

**SEX OFFENDERS IN COMMUNITY CORRECTIONS:  
POLICY AND PRACTICE IN BRITISH COLUMBIA**

by

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THESIS PROPOSAL SUBMITTED IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE DEGREE  
OF MASTER OF ARTS  
in the School  
of  
Criminology

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**SIMON FRASER UNIVERSITY**

November 1997

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0-612-24164-5

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## Abstract

The dramatic increase of sex offences in British Columbia threatens public safety. Heightened public pressure has been placed on corrections to develop effective management for sex offenders in the community. There are a few studies focusing on the effectiveness of community-based treatment initiatives. However, few studies have examined the response of the community corrections in British Columbia to sex offenders. This thesis explores the management policies and operational practices utilized for sex offenders on probation in British Columbia. A qualitative research method is used involving interviews with policy-makers in charge of sex offender policies and sex offender specialists (probation officers), as well as people who are working for victims-of-crime organizations and citizen groups in British Columbia.

According to the findings, while in the 1980s sex offender supervision practices were developed based on the increased knowledge about sex offenders and treatment (i.e., the relapse prevention approach), in the 1990s the sex offender policies in British Columbia were formulated to respond to the public's and victims' demands for increased community safety. Recently, the formalization of supervision and intrusion into the life of offenders have increased. Sex offender policies in British Columbia are implemented with more emphasis on the goals of offender control and public safety than on the goal of offender rehabilitation. These policies are based on the assumption that there is no cure for sex offenders, but that such behaviour can be managed through efficient risk management in the community. However, some difficulties were pointed out with translating these policies into actions. Treatment opportunities were not provided for

sex offenders as much as home visits and liaisons with the local police. There were few networks for solving problems in the community and for helping victims. Community members presented a variety of critical views of the sex offender policies and practices.

The study concludes that the sex offender policies and practices in British Columbia are based on the traditional offender-focused paradigm and function as a punitive approach against the backdrop of retributive political climates. Finally, the research findings suggest the requirements for efficient risk management for the general policy in community corrections.

## Dedication

*To my wife, Atsumi, and my children, Ayano, Shotaro and Yuto.*

## Acknowledgments

I would like to extend my gratitude to all those who supported me in the process of writing this thesis, either directly or indirectly. In particular, I would like to thank my supervisors, Dr. Curt T. Griffiths and Dr. William Glackman, for their constructive criticism, helpful suggestions and generous guidance throughout this endeavour.

As well, I would like to acknowledge the assistance given to me by many probation officers as well as high-ranking officials at the Ministry of Attorney General of British Columbia (Corrections Branch) and Justice Institution of British Columbia, as well as many volunteers working for the community and victims for allowing me interview and access the data on which this thesis is based. Special thanks is extended to the Ministry of Justice, Japan (Rehabilitation Bureau) for giving me an invaluable opportunity to study overseas.

A warm “thank you” is for many new friends whom I have met at Simon Fraser University and the encouragement and support I have received is overwhelming.

Finally, I am especially indebted to Atsumi. Without her encouragement, understanding, patience, assistance and love, this thesis would not have been completed. My children, Ayano, Shotaro and Yuto also gave me a “hope.” Our collective work contributed to producing this thesis.

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# Chapter I

## INTRODUCTION

### OVERVIEW

This study explores the management policies and operational practices utilized for sex offenders on probation in British Columbia. More specifically, the thesis will attempt to answer the following questions: (a) What are the policies for sex offenders on probation and upon what basis are these policies formulated? (b) How are these policies implemented by line level supervisory personnel? (c) How do these sex offender policies and practices function in the political cycle that includes offenders, victims, community, and the state? and, (d) What perceptions are held of these policies and practices by community interest groups which have an influence on the decision-making of criminal justice issues?

Public concern about the dramatic increase of sexual crimes has reached panic levels (Sampson, 1994). In 1994, there were 30,560 police-reported incidents of level I sexual assault, 104 per 100,000 population. This represents an increase of 99 percent since 1984, with an average annual increase of 8 percent (Canadian Centre for Justice Statistics, 1995b). It is argued that the increase of sex offenders on conditional release and probation threatens the feeling of safety in the community (Mills, as quoted in Ekstedt & Jackson, 1996: 206). Heightened public pressure has been placed on correctional systems to develop effective management and treatment for sex offenders in the community.

There has also been an expansion of treatment programs for sex offenders since the 1980s (Polowek, 1993: 5-23). At the federal level, the Correctional Service of Canada (CSC) has increased its capacity for treatment from less than 200 per year

in 1987 to more than 1700 in 1994/95 fiscal year, of which 600 offenders are in relapse prevention programs in the community (Carter & Lefaive, 1995). Management strategies for sex offenders have also developed to provide enhanced supervision of sex offenders. For example, at the provincial level, in 1987 the specialized supervision unit for adult sex offenders on probation was established in Vancouver. Attention to sex offenders has focused on the lack of support in the community for sex offenders after completion of their sentences (Mills, as quoted in Ekstedt & Jackson, 1996: 187; Griffiths & Verdun-Jones, 1994: 580). In recent years, the retributive political climate has pressured the federal and provincial governments into tightening the control of sex offenders. The Corrections and Conditional Release Act has recently been amended to make it easier to detain child sex offenders (s. 129(9)). It is in this context that public notification has become an issue.

There has also been increasing attention given to sex offenders by many academic researchers, and there are numerous studies focusing on the causes of sexual crime and the effectiveness of institutional and community-based treatment initiatives. However, there are few studies which have examined the response of the criminal justice system to the explosion of the number of sex offenders and the myriad of relevant issues (Sampson, 1994).

The formulation and direction of correctional policies for sex offenders are affected by many factors: (a) external factors such as the requirements of legislation and the process of law review; short-term political needs; the policy and procedures of related subsystems within the criminal justice system; and academic research; and, (b) internal factors such as professional interests; resource capabilities and operational maintenance needs (Ekstedt & Griffiths, 1988: 110). It should be noted that policy-

making to control criminal behavior may be influenced by national values, historical conditions and economic constraints (Hagan & Leon, 1978). For instance, the Canadian Charter of Rights and Freedoms, which reflects the transition of emphasis from social order to individual freedoms, provides a frame of reference within which policy is formulated.

Indeed, with regard to policies in community corrections, factors such as community attitude, community tolerance, community support (resource availability) and community structure may impact policy-making (Byrne, 1989). For example, it seems logical that the increased awareness of the public towards the protection of children would demand strict surveillance of child molesters. The political environment at the local and national levels also appears to play a crucial role in the direction and development of sex offender policies. The victim movement may affect the balance of power in this environment as well. In socially and economically hard times, there may be a demand on correctional institutions to return to the basics - the punishment of offenders with due attention to the protection of society (Ekstedt & Griffiths, 1988: 75). In sum, to understand the formulation and direction of current sex offender policies within the community corrections framework, attention should be paid to these factors which may affect policy-making and practice.

However, an unanswered, fundamental political question is "why the state behaves in particular ways and who benefits" from particular policies (Stephen, 1989: 46). Several explanations about how sex offender policies are constructed have been proposed, including changing attitudes toward child/adult sexuality, the emergence of feminist movements and the development of studies on sex offenders and victims (Polowek, 1993: 14-19). Additionally, public pressure from community and victims

through media coverage and social actions has been recognized as a factor in the formulation of sex offender policy. Although these explanations are plausible, they remain too vague to comprehend the entire picture of sex offender policies. Rock's observation on the policy-making for victims of crime in Canada can be applied to this issue:

Surmise and imputation have supplanted observation. Policy-making has been reduced to the analytic status of a small Black Box which is allowed to be neither very puzzling nor particularly threatening to other models and ideas. (Rock, 1986: xi)

Another question is how sex offender policies are implemented. More specifically, this study explores the current policies and practices for sex offenders in community corrections in one Canadian province and examines how the policies original intents and underlying principles are reflected in these practices.

A final question is how these policies and practices function within the political cycle that includes offenders, victims, community, and the state. Of particular concern is the question, how these sex offender policies and practices best protect and serve the community? A brief discussion about community corrections will make this point clear. Scull (1983: 146) defines the term "community corrections" as "a wide variety of policies and programs, whose major characteristic is that they constitute versions of formal social control operating outside the walls of traditional penal institutions, both juvenile and adult." Greenberg (1975: 1) also points out that "community corrections" denotes a reduced degree of segregation from ordinary social life. Probation, parole, diversion, fine, restitution, and community service order are included within the framework of community corrections. Community corrections programs were developed in the 1960s and 1970s on the basic

premise that community correctional programs were: (a) more effective in rehabilitating offenders; (b) more humanitarian; and (c) more economical than correctional institutions (Greenberg, 1975; Hylton, 1982). However, these assumptions are not necessarily supported by empirical studies. The promotion of community corrections resulted in increased resistance among members of the public and a steady increase in the prison population (Scull, 1983; Hylton, 1982; Greenberg, 1975). While admitting that community corrections served to expand the state's control over the behavior and freedom of individuals, Hylton (1982: 370) asserts that, unless the extension of correctional control is associated with the provision of better services to offenders, there is no justification for such an expansion. The author assumes that community corrections in the 1960s and 1970s expanded against the backdrop of offender rehabilitation as an objective, while paying little attention to the existing problems in the community. On the basis of these assumptions, Scull (1983: 165) concludes:

[T]inkering around with the criminal justice system a radically unjust society is unlikely to advance us very far toward justice, equity or, come to that, efficacy.

There are two different notions of community corrections under the philosophy of community protection. One direction is a "new" generation of community-based corrections which emphasizes risk control in the community rather than reintegration of offenders into the community. This direction is emerging under a retributive ideology which focuses on electronic monitoring, home arrest and intensive supervision (Benekos, 1990: 53; Byrne, 1989). In the 1980s, the probation population increased at a faster rate than the prison population. The increased population on probation posed an immediate threat to the community (Byrne, 1989).

Members of the public had a retributive attitude toward the offenders, but they did not want any more prisons to be built. Thus, intermediate sanctions were considered as a solution. Benekos (1990: 55) recognized that the ideological underpinnings of these new types of community corrections were not therapeutic but punitive and restrictive, and that the motivation was not humanitarian but economic. According to Byrne (1989):

[E]xisting intermediate sanction programs attempt to provide short-term community control by utilizing such offender-based strategies as drug/alcohol testing, curfew checks, surveillance (via high contact levels), and strict revocation procedures to induce compliance with treatment.

The other notion views that community corrections should be practiced with and for the community. The primary components of this direction are problem solving and the establishment of community partnerships (Barajas, 1996). With these approaches in mind, an issue is who benefits from the current sex offender policies and practices.

## **OBJECTIVES**

The purpose of this thesis is fourfold: (a) to document changes to the Criminal Code and sex offender probation policies at a provincial level; (b) to examine the factors that influence the formulation of sex offender policies; (c) to examine the practices utilized for sex offenders on probation; and (d) to evaluate these sex offender policies and practices in order to determine who benefits from these policies and practices.

To achieve these objectives, a number of field research methods will be employed. First, an analysis of the relevant policy documents will be undertaken to examine the changes to the Criminal Code as well as to policies and practices in

probation in terms of sex offenders. Second, interviews with provincial practitioners, administrators and policy-makers, as well as representatives of victims-of-crimes organizations and citizen groups in British Columbia will be conducted to determine their perceptions of the formulation of sex offender policies and their views of the impact of sex offender policies and practices on offenders, victims, community, and the state.

## **OVERVIEW OF FOLLOWING CHAPTERS**

Following the introduction, Chapter II examines the current explanations for sexual offending which provide the knowledge base for policy-making for sex offenders. Chapter III traces the changes to the Criminal Code that relate to sex offenders and the province of British Columbia's policies and practices for sex offenders on probation. Chapter IV discusses the method of the study. Chapter V analyzes the interviews with practitioners, administrators/policy-makers, representatives of victims-of-crime organizations and citizen groups, and attempts to answer the questions about the management policies and operational practices utilized for sex offenders on probation in British Columbia. Chapter VI analyzes the formulation of sex offender policies, examines the values upon which sex offender policies and practices in community corrections are based and identifies requirements for a general community corrections policy, as well as discusses the limitations of the thesis and offers recommendations for future research.

## **POLICY ANALYSIS: A FRAMEWORK**

Before examining sex offender policies and practices in British Columbia, it would be proper to provide a policy analysis framework within which an identification of the factors which influence the development of correctional policy can be



conducted.

## **Defining Policy**

According to Ekstedt and Griffiths (1988:103), public policy “may be viewed as a decision which constrains other decisions and gives meaning to the work to be done.” This definition of policy points out that a policy is not only an overall direction of followed activities, but also a basic social value statement. Policy has tremendous impact on a series of further decisions because it is upon the basis of the declared value that subsequent decisions are shaped (p. 102). The decision about how to address many competing and often contradictory values, and how to achieve social purpose, constitutes a focal stage in policy-making . In criminal justice policy, what is justice is a primary question that policy should address, implicitly or explicitly. The balance between fairness to the individuals and to the well-being of society as a whole remains a fundamental topic. More specifically, there is “(t)he growing demand on the part of the general public that the criminal justice system provides a better balance between the needs and interests of the offender and those of the victim ...” (Ekstedt and Jackson, 1996: 296). In fact, to fulfill the public’s demand that each social institution maintains a high level of public accountability, corrections system is under pressure to have clear policies with governing principles (p. 295). Defining policy as a value statement is useful for distinguishing policy from procedures, which “... establishes the specific means by which the policy can be implemented” (Ekstedt, 1991: 84). It is likely that in the criminal justice system, procedures are developed without articulated policies and major programs are implemented without regard for the original policy intents (pp. 84-85). This distinction provides the researcher with a perspective to analyze the development of

sex offender policies and practices.

Policy may reflect in "Philosophy" governing principles, and "Goal" and "Principles" which take the form of mission statements and the legislation. For example, the "Mission" document of Correctional Service of Canada (CSC) provides directions to the CSC<sup>1</sup>:

The Correctional Service of Canada, as part of the criminal justice system, contributes to the protection of society by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control (Correctional Service Canada, 1990).

The "Mission" statement specifies the business in which the CSC is engaged, and is followed by the Core Values (the basic and enduring ideals of the CSC), the Guiding Principles (the key assumptions which serve to direct the CSC in its daily actions), and the Strategic Objectives (those goals the CSC must articulate and strive to achieve because they are deemed to be essential in achieving the "Mission" over the long time). These four components make up the "Mission" document (Correctional Service Canada, 1990: Introduction). The "Mission" document is "the framework within which our policies and plans are developed and our decisions are made", "the basis upon which we want to be held accountable" (Introduction), and "a clearly and highly integrated set of goals" (Correctional Service Canada, 1991: 2). The purpose of the "Mission" statements is to realize a value-based, result-driven organization for doing good corrections (pp. 19-29). The lack of a policy framework is emphasized as the main cause of organizational dysfunction. What the "Mission" document aims to produce is literally an integrated policy. From the inmates' point of view, practices

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<sup>1</sup> It was signed by both the Minister and the Commissioner in February 1989, and two new strategic objectives were included in the second edition in 1990.

without clear policies had detrimental effects on the human rights of inmates (pp. 180-208). In the same vein, the document entitled "Beliefs, Goals, and Strategies" published by the Corrections Branch of British Columbia (revised: May 1986) portrays certain objectives against the backdrop of a set of values, goals, and strategies. Nevertheless, it should be noted that detailed matters with specific objectives for sex offender programs are not detailed in the "Mission" document of the British Columbia Corrections Branch. They may exist in other subsidiary legislation and documents such as directives, endorsed standards, and operation manuals.

### **Policy Analysis**

Policy analysis constitutes both the methods of problem structuring and problem solving. This thesis focuses on problem structuring, which is defined as a continuously recurring phase of policy inquiry in which analysts search among competing problem formulations of different stakeholders (Dunn, 1994: 138). Policy problems are not always objective and "are partly in the eye of the beholder" (p. 137). Problematic situations might be interpreted in different ways by different stakeholders, which reflect many factors such as different ideologies, frames of reference, world views, personal characteristics of analysts, and the institutional settings in which they work (Dunn, 1981, 1994). Since the actual policy-making process is political in nature, formal policy problems are often formulated in deliberately obscure terms in order to gain political acceptance. However, formal policy problems should correspond to the problematic situation as much as possible. Otherwise, it may result in errors of the third type: solving the wrong problem when one should have solved the right one (Dune, 1994: 151). To reduce this type of error, the conflicting assumption that policy stakeholders bring to a given problematic situation, but are

seldom conscious of, should be explored in the policy analysis.

The basic form of policy analysis in this research will be based on retrospective analysis; that is, to describe phenomena and/or determine relationships among them after policy actions have been taken, and to answer designative questions: Do sex offender policies exist, what are they and how did they come about? Starting with identification of sex offender policies (e.g., goals and principles) perceived by stakeholders -- probation officers and policy-makers, community interest groups -- the analysis moves on to focus on the same set of data and identifies the assumptions underlying their perceptions. In the next step, the different kinds of assumptions will be compared and evaluated in terms of their importance, and an acceptable list of assumptions on which as many stakeholders as possible agree will be created. Finally, these assumptions will be composed for a new conceptualization of the problem. This analysis of policy formulation will be followed by an examination of the values upon which sex offender policies are based. It is hoped that this evaluation will reveal the extent to which values underlying particular goals and objectives have been realized through the implementation of policies which is expected to follow.

The basic approach in this thesis is decision-theoretic evaluation. This approach "uses scientific methods to produce reliable and valid information about policy outcomes that are explicitly valued by multiple stakeholders", as opposed to a formal evaluation which evaluates on the basis of formally announced goals and objectives by policy-makers (Dunn, 1981: 348). Under the decision-theoretic evaluation approach, formally announced goals and objectives are challenged by latent goals and objectives of other parties who have stakes in the formulation and

implementation of policies. This approach is useful for highly complicated problems, which need evaluation in terms of adequacy, equity, responsiveness and appropriateness, as well as effectiveness and efficiency. To surmise assumptions about expected relationships between policy actions and objectives of multiple stakeholders is also an important objective of this approach.

### **External and Internal Influences on the Formulation of Policies**

Operational policies result from the tension which a variety of influences on policy-making create. Those influences stem from both outside and inside of the correctional enterprise. In this section, I will describe factors which are deemed to have much impact on sex offender policies. The way in which those influences interact with each other will be explored in Chapters III and V.

According to Ekstedt and Griffiths' categorization (1988: 109-129), these factors constitute the external and the internal influences, respectively followed by subcategories. The external influences consist of legislative mandate and the process of law review, short-term political need, policy and procedure of related subsystems within criminal justice, and academic research. The internal influences consist of professional interest, resource capability, and operational maintenance needs.

### ***The Legislation and Law Review***

Existing legislation establishes the mandate for corrections. The principal legislation related to corrections are the Corrections and Conditional Release Act, the Criminal Code, the Young Offenders Act, the Correction Act (Province of British Columbia), the Canadian Charter of Rights and Freedoms, and the Freedom of Information and Protection of Privacy Act (British Columbia). Some of these will be examined in Chapter III. In addition, other legislation has implications for

corrections, including the Child, Family, Services Act, the School Act, the Community Facility Act, and international conventions such as the Convention of Children's Rights. There is one further area that effects sex offender policies. It is the United States' legislation and law review, such as sex offender registry, community notification, and long-term supervision.

### ***Short-Term Political Needs***

When correctional issues emerge and are identified as disturbing political stability, considerable pressure can descend upon policy-makers to do something to address and resolve these problems. A number of incidents related to sex offences functioned to create this type of pressure in the past and were followed by efforts to develop policies and procedures that would alleviate the political discomfort. Among them, the murder case of Jason Gamache, which had the most impact on sex offender policies in British Columbia. This case will be detailed in Chapter III. Many inquiries, most of which were raised at the federal level, have accumulated a number of recommendations. However, there were few inquiries in the British Columbia level. The Fisher Report will be elucidated in Chapter III.

### ***Policy and Procedure of Related Subsystems within Criminal Justice***

Whether or not criminal justice really works as a "system", each component of criminal justice with its own purpose is interdependent. A change in police, prosecution or court policies dealing with sex offenders will often have a dramatic impact on the profile of people on probation and, in turn, probation supervision. The multi-agency approach that sex offender policies adopt encourages each component of the criminal justice system to share integrated goals and principles. Since sex offenders are also the target of social services, mental health services, and educational

services, influences are multi-disciplinary in nature. In fact, the treatment aspect of sex offender supervision in British Columbia has depended on Forensic Psychiatric Services. Multi-disciplinary approaches not only affect treatment but also determine the management structure.<sup>2</sup>

### ***Academic Research***

For many years, sex offenders were treated in the same way as other types of offenders, partly because of a lack of knowledge about them. As noted in the following chapter, academic research from the social and behavioral sciences contributed to increased knowledge of the prevalence and seriousness of sexual crime, differences of sex offenders from general offenders, and treatment programs for sex offenders. The expansion of knowledge base, in turn, had the effect of sensitizing policy-makers to a problematic situation and helping them identify policy options and strategies for the situation.

### ***Professional Interest***

According to Ekstedt and Griffiths (1988: 123), a profession refers to a vocation, which requires a special skill, unique tools or technologies, and special structures within which the work takes place. Persons who make dedicated commitments to such work can be vocal in terms of professional interests. The interests shared by them and the conflicts they generate have an influence on policies and practices. Among the examples of professional interests are dedicated efforts that a few probation officers made to develop strategies for sex offender supervision in the early 1980s. Ongoing meetings of sex offender specialists (probation officers) in the Fraser Region is another example. Sex offender policies are implemented by

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<sup>2</sup> For example, at some time in 1997, the probation supervision of youth sex offenders will be transferred to a new ministry, i.e., the Ministry for Children and Families.

probation officers who are supposed to have a specialized body of knowledge. It is recommended that sex offender specialists be affiliated with a professional organization. In addition, they share some concerns such as mental problems (e.g., stress, burnout). Thus, it seems apparent that professional interests will have a growing influence on policies and practices.

### ***Resource Capability***

The available materials and resources limits the implementation of policies. Therefore, these changes produce policy reviews to increase efficiency or to adjust operational strategies to available resources. In Canada, restraint management<sup>3</sup> emerged in the sharp economic downturn of the late 1970s, and continues to play a major role in policy-making against the backdrop of the growing demand on both politicians and bureaucrats for public accountability in the delivery of services (Ekstedt & Griffiths, 1988: 385). The history of Canadian corrections indicates that in an economic recession, there is often a “return to the basics”; that is, punishment of offenders with due attention to the protection of society, and an increased reliance on prisons (pp. 75, 386). However, the present circumstances are not simple in that while the attitude of the general public with regard to sex offenders has become more punitive, the expanding use of prison is criticized from the point of cost efficiency. The balance of resources allocated to offenders and victims is also a policy issue.

### ***Operational Maintenance Needs***

Unless the needs to promote predictability, stability, and the comfort and confidence of employee groups are met, any policy is likely to seek only to resolve

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<sup>3</sup> Restraint management means that managers are required to perform in a highly competitive environment in terms of material and manpower resources (Ekstedt & Griffiths, 1988: 385).



crisis-needs (Ekstedt & Griffiths, 1988: 127). When highly demanding policies are imposed on the workers without adequate resources and staff training, the workers are placed in a stressful situation and the original intentions of policies may be compromised. Probation officers handling sex offenders in British Columbia work in difficult situations. Chapter V examines the aspects of policies that are compromised and discusses how those compromises can change the original intention of policies.

## Chapter II

### AN OVERVIEW OF SEX OFFENDER STUDIES

#### EXPLANATION OF SEXUAL OFFENDING

The various types of explanations and understandings about the causality of sexual offending suggest different criminal justice policies, or philosophies and strategies. The nature of the relationship between theory and policy is reciprocal. Policies are sometimes driven by theories, and sometimes drive theories by adopting them to support policies themselves. If theories on which policies are based are found not to be valid, justification of policies may be eliminated eventually. Furthermore, changes in policies and theories are linked intimately to social context. Lilly, et al., (1995: 7) argue that "the very changes in theory that undergird changes in policy are themselves a product of transformations in society." More importantly, the way in which raw data about sexual offending are interpreted and conceptualized have much influence on policies. In fact, it was not until two decades ago that sexual abuse started to gain much attention as a policy issue. Although previous studies of sexual abuse conducted in the 1920s to the 1960s revealed extremely high rates of sexual abuse of children, this information was given little attention. Instead, the thesis that the sexual abuse of children was not intrinsically harmful to them and that the emotional reaction of others may affect a child more than the sexual contact, continued to be promulgated throughout the 1970s (Salter, 1988: 21-24).

The majority of psychiatric and psychological opinions assumed that "the child, not the offender was responsible for the sexual aggression directed toward her" (Salter, 1988: 30). For example, Revitch and Weiss (1962, as quoted in Salter: 1988: 29) state

that "the child victim is aggressive and seductive and often induces the adult offender to commit the offence." Victims who repeatedly accessed the offenders, regardless of the victims' degree of immaturity or the degree of psychological or physical coercion applied against the victims, were labeled "participating" or "provocative." Under the psychoanalytical principles of Freud, "the child's acting out" was elucidated in various ways, including "revenge directed at the mother for pre-Oedipal frustrations" (Gordon, 1955, as quoted in Salter: 1988: 29). Freud states that the notions of sexual abuse in childhood are just fantasies (Whetsell-Mitchell, 1995: 43). However, Salter points out the logical errors in the tendency to blame the child victim of sexual abuse: (a) confusion of correlation with causation; (b) ignorance of psychological coercion to the victim; and (c) confusing of the issue of responsibility to set limits on inappropriate behaviour of a child sexualized by a previous assault (1988: 33-34). Nevertheless, against the backdrop of Freud's dominant psychoanalytical approach giving way to the sex offenders, sexual abuse was defined as a problem of mental health and education rather than as a crime.

While the psychoanalytic point of view provided guidance in the field of treatment of sex offenders for many decades, its influence on today's treatment programs has declined substantially because the assumptions underlying such theories are untestable (Cooper, 1994: 1). Although the past two decades have witnessed the development and proliferation of theories, the consensus among them is: (a) there is no such thing as a prototypical sex offender (heterogeneity) (p. 1); and (b) with respect to several characteristics, many sex offenders do not present a different profile from the so-called "normal" populations (e.g., Cooper, 1994: 1; Johnson, 1996: 2; Marshall, 1996: 322). It

follows, therefore, that the following explanations with univariate models do not serve us equally well in explaining all types of sexual offending (Cooper, 1994a: 2). Nevertheless, all the explanations contribute to the understanding of causal factors. In this context, some approaches to incorporate multiple explanatory constructs are proposed (Cooper, 1994a: 2; Hall & Hirschman, 1992).

## **Univariate Models**

### ***Biological Theories***

One of the biological theories is evolutionary psychology, which offers explanations for mental mechanisms and behaviours on the basis of the following arguments: (a) natural selection will favor the development of traits which increase reproductive fitness; and (b) individuals will act in ways that increase the probability of survival of their kin (Cooper, 1994: 2-3). A person's use of violence is explained as an adaptive behaviour to help him/her adjust to certain environments. One aspect of evolutionary theories is sex differences in mating strategies: a male's reproductive success is limited by access to sexually available females, whereas a female's reproductive success is limited by a male's willingness to provide parental assistance (Quinsey & Martin, 1995: 303). On this assumption, the mate deprivation hypothesis is induced: males who have more limited access to mates (e.g., men of lower status) are more likely to resort to sexual coercion. Much marital violence and homicide appear to arise out of males' desire to control the reproductive capabilities of females (p. 303). This theory seems more applicable when explaining the sexual coercion of women than the male sexual preference for pre-pubescents (Quinsey & Martin, 1995: 308; Cooper, 1994: 2).

Although the implications of this approach for the prevention of sexual offending and for the treatment of sex offenders await explication (Quinsey & Martin, 1995: 311), Marshall (1996: 318) points out that it is not only untestable, but it also helps sex offenders diminish their responsibility.

Another example of biological theories is a set of biomedical explanations of sexual offending. In these explanations, sexual offending is attributed to brain damage or the presence of tumours; impaired neuropsychological functions; genetic abnormalities; chemical abnormalities in the endocrine system; development of sexual preferences through anomalous differentiation at critical stages such as puberty; and other medical problems (Cooper, 1994: 4; Whetsell-Mitchell, 1995: 42). These biological theories have some implications for the treatment of sex offenders. Among them is antiandrogen therapy (e.g., Depo-Provera and cyproterone acetate), which is often offered to block or modify levels of circulating androgens, thereby decreasing sexual arousal (Small, 1992: 133; Marshall, 1996: 185; Cooper, 1994b: 5-6).

### ***Psychopathological or Personality Theories***

Atkinson (1997: 33) contends that there are two types of sex offenders: a mentally disordered sex offender and a sex offender with a mental disorder. A mentally disordered sex offender refers to the offender who has committed his/her illegal sexual behaviour as a direct result of the mental disorder. For example, an offender commits a sexual assault in following through on the command hallucinations to inseminate a specific woman in order to save the world from evil. On the contrary, a sex offender with a mental disorder refers to the offender who has a sexual offending problem

independently of the mental illness: for example, the offender who has a paranoid delusional disorder and fondles pre-pubescent children. Although the image of sex offenders as mentally disordered is still popular, there is little evidence to indicate that sex offenders are any more likely than other offenders to have a history of mental disorder (Sampson, 1994: 14; Small, 1992: 132).

The fourth Diagnostic and Statistical Manual of Mental Disorder of the American Psychiatric Association (DSM-IV, 1994) classifies sexual aggression against children as a paraphilia (pedophilia) (pp. 522-532).<sup>4</sup> The DSM-IV gives diagnostic criteria for pedophilia:

- (A) Over a period of at least six months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviours involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
- (B) The fantasies, sexual urges, or behaviours cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- (C) The person is at least age 16 years and at least 5 years older than the child or children in Criterion A (American Psychiatric Association, 1994: 528).

Pedophilia is not necessarily a synonym for child molestation. The term "child molestation" is usually regarded as a generic term for those who offend against underage persons (Howitt, 1995: 12). It is assumed that pedophiles have strong sexual desires towards underage persons (p. 17). According to Hall and Hirschman (1992: 10), however, deviant sexual arousal may not be unequivocally characteristic of men who have

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<sup>4</sup> Sexual aggression against adults, with an exception of sexual sadism, is not a paraphilia per se, but is usually included under the antisocial personality disorder category (Hall & Hirschman, 1992: 12).

sexually offended against children.

### ***Social Learning Theory***

The social learning theory argues that people commit crime as a result of a learning process. It assumes that human beings are highly prepared to associate certain stimuli and events, rather than others, with sexual arousal and behaviour. The theory hypothesizes that deviant sexual arousal is developed through basic conditioning principles and that such arousal is elaborated and maintained through deviant fantasy in masturbation (Cooper, 1994a: 6). To take pedophiles, for example, children's early sexual experiences which associate sexual arousal with immature bodies condition a long-term sexual response to immature bodies through reward (e.g., gratification) and punishment (e.g., inadequate parenting) contingencies (Howitt, 1995: 131-132). In explaining how some men learn to direct their anger, aggression, and violence toward women in particular, the sex role theory attributes this behaviour to cultural stereotypes and attitude about male-female relations: boys should have masculine toughness, power and control; girls should show submissive ladylike behaviour to maintain relationships and to serve others (Johnson, 1996). For example, through rape a man vulnerable in his masculinity proves to himself, his victim, and the world that he is a real man.

### ***Sexual Addiction Theories***

Sexual addiction theories assume that sexual offending is an addiction which, like alcoholism, is best characterized as an illness (Laws, 1996). In these theories, it is purported that "once an addiction is ensconced a cure is non-existent, only control and abstinence are possible, and abstinence is not equated with cure" (Whetsell-Mitchell,

1995: 50). Treatment goals are that “the addict must learn to accept his powerlessness to control the addiction and ultimately develop an alternate lifestyle which recognizes this fact and includes plans for countering this powerlessness” (Copper, 1994) through alcoholics anonymous (AA) - type self-help groups.

### *Cognitive-Behavioural Theories*

Cognitive-behavioural theories posit a singular temporal sequence of affect-fantasy-conscious planned-behaviour that leads to sexually aggressive behaviour (Hall & Hirschman, 1992). Schwartz (1995) summarizes these processes in the following way:

Sex offenders may initially set up negative emotional states by interpreting experiences in a negative way. They may relieve the depression or anxiety produced by these interpretations by preoccupying themselves with deviant fantasies. If the fantasies or the possible, subsequent behaviour becomes uncomfortable, they minimize, justify, or rationalize their behaviour by using “cognitive distortions.” They may attribute blame to the victim (e.g., “she asked for it”), or they may blame alcohol or drugs. These distorted thought processes perpetuate the deviant behaviour.

With pedophiles, it is argued that child pornography contributes to disengaging their inhibitions against offending through validation of their distorted thinking (e.g., offenders see other adults doing much the same things that they do or want to do) (Howitt, 1995:136). Pedophiles often have the distorted thinking of blaming the dysfunctional family, victims and other family members (e.g., wives), which should be confronted to control abusers (pp. 136-137). Denial and minimization are typical among sex offenders. Barbaree’s study (1991) found that 54 percent of the rapists were in complete denial and a further 42 percent minimized some aspect of their offence. Another example of cognitive distortions is a lack of victim empathy. Many treatment programs incorporate



the concept of victim empathy. However, there is little in the way of convincing evidence that sex offenders lack empathy (Marshall, 1996b). The relapse prevention model, of which I shall give a more precise account later, has primarily grown from these cognitive-behavioural theories.

### ***Feminist Theory***

Feminist theories trace the historical significance of the socio-economic and legal structures and practices that have fostered male privilege and a female's dependence on a male partner (Johnson, 1996). According to Hinch (1996), liberal feminists have been primarily concerned with the ways in which laws discriminate against women and have tried to reform these laws to enhance legal equality (e.g., to remove barriers to increase conviction rates of sex offenders). Radical feminists argue that the root cause of rape is patriarchy, which leads to rigid gender role models. While liberal feminists supported the 1983 amendments to the Criminal Code (Bill C-127)<sup>5</sup>, radical feminists were opposed to enshrining the concept of gender neutrality, arguing that the amendments give no social, political, economical power men possess to women, and that these amendments only gave the appearance of granting legal equality. Socialist feminists analyze both the patriarchal and class nature of sexual assault law and law enforcement practices. For example, lower-income men are likely to demonstrate their masculinity in a physical and sexual manner (i.e., sexual offending) because they are denied masculinity status in ways available to middle-income men through education and economic success (Johnson, 1996).

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<sup>5</sup> Bill C-127 is called the "rape reform law." For further details, see pp. 40-42.

## **Integrate/Multivariate Models**

Some models integrate several factors or a combination of factors to understand sex offences more comprehensively. The precondition model presents four reasons to explain why adults are sexually attracted to children (Whetsell-Mitchell, 1995: 50-51). These reasons consist of emotional congruence (i.e., emotional needs to relate to children, such as ones to express an immature sexuality), sexual arousal, blockage (i.e., things that make sexual and emotional gratification in adult relationships unavailable, e.g., deficient social skill), and disinhibition (i.e., things that lower inhibitions, such as impulse disorder) (pp. 50-51; Howitt, 1995: 133-134). This model, based on existing research, assumes that offenders are diverted from adult relationships (Howitt, 1995: 132).

Hall and Hirschman (1992) also argue that a combination of physiological, cognitive, affective, and personality factors may be prominent as motivational factors of sexual offending and that the application of this model depends on typologies such as sexual aggression against adult and children. With sexual aggressors against children, the authors propose four types of primary motivational precursors. These factors are limited in number, so that treatment can be targeted to them. One of these factors is physiological sexual arousal. This arousal is fueled by pedophilic sexual fantasies. This subtype is likely to have multiple victims. A greater portion of sexual aggressors against male children may be in this subtype than in other subtypes. Another motivational factor is cognitions that justify sexual aggression. For example, some child molesters believe that sex between children and adults does not harm children (Marshall, 1996b). Incestual behaviour may be a common type of this category. Negative

affective states are the third motivational factor. The act of this subtype is opportunistic and unplanned. The child molester with this type of motivation is equivalent to the “regressed offender” who has no predominant sexual attraction to younger persons, but due to a stressor or stressors such as marital difficulties and unemployment, seeks out a child as a substitute for unavailable adults (Groth & Birnbaum, 1978 quoted by Howitt, 1995:18; Whetsell-Mitchell, 1995: 40; Cumming & Buell, 1997: 83). Depressive states may be more common than anger states in sexual aggressors against children (Hall & Hirschman, 1992). The final precursor is personality problems or disorders that are characterized by a chronic tendency to be sexually aggressive against children. This is equivalent to the category of “a fixated offender” (Groth & Birnbaum, 1978 quoted by Howitt, 1995:18). Groth and Birnbaum (1978, quoted by Howitt, 1995:18) stated that “[a] fixated offender has from adolescence been sexually attracted primarily or exclusively to significantly younger persons.”

However, every assumption underlying these explanations is not confirmed by research findings. For example, deviant sexual arousal is assessed to measure a man’s erectile responses while he watches or listens to various sexual stimuli chosen to represent those categories of behaviour thought to be relevant to his offence (phallometry). It assumes that sex offenders are driven to engage in offensive behaviour because they prefer deviant sex (sexual preference hypothesis). One implication for treatment is that changes in offending should follow from therapeutic reductions in deviant sexual arousal (Howitt, 1995: 135). Although the early studies appear to support this hypothesis, there are recent works which fail to distinguish sex offenders from non-sexual offenders

(Marshall, 1996b; Hall & Hirschman, 1992: 10). Howitt (1995: 135) contends that "the notion that *laboratory measured* deviant sexual arousal to children contributed to offending is in doubt" (Howitt's italics), because laboratory-based arousal measures lack validity and reliability, and fail to eliminate faking strategies. The guidelines endorsed by B.C. policies allow the use of the penile plethysmograph as a supplementary component of the sex offender assessment, treatment, and management process (Pang & Sturrock, 1996: 28-33).<sup>6</sup> However, Marshall (1996b) points out ethical problem of phallometry and suggests withdrawing the use of phallometry until more adequate data is available. Next, deficient social skills are suggested as blockage to adult relationships. Among these are deficits in conversation, assertion, and relationship skills; but little effort has been made to develop adequate measures (p. 170). With respect to other dysfunctional aspects, deficits in intimacy and loneliness are pointed out (p. 170). While one study on the behavioural measure found that rapists and child molesters were significantly less skilled in social life and that they tended to report themselves as being less assertive, a recent study found that rapists reported greater overassertiveness than child molesters and non-offenders (p. 169). Techniques such as assertiveness and social skills training that improve relationships with adults, are incorporated in many treatment programs for sex offenders. However, Whetsell-Mitchell (1995: 48) cautioned that the low social skill of incarcerated pedophiles "may be a function of their incarceration rather than the direct result of being a child sexual abuser." Another example of limitations is regarding low self-esteem. It is assumed that behaviour change is facilitated when a

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<sup>6</sup> See pp. 57-58.

person is confident of being able to handle the problem (Marshall, 1996b). The low self-esteem of pedophiles is considered to be a factor of emotional congruence to children (Howitt, 1995: 133). However, pedophiles' low esteem "may be the result of the arrest process and disdain with which they are treated by other prisoners" (p. 134).

## **TREATMENT OF SEX OFFENDERS**

### **Development of Treatment**

As the underlying causes of sexual behaviour are better understood, we have seen the expansion of treatment targets. According to Marshall (1996b), in the past twenty years treatment has moved in a more cognitive direction, incorporating factors such as distortions, attitudes, and beliefs. The introduction of the relapse prevention approach was the biggest development in the 1980s. This approach has had considerable impact on probation supervision strategies in Canada and the United States. In this section, the relapse prevention approach, which has provided the foundation for probation supervision will be considered.

### ***Relapse Prevention Approach***

Relapse prevention is "a treatment approach, developed within the area of addictive disorders, that is specifically designed to address maintenance problems in the changing of behaviours" (George & Marlatt, 1989: 2). Since relapse prevention assumes that the maintenance of change may be governed by entirely different principles than those associated with initial cessation, relapse prevention may be applied regardless of the orientation or method used during treatment (p. 5).

When the relapse prevention approach is applied to sex offenders, "relapse" is

defined to be “any occurrence of a sexual offence”, while “lapse” refers to “any occurrence of willful and elaborate fantasizing about sexually offending or any return to sources of stimulation associated with the sexual offence pattern, but short of performance of the offence behaviour” (p. 6). Relapse prevention, based on social cognitive theory, assumes that: (a) sex offending is maladaptive behaviour and, for that matter, adaptive behaviours are viewed as determined by past learning experiences, situation antecedent influence, prevailing reinforcement contingencies (both reinforcement and punishment), cognitive expectations or beliefs, and biological influences; and, (b) the target behaviour is viewed as a maladaptive response to life stress and dissatisfaction (p. 3). Maladaptive behaviour is formed by links of feelings, thoughts, behaviours, and events or environments (cognitive-affective-behavioural chain) which make the “offence cycle.” The ultimate goal of relapse prevention is to prevent relapse by breaking the links and replacing the maladaptive coping responses with adaptive coping responses. Two central objectives of relapse prevention treatment procedures are to teach individuals to cope effectively with High Risk Situations and to respond to the early warning signals that covertly steer them toward eventual High Risk Situations (p. 16). Relapse prevention emphasizes assisting sex offenders self-management and the idea the individual should accept responsibility for his/her behaviour and the use of adaptive or maladaptive coping responses. Furthermore, there is an emphasis on external management and controls. Since offenders are, at times, unreliable informants regarding lapses, the external supervisory dimensions of the relapse prevention model were developed with three functions: (a) monitoring of specific offence precursors; (b) creating an informed network

of collateral contacts; and (c) creating a collaborative relationship between the probation officer and mental health professionals conducting therapy with the offender (Pithers et al., 1989).

What we should keep in mind is that relapse prevention rejects the central premise of the medical model; namely, treatment enables cure (George & Marlatt, 1989; Pithers & Cumming, 1989). On the contrary, relapse prevention proposes that, although sexual aggressors cannot be cured, they can control their behaviours. Marshall and Barrett (1992: 196) state that “[t]reatment for sex offending is not like a vaccine against polio or the measles. It does not eliminate the possibility of the behaviour occurring again. It simply reduces the chances that it will recur.”

George and Marlatt (1989) suggest that an adequate application of relapse prevention requires an offender who is motivated to change, adjunctive cessation treatment, and very diligent work by both the offender and the therapist in implementing relapse prevention procedures. First, with respect to offenders’ motivation, the problem regarding sex offenders who deny their offences and distort the truth by minimizing the frequency, severity and variety of their criminal sexual behaviours should be examined. In fact, it is not unusual that these categories of sex offenders are refused entry to programs (Marshall, 1996b). How we deal with those people who sometimes have a high risk of re-offending may be a critical point for formulating policies that protect society. Next, in terms of adjunctive cessation treatment, many programs combine relapse prevention and other components, depending on the program setting. Most current treatment programs for sex offenders cover offence-specific targets such as denial

and minimization; victim harm and victim empathy; offence-supportive attitudes, beliefs, and distorted perceptions; offence fantasies; and relapse prevention (Marshall, 1996b: 181) -- all of which are often addressed in a group therapy format approached from a cognitive-behavioural perspective (p. 181). There are programs to target offence-related problems. These programs include relationship/marital therapy, anger management, substance abuse, social skills and assertiveness training and life management skills (pp. 186-187).

### **What Works?**

Since no one has compared programs with the relapse prevention components to other programs, relapse prevention itself is not supported empirically (George & Marlatt, 1989; Marshall, 1996b). Although multiple programs applying relapse prevention with sex offenders have spread across Canada and the United States, information concerning their efficacy is still limited. These approaches are too new to have long-term, follow-up studies (Glackman, 1991) and it is difficult to identify an acceptable control group (Marshall & Pithers, 1994). However, studies of multiple programs applying relapse prevention with sex offenders are available, and offer both pessimistic and optimistic conclusions.

For example, the study (Atrops et al., 1996) evaluating the Hiland Mountain Sex Offender Treatment Program concluded that "treatment can and does work, certainly for some offenders. It works by reducing the incidence of sexual re-offence or by prolonging the time until re-offence. Either of these results reduces the number of victims in the community." Marshall and Pithers (1994) suggest that the pessimistic



conclusions of past studies reflect the ineffectiveness of early, generic approaches to sex offender treatment or simple conceptualizations of treatment. From a review of four recent studies that have compared the outcomes of treated sex offenders with untreated offenders, the authors conclude that modern comprehensive cognitive-behavioural treatment programs can be effective. However, specialized programs may possess differential efficacy with rapists and child abusers. The authors caution that "specialized treatment appears to have a greater influence on child abusers than rapists", and also, "[o]n the other hand, ... the latest report ... reveals a clear advantage for treated versus untreated rapists, but not for child molesters" (pp. 20-21).

According to the Solicitor General of Canada (1990), treatment can be effective in reducing sexual recidivism from about 25 percent to 10-15 percent. This implies that, while no approach can guarantee complete success, a substantial number of victimizations have been avoided. Laws (1996) argues that zero-tolerance position (i.e., "lapses are probably manageable but relapses *must not occur*" [Laws's italics]) is too high a standard to be attained, and proposes applying a harm reduction perspective to sex offender treatment which acknowledges that "lapse *and* relapses are probably inevitable, and that the job of treatment, at the very least, is to reduce the frequency and intensity of these instances if they cannot be eliminated" (p. 245 [Laws's italics]). He adds that for accuracy, the words "sex offender *treatment*" should be substituted for "sex offender *management*" (Laws's italics). One implication that a harm reduction approach may have for the criminal justice system is that pragmatic and holistic approaches, such as strategies in containing gambling, prostitution, or drug dealing, should be adopted to

protect society.

## **THE SEX OFFENDER POPULATION**

### **Trends in Sexual Assaults**

While police-reported incidents of sexual assault in 1994 has decreased (-9.8 percent) from the previous year, which was the first decline since the new assault categories were created in 1983, the incidents and rates have more than doubled (+110 percent) since 1984. In 1994, a total of 31,690 incidents of sexual assault were reported to the police in Canada, a figure that can be calculated as 108 incidents for every 100,000 people in the population, up from 14,793 incidents reported in 1984 (59 per 100,000 population) (Canadian Centre for Justice Statistics, 1995b). The same trend applies to incidents of sexual assault in British Columbia and in the city of Vancouver: the number of sexual assault reports increased by 160 percent over the period 1984-92 (from 2,544 to 6,643 incidents, from 77 to 177 per 100,000 population based on aggregate UCR survey) (Roberts, 1994); an increase of 55 percent over the period 1985-94 in Vancouver (from 420 to 653 incidents) (Polowek, 1993; Canadian Centre for Justice Statistics, 1995b). Sexual assaults have increased more than any other Criminal Code offence since 1984 (Canadian Centre for Justice Statistics, 1995b). Although the information on incidents committed by people on probation is not available, the general trend in sexual assaults may affect the public's attitudes toward sex offences, which in turn, may have an influence on the policy-making process. How this trend has affected probation policies will be examined in the next chapter. Here, I will describe the extent of sexual offending at large.

The major sources of statistical information are fourfold: (a) police statistics (e.g., the Uniform Crime Reporting (UCR) survey, every year); (b) clinical samples (e.g., a case study of clients in a rape crisis centre); (c) crime victim surveys (e.g., the Canadian Urban Victimization Survey (CUVS, 1982), the surveys conducted for the Committee on Sexual Offences Against Children (1983, the Badgley Report, 1984), the General Social Survey (GSS, 1988 and 1993) and the Violence Against Women Survey (VAWS, 1993); and, (d) reports by sex offenders themselves. However, it is difficult to determine the exact prevalence of sex offences due to the limitations of each source (Glackman, 1991; Johnson, 1996; Roberts, 1994).

According to the UCR surveys, the rates of sexual assault reported to the police per capita slowly increased from 1963 to 1983, and thereafter an immediate sharp increase to the peak in 1993 was recorded, followed by a gradual decline (Glackman, 1991: 242; Johnson, 1996: 33; Canadian Centre for Justice Statistics, 1995b, 1996). Since the categories and definitions of sex offences have changed in 1983, it is safe to consider the periods before and after 1983 as separate entities (Glackman, 1991: 24). Whether the steep rise from 1983 to 1993 was accounted for by a real increase in incidents or an increased rate of reporting to the police, is still unclear. According to Roberts (1994), the reported incidences of sexual assaults increased at a faster rate than those of non-sexual assaults over the period 1983-1992, and in recent years the rates of increase are comparable. The author argues that "the publicity surrounding the passage of rape reform legislation encouraged a larger number of victims of sexual aggression to report to the police, and that this initial effect has diminished since that period" (p. 9). An

analysis of the UCR surveys indicated that a majority of the sexual assaults occurred when the respondents were children or youths (Glackman, 1991: 243). These findings support the argument that a change in reporting behaviour caused the increase in official records of sexual assaults. As Glackman (1991) points out, however, the possibility of a real increase cannot be ruled out because all of the respondents were adults over age eighteen at the time when the surveys were conducted (p. 243). As Johnson (1996) states, these trends must be interpreted within the context of other social factors, such as changes in reporting practices; changes in legislation; changing social mores; declining tolerance toward sex offences on the part of women; and improved response on the part of the justice system to these offences (p. 36). It seems reasonable to say that, over the years, sex offenders have been flushed out from their hiding places.

Regardless of what caused the increase in reported incidents of sexual assaults, such trends were dramatic enough to create a sensation. Many victim surveys revealed that police statistics only hit the tiny tip of the iceberg. For example, in the General Social Survey (1993) sexual assaults were the most likely to remain unreported (90 percent). The Violence Against Women Survey (1993), in which 12,300 women interviewed by telephone, suggested that only 6 percent of all sexual assaults were reported. The clinical samples, even though they may be unrepresentative of all sexual assaulted cases, provided insight into the contexts in which sex offences occurred, and caught the attention of the public government and academics (Johnson, 1996; Whetsell-Mitchell, 1995). Furthermore, publication of reports that revealed that each sex offender had multiple, unbound victims, frightened the practitioners and the public. According to

Abel et al. (1985, quoted by Glackman, 1991), in a study of rapists and child molesters who had volunteered for treatment, each rapist had nearly eight victims on average, compared to each child molester who had an average of 167 molestations involving 76 victims. The case-file review conducted by the CSC (1993) found that nearly one-fifth of the sex offender population was known to have committed sexual offence(s) in the past but was never convicted (Motiuk & Porporino, 1993). It is apparent that sex offenders can affect the entire community, creating important social and political issues. A study<sup>7</sup> of reported cases of child sexual abuse with multiple victims in British Columbia from 1985 to 1989 found that:

21 communities experienced 30 occurrences of multiple victim child sexual abuse; the number of children who were victims in all 30 occurrences was 2,099, or an average of 70 victims per occurrence. In 80 percent of the occurrences, offenders occupied positions of trust; 50 percent were professionals in the communities. In addition, further investigations traced offenders movements through at least 41 additional locations where they also resided and in 41 percent of these locations they were suspected, investigated and/or charged with child sexual abuse.

### **Profile of the Sex Offender Population**

Since sex offences reported to the police are funneled through a filtering process (e.g., plea bargaining), only a portion of convicted sex offenders come under supervision of corrections. The absolute number of offenders convicted of sexual offence under bail and probation supervision increased significantly, by 77 percent, over the fiscal years of 1984 to 1989 (from 414 in 1984-1985 to 731 in 1989-1990) (Polowek, 1993: 7). In

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<sup>7</sup> The Child and Youth Mental Health Services Division of the British Columbia Ministry of Health, quoted by the Federal Ad Hoc Inter-Departmental Working Group on Information Systems on Child Sex Offenders, 1994, p. 4.

addition, as shown on Table 1, there has been a marked increase in the number of "sex offenders" defined in the "B.C. Corrections Branch, Manual of Operations":

A sex offender is an offender serving a disposition under the Criminal Code of Canada for a sexual offence, or another offence which includes sexual offending, intent or behaviour, or a sex offender who has previously completed a disposition for a sexual offence but is currently serving a disposition under the Criminal Code of Canada for a non-sexual offence which includes conditions appropriate for sex offenders (e.g., for therapy).<sup>8</sup>

Apparently, this definition of sex offenders was a result of the increased awareness and understanding of the etiology of sexual offending. There were 2,011 admissions of sex offenders to bail, parole, and probation in British Columbia in the fiscal year of 1995. Sex offenders under these forms of community supervision have increased by 62 percent since the fiscal year of 1990. Since the total admissions to probation show a steep growth during the same period (approximately 200 percent increase from 1987 to 1994), the percentage of sex offenders compared to the total population under supervision has been stable. It is apparent, however, that, since the fiscal year of 1986, sex offenders have emerged as a distinct category to be treated separately from others. The same may be true of sex offenders under federal jurisdiction. The number of offenders in federal institutions, whose major admitting offence was a sex offence, increased by 107 percent over the period 1986-95 (from 1,339, 11 percent of the total population in 1985, and 1,716, 12 percent in 1991 to 2,766, 20 percent in 1995), and sex offenders on conditional release increased by 22 percent over the period 1990-95 (from 907 to 1,109, 12 percent).

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<sup>8</sup> See note 36.

**Table 1****Admission Cases to Corrections**

Year	Remand Admission to Custody			Sentenced Admission to Custody			Bail, Parole, Probation Admission		
	total	sex*(%)	sex*(%)	total	sex*(%)	sex*(%)	Total	sex*(%)	sex*(%)
90-91	5340	11.6	619	9138	11.6	1060	12323	10.1	1244
91-92	5760	11.8	679	10135	11.8	1196	13597	10.7	1455
92-93	6058	11.7	709	10579	11.7	1240	14367	10.1	1451
93-94	6923	12.3	852	11654	12.3	1433	16233	9.2	1493
94-95	7699	11.7	901	12185	11.7	1425	18741	9.2	1724
95-96	8533	12.3	1050	12425	12.3	1528	20112	10.0	2011

Source: Ministry of Attorney General, Corrections Branch.

Accurate descriptions of sex offenders under supervision and their involvement in the criminal justice system would help make policies more effective. Studies of sex offenders under the jurisdiction of the corrections system in British Columbia have just begun. While a few research projects on recidivism rates and evaluations of sex offender risk assessment are being conducted, only information on the profiles of sex offenders in Stave Lake Correctional Centre (an open custody facility in British Columbia) (Beaton, 1996) is available. This project analyzed the characteristics, victims, and offences of 382 sex offenders released from the Centre between 1992 to 1995, on the basis of the data collected by centre staff.<sup>9</sup> The following are a comparison of the findings of this project with the findings of a study on federal sex offenders (Motiuk & Porporino, 1993)<sup>10</sup> :

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<sup>9</sup> The data was obtained as part of the routine intake process.

<sup>10</sup> The design of the Case-file Review involved systematic selection, a modification of simple

- (a) 51 percent of the Stave Lake offenders were living common law or married and 75 percent of them were employed, while 54 percent of sex offenders in federal jurisdiction were single and 45 percent of them were unemployed.
- (b) 65 percent of the victims of the Stave Lake offenders were under the age of 12, while 31 percent of the federal sex offender population was under 12.
- (c) 53 percent of the victims of the Stave Lake offenders were close family (including daughter, step-daughter or relatives to the offenders), while 38 percent of the federal sex offender population were strangers.<sup>1139</sup>

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random sampling, of all sex offenders in CSC operational units (institutions and parole office). Of the 2,777 sex offenders originally targeted for sampling, 842 were actually selected in the five CSC regions.

<sup>11</sup> Other key findings of the project in Stave Lake Correctional Centre were: most of the offenders were planned and occurred in private residences; offenders may have alcohol and drug abuse problems, but only a minority were actually impaired at the time of the offence; and sexual behaviours of the offenders were patterned.



## Chapter III

# REACTIONS OF THE CRIMINAL JUSTICE SYSTEM TO SEX OFFENCES

### CHANGES TO THE CRIMINAL CODE

The Criminal Code is the ultimate policy response of criminal justice to sex offenders through a catalogue of offences, penalties, and procedures. It seems apparent that the criminal justice response to sex offences has developed along three tracks: reform of the rape laws; amendments to sexual offence provisions involving child victims; and provisions for dangerous offenders. In this section, I will track the law reforms in each area.

#### **Rape Laws**

In 1983, Bill C-127, known as the rape reform bill, was proclaimed in force. It made substantive amendments to the Criminal Code in the areas of assault offences, sexual assault offences, and child abduction, followed by certain evidentiary rules employed in sexual assault trials to encourage victims to report.<sup>12</sup> The most significant changes to Bill C-127 included replacing the offences of rape (s.143), attempted rape (s.145), indecent assault on a female (s. 149), and indecent assault on a male by a male

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<sup>12</sup> The roots of Bill C-127 can be traced to 1978 and the Law Reform Commission's Report on sexual offences. This Commission recommended that the criminal law was to be justified on one or more of three grounds: (a) protection of the individual integrity of the person from non-consensual sexual contact; (b) protection of children and the psychologically vulnerable from sexual contact; and (c) protection of public decency: the right not to have one's sexual values offended in public. In 1981, Bill C-53, carrying forward the basic recommendations of the Law Reform Commission, was given first and second reading in the House of Commons. This Bill originally covered not only sexual assault but also sexual conduct against children and public morality offences. However, due to the Standing Committee's disagreement to latter two provisions, only the sexual assault part of Bill C-53 was introduced as Bill C-127 (Minister of Justice and Attorney General of Canada, 1983).

(s.156) by a three-tiered structure of new sex offences: sexual assault (s.271 sexual assault I); sexual assault with a weapon, threats to a third party or causing bodily harm (s.272 sexual assault II); and aggravated sexual assault (s.273 sexual assault III). The maximum penalties of the sexual assault offences are, respectively, ten years, fourteen years, and life imprisonment. Sexual assault offences were included in Part VI of the Criminal Code as “Offences Against the Person and Reputation”, paralleled with three levels of assault offences (ss. 266, 267 and 268). Sexual assault offences are defined as especially serious and offensive forms of assault, where a sexual component is present (Boyle, 1984: 54).<sup>13</sup> A sexual assault includes, but is not restricted to, rape (which occurs only where there is penetration of the vagina). The emphasis was on the violent nature of sexual assault rather than on its sexual nature (Minister of Justice and Attorney General of Canada, 1983: 5). The new sexual assault offences were aimed at protecting the integrity of a person from non-consensual sexual contact. This is reflected in the abolition of a husband’s immunity from being charged with the rape of his wife and the gender-neutralization of some offences. Another important feature of Bill C-127 is the amendment to the laws of evidence to make trials less traumatic for complainants. Bill C-127 repealed provisions applying to sex offences, including the doctrine of recent complaint, as well as the requirement of corroboration and admission of evidence relating to the sexual history and reputation of complainants. The Bill also banned the publication of the identity of complainants (Boyle, 1991).

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<sup>13</sup> The test for the sexual nature of an assault came when the Supreme Court of Canada (*R. v. Chase*, 1987) ruled that it does not depend solely on contact with specific areas of the body, but on circumstances of a sexual nature such that the sexual integrity of the victim is violated (Boyle,

Although Bill C-127 was not without the challenge under the Canadian Charter of Rights and Freedoms (e.g., ss. 15 and 28), the most important event was the decision of the Supreme Court of Canada in *Seaboyer and Gayme*, 1991.<sup>14</sup> which struck down section 276 of the Criminal Code.<sup>15</sup> This decision, perceived as the first unequivocal defeat for women at the hands of the Supreme Court, triggered women's groups to lobby to strengthen other aspects of the law (Mandel, 1994). As a result, in 1992, Bill C-49 came into force. Although these amendments did not affect the structure of the sexual assault offences created in 1983, it defined the legal parameters for determining the admissibility of a victim's past sexual history as evidence in sexual assault trials. This bill also provided a definition of "consent" for the purpose of sexual assault offences and strengthened negative definitions by adding "abusing a position of trust, power or authority" as situations where there could be no consent (Mohr & Roberts, 1994; Mandel, 1994).

### **Sex Offences Involving Child Victims**

On December 9, 1980, the federal government announced the appointment of a Committee on Sexual Offences against Children and Youths, chaired by Dr. Robin

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1991; Johnson, 1996).

<sup>14</sup> *Seaboyer and Gayme*, young men charged with sexual assault, launched an appeal for the right to introduce evidence relating to complainants' sexual history. The basic argument of the majority opinion was that nothing could ever justify interfering with the traditional judicial discretion to admit any evidence felt relevant and not unduly prejudicial. Otherwise, there is a possibility that innocent persons might be convicted (Mandel, 1994: 383).

<sup>15</sup> Section 276 limited the questioning of victims in sexual assault trials about their sexual history. It is a key element of "rape shield" laws with section 277 of the Criminal Code, which excludes evidence of a victim's sexual reputation for purposes of questioning her credibility. The Supreme Court of Canada upheld section 277 (Mohr & Roberts, 1994; Mandel, 1994).

Badgley (the Badgley Committee), that inquired into sex offences against children, juvenile prostitution and child pornography. It was expected to recommend how young victims could be better protected by the law and the helping services (Badgley, 1987). While the issue of child sexual abuse was starting to be seriously addressed by professionals in the 1970s, it was only very slowly that the public was beginning to face the reality of this issue. The incest survivors' recovery movement and stories presented in the media brought child sexual abuse to the forefront in the United States in the late 1970s and early 1980s (Whetsell-Mitchell, 1995: 6-7). In Canada, when the Badgley Committee began its work, there was pervasive public silence about these problems, little reliable information about the acts being committed, and no coordinated and comprehensive policies in place (federally or provincially) to provide clear guidelines for giving assistance to these children (Badgley, 1987). Even though the report of the Badgley Committee (the Badgley Report), released on August 1984, found that child sexual abuse was widely prevalent,<sup>16</sup> the initial response by government was "laid-back, at best, non-committal" (p. 10). A growing concern and awareness of the public urged the federal government to implement many of the Badgley Committee's recommendations (p.10). Those recommendations were developed with a framework of four guiding principles: a better co-ordination of services; the establishment of public education and health promotion; better services for child sexual abuse victims; and major amendments to the Criminal Code and the law of children's evidence (p. 7).

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<sup>16</sup> For example, at some time during their lives, about one in six females and one in 12 males had been victims of one or more direct sexual assaults; four in 100 young females had been raped; two in 100 young persons had been victims of acts of attempted or actual or anal penetration; and the great majority of victims or their families had not sought help from public services (Levine,

In 1988, these initiatives were followed by the passage of legislation relating to child sexual abuse, juvenile prostitution, and evidence given in court of children (Bill C-15), all of which reflected the federal government's message that the protection of children and youths was a priority in Canada and that the sexual abuse of children was unacceptable and would not be tolerated (Hornick & Bolitho, 1992: 4; Mohr & Roberts, 1994: 7). As Badgley stated:

Child sexual abuse is gradually emerging from the dark closet of hidden fears and irrational prejudices .... What we are witnessing is a gradual, but fundamental shift in our values as a people about the rights of our children and the need to assure their health, happiness and security. As never before in Canada, these purposes are coming to the "front stage centre" of public concern (1987: 11-12).

Bill C-15 created three new offences relating to the sexual abuse of children: sexual interference, invitation to sexual touching, and sexual exploitation (ss. 151, 152 and 153).<sup>17</sup> Some provisions were repealed completely (ss. 141, 146, 151, 152, 153, 154 and 157) and other sections were written to extend protection to young males (ss. 166 and 167) or to add new provisions where the offence involved a child under the age of 18 (ss. 155, 169 and 195). As a result of these changes, there are now 16 sex offences in the Criminal Code.<sup>18</sup> Bill C-15 also sought to facilitate the court testimony of children

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1985; Badgley, 1987).

<sup>17</sup> Sexual interference refers to touching anyone under the age of 14 for a sexual purpose with any part of the body or an object; invitation to sexual touching refers to inviting a child under 14 to touch another person or himself in a sexual way; and sexual exploitation refers to persons in position of trust or authority having sexual contact with youths between the age of 14 to 18.

<sup>18</sup> The current offences that can apply to child sexual abuse are: sexual interference (s.151); invitation to sexual touching (s.152); sexual exploitation (s.153); incest (s.155); anal intercourse (s.159); bestiality and associated offences (s.160); parent or guardians procuring sexual activity (s.170); householder permitting sexual activity (s.171); corrupting children (s.172); indecent acts

under the age of 18 by changing the rules of evidence and procedure. Some sections regarding the laws of evidence that applied to sex offences against adults were extended to sex offences against children (ss. 274, 275, 276(1), 277 and 486(3)). Other sections were changed to repeal the time limitation of prosecution and to permit testimony outside the courtroom, the use of videotaped evidence, and the testimony by children under fourteen years of age (ss. 141, 486(2.1) and 715.1 of the Criminal Code, s.16(2)(3) of the Canada Evidence Act). Bill C-15 contained a comprehensive set of provisions on child sex offences, which took the complex nature of child sexual abuse into consideration. An impact study of Bill C-15 in five Canadian cities concluded that most aspects of the legislation were working well and that the professionals involved have adapted to and accepted the changes to the Criminal Code. The findings were:

- (a) Reporting of alleged occurrences of child sexual abuse to police ranges from 73 to 158 per population of 100,000;
- (b) The most common form of abuse was genital fondling (22 to 46 percent) while intercourse occurred in 10 to 20 percent of the cases;
- (c) Most victims were female under 12 years old and a significant number were under five years old (15 to 22 percent);
- (d) The 94 percent of accused were male, 30 to 57 percent related to the victim;
- (e) A significant number (17 to 29 percent) of the accused were 12 to 17 years old who were charged under the Young Offenders Act;
- (f) Unfound accusation rates were low (5 to 22 percent);
- (g) Conviction rates were generally high (59 to 83 percent);
- (h) Incarceration rates were ranging from 51 percent to 74 percent. In terms of sexual interference (s.151), the most common dispositions for Calgary cases were incarceration (30 percent) and incarceration with probation (30 percent), followed by suspended sentence and probation (28 percent);

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(s.173(1)); indecent exposure (s.173(2)); living off avails of a prostitute under 18 years (s.212(2)); obtaining a person under 18 years for sexual purpose (s.212(4)); sexual assault (s.271); sexual assault with a weapon, threats to a third party or causing bodily harm (s.272); and aggravated sexual assault (s.273).

- (i) The average incarceration time for sexual interference (s.151) was 7 to 11 months, for sexual assault (s.271), 10 to 11 months (Hornick & Bolitho, 1992).

Additional amendments to the Criminal Code that relate to sex offences against children were enacted in 1993 as part of Bill C-126. These reforms<sup>19</sup> enable the court to prohibit a convicted sex offender from attending specified areas frequented by children and from being an employee or volunteer in a position of trust with children (s.161).<sup>20</sup> It also created a peace bond for sex offences (s.810.1), in which any person may obtain a peace bond lasting up to twelve months, if he or she fears that another person will commit a sexual offence against a child.

For the last ten years, the criminal justice system has responded quickly to child sexual abuse issues. In other words, policies for sex offences have been equivalent to those for preventing child sexual abuse. Mohr and Roberts point out that:

Perhaps more than ever before, the term sexual assault evokes the image of children -- children abused by their fathers, stepfathers, uncles, social workers, teachers, doctors, and priests (1994: 4).

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<sup>19</sup> These reforms also include provisions which exclude members of the public from the court room and permit support persons for accommodating the special needs of children testifying in cases involving child sexual and violence (s.486).

<sup>20</sup> Child sexual abuse requires various prevention measures. Given the difficulties of ensuring that child victims are protected from manipulation and threat by sex offenders, one prevention measure is to screen people who are applying for paid or voluntary positions of trust with children, so that known child sex offenders are denied access to children, thus reducing their opportunities to re-offend. At the present time, several provinces (e.g., Nova Scotia, Manitoba and Ontario) have their own child abuse registries. However, their use and criteria are different and information is not necessarily accurate without fingerprints. The development of the national registry of information through the Canadian Police Information Centre (CPIC) is now under examination by the federal government (The Federal Ad Hoc Interdepartmental Working Group on Information Systems on Child Sex Offenders, 1994).

## **Sex Offenders Defined as Dangerous Offenders**

The Dangerous Offender legislation in Canada has always focused on specific types of risk creators: sex offenders, violent offenders, recidivists, and persons considered to have a mental illness or personality disorder (Petrunik, 1994: 8). In this sense, a sex offender of children may represent a typical category of dangerous offenders. In fact, of 121 persons serving indeterminate sentences under the section 761 of the Criminal Code as of December 1992, over one half had a sex offence as their major offence and 90 percent had a history of one or more sex offences (Petrunik, 1994: 112).<sup>21</sup>

Section 753 of the Criminal Code provides for a court hearing as to whether a person is a dangerous offender in cases where the following criteria are met with respect to sex offenders:

- (a) conviction for a serious injury offence: an offence or attempt to commit an offence mentioned in sections 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault);
- (b) the offender, by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses.

Once a convicted person is declared “a dangerous offender”, he/she may receive a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted. A dangerous offender may apply for parole. Additionally the National Parole Board

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<sup>21</sup> Of some 60 people found to be dangerous offenders between October 1977 and December 1985, 78 percent had committed sex offences (Griffiths & Verdun-Jones, 1994: 371).



shall examine such offender's case on a regular basis (s.761 of the Criminal Code).

The roots of the dangerous offender provisions can be traced to the 1947 Habitual Offender legislation and the 1948 Criminal Sexual Psychopath legislation,<sup>22</sup> which were based on the clinical model. This model assumes that sex offences are the product of individual pathology (sexual psychopathy), which requires diagnosis. Consequently this model advocates subjecting the offender to indeterminate confinement and treatment in order to protect the public (Petrunik, 1994). In 1960, the term "criminal sexual psychopath" was replaced by the term "dangerous sex offender", which reflects the emergence of a justice model of social control, particularly in the United States (p. 77). In 1977, the present dangerous sex offender legislation (Bill C-51, which repealed the Habitual Offender and Dangerous Sexual Offender provisions) was enacted as a part of the "Peace and Security Package," a series of measures to ease public concern about the possible increased risks posed by violent offenders associated with the abolition of capital punishment (p. 83).

Since its enactment, the dangerous offender legislation has been criticized by those concerned about individual rights (criminal justice model), and there have been legal challenges under the Canadian Charter of Rights and Freedoms. However, the courts have consistently upheld its constitutionality, despite the false positive problem in clinical prediction (p. 87; Griffiths & Verdun-Jones, 1994: 372-373). Apparently, these trends have proceeded against the backdrop of pressure from a general public who is

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<sup>22</sup> This law defined a criminal sexual psychopath as "a person who by a course of misconduct in sexual matters had evidenced a lack of power to control his sexual impulse and who as a result is likely to attack or otherwise inflict injury, loss, pain or other evil on any person" (McRuer, quoted by Petrunik, 1994: 76).

sensitized by the findings of the Badgley Report and a few brutal incidents. There has been strong public pressure to protect the community through the imposition of longer periods of incarceration for violent offenders, including sex offenders (Griffiths & Verdun-Jones, 1994: 370-374). Petrunik (1994) argues:

Since the early 1980s, there has been a move toward a community protection model of dangerousness fostered by victims rights and child protection advocates, the women's safety movement, and an emerging body of research on the victimization of women and children (p. 113).

The trends are more prominent in the United States. For example, in 1990, the state of Washington passed the Community Protection Act, which included a provision for the indefinite confinement for "sexually violent predators" (pp. 108-109; Small, 1992). In 1988, the state of Arizona enacted lifetime probation terms for offenders convicted of certain classes of sex offences (Pullen & English, 1996). Recently, the Canadian government has implemented a set of measures to protect the community from further victimization by sex offenders. In May 1993, the Solicitor General of Canada announced the proposals. One focal point was the provision of expanding dangerous offender applications in the case of high-risk offenders who were approaching the end of their sentences, a provision which raised numerous constitutional issues (e.g., double jeopardy) (Petrunik, 1994: 96-99; Griffiths & Verdun-Jones, 1994: 373-374). In September 1996, the federal government tabled a new package of the Criminal Code amendments in Bill C-55. It proposed a new middle category for high-risk offenders ("long-term offender") targeting specifically sex offenders (Solicitor General of Canada,

1996).<sup>23</sup> If successful, long-term offenders would face up to 10 years of supervision, which may include electronic monitoring, after the completion of their sentence. The dangerous offender provisions of the Criminal Code would also be tightened up (e.g., judges must impose indeterminate sentences on dangerous offenders).<sup>24</sup> Potentially violent criminals, including sex offenders, even if they have not been charged with a crime, could be forced to wear an electronic tracking device for up to one year and be restrained from school yards (judicial restraint). The new provision would allow judges in British Columbia to place a high-risk sex offender on the electronic monitoring program after his release from prison.<sup>25</sup> These initiatives clearly respond to the public's demand for tougher approaches to sex offenders. Justice Minister Mr. Rock has stated:

We've decided to choose the safety and protection of children over the rights of a violent high-risk criminal .... With pedophiles and dangerous offenders, just because they're released from jail doesn't mean their propensity to re-offend has been snuffed out. In bringing forward this bill we are making a smart and necessary move to ensure the safety of the streets.<sup>26</sup>

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<sup>23</sup> McLroy A., the *Globe and Mail*, September 16, 1996; McLroy A., the *Globe and Mail*, September 17, 1996; the *Vancouver Sun*, September 19, 1996. This Bill has measures not only to crack down on hard-core criminals, but also to promote the reintegration of non-violent offenders into the community.

<sup>24</sup> Further, the Crown would have up to six months after conviction to apply for dangerous offender designation, but must give notice at time of sentencing; the initial parole review for dangerous offenders would be changed to the seventh year of sentence from the current third year; the number of psychiatrists required to testify at a dangerous offender hearing would be reduced from two to one.

<sup>25</sup> Hall N., "Bill Targets High Risk Sex Offenders", the *Vancouver Sun*, September 18, 1996.

<sup>26</sup> Fournier, S., "Feds Seek to Monitor Offenders", the *Province*, September 17, 1996.

Although these initiatives have been applauded by the police and victim rights groups,<sup>27</sup> there will certainly be challenges under the Canadian Charter of Rights and Freedoms.

## **CHANGES TO PROBATION POLICIES FOR SEX OFFENDERS IN BRITISH COLUMBIA**

The criminal justice response to sex offenders by corrections in British Columbia can be divided into three distinct time frames: (a) no special practices for sex offenders (prior to mid-1980s); (b) specialized practices for sex offenders (mid-1980s to 1992); and, (c) the development of specific sex offender policies (post-1992).

### **No Special Practices for Sex Offenders (prior to mid-1980s)**

Historically, sex offenders on probation in British Columbia have not been identified as a special group to be treated differently from probationers in general. An early survey on the prevalence of sex offenders on probation in seven provinces across Canada revealed that in 1964, adult and juvenile male sex offenders, accounted for 4.4 percent of the total general probation population (Gigeroff, 1965). Although this survey indicated that sex offenders on probation were referred to mental health services for the purpose of assessment and treatment, it is not clear how many sex offenders were referred to the psychiatric services. In the 1970s, the provincial government began to be aware of the nature of sex offences: in 1973 the Vancouver Rape Relief Centre, the first organization in Western Canada designed specifically to meet the needs of rape victims, opened and was supported with provincial government grants (Goldsberry, 1979). In the late 1970s and 1980s, there was a growing awareness of the prevalence of, and harm

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<sup>27</sup> Fuller L. executive assistant for the B.C. chapter of CAVEAT said that the new measures might have contributed to the prevention of the 1992 murder of six year-old by Jason Gamache.

caused by, sexual abuse and there were several incidents of child molestation by people in trusted positions (e.g., a child protection social worker, Bill Moreau in 1982; an elementary school principal, Robert Noyes in 1985), physical and sexual abuse of native children by Catholic priests in church-run residential schools (e.g., Newfoundland and B.C.), heightened the public's concern about sex offences against children (Ekstedt & Jackson, 1996; Polowek, 1993).

Justice agencies were not immune from the political pressure created by these incidents (Polowek, 1993). In 1982, O'Shaughnessy (Ekstedt & Jackson, 1996: 193-194) started the adolescent sex offender programs at Juvenile Services to the Court in Burnaby, to which the enactment of the Young Offenders Act (1983) enabled more funds to be allocated. In the same year, the Forensic Psychiatric Services Commission began providing out-patient programs for B.C. Corrections, and then expanded to provide a comprehensive and multifaceted sex offender program (Polowek, 1993: 21). However, the supervision of sex offenders was far from efficient because these contract resources were limited and information could not be shared between agencies (Polowek, 1993: 22-23). At this time, a few probation officers began to acknowledge the special needs required in the supervision of sex offenders, which subsequently led to a proposal for the establishment of a Sexual Offender's Attendance Program (Polowek, 1993: 24-25).

#### **A Partial Policy for Sex Offenders (mid-1980s to 1992 )**

While in the initial phase discussed above the focus was placed on treatment issues, in the period mid-1980s to 1992, management issues emerged. The first response of the British Columbia government to sex offences was the implementation of specialized correctional facilities. The Stave Lake Correctional Center near Mission

changed its mandate to provide a comprehensive program for adult male sex offenders (1986).<sup>28</sup> It developed a program based on the concept of a therapeutic community that focused on assisting sex offenders better understand and change their behaviour through cooperation with Forensic Psychiatric Services and several community agencies. Careful release planning and close relationships with community resources (e.g., probation officers) were emphasized.<sup>29</sup>

In 1987, the Vancouver Specialized Supervision Unit (VSSU) was established to provide enhanced supervision of convicted sex offenders. The first office of its type in Canada (Polowek, 1993: 3), it began as one unit with two probation officers, one secretary and one psychologist, and dealt with only adult sex offenders. In 1989, this office became independent with a local director. The sex offenders dealt with at the VSSU expanded from adult (provincial) parolees and adult probationers in Vancouver, North Vancouver and Richmond, to youth sex offenders and adult bailees in 1995 when three probation officers were added.<sup>30</sup> During the late 1980s, the total number of offenders on probation increased dramatically. However, under the provincial government of the day, probation staff were trimmed and budgets were frozen. It was at this time that various re-structuring models for the delivery of probation services were discussed with field probation officers. Specialization for specific offender groups was

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<sup>28</sup> As of March 1993, the Ford Mountain Correctional Centre in Chilliwack also accommodates a mixture of sex offenders, mentally disordered offenders, and offenders in protective custody (Province of British Columbia, 1993).

<sup>29</sup> Province of British Columbia, n.d.; Gobillot, n.d.

<sup>30</sup> During 1997, two probation officers in charge of youth sex offenders will be transferred to the Ministry for Children and Families, and the VSSU will be again a part of a larger probation office.

suggested to increase the effectiveness of case management. The VSSU program was supported by these action plans. In November 1990, the East District Specialized Supervision Unit (EDSSU) was established in Coquitlam with responsibility for adult and youth sex offenders (parole, probation, and bail supervision) in Burnaby, New Westminster, Coquitlam, Port Coquitlam and Port Moody. The concept then expanded to other offices throughout the province, the specific structure of the offices varying according to local requirements (e.g., size of office and resource availability). One example was the Intensive Supervision Program-Kelowna Model at the Kelowna Probation Office, established in 1992. Although not formulated as systematic models, a variety of sex offender programs were conceptualized and developed at different probation offices (e.g., the Port Alberni Probation Office in 1989).

Although these developments resulted in a variety of sex offender programs focused on regional needs, there is no doubt that the VSSU and the EDSSU played a pioneering role as the prototypes for the supervision of sex offenders in British Columbia. Before describing these programs, it is important to understand the rationale for having specialized units for sex offenders staffed by specially trained probation officers. In the late 1980s, sex offenders accounted for approximately 5 to 6 percent of the total population on probation. Even though this figure was relatively small, it was enough to force the provincial government to identify sex offenders as a special target group, particularly those offending against children. Secondly, the experiences of probation officers and the findings of research studies on sex offenders revealed that sex offenders should be treated differently. It was acknowledged that sex offenders were distinguished as being "manipulative, secretive, devious, deceptive", showing a continued propensity to

re-offend, and as offenders who carefully planned their offences so as to appear that they occurred without forethought (English et al., 1996). Mr. Neil McKenzie, a founder of the VSSU, states that "Sex Offenders are people in denial. Often times, they got charged. The courts didn't understand. They are very manipulative people."<sup>31</sup> Group supervision and a team approach were perceived as useful tools to challenge this denial. A third rationale for a specialized unit was that the accumulated knowledge on the etiology and the development of treatment enabled probation officers to have a general opportunity to reduce recidivism through intensive supervision and using various relapse prevention techniques (Campbell, n.d.: 23; Polowek, 1993: 25). Offenders required supervision by probation officers with specialized knowledge and experience and who had small caseloads. The supervisory practices of the VSSU and the EDSSU were practice-driven (Polowek, 1993: 25-26) while theory provided the structure for the specialized unit (Campbell, n.d.). In Campbell's view:

The knowledge gained from theory and empirical description has provided structure to the supervision which is targeted more applicably to the probationers' particular characteristics and the risks posed by these clients, while also providing an inventory list to assess their needs (p. 57).

The primary goals and principles of the VSSU and the EDSSU are to protect society through the development of internal control and external control over sex offenders' behaviours (Polowek, 1993: 291; Campbell, n.d.: 24). More importantly, the "VSSU program overview"<sup>32</sup> emphasizes:

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<sup>31</sup> Interview with Neil McKenzie at the VSSU on February 5, 1997.

<sup>32</sup> Written by Neil McKenzie, Local Director, VSSU (1995 version).



The V.S.S.U. program is not primarily treatment-oriented but, instead, emphasizes relapse prevention. Supervision is, however, seen as a therapeutic process which assists offenders to develop and maintain socially acceptable lifestyles.

Internal controls, that is, self-policing or individual self-control, are enhanced through identifying and learning the strategies to interrupt individual offence cycles. Offence cycles refer to the subsequently progressive processes from early and immediate precursors through the high-risk situations and fantasy (lapse) to the relapse (i.e., the return to the previous pattern of habitually performing the sexually aggressive behaviour). The relapse prevention plan is developed during the intake process and revised and reformulated several times for every sex offender. Group programs, therapy by psychologists and psychiatrists, and education for victim awareness, are all aimed at developing internal controls in the offenders. To achieve external controls,<sup>33</sup> the VSSU and the EDSSU emphasize “a coordinated approach” (Polowek, 1993: 292) or “a team approach” (Campbell, n.d.: 29-36). External controls are provided by monitoring specific offence precursors by intensive surveillance (frequent meetings and home visits), creating an informal network of collateral contacts (e.g., spouse, other family member, significant others, and victims), and creating a collateral relationship with other agencies (e.g., mental health professionals, police, and schools). In order to avoid an over-reliance on self-reporting by sex offenders, emphasis is placed on gathering as much information as possible from various sources. It is assumed that the collection of information contributes to the efficacy of supervision. The supervision of sex offenders is composed of an integration of these two controls, and is known as a therapeutic

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<sup>33</sup> For the concept of external control, see p. 29.

process.

The coordinated approach requires the establishment of clear policies and standards for the supervision and treatment of sex offenders beyond the mandate of the agencies involved. To this end, a task force was established in February 1991 (Corrections Branch, 1991) and the final report, entitled "The Management of Sex Offenders", articulated the mandate and philosophy of the provincial corrections branch in responding to and managing sex offenders.

The goals are to protect the community; to manage the offender; and to reduce the abuse and violence against victims (p. 2).

B.C. Corrections Branch contributes to these goals in three basic ways: by administering and enforcing the order of the court in a manner which effectively meets the intent of sentence and protection of society; minimizing the risk of re-offending through supervision and the provision of programs and services that allow the offender to control and change his own behaviour; maximizing the effectiveness of programs through the training of staff (p. 2).

The Branch's mandate is to manage resources in a manner that fosters effective inter-agency cooperation and draws upon the expertise and experience of the community (p. 2).

The VSSU and the EDSSU programs are premised on the assumption that the etiology of sex offences is centered on: (a) a deviant arousal pattern, and/or (b) the inappropriate conversion of non-sexual problems into sexual behaviour (VSSU Program Manual, 1990, quoted in Polowek, 1993: 292). It is assumed that, while sex offenders are "treatable", the term "treatable" is defined not as "curable", but as "helping the offender learn ways of minimizing the risk of re-offence" (p. 292). A similar assumption was echoed in the report entitled "The Management of Sex Offenders": "sexual offending is a behaviour

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that does not lend itself to the commonly held notion of cure .... rather, [it is] a behaviour that must **be managed or controlled**" (Corrections Branch, 1991: 2, boldface in original). The concept of managing the sex offenders, rather than treating them, is used. However, this does not mean that the potential efficacy of treatment programs is dismissed; rather, the term "management" is used to define the needs, to solicit the resources, and to manage the service delivery, including treatment, within a multi-agency and multi-disciplinary perspective so that sex offenders do not re-offend. In this context, diversion programs are not considered suitable for sex offenders. The provincial Ministry of Attorney General, the Criminal Justice Branch, and the Corrections Branch adopted agreements and established guidelines to actually exclude sex offenders, particularly pedophiles, from diversion programs.<sup>34</sup>

### **The Development of Provincial Policies for Sex Offenders (post-1992)**

Until 1992, there were no province-wide policies for sex offenders despite the development of some innovative practices. The major development in probation supervision policies for sex offenders occurred following an incident of sexual assault and murder in October 1992 by Jason Gamache, an adolescent sex offender on probation. In May 1994, the report of official inquiry into the event, known as the Fisher Report, was published. The Fisher Report reviewed the process and procedures followed in supervising Jason Gamache and recommended that the government have province-wide standards for the supervision of sex offenders. These standards would consist of a

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<sup>34</sup> Ministry of Attorney General, Criminal Justice Branch, and Corrections Branch, 1992, "Agreement and Guidelines for the Involvement of the Corrections Branch in the Diversion of Sexual Offenders", in Probation Officer Program Adult Modules, Justice Institute of B.C. Corrections Academy.

notification policy, assessment, and supervision. Before examining these standards, further discussion of the Jason Gamache case and the Fisher Report is required.

### **The Jason Gamache Case**

In 1992, Dawn Shaw a six year old, was murdered by Jason Gamache, a youth who had previously lived next door to the victim. Surprisingly, following the incident, Jason was asked to baby-sit the two older Shaw children by neighbours and did so with the apparent knowledge and approval of the police. By the time the police received information about Jason's criminal record, Jason was no longer baby-sitting. Later the same evening, Jason again baby-sat two children of another neighbour. These things happened because none of the neighbours, the local RCMP, or the school were informed about Jason's record of sex offending. The probation order for Jason's original sex offences involving young children (4-6 years) who lived in the neighbourhood included specific conditions of: residing in a home approved by a probation office, attending school regularly and properly, attending psychological or sex offender counseling and therapy at the adolescent sex offender program, and prohibiting him from associating with any person under the age of 12, unless accompanied by a responsible adult. According to the findings of the Fisher Report, Jason was not considered a high-risk offender and was supervised in the same way other young offenders were supervised. It appeared that things had been going well, with Jason reporting to his probation officer on average every 3-4 weeks; attending a group session of sex offenders program and seeing individual therapist without apparent serious difficulties; and having a cooperative mother.

However, in retrospect, there were some suspicions that Jason had breached the

conditions of his probation order, including the no-contact provision. In addition, there had been no home visits, no random checks, and no communications between probation and other authorities (e.g., police and school). The probation officer knew nothing about Jason's activities unless he was informed by Jason, his mother, or his therapist. The report pointed out that the current system of probation did not meet public expectations; that is, the probation system did not ensure that the risks to others in the community were reduced. It was revealed that the supervision approach was not preventive; rather, it was reactive in nature, crisis management-oriented, lacked the necessary resources for delivering specialized supervision, and lacked cooperation between authorities. In addition, there was only one policy which applied specifically to youth sex offenders in the province:

Child abuse ... offenders who are being supervised in the community on ... probation ... should be given a high priority and intensive supervision .... Where counseling or treatment is ordered by a youth court ... the responsible staff member shall take particular care to monitor and enforce these terms and report any apparent willful failure to comply to Crown counsel .... Any release from custody to the community should be made known to the investigating police officer(s) and to the police in the community to which the offender is released, if different.<sup>35</sup>

Since there were no specified, province-wide policies that applied to daily probation supervision, it is fair to say that probation officers had no guidance on how to deal with sex offenders. The murder of Dawn Shaw angered both the public and probation officers. The Fisher Report concluded that an increased level of supervision would help reduce the risks of sex offenders. The report recommended:

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<sup>35</sup> "Inter-Ministerial Co-ordination. Child Abuse - Young Persons as Offenders", s. A7, March 14, 1988, quoted by Fisher, 1994: 10.

- (a) Each probation office should have specially trained officers;
- (b) Average caseloads should be reduced;
- (c) Specific province-wide policies should be adopted for intensive supervision, including collateral contacts and keeping detailed records;
- (d) All police officers should be expected to know of all the young sex offenders in the area. Notifications to school officials may also be required;
- (e) Therapy and supervision should work closely together. Limited confidentiality should be retained;
- (f) More consideration should be given to the residency conditions;
- (g) Extreme care should be exercised to prohibit a sex offender from contacting with children; and
- (h) The Young Offenders Act should be amended to enable probation officers to notify some individuals on a need-to-know basis (Fisher, 1994: 24-26).

### **Current Probation Policies**

The Fisher Report had a significant impact on the development of province-wide policies. Most of these recommendations were manifested in the establishment of a notification policy to protect children from abuse (June, 1994), the introduction of a comprehensive assessment tool (Sex Offender Risk/Needs Assessment (SORA), 1995), and the establishment of supervision standards (Manual of Operations: Youth Programs, September, 1995; Manual of Operations: Adult Probation & Community Services (draft),<sup>36</sup> 1995).

### ***Notification Policy***

The privacy of sex offenders is generally protected by the provisions in the provincial Freedom of Information and Protection of Privacy Act. However, it is assumed that sex offenders have a limited confidentiality. The principle of limited

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<sup>36</sup> "Manual of Operations: Adult Probation & Community Services" (Province of British Columbia, 1995b) has been revised six times. The latest version is Draft #7, March 14, 1996.

confidentiality is an essential part of external control. For example, child abuse and neglect, information about crimes committed or contemplated by a probationer or any other person, which could be revealed through supervision, must be reported to the child protection authorities or the police.<sup>37</sup> Furthermore, probation officers are supposed to seek the consent of sex offenders before providing information about them with collateral contacts.<sup>38</sup> In the case of failure by sex offenders to consent to a waiver of confidentiality, community notification policies are applied. Within the provincial Freedom of Information and Protection of Privacy Act, a notification policy to protect children from abuse was established (June 1994). The notification policy, one of three initiatives stemming from the Known Abusers Project,<sup>39</sup> aims at enhancing community safety, while at the same time balancing the privacy rights of the offender and the community's right to know of the offender's presence. In the case of compelling circumstances without the consent of sex offenders, supervising probation officers consult with the Corrections Branch Information and Privacy Analyst for recommendations or approval to notify individuals, groups (FIPPA s.33(p)<sup>40</sup>) or the

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<sup>37</sup> "Adult Probation and Community Services" (Draft, August 31, 1991) s. F1, 1.06 (Province of British Columbia, 1995b) and Justice Institute of B.C., Corrections Academy, Probation Officer Program Adult Modules.

<sup>38</sup> See, note 36, 6.07.

<sup>39</sup> The purpose of the Known Abusers Project is to enhance the community's safety from abusers of children. Other initiatives included the design of educational materials regarding child abuse and the introduction of the Criminal Records Review Act which requires all persons who work with children in government operated, funded or licensed programs, to undergo a thorough criminal record check.

<sup>40</sup> "A public body may disclose personal information only ... (p) if the head of the public body determines that compelling circumstances exist that affect anyone's health or safety and if notice

general community (FIPPA s.25<sup>41</sup>), including the news media, when a risk is presented by known abusers. Notification takes place on a case-by-case basis, depending upon the degree of risk the sex offender presents: the *modus operandi* of the offender; adherence to court orders; participation in and response to treatment programs; current activities, including access to potential victims; and psychiatric history. Notification to the general community is subject to more strict procedures than limited notification to an individual or group.<sup>42</sup> While these policies have attempted to address the public's fear, it should be noted that there are no clear policies to ensure that notification information is properly used. The growing concern of the public has required that corrections move beyond a case-by-case notification (e.g., sex offender registration).<sup>43</sup>

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of disclosure is mailed to the last known address of the individual the information is about" (s. 33).

<sup>41</sup> "Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) the disclosure of which is, for any other reason, clearly in the public interest" (s. 25(1)).

<sup>42</sup> For example, while in the case of limited notification to an individual or group for which the Information and Privacy Analyst (IPA) has approval authority, the IPA must brief and seek the authority of the Deputy Minister of the Attorney General for notification to the general community.

<sup>43</sup> In February 1997, Michael Andrew Gibbon, 28, was charged with possessing and distributing child pornography. From this material, he was found to have raped at least two girls, acts which occurred four years previous when he was under a probation order following his jail term for molesting his niece. Neighbours who lived in the community were not warned. His next-door neighbour said that rumors about Gibbon floated around the community, but no one ever officially contacted him. This case raises questions about why the community around Gibbon was never warned by authorities of the danger he posed. When Gibbon was on probation, he was not considered a high-risk case. Now this case is under independent investigation (*Vancouver Sun*: Lee J. & M. Hume, March 5, 1997; Mulgrew I., J. Lee and S. Bell, March 6, 1997; Lee J., March 7, 1997; Lee J., March 7, 1997; and Bell S., March 7, 1997).



Another intended function of these notification policies was to ensure the appropriate sharing of information about known abusers of children between justice agencies. After the Jason Gamache incident, the probation office began notifying the local police of any sex offenders not only when they were released to the community from prison, but also when their probation supervision was transferred from one office to another. Now the information provided to the local police includes the name, address, physical description, offence(s), probation conditions, and vehicle on an updated basis. At the local level, child abuse committees have been established to create a multi-ministerial approach to provide services through information sharing relating to child abuse (e.g., Surrey Child Abuse Committee). The extent to which information is shared among different agencies, however, generally depends on regional interests.

### *Assessment*

In 1995, the Sex Offender Risk/Needs Assessment (SORA) was developed by Atkinson and Hornibrook of the provincial Forensic Psychiatric Services. This instrument was one of three Risk/Needs Assessments -- the others being the Community Risk/Needs Assessment (CRNA) and the Spousal Assault Risk Assessment (SARA) which were designed to evaluate the risk of re-offending, to identify criminogenic needs, and to facilitate a focused supervision plan. In the case of sex offenders, the SORA is administered rather than the CRNA.<sup>44</sup> When a person commits a sex offence against his

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<sup>44</sup> For a sex offender who commits a sexual assault against an adult stranger and who has other non-sexual criminal convictions, the SORA is used in addition to the CRNA (B.C. Corrections Branch, "Manual of Operations", s. F1, September 11, 1995).

spouse, the SARA is used.<sup>45</sup>

The SORA is a comprehensive and systematic review of both the static factors and dynamic factors (needs) that affect the risk of sexual re-offending.<sup>46</sup> The overall level of risk is determined by combining these two factors. Static risk factors consist of relevant actuarial and historical information (e.g., prior sexual offence and sex of victim). If the offender has had a longer history of sexual problem(s), committed more intrusive offences, and has anti-social attitudes, then the higher the risk (e.g., fixated pedophiles, especially those with a preference for male victims). An example of a low-risk category is an incest offender, especially when the offence is historical in nature. Dynamic risk factors (needs) include the relevant clinical risk variables: motivators, disinhibitors, and blocks to legal sexual outlets. These factors are amenable to change and indicate “what needs, in terms of treatment or supervision, does a given offender have in order to reduce or manage his risk of offending” (Atkinson & Hornibrook, 1995: 4). Examples of high-need offenders are those who have multiple sexual deviances or those who do not accept responsibility for their offences. To complete a risk/needs assessment, probation officers should gather a considerable amount of clinical information through structured interviews focusing on questions relating to sex and offending, and a consultation to the Forensic Psychiatric Services.

The SORA not only assesses risk, but also assists in the development of a case

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<sup>45</sup> This situation is considered to be an escalation of an existing abusive relationship rather than a sexual disorder; therefore, this case falls within the specialized supervision category of spousal assault (B.C. Corrections Branch, “Manual of Operations”, s. F1, September 11, 1995). However, in practice, it is difficult to clearly distinguish them.

<sup>46</sup> The description of the SORA in this subsection is derived from Atkinson and Hornibrook (1995).

management plan. The standards of case management plan according to risk/needs level will be given an account of in the next subsection. Since the overall risk of re-offending is dynamic and can change over time, intervention strategies may be altered as a result of re-assessment (Atkinson & Hornibrook, 1995: 9). Furthermore, it is assumed that not every offender presents the same needs and, therefore, intervention strategies must be individualized (p. 10).

### *Supervision Standards*

Guidelines for “Case Management of Sex Offenders” in “Manual of Operations: Adult Probation & Community Services” (Province of British Columbia, 1995b) were introduced in 1995, along with the manual of operations for youth sex offenders (Province of British Columbia, 1995a). However, the manual for adult sex offender supervision was followed by six revisions within one year. The latest version (draft # 7) is approved as a draft form. Draft #7 defines sex offender<sup>47</sup> and the purpose of supervision: to enhance public safety by providing assistance for reducing the risk; providing treatment, counseling or therapy; monitoring; and maintaining liaisons with other agencies. It also contains standards and procedures of initial reporting, assessment, collateral contact and case management.<sup>48</sup> There are many requirements that probation officers must address, based primarily on the results of the administration of the SORA.

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<sup>47</sup> For definition of “sex offenders”, see pp. 36-37.

<sup>48</sup> The case management plan addresses relapse prevention plan, biography, offence cycle, victim grouping, vehicle, collateral, victim awareness, group reporting, psychiatric/psychological reports, matters to be reviewed at each contact (e.g., frustration), therapy contacts, agency contacts, home, education/employment, cycle and relapse prevention plan, and conditions (Province of British Columbia, 1995b).

For example, depending on the level of risk/needs and the conditions on the supervision order, levels and modes of supervision are applied to the specific case.<sup>49</sup> With sex offenders categorized as having high risk/needs, probation officers are required to contact the probationer at least four times per month (including collateral contacts) and complete home visits at least once every two months. It should be noted, however, that the assessment of a given offender as being at high risk is, itself, not as important as whether the risk is manageable (Atkinson & Hornibrook, 1995: 10). For example, as long as the offender with high risk/high need is “completely compliant and is committed to controlling his behaviour and learning new ways of maintaining healthy sexual and personal relationships,” (p. 10), this individual is manageable and would not need strong external controls such as warning a potential identified victim. Low-risk/needs sex offenders are subject to at least two contacts per month (home visit is at the discretion of the probation officer), which is similar to the supervision level for medium risk/needs non-sexual offenders. No sex offender shall be placed on the probation monitoring program.<sup>50</sup> Within this framework, a variety of supervisory models in different locations, besides the VSSU and the EDSSU, have been developed and expanded depending on regional needs: a psycho-education group run by probation officers in Penticton, Duncan and Langley; a systematic approach with a team concept in Kelowna and Surrey; a community-oriented approach in Port Albarni; and a multi-ministerial approach in Victoria. At the same time, several newly hired probation officers were allocated to the

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<sup>49</sup> See note 36, 6.04(6) and 6.06.

<sup>50</sup> See note 36, 6.06.

regions specifically to increase the supervision of sex offenders. In 1995, six extra probation officers were placed in the Fraser Valley District; in addition, every probation office was supposed to have a sex offender specialist. It was suggested that the caseload for each probation officer be limited to 35 sex offenders. With respect to the specific training for supervision of sex offenders, the Justice Institute of British Columbia has expanded from one basic course in 1992 to a "sex offender certificate program",<sup>51</sup> which includes a total of 120 credit hours, 20 courses (5 mandatory, 15 elective) in 1996.

The probation conditions for sex offenders have been standardized. They are made up of several main domains: contact with probation officer, treatment, restricted contact, residency, alcohol and drugs, vehicle, curfew, associations, and photographs. Enforcement standards for non-compliance of probation orders by sex offenders are based on general policies and procedures for probationers, while the cases of wife assault have special policies and procedures.<sup>52</sup> Yet, technical violations leading to relapse (i.e., sexual re-offending) are supposed to be taken seriously. Campbell (n.d.: 23) noted in terms of the goals of a specialized unit that "the goal would be to uncover offending and re-institutionalize the offender on new charges."

The proposed levels of intensity of supervision have increased over the course of the various revisions of the policy. For example, the amount of supervisory intervention

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<sup>51</sup> The goal of the program is to provide as much information as possible to assist those dealing with sex offenders for extended periods of time. Attendants are expected to be a mixed group of probation officers, individuals, contractors and any other agencies working with sex offenders, their significant others and victims.

<sup>52</sup> B.C. Corrections Branch. Manual of Operations, s. F5, Wife Assault: "K" Files.

for medium-risk/needs sex offenders has changed from two to three contacts per month.<sup>53</sup> These new standards of supervision are not immune from criticism, including those of the Fraser Community District Sex Offender Supervision Group (Neufeld, 1996).<sup>54</sup> This group argued that the increased expectations being placed on probation officers in terms of supervising sex offender can no longer be met due to caseload demands. It was noted that the average caseload in the Fraser Valley District was 74.8 clients per full time probation officer in 1996, which was twice the suggested maximum, a factor which contributed to the suspension of psycho-education groups for sex offenders in many offices. According to the supervision group, probation has become burdened with many complex conditions, including frequent home visits, collateral checks, reporting (over two-thirds of the caseload must report at least once per week) and investigations of residences. Probation officers are also under tremendous pressure from the general public and often perceive a lack of support from management:

[T]here are less resources assigned to supervising Fraser Valley sex offenders than prior to the Fisher Report .... a Corrections Branch representative painted a very ROSY picture of what Corrections was doing. We will lose credibility very quickly if we are not able to deliver these promises (p. 1).

## Summary

Prior to the mid-1980s, there was little general knowledge and awareness about sex offenders among probation officers and the general public. Sex offences were often

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<sup>53</sup> See note 36, 6.06.

<sup>54</sup> This is a voluntary group, created by probation officers with a professional interest in supervising sex offenders in Fraser District. The purposes of this group are to learn, exchange information, support each other, and advise on policy. In 1996, an open letter "Submission to Fraser District Management Team and the Transition Team" written by this group was sent to Premier of British Columbia Clark and MLA B. Penner.

perceived as isolated incidents committed by a small group of dangerous sex offenders. The public discourse on sex offender supervision in the community has focused on federal, rather than provincial, policies. For example, in 1981, the rape and murder of nine children by Clifford Olson in British Columbia, and the federal government's handling of this case undermined the credibility of the justice system (Neufeld, 1997). The high-profile incidents perpetrated by sex offenders and the reports of subsequent inquiries have functioned to direct the public's attention toward the federal parole system. In this phase, while knowledge about sex offenders had been liberated from Freudian perspectives and developed exponentially, with few exceptions, such knowledge was not shared with the public or criminal justice practitioners. The impact of victim surveys, such as those included in the Badgley Report, was, initially, quite limited. However, the growing awareness of the prevalence and seriousness of sex offences, particularly those against children, precipitated changes in policy and practice in British Columbia. Public pressure to protect children, which was reflected in the comprehensive amendment to the Criminal Code (Bill C-15, 1988), had considerable influence on provincial policies. The sex offences committed by people in trusted positions inspired public fear, and it became apparent that the real issues involved both provincial and federal issues.

A dramatic increase in the number of sex offenders in B.C. Corrections occurred in the last half of the 1980s and precipitated the establishment of specialized supervision units such as the VSSU in 1986 and the EDSSU in 1990. Public attention was directed toward provincial policies which dealt mainly with sex offenders of children. Supervision in offices such as the VSSU was premised on the assumption that sex offenders cannot be cured, but can be managed through internal control (using a

cognitive-behavioural approach) and external control (using social networks). Sex offender supervision in this phase is distinguished by a practice/theory-driven, rather than a policy-driven approach. The murder involving Jason Gamache was significant in making sex offences a political issue at the provincial level. The introduction of a set of policies, including assessment, supervision, and notification, as important parts of case management, was a response to political pressures. High-profile cases in the provincial sphere raised the demands for community protection. From a community protection point of view, the distinction between federal policies and provincial policies has become blurred. It seems that, while the current policies are premised on the same assumption as those in the past, they have been more influenced by the general public. In this context, questions are raised about how these formal policies are interpreted by policy-makers, probation officers who supervise sex offenders, and the community; how these policies are implemented; and how these policies are functioning at the present time in terms of the balance between sex offenders, victims, community, and the government. These are the questions and issues addressed in the remainder of this thesis.



## **Chapter IV**

### **RESEARCH METHODS**

#### **INTRODUCTION**

Sex offender policies have developed in a different fashion at the provincial and federal levels in Canada, and from agency to agency in the criminal justice system. There were several reasons that the current study focused on probation policies and practices in British Columbia. First, bearing in mind the financial and time constraints within which the thesis was undertaken, as well as the diversity of policies in each jurisdiction, the analysis is limited to a particular jurisdiction. Secondly, the majority of sex offenders are under the probation supervision. Probation practices in British Columbia have some advantages over other jurisdictions: an innovative specialized supervision unit and a special training course for probation officers in charge of sex offender supervision. At this time, B.C. Corrections has the necessary components of management (i.e., assessment, classification, supervision, notification, and special shift) which are useful for the purposes of this thesis. This research focuses on adult sex offender policies rather than those relating to young offenders. This is because, at the time of research, the responsibility for supervising young offenders on probation was transferred from the Ministry of Attorney General to the newly created Ministry for Children and Families.

#### **RESEARCH METHODS**

A combination of qualitative research methods involving an analysis of the relevant policy documents (archival research) and interviews with persons (stakeholders) who have interests and concerns in sex offender policies and practices of the sex offender

policies (interview method) were employed in this study. At the pre-research phase, a discursive field work involving observation of a variety of practices was conducted. In the subsections that follow, each method is described.

### **Observation**

The pre-research phase of this study began in the Spring 1996, with a series of observations at various sites, including probation offices, parole offices, halfway houses, prisons, youth custody, non-profit organizations working for crime prevention, and conferences in British Columbia, Ontario (Canada) and Washington State (United States). The primary purpose of these observations was to explore the various types of correctional policies and practices relating to sex offenders which were supposed to be different from the researcher's personal experience as a probation officer in Japan.

With respect to the topic of this study, three observations were significant: the Fourth Child Sexual Abuse Symposium held at the University of Victoria in March 1996, with the theme "Responsibility, Relationships, and Reconciliation: The Victim and Offender in the Home and Community"; an interview with Mr. Neil McKenzie, Local Director, Vancouver Specialized Supervision Unit in May 1996; and attendance in the basic probation officer training course for sex offender supervision at Justice Institute of British Columbia in June 1996.

### **Archival Research**

Most of the policy documents relevant to this study were made available by the participants interviewed. They included law, directives, protocols, discussion papers, manuals, minutes of meetings, a government report, reports of inquiries, a newsletter, magazines, newspapers, and TV programs.

## Interviews

The third research method utilized was interviews conducted with stakeholders of the sex offender policies in British Columbia. These interviews were designed to supplement archival analysis by soliciting the participants' perceptions about sex offender policies and practices in British Columbia. A triangulation of interview data with data gathered through archival method was designed to create more objective understanding (Marshall & Rossman, 1995: 81). Interviews have the advantage of offering implied information which is essential to understand the policies in a holistic way. As Ekstedt and Jackson (1996) state:

Systems are driven by the assumptions and beliefs of the people who work in them; the importance of these beliefs and assumptions must therefore be recognized (p. 48).

The persons interviewed were all stakeholders of sex offender policies as applied to probation. For instance, probation officers, policy-makers, victims, offenders, the community at large, and other agencies dealing with sex offenders (e.g., police, judges, and psychiatrists) and politicians could all be considered. However, the time limitations of this research constrained the size of the sample. In addition, to avoid ethical issues, sex offenders and victims of sex offences themselves were deleted from the sampling lists. Thus, the sampling targets included probation officers in charge of sex offender supervision, policy-makers with responsibility for sex offenders on probation, and community groups, including groups advocating and serving on behalf of offenders and victims. The reason that the community groups were listed was not to analyze the public's perception of, but to acquire their insight into, the sex offender policies.

The first list of prospective interviewees was drafted on the basis of information

provided by a management officer in Victoria; a parole officer who is involved in sex offender supervision; Regional Staff College (CSC Pacific Region) at Mission; and the proceedings of the previously mentioned symposium. The first interview list included five probation officers; three parole officers; nine policy-makers and administrators (three employed by the province of British Columbia and six working for Correctional Services of Canada); and eight community interest groups (two victim's groups, two citizen groups, two advocacy groups and two other agencies). During the early phase of the research, people who work in a federal domain were deleted from the list.

The second list was based on a list of sex offender specialists in British Columbia, provided by a management officer in Victoria and a probation officer whom the researcher had interviewed. The final prospective participant list included twenty-five people: eleven probation officers; seven policy-makers/administrators; six representatives of community groups; and one treatment person in a federal penitentiary.<sup>55</sup>

Unstructured interview schedules were prepared for the data collection, and they included open-ended questions. They allowed the researcher to let the participants speak about their perspectives and insights (Morse & Field, 1995: 90-95). This method was intended to correspond to the exploratory nature of the research (Marshall & Rossman, 1995: 40-41). Two interview schedules were used respectively for probation officers and policy-makers/administrators, as well as for the representatives of community groups. However, the two schedules covered the same subjects related to the research

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<sup>55</sup> She was working in the federal domain; but, since she was a knowledgeable person about sex offender treatment, she was left in the second list.

objectives: sex offender policies; implementation; and the balance of the interests of offenders, victims, and the community (see Appendix 1 for interview schedules).

A formal request, which included a self-introduction and the purpose of the research, was sent to the prospective participants in the first and second lists. This was followed by a telephone conversation with them. Most participants were willing to participate in this research; however, one probation officer was not at the time engaged in the supervision of sex offenders; and another person was working for a community group which focused on wife assaults rather than sex offenders. Fortunately, they suggested other persons for this research, which supplemented the list. Ultimately, interviews were conducted with twenty-eight people including thirteen probation officers (one was working as a case management officer in the prison); seven administrators (policy-makers and local directors<sup>56</sup>; six community groups; and two clinicians (one psychologist, one registered nurse) (see Table 2 for the list of people interviewed).

The researcher conducted the interviews in several regions of British Columbia between November 1996 and February 1997. Before starting the interviews, all participants were told that participation in the interviews was voluntary and that the anonymity and confidentiality of responses would be assured. Also their permission to have these interviews tape-recorded was sought, and all of them agreed to do so. The interviews lasted from half an hour to two hours, and were conducted on a one-to-one basis with two exceptions (i.e., one to two). Several of the respondents provided relevant materials to supplement the interviews. What should be added here is that one

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<sup>56</sup> All of the local directors in the list had sex offender caseloads.

interview was conducted after attending a sex offender specialists meeting in one region. This provided an opportunity for the researcher to obtain the specialists insights on current policies.

## **Table 2 Participant List**

### **Administrators (Policy-Makers & Local Directors)**

- A1: L.D. Fraser Region (Male)
- A2: Policy-Maker, Vancouver Island Region (M)
- A3: L.D. Vancouver Metro Region (M)
- A4: Policy-Maker, Vancouver Metro Region (M)
- A5: L.D. Vancouver Metro Region (M)
- A6: L.D. Vancouver Island Region (Female)
- A7: Policy-Maker, Vancouver Island Region (M)

### **Community Groups**

- C1: Community Group for Women, Vancouver Metro Region (F)
- C2: Service/Advocacy Group for Offenders, Vancouver Metro Region (M)
- C3: Community Group (VORP), Fraser Region (M)
- C4: Advocacy Group for Victims, Fraser Region (F)
- C5: Community Group for Women, Vancouver Metro Region (F)
- C6: Advocacy Group for Victims, Fraser Region (F)

### **Probation Officers**

- P1: Fraser Region (M)
- P2: Vancouver Island Region (F)
- P3: Fraser Region (M)
- P4: Vancouver Metro Region (M)
- P5: (Prison), Fraser Region (M)
- P6: Fraser Region (M)
- P7: Fraser Region (F)
- P8: Fraser Region (M)
- P9: Interior Region (M)
- P10: Interior Region (M)
- P11: Interior Region (F)
- P12: Fraser Region (M)
- P13: Fraser Region (F)

## **Therapists**

T1: Psychologist, Fraser Region (M)

T2: Nurse, Fraser Region (F)

(Note) There was no participant from the Northern Region. 10 Female: 18 Male.

## **LIMITATIONS OF THE RESEARCH**

This research has several methodological limitations. First, since the scope of this research is limited to probation policies and practices in British Columbia, it cannot be generalized to those in other jurisdictions across Canada. Second, since the probation officers and policy-makers who are engaged with non-sexual offenders are not included among the interviewees, this research cannot answer the question of how sex offender policies operate within the overall the context of corrections policies in British Columbia. Third, non-specialist probation officers often deal with sex offenders in the rural areas. These probation officers are not included in the interview list. However, some problems would emerge (e.g., scarcity of treatment resources; physical isolation) that would have implications for policies and practices. Therefore, the outcomes of this research are not representative of the sex offender policies and practices in British Columbia. Finally, since there is no corresponding research, I cannot examine internal validity by comparing the results of the research with previous studies. In spite of these limitations, this research contributes to the exploration of sex offender policies and practices in British Columbia and further, an understanding of the development and implementation of correctional policy.

## Chapter V

### FINDINGS

#### SEX OFFENDER POLICIES OF CORRECTIONS IN BRITISH COLUMBIA: GOALS AND PRINCIPLES

There was no difference among the participants interviewed for the study in how the goals of sex offender policies were defined. Administrators, probation officers and community group members generally agreed that the goals were to protect the community, help offenders reduce the likelihood of re-offending, and, reintegrate offenders back into the community. However, several perspectives were presented. One perspective was centered on feminist theory. According to this perspective, the criminal justice system deals with only “sick” men, “non-white middle class men” and “strangers who sexually assaulted boy children” (C5). Another perspective was presented by one respondent in a service group for offenders, who contended that the goal of sex offender policies was only to keep sex offenders from re-offending, which connoted longer incarceration with no treatment (C2). The responses of administrators and probation officers, however, reflected the perception that the mandate of probation officers was limited to the term of probation, while treatment was expected to have a long-term effect in reducing the likelihood of re-offending (A2). The administrators and probation officers interviewed argued that protection of the community could be achieved by preventing sex offenders from re-offending (i.e., committing sex offences).

However, with respect to the parameters of community protection; in other words, to what extent sex offenders should be prevented from re-offending, there were a few variations: “no more victims”; “fewer victims”; and “less damage” (P1). The goal



of 'no more victims' is not as predominant as it used to be because this objective is seen as unattainable.<sup>57</sup> The adoption of the relapse prevention approach prepared for the change from "no more victims" to "fewer victims." "Fewer victims", which is a goal of formal policies,<sup>58</sup> was considered to be an achievable goal by many of the administrators and probation officers interviewed. A policy-maker (A2) stated that "our goal is to do whatever we can, in consideration of the probation order, to reduce the chances of re-offending." This view was echoed by several probation officers, one stating that "[we] try to minimize sex offending. We can't shut it down entirely, but we can reduce the number." Recently a new concept based on the harm reduction theory was introduced to advocate "less damage." This goal was reflected in the following statement:

We've seen people in jail or on the street put needles in their arms and become HIV .... The reality is this [HIV] is spreading among the jail population. Why don't we just say, 'It's happened, let's give them clean needles.' These are strategies of harm reduction. People say, 'No victim, no victim.' But we always have sex offenders in the population. We will and we accept that. With a really dangerous population, we have to contain them as much as possible. We should not judge ourselves a failure if one of the offenders has a lapse, and goes out and commits an offence. Maybe it's a victory if, instead of going out to victimize ten children, we manage to get him after one offence against a child. He offended but he reported it. It's reduced the harm (P2).

Given the devastating impact of sex offences on victims and the zero tolerance attitude of the public, there may be little room for this concept to be accepted generally (P1 and P2).

With respect to the principles underlying sex offender policies, administrators and probation officers in general emphasized the importance of fairness and of balancing

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<sup>57</sup> Of course, the phrase "no more victim" is used for motivating sex offenders (A3).

<sup>58</sup> See pp. 65-66.

the rights of victims, offenders, and the community. However, it should be noted that, when sex offender policies were translated into operational policies, the notions of fairness and balance were interpreted more in the victims' favor, in comparison to cases involving non-sexual offenders (A3). Several administrators and probation officers stated that sensitivity to the needs and rights of victims was a primary objective of sex offender policies. For example, a local director interviewed stated that the ultimate goal of probation officers supervising sex offenders was to meet the needs of victims (A6). Within this framework, massive intervention and limited confidentiality of sex offenders' information are required (A2).

Although it was generally felt that sex offenders should have more opportunities for counseling (P7), the primary purpose of treatment was to manage risk along with intensive intervention (A2). The term "rehabilitation" was deliberately avoided on the assumption that sex offenders could not be cured (A1 and A3). According to one local director:

Once [one is a] sex offender, [he is] always a sex offender, [he] always has to be aware of dangerous signs, red flags. It's difficult to use the term rehabilitation of sex offenders because it infers somehow they are cured .... We somehow cure you .... We identify some area of concerns that sex offenders have to work out throughout life not to re-offend. Then we can say that person's rehabilitated. But at any time, if a right factor is in place, a sex offender can relapse (A3).

Concurring with this assumption, one probation officer recommended that some sex offenders, particularly pedophiles, be given life term probationary sentences (P3).

On the contrary, these perceptions of the principles underlying sex offender policies were challenged by the community respondents, as well as by a few probation

officers and administrators who argued that there were no clear principles underlying the policies. One respondent in a service group for offenders pointed out that, while the policies appeared to be victim-oriented, the fact that sex offenders might also have been victims in their childhood was ignored (C2). C2 also commented, with which C3 and C6 agreed, that sex offender policies could not address the victims' needs for healing, and that victims were used solely as instruments for defeating offenders in an adversarial court. One local director agreed that the needs of victims and the rehabilitation of sex offenders were not given appropriate attention to (A1). These respondents observed that those who benefited from the existing policies were bureaucrats, politicians, and professional people, rather than the community, victims, and sex offenders. Furthermore, one probation officer interviewed argued:

Standards only give us a guideline. As government tries to save money and cut back, they are getting away from the guideline. We've seen twice as many people as we should do. What I would like to see is the standards maintained (P1).

One local director agreed with these assessments, stating that the relapse prevention component in the first policy draft (1995) had been watered down by budget cutbacks (A6). She added that the standard of supervision was no longer different between sex offenders and non-sexual offenders. A policy-maker (A2) also acknowledged the difficulty of following the formal policy with every sex offender because of heavy caseloads, stating that "there is no magic policy." Whether having clear principles or not, practitioners had to make decisions about what aspects of the policies should be compromised and what should be maintained. Next, I will examine how participants perceived the key features of sex offender policies.

## CHARACTERISTICS OF SEX OFFENDER POLICIES

### Integration of Treatment and Supervision

Probation supervision of sex offenders was perceived by administrators and probation officers to be different from that for non-sexual offenders in terms of its approach. The majority of respondents noted that a prominent feature of sex offender supervision was the intensive supervision performed through close relationships between probation officers and therapists. With sex offender policies, the barriers between supervision and treatment (therapy) are broken down (A2 and P7). Traditionally, information disclosed by sex offenders in therapy was not shared with probation officers. Thus, probation officers sometimes missed critical information about the offenders (A2). Under the existing policies, probation officers are required to not only check the attendance of offenders in treatment programs, but also to “know what’s going on with therapy” (A2). One policy-maker noted that sex offenders were always at a greater risk and must be kept high-profile, stating:

I guess we are simply less believing that rehabilitation has occurred. The risk of re-offending is always there .... Then probation officers must be vigilant about the risk (A2).

The breakdown of the barriers between probation officers and therapists is designed to generate large amounts of information. An assessment of risk/needs of sex offenders by using the SORA also presumes a close relationship between probation officers and therapists. Furthermore, treatment is perceived to no longer be a monopoly by therapists.

As one probation officer commented:

Probation officers must play an important role in supervision and must work hand in hand with outpatient counselors and psychologists. They [therapists] can provide treatment, but we also can have a role. Some

probation officers have started education awareness groups recognizing the special needs of sex offenders (P12).

According to most of the administrators and probation officers interviewed, probation officers should be engaged in an education process rather than therapy. With group programs for sex offenders, "psycho-education group" (P1 and P8) and "group supervision" (P2) were defined as different from those run by therapists. For example, one probation officer explained that, while therapists dealt with many in-depth issues (e.g., their trauma in childhood), psycho-education groups addressed surface areas (e.g., identifying individual offence cycles) (P8). The psycho-education group, assuming that sex offenders will re-offend because they do not know how to stop sexual offending, provides a tool to change their behavior (through teaching offence cycle, coping skills in relapse prevention, and victim empathy). Sometimes participants in psycho-education groups are expected to develop the motivation and a readiness to be involved in therapy groups. For some offenders, therapy is considered unnecessary (P8). One probation officer outlined the procedures of group supervision:

We take a couple of minutes to ask, 'What do you do', 'What's new'. Answers could be 'I lost my job', 'I found job', 'No problem'. From those things, sometimes topics come out, often 'anger.' We debate and connect this with sexual offences and victims. Group go after guys and say 'You should have smart ideas, you should not make decisions to go the wrong way.' No matter how short it is, it is a positive experience .... It's a twenty-week program. It's not therapy, it's an education. We are talking about communication skills and anger management (P2).

Group supervision is believed to be an appropriate strategy for deterring high-risk behavior through feedback from others (A3 and P11) and identifying thinking errors (P10).

With respect to the important role played by probation officers, one therapist concurred that the relapse prevention approach was suitable to the probation officers' work (T2). T2 noted that "treatment [of sex offenders] is based on the idea that if persons have more understanding of themselves and impact of crime, more skills, more awareness, they will be less likely to re-offend." Thus, probation officers are expected to teach the relapse prevention plan/cycle/stresses and to provide sex education. In this context, the cooperation between probation officers and therapists is conceptualized as a team approach utilizing a relapse prevention model. One respondent in a community group for women agreed that this team approach characterized sex offender policies (C1).

### **Intensive Probation**

Other conspicuous features of sex offender supervision, as perceived by the administrators and probation officers interviewed, were the "intrusive", "intensive" and "proactive" nature of supervision, combined with "collateral contact", "tighter control" and a "hands-on approach." One local director stated that "we radically interfere with their [sex offenders'] life" (A5). Intrusive questioning, such as asking about personal sexual history, is an essential part of creating relapse prevention plans. This also included more contacts and home visits, photo identifications, and vehicle checks. Contacts for probationary supervision are not limited to sex offenders themselves, but include people who are involved with sex offenders, such as their families, schools, the police, social services, as well as therapists. Collateral contact is made not only for monitoring purposes, but also for supporting sex offenders through "telling them [e.g., family members] when the risk of re-offending becomes greater [on the basis of their identified offence cycles]" (A2). It is assumed that: (a) sex offenders are always a risk

and must be kept high-profile (A1 and A2); and (b) sex offences are secret in nature and sex offenders are liars (A3, P3, P4 and P11). Concerning the secret nature of sex offences, one local director stated that “[p]olicies are trying to help us bring out the secrecy” (A3). In addition, one probation officer argued that intensive supervision could be justified because sex offenders were not well understood:

[Sex offender policies are] much more intensive because we still don't know what causes this, how to deal with it. We are still scratching the surface. We know one of the effective ways to deal with sex offenders is to control and to confront them (P10).<sup>59</sup>

### **TYPE OF SEX OFFENCES/OFFENDERS**

The formal policies do not clearly differentiate the type of sex offences (e.g., incest, rape, exhibitionism, etc.) in supervision standards, with the exception of victim grouping (e.g., victim type, grooming pattern).<sup>60</sup> In their responses, the administrators and probation officers generally agreed that sex offenders should be supervised individually according to the level of risk, as indicated by the SORA, rather than according to the type of sex offences. Some respondents (A4, A5 and P7) suggested that the SORA in terms of risk, tended to score pedophiles at the high end and incest offenders at the low end. For instance, one policy-maker stated that some sex offenders would always be scored higher risk (A4). In A4's view:

Real pedophiles are maybe always at a higher risk, wanting to have sex with children ... with no control over their sexuality and no interest in adult women .... Incest offenders probably are at the lower end of the

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<sup>59</sup> Confrontation in this context does not necessarily mean the confrontational attitude of probation officers toward sex offenders. P2 stated that “[n]ow you have to create a climate of trust. In the past it was much more confrontational. The recidivism rate was much higher. Now we will say, ‘Please tell me, please trust me ....’” See Marshall, 1996a.

<sup>60</sup> See note 36, 6.09 (4).

risk, taking some treatment, demonstrating some control over their lifestyle, despite their offences.

Probation conditions imposed by judges, designed to target specific high-risk factors, are also used in the supervision of different types of sex offenders (A6). In fact, one probation officer observed that pedophiles often received longer sentences with more onerous probation conditions (P4). Several administrators suggested that sex offender policies in British Columbia had developed around pedophiles, with one local director observing:

Sex offender policies are based on offenders, not on offences. But my belief is that the offender we are concerned with is a pedophile, a guy who committed [sex offences] against children. We have tough policies to deal with all sex offenders based on the most notorious sex offenders, who are pedophiles (A1).

The supervision of individual offenders depends on each probation officer's expertise and discretion (A3, P4, P6 and P11). One local director commented that relapse prevention plans should be made for all types of sex offenders (e.g., flasher, exhibitionist and pedophile) depending on the dynamics of the offences, victim types and the social impact of the offences (A3). While admitting that probation officers should have discretion, one probation officer added that specific policies for different types of sex offences should be developed because it was doubtful that all sex offender specialists could make appropriate decisions (P6).

The advantages of non-discriminating policies were mentioned by two therapist respondents (T1 and T2). They stated that groups of sex offenders who had committed different kinds of offences worked effectively because the offenders of one type of sex offence could point out the cognitive distortions of those of another type of sex offence



(T2) or because sex offenders often shared the same thinking errors across the different types of offences (T1).

## **FACTORS INFLUENCING POLICY-MAKING**

Although the respondents, in general, agreed that a variety of external factors influenced policy-making for sex offenders, there were some differences between administrators, probation officers and respondents in the community groups. The administrators and probation officers interviewed generally agreed that external factors were: (a) high-profile cases and the media; (b) awareness of sexual offending, particularly child sexual abuse and an increase in reporting; and (c) the development of knowledge about sex offenders. Probation officers added the influence of the United States legislation and correctional practices, while the administrators emphasized the impact of the victim's movement and the development of victim services.

The impact of the victim's movement was also pointed out by all respondents in the community groups. Furthermore, the responses by community group members emphasized the women's movement and the political and religious rights movements as influential factors in policy-making for sex offenders. The development of treatment programs in the mental health field was also acknowledged by one respondent in a community group for women (C1). Therapists emphasized the increased awareness of the serious impact of sex offences on victims and the development of knowledge about sex offenders. Some respondents (A5, P12 and P13) admitted that there was no direct influence from wife assault policies, which started much earlier, or from rape reform legislation (1983, Bill C-127). The internal factors that influenced policy-making were also noted by some administrators and probation officers, including the pioneering works

of a few probation officers (A2 to A5 and P11) and the increase of the sex offender population (A2, A3, P2 and P10).

### **Increased Knowledge or Public Fear?**

All of the administrators and probation officers interviewed indicated that increased awareness of the seriousness and prevalence of sex offences, as well as the occurrences of high-profile cases, had amplified the public's fear of sex offences, particularly sexual abuse against children. Heinous crimes by strangers (e.g., Clifford Olson) and by people in trusted positions (e.g., Robert Noyes) had brought sex offenders to the public's attention. The general public demanded that these offenders be removed from the community and be given intensive supervision upon release.

The administrators and probation officers also agreed that increased knowledge about the causes of sex crimes and the treatment of sex offenders had resulted in the development of sex offender policies. However, there was no agreement among the administrators and probation officers with respect to the extent of influence that the public's fear and knowledge had on correctional policy-making. One policy-maker contended that the policies developed not only as a result of political pressure (i.e., "should do something" to reduce the recurrence of the crime), but also from pressure from probation officers who were engaged in supervising sex offenders (e.g., proposals to establish specialized supervision units for sex offenders) (A2). Another policy-maker conceded that, traditionally, sex offenders were supervised in the same way that other types of offenders on probation were supervised due to the paucity of knowledge about these offenders (A4). These policy-makers acknowledged that practitioners in the field had taken the initiative for the development of sex offender policies. Two local

directors observed that sex offender policies were created in a more thoughtful and rational way under the great public pressure than those in the United States (A6 and A7).

One respondent in a community group for women agreed with these assessments, noting:

Some changes have been made. Public perception sometimes is different because they are preoccupied by high-profile cases .... We have a more humane approach than they have in Washington State .... [in terms of the balance between protection of the community and integration of sex offenders to the community] (C1).

However, some respondents noted that formal policies often originated from the "knee-jerk reactions" (A4) and "face-saving" efforts (P8) of bureaucrats. One probation officer stated:

They [policy-makers] can make the sex offender policies even though they know we don't have time to implement the policies. They impose lots of stuff to do that I don't have time to do. They seem like good suggestions but we need smaller caseloads to implement the policies (P8).

One local director argued that policies were not based on increased knowledge, but were developed in response to public pressure (i.e., "phobia") (A1):

Most of what characterizes sex offender policies in British Columbia has been high-profile cases that have hit the media, i.e., Deni Perrault and Jason Gamache. Those cases highlighted the unpredictable nature of offences and also highlighted community needs for protection .... Other things were the revelation of sexual abuse in orphanages and sexual abuse by judges and priests. Community awareness of sex offenders has been heightened, and to some degrees, we can say, created a "phobia" .... But we have no successful treatment programs for sex offenders. In this context, we have developed sex offender policies ... based on the assumption that sex offenders, are extremely dangerous ... (A1).

This local director criticized the present policies by arguing that, contrary to the general public's perceptions, obvious high-risk sex offenders comprised only a small percentage of the population and that the majority of sex offenders on probation were intrafamilial

child molesters rather than extrafamilial pedophiles. One respondent in a service group for offenders concurred that "an attempt to avoid negative publicity" was the basis for sex offender policies (C2).

### **The Pressure from Crime Victims**

While there is little doubt that the concerns of crime victims have increased the awareness of the public and has impacted corrections policy-making and practice in the area of sex offenders, the input of crime victims was described with mixed feelings by the administrators interviewed. Two administrators noted the positive impact of victim groups on policies (A5 and A6). One local director stated:

[The victim's movement helped] the realization in society that sexual abuses are very common, very damaging. The victim service movement has assisted in bringing about victims' rights and accountability in the system, which are very important (A6).

However, administrators also commented on the negative effects of the victims movement on the community and on victims themselves (A4 and A5). They argued that victim groups, which were not necessarily groups made up of victims of sex offences, advocated that the criminal justice system no longer protected them. The citizenry, adopting the "NIMBY" ("not in my back yard") syndrome, attempted to remove treatment programs from the community. For example, the EDSSU, initially located in Coquitlam in November 1990, was forced by community members to relocate twice (September 1993; October 1995) to Burnaby. Further, the EDSSU was often interrupted in carrying out its treatment programs because community members were concerned about sex offenders wandering about in the neighbourhoods (A3). The deprivation of treatment opportunities for sex offenders may have contributed to a failure to protect the

opportunities for sex offenders may have contributed to a failure to protect the community and victims.

Three respondents in the community groups also pointed out that not all of the input of crime victims on policies benefited the community and victims. C2 commented that some victim groups incited the public and politicians to generate policies through “emotionalism” and created “a lot of polarization” between sex offenders, victims, and the community (C2). Peace in the community could not be restored under such hostile conditions. Another respondent in a community group remarked that outspoken victim groups had made government take a more repressive attitude toward sex offenders by limiting the release of sex offenders (C3). If sex offenders were rejected for release despite having completed treatment, they could regress and become dangerous to the public. Finally, one respondent noted that some victim groups were being taken advantage of by politicians of the right wing (C5).

## **OPERATIONAL PRACTICES AND RELATED ISSUES**

While the development of policies of sex offenders has become a top priority of the British Columbia government, these policies are still “a draft policy” (especially for adult sex offender policies) and have remained in a continual state of evolution in that they can change quickly over time (A1). Nevertheless, there was a consensus among the administrators and probation officers interviewed with respect to the features of the policy changes that had occurred, including: further specialization; reduced discretion and tighter control; and an estrangement between policies and practice. The following section will explore these new trends by examining the operational practices of sex offender supervision.

## Programs for Sex Offenders

Treatment programs for sex offenders have focused on either offence-specific targets or offence-related targets (Marshall, 1996b: 180). Offence-specific targets are addressed by: (a) therapy (group or individual) offered by psychiatrists or psychologists in the Forensic Services of the Ministry of Health; (b) psycho-education groups conducted by probation officers<sup>61</sup>; (c) individual meetings with probation officers; (d) individual treatment by psychologists<sup>62</sup>; and, (e) private treatment. Offence-related targets are dealt with primarily through programs on substance abuse, anger management, and life skills management.

According to the researcher's observations and interviews, the availability of treatment programs varies from office to office. For example, as of January 1, 1997, seven out of thirteen probation offices which were visited by the researcher had psycho-education groups directed by probation officers.<sup>63</sup> One probation officer who was directing a psycho-education group observed that, of the sixty sex offenders, thirty attended a psycho-education group with a probation officer, while fifteen were referred to group therapy with psychologists and another fifteen were provided individual therapy with psychologists<sup>64</sup>(P1). However, many of the probation officers and administrators interviewed noted that there was a lack of treatment programs, even though the number of

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<sup>61</sup> Different types of sex offenders attend the psycho-education groups, with the exception of the VSSU, which has groups for exhibitionists and child molesters.

<sup>62</sup> (a) to (d) are based on the relapse prevention approach.

<sup>63</sup> One of those probation offices reduced the number of groups recently from three to two groups.

<sup>64</sup> These psychologists work seven hours a week for a probation office.

sex offenders under supervision in the province had increased. In fact, the number of sex offenders in one local probation office had doubled over the last six years (P10). One policy-maker observed that “probably the majority of people on probation/parole (provincially) for sex offences were not receiving treatment” (A4).

Several explanations as to why a majority of sex offenders did not receive treatment were offered by the administrators and probation officers. First, due to budget cutbacks, some therapy groups offered by the Forensic Services were limited to clients with mental disorders (A3 and A4). This means that sex offenders without mental disorders, who made up a majority of the sex offenders, had no opportunity to receive therapy at the Forensic Services. Second, even when sex offenders were given the probation condition of therapy,<sup>65</sup> they had to wait for a long time to receive therapy. Some had even received no treatment by the end of their probation term due to a lack of resources and community programs for sex offenders (A3, A4 and P6).<sup>66</sup> One local director stated that it was difficult to decide which sex offenders should be given priority in the treatment programs (A3).

According to some respondents, the third reason as to why many sex offenders did not receive treatment was that sex offenders who denied their criminal conduct were excluded from the treatment programs, even though they could be the most dangerous (A3, P6 and P8). Although the idea of “pre-group treatment program” for deniers, who

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<sup>65</sup> When judges order probation with conditions of taking counseling, therapies offered by psychologists are usually considered (P10).

<sup>66</sup> Some rural areas have no counseling people (P10). Psychologists contracting with specialized units engage only in assessment and crisis intervention.

are less motivated to stop offending has been developed, it has not been implemented due to a lack of time and resources (A3). Another reason was that private treatment for which sex offenders have to pay was not used very much because it was not affordable (A3, P1 and P7).<sup>67</sup> Finally, with respect to programs for offence-related targets, one probation officer (P7) stated that a lack of understanding among psychologists had prevented sex offenders from continuing a substance abuse program.

With respect to the effectiveness of treatment programs, most of the administrators and probation officers took an optimistic view. It was generally agreed that, since there were no longitudinal studies on treatment programs offered to sex offenders on probation, it was “too early to tell” about the effectiveness of these programs (P3 and P11). The optimistic view of the respondents was based not only on studies conducted in other jurisdictions, but also on their experiences. One probation officer quoted a psychologist’s observation:

It seems to work. Nobody tests them [programs involving relapse prevention model]. We could argue it doesn’t matter what to do with these offenders. Keep in touch with them, have a relationship with them. That might be efficient, too. It seems to work.

One probation officer admitted that some treatment programs worked for some sex offenders but not others, such as homosexual pedophiles (P1). One policy-maker argued that a study with a smaller sampling showed very few people committing a second offence, at least while under supervision (A2). While psycho-education groups were considered effective in minimizing sex offenders’ denial of their crime (A1 and A3), one

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<sup>67</sup> Even though a private treatment program was provided at a moderate price to sex offenders of ethnic minority groups in a local area, only one sex offender was referred to the program (P7).



local director argued that the effectiveness of these groups still depended on who was running them and that these groups had the limitation of focusing on a group of sex offenders as a whole, to the exclusion of the individual sex offenders (A1).

One critic in a service group for offenders argued that sex offenders were forced to conform to various strict conditions, and were not given support and the means to succeed in the community (e.g., employment) (C2). These problems were acknowledged by the administrators and probation officers interviewed as well (A2 and P4). Furthermore, one respondent in an advocacy group for victims had a different view on the sanctions for sex offenders (C4). According to her, the probation term for sex offenders should be increased and the breach of probation conditions should be taken more seriously by probation officers.

## **Networks in the Community and Community Notification**

### ***Networks of Probation Services in the Community***

The term “community” is difficult to define. Since there exists more than one definition, it is important to state clearly what community means (C3). The administrators and probation officers interviewed stated that a community was made up of all actors in a particular area who share certain concerns and needs related to sex offences, including police, social services, schools, employers, and neighbours. One local director, for example, stated that “a community could be defined as the victims, the education system, the police system, the employment system and the mental health profession” (A1).

While admitting that a community consisted of people who are affected in some way by sex offences (a community as a victim), respondents in community groups

maintained that government should be distinguished from a community. There were three groups in terms of approaches held by these respondents, which differed in their view of the relationship between the community and government. Community Group I was represented by one respondent (C5). C5, who centered on feminist theory, stated that the government always served the interests of powerful men; that is, white men in the middle class rather than the interests of the community as a whole. Her assumptions were that: (a) sex offences are based on power and control over women; (b) to make a difference, society should treat both men and women equally; and (c) government policy tends to individualize and psychologize the procedures for responding to sex offenders. This position infers that the ultimate solution to sex offences might not come from the present government dominated by men.

The respondents in Community Group II (C2 and C3) argued that the community should take responsibility for dealing with sex offenders and victims. Their assumptions were that: (a) government is only an instrument of the community; (b) the needs of the community cannot be addressed solely by meeting the political needs of government; (c) the community needs to recover from the trauma caused by sexual offending and to restore peace; and, (d) the government should respond to the needs of the community. Finally, Community Group III was represented by a respondent in an advocacy group for victims (C4). C4 stated that community safety should be accomplished through adequate supervision of sex offenders and by ensuring that the punishment fits the crime. It was assumed that the rights of victims and community were overwhelmed by those of sex offenders under the current policies.

The administrators and probation officers interviewed agreed that liaisons with

police and therapists have developed over the last few years. Although the degree of the relationship between the police and probation services varied from office to office, one local director was of the view that the relationship has been a positive one:

Police don't misuse this information. They use it for another part of supervision. They drive by and ask one or two questions. They help us in supervision (A3).

One policy-maker suggested that probation officers should strengthen networks with other components of the community, such as social services, parents and schools, victim groups, and media:

It is very important to go out and talk and learn what people say, what they are doing. We need to be seen as part of a solution, not part of authority .... I'd like to see each probation officer linking with people. That's part of the policy (A2).

The administrators and probation officers generally emphasized networks with the community, assuming that community members are concerned about their safety from sex offenders and struggle to alleviate their fears of sex offences. Most administrators and probation officers perceived that accurate information and knowledge given to the community were critical in responding to those concerns. Information should focus on several points such as: (a) the fact that not every sex offender is a high-risk pedophile (P2); (b) the ways to protect children (A1 and A4); (c) the ways to prevent people from becoming child abusers (A2); and (d) the fact that sex offenders live everywhere in the community (P3). One local director noted the importance of proactive stances by probation officers so that the public could avoid distorted conclusions (A3). One policy-maker stated that probation officers' proactive contact with the public increased the community's understanding of the functions of community corrections (A4). Those

stances were partly reflected in the practices of specialized supervision units, including meetings with city councils, parents' groups, school boards, and the "Citizen Advisory Board" (CAB) (A3 and A5). The CAB constitutes representatives of schools, lay persons in the community, and local politicians. The CAB meetings take place regularly; for example, once every two or three months in an office or when required. Several topics are discussed during the meetings, including the problems that have occurred in the community. The CAB, however, keeps a low profile (A5).

The sex offender supervision standards<sup>68</sup> prescribe key collateral contacts (e.g., the offender's spouse, partner, care giver, employers, supervisors, landlords, social workers, and family friends) which are designed to provide the public with cautions about high-risk situations and offence cycles of sex offenders. However, some of the probation officers interviewed demonstrated that the networks with the community were fragmentary in nature. In fact, one policy-maker admitted that the extent to which probation officers networked with the community depended on the local circumstances of probation offices, including the personal beliefs of the local directors and the probation officers themselves (A4). Several probation officers observed that there were no clear policies regarding networks with the community. According to one probation officer:

We don't have any guidelines to explain to the community what we do. Most of that is dealt with by other agencies. Educational programs might touch on sex offenders, but we don't deal with that in the community probation office (P6).

There was a shared perception that limited resources and concerns with confidentiality did not allow probation officers to communicate effectively with the community. One

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<sup>68</sup> See note 36.

probation officer, for example, stated that “[w]e really don’t have much network [with the community] .... We have too many clients. You don’t have time for that ‘luxury’” (P3). One policy-maker commented that special training for probation officers was needed for creating networks and public education (A4).

While the administrators and probation officers emphasized networks with the community in the context of being accountable to the community, the respondents in Community Group II (C2 and C3) argued that information should be given so that community members could take responsibility for themselves. In doing so, respondents in the community groups went beyond the issue of information. Their key assertion was that harmony, a primary need of the community, could be restored by addressing the needs of sex offenders, as well as the needs of their victims (including the community as a traumatized victim) (C3). In this context, these respondents concluded that the present networks with the community were very limited. One respondent in an advocacy group for victims (Community Group III: C4) was also dissatisfied with the networks with the community, contending that the community was often not informed about what was going on in the criminal justice system and inadequate supervision of sex offenders would revictimize the community and victims.

### ***Public Notification***

One important issue related to community concerns and needs is public notification of information about sex offenders.<sup>69</sup> At the present time, there is no

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<sup>69</sup> Public notification includes requiring sex offenders to register with a law enforcement agency (registration), as well as notifying the community of their status (e.g., sex offenders’ conviction and residence) (community notification).

registration legislation in British Columbia (A7), although it is under review.

• Since the implementation of the notification policy (1994), only three offenders have been brought to the attention of the community through the media. On average, one of ten applications has been approved every year. The latest case approved for notification involved a violent rapist who absconded from probation supervision.<sup>70</sup> Limited notification was made approximately ten times a year to specific groups (e.g., school principals, daycare centres, church groups, boy Scouts and sports clubs) and individuals (e.g., a single mother who has contact with a pedophile and whose children may thereby fall victim to such individual).<sup>71</sup>

With respect to community notification, respondents were classified into three major groups: proponents of general notification, supporters of case-by-case notification, and opponents of notification. Most of the administrators, probation officers and respondents in Community Group II (C2 and C3) argued for case-by-case notification policies, which were concurrent with the philosophy of the Freedom of Information and Protection of Privacy Act. The principle framework was that information about dangerous high-risk sex offenders should be given to their potential victims (e.g., a woman with children when she initiates a relationship with a child molester; a school principal when a child molester begins to hang around a school) and the general community through the media (e.g., an absconder from probation supervision). Non-high-risk sex offenders, on the other hand, should not be subjected to public notification

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<sup>70</sup> Interview A7.

<sup>71</sup> Ibid.

against their will. Dangerous high-risk sex offenders refer to those whom probation officers cannot manage (A2, P2 and P3) and those who could be "power rapists" (P1), "pedophiles" (A2, P3 and P4), and absconding recidivists (A1).

The administrators and probation officers interviewed argued that, if appropriate education was not accompanied by notification, general notification could: (a) frighten the community (P1); (b) force sex offenders to hide, which, in turn, would cause community "hysteria" (A1) or "panic" (C2 and A2); (c) increase the risk of re-offending because the stress of notification might get sex offenders back to their sex offence pattern (C3, A3 and P8); and (d) lead to a false sense of security among the public because most sex offences occur in the homes (P1 and P2). One therapist agreed with these adverse effects of general notification (T1). According to one policy-maker, the case-by-case notification would be effective in motivating sex offenders to enter or work harder in treatment programs (A7). The administrators stated that sex offenders should be kept visible and be managed by authorities as much as possible in order to ensure public safety and to avoid panic in the community (A1 and A7). According to one local director and one probation officer, the decision on whether the case-by-case notification should be provided must attempt to balance between the community's need for safety and the sex offenders' civil rights (A1 and P3).

In this context, several administrators made recommendations for elaborating the procedures and criteria for public notification. One policy-maker, for example, proposed that certain trained people first be notified before notification is made to the general public (A4). The "community panel" concept, which operates in Manitoba, was

suggested as an alternative for procedure by another policy-maker (A7). This panel is composed of the community members, including housewives, medical professionals, and corrections workers. Finally, one local director recommended the establishment of an assessment instrument for community notification that is similar to the SORA (A3).

While agreeing with the above points, the respondents in Community Group II (C2 and C3) added two additional criteria for public notification. First, C2 contended that the public needed to know about sex offenders only in cases where the public was prepared to view all sex offenders and victims as community members and to find constructive solutions to restore peace. From C2's view:

You make notifications through people who are trained in issues on victim-offender reconciliation, so that they can bring together members of the community, people who have committed the offences, victims .... and help them, and say, 'O.K. we have a person living in the community who has committed this kind of offence. We know that kind of offence creates fear in anybody, so let's find a way we can live together' ..... There are people who are willing to help persons who have committed offences and to support persons who are victimized .... on that basis, society should be notified about sex offenders.

Another criterion pointed out by C2 was that community notification should be used only as a last resort. The requirements for community notification should be that a sex offender is likely to re-offend despite every effort having been made to help the sex offender with treatment and support (e.g., employment), and that there is no appropriate way, except through notification, to keep him away from children. C3 cautioned that policies should not serve just to placate the public's frustration and anger.

These proponents for the case-by-case notification were countered by a respondent in an advocacy group for victims (Community Group III: C4). According to her, the community has a "right to know" the whereabouts of sex offenders. C4 argued



that supervision could be proactive for safety reasons only when the community at large knew the sex offenders' whereabouts, and there was no evidence that public members might harass the sex offenders if they knew their whereabouts.

### **Networks for Victims and Victim Notification**

Probation officers are supposed to contact victims at critical points: when bail is granted with protective conditions<sup>72</sup>; pre-sentence assessment<sup>73</sup>; and parole assessment<sup>74</sup> (P1, A2 and A3). During the initial reporting phase of probation, victims are informed by probation officers as to the probation conditions of the sex offenders and are, if necessary, directed to available community resources (P3).<sup>75</sup> Victims are also advised to inform probation officers of any contact that sex offenders have had with them (P1 and A3). The Victims of Crime Act (Bill-37, British Columbia, 1995)<sup>76</sup> enables victims of crime to access the offenders' names and the areas where the offenders may be (A7).<sup>77</sup>

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<sup>72</sup> "Adult Probation and Community Services", (June 1, 1984) s. E1, p. 2b, 2.12; (October 31, 1990) p. 5b, 5.05 (Province of British Columbia, 1995b).

<sup>73</sup> "Adult Probation and Community Services - Court Services, Pre-sentence Reports - Victim Comments" (October 31, 1990) s. E2, 7.01 to 7.07 (Province of British Columbia, 1995b).

<sup>74</sup> "Release and After-Care Services - Temporary Absences from Custody, Community Assessments", s. G1, 2.03 (Province of British Columbia, 1995b); "Adult Probation and Community Services - Release and After-Care Services, Provincial Parole" (January 19, 1993) s. G2, 1.07 (ibid.).

<sup>75</sup> "Administration and Enforcement of Community Orders - Case Management of Sex Offenders" (March 14, 1996, Draft #7) s. F1 6.03, 7 (Province of British Columbia, 1995b); "Initial In-Person Interview" (August 31, 1991, Draft) s. F1, 1.11 (ibid.).

<sup>76</sup> Bill-37 prescribes the goals that government must promote, including the development of victim services, the protection of victims against intimidation, prompt return of the property of victims, justice personnel training, proper recognition of the needs of victims, and culturally sensitive services and information.

<sup>77</sup> These areas are not the exact addresses of sex offenders' home but they are the names of communities where they live.

Such information is given to victims<sup>78</sup> who were harmed by the sex offenders, as well as to the victims' families.<sup>79</sup>

Victims are defined by more than a legal definition. One local director stated "[p]rimary victims are actual persons who were molested but secondary victims include everybody who was involved with the persons abused" (A1). Respondents in Community Group II (C2 and C3) tended to define victims more broadly. For example, through the process of plea bargaining, substantial sexual assaults are possibly substituted for common assaults, and their victims are no longer those of sex offences.<sup>80</sup> C3 defined victim as "trauma victim" rather than "victim of crime." According to this definition, since the trauma and pain of victims should be addressed, it does not matter whether the offenders are accused of sex offences or non-sexual offences, or whether specific behaviors of offenders are successfully defined as crime. This definition (i.e., victim as "trauma victim") might allow the system to be more sensitive to secondary victimization done by the criminal justice system (e.g., adversarial system) (C3).

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<sup>78</sup> The term "victim" is legally defined as: "an individual who suffers, in relation to an offence, (a) physical or mental injury or economic loss as a result of an act or omission that forms the basis of the offence, or (b) significant emotional trauma and is an individual against whom the offence was perpetrated or, with respect to an individual against whom the offence was perpetrated, is a spouse, sibling, child or parent of the individual (the Victims of Crime Act, s.1).

<sup>79</sup> For example, with respect to child sexual abuse, see note 74, 7.06.

<sup>80</sup> Those offenders could be supervised on probation as sex offenders who committed non-sexual offences, which include sexual offending intent or behavior, but it is difficult to treat them. P1 stated:

[As a result of plea bargaining, a sex offender says] "I'm not a sex offender. I don't need treatment." [In most religions, confession of your sins is the path to absolution. However if] you never admit that you've done something wrong, how can you ever make it right?

While the effects of victimization and the psychological needs are different for each crime victim, certain needs and concerns of the victims were generally identified as important by the Solicitor General of Canada (1987); that is, (a) information about sex offenders; (b) support from the community as well as from family and friends to help the victims deal with feelings of isolation and vulnerability; (c) recognition of the harm done to the victims; (d) reparation of the harm; and (e) effective protection from re-victimization or retaliation. First, information about sex offenders (e.g., their release date, conditions, and their efforts to rehabilitate themselves) was considered by the administrators and probation officers as essential information to be provided to the victims of sex offenders. More sophisticated information systems, currently under development, were expected to make it easier for victims to access information (P3 and A7); yet, some limitations were identified. One probation officer stated that victims were given only copies of probation orders and, if they moved from the area, nothing could be done for them (P3). Victim notification could also be effective in protecting victims from re-victimization or retaliation. Most of the administrators and probation officers interviewed approved of the victims' "right to know" in order to prevent their re-victimization. Respondents in Community Group II (C2 and C3) stated that victim notification by itself was inadequate and that other support programs should be provided. In C3's view, for example, "victim notification is a straw for a drowning person. It's a nice shot but not enough." While accepting C3's assessment, C2 endorsed victim-offender reconciliation programs (VORP), which were expected to help victims address their pains and grief. Questions such as "why me?", "did I do something wrong?" or "could I have done something differently?", were not addressed by sex offender policies

(C2). Furthermore, one respondent in an advocacy group for victims (Community Group III: C4) contended that the existing victim notification was getting better but still inadequate. For example, if crime victims attend parole hearing, they can obtain a great deal of information about the offenders, including the kinds of treatment and programs in which the offenders have been involved; their problems and plans after release; the psychological and psychiatric traits of the offenders; and the motives, methods, backgrounds of the incidents and the offenders' responses to the incidents and the victims. If sex offenders refuse to attend their parole hearing for any reasons, however, the victims cannot get this information.

With respect to the victims' need for support, probation services can only refer victims to victim support programs. One probation officer (P2) reported that she had attempted to get an incest family back together through a careful and gradual process by educating and empowering the victim and the other family members. P2 noted, however, that such an effort was a rare case and that the victim's family was no longer referred to family counseling. Two probation officers (P11 and P12) also argued that, with limited resources, probation officers could not function in a dual role: as therapists of offenders and as therapists of victims, who sometimes had more emotional difficulties than the offenders. Further cooperation among agencies for victim support was recommended.

In addition, two respondents emphasized that the harm done to victims by offenders needed to be recognized (C3) and be given more attention (C4). One local director commented that victims should be notified all the time because "they [victims] [were] players .... they need[ed] to know that their suffering [had] been acknowledged by the community" (A1). Only one respondent in an advocacy group for victims (C4)

mentioned reparation for the harm caused by sex offenders. C4 criticized the British Columbia government for cutting the financial compensation funds for victims.<sup>51</sup>

### **Long-Term Supervision**

The administrators and probation officers interviewed generally noted that, while nobody had the authority to supervise sex offenders after the probation term had expired, "open door practices" were implemented, which would allow former probationers to come back to attend supervision groups and talk with probation officers. Several administrators and probation officers reported that, while a few former sex offenders had contacted probation officers on a voluntary basis, such cases were very rare. One policy-maker observed that former probationers could choose to see private therapists, but that they would have to pay for the services themselves (A2). Community resources, such as programs run by the John Howard Society and the Elizabeth Fly Society, had limited spaces. In fact, the respondents in general observed that there was no strategy available for sex offenders after their probation term was over. In this context, one local director recommended that prior to the end of their probation term, sex offenders should be put into support networks (A6).

With respect to long-term supervision, which refers to extended supervision of sex offenders in one form or another after the term of probation has expired, respondents were again divided into four categories. First, the respondent in Community Group III (C4 in an advocacy group for victims) stated that sex offenders should be supervised for

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<sup>51</sup> Financial compensation fund for victims was cut up to 60 percent from 27 million dollars in 1995 to 12 million dollars in 1997, while 215 million dollars were spent on legal aid for offenders (C4).

life because they had a high-risk of re-offending without supervision. Second, the respondent in Community Group I (C5), opposed C4's statement, stating that the probation term for sex offenders should not be extended because these offenders had the right not to be subjected to any unreasonable punishment. Third, the majority of administrators and probation officers commented that the ten-year supervision period proposed by the federal government<sup>82</sup> was reasonable for preventing people from re-offending. They perceived that a new category, that is, a long-term sex offender category, was designed as a compromise for sex offenders who should be given more than probation supervision<sup>83</sup> but less than an indefinite term of supervision (CC. s.753). Finally, the respondents in Community Group II (C2 and C3)<sup>84</sup> emphasized treating sex offenders under programs such as alcohol anonymous and community support rather than monitoring them by way of putting them under an obligation to report to probation officers or the police. C2, for example, stated:

We know some people who have committed certain kinds of sex offences and are not going to change .... I believe people in our society have the right to live in safety and peace, and to feel safe and at peace. Given that, I would suggest that long-term supervision is a good thing ... but the monitoring of probation officers has no impact on whatever [re-offending of sexual crime] .... you can provide that person with community support groups who can help him find appropriate work and lodging ... and who do not condone his behavior but keep in contact with him to counsel to him on a regular basis ....

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<sup>82</sup> For long-term supervision legislation, see Chapter Three, pp. 49-50.

<sup>83</sup> Maximum term of probation is three years.

<sup>84</sup> This argument was agreed by a few administrators, probation officers and C6.

## EQUILIBRIUM OF SEX OFFENDER POLICIES

In the preceding section, the needs and concerns of the community and crime victims were discussed. Before assessing the balance of policies/practices between sex offenders, their victims, and the community, the needs and concerns of sex offenders should be addressed. According to the administrators and probation officers interviewed, the main concerns of sex offenders were: (a) not to have their probation orders revoked (A4 and P6); (b) to successfully complete treatment (A4 and P6); and, (c) to make a living (A4). One policy-maker commented that, after confinement and/or probation, a sex offender would be confronted with difficult problems relating to survival in the community (A4). One probation officer pointed out that sex offenders needed to be educated about their problems and the ways to deal with them (P6).

As to how sex offender policies and practices of probation in British Columbia attempt to balance the concerns and needs of sex offenders, their victims, and the community, various assessments were presented by the respondents. The administrators and probation officers interviewed generally agreed that these policies were designed to focus primarily on the safety of the community and victims, followed by the needs of sex offenders. Community needs (i.e., safety) were intended to be met through the intensive supervision of sex offenders and treatment involving a relapse prevention approach (P7). One policy-maker stated that probation agencies could serve victims by managing sex offender successfully, and suggested that probation services could do more for victims in terms of treatment (A2). Along the same line, one local director agreed that, while the policies per se focused more on sex offenders, policies had moved more towards the goal of protecting victims of sex offenders (A3). Increased contacts with victims, provision

for victim notification, and permission of victims' attendance in parole hearings were some examples (A3, P6 and P7). From one probation officer's point of view, under the existing policies, probation officers were expected to do a "fairly exhaustive job compared to the past" when supervising sex offenders (P6). Despite the intrusive nature of supervision, one local director argued that the standards for sex offender supervision were designed to treat sex offenders "with respect" (A3). The purpose of supervision was to prevent relapse rather than to punish offenders. With these points in mind, the administrators and probation officers commented that sex offender policies (e.g., the case-by-case approach of community notification) were formulated and developed based on a balance between the needs of sex offenders, victims, and the community (A5 and A7).

One probation officer pointed out, however, that implementation of sex offender policies depended on each probation officer's discretion (P11). More importantly, as discussed before, the needs of the community and victims might not be fulfilled in the operational policy because there was a lack of programs for sex offenders and victim services (A3, A4 and P3), and because there was no clear principle underlying sex offender policies (Community Group II: C2 and C3).

One respondent (Community Group I: C5), who centered on feminist theory, also criticized the existing sex offender policies. Her argument was that these policies served the interests of powerful white men by attributing sex offences by non-white men to their psychological problems. She recommended that more resources be allocated to front-line organizations that helped women and children, rather than to government



programs which ignored the role of social factors (e.g., social structure) in causing sex offences.

## Chapter VI

### CONCLUSION

#### SEX OFFENDERS IN COMMUNITY CORRECTIONS

The basis of probation policy and practice for sex offenders in British Columbia before the emergence of province-wide policies in the early 1990s can be traced to the Mission Statement of British Columbia Corrections and the documents on the VSSU program. The British Columbia Corrections' Mission Statement includes the mission and general values to which the Corrections Branch is committed:

The Corrections Branch, as part of the Justice System, delivers services and programs on behalf of our communities, which promote public safety, provide opportunities for offenders to change, and assist families to resolve conflict.

The Corrections Branch is committed to:

(a) Offenders: We will intervene only to the extent necessary in the lives of offenders while providing services which ensure the protection of both the community and offenders, treat offenders fairly with dignity and respect, encourage self-determination, meet the physical, emotional, spiritual and educational needs of youth in our care, and ensure a range of opportunities to assist in the rehabilitation of adult offenders.

(b) Community: We believe in crime prevention through social development. We will work with other government ministries, with neighbourhoods and their community agencies to develop safe communities ....

(c) Victims: We will take victims' views and rights into consideration in our work with offenders, and we will work with other parts of the justice system to help victims (Province of British Columbia, 1986).

While these values did not articulate the specific goals and principles for supervising sex offenders, they attempted to achieve both community safety and treatment of offenders, and respond to the needs of victims of sex offences. The VSSU program, as mentioned

in Chapter III, defined supervision as a therapeutic process which assists sex offenders in developing and maintaining socially acceptable lifestyles. It appears that the Mission Statement and the VSSU program have as a goal offender rehabilitation along with community safety.

The term "rehabilitation" of sex offenders, however, should be interpreted circumspectly. The term generally connotes that sexual offending is a medical disease. One basic premise of the relapse prevention approach is that sex offenders cannot be cured. The medical-disease model is negated under this approach (George & Marlatt, 1989; Laws, 1996). The term "treatment" should also not be used to refer to magic cure (Laws, 1996). The assumption that sex offenders were always going to pose a risk to the community and, therefore, should be high profile every time, was reinforced by both research and the experiences of probation officers. The relapse prevention approach, however, emphasizes teaching sex offenders to achieve personal control of their inappropriate sexual impulses, feelings, and behaviours (English et al., 1996: 11; George & Marlatt, 1989: 3). Successful internal controls, which can be achieved by sex offenders themselves, could reduce their risk of re-offending. When the risk of re-offending is successfully reduced, the sex offenders can be called "rehabilitated." Under the current standards of supervision, the collaboration between treatment (therapy) and supervision is paramount, which parallels loosely to a combination of internal controls and external controls of relapse prevention. Idealistically, probation practices for sex offenders should be processes of establishing self-management (internal controls) under appropriate supervision (external controls). Thus, offender rehabilitation can function as a probation value, which is "defined less as 'cure' and more as 'restoration to full

citizenship” (Nellis, 1995: 26). This value is supported by the “some things work” philosophy, which was supported by the administrators and probation officers interviewed. Even the attributes of manipulation and secrecy which characterize sex offenders, can be broken down through the enhancement of specialized approaches, such as group therapy and the team approach of probation officers. Offender rehabilitation as a value culminated with the establishment of the EDSSU (1990) and the publication of a task force report entitled “The Management of Sex Offenders” (1991).

### **INFLUENTIAL FACTORS ON SEX OFFENDER POLICIES**

Table 3 summarizes and compares the assumptions underlying the respondents' perceptions. The findings indicate that administrators in the study were more likely than probation officers to emphasize the impact of the victim's movement on the formulation of sex offender policies. The administrators interviewed also suggested that these policies should focus on helping victims. The probation officers interviewed were likely to point out the difficulties of carrying out the formal policies, because of heavy caseloads and the role conflict of probation officers; that is, the issue of whether probation officers should work to protect the interests of sex offenders or those of crime victims. Despite these differences, the administrators and probation officers interviewed held similar views with respect to the characteristics and supervision of sex offenders; that is, “sex offenders are liars/deniers”, “sex offenders are always at risk of re-offending”, “sex offenders cannot be cured, but can be managed while being supervised”, and “the relapse prevention approach is effective for some sex offenders.” They shared these assumptions because most of the administrators were local directors who were in charge of supervising sex offenders in addition to assuming their management responsibilities.

**Table 3: Comparisons of Assumption**

<b>Community Group I (C5)</b>	<b>Community Group II (C2,C3)</b>	<b>Administrators &amp; Probation Officers</b>	<b>Community Group III (C4)</b>
<b>(Goal)</b> gender equality	quality of life	community safety (fewer victims)	community safety (no more victims)
<b>(Sex offender)</b> an everyman -----	offenders/victims  sex offender not always at high-risk	a liar/denier  sex offender always at risk	a liar/denier  sex offender always at high-risk
<b>(Supervision)</b> -----	no cure, but can be managed by support network	no cure, but can be managed while supervision	no cure. some can be managed by ISP
<b>(Treatment)</b> -----	some things work	some things work (relapse prevention)	treatment is insufficient
<b>(Needs- Community &amp; Victim)</b> CJS serves the interests of white- middle class men	victim & community needs are not heard by CJS	victim & community needs can be achieved by intrusiveness to offenders' life	victim & community needs are not heard by CJS
community should manage information	community should manage information	government should manage information	community (victim) has "right to know"
<b>(Policy-making)</b> -----	policy-making should be a rational process	accountability to the general public	immediate solution is needed
<b>(Recommendation)</b> no more money to government; more funding to service agencies	support networks for offenders & victims; VORP; de- institutionalization	risk management by treatment & supervision; quasi- rehabilitation	punishment & education

and because the probation officers and administrators were trained at the Justice Institute of British Columbia.

The stereotype of sex offenders as pedophiles could have given rise to these assumptions. It should be noted, however, that not all of these assumptions were supported by empirical research. Some administrators and probation officers expressed views presented by Community Group II with respect to the probation services' networks for the community and victims (e.g., "the victims' needs are not addressed by the sex offender policies" and "needs of sex offenders, victims, and the community should be equally addressed"). Other administrators and probation officers were of the view that sex offender policies were developed based on the tenets of the punishment model which was presented by Community Group III (C4). No views centered on a feminist perspective were found in the responses of the administrators and probation officers interviewed. In the following discussion, the development of sex offender policies in British Columbia will be examined.

### **Sex Crimes and Political Pressure**

In the 1980s, several crimes committed by sex offenders were extensively reported in the media and the fear of sex crime escalated among Canadians. However, the public discourse on sex offender supervision focused on the federal, rather than provincial, policies. Thus, it was not until the 1990s that the British Columbia government identified sex offenders as a threat to the community and acknowledged that urgent action was required. The murder case of Jason Gamache directed the public's attention to probation supervision. As noted earlier, the Fisher Report revealed that Jason Gamache's probation officer knew nothing about Jason's activities unless he was

told by Jason himself, his mother and therapist, and that no one in the community was informed about Jason's criminal history. A lack of access to information about sex offenders in the community created high levels of fear among the public. The British Columbia government needed to restore the public's trust and it was in this context that probation policies for sex offenders (consisting of supervision standards, risk needs assessment and notification policies) were developed.

### **Application of the Relapse Prevention Approach**

"Manual of Operation: Adult Probation & Community Services" (Province of British Columbia, 1995b) describes as the purpose of sex offender supervision to enhance public safety by integrating assistance, treatment, monitoring, and collateral contact.<sup>85</sup> This supervision standard embodies the principle that public safety and community protection are the top priorities of probation. This, however, does not mean that offender rehabilitation as a value is disregarded. Rather, sex offender policies have developed within the framework of relapse prevention. The close relationships between therapists and probation officers are underscored. The enhancement of specialization reflects offender rehabilitation as a priority. Probation officers maintain their discretion to deal with technical violations of probation orders (A4). Although it is believed that a breach of conditions is more likely to be taken seriously in the programs of the VSSU and the EDSSU (Polowek, 1993; Campbell, n.d.), there is no evidence that the rate of revocation is higher with sex offenders than with others types of offenders. However, it should be noted that policy-makers were under a great deal of public pressure to provide

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<sup>85</sup> See note 36.

protection to the community. Offender rehabilitation as an objective was challenged by the need for community protection because “the placing of offenders’ needs and interests above, as opposed to alongside, the rights of victims and the requirements of public safety lack[ed] moral justification and, in the 1990s, political credibility” (Nellis, 1995: 26). Nevertheless, the administrators and probation officers perceived that sex offender policies attempted to balance the two objectives. One example is the case-by-case notification policy. However, some administrators and probation officers observed that the recent changes in sex offender policies were an apparent response to the public’s demand for community safety. The changes included increased formalization of supervision of and intrusion into the lives of offenders. Sex offender policies have become unrealistic as they have increased requirements that probation officers must address in response to the heightened public pressure. For example, only a surveillance aspect of the policies, that is, home visits and liaisons with the local police are implemented while treatment for sex offenders are compromised. Apparently, the rights of victims and the requirements of public safety were placed above offender rehabilitation as an objective in the implementation process.

## **WHO BENEFITS FROM SEX OFFENDER POLICIES**

### **Risk Management Approach**

According to most administrators and probation officers, the main reason why offender rehabilitation as an objective faded was, in part, the lack of resources. However, some respondents in community groups, a few administrators, and probation officers pointed out that the lack of principles underlying sex offender policies caused ignorance of offender rehabilitation as an objective in the implementation process. It



was assumed that the needs of the community and victims were met by preventing sex offences. Community protection could be attained by addressing factors that could lead to relapse. Limited confidentiality and absolute cooperation of agencies involved with sex offenders, particularly in the sharing of information, were crucial elements in containment strategies (English et al., 1996). Efforts to monitor and manage sex offenders' deviant thoughts and actions were emphasized in these strategies (p. 12). Therapeutic interventions were stressed as effective methods of controlling, rather than rehabilitating, sex offenders (Ekstedt, 1995: 47). External controls through intensive collateral contacts, multi-disciplinary and multi-agency approaches (e.g., collaboration with therapists and local police), were intended to prevent sex offenders from hiding and to keep them visible. Risk management was viewed as possible in cases where probation officers could acquire as much knowledge as possible about sex offenders and properly assess their risks. Heberton and Thomas note:

Offenders' rights are displaced by knowledge-system rights; justice becomes a matter of just knowledge production for efficient risk management in the community (1996b: 109).

However, such "security through knowledge" and "the instantiation of risk management process" are themselves paradoxical in that the processes are rooted in, and themselves constitute, insecurity (Heberton & Thomas, 1996a: 439-440). No matter how intrusive supervision is, absolute information on risk management cannot be obtained. Under the case-by-case notification policies, when the government cannot manage the risk of sex offenders, such risk is redistributed to the community and shared among the government, community members, and victims. The public accepts the assumption that sex offenders have no cure, but is unlikely to perceive that all of sex

offenders can be managed. Risk management cannot rely extensively on internal controls because the 'some things work' philosophy cannot persuade the public. In addition, given that there is little public trust in the government, which was partly created by the victim movements, offender rehabilitation is no longer viewed as a legitimate objective compatible with community safety.

According to the administrators and probation officers interviewed, a main feature of the sex offender policies in British Columbia is intensive supervision, combined with surveillance and therapeutic intervention. This study, however, found that treatment of sex offenders could not exist apart from risk management strategies. While the policies have become more intrusive, no ethical questions have arisen, except for the concerns about the criteria for community notification. The principle of limiting intervention in the lives of sex offenders only to the extent necessary, which is described in British Columbia Corrections' Mission Statement, is given little attention. Thus, it can be seen that the punishment philosophy overshadows the rehabilitation philosophy as a value in sex offender policies in British Columbia.

### **Perspective of Community and Victims**

Community protection as an objective of correctional policies for sex offenders does not always imply a focus on protecting the interests of the community. The findings of this research show that there are networks for solving problems in the community and for assisting victims. Contacts with victims have expanded more than ever before. However, since victim services are not synchronized with the supervision of sex offenders, contacts with victims are often no more than giving victims some information about offenders. Existing policies attempt to answer the question, "what to

do 'to' or 'for' offenders" to protect community safety, rather than the question of "how can we best protect and serve the community" (Barajas, 1996:32). Community protection as an objective in the offender-focused paradigm is limited in that it commits errors of the third type (Dunn, 1981, 1994): solving the wrong problem (i.e., focusing on the punishment or rehabilitation of offenders as a solution to crime) when the right one should be solved (i.e., focusing on achieving quality of life in the community as an ultimate goal) (Byrne, 1989). Some administrators in this study were aware of the need to solve the right problem. For example, one policy-maker stated that it was very important for probation officers to go out and listen to what victims, parents, and other community members had to say and what they wanted, and that probation officers needed to be seen as part of the solution (A2). Under the community-focused paradigm, which is committed to doing justice, promoting secure communities, restoring crime victims, and promoting non-criminal options (Barajas, 1996:33), probation services should contribute to solutions. One local director recommended that the community be the ultimate client probation officers served, and that probation services be involved with the community "not only in terms of prevention, but also in terms of supervision and aftercare" (A6).

## **SEX OFFENDERS IN COMMUNITY CORRECTIONS**

In sum, the prototype of current policies was inspired by practice/theory developed in the 1980s. Policies in British Columbia utilized for sex offenders as high-profile offenders, however, were apparently formulated in response to the public's demand for community safety from sex offenders, and in particular, pedophiles. Specific risk management strategies were developed to reduce the victims of sex offences.

These strategies included the integration of treatment and supervision, intensive probation, risk needs assessment and public notification. Perspectives of the community as a potential victim were incorporated into risk management strategies against sex offenders. It was pointed out, however, that the supervisory expectations of line level officers (i.e., probation officers) were too great to effectively implement these sex offender policies. The system also lacked a network for serving the needs of victims and the community. It can be said that the sex offender policies and practices in British Columbia were based on the traditional offender-focused paradigm and functioned as a punitive approach against the backdrop of retributive political climates. Community interest groups were not unanimous in terms of their perceptions of sex offender policies and practices, some of which were shared by some administrators and probation officers. Particularly, an idea of focusing on the needs and interests of sex offenders, their victims, and the community, rather than the punishment of offenders had much influence on some administrators and probation officers, while sex offender policies and practices moved toward a punitive approach.

This thesis as a case study to explore sex offender policies and practices in British Columbia has implications for the general policies of community corrections. Policies in community corrections are likely to be sensitive to the public's pressure. Goals of policies in community corrections, incorporating the victims' perspectives are often described as reducing victimization rather than preventing further offending. Risk management became a buzz word in the 1990s for reducing victimization. It is assumed that the establishment of accurate risk needs assessment tools and specialized supervision practices with sufficient resources are required for efficient risk management.

Furthermore, the notion of risk management per se can be compatible with offender rehabilitation as an objective. Unless there are clear principles which focus on the needs and interests of offenders, victims, and the community, however, the policy may be mainly punishment-oriented to offenders in response to the public's pressure. For example, there is a new policy in community corrections in British Columbia that non-violent, first-time offenders are referred to programs based on restorative justice, while violent, high-risk offenders are subject to severe punishment.<sup>86</sup> Among critical questions are, who is a high-risk offender and what is the nature of high-risk. Under the public's demands for retribution, even high-profile offenders with no real risk might be defined as high-risk offenders.

## **LIMITATIONS AND SUGGESTIONS FOR FUTURE RESEARCH**

This thesis has a number of limitations. The first limitation pertains to the sampling of interview participants. The participant list of probation officers was composed of only present or former sex offender specialists. To explore sex offender policies more precisely, research that examines probation policies dealing with other types of offenders on probation is required. For example, interviews with probation officers in charge of wife assault offenders could be useful in obtaining insights into sex offender policies. Some sex offender specialists practice in supervision teams with probation officers who deal with wife assault offenders (P11). Consultation between these two types of probation officers is common (A3). Values emphasized in these supervision practices should be examined.

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<sup>86</sup> Keynote address by Hon. Ujjal Dosanjh, Attorney General of British Columbia, in a Video Conference on Restorative Justice Approaches, "Achieving Satisfying Justice In Your

A second limitation of this thesis is related to the unit of analysis. Sex offenders are a heterogeneous offender group. The assumptions underlying the specific policies for each type of sex offence might also differ. For example, incest offenders are unlikely to be assessed as high-risk offenders and family dysfunction could be a target of treatment. One respondent (P2) even commented that incest should be decriminalized. Pedophiles are more likely to be assessed as high risk and to attract attention from the public than incest offenders and exhibitionists. And, a recent study reveals that child molesters with previous sex offences, who selected extrafamilial male victims and who had never been married, showed a high rate of recidivism (77%) during the 15-30 year follow-up period (Solicitor General of Canada, 1996). The high recidivism rate among pedophiles is usually used to support long-term supervision policies. These differences would require the development of more specific policies. Further research should explore specific policies for each type of sex offender.

## **Appendix**

### **INTERVIEW SCHEDULE 1**

#### **PROBATION OFFICERS & ADMINISTRATORS**

1. In your career, how have you been involved with sex offender policies and practice?
2. What are the similarities and differences between sex offender policies and policies for other offenders?
3. Could you tell me when, how, and why sex offender policies were created? Did community pressures (e.g., the victim's movement) affect sex offender policies?
4. How have sex offender policies developed and changed over the years? What changes have occurred to sex offender policies and why? What changes have occurred to the organizational structure within which sex offenders are managed?
5. Who decides which sex offender policies to implement or change?
6. What are the goals and principles underlying sex offender policies?
7. Do you think the existing sex offender policies are specified according to the types of sex offences?
8. How are sex offender policies implemented?
9. What programs and services are available for sex offenders?
10. What do you think of the effectiveness of the programs and services for sex offenders?
11. How do probation agencies network with the community? Could you define "community"? What are the strengths and limitations of the networks?
12. What are the community's concerns and needs? Do you think these concerns and needs are being addressed by the existing sex offender policies and practices?
13. How do the probation agencies network with the victims of sex offenders or victims-of-crime organizations? What are the strengths and limitations of the networks?
14. What are the victims' concerns and needs? Do you think these concerns and needs are being addressed by the existing sex offender policies and practices?

15. To what extent do you think that sex offender policies have acted to balance the concerns and needs of sex offenders, their victims, the community, and the government?
16. What do you think about public notification? Do you oppose public notification? If so, why? If you support public notification, what do you think the nature of the notice should be and to whom should it be given? How should the notification be made? What legitimizes that policy?
17. What do you think about victim notification? Do you oppose victim notification? If so, why? If you support victim notification, what do you think the nature of the notice should be and to whom should it be given? How should the notification be made? What legitimizes that policy?
18. What do you think about the proposed "Long-Term Supervision Legislation" now under discussion in Parliament?
19. How would you evaluate the outcomes of current sex offender policies? What about unintended consequences? Who benefits from the sex offender policies?
20. What would you suggest be done differently in the future to improve sex offender policies and practices?
21. In these days of financial restraints, where should we invest our resources?
22. Finally, do you have any additional comments or suggestions? Is there anything that we haven't touched on that you would like to address?



## INTERVIEW SCHEDULE 2

### COMMUNITY GROUPS

1. Could you tell me about your organization?
2. What population do you think your organization represents? How do you define "victim" and "community" in your sphere of activity?
3. What are your organization's goals?
4. What are your organization's strategies?
5. Could you describe how these goals and strategies have developed and changed over the years and why?
6. What are the similarities and differences between sex offender policies and policies for other offenders?
7. What do you think are the goals and principles underlying sex offender policies?
8. Could you tell me when, how, and why sex offender policies were created?
9. Do you think community pressure has affected sex offender policies?
10. How have sex offender policies developed and changed over the years? What changes have occurred to sex offender policies and why? What changes have occurred to the organizational structure within which sex offenders are managed?
11. Who decides which sex offender policies to implement or change?
12. Do you think the existing sex offender policies are specified according to the type of sex offences?
13. How are sex offender policies implemented?
14. What do you think of the practices utilized for sex offenders on probation?
15. What are the community's concerns and needs? Do you think these concerns and needs are being addressed by the existing sex offender policies and practices?
16. What are the victims' concerns and needs? Do you think these concerns and needs are being addressed by the existing sex offender policies and practices?

17. How do the probation agencies network with the community and victims? What are the strengths and limitations of these networks?
18. To what extent do you think that sex offender policies have acted to balance the concerns and needs of sex offenders, their victims, the community and the government?
19. What do you think about public notification? Do you oppose public notification? If so, why? If you support public notification, what do you think the nature of the notice should be and to whom should it be given? How should the notification be made? What legitimizes that policy?
20. What do you think about victim notification? Do you oppose victim notification? If so, why? If you support victim notification, what do you think the nature of the notice should be and to whom should it be given? How should the notification be made? What legitimizes that policy?
21. What do you think about the proposed "Long-Term Supervision Legislation" now under discussion in Parliament?
22. How would you evaluate the outcomes of current sex offender policies? What about the unintended consequences? Who benefits from the sex offender policies?
23. Do you have any criticisms with respect to sex offender policies in British Columbia?
24. What would you suggest be done differently in the future to improve sex offender policies and practices?
24. In these days of financial restraints, where should we invest our resources?
25. Finally, do you have any additional comments or suggestions? Is there anything that we haven't touched on that you would like to address?

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