then ordering a fine as the major penalty.

Aside from cases of summary conviction, the Code does not specify the maximum amounts that an offender may be fined.

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[10] S.722

[11] S.646(1)

[12] S.646(2)

Similarly, only rarely does it provide the minimum amount of a fine for an offence. Thus, the sentencing judge is allowed considerable discretion in the severity of the fine, taking into account the seriousness of the offence and the circumstances of the case.

Statistics Canada data indicates that, in 1973, Canadian judges ordered a fine in 35% of indictable convictions.[13] This is a considerable increase since 1962 when only 21% of such cases resulted in a fine.[14] During the same decade, the fine's prevalence in summary convictions, under the Criminal Code, remained fairly constant, being levied at an average rate of between 76% to 80%.[15]

In view of the major role which the fine plays in modern sentencing practice, it is remarkable that so little research has been conducted into its use and effect. While legal theorists and penologists have spent a great deal of time and effort on other forms of punishment and sentencing alternatives, very little attention has been devoted to the fine. As one author has noted:

> Few theorists on the problem of punishment have paid sufficient attention to the fine and there is little scientific or statistical knowledge about its effect either on the individual or on society as a whole. Yet the fine is used in practice more than any other treatment by magistrates, so that we have here practice

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[13] Ibid.

[14] Sandra Edelman, "Sentencing Data", unpublished, (Vancouver, Ministry of the Attorney-General, 1979):p. 8

[15] Ibid.

perpetually out-running theory.[16]

In their working paper, Provincial Offences: Tentative Recommendations for Reform, the Saskatchewan Law Reform Commission discussed some of the difficulties inherent in researching the fine.

> To begin with, there has been no evaluative research into the fine's effectiveness as a penalty when compared with other sanctions such as imprisonment in lowering conviction rates. Also, no data exists on the types of offenders who are fined or the frequency and uniformity with which the fine is imposed by the different magistrates' courts in Saskatchewan. Furthermore, the differential rates of reconviction between offenders who have received large fines and those offenders who receive small fines is unknown. Therefore, we do not know whether the deterrent effect of the fine has any relation to the amount of the fine imposed by the courts. [17]

Unfortunately, in this regard, what is true of Saskatchewan is true of Canada. There have been few empirical studies on this aspect of fine use in this country. Indeed, there have been relatively few studies concerning this subject anywhere. Therefore, if any comprehensive discussion of the fine is to be attempted the researcher has no alternative but to seek out and utilize data from a variety of nations.

While there is a serious lack of descriptive or evaluative research into the fine, there is certainly no shortage of opinion on the fine's merits or lack thereof.Samuels has described the fine as "the least spectacular of sanctions,

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[16]Quoted in Ralph Davidson, "The Promiscuous Fine", Criminal Law Quarterly vol. 8, 1965, p. 74.

[17]Law Reform Commission of Saskatchewan, Provincial Offences: Tentative Recommendations For Reform (Saskatoon: Law Reform Commission of Saskatchewan, April 1977), p. 30.

numerically the most important, the cheapest, by no means the least effective...".[18] In addition, the fine is "simple, uncomplicated, adaptable and popular, because it involves no expense to the public, no burden on the prison system, no social dislocation and less stigma than most other criminal sanctions".[19] Jobson argues that through selecting the fine as a sentencing alternative, the deterrent value of punishment is maintained, the costs of imprisonment of the offender and the burden of welfare payments to his family saved, the undesirable effects of exposing the defendant to prison life avoided, and the offender is less likely to assume a destructive criminal self-image.[20] Other commentators have noted that a fine allows the offender to maintain his job and fulfill his other financial obligations and "more importantly, the fine sets a retributive limit to the amount of suffering that an offender must undergo to satisfy the aims of deterrence and vengeance expected by society for breaking the law".[21] Yet other authors have commended the fine for its efficiency as a deterrent. The English Advisory Council on the Penal System has claimed the fine "to be one of the most effective (sanctions) in relation to offenders of almost all age

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[18]Alec Samuels, "The Fine: The Principles", The Criminal Law Review 1970, p. 272.

[19]Ibid., p. 201.

[20]K.B. Jobson, "Fines", McGill Law Journal vol. 16, 1970, p. 660.

[21]"The Fine As An Option", Liason vol. 6, No. 7, July/August 1980.

groups and criminal histories".[22] In a similar vein, the Law Reform Commission of Saskatchewan has stated that "Unlike most non-custodial and semi-custodial penalties, the fine ranks as the cheapest and most efficient disposition for the majority of offenders".[23] Sir Rupert Cross has also praised the fine as "the most successful penal measure in the sense that fewer persons who have been fined are reconvicted than those put on probation or sent to prison" and argues that "where the Court has no clear view as to the course to follow, a fine is the best bet".[24] Regrettably, Sir Rupert offers little empirical support for these accolades and recommendations. Possibly the most glowing overall recommendation for the fine comes from Sutherland and Cressey:

> First, the fine is the most easily and thoroughly remissible of any of the penalties; capital punishment, whipping or imprisonment once administered cannot be remitted effectively, but a fine that has been paid can be repaid. Second, the fine is a most economical penalty; it costs the state practically nothing when used without imprisonment for default. Third, the fine is easily divisible and can be adjusted to the enormity of the offense, the character and wealth of the offender, the state of public opinion, and other conditions more easily than any other penalty. Fourth, it does not carry with it the public stigma and disgrace that imprisonment does, and therefore does not hamper reformation of the offender. Fifth, it affects one of the most general interests of mankind and causes a kind of suffering that is universal; therefore it is

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[22] Non-Custodial and Semi-Custodial Penalties: Report of the Advisory Council on the Penal System (London: Her Majesty's Stationery Office, 1970), p. 5.

[23] Law Reform Commission of Saskatchewan, op. cit., p. 29.

[24] Sir Rupert Cross, The English Sentencing System , (London: Butterworths, 1971), p. 21.

> efficacious in dealing with the great majority of mankind. Finally, it provides an income for the state, county or city.[25]

Such enthusiasm for the fine is by no means universal. Researchers, such as Bottoms, argue that a fine may be a humanitarian alternative to imprisonment but are skeptical that it is any more effective than all other sanctions.[26] Davidson is similarly cautious about the fine's efficacy, pointing out that fining prostitutes has not stopped them plying their trade; the fine just becomes another expense to be incorporated into their fee thereby merely constituting the equivalent of a license.[27] Criticism has also been directed towards judges' application of the fine and their lack of enquiry to ascertain whether the defendant is capable of paying the amount of fine the sentencer has in mind. [28] If the defendant's means are ignored, the fine may become discriminatory, punishing the less affluent offender more severely and merely serving as a token punishment for the rich.

Additional uncertainty exists regarding the penal objectives of the fine. The Criminal Law and Penal Methods Reform Committee of South Australia has noted that, in its view, the basic difficulty with the fine as a correctional measure is

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[25]Edwin H. Sutherland and Donald R. Cressey, Criminology 10th ed. (Philadelphia: J.B. Lippincott Co., 1978, p. 324.

[26]A.E. Bottoms, The Efficacy of the Fine: The Case for Agnosticism", The Criminal Law Review 1973, pp. 543-549.

[27]Davidson, op. cit., p. 80-83.

[28]"Notes: Fining the Indigent", Columbia Law Review vol. 71, 1971, p. 1283.

that "its proper function in the scope of its inherent limitations has not been satisfactorily identified". As to the objectives of the fine; "In itself, it can hardly be regarded as reformative, although it may indirectly produce the result. If it does, it must be because it operates by way of deterrence consequent upon retribution". [29] Daunton-Fear uses a similar argument; "The fine on its own can hardly be described as reformative in a positive way. In one sense, however, it can be retributive and it may be deterrent".[30] The crux of her argument is that, if one considers retribution to involve 'payment' for a criminal offence, the fine can bear a direct relation to the victim's loss or the defendant's gain, and thus serve a retributive function as a sentence for property offences or crimes of pecuniary gain. However, in those cases where no measurable loss or gain exists, such as in offences which constitute a public nuisance, being drunk in a public place and so on, the fine cannot serve a truly retributive function; instead, it operates as a deterrent. An article in The Columbia Law Review has pointed out that "A fine also cannot serve to rehabilitate or reform, if rehabilitation is defined as an extensive modification of an individual's anti-social attitudes or correction of his aggressive or compulsive criminal

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[29]Quoted in The Law Reform Commission, Sentencing Research Paper No. 3; Alternatives to Imprisonment: The Fine As A Sentencing Measure (Sydney: The Australian Law Reform Commission, January 1979), p. 6.

[30]Daunton-Fear, op. cit., p. 391

behaviour".[31] According to the writer, the fine may have a limited reformative function, however, in cases of negligence "by impressing upon a defendant who has acted negligently that he will be held accountable for his action".[32] It is debatable whether this effect is really due to the offender's reformation of character or to his new fear of punishment. The argument also seems unclear in the author's mind as he goes on to state that, in these cases, "if an individual has never before been held responsible for what he did, a fine may be all that is needed to deter him from risking criminal liability again".[33] The objective of the fine may, like beauty, be in the eyes of the beholder. Keith Devlin has summarized the issue as follows:

> It is possible to argue that for every individual for whom a fine is considered appropriate, there is a notional fine: a fine which in some cases is leniency which falls short of "letting off" and thus encourages reformation, a fine which in other cases is within the capacity of the offender to pay and yet deterrent enough to discourage further crime, and finally, in the appropriate case, a fine which is retributive enough for society to be assured that justice is being done.[34]

As the fine seems to have multiple objectives, it is not surprising that is has been recommended by legal theorists and penologists for use in a variety of offences. Regrettably, (as will be seen later in this thesis), there is little evaluative

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[31]"Notes: Fining the Indigent", op. cit., p. 1284.

[32]Ibid.

[33]Ibid.

[34]Keith Devlin, Sentencing Offenders in Magistrates' Courts (London: Sweet and Maxwell, 1970), p. 62

evidence to support many of their claims. Samuels has argued that the fine is exceptionally successful in shoplifting cases, and, if the fine is heavy, very efficient for soliciting.[35] Walker also maintains that fines may be an effective sanction for prostitution[36] and has urged that for first offenders, in general, a fine should be tried before supervisory or custodial measures.[37] Several authors have contended that the fine is a useful sentence when dealing with crimes of avarice or greed for financial gain.[38] Davidson contends, however, that this position is unfounded.[39] The Ouimet Report supports the use of a fine for "casual" or regulatory offences and suggests that a fine is preferable to imprisonment for non-dangerous offenders.[40] Carter and Cole[41] contend that the fine is effective for the majority of crimes against property, and in agreement with Posner,[42] further

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[35] Samuels, op. cit., p. 206.

[36] Nigel Walker, Crime and Punishment in Britain 2nd rev. ed.,(Edinburgh: University Press, 1968), pp. 242-242.

[37] Ibid., pp. 257-258.

[38] "Fines and Fining - An Evaluation", 101 Pennsylvania Law Review 1013; Report of the Canadian Committee on Corrections, Toward Unity: Criminal Justice and Correction. (Ottawa: Information Canada, 1969), p.197.

[39] Davidson, op. cit., p. 81.

[40] Report of the Canadian Committee on Corrections, op. cit., pp. 197-198.

[41] Carter and Cole, op. cit., pp. 155-161.

[42] Richard A. Posner, "Optimal Sentences for While-Collar Criminals", American Criminal Law Review vol. 17, No. 4, (Spring 1980): p. 409.

recommend its use for white-collar offences. Lovald and Stub[43] recommend the fine as an effective sentence for offenders convicted of chronic drunkenness.

One of the many difficulties associated with trying to determine the role of the fine in sentencing practice is that most sources of statistics do not differentiate between a sentence of a fine alone and a fine in conjunction with another sanction. An exception is a study undertaken by Hann, in 1973, of decision-making in Canadian criminal courts.[44] When all types of offenses were taken together, it became evident that the most frequently ordered disposition (61.5% of cases) was a fine with a definite prison term prescribed should the defendant default on payment. The next most frequent sentences were definite prison terms (11.3%) and suspended sentences(12.6%). A fine alone was only ordered in .8% of convictions. In a few cases, fines were levied in conjunction with license suspensions (.5%0), and definite prison terms (.1%). In this study there was not a single instance of a fine being ordered in addition to an order to make restitution or compensation.[45]

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[43]Keith Lovald and Holgar R. Stub, "The Revolving Door: Reactions of Chronic Drunkenness Offenders to Court Sanctions". Journal of Criminal Law, Criminology, and Police Science 59(4): 525-530, 1968.

[44]Robert G. Hann, Decision Making In The Canadian Criminal Court System,2 vols., (University of Toronto: Centre of Criminology, 1973).

[45]Ibid.,vol.2,pp. 418-419. It should be noted that this part of the study was limited to magistrates' courts.

Some specific offenses tend to result in a fine more frequently than others. In a survey of both indictable and summary convictions of Nova Scotia courts, in 1967, Jobson found that fines accounted for 58.2% of all dispositions, and in five out of nine selected offence categories, a fine was the result in 50% of the cases.[46] It is important to note that in weapons offenses, assaults, causing a disturbance, impaired driving, and wilful damage to property, fines accounted for approximately 80% of dispositions. When impaired driving cases are excluded, the fine was used in 67% of all sentences for the remaining four categories.

For some offenses, however, a fine was rarely ordered. In cases of breaking and entering a fine was used in only .7% of the dispositions while suspended sentences were used in 50.8% of such convictions. A very similar situation was apparent in cases of theft and false pretences. Jobson suggests that this relative disuse of the fine and concomitant reliance on suspended sentences may be due to the provisions of the Criminal Code prohibiting the use of the fine alone in cases punishable by five years or more imprisonment (breaking and entering is punishable by fourteen years or life depending on the circumstances). The Criminal Code does not disallow suspended sentences for these offences, thereby making it possible for a judge to order a non-custodial sentence. The author hypothesizes that a removal of the current restrictions on the application of

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[46]K.B.Jobson, McGill Law Journal, vol. 16, 1970: pp. 647-648.

the fine would result in an increase in its use in such cases and a decrease in the use of suspended sentences and probation.[47]

In England (the country from which the bulk of Canadian law stems), the use of the fine is more extensive. Under British law, fines are authorized for almost every offence except murder.[48] In 1977, English magistrates fined 74% of their non-traffic convictions. As previously mentioned, the fine is not infrequently used in the Crown courts for quite serious offences. For the following offense categories selected by Carter and Cole, the fine was the most frequently used sentencing alternative: violence against the person (52.5%), sexual offences (41.3%), theft/handling (61.4%), fraud/forgery (46.4%), and criminal damage (69.0%).[49] The fine was also used in an average of 50% of dispositions for other indictable offences.[50] Very similar results are described by Tarling.[51]

In Tarling's study of the Sentencing patterns of thirty randomly selected English courts, the sentences of 30,342

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[47]Ibid., pp. 648-649.

[48]Op. Cit. Carter and Cole, p. 155.

[49]Ibid.

[50]Ibid.

[51]Roger Tarling, Home Office Research Study No. 56: Sentencing Practice in Magistrates' Courts (London: Her Majesty's Stationery Office, 1979), pp. 14-15

offenders convicted of indictable offences were noted.[52] Overall, a fine was ordered in 61.3% of the sample. Sexual offences (68.2%), causing criminal damage (69.5%), and shoplifting (67.4%) were most frequently sanctioned by way of a fine. The two least frequently fined categories of offences listed were fraud and forgery (51.1%) and burglary (36.9%).

In another English study, conducted by Paul Softley[53] in 1974, of the use of fines in magistrates' courts, fines were least frequently used for burglary (48%) and most frequently used for criminal damage (76%). Fraud was the next least frequently fined offence (58%), followed by malicious wounding (67%) and theft (69%).[54]

While it can be clearly demonstrated that use of the fine varies with the type of offence committed, why two offenders charged with the same offence should be treated differently is far less apparent. Several major English studies have been conducted specifically looking at the fine in this regard.

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[52]Ibid

[53]Paul Softley, Home Office Research Study No. 46: Fines in Magistrates' Court (London: Her Majesty's Stationery Office, 1978), p. 2

[54]It should be noted that in all of the studies just cited, offences of fraud, forgery, and burglary had a low rate of fining. While English judges still fined a greater proportion of these offenders than did Canadian judges; some of this difference may be due to differences in sentencing provisions. It may also be the case, in both countries, that judges feel less confident about the suitability or efficacy of the fine or the public acceptability of fines for these offences.

In Paul Softley's national study of the use of fines in magistrates' courts, the sentences of 3,240 adult offenders convicted of burglary, theft, obtaining property by deception, criminal damage, wounding, or assault occasioning actual bodily harm were analyzed by the number of previous convictions.[55] It was hypothesized that fines would be ordered infrequently for first offenders, as the absence of a criminal record would serve as a mitigating factor in sentencing thereby making it less likely that the courts would impose a punitive sanction; that fines would be used relatively frequently for offenders with one or two prior convictions, and much less commonly for offenders with three or more previous convictions as the length of their criminal records would induce the courts to be less favourably disposed towards giving a non-custodial sentence.

In contrast to Softley's expectations, analysis of the data showed that offenders without any prior convictions were fined at a rate of 75.2%, and those with one or two previous convictions were fined in 73% of the cases - a difference of only 2.2%. For first offenders, the principal alternative to a fine was an absolute or conditional discharge (17%), custodial or suspended sentences being ordered in only 1.6% of the sample. Offenders with one or two prior convictions received absolute or conditional discharges at a rate of 9.6% and the incidence of incarceration and suspended sentences increased to 7%. As predicted, for offenders with three or more previous convictions

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[55]Softley, op. cit. p. 3.

the number of fines dropped sharply, being ordered in only 47.5% of the cases. For this group, the principal alternative to a fine was imprisonment or a suspended sentence (27.5%).[56]

In a study conducted by Phillpott and Lancucki of 5000 offenders convicted of violence against the person, sexual offences, burglary and robbery, theft and handling stolen goods, fraud and forgery, malicious damage and motoring offences, the rate of fines and discharges was found to be inversely proportional to the number of prior convictions and custodial sentences.[57] Males with no previous criminal record were fined in 65% of the cases, those with one previous conviction were fined at a frequency of 52%, two to four prior convictions resulted in fines in 41% of the cases, and those offenders with five or more prior convictions were only fined at a rate of 25%. The percentage of discharges granted dropped from 16% for first offenders to 7% for those with one prior conviction to only 4% for those subjects with five or more prior convictions. The proportion of subjects given suspended or immediate custodial sentences rose steadily as the number of convictions increased. The most dramatic increase occurred in custodial sentences. First offenders were given custodial sentences in 3% of the cases, 12% of the subjects with one prior conviction were

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[56] Ibid. pp. 1-4.

[57] G.J.O. Phillpotts and L.B. Lancucki, Home Office Research Study No.53: Previous Convictions, Sentence and Reconviction: A Statistical Study of a Sample of 5000 Offenders Convicted in January 1971 (London: Her Majesty's Stationery Office, 1979). pp. 8-9.

incarcerated, 26% of thsoe with two to four previous convictions, and those with five or more prior convictions were incarcerated at a rate of 47%.

In contrast to Softley's sample, 788 of Phillpott and Lancucki's subjects were male juveniles between ten and seventeen years of age.[58] For this group, the previous pattern of fining discovered in relation to adult offenders was not replicated. The author suggests that this may be due to the different range of sentences available to the courts when dealing with this age group. No evidence was found "that the proportion of juveniles fined was different for those with differing numbers of previous convictions".[59] However, the proportion of juveniles fined was considerably lower (approximately 33%) than for the older age groups with no or few previous convictions.

In both Tarling's[60] and Phillpott and Lancucki's[61] studies, the age of the adult offender did not seem to influence, to any significant degree, the frequency of fine use. Tarling's subjects were grouped into four age categories: 21-25 years, 26-30 years, 31-40 years, and 40 years of age and older.[62] Overall, fines were ordered for 61.3% of offenders with very

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[58]Ibid. p. 10

[59]Ibid. p. 9

[60]Tarling, op. cit. pp. 14-15

[61]Phillpott and Lancucki, op. cit. p. 10

[62]Tarling, op. cit. pp. 14-15

little variation amongst the age groups. The youngest group (21-25 year olds) were fined at an aggregate rate of 62.9% and the oldest group (40 years of age and older) at 58.6%. This pattern of stability of use was also apparent in the use of probation (average use was 4.3%), custodial sentences (average use was 10.3%), and suspended sentences (the average rate was 8.7%). The frequency of discharges granted did increase in each successive age group from 9.7% for the younger offenders to 18% for the group aged 40 and over. Tarling suggests that the increased use of discharges accounts for the slight reduction in the use of probation, fines, and suspended sentences and concludes that "otherwise, age had little effect on the disposal awarded".[63]

It is unfortunate that neither of these studies included a sample group of geriatric offenders e.g. those offenders sixty-five years of age and older. This omission may be due to a scarcity of offenders in the age group. Whether old aged pensioners are fined less often than other age groups is still unknown.

Softley's study appears to be the only work to date which has attempted to relate the gravity of the offence to the incidence of fines.[64] It was expected that the seriousness of the offence charged would reflect more clearly than the number of prior convictions that fines were used more often for cases

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[63]Ibid. p. 15

[64]Softley, op. cit. pp. 4-5

in the 'intermediate range' where some form of penalty less severe than a custodial sentence was appropriate. Sentences for property offences (theft, burglary, obtaining property by deception and criminal damage) were analyzed by the value of the property involved (up to five pounds sterling, 5.01 pounds sterling - 50 pounds sterling, and over 50). The results showed not only that the incidence of fine use did not correspond to the expected pattern, but also that decisions to fine offenders were unrelated to the value of the property. Offences involving property, worth only five pounds sterling or less, were fined 66.7% of the time and, where the property was worth over 50 pounds sterling, the frequency of fine use merely dropped to 64.1%. Regardless of the value of the property involved, the fine was used at an almost constant rate of 65.8%. The judicial decision to order other forms of punishment, however, did seem to be influenced by the cost of the property involved. As the value of the goods increased, courts tended to make less use of absolute or conditional discharges (up to 5 pounds sterling =16.3%, 5.01 pounds sterling - 50 pounds sterling=11.8%, over 50 pounds sterling=6.1%) and more use of custodial sentences (up to five pounds sterling=8.1%, 5.01 pounds sterling - 50 pounds sterling=11.3%, and over 50 pounds sterling=18.0%). Analogous results were obtained with individual offence categories.

Softley suggests that the widespead use of fines for both minor and serious property offences may be due to the ease with which the severity of a fine may be adapted to the gravity of

the offence and the circumstances of the offender.[65]

As previously noted in Chapter 3, judges have enormous discretion in setting the amount of the fine with very few parameters prescribed by law. While the means of the offender must be regarded in determining the size of the fine, the courts are not obliged to consider the offender's financial situation prior to selecting the form of punishment to be inflicted. In Softley's sample, however, the decision to impose a fine rather than some other sanction was influenced by the offender's employment status, "presumably because the amounts which some offenders could afford to pay would be derisory and bring the administration of justice into disrepute".[66] Approximately one-half of Softley's unemployed subjects were fined compared with three-quarters of those who had jobs. Among the unemployed offenders, significantly greater use was made of absolute or conditional discharges (17.7% compared with 9.7% for employed offender) and custodial sentences (15.4% compared with 8.8% of employed offenders).[67]

Information concerning the cash amounts of fines that Canadian judges levy and for what offences is currently unavailable. Such a lack of data is catastrophic to any attempt at an assessment of this sanction. It is impossible to ascertain any correlation between offences, offender characteristics, and

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[65]Ibid.

[66]Ibid. p. 5

[67]Ibid.

the degree of severity of the fine. Similarly, it is impossible to relate the size of the fine to its effectiveness in terms of fine default or reconviction rates or its impact in terms of the individual offender or to the community at large.

Why such information is not obtainable is equally difficult to explain. One would at least expect the government to be interested in a source of its revenue to the extent where it would be able to calculate the total sum of its income from fines; however, even this is unknown. Apparently, the amounts of fines are recorded on individual offender's records in B.C. In many instances this information and additional socio-demographic variables such as employment status, which are useful to social scientists, have not been 'fed' into the provincial government's computer data banks. In those instances where at least some of this data has been entered into the computers, programs have not yet been devised to retrieve this information. It is not possible, under either the B.C. Corrections Branch or B.C. Court Services Divisions data systems, to retrieve information relating the offender's characteristics to his offense(s) and his subsequent fine and number of days sentenced in default. It would seem that government departments have not felt the need for such data acutely enough to stimulate the necessary research. This is apparently due to the differing objectives of academics and governmental departments. Government information systems are primarily designed for case management i.e. how many prison beds are needed, where, and for how long. It would seem

that socio-demographic variables and the specific details of sentencing of individual offenders are not a necessary component of this type of work.[68] To the academic researcher attempting any accurate description of the use and effect of a sanction, this data is critically important. The academic community, however, has been equally lax in its collection of data on the fine. However, it is far more difficult, due to time and money constraints and in terms of ease of access, for academics to gather this data than it is for a government which already has this information tucked away in its files. In Canada, the fine operates in a vacuun of ignorance. Research from other nations is almost equally sparse. Again, England has produced the only empirical works to date of any significance.

In 1977, the total amount of fines ordered by English courts was approximately $70 million.[69] Carter and Cole note that individual fines appear to be relatively low and also fairly consistent in their severity among offence categories.[70] Since this data was gathered, however, the maximum limit on the

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[68]This information was obtained through interviews with Mr. Hal Philbrook, Management Information Officer, Ministry of the Attorney-General, Court Services Division, Victoria, B.C., and Mr. Greg Muirhead, Senior Research Analyst, Ministry of the Attorney-General, Corrections Branch, Victoria, B.C., 21 July 1983. It is only fair to mention that both these gentlemen were most sympathetic to the problem of data collection faced by academic researchers and were constrained only by lack of raw data, time and money limitations and not by any lack of sensitivity to the need for such research.

[69]Carter and Cole, op. cit. pp. 157-158.

[70]Ibid.

amount of a fine which may be levied for an indictable offence has been raised from approximately $800 to approximately $2000. It should also be remembered, when looking at the table below, that in England, incomes are generally lower and living expenses higher than in North America. As the authors point out, at the time their data was gathered, a fine of 30 pounds sterling was, for many people, the equivalent of half a week's salary.[71]

Tarling reports that the average size of the fines imposed in the thirty courts he observed, varied greatly. The lowest average fine ordered was 18 pounds sterling and the greatest was 47 pounds sterling.[72] Courts which imposed fines the most frequently did not, on average, order higher or lower fines than courts which used fines less commonly. In Tarling's opinion, the decision concerning the amount of a fine the offender will have to pay is made independently of the initial decision to select a fine as the appropriate sanction.[73]

According to the author, neither the age of the offender, nor his previous number of convictions, appeared to influence the amount of the fine but the type of offence committed did have some effect. Courts in his sample tended to order higher fines in cases of sexual offences, offences of violence, burglary, and theft or unauthorized use of a motor vehicle, than

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[71]Ibid.

[72]Tarling, op. cit. pp. 22-23.

[73]Ibid. p. 22.

Table 1

Percentages of Offenders Fined in Magistrates' Courts for Selected Offence Categories, by Amounts of Fines

	Percentages of offenders fined and amounts of fines (in Canadian dollars)*			
	Under $60	$61-140	$141-$200	Over $200
	%	%	%	%
Violence against person	51	32	14	2[a]
Sex	39	36	20	3
Burglary	67	24	7	1
Robbery[b]	91	9	0	0
Shoplifting	70	23	5	3
Theft	57	34	8	1
Handling	67	23	8	2
Fraud/Forgery	67	23	7	2
Criminal Damage	80	16	3	0
Other Indictable	76	19	4	0

*The amounts of fines were converted from pounds sterling to Canadian dollars. At the time this data was gathered one pound sterling was worth approximately $2 Canadian.

[a]Rows may not equal 100% due to rounding.
[b]Juveniles only (charges of robbery by adults are heared in the Crown Court).

[1]James A. Carter and George F. Cole, op.cit., p. 158. The original table has been condensed and implified.

in criminal damage offences.[74] Unfortunately, Tarling gives no indication of a scale of fines imposed in relation to offence type.

In Paul Softley's study of fines in magistrates' courts, a somewhat more detailed description is given.[75] While English courts, at the time the study was conducted, could impose fines of up to 400 pounds sterling for indictable offences, most fines were considerably less severe. For the offences selected (burglary, theft, obtaining property by deception, criminal damage, and wounding and assault occasioning actual bodily harm) only 5% of fines exceeded 50 pounds sterling, and the majority (61%) were 20 pounds sterling or less.[76]

As in Tarling's work, the size of fines varied with the type of offence. Again, criminal damage resulted in the lowest fines, the average fine being 16.3 pounds sterling. Wounding and assault causing bodily harm were fined most severely, the average penalty being 32.8 pounds sterling, followed by burglary 28.9 pounds sterling, and theft 23.4 pounds sterling.[77]

Within each type of property offence, the size of the fine varied according to the value of the property involved. For some

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[74] Ibid.

[75] Softley, op. cit. p. 10.

[76] Softley notes that in 1976 (two years after the data for this study was collected) only 43% of fines were for 20 pounds sterling or less, however, the majority of fines were still less than 30 pounds sterling.

[77] Ibid. p. 11.

unexplained reason, the correlation was highest in cases of obtaining property by deception (.62). Other correlations were relatively low; burglary .24, theft .37, and criminal damage at .23.[78]

Unlike other sanctions such as incarceration or probation, which involve time and personal freedom constraints, the fine is unique in that it is a financial penalty and, as incomes are individualized, the impact of the sentence on offenders is less easy to generalize. To illustrate, in cases of custodial sentences, the loss of liberty alone is essentially the same for all offenders. The effects of incarceration on their families, careers etc. may be widely diverse, but their physical ability to serve the sanction is not affected. In cases of financial penalties, however, unless some regard is paid to the individual circumstances of the offender, a sentence may be passed which is actually impossible for him or her to fulfill. Thus, whether the financial circumstances of the offender have been taken into account in fixing the amount of the fine, becomes an essential question in any discussion of fine use.

According to Softley, in cases of offences against property, there was a statistically significant relationship between the amount of a fine and the offender's income.[79] In crimes of burglary, the correlation was .3, for theft .28, and in criminal damage .12. However, in cases of wounding and

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[78]Ibid.

[79]Ibid.

assault occasioning actual bodily harm, no relationship was found. Softley suggests that it is possible that income was considered, but its effect on the size of the fine imposed was obscured by other factors and thus the correlation was indiscernible.[80]

In an attempt to clarify the relationship, an analysis of offenders convicted of theft and whose income was known, was performed using the following additional variables: the value of the stolen property; the value of unrecovered property; whether the offender was employed; the offender's employment record; plea; living arrangements and previous convictions. When all of these factors were considered together, 32% of the variation in the amounts of fines imposed was accounted for. However, only the value of the property involved and the offender's income were of major importance, together comprising 24% of the variance.[81]

Unfortunately, Tarling's data included neither information concerning the value of property involved in the offences committed nor the means of individual offenders. However, it was possible to investigate the relationship between the average fines imposed by the thirty courts in his study and the social and economic conditions prevalent in their catchment areas. It was found that, in areas with high unemployment and lower weekly incomes, the courts tended, on average, to give lower fines. In

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[80]Ibid.

[81]Ibid. p. 12.

Tarlig's words: "Although this analysis does not provide direct evidence that courts take account of the individual means of the offenders before them, taken in conjunction with Softley's results, it strongly suggests that they are not insensitive to such matters".[82]

In a study undertaken by Dr. Ann Smith and Joanna Gordon, of 4890 offenders fined under summary jurisdiction, it was found that the 390 female offenders in the sample received, on average, lower fines than their male counterparts.[83] "Courts imposed heavy fines on a far smaller proportion of women than of men, and few women offenders were fined over 10 pounds sterling".[84] Unfortunately, little other information is given and so it is not possible to tell whether the variation in fines was due to the offender's sex, income, or both. Sex and income may be directly proportional to one another.

While the Canadian Criminal Code permits broad discretion in sentencing offenders to a financial penalty, it gives relatively no guidance to the judiciary in relation to the calculation of fines to be given (or for any other penalty for that matter). As Griffiths et. al. have commented:

> The courts have enormous discretionary power vested in them in relation to the dispositions which they may choose as the Criminal Code is characterized by high maximum penalties, the almost complete absence of

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[82]Tarling, op. cit. p. 23.

[83]Dr. Ann Smith and Joanna Gordon, "The Collection of Fines in Scotland", Criminal Law Review (1973) pp. 560-564.

[84]Ibid. p. 564.

> mandatory sentences and a lack of criteria for the guidance of the courts in sentencing. Furthermore, since individual sentences cannot be appealed to the Supreme Court of Canada, case law precedents have not developed for the whole of Canada.[85]

Unlike many other nations, Canada does not have a systematic set of guidelines relating to the offence committed and the offender's income. Keith Jobson has aptly dubbed this lack of assistance 'the No-Rule approach'.[86] Apparently in some parts of the country, manuals are available to magistrates which make some suggestions for specific amounts of fines and magistrates occasionally hold meetings to discuss sentencing practices.[87] Jobson also suggests that "as a matter of habit, a magistrate, or a group of magistrates, soon develop an understood 'tariff' or average fine to take care of the ordinary case".[88] As Davidson points out, the advantage of having a fine which is not fixed is that the court is able to adjust the amount of the fine to the offender's circumstances.[89] The major criticism raised against this approach is its potential for inequitable sentencing - "in the sense that no two judges or magistrates are likely to impose identical fines given two identical - or at least similar - cases".[90]

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[85]Griffiths, et. al., op. cit., p. 171

[86]Jobson, op. cit. p. 639.

[87]Ibid.

[88]Ibid.

[89]Davidson, op. cit. p. 83.

[90]Ibid.

In an effort to determine the extent to which any 'tariff' existed amongst magistrates, Jobson cites a survey of six magistrates' courts, in Nova Scotia, during a six month period from June to December, 1966.[91] Four types of offences were analyzed: common assault (indictable); common assault (summary conviction); assault causing bodily harm (indictable) and obstructing a police officer (indictable).[92] Higher penalties were expected for indictable offences; however, these predictions were not strongly supported by the data.

In those cases of common assault prosecuted by way of summary conviction, the maximum fine ordered was $150 whereas in those cases of common assault pursued by way of indictment, the most severe fine handed down was only $100. The same paradox was found when looking at the minimum fines levied. Amongst those assaults prosecuted on indictment, the lowest fine was only $2 whereas, under summary convictions for this offence, the minimum fine was $10.[93]

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[91]Jobson, op. cit. p. 639. Apparently, the data used in this study was collected from magistrates' files in the cities of Halifax and Sydney, Nova Scotia, by Mr. Irwin Nathanson of Dalhousie Law School during the summer of 1967. See: I. Nathanson, "Fines in Magistrates' Courts" (unpublished).

[92]Unfortunately, the survey Professor Jobson cites gives no indication of the numbers of offenders in this sample, how many subjects were convicted of each offence, nor the number of cases before each magistrate. Similarly, no indication is given of the criminal records or financial circumstances of the subjects. These points should be borne in mind when considering the results of this survey as these variables may have been influential.

[93]Jobson, op. cit. p. 640.

The range of fines ordered for common assault (indictable) by five judges, therefore, gives little indication of the kind of fine an offender may expect and certainly makes the notion of a tariff existing amongst judges somewhat questionable at best. While the steepest fine ordered by Judge B was $35 for this offence, Judges C,E, and F levied fines of up to $100. In common assaults prosecuted summarily, the range of fines was similarly large; the maximum fine awarded by Judge D was $10, whereas Judge F gave fines of up to $100, and Judge E's maximum limit was $150.[94]

As predicted, the maximum fines for assaults causing bodily harm where higher than for common assaults. The maximum fine given was $500. Some of the fines, however, were strikingly low. The minimum fine given by Judge C was $10, and for Judge E a fine of only $5.[95]

As Jobson points out, the variation amongst magistrates' fines was much greater in cases of assault causing bodily harm than in cases of common assault: "For example, the maximum fine imposed by Magistrate A was eight times the amount imposed by Magistrate C, and the minimum fine imposed by Magistrate A was 15 times that imposed by Magistrate E.[96] When one considers the range of possible physical harms incurred under the ambit of this offense, however, it is not surprising that there might be

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[94]Ibid.

[95]Ibid.

[96]Ibid. p. 641.

a sizable variation in the severity of the fines imposed commensurate with the degree of harm suffered by the victim. Therefore, the maximum fines imposed by these judges may not reflect an arbitrary use of the fine but rather a response to the gravity of the circumstances of the offenses before them. Whether this is indeed the case, however, is impossible to tell from the information provided by Professor Jobson as no indication of the seriousness of the injuries inflicted on the offender's victims is offered.

Indictable offences of obstructing a police officer showed somewhat more consistent fining patterns but there was still a wide range in the amounts of fines ordered. The minimum fines levied amongst the magistrates varied between $4 and $11. When maximum fines are considered, two magistrates ordered maximum fines of $55 and $56 respectively, two magistrates gave out maximum fines of $75, and the remaining two ordered maximum fines of $100.[97]

Due to the lack of information given concerning the methodology used in this survey (see footnote 94), it is difficult to ascertain whether a tariff system does exist amongst Canadian judges. The results would seem to suggest not. However, it is possible that the offenders' characteristics and the circumstances of the offences involved may have skewed the data. Nevertheless, this possibility appears to be rather unlikely. Professor Jobson appears to share the same skepticism:

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[97]Ibid. p. 640.

"Assuming that all magistrates handled a roughly similar cross-section of cases, do the variations in maxima and minima fines between magistrates suggest the need for legislative criteria governing amounts of fines?".[98]

Sir Rupert Cross suggests that English courts operate a rough tariff system based on the gravity of the offence, the circumstances under which the offence was committed, and the offender's prior record.[99] According to Alec Samuels, some magistrates calculate the fines for speeding offences, for example, on the basis of x per mile over the speed limit.[100] The need to pay attention to the offender's means when calculating the amount of the fine to be paid complicates the tariff formula and, as Sir Rupert Cross further points out, "no Court can be expected to disregard the profit derived from an offence when fixing the amount of the fine to be imposed on its perpetrator".[101]

In R. v. Lewis,[102] the Court of Criminal Appeal delineated some of the major factors that English judges attend to, in determining the size of the fine:

> Once the Court has decided that a fine is proper then there are obviously in each case many factors which may follow, but amongst the factors which the Court must

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[98]Ibid. p. 641.

[99]Sir Rupert Cross, op. cit. p. 22.

[100]Alec Samuels, op. cit. p. 205.

[101]Sir Rupert Cross, op. cit. p. 22.

[102][1965] Crim. L. R. 121.

> consider one can mention first the amount involved in the fraud, ...secondly the amount obtained out of it by the accused if known...; thirdly his capacity to pay. It is in the view of this Court wrong in principle to impose such a fine as may be utterly beyond the accused's means and will only result in the prison sentence which is mentioned at the time of the trial as the sanction for failure to pay.[103]

To assist judges in determining the amounts of fines to be ordered, the Home Office and the Lord Chancellor's Office send out circulars advising judges of the severity of fines for various offences currently being levied by their colleagues. The existence of an actual formula for the calculation of fines, however, seems nebulous at best. Samuels goes so far as to assert that "The tariff can readily be applied by the court without time or effort being required, it gives the appearance of consistency, and often satisfies the rough sense of equality of treatment expected by offenders".[104] Unfortunately, the author does not even attempt to describe the equation used by judges nor is any empirical evidence offered of the existence of such a formula. On this point, Samuels becomes almost hesitant about the strength of his assertions that a definite tariff exists:

> The courts are probably in transition in the matter, retaining the concept of just proportion but nevertheless paying more attention to the individual needs of the offender. But the tariff is essentially retrogressive, concentrating upon the offence and the offender's record instead of upon prognosis for the

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[103]This extract from the judgement of the Court of Criminal Appeal is taken from D.A. Thomas's Principles of Sentencing p. 221 note 1 cited by Sir Rupert Cross, op. cit. p. 22.

[104]Samuels, op. cit. pp. 204-205.

future set in the context of the history.[105]

With all due respect to Sir Rupert Cross and Professor Samuels, their arguments seem long on principle and philosophy but somewhat short on evidence. It would appear that, with the exception of slightly more numerous statutes governing the maximum and minimum amounts of fines, English judges may operate 'in the dark' in much the same fashion as their Canadian counterparts.

In the United States, the system of fining is even more chaotic. Sol Rubin has commented that:

> Even a cursory examination of the criminal laws of American jurisdictions establishes the total absence of any logical or other discernible basis in the statutory prescriptions of fines as punishment. Neither the misdemeanour felony classification nor any other grouping of crimes furnishes any key to the statutoryb gradations used in specifying the maximum or minimum penalty for the crimes to which fines are applicable.[106]

As each state has its own Criminal Code, the penalties for the same offence can vary tremendously from state to state. In a survey of the statutory law of sexual crimes in the United States,[107] it was found that for the offence of operating a house of prostitution, maximum fines in twenty states ranged from $50 to $2500. For the offence of sodomy, statutes in eight states varied in the maximum allowable fine from $1000 to no maximum limit. Three states authorize a fine for rape. Maximum fines ranged from $2000 to $7000. It should be pointed out that

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[105]Ibid. p. 206.

[106]Sol Rubin, op. cit. p. 262.

[107]Ibid. p. 263.

other dispositions, such as incarceration, showed similar disparities across the nation.[108]

Any general formula for the actual calculation of the amount of a fine on a universal level, in the U.S., would therefore seem impossible. However, some sort of tariff may be used by judges within any given state although there is little empirical evidence of this occurring. Apparently, in the case of offenses, such as gambling, in which the fine may be seen by some critics to operate as a license, some judges have worked out an undefined policy of increasing the amount of the fine for each successive offence committed by known recidivists.[109] Some such gradations are occasionally required by statute. [110] Regardless of the formula used, calculation of a suitable fine is made more difficult by the lack of legislative response to the changing value of money since statutes were first enacted. In Pennsylvania for example, some fines are still expressed in terms of British pounds.[111]

It has been contended that, in Australia and New Zealand, judges use a rough scale of fines for particular offences.[112] In

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[108]Ibid. pp. 263-265.

[109]"Fines and Fining - An Evaluation", 101 Pennsylvania Law Review p. 1019.

[110]Ibid.

[111]ibid.

[112]M.B. Hoare and C.R. Bevan, "Alternatives to Imprisonment and Progressive Variation in Current Practice", Australian and New Zealand Journal of Criminology vol. 5, no. 1, (March 1972):p. 25.

other words, there is a tendency to fix a standard fine for a particular offence. As Hoare and Bevan point out, this practice is often markedly unfair in its operation as it does not accommodate the circumstances of individual offenders.[113] Thus unequals are treated equally and injustice results owing to consistency in sentencing practices. While the authors agree that the calculation of a fine commensurate with both the crime and the means of the offender is in theory highly desirable, they suggest that the practical difficulties of a magistrate being able to gain sufficient information on the financial status of an offender, in order to make a calculated assessment of an appropriate fine, are almost insurmountable. It is further suggested that the work load of the average magistrate precludes any such in-depth inquiry.[114]

In an attempt to combat the inherent inequities of using a 'global fine system' (the traditional method where the judge sentences the offender to pay a fixed sum of money arrived at by roughly considering the seriousness of the offence and the offender's means), a number of countries have adopted the theory underlying the day-fine system. The first country to use the day-fine system was Finland in 1921. Sweden followed suit in 1931 and Denmark in 1939. The system has been in place in Cuba since 1938. The concept also exists in the Peruvian Penal Code of 1924 (Article 20), the Brazilian Penal Code of 1969 (Article

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[113]Ibid.

[114]Ibid.

44), the Costa Rican Code of 1971 and the Bolivian Code of 1972 (Article 29). In 1975, the system was also adopted in the penal codes of Germany and Austria.[115] The different national systems vary somewhat with their application and the methods used for calculating the actual units; however the basic principle is the same. The severity of the fine is determined, not in terms of money but in terms of a certain number of days commensurate with the gravity of the offence. Each 'day' is equivalent to a fixed sum of money, assessed in accordance with the offender's financial circumstances.[116] In essence, the day-fine method of calculating the amount of a fine to be imposed is an attempt to assess penalties which will have an equal personal impact on offenders. The Swedish system offers a clear illustration of how the system works.[117]

In Sweden, the number of day-fines normally ranges from 1 - 120. If an offender is sentenced at the same time for several

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[115]Antonio Beristain, "Penal and Adminstrative Fines in Relation to Prison Sentences", International Criminal Justice Review no. 302, (November 1976): p. 258.

[116]For further information on the day-fine system see: "Fines and Fining - An Evaluation", 101 Pennsylvania Law Review, pp. 1013 - 1030; Fiori Rinaldi, Imprisonment for Non-Payment of Fines, Penology Monograph No. 2, 2d ed. (Queensland: Australian National University, 1976); Hans-Jorg Albrecht and Elmer H. Johnson, "Fines and Justice Administration: The Experience of the Federal Republic of Germany", International Journal of Comparative and Applied Criminal Justice, vol. 4, no. 1, (Spring 1980): pp. 3-14; M. Lopez-rey, "Present and Future of Non-Institutional Treatments", International Journal of Criminology and Penology , vol. 1, 1973, pp. 301-317.

[117]Hans Thornstedt, "The Day-Fine System in Sweden", Criminal Law Review, 1975, pp. 307-312.

offences all of which are punishable by day-fines, he has to be sentenced to a joint punishment, which may not be in excess of 180 day-fines. For some offences, the minimum and maximum number of day-fines is regulated by statute as is the maximum amount of a day-fine. The scale of 1 - 120 (180) day-fines is designed to accomodate both petty and more serious offences. It is only in very rare instances that the maximum is applied.[118] According to Thornstedt, the apportionment of day-fines has a tendency to be made according to a set pattern in regard to the more frequently occurring offences. For example, the normal amount for ordinary traffic offences is 10 or 15 day-fines, and for less serious types of drunken driving the offender may expect between 40 - 100 day-fines.[119] In an attempt to attain some consistency in the number of day-fines being assessed for particular offences, the Chief Public Prosecutor issues circulars which are reproduced in the commentary to the Penal Code and used by all criminal lawyers.[120]

The per diem amount of the day-fine is calculated as the thousandth part of the offender's income during the year after the deduction of essential expenses to maintain himself and his family. The calculation of the annual income is made on the basis of the offender's financial position at the time of sentencing and is roughly the total amount which the offender

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[118]Ibid. p. 308.

[119]Ibid.

[120]Ibid.

has received during the course of the year in the form of wages, interest, pension, and annuities etc. The value of the offender's property also influences the per diem rate. However, the courts will consider whether the property is easily liquidated or whether it is tied-up capital. Invested capital does not ususally increase the amount of the day-fine nor do owner-occupied homes unless they are exceptionally valuable. Any cash savings the offender has are taken into account and do influence the per diem rate.[121] Obligations to support one's children or other dependants operate to reduce the per diem rate. In addition, the offender may also bring before the court other financial liabilities he may have such as interest due on loans, hire purchase commitments, unpaid taxes, unpaid fines from earlier sentences or civil damages for which he is responsible.[122] Thus an attempt is made to get an overall view of the offender's financial position. Professor Ivar Strahl has commented: "To a Swede who is used to the day-fine system, it seems to be a merit of the system that it forces the courts to consider the economic circumstances of the accused and to account openly for the way in which such consideration has been done".[123]

The reliability of information on the offender's financial status is of major importance in the day-fine system.

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[121]Ibid. p. 310.

[122]Ibid.

[123]Quoted by Thornstedt, ibid., p. 312.

Information about the offender's means is obtained by the police as part of their investigation of the offence and, at sentencing, the offender is asked for further information and verification of the police report. In Sweden, access to information about people's financial status is readily available. Tax authorities' records, of the amounts of the individual citizen's taxable income and the amounts of income tax and wealth tax he must pay, are open to the public for inspection. Thus, an offender's financial circumstances are easily verifiable.[124]

More than 75% of the fines in Sweden are determined not by the courts but by the public prosecutors. The prosecutor may propose a fine determined by him to the perpetrator and should the proposal be accepted, it has the same legal effect as a sentence by a court. The prosecutor may not propose a more severe sentence than 50 day-fines (or if more than one offence, 60 day-fines). This system, which has been in operation since 1948, encompasses all offences with fines as the maximum punishment as well as lesser offences such as petty larceny, which are punishable by a fine or a short prison term.[125]

In addition to the day-fine system, Sweden also uses global fines whereby the prosecutor or the court sets the fine at a particular sum of money. However, this type of fine is only used for petty offences such as small traffic offences or drunkenness

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[124]Ibid.

[125]Ibid. p. 307.

or disorderly behaviour, and the fines imposed are relatively small varying between 10 and 500 Kronen.[126]

Thornstedt points out that the relationship between the two systems of fining may raise some difficulties as wealthy offenders ordered to pay day-fines may be sentenced to pay an amount which may be too great in relation to the seriousness of the offence. If the offence involved is petty, the law allows the amount of the day-fine to be abated. This is an exception to the general rule that the gravity of the offence should influence the number of day-fines and not the amount of them. As most petty offences are nearly always sanctioned by way of a global fine, the incidence of day-fine abatements is apparently very low.[127]

According to Albrecht and Johnson, the introduction of dayfines in Germany brought few dramatic changes in regard to the general decision-making patterns of judges in their choice of dispositions.[128] The most noticeable change that occurred was an increase in the average amount of fines imposed. In 1972, only 6% of fines imposed were over 2000 DM; in 1975, there were 16%. The previous method of setting fines was standardized according to the offense. For example, hit-and-run traffic

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[126]Ibid.

[127]Ibid. p. 311.

[128]Hans-Jorg Albrecht and Elmer H. Johnson, "Fines and Justice Administration: The Experience of the Federal Republic of Germany", International Journal of Comparative and Applied Criminal Justice, vol. 4, no. 1, (Spring 1980):p. 10.

offenses usually resulted in a fine of approximately 500 DM "as a sort of fixed tax".[129] Under the present day-fine system, the judge fixes the terms according to the offense and then sets the per diem rate according to the offender's income. The effect has been an increase in the proportion of very large fines for high income offenders.[130] Unfortunately, the authors do not offer any substantial statistical description of the range of fines imposed before and after the introduction of the day-fine system and their relationship to various types of offenses.

In summary, the fine is the most frequently ordered penal sanction in the modern criminal courts of western industrialized nations. The basis of its popularity remains speculative. It would seem, however, that there has been a growing disappointment with incarcerative sanctions and the fine may, in many cases, appear to be a suitable sentencing alternative owing to its flexibility in its range of application to a multitude of offences of varying gravity. Furthermore, it is an expedient sentence to administer and is relatively inexpensive to the state.

However, very little empirical research has been conducted concerning judicial administration of the fine. This dearth of information is most marked in Canada but the available data from overseas is also extremely sparse. Relatively little is known, therefore, about which types of offences and offenders attract a

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[129]Ibid.

[130]Ibid.

fine, the severity of fines which are levied and how judges calculate the amount of the fines they levy.

In a similar vein, there is little agreement on the penal objectives of the fine as a sanction. When little is known about the actual usage of a sanction and this lack of knowledge is coupled with confusion about what the sanction is supposed to achieve, any evaluation of the impact of the sanction on individual offenders and the efficacy of the sanction in general, becomes extremely difficult. Therefore, in the next chapter, a variety of approaches will be undertaken in an attempt to describe the events which may take place once an offender has been sentenced to a fine.

V. The Fine from Sentencing to Recidivism: An International Perspective

If the punishment is to fit the crime, then stock should be taken of the impact of the sentence upon the offender, on whom it is being inflicted. As a financial penalty, and thus relatively easily quantified, the fine offers a unique opportunity for individualized justice. Few studies to date have paid even passing attention to the impact of the size of the fine on offenders in terms of the hardship (punishment?) it caused them and its consequences, i.e., was the size of the fine such that it was impossible for the individual to pay it and thus imprisonment for default resulted? No study focussing on this aspect of the fine has been undertaken in any nation. Without being able to assess the impact of the fine on an offender, it is difficult to measure the severity of the punishment being meted out. This, in turn, obscures the efficacy of the fine in terms of the Bench's sentencing objectives - be they retribution, deterrence, or any other sentencing aim. For example, if the courts selects a fine as an appropriate sanction for an individual offender because a custodial sentence would be too harsh under the circumstances and, owing to current or future events the offender defaults on the fine and is subsequently imprisoned, the initial objective of the courts in ordering a fine has been thwarted. Not only has the offender

undergone some financial hardship in attempting to pay the fine, but in addition he has had to suffer the pains of imprisonment. How often this situation actually occurs is also unknown as so little is known about why people default on their fines. While justice may be seen to be done by the apparent frequency of fine use, whether justice is actually being done remains an open question.

This chapter will review the current literature, dealing with the effect of the fine in terms of the individual offender's lifestyle, the length of time it takes people to pay their fine, the enforcement mechanisms that are brought to bear on those who do not pay their fines on time, imprisonment for default, fine option programs, and recidivism rates after the imposition of a fine compared with other sanctions.

In Paul Softley's study, 'Fines in Magistrates' Courts',[1] 368 subjects (17% of the sample) responded to a postal questionnaire sent to them seven or eight months after sentencing. An analysis of the response rate apparently showed no bias in terms of the numbers of previous convictions, employment, and default rates of the respondents.[2]

When asked their opinion regarding the amount of the fine they were ordered to pay, 58% of the respondents thought that their fines were too large; 38% thought the amount was quite

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[1]Paul Softley, Home Office Research Study No. 46: Fines in Magistrates' Courts (London: Her Majesty's Stationery Office, 1978).

[2]Ibid., p.26.

fair; 2% thought it was too low, and 2% offered no opinion. Among those respondents who defaulted on their fine, over two-thirds felt the amount of the fine was excessive.[3]

As to the financial sources from which their fines were paid, approximately 75% of the respondents said they paid their fines partly or in whole from their current incomes. Softley points out that this finding underlines the importance of the court conducting a means inquiry before assessing the amount of the fine.[4] Seven per cent of respondents, most of whom were unemployed at the time of sentencing, said their fines were paid by someone else. A further examination of the source of payment revealed that 35% of non-defaulters, compared with only 8% of defaulters, paid either some or all of their fines from their personal savings. While the possibility exists that at least some of the subjects who defaulted on their fines had savings but were unwilling to use them to make their payments to the courts, Softley suggests that a more plausible explanation of the findings is that the defaulting subjects rarely had money put aside, and that this factor contributed to their failure to pay.[5]

Respondents were further asked whether, as a result of having to pay their fine, they had to curtail their spending. Overall, 77.7% of the subjects said they did. Amongst the

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[3]Ibid.

[4]Ibid.

[5]Ibid.

defaulting subjects, 87% said they had to cut back compared with 66% who paid off their fines (this difference is statistically significant, p. 001).[6]

Those subjects who had reduced their spending were then asked which items they had cut back on. 42% said they had spent less on shoes and clothing; 39% claimed they had spent less on food and housekeeping; 36% said they had spent less on drinks, cigarettes, or pipe tobacco, and 8% said they had spent less on fulfilling existing financial liabilities such as rent, rates, hire purchase commitments, and unspecified bills. When the defaulting subjects were compared with those who had paid their fines as ordered by the courts, the results showed that defaulters were more likely to have reduced expenditure on food and housekeeping, and less likely to have economized on entertainment. This finding is consistent with the budgets of offenders who were unemployed, at the time of sentencing. Twelve per cent of fine defaulters, compared with only 2% of the other respondents, said they had deferred payment of their rents and other financial commitments and debts. Thus, it would appear that, at least in some cases, the imposition of a fine resulted in serious financial difficulties.[7]

Among the 204 subjects who defaulted on their fines, 159 (78%) said they had delayed in paying their fines because they needed the money for other things. In order of frequency, the

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[6]Ibid.

[7]Ibid. p. 27.

items they mentioned included: shoes and clothing; food and housekeeping; rent and rates; unspecified bills; hire purchase commitments; light and heating; and public transport.[8] As Softley has noted; "It is apparent that fine judgement is required to identify those cases where default is due to wilful refusal or culpable neglect".[9]

One hundred and seven respondents (29%) said that a change in their circumstances after sentencing had made it difficult for them to pay their fines. The most frequently mentioned circumstances were loss of employment or a reduction in their earnings. However, only 20% of those who said that their income had been reduced, applied to the court for an extension of time in which to pay their fine.[10]

The author cautions that, owing to the low response rate, these findings should be viewed with discretion and that they merely imply that some offenders had difficulty in meeting the financial demands of the court, and that those who defaulted on their fines may have had to make greater sacrifices than those who paid on time.[11] In discussing these findings however, Softley comments:

> But if there is some truth in this view, it follows that it would be unrealistice to equate default with unwillingness to pay in every case and that at many

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[8]Ibid.

[9]Ibid.

[10]Ibid.

[11]Ibid.

> means enquiries the point to be determined would seem to be whether the defaulter had made sufficient effort to pay rather than whether he had wilfully refused to pay.[12]

In Martin Davies' study of probationers aged between 17 and 21, approximately 360 had a financial penalty imposed compared with 133 who had no financial penalty imposed or outstanding during the first twelve months of their probation period.[13] Within the fined group, 50% had not paid their fine or paid with difficulty or delay. The remaining half paid without difficulty.

Not surprisingly, but of importance, the greater the sum adjudged to be paid, the higher the proportion of probationers who reported difficulty in meeting the order of the court.

Davies reports a direct relationship between the social and personal circumstances of the offender and their level of difficulty in fulfilling their obligation to the court. Those probationers who were encountering difficulties in their home or work environment found it more difficult to pay on time, and in full, than those with good relationships and no material stress.[14] It is unfortunate that Davies' research on this aspect of financial penalties, was couched in such general terms but, in fairness to the author,it should be pointed out that this section of the study constituted only a very minor part of his investigation. Most researchers have ignored this topic

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[12]Ibid.

[13]Martin Davies, Home Office Research Study No. 5: Financial Penalties and Probation (London: Her Majesty's Stationery Office, 1970) p.11.

[14]Ibid., pp. 12 - 13.

Table 2

The Payment of Court Debts and Size of the Fine

Size of the debt	N	Proportion who found difficulty in paying
Under 4 pounds	92	15%
4 pounds and under 12 pounds	80	45%
12 pounds and under 25 pounds	76	63%
25 pounds and over	108	75%
	356	

altogether.[15]

In the words of Cecil Latham, "If a fine is not paid voluntarily and payment of it is not enforced, the sentence which the court has passed is rendered ineffective. This is, of course, no more than a truism; but it emphasizes the importance of fine enforcement as a part of the sentencing process".[16] The length of time within which the court has ordered the fine to be paid, the actual time it takes people to pay their fines, the enforcement mechanisms which are used to induce such payment and their 'return rate', and the number of fines left unpaid, may all be seen as indicators of the viability of the fine as a penal sanction. Many scholars have suggested that the fine is an

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[15]Ibid., p.12.

[16]Cecil Latham, "Enforcement of Fines", Criminal Law Review (1973) p. 552.

inexpensive and expedient sanction for the state to administer. While no information is available on the actual costs of fine enforcement to the state, as can be seen from the studies described below, simplistic claims of expediency and economy should not be accepted wholesale. Moreover, the length of time it takes people to pay their fines may also indicate the severity of the penalty to the individual involved. Conversely, it may indicate either unwillingness to pay, or a degree of contempt on the part of offenders, for whom the state's enforcement proceedings do not result in payment. The number of unpaid fines is also relevant to the deterrent effect of the sanction; "...because an unpaid fine can only in rather unusual circumstances be said to be a deterrent in individual terms, and ceases to be a deterrent in general terms once it is generally appreciated that it is possible to avoid paying fines".[17] Thus, any realistic assessment of the fine should be undertaken from an eclectic point of view.

During the years 1967 and 1968, Paul Softley conducted a survey of fine enforcement involving 455 courts and 2,482 offenders.[18] Nearly one-half of the offenders paid within one week, two-thirds paid within three weeks and about three-quarters paid within eight weeks. After nine months,

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[17]Keith Devlin, Sentencing Offenders in Magistrates' Courts (London: Sweet and Maxwell, 1970), p.65.

[18]Paul Softley, Home Office Research Study No. 16; A Survey of Fine Enforcement (London: Her Majesty's Stationery Office, 1973).

approximately 10% of the subjects had not completed their payment, leaving about 17% of the total sum imposed outstanding.[19]

An investigation was undertaken in relation to the principal offence for which the subjects were charged in an attempt to ascertain which groups of offenders were most likely to pay on time and which were apt to cause enforcement problems. The author's results are reproduced below.[20]

From the table it is apparent that offenders charged with drunkenness were the most frequently overdue on their payments. However, the total amount of their outstanding fines only constituted about 3% of the total sum still owed by the sample group at the end of the nine month study period. By offence type, the next worst groups were those charged with indictable property offences followed by non-indictable revenue and property offences. These two groups each accounted for over 30% of the arrears nine months from sentence.[21] Thus, while drunkenness offenders may constitute the poorest risk groups in terms of numbers, from a financial point of view, property and revenue offenders are the most costly in terms of unpaid fines.

It was also found that the time taken by the subjects was more closely related to the amount of the fine to be paid than the terms of payment as ordered by the court. This conclusion is

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[19]Ibid., p.14.

[20]Ibid., this table is adapted from Table 11, p. 15.

[21]Ibid., pp.14-17.

Table 3

Defendants who had not paid within 9 months of sentence by principal offence

Principal Offence	1967	1968
Drunkenness	41.8	32.3
Indictable property	30.9	31.3
Non-indictable revenue and property	19.1	22.6
Other non-indictable	9.4	12.3
Motoring	4.8	5.2
All defendants	10.3	11.3

illustrated below.[22]

It was found that the proportions of defendants, who paid their fines on time, varied inversely with the time allowed for payment. Those defendants who were given relatively longer periods of time in which to pay tended not to complete their payments within the allotted time period.[23] Softley suggests that in cases, where relatively large penalties were imposed "...the extra time generally allowed for payment only partially compensated for the increase in the amounts to be paid. The

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[22]Ibid., this table appears as Table 14, p.22.

[23]Ibid., p.22.

Table 4

Period during which the proportion of defendants who were due to have completed payment, or who had completed payment, reached 50 per cent: an analysis by sum adjudged to be paid

Sum adjudged to be paid	1967 Final payment due (weeks from sentence)	1967 Final payment made (weeks from sentence)	1968 Final Payment due (weeks from sentence)	1968 Final Payment made (weeks from sentence)
up to 5.00	1	1	1	1
5.01 - 10.00	1	2	1	2
10.01 - 20.00	1	4	1	4
20.01 - 30.00	2	4	4	18
more than 30.00	8	30	9	25

burden of payment therefore weighed doubly heavy on many who were given a seemingly more liberal allowance of time".[24]

In Softley's later study of fines in magistrates' courts, eighty per cent of the sample (2,596 offenders) were adjudged to pay fines, compensation, or costs or contribution orders. The sum of the penalties imposed was 125,600 pounds sterling. Fifty-seven per cent was related to fines and thirty-nine per cent to compensation. Most of the financial penalties imposed were relatively small: almost one-half (47.5%) were for 25 pounds sterling or less, one-quarter were for amounts in excess

[24]Ibid., p.23.

of 50 pounds, and only 8.5% were for more than 100 pounds.[25]

At the time of sentencing, half the subjects were ordered to pay by installments and almost as many had been given periods of time to pay ranging from seven days to one month. A very small proportion of subjects (1.5%) were not given time for payment and were ordered to pay forthwith. One hundred and fifty-six offenders (6%) applied for, and were granted, an extension of time in which to pay before enforcement action was taken. Discounting allowances for further time, it was determined that: 24% of the sample were due to have completed payment within seven days; 47% were given one month to pay; and 74% were due to have completed their payments within three months. Only 1.2% (31 subjects) were given more than eighteen months to fulfill their obligations to the court.[26]

The actual time that subjects took to complete payment is reproduced in Table 5.

The above results show that overall, a large number of persons fined did not pay their fines on time. While 74% of the sample should have completed their payments within the three months of receiving their sentence, in fact, only 49.3% had done so. Almost one-quarter of the sample (23%) had not paid off their orders within eighteen months. Two hundred and twenty

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[25]Softley, Fines in Magistrates' Courts, op. cit., p.14.

[26]Ibid., the length of time that courts permit offenders to pay off their fines does not appear to have changed since Softley's study done in 1967 and 1968. See A Survey of Fine Enforcement, op. cit., p.19.

Table 5

Time taken to complete payment

Payment of total sum completed	Offenders	%
Within 7 days of sentence	568	21.9
Within 1 month of sentence	911	35.1
Within 3 months of sentence	1279	49.3
Within 6 months of sentence	1593	61.4
Within 9 months of sentence	1781	68.6
Within 12 months of sentence	1873	72.1
Within 18 months of sentence	1999	77.0
Payment not completed within 18 months of sentence	597	23.0
Total	2596	100.0

subjects (9%) had made no payment at all. Interestingly, over half (52%) of those who had not paid their penalties in full were reconvicted within two years of receiving the initial sentence.[27]

Eighteen months after sentence, only 72% (90,292 pounds) of the total sum owing by the sample had been paid.[28]

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[27]Ibid., p.15.

[28]Ibid.

Several factors were isolated which were found to be associated with failure to pay on time. Of these, the number of the offender's prior convictions and the amount of the penalty imposed produced the highest correlations. The relationship between whether the penalty was paid within eighteen months and the subjects criminal history is shown in Table 6.[29]

Thus, the number of previous convictions and the likelihood of payment being made are inversely related. For example, whereas 89% of first offenders completed their payments on time only 46% of those, with three or more prior convictions did so.

When the data was analyzed by the sum to be paid, failure to pay on time was also inversely associated with the size of the penalty as shown below.[30] The smaller the sanction, the stronger the chance that it would be paid.

Whereas 55% of those subjects ordered to pay sums in excess of 100 pounds had failed to complete payment, only 15.4% of those fined less than 25 pounds had not paid in full within the 18 month study period. A relationship was not discovered, however, between making no payment at all and the amount of the fine. The offender's previous conviction rate, however, was connected. Only 3% of first offenders failed to make any payment at all whereas, for subjects with three or more prior offences,

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[29]Ibid., this table appears as Table 11, p.16.

[30]Ibid., this table appears as Table 12, p.17.

Table 6

Whether payment was completed by number of previous convictions

Whether payment was completed within 18 months	Number of previous convictions None %	1-2 %	3 or more %	Total %
Payment completed	89.0	77.4	54.2	77.0
Payment not completed	11.0	22.6	45.8	23.0
Total	100.0	100.0	100.0	100.0
	(N=1223)	(N=650)	(N=679)	(N=2596)

r=.31,p .001

Table 7

Sum adjudged to be paid

Whether payment was completed within 18 months of sentence	.01-25.0 %	25.01-50 %	50.01-100 %	over 100 %	total %
Payment completed	84.6	79.3	67.8	45.0	77.0
Payment not completed	15.4	20.7	32.2	55.0	23.0
Total	100.0	100.0	100.0	100.0	100.0
	(N=1233)	(N=716)	(N=425)	(N=222)	(N=2596)

r=.22, p .001

the proportion had increased to 20%.[31]

For the purposes of this study, the definition of default included those subjects against whom enforcement action was taken as a result of their failure to complete payment on time, and any others, who failed to pay the full amount or installment within three weeks of the due date. Almost one-half of the sample were classified as defaulters.[32]

In an attempt to ascertain which factors were associated with the ability or willingness of offenders to pay, the following variables were considered; the sum adjudged to be paid; the number of previous convictions; whether the offender was employed or not at the time of conviction; the offender's income, living arrangements, age, sex, and number of children still in school.[33] Together, these variables accounted for 24% of the variation in default. However, the number of previous convictions accounted for 13% and income and employment each accounted for only 1% of the variation. Thus, an offender's criminal record was found to be a better predictor of default than his financial circumstances at the time of conviction.[34]

The author suggests several explanations for this

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[31]Ibid. p.17.

[32]Ibid.

[33]Ibid., p.18.

[34] Ibid., p. 19.

finding.[35] As he points out, the "...number of previous convictions are certainly evidence of bad character and might also be to some extent indicative of unwillingness to pay".[36] Also, peoples circumstances change and so some subjects, who were employed at the time of conviction, lost their jobs or had their incomes reduced. Others who were unemployed, at the time of conviction, later found work. Furthermore, courts tended to vary the amount of the fine in accordance with the offender's income. Softley suggests that:

> The fact that financial circumstances were not highly predictive of default may therefore have been due to courts anticipating the problems of collection by making allowance for such circumstances in deciding whether to fine an offender and in fixing the actual amount of the fine.[37]

In Britain, the vast majority of offenders sentenced to pay a fine do not receive, at the time of sentencing, a concommittant sentence to prison should they default. This is quite unlike the situation in Canada, in which this practice is

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[35]Ibid.

[36]Ibid.

[37]Ibid.

[38]See: Robert G. Hann, Decision Making in the Canadian Criminal Court System, 2 vols., (University of Toronto: Centre of Criminology, 1973); Curt T. Griffiths, John F. Klein, and Simon Verdun-Jones, Criminal Justice in Canada: An Introductory Text, (Vancouver: Butterworth and Co., 1980), pp. 172-173; R.E. Kimball, "On the Imposition of Imprisonment in Default of Payment of a Fine", Criminal Law Quarterly 19:1, (12/76) pp.29-33.

routine[38], although by no means mandatory.[39] No published Canadian study to date has concerned itself with the frequency and viability of various enforcement mechanisms. The researcher must yet again resort to Paul Softley's work in England.[40] As many of the enforcement mechanisms used by the English courts, such as reminder notices, are available to Canadian courts, Softley's work is relevant to Canadians.

In England, the general procedure for collecting fines is as follows. Initially, a reminder letter is sent to the offender notifying him that payment is overdue and warning him of the consequences of fine default. Should the offender's response prove unsatisfactory, a summons or, in some cases, a warrant is issued to bring him before the court for an inquiry into his financial status and an explanation of his failure to comply with the original terms of payment. When no further action is taken at this time, other than to instruct the offender to pay, this procedure is referred to as an adjourned hearing. If the offender has moved into another court catchment area, a 'transfer of fine order' gives jurisdiction to the court overseeing his current residential zone. Offenders who resist

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[39]For a discussion of the law in relation to fine collection, see Chapter 3 of this thesis.

[40]Softley, A Survey of Fine Enforcement (1973) and Fines in Magistrates' Courts (1978), op. cit. As the findings from both these studies are consistent with one another, the latter study will be discussed with regard to the productivity of various enforcement mechanisms. Readers who prefer a more rigorous and detailed statistical analysis may wish to refer to A Survey of Fine Enforcement.

paying their fines may be placed under the supervision of a probation officer via a money payment supervision order. If payment is not made voluntarily, the court may impose an attachment of earnings order thereby garnisheeing the offender's wages. As a method of last resort, a warrant of commitment may be executed sending the offender to prison for a fixed period of time as an alternative to payment.[41]

Enforcement proceedings were introduced against 47.9% (1244) of Softley's sample of fined offenders.[42] The frequency of use of various methods of enforcement and the percentage of actions, which resulted in some payment being made before subsequent action was taken, is described in Table 8.[43]

As some offenders were subject to more than one method of enforcement, it was possible to perform a comparative analysis of the success rates of various actions. The results indicated that means warrants were more likely to result in some payment than either reminder letters (p. 05) or means summonses (p .01)

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[41]Softley, Fines in Magistrates' Courts, op. cit., p. 21. See also Latham, op. cit.; "Making People Pay: The Fine Defaulter", Justice of the Peace, October 22, 1977, pp. 626-627; Martin Davies, Home Office Research Study No. 5: Financial Penalties and Probation (London: Her Majesty's Stationery Office, 1970). The Australian system of fine enforcement is in many cases analogous to British procedures. See: Fiori Rinaldi, Imprisonment for Non-payment of Fines, Penology Monograph No. 2, 2d ed. (Queensland: Australian National University, 1976); The Australian Law Reform Commission, Sentencing Research Paper No. 3, Alternatives to Imprisonment: The Fine As a Sentencing measure, (Sydney: The Australian Law Reform Commission, 1979).

[42]Softley, Fines in Magistrates' Courts, op. cit., p.21.

[43] Ibid., adapted from Tables 14 and 15, pp.22-23.

Table 8

The Frequency of Use of Various Methods of Enforcement and the Percentages of Actions which resulted in some payment being made.

Type of action	Offenders	# of actions	% of actions resulting in some payment
Reminder letter	431	525	50.7
Means summons	236	246	38.6
Means warrant	806	955	39.0
Adjourned Hearing	218	358	65.1
Warrants of commitment granted	341	341	63.6
Warrants of commitment issued	194	194	54.6
Money payment supervision order	84	84	52.4
Attachment of earnings order	22	25	92.0
Number of actions taken within 18 months of sentence	1244	2853	

and the granting of a warrant of commitment (the setting of a term of imprisonment in lieu of payment) was more successful in inducing payment than simply adjourning a hearing.[44]

While the general success-rate of the actions taken may not be very high, Softley suggests that, without them, the rate of fine payment would have been very much worse.[45] During the course of the study, due to a change in accounting procedures , fine enforcement proceedings were suspended at one of the courts in the study. Of the 68 offenders affected, only 26 (38%) had completed payment withing eighteen months of sentence and 27 (40%) had not paid anything at all. When these figures are compared with the sample groups as a whole in which 77% had completed payment within eighteen months and only 9% had made no payment, the necessity of enforcement proceedings is apparent.

In an attempt to discover which methods of enforcement might work best for particular offenders, the results of actions taken were analyzed using variables such as the offender's age, sex, criminal record and living arrangements. None of these factors turned out to be associated with the outcome of the methods used.[46]

From an administrative point of view, fine enforcement is a complex and expensive proposition requiring a considerable amount of time and effort on the part of court staff. Tarling

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[44]Ibid., p.25.

[45]Ibid., p.24.

[46]Ibid.

considered whether the problems of enforcing fines might affect the courts' use of the sanction.[47] Only four of the thirty courts in the sample said that they were swayed. All four of these courts were well below the average in their frequency of fine use. Two of the courts served seaside towns, and the clerk of one of them reported that due to the difficulty of enforcing fines on visitors, the town's magistrates were cautious in inposing fines. Except in cases where court catchment areas have a highly transient population, it would seem that, in general, courts are not influenced in their initial decision to impose a fine by the possibility of enforcement problems. Tarling notes however, that: "...a number of court officials indicated that possible future problems of enforcement are considered when calculating the offender's means and, hence, the amount of fine to be imposed, the method of collection and the time allowed to complete payment".[48]

Possibly the most controversial aspect of the fine as a criminal sanction involves the state's use of a secondary sanction - incarceration - to enforce payment. In nearly all nations, failure to pay a fine may ultimately result in a fixed term of imprisonment until either the fine is paid or the prison sentence is served out, whichever comes sooner. The debate,concerning the justification for imprisonment on fine

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[47]Roger Tarling,Home Office Research Study No. 56: Sentencing Practice In Magistrates' Courts (London: Her Majesty's Stationery Office, 1979), pp.23-24.

[48]Ibid., p.24.

default, can be divided into three separate but interconnected topic areas as follows (1) the purpose of imprisonment for default, (2) whether fine defaulters are unable to pay the fine or whether the majority are unwilling to pay, and (3) the ratio between the size of fines being imposed and the number of days an offender is sentenced to prison.

Newton has argued that imprisonment for default defeats the original intent of a fine.

> If the punishment authorized for a crime permits either fine or imprisonment and in a particular case the court selects the former, it has thereby decided that fine rather than imprisonment is the appropriate method of treating the offender. Subsequent use of imprisonment to enforce the fine, whether for punishment or debt collection, vitiates the previous fundamental decision to deal with the offender by fine.[49]

Hickey and Rubin argue in a similar vein:

> The state has more to gain than to lose if it cannot, or does not, imprison on default of fine. It accomplishes neither deterrence nor any legitimate penal goal by imprisonment, and gains only the additional expense of maintaining the man in prison, and perhaps the satisfaction of having penalized the man in some way, whether or not it does any good.[50]

Other authors such as Latham argue that the purpose of enforcement is primarily to secure payment and that: "The requirement that a means inquiry be held is a reasonable and proper safeguard against enforcement action, particularly

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[49]Anne Newton, "Alternatives to Imprisonment: Day Fines, Community Service Orders, and Restitution", Crime and Delinquency Literature vol. 8, no. 1, March 1976, p.116.

[50]William L. Hickey and Sol Rubin, "Suspended Sentences and Fines", Crime and Delinquency Literature vol. 3, no. 3, September 1971, pp. 427-428.

committal to prison, being taken unless the offender has deliberately chosen to default".[51]

In essence, the question becomes whether imprisonment for default is a method of punishing those who refuse to pay or a method of debt collection. Imprisonment for default of fine may be justifiable as a means of debt collection, if the offender has the means to pay his fine but is reluctant or unwilling to pay. Such cases may be seen as a form of contempt of court. But is imprisonment for default justifiable when the offender is unable to pay? It is the objective of the laws of Canada[52], the United States,[53]

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[51]Latham, op. cit., p.558.

[52]See Chapter 3 of this thesis; R.E. Kimball "On the Imposition of Imprisonment in Default of Payment of a Fine", Criminal Law Quarterly vol. 19, no. 1, December 1976, pp. 29-33; John Farris, "Sentencing", Criminal Law Quarterly, vol. 18, 1976, pp. 421-434; K.B. Jobson, "Fines", McGill Law Journal vol. 16, 1970, pp.633-675.

[53]In the U.S. imprisonment for fine default of indigent offenders has been ruled unconstitutional. See: New York v. Saffore 18 N.Y. 2d 101, 218 N.E. 2d 686, 271 N.Y.S. 2d 972 (1966); Tate v. Short 91 S.Ct. 668 (1971); Re Antazo 473 P. 2d 999, 89 Cal. Rptr. 255 (1970); State v. Tackett 52 Haw. 601 (1971). An impoverished offender may in many states escape imprisonment by swearing the pauper's oath. For further information see: Hickey and Rubin, op. cit.; Sidney Eagles, "Disposition of Defendants Under Chapter 15A", Wake Forest Law Review vol. 14, no. 5, October 1978, pp. 971-996; "Fines and Fining - An Evaluation", 101 University of Pennsylvania Law Review pp. 1013-1030; "Notes: Fining the Indigent", Columbia Law Review vol. 71, 1971, pp. 1281-1308; "Conversion of Fine into Terms of Payment for Offenders Financially Unable to Pay Fine Held Violative of Equal Protection Clause", Buffalo Law Review vol. 21, Fall 1971, pp. 247-266; "Thirty Dollars or Thirty Days: Equal Protection for Indigents", University of Miami Law Review vol. 25, 1971, pp.537-541; Mary Bown Little, "Choice of Fine or Imprisonment is No Choice at All for an Indigent Offender - Default Imprisonment of Indigents Consitutes Inviduous Discrimination on the Basis of Wealth, in Violation of the Equal

Australia[54], and England[55] that indigent offenders not be imprisoned for fine default. In the opinion of some writers, however, many impoverished offenders who are unable to pay their fines are being jailed for fine default. The fine is then criticized as a discriminatory sanction and imprisonment for default likened to debtors' prisons.

Professor Jobson estimates that, in one metropolitan court in Canada (which unfortunately he does not name or describe), 92% of the persons fined paid their fines within the time specified by the court.[56] Of the 8% who defaulted (many of whom were apparently convicted under the Highway Traffic Act and the Liquor Control Act) approximately 25% were never located, 69%

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[53](cont'd) Protection Clause of the Fourteenth Amendment", Villenova Law Review vol. 16, April 1971, pp. 754-766; Stephen E. Reynolds and James M. Rock, "Justice in Punishment by Fines", Journal of California Law Enforcement vol. 10, no. 4, April 1976, pp.136-143.

[54]Mary Daunton-Fear, "The Fine As a Criminal Sanction", in The Australian Criminal Justice System 2d ed., ed. Duncan Chappell and Paul R. Wilson (Sydney: Butterworths, 1977); The Australian Law Reform Commission, Sentencing Research Paper No. 3 op. cit.; Fiori Rinaldi, Imprisonment for Non-payment of Fines, op. cit.

[55]Marjorie Jones, "Fining Football Hooligans - Pay Up or Be Locked Up", Justice of the Peace, May 26, 1979, pp. 293-294; William D. Bosland, "Fines- Every Sentence Must Carry Conviction", The Law Society's Gazette, September 28, 1977, p. 804; "Fine Enforcement in Birmingham", Justice of the Peace July 14, 1979, pp. 386-388; Rod Morgan and Roger Bowles, "Fines: The Case for Review", Criminal Law Review 1981, pp. 203-214; Cecil Latham, op. cit.; Softley, A Survey of Fine Enforcement op. cit.; "Making People Pay: The Fine Defaulter", Justice of the Peace, October 22, 1977; Alec Samuels, "The Fine: The Principles", Criminal Law Review 1970, pp. 201-210, pp. 268-272.

[56]Keith Jobson, "Fines", McGill Law Journal vol. 16, 1970, pp.664-665.

paid when the police arrived to arrest them, and 6% went to prison. Apparently most of the fines were in the $50.00 range.

In a random survey of rural courts in Nova Scotia, in one court alone, fifteen sentences of "$80 or 30 days" resulted in imprisonment.[57] Jobson further reports cases of "$10 or 20 days" and "30 days or $50" resulting in imprisonment for fine default and concludes that:

> The clear impression emerges of a correlation between per capita income and the number of cases of imprisonment for failure to pay fines. In the Halifax courts, imprisonment in default is confined to a few cases. In the less wealthy areas of the province more poor people go to jail for lack of money.[58]

As Jobson gives no indication of the methodology used in this survey or the number of cases involved, his findings are difficult to evaluate. While the relative size of the fines imposed seems very low, the question as to why these people defaulted (incapacity v. unwillingness) remains unanswered. It can be said, however, that, regardless of the frequency of sentences involved, a ratio of "$10 or 20 days" seems disproportionate. This would mean that a fine defaulter was 'serving' his fine at $0.50 per day. Regardless of whether the offender was unemployed or employed (in which case while he was in prison he would be losing his salary) $0.50 per day places liberty at a very low price. According to John Hagan, fines in

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[57]Ibid.

[58]Ibid., p.665.

Canada are paid approximately 80% of the time.[59] No indications is given of how many people are actually imprisoned for default. In a two month survey in Alberta, information was gathered on 1000 offenders admitted to five prisons. Hagan reports that nearly two-thirds of the native offenders were incarcerated for fine default compared with only one-third of the white offenders.[60] Apparently, a "...further analysis revealed that no significant consideration was given to the disadvantaged economic circumstances of native persons in selecting the fines imposed" and that "This situation suggests an unfortunate parallel between our modern correctional system and the debtors' prisons of the past".[61] Unfortunately, the author does not describe the size of fines imposed, the frequency or degree of rigour of means inquiries, the number of requests for further time to pay or the courts response, or the _per diem_ sentence for fine default.

The Law Reform Commission of Canada, in its working paper, _Restitution and Fines_, cites a study which estimates that 40% of people imprisoned for default made partial payment either before incarceration or while in custody. The Commission suggests that these people were willing, but unable, to pay their fines and on this basis asserts that the fine is a discriminatory sanction

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[59]John Hagan, "Locking Up the Indians: A Case For Law Reform", _Canadian Forum_ vol. 55, February 1976, p.17.

[60]Ibid., p.16.

[61]Ibid.

favouring the affluent offender.[62]

In England, Wilkins reports that the proportion of people fined who are actually imprisoned, as a consequence, is only 9 per 1000.[63] Latham strongly suggests that, in most cases, these people were unwilling, rather than unable, to pay.[64] He reports that, in one Manchester court during the last quarter of 1971, 243 defaulters were committed forthwith and "Every one of them paid the amount due either immediately or within a very short time of arriving at the prison. The means inquiry courts were all held on a Friday and by the following Monday none of those committed to prison were still there.[65]

On the other hand, Dell argues that many of those who do end up in prison for default are without the means to pay their fines.[66] In 1966, one in seven fine defaulters in Birmingham prisons reportedly had no income at all, when they committed the offence for which they were fined. A similar situation was found to exist in Holloway, in 1967. According to Dell's argument, if people had the money to pay their fines, it would be probable that, upon finding themselves committed to prison, they would

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[62]Law Reform Commision of Canada Working Papers 5 & 6 (Ottawa: Information Canada, 1974) p.32.

[63] Cited in "Fine Enforcement in Birmingham", Justice of the Peace July 14, 1979, p.386. This estimate is also supported by Latham, op. cit., p. 559, and Morgan and Bowles, op. cit., p.204.

[64]Latham op. cit., p.558.

[65]Ibid.

[66]Susanne Dell, "Fines", New Society June 6, 1974, p.578-579.

promptly pay their fines and thereby gain their release. Of 10,000 offenders imprisoned for fine default in 1972, 6,000 served over half their sentences, and 3,800 served almost the full time.

There is also concern, in Australia, that impoverished offenders are being imprisoned due to their inability to pay off their fines. Daunton-Fear notes the high rate of imprisonment amongst those fined for drinking in a public place and the consumption of methylated spirits.[67] Of the 254 fines imposed for these offences, 103 resulted in imprisonment for fine default. The average fine imposed for these offences was only $11.00[68]

While discussing the various maximum periods provided by statute for imprisonment as a result of defaulting on a fine, the Law Reform Commission of Australia has agreed that the ratio between the size of the fine and the number of days would appear to be entirely arbitrary.[69] In South Australia, Tasmania, and Queensland, failure to pay a $2.00 fine may result in up to 7 days imprisonment; in Western Australia, such a fine may result in up to 3 days in prison; in Victoria, default on a $2.00 fine may be met with a maximum of one month, while in New South Wales

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[67]Mary Daunton-Fear, "The Fine As a Criminal Sanction", in The Australian Criminal Justice System, 2d ed., ed. Duncan Chappell and Paul R. Wilson (Sydney: Butterworths, 1977), pp.404-405.

[68]Ibid.

[69]The Australian Law Reform Commission, Sentencing Research Paper No. 3 op. cit., p. 14; see also Rinaldi, op. cit., p.80.

the maximum detention period is only twenty-four hours.[70] The manner in which the courts actually operationalize these statutes, i.e., how frequently the maximum periods are enforced, the actual ratio between the size of the fine and sentence lengths and their relationship between the offence and the offender, is unknown.

Hickey and Rubin contend that between 40 to 60 per cent of all offenders detained in American county jails are incarcerated for fine default.[71] It is also maintained that vast numbers of these people are indigent and incapable of paying their fines. Unfortunately, no empirical research is cited to support the claim that "...the jails are filled with impoverished defendants unable to pay fines...".[72] It is apparent, however, that the money-time exchange equations are just as disparate in the United States as they are in Australia. Thirty-five states have statutory equations for the per diem rate of incarceration for fine default but the ratios vary from as little as $1/day to $20/day.[73]

Until such time as a comprehensive study is conducted on fine defaulters, criticisms levied against the fine and imprisonment for default remain unanswerable. As the situation

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[70]Ibid.

[71]Hickey and Rubin, op. cit., p.425.

[72]Ibid.

[73]Stephen E. Reynolds and James M. Rock, "Justice in Punishment by Fines", Journal of California Law Enforcement vol. 10, no. 4, April 1976, p.137.

now stands, the number of people imprisoned for default, the peiods for which they are incarcerated in relation to the size of the fine imposed, the numbers of people who pay their fines and at what stage of their incarceration, the number of requests for extensions of time in which to pay and the court's response, and the reasons why people default on their fines are unknown. Owing to the serious nature of the accusations against the fine and imprisonment for default provisions, these criticisms should not be ignored.

Concern for the numbers of people being imprisoned for fine default has generated the creation of 'fine option' programs in New Brunswick, Quebec, Saskatchewan, and Alberta.[74] Regardless of the province, the programs are essentially the same in their modes of operation. Immediately after a sentence of a fine is imposed, the offender is advised that should he find himself unable to pay the fine within the required time frame he may, before defaulting, apply to the fine option program. As an example of the criteria which must be met by the applicant, those of the Alberta program are given.[75]

1. Candidate must express an interest in the fine option program (participation is strictly voluntary).

2. Canadidate's default time must be in excess of five days.

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[74] A fine option pilot program was initiated in B.C. in 1979. However, the program is no longer in existence. For more information on this project, refer to Chapter 6 of this thesis.

[75] H.J. Weber, "It Is A Fine Option: The Fine Option Program at the Post-incarceration Level", Crime et/and Justice vol. 15, no. 3, November 1977, p.236.

3. Candidate must not have outstanding warrants - verification is obtained via the Canadian Police Information Centre (C.P.I.C.).
4. Candidate must not be a security risk or have a previous history of breaking custody.
5. Candidate must not have recent convictions for violent or sexual offences.

Once accepted into the program, the offender is assigned to community service work, the performance of which is supervised and his hours of work recorded. Fines are worked off at the prevailing minimum wage regardless of the type of work performed. In addition to community service work, the offender may, if he has the resources, also make money payments towards his fine. Once the fine is satisfied either through the hours of work completed or work plus cash, the offender is given a voucher to take to his supervising agency and this is accepted in lieu of cash payment of the fine.

At least in Alberta, offenders in the fine option program are subject to Temporary Absence Regulations.[76] Thus, an offender may be required to stay at his current place of residence, to refrain from the consumption of alcohol or non-medically prescribed drugs, or obey any other conditions imposed by a Community Corrections Officer. Breach of these conditions may result in incarceration of the defaulter for the period originally required by the court less any accredited time

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[76]Ibid., pp.236-237.

he has worked off. Should the individual leave the required area of jurisdiction he is declared unlawfully at large via Section 133 (1) (b) of the Criminal Code and dealt with accordingly.

Many of these programs appear to be quite successful both in the completion rates and from a cost-saving perspective.[77] In Alberta, 218 of 236 applicants successfully completed the program within a seven month period. It is estimated that 3,045 days of incarceration were thus avoided at a saving to the taxpayers of $83,700 (calculated at $28 per day per individual kept in prison). In addition, the community benefited from 4,609 hours of community service.

The Saskatchewan program reports similar successes.[78] In the fiscal year 1977-78, approximately 4,909 offenders performed in excess of $400,000 in community volunteer services. 75,795 days of incarceration were avoided at a saving of over $2,000,000.

If one assumes that the principal objective of a penal sanction is to deter the offender from committing further criminal offences, then the most commonly used measure of effectiveness is the rate of reconviction following the imposition of the sanction under study. The use of reconviction rates as a measure of the success or failure of a sanction is fraught with problems. Most studies do not tell the reader what

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[77]Ibid., p.237-238.

[78]National Task Force on the Administration of Justice, Corrections Services in Canada 1977-78 pp.105-106.

the offender's original offence was, that incurred the sanction, and the nature of his later offence. Neither do they report the severity of the sanction imposed, i.e., how large the fine was and what proportion of the offender's income this represented. Thus, the dependent and independent variables under study are obscured, leaving the results suspect at best. The only thing that reconviction rates reveal is the number of times an offender has been subsequently convicted of a criminal offence. Even this data should be read with circumspection as the reliability of the data is dependent upon the diligence of recorders in updating criminal records. There is often a time lag between the date of reconviction and its subsequent reporting. Most importantly, reconviction rates may not reflect the offender's actual recidivism and, therefore, the deterrent value, or lack thereof, of the sanction. As reconviction rates only report subsequent recorded convictions they do not offer any information on the number of offences an offender has committed that have not been detected.

It is also arguable that deterrence should not be measured in terms of absolutes (i.e., the sanction is only seen as successful if the offender is never reconvicted again) but rather in terms of degree. For example, if an offender is charged with a very serious offence for which he is fined and his later reconviction(s) is for a very minor offence, the sanction may have been at least partially effective and thus of value. To date, there does not seem to have been any

comprehensive study on the fine, which attempts to measure the efficacy of the sanction in this manner.

In addition, reconviction rates may be symptomatic of the judge's skill in sentencing those offenders least likely to commit further offences and, possibly, any other sanction would have been equally successful. It may well be the case that judges take into account factors in sentencing, that are unknown to researchers. It is certainly the case that social scientists have been unable to account for a great many of the variables associated with recidivism.

The earliest investigation into the efficacy of the fine, in terms of reconviction rates compared with other sanctions, was conducted by Hammond in a well- known work for the British Home Office, entitled 'The Sentence of the Court: A Handbook for Courts on the Treatment of Offenders'.[79] One of the initial objectives of the study was to calculate the probability of an offender being reconvicted within a stated period of his current conviction (or release from custody) having regard to factors in his criminal history. The purpose of such a calculation was an attempt to "...make it possible to compare the effectiveness, in preventing reconviction of different types of treatment, and to assess whether a particular type has better results with one

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[79]The Sentence of the Court: A Handbook for Courts on the Treatment of Offenders (London: Her Majesty's Stationery Office, 1969).

class of offender than another".[80] In computing the 'expected' rate of recidivism, three factors were controlled for, namely (1) age, (2) the type of the current offence, and (3) the number of previous convictions. The actual rates of reconviction were then compared to the expected rates of various samples of offenders during a five year period. Hammond's results are reproduced in Table 9 below.[81]

Despite the author's caveat, that the results be treated with caution as the offenders' social circumstances had not been allowed for and there existed the possibility that courts had made allowances for factors not recorded in the documents used in the research, he concluded that: "fines were followed by the fewest reconvictions compared with the expected numbers for both first offenders and recidivists of almost all age groups".[82] It was further claimed that, apart from small fines of less than one pound, fines for larceny were followed by fewer reconvictions than fines for other offences[83] and that:"fines, particularly the heavier ones, appear to be among the most 'successful' penalties for almost all types of offender". [84]

The major controversy, surrounding 'The Sentence of the Court', has focussed on the adequacy of the control or matching

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[80]Ibid. p.64.

[81]Ibid., p.72.

[82]Ibid. p.71.

[83]Ibid., p.70.

[84]Ibid., p.73.

Table 9

First and Recidivist Offenders

Indices showing results of sentences compared with expectation (100=Expected rate of reconviction within five years except where otherwise stated)

	Under 17		17 to 21		21 to 30		30 and over	
	1st Offenders	Recidivists	1st Offenders	Recidivists	1st Offenders	Recidivists	1st Offenders	Recidivists
Discharge.....	89	100	89	98	109	90	133	104
Fine.....	75	83	75	94	63	99	84	65
Probation.....	118	101	122	101	153	115	(150)	121
Approved School.	138	102	---	---	---	---	---	---
Borstal Training	---	101	---	95	---	---	---	---
Detention Centre	---	106	---	110	---	---	---	---
Attendance Cntre	---	119	---	---	---	---	---	---
Imprisonment....	---	---	---	106*	146+	111*	(91+)	104*
Corrective Trng.	---	---	---	---	---	104*	---	---

*The calculation was based on a three year follow-up and it was necessary to exclude sentences of over three years.

+Excluding sentences of three years or longer.

NOTES: (1) Round brackets indicate very small numbers of offenders.

(2) The number of juvenile first offenders committed to institutions other than approved schools was too small to provide a satisfactory result; similarly in the 17 to under 21 age group the results had to be combined into one figure for "institutional treatments". (Of the group, the Borstal result was the best, being about average in effectiveness.)

technique used in the study. As Bottoms has pointed out, "control on only three factors is a less full matching of intake than most penologists would want in an ideal research situation, particularly when the three factors have not been selected as the result of a full prediction technique study".[85] Furthermore, the courts under study may have added weight to the controlling device of Hammond. Nigel Walker has argued that:

> We have only to suppose that the sort of man whom courts think they can correct by means of a fine is in the nature of things more likely to go straight whatever is done to him. This is not at all unlikely. The man who is regarded by sensible courts as worth fining is the man with a steady job, good wages and a fixed address: a better prospect than the intermittently employed man with 'no fixed abode'. The very nature of the fine makes it less likely to be applied to the men who are most likely to be reconvicted.[86]

Bottoms further questions the credibility of 'The Sentence of the Court's claim that "...fines, particularly the heavier ones are successful...".[87] The evidence for this assertion comes solely from a study of first offenders convicted, in Scotland in 1947, in which the 'effectiveness indices' for three levels of fine were as follows:

Less than one pound sterling	(114)
One pound to five pounds sterling	(97)
Over five pounds sterling	(89)

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[85]A.E. Bottoms, "The Efficacy of the Fine: The Case for Agnosticism", Criminal Law Review (1973) p.545.

[86]Nigel Walker, Sentencing In A Rational Society 2d ed. (Hammondsworth, Middlesex: Penguin Books Ltd., 1972), p.95. Also quoted in Bottoms, op. cit., p.546.

[87]Bottoms, op. cit., pp.548-9.

Bottoms contends that the poor effectiveness of low fines may be due to the fact that these fines were only imposed in less than one in seven cases, and when they were given, were imposed disproportionately often for cases of theft (presumably petty theft).[88]

> It is thus a reasonable speculation that they were imposed especially upon somewhat socially inadequate offenders against whom the court wished to register some penalty other than a discharge, but did not wish to place on probation. And, even in a sample of first offenders, such men could be expected to have a higher chance of recidivism than others.[89]

The author further points out that 'The Sentence of the Court' does not make it apparent to the reader that its data on the level of fines are based solely on first offenders:

> ...and hence its very general statement that 'fines, particularly the heavier ones, appear to be among the most successful penalties for almost all types of offender' can only be described as seriously misleading, especially in a handbook for sentencers. It is not often one accuses the Home Office of rash overstatement, but, unless further and better unpublished evidence is available, this seems to be a plain case of it.[90]

Some support for Bottoms' skepticism towards the efficacy of the fine comes from another Home Office research study on financial penalties and probation, conducted by Martin Davies.[91] It was hypothesized that the imposition of a financial penalty

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[88]Ibid.

[89]Ibid.

[90]Ibid., p.549.

[91]Martin Davies, Home Office Research Study No. 5: Financial Penalties and Probation (London: Her Majesty's Stationery Office, 1970).

on a probationer would reduce the likelihood of his reconviction.[92] Comparisons were made between probationers who were not fined at the time their order was made, those who were fined up to 10 pounds and those who were fined 10 pounds or more. The reconviction rates of each group were compared over the course of a year. No significant difference in failure rates were found. Moreover, when the probationers were regrouped according to the number of their previous convictions, the fine was not consistently related to outcome. Thus, the hypothesized relationship between the imposition of a financial penalty and a lower failure rate was not confirmed.[93]

Due to the possibility that courts may deliberately abstain from imposing further financial penalties on probationers with previously outstanding fines, the data were re-examined in such a manner as to allow a comparison to be made between (1) probationers who were simultaneously sentenced to a fine and probation or who were required to pay fines from outstanding court appearances, and (2) those probationers who were free of any financial penalty.[94] The analysis is presented below.

Again, fines were not found to be related to lower reconviction rates. Table 10 actually suggests that fines may be linked with a greater likelihood of failure on probation especially if the penalty is over ten pounds sterling. However,

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[92]Ibid., p.5.

[93]Ibid.

[94]Ibid., p.16.

Table 10

Reconviction in the first twelve months of probation by the amount outstanding or imposed at the time the order was made.

	Number reconvicted	Number not reconvicted	Total	Proportion Reconvicted
No fines.....	28	143	171	16%
Up to 10 pounds in fines.....	52	105	157	33%
10 pounds and over in fines	68	88	156	44%
			484	

Chi=29.191, df=2, p. .001.
No information in 23 cases.

when the data were re-examined taking into account the number of previous convictions, it was found that this relationship was lost, suggesting no real association between the imposition of financial penalties and the commission of further offences.[95]

The next stage of analysis was performed as a response to 'The Sentence of the Court's emphasis on the need for further information about offenders' social circumstances. Probationers were divided into eight risk groups established by the use of three environmental variables: the level of support at home, unemployment, and the level of crime contamination which incorporated the number of previous convictions. It was

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[95]Ibid., p.7.

therefore possible to compare the impact of fines on groups of probationers with shared characteristics. The data is described below.[96]

According to Davies' interpretation of the data, a consistent pattern was found throughout the risk groups but in contradiction to the hypothesis: in no group do those who have been fined have a better success rate than those who were not fined. Davies claims that: "...by the use of the environmental risk groups to compare like with like, a consistent tendency for probationers who have been 'fined' to have a relatively high failure-rate is revealed".[97]

A further approach was then taken. Still using the same eight risk groups, the mean predicted periods to reconviction, from the start of the probation order, were compared. Table 12 illustrates the author's findings.[98]

In every environmental risk group, there is a lower mean predicted period to reconviction where fines were imposed or outstanding at the time the order was made. Davies concludes: "Thus, using a different method of analysis, an earlier finding is given further support: within each environmental risk group, those who were not 'fined' showed a tendency to avoid reconviction for a longer period of time than those who were

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[96]Ibid., p.8.

[97]Ibid.

[98]Ibid., p.9.

Table 11

Twelve month reconviction rates in each environmental group, by 'fines', outstanding or imposed at the time the order was imposed.

Environmental groups	Total number of cases	Proportion reconvicted of those 'fined'	not 'fined'
1Aa	83	15%	4%
1Ba	32	7%	0%
1Ab	51	29%	18%
1Bb	30	57%	14%
11Aa	65	33%	25%
11Ab	81	46%	28%
11Ba	47	47%	21%
11Bb	95	58%	14%
	489		

- The application of Cochran's test gives a critical ratio of 4.93; p. .001.
- No information on 18 cases

Key to environmental groups

1 High support at home (positive factor)
11 Low support at home (negative factor)

A In work when placed on probation (positive factor)
B Unemployed when placed on probation (negative factor)

a Low level of crime contamination (positive factor)
b High level of crime contamination (negative factor)

Table 12

Estimated mean period to reconviction for eight environmental risk groups: according to whether or not 'fines' were imposed or outstanding at the time the order was made.

Environmental group	Predicted mean period to reconviction (in months) Probationers not 'fined'	'fined'
1Aa	279.0	72.9
1Ba	216.0	160.0
1Ab	63.4	35.5
1Bb	18.1	15.1
11Aa	42.4	29.8
11Ba	49.8	17.5
11Ab	36.1	19.7
11Bb	74.8	12.3

p=.004 (sign test)
Key to environmental groups: see previous table

'fined'.[99]

As the author points out, two criticisms may be made of the study:

(1) Regardless of what comparisons are made in studies of this type, it can always be argued that the case is unproven. For example, the probationers who were fined might have had an even higher rate of reconviction, if they had not been fined.

(2) The introduction of risk groups does not cover all variables related to risk and, therefore, it is possible that the differences found between the groups with fines and those

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[99]Ibid.

without, may be due to an unidentified variable(s). Such difficulties could only be overcome by controlled experimental conditions.[100]

Bearing this in mind, Davies goes so far as to assert that: "... however, one point does emerge clearly: there is no evidence to confirm the idea that fining a man actually reduces his likelihood of reconviction. All the environmental groups of probationers in this sample appeared to do relatively worse, in terms of reconviction, when they carried the burden of simultaneous fines".[101]

In contrast to Davies' study, yet another Home Office research project by Paul Softley, confirmed in part the results of 'The Sentence of the Court'. [102] Approximately one-third (34.2%) of Softley's sample were reconvicted within two years of sentence or release from custody. Reconviction rates were found to vary significantly according to the nature of the sentence imposed.[103] The lowest reconviction rate was associated with the fine - only 29% of fined offenders were reconvicted within 2 years, this was followed by absolute or conditional discharges with a reconviction rate of 31.8%. Probationers were reconvicted at a rate of 47.2% and offenders with suspended sentences at

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[100]Ibid.

[101]Ibid., p.10.

[102]Paul Softley, Home Office Research Study No. 46: Fines in Magistrates' Courts (London: Her Majesty's Stationery Office, 1979). .

[103]Ibid., p.7.

49.5%. The highest rate of reconviction - 65% - was associated with imprisonment. However, as Softley points out, it could only be inferred that fines were the most effective sanction in deterring offenders if it were known that offenders treated in different ways were comparable, at least in respect to characteristics related to re-offending.

Again, two of the most important factors related to re-offending were found to be the age of the offender and the number of his/her prior convictions. In Softley's sample, reconviction was clearly correlated with the number of prior convictions (r=.37, p. .001): for first offenders, the reconviction rate was 17%; for those with one or two previous convictions, the rate was 32%, and those with three or more previous convictions were reconvicted in 60% of the cases. Offenders aged 17 - 20, who were first offenders or had only one or two previous convictions, were significantly more likely to be reconvicted than those aged 21 or over (p. .001).[104]

In drawing up a comparison of conviction rates by sentence type, some allowance was made for the effects of age and the length of the offenders' criminal histories.[105]

For all groups, with the exception of 17 - 20 year olds with three or more previous convictions, lower rates of reconviction were associated with the use of the fine although, in many cases, the difference between the reconviction rates of

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[104]Ibid.

[105]Ibid., p.9.

Table 13

Two year reconviction rates associated with fines and other sentences or orders

	Offenders reconvicted within 2 years as a percentage of each group				Significance level
	Fines		Other sentences or orders		
Offenders aged 17 - 20	%	(Base)	%	(Base)	
no previous convictions	27.5	(335)	30.7	(114)	NS
1 or 2 previous convictions	38.4	(232)	50.0	(72)	NS
3 or more previous convictions	65.9	(126)	63.8	(94)	NS
Offenders aged 21 or over					
no previous convictions	9.3	(686)	15.7	(223)	p. .05
1 or 2 previous convictions	24.1	(295)	28.8	(125)	NS
3 or more previous convictions	53.8	(344)	62.8	(414)	p. .05

the fined offenders and the 'non-fined' offenders were slight or not statistically significant.

These results are probably a consequence of allowance being made only for age and the number of previous convictions and not for other factors related to re-offending.[106] It is unfortunate that Softley, unlike Davies, did not attempt to control for current offense type and the offender's social circumstances. As Davies' sample group was totally comprised of probationers and Softely's sample covered a wide array of dispositions, if Softley had used Davies' methods of control, some interesting results might have been obtained.

One factor which Softley later analyzed, which was not considered in Davies' study, was the offender's employment status. In Softley's sample, 41% of unemployed offenders were reconvicted compared with 30% of employed offenders (p.001).[107] Each of the results, discussed in Table 12, were analyzed separately for employed and unemployed offenders: "Although the subsequent analysis was inconclusive because of the small numbers involved, it was found that for 9 of the 12 comparisons the reconviction rate was lower for those who had been fined".[108]

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[106]Ibid.

[107]Ibid., p. 9. See footnote 1. Even allowing for the effects of age and previous convictions, it was found that unemployed offenders had a consistently higher reconviction rate than employed offenders.

[108]Ibid. p.9.

While Softley agrees that his results are, on the whole, consistent with those reached in 'The Sentence of the Court' , he emphasizes that it is by no means clear that the slight superiority of the fine is due to the effect of the fine itself or to other unknown factors.

Part of Phillpotts and Lancucki's study of 5000 offenders, convicted in 1971, focusses on the relationship between the age and sex of the offender, the original offence and sentence, and the subsequent reconviction rate. The authors were also interested in the period of time, which elapsed between the initial sentence and the first reconviction, and also the number of reconvictions during the follow-up period.[109]

Overall, 50% of males and 22% of females were reconvicted within the six year follow-up period.[110] Age and the number of previous convictions were again found to be associated with the likelihood of reconviction. The older the offender, the lower the incidence of reconviction and, similarly, the fewer the number of prior convictions, the lower the rate of reconviction. Within the male sample, reconviction rates varied little by offence type; nearly 50% of offenders, regardless of offence, recidivated with the exception of burglary and robbery (approximately 2/3) and motoring offences (about 1/4). The

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[109]G.J.O. Phillpotts and L.B. Lancucki, Home Office Research Study No. 53: Previous Convictions, Sentence and Reconviction: A Statistical Study of a Sample of 5000 Offenders Convicted in January 1971 (London: Her Majesty's Stationery Office, 1979). pp.14-29.

[110]Ibid., p.14.

pattern of female offenders' reconvictions was similar to that of the male subjects, but the actual reconviction rates were lower. Because women only comprised about 10% of the sample group, the following analyses refer only to male subjects.

An examination of differences in reconviction rates for different sentences was conducted in relation to subjects of varying ages and number of previous convictions. Although age and the number of prior convictions were strong indicators of reconviction, the type of sentence given also had some effect: "...it was generally the case that males given custodial sentences had higher reconviction rates than males given suspended sentences or probation or supervision orders and these in turn had higher reconviction rates than males given a fine or an absolute discharge".[111]

Males convicted of burglary and robbery or theft and handling of stolen goods comprised two-thirds of the sample and, therefore, a separate analysis was called for. Although the effect was less marked for offenders with more previous convictions, reconviction rates tended to be lower for persons, who had received fines or discharges than any other form of sanction.[112]

Phillpotts and Lancucki's conclusions are, however, very tentative with regard to the effect of sentence type on reconviction rates:

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[111]Ibid., p.16.

[112]Ibid. pp.16-19.

> The conclusion which may be drawn from this is that the major part of the variation in reconviction rates following different sentences may be attributed to differences in the distribution by age, number of previous convictions and types of offence of persons given such sentences; however, other factors associated with the type of sentence, or the type of sentence itself, may also have some effect.[113]

Like Paul Softley,[114] Phillpotts and Lancucki find themselves in general agreement with the results of Hammond's work in 'The Sentence of the Court'[115], despite the differences in methodologies and sample groups. The authors do note, however, that their reconviction rates following fines were considerably higher than Hammond's for offenders aged under 17 and for offenders aged 30 or over (for example, for persons with previous convictions, about 80% and 50% respectively, compared with about 55% and 30% in Hammond's work).

An American study, by Critelli and Crawford, of the effects of a fine versus no punishment on the reconviction rates of 324 offenders from a small community in Texas, claims that fines are relatively ineffective in controlling subsequent crime.[116]

First offenders and recidivists apparently differed neither in relation to the seriousness of the crime (rated as mild, moderate, or severe depending on the danger of the offence posed

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[113]Ibid., p.19.

[114]Op. cit.

[115]Op.cit.

[116]Joseph W. Critelli and Ronald F. Crawford, Jr., "The Effectiveness of Court-Ordered Punishment: Fine Versus No Punishment", Criminal Justice and Behavior (1980) 7/4 pp.465-490.

to the public and the "suggested fine" as determined by court officials) nor to the amount of the fine assessed at first offense. Subsamples of repeaters and non-repeaters were matched for age at first offense, race, and sex.[117]

The effectiveness of court-ordered punishment was determined by comparing the various dispositions in relation to probability of future crime. The probability of future crime was set at one, if the offender had committed 'future offenses', and at zero, if no offences were committed during the twelve year study period. A one-way analysis of variance test (ANOVA) was conducted to compare the probability of future crime after a disposition of (1)probation, (2)disposition unknown, (3)no punishment, (4)fine, or (5)jail, at the time of the first offense. The one-way ANOVA results were statistically significant ($F=2.93, df=4/319$, p. .05). A Neuman Keuls analysis indicated a lower probability of future crime for those receiving no punishment or disposition unknown than for those who were fined.[118]

Critelli and Crawford assert that subjects who received a fine had a higher probability of recidivating than those offenders, who received no punishment. Furthermore, of those fined, the ones receiving a comparitively severe fine had a higher probability of future crime than those receiving fines which were low compared to the penalty suggested by court

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[117]Ibid., p.467.

[118]Ibid., p.468.

officials.[119] The authors conclude that: "...the present results indicate that the current use of fines is ineffective...".[120]

On the basis of the research design of this study, it is suggested that these conclusions are somewhat rash. While the authors admit that their design cannot determine whether the disposition options were causally related to the probability of future crime, they claim that this is due to the lack of random assignment of subjects to disposition conditions. It is suggested that the methodology used by Critelli and Crawford is so seriously flawed that even random assignment would be of little, if any, assistance.

One of the major omissions of the study was the lack of control of the number of previous convictions of their subjects. In light of the importance of this factor in relation to reconviction rates, as reported by the British Home Office studies [121], it is remarkable that a study published in 1980 would leave such a variable uncontrolled for. Similarly, subjective categorizations of offence severity may not be as accurate an indicator as offence type. Furthermore, while the authors admit that any conclusions drawn from the jail and probation categories are tentative owing to the size of the groups, it should be noted that only eight subjects were in the

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[119]Ibid., p.469.

[120]Ibid.

[121]See; The Sentence of the Court, Davies, Softley, Phillpotts and Lancucki, op. cit.

'jail' category and only three person received probation. These groups were really too small to test significance, and, yet, they were included in the analyses. The disposition of 'no punishment' is left undefined by the authors and so the reader has no idea whether this refers to suspended sentences or discharges. One of the largest categories of offenders (N=77) was in the 'disposition unknown' group. As the sentence was unknown, it is hard to understand how the relative efficacy of other sanctions could be fairly compared with it. In addition, the integrity of the 'suggested fines' used to measure the severity of actual fines was left untested. For these reasons, it is recommended that the results of this study be given very little weight.

In a study of 1,649 chronic drunkenness offenders, Lovald and Stub found the fine to be a more effective treatment than suspended sentences or workhouse sentences.[122] The data was gathered from Minneapolis police and court records throughout 1957 (although the study was not published until 1968), the subjects were all male and had appeared on a drunkenness charge at least once during the year. For the purposes of the study, the nature of the disposition was treated as the independent variable. The dependent variable was operationalized as the period of time between court appearances for drunkenness or a

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[122]Keith Lovald and Holgar R. Stub, "The Revolving Door: Reactions of Chronic Drunkenness Offenders to Court Sanctions", Journal of Criminal Law, Criminology, and Police Science (1968) 59(4) pp.525-530.

related charge. The sample group was divided into two groups; those with 'Skid Row' addresses, and non-Skid Row addresses.

The authors report that with respect to Skid Row offenders, upon an average period of 73 days elapsed between the fined offenders' first and second arrests compared with 60 days for those given jail sentences, and 63 days for those given suspended sentences. The same pattern was observed for non-Skid Row subjects, this time reaching a statistically significant F ratio. After a third arrest, Skid Row offenders who were fined were out of court on average 74 days, compared with 49 days for those who were jailed and 42 days for those who received suspended sentences (these differences did achieve statistical significance). The same pattern emerged for the non-Skid Row offenders but did not reach significance. It was only after the fourth arrest that jail sentences resulted in greater lapses of time between court appearances than did fines. However, the difference did not reach a level of statistical significance.[123]

Lovald and Stub report: "The most striking fact revealed by these findings is that, regardless of the number of arrests, court fines apparently have a greater deterrent effect than workhouse sentences...thus with one exception fines apparently inhibit future offences more effectively than is the case for jail or suspended sentence".[124]

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[123]Ibid., pp.526-527.

[124]Ibid., p. 526.

Yet again, these conclusions should be treated with caution. The authors do not make it clear whether or not they controlled for imprisonment for fine default. If, for example, an offender is fined and subsequently imprisoned for default it would not be surprising if his time between court appearances was longer than that of an offender, who received a suspended sentence and has been out on the street and thus vulnerable to re-arrest. Furthermore, while the authors operationalized their dependent variable as the period of time between court appearances, in their results they discuss the days between arrests.[125] This is confusing. If Lovald and Stub are really measuring the effectiveness of these sanctions by the date of court appearances, it may be the case that their results could be contaminated by the availability, or lack thereof, of court time i.e., court scheduling. Unfortunately, the authors do not give the reader enough information to clarify these issues.

In a study performed in Australia, Kraus assessed the deterrent effects of fines and probation on male juvenile offenders.[126] His sample was comprised of all male juvenile offenders (excluding traffic offenders) who were fined in New South Wales between the 1st of January 1962 and 31 December 1963 (N=65). Each of these subjects were then matched to a probationer on the following characteristics: age, age at the

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[125]Ibid., pp.426-427.

[126]J. Kraus, "The Deterrent Effect of Fines and Probation on Male Juvenile Offenders", Australian and New Zealand Journal of Criminology vol. 7, no. 4 (December: 1974):pp.231-240.

time of current court appearance, type of current offense, number of previous convictions, types of previous offences and the number of previous committals to institutions. The subjects interactions with the criminal justice system were then recorded over a five year period.[127]

For first offenders, the reconviction rate was higher for those who had received probation than those who had been fined. No significant difference was found between the reconviction rates following fines or probation for offenders with previous records.[128]

In assessing the relevance of age of offenders for the relative efficacy of fines and proabation, the anaylsis was performed in terms of absence, or presence, of further offences as the categories were too small to use rates of offences. The results showed no significant differences in any of the age groups between juveniles who committed further offences after being fined and after being put on probation.[129]

Offenders, who had been institutionalized or detained during the follow-up period, were then classified into three groups: take and use motor vehicles (N=29), steal (N=16), and assault and malicious damage (N=29). It was found that, in the 'steal' group, a greater number of juveniles were imprisoned or institutionalized 'two or more' times after fines than

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[127]Ibid., p.232.

[128]Ibid., p.234.

[129]Ibid.

probation. However, no significant differences were found in the other two groups of offenders, nor when all offenders were combined.[130]

When the types of offences committed after fines and probation were considered, the findings indicated that offenders in the 'steal' group committed more 'take and use motor vehicle' offences after being fined than after probation (further analysis indicated that residential differences did not account for this result). No other significant differences were found.[131]

Kraus concludes that the:

> ...imposition of fines seems preferable to probation as a method of treatment of male juveniles charged with stealing cars, assault, or malicious damage, praticularly if they are first offenders. Since recidivists were found to respond to fines as well as to probation, it could be inferred that juveniles charged with other offences would also respond to fines and do no worse than they would on probation, and possibly better if they were first offenders.[132]

A West German study by Albrecht and Johnson, involving 3,322 offenders, also examined the efficacy of the fine compared with other sanctions.[133] The authors claim that, for their sample, the amount of the fine did not have an effect on the

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[130]Ibid. p.235-236.

[131]Ibid., p.236-237.

[132]Ibid., p.239.

[133]Hans-Jorg Albrecht and Elmer H. Johnson, "Fines and Justice Administration: The Experience of the Federal Republic of Germany", International Journal of Comparative and Applied Criminal Justice vol. 4, no. 1, (Spring:1980): pp.3-14.

offenders' chances of reconviction or the degree of seriousness of subsequent offences. This lack of association was apparent for both first and recidivist offenders, and for all types of offenses.[134]

Fines did result in lower reconviction rates than imprisonment. When all first offenders were considered as a whole, 16 per cent of the fined group recidivated during the following five year period compared with fifty per cent of the 'imprisoned' group.[135]

When reconviction rates prior to 1969 (when the day-fine system was introduced in lieu of imprisonment for minor offenses) were drawn into the study , the authors report that at least for traffic offenders generally, day fines were no more, nor less, effective than short-term imprisonment in reducing recidivism rates.[136]

In a comparison of reconviction rates for offenders who received a fine, probation, or imprisonment, fines were found to have a 'superior' effect for petty property offenders and embezzlers but not for traffic offenders or professional thieves.[137]

Unfortunately, Albrecht and Johnson offer no description of the methodology they used to achieve these results. As such, it

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[134]Ibid, p.12.

[135]Ibid.

[136]Ibid.

[137]Ibid.

is not possible to evaluate the merits of their results.

As no information is available on the size of fines imposed in relation to offenders' means, it is difficult to gauge the severity of punishment being imposed through the courts use of fines and the concommittant implications for the efficacy of the sanction.

According to Paul Softley's work, which is virtually unique in this area, three-quarters of his subjects paid their fines from their current incomes but had to curtail their spending in order to do so. In many cases food, clothing and shelter were affected, most frequently among the defaulting subjects. This would suggest that the fine is serving a punitive function overall but in some cases may cause unintended hardship. No study has been done to date, however, on means enquiries and the subsequent fines imposed. The relationship between the size of the fine, the offender's means and circumstances, and the impact of the sanction is unknown.

Summary

There has been considerable debate in the literature, often couched in highly emotive terms, about the justice of imprisonment for fine default. Considering the heat of the arguments and the seriousness of the accusations, it is remarkable that so little empirical research has been conducted on fine default.

It would appear that enforcement mechanisms are necessary to induce payment and even then a number of fines will remain unpaid at the expiration of the time to pay period given by the courts. The two best predictors of default appear to be the size of the fine and the number of previous convictions. Both these variables have an inverse relationship to the likelihood of the fine being paid in full and on time. As a consequence of the infrequency of studies on the subject and the non-static nature of peoples' financial circumstances, research on the relationship of offenders' means and their potential for default is inconclusive.

Moreover, almost nothing is known about those offenders who do default on their fines and are subsequently imprisoned as a result. Most nations do not publish statistics on the number of offenders so imprisoned and no studies have been conducted on these populations in an attempt to ascertain their reasons for non-payment. It does seem, however, that many offenders are serving out their fines at a very low rate of dollars to days and that most countries do not have any coherent policy on the length of time to be served in relation to the size of the fine imposed.

At least in terms of reconviction rates, it would appear that the degree of the efficacy of the fine remains an open question. The research to date is inconclusive at best. While most of the literature seems positively inclined towards the fine perhaps the best that could be said is that while fines are

not significantly more effective in reducing the incidence of further offences, they do not appear in general to be any less effective than other sanctions in this regard.

VI. The Fine in British Columbia

The paucity of information available in Canada, indeed on an international scale, is paralleled in British Columbia. Very little empirical research has been undertaken in this Province concerning the use and efficacy of the fine. To date no study has been published in the academic literature. Throughout the course of this chapter, the available data will be discussed and a preliminary exploration conducted in an attempt to ascertain to what extent the fine is being used in the Province. In addition, some unpublished reports will be reviewed.

The only readily accessible data concerning the frequency of fine use, and the offences for which it is imposed, are available through the Court Services Division of the Ministry of the Attorney-General of British Columbia. The information comes in the form of annual computer print-outs known as Criminal Court Disposition Reports.

When using these disposition reports it must be borne in mind that each disposition relates to Court Services' definition of a case, i.e., each accused per information regardless of the number of counts. If a number of counts are disposed of by varying sanctions, the computer is programmed to select the most serious sentence or other disposition and report it for that count. The other counts are not recorded. Custodial sentences such as 'jail', are considered more serious than a fine and

probation less serious.[1]

While such a system may be functional from a case management point-of-view, it is less than satisfactory to the social scientist. As only the most serious penalty is reported, other convictions for lesser offences or offences resulting in less serious dispositions are lost. Thus, the disposition reports do not truly reflect the number of convictions for various offences committed throughout the Province. Similarly, they do not accurately portray sentencing patterns. For example, if a judge wishes to impose an essentially non-custodial sanction and chooses the fine as the appropriate method for so doing and, if the offence is punishable by more than five years imprisonment, the law requires that an additional sentence must be imposed in order to permit the use of a fine. It is possible, therefore, to sentence an offender to one day in jail and a $10,000 fine. To the judge (and probably to the offender also), the fine is the principal disposition. To the computer, however, the jail sentence is 'seen' to be the most serious disposition and, therefore, only the disposition, 'jail', will be reported. The fine will not be mentioned.

As a consequence of the need for expediency and budgeting demands, a great deal of information has been lost.[2]

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[1]Hal Philbrook, Management Information Officer, Court Services Division, personal letter, 27 July 1983.

[2]After much searching by Mr. Hal Philbrook of Court Services, it has been found that criminal files dating back to the early 1900's process through the Vancouver Provincial court system, have been retained at 365 Railway Avenue, Vancouver, British Columbia. An alphabetical listing of all persons sentenced since

Court Services' data system cannot provide information on the amounts of fines, or the size of the fine in relation to offence type and offender characteristics such as age, sex, race, employment status or the number of previous convictions. Such information would be invaluable to an adequate study of the fine or any other sanction being used in the Province.

Despite these limitations, the disposition reports yield a general description of the frequency of use of the fine and for which offences it is being used. When all offences are considered together, it is apparent that the fine is by far the most commonly imposed sanction in British Columbia. Figure 1 illustrates the comparative frequency of sentencing options ordered in British Columbia for the years 1976 to 1982 inclusive.[3]

While the fine may still be the primary disposition, its popularity would appear to have declined gradually over the last seven years. In 1976, a fine was the most serious penalty ordered in 68.55% of all cases. By 1982, the incidence of use had fallen to 56.05%. Of the 603,171 'cases' resolved by the

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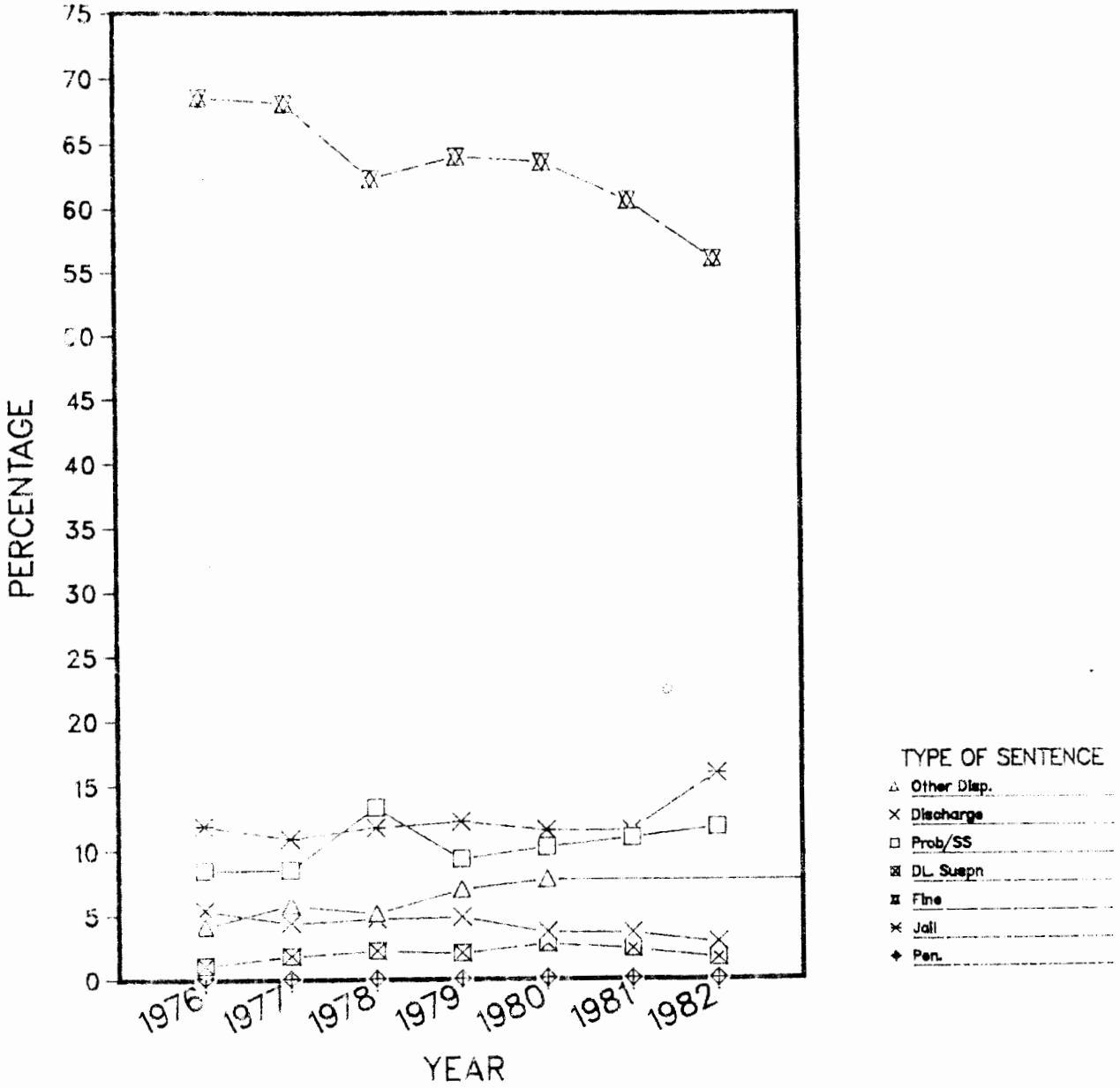
[2](cont'd) 1977 giving the type of disposition, the charge, and the file number is available. The list will not indicate if the fine has been paid. The files will contain this information and will also yield some demographic information on the offender because the police report to crown counsel is filed with the court file once the case is completed. Hal Philbrook, personal letter, 27 July 1983.

[3]The co-ordinates for this graph were determined by adding the number of guilty pleas to the number of 'found guilty' for each year and then dividing the sum of each number of cases for each disposition by the total of guilty pleas and 'found guilty'.

Figure 1

Percentage of Sentences Imposed by B.C. Courts During the Years 1976–1982



Coordinates for Figure 1

Frequency of Sentences Imposed by B.C. Courts 1976-82

Year	Other Disp.	Discharge	Prob/SS	DL.Suspn.	Fine	Jail	Pen.
1976	4.12	5.38	8.48	1.07	68.55	11.95	.16
1977	5.81	4.4	8.53	1.82	68.10	10.99	.08
1978	5.14	4.73	13.31	2.22	62.33	11.81	.08
1979	6.99	4.84	9.34	2.03	63.99	12.24	.05
1980	7.73	3.66	10.22	2.76	63.55	11.55	.10
1981	10.42	3.58	10.92	2.35	60.62	11.50	.06
1982	11.15	2.87	11.74	1.65	56.05	15.99	.06

courts during this period 316,493 (52.47%), however, were driving offences. When driving offences are deleted from the sample and all other offences are considered together, the rate of fines has remained quite stable as shown in Table 14.*

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*Data for this table were gathered from Appendices C to I.

Table 14

Frequency of fine use for non-driving offences by B.C. Courts for the years 1976 to 1982

Year	% Fined
1976	54.93
1977	54.91
1978	51.05
1979	54.20
1980	54.16
1981	52.38
1982	50.35

In order to get a general idea of which types of offences were more or less prototypically associated with fine dispositions, the twenty offence types given in the disposition reports were consolidated into 6 major offence categories; offences against the person, property offences, statutes and by-laws, driving offences, drugs, and other.[5] It was possible to aggregate the data for the last seven years as the sentencing patterns for these categories were much the same from one year to another.[6] It could be said, therefore, that in regard to most major categories of offence types judges would seem to have

[5]For a description of which sections of the criminal code and the statutes included in these offence categories, see Appendix A.

[6]See Appendix B.

changed very little in their choice of what they consider to be an appropriate penalty.

Figure 2 illustrates the range of sanctions imposed for offences against the person. This category includes assaults, homicides, offensive weapons charges, robbery, and sexual offences.[7]

As can be seen, the fine is still a very prevalent sanction, being used in approximately 35.96% of all cases. The next most commonly used dispositions were probation or suspended sentences, at 25.17%, and jail, at 23.63%. This should not be unexpected as offences against the person encompass a wide range of harms. While it is probably safe to say that judges reserve jail sentences for the more serious cases, the basis, upon which they discriminate between cases which result in a fine or in probation, is unknown. Unfortunately, the data give no indication of the severity of the sanctions imposed, i.e., the number of months probation or the size of the fine. Such information would at least give a subjective indication of judges' views concerning the efficacy of various sanctions as a response to offences against the person. It is evident, however, that even in cases of violent crime (although the degree of violence involved is unknown), a fine is used extensively overall.

If this major grouping is broken down into subcategories, the following pattern emerges from the 1982 disposition reports,

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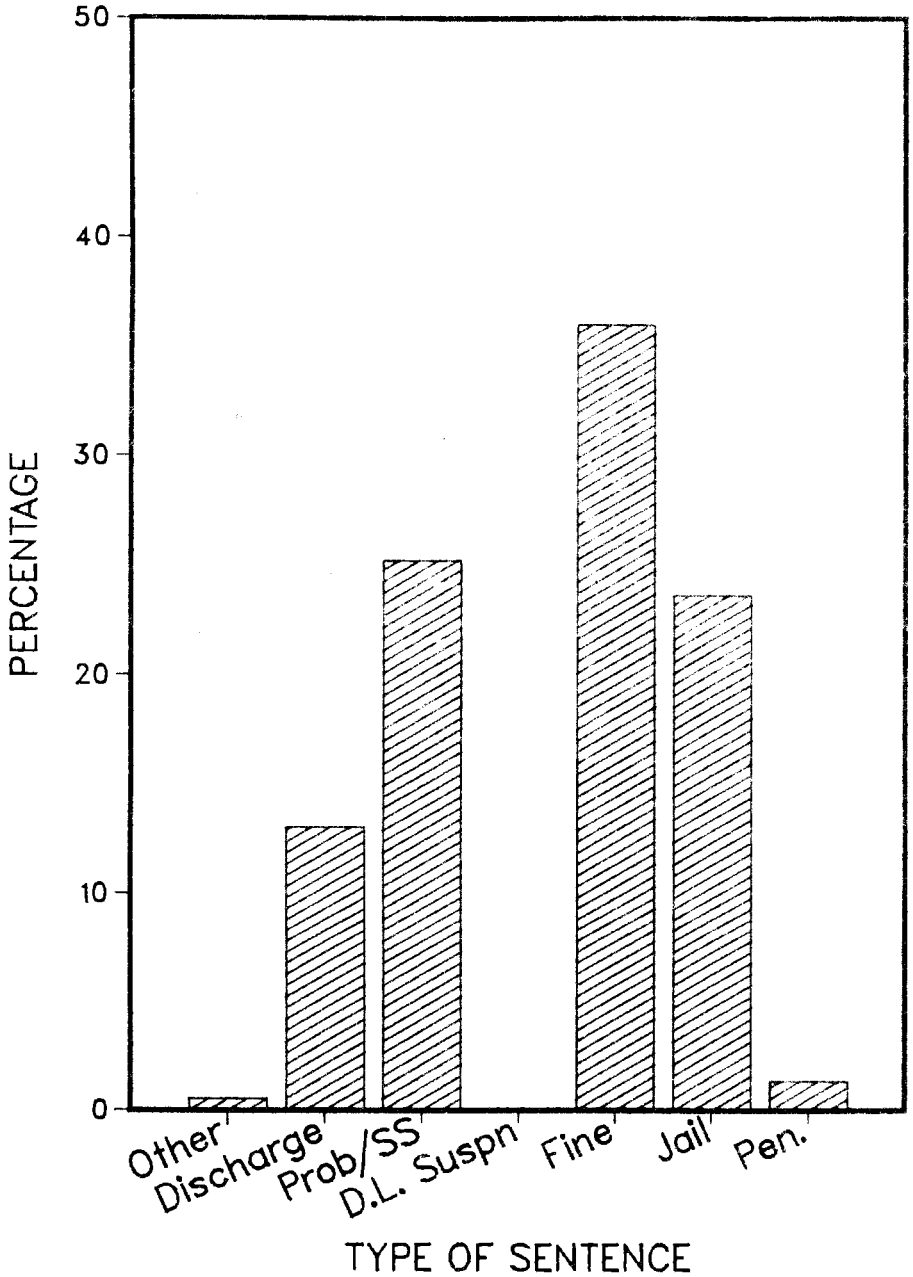
[7]Data for this figure were gathered from Appendix B.

Figure 2

Sentences Imposed by B.C. Courts
for Offences Against the Person
7 year Aggregate



Co-ordinates for Figure 2

Other	Discharge	Prob/SS	DL	Fine	Jail	Pen.
.52	13.04	25.17	.04	35.96	23.03	1.31

as shown in Table 15.[8] For the assault category, the fine is clearly the most commonly used penalty at 41.98%, followed by probation and suspended sentences (25.54%) and jail (20.51%). An analogous situation exists for offensive weapons charges, which were fined in 33.90% of cases. Probation and jail were ordered at a rate of 28.12% and 25.76% respectively. For sexual offences, the fine was the third most common sentencing option (23.39%) compared with probation and suspended sentences (35.25%) and jail (32.88%). In cases of robbery, however, the fine was only rarely used (3.2%) and in no case of homicide in 1982 was a fine ordered as the harshest penalty (although in some previous years there has been an occasional fine as a result of a homicide conviction).[9]

It is interesting to note that, while the fine was used at an average rate of 35.96% in cases of violent crime, it is only used in 25.99% of cases involving property. The most frequently used sanctions for this category of offences were jail sentences (30.44%) and probation or a suspended sentence (28.99%).[10]

When the property category is divided into its major components, the pattern remains true except in cases of theft - in which the fine was the most commonly imposed disposition.[11] The difference in sentencing rates between violent crimes and

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[8]Data for this table were taken from Appendix I.

[9]See Appendices C, D,F, and G.

[10]Data from Appendix B.

[11]Data for this table are from Appendix I.

Table 15

breakdown of sentences for 'violent' crime imposed by B.C. Courts in 1982

	% Other	Discharge	Prob/SS	Fine	Jail	Pen	N
Assault	.83	10.19	25.54	41.98	20.51	.17	2287
Homicide			14.28		57.14	28.57	7
Offensive Weapons	.26	10.78	28.12	33.90	25.76	.13	761
Robbery			9.77	3.20	80.46	3.45	348
Sexual Offences	.34	3.39	35.25	23.39	32.88	2.72	295

Co-ordinates for Figure 3

Other	Discharge	Prob/SS	DL	Fine	Jail	Pen.
.03	13.63	28.99	-	25.99	30.44	.21

Figure 3

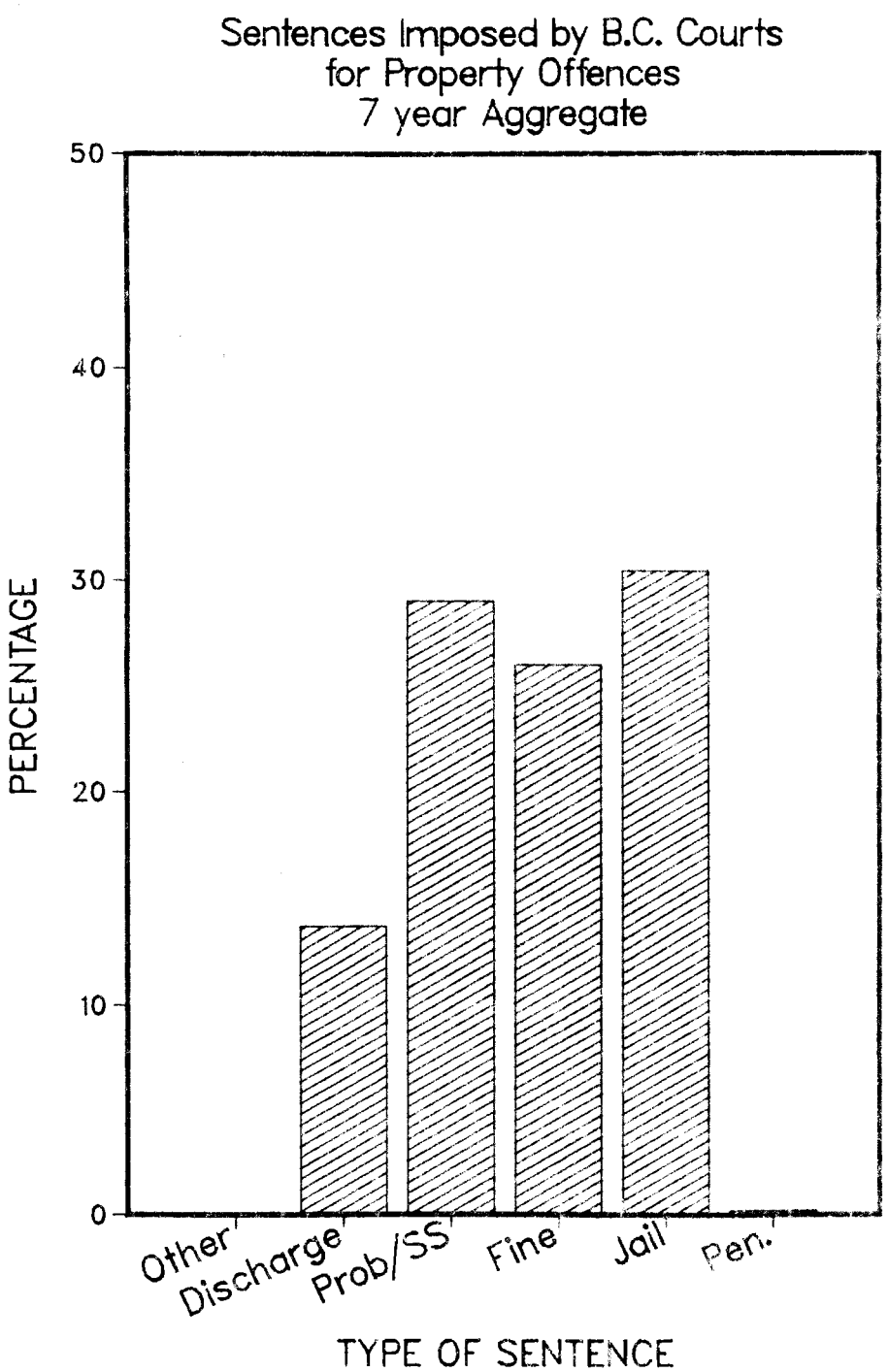
Sentences Imposed by B.C. Courts
for Property Offences
7 year Aggregate
50
40
30
20
10
0
PERCENTAGE
Other
Discharge
Prob/SS
Fine
Jail
Pen.
TYPE OF SENTENCE

Table 16

Breakdown of sentences for 'property' offences imposed by B.C. Courts in 1982

	Discharge	Prob/SS	Fine	Jail	Pen	N
B. & E.	.64	31.61	6.91	58.77	.51	2360
Possession of stolen property	.63	24.89	22.57	44.99	.31	1567
Theft	12.38	30.33	34.96	21.73	.06	9774
Fraud	6.48	27.77	22.98	41.58	.26	2715

property offences may, in part, result from the requirements of the Criminal Code. An offender convicted of an indictable offence punishable by up to five years in prison may be fined in addition to or in lieu of any other punishment that is authorized.[12] When an indictable offence is punishable by imprisonment for more than five years, a fine may be ordered in addition to another punishment, but not in lieu of any other sanction.[13] Thus, offences such as assault (e.g., S.245(2)(a)(b) and S.246(2)(d)(e)) and offensive weapons charges (e.g., Ss.87 and 88), which are punishable by summary conviction or imprisonment for a period up to, but not exceeding five years, may be sanctioned by way of a fine alone. Indeed for these two categories of offences, the fine was the most prevalent

[12] S.646(1).

[13] S. 646(2).

sanction. Within the property offence grouping, it was only for cases of theft that the fine was the predominant disposition imposed. S.294(a) specifies that where the property stolen is a testamentary instrument or where the value of the goods stolen exceeds $200, the offender may be incarcerated for up to 10 years. Ss.294(b)(i) and (ii) provide that, for lesser offences, the offender is liable to imprisonment for a maximum of two years or to prosecution by way of summary conviction. It is, therefore, only in cases of conviction by way of S.294(a) that the offence may not be sanctioned by way of a fine alone. Similar situations exist with regard to possession of stolen property (S.313) and fraud (e.g., S.338), where the penalty varies in accordance with the value of the property involved. According to the disposition reports, break and enter offences were only rarely disposed of by a fine (6.91%). S. 306(1)(d) permits a sentence of life imprisonment and, even in cases where the place entered is not a dwelling house, a maximum penalty of fourteen years in prison is specified.[14] Owing to the nature of Court Services' ranking system, it can be said that only for 6.91% of breaking and entering offences was a fine the most serious penalty imposed. It is impossible to determine how often a fine was ordered in conjunction with a jail or penitentiary sentence for this offence.

Figure 4 illustrates the courts' use of various sanctions in dealing with federal and provincial statutes and municipal

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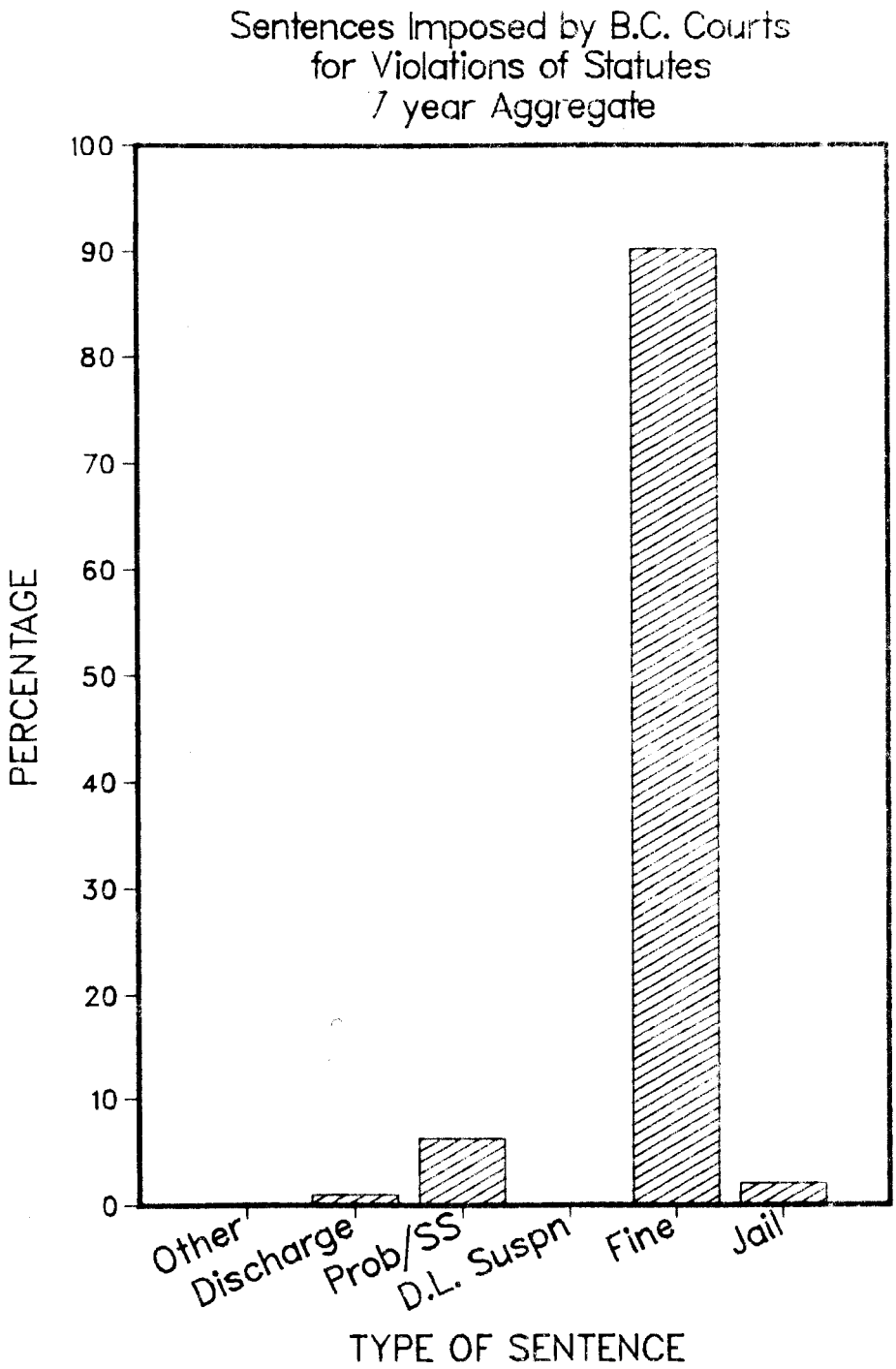
[14] S.306 (1)(e).

Figure 4


Sentences Imposed by B.C. Courts
for Violations of Statutes
1 year Aggregate
PERCENTAGE
100
90
80
70
60
50
40
30
20
10
0
Other
Discharge
Prob/SS
D.L. Suspn
Fine
Jail
TYPE OF SENTENCE

Co-ordinates for Figure 4

Other	Discharge	Prob/SS	DL	Fine	Jail	Pen.
.18	.95	6.24	.04	90.19	2.05	-

by-laws.[15]

As is apparent from Figure 4, a fine was by far the most common penalty imposed, being used at a rate of 90.19%. The next most common dispositions were probation or a suspended sentence. These sanctions were used in only 24% of the cases. The frequency of fine use is probably explicable on the basis that many of these regulatory offences are perceived to be of a relatively minor nature being mala prohibita rather than mala in se. Offenders in this category do not in general pose a risk to society and, therefore, supervision or incapacitation is rarely called for. A fine is possibly seen as an expedient sanction which provides enough 'sting' to meet the seriousness of the offence. Some offences of this character, e.g., failing to obtain various licenses, probably occur as a result of the offender trying to save money and a fine may adequately deprive the offender of his ill gained profit.

Figure 5 describes the relationship between driving offences and the sanctions imposed.[16]

Yet again, the fine is the predominant sanction (72.52%). However, since 1976, the use of fines has dropped from 81.70% to 61.35%, in 1982. The use of 'other'[17] dispositions has increased in this same period from 7.62% to 20.34% and the use of jail

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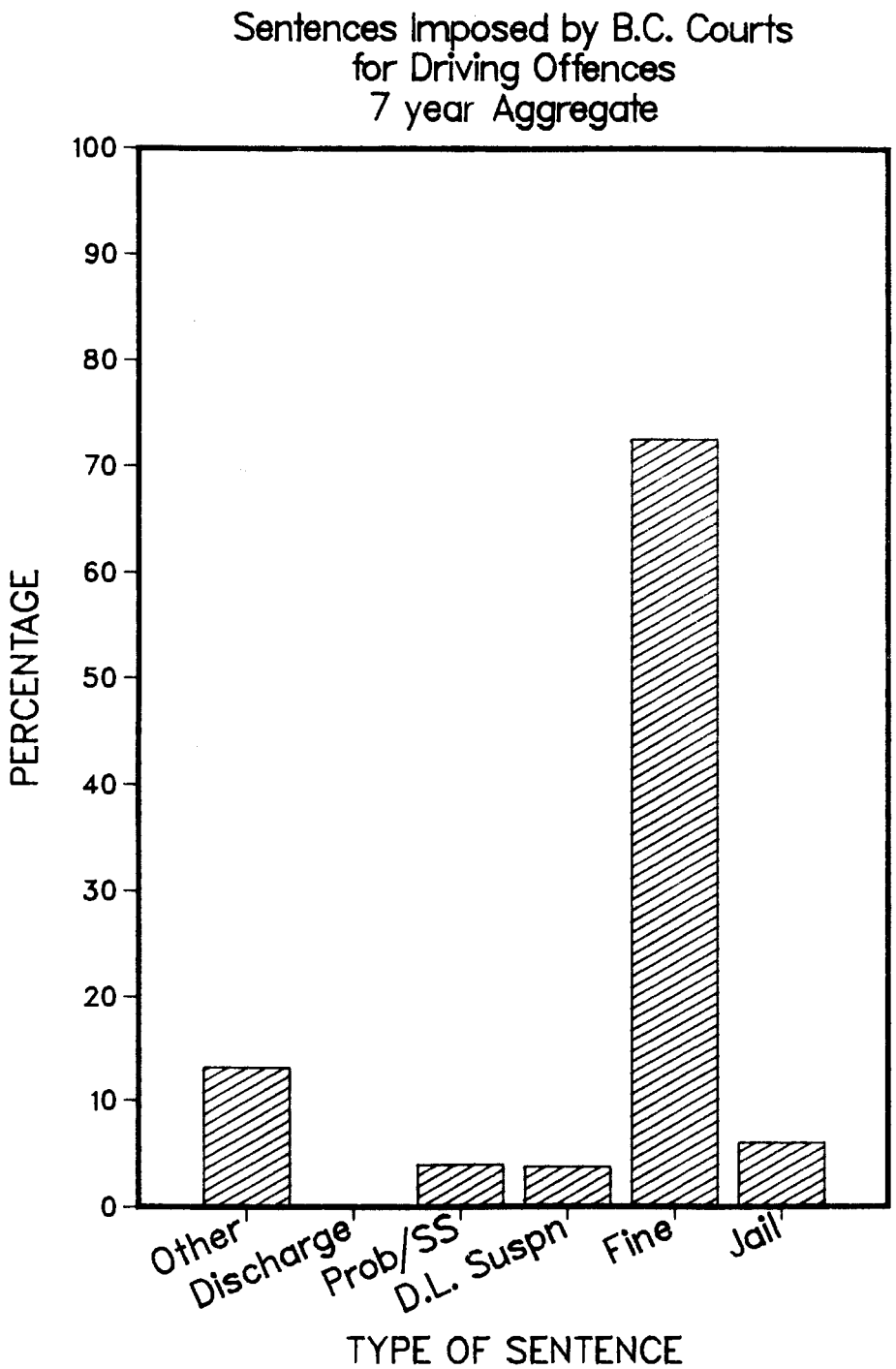
[15]Data for this figure was compiled from Appendix B.

[16]Data for this figure is from Appendix B.

[17]At the present time Court Services is unable to explain the types of dispositions that fall into this category. An investigation by their systems analysts is underway.

Figure 5


Sentences Imposed by B.C. Courts
for Driving Offences
7 year Aggregate
PERCENTAGE
100
90
80
70
60
50
40
30
20
10
0
Other
Discharge
Prob/SS
D.L. Suspn
Fine
Jail
TYPE OF SENTENCE

Co-ordinates for Figure 5

Other	Discharge	Prob/SS	DL	Fine	Jail	Pen.
13.13	.16	3.98	3.77	72.52	6.07	-

sentences has increased in the last year from 4.56% to 10.15%.

'Driving offences' is comprised of two subcategories; (1) motor vehicle offences which include criminal negligence, dangerous driving, and impaired driving charges, and (2) provincial motor vehicle offences which are created by statute. The use of fines as a response to provincial motor vehicle offences has been consistently declining since 1976, when 70% of such offenders were fined compared with 51% in 1982. The Criminal Code driving offences show a remarkably unstable fining pattern.[18] As driving offences consititute over half the cases before B.C. courts, it would be of interest to discover the reasons for the fluctuations in sentencing Criminal Code motor vehicle offenders and the decline in the use of the fine for provincial motor vehicle offences. The data do not permit the use of dispositions to be correlated to specific Criminal Code sections or provincial acts and, therefore, a separate investigation, using a different data base, would need to be conducted to understand this sentencing pattern. Such an inquiry is beyond the scope of this thesis.

The major category 'drugs' includes all sections of the Narcotic Control Act R.S.C. 1970, c. N-1 and the Food and Drugs Act R.S.C. 1970, c. F-27. Figure 6 describes the courts' use of various sanctions under these acts.[19]

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[18]Data for Table 17 were gathered from Appendices C to I.

[19]Data for this figure were taken from Appendix B.

Table 17

Driving Offences

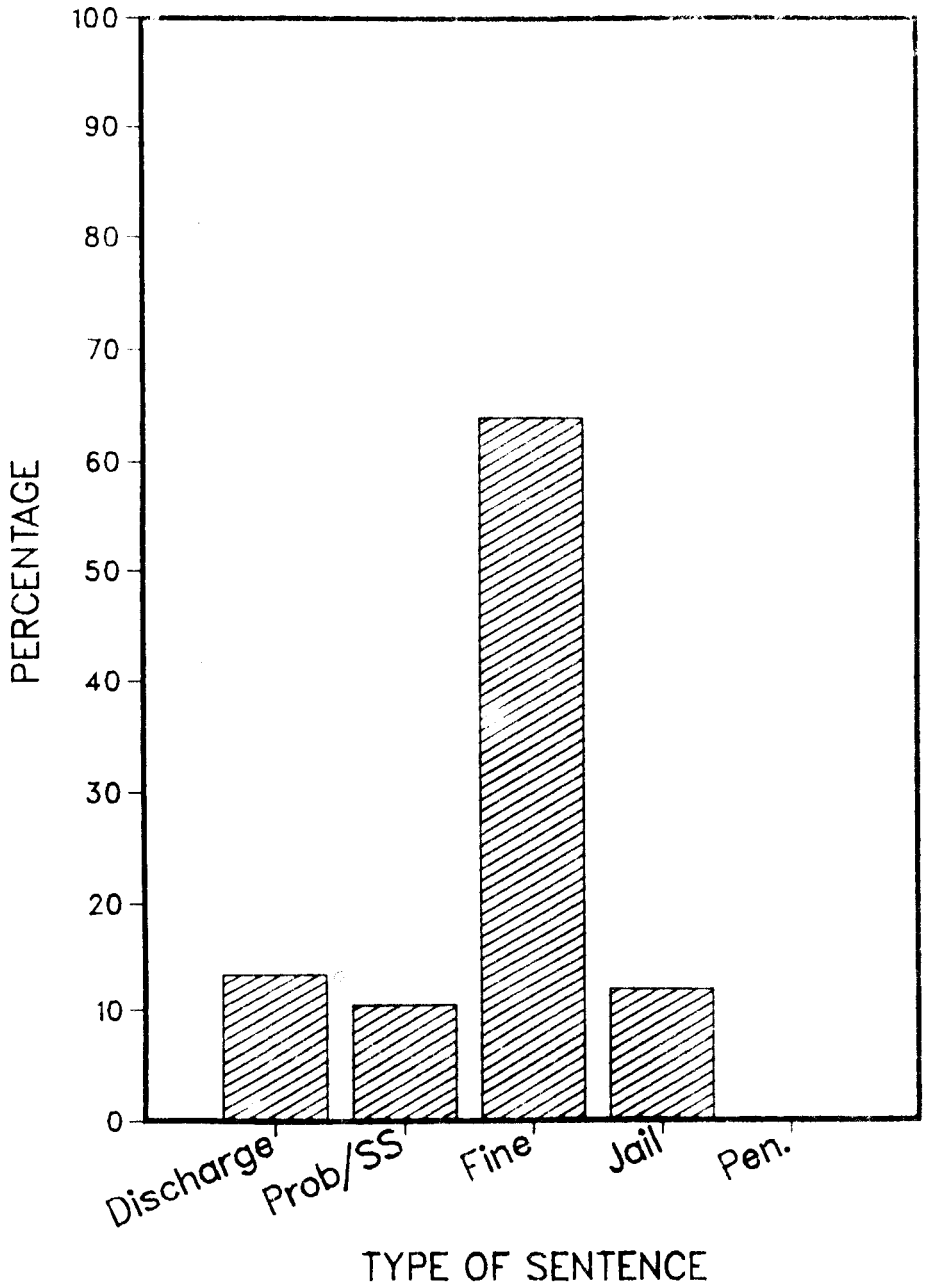
Year	motor vehicle % fined	provincial motor vehicle % fined
1976	90.89	70.06
1977	88.77	70.24
1978	76.81	67.42
1979	85.44	61.91
1980	87.55	59.25
1981	89.68	52.38
1982	79.41	50.75

Co-ordinates for Figure 6

Other	Discharge	Prob/SS	DL	Fine	Jail	Pen.
-	13.35	10.42	-	63.84	11.88	.19

Figure 6

Sentences Imposed by B.C. Courts
for Drug Offences
7 year Aggregate



Overall, a fine was the most frequently used sanction (63.84%) followed by discharges (13.35%) and jail (11.88%). It is important to note that some offences, particularly under the Narcotic Control Act, have such serious penalties attached to their commission that a court may not dispose of the case by way of a fine alone. The importing and exporting of narcotics (S.5 N.C.A.) for example, requires a minimum period of incarceration of seven years. It is not known how often a fine is attached to such sentences. As this is a particularly lucrative form of criminal activity, it would be interesting to discover how often fines are used to deprive the offender of his/her profits and the size of the fines involved.

The last major category 'other' is, as the name implies, comprised of the remaining sections of the Criminal Code. As can be seen in Figure 7, the fine was again the predominant sanction (38.68%) followed by jail (30.72%).[20]

Thus, across all six major offence categories, except property offences, the fine was the most commonly imposed sentence, in British Columbia courts. As previously discussed, the incidence of use may be higher than represented in Figures 1 - 7, as a result of Court Services data system's method of ranking and reporting. It can be said, however, that in more than one-half of all cases resolved by B.C. courts over the last seven years, a fine was the most serious penalty imposed.

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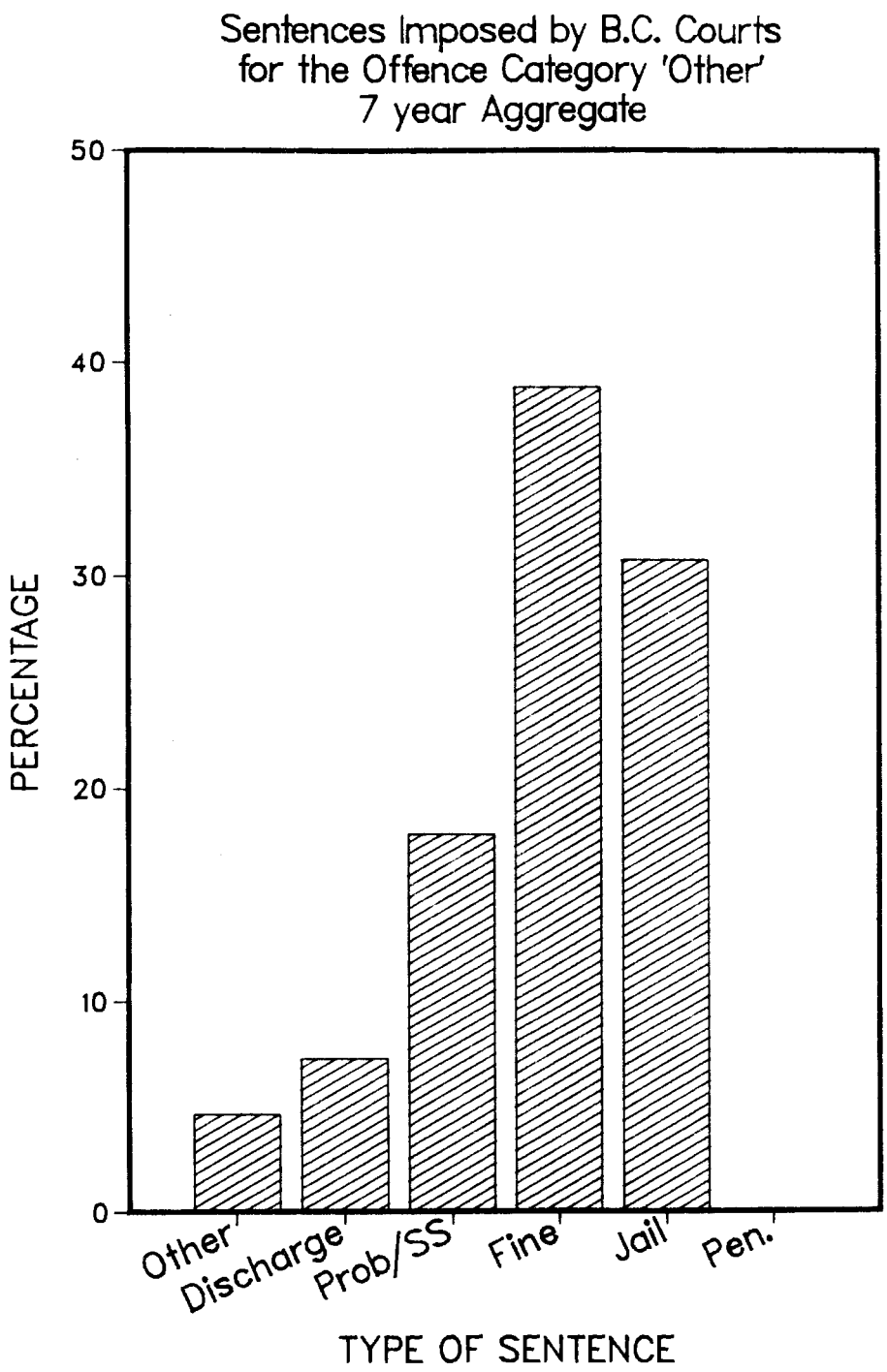
[20]Data for this figure were taken from Appendix B.

Figure 7


Sentences Imposed by B.C. Courts
for the Offence Category 'Other'
7 year Aggregate
50
40
30
20
10
0
PERCENTAGE
Other
Discharge
Prob/SS
Fine
Jail
Pen.
TYPE OF SENTENCE

Co-ordinates for Figure 7

Other	Discharge	Prob/SS	DL	Fine	Jail	Pen.
4.61	7.21	17.87	-	38.86	30.72	.07

As of March, 1983, in the Province of B.C., 10,768 fines (totalling $3,448,312) were owed to the Province but had not yet become overdue.[21] An additional 6,554 fines worth $974,011 were overdue as of this date.[22] In the case of many of these fines, a demand letter, warrant letter, tracing unit search or telephone call had been contemplated or finalized in an attempt to obtain payment. A further 6,656 fines had been defaulted on and a warrant of committal issued. These fines were collectively worth an additional $2,068,835 to the Province.[23] In total, 23,978 fines worth $6,491,158 were outstanding or in the process of being paid as of March, 1983.[24]

These figures do not actually reflect the amount of income to the Province from fines as they do not include all the fines which are paid immediately to the court but only those fines for which time to pay was given. The number of fines which are paid forthwith to the court and their dollar value, is unknown. The gross revenue from fines to the Province is, therefore, also unknown. It would seem, however, that from the government's point-of-view, fining criminals is a fairly lucrative business. In this regard, the fine is a unique sanction. While it is true

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[21]This information was obtained from a document, available from B.C. Court Services dated March 21-31, 1983, referred to as 'Receivables for Court Registry, Sheriffs and Court Recorders: Provincial Summary'.

[22]Ibid.

[23]Ibid.

[24]Ibid.

that the state still has to pay overhead costs in administering and enforcing fines, it is the only criminal sanction in which the offender in essence, pays to be punished. Unlike incarceration and supervisory sanctions, which are expensive to the state in capital expenditures and salary expenses, and various discharges which are almost non-sanctions, the fine is a revenue-generating enterprise. This aspect of fine use has thus remained historically constant since Roman times.

In June, 1974, British Columbia amended its Summary Convictions Act,[25] so that default on a fine imposed for an infraction of a provincial statute that was proceeded with summarily, would no longer result in imprisonment but instead enforcement would be by means of civil procedure. Delisle reports that, within one year of the proclamation of the amendment, the number of persons imprisoned for fine default in respect to Provincial Statutes declined by 74.3%.[26] The author gives no indication of the number of souls affected by amendment. It is similarly asserted that approximately 12% of these statutory offenders do not complete payment of their fines within the time frame specified by the courts.[27] Put in a more positive light, this also means that, in the vast majority of

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[25]Revised Statutes of British Columbia, Chapter 73 Summary Convictions Act (1960), s.57 amended 1974.

[26]A.O. Delisle, 'Fines: Their Imposition and Enforcement', working paper of the Criminal Law Division, Ministry of the Attorney-General, November, 1977, p.3.

[27]Ibid., p.1.

these cases (88%), such fines are paid on schedule without any enforcement action being taken.

Each court's Registry Office is responsible for the collection of all overdue fines.[28] When civil enforcement procedures are to be brought to bear, upon the expiration of the time period in which payment was to be completed, the offender is contacted by telephone. Should payment not be forthcoming, a demand letter is then sent. Approximately three weeks later, 'outstanding' defaulters are personally contacted to ascertain their ability to pay their fines and to make arrangement for so doing. Those offenders who are found to have the means to pay their fines but are non-compliant, may be sued for payment in Small Claims Court. In some cases, however, the fine may be remitted. Individuals who are unable to pay their fines due to (1) illness; (2) lengthy incarceration; (3) leaving the Province; or financial bankruptcy, may have their fines 'written off'.[29]

No information is currently available concerning the effectiveness of the current enforcement procedures in obtaining payment nor concerning the length of time it takes people to pay their fines under this system. The number of people who escape the net of enforcement, and the amount of money thereby lost to the Province is also unknown. Similarly, no data are available

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[28]Will Austin, Court Services Division, personal communication, April 22, 1983.

[29]Delisle, op. cit., pp. 11-12.

concerning the number of fines and their value, which are remitted, nor concerning the circumstances of the offenders, who are so relieved. This information would be particularly valuable since it would at least serve as an indicator of whether the fine was an appropriate sanction for these offenders in the first place or whether circumstances, occurring after sentencing, resulted in default. If the cause of the default occurred after sentencing, why did the offender not reappear before the court to ask for an extension of the time to pay? If representation was made to the courts, what was the result? No study has been conducted concerning these issues.

Apart from those cases, which are subject to the Summary Convictions Act, default on a fine results in an almost immediate issuance of a Warrant of Committal. The Court does not contact the offender to warn him that he is in danger of being imprisoned. A report by B.C. Corrections suggests that, at least on Vancouver Island, the majority of people (90 -95% in Nanaimo and Campbell River) pay their fines in full when presented with a warrant. "Such persons either come up with the money right away, or within about two hours, if allowed to make a few phone calls".[30]

Many people, it would seem, will only fully pay their fines when directly confronted with the threat of immediate imprisonment, in which case, imprisonment for fine default may

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[30]Minstry of the Attorney-General, "Fine In- default Profile: Vancouver Island Regional Correctional Centre, August 1, 1977 to January 16, 1978" p.20.

be a necessary evil. If such people can further pay off their fines on a few hours notice, it would suggest that the size of the fines imposed by the courts were not disproportionate to these offender's means and that their delay in payment was a consequence of something other than poverty.

What then of those offenders who, when presented with a warrant, do not pay their fines and are arrested and imprisoned as a result? Are they unwilling or unable to pay and what are the terms of their confinement? In British Columbia, as in the rest of the world, these questions remain largely unanswered.

A profile of in-default admissions to the Vancouver Island Regional Correctional Centre, from August 1, 1977 to January 16, 1978, reveals that of the 130 offenders admitted, 69 (53.07%) were in default of fines imposed for 'impaired driving' and 'driving over.08'.[31] For these two offences, a breakdown of the amount of the fine and the number of days to be detained in custody shows remarkable discrepancy in the per diem rate at which overdue fines are to be served out.[32]

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[31]Ministry of the Attorney-General, "Fine Indefault Profile: Vancouver Island Regional Correctional Centre August 1, 1977 to January 16, 1978" p. 9.

[32]Ibid., Table 18 is adapted from Table 9, p. 11.

Table 18

Days in-default to be served in relation to the dollar amount of the fine for impaired drivers committed to V.I.R.C.C. from August 1, 1977 to January 16, 1978

$ Amount	Days to serve	Per diem rate	Court	Previous Admissions
100	30	$ 3.33	Duncan	7
110	28	3.93	Victoria	1
150	6	25.00	Victoria	-
250	10	25.00	Nanaimo	-
260	12	21.67	Victoria	-
300	30	10.00	Parksville	1
300	20	15.00	Victoria	-
325	28	11.60	Duncan	-
350	30	11.67	Courtenay	-
350	30	11.67	Nanaimo	2
400	12	33.33	Duncan	1
400	8	50.00	Pt. Alberni	1
400	30	13.33	Pt. Alberni	-
400	30	13.33	Campbell River	-
400	15	26.67	Nanaimo	4
425	12	35.42	Duncan	-
450	27	16.67	Pt. Alberni	1
450	30	15.00	Campbell River	1
450	25	18.00	Pt. Alberni	1
500	30	16.67	Victoria	-
500	14	35.71	Victoria	3
500	14	35.71	Nanaimo	-
500	30	16.67	Victoria	4
500	30	16.67	Victoria	-
500	21	23.81	Duncan	-
500	15	33.33	Campbell River	-
500	10	50.00	Nanaimo	3
500	15	33.33	Nanaimo	-
510	47	10.85	Nanaimo	1
600	45	13.33	Pt. Alberni	-
600	21	28.57	Nanaimo	-
600	14	42.86	Nanaimo	1
600	26	23.08	Duncan	1
750	20	37.50	Nanaimo	-

From the table, the average *per diem* rate is $22.90. Some offenders, however, were serving off their fines at less than $4 per day while the highest rate was $50 per day. Even when two offenders are fined the same amount for the same offence, the rate at which they serve off the fine can differ markedly. For example, two offenders from Victoria were both fined $500. The offender, who had three previous convictions to V.I.R.C.C., was serving his fine at $35.71 per day, over 14 days, while his colleague, with no previous admissions, was sentenced to 30 days in default or $16.67 *per diem*.

The pattern of sentencing disparity is repeated in the 'driving over. 08' charges.[33]

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[33]Ibid., Table 19 is adapted from Table 10, p. 12.

Table 19

Days in-default to be served in relation to the dollar amount of the fine for 'driving over .08' offenders committed to V.I.R.C.C. from August 1, 1977 to January 16, 1978.

$ Amount	Days to serve	Per Diem rate	Court	Previous admissions
100	3	$33.33	Nanaimo	-
150	6	25.00	Nanaimo	-
200	20	10.00	Nanaimo	-
200	10	20.00	Nanaimo	-
225	14	16.07	Duncan	2
250	16	15.63	Victoria	-
250	10	25.00	Surrey	-
275	14	19.64	Duncan	2
300	14	21.43	Kamloops	-
300	10	30.00	Courtenay	-
300	30	10.00	Duncan	-
350	30	11.67	Pt. Alberni	1
400	7	57.14	Nanaimo	-
400	30	13.33	Victoria	1
400	30	13.33	Hope	-
400	11	36.36	Victoria	-
400	10	40.00	Nanaimo	-
400	15	26.66	Ladysmith	-
500	7	71.43	Courtenay	2
500	14	35.71	Victoria	-
500	14	35.71	Victoria	-
500	61	8.20	Courtenay	2
500	30	16.67	Pt. Alberni	-
500	14	35.71	Nanaimo	-
550	14	39.29	Courtenay	3
600	184	3.26	Matsqui	-
600	60	10.00	Duncan	-
600	14	42.86	Duncan	-
650	45	14.44	Victoria	-
750	61	12.30	Victoria	-
750	30	25.00	Nanaimo	-
750	30	25.00	Nanaimo	1
1000	14	71.43	Pt. Hardy	1

The average per diem rate for this sample was $26.41 but again there is tremendous variation within the sample, ranging from $3.26 per day to $71.43. A Matsqui offender with a $600 fine was sentenced to 184 days in prison for default, while a Courtenay offender with a $550 fine was sentenced to 14 days. Regardless of the defendants' histories, it is difficult to justify a $50 difference in fines resulting in a difference of 170 days in prison. The Matsqui offender was serving his fine at $3.26 per day, while the Courtenay defendant was serving his out at more than twelve times that. Similarly, two other Courtenay offenders, who both had two previous admissions to V.I.R.C.C., were each fined $500. One was sentenced to 7 days in default (71.43 per day) while the other was sentenced to 61 days ($8.20 per day). Again, if the amount of the fine is adjudged to be appropriate to the gravity of the offence and the means of the offender, it is hard to understand why there should be such a discrepancy between the price of individual offenders' liberty.

The only current information concerning fine defaulters throughout the Province is available from the B.C. Corrections Branch of the Ministry of the Attorney-General. This data base only includes those persons, who have defaulted on their fines and been incarcerated in a provincial institution solely as a result of fine default. The data excludes those fine defaulters who are incarcerated for other reasons as well. As the data only refers to imprisoned defaulters, it offers no information on those offenders who default on their fines under the Summary

Convictions Act, nor does it include information on those persons who have defaulted on their fines and escaped arrest, or who have defaulted on their fines and the courts have remitted the fines or the clerk's office has written the fines off. Thus, the Corrections data only describes a portion of fine defaulters; how big a proportion this is, is unknown.

Unfortunately, the B.C. Corrections data system is incompatible with that of Court Services. Thus, no reliable comparison of the data can be made. It is not possible, for example, to determine the proportion of impaired drivers who default on their fines by calculating the number of cases fined from Court Services data and comparing it to the number imprisoned according to B.C. Corrections data. Each branch of government uses its own system of data collection and has its own priorities with regard to the type of information it gathers to satisfy its managerial needs. Thus, while Court Services records information by the 'case', the Corrections Branch data system follows the individual offender. The offence categories used by Court Services are discrete, those used by the Corrections Branch overlap. British Columbia is, therefore, blessed with two expensive and complex data-gathering machineries the designs of which prohibit information-sharing. While information is recorded from the time the offender is fined to the time he may be released from prison for default, as a result of these two completely separate and independent systems, the information cannot be translated into a continuous

data base from which information concerning the entire sentencing process may be gleaned.

The researcher using B.C. Corrections data is confronted with many of the same problems and limitations presented by the Court Services data system. As previously discussed, the Corrections data, like that of Court Services, is not all inclusive of the population of offenders. The major drawback, however, is again the lack of a number of potentially important socio-demographic variables and details of the sentence imposed, i.e., the size of the fine, the offenders' employment status, etc. Those variables which are recorded, such as age, race, offence, and the number of days to be served, cannot be correlated. It is not possible to construct a profile of the typical fine defaulter but only to describe the imprisoned defaulters on the basis of one variable at a time. Thus, while one can determine how many offenders are of a particular age, for example, it is impossible to ascertain the offences for which they were charged, their race, or their length of custody. If one cannot ascertain the size of the fines imposed, the offenders' employment status or financial means, it is not possible to determine whether or not the Bench's use of the fine was appropriate initially, and secondly, whether or not imprisonment for default is an equitable method of dealing with defaulters or is, in reality, a debtors' prison for the poor.

As can be seen in Table 20,[34] persons imprisoned for fine default comprise a significant proportion of the populations of provincial correctional institutions. Since 1976, an average of 18.52% of all admissions to provincial institutions have been offenders imprisoned solely for fine default. There has been relatively little fluctuation in the rate of default admissions although there was a slight decrease in the years 79/80 to 80/81 and a 2.4% increase in 81/82. This data is so recent, however, that more time will have to pass before it can be shown whether a new trend is beginning. Since 1976, the total number of offenders admitted to provincial institutions has increased by 28.8%. The number of fine defaulters has increased in this same period by 25%. For the six year period shown, the Province has borne the cost of incarcerating approximately 7,895 fine defaulters. It is not possible, within the limitations of the data, to calculate the acutal number of days served and from this figure estimate the cost to the Province. It is safe to say, however, that the expense of incarcerating fine defaulters is considerable.

Within the socio-demographic variables rendered by the Corrections data, the make-up of the fine default populations appears to have changed very little since 1974. When age is considered, an average of 22.59% of these offenders are under

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[34]Data for this table was gathered from a B.C. Corrections Service document entitled: 'Ministry of Attorney-General, Corrections Branch, Adult Institutions: Percent of Admissions and Bed Days Delivered by Selected Categories'. 1982.

Table 20

Admissions for fine default in relation to the B.C. Provincial prison population for the years 1976/77 to 1981/82

	76/77	77/78	78/79	79/80	80/81	81/82
Fine in default	1262	1368	1409	1153	1124	1579
Total admissions	6396	6805	7151	7032	6856	8401
Percent fine in default	19.73	20.1	19.7	16.4	16.4	18.8

the age of 22.[35] An additional 37% are between the ages of 22 and 29, and a further 22% are 30 to 39 years of age. Only 6-7% of fine defaulters are fifty or older.

As a breakdown by age of persons fined is not available it is not possible to tell whether any particular age group is under or over represented. It is important to note, however, that over one-fifth of fine default admissions were offenders under the age of 22. S.646(19) of the Canadian Criminal Code prohibits automatic incarceration for fine default of offenders in this age group.[36] The Code requires that, prior to imprisonment, offenders in this age group must have a report prepared by a probation officer for the court on their ability to pay their fines. Thus, if these reports are accurate and the courts cognizant of their contents, it would suggest that at

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[35]For a more complete breakdown by age see Appendix J.

[36]See Chapter 3 of this thesis for a more detailed explanation.

least in the cases of these offenders, fine default may not be a result of financial inability to pay but rather unwillingness or irresponsibility.

If the default population is divided into Native and Non-Native groupings, over the last nine years,an average of 20% have been Native offenders.[37] The rate of Native admissions over this period has fluctuated between a 'high' of 22.7% in 1974/75 to a low of 16.8% in 1981/82. In 1982/83 the percentage of Native admissions had increased only slightly to 17.6%. As nothing is known about the proportion of Native offenders fined or their personal circumstances, no reasonable speculation can be made regarding the appropriateness of fine use and incarceration of default in relation to this group of offenders.

Very few women are imprisoned for fine default. Since 1974, an average of only 2.9% of fine defaulters have been women.[38] Again, as no information is available on the number of females compared with males who are fined, it is not possible to say whether there is anything remarkable in this finding.

The average number of admissions, by offence category, for the period 1974/75 to 1982/83 inclusive, is illustrated in Table 21.[39] It can be seen that by far the largest group of defaulters were fined for motor vehicle related offences (55%). This figure

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[37]For a more detailed breakdown see Appendix K.

[38]For a more detailed breakdown, see Appendix L.

[39]For a more detailed breakedown by year and offence, see Appendix M. For a description of which offences are subsumed into these offence categories, refer to Appendix N.

Table 21

Imprisoned fine defaulters by offence types for which they were originally fined

Offence	%
Administrative	3.2
Breach of Probation	2.03
Breaking and Entering	1.54
Cannabis	3.88
Cannabis Possession	3.36
Driving While Disqualified	3.44
Driving and Drinking	46.36
Drugs	9.88
Heroin	.32
Motor Vehicle Related	55.11
Person	3.64
Property	15.63
Public Order	8.96
Seniors	3.78
Sexual	.33
Theft by Fraud	1.11
Theft under $200	6.91
Violent	.22
Weapons	1.26

is very similar to the proportion of motor vehicle 'cases' from B.C. Court Services Data. For this particular offence category, the definitions used by Corrections and Court Services are comparable.[40] Driving and drinking offenders constitute an average 46% of the fine default population.[41] In 1974/75, such offenders formed about 35% of the total. In 1981/82, they constituted 52.4%. In addition to the loss to human life and

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[40] See Appendices A and N.

[41] See Appendix M.

property that these offenders may cause on the Province's roads, it is apparent that the drinking driver is also a serious drain on the Province's courts and correctional systems.

The number of days, which fine defaulters have been sentenced to serve, is portrayed in Table 22.[42] The period of 1974 to 1983 has been simplified into three periods of varying length in order to demonstrate more clearly the changes in sentencing patterns, which have taken place.

In regard to the length of imprisonment for fine default, the data for 1974-1975/76 is essentially bimodal in that an average of 63.5% of offenders were sentenced to 22-30 days in custody and 30% were sentenced to sentences of 46-60 days. Therefore, over 93% of fine defaulters received one of these two sentences. There were very few sentences in between. A further 5% of offenders received sentences of 91-80 days. Put another way, the sentencing pattern may be represented as in Table 23. This suggests an almost reflexive sentencing practice. That is, that courts were sentencing by essentially choosing one of three options, they had given themselves, and not by 'fine-tuning' the number of days to be served in relation to the dollar amount of the fine. It would be interesting to see whether the size of fines imposed for this period (and earlier) would also cluster so tightly.

1976/77 seems to have found the courts in a transition phase (see Table 22) in that slightly more sentences were given

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[42]For a more detailed breakdown by year refer to Appendix O.

Table 22

Fine default sentences 74/76 to 77/83

Sentence Length in Days	74/76 %	76/77 %	77/83 %
1-7	.55	2.6	16.63
8-14	.45	3.2	32.85
15-21	.15	1.6	16.02
22-30	63.5	66.8	21.7
31-45	-	.2	2.58
46-60	30.3	20.9	5.48
61-90	.05	.6	2.85
91-180	5.05	3.9	1.6
181-270	.05	-	.05
271-360	-	.1	.12
361-719	-	-	.03
720+	-	-	.05

Table 23

Fine Default Sentences 1974/76

	%
1 month	63.5
2 months	30.3
3-6 months	5.05
Total	98.85

for varying shorter periods of time. The year 1977/78 brought about a dramatic change in sentencing patterns, which has remained constant to the present day. Instead of thinking of number of months of custody to be served, it would appear that

judges are now calculating the sentence in terms of weeks.[43]

There is no apparent explanation for this change in sentencing practice.

It would appear that, overall, sentences for fine default have become much shorter (see Table 9). While the instances are few, however, there has been an increase since 1977 of (comparatively) very lengthy sentences of six months or longer.

B.C. Corrections data also include what are referred to as recidivism measures. Five indices are used: (1) no previous formal contact; (2) no previous time in jail; (3) no previous jail sentence; (4) previous jail over two years ago; and (5) previous jail within two years. These categories are mutually exclusive. No previous formal contact means that the offender has not previously entered the B.C. Corrections system. He has never been on probation or bail supervision in B.C. No previous time in jail includes those offenders, who have had previous court-ordered Community Services involvement, but have never been sentenced to a B.C. jail prior to the current instance. No previous jail sentence refers to those offenders, who have been remanded in custody but not previously sentenced to custody in the Province. The last categories (4) and (5) are self-explanatory.[44]

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[43]It may be the case, however, that this patterning is a product of the Corrections system's method of categorizing the data. For the periods used, refer to Appendix O.

[44]G.K. Muirhead, personal communication to Mr. Bernard G. Robinson, June 8, 1981.

Table 24

Fine Default Sentences 1977/83

	%
1 week	16.63
2 weeks	32.85
3 weeks	16.02
4 weeks	21.70
Total	87.2

The proportions of fine defaulters in these categories has shown some movement over the last nine years.[45] Perhaps the most remarkable change has been a drop in the number of fine defaulters, who have have no previous formal contact with the B.C. Corrections system. In 1974/75, 54.1% of fine defaulters were completely new to the sytem. This percentage has gradually and consistently declined to 29.8% in 1981/82 and then increased to only33.2% in 1982/83.

Many fine default inmates may be seen as 'repeaters'. The proportion of offenders, who have previously been sentenced to some Community Services involvement but escaped jail prior to the fine default, has more than doubled since 1974/75 (when they represented 8% of the default population) to 17.6% in 1982/83.

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[45]For a more detailed description, see Appendix P.

The 'no previous jail sentence' and'previous jail within two years' categories have remained relatively stable over this period, averaging 7.19% and 22.83% of default admissions respectively. The percentage of offenders who fall into the 'previous jail over 2 years ago' category, however, has more than quadrupled since 1974/75, when they represented only 3.3% of this population, to 17.6% in 1982/83.

As shown in Table 25, there has been a 50% decline in the percentage of fine defaulters released from prison on payment of their fines.[46]

Because no information is available on the size of fines levied on these offenders and their personal circumstances, it is not possible to determine whether or not this decrease in the number of defaulters paying off their fines is due to an increasing inability to pay or some other reason. Some offenders faced with a sizeable fine and a relatively short in-default sentence, (and the data do indicate that shorter terms of imprisonment are being ordered), may make a rational decision not to pay their fines, preferring to serve their in-default terms instead. Similarly, it is not possible within the confines of the data to determine at what point during their custody these fines were paid. This is unfortunate as such information could serve as an indicator of whether the offender had the

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[46]Data for this table were drawn from computer print-outs from the Ministry of the Attorney-General entitled 'Corrections Profile of Institutional Population Fine Defaulters' for the years 1974/75 and 1982/83.

Table 25

Frequency of fine defaulters released on payment of their fines from 1974/75 to 1982/83

Year	%
1974/75	16.4
1975/76	12.8
1976/77	11.4
1977/78	13.6
1978/79	11.9
1979/80	10.0
1980/81	8.1
1981/82	7.3
1982/83	8.2

means to pay and was holding back. If for example, most of those who obtained their release in this manner came up with the money during the first few days in custody, it would seem reasonable to suggest that at least for some of these offenders, access to funds was available. Conversely, if it was found that it took offenders much longer to pay off their fines, it may be an indicator of lack of means rather than lack of incentive.

It should be noted, however, that the length of time it takes imprisoned defaulters to pay off their fines should not be used in isolation as an indicator of offenders' inability or unwillingness to pay off their fines. Some offenders who have

the means to pay their penalties, for example, may prefer to spend the time in prison, especially if the fine is large and the period of incarceration relatively short.

In March,1982 the Gallup Poll organization conducted a Province-wide public opinion survey concerning specific issues in correctional services. One of the questions the subjects were asked was "when an offender is fined by a court and fails to pay that fine, which is the most appropriate response?". The results of the survey are shown in Table 26.[47]

At least among those surveyed, imprisonment for fine default received little support. The overwhelming majority preferred that offenders work off their fines by performing community service tasks. Another 25% preferred some form of civil action being taken to recover the monies owing to the Province.

In response to concerns that imprisonment for fine default discriminates against the poor, and to the rising costs of incarcerating offenders, the Ministry of the Attorney-General instituted a fine option pilot program on Vancouver Island. The experimental program ran from January 15th, 1979 to March 31, 1980 and was limited to the two major court locations of the Nanaimo, Ladysmith, Parksville area and the Victoria area.

The pilot program had three primary objectives:[48]

1. To reduce the number of admissions to the Vancouver Island

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[47]B.C. Corrections Branch 'Research Report' August, 1982.

[48]J. Proudfoot, 'Fine Option Pilot Project Review', March 1980.

Table 26

Results of Gallup Poll survey on fine default

	%
A period of imprisonment	10.9
Community Service Work	57.9
Confiscation of assets	9.4
Garnishee of wages	16.9
Don't know	4.9

Regional Correctional Centre who were there solely for non-payment of a fine;

2. To reduce any existing disparities between those who have money and those who do not; and
3. To determine the feasibility of expanding a fine option program to other parts of the Province.

Entrance to the program was limited to those persons given a fine and in-default sentence, under the provisions of the Canadian Criminal Code.

Throughout the period January to December, 1979, 1658 offenders were sentenced by the Provincial Court in Victoria to fines and imprisonment upon default;[49] 322 of these persons paid their fines immediately. The remaining 1336 requested and were

[49]Ibid. p.7-8. As the number of offenders in the Nanaimo area were so small (23) only the Victoria group will be reviewed.

granted time to pay their fines and were thus eligible for the fine option program. Only 45 of these people (just over 3%) elected to enter the program and work off their fines.[50] Of this group, 35 (78%) successfully completed the program. Many of the fines imposed on the fine option clients were relatively low as shown in Table 27.[51] Almost 50% of the fines were for amounts less than $100. Another 25% were for sums between $100 to $250.

The length of time the courts gave these clients to pay off their fines is illustrated in Table 28.[52] According to the Proudfoot report, with regard to time to pay:

> "The Courts seem to be very lenient in allowing whatever time the offender asks for in which to pay off their fines. I am advised that extensions of time on any reasonable grounds receive favourable consideration."[53]

The in default prison sentences, these clients faced, were all for one month or less.[54] 25% of the group were sentenced to up to 7 days in prison; 40% were sentenced to 7 to 14 days; 28% were given 15 to 30 days; and 6% were sentenced to one month.

Yet again, drinking and driving offenders formed the

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[50]These offenders had committed a total of 47 offences and for this reason some of the data which follow will add up to 47 rather than 45.

[51]Table 27 is reproduced from a report by J. Proudfoot, 'Fine Option Pilot Project Review', Appendix E, Table 4.

[52]Table 28 is reproduced from J. Proudfoot, op. cit., Appendix E, Table 3.

[53]Proudfoot, op.cit., p.8.

[54]Ibid., Appendix E, Table 2.

Table 27

Fines Among Fine Option Clients
Victoria B.C.

Amount	#	%
0-50	13	27.7
51-100	10	21.2
101-150	4	8.5
151-200	5	10.6
201-250	3	6.4
251-300	2	4.3
301-350	1	2.1
351-400	3	6.4
401-450	3	6.4
451-500	1	2.1
501-550	-	-
551-600	-	-
601-700	2	4.3
Total	47	100.0

Table 28

Time to pay granted fine option program clients

Time to pay	#	%
less than one month	9	19.1
one month	17	36.2
six weeks	4	8.5
two months	6	12.8
three months	4	8.5
four months	2	4.3
five months	1	2.1
six months	-	-
over six months	4	8.5
Total	47	100.0

majority of the clientele.[55] 76.6% of the offenders had been charged with 'impaired driving' or 'driving over .08'. An additional 9% were charged with 'driving while disqualified' or 'failure to give a breath sample'. Four offenders (8.5%) were fined for theft. The remaining three offences were assault, break and enter, and obstructing a peace officer.

Many of the offenders who elected to work off their fines were relatively young; just over 50% were 24 years old or younger. An additional 30% were less than 40 years of age.

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[55]Ibid., Table 5.

Eleven percent of the group were older than fifty, and half of this group were old-age pensioners.[56]

It is important to note that three-quarters of the fine option program clients were unemployed.[57] Only eight offenders were working at the time of entrance to the program (17.8%). 6.6% of the clients were pensioners.

With regard to marital status, 75.6% were single.[58] All the clients appear, from the data, to be male. It is not known how many Native Indian offenders, if any, were clients.

Of primary importance to any government is the cost of the program being instituted. In Victoria, the Community Service Officer was able to absorb the fine option clients into his caseload, so no staff costs were incurred. In Nanaimo, the John Howard Society was contracted to supervise the clients. The contract basically provided for two hours at $10.00 per hour for initial contact, and four dollars for every 20 hours of community work performed by the clients.[59]

The costs involved in a sentence of $500 or 30 days in prison for default would breakdown as follows:[60]

1. $500 20 = 25 hours + 2 = 27 hours x $10.00 = $270 for John Howard supervision.

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[56]Ibid., Table 6 and Table 7.

[57]Ibid., Table 7.

[58]Ibid., Table 8.

[59]J. Proudfoot 'Fine Option Pilot Project Cost Analysis'.

[60]Ibid.

2. It could be argued, however, that the Province has lost $500 revenue and that this should be added to the cost, in which case

   $270.00 + $500.00 = $770.00.

3. An equally justifiable argument is that, in order to pay off a $500 fine, the client must perform 166 and 2/3 hours of community work at $3.00 per hour and that this is of benefit to the Province as a whole. Thus, $770.00-$500.00 = $270.

Should our offender not pay his fine within the period required and be incarcerated, owing to remission, a 30 day sentence would require him to spend 20 days in custody.[61] Thus, 20 days x approximately $50 per day incarceration costs = $1,000. Using argument number 2 above (the $770.00 cost) the net saving to the Province by using the fine option program would be $230.00. If the community service work is considered of benefit, the fine option alternative saves the Province $730.00. Whichever way one looks at it, the fine option program is a money-saving alternative to imprisonment. In fact, the savings to the Province may be much higher. Owing to the short sentences most defaulters are required to serve and the normal classification time span required to process inmates, some defaulters could spend most of their time in secure-setting jails. The capital costs incurred in such facilities are approximately $70 to $100 per day per cell.

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[61] Ibid.

The major difficulty the fine option program encountered was a lack of support from officials in the criminal justice system - notably, from the judges.[62] These problems were most pronounced in Nanaimo and resulted in only 23 offenders entering the program - a number too small upon which to base a sound evaluation of the program's impact on the area. Although the judiciary had been consulted prior to the start of the program, once underway they were reluctant to support it. Apparently, many judges were in favour of the concept of a fine option program but felt that it interfered with the sentence of the court and, because it lacked a basis in legislation, felt they could not support it. Several judges in the Victoria area were in agreement.

It was concluded that a fine option program was a worthwhile endeavour, which was also cost efficient. Before a Province-wide program could be successful, however, it would seem that some changes would have to be made in provincial legislation or to S.650 of the Canadian Criminal Code, before the judiciary would lend its necessary support.

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[62] J. Proudfoot, "Fine Option Pilot Project Review', March 1980, p.5.

Summary

As previously discussed in this chapter, the researcher is hindered both by the incompatibility of the data systems used by various branches of government, and the absence of empirically based published reports on the operation of the fine in the Province. Such information as is available does yield, however, a sketch of the fine in practice.

Throughout the last seven years (and perhaps even longer) the fine has been the most commonly used sanction by British Columbia judges, being ordered as the most serious penalty in over 50% of cases during this period. When offence type is considered, the fine was the most frequent sanction imposed for all but property offences. It is believed that this phenomenon is a reflection of the provisions of the *Criminal Code* prohibiting a fine *in lieu* of any other penalty, where the offence is punishable by more than five years in prison.

In contrast to many other sanctions, the fine appears to be a very cost efficient sanction bringing in several millions of dollars revenue to the Province annually. While the costs of fine enforcement are unknown, the amount of income the fine brings in is undoubtedly much greater.

It would seem that many people, who have the funds to pay off their fines, will delay payment until actually confronted with a warrant for their arrest. Almost nothing is known, however, about those offenders who are imprisoned. What is

apparent is that there are wide disparities between the *per diem* rates to which people are sentenced to serve out their fines. Some incarcerated defaulters are being credited less than $4.00 per day of servitude. Other offenders, charged with the same offence, are being credited more than $70.00 per day. If the amount of the fine is deemed to be appropriate to the gravity of the offence and the means of the offender, it seems only just that the sentence for default be equally carefully considered. While an argument can be made that an offender, who is gainfully employed with a large salary, would lose more money per day by being incarcerated than his unemployed counterpart, it is difficult to justify a twenty-four hour period of incarceration being served at a rate approximate to one hour's minimum wage regardless of the offender's means. Surely one day of liberty is worth more than this. One cannot help but wonder if the judiciary is aware of this kind of sentencing disparity occurring within the Province, indeed, within courts in the same city. Unfortunately, the *Criminal Code* offers no guidelines regarding the length of sentence to be served in relation to the amount of the fine. It would appear, on the basis of the data, that the judiciary also lacks a cohesive policy in this regard.

From the B.C. Corrections and B.C. Court Services, it would seem that those persons imprisoned for fine default represent only a very small proportion of those fined. In any given year it can be expected that approximately 100,00 'cases' will result in fines. Of these, about 1500-1600 offenders will be imprisoned

for non-payment. As previously cautioned, the actual proportion of fine defaults cannot be calculated; however, there is such divergence in the numbers that it is safe to say that the number is comparatively small.

The rate at which we incarcerate fine defaulters appears to have changed little as does the make-up of this population. The most common variables used to describe this group are as follows: young males under the age of 40; generally non-native; a predominance of alcohol and automobile-related offences; and, in recent years, often repeat offenders.

It would seem that, since 1977, sentences have become quite a bit shorter with judges sentencing in units of weeks as opposed to months. However, the number of persons being released on payment of their fine has declined by 50% since 1977/75. Whether this is a reaction to current sentencing practices, i.e., the offender would rather serve 7-.14 days, or difficult economic circumstances, is unknown.

While the numbers of people being incarcerated may be comparatively small, the cost to the taxpayer is considerable, running at approximately $50 per day per offender. In response to these costs and concern that the fine may favour the wealthy offender and that we may be imprisoning the indigent, a fine option program was tried. It became apparent that judges would not support the program unless it had a legislative basis.

The public, however, does seem to support the concept of working off fines and feels that imprisonment is a much less appropriate measure.

VII. Conclusions

Throughout this thesis, an attempt has been made to gather together the available literature and data in order to describe the operation of the fine as a criminal sanction. As has been pointed out many times in the preceeding chapters, one of the most remarkable things about the fine is how little we know about it. Still, the fine continues to be the most frequently used sanction in the criminal courts of many countries, including Canada. Because of the high incidence of use for a wide variety of offences it is important that the practice of fining be subject to evaluation, both from the point of whether it is fulfilling its purpose as a sanction and in order to make amendments and policy recommendations. Owing to the lack of empirical research into the use and effect of the fine, and to the difficulties in the data that are available (at least in British Columbia), no sound evaluation of the fine, upon which policy recommendations can be responsibly based, is possible. Once again, the all too familiar appeal must be made for fundamental research to be performed into almost every aspect of the subject matter.

Much of the research which needs to be done could be accomplished in British Columbia if the data collection and reporting systems of B.C. Corrections and Court Services could be modified. The first necessary change would be to make the

systems compatible with one another so that the researcher could follow the sentencing process from the charge through to the ultimate disposition. It would be preferable that the individual offender be followed, rather than the 'case', as should the subject re-offend he could then be traced. By selecting the most serious sanction, a great deal of information is lost as explained in Chapter 6. Therefore all charges and dispositions should be recorded. Moreover, in order to attain the maximum benefit from the data system, information concerning a number of additional variables should be recorded. Of paramount importance, are details relating to the sanction imposed. In the case of the fine, it is necessary to know the offence charged, the dollar amount of the fine, the time within which the offender must pay, and the number of days he is sentenced to prison in case of default. These variables are necessary before even a cursory description of the fine in practice can be rendered. If the efficacy of the sanction is to be evaluated, information on the offender's criminal history and social characteristics is also necessary. In the present format, neither B.C. Corrections nor Court Services data can be used to measure the impact of the fine on individual offenders in terms of the punishment engendered, the appropriateness of the fine as a sanction to the offence and the offender, or the efficacy of the fine in terms of recidivism or imprisonment for default rates. The collection of sentencing and socio-demographic variables, which could be correlated one to another and to the

offender, would greatly remedy the current state of relative ignorance and would provide a basis upon which policies could be formulated.

It would be hopelessly unrealistic, however, to expect such dramatic changes to be made. Not only would they be extremely costly and time-consuming, but also, from the government's case management perspective, such changes would only provide interesting rather than necessary information. Thus, if the fine is to be thoroughly researched, the burden must fall on the academic community. The task must, of necessity, start with primary data collection on those factors just discussed.

While there are no doubt many viable ways of effectively researching the fine, one method which would yield a great deal of information would be to select at random a large group of offenders (such as 1,000), and follow them through the sentencing process and for a number of years after disposition in order to record recidivism information. An additional matched group of offenders would be needed for comparison purposes. The following discussion will delineate many of the issues which need to be researched, the variables on which information should be recorded, and possible policy implications such research might suggest. It is not the intent of this thesis to detail the actual methodologies which could be used to perform such a study, but, rather to highlight the issues involved.

The most serious accusation laid against the fine, and possibly the most lacking in research, is the contention that it

is a discriminatory sanction favouring the wealthy offender. Research into this area must begin right in the courtroom. As discussed in Chapter 3, both Parliament and the case law have stressed the importance of ascertaining the defendant's means before imposing a fine. Because judges in this country automatically and simultaneously tend to order a term of imprisonment, should the fine not be paid on time, the means of inquiry at sentencing is a critical checkpoint if the monetary penalty is not be be a merely illusory sanction.

As of this date, there does not appear to be any study anywhere which focusses on means inquiries. The first crucial question which needs to be asked is whether they are being conducted in all cases and, secondly, to what degree is the inquiry being made? Are these just cursory examinations or is some real attempt being made to determine the defendant's financial capabilities and the length of time that will reasonably be required for him to pay off the fine. Are judges taking into account the effects of the fine on the whole family? It is not being suggested here that defendants be given such a long line of credit that the offender does not feel the blow of the penalty but, if Softley's results[1] have a basis in fact, some families may be going without food and clothing in order to pay their offender's fines. Furthermore, it may be the case that where the fine is too large for the offender to pay on time,

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[1]Paul Softley, Home Office Research Study No. 46: Fines in Magistrates' Courts (London: Her Majesty's Stationery Office, 1978).

someonelse, such as a lover or a parent, may pay it in order to keep the offender out of jail. As pointed out in R. v. Lewis,[2] this is not the purpose of the fine.

It may be the case that judges with already heavy caseloads find a thorough means inquiry too time-consuming to be done properly in all cases. Owing to the frequency with which fines are being imposed, in-depth financial enquiries would take up a considerable amount of court time. Judges' attempts to impose a reasonable fine may also be hampered by the defendant at bar. Are defendants prior to sentencing prepared enough to explain to the Court their financial responsibilities and liabilities, or are they too confused and nervous at finding themselves in court to explain their situation? Offenders may be agreeing to terms suggested to them by the judge which they are unable to meet and, further, may not understand. This leads to the question of whether judges make it clear to offenders that they may reappear before the court to ask for an extension of time in which to pay their fines. Some defendants who are attempting to pay their fines but are unable to pay in full and on time, may be being incarcerated, whereas if they had appeared before the court, they could have explained their circumstances to the judge and the terms could have been modified. Whether or not offenders understand their sentences and the Courts understand offenders' circumstances, how often offenders reappear before the Courts and the Courts' responses, are issues which have been totally

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[2] [1965] C.L.R. 121.

neglected in the literature.

Research into this area may lead to recommendations which may ease the burden on judges and help prevent miscarriages of justice. If, for example, the judiciary were willing and it was administratively feasible, one possible amendment to the present procedure may be to require the offender, after conviction where a fine has been indicated by the Court but prior to actual sentencing, to attend the Clerk of the Court's Offfice to fill in a budget sheet. The offender would then, after being made aware of the consequences of making a false statement, be asked to sign an affidavit swearing to the truth of his declaration. This may be a necessary step as, unlike the situation in some Scandinavian countries, Canadian courts do not have ready access to income tax information. After sentencing, should the judge proceed with a fine, the offender could return to the Clerk's office for any further clarification of questions he may have regarding his payment schedule. At this time, should fine option programs be available the offender could be informed of his alternatives. Should the sentencing judge decide not to impose a financial penalty, the offender's financial information and affidavit should be destroyed to protect his privacy as much as possible.

Such a process, as the one suggested, may go far in reducing misunderstandings in the courtroom. Properly done, it would also furnish the Bench with enough information to make a calculated assessment of the fine in an expeditious manner

taking into account the offender's means and circumstances.

In addition, this procedure could pave the way to a day-fine system and would certainly, from an administrative point of view, ease the transition from a global fining system. Before a day-fine system could be initiated, a considerable amount of research would need to be conducted. A number of questions would need to be addressed, such as: which offences should be subject to day-fines and which left to the global system? should the Swedish system be adopted wholesale or should some modifications be made to suit better the Canadian sense of justice?; how should the gravity of the offence be calculated and similarly, the value of the units of day-fines involved, i.e., a definition of one day-fine; how different would the fines imposed under a day-fine system be from those being currently levied, (some adjustments over time may be necessary;) is such a system feasible in terms of administrative time and cost?; and, last but not least, would the Canadian public, judiciary, and legislature support such a system?

Although little research has been conducted into the use of a day-fine system in Canada, the use of day-fines has been recommended by the Law Reform Commission of Canada[3] and Griffiths et al.[4] on the basis of its operation overseas. Indeed

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[3]Law Reform Commission of Canada, Working Papers 5 and 6 (ottawa: Information Canada, 1974) pp.31-47; Guidelines: Dispositions and Sentences in the Criminal Process (Ottawa: Information Canada, 1976) pp.64-65.

[4]Curt T. Griffiths, John F. Klein, and Simon Verdun-Jones, Criminal Justice in Canada: An Introductory Text (Vancouver: Butterworth and Co., 1980) pp.172-173.

even from the little information we have on the fine and sentencing disparity in Canada, an argument can be made for instituting a day-fine system as soon as possible. The operation of the day-fine demands that the sentencing Court fully take into account the offender's means and circumstances, gauge the gravity of the offence, and upon this information calculate an appropriate fine. It is the objective of the day-fine that the punishment fit both the crime and the offender. In such a manner, two offenders convicted of the same offence may feel the impact of the penalty equally, although the actual fines imposed may be quite different. Thus, the concept of equal justice may be given effect. While this is no doubt the current intent of Canadian judges, whether it is in reality the case, is unknown. A day-fine system would give the Bench sentencing guidelines but would not seriously hamper the Court's discretion in imposing a sentence it considers appropriate.

An additional benefit, once such a system is in place, is that, unlike minimum and maximum fines in the Criminal Code and other statues, owing to the very nature of the day-fine system the penalties imposed keep pace with inflation. Therefore, only a minimal amount of legislative upkeep is necessary for those offences which may remain punishable by standard or global fines.

Except in terms of the gross value of the fine, we have little indication of the degree of punishment the fine inflicts. Without knowing the severity of the sanction being imposed, it

is difficult to see how the punishment can accurately be made to fit the crime. Investigations should be made into the effects of fines on offender's lifestyles and the level of difficulty they encountered in trying to pay their fines on time. Similarly, research should be conducted concerning the efficacy of currently used enforcement mechanisms, particularly imprisonment for default.

As previously discussed, it is routine practice in Canada (except where the offender is under 22 years of age[5] or subject to the protection of the Summary Convictions Act[6]) automatically to specify a period of time to be served in prison should the offender default on his fine. Upon expiration of the time to pay period, offenders who are in default are arrested under warrant and committed to custody.

One of the first of many questions which need to be answered is whether it is really necessary to order a term of imprisonment at the time of sentencing or whether some other enforcement method would not be more productive with less risk of injustice. Research is much needed concerning those offenders, who do default on their nines and are incarcerated as a result. Are these offenders unable or unwilling to pay? How long a sentence of imprisonment was ordered in relation to the size of the fine?

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[5] S. 646 (10) Canadian Criminal Code.

[6] Revised Statutes of British Columbia, Chapter 73 Summary Convictions Act (1960), s. 57 amended 1974.

In England and some Scandinavian countries, a sentence of imprisonment for default is only rarely passed at the time of the original fine. Should an offender default on his fine he is required to reappear before the court to explain his reasons for non-payment. If it becomes apparent that the offender lacks the means to pay his fine, the Court can modify the terms of the original sentence. Imprisonment for fine default (at least in theory) is reserved for those offenders, who have the ability to pay but refuse to comply with the sentence of the Court.

It has been recommended by both the Ouimet Commission[7] and the Law Reform Commission of Canada[8] that procedures such as the one described be instituted. The Law Reform Commission goes even further, recommending "that judges be prohibited from imposing a fine and simultaneously imposing a sentence of imprisonment to be served in the event the fine is not paid" and:

1. That, as the court in imposing a fine must have considered this to be the appropriate penalty for the offence, every effort should be made to collect the fine before resorting to imprisonment or other forms of detention.
2. The final sanction of imprisonment should not be resorted to unless: (a) all other methods of enforcement have been unsuccessfully attempted or were unavailable or inappropriate, and (b) the defendant has the means or ability to pay.[9]

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[7]Report of the Canadian Committee on Corrections, Towards Unity: Criminal Justice and Corrections (Ottawa: Information Canada, March 1969) pp.197-198.

[8]Law Reform Commission of Canada, op. cit.

[9]Law Reform Commission of Canada, Working Papers 5 and 6 p. 32.

If these recommendations were acted upon, it would appear less likely than under current procedures that indigent offenders might be imprisoned for fine default as a result of their inability to pay. Unfortunately, however, there is no sign that such a change is imminent.

Additional research should also be conducted concerning the length of stay that fine defaulters are sentenced to, in relation to the size of fine imposed. It would appear that there are serious disparities in the rates at which offenders are serving out their fines. The judiciary may be taking into account a number of factors in determining these sentences, which are not apparent on the face of the data alone. Therefore, research should be done exploring the methods by which judges calculate prison sentences for default. It is obvious, however, that some offenders are serving out their fines at very low rates. It is the opinion of the author that $3 to $4 credit, per day of imprisonment, places a ridiculously low price on human freedom. Some minimum *per diem* rate should be calculated and possibly amendments made to the *Criminal Code*, which would at least give judges some sentencing guidelines. Just as the day-fine system can be used to assess an appropriate fine, a similar methodology could be constructed in regard to imprisonment for fine default. At the very least, the judiciary should develop some coherent philosophy of sentencing with some minimum dollar-to-day ratios.

In the alternative, should steps be taken to ensure that only those offenders who are capable but unwilling to pay their fines are imprisoned, the concept of imprisonment for default *per se* might be abandoned and the offender charged with contempt of court, civilly proceeded against, or should he be employed, his wages could be garnisheed. Before such a change could be reasonably made, however, the judiciary would have to be extensively consulted, a cost benefit analysis of the various modes of enforcement mechanisms conducted, and an in-depth investigation of fine defaulters performed. When one considers the enormous cost of incarcerating even relatively small numbers of fine defaulters, a study of alternative methods is clearly worthwhile.

Once imprisoned for fine default, the offender may at any period during his incarceration obtain his release by completing payment of his fine. Similarly, he may reduce his stay by making part payment. Both of these courses of action are governed by s. 650 of the *Criminal Code*. No information is available, concerning the number of offenders who reduce their sentence, by how much, and at what point in their sentence. Only cursory information is obtainable on the actual numbers of offenders, who obtain their release. From the B.C. data it would appear that the proportion of such offenders has been declining. This may be indicative of the imprisonment of indigent offenders. Alternatively, it may be the case that, once presented with a warrant, more people than before are able to obtain the

necessary funds to avoid actual imprisonment or that arresting officials are allowing defaulters more opportunity to make such arrangements prior to admission to prison. In either instance, such offenders would escape inclusion in the data set. Research into the area is necessary, as it is relevant to the appropriateness of the fine as a sanction and the calculation of the size of the penalty imposed in addition to the importance of the possibility of imprisoning offenders who are unable rather than unwilling to pay their fines.

It would appear that in those provinces in which fine option programs are well established, that there is not only a high completion rate by offenders (which is one definition of success), but they are also of considerable benefit to the taxpayer. By performing community service work as a method of working off their fines, offenders not only escapte imprisonment and whatever detrimental effects it may have, but also gain work experience which may be of later assistance. The community benefits in that it does not have to bear the economic costs of imprisonment, more in some cases, the cost of supporting the incarcerated offenders family.

Supporters of fine option programs often argue that these programs narrow the gap between the wealthy and indigent offender and reduce whatever discriminatory effects the fine may have. This is only partially true, as depending upon a persons employment and financial status a fine of a particular amount will still have a differing impact. However, for those persons

in the program, as they are all credited with work paid at the same rate, the program does serve an equalizing function.

A point which has yet to be stressed in the literature, in favour of a fine option program, is the role it can play in relieving sentencing disparity. While the program cannot alleviate differences in the amount of the fines imposed for like offences, it can, by offering the offender an opportunity to escape imprisonment by working off his fine, relieve the effects of sentencing disparities in the lengths of incarceration ordered for default. If one takes the extreme example described in Chapter 6 of the Matsqui offender with a $600 fine sentenced to 184 days in prison for default and the Courtenay offender charged with the same offence who was fined $550 and given 14 days for default, the point becomes clear. Under a fine option program the Matsqui offender would be required to work an additional few hours to make up the small difference in his and the Courtenay defendants fine, but by doing so would avoid the additional 170 days incarceration for default. Thus, a fine option program may not only be cost effective in financial terms but may also be effective in attaining equality of justice by reducing the differences between sentences for default.

Before a fine option program can be successfully established in British Columbia, further preliminary research is needed. It is essential that the judiciary be supportive not only of the concept of a fine option program but also its actual

operation. It may be necessary to run a sizeable fine option program on an experimental basis first and then if this is successful some changes may be needed either to the criminal code or to provincial legislation to give the fine option programs a legislative basis. Without this legal foundation such programs may atrophy due to lack of clientele.

This point seems to have been recognized by the federal government. Bill C-21, which was given its first reading before the House of Commons on November 21, 1978, proposed the following addition to the Criminal Code in order to accomodate the initiation of fine option programs:

> 650.1 (1) An accused on whom a fine has been imposed in respect of an offence may discharge the fine in whole or in part by earning credits for work performed, before or after imprisonment or before or after imprisonment for default of payment of the fine, in a program established for that purpose.

Shortly thereafter, a change of government occurred and the Bill looks to have fallen by the wayside. It is possible, however, that additional research stimulating interest in fine option programs could revive the Bill or produce a similar amendment.

To date the research concerning the efficacy of the fine, as measured by recidivism rates is inconclusive at best. Research of this nature is fraught with difficulty as there are no doubt many factors, which may affect the offender's chances of recidivating and cannot be controlled for. It is important, therefore, in conducting such research to control for as many variables, which may be related to recidivism, as possible in an attempt to isolate more accurately the effect of the sanction. A

common technique is that of matching offenders on known variables and then comparing their reconviction rates over time by the initial sanction imposed. From the literature the following factors should be considered:

(a) the offender's criminal history - both the number and types of offences for which he has been convicted and the current offence.

(b) age

(c) sex

(d) race

(e) the size of the fine imposed

(f) the number of days in prison the offender will serve should he default

(g) his previous number of defaults, if any

(h) the length of time the offender is given by the court to pay his fine and the terms of payment

(i) the offender's occupation and employment status

(j) the offender's income and financial liabilities and responsibilites

(k) marital status and number of dependants

(l) the number and types of offences subsequently committed during the follow-up period, the sanctions imposed, and at what point after the original sentencing these offences occurred.

As previously discussed, this list is almost certainly an incomplete accounting of factors relevant to the efficacy of the fine or any other sanction. However, should they be included in

a study which followed a large number of offenders over time they may yield a wealth of information concerning the fine both in general and as a deterrent to further crime.

Yet another policy issue, which relates both to the use and efficacy of the fine, is that of current sentencing restrictions on the use of the fine alone for those offences punishable by five years or more in prison, as delineated in s. 646 of the Criminal Code. Compared with the limitations on other sanctions, this regulation appears unnecessarily in restrict fine use. In the case of absolute discharges and probation, for example, s.662.1 of the Criminal Code provides that, unless a minimum punishment is prescribed by law, any offence punishable by less than imprisonment for fourteen years or for life, may, at the discretion of the court, result in the accused being discharged absolutely or upon the conditions prescribed in a probation order. There is no immediately apparent, logical reason why the fine may only be used in addition to another sanction for offences punishable by five years in prison or more.

Research into the efficacy of the fine may clarify the reasons for such a restriction or, alternatively, show that it is an unnecessary provision. Should the research show that a fine alone is adequate, amendments to the Criminal Code, analogous to s.662.1, should be made thereby providing the judiciary with more flexibility in sentencing. Such an amendment might not only increase the incidence of fining and the range of offences for which it could be used, but would also reduce the

frequency of 'double sentences', i.e., the fine plus another sanction, which combination may in some cases be more than necessary to adequately deal with the offender and are expensive to administer.

At least in theory, there is much to commend the fine as a criminal sanction. Because a financial penalty is easily quantifiable, the fine offers a very real opportunity to match the severity of the punishment to the gravity of the offence and the circumstances of the offender. Unlike many other sanctions, such as probation, the administration of the sentence remains under the control of the Court. Thus, should the offender's situation change in such a way as to make the original sentence overly severe, the Court can mitigate the punishment imposed to the degree initially intended. If used without imprisonment for default, the offender can maintain his job and his dignity. Neither he nor his family would appear to suffer the stigma that some other sanctions may engender and the family unit is not subjected to dislocation. From the state's point of view it is both a cost effective and expedient sanction which appears to be no less effective overall than other dispositions.

On the other hand, in practice, the fine may have some very serious drawbacks. The accusation has been made that it is a discriminatory sanction, favouring the wealthy offender. There is some evidence that the imposition of a financial penalty on some offenders may result in unintended financial hardship, encroaching upon their ability to provide the necessities of

life for their families. It has also been said that a fine may merely constitute a license to commit further crime and that in crimes of financial gain, e.g., prostitution, it is just regarded an an overhead cost of 'doing business'. Some of the research indicates that there may be serious disparities in the lengths of sentences that defaulters receive. Moreover, some fine defaulters are serving out their fines in prison at very low rates *per diem*. Possibly, the most serious criticism of the fine is that, in some cases, it is really a sentence of incarceration in disguise; that some indigent offenders are being imprisoned owing to their inability, rather than their unwillingness, to pay the fine and that the fine as a non-custodial penalty in these cases is an illusion.

As a result of the lack of investigative research on the fine, the actual state of accounts is unknown. Practice is indeed outstripping theory on a grand scale. Until such time as a more comprehensive picture of the use and efficacy of the fine can be pieced together from the results of intensive empirical research, the state of the fine will remain as it now is; an enigma.

Appendix A

Content of Major Offence Categories

	Act	Sections
Offences against the person	ccc(1) Assault	228 229 230 231 232 244 245 246
	ccc(2) Homicide	212 213 214 218 219 220 222
	ccc(3) Offensive Weapon	76 78 79 80 82 83 84 85 86 87 88 89 90 91 92 93 94 96 102
	ccc(4) Robbery	302 303 304
	ccc(5) Sexual Offences	143 144 145 146 148 149 150 151 152 153 154 155 156 157 169 170 253
Property Offences	ccc(1) B & E	306 307 309
	ccc(2) Possession Stolen Property	312 313 314 315
	ccc(3) Theft	283 287 290 292 294 295
	ccc(4) Fraud	121 256 296 301 305 320 321 322 324 325 326 327 329 330 335 336 338 340 346 351 352 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371

Content of Major Offence Categories (continued)

Statutes	Act	Sections
Federal	BRA CIA CPA CRA CSA CVA EXA FFA IMM ITA JDA MBA NHB NPA PSA PSS RIA SVR VIA	All
Provincial	BCF CAL FAA FIA FRA GLA LCA LTA MWA OTH PC RTA SCA SEC SST WLA	All
Municipal by-law	BL	All
Driving Provincial motor vehicle	CTA MCA MVA MVR	All
Motor vehicle offences	CCC	203 204 233 234 235 236 238
Drugs	FDA NCA	All
Other Breach of Probation	CCC	666
Failed to Appear	CCC	133
Other	CCC	64 67 73 98 101 103 106 116 118 119 120 122 125 127 128 130 132 135 138 159 162 163 164 165 168 171 172 173 175 184 202 217 223 240 242 243 247 249 250 254 260 264
Social Other	CCC	166 167 185 186 187 189 191 192 193 194 195

Appendix B

Date	Other	Discharge	Prob/SS	DL	Fine	Jail	Pen	N
PERSON								
1976	.53	17.39	20.80	0	35.04	24.07	1.5	2634
1977	.84	14.30	24.47	-	37.13	22.10	.66	2742
1978	.38	15.57	28.04	.08	31.91	22.34	1.15	2614
1979	.51	14.82	23.25	.03	36.58	23.62	.61	2955
1980	.54	9.76	27.6	-	38.89	21.30	1.4	3361
1981	.36	10.67	26.85	-	37.08	23.68	.11	3590
1982	.59	8.79	25.34	-	35.10	28.29	.73	3698
	.52	13.04	25.17	.04	35.96	23.63	1.31	21594
PROPERTY								
1976	.01	18.10	23.90	-	26.28	30.93	.27	10552
1977	.05	16.17	27.55	-	25.00	30.54	.26	10640
1978	.07	15.17	32.05	.01	22.32	29.64	.12	11304
1979	.04	14.81	28.89	-	25.56	29.63	.13	12143
1980	.02	10.84	32.22	-	26.80	29.32	.19	13002
1981	-	11.18	28.73	-	28.21	30.43	.37	14738
1982	.02	9.14	29.57	-	27.76	32.56	.16	16416
	.03	13.63	28.99	-	25.99	30.44	.21	88795
STATUTES								
1976	.13	.55	4.85	.03	92.37	1.84	.01	10306
1977	.07	.40	5.01	.02	92.34	1.80	.02	10828
1978	.13	1.52	6.19	-	90.20	1.70	-	10358
1979	.27	1.07	5.41	.09	90.0	2.71	-	12413
1980	.29	.98	4.88	.08	90.81	2.06	-	12899
1981	.11	1.38	7.56	.04	88.29	2.06	-	13488
1982	.24	.72	9.8	-	86.39	2.16	-	13289
	.18	.95	6.24	.04	90.19	2.05	-	82581

Appendix B (continued)

Date	Other	Discharge	Prob/SS	DL	Fine	Jail	Pen	N
DRIVING								
1976	7.62	.17	3.19	2.09	81.70	5.06	.01	37455
1977	9.90	.14	2.57	3.31	78.91	4.5	-	44917
1978	8.87	.26	8.13	4.16	72.18	6.08	-	40578
1979	12.81	.20	2.50	3.95	73.40	6.58	-	41523
1980	13.90	.16	2.43	5.33	72.36	5.57	-	46545
1981	18.47	.14	4.39	4.38	67.74	4.56	-	53731
1982	20.34	.08	4.65	3.19	61.35	10.15	-	51751
	13.13	.16	3.98	3.77	72.52	6.07	-	316500
DRUGS								
1976	0	14.29	6.21	-	66.28	12.29	.51	6313
1977	-	14.53	9.18	-	64.51	11.34	.22	5883
1978	-	15.34	10.67	-	62.86	10.56	.30	4744
1979	-	17.30	8.45	-	63.61	10.08	.12	5186
1980	-	14.24	12.80	-	62.53	9.95	.12	6010
1981	-	10.47	13.08	-	63.08	13.06	.01	6936
1982	.02	7.27	12.55	-	63.98	15.86	.05	5969
	-	13.35	10.42	-	63.84	11.88	.19	41041
OTHER								
1976	2.32	8.98	17.09	.02	38.70	32.17	.17	6344
1977	3.97	7.72	16.32	-	40.89	29.95	.12	6771
1978	4.33	7.46	20.47	-	37.62	29.55	.05	6449
1979	4.45	8.17	17.49	.04	39.76	29.49	-	7234
1980	5.26	6.05	18.79	-	40.35	29.04	.07	8391
1981	5.65	6.69	17.63	-	39.58	29.46	.05	8730
1982	6.26	5.4	16.82	-	35.14	35.29	.02	8748
	4.61	7.21	17.87	-	38.86	30.72	.07	52667

Appendix C
1976

	Other Disp.	Disch.	Prob.SS	DL.Susp.	Fine	Jail	Pen.
Offences Against the Person	N=2634 (99.33%)						
Assault	10/1617	336/1617	321/1617	0	660/1617	277/1617	1/1617
Homicide		1/8	2/8		1/8	4/8	0/8
Off.Weapon	3/598	83/598	142/598	0	217/598	149/598	1/598
Robbery	0	5/219	18/219	0	52/219	152/219	38/219
Sex Off.	1/192	33/192	65/192	0	41/192	52/192	0/192
	.53%	17.39%	20.80%	0	35.04%	24.07%	1.5%
Property Offence	N=10552 (99.49%)						
B & E	1/1524	66/1524	489/1524	0	121/1524	815/1524	17/1524
Poss. SP.	0/999	133/999	244/999	0	231/999	386/999	2/999
Theft	0/6060	1522/6060	1270/6060	0	2026/6060	1213/6060	5/6060
Fraud	0/1969	189/1969	519/1969	0	395/1969	850/1969	5/1969
	.01%	18.10%	23.90%	0	26.28%	30.93%	.2%
Statues and By-Laws	N=10306 (99.78%)						
Federal	0/2966	18/2966	70/2966	1/2966	2755/2966	18/2966	0
Provincial	5/6055	39/6055	324/6055	2/6055	5616/6055	54/6055	1/6055
Mun. By-Laws	8/1285	0	106/1285	0	1149/1285	18/1285	0
	.13%	.55%	4.85%	.03%	92.37%	1.84%	.01%

Appendix C (continued)

	Other Disp.	Disch.	Prob.SS	DL.Susp.	Fine	Jail	Pen.
Driving N=37455 (99.84%)							
M/V Offence	0/20934	57/20934	113/20934	4/20934	19026/20934	1704/20924	5/20934
Prov. mv.	2855/16521	5/16521	1081/16521	778/16521	11575/16521	190/16521	0
	7.62%	.17%	3.19%	2.09%	81.70%	5.06%	.01%
Drugs N=6313 (99.58%)							
Drugs	0/6313	902/6313	392/6313	0	4184/6313	776/6313	32/6313
	0	14.29%	6.21%	0	66.28%	12.29%	.51%
Other N=6344 (99.45%)							
Breach of Prob.	0/782	14/782	144/782	0	210/782	404/782	0
FTA	0/1764	63/1764	133/1764	0	392/1764	1162/1764	6/1764
Other	5/145	11/145	24/145	0	88/145	16/145	1/145
Other CCC	141/3536	468/3536	747/3536	1/3536	1723/3536	432/3536	2/3536
Soc. other	1/117	14/117	36/117	0	42/117	22/117	2/117
	2.32%	8.98%	17.09%	.02%	38.70%	32.17%	.17%

Appendix D
(1977)

	Other D.	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	Σ
Offences Person								
Assault	18/ 1719	284	394	0	728	292	1	1719
Homicide	1/ 11	-	2	-	1	6	-	11
Off. Weapon	1/ 574	82	148	-	207	129	2	574
Robbery	-/ 181	1	27	-	10	131	12	181
Sex	3/ 257	25	100	-	72	48	3	257
99.5	.84	14.30	24.47	-	37 [illegible]	22 10	.66	2742
Against Property								
B & E	1	56	502	-	142	810	17	1544
Poss. Sp.	-	130	252	-	237	362	4	898
Theft	3	1329	1566	-	1825	1149	2	5889
Fraud	1	205	611	-	456	928	5	2218
99.57	.05	16.17	27.55		25.0	30.54	.26	10640

Appendix D (continued)
(1977)

	Other D.	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	Σ
Statutes and By-laws								
Federal	1	19	78	1	2890	123	1	3118
Provincial	7	20	323	1	5819	68	1	6255
Municiple	-	4	142	-	1290	4	-	1455
99.66	.07	.40	5.01	.02	92.34	1.80	.02	10828
Driving								
M/v off.	-	19	78	1	2890	123	1	3118
Prov. m.v.	4449	9	997	1481	16779	147	-	23889
99.33	9.90	.14	2.57	3.31	78.91	4.5	-	44917
Drugs								
	-	855	540	-	3795	667	13	-
99.78	-	14.53	9.18	-	64.51	11.34	.22	5883

Appendix D (continued)
(1977)

	Other D.	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Other								
Br. of Prob.	-	19	165	-	288	405	-	880
FTA	-	46	152	-	393	1095	2	1700
Other	24	2	42	-	90	33	-	192
Other CCC	245	454	759	1	1965	474	6	3921
Soc. Other	-	2	21	-	33	21	-	78
99.47	3.97	7.72	1682		40.89	29.95	.12	6771

Appendix E
(1978)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Offence Prison								
Asslt	10	269	464	-	6/2	297	2	1662
Hom.	-	-	3	-	-	5	-	8
Off.W.	-	72	169	-	160	118	1	523
Rob.	-	3	26	-	11	117	26	183
Sex.	-	63	71	2	51	47	1	238
99.47	.38	15.57	28.04	.08	31.91	22.34	1.15	2614
Against Property								
B & E	6	45	611	1	107	838	7	1631
Poss. Sp.	-	125	269	-	207	355	1	962
Theft	-	1323	2040	-	1823	1318	3	6530
Fraud	2	222	703	-	386	840	2	2181
99.38	.07	15.17	32.05	.01	22.32	29.64	.12	11304

Appendix E (continued)
(1978)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Statute By-Law								
Federal	1	53	101	-	2907	91	-	3159
Provincial	12	81	377	-	5477	80	-	6044
Municiple	-	23	163	-	959	5	-	1155
99.74	.13	1.52	6.19	-	90.20	1.70	-	10358
Driving								
M/v off.	1	57	2299	6	15806	2325	1	20578
Prov. mv.	3597	50	1000	1683	13484	141	-	20000
99.68	8.87	.26	8.13	4.16	72.18	6.08	-	40578
Drugs	0	728	506	-	2982	501	14	4744
99.78	-	15.34	10.67	-	62.86	10.56	.30	4744

Appendix E (continued)
(1978)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Other								
Br. of Prob.	1	21	152	-	241	355	-	779
FTA	-	26	158	-	420	1075	-	1688
Other	3	2	17	-	90	13	-	126
Other CCC	275	429	977	-	1643	456	3	3798
Soc. Other	-	3	16	-	32	7	-	58
99.48	4.33	7.46	20.47	-	37.62	29.55	.05	6449

Appendix F
(1979)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Assault	14	326	424	-	786	323	-	1883
Homicide	-	-	1	-	2	6	1	10
Off. Weap.	-	66	163	-	200	152	1	584
Robbery	-	1	19	-	19	142	14	195
Sex	1	45	80	1	74	75	2	283
99.42	.51	14.82	23.25	.03	36.58	23.62	.61	2955
Against Property								
B & E	4	39	624	-	191	931	10	1865
Poss. Sp.	-	119	283	-	267	423	2	1103
Theft	1	1411	1872	-	2066	1414	1	6787
Fraud	-	229	729	-	580	830	3	2388
99.06	.04	14.81	28.89	-	25.56	29.63	.13	12143

Appendix F (continued)
(1979)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Statute By-Law								
Federal	-	37	74	-	1774	197	-	1991
Provincial	2	8	161	-	1553	7	-	1740
Municiple	32	88	437	11	7956	132	-	8682
100.45	.27	1.07	5.41	.09	90.90	2.71	-	12413
Driving								
M/v off.	-	38	156	9	17334	2594	1	20289
Prov. mv.	5319	47	881	1633	13145	138	-	21234
99.44	12.81	.20	2.50	3.95	73.40	6.58	-	41523
Drugs	-	897	438	-	3299	523	6	5186
99.56	-	17.30	8.45	-	63.61	10.08	.12	5186

Appendix F (continued
(1979)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Other								
Br. of Prob.	-	16	142	-	213	396	-	775
FTA	-	37	163	-	451	1190	-	1850
Other	1	5	16	3	55	10	-	90
Other CCC	321	530	928	-	2121	533	-	4460
Soc. Other	-	3	16	-	36	4	-	59
99.4	4.45	8.17	17.49	.04	38.76	29.49	-	7234

Appendix G
(1980)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Offence Persons								
Assault	15	258	545	-	946	323	2	2096
Homicide	-	-	2	-	1	11	1	15
Off. Weapon	-	59	227	-	263	149	-	703
Robbery	-	-	34	-	21	165	42	264
Sex	3	11	115	-	76	68	2	283
99.35	.54	9.76	27.46	-	38.89	21.30	1.4	3361
Against Property								
B & E	-	63	665	-	190	1012	11	1959
Poss. SP.	-	94	262	-	275	399	1	1044
Theft	-	1075	2464	-	2422	1516	3	7511
Fraud	3	177	798	-	597	885	10	2488
99.39	.02	10.84	32.22	-	26.80	29.32	.19	13002

Appendix G (continued)
(1980)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Statute By-Law								
Federal	2	46	105	-	1448	74	-	1677
Provincial	31	74	376	10	7881	183	-	8578
Municiple	5	6	148	-	2385	9	-	2644
99.1	.29	.98	4.88	.08	90.81	2.06	-	12899
Driving								
M/v off.	-	43	151	3	18878	2443	3	21561
Prov. mv.	6472	30	979	2478	14804	148	-	24984
99.75	13.90	.16	2.43	5.33	72.36	5.57	-	46545
Drugs	-	856	769	-	3758	598	7	6010
99.64		14.24	12.80	-	62.53	9.95	.12	6010

Appendix G (continued)
(1980)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Other								
Br. of Prop.	-	19	169	-	343	472	-	1009
FTA	1	35	193	-	508	1339	-	2087
Other	-	8	17	-	83	16	-	125
Other CCC	440	444	1185	-	2393	605	6	5089
Soc. Other	-	2	13	-	59	5	-	81
99.56	5.26	6.05	18.79	-	40.35	29.04	.07	8391

Appendix H
(1981)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Offence Persons								
Assault	10	288	587	-	1016	408	-	2325
Homicide	-	-	-	-	-	5	-	6
Off. Weapon	2	78	223	-	253	159	-	730
Robbery	-	-	34	-	18	186	3	247
Sex	1	17	120	-	44	92	1	282
98.75	.36	10.67	26.85	-	37.08	23.68	.11	3590
Against Property								
B & E	-	16	691	-	218	1102	33	2106
Poss. SP.	1	109	360	-	361	548	2	1398
Theft	-	1353	2425	-	2912	1800	1	8542
Fraud	-	169	758	-	667	1035	19	2692
98.92	-	11.18	28.73	-	28.21	30.43	.37	14738

Appendix H (continued)
(1981)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Statute By-Law								
Federal	-	49	141	-	1367	68	-	1630
Provincial	13	115	496	5	7746	188	-	8604
Municiple	1	8	307	-	1913	1	2254	
99.44	.11	1.38	7.56	.04	88.29	2.06	-	12488
Driving								
M/v. off.	-	29	90	-	19851	2117	-	22135
Prov. mv.	9922	44	2270	2351	16549	334	-	31596
99.68	18.47	.14	4.39	4.38	67.74	4.56	-	53731
Drugs	-	726	907	-	4375	906	1	
99.7	-	10.47	13.08	-	63.08	13.06	.01	6936

Appendix H (continued)
(1981)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Other								
Br. of Prop.	-	30	195	-	401	548	1	1194
FTA	2	34	191	-	609	1457	1	2322
Other	1	6	13	-	55	12	-	87
Other CCC	490	481	1127	-	2361	552	2	5049
Soc. Other	-	33	13	-	29	3	-	78
99.06	5.65	6.69	17.63	-	39.58	29.46	.05	8730

Appendix I
(1982)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Offence Persons								
Assault	19	233	584	-	960	469	4	2287
Homicide	-	-	1	-	-	4	2	7
Off. Weapon	2	82	214	-	258	196	1	761
Robbery	-	-	34	-	11	280	12	348
Sex	1	10	104	-	69	97	8	295
98.84	.59	8.79	25.34	-	35.10	28.29	.73	3698
Against Property								
B & E	-	15	746	-	163	1387	12	2360
Poss. SP.	1	99	390	-	353	705	2	1567
Theft	2	1210	2964	-	3417	2124	6	9774
Fraud	-	176	754	-	624	1129	7	2715
99.21	.02	9.14	29.57	-	27.76	32.56	.16	16416

Appendix I (continued)
(1982)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Statute By-Law								
Federal	-	33	102	-	1454	109	-	1701
Provincial	28	51	473	-	6522	169	-	7281
Munciciple	4	12	728	-	3504	9	-	4307
99.31	.24	.72	9.8	-	86.39	2.16	-	13289
Driving								
M/v. off.	1	7	49	1	15205	3822	1	19147
Prov. mv.	10527	32	2357	1648	16545	1419	-	32604
99.76	20.34	0.8	4.65	3.19	61.35	10.15	-	51751
Drugs	1	434	749	-	3819	947	3	5969
99.73	.02	7.27	12.55	-	63.98	15.86	.05	5969

Appendix I (continued)
(1982)

	Other	Disch.	Prob.SS	D.L.	Fine	Jail	Pen.	
Other								
Br. of Prop.	-	17	213	-	410	751	-	1409
FTA	-	31	176	-	515	1634	-	2377
Other	-	8	9	-	41	14	-	72
Other CCC	547	415	1064	-	2101	693	2	4868
Soc Other	1	1	9	-	7	4	-	22
99.03	6.26	5.4	16.82	-	35.14	35.39	.02	8748

Appendix J

B.C. Fine Defaulters by Age

% Admissions	74/75	75/76	76/77	77/78	78/79	79/80	80/81	81/82	82/83	$\bar{x}$
Under 18	2.6	1.4	1.6	1.0	1.1	1.0	1.1	.0	.9	1.2
18-19	11.0	9.0	8.2	8.1	9.0	8.5	7.2	9.5	8.0	8.72
20-21	13.8	12.4	12.5	12.6	10.5	12.1	11.3	14.9	13.9	12.67
22-24	16.2	17.0	15.4	16.0	16.0	18.7	18.7	18.7	19.2	17.32
25-29	18.8	20.0	20.2	20.3	20.9	20.6	20.0	17.8	20.6	19.9
30-34	11.1	10.0	11.6	13.0	14.1	13.2	14.3	16.5	13.5	13.03
35-39	7.9	9.2	9.9	9.5	9.9	9.5	10.2	8.3	9.5	9.32
40-49	13.2	13.9	13.5	11.6	11.9	9.5	10.3	7.9	9.2	11.22
50+	5.5	7.0	7.0	7.9	6.6	6.9	7.0	6.3	5.2	6.6

Appendix K

B.C. Fine Defaulters by Race

% Admissions	74/75	75/76	76/77	77/78	78/79	79/80	80/81	81/82	82/83	$\bar{x}$
Native	22.7	22.3	19.4	18.9	18.2	22.6	22.1	16.8	17.6	20.07
Non-native	77.3	77.7	80.6	81.1	81.8	77.4	77.9	83.2	82.4	79.93

Appendix L

B.C. Fine Defaulters by Sex

% Admissions	74/75	75/76	76/77	77/78	78/79	79/80	80/81	81/82	82/83	$\bar{x}$
Male	96.3	97.4	97.0	96.8	96.4	97.0	97.7	98.1	97.1	97.09
Female	3.7	2.6	3.0	3.2	3.6	3.0	2.3	1.9	2.9	2.91

Appendix M

B.C. Fine Defaulters by Offence

% Admissions	74/75	75/76	76/77	77/78	78/79	79/80	80/81	81/82	82/83	$\bar{x}$
Admin.	2.4	2.7	2.9	2.6	3.9	4.1	4.4	3.5	2.3	3.2
Breach/Prob.	1.3	1.1	2.0	1.9	2.7	2.1	2.3	1.9	3.0	2.03
B & E	1.3	1.7	1.1	.9	1.2	1.6	2.0	2.5	1.6	1.54
Cannabis	-	1.2	6.4	7.5	5.6	3.5	3.4	4.1	3.2	3.88
Cann.Poss.	-	1.2	6.0	6.3	5.3	2.9	2.5	3.8	2.2	3.36
Driv./Disq.	2.1	3.7	2.5	3.2	5.2	5.1	5.2	1.9	2.1	3.44
Driv./Drink.	35.7	45.7	47.1	50.5	46.9	48.0	44.3	52.4	46.6	46.36
Drugs	13.2	9.0	9.9	10.9	10.1	8.6	8.0	8.6	10.6	9.88
Heroin	-	.3	.6	.7	.8	.3	.1	-	.1	.32
Mv.Related	50.9	55.3	54.4	57.1	56.3	57.0	54.1	58.07	52.8	55.11
Person	3.3	4.4	3.2	3.3	3.4	3.8	4.1	3.5	3.7	3.64
Property	14.9	17.5	17.3	12.7	14.0	15.7	17.1	14.3	17.2	15.63
Pub.Order	12.0	9.6	6.8	9.5	9.4	9.4	7.6	7.0	9.3	8.96
Seniors	2.4	2.3	2.9	3.5	2.7	3.6	5.3	6.3	5.0	3.78
Sexual	1.1	.2	.6	.2	.2	.3	.2	.0	.2	.33
Theft/Fraud	1.3	1.4	1.0	.4	.6	1.4	1.0	1.3	1.6	1.11
Theft/$200	7.5	8.0	9.0	5.6	6.4	6.3	6.6	6.0	6.8	6.91
Violent	.4	.3	.2	.1	.1	.2	.3	.3	.1	.22
Weapons	1.3	1.1	1.1	1.2	.9	.9	2.0	1.3	1.5	1.26

Appendix N

B.C. Fine Defaulters

Offence Categories

Administrative Offences	Administrative offences are those relating to money and public administration under the following acts: Family Relations, Women and Children's Maintenance, Customs, Post Office, Unemployment Insurance.
Breaches of Probation	Breaches of probation, parole, 64A and intermittent sentences.
Cannabis, Drugs, Heroin	Includes all trafficking, possession, importing, possession with intent to traffic, and cultivation offences.
Cannabis Possession	Includes cannabis possession only.
Driving and Drinking	Includes impaired driving, driving over .08 and failure to blow.
Motor Vehicle Related	Includes impaired driving, driving over .08, failure toblow, failure to stop, negligence in the use of a motor vehicle, disqualified driving, taking an auto without consent and other motor vehicle act offences.
Person	Includes all offences involving direct intended harm to a person. These are: point a firearm, rape, attempted rape, sex with an underage female, sex with the feeble-minded, indecent assault, incest, buggery, gross indecency, corrupting children, murder, attempted murder, manslaughter attempted suicide, harm with intent to wound, common assault, assault with intent to wound, assaulting a peace officer, kidnapping, robbery, extortion, harassing or threatening and contributing to juvenile delinquency.

Appendix N (continued)

B.C. Fine Defaulters

Offence Categories

Property	Includes all theft offences plus extortion, breaking and entering, possession and housebreaking instruments, possession of stolen property, false pretences, fraud, forgery, counterfeiting, arson.
Public Order	Includes unlawful assembly, riot, resisting a peace officer, failure to assist a peace officer, impersonating a peace officer, causing a disturbance, trespassing, vagrancy, mischief, common assault, assaulting a peace officer, unlawfully in dwelling, fraud in obtaining food or lodging, harassing or threatening, liquor act, railways act, false fire alarm.
Serious	Includes escaping lawful custody, rape, attempted rape, sex with an underage female, sex with the feeble-minded, indecent assault, murder, attempted murder, manslaughter, harm with intent to wound, assault with intent to wound, kidnapping, robbery, extortion, making counterfeit money, all drug importing or trafficking, conspiracy, breach of national parole, buggery, incest and gross indecency.
Sexual	Includes rape, attempted rape, sex with an underage female, sex with the feeble-minded, indecent assault, incest, buggery, gross indecency, obscene matter, corrupting children, indecent act, indecent exposure, prostitution-related, bawdy house-related and other moral offences.
Theft by Fraud	Those offences in which the theft is indirect and non-violent, including theft by conversation forgery and uttering, counterfeiting, public fraud.

Appendix N (continued)

B.C. Fine Defaulters

Offence Categories

Violent	These are offences involving direct serious physical violence to a person including rape, attempted rape, indecent assault, murder, attempted murder, manslaughter, harm or assault with intent to wound, kidnapping, robbery.
Weapons	Includes possession or use of a firearm, explosives or other weapon pointing a firearm and robbery.

Appendix O

B.C. Fine Defaulters

Sentence Length in Days

% Admissions	74/75	75/76	76/77	77/78	78/79	79/80	80/81	81/82	82/83
1-7	.1	1.0	2.6	15.9	16.7	15.6	13.6	16.8	21.2
15-21	.1	.8	3.2	27.5	35.9	35.7	31.6	32.4	34.0
15-21	.1	.2	1.6	14.2	13.6	16.4	17.3	16.8	17.8
22-30	56.3	70.7	66.8	27.6	20.6	20.2	24.9	19.7	17.2
31-45	-	-	.2	1.3	2.3	2.5	3.1	4.1	2.2
46-60	37.3	23.2	20.9	9.2	5.3	4.0	5.4	5.7	3.3
61-90	.1	-	.6	2.0	3.8	3.0	2.3	3.2	2.8
91-180	6.0	4.1	3.9	2.0	1.4	2.0	1.4	1.3	1.5
181-270	-	.1	-	-	.1	.2	-	-	-
271-360	-	-	.1	.1	.2	.3	.1	-	-
361-719	-	-	-	.1	-	-	.1	-	-
720+	-	-	-	.1	-	-	.2	-	-

Appendix P

B.C. Fine Defaulters

Recidivism Measures

% Admissions	74/75	75/76	76/77	77/78	78/79	79/80	80/81	81/82	82/83
No previous formal contact.	54.1	50.2	45.2	42.3	39.3	33.0	33.3	29.8	33.2
No previous time in jail.	8.0	9.7	11.2	14.5	13.7	16.8	15.6	18.4	17.6
No previous jail sentence.	5.8	6.4	7.6	5.9	7.1	7.8	8.3	8.6	7.2
Previous jail over 2 years ago.	3.3	9.2	12.6	14.3	14.7	15.5	16.2	17.8	17.6
Previous jail within 2 years.	28.8	24.5	23.5	23.0	25.2	26.9	26.6	25.4	24.4

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