SENTENCING ABORIGINAL OFFENDERS: PROGRESSIVE REFORMS OR MAINTAINING THE STATUS QUO?

by

Andrew Welsh
B.A. (Hons.), University of Waterloo, 1997
M.A., Simon Fraser University, 1999

DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF

DOCTORATE OF PHILOSOPHY

In the
Department
of
Psychology

SIMON FRASER UNIVERSITY

August 2004

1 APPROVAL

Name: **Andrew Welsh**

Degree: **Doctorate of Philosophy**

Title of Dissertation: **Sentencing with Aboriginal Offenders: Progressive Reforms or Maintaining the Status Quo?**

Examining Committee:

Chair: **Dr. Barry Beyerstein**
Professor

Dr. James R.P. Ogloff
Senior Supervisor
Professor

Dr. Deborah Connolly
Supervisor
Assistant Professor of Psychology

Dr. Ronald Roesch
Supervisor
Professor of Psychology

Dr. J. Don Read
Internal Examiner
Professor of Psychology
Simon Fraser University

Dr. Julian Roberts
External Examiner
Associate Professor
Criminology, University of Ottawa

Date Approved: Thursday, August 5th, 2004

SIMON FRASER UNIVERSITY

Partial Copyright Licence

ABSTRACT

As of March 31, 2003, Aboriginal offenders represented 18.3% of the incarcerated population, but accounted for only 2.7% of the Canadian population. Bill C-41 was introduced by Parliament to amend *Criminal Code* sentencing practices, and to encourage judicial consideration of alternatives to incarceration, with particular attention to the circumstances of Aboriginal offenders. To investigate the extent to which the Bill C-41 sentencing reforms have been effective in addressing Aboriginal over-representation, two separate studies were conducted. The first study examined sentencing admissions to incarceration, probation, or a conditional sentence for all male offenders in British Columbia from April 1993 to April 2000. Analyses demonstrated that neither overall incarceration rates nor Aboriginal incarceration rates in British Columbia have declined significantly since the introduction of Bill C-41. There was also no significant decline in Aboriginal incarceration rates when controlling for offence seriousness and criminal history. The second study examined judges' reasons for sentencing in a sample of Canadian sentencing cases to determine the role of Aboriginal status relative to other legally relevant factors. The Quicklaw dataset was used to identify 713 reported sentencing decisions from 1990 to 2002. Results indicated that Aboriginal offenders were not more likely to be incarcerated than non-Aboriginal offenders. Finally, Aboriginal status did not significantly predict the likelihood of receiving a custodial or non-custodial disposition relative to aggravating and mitigating factors cited by judges. Thus, it appears that the Bill C-41 sentencing reforms have underestimated the true complexity of the overrepresentation problem and, regardless of recent common law developments, sentencing judges alone cannot significantly reduce the current disproportionate rates of Aboriginal incarceration. The implications of these findings in light of the goals of Bill C-41 are discussed.

DEDICATION

To Jen. Thank you for all your love and support. I could not have made that last push to finish this dissertation without you. And to my parents who provided me with the love and encouragement to pursue my dreams and fulfill my goals. This is for you, Mom and Dad.

ACKNOWLEDGEMENTS

I would like to express my gratitude to Jim Ogloff for continuing to supervise and guide me during the course of my Ph.D. research despite beginning a new career in Melbourne, Australia. Without your support and guidance, my dissertation would not have been completed. It has been a privilege to be your student, and I truly appreciated the opportunity I had to join you briefly in Melbourne. I am also very grateful for Ron Roesch and Deborah Connelly's input, which has been much appreciated. To my friends and colleagues in the Mental Health, Law, and Policy Institute, thank you for your encouragement and friendship. I would also like to acknowledge Carolyn Hole at the Ministry of the Attorney General. Your cooperation and assistance made this research project possible. And I would like to extend a sincere thank you to the support staff in the Department of Psychology. Thank you to my friends and family back in Ontario. Your understanding and patience has been invaluable. Finally, I would like to thank my partner, Jennifer Lavoie, whose willingness to proofread drafts and listen to research ideas made the completion of this project possible.

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF TABLES

2 CHAPTER ONE: LITERATURE REVIEW

2.1 Introduction:

Despite a longstanding reputation for human rights achievements, the Canadian criminal justice system has evidenced a long-standing tradition of relying on incarceration as the primary sanction for offenders. According to the most recent Corrections and Conditional Release Statistical Overview prepared by Public Safety and Emergency Preparedness Canada (2003), Canada's incarceration rate is higher than the rates in most Western European countries. In 2001, the incarceration rate in Canada was 116 per 100, 000 in the general population (Public Safety and Emergency Preparedness Canada, 2003). This problem has been further exacerbated by the over-representation of Aboriginal peoples in Canadian correctional facilities. As of March 31, 2003, Aboriginal offenders represented 18.3% of the incarcerated population, but accounted for only 2.7% of the Canadian adult population (Public Safety and Emergency Preparedness Canada, 2003). This disproportionate rate of incarceration of Aboriginal people is a phenomenon that has been widely documented and discussed in the academic literature, government reports, and Supreme Court rulings (Cawsey, 1991; LaPraire, 1996; *R.* v. *Gladue*, 1999; Welsh & Ogloff, 2000). Nonetheless, the disproportionate imprisonment of Aboriginal peoples has changed very little over the last two decades.

To address these problems, Parliament introduced significant sentencing reforms in 1996. Much debate has focused on a specific provision of the *Criminal Code* (1985) introduced by these reforms concerning the sentencing of Aboriginal offenders. Section 718.2(e) provides that a court imposing a sentence must take into consideration all available sanctions other than imprisonment, with particular attention to the circumstances of Aboriginal offenders. The purpose of the present

study was to examine the extent to which these sentencing reforms, particularly Section 718.2(e), have affected sentencing of Aboriginal offenders. To date, the Supreme Court of Canada has acknowledged that judges must take into consideration the conditions of Aboriginal peoples when sentencing (*R.* v. *Gladue*, 1999). Several pertinent issues concerning the application of Section 718.2(e), however, remain unresolved, and a subsequent Supreme Court case implies that there will be restrictions on the use of community-based sanctions (*R.* v. *Wells*, 2000). To provide a sufficient background of sentencing and the Aboriginal experience in the criminal justice system, several issues will be examined including: (1) current Canadian sentencing legislation; (2) a review of Section 718.2(e) and its interpretation to date by the Canadian judiciary; (3) a brief review of existing research on factors influencing sentencing; and (4) a focus on research regarding sentencing with Aboriginal offenders.

2.2 An Overview of Sentencing in Canada

Sentencing is often considered by judges, even when compared to arriving at a verdict, as the most difficult component of a trial (Manson, Healy, & Trotter, 2000). This stems, in large part, from the fact that sentencing is a complex process involving the consideration of a wide range of information. As described by John Hogarth (1971), sentencing "is a cognitive process in which information concerning the offender, the offence, and the surrounding circumstances is read, organized in relation to other information and integrated into an overall assessment of the case" (p. 279).

Canada's sentencing model has traditionally provided judges with considerable latitude in selecting among potential sanctions (Manson et al., 2000; Ruby, 1987). The *Criminal Code* (1985), for example, provides judges with maximum penalties allowable for criminal offences, but rarely sets lower limits, leaving judges to select a punishment from a broad range of options. The fundamental principle of sentencing, under Section 718 of the *Criminal Code*, requires judges to "fit" the punishment to both the individual offence and the individual offender,

reserving the maximum punishment for the worst-case scenario. Notwithstanding this statutory mandate, there is no exact blueprint for a judge that spells out what information to consider when assessing the seriousness of the offence and the moral culpability of the offender, or how to use this information to calculate an appropriate sentence. Traditionally, judges' sentencing decisions have relied upon at least two sources to direct their sentencing decisions: (1) the aggravating and mitigating factors present in a case, and (2) the goals or principles of sentencing.

2.2.1 Aggravating and Mitigating Factors

In common law, judges have recognized sets of factors that affect the gravity of the offence and the court's assessment of the offender's culpability and then have applied them to make the decisions about which sanction to impose and its length (Manson, 2000; Manson et al., 2000; Ruby, 1987). These factors are known as either mitigating or aggravating factors. Aggravating circumstances are elements of offence or offender's background that could result in a harsher sentence, whereas mitigating circumstances are those elements of an offence or an offender's background that could result in a lesser sentence (Schmalleger, MacAlister, & McKenna, 2004). The majority of written or oral sentencing decisions include some consideration and placement of the relevant information into these two categories (Manson et al., 2000). Over the years, the common law has recognized dozens of factors that can have mitigating or aggravating effects (See Manson, 2000, for a detailed discussion of aggravating and mitigating factors).

In recent years, amendments have been made to the *Criminal Code* (1985) to entrench common law by requiring judges to increase or reduce a sentence by taking into account aggravating or mitigating circumstances, relevant to the offender or the offender. The *Criminal Code* (1985) lists a few examples of aggravating circumstances, including spousal or child abuse, evidence that a position of trust was violated, and evidence that the offence was committed for a

criminal organization. There are no examples of mitigating factors in the *Code* (Manson et al., 2000).

2.2.2 Sentencing Principles

In addition to those aggravating and mitigating factors prescribed in both the *Criminal Code* (1985) and case law, judges' sentencing decisions have traditionally been guided by a set of philosophical sentencing principles that have been developed over time. Although several purposes or principles of sentencing have been identified, the objectives of sentencing can be generally classified into two distinct categories: retributive justifications and utilitarian justifications. According to retributive theory or a just-deserts approach to sentencing, offenders are punished because they have done something wrong and therefore deserve to be punished. Retributive approaches to punishment are past-focused and involve the balancing of the severity of the punishment with the seriousness of the offence. Denunciation, which is closely related to retribution, refers to the expression of moral outrage that can be communicated through sentencing (Spohn, 2002).

In contrast, utilitarian justifications of punishment emphasize the prevention of crimes in the future. The prevention of crime from a utilitarian perspective may be accomplished by deterring individual offenders from re-offending (specific deterrence) or deterring other offenders from committing similar crimes (general deterrence). Alternatively, future crimes may be prevented by either incarcerating high-risk offenders (incapacitation) or rehabilitating offenders (Spohn, 2002). These philosophical principles guide judges in determining the best "fit" between the aggravating and mitigating factors in the case and the appropriate punishment. How these principles guide sentencing decisions, however, is only vaguely understood. Whether general deterrence, for instance, is best achieved though a lengthy prison sentence or a period of probation in the community with strict conditions will ultimately depend upon the judge's assessment of each individual case.

2.2.3 Bill C-41 and Sentencing Reforms

Canada's sentencing scheme has been the subject of considerable scrutiny. Much of public criticism has been focused on two particular aspects of sentencing in Canada. First, numerous reports have noted that, compared to other western nations, Canada has a high rate of incarceration. Comparatives analyses of international incarceration rates have observed that Canada's rate of 116 inmates per 100, 000 in the population was higher among Western European countries (Public Safety and Emergency Preparedness Canada, 2003). Second, much criticism has focused on the wide disparity in both the type and severity of sentences administered by courts (Griffiths & Cunningham, 2000; Roberts, 2001). Indeed, a large body of research has shown that there is often a wide variation in sentences, even after controlling for offender and offence characteristics (Birkenmayer & Besserer, 1997; Doob & Beaulieu, 1992; Hogarth, 1971; Palys & Divorski, 1986).

Numerous recommendations were put forth to address these concerns. The Canadian Sentencing Commission (1987), for example, recommended that judges be provided with more meaningful sentencing guidelines. In response to these and other recommendations, sentencing reform legislation was passed by Parliament in 1996 (Bill C-41). Among the reforms contained in Bill C-41, the primary purposes and principles of sentencing were officially codified in Part XXIII of the *Criminal Code* (1985). The intention of these guidelines was to reduce the amount of discretion that a judge exercises in imposing sanctions. These objectives of sentencing are described in Section 718 of the *Criminal Code* (1985):

> 718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives.
>
> (a) To denounce unlawful conduct;
>
> (b) To deter the offender and other persons from committing offences;

(c) To separate offenders from society where necessary;

(d) To assist in rehabilitating offenders;

(e) To provide reparations for harm done to victims or to the community; and

(f) To promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

When sentencing an offender, a judge must consider each of these objectives and decide which principle or a combination of principles is most appropriate for each specific case. These principles must also be balanced with the "Fundamental Principle" of sentencing - "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender" (s. 718.1, *Criminal Code*, 1985). Although this reform was largely a codification of judicially recognized goals of sentencing, Section 718 has incorporated a third distinct category of sentencing ideologies - restorative goals. Briefly, restorative justice is best understood as a new way of addressing criminal behaviour wherein crime is deemed a violation of people and relationships in the community (Zehr, 1990). Sections 718(e) and (f), which refer to reparations and the responsibility of the offender, signal efforts on the behalf of Parliament to introduce the philosophy of restorative justice to Canadian sentencing practices, and steer judges away from incarceration as a primary means of dealing with offenders.

In addition to introducing an explicit statement of the purposes and principles of sentencing, Bill C-41 created a new type of sanction, the conditional sentence. This new sanction was enacted to help reduce Canada's reliance on incarceration. Section 742.1 of the *Criminal Code* (1985) lists four criteria that a court must consider before deciding to impose a conditional sentence: (1) The offender must be convicted of an offence that is not punishable by a minimum term of imprisonment; (2) The court must impose a sentence of imprisonment of less than two years; (3) The safety of the community must not be endangered by the offender serving the

sentencing in the community; and (4) A conditional sentence must be consistent with the fundamental purpose of sentencing set out in Section 718.1. Although the conditional sentence was created as a community sanction, the Supreme Court of Canada recently stressed that conditional sentence must include conditions that are highly restrictive of the offender's liberty, thus distinguishing it from probation and other community sanctions (*R.* v. *Proulx,* 2000).

2.2.4 Sentencing Reforms and the Consideration of Aboriginal Peoples

Over the past two decades, there has been a growing focus on the plight of Aboriginal peoples within the Canadian criminal justice system as evidenced by numerous government reports, public inquiries and empirical studies (Cawsey, 1991; LaPrairie, 1996; Royal Commission on Aboriginal Peoples, 1996; Welsh & Ogloff, 2000). At this point, it is important to note that the term Aboriginal people include the Indian, Metis and Inuit people (*Constitution Act*, 1982). Indians include Aboriginal people who are entitled to be registered as Indians pursuant to the *Indian Act* of Canada. (1985). Metis people are those Aboriginal people of mixed blood, Aboriginal-white ancestry who are, and who consider themselves as being, neither Indian nor Inuit, or who regard themselves as Metis. Inuit people are those Aboriginal people who were known formerly as Eskimos.

The majority of criminal justice literature has documented the over-representation of Aboriginal people in correctional facilities (e.g., LaPrairie, 1996; Solicitor General of Canada, 1998; Welsh & Ogloff, 2000). Indeed the disproportionate representation of Aboriginal peoples has been frequently noted, both in the past and more recently. In 1979, for instance, Aboriginal people represented 6.7% of the federal inmate population, even though they only represented 1.3% of the Canadian population. These numbers have changed very little over the last two decades. As of March 31, 2003, Aboriginal offenders represented 18.3% of the federal and

provincial incarcerated population, but accounted for only 2.7% of the Canadian adult population (Public Safety and Emergency Preparedness Canada, 2003)[1].

Not surprisingly, the explanations for over-representation are diverse and complex. While some researchers have suggested that Aboriginal peoples are committing either disproportionately more crimes or more serious and/or visible crimes, other researchers have pointed to differential criminal justice system processing as a result of discrimination (LaPrairie, 1990; 1992; 1996). Those who advocate the role of systemic discrimination in Aboriginal over-representation have argued that the differential impact of the justice system on Aboriginal persons may be most apparent at the sentencing state (Jackson, 1988). Although sentencing practices cannot solely account for Aboriginal over-representation, a significant reform was included in Bill C-41 to address this issue. Specifically, Section 718.2(e) of the *Criminal Code* (1985) provides that a court imposing a sentence must take into consideration all available sanctions other than imprisonment that are reasonable in the circumstances, *with particular attention to the circumstances of Aboriginal offenders*. The general principle underlying s. 718.2(e) is restraint in the use imprisonment for *all* offenders. Nonetheless, this section has generally been read as a statutory means of ameliorating the serious problem of overrepresentation of Aboriginal people in prisons (Manson et al., 2000).

In *R.* v. *Gladue* (1999), the Supreme Court of Canada had the opportunity to test the meaning of Section 718.2(e) with respect to sentencing of Aboriginal offenders for the first time. In *R.* v. *Gladue* (1999), an aboriginal woman, Marie Gladue, plead guilty to manslaughter in the death of her common law husband. At the sentencing hearing, the judge noted that there were no special circumstances arising from the Aboriginal status of the accused that he should take into consideration as Gladue was living in an urban area off-reserve and not within an Aboriginal

[1] The 2003 Census data cannot be compared to data from the 1979 Census. Early census data on Aboriginal persons were derived from a question that asked about their ethnic origin or ancestry. Subsequent censures included a new question that asked more directly if the person is an Aboriginal person, that is, North American Indian, Métis or Inuit.

community. As a result, Gladue was sentenced to three years imprisonment. Following a dismissal of her appeal by the British Columbia Court of Appeal, Gladue appealed to the Supreme Court of Canada seeking an interpretation of the meaning of Section 718.2(e) of the *Criminal Code* (1985). The Supreme Court of Canada dismissed the accused's appeal predominately because she had already been granted parole.

However, in its decision, the Supreme Court of Canada made several important rulings concerning the meaning of Section 718.2(e). First, it was held that the sentencing judge erred in limiting the application of Section 718.2(e) to the circumstances of Aboriginal offenders living in rural areas or on-reserve. The Supreme Court acknowledged that many Aboriginal people appear in the criminal justice system as a result of systemic discrimination and, consequently, a failure to apply Section 718.2(e) to all Aboriginal people would undermine the intent of the provision. In arriving at this conclusion, the Supreme Court provided a framework of analysis for sentencing judges when considering Aboriginal status in sentencing decisions. Among the background factors that are considered to play a role in Aboriginal criminality, the Court noted years of dislocation and economic deprivation, high unemployment rates, lack of opportunity, substance abuse, loneliness, and community fragmentation. The Court stressed that judges must consider these background and systemic factors when sentencing Aboriginal offenders. Second, the Supreme Court of Canada stressed that Section 718.2(e) does not imply an automatic non-custodial sentence or reduction in prison sentence. Consistent with this ruling, the Court stated Section 718.2(e) must be read and considered in relation to the other principles of sentencing discussed earlier (*R.* v. *Gladue*, 1999).

Certainly, the *Gladue* (1999) decision has important implications for the sentencing of Aboriginal offenders (Turpel-Lafond, 1999). Nonetheless, legal scholars have noted that there are some limitations with the Supreme Court of Canada's interpretation of Section 718.2(e) of the *Criminal Code* (1985) (Anand, 2000; Pelletier, 2001; Stenning & Roberts, 2001). The concerns

regarding Section 718.2(e) and the *Gladue* decision can be grouped into three general categories. First, despite stressing that Section 718.2(e) must be read and considered in the context of other sentencing principles in the *Criminal Code* (1985), the Supreme Court did not specifically address how Aboriginal status will be balanced with these other principles. For example, do restorative justice principles receive greater weight than deterrence or denunciation when the accused is Aboriginal? Although the Supreme Court acknowledged that traditional sentencing principles, such as deterrence and denunciation, contribute to Aboriginal over-representation, the Supreme Court also stated that "the application of s. 718.2(*e*) does not mean that aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice and less weight to goals such as deterrence, denunciation, and separation" (*R.* v. *Gladue*, 1999, para. 78).

Second, Pelletier (2001) has argued that the Supreme Court's analysis in *Gladue* (1999) fails to acknowledge and identify a number of systemic or background factors that are helpful in understanding the reasons behind Aboriginal over-representation. The Court did cite "years of dislocation and economic development" as significant factors associated with Aboriginal criminality, however, Pelletier has suggested that undue emphasis was placed on an Aboriginal offender's connection to the community and culture, which may discount the alienating effects of years of colonization and cultural dislocation. As a result, Pelletier believes the Supreme Court has not provided room in the application of Section 718.2(e) for the Aboriginal offender who has been unable to participate in his or her culture. Pelletier's position has been uniquely contrasted by Stenning and Roberts (2001). While not discounting the impact of colonization and cultural dislocation, Stenning and Roberts have commented that the results of these problems, the "systemic and background factors" listed by the Supreme Court of Canada, are not necessarily unique to Aboriginal offenders. Indeed, they argue that low incomes, high unemployment, lack of education, and substance abuse, are commonly noted problems cited among most federal inmates.

Finally, one of the most problematic features of the *Gladue* (1999) decision concerns the application of Section 718.2(e) to serious and violent offenders. There is some indication that judges may find that conditional sentences and other alternatives to incarceration may be inappropriate for Aboriginal and other offenders who commit the most serious crimes. In *R.* v. *Wells* (2000), Wells, an Aboriginal man, was convicted of sexual assault and subsequently sentenced to 20 months in a provincial correctional institution. The custodial disposition administered contrasted with the recommendations of the pre-sentence report, which had advocated a conditional sentence. The Supreme Court of Canada upheld this sentence. In their decision, the Supreme Court stated that "[w]hile s. 718.2(e) requires a different methodology for assessing a fit sentence for an Aboriginal offender, it does not necessarily mandate a different result" (para. 44).

The Court's ruling on this point is problematic when one considers the relative ease with which a sentencing judge could deem any number of offences to be "serious." Such a narrow application of Section 718.2(e) may be further exacerbated in the case of Aboriginal offenders, given differences in the offence seriousness and criminal history between Aboriginal and non-Aboriginal offenders. Statistics have consistently illustrated significantly higher crime rates within Aboriginal communities and among Aboriginal people in non-Aboriginal communities (LaPrairie, 1996; Royal Commission on Aboriginal Peoples, 1996). Further, the reliance of sentencing judges on legally relevant aggravating and mitigating factors, such as the presence of a prior criminal record or an offender's education level, can have an undue influence on the incarceration rate for Aboriginal people. Given the marginalized status of Aboriginal people in Canada, incarceration may become the only reasonable option for the sentencing judge regardless of the gravity of the offence. Other problems are posed by the lack of funding for community-based alternatives to incarceration. Many remote communities, particularly Aboriginal communities, do not have access to treatment centres, healing lodges, and community-based

correctional programs. Simply put, a judge may be unlikely to opt for a community-based disposition when community resources are poor or unavailable (Pelletier, 2001).

2.3 Determinants of Sentencing

As previously discussed, sentencing disparity has long been observed in criminal courts. In fact research dating back as early as 60 years ago has shown evidence of disparity in sentencing (Gaudet, Harris, & St. John, 1932). These observed differences in legal sanctions across similar offences raises an important question – to what extent is this variation attributable to extra-legal factors? Some research has shown that legally relevant variables explain much of this variation (Andrews, Robblee, Saunders, Huarson, Robinson, Kiessling, & West, 1987; Brantingham; 1985). There are a number of aggravating and mitigating factors that may account for some observed variation (e.g., prior criminal history, victim characteristics, and prospect for rehabilitation). However, other research suggests that extra-legal factors may also contribute to this variation. To obtain a greater understanding of factors that may influence sentencing, existing research will be reviewed in three different areas: (1) judicial characteristics; (2) offence and offender characteristics; and (3) the effects of sentencing guidelines.

2.3.1 Judicial Characteristics

Judges' sentencing goals, attributions about the causes of crime, and ideologies have been hypothesized to influence sentencing outcomes (Carroll, Perkowitz, Lurigio, & Weaver, 1987; Diamond, 1983; Melton, Petrilla, Poythress, & Slobogin, 1999). For example, Forst and Wellford (1981) found that judges favoring incapacitation administered the longest sentences, while judges favouring rehabilitation gave more supervised time. Consistent with these findings, Clancy, Bartolomeo, and Wellford (1981) found that factors that influenced sentencing disparity in a study of U.S. federal courts included: (1) the judges' overall value orientations about the functions of the criminal sanction; (2) judgments about the appropriate goal of case-specific

sentences; (3) perceptions about the severity of the sentences themselves; and (4) a predisposition to impose relatively harsh or lenient sentences.

In perhaps the most well-designed Canadian study of sentencing, Hogarth (1971) examined actual sentencing decisions, measuring variables associated with the case (e.g., seriousness of the offence, whether the accused plead guilty) and characteristics related to the offenders (e.g., age, employment status, criminal record). In addition, Hogarth also gathered data from the sentencing judges concerning their perceptions of important case facts, perceptions of their legal and social context, and attitudes regarding crime, punishment, and penal philosophy. Results demonstrated that judges varied in their attitudes and perceptions regarding crime and punishment, and variability in these attitudes was systematically related to sentencing variation. In fact, Hogarth found that 40.7% to 69.6% of the variance in sentencing dispositions could be explained on the basis of judges' status on attitudinal and perceptual variables.

The most recent analysis of actual sentencing patterns also found considerable variation in sentencing that could be explained by judicial characteristics. Roberts (1999) looked at the imprisonment rates in a number of provincial courts across the country. Results indicated that the incarceration rate varied considerably, from 14% in one location (Calgary) to 41% in another (College Park, in Toronto). The same phenomenon was observed when comparisons were made between different jurisdictions after controlling for the seriousness of the offence. Based on these results, Roberts concluded that the judge rather than the legal characteristics of the case accounted for a large degree of the variation in sentencing outcomes.

2.3.2 Characteristics of the Offender and the Offence

As previously discussed, a variety of characteristics associated with the offence and the offender, such as the use of violence or a prior criminal record, are considered as aggravating circumstances by judges (Manson et al., 2000). Not surprisingly then, research has shown that a variety of factors associated with characteristics of the offender, the offence, and the legal system

itself may account for some of the variation in sentencing decisions. Consistent with case law, studies of judges' sentencing decisions have shown that the two most consistent predictors of sentencing outcomes are the seriousness of the offence and the offender's prior criminal record (Ebbesen & Konecni, 1981; Roberts, 1995; Spohn, 2002). Offenders who commit more serious crimes are sentenced more harshly than those who commit less serious crimes. Offenders with more extensive criminal histories receive more severe sentences than those with shorter criminal histories.

Although both offence seriousness and criminal history are important predictors of sentencing outcomes, the relative weight allotted to each factor by judges may vary at different stages of the sentencing process. In short, the sentencing process involves two distinct decisions: (1) what sentence to impose, and (2) the length or severity of that sentence. There is some evidence to suggest that offence seriousness may be a more robust predictor of sentencing decisions than prior criminal history. In a study of sentencing outcomes for offenders convicted of felonies in Chicago in 1993, Spohn and DeLone (1996, as cited in Spohn, 2002) found that both the sentence outcome and the sentence length were predicted by the seriousness of the offence. Offenders convicted of more serious offences were more likely to be incarcerated and receive longer prison sentences. In contrast to offence seriousness, Spohn and DeLone found that the offender's prior criminal record primarily affected the decision to incarcerate. Offenders with no prior criminal history were sentenced to prison at a much lower rate (27.1 percent) than those with even one prior conviction (79.8%).

Several other indicators of offence seriousness also affect sentencing decisions. Offenders convicted of violent crimes, for example, are more likely to be incarcerated than those convicted of property crimes, and offenders convicted of more than one charge receive more severe sentences than those convicted of only one charge (Spohn & DeLone, 1996, as cited in Spohn, 2002). The use of a weapon in the commission of an offence has been deemed by judges

to elevate the seriousness of the offence (Manson, 2001) and U.S. research has in fact found that use of a gun during the commission of a crime increases the odds of incarceration but does not affect sentence length (Spohn & DeLone, 1996, as cited in Spohn, 2002). Baab and Ferguson (1967) also found that, for offenders with the same charge, those who threatened physical harm tended to receive harsher sentences. Finally, in a survey of 200 provincial court judges, Palys and Divorksi (1986) found that when sentencing disparity does exist, variability was in large part accounted for by the offence type.

Existing U.S. research has also identified a relationship between several characteristics of the offender and sentencing outcome. There is evidence, for example, that men are sentenced more harshly than women (Daly & Bordt, 1995), that young adults are sentenced more harshly than either adolescents or older adults (Steffensmeier, Ulmer, & Kramer, 1995), and that blacks and Hispanics in the United States are sentenced more harshly than white accused individuals (Chiricos & Crawford, 1995). In a study of racial status and sentencing differences, Kramer and Steffensmeier (1993) found that despite not having a significant relationship to the length of sentences imposed, African-American defendants were 8% more likely to be incarcerated than white defendants. There also is some evidence that the offender's education, income, and employment status are related to sentence severity. Albonetti's (1997) study of drug offenders sentenced in U.S. District Courts from 1991 to 1992, for instance, showed that offenders with at least a high school education received shorter prison sentences than those without a high school education. In a study of sentencing decisions in Chicago and Kansas City, Nobiling, Spohn, and DeLone (1998) found that unemployed offenders were significantly more likely than employed offenders to be sentenced to prison. In addition, Daly (1989) found that defendants who were living with a spouse, living with parents or other relatives, or caring for young children were treated more leniently than "single" defendants.

In addition to characteristics of the offence and offender, two legal or case-processing attributes have been linked to judges' sentencing decisions: plea of the accused and the defendant's pre-trial status (released or in custody prior to trial). Studies of sentencing confirm that offenders who plead guilty to an offence are treated more leniently during the sentencing process (Spohn, 2002; Uhlman & Walker, 1980). For example, two recent studies of sentences imposed on drug offenders in U.S. District Courts found that pleading guilty reduced both the likelihood of a prison sentence and the length of sentence imposed on offenders who were incarcerated (Albonetti, 1997; Kautt & Spohn, in press). A study of sentences imposed in Chicago, Kansas City, and Miami reached similar conclusions (Spohn & DeLone, 2000). In Kansas City and Miami, defendants convicted at trial were substantially more likely than those who pled guilty to be sentenced to prison. In all three jurisdictions, those who went to trial faced significantly longer sentences than those who pled guilty.

The importance of a guilty plea in sentencing decisions is not surprising; judges have traditionally considered a guilty plea as a mitigating factor (Manson et al., 2000). Although the mitigating value of a guilty plea can depend on its timing, judges generally consider a plea to be mitigating because it implies remorse and an acknowledgement of responsibility by the offender. The Auditor General of Canada (2002) has outlined several additional benefits associated with a guilty plea including the fact that it can allow attorneys and the courts to handle more cases with the same or fewer staff, reserving court time for more serious cases, and it spares victims from having to testify. In spite of the mitigating values of a guilty plea, courts have adamantly emphasized that the fact that an offender has exercised the constitutional right to be presumed guilty and pleaded not guilty should not be used as an aggravating factor (Manson et al., 2000).

According to some sentencing studies, pre-trial status or time in custody also plays a significant role in sentencing decisions. Section 719(3) of the *Criminal Code* (1985) allows the sentencing judge to take into account any time already spent in custody while awaiting trial or

sentencing when sentencing an offender. Although the exact amount of credit provided for time-served varies from jurisdiction to jurisdiction, courts have generally applied a "two to one" ratio or double time credit. Courts' rationale for such credit is to reflect the fact that pre-trial custody detention centres do not provide educational or other rehabilitative programs which would otherwise be available to those serving jail or prison sentences (*R.* v. *Wust*, 2000).

To date, there is no existing Canadian research examining the effects of time served in custody on sentencing decisions. Several U.S. studies, however, have examined the role of pre-trial custody in sentencing decisions with interesting results. A study of sentencing decisions in two Florida counties, for example, found that defendants held in jail prior to trial were significantly more likely to be incarcerated following conviction, even after controlling for other predictors of sentence severity (Chiricos & Bales,1991). Moreover, pretrial detention increased the odds of incarceration for offenders convicted of drug offences, property crimes, and violent crimes. A study of sentencing decisions in Chicago, Miami, and Kansas City reached a similar conclusion (Spohn & DeLone, 2000). In each city, offenders who were released prior to trial faced substantially lower odds of imprisonment than those who were detained.

2.4 Sentencing with Aboriginal Offenders

There has been a great deal of rhetoric and anecdotal evidence concerning overt racism and unwarranted disparity in the conviction and sentencing of Aboriginal people. In his widely reported paper, Jackson (1988) concluded "that one reason why Native inmates are disproportionately represented in the prison population is that too many of them are being unnecessarily sentenced to terms of imprisonment" (p. 212). In the over-representation literature, a great deal of both Canadian and U.S. research has focused on the sentencing of Aboriginal offenders. Briefly, a review of the existing research will be conducted in two general streams: (1) Research examining sentence type, and (2) Research examining sentence length.

2.4.1 Sentence Type

Among criticisms of criminal justice processing of Aboriginal people, it has been suggested that Aboriginal accused are more likely to receive a term of incarceration. Canadian research findings, however, have been mixed. Some Canadian studies have observed differences in dispositions based on Aboriginal status. In the first published Canadian study of disparity in sentencing outcomes in Winnipeg, Dubienski and Skelly (1970) found relatively fair treatment of Aboriginal accused in most areas except in the area of regulatory offences where fines were disproportionately imposed.

In a subsequent study conducted in Winnipeg, Bienvenue and Latif (1974) found that although Aboriginal people comprised only three percent of the urban population, 27.9% of all male offenders convicted were Aboriginal, and 70.6% of all female offenders convicted were Aboriginal. Interestingly, examination of disposition type suggested that Aboriginal offenders in fact received lighter sentences. For example, only 8.6% of Aboriginal offenders were incarcerated as compared to 10.8% of non-Aboriginal offenders. However, consistent with Dubienski and Skelly's (1970) findings, Aboriginal offenders were significantly more likely to receive a fine (74.9% vs. 67.0%). The authors suggested that the disproportionate use of fines with Aboriginal accused was itself a form of discrimination as the Aboriginal offenders were less able to complete payments.

Contrary to these findings, however, other studies have found instances of reverse differential treatment based on Aboriginal status. In the Canadian Centre for Justice Statistics, Homicide Project, Moyer (1987) compared sentences for Aboriginal and non-Aboriginal people accused of homicide for the period of 1962-1984. Surprisingly, Moyer's analysis revealed that Aboriginal offenders in fact were less likely to be convicted of first- or second-degree murder, and more likely to be convicted of manslaughter as compared to non-Aboriginal offenders. Specifically, only 4.0% of Aboriginal men in the study cohort were convicted of first-degree

murder as compared to 13.5% of non-Aboriginal men. In contrast, 76.3% of Aboriginal male accused were convicted of manslaughter as compared to 45.6% of non-Aboriginal male accused.

Other Canadian research has found that Aboriginal status may have an indirect effect on sentencing outcomes that is mediated by both demographic and criminal history variables. In a study of sentencing in western Canada, Hagan (1975) reported that prior criminal history and lower socioeconomic status were directly associated with sentencing outcome and, as a result of differences on these factors, Aboriginal offenders were more likely to be incarcerated. A second study by Hagan (1977) found no effect of Aboriginal status on disposition type in urban areas, but in rural areas, Aboriginal offenders were more likely to be incarcerated. An examination of pre-sentence reports and sentencing decisions in the Yukon found that Aboriginal offenders were more likely to be incarcerated than non-Aboriginal accused (40% versus 30%) (Boldt, Hursh, Johnson, & Taylor, 1983). However, this difference was accounted for by two factors – the Aboriginal accused had more prior convictions and had committed more serious crimes. Similarly, Lewis (1989) found that Aboriginal offenders with prior criminal convictions were acquitted less often and found guilty more often than non-Aboriginal offenders in B.C. summary conviction courts. However, Aboriginal offenders with no prior criminal convictions were granted stay of proceedings more frequently as compared to non-Aboriginal offenders.

Research has identified several differences between Aboriginal and non-Aboriginal offenders that could have an effect on sentencing outcomes. Generally, Aboriginal offenders are younger than the average age in the general population of inmates (Boe, 2000). In addition, Aboriginal peoples have high rates of personal and social problems that may impact upon the occurrence and frequency of criminal behaviour. Based on interviews with a 10% sample of federal male Aboriginal offenders, Johnston (1997) reported that early drug (60%) and alcohol abuse (58%) were commonplace characteristics among these inmates as were childhood

behavioural problems. Other frequently noted occurrences were childhood physical (45%) and sexual (21%) abuse, as well as severe poverty (35%) and parental absence (41%).

There is also a large body of research that suggests that there are substantial differences in the criminal history of Aboriginal and non-Aboriginal offenders. Current data suggest that Aboriginal offenders have contact with the justice system at a much younger age (Nafekh & Welsh, 1999) and are more likely to have served a prior federal sentence (Solicitor General of Canada, 1998). Studies across time have also consistently shown that Aboriginal offenders are disproportionately involved in violent offences (LaPrairie, 1996; Solicitor General of Canada, 1998). In a sample of Canadian federal offenders who reached full parole eligibility in 1996, Welsh and Ogloff (2000) found that Aboriginal offenders were three times as likely to have been admitted for a homicide offence, and twice as likely to be admitted for both a sexual and an assault-related offence. This differential involvement in criminal behaviour, particularly violent offences, could leave sentencing judges with fewer options when sentencing Aboriginal offenders.

A small body of research examining sentencing outcomes with Aboriginal offenders has also been conducted in the U.S. and, similar to the Canadian research, the findings have been mixed. Early work by Hall and Simkus (1975) concluded that there was in fact disparity in sentencing with Aboriginal offenders. In two studies examining all offenders sentenced to probationary types of sentences for felonies between 1966 and 1972, Hall and Simkus noted that Aboriginal offenders were less likely to receive deferred sentences than Caucasian offenders, and were more likely to serve time in prison. Consistent with these findings, Benjamin and Kim (1980) reported that Aboriginal offenders in Minnesota were sentenced to probation less often than Caucasian accused (32% versus 51%) and were fined (24% versus 10%) and incarcerated more frequently (36% versus 25%). However, Benjamin and Kim also found that Aboriginal offenders also had a greater proportion of stayed or suspended sentences (36% versus 28%). In a

study of juvenile court records in Wisconsin, Poupart (1995) found that Aboriginal youths were more often referred to the prosecutor than were white youths (63% vs. 39%), were more often detained (15% vs. 7%), and were more severely treated (e.g., 24% vs. 11% transferred to a juvenile facility or waived into adult court).

Contrary to these findings, Leiber (1994) noted that Aboriginal youth in Iowa were treated more leniently than both African Americans and whites at intake and the petition stage, and found no differences at the judicial disposition stages. Furthermore, Aboriginal youth were more often diverted from correctional facilities. Based on a review of juvenile records in Minnesota, Feld (1995) found that being African American or Aboriginal increased the chances of being represented by counsel, of being detained, and of having a disposition involving removal from the home. However, there were no differences in commitment to secure institutions based on racial status.

2.4.2 Sentence Length

Although the research on disposition outcomes is mixed, the majority of Canadian research suggests that those Aboriginal offenders who are incarcerated may receive shorter sentence lengths as compared to non-Aboriginal offenders. Based on five years of federal admissions data from 1976 to 1989, Canfield and Drinnan (1981) reported that Aboriginal offenders consistently received shorter sentences as compared to non-Aboriginal offenders, even after controlling for offence type. For example, 55.1% of Aboriginal offenders received sentences of four years or less for attempted murder as compared to 23.2% of non-Aboriginal offenders. Similar disparities were reported for manslaughter, break and enter, theft, assault, and robbery, and sexual offences. These findings were supported in a subsequent study by Moyer, Billingsley, Kopelman, and LaPrairie (1985). In addition, Bonta (1989) found no significant differences between average sentence lengths for Aboriginal compared to non-Aboriginal provincial offenders when controlling for criminal history.

Comparisons of Aboriginal and non-Aboriginal offenders in federal correctional facilities in Canada also indicate that non-Aboriginal offenders generally have longer sentence lengths than Aboriginal offenders. As of July 2nd, 1995, non-Aboriginal offenders had a mean sentence length of 5.2 years as compared to 4.2 years for Aboriginal offenders. Even when comparing sentence length by type of offence for federal offenders, Aboriginal offenders still had shorter sentences. These findings held for the following offences: attempted murder, assault causing bodily harm, robbery, and trafficking (LaPrairie, 1996).

Research findings in the U.S. concerning sentence length have been less clear. Bynum and Paternoster (1984) found that the Aboriginal offenders had significantly shorter sentences imposed (18.6 months versus 26.5 months), a difference that was apparent even after controls for age, education and prior convictions. Defining sentence severity as the percentage of the maximum sentence given to an offender, researchers in South Dakota noted that Aboriginal offenders received sentences of either the same or less severity, even after controls for prior convictions, offence type, and judge (Pommersheim & Wise, 1989; Feimer, Pommersheim, & Wise, 1990). Based on a review of sentencing data in Yakima County (Washington) from 1986 to 1989, Hood and Harlan (1991) found that Caucasian and Aboriginal offenders had similar sentence lengths, and both of these groups received shorter sentences than Hispanics. These findings were replicated in a subsequent study (Hood & Lin, 1993).

Other U.S. studies on sentencing have found differences between Aboriginal and non-Aboriginal offenders based on the admitting offence. In a sample of inmates in Arizona state, Alvarez and Bachman (1996) found that Caucasian offenders received longer sentence lengths for assault, sexual assault, and homicide, whereas Aboriginal offenders received longer sentences for burglary. Consistent with these findings, Bachman, Alvarez, and Perkins (1996) noted that Aboriginal offenders received longer sentences for robbery, burglary, drug trafficking and public order offenses, shorter sentences for larceny, and similar sentences for murder, assault and sexual

assault. However, the results varied by state. For instance, North Carolina was the most discriminatory state, while North Dakota showed reverse discrimination.

2.5 Summary and Present Study

The goal of sentencing reforms introduced in Bill C-41 was to address Canada's over-reliance on incarceration generally; it was also enacted with the explicit intent of reducing incarceration of Aboriginal offenders. Nonetheless, both sentencing research and case law suggest that there are obstacles to fully implementing this provision. Offence seriousness and prior criminal history, for example, are the two most consistent predictors of sentencing outcomes across research (Ebbesen & Konecni, 1981; Roberts, 1995; Spohn, 2002). Furthermore, the Supreme Court of Canada decisions in *Gladue* (1999) and *Wells* (2000) have emphasized that Section 718.2(e) of the *Criminal Code* (1985) does not imply an automatic non-custodial sentence for Aboriginal offenders. The Supreme Court has also ruled that in cases involving violent crimes, the sentencing objectives of deterrence and denunciation may be best served by a custodial sentence (*R.* v. *Proulx*, 2000). Given that Aboriginal offenders are disproportionately convicted of violent offences and are more likely to have a prior criminal history (e.g., LaPrairie, 1996), it is possible that a large proportion of Aboriginal offenders will be considered a higher risk to serve a sentence in the community which, in turn, may increase the judicial propensity to incarcerate offenders.

To date, no empirical research evaluating the effects of the sentencing reform legislation on Aboriginal incarceration rates have been published. The purpose of the present study was to investigate the extent to which the sentencing principles introduced to the *Criminal Code* (1985), particularly Section 718.2(e), have been effective in addressing the issue of Aboriginal over-representation. There are several ways to evaluate the effectiveness of sentencing legislation. The two main foci of investigation in this study were (1) understanding the impact of Bill C-41 on Aboriginal incarceration rates, and (2) determining what role Aboriginal status played in judges'

sentencing decisions in light of Bill C-41 and Supreme Court decisions, such as *Gladue* (1999). Two separate studies were conducted to address two specific research questions:

1. *Have incarceration rates, particularly Aboriginal incarceration rates, decreased in B.C. since the implementation of Bill C-41 in September 1996?* It is predicted that, given the criminal history of and the nature of offences committed by a large proportion of Aboriginal offenders, there will be no observable decline in Aboriginal incarceration rates since the implementation of Bill C-41.

2. *To what extent does Aboriginal status play a role in judges' sentencing decisions relative to legally relevant offender and offence characteristics and sentencing principles that have traditionally guided the sentencing process?* Based on the existing literature, it is predicted that Aboriginal status will not significantly predict either sentencing outcome (Non-custodial vs. custodial sentence) or sentence length.

3 METHOD

3.1 Study 1: An Evaluation of B.C. Incarceration Rates

3.1.1 The Dataset

The dataset was selected, retrospectively, from the files of the Ministry of the Attorney General. Overall, the dataset included all male offenders sentenced in British Columbia criminal courts from April 1993 to April 2000. Due to the relatively small proportion of women in the sentenced population and concerns regarding anonymity, female offenders were not included in the current study. Importantly, the dataset does not count individual offenders, but rather individual admissions to imprisonment, a conditional sentence, or probation. An offender could be convicted and receive a relatively short sentence and, upon release, be convicted of another offence, resulting in a new admission. There could also be instances of an offender having two different sentences stemming from the same conviction. For example, an offender could be sentenced to a period of incarceration, followed by a period of probation. In this case, there would be two separate data entries, with an admission to incarceration and an admission to probation.

The dataset included several variables:

1. *Aboriginal Status* (Aboriginal, non-Aboriginal). The Aboriginal offender group was comprised of Inuit, Metis, and North American Indian offenders (status/non-status). All other offenders comprised the non-Aboriginal offender group.
2. *Date of Birth.*
3. *Date of Sentencing.*
4. *Sentence Type* (Incarceration, Probation, Conditional).

5. *Sentence Length* (in days).

6. *Criminal History*. In the current study, criminal history was based on jail time in the British Columbia Provincial Case File (PCF) system. In total, there were five levels of the variable, which were mutually exclusive.

    a. *No Prior Formal Contact*. The admission to sentencing was the first time the offender has appeared in the PCF.

    b. *No Prior Jail Time*. The offender has a prior history on the PCF, but no record of institutional time, whether lockup, remand, or sentenced history.

    c. *No Prior Jail Sentence*. The offender has a history on the PCF, including institutional time in remand or lockup, but has never been sentenced.

    d. *Prior Jail Sentence Over Two Years Ago*. The offender has a prior history on the PCF, which included Sentenced Institutional Time, but the latest discharge was over two years prior to their current conviction.

    e. *Prior Jail Sentence Within Two Years*. The offender has a prior history on the PCF, which includes Sentenced Institutional Time, and the latest discharge was within two years of the current conviction.

7. *Index Offence*. The Index Offence describes the most serious offence for which the offender was serving his current sentence. A total of 130 specific offences from the *Criminal Code*, *Motor Vehicle Act*, the former *Narcotic Control Act*, and current *Controlled Drugs and Substances Act*, were included under this variable. For the purposes of analyses, individual offences were re-coded and categorized based on similarity to create 19 broad offence categories. For example, offences involving an assault (i.e., Assault, Assault with a Weapon, Aggravated Assault) were categorized together under "Assault" (See Appendix B for a list of the original offences and the broader offence categories). These 19 index offence categories

were further re-categorized into five broad categories, which are described in Appendix C (i.e., Offences Against the Person, Sexual Offences, Drug Offences, Property Offences, Other Offences).

To obtain a measure of the severity of the offence, the Index Offence variable was re-coded into a dichotomous variable, "Serious Personal Injury Offence". The Serious Personal Injury Offence (SPIO), defined under Section 752 of the *Criminal Code* (1985), is a component of the Dangerous Offender provisions. Briefly, if a Crown Attorney believes that an individual may be an appropriate candidate for proceedings under the Dangerous Offender provisions, the accused must be convicted of an SPIO. A list of Serious Personal Injury Offences can be found in Appendix D.

3.2 Study 2: An Evaluation of Judicial Sentencing Decisions

Unquestionably, one of the major goals of the Bill C-41 amendments was to create viable alternatives to incarceration in the interests of reducing correctional populations, particularly with respect to Aboriginal peoples. The Supreme Court of Canada's decision in *Gladue* (1999) re-affirmed this goal, urging judges to consider the "unique systemic or background factors" of Aboriginal peoples that may have contributed to the offence. In the subsequent *Wells* (2000) decision, the Supreme Court further emphasized that although Section 718.2(e) does mandate a "different methodology" for determining an appropriate sentence, it does not necessarily mandate a different sentence for an Aboriginal offender that would be appropriate under any other circumstances. The purpose of this section of the study was to determine the extent to which Aboriginal status plays a role in sentencing decisions relative to other factors generally considered in sentencing hearings.

3.2.1 The Dataset

In an effort to determine the actual role of Aboriginal status in sentencing decisions, I reviewed provincial and appellate court opinions in Canadian sentencing cases. The Quicklaw

dataset was used to identify English sentencing decisions reported between 1990 to 2002 (i.e., excluded Quebec and some New Brunswick decisions). Briefly, a case is "reported" if it is published in any series of law reporters. The decision to publish a judgment is made by the publisher of the law reporter. Generally, if the case is important it will be published (e.g., interprets, clarifies, or develops the law). Quicklaw is a dataset that contains the full text of all Supreme Court of Canada decisions, written and oral decisions (reported and unreported) from provincial Courts of Appeal, written decisions from the provincial Superior Courts (generally, from 1986 forward), and written decisions from Provincial Courts if the decision was forwarded to Quicklaw (decisions are forwarded to Quicklaw at the discretion of the individual Provincial Court judge). The dataset for the current study only included provincial court, provincial superior court, and appellate court sentencing decisions.

3.2.2 Search Strategies

All cases were selected using the following procedure. The Quicklaw search was a keyword search. First, to identify sentencing decisions, the keyword, "sentencing," was used in conjunction with the following keywords: "reasons," "decision," and "judgment." Second, to identify sentencing decisions involving Aboriginal offenders, the following keywords were also included: "Aboriginal," "First Nations," "Indian," "Metis," and "Inuit." Following the identification of sentencing cases involving Aboriginal offenders, an equivalent number of sentencing cases involving non-Aboriginal offenders were identified and selected for inclusion in the sample. Non-Aboriginal offender sentencing cases were matched with Aboriginal sentencing cases on the basis of Province/Territory and Sentencing Year. For example, if 10 sentencing decisions involving Aboriginal offenders were found for British Columbia in the year 1990, 10 sentencing decisions involving non-Aboriginal offenders in British Columbia in 1990 were identified and included in the current sample. In those cases where a greater number of non-

Aboriginal sentencing decisions were identified for a given province and year, a random number system was used to select cases for inclusion in the sample.

These search strategies identified a substantial number of cases. Each case was reviewed to confirm that it was a sentencing decision and that it contained the necessary information for analyses. Cases may have been excluded from analyses for several reasons. Only cases involving offenders convicted of a criminal offence for which there is no minimum sentence prescribed in the *Criminal Code* (1985) were included in the sample. For example, offenders convicted of first- or second-degree murder, for which a life sentence is mandated, were not included in the sample. This selection requirement simply stems from the fact that offenders convicted of an offence wherein a minimum sentence is prescribed *must* receive a term of incarceration, and would negate examining the reasons for administering a particular sentence. In addition, cases involving specialized legal matters, such as Dangerous Offender hearings or weapon prohibitions, were not included in the sample. Finally, all of the sentencing judgments included contained (a) information pertaining to the offence with which the offender was convicted, (b) the disposition administered in the case, (c) the length of the disposition, and (d) a brief description of the judge's reasons.

3.2.3 Coding Protocol

A coding protocol was developed to record information pertaining to the sentence administered in each case and the reasons cited for sentencing decisions (see Appendix E for the complete coding protocol). Court and appellate information, current conviction information, offence and offender characteristics, and reasons for sentencing were recorded from each case. Appendix E presents the variables recorded in the coding protocol. What follows below is a brief description of those variables contained in the coding protocol that require further explanation.

1. *Index offence.* Information regarding the current conviction offences was recorded for up to five separate offences. The offence title was recorded as an open-ended variable, and the

following information was recorded for each particular offence: the number of counts, disposition received, length of disposition, and whether the dispositions were administered concurrently (i.e., served at the same time) or consecutively (i.e., one sentence follows another). Over 130 specific offences from the *Criminal Code*, *Motor Vehicle Act*, the former *Narcotic Control Act*, and current *Controlled Drugs and Substances Act*, were included under this variable. As such, the same process described in Study 1 was used to re-code and categorize the offence based on similarity to create 19 broad offence categories (see Appendix B).

2. *Total sentence length.* For each case, the sentence that was reported in the decision was recorded (in days). In cases of multiples sentences being served consecutively, the total sentence length were calculated by summing up each of the consecutive sentences.

3. *Severity of the most serious offence.* In many cases, the offender was convicted of a series of offences, rather than just one. However, for the purpose of analyses, it was necessary to identify the most serious offence in an offender's current conviction. The measure of offence severity utilized in this study was the Modified Offence Severity Scale from the Correctional Service of Canada's (CSC) Offender Intake Assessment procedure (CSC, 1995, see Appendix F). The Modified CSC Offence Severity Scale was used to determine which of the offender's current offences was the most severe.

4. *Additional probationary period.* In cases where an offender has been sentenced to a custodial sentence of two years less a day, the judge has the option of administering a probationary term to follow the period of incarceration. This variable was coded if the judge did administer an additional probationary period to the offender. Further, the length of the probationary period was recorded (in days).

5. *Victim in current offence.* This category contains information about whether there was a victim of the offender's criminal activity reported in the sentencing decision. The nature of

victimization was classified as Property/Theft/Fraud, Violent, or Negligent. Further information regarding the victim(s) was recorded for cases involving a violent victimization.

6. *Victim-offender relationship.* If the court described the nature of the relationship between the victim and the offender, it was recorded as an open-ended variable. The coded responses were grouped into eight broad categories. Definitions of the eight broad categories are provided below:

   a. *Parental Relationship*: The victimization occurred in a parental relationship where the victim was either under the parental authority of the offender or in parental authority over the offender.

   b. *Intimate Relationship*: The victimization occurred in the context of an intimate relationship. Intimate relationships included marriage, common-law relationships, and dating relationships.

   c. *Family Member*: In this category, the offender was a family member of the victim, either by blood or by marriage.

   d. *Family Connection*: In this category, the victim was known to the offender as a result of a common connection through the family, such as a family friend or neighbour.

   e. *Friendship/Acquaintance*: The victim and the offender were known to one another either through a friendship or as acquaintances through social connections.

   f. *Community Connection*: In this category, the offender and victim knew one another within their community and may have had recurring contact with one another in the larger community setting. Interactions between the victim and offender have occurred under community-prescribed roles.

   g. *Situational Connection*: In this category, the victim and offender were not known to one another prior to the offence. This category, however, is differentiated from the "Stranger"

category in that the victim has been selected by virtue of their particular situation. For example, in cases involving robberies of convenience stores or banks, the victim has been selected as a result of their particular position in the situation. The victim could only have been replaced by a finite number of victims. If the offender wanted to rob a bank, he or she would have to select their victim from a limited pool – bank tellers.

h. *Stranger*: The victim and the offender in this category did not know one another prior to the offence; the victim was selected in a completely random process. In contrast to the Situational Connection, the victim was selected in a completely random process, and could have been replaced by any other potential victim.

7. *Level of violence*. The level of violence involved in the most serious offence was measured using a modified item from a scale designed for coding aggressive incidents and distinguishing instrumental from reactive violence (Cornell, 1993). This variable was measured on a scale ranging from 0 (no violence) to 4 (homicide) based on the amount of harm incurred by the victim. The researcher reduced this item from its original 7-point form due to inconsistencies in the amount of detail pertaining to victim injury provided in the cases. If there was more than one victim in the current offence, this information was completed for the victim who sustained the most severe injuries.

8. *Level of sexual violence*. The level of violence involved in sexual assault cases was measured using a scale designed for coding sexual violence in a study of historical child sexual abuse cases (Connolly & Read, 2003). This variable was measured as follows: (1) Exposure and/or fondling; (2) Non-penile penetration; and (3) Penile penetration. If there was more than one victim in the current offence, this information was completed for the victim who sustained the most serious assault.

9. *Level of education*. If the offender's educational attainment was reported in the sentencing decision, it was recorded as an open-ended variable. The categories used to code frequency

descriptions, as well as the particular descriptors in each category, are presented in Appendix 7.

10. *Marital status*. If the offender's marital status was described in the sentencing decision, it was recorded as an open-ended variable. The responses recorded under this variable were grouped into four categories: (1) Single, (2) Dating relationship, (3) Married or common-law, and (4) Divorced or separated.

11. *Criminal History*. Four variables were used to measure criminal history. First, whether the judge cited any prior criminal history was coded as a dichotomous variables (Yes, No). The total number of past convictions was counted as prior convictions. Prior histories of either violent offences or sexual offences were also both coded as dichotomous variables (Yes, No).

12. *Sentencing Aboriginal offenders*. Section 718.2(e) of the *Criminal Code* (1985) states that judges must consider alternatives to incarceration when the circumstances are reasonable, with particular attention to the circumstances of Aboriginal offenders. Courts, however, have not been given much direction concerning the role of Aboriginal status in the sentencing process. The extent to which Aboriginal status was considered in the sentencing decision was measured using a flow-chart approach with three dichotomous variables:

    a. *Aboriginal status as a mitigating factor.* First, whether the sentencing judge stated that he or she was taking judicial notice of the broad systemic and background factors of Aboriginal people was coded as a dichotomous variable (Yes, No). For example, if the judge discussed the economic deprivation experienced by Aboriginal peoples or the rates of substance abuse and fragmentation within Aboriginal communities, this would be evidence of considering Aboriginal status as a mitigating factor.

    b. *Aboriginal status and non-custodial sentences.* Whether the judge stated that the circumstances of Aboriginal people warranted a non-custodial disposition was coded as a

dichotomous variable (Yes, No). This was not an inference about the judge's intentions. Rather this variable was coded based upon the judge's explicit statements regarding their reasons for administering a particular disposition.

c. *Aboriginal status and sentence length.* If the judge stated that the Aboriginal status of the offender did not justify a non-custodial disposition, the coding protocol then considered whether the judge cited Aboriginal status as a justification for administering a lower sentence than what would be observed in other cases involving a similar offence (Yes, No). As described above, this coding item did not involve extrapolating or inferring the role of Aboriginal status, but rather involved coding the explicit statements made by judges in their reasons for sentencing.

13. *Discussion and application of sentencing principles.* Section 718 of the *Criminal Code* (1985) sets out the fundamental purpose of sentencing and the specific objectives or principles of sentencing. Canadian sentencing is influenced by seven goals: (1) Denunciation, (2) General deterrence, (3) Specific deterrence, (4) Incapacitation, (5) Rehabilitation, (6) Reparation, and (7) Responsibility. Whether each of these sentencing principles was discussed in the sentencing decision was coded as a dichotomous variable (Mentioned, Not Mentioned). This was not a measure of the extent to which the coder felt judges were considering these principles of sentencing. The principle had to be clearly stated in the reasons for sentence, and not merely implied. In cases where the various sentencing principles have been mentioned by the judge, the coding protocol next considered whether the judge stated that a particular objective was a justification for the sentence being administered in that case (Justification for Sentence, Not a Justification for Sentence).

14. *Importance of sentencing principles.* Canadian judges consider the amalgam of sentencing objectives in an attempt to determine which one, or combination, deserve priority in a given case. In other words, the sentencing objectives listed in Section 718 are not mutually

exclusive; a judge may give priority to one or a combination of principles in a given case. The importance or priority of each sentencing objective in the judge's decision was measured using a four-item scale (1 = Primary objective, 2 = Secondary objective, 3 = Tertiary objective, 4 = Not an objective). This coding category was subsequently collapsed into dichotomous categories (1 = Goal of Sentence, 2 = Not a Goal of Sentence) as a result of coding difficulties with the more specified scale.

15. *Reasons for sentencing*. Section 718.2(a) of the *Criminal Code* (1985) requires judges to increase or reduce a sentence by taking into account aggravating or mitigating circumstances relevant to the offender or the offence. To gain information about the reasons for sentencing, two open-ended items pertaining to the aggravating and mitigating factors considered by the judge in the sentencing decision were included in the coding protocol. A maximum of six aggravating and mitigating factors, respectively, were coded for each case. This approach identified a substantial number of sentencing factors. As such, for the purposes of inferential analyses, the individual aggravating and mitigating factors were grouped into dichotomous variables indicating whether that particular sentencing circumstance was "cited by the judge" or "not cited by the judge" in his or her reasons for sentencing. The categories used in the current study were based, in large part, on common aggravating and mitigating circumstances identified by Manson (2001). Those circumstances that were identified in the cases that did not fit any of Manson's categories were grouped into categories based on their similarity in effect on sentencing and the application of sentencing principles.

Aggravating factors are those elements of an offence or of an offender's background that could result in a harsher sentence (Schmalleger et al., 2004). Brief definitions of the 12 categories of aggravating factors used in the current study are presented below:

a. *Previous convictions*. This aggravating category included any reference by the judge to the offender's prior criminal record in his or her reasons for sentencing (Manson, 2001; Manson et al., 2001).

b. *Prior relevant record*. This category was differentiated from the above aggravating circumstance in that it included consideration by the judge of a past similar history of criminal behaviour. For example, if the offender was convicted of sexual assault and the judge made reference to a past criminal conviction of sexual assault in his or her reasons for sentencing, this category was coded as "cited by the judge."

c. *Actual or threatened use of violence*. This aggravating category included consideration by the judge of threats of physical harm, the use of physical force in the commission of the offence, or physical coercion in sexual assaults. Considerations by the judge of spousal violence, group or gang violence, and cruelty or brutality were also amalgamated into this category due to their low frequency across the cases (Manson, 2001; Manson et al., 2001).

d. *Offence committed while subject to conditions*. This category was coded as "cited by the judge" if the judge considered the fact that the current offence(s) was committed while the offender was under conditions of the court (e.g., probation, bail, conditional sentence) as aggravating (Manson, 2001; Manson et al., 2001).

e. *Multiple victims or incidents*. This category was coded as "cited by the judge" if the judge gave consideration to the presence of multiple victims in his or her reasons for sentencing. It also included consideration of the ongoing nature of an offence or an offence that was repeated over several incidents (Manson, 2001; Manson et al., 2001).

f. *Planning and organization*. If the judge cited the offender's premeditation for an offence, or some element of planning and organization, this aggravating category was coded present (Manson, 2001; Manson et al., 2001).

g. *Economic costs and motivations of criminal activity.* This aggravating category included any consideration by the judge of the economic costs of the offender's criminal activities, such as property damage or lost wages incurred by the victim (Manson, 2001; Manson et al., 2001). In addition, this category was coded if the judge gave consideration to economic motivations for criminal activity (e.g., crime for profit).

h. *Vulnerability of the victim.* Victim vulnerability refers to particular circumstances of the victim that increased their proneness to victimization. For example, a large number of cases in the current sample involved sexual assaults against children or sleeping victims. This aggravating category included any consideration by the judge of the victim's vulnerability (Manson, 2001; Manson et al., 2001).

i. *Breach position of trust.* Section 718.2 (a) (iii) states that a sentence should be increased if there is "evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim." As such, this factor was coded as "cited by the judge" if the judge discussed "breach of trust" as an aggravating factor.

j. *Substantial physical injuries or psychological harm.* This aggravating category was coded as "present" if the judge gave consideration in his or her reasons for sentencing to the injuries sustained by the victim because of the offence (Manson, 2001; Manson et al., 2001).

k. *Use of weapon.* If the judge cited the offender's use of weapon in the offence as an aggravating factor, this category was coded as present.

l. *Factors increasing culpability.* According to Manson et al. (2000), "[s]entencing ought to respond proportionately to culpability" (pg. 133). In sentencing decisions, the judge tries to fit the sentence in accordance with the moral blameworthiness of the offender. This aggravating category included any consideration by the judge of characteristics of the

offender or the offence that the judge believed increasing the culpability of the offender, including an absence of provocation, home invasions, or confining victims. In addition, aggravating circumstances described by Manson (2001) as "deliberate risk-taking" were grouped into this category due to their low frequency across the cases.

Mitigating circumstances are those elements of an offence or of an offender's background that could result in a lesser sentence (Schmalleger et al., 2004). Brief definitions of the 10 categories of mitigating factors used in the current study are presented below:

a. *First-time offender.* This mitigating category was coded "cited by the judge" if the judge made reference to an offender's absence of any criminal record as mitigating in the case (Manson, 2001; Manson et al., 2001).

b. *Guilty plea.* If the judge gave consideration to the offender's guilty plea as a mitigating factor, this category was coded as present (Manson, 2001; Manson et al., 2001).

c. *Pre-trial custody.* If the judge gave the offender credit for time served in custody while awaiting sentencing, this category was coded as present.

d. *Collateral or indirect consequences.* This mitigating category included any consideration by the judge of physical, emotional, social, or financial consequences experienced by the offender as a result of his or her conviction (e.g., loss of employment) (Manson, 2001; Manson et al., 2001).

e. *Pre- and Post-offence meritorious conduct.* Manson et al. (2000) referred to this particular category of mitigating factors as "moral credit." This category was coded as "present" if the judge cited any positive characteristics, actions, or achievements of the offender (e.g., cooperating with the police, apologizing in court) in mitigation of the offence. Considerations by the judge of prior good character and acts of reparation were also amalgamated into this category due to their low frequency across the cases (Manson, 2001; Manson et al., 2001).

f. *Disadvantaged background.* This mitigating category included any consideration by the judge of an offenders' disadvantaged background in his or reasons for sentencing. The evidence of disadvantaged background cited by the judge included lack of educational or employment opportunities, a disrupted family background, exposure to family violence, or a history of physical or sexual abuse (Manson, 2001; Manson et al., 2001).

g. *Physical or mental health problems.* This category included any consideration by the judge of physical or mental health characteristics of the offender (e.g., Fetal Alcohol Syndrome, depression) that the judge believed might have exacerbated the effects of a custodial sentence.

h. *Factors lowering culpability.* This mitigating category included any consideration by the judge of characteristics of the offender or the offence that the judge believed lowered the culpability of the offender, such as the absence of victim injury or physical force. Considerations by the judge of evidence of impairment or the presence of provocation were also amalgamated into this category due to their low frequency across the cases (Manson, 2001; Manson et al., 2001).

i. *Post-offence rehabilitative efforts.* This mitigating category included any consideration by the judge of an offender's efforts at engaging in treatment since the commission of the offence.

j. *Rehabilitative prospects.* This category included any consideration by the judge of characteristics or actions of the offender that were deemed to increase the offender's rehabilitative prospects, such as young age or educational attainment. A consideration by the judge of employment record was also amalgamated into this category due to its low frequency across the cases (Manson, 2001; Manson et al., 2001).

3.2.4 Interrater Reliability

Interrater reliability refers to the extent to which two or more evaluators agree in their scoring of factors, and ensures that inconsistencies among observers are minimal (Kazdin, 1982).

To ensure interrater reliability, after a short training period, two independent reviewers coded a random sample of 10% of the selected sentencing cases ($n = 70$) in the dataset. Each reviewer independently read the randomly selected cases and completed the coding protocol. Their results were recorded on separate coding forms. A comparison of the reviewers' records reflected the consistency with which information in the sentencing cases were recorded in the coding protocol. Reliability was regarded as acceptable if it met or surpassed 80% using an estimate of proportional agreement (Kazdin, 1982), *% = [# Agreements/# Agreements + # Disagreements] x 100*. Interrater analyses of all categorical variables in the coding protocol ranged from 85.7% to 100.00%. The only area of concern where reliability fell below 80% was "*Aboriginal status and sentence length*" (77.14%). As such, this variable was included for descriptive purposes only.

4 RESULTS

4.1 Study 1: An Evaluation of B.C. Incarceration Rates

Sentencing reforms introduced by Bill C-41, including the conditional sentence, were expected to impact upon sentencing decisions in Canadian criminal courts. One of the primary goals of the Bill C-41 reforms was to reduce the use of incarceration traditionally observed in Canada. In addition, special emphasis was placed upon sentencing decisions with Aboriginal offenders. Due to extensive involvement in the criminal justice system and the disproportionate number of convictions for violent offences experienced by Aboriginal offenders, however, it was expected that the Aboriginal incarceration rate would change little following Bill-C41. To examine this hypothesis, monthly incarceration rates were calculated from April 1993 to April 2000 and analysed using the interrupted time-series analysis technique.

4.1.1 Overview of the Ministry of the Attorney General Dataset

As shown in Table 1, a total of 151, 669 offenders were included in the dataset. The purpose of this study was to examine decisions related to sentenced time. Consistent with this goal, three groups of sentenced offenders were not included in the sample for further analyses: (1) Offenders sentenced to time served (1.8%, $n = 2754$), (2) Dangerous offenders, (0.0%, $n = 55$), and (3) Data entry errors (0.0%, $n = 22$). As a result, a total of 148, 838 sentenced offenders were included in the sample for further analyses.

Table 1 also provides a descriptive overview of the sample in the current study. Consistent with past research, approximately 16% (16.2%, $n = 24, 087$) of offenders in the current sample were Aboriginal offenders. In addition, the average age of offenders at the time of sentencing was 31.81 years ($SD = 10.31$), with age ranging from 17 to 83 years. The type of disposition received by offenders is also presented in Table 2. Over half of offenders in the

sample received a community-served sanction as opposed to incarceration. As shown in Table 2, approximately 4% (4.1%, $n = 6155$) of offenders received a conditional sentence, and 51.8% of offenders received probation ($n = 77, 092$). In contrast, 44.1% ($n = 65, 591$) of offenders were sentenced to incarceration. The percentage distribution of offenders by sentencing year does not show much variation. As mentioned above, sentencing information was only available for eight months in 1993 and four months in 2000, respectively, thus accounting for the smaller proportion of sentencing admissions observed in those years.

Table 1

Overview of the Ministry of the Attorney General Dataset

Variable	Frequency	Percentage
Sentencing Decision		
Time Served	2754	1.8
Sentenced Time	148, 838	98.1
Dangerous Offender	55	0.0
Data Entry Error	22	0.0
Aboriginal Status		
Aboriginal	24, 087	16.2
Non-Aboriginal	124, 751	83.8
Disposition Type		
Conditional Sentence	6155	4.1
Probation	77, 092	51.8
Custodial Sentence	65, 591	44.1
Sentencing Year		
1993	14, 401	9.7
1994	21, 654	14.5
1995	22, 655	15.2
1996	22, 854	15.4
1997	21, 364	14.4
1998	19, 969	13.4
1999	20, 680	13.9
2000	5261	3.5

4.1.2 Index Offence

The percentage distribution of offences for which offenders in the current sample were convicted is presented in Table 2. As previously mentioned, the sample was comprised of both provincial and federal offenders. Not surprisingly then, a relatively large proportion of offenders were convicted of minor or non-violent offences. Nearly a quarter of offenders were convicted of an assault-related offence (21.5, $n = 32, 071$). Approximately 18% of offenders were convicted of a theft offence (17.5%, $n = 26, 102$) and 16.8% of offenders were convicted of a driving offence ($n = 25, 014$) under the *Criminal Code* (1985) or *Motor Vehicle Act* (1985). Comparatively, only 3.9% and 1.9% of offenders in the sample were convicted of a sexual offence ($n = 5755$) or robbery ($n = 2885$), respectively. Less than 1% of offenders in the current sample were convicted of a homicide offence (0.2%, $n = 250$).

4.1.3 Criminal History

An overview of the criminal history of offenders in the current sample is provided in Table 3. Relatively few offenders had no previous formal contact with B.C. Corrections. As shown in Table 4, only 17.8% of offenders ($n = 26, 457$) had no prior criminal history. Approximately 18% (18.3%, $n = 27, 265$) of offenders had a prior history on the Provincial Case File but no record of institutional time, and an additional 9.6% ($n = 14, 291$) had a prior history on the PCF with institutional time but had not received a jail sentence. Over half the current sample, however, had served a prior jail sentence in British Columbia. Twenty percent (20%, $n = 29, 757$) of offenders had served prior sentenced institutional time, with the most recent discharge being over two years ago. A third of offenders (34.3%, $n = 51, 068$) had served a prior institutional sentence within the last two years of their current conviction.

Table 2

Description of the Index Offence for Overall Sample

Offence Type	Frequency	Percentage
Homicide Offence	250	0.2
Assault Offence	32, 071	21.5
Sexual Offence	5755	3.9
Robbery	2885	1.9
Theft	26, 102	17.5
Drug Offence	10, 913	7.3
Break and Enter	10, 570	7.1
Criminal Harassment	922	0.6
Weapons Offence	2800	1.9
Criminal Negligence	96	0.1
Abduction/Kidnapping	321	0.2
Arson Offence	283	0.2
Intimidation/Threat	4013	2.7
Driving Offence	25, 014	16.8
Fraud/Currency Offence	4208	2.8
Conspiracy to Commit	879	0.6
Public Nuisance Offence	5950	4.0
Offence Against Administration of Justice	15, 806	10.6
Total	148, 838	100.00

Table 3

Description of Criminal History for Overall Sample

Criminal History	Frequency	Percentage
No Criminal History	26, 457	17.8
No Prior Institutional Time	27, 265	18.3
No Prior Jail Sentence	14, 291	9.6
Prior Jail Sentence – Over 2 Years Ago	29, 757	20.0
Prior Jail Sentence – Last 2 Years	51, 068	34.3
Total	148, 838	100.00

4.1.4 Comparison of Aboriginal and Non-Aboriginal Offenders

Statistical comparisons of Aboriginal and non-Aboriginal offenders on age, offence type, and criminal history, in the overall sample[2], are presented in Table 4. Because pairwise comparisons were conducted without the use of an omnibus test, the Bonferroni correction was used. An initial .05 level of significance was chosen and divided by the number of dependent variables (4), resulting in a critical value .0125. Consistent with past research, Aboriginal offenders were more likely to be convicted of offences involving physical, non-physical, and sexual violence, χ^2 (4) = 617.00, p = .000. As illustrated in Table 4, Aboriginal offenders were also more likely to be convicted of an offence against the person (32.3% vs. 28.8%, respectively), and less likely to be convicted of a property offence (25.3% vs. 28.3%, respectively). Table 5 also shows that Aboriginal offenders were more likely to be convicted of a sexual offence (5.0% vs. 3.7%, respectively) and were more likely to be convicted of a Serious Personal Injury Offence (21.9% vs. 17.8%), χ^2 (1) = 224.26, p = .000.

With respect to criminal history, results indicate that Aboriginal offenders also had significantly more extensive involvement in the criminal justice system, χ^2 (4) = 2423.01, p = .000. An overwhelming proportion of all offenders in the study sample had prior involvement in the B.C. correctional system. Aboriginal offenders, however, were less likely to have no criminal history as compared to non-Aboriginal offenders (9.1% vs. 19.5%). In contrast, a quarter of Aboriginal offenders (24.3%, n = 5860) had been discharged from a prior institutional sentence over two years prior to the current conviction as compared to 19.2% (n = 23, 897) of non-Aboriginal offenders. In addition, a larger proportion of Aboriginal offenders had served a prior institutional sentence within two years of the current conviction as compared to non-Aboriginal offenders (43.2% vs. 32.6%, respectively).

[2] Although the dataset included all male offenders sentenced to custody, probation, or a conditional sentence, and therefore could be considered a population, it was treated as a sample of all sentencing decisions in British Columbia.

Table 4

Comparative Overview of Aboriginal and Non-Aboriginal Offenders

Variable	Aboriginal	Non-Aboriginal	Test
Age at Sentencing	$M = 30.60$	$M = 32.04$	$t = 21.28$***
Index Offence			$\chi^2(4) = 617.00$***
Offence Against the Person	32.3	28.8	
Sexual Offence	5.0	3.7	
Drug Offence	4.3	8.0	
Property Offence	25.3	28.3	
Other	33.1	31.3	
Offence Severity			$\chi^2(1) = 224.26$***
SPIO	21.9	17.8	
Non-SPIO	78.1	82.2	
Criminal History			$\chi^2(4) = 2423.01$***
No Criminal History	9.1	19.5	
No Prior Institutional Time	16.5	18.7	
No Prior Jail Sentence	11.6	10.1	
Prior Jail Sentence (>2 yrs)	24.3	19.2	
Prior Jail Sentence (<2 yrs)	43.2	32.6	

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

4.1.5 A Profile of Offenders under Conditional Sentences

A total of 6155 offenders were assigned a conditional sentence between September 1996 and April 2000 in British Columbia. Of those offenders, approximately 16% were of Aboriginal descent (16.1%, $n = 989$). With respect to sentence length, on average, offenders were sentenced to less than a year to serve conditionally in the community ($M = 201.75$, $SD = 166.09$), with the sentence length ranging from 1 day to 2 years.

Information describing the Index Offence and Criminal History of offenders admitted to a conditional sentence are presented in Tables 5 and 6, respectively. Not surprisingly, there were relatively few offenders convicted of homicide (0.2%, $n = 10$), robbery (3.1%, $n = 191$), or a sex offence (7.4%, $n = 453$). Offenders convicted of a theft-related offence comprised the largest offence group (19.4%, $n = 1193$). As shown in Table 6, over half of the offenders had served a prior custodial sentence, with 24.2% ($n = 1490$) having served that sentence over two years ago, and an additional 31.9% ($n = 1962$) having served a custodial sentence in the last two years of their current conviction.

Table 7 presents statistical comparisons of Aboriginal and non-Aboriginal offenders with respect to the index offence and criminal history. A Bonferroni correction was used to adjust for the multiple dependent variables. An initial level of significance of .05 was chosen and divided by the number of dependent variables (2), resulting in a critical value of .025. Consistent with those results observed with the overall sample, Table 7 shows that Aboriginal offenders were more likely to be convicted of offences against the person and sex offences, χ^2 (4) = 134.70, p = .000. Similarly, Aboriginal offenders also had significantly more extensive involvement in the criminal justice system as compared to non-Aboriginal offenders, χ^2 (4) = 79.54, p = .000.

Table 5

Description of the Index Offence for Offenders under Conditional Sentence

Offence Type	Frequency	Percentage
Homicide Offence	10	0.2
Assault Offence	986	16.0
Sexual Offence	453	7.4
Robbery	191	3.1
Theft	1193	19.4
Drug Offence	931	15.1
Break and Enter	631	10.3
Criminal Harassment	56	0.9
Weapons Offence	131	2.1
Criminal Negligence	5	0.1
Abduction/Kidnapping	16	0.3
Arson Offence	19	0.3
Intimidation/Threat	132	2.1
Driving Offence	492	8.0
Fraud/Currency Offence	401	6.5
Conspiracy to Commit	46	0.7
Public Nuisance Offence	81	1.3
Offence Against Administration of Justice	381	6.2
Total	6155	100.00

Table 6

Description of the Criminal History for Offenders under Conditional Sentence

Criminal History	Frequency	Percentage
No Criminal History	869	14.1
No Prior Institutional Time	1102	17.9
No Prior Jail Sentence	732	11.9
Prior Jail Sentence – Over 2 Years Ago	1490	24.2
Prior Jail Sentence – Last 2 Years	1962	31.9
Total	6155	100.00

Table 7

Comparative Overview of Aboriginal and Non-Aboriginal Offenders under Conditional Sentence

Variable	Aboriginal	Non-Aboriginal	Test
Index Offence			$\chi^2(4) = 134.70$***
Offence Against the Person	34.3	23.9	
Sexual Offence	10.1	6.8	
Drug Offence	6.2	16.8	
Property Offence	30.0	37.7	
Other	19.4	14.8	
Criminal History			$\chi^2(4) = 79.54$***
No Criminal History	7.3	15.4	
No Prior Institutional Time	17.7	17.9	
No Prior Jail Sentence	9.3	12.4	
Prior Jail Sentence (>2 yrs)	32.5	22.6	
Prior Jail Sentence (<2 yrs)	33.3	31.6	

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

4.1.6 A Profile of Offenders under Probation

Probation represented the most frequently used sentencing option, with a total of 77, 092 offenders being admitted to probation between April 1993 and April 2000. Slightly fewer Aboriginal offenders were sentenced to probation, but the numbers are still consistent with past observations of the Aboriginal prevalence rates (14.9%, $n = 11, 501$). On average, offenders were sentenced to 438.05 days on probation ($SD = 227.44$), with the length of probation ranging from 1 day to 1095 days. Information describing the Index Offence for offenders sentenced to probation is presented in Table 8. The majority of offenders on probation had been convicted of either an assault offence (31.4%, $n = 24, 205$) or a theft-related offence (16.9%, $n = 13, 052$). Less than 1.0% of offenders on probation had been convicted of homicide (0.1%, $n = 39$). As shown in Table 9, a quarter of offenders on probation had no prior criminal history (24.0%, $n = 18, 4729$). Comparatively, approximately 20% (20.5%, $n = 15, 796$) had served a custodial sentence in the last two years.

Statistical comparisons of Aboriginal and non-Aboriginal offenders on Index Offence and Criminal history are presented in Table 10. A Bonferroni correction was used to adjust for the multiple dependent variables. An initial level of significance of .05 was chosen and divided by the number of dependent variables (2), resulting in a critical value of .025. Although Aboriginal offenders were statistically more likely to be convicted of offences involving physical, non-physical, and sexual violence, $\chi^2 (4) = 272.68, p = .000$, the observed differences are negligible, are most likely attributable to the large sample size. However, Aboriginal offenders did have significantly more extensive involvement in the criminal justice system, $\chi^2 (4) = 1327.05, p < .001$. Approximately 28% of Aboriginal offenders, for example, had served a custodial sentence in the last two years compared to 19.1% of non-Aboriginal offenders.

Table 8

Description of the Index Offence for Offenders under Probation

Offence Type	Frequency	Percentage
Homicide Offence	39	0.1
Assault Offence	24, 205	31.4
Sexual Offence	3091	4.0
Robbery	1024	1.3
Theft	13, 052	16.9
Drug Offence	4760	6.2
Break and Enter	4393	5.7
Criminal Harassment	694	0.9
Weapons Offence	1837	2.4
Criminal Negligence	23	0.0
Abduction/Kidnapping	146	.02
Arson Offence	148	0.2
Intimidation/Threat	2983	3.9
Driving Offence	6161	8.0
Fraud/Currency Offence	2089	2.7
Conspiracy to Commit	255	0.3
Public Nuisance Offence	4906	6.4
Offence Against Administration of Justice	7277	9.4
Total	77, 092	100.00

Table 9

Description of the Criminal History of Offenders under Probation

Criminal History	Frequency	Percentage
No Criminal History	18, 472	24.0
No Prior Institutional Time	18, 797	24.4
No Prior Jail Sentence	6235	8.1
Prior Jail Sentence – Over 2 Years Ago	17, 792	23.1
Prior Jail Sentence – Last 2 Years	15, 796	20.5
Total	77, 092	100.00

Table 10

Comparative Overview of Aboriginal and Non-Aboriginal Offenders under Probation

Variable	Aboriginal	Non-Aboriginal	Test
Index Offence			χ^2 (4) = 272.68***
Offence Against the Person	43.5	39.9	
Sexual Offence	5.4	3.8	
Drug Offence	3.6	6.6	
Property Offence	23.2	26.0	
Other	24.4	23.7	
Criminal History			χ^2 (4) = 1327.05***
No Criminal History	13.3	25.8	
No Prior Institutional Time	23.5	24.5	
No Prior Jail Sentence	5.9	8.5	
Prior Jail Sentence (>2 yrs)	29.1	22.0	
Prior Jail Sentence (<2 yrs)	28.2	19.1	

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

4.1.7 A Profile of Offenders under Custodial Supervision

A total of 65, 591 offenders were incarcerated between April 1993 and April 2000. Consistent with past research, approximately 17% of incarcerated offenders were of Aboriginal descent (17.7%, $n = 11, 597$). On average, offenders were sentenced to 131.62 days in custody ($SD = 328.44$), with the length of sentence ranging from one day to 9000 days. Information describing the Index Offence for offenders sentenced to incarceration is presented in Table 11. As compared to conditional sentence and probation, the majority of offenders in custody were convicted of a driving offence under the *Criminal Code* (1985) or the *Motor Vehicle Act* (1985) (28.0%, $n = 18, 361$) or a theft-related offence (16.9%, $n = 13, 052$). Less than 1.0% of offenders in custody had been convicted of homicide (0.1%, $n = 201$). As shown in Table 12, the majority of offenders had served a prior custodial sentence. Over half of the offenders in custody had served a prior custodial sentence in the last two years of their current conviction (50.8%, $n = 33, 310$).

Statistical comparisons of Aboriginal and non-Aboriginal offenders on Index Offence and Criminal history are presented in Table 13. A Bonferroni correction was used to adjust for the multiple dependent variables. An initial level of significance of .05 was chosen and divided by the number of dependent variables (2), resulting in a critical value of .025. Aboriginal offenders were statistically more likely to be convicted of offences against the person than non-Aboriginal persons, $\chi^2 (4) = 391.98, p < .001$, (20.8%, vs. 15.5%, respectively). In addition, Aboriginal offenders in custody did have a more extensive criminal history, $\chi^2 (4) = 888.45, p < .001$. Approximately 60% of Aboriginal offenders (58.9%) had served a custodial sentence in the last two years as compared to 49.0% of non-Aboriginal offenders. Further, only 5.1% of Aboriginal offenders had no prior criminal history as compared to 12.1% of non-Aboriginal offenders.

Table 11

Description of the Index for Offenders under Custodial Supervision

Offence Type	Frequency	Percentage
Homicide Offence	201	0.3
Assault Offence	6880	10.5
Sexual Offence	2211	3.4
Robbery	1670	2.5
Theft	11, 857	18.1
Drug Offence	5222	8.0
Break and Enter	5546	8.5
Criminal Harassment	172	0.3
Weapons Offence	832	1.3
Criminal Negligence	68	0.1
Abduction/Kidnapping	159	0.2
Arson Offence	116	0.2
Intimidation/Threat	898	1.4
Driving Offence	18, 361	28.0
Fraud/Currency Offence	1709	2.6
Conspiracy to Commit	578	0.9
Public Nuisance Offence	963	1.5
Offence Against Administration of Justice	8148	12.4
Total	65, 591	100.00

Table 12

Description of Criminal History for Offenders under Custodial Supervision

Criminal History	Frequency	Percentage
No Criminal History	7116	10.8
No Prior Institutional Time	7366	11.2
No Prior Jail Sentence	7324	11.2
Prior Jail Sentence – Over 2 Years Ago	10, 475	16.0
Prior Jail Sentence – Last 2 Years	33, 310	50.8
Total	65, 591	100.00

Table 13

Comparative Overview of Aboriginal and Non-Aboriginal Offenders under Custodial Supervision

Variable	Aboriginal	Non-Aboriginal	Test
Index Offence			$\chi^2(4) = 391.98$***
Offence Against the Person	20.8	15.5	
Sexual Offence	4.1	3.3	
Drug Offence	4.9	8.7	
Property Offence	27.1	30.3	
Other	43.1	42.3	
Criminal History			$\chi^2(4) = 888.45$***
No Criminal History	5.1	12.1	
No Prior Institutional Time	9.5	11.6	
No Prior Jail Sentence	7.6	11.9	
Prior Jail Sentence (>2 yrs)	18.9	15.3	
Prior Jail Sentence (<2 yrs)	58.9	49.0	

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

4.1.8 Evaluating Incarceration Rates in British Columbia

4.1.8.1 An Overview of Time-Series Analysis

When social reforms, such as a new law, are put into effect across an entire system, there is no equivalent control group for statistical comparisons, raising problems for analyses. Simple pre- and post-test methodologies, for example, are not sensitive to trends over time, such as steady declines or increases, and may lead to erroneous conclusions (Campbell & Stanley, 1966). Time-series analysis, introduced by Campbell (1969), is used when observations are made repeatedly over an extended period at equally spaced intervals. As in most other analyses, in time series analysis it is assumed that the data can be decomposed into several elements, including trend (i.e., the series drifts upward or downward throughout most of its history), seasonality (i.e., the series may reflect seasonal variations), and random error. Trend, seasonality, and random error may obscure the impact of any intervention, thus the goal of time-series analysis is to develop a model to filter out these types of noise.

4.1.8.2 ARIMA (p, d, q) Methodology

The Auto-Regressive Integrated Moving Average (ARIMA) model accounts for all three types of "noise" through three steps: identification, estimation, and diagnosis. Identification involves identifying three types of parameters that model the time-series and filter out the influence of random noise: the autoregressive parameter (p), the trend parameter (d), and the moving average parameter (q). In order to model a time series process, the data first needs to be stationary (e.g., constant mean, variance). Stationarity is achieved by differencing the scores to remove observed trends; the number of times the series needs to be differenced to achieve stationarity is reflected in the d parameter (Tabachnick & Fidell, 2001).

Autoregressive (p) and moving average (q) parameters are also identified at the initial stage. The autoregressive component represents the memory of the time-series for preceding observations, whereas the moving-average element represents the memory of the series for

preceding random error. The autoregressive (AR) and moving-average (MA) parameters are identified through patterns in their autocorrelation and partial autocorrelation functions (ACF and PACF, respectively). Autocorrelations are self-correlations of the series of scores with itself, removed one or more periods in time; partial autocorrelations are self-correlations with intermediate autocorrelations partialed out (Box & Jenkins, 1976). Identification of the AR and MA parameters is not straightforward and requires a good deal of experimentation with alternative models. Sometimes, for example, there is more than one pattern suggested by the ACF and PACF plots (see Pankratz, 1983, for a discussion of the models that can be identified based on the shape of the ACF and PACF).

The second step in modeling the series is estimation, in which the estimated size of a lingering auto-regressive or moving-average effect is tested against the null hypothesis that it is zero. In this stage of the model-building procedure, there are two estimation criteria. First, parameters estimates must lie within the bounds of stationarity and/or invertibility for the autoregressive or moving-average parameters. That is, because they are correlations, the parameter values must lie between –1 and 1. Second, parameter estimates must be statistically significant. If the parameter estimates do not satisfy both criteria, a new model must be identified (Tabachnick & Fidell, 2001).

The third step is diagnosis, in which residual scores are examined to determine if the identified model fits the data. If the proper ARIMA (p, d, q) model has been identified and estimated, then the model residuals will not be different than white noise. Diagnosis consists of estimating an ACF from the model residuals. If the model residuals are not different than white noise, than all lags of the residual ACF will be expected to be zero. In practice, of course, one or two lags of an ACF are expected to be statistically significant by chance alone. There are several espoused methods for assessing the fit of the data. To test whether the entire residual ACF is different than that expected of random error, an analyst may use the Q statistic, which assumes an

ACF of k lags estimated from N residuals. The Q statistic is distributed as a chi-square with the degrees of freedom determined by the length of the ACF and the number of AR and/or MA parameters in the model (McDowall et al., 1980).

4.1.8.3 Overall Incarceration Rate

A time-series model for incarceration rate in British Columbia was developed to examine the effect of Bill C-41, introduced in September 1996. Data pertaining to incarceration rate were available for 41 months before and 43 months after the implementation of Bill C-41. The time-series plot of the monthly incarceration rate is presented in Figure 1. On average, 780.85 (*SD* = 115.48) offenders were incarcerated monthly in British Columbia. As seen in Figure 1, the variability of the scores appears to decrease over time, however, the decrease is small and, given the difficulties associated with interpreting transformed data, the decision was made to not use a logarithmic transformation. Further, there were several extreme values evident in Figure 1. With the use of a $p < .001$ criterion for Mahalanobis distance, however, no significant outliers were identified in the time-series data.

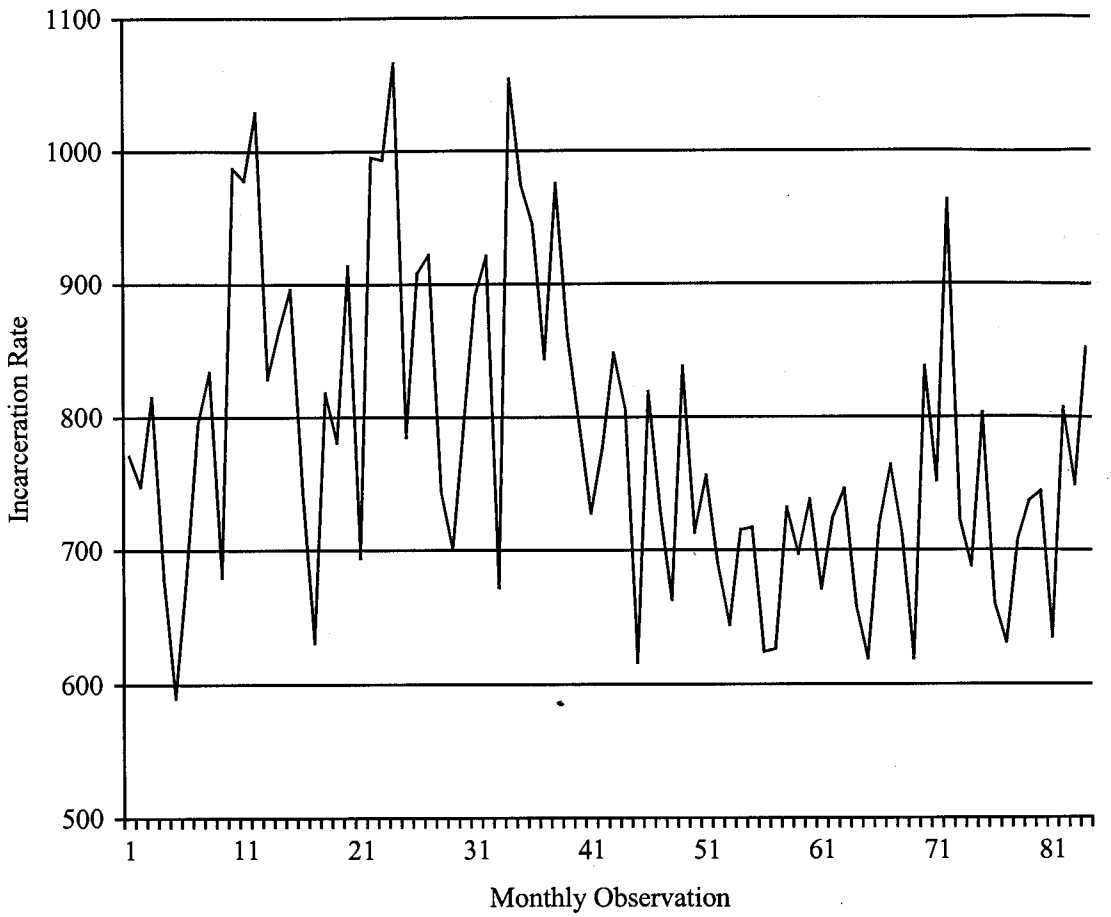
The 41-month pre-Bill C-41 series was used to identify, estimate, and diagnose an appropriate ARIMA model. An ACF plot showed a pattern of (0, 1, 0), with large positive spikes at Lag 12, not surprising with monthly data. Differencing of scores was conducted at Lags 1 and 12, respectively, to achieve stationarity, however, the differencing at Lags 1 and 12 still produced spikes on the ACF and PACF at Lag = 3, and the pattern resembled an ARIMA (p, 0, q) with both AR and MA parameters. Estimation of an ARIMA (1, 1, 1) $(0, 1, 0)_{12}$ model indicated that the moving-average parameter was non-significant. The more parsimonious (1, 1, 0) $(0, 1, 0)_{12}$ model, however, produced a significant autoregressive parameter at the .05 level that satisfied the bounds of stationarity. At the diagnostic step of the model-building procedure, the ACF for the residuals indicated that the identified model adequately fit the data, $Q\,(13) = 21.33$, *ns*. In

addition, a normal probability plot based on the residuals for the ARIMA model indicated that the assumption of normality for the sampling distribution was not been violated.

The model identified with the pre-intervention time-series was then used to evaluate the impact of Bill C-41. Parameter values, their standard errors, and respective *t*- and *p*-values are presented in Table 14. The results illustrate that the auto-regressive parameter (B = -.63) was statistically significant, t = -6.01, p = .000. It was expected that incarceration rates would decrease following the implementation of Bill C-41 in September 1996. Contrary to this expectation, as shown in Table 14, the intervention parameter (B = -69.617), was not statistically significant, t = -.922, p = .360. Thus, incarceration rates have not significantly decreased since the implementation of sentencing reforms in 1996.

Figure 1

Overall Monthly Incarceration Rate



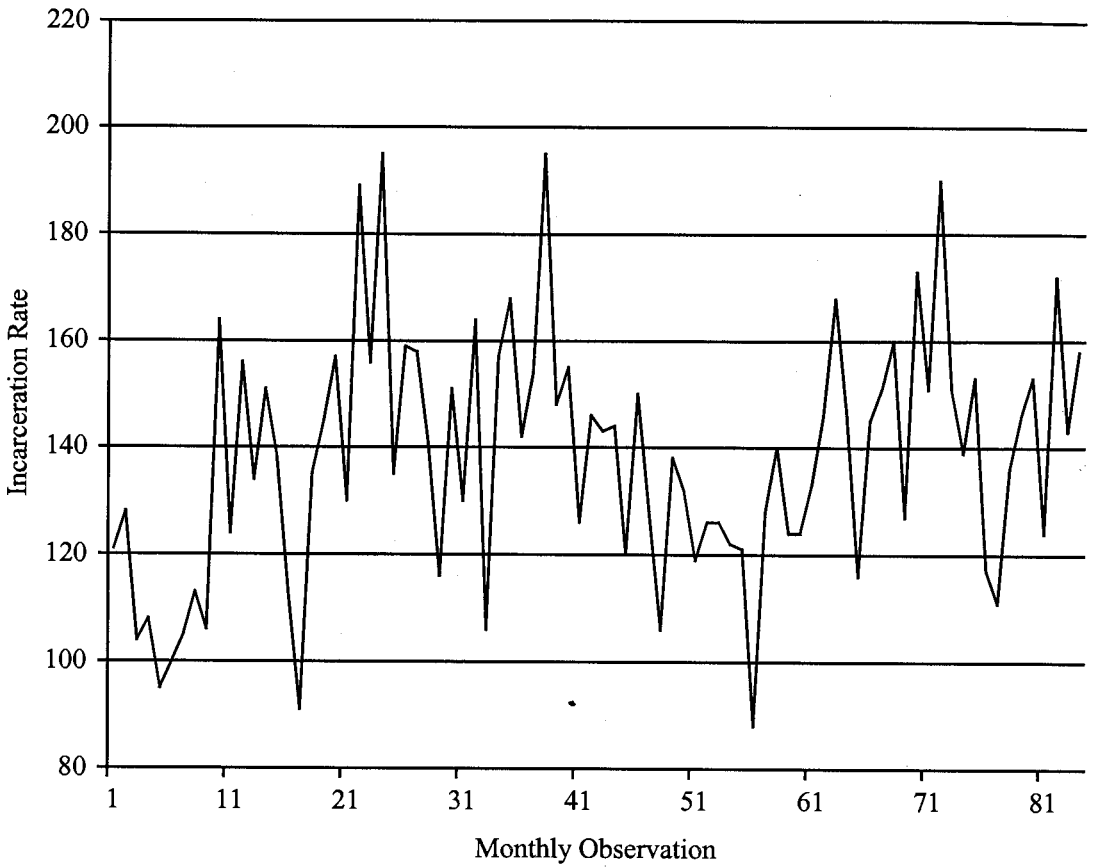
4.1.8.4 Aboriginal Incarceration Rate

A second time-series model was conducted to evaluate changes in incarceration rates for Aboriginal offenders. Data pertaining to incarceration rate were available for 41 months before and 43 months after the implementation of Bill C-41. The time-series plot for the monthly incarceration rate is presented in Figure 2. On average, 138.06 (SD = 32.02) Aboriginal offenders were incarcerated monthly in British Columbia. As seen in Figure 2, the variability in incarceration rate remains relatively constant over the time sequence. In addition, there are no outliers readily apparent in Figure 2. Consistent with this observation, an evaluation of outliers using a p-value of .001 for Mahalanobis distance revealed no significant outliers in the time-series data.

Prior to assessing the impact of Bill C-41, the 41-month pre-reform series was used to identify, estimate, and diagnose an appropriate ARIMA model for Aboriginal incarceration rate. An analysis of the ACF plot presented suggested a (0, 1, 0) model, with large positive spikes at Lag 12. As such, differencing of scores was conducted at Lags 1 and 12, respectively, to achieve stationarity, however, the differencing still produced common ACF and PACF patterns, with spikes oscillating on both sides, suggesting a model with a moving-average parameter. Estimation of an ARIMA (0, 1, 1) $(0, 1, 0)_{12}$ model indicated that the moving-average parameter was statistically significant, and satisfied the bounds of invertibility for moving-average parameters. At the diagnostic step of the model-building procedure, the ACF for the residuals indicated that the identified model adequately fit the data, Q (13) = 4.89, *ns*. A normal probability plot based on the residuals for the ARIMA model indicated that the assumption of normality for the sampling distribution has not been violated.

Figure 2

Aboriginal Monthly Incarceration Rate



The model identified with the pre-intervention time-series was then used to evaluate the impact of Bill C-41 on Aboriginal incarceration rates. Parameter values, their standard errors, and respective *t*- and *p*-values are presented in Table 14. The results illustrate that the moving-average parameter ($B = .626$) was statistically significant, with $t = 5.88$, $p = .000$. Given the emphasis on Aboriginal people and alternatives to incarceration in Section 718.2(e) of the *Criminal Code* (1985), it was expected that incarceration rates would decrease following the implementation of Bill C-41 in September 1996. Surprisingly, as shown in Table 14, the intervention parameter ($B = .523$), was not statistically significant, $t = .023$, $p = .981$. Thus, there has been no significant decrease in the rate of incarceration for Aboriginal offenders in British Columbia.

4.1.8.5 Non-Aboriginal Incarceration Rate

A third time-series model for incarceration rates for non-Aboriginal offenders was conducted. Data pertaining to incarceration rate were available for 41 months before and 43 months after the implementation of Bill C-41. The time-series plot for the monthly incarceration rate is presented in Figure 3. On average, 642.79 ($SD = 101.11$) non-Aboriginal offenders were incarcerated monthly in British Columbia. As seen in Figure 3, the variability of the scores appears to decrease over time, however, the decrease is small and, given the difficulties associated with interpreting transformed data, the decision was made to not use a logarithmic transformation. In addition, there are no outliers readily apparent in Figure 3. Consistent with this observation, an evaluation of outliers using a *p*-value of .001 for Mahalanobis distance revealed no significant outliers in the time-series data.

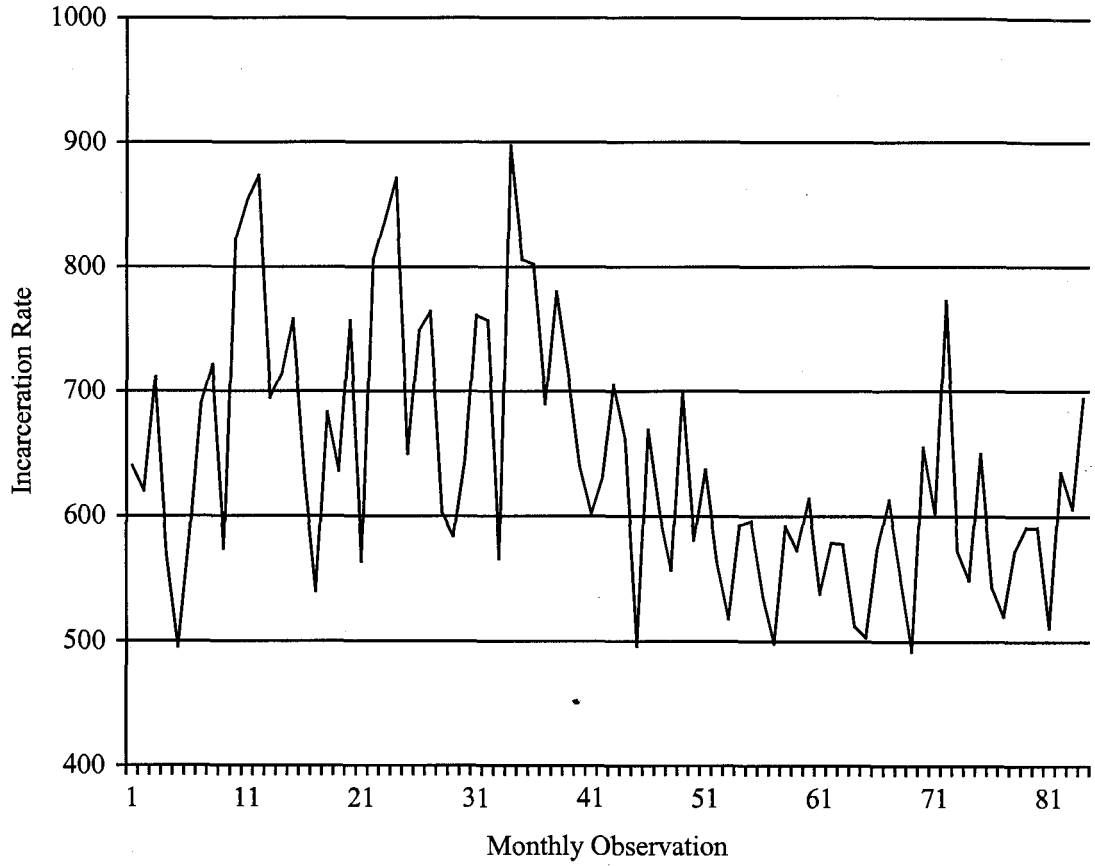
The 41-month pre-Bill C-41 series was used to identify, estimate, and diagnose an appropriate ARIMA model for non-Aboriginal incarceration rate. An ACF plot presented in Figure 10 suggested a (0, 1, 0) model, with large positive spikes at Lag 12. As such, differencing of scores was conducted at Lags 1 and 12, respectively, to achieve stationarity, however, the

differencing still produced common ACF and PACF patterns, with spikes oscillating on both sides, suggesting a model with a moving-average parameter. Estimation of an ARIMA (0, 1, 1) $(0, 1, 0)_{12}$ model indicated that the moving-average parameter was statistically significant, and satisfied the bounds of invertibility for moving-average parameters. As the final step of the model-building procedure, an examination of the ACF estimated for the residuals, indicated that the residuals did not significantly differ from random error, Q (13) = 8.72, *ns*.

The model identified with the pre-intervention time-series was then used to evaluate the impact of Bill C-41 on non-Aboriginal incarceration rates. Parameter values, their standard errors, and respective *t*- and *p*-values are presented in Table 14. The results illustrate that the moving-average parameter (B = .836) was statistically significant, with t = 8.782, p = .000. Although 718.2(e) of the *Criminal Code* (1985) places emphasis on the circumstances of Aboriginal people, the provision was enacted with the intention of directing judges to alternatives to incarceration for all offenders. Thus, it was expected that incarceration rates would decrease following the implementation of Bill C-41 in September 1996. Consistent with this expectation, as shown in Table 18, the intervention parameter (B = -140.626), was statistically significant, t = -3.301, p = .002. The negative sign of the intervention parameter indicates that the incarceration rate for non-Aboriginal offenders has significantly decreased since the implementation of Bill C-41.

Figure 3

Non-Aboriginal Monthly Incarceration Rate



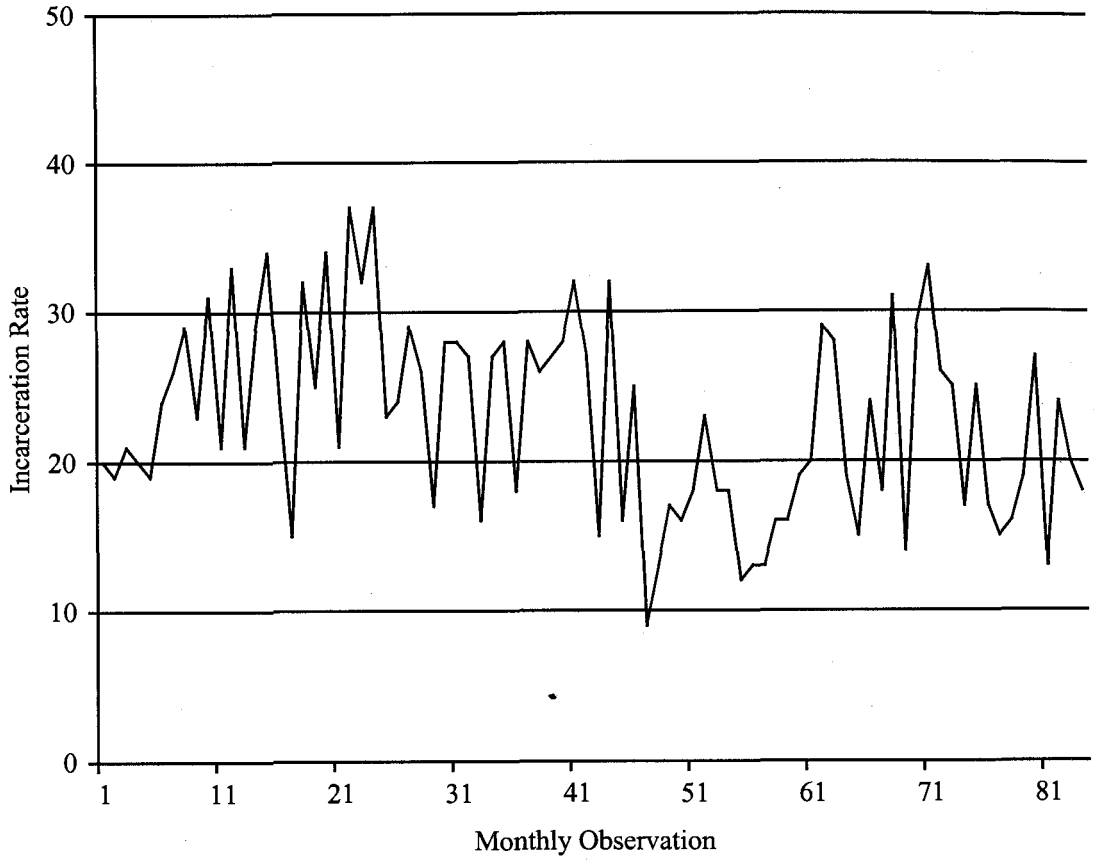
4.1.8.6 Aboriginal Incarceration Rate (No Criminal History, Non-SPIO)

Research has consistently noted that the seriousness of the offence, or the amount of physical or psychological harm to the victim, relates more strongly than any other variable to sentencing decisions (Roberts, 1997). The criminal history of the offender has also been frequently identified as a significant predictor of sentencing outcomes (Roberts, 1997). Among the hypotheses in the current study, it was argued that the differences observed between Aboriginal and non-Aboriginal offenders with respect to criminal history and offence severity might account for differences in incarceration rates. As such, an additional time-series model was developed to observe incarceration rates for Aboriginal offenders who were convicted of a non-Serious Personal Injury Offence and those with No Prior Criminal History.

Data pertaining to incarceration rate were available for 41 months before and 43 months after the implementation of Bill C-41. The time-series plot for the monthly incarceration rate is presented in Figure 4. On average, 22.82 (SD = 6.52) Aboriginal offenders with No Criminal History and a non-violent Index Offence were incarcerated monthly in British Columbia. As seen in Figure 4, the variability of the scores appears to be relatively consistent over time. In addition, an examination of Figure 4 suggests that some scores may be extreme outliers in the time-series sequence. Nonetheless, an evaluation of outliers using a p-value of .001 for Mahalanobis distance revealed no significant outliers in the time-series data.

Figure 4

Monthly Aboriginal Incarceration Rate (No Criminal History, Non-Violent)



The 41-month pre-Bill C-41 series was used to identify, estimate, and diagnose an appropriate ARIMA model for Aboriginal incarceration rate. An evaluation of the ACF plot suggested a (0, 1, 0) model, with large positive spikes at Lag 12. As such, differencing of scores was conducted at Lags 1 and 12, respectively, to achieve stationarity, however, the differencing still produced common ACF and PACF patterns, with spikes oscillating on both sides, suggesting a model with a moving-average parameter. Estimation of an ARIMA (0, 1, 1) $(0, 1, 0)_{12}$ model indicated that the moving-average parameter was statistically significant, and satisfied the bounds of invertibility for moving-average parameters. As the final step of the model-building procedure, an examination of the ACF estimated for the residuals, indicated that the residuals did not significantly differ from random error, $Q\,(13) = 5.85$, *ns*. The normal probability plot based on the residuals for the ARIMA model indicated that that the assumption of normality for the sampling distribution had not been violated.

The model identified with the pre-intervention time-series was then used to evaluate the impact of Bill C-41 on Aboriginal incarceration rates. Parameter values, their standard errors, and respective *t*- and *p*-values are presented in Table 14. The results illustrate that the moving-average parameter ($B = .658$) was statistically significant, with $t = 6.074$, $p < .001$. Given that those offenders with a prior criminal history and a current conviction for a Serious Personal Injury Offence were removed from analyses, it was expected that there would be a significant decrease in incarceration rate. Surprisingly, as shown in Table 14, the intervention parameter ($B = -8.220$), was not statistically significant, $t = -1.151$, $p = .254$. Although Aboriginal incarceration rates have decreased, this reduction was not statistically significant.

4.1.8.7 Non-Aboriginal Incarceration Rate (No Criminal History, Non-SPIO)

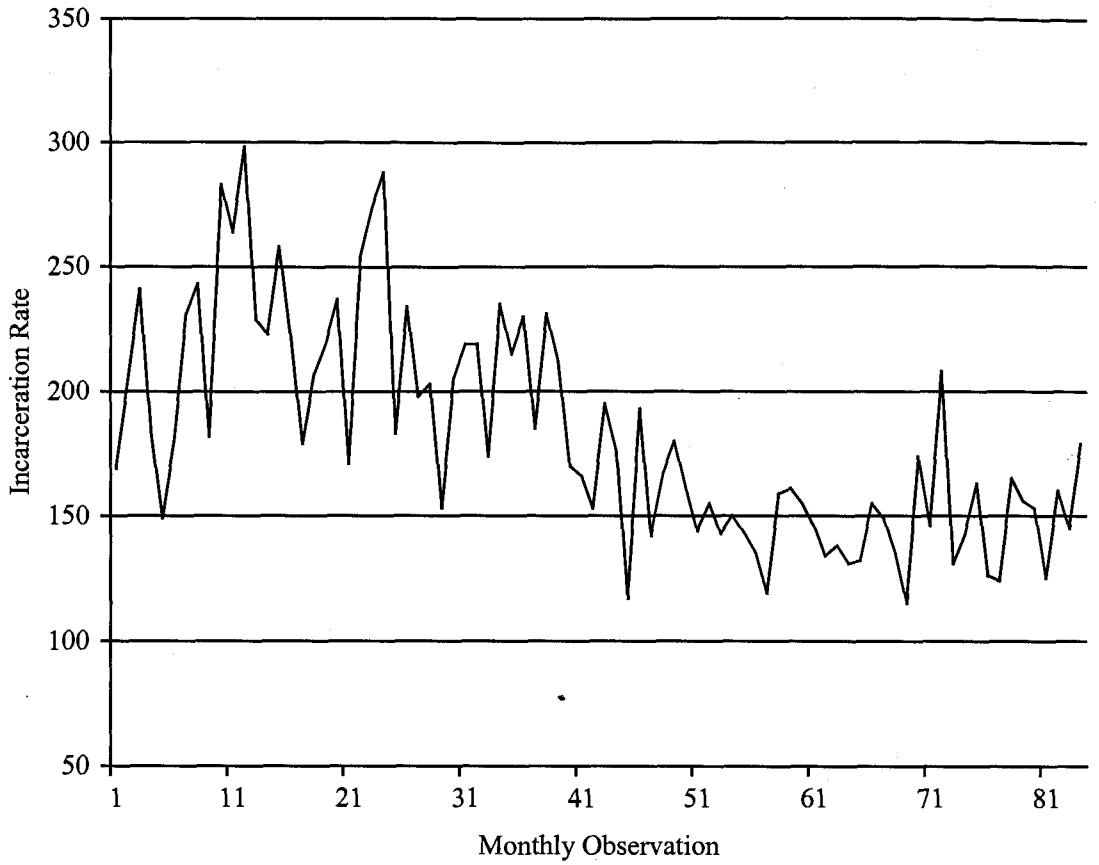
To evaluate Bill C-41's impact on incarceration rates when controlling for Criminal History and Offence Severity, a similar time-series model was developed for non-Aboriginal offenders. The time-series plot for the monthly incarceration rate is presented in Figure 5. On

average, 182.18 (*SD* = 44.10) non-Aboriginal offenders with No Criminal History and a non-violent Index Offence were incarcerated monthly in British Columbia. As seen in Figure 5, the variability of the scores appears to decrease over time, however, the decrease is small and, given the difficulties associated with interpreting transformed data, the decision was made to not use a logarithmic transformation. In addition, an examination of Figure 5 suggests that some scores may be extreme outliers in the time-series sequence. Nonetheless, an evaluation of outliers using a *p*-value of .001 for Mahalanobis distance revealed no significant outliers in the time-series data.

The 41-month pre-Bill C-41 series was used to identify, estimate, and diagnose an appropriate ARIMA model for non-Aboriginal incarceration rate. An examination of an ACF plot suggested a (0, 1, 0) model and, as a result, differencing of scores was conducted at Lags 1 and 12 to achieve stationarity, however, the differencing still produced common ACF and PACF patterns, suggesting a model with a moving-average parameter. Estimation of an ARIMA (0, 1, 1) $(0, 1, 0)_{12}$ model indicated that the moving-average parameter was statistically significant, and satisfied the bounds of invertibility for moving-average parameters. An examination of the ACF estimated for the residuals, indicated that the residuals did not significantly differ from random error, $Q\,(13) = 7.13$, *ns*. A normal probability plot based on the residuals for the ARIMA model indicated that the assumption of normality for the sampling distribution has not been violated.

Figure 5

Monthly Non-Aboriginal Incarceration Rate (No Criminal History, Non-Violent)



The model identified with the pre-intervention time-series was then used to evaluate the impact of Bill C-41 on non-Aboriginal incarceration rates. Parameter values, their standard errors, and respective t- and p-values are presented in Table 14. The results illustrate that the moving-average parameter ($B = .795$) was statistically significant, with $t = 8.047, p < .001$. Given that those offenders with a prior criminal history and a current conviction for a Serious Personal Injury Offence were removed from analyses, it was expected that there would be a significant decrease in incarceration rate. As shown in Table 14, the intervention parameter ($B = -48.204$), was in fact statistically significant, $t = -2.776, p = .007$, thus indicating that non-Aboriginal incarceration rates have declined since the implementation of Bill C-41 in September 1996.

Table 14

Interrupted Time-Series Parameter Values

Parameter	*B*	*SEB*	*t*-value	*p*-value
Overall				
Auto-regressive	-.633	.105	-6.014	.000
Bill C-41	-69.617	75.466	-.922	.360
Aboriginal				
Moving Average	.626	.106	5.88	.000
Bill C-41	.523	22.269	.023	.981
Non-Aboriginal				
Moving Average	.836	.095	8.78	.000
Bill C-41	-140.626	42.599	-3.301	.002
Aboriginal (No History, Non-Violent)				
Moving Average	.658	.018	6.074	.000
Bill C-41	-8.220	7.138	-1.151	.254
Non-Aboriginal (No History, Non-Violent)				
Moving Average	.795	0.99	8.047	.000
Bill C-41	-48.204	17.363	-2.776	.007

4.1.9 Sentence Length: Evaluating the Impact of Bill C-41

The majority of Canadian research suggests that Aboriginal offenders may receive shorter sentence lengths as compared to non-Aboriginal offenders (Bonta, 1989; Canfield & Drinnan, 1981; Moyer et al., 1985). In addition to examining incarceration rates, this study also investigated whether sentence length does in fact differ between Aboriginal and non-Aboriginal offenders. Given the larger non-Aboriginal sample, the matched-pairs random assignment procedure was used to create equivalent Aboriginal and non-Aboriginal groups, and to increase the statistical power of analyses. Each Aboriginal offender in the Incarceration dataset was matched with one non-Aboriginal offender on three variables: Index Offence, Criminal History, and Sentencing Year. If there was no equivalent match between an Aboriginal and non-Aboriginal offender on all three variables, that particular Aboriginal offender was dropped from the sample (n = 1869).

4.1.9.1 The Matched Sample

As shown in Table 15, a total of 19, 446 offenders were included in the matched sample, which included 9723 of both Aboriginal and non-Aboriginal offenders. The percentage distribution of Index Offences in the Matched Sample is comparable to the distribution observed in the Custodial sample. A larger proportion of offenders in the Matched Sample, however, have served a prior custodial sentence within two years of their current conviction (63.8%, n = 12, 408). Briefly, the average sentence length of offenders was 129.9 days (SD = 253.07), with the sentence ranging from one day to 5040 days. Not surprisingly, given that the sample included both provincial and federal offenders, seventy-five percent (75%) of the sample had a sentence length of 120 days or less. On average, Aboriginal offenders were sentenced to 122.01 days (SD = 233.15), whereas non-Aboriginal offenders were sentenced to 137.80 days (SD = 271.31).

Table 15

Statistical Overview of the Matched Sample

Variable	Frequency	Percentage
Aboriginal Status		
Aboriginal	9723	50.0
Non-Aboriginal	9723	50.0
Index Offence		
Homicide Offence	46	0.2
Assault Offence	3752	19.3
Sexual Offence	870	4.5
Robbery	386	2.0
Theft	3924	20.2
Drug Offence	908	4.7
Break and Enter	1918	9.9
Criminal Harassment	32	0.2
Weapons Offence	320	1.6
Criminal Negligence	14	0.1
Abduction/Kidnapping	24	0.1
Arson Offence	26	0.1
Intimidation/Threat	336	1.7
Driving Offence	2690	13.8
Fraud/Currency Offence	248	1.3
Public Nuisance/Mischief	406	2.1
Offence Against Administration of Justice	3546	18.2
Criminal History		
No Criminal History	734	3.8
No Prior Institutional Time	1550	8.0
No Prior Jail Sentence	1610	8.3
Prior Jail Sentence - 2 Years Ago	3144	16.2
Prior Jail Sentence – Last 2 Years	12408	63.8

Table 15

Statistical Overview of the Matched Sample

Variable	Frequency	Percentage
Sentencing Year		
1993	1560	8.0
1994	2592	13.3
1995	2956	15.2
1996	3038	15.6
1997	2600	13.4
1998	2890	14.9
1999	3036	15.6
2000	774	4.0

4.1.9.2 Analysis of Covariance

The goal of this analysis was to determine whether differences in sentence length existed between Aboriginal and non-Aboriginal offenders, while controlling for Index Offence and Criminal History. Due to the disproportionately large differences among the cell values in Index Offence and Criminal History, however, a one-way analysis of covariance (ANCOVA) was conducted on sentence length, with Aboriginal status (Aboriginal/non-Aboriginal) as the independent variable. Criminal History was subsequently dropped from the analysis, as it is a categorical variable and, as a result, cannot be used as a covariate in the ANCOVA procedure.

The Index offence variable was re-coded using the Cormier-Lang System for Quantifying Criminal History to create a continuous scale for Offence Severity (Akman & Normandeau, 1967). Briefly, the system developed by Akman and Normandeau (1967) can be used to quantify an offender's current index offence. Generally, this system is recommended when official police "rap sheet" information is available (e.g., records from the Royal Canadian Mounted Police Fingerprint Service) to ascertain the level of violence or harm perpetrated. This information, however, was not available for the current study. As such, for those offences where the level of violence or harm was required for coding, the average of the highest and the lowest potential score that could be allotted was taken. For example, Armed Robbery can receive a score of 8, and Robbery (i.e., purse snatching) can receive a score of 3. In this case, the average score of Robbery was calculated to arrive at a value of 6.5, which was rounded down to the next possible category score of 6. Finally, the Cormier-Lang System does not include non-*Criminal Code* offences. As such, offences not in the *Code* were dropped from these analyses (i.e., *Motor Vehicle Act* offences).

Evaluations of the assumptions of normality of sampling distributions, linearity, and homogeneity of variance were conducted prior to proceeding with the ANCOVA analysis. These tests indicated that sentence length was positively skewed (6.351) and peaked (64.411), and the

Kolmogorov-Smirnov statistic also shows that the distribution of sentence length violates the assumption of normality ($KS = .305, p < .001$). A logarithmic transformation of sentence length was performed, and the transformation largely reduced the problems of normality. The covariate, Offence Severity, was also tested for the normality assumption and analyses indicated that that Offence Severity scores were not normally distributed and, as a result, Offence Severity was also re-coded using a logarithmic transformation. Evaluations of the assumptions also found a linear relationship between sentence length and offence severity for both Aboriginal and non-Aboriginal offenders.

The results of the one-way ANCOVA are presented in Table 16. A Levene's Test of Equality of Error Variance was not statistically significant ($p < .05$), thus indicating the assumption of homogeneity of variance was not violated. After adjustment by the covariate, Offence Severity, Sentence Length varied significantly with Aboriginal status, as summarized in Table 16, $F(1, 19445) = 5.767, p = .016$. The strength of the relationship between Aboriginal Status and Sentence Length, however, was weak, with partial-$\eta^2 = 0.00$, thus suggesting that the statistical significance of Aboriginal Status was an artefact of the large sample size. The covariate, the logarithm of Offence Severity, was also significantly associated with sentence length, $F(1, 19445) = 7820.812, p < .001$, with partial-$\eta^2 = .287$. These results indicate that the difference in sentence length observed between Aboriginal and non-Aboriginal offenders was in large part attributable to offence severity.

Table 16

ANCOVA Analysis of Sentence Length

Variable	DF	*F*-value	*p*-value	Partial-η^2
Aboriginal Status	1	5.767	.016	.000
Offence Severity	1	7820.812	.000	.287

4.2 Study 2: An Evaluation of Judicial Sentencing Decisions

4.2.1 Overview of Cases in the Sample

An overview of basic descriptive characteristics of the judicial sentencing decisions included in the dataset is presented in Table 18. There were 713 sentencing decisions reviewed in the current study, and approximately 51% of the cases involved an Aboriginal offender (51.8%, n = 369). The percentage distribution of sentencing decisions by year shows that a third of the cases in the dataset were decided from 1990 to 1995 (27.6%, n = 197), prior to the introduction of Bill C-41. The largest proportions of cases were decided in 1999 (13.3, n = 95) and 2001 (14.3, n = 102), respectively. With respect to jurisdiction, approximately 20% of the cases were from British Columbia (19.6%, n = 140) and the Northwest Territories (18.9%, n = 135). Only four cases from Nova Scotia were included, and no sentencing cases from Prince Edward Island or Quebec were included in the sample. Although 10 cases were included from Nunaavut, the researcher was unable to identify any sentencing cases involving non-Aboriginal offenders from Canada's newest territory. Finally, the majority of cases in the sample were heard in provincial or provincial superior courts (71.4%, n = 509).

Information pertaining to appellate cases and decisions is presented in Table 19. A total of 186 (26.3%) sentencing decisions in the dataset were appellate decisions. Of these appellate cases, the majority involved an appeal filed by the defendant (69.9%, n = 128). Legal scholars have generally suggested that courts of Appeal are reluctant to overturn trial judges' sentencing decisions (Manson et al., 2000). Consistent with this observation, the Court of Appeal upheld the original sentencing decision in nearly half of the cases (47.7%, n = 82). In a third of appellate cases, the Court of Appeal lowered the sentence length or substituted a less serious sanction (30.2%, n = 52).

Table 17

Characteristics of Cases Included in the Sample

Variable	Frequency	Percentage
Aboriginal Status		
Aboriginal	369	51.8
Non-Aboriginal	344	48.2
Sentencing Year		
1990	20	2.8
1991	38	5.3
1992	32	4.5
1993	22	3.1
1994	36	5.0
1995	49	6.9
1996	36	3.6
1997	52	7.3
1998	77	10.8
1999	95	13.3
2000	85	11.9
2001	102	14.3
2002	79	11.1
Province		
British Columbia	140	19.6
Alberta	96	13.5
Yukon	86	12.1
Northwest Territories	135	18.9
Nunaavut	10	1.4
Saskatchewan	68	9.5

Table 18

Characteristics of Cases Included in the Sample

Variable	Frequency	Percentage
Province		
Manitoba	44	6.2
Ontario	82	11.5
Newfoundland	20	2.8
New Brunswick	28	3.9
Nova Scotia	4	0.6
Level of Court		
Youth Court	18	2.5
Provincial Court	509	71.4
Court of Appeal	186	26.1

Table 18

Overview of Appellate Decisions

Variable	Frequency	Percentage
Filing an Appeal		
Crown	55	30.1
Defendant	128	69.9
Section 718.2(e) Appeal	23	13.3
Yes	23	13.3
No	150	86.7
Outcome of Appeal		
Uphold Sentence	82	47.7
Increase Time	38	22.1
Decrease Time	52	30.2

4.2.2 Characteristics of the Index Offence

An overview of the most serious index offence in the offenders' current conviction is included in Table 20. In contrast to the Ministry of the Attorney General dataset used in Study 1, a large proportion of the sentencing cases in this sample involved serious and/or violent offences. A third of the sentencing decisions, for example, concerned a sexual offence (30.1%, $n = 214$). As shown in Table 20, a large proportion of the cases also involved sentencing for assault offences (18.4%, $n = 131$). Other significant index offence groupings in the sample included drug offences (9.1%, $n = 65$), driving offences (8.7%, $n = 62$), homicide offences (8.0%, $n = 57$), and robbery offences (7.7%%, $n = 57$).

Table 21 depicts comparisons between Aboriginal and non-Aboriginal offenders on those variables pertaining to the index offence. A Bonferonni correction was used to adjust for the analyses of multiple dependent variables describing the number of offences in the current conviction, offence seriousness, and the presence of substance use. An initial significance level of .05 was chosen and divided by the number of dependent variables describing these characteristics (3), resulting in a critical value of .02. On average, offenders in the dataset were convicted of 1.61 offences ($SD = 1.50$). Aboriginal offenders ($M = 1.58$, $SD = 1.75$) were not convicted of more offences in their current conviction as compared to non-Aboriginal offenders ($M = 1.63$, $SD = 1.18$), $t\ (711) = -0.43$, $p = .665$. With respect to offence seriousness, Aboriginal offenders were convicted of more serious offences overall than non-Aboriginal offenders, $\chi^2\ (3) = 15.65$, $p = .001$. Based on the categories contained in the Modified CSC Offence Severity Scale, a significantly larger proportion of Aboriginal offenders were convicted of serious offences as compared to non-Aboriginal offenders (48.2% vs. 35.2%). In addition, Aboriginal offenders were also significantly more likely to have committed their index offence(s) under the influence of alcohol and/or drugs, $\chi^2\ (1) = 70.78$, $p = .000$. Over two-thirds of Aboriginal offenders (67.4%)

were impaired during the commission of their offences compared to approximately a third of non-Aboriginal offenders (35.0%).

Several variables were coded with respect to victims and victim injury present in the index offence. A Bonferonni correction was used to adjust for the analyses of multiple dependent variables describing victims and victim injury. An initial significance level of .05 was chosen and divided by the number of dependent variables describing Index Offence characteristics (5). This resulted in a critical value of .01 that was applied in determining statistical significance for chi-square analyses. First, the majority of sentencing decisions in the dataset involved an identifiable victim (87%, $n = 618$). In those cases where a victim was identified, the victimization predominately involved violence (81.6%, $n = 500$). Ten percent (10%, $n = 61$) of victims in the sentencing cases were victims of property offences or theft, and an additional 8.5% ($n = 52$) of victimization incidents involved negligent acts. Although Aboriginal offenders were not significantly more likely to have a victim of violence identified in their index offence, χ^2 (1) = 6.38, $p = .012$, a larger proportion of Aboriginal offenders' index offences involved a violent victimization as compared to non-Aboriginal offenders (85.1% vs. 77.1%).

Further, analyses of cases involving an incident of violent victimization showed that females were overwhelmingly the victims of violent crime included in the sample as compared to males (62.7% vs. 37.3%). As shown in Table 21, there were no victim gender differences in the index offences of Aboriginal and non-Aboriginal offenders, χ^2 (1) = 0.30, $p = .59$. Furthermore, there were no statistically significant differences in the patterns of victim-offender relationship between Aboriginal and non-Aboriginal offenders, χ^2 (7) = 12.63, $p = 0.08$. For example, a similar proportion of Aboriginal offenders committed their offence against a victim under their parental supervision or a spousal/intimate partner (6.9% and 15.6%, respectively) as non-Aboriginal offenders (10.9% and 19.8%, respectively).

Two indices of victim injury were included in the current study. The first index of victim injury concerned non-sexual violent offences. As shown in Table 21, Aboriginal offenders were significantly more likely to seriously injure their victims as compared to non-Aboriginal offenders, χ^2 (4) = 17.34, p = .002. That is, Aboriginal offenders were nearly twice as likely to either kill or seriously injure their victims (11.9% and 15.7%, respectively) as non-Aboriginal offenders (6.1% and 9.9%, respectively). The second index of victim injury concerned injuries sustained in sexually violent offences. Analyses indicate that Aboriginal offenders' offences were not significantly more likely to involve higher levels of sexual violence as compared to non-Aboriginal offenders, χ^2 (2) = 8.36, p = .02. However, there does appear to be a non-significant trend; that is, a larger proportion of Aboriginal offenders' sexual offences involved either penile penetration or non-penile penetration (62.6% and 22.0%, respectively) than non-Aboriginal offenders (50.6% and 16.9%, respectively).

Finally, information pertaining to weapon use in the index offence is also presented in Table 21. A total of 193 sentencing decisions involved an index offence wherein a weapon was used. Knives constituted the most frequently used weapon across index offences (53.6%, n = 98), while firearms comprised approximately a quarter of weapons used in the index offence (24.0%, n = 44). Analyses indicate that Aboriginal offenders were not more likely to use a weapon in their index offence (38.7%) as compared to non-Aboriginal offenders (34.5%), χ^2 (1) = 0. 96, p = .33.

Table 19

Most Serious Offence for Overall Sample

Offence Type	Frequency	Percentage
Homicide Offence	57	8.0
Assault Offence	131	18.4
Sexual Offence	214	30.1
Robbery	55	7.7
Theft	16	2.2
Drug Offence	65	9.1
Break and Enter	38	5.3
Criminal Harassment	7	1.0
Weapons Offence	12	1.7
Criminal Negligence	8	1.1
Abduction/Kidnapping	7	1.0
Arson Offence	4	0.6
Intimidation/Threat	9	1.3
Driving Offence	62	8.7
Fraud/Currency Offence	20	2.8
Public Nuisance Offence	5	0.7
Offence Against Administration of Justice	3	0.4
Total	713	100.00

Table 20

Comparison of Aboriginal and Non-Aboriginal Offenders on Offence Variables

Variable	Aboriginal	Non-Aboriginal	Test
# of Charges	1.58 (1.75)	1.63 (1.18)	t (711) = -.43
Index Offence Seriousness			χ^2 (3) = 15.65***
Minor Offences	8.7	8.4	
Moderate Offences	29.0	41.9	
Serious Offences	48.2	35.2	
Major Offences	14.1	14.5	
Substance Use in Index Offence			χ^2 (1) = 70.78***
Yes	67.4	35.0	
No	32.6	65.0	
Victim of Violence in Index Offence			χ^2 (1) = 6.38
Yes	85.1	77.1	
No	14.9	22.9	
Victim Gender			χ^2 (1) = 0.30
Male	38.3	35.9	
Female	61.7	64.1	
Victim-Offender Relationship			χ^2 (7) = 12.63
Stranger	14.3	17.8	
Situational Connection	13.9	13.9	
Community Connection	16.5	17.8	
Friend/Acquaintance	15.6	11.4	
Family Connection	7.8	5.0	
Family Member	9.5	3.5	
Spousal or Intimate Partner	15.6	19.8	
Parental Relationship	6.9	10.9	

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

Table 21

Comparison of Aboriginal and Non-Aboriginal Offenders on Offence Variables

Variable	Aboriginal	Non-Aboriginal	Test
Level of Victim Injury			χ^2 (4) = 17.34**
No victim injury	53.4	60.8	
No assault/Threatening	6.2	10.8	
Minor injury	12.7	12.5	
Serious injury	15.7	9.9	
Victim death	11.9	6.1	
Level of Victim Injury (Sexual)			χ^2 (2) = 8.36
Exposure/Fondling	15.4	32.5	
Non-Penile Penetration	22.0	16.9	
Penile Penetration	62.6	50.6	
Use Weapon in Index Offence			χ^2 (1) = 0.96
Yes	38.7	34.5	
No	61.3	65.5	

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

4.2.3 Characteristics of the Offender

Characteristics of the offender, including age, gender, marital and employment status, educational level, and criminal history are reported in Table 22. Consistent with past research, Aboriginal offenders in the current sample were significantly younger at the time of sentencing ($M = 31.31$, $SD = 12.24$) than non-Aboriginal offenders ($M = 35.81$, $SD = 13.71$), $t\ (541) = -4.04$, $p = .000$. To evaluate differences between Aboriginal and non-Aboriginal offenders on several socio-demographic characteristics, a Bonferonni correction was used to adjust for the analyses of multiple dependent variables. An initial significance level of .05 was chosen and divided by the number of dependent variables (5). This resulted in a critical value of .01 that was applied in determining statistical significance for chi-square analyses.

The distribution of gender in the current sample was also consistent with the distribution commonly observed in the criminal justice system. That is, the majority of sentencing decisions involved male offenders (91.3%, $n = 651$). Between both Aboriginal and non-Aboriginal offenders, the majority of cases involved male offenders (89.4% and 93.3%, respectively), $\chi^2\ (1) = 3.38$, $p = .07$. Information pertaining to marital status was available in 434 cases. No significant differences were observed in the marital status of Aboriginal and non-Aboriginal offenders, $\chi^2\ (3) = 5.27$, $p = .15$. Approximately half of Aboriginal offenders (50.2%) and non-Aboriginal offenders (50.7%) were married or in a common-law relationship. Conversely, a third of non-Aboriginal offenders (28.4%) were single, while 35.2% of Aboriginal offenders were described as being single.

As shown in Table 22, Aboriginal offenders in the current sample evidenced substantial problems with societal marginalization. A total of 295 cases provided information about offenders' level of educational attainment. Chi-square analyses show that Aboriginal offenders had significantly less education than their non-Aboriginal counterparts, $\chi^2\ (3) = 42.81$, $p = .000$. Aboriginal offenders, for example, were three times more likely to have failed to complete

elementary school than non-Aboriginal offenders (34% vs. 11.3%). In contrast, only 6.8% of Aboriginal offenders in the current sample had some or had completed post-secondary education as compared to 30.1% of non-Aboriginal offenders. Aboriginal offenders were also less likely to be employed at the time of their index offence as compared to non-Aboriginal offenders, χ^2 (1) = 31.10, p = .000, with 50% of Aboriginal offenders being unemployed at the time of their index offence as compared to only 24.7% of non-Aboriginal offenders. Lastly, substance abuse problems were also significantly more prevalent among Aboriginal offenders than non-Aboriginal offenders, χ^2 (1) = 106.38, p = .000. Aboriginal offenders were twice as likely to have a substance abuse problem (77.9%) than non-Aboriginal offenders (35.5%).

Information concerning the criminal history of offenders in the sample is also presented in Table 22. A Bonferonni correction was used to adjust for the analyses of multiple dependent variables. An initial significance level of .05 was chosen and divided by the number of dependent variables (4). This resulted in a critical value of .0125 that was applied in determining statistical significance for chi-square analyses. Over two-thirds of offenders in the sample had a prior criminal record (67.4%, n = 459). Consistent with existing research, Aboriginal offenders were significantly more likely to have a prior criminal history than non-Aboriginal offenders (81.1% vs. 53%), χ^2 (1) = 61.04, p = .000. Aboriginal offenders also had more prior convictions (M = 14.77, SD = 17.66) than non-Aboriginal offenders (M = 8.26, SD = 11.84), t (265.17) = 45.71, p = 000. With respect to a violent criminal history, a total of 258 offenders had a recorded history of violent offences. Table 22 shows that Aboriginal offenders were twice as likely to have a prior violent offence in their criminal record (52.4%) than non-Aboriginal offenders (26.5%), χ^2 (1) = 45.71, p = .000. A relatively smaller number of offenders in the sample had a prior history of sexual offences (9.2%, n = 60), however, Aboriginal offenders were still twice as likely as non-Aboriginal offenders to have a prior sexual offence in their criminal record (12.1% vs. 6.2), χ^2 (1) = 6.88, p = .009.

Table 21

Characteristics of the Offender

Variable	Aboriginal	Non-Aboriginal	Test
Age at Sentencing	31.31 (12.24)	35.81 (13.71)	t (541) -4.04***
Gender			χ^2 (1) = 3.38
Male	89.4	93.3	
Female	10.6	6.7	
Marital Status			χ^2 (3) = 5.27
Single	35.2	28.4	
Dating/Intimate Relationship	6.4	6.5	
Common Law/Married	50.2	50.7	
Divorced/Separated	8.2	14.4	
Educational Level			χ^2 (3) = 42.81***
Less than elementary school	34.0	11.3	
Some high school	48.4	40.6	
High School	10.5	18.0	
Post-secondary	6.8	30.1	
Employment Status			χ^2 (1) = 31.10***
Employed	50.0	75.3	
Unemployed	50.0	24.7	
Substance Abuse Problem			χ^2 (1) = 106.38***
Yes	77.9	35.5	
No	22.1	64.5	
Prior Criminal History			χ^2 (1) = 61.04***
Yes	81.1	53.0	
No	18.9	47.0	

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

Table 22

Characteristics of the Offender

Variable	Aboriginal	Non-Aboriginal	Test
# of Prior Convictions	14.77 (17.66)	8.26 (11.84)	t (266) = 3.32***
Prior Violent History			χ^2 (1) = 45.71***
Yes	52.4	26.5	
No	47.6	73.5	
Prior Sexual Offence			χ^2 (1) = 6.88**
Yes	12.1	6.2	
No	87.9	93.8	

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

4.2.4 Sentencing Dispositions

An overview of the dispositions administered in the cases is presented in Table 23. In the majority of the cases included in the sample, the offender was sentenced to a period of incarceration (73.9%, $n = 527$). A quarter of cases in the sample resulted in a non-custodial or community-based sentence (24.5%, $n = 175$). The most commonly administered community-based sanction across the cases was the Bill C-41 initiated conditional sentence (15.4%, $n = 110$). Suspended sentences were administered in 4.5% ($n = 32$) of the cases, and fines were only used as the primary disposition in 1.1% ($n = 8$) of the cases.

Comparisons between Aboriginal and non-Aboriginal offenders on the disposition outcomes are presented in Table 24. Because pairwise comparisons were conducted without the use of an omnibus test, the Bonferonni correction was used. With respect to disposition outcome and length, an initial .05 level of significance was chosen and divided by the number of dependent variables (3). This resulted in a critical value of 0.017 in determining statistical significance for the chi-square and t-test analyses. An additional Bonferonni correction was conducted for variables pertaining to the administration of probation were an initial level of significance of .05 was divided by the number of dependent variables (2), resulting in a critical value of .025.

Contrary to expectations, Aboriginal offenders were not significantly more likely to receive a custodial sentence than non-Aboriginal offenders, χ^2 (1) = 0.36, $p = .55$. Approximately three-quarters of both Aboriginal offenders (74.5%, $n = 275$) and non-Aboriginal offenders (76.5%, $n = 263$) were sentenced to a period of incarceration. With respect to the length of incarceration, there was no statistically significant difference in sentence length between Aboriginal offenders ($M = 1230.31$, $SD = 1582.32$) and non-Aboriginal offenders ($M = 1257.39$, $SD = 1522.92$), t (524) = -0.20, $p = .84$. Overall, the average length of conditional sentences administered was 496.41 days ($SD = 208.05$). There was no significant difference in the average

length of the conditional sentences administered to Aboriginal and non-Aboriginal offenders, t (108) = 2.04, p = .04. Table 24, however, does show a non-significant trend in the length of conditional sentences with Aboriginal offenders receiving longer conditional sentences (M = 539.22, SD = 209.56) than non-Aboriginal offenders (M = 459.41, SD = 201.20).

In cases where an offender has received a custodial sentence of two years less a day, the judge has the option of administering an additional probationary period to follow the period of incarceration, up to a maximum of three years. As shown in Table 24, Aboriginal offenders were significantly more likely to receive a probationary period in addition to incarceration than non-Aboriginal offenders, χ^2 (1) = 7.24, p = .007. Approximately 35% of Aboriginal offenders (34.7%, n = 124) received an additional probationary period as compared to 25.4% of non-Aboriginal offenders (n = 25.4%). There were, however, no significant differences in the length of the additional probationary period between Aboriginal offenders (M = 734.88, SD = 288.68) and non-Aboriginal offenders (M = 715.35, SD = 275.83), t (208) = 0.50, p = .62.

Table 22

Overview of the Administered Sentencing Dispositions

Sentence Outcome	Frequency	Percentage
Custodial	527	73.9
Probation	13	1.8
Conditional Sentence	110	15.4
Absolute Discharge	2	0.3
Conditional Discharge	6	0.8
Suspended Sentence	32	4.5
Secure Custody	11	1.5
Open Custody	2	0.3
Fine	8	1.1
Curative Discharge	1	0.1
Time Served	1	0.1
Total	713	100.0

Table 23

Comparison of Aboriginal and Non-Aboriginal Offenders on Disposition Outcomes

Variable	Aboriginal	Non-Aboriginal	Test
Sentence Outcome			χ^2 (1) = 0.36
Custodial	74.5	76.5	
Non-Custodial	25.5	23.5	
Length of Incarceration	1230.31 (1582.32)	1257.39 (1522.92)	t (524) = -0.20
Conditional Sentence Length	539.22 (209.56)	459.41 (201.20)	t (108) = 2.04*
Additional Probationary Period			χ^2 (1) = 7.24**
Yes	34.7	25.4	
No	65.3	74.6	
Length of Probationary Period	734.88 (288.68)	715.35 (275.83)	t (208) = 0.50

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

4.2.5 Application of the Sentencing Principles

Among the reforms contained in Bill C-41, the primary purposes and principles of sentencing were officially codified in Section 718 of the *Criminal Code* (1985). Information pertaining to the discussion and application of the goals of sentencing are presented in Table 25. General deterrence was the most frequently cited goal across the sentencing decisions (76.8%, n = 490), followed by rehabilitation (58.2%, n = 371), and just-deserts or denunciation (55%, n = 351). The new restorative goals of sentencing, reparation and responsibility, were cited in fewer than 20% of the sentencing decisions in the current sample (18.1% and 18.4%, respectively).

As shown in Table 25, general deterrence was also the most frequently applied sentencing principles by judges. That is, judges cited general deterrence as a primary goal of sentencing in 69% (n = 383) of the cases. A just-deserts approach to sentencing was also an important goal of sentencing, with judges citing denunciation as a primary goal of sentencing in 46.6% (n = 258) of cases. Rehabilitation was cited less frequently as a primary goal of sentencing (19.5%, n = 108), and judges infrequently cited the restorative goals of sentencing, reparation (1.3%, n = 7) and responsibility (2.2%, n = 12).

Comparisons of Aboriginal and non-Aboriginal offenders with respect to the application of the Section 718 sentencing principles are presented in Table 26. Because pairwise comparisons were conducted, the Bonferonni correction was used to correct for family-wise error rates. An initial level of significance of .05 was chosen and divided by the number of dependent variables (5). This resulted in a critical value of .01 that was applied in determining statistical significance. Due to the low observed frequencies of the restorative justice principles (i.e., reparation, responsibility), they were not included in the analyses.

As shown in Table 26, judges when sentencing Aboriginal offenders, cited principles commonly associated with custodial sentences less frequently. For example, judges cited denunciation as a primary goal of sentencing less frequently in cases involving Aboriginal

offenders than in cases involving non-Aboriginal offenders (41.1% vs. 52.2%), χ^2 (1) = 6.88, p = 009. Similarly, general deterrence was cited as a primary goal of sentencing in 60.4% of Aboriginal cases as compared to 77.8% of non-Aboriginal cases, χ^2 (1) = 19.78, p = 000. Comparatively, rehabilitation was cited twice as frequently by judges when sentencing Aboriginal offenders (26.4%) than when sentencing non-Aboriginal offenders (12.5%), χ^2 (1) = 17.18, p = 000. Neither specific deterrence nor incapacitation were applied more frequently by judges when sentencing Aboriginal and non-Aboriginal offenders, χ^2 (1) = 1.45, p = .228 and χ^2 (1) = 3.30, p = .069, respectively.

Table 24

Application of Sentencing Principles in Judicial Sentencing Decisions

	Frequency	Percentage
Discussion of Principles		
Denunciation	351	55.0
General Deterrence	490	76.8
Specific Deterrence	328	51.7
Incapacitation	230	36.3
Rehabilitation	371	58.2
Reparation	115	18.1
Responsibility	117	18.4
Application of Principles		
Denunciation	258	46.6
General Deterrence	383	69.0
Specific Deterrence	151	27.3
Incapacitation	91	16.5
Rehabilitation	108	19.5
Reparation	7	1.3
Responsibility	12	2.2

Table 25

Comparison of Sentencing Principles between Aboriginal and Non-Aboriginal Offenders

Variable	Aboriginal	Non-Aboriginal	Test
Denunciation			χ^2 (1) = 6.88**
Goal of Sentence	41.1	52.2	
Not a Goal of Sentence	58.9	47.8	
General Deterrence			χ^2 (1) = 19.78***
Goal of Sentence	60.4	77.8	
Not a Goal of Sentence	39.6	22.2	
Specific Deterrence			χ^2 (1) = 1.45
Goal of Sentence	25.0	29.6	
Not a Goal of Sentence	75.0	70.4	
Incapacitation			χ^2 (1) = 3.30
Goal of Sentence	19.3	13.6	
Not a Goal of Sentence	80.7	86.4	
Rehabilitation			χ^2 (1) = 17.18***
Goal of Sentence	26.4	12.5	
Not a Goal of Sentence	73.6	87.5	

Note: *$p < .05$, ** $p < .01$, ***$p < .001$.

4.2.6 Aggravating and Mitigating Factors

Both the *Criminal Code* (1985) and common law tradition require judges to increase or reduce a sentence by taking into account aggravating or mitigating circumstances relevant to the offender or the offence. The observed frequencies of aggravating and mitigating factors cited by judges in their reasons for sentencing are displayed in Table 27. Consistent with research on determinants of sentencing decisions, the reasons for sentencing cited by judges reflected a predominant consideration of characteristics describing both offence seriousness and criminal history. Actual or threatened use of violence (42.8%, $n = 289$) was the most frequently cited aggravating factor by judges in the sentencing cases. Similarly, a prior criminal history was cited as an aggravating factor in a third of the cases (32.2%, $n = 218$) and a prior relevant record was cited in a quarter of cases (25.3%, $n = 171$).

With respect to mitigating factors, judges recognized the offender's guilty plea in over two-thirds of the cases (65.7%, $n = 432$). Judges also gave much consideration to the offenders' amenability to treatment. The rehabilitative prospects of the offender were cited as a mitigating factor in 39.7% ($n = 261$) of the cases. In addition, first-time offenders were viewed positively at sentencing hearings, as judges cited the lack of a criminal record as a mitigating factor in over a third of cases (33.6%, $n = 221$). Given the importance of individual liberty and the presumption of innocence, it is not surprising that judges gave consideration to the period of pre-trial custody served by the offender in a quarter of the cases (24.3%, $n = 160$).

Table 26

Judicially Cited Aggravating and Mitigating Factors

Sentencing Factor	Frequency	Percentage
Aggravating Factors		
Previous Convictions	218	32.2
Prior Relevant Record	171	25.3
Actual or Threatened Use of Violence	289	42.8
Offence Committed While Subject to Conditions	97	14.3
Multiple Victims or Multiple Incidents	70	10.4
Planning and Organization	67	9.9
Economic Costs of Criminal Activity	83	12.3
Vulnerability of Victim	177	26.2
Factors Increasing Culpability	188	27.8
Breach Position of Trust	132	19.5
Victim Injury	140	20.7
Use Weapon	129	19.1
Mitigating Factors		
First-time Offender	221	33.6
Guilty Plea	432	65.7
Pre-trial Custody	160	24.3
Disadvantaged Background	88	13.4
Pre- and Post-Offence Meritorious Conduct	104	15.8
Collateral or Indirect Consequences	59	9.0
Physical or Mental Health Problems	82	12.5
Factors Lowering Culpability	64	9.7
Post-Offence Rehabilitative Efforts	96	14.6
Rehabilitative Prospects	261	39.7

4.2.7 Determinants of Sentencing Outcome

Judges' sentencing decisions may incorporate a wide range of factors pertaining to case characteristics and offender attributes. Logistic regressions were calculated to determine the proportion of variability in judges' sentencing decisions accounted for by Aboriginal status relative to two groups of legally relevant factors: (1) aggravating and mitigating factors cited by judges, and (2) the sentencing principles applied by the judge. Briefly, the logistic regression procedure allows one to predict a dichotomous outcome such as group membership by estimating the probability of an event occurring given the status of a set of predictor variables that may be continuous, discrete, or dichotomous. Two separate models were tested in the current study because logistic regression analyses may produce large parameter estimates and standard errors when there are too few cases relative to the number of predictors (Tabachnick & Fidell, 2001). The number of predictor variables based on aggravating and mitigating factors, and the sentencing principles would have violated this statistical assumption if tested in a single model.

4.2.7.1 Aboriginal Status and Reasons for Sentencing

The first series of analyses examined the role of Aboriginal status in sentencing decisions relative to those aggravating and mitigating factors cited by judges. Two logistic regressions were calculated, one using the hierarchical stepwise approach and the other using the backward elimination procedure. A Bonferroni correction was used to correct for family-wise error rate. An initial level of significance of .05 was chosen and divided by the number of logistic regressions calculated (2), resulting in a critical value of .025. Although the logistic regression has no assumptions about the distribution of the predictor variables (Noursis, 1993), there are other limitations associated with logistic regression, which were evaluated prior to conducting analyses. An examination of the obtained tolerance values for the predictor variables indicated that multicollinearity was not an issue in the current data. Expected cell frequencies for all pairs of categorical variables, including the dependent variable, were also calculated to ensure adequate

power, and tests indicated that no cell had an expected frequency of zero, and no cells had expected frequencies of less than five.

First, a hierarchical logistic regression was used to determine what proportion of variance was accounted for by Aboriginal status over aggravating and mitigating factors cited in the sentencing decision. Twenty-three independent variables were used to predict the dichotomous dependent variable, Sentencing Outcome (Non-Custodial, Custodial). First, nine variables describing the mitigating factors cited by judges were entered on Block 1[3]. Then, on Block 2, the 12 variables describing aggravating factors were entered. The year the case was decided (Sentencing Year) was re-coded into a dichotomous variable using the Supreme Court of Canada's decision in *Gladue* (1999) as the dividing point (Pre-/Post-Gladue)[4]. This variable was entered into the model on Block 3. Lastly, Aboriginal status was entered on Block 4. All categorical variables were recoded using the indicator procedure before their entry (Tabachnick & Fidell, 2001).

Table 28 reports the regression coefficients (B), their standard errors (SE), the odds ratio ([Exp] B), and the Wald statistic (significance test of the regression coefficients) and its corresponding significance level for each predictor variable. As expected, those variables pertaining to mitigating factors entered in Block 1, were strong predictors of sentencing outcome, correctly classifying 75.4% of cases as either receiving a non-custodial or custodial disposition, χ^2 (9) = 57.526, p = .000. In cases where the judge cited factors lowering culpability, a guilty plea, and post-offence rehabilitative efforts as mitigating factors, offenders were significantly more likely to receive a non-custodial disposition. In contrast, in cases where the judge gave credit to an offender for serving pre-trial custody, the offender was less likely to receive a non-custodial disposition.

---

[3] Due to the overlap with the Aggravating variable, Previous Convictions, the mitigating variable, No Prior Criminal History was not included in the analyses.

[4] A total of 352 cases in the sample were decided prior to the Supreme Court's *Gladue* (1999) decisions, and 361 cases were included following the *Gladue* (1999) decision.

Aggravating factors, added at Block 2, significantly increased the classification power of the model, beyond the prediction made on the basis of mitigating factors, to 76.5%, χ^2 (12) = 46.937, p = .000. Regression coefficients indicate that in cases where the judge cited the use or threat of violence, victim vulnerability, the commission of the offence while subject to court-ordered conditions, and factors increasing the moral culpability of the offender, and a prior criminal history or prior relevant record, the likelihood of a custodial disposition increased. The only new predictor to achieve significance was disadvantaged background. Judicial consideration of an offender's disadvantaged background significantly increased the likelihood of a non-custodial disposition.

The addition of the *Gladue* variable at Block 3 did significantly improve the classification ability of the model, χ^2 (1) = 7.573, p = .006. Following the *Gladue* (1999) decision, the likelihood of a non-custodial disposition significantly increased. As hypothesized, the addition of Aboriginal status in Block 4 did not significantly improve the classification ability of the model over that which was classified by the predictor variables, χ^2 (1) = 1.780, p = .182. No new variables achieved statistical significance at the final step of the model. A test of the full model with all 23 independent variables was statistically significant, χ^2 (22) = 105.963, p = .000, indicating that the model, as a set, reliably distinguished between Non-Custodial and Custodial sentences. The variance accounted for by the model was moderate, Nagelkerke's R^2 = .25, with the full model accurately classifying 76.9% of cases.

Table 27

Judicial Reasons for Sentencing and Disposition Outcome

Variables	*B*	*SE (B)*	*Wald*	*Exp(B)*	Sig.
Block 1					
Pre-trial custody	1.588	.304	27.204	4.893	.000
Guilty plea	-.486	.211	5.319	.615	.021
Factors lowering culpability	-.831	.300	7.664	.435	.006
Collateral consequences	-.087	.322	.073	.788	.917
Meritorious conduct	.391	.278	1.969	1.478	.161
Disadvantaged background	-.448	.269	2.785	.639	.095
Health problems	-.229	.277	.686	.795	.408
Rehabilitative efforts	-.530	.247	4.581	.589	.032
Rehabilitative prospects	-.005	.198	.001	.995	.979
Block 2					
Pre-trial custody	1.263	.322	15.365	3.538	.000
Guilty plea	-.577	.221	6.793	.562	.009
Factors lowering culpability	-1.013	.318	10.111	.363	.001
Collateral consequences	.173	.339	.259	1.188	.611
Meritorious conduct	.346	.295	1.380	1.414	.240
Disadvantaged background	-.647	.287	5.089	.524	.024
Health problems	-.307	.292	1.104	.736	.293
Rehabilitative efforts	-.710	.264	7.253	.492	.007
Rehabilitative prospects	.045	.210	.046	1.046	.830
Factors increasing culpability	-.585	.252	5.394	.557	.020
Use or threaten violence	-.567	.239	5.637	.567	.018
Economic costs	.022	.330	.005	1.022	.946
Victim injury	-.501	.288	3.025	.606	.082
Planning and organization	-.610	.395	2.386	.543	.122
Multiple victims or incidents	-.576	.400	2.074	.562	.150
Previous convictions	-.543	.244	4.938	.581	.026
Prior relevant record	-.789	.274	8.311	.454	.004
Victim vulnerability	-.586	.275	4.536	.557	.033
Breach position of trust	-.098	.282	.121	.907	.728
Subject to conditions	-.602	.346	3.032	.548	.082
Use weapon	-.515	.297	3.004	.597	.083
Block 3					
Pre-trial custody	1.354	.328	17.008	3.874	.000
Guilty plea	-.584	.225	6.745	.558	.009
Factors lowering culpability	-.963	.324	8.861	.382	.003
Collateral consequences	.076	.346	.048	1.079	.827
Meritorious conduct	.298	.299	.994	1.347	.319
Disadvantaged background	-.736	.294	6.262	.479	.012
Health problems	-.308	.297	1.074	.735	.300
Rehabilitative efforts	-.843	.270	9.791	.430	.002
Rehabilitative prospects	.052	.213	.059	1.053	.808
Factors increasing culpability	-.755	.261	8.366	.470	.004

Table 27

Judicial Reasons for Sentencing and Disposition Outcome

Variables	*B*	*SE (B)*	*Wald*	*Exp(B)*	Sig.
Block 3					
Use or threaten violence	-.517	.242	4.575	.596	.032
Economic costs	.067	.335	.040	1.069	.842
Victim injury	-.438	.292	2.254	.645	.133
Planning and organization	-.607	.397	2.341	.545	.126
Multiple victims or incidents	-.516	.405	1.619	.597	.203
Previous convictions	-.545	.248	4.819	.580	.028
Prior relevant record	-.822	.278	8.774	.439	.003
Victim vulnerability	-.577	.277	4.324	.562	.038
Breach position of trust	-.090	.286	.099	.914	.753
Subject to conditions	-.753	.356	4.481	.471	.034
Use weapon	-.387	.301	1.649	.679	.199
Pre-/Post-*Gladue*	.564	.207	7.446	1.757	.006
Block 4					
Pre-trial custody	1.357	.329	17.036	3.886	.000
Guilty plea	-.576	.226	6.522	.562	.011
Factors lowering culpability	-.942	.326	8.346	.390	.004
Collateral consequences	.081	.345	.055	.815	1.084
Meritorious conduct	.247	.302	.671	1.281	.413
Disadvantaged background	-.691	.296	5.451	.501	.020
Health problems	-.281	.299	.885	.755	.347
Rehabilitative efforts	-.823	.270	9.264	.439	.002
Rehabilitative prospects	.070	.214	.108	1.073	.743
Factors increasing culpability	-.733	.261	7.869	.480	.005
Use or threaten violence	-.545	.243	5.024	.580	.025
Economic costs	.102	.337	.091	1.107	.763
Victim injury	-.470	.293	2.571	.625	.109
Planning and organization	-.619	.398	2.428	.538	.119
Multiple victims or incidents	-.471	.406	1.344	.625	.246
Previous convictions	-.615	.254	5.877	.540	.015
Prior relevant record	-.868	.281	9.579	.420	.002
Victim vulnerability	-.613	.279	4.825	.541	.028
Breach position of trust	-.076	.286	.070	.972	.791
Subject to conditions	-.719	.356	4.068	.487	.044
Use weapon	-.405	.302	1.791	.667	.181
Pre-/Post-*Gladue*	.569	.707	7.556	1.767	.006
Aboriginal status	-.296	.223	1.769	.744	.183

Note: Block 1 - χ^2 (9) = 57.526, p = .000; Block 2 - χ^2 (12) = 46.937, p = .000; Block 3 - χ^2 (1) = 7.573, p = .006; Block 4 - χ^2 (1) = 1.780, p = .182; Final - χ^2 (23) = 122.205, p = .000.

A second logistic regression, using the backward elimination procedure, was conducted to derive a statistically significant prediction model while maintaining fewer variables. Backward elimination rather than forward inclusion was selected as the method of stepwise regression because there is less risk of failing to find a relationship. In some cases, a variable may appear to have a statistically significant effect only when another variable is held constant. This is called a suppressor effect. One disadvantage to forward inclusion as a method for stepwise regression is the possible exclusion of variables involved in suppressor effects. With backward elimination, because all variables will already be in the model, there is less risk of failing to find a relationship (Menard, 1992).

The results of the final equation, shown in Table 28, indicate that the model classified 76.5% of cases as either being sentenced to a non-custodial or custodial disposition, χ^2 (14) = 104.464, p = .000. Consistent with what was observed in the hierarchical logistic regression, the results indicate that the most important variables for predicting whether an offender will be sentenced to a non-custodial or custodial disposition pertain to the aggravating and mitigating factors cited by judges in their sentencing decisions. The only new variable to significantly predict the disposition outcome in the backward elimination procedure was the aggravating factor, Breach Trust. In those cases where the judge cited a breach of a position of trust in the commission of the offence, offenders were significantly less like to receive a non-custodial disposition. Further, Aboriginal status did not significantly contribute to the variability in sentencing outcomes over these variables.

Table 28

Backward Elimination Procedure Predicting Disposition Outcome

Variables	*B*	*SE (B)*	*Wald*	*Exp(B)*	Sig.
Pre-trial custody	1.393	.323	18.641	4.027	.000
Guilty plea	-.595	.222	7.189	.552	.007
Factors lowering culpability	-.950	.317	8.961	.387	.003
Disadvantaged background	-.756	.289	6.870	.469	.009
Rehabilitative efforts	-.780	.264	8.703	.458	.003
Factors increasing culpability	-.734	.254	8.376	.480	.004
Use or threaten violence	-.594	.221	7.195	.552	.007
Victim injury	-.524	.272	3.723	.592	.054
Planning and organization	-.681	.391	3.037	.506	.081
Previous convictions	-.523	.239	4.784	.593	.029
Prior relevant record	-.720	.263	7.489	.487	.006
Victim vulnerability	-.649	.250	6.708	.523	.010
Breach trust	-.685	.344	3.979	.504	.046
Pre-/Post-*Gladue*	.592	.204	8.396	1.807	.004

Note: χ^2 (14) = 104.464, p = .000.

4.2.7.2 Aboriginal Status and the Principles of Sentencing

To investigate the role of Aboriginal status in sentencing decisions relative to the sentencing principles applied by judges, in addition to legally relevant characteristics of the offence and offender, two additional logistic regressions were calculated. Using the Bonferroni correction procedure, an initial level of significance of .05 was chosen and divided by the number of logistic regressions calculated (2), resulting in a critical value of .025. An examination of the obtained tolerance values for the predictor variables indicated that multicollinearity was not an issue in the current data. Expected cell frequencies for all pairs of categorical variables, including the dependent variable were also calculated to ensure adequate power. Because of these tests, variables describing the principles of incapacitation, reparation, and responsibility were not included in the logistic regression analyses due to extremely low cell frequencies.

First, a hierarchical logistic regression was conducted using nine independent variables to predict the dichotomous dependent variable, Sentencing Outcome (Non-Custodial/Custodial). Table 33 reports the regression coefficients (B), their standard errors, the Wald statistic and its corresponding significance value, and the odds ratio ([Exp]B) for each predictor variable as it was entered into the equation. Variables were entered in five blocks. A single variable pertaining to the offence, Offence Seriousness, was entered in the first block, followed by two variables describing characteristics of the offender – Prior Criminal History (Yes, No) and Prior Violent History (Yes, No). The Pre-/Post-*Gladue* variable and Aboriginal status (Aboriginal/Non-Aboriginal) were entered on the third and fourth blocks, respectively. Lastly, four variables related to the sentencing principles applied in the cases by the judge – Denunciation, General Deterrence, Specific Deterrence, and Rehabilitation – were entered in the fifth block[5]. All categorical variables were re-coded using the indicator procedure prior to entry. Offence

[5] The sentencing principle, Incapacitation, was not included in this analysis because there were cases in which Incapacitation was cited as a goal of sentencing wherein the offender received a non-custodial disposition.

seriousness was collapsed into three categories (1 = Moderate offences, 2 = Serious offences, 3 = Major offences).

Table 30 shows that offence seriousness was a strong predictor of sentencing outcome, correctly classifying offenders as being sentenced to a non-custodial or custodial disposition in 75.6% of cases, χ^2 (3) = 22.174, p = .000. Regression coefficients indicate that offenders convicted of major or serious offences were significantly more likely to receive a custodial disposition. The addition of variables describing the criminal history of the offender at Block 2 significantly increased the classification ability of the model, χ^2 (2) = 16.520, p = .000. Offenders with a prior criminal history were significantly more likely to receive a custodial disposition. A prior history of violent criminal offences, however, was not a significant predictor of sentencing outcome.

The addition of the Pre-/Post-*Gladue* variable at Block 3 also significantly increased the classification ability of the model to 77.5%, χ^2 (1) = 4.99, p = .025. The likelihood of a non-custodial disposition increased following the Supreme Court's decision in the *Gladue* (1999) case. Of particular interest, the addition of Aboriginal status at Block 4 resulted in marginally significant improvement in the classification ability of the model over that which was classified by offence seriousness and criminal history, χ^2 (1) = 3.421, p = .064. As shown in Table 30, Aboriginal offenders were marginally more likely to receive a non-custodial disposition than non-Aboriginal offenders.

At Block 5, the addition of the sentencing principles cited by judges in the cases, significantly increased the classification ability of the model, χ^2 (4) = 70.860, p = .000. In cases where the judge cited rehabilitation as a primary goal of sentencing, the likelihood of a non-custodial disposition significantly increased. Conversely, when specific deterrence was cited as a primary goal of sentencing, the likelihood of a non-custodial disposition decreased. Once the sentencing principles were added to the model, Aboriginal status was no longer a significant

predictor of sentencing outcome. A test of the full model with all nine independent variables was statistically significant, χ^2 (11) = 122.920, p = .000, indicating that the model, as a set, reliably distinguished between Non-Custodial and Custodial sentences. The variance accounted for by the model was moderate, Nagelkerke's R^2 = .312, with the full model accurately classifying 80% of cases.

A second logistic regression, using the backward elimination procedure, was also conducted. The results of the final equation are provided in Table 31. The results indicate that the most important variables for predicting whether an offender is administered a non-custodial or custodial disposition pertain to offence seriousness, criminal history, and the sentencing principles, χ^2 (7) = 121.04, p = .000. In addition, the likelihood of a non-custodial sentence significantly increased following the *Gladue* (1999) decision. As expected, the Aboriginal status of the offender did not significantly predict the disposition outcome.

Table 29

Sentencing Principles and Disposition Outcome

Variables	*B*	*SE (B)*	*Wald*	*Exp(B)*	Sig.
Block 1					
Offence seriousness					
Moderate offences	.181	.373	.235	1.198	.628
Serious offences	.999	.380	6.90	2.717	.009
Major offences	1.390	.480	8.397	4.013	.004
Block 2					
Offence seriousness					
Moderate offences	.346	.382	.822	1.414	.365
Serious offences	1.147	.391	8.624	3.149	.003
Major offences	1.391	.488	8.124	4.019	.004
Criminal history	.768	.270	8.118	2.156	.004
Violent criminal history	.164	.291	.319	.572	1.178
Block 3					
Offence seriousness					
Moderate offences	.395	.386	1.048	1.484	.306
Serious offences	1.196	.394	9.199	3.307	.002
Major offences	1.403	.492	8.148	4.068	.004
Criminal history	.795	.273	8.473	2.215	.004
Pre-/Post-*Gladue*	.477	.215	4.934	1.612	.026
Block 4					
Offence seriousness					
Moderate offences	.394	.386	1.046	1.484	.306
Serious offences	1.273	.397	10.272	3.572	.001
Major offences	1.427	.493	8.386	4.165	.004
Criminal history	.920	.284	10.495	2.508	.001
Violent criminal history	.277	.298	.865	1.319	.352
Aboriginal status	-.432	.237	3.372	.649	.066
Pre-/Post-*Gladue*	.490	.216	5.146	1.632	.023
Block 5					
Offence seriousness					
Moderate offences	.557	.428	1.693	1.746	.193
Serious offences	1.221	.438	7.770	3.390	.005
Major offences	1.508	.548	7.559	4.517	.006
Criminal history	1.345	.324	17.262	3.838	.000
Violent criminal history	.013	.335	.002	1.013	.968
Aboriginal status	-.099	.265	.140	.906	.709
Pre-/Post-*Gladue*	.549	.242	5.144	1.731	.023
Denunciation	-.301	.281	1.147	.740	.284
General deterrence	-.180	.369	.238	.835	.625
Specific deterrence	1.032	.342	9.099	2.807	.003
Rehabilitation	-1.082	.375	18.802	.223	.000

Note: Block 1 - χ^2 (3) = 22.174, p = .000; Block 2 - χ^2 (2) = 16.520, p = .000; Block 3 - χ^2 (1) = 4.99, p = .025; Block 4 - χ^2 (1) = 3.421, p = .064; Block 5 - χ^2 (4) = 70.860, p = .000; Final - χ^2 (23) = 122.920, p = .000.

Table 30

Sentencing Principles and Backward Elimination Procedure Predicting Disposition Outcome

Variables	*B*	*SE (B)*	*Wald*	*Exp(B)*	Sig.
Offence seriousness					
Moderate offences	.489	.421	1.346	1.631	.246
Serious offences	1.133	.428	6.996	3.104	.008
Major offences	1.448	.544	7.098	4.255	.008
Criminal history	1.348	.256	27.677	3.851	.000
Pre-/Post-*Gladue*	.617	.235	6.912	1.854	.009
Specific deterrence	1.033	.333	9.612	2.808	.002
Rehabilitation	-1.447	.284	26.906	.243	.000

Note: χ^2 (7) = 121.04, p = .000

4.2.8 Aboriginal Status and Sentence Length

The purpose of the second set of analyses was to determine the effect of Aboriginal status on the sentence length administered in cases relative to characteristics of the offender and the offence, reasons cited for sentencing, and the *Criminal Code* (1985) sentencing principles. Data included only cases where the offender was sentenced to a period of incarceration (n = 538). On average, offenders in this sample were sentenced to 1226.52 days (SD = 1541.05) of incarceration. Two multiple linear regressions were calculated to investigate the independent contribution of several variables to the determination of the dependent variable, Sentence Length (in days).

4.2.8.1 Aboriginal Status and Reasons for Sentencing

The first analysis examined the role of Aboriginal status in the determination of sentence length relative to those aggravating and mitigating factors cited by judges. Prior to conducting analyses, assumptions underpinning the use of multiple regression, including multicollinearity, normality, linearity, homoscedasticity, and the presence of outliers, were tested. Results of the evaluation of these assumptions led to the logarithmic transformation of Sentence Length to reduce skewness and to improve the normality, linearity, and homoscedasticity of residuals. With the use of a $p < .001$ criterion for Mahalanobis distance no outliers among the cases were found. Obtained tolerance values indicated that multicollinearity was not an issue. Twenty-three independent variables describing the aggravating and mitigating factors cited by the judge, the sentencing year, and the Aboriginal status of the offender were used to predict sentence length[6].

Table 32 reports the standardized regression coefficients and their corresponding t-values for all independent variables included in the model. A test of the regression model with all 23 independent variables was statistically significant, F (23, 485) = 7.730, p = .000, indicating that the model, as a set, reliably predicted Sentence Length. The predictive ability of the model was

[6] The same independent variables used in the prior logistic regression analyses were used in these analyses.

moderate (R^2 = .28, R^2_{adj} = .24), with the predictor variables accounting for 24% of the observed variance in Sentence Length. As shown in Table 32, eleven of the independent variables contributed significantly to the prediction of Sentence Length. Only two mitigating factors were significantly associated with the sentence length administered in cases. Offenders who suffered judicially acknowledged collateral consequences because of their conviction received shorter sentences (M = 2.83, SD = .57) than offenders who did not suffer any such collateral consequences (M = 2.52, SD = .53). Judges also administered significantly shorter sentences when the rehabilitative prospects of the offender were considered positive (M = 2.69, SD = .56) than when such prospects were absent (M = 2.87, SD = .58).

The results in Table 32 indicate that aggravating factors, however, played a much greater role in the determination of sentence length. Several elements of offence seriousness significantly predicted sentence length. Offenders who used a weapon in their index offence received significantly longer sentences (M = 2.92, SD = .53) than those offenders who did not use a weapon (M = 2.78, SD = .60). Similarly, in cases where the judge cited victim injury, multiple victims or incidents, and planning and organization as aggravating factors, offenders received significantly longer sentences than what was observed in cases where these aggravating factors were not cited. The criminal history of the offender also significantly predicted sentence length. Offenders with a prior criminal record (M = 2.88, SD = .54) or a prior relevant record (M = 2.92, SD = .53) received significantly longer sentences than offenders in cases where no criminal record (M = 2.77, SD = .59) or relevant record (M = 2.77, SD = .58) was advanced. Interestingly, in cases where the judge cited financial costs or motives as an aggravating factor, offenders received significantly shorter sentences (M = 2.73, SD = .57) than what was observed in cases where financial costs or motives were not cited (M = 2.82, SD = .57). Consistent with expectations, Aboriginal status did not significantly predict the sentence length administered in cases.

Table 31

Judicial Reasons for Sentencing and Sentence Length

Variable	Std.-*B*	*t*-value	*p*-value
Aboriginal status	-.034	-.786	.432
Pre-/Post-*Gladue*	.042	1.014	.311
Pre-trial custody	-.083	-1.905	.057
Guilty plea	.058	1.399	.162
Factors lowering culpability	.055	1.330	.184
Collateral consequences	.093	2.285	.023
Meritorious conduct	.043	1.039	.299
Disadvantaged background	-.014	-.339	.735
Health problems	-.003	-.071	.944
Rehabilitative efforts	.002	.042	.967
Rehabilitative prospects	.146	3.458	.001
Factors increasing culpability	.161	3.874	.000
Use or threaten violence	.126	2.778	.006
Economic costs	.132	2.819	.005
Victim injury	.270	6.067	.000
Planning and organization	.214	5.060	.000
Multiple victims or incidents	.216	5.061	.000
Previous convictions	.127	2.849	.005
Prior relevant record	.177	4.078	.000
Victim vulnerability	.191	4.122	.000
Breach position of trust	.034	.726	.468
Subject to conditions	-.021	-.488	.626
Use weapon	.135	3.094	.002

Note: F (23, 485) = 7.730, p = .000

4.2.8.2 Aboriginal Status and the Sentencing Principles

The second analysis examined the role of Aboriginal status in the determination of sentence length relative to the sentencing principles applied by judges, and legally relevant characteristics of the offence and offender. Prior to conducting analyses, assumptions underpinning the use of multiple regression, including multicollinearity, normality, linearity, homoscedasticity, and the presence of outliers, were tested. Consistent with the prior multiple regression analysis, results of the evaluation of these assumptions led to the logarithmic transformation of Sentence Length to reduce skewness and to improve the normality, linearity, and homoscedasticity of residuals. There were no problems with either outliers or multicollinearity.

Table 33 reports the standardized regression coefficients and their corresponding *t*-values for all independent variables included in the model. A test of the regression model with all 10 independent variables was statistically significant, $F(10, 395) = 13.992$, $p = .000$, indicating that the model, as a set, reliably predicted Sentence Length. The predictive ability of the model was moderate ($R^2 = .27$, $R^2_{adj} = .25$, with the predictor variables accounting for 25% of the observed variance in Sentence Length. As shown in Table 33, three of the independent variables significantly predicted Sentence Length. Consistent with past research examining determinants of sentencing decisions, offence seriousness and criminal history significantly predicted Sentence Length. Offenders convicted of major offences ($M = 3.01$, $SD = .46$) and serious offences ($M = 2.99$, $SD = .48$) were administered longer sentences than offenders convicted of moderate offences ($M = 2.57$, $SD = 0.540$ or minor offences ($M = 2.16$, $SD = 0.67$). Offenders with a prior history of violent offences received longer sentences ($M = 2.96$, $SD = 0.50$) than offenders with no such history ($M = 2.69$, $SD = 0.59$). In addition, in those cases where judges cited the principle of incapacitation as a goal of sentencing, offenders received longer sentences ($M = 3.14$, $SD = 0.56$) than in cases where this sentencing goal was not applied ($M = 2.73$, $SD = 0.52$).

Table 32

Sentencing Principles and Sentence Length

Variable	Std.-*B*	*t*-value	*p*-value
Offence seriousness	-.351	-7.756	.000
Prior criminal history	-.036	-.643	.521
Prior violent history	-.151	-.2608	.009
Aboriginal status	.044	.930	.353
Pre-/Post-*Gladue*	.024	.529	.597
Denunciation	-.063	-1.311	.191
General deterrence	-.093	-1.576	.116
Specific deterrence	.029	.634	.521
Incapacitation	-.209	-3.923	.000
Rehabilitation	.053	.960	.338

Note: $F(10, 395) = 13.992, p = .000$

4.2.9 Aboriginal Status as a Mitigating Factor

To further investigate the impact of Section 718.2(e) of the *Criminal Code* (1985), information was also collected regarding the judicial consideration of Aboriginal status in sentencing decisions. As shown in Table 34, Aboriginal status was given consideration by the judge in approximately half of those sentencing cases involving an Aboriginal offender (49.1%, n = 181). Of those cases where Aboriginal status was considered as a mitigating factor, judges cited the background and systemic factors of Aboriginal people as a justification for a non-custodial disposition in 21.7% of sentencing decisions (n = 39). In an additional 29.9% of sentencing decisions involving Aboriginal offenders (n = 35), the judge cited the Aboriginal status of the offender as a justification for a custodial sentence that was shorter in length than what might be observed in similar cases. Although the logistic regression procedure is relatively free of statistical assumptions regarding its use, logistic regression analyses may produce large parameter estimates and standard errors when there are too few cases relative to the number of predictors (Tabachnick & Fidell, 2001). Due to the smaller number of cases where Aboriginal status served as a justification for a non-custodial disposition, no further analyses were conducted to determine the differential contribution of various sentencing factors to judges' decisions.

Table 34 also displays information pertaining to the judicial consideration of the Supreme Court of Canada's *Gladue* (1999) decision. The *Gladue* case was cited in 21.6% of sentencing decisions included in the sample (n = 138). In the majority of those sentencing cases, the *Gladue* case was mentioned in the judges' review of relevant caselaw (60.1%, n = 83), while an additional 27.5% of cases (n = 38) followed the Supreme Court's decision. Only 10 judges (5.1%) distinguished their case from the Supreme Court's decision in *Gladue.*

Table 33

The Mitigating Impact of Aboriginal Status

Variable	Frequency	Percentage
Aboriginal Status – Mitigating Factor		
Yes	181	49.1
No	185	50.1
Aboriginal Status – Non-Custodial Sentence		
Yes	39	21.7
No	141	78.3
Aboriginal Status – Shorter Sentence		
Yes	35	29.9
No	82	70.1
Gladue (1999) Decision – Cited in Case		
Yes	138	21.8
No	496	78.2
Gladue (1999) Decision – Judicial Citation		
Followed	38	27.5
Distinguished	7	5.1
Explained	10	7.2
Mentioned	83	60.1

5 CHAPTER FIVE: DISCUSSION AND CONCLUSION

The general purpose of the current study was to examine the effectiveness of the Bill C-41 sentencing reforms, particularly Section 718.2(e), with regard to Aboriginal overrepresentation. Government statistics and empirical research has long documented that Aboriginal people account for a much higher proportion of Canada's inmate population than would be expected by looking only at their relative proportion in the general population (Public Safety and Emergency Preparedness Canada, 2003). To determine the effectiveness of the recent sentencing reforms, the first study examined incarceration rates in the province of British Columbia over a several year period before and after the introduction of Bill C-41. A second study was conducted to examine judges' reasons for sentencing in a sample of Canadian cases to determine the role of Aboriginal status in sentencing decisions relative to other legally relevant factors. To provide a thorough review of the findings of these two studies and their meaning in the larger Aboriginal criminal justice literature, this section begins with a summary and interpretation of the major findings of both studies, followed by a discussion of the policy implications for the criminal justice system. The discussion concludes with a review of the limitations of this research and suggestions for future research directions.

5.1 Summary and Commentary on Major Findings

5.1.1 Incarceration Rates in British Columbia

Canadian Parliament's explicit intent in signalling out Aboriginal offenders for distinct sentencing treatment in Section 718.2(e) of the *Criminal Code* (1985) was to address the disproportionate representation of Aboriginal peoples in Canadian correctional facilities (Hansard, 1994). The results of the current study, however, demonstrate that neither overall

incarceration rates nor Aboriginal incarceration rates in British Columbia have declined significantly since the introduction of the Bill C-41 sentencing reforms in 1996. Contrary to expectation, even when controlling for offence seriousness and criminal history, there was no significant decline in the incarceration rate of Aboriginal offenders.

The data from this study show that both overall incarceration rates and Aboriginal incarceration rates did indeed decline initially following the implementation of Bill C-41 in September 1996. However, this change was temporary. Over time, the incarceration rates increased back to similar levels observed prior to the introduction of the sentencing reforms. Similar patterns have been observed in other studies of legal reforms. Luckey and Berman (1979), for instance, reported that involuntary civil commitment rates experienced initial declines following the adoption of new commitment standards in Nebraska, followed by a return to pre-reform levels.

There are several possible explanations for the failure to observe any significant reduction in British Columbia incarceration rates. First, judges may have been uncertain about the applicability of Section 718.2(e) and the extent to which Aboriginal status should be considered in sentencing decisions. Although Section 718.2(e) has largely been considered Parliament's direction to Canadian judges to remedy Aboriginal overrepresentation, the meaning and scope of this *Criminal Code* provision was untested for the majority of the post-reform period included in the current study. *Gladue* (1999) provided the Supreme Court of Canada its first opportunity to interpret Section 718.2(e). According to Roach and Rudin (2000), a number of stereotypes and myths about Aboriginal offenders may have affected the way Section 718.2(e) was administered prior to the *Gladue* case. The trial judge in *Gladue*, for example, ruled that there were no special circumstances arising from Gladue's Aboriginal status because she was living off reserve in an urban centre. Thus, Section 718.2(e) may have been applied inconsistently across sentencing decisions or considered irrelevant to the circumstances of some Aboriginal offenders.

Another factor that may account for the failure of Section 718.2(e) to reduce Aboriginal incarceration rates in British Columbia may be public and political opposition to the provision. Though the provision received support from some political and Aboriginal leaders during its development, it was less well received by other political parties who raised concerns about a "two-tiered sentencing system" and reverse discrimination (Hansard, 1994). Section 718.2(e) has also been subject to much criticism in the Canadian media. The Joel Libin assault, which occurred in August 2000, in Vancouver, British Columbia, prompted several negative editorials regarding Section 718.2(e) (Vancouver Sun, 2001). Such negative publicity has not subsided as recent sentencing cases and subsequent editorial responses have continued to express disagreement with the "dumb judicial exercise [it is] to parse culpability according to race" (Vancouver Sun, 2004, p. B1). Surveyed Canadian judges have in fact acknowledged that before imposing a conditional sentence they consider the possible impact that such a disposition might have on the public's opinion of the administration of justice (Roberts & LaPrairie, 2000; Roberts, Doob, & Marinos, 2000).

Nonetheless, the extent to which courts, as part of the independent judiciary, have been influenced by the unpopularity of Section 718.2(e) is most likely limited (Roach & Rudin, 2000; Turpel-Lafond 1999). Judges in the Canadian criminal justice system have always enjoyed considerable discretion in their professional capacities and this discretion is protected by security of tenure, financial security, and institutional independence (*Valente* v. *The Queen*, 1985). Public criticism of sentences administered by Canadian judges has also certainly not been limited to the Section 718.2(e) provision (Roberts & Stalans, 2000). In addition, there is some indication that support for judicial sentencing decisions does increase when members of the public are provided with more information. A growing body of research shows that when confronted with a specific case, or when given more information about the facts of the case, the average layperson becomes increasingly less punitive (e.g., Roberts & Doob, 1990). Recent research has also found that when

the financial situation of Aboriginal people in Canada and/or their over-representation in prisons was made salient, surveyed participants indicated that they were in support of Section 718.2(e) (Dioso & Doob, 2001).

A third factor to take into consideration when explaining the incarceration patterns observed in the current study is the availability of community resources. Simply put, a lack of community resources, particularly adequate supervisory resources, and community-based programs may account for the failure to observe reductions in both overall and Aboriginal incarceration rates. Across Canada, the availability of community treatment and supervisory resources varies widely (Cole, 1999). Further, some studies suggest that an absence of such resources in the community may have negative effects upon community dispositions. A study of probationary measures in remote Canadian regions, for example, reported that the ability to enforce supervisory conditions was significantly reduced in the absence of community-based programs (Griffiths, Zellerer, Wood, & Saville, 1995).

Recent Canadian sentencing decisions also suggest that the availability of necessary community resources will play an important role in trial judges' decisions to implement community sanctions. In *R.* v. *Proulx* (2001), the Supreme Court of Canada stated that when deciding if restorative sentencing objectives can be achieved in a particular case, "the judge should consider the offender's prospects of rehabilitation, including whether the offender has proposed a particular plan of rehabilitation[, and] the availability of appropriate community service and treatment programs" (para.113). The Alberta Court of Appeal has also expressed concerns regarding the use of conditional sentences in light of insufficient community resources (*R.* v. *Brady*, 1998). Finally, a recent survey of Canadian judges reported that some judges take into consideration the presence of support resources when deciding to implement conditional sentences (Roberts & LaPrairie, 2000; Roberts et al., 2000). Given that some Aboriginal communities are geographically isolated and are characterized by high unemployment, lack of

resources, and high levels of crime and disorder (Solicitor General of Canada, 1998), sentencing judges may feel pressured to rely on incarceration rather than community-based sanctions.

Fourth, the introduction of the conditional sentence of imprisonment itself may indirectly be contributing to the steady incarceration rates of Aboriginal offenders. Some legal scholars have suggested that conditional sentences may have the unintended consequence of net widening and, as a result, increasing the incarceration rate in Canada (Roach, 2000). According to the net-widening hypothesis, judges may be applying conditional sentences to offenders who would not normally have been subjected to actual imprisonment and, in some cases, to offenders who might normally be subject less serious sanctions (Roberts 1999). Courts have made serious strides to present the conditional sentence as a punitive sanction. The Supreme Court of Canada has stated that that the length of a conditional sentence can sometimes be longer than an actual term of imprisonment, and that the supervisory conditions should be more stringent than those conditions imposed for probation (Healy, 2000; *R.* v. *Proulx*, 2000).

The net widening consequences of conditional sentences may be particularly salient for Aboriginal offenders. Roach (2000) has suggested that trial judges, in an effort to remain consistent with the Supreme Court's directions, may be tempted to impose strict conditions on Aboriginal offenders. In addition, the conditions may be imposed for a lengthy period of time because of the serious needs presented by many Aboriginal offenders (Pelletier, 2001). As the severity and length of the conditions increases, the chance for breach also increases. Canadian courts may be "setting up" Aboriginal offenders for failure in the community; that is, Aboriginal offenders may be disproportionately subject to be breached and to be breached at an earlier stage of their conditions because of a variety of factors including systemic discrimination in policing and parole (Roach, 2000). Following the Supreme Court's presumption in Proulx (2000), trial judges will now be encouraged to require Aboriginal offenders who have breached to serve the rest of their conditional sentence in jail. Based on the dataset provided by the Ministry of the

Attorney General (British Columbia), 583 offenders were incarcerated for breaching conditional release. Of those offenders, approximately 25% (24.9%, $n = 133$) were Aboriginal offenders.

5.1.2 The Role of Aboriginal Status in Judges' Sentencing Decisions

The introduction of Section 718.2(e) to the *Criminal Code* (1985) and the Supreme Court of Canada's subsequent ruling in the *Gladue* (1999) case have placed an onus on Canadian judges to consider the "unique systemic or background factors" of Aboriginal peoples during the sentencing process. As such, the second goal of the current study was to examine the extent to which Aboriginal status was correlated with judges' sentencing decisions relative to legally relevant offender and offence characteristics and sentencing principles that have traditionally guided the sentencing process. Among criticisms of criminal justice processing of Aboriginal people, it has been suggested that Aboriginal accused are more likely to receive a term of incarceration. As hypothesized, however, Aboriginal offenders were not more likely to be incarcerated than non-Aboriginal offenders in the current study. Further, Aboriginal status did not significantly predict the likelihood of receiving a custodial or non-custodial disposition relative to both those aggravating and mitigating factors cited by judges, and the sentencing principles applied in cases.

In addition to the type of disposition, sentencing judges must also decide the severity or length of disposition to administer. To date, the majority of Canadian sentencing research suggests that those Aboriginal offenders who are incarcerated do not receive significantly longer sentences and may in fact receive shorter sentence lengths as compared to non-Aboriginal offenders (Bonta, 1992; Canfield & Drinnan, 1981; Moyer et al., 1985). Consistent with these findings, there were no significant differences in the sentence lengths between Aboriginal and non-Aboriginal offenders. The comparative analysis of Aboriginal and non-Aboriginal offenders in British Columbia, matched on sentencing year, index offence, and criminal history, revealed no significant differences in sentence length. Offence seriousness accounted for observed differences

in the length of incarceration. Similarly, Aboriginal offenders in the Quicklaw sample of sentencing decisions were not incarcerated for significantly longer periods than non-Aboriginal offenders.

Although there were no significant differences observed in the custodial sentence length administered to offenders, Aboriginal offenders were significantly more likely to be placed on a probationary period in addition to a period of incarceration (two years less a day). To date, no published Canadian study has taken into account the combined effects of a probationary and a custodial disposition. Nonetheless, in cases where a judge sentences an offender to a custodial term of less than two years, he or she may also administer a probationary period to follow the custodial term, for up to three years, thereby significantly increasing the amount of time an offender is regulated by supervisory conditions. This may provide some additional support for an indifferent form of differential treatment of Aboriginal peoples in the criminal justice system. In an early study of sentencing, Bienvenue and Latif (1974) reported that Aboriginal offenders were disproportionately issued fines by sentencing judges, which they suggested was an indirect form of discrimination as Aboriginal offenders were less able to complete payments.

Despite the best intentions of Bill C-41 and, specifically, Section 718.2(e), the current results suggest that Aboriginal status does not play a direct role in judges' sentencing decisions. There are several possible explanations to account for the failure of Aboriginal status to predict judges' sentencing decisions. First, contrary to public and political concerns that Section 718.2(e) implies "cultural sentencing" or reverse discrimination, the Supreme Court of Canada has stressed that this sentencing provision does not imply an automatic non-custodial sentence or reduction in prison sentence for Aboriginal offenders (*R.* v. *Gladue*, 1999). It is not Aboriginal status itself that is intended to guide judges' sentencing decisions. Rather judges have been instructed to take into consideration those factors or conditions associated with Aboriginal criminality, including cultural dislocation, economic deprivation, high unemployment rates, lack

of opportunity, substance abuse, family disruption, and community fragmentation. The results of the current study suggest that judges may indeed be taking these "systemic and background factors" into account during sentencing. In those sentencing decisions where judges cited an offender's disadvantaged background as a mitigating factor, for instance, offenders were significantly more likely to receive a non-custodial disposition.

As pointed out by Stenning and Roberts (2001), however, those "systemic and background factors" listed by the Supreme Court of Canada are not necessarily unique to Aboriginal offenders, which may explain the failure to observe a direct impact of Aboriginal status. High rates of unemployment, substance abuse, physical and sexual victimization, and low levels of educational attainment have been frequently observed among a substantial proportion of the Canadian inmate population. Aboriginal offenders report these problems at much higher rates than non-Aboriginal offenders, but they are not unique problems. In a Correctional Service of Canada survey of family disruption, for example, approximately two-thirds of Aboriginal inmates said they were adopted or placed into foster care as compared to approximately one-third of non-Aboriginal inmates (Trevethan, Auger, Moore, MacDonald, & Sinclair, 2001). Judges have considered the disadvantaged background of the offender to be a potential mitigating factor at sentencing in common law prior to the introduction of Bill C-41. One could argue that many of the "systemic and background factors" discussed by the Supreme Court of Canada have traditionally been considered by sentencing judges and, thus, there may be no reason to expect significant changes in sentencing decisions.

Perhaps the most unique aspect of the Supreme Court's decision in *Gladue* (1999) was the attention drawn to the discrimination, alienation, and cultural dislocation experienced by Aboriginal peoples. The Supreme Court of Canada has acknowledged the widespread discrimination experienced by Aboriginal peoples in past decisions (*R.* v. *Williams*, 1998). In addition, the negative experiences of Aboriginal peoples in Canada's residential school programs,

for example, are well documented (Trevethan et al., 2001; Manitoba Aboriginal Justice Inquiry, 1991). Sentencing judges, however, may have difficulty determining how much weight to place on these unique Aboriginal experiences when deciding upon an appropriate disposition. In other words, judges may be uncertain about how these experiences translate into a proportionate punishment as compared to problems with unemployment or substance abuse, where existing case law may set out acceptable sentencing parameters.

Aboriginal status may also have an indirect effect on sentencing outcomes that is mediated by both demographic and criminal history variables. In a study of sentencing in western Canada, Hagan (1975) reported that prior criminal history and lower socioeconomic status were directly associated with sentencing outcome and, as a result of differences on these factors, Aboriginal offenders were more likely to be incarcerated. In the current study, there were several clear indicators of the marginalized status of Aboriginal offenders. Results indicated that Aboriginal offenders had a significantly lower level of educational attainment, higher levels of unemployment at the time of their arrest, and more prominent problems with substance abuse.

Judicial consideration of these systemic factors, as prescribed by Section 718.2(e), may pose indirect problems for Aboriginal offenders. Simply put, given the significant problems experienced by a number of Aboriginal offenders, judges may deem community-based dispositions, such as probation, to be an inappropriate means of supervision. This problem may be further exacerbated by a lack of access to treatment centres, healing lodges, and other community resources, particularly in remote Aboriginal communities (Pelletier, 2001). Sentencing judges may consider the level of supervision and access to rehabilitative programs available in correctional facilities to be necessary for the successful rehabilitation of some Aboriginal offenders. This may also account for the increased likelihood of Aboriginal offenders to receive a probationary period subsequent to a custodial disposition.

The present results suggest that, with respect to sentencing decisions, judges are relying heavily upon those aggravating and mitigating factors that have been developed through common law, and the sentencing principles outlined in the *Criminal Code* (1985). The majority of sentencing research has identified the important of offence seriousness and criminal history in determining the outcome of the sentencing process (Roberts, 1997). Not surprisingly then, several aggravating factors significantly predicted disposition outcome in the current study. Offenders with a criminal record or a prior relevant record were significantly more likely to be sentenced to incarceration. This is consistent with other Canadian sentencing studies. Research on the preparation of pre-sentence reports, for example, has shown that primary emphasis is placed on the number of prior convictions when making recommendations for incarceration (Boldt et al., 1983).

The seriousness of the offence also played an important role in judges' decisions to sentence offenders to a period of incarceration. Consistent with past research, those offenders who either used violence or threatened violence in their current offence were significantly more likely to be incarcerated. The coding of aggravating factors cited by judges also provided some interesting insight into other aspects of the offence that may influence its perceived seriousness. For those offences where the victim was considered to be vulnerable or prone to victimization, such as children, offenders were significantly more likely to be incarcerated. Other factors deemed by the judge to increase moral culpability or blameworthiness, including offences involving deliberate risk-taking, home invasions, or confinement of victims, also increased the likelihood of a custodial disposition.

Interestingly, aggravating factors appeared to play an even greater role in the judges' determination of an appropriate sentence length. Contrary to some observations in the sentencing literature which have suggested that criminal history plays a greater role in the decision to incarcerate an offender than in the determination of sentence length (Spohn, 2002), offenders in

the current study with either a prior conviction or a prior relevant record received significantly longer prison sentences. This difference across the research findings could perhaps be due to an increased consideration of risk assessment literature and the importance of criminal history as a risk marker. In addition to the criminal history of the offender, several factors describing the seriousness of the offence also predicted sentence length. For those offences where there were multiple victims, a weapon was used, violence was used or threatened, serious victim injury was present, the victim was considered vulnerable, or the victim suffered economic loss as a result of the crime, the offender received a significantly longer prison sentence.

Several mitigating factors significantly predicted the disposition administered in the sentencing cases sampled in the current study. Consistent with past findings in sentencing research (Albonetti, 1997; Spohn, 2002; Uhlman & Walker, 1980), offenders who plead guilty were significantly more likely to receive a non-custodial disposition than those offenders who opted for a trial. Given the benefits a guilty plea presents for the administration of justice (Auditor General of Canada, 2002), judges have traditionally considered a guilty plea as a mitigating factor and, as such, this result is not surprising (Manson et al., 2000).

Existing sentencing research has also found that defendants held in jail prior to trial are significantly more likely to be incarcerated following conviction (Chiricos & Bales, 1991; Spohn & DeLone, 2000). This finding was replicated in the current study, as offenders who were detained prior to their trial proceedings were significantly more likely to receive a custodial disposition. Although accused individuals have a constitutional right to be presumed innocent (*Canadian Charter of Rights and Freedoms*, Section 11(d), 1982), this right is not absolute and, in fact, the *Criminal Code* (19850 outlines those circumstances under which a judge can deny bail. Section 515(10) of the *Code* (1985) allows a judge to deny bail where the detention is necessary to ensure the accused's attendance in court, where the detention is necessary for public safety, or where the detention is necessary in order to maintain confidence in the administration

of justice. Perhaps those offenders who are more likely to be denied bail and serve time in custody while awaiting trial and sentencing also present with more aggravating or risk factors at the sentencing phase, which may account for their increased likelihood of being incarcerated.

Judges also appeared to have taken into consideration those factors or characteristics that lowered the moral culpability of the offender, or provided an indication that the offender was an ideal candidate for a community-based disposition. As previously mentioned, in those cases where available information suggested that the offender had been raised in a disadvantaged background, judges were significantly more likely to use a non-custodial disposition. Under these circumstances, judges may have considered rehabilitation to be of greater importance than retribution or punishment. Other factors deemed by the judge to lower the moral culpability or blameworthiness of the offender, including provocation or the absence of victim injury, also decreased the likelihood of a custodial disposition. Offenders that had made efforts at addressing their criminogenic needs while awaiting sentencing were also significantly less likely to be incarcerated.

Only two mitigating factors cited by judges significantly predicted the length of sentence. In those cases where the judge considered collateral consequences of the offender's conviction, such as the loss of employment, financial hardships, or loss of community stature, offenders received significantly shorter sentences. Under these circumstances, it is likely that in deciding upon a fit or proportionate sentence, judges may feel that there is less need for a long period of incarceration to achieve a significantly deterring punishment. The rehabilitative prospects of the offender were also considered to be important by judges when deciding upon the length of punishment. For example, in cases where the judge cited the young age of the offender, the availability of community resources and support networks, and adequate educational or employment skills, offenders received significantly shorter sentences. Thus, judges may have decided that these offenders required a period of incarceration to satisfy the principles of

sentencing, but given the presence of certain factors that were deemed to increase their reintegration potential, the length of incarceration did not need to be onerous.

With respect to the sentencing principles described in Section 718 of the *Criminal Code* (1985), only the presence of principles of rehabilitation and specific deterrence significantly predicted the disposition outcome. In cases where judges cited the principle of rehabilitation as a salient goal of sentencing, offenders were significantly less likely to be incarcerated. Many studies have noted that successful treatment outcomes are observed more frequently in community-based treatment programs as opposed to correctional rehabilitative programs (Losel, 1996). Not surprisingly then, judges may opt for a community-based disposition, such as probation or a conditional sentence, if they believe that the rehabilitation of the offender should take precedence in the sentencing decision. Comparatively, when judges considered the specific deterrence of the offender as an important goal in particular cases, offenders were significantly more likely to be incarcerated. Generally, judges cited specific deterrence when the offender had a prior criminal record, thus, it is not surprising that the importance of this sentencing principle would coincide with the use of incarceration.

Only the goal of incapacitation or separation significantly predicted the length of incarceration. Incapacitation is most often cited in cases involving high-risk offenders or offenders convicted of particularly violent crimes; in these cases, the goal of protecting the public takes precedence over all other sentencing principles (Manson, 2000; Manson et al., 2000). For instance, in all cases where the judge cited the need for incapacitation, the offender was incarcerated. Given the emphasis on public protection in these cases, it is not surprising that these offenders would receive significantly longer sentences.

General deterrence and denunciation, the two most frequently cited sentencing principles, did not significantly predict either the type of disposition or the length of incarceration. While this may seem surprising at first, it is important to consider that both deterrence and denunciation are

common sentencing goals that might apply across a wide range of circumstances in sentencing cases. Further, according to judges, the type of sentence that may successfully achieve either general deterrence or denunciation can widely vary across cases. The Supreme Court of Canada has stated, for example, that community-based dispositions can achieve the goal of deterrence, if appropriate supervisory conditions are enforced (*R.* v. *Proulx*, 2000; *R.* v. *Wells*, 2000). In some cases, general deterrence or denunciation may be achieved by a conditional sentence or probation, whereas in other cases, these principles may only be achieved by a period of incarceration. This suggests that the importance of general deterrence and denunciation in predicting particular sentencing outcomes would depend in large part upon the individual circumstances of each case.

A final issue that was raised by the findings related to the sentencing principles concerns the use of the restorative sentencing principles. When the sentencing principles were codified in 1996, Bill C-41 also introduced restorative justice concepts of restoration and responsibility to the *Criminal Code* (1985). The introduction of these sentencing objectives was consistent with the overall goal of encouraging judges to increasingly rely on community-based approaches to criminal justice. Nonetheless, the current study suggests that judges in their sentencing decisions discussed these restorative objectives infrequently. Surveys of Canadian judges suggest that the absence of resources and mechanisms to achieve restoration, for example, may be affecting the extent to which these principles are considered (Roberts & LaPrairie, 2000; Roberts et al., 2000).

5.2 Limitations

There are a few limitations of this study that may impact the conclusions and the generalizations that can be drawn from these results. The principal limitation of this research is that the timeframe of Study 1 ends too early. Although the number of monthly observations included in the time-series design were satisfactory for the purposes of conducting the analyses, the post-reform period following the implementation of Bill C-41 was rather abrupt, ending in April 2000. Any evaluation of the impact of Bill C-41 and, specifically, Section 718.2(e) of the

Criminal Code (1985), must take into consideration that there were several questions regarding the interpretation and application of these sentencing reforms that were largely left unanswered until the Supreme Court of Canada's *Gladue* decision in 1999. It can be argued that it takes much longer that a few months for the Supreme Court judgment to have an effect. A good example of this point is that only one in five cases included in the Quicklaw dataset for Study 2 cited *Gladue* (1999). Further, there have been several Supreme Court decisions that have more clearly defined the applicability of non-custodial sanctions for particular offences (e.g., violent offences) (*R.* v. *Proulx*, 2000; *R.* v. *Wells*, 2000). The time period incorporated in the current study would not account for any potential impact these court decisions would have on incarceration rates.

The inclusion of data from only one province (British Columbia) further limits the generalizability of the current study's results. There are a number of reasons to expect some variations in sentencing patterns across provinces. Criminal court judges are granted, by statue and precedence, considerable latitude in selecting sanctions for convicted offenders. Not surprisingly then, there is considerable variation among major urban areas across Canada in the extent to which incarceration is used as a sanction. Prince Edward Island and Ontario, for example, were more likely to sentence offenders to prison for the most serious offence in the case in 2000-2001 (59% and 41%, respectively) than Nova Scotia or Saskatchewan (24% and 22%, respectively) (Thomas, 2002). Although sentencing decisions from across Canada were incorporated in the second study, given the nature of the Quicklaw dataset, it is not possible to make generalizations regarding patterns of incarceration.

At the outset of this study, it was suggested that the criminal history of Aboriginal offenders might account to some extent for the disproportionately larger incarceration rates observed in Canada. Although criminal history and offence seriousness were incorporated in the analyses of incarceration rate patterns in British Columbia, there were problems with these measures that raise internal validity concerns. The most obvious problem with the measure of

criminal history was that it was based on the Provincial Case File system in British Columbia. This dataset would only include arrests and convictions within the province and, thus, offenders with criminal convictions in other provinces would have "No Criminal History," according to this dataset. Offence seriousness was based on the *Criminal Code* (1985) offence designations, which for the majority of offences provides little information about the impact of the crime. Many offences in the *Criminal Code* are hybrid offences, which can be treated as more or less serious by the Crown prosecutor. This offence classification recognizes that the seriousness of a particular offence, such as assault, depend on the facts of the case. As such, the *Criminal Code* offence designations may invariably over- or underestimate the seriousness of offences.

The second study, which involved the content analysis of judges' reasons for sentencing, also contained several limitations. As previously mentioned, there are some concerns about the representativeness of the sample of sentencing decisions that were drawn from the Quicklaw dataset. Briefly, the Quicklaw dataset contains only those cases reported by judges and, as a result, there would be a large number of sentencing decisions that would be unavailable for analysis. Generally, these cases would involve less serious offences or legal issues, which is partially evident in the high baserate of more serious offences (e.g., manslaughter, sexual assault) that were included in the current sample. Nonetheless, the purpose of the second study was to explore judges' reasons for sentencing and, specifically, how judges weigh Aboriginal status among other relevant sentencing factors. This problem with the sample merely limits the extent to which the author can comment upon sentencing trends, such as incarceration rates.

A further limitation of the present study refers to general problems associated with coding information from secondary or criminal justice agency sources. According to Maxfield and Babbie (2005), all criminal justice record keeping reflects a social process. As a result, discretionary actions by criminal justice officials affect the production of all criminal justice records. In the current study, the majority of information that was coded involved the manifest

content of judges' reasons for sentencing – the concrete or clearly stated information included in the sentencing decisions (Maxfield & Babbie, 2005). The sentencing decisions included in the sample differed widely in terms of the amount and types of information that were reported by the judges, which resulted in considerable missing values or data for some variables, particularly sociodemographic variables. Naturally, this limited the extent to which this information could be used in predicting the various sentencing decisions.

With respect to manifest coding, the analyses in the present study relied upon those factors specifically cited by the judge as important in his or her decision. It is likely that other factors not discussed in great detail, or at all, may also have influenced the judges' sentencing decisions. For example, judges may have been implicitly influenced by characteristics of the offender or the offence and, as a result, not have discussed these factors in their reasons for sentencing. Several areas of applied and social psychology research suggest that people often overestimate their ability to be impartial. Son Hing and her colleagues (2002), for example, found more than 90 percent of white study participants appeared to more quickly associate negative concepts with visible minorities than with whites and, more importantly, these biases were often reported among people who had reported themselves to be unprejudiced. Similarly, Ogloff and Vidmar (1994) reported that mock jurors exposed to pretrial publicity were just as likely to consider themselves to be impartial as those mock jurors not exposed to any biasing material.

Finally, while not a limitation itself, the discussion of the role of Aboriginal status in sentencing decisions requires further clarification. Throughout this paper, the role of Aboriginal status, as defined in Section 718.2(e) has been treated as a mitigating factor at sentencing. Although this is a position that many scholars adopt, it is important to note that this may be a flawed interpretation. Some critics of this position have argued that if Aboriginal status were a mitigating factor, it would be applicable along the entire range of offence seriousness. The absence of prior convictions, for example, mitigates the sentence whether the offender has been

convicted of a minor theft or manslaughter. But the *Gladue* (1999) judgment makes it clear that Section 718.2(e) does not apply for the most serious cases; it may therefore not function like a classic ground for mitigation.

5.3 Suggestions for Future Research

The results of the present study suggest that the Bill C-41 sentencing reforms have not had a significant impact on reducing rates of Aboriginal incarceration. Despite the positive direction adopted by the Supreme Court of Canada in *Gladue* (1999), the present study also suggests that there are many reasons to be pessimistic about the future and Aboriginal overrepresentation. However, given the limited nature of the samples adopted in both studies, broader impactions of the results cannot be drawn. There are several directions future research could take to improve upon the present study.

The input of sentencing judges seems especially important given the significant latitude accorded to them, particularly at the sentencing stage. Judges have considerable power to decide whether an offender is incarcerated or is allowed to remain in the community, thus, future research should elicit opinions and information directly from judges. There does exist research that has surveyed Canadian judges regarding the usage of the conditional sentencing provisions, which has provided some important insight into judges' sentencing decisions (Roberts & LaPrairie, 2000; Roberts et al., 2000). A similar approach could be adopted to survey judges regarding Section 718.2(e) and the role Aboriginal status plays in their sentencing decisions. This approach could be coupled with the use of sentencing simulations, wherein judges would be given simulated pre-sentence reports and asked to impose a sentence and provide reasons for their decision (Palys & Divorski, 1986; Roberts, 2001). Although there are limitations associated with this approach, information obtained from such studies could be used to supplement existing knowledge obtained from surveys and actual sentencing statistics.

Pre-sentence reports may also provide a wealth of information that may be useful in developing models of judicial decision-making in sentencing cases. A pre-sentence report is a report usually prepared by a probation officer for the court. It provides the judge with information about the accused person, their personal circumstances, employment and attitude towards the offence and the victim. The inclusion of pre-sentence reports in sentencing studies may allow researchers to more fully explore the role of socio-demographic variables, such as educational attainment, employability, or personal circumstances, in the judges' sentencing decisions. The results of the present study suggest that these variables may play an important role in sentencing decisions; however, problems with missing information prevented a more thorough analysis of the impact of such variables.

Another direction of future research that would be useful to gaining a more complete understanding of sentencing decisions concerns the quantity and quality of community resources available to Aboriginal offenders. Both the rehabilitative efforts of offenders while awaiting sentencing and the rehabilitative prospects of offenders significantly predicted sentencing decisions in the present study. In addition, surveyed Canadian judges have indicated that they are likely to consider the availability of community resources when considering the appropriateness of a conditional sentence (Roberts & LaPrairie, 2000; Roberts et al., 2000). More restricted access to necessary programs or resources, particularly for Aboriginal offenders, could negatively affect the good-will intentions of the Bill C-41 sentencing reforms.

To date, several criminal justice agencies, including the Correctional Service of Canada (CSC) and National Parole Board (NPB), have made significant strides to increase culturally-relevant programming for Aboriginal offenders. Sections 79 to 84 of the *Corrections and Conditional Release Act* (CCRA) have set the stage for Aboriginal inmates to benefit from the inclusion of traditional approaches to healing. Elder-assisted Parole Board hearings are also in the process of being implemented across Canada. These efforts, however, do not address the concerns

regarding the availability of similar resources of Aboriginal offenders who are serving sentences in the community. It would be particularly useful for researchers to examine the availability and accessibility of community resources for offenders and how this availability impacts upon sentencing decisions.

5.4 Conclusions and Implications

The Bill C-41 sentencing reforms have been criticized for accepting the view that the over-representation of Aboriginal people in correctional facilities is a result of harsh sentencing decisions by judges rather than the more fundamental problem of the social and economic circumstances of Aboriginal people in Canada (Stenning & Roberts 2001). This view has ignored the growing body of research, which includes the results of the present study, that suggests that Aboriginal offenders are neither more likely to be incarcerated nor are they more likely to receive longer prison sentences . Furthermore, the failure to observe a significant reduction in Aboriginal incarceration rates in the current study suggests that addressing the problem of the overrepresentation at the sentencing stage is inadequate because it does not address the problem that resulted in most Aboriginal offenders coming before the court.

The overrepresentation of Aboriginal offenders flows from a number of sources, including poverty, substance abuse, lack of education, and the lack of employment opportunities for Aboriginal people. In the current study, over a third of Aboriginal offenders (34%) had failed to even complete elementary school. Half of Aboriginal offenders were unemployed at the time of their index offence. With respect to substance abuse, over twice as many Aboriginal offenders were described as having difficulties with drugs and/or alcohol as non-Aboriginal offenders (77.9% vs. 35%). These are long-standing problems that develop long before Aboriginal people have contact with the criminal justice system. In addition, the impact of these social problems is evident when reviewing the well-documented differences in criminal history between Aboriginal and non-Aboriginal offenders. In both samples incorporated in the present study, Aboriginal

offenders were significantly more likely to be convicted of a serious, violent offence, and were also more likely to have a prior criminal history.

Given the serious, marginalized status of many Aboriginal offenders, Stenning and Roberts (2001) are correct in their assumption that sentencing judges can only play a limited role in remedying the problem of overrepresentation in Canada. The criminal justice system is best conceptualized as a continuum of interdependent agencies, including the police, courts, and corrections (Bonta, 1992). The sentencing process itself comes much later along this continuum and will undoubtedly be influenced by earlier events and decisions. For Aboriginal offenders with a more serious criminal history, less educational attainment and employability skills, substance abuse problems, and higher frequencies of domestic breakdown and violence, sentencing judges may feel they have fewer options regardless of the best intentions of Section 718.2(e).

The Canadian criminal justice system has traditionally been characterized by an over-reliance on incarceration and, as a result, Canada ranks among the highest users of incarceration in the western world (Public Safety and Emergency Preparedness, 2003). This emphasis on incarceration has had a detrimental effect on offenders, particularly Aboriginal offenders. Over the past twenty years, there have been numerous studies and reports that confirm that Aboriginal peoples experience disproportionately high rates of crime and are over-represented in the correctional system. Yet despite increasing interest in Aboriginal justice issues, we have still been unable to answer some of the most fundamental questions about the relationship of Aboriginal people to the criminal justice system. The present study has suggested that the sentencing reforms contained in Bill C-41 underestimate the true complexity of the overrepresentation problem and, regardless of the direction provided by the Supreme Court in *Gladue* (1999), sentencing judges alone cannot significantly reduce the current disproportionate rates of Aboriginal incarceration. The primary conclusion is that there remains a great deal of work to be done before we understand the nature of over-representation.

6 APPENDICES

Appendix A

Letter of Ethical Approval

SIMON FRASER UNIVERSITY

OFFICE OF RESEARCH ETHICS

BURNABY. BRITISH COLUMBIA
CANADA V5A 1S6
Telephone: 604-291-3447
FAX: 604-268-6785

October 17, 2002

Mr. Andrew Welsh
Department of Psychology
Simon Fraser University

Dear Mr. Welsh:

Re: Sentencing with Aboriginal Offenders: An Evaluation of the Impact of Section 718.2(e) of the Criminal Code

I am pleased to inform you that the above referenced Request for Ethical Approval of Research has been approved on behalf of the Research Ethics Board. The approval for this project is for the term of the period of the grant, as defined by the funding agency. If this project does not receive grant support, the term of the approval is twenty-four months from the above date.

Best wishes for success in this research.

Sincerely,

Dr. Hal Weinberg, Director
Office of Research Ethics

c: J. Ogloff, Supervisor
/bjr

Appendix B

Index Offence List

Offence Category	Specific Offence Title	Statute, Section Number
Homicide	Manslaughter	*Criminal Code*, S. 236
	Attempt Murder	*Criminal Code*, S. 239
	Accessory After Fact	*Criminal Code*, S. 240
	Counsel to Commit Homicide	*Criminal Code*
Assault	Causing Injury with Intent	*Criminal Code*, S. 81(2)(a)
	Assault	*Criminal Code*, S. 265(1)
	Assault with Weapon	*Criminal Code*, S. 267(a)
	Assault Cause Bodily Harm	*Criminal Code*, S. 267(b)
	Aggravated Assault	*Criminal Code*, S. 268
	Unlawfully Cause Bodily Harm	*Criminal Code*, S. 269
	Assault Police Officer	*Criminal Code*, S. 270(1)
Sexual	Sexual Interference	*Criminal Code*, S. 151
	Invitation to Sexual Touching	*Criminal Code*, S. 152
	Sexual Exploitation	*Criminal Code*, S. 153
	Incest	*Criminal Code*, S. 155
	Anal Intercourse	*Criminal Code*, S. 159
	Beastiality	*Criminal Code*, S. 160(1)
	Indecent Act	*Criminal Code*, S. 173(1)
	Living Off Prostitution	*Criminal Code*, S. 212(2)
Sexual	Sexual Assault	*Criminal Code*, S. 271(1)
	Sexual Assault With Weapon	*Criminal Code*, S. 272
	Aggravated Sexual Assault	*Criminal Code*, S. 273
	Indecent Assault on Female	*Criminal Code*, S. 149*
	Indecent Assault on Male	*Criminal Code*, S. 156*
Robbery	Robbery	*Criminal Code*, S. 344
	Armed Robbery	*Criminal Code*
	Attempted Robbery	*Criminal Code*
Theft	Theft	*Criminal Code*, S. 322(1)
	Theft of Credit Card	*Criminal Code*, S. 342(1)

Offence Category	Specific Offence Title	Statute, Section Number
Theft	Theft Under $1000	*Criminal Code*, S. 334(a)
	Theft Over $1000	*Criminal Code*, S. 334(a)
	Theft Under $5000	*Criminal Code*, S. 334(a)
	Theft Over $5000	*Criminal Code*, S. 334(a)
Drug	Possession of Substance	*Control Drugs/Substances Act*, S. 4(1)
	Trafficking	*Control Drugs/Substances Act*, S. 5(1)
	Possess with Purpose of Trafficking	*Control Drugs/Substances Act*, S. 5(1)
	Importing/Exporting	*Control Drugs/Substances Act*, S. 6
	Production of Substance	*Control Drugs/Substances Act*, S. 7
Break and Enter	Forcible Entry	*Criminal Code*, S. 72
	Break and Enter	*Criminal Code*, S. 348(1)
	Unlawfully in Dwelling House	*Criminal Code*, S. 349(1)
	Possess Break-in Instrument	*Criminal Code*, S. 351(1)
Crim. Harassment	Criminal Harassment	*Criminal Code*, S. 264(1)
Weapons	Using Explosives	*Criminal Code*, S. 81(1)
	Use Firearm	*Criminal Code*, S. 85(1)
	Point a Firearm	*Criminal Code*, S. 87.1
	Possess Unauthorized Weapon	*Criminal Code*, S. 88
	Carrying Concealed Weapon	*Criminal Code*, S. 90
	Export/Import Weapon	*Criminal Code*, S. 103
Fraud/Monetary	Extortion	*Criminal Code*, S. 346
	False Pretence	*Criminal Code*, S. 361
	Fraud – Food/Lodging	*Criminal Code*, S. 364(1)
	Forgery	*Criminal Code*, S. 375
	Fraud	*Criminal Code*, s. 380(1)
	Personate with Intent	*Criminal Code*, S. 403
	Making Counterfeit Money	*Criminal Code*, S. 449
	Possess Counterfeit Money	*Criminal Code*, S. 450
	Laundering	*Criminal Code*, S. 462.31
Negligence	Criminal Negligence	*Criminal Code*, S. 219

Offence Category	Specific Offence Title	Statute, Section Number
Negligence	Causing Death	*Criminal Code*, S. 220
	Causing Bodily Harm	*Criminal Code*, S. 221
Driving	Dang. Operate Cause Bodily Harm	*Criminal Code*, S. 249(3)
	Dang. Operate Causing Death	*Criminal Code*, S. 249(4)
	Fail to Stop at Accident	*Criminal Code*, S. 252
	Operate While Impaired	*Criminal Code*, S. 253(a)
	More than 80 mg. Alcohol in Blood	*Criminal Code*, S. 253(b)
	Refuse Breath Test	*Criminal Code*, S. 254(5)
	Operate While Disqualified	*Criminal Code*, S. 259(4)
Threat	Uttering Threats	*Criminal Code*, S. 264.1
	Intimidation	*Criminal Code*, S. 423(1)(b)
	Extortion by Threats	*Criminal Code*, S. 346(1)
Kidnapping	Kidnapping	*Criminal Code*, S. 279(1)
	Confinement	*Criminal Code*, S. 279(2)
	Abduct Person Under 16	*Criminal Code*, S. 280
	Abduct Person Under 14	*Criminal Code*, S. 281
Arson	Arson/Disregard for Human Life	*Criminal Code*, S. 433
	Arson/Damage to Property	*Criminal Code*, S. 434
	Arson for Fraudulent Purpose	*Criminal Code*, S. 434.1
Nuisance	Unlawful Assembly	*Criminal Code*, S. 63
	Riot	*Criminal Code*, S. 64
	Public Mischief	*Criminal Code*, S. 140
	Cause Disturbance	*Criminal Code*, S. 171(1)(a)
	Trespass	*Criminal Code*, S. 177
	Mischief to Property	*Criminal Code*, S. 430
Admin. of Justice	Disobey Court Order	*Criminal Code*, S. 127(1)
	Perjury	*Criminal Code*, S. 131(1)
	Obstructing Justice	*Criminal Code*, S. 139(1)
	Escape	*Criminal Code*, S. 145(1)
	Fail to Attend Court	*Criminal Code*, S. 145(2)
	Fail to Comply with Recognizance	*Criminal Code*, S. 145(3)
	Fail to Appear	*Criminal Code*, S. 145(4)
	Breach Probation	*Criminal Code*, S. 733.1

Appendix C

Index Offence Re-Coded

Offence Category	Specific Offence Title
Offences Against the Person	Homicide
	Assault
	Robbery
	Criminal Harassment
	Weapons
	Negligence
	Threat
	Kidnapping
	Arson
Sexual Offences	Sexual Offences
Drug Offences	Drug Offences
Property Offences	Break and Enter
	Theft
	Fraud/Monetary
	Driving
Other Offences	Nuisance
	Offences Against Administration of Justice

Appendix D

Serious Personal Injury Offences

Offence	Section
Possession of Weapon	88
Sexual Interference	151
Invitation to Sexual Touching	152
Manslaughter	222
Attempted Murder	239
Accessory after the fact to Murder	240
Discharge Firearm with Intent to Wound	244
Assault with a Weapon	267(a)
Assault Causing Bodily Harm	267(b)
Aggravated Assault	268
Sexual Assault	271
Sexual Assault with a Weapon	272
Aggravated Sexual Assault	273
Kidnapping	279
Unlawful Confinement	279(2)
Robbery	343
Break and Enter	348
Arson	433
Conspiracy to Commit Murder	465

Appendix E

Sentencing Decisions Coding Sheet

A. COURT INFORMATION

Case Name:_____ **Year:** _____

Trial Province:_____

Plea of accused: 1=Not Guilty 2=Guilty

Level of Court: 1=Provincial 2=Court of Appeal 3=Youth Court

B. APPELLATE DECISION INFORMATION

Was the trial decision appealed? 1=Yes 2=No

Who filed the appeal? 1=Crown 2=Defendant

Appeal based on Section 718.2(e) of the *Criminal Code*?
(A Failure to Consider the Aboriginal Status of the Accused)
1=Yes 2=No

Outcome of the Appeal *(Circle one)*:
1=Uphold sentence
2=Increase time
3=Decrease Time

C. CURRENT CRIMINAL CODE CHARGES

Offence Type	# Counts	Sentence Received	Sentence Length	Concurrent/Cons.
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____

Total Sentence Length *(in days)*: _____

Most Serious Conviction Offence: _____**Code Number:** _____
(Code using Modified CSC Offence Severity Scale, Appendix F)

Total # of offences in current conviction: _____

Additional Probationary Period Administered: 1=Yes 2=No
Total Length of Probationary Period *(in days)*: _____

Alcohol or Drug Use during Commission of Offence: 1= Yes 2=No

Was there a reported victim in the current offence: 1=Yes 2=No
Type of Victimization:
1=Property/Theft/Fraud
2=Violence
3=Accidental/Negligent

Complete the following questions only for offences involving violence. Violence includes physical, non-physical (i.e., verbal threats), and sexual violence (i.e., exposure/fondling, non-penile penetration, penile penetration).

Number of victims in the current conviction offences: _____

If there was more than one victim in the current offence, complete the following questions for the victim who sustained the most severe injuries.

Age of the Victim: _____**Gender of Victim:** 1=Male 2=Female

Relation to Victim: _____

Level of Violence:
0=No violence
1=No injury/Threatening
2=Minor injury (e.g., cut, bruise)
3=Serious injury (e.g., hospitalized)
4=Victim death

Level of Sexual Violence:
1=Exposure/Fondling
2=Non-Penile Penetration
2=Penile Penetration

Use of Weapon: 1=Yes 2=No **Type of Weapon**:
_____

D. OFFENDER CHARACTERISTICS

Offender gender: 1=Male 2=Female **Age at sentencing:** _____

Level of education *(at time of offence)*: _____
Marital status *(at time of offence)*: _____

Employment status *(at time of offence)*: 1=Employed 2=Unemployed

DOES THE OFFENDER HAVE A SUBSTANCE ABUSE PROBLEM?
1=Yes 2=No

Prior criminal record: 1=Yes 2=No **# of prior convictions:** _____

Prior violent offence: 1=Yes 2=No
(Violent = Murder, att. Murder, assaults, robberies, utter threats, kidnap)

Prior sexual offence: 1=Yes 2=No
(Sexual = serious sex offences, child sexual offences)

Aboriginal Status: 1=Aboriginal 2=Non-Aboriginal

E. SENTENCING ABORIGINAL OFFENDERS

Section 718.2(e) of the Criminal Code states that judges must consider alternatives to incarceration when the circumstances are reasonable, with particular attention to Aboriginal offenders. Courts, however, have not been given much direction concerning the extent to which Aboriginal status should be considered during sentencing. The following questions record the extent to which Aboriginal status was discussed and/or weighed in the sentencing decision.

Aboriginal status was considered as a mitigating factor in sentencing:
1=Yes 2=No

Aboriginal status presented "special circumstances" justifying a non-custodial sentence:
1=Yes 2=No

Aboriginal status presented "special circumstances" justifying a shorter custodial sentence:
1=Yes 2=No

Was the *Gladue* (1999) decision cited in the case?
1=Yes 2=No

If Gladue (1999) was cited, what judicial consideration was it given? *(Circle one):*
1=Followed
2=Distinguished
3=Explained
4=Mentioned
5=Cited in dissenting opinion

F. SENTENCING PRINCIPLES

Denunciation:
1=Mentioned 2=Not mentioned
1=Justification for sentence 2=Not a justification for sentence

General Deterrence:
1=Mentioned 2=Not mentioned
1=Justification for sentence 2=Not a justification for sentence

Specific Deterrence:
1=Mentioned 2=Not mentioned
1=Justification for sentence 2=Not a justification for sentence

Incapacitation:
1=Mentioned 2=Not mentioned
1=Justification for sentence 2=Not a justification for sentence

Rehabilitation:

1=Mentioned
1=Justification for sentence

2=Not mentioned
2=Not a justification for sentence

Reparation:

1=Mentioned
1=Justification for sentence

2=Not mentioned
2=Not a justification for sentence

Responsibility:

1=Mentioned
1=Justification for sentence

2=Not mentioned
2=Not a justification for sentence

Denunciation

1=Primary goal of sentence
2=Secondary goal of sentence
3=Tertiary goal of sentence
4=Not a goal of sentence

General Deterrence

1=Primary goal of sentence
2=Secondary goal of sentence
3=Tertiary goal of sentence
4=Not a goal of sentence

Specific Deterrence

1=Primary goal of sentence
2=Secondary goal of sentence
3=Tertiary goal of sentence
4=Not a goal of sentence

Incapacitation

1=Primary goal of sentence
2=Secondary goal of sentence
3=Tertiary goal of sentence
4=Not a goal of sentence

Rehabilitation

1=Primary goal of sentence
2=Secondary goal of sentence
3=Tertiary goal of sentence
4=Not a goal of sentence

Reparation

1=Primary goal of sentence
2=Secondary goal of sentence
3=Tertiary goal of sentence
4=Not a goal of sentence

Responsibility

1=Primary goal of sentence
2=Secondary goal of sentence
3=Tertiary goal of sentence
4=Not a goal of sentence

G. REASONS FOR SENTENCING

Based on the reasons for sentencing provided by the judge, write down any additional mitigating or aggravating factors that provided a basis for the sentence administered.

Mitigating Factors

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Aggravating Factors

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Appendix F

Modified CSC Offence Severity Scale

Major Offences

101= First or second degree murder and attempted murder
102=Kidnapping, forcible detention, abduction, and/or hostage-taking
103=Hijacking of aircraft, treason, and espionage
104=Illegal possession and/or detonation of explosives (likely to cause death)
105=Violent terrorist activities
106=Armed robbery (with extreme violence, organized or notorious)
107=Assault (with or without weapon) causing serious injury, risk of death, or disfigurement

Serious Offences

201=Armed robbery, attempted armed robbery, and robbery with violence
202=Arson
203=Sabotage
204=Conspiracy to traffic or import a dangerous drug
205=Trafficking and possession for the purpose of trafficking dangerous drugs
206=Trafficking in illegal firearms
207=Manslaughter
208=Extortion
209=Sexual assault offences (rape, attempted rape, sexual assault, aggravated sexual assault, any sexual offence involving a child)
210=Assault (with or without weapon), wounding
211=Escape with violence from any level of security
212=Use of firearm during commission of an offence

Moderate Offences

301=Possession of dangerous drugs
302=Trafficking, conspiracy, possession for the purpose of trafficking (soft drugs)
303=Forgery
304=Fraud offences, false pretences
305=Bribery
306=Forcible entry
307=Breaking and entering
308=Criminal negligence causing death or bodily harm, dangerous driving
309=Non-violent sex offences (i.e., gross indecency, indecent assault)
310=Robbery
311=Escape without violence
312=Theft
313=Auto theft
314=Obstruction of justice, perjury, resist arrest, obstruct peace officer
315=Possession of stolen property over
316=Possession of a weapon, carry a concealed weapon
317=Assault causing bodily harm (no serious injury)
318=Criminal harassment

Minor Offences

401=Possess of stolen property under
402=Common assault
403=Possession of soft drugs
404=Theft under
405=Public mischief, damage to property, causing disturbance, wilful damage
406=Criminal negligence not resulting in bodily harm
407=Possession of a restricted or prohibited weapon
408=Possession of forged currency, passports, cheques
409=Driving while impaired, driving with over 0.08, driving under suspension, careless driving
410=Parole or statutory release revocation, breach of probation
411=Unlawfully at large, failure to attend, failure to comply with undertaking or recognizance

7 REFERENCES

Akman, D.D., & Normandeau, A. (1967). The measurement of crime and delinquency in Canada. *British Journal of Criminology, 7*, 125-128.

Albonetti, C.A. (1997). Sentencing under the federal sentencing guidelines: Effects of defendant characteristics, guilty pleas, and departures on sentence outcomes for drug offenders, 1991-1992. *Law and Society, 31*, 789-822.

Alvarez, A., & Bachman, R.D. (1996). American Indians and sentencing disparity. *Journal of Criminal Justice, 24*, 549-561.

Anand, S. (2000). The sentencing of aboriginal offenders, continuing confusion, and persisting problems: A comment on the decision in *R.* v. *Gladue*. *Canadian Journal of Criminology, 42*, 412-419.

Andrews, D., Robblee, M., Saunders, R., Huartson, K., Robinson, D., Kiessling, J., & West, D. (1987). Some psychometrics of judicial decision making. *Criminal Justice and Behaviour, 14*, 62-80.

Auditor General of Canada. (2002). *The criminal justice system: Significant challenges.* Ottawa: ON: Office of the Auditor General of Canada.

Baab, G.W., & Furgeson, W.R. (1967). Texas sentencing patterns: A statistical study. *Texas Law Review, 45*, 471-486.

Bachman, R., Alvarez, A., & Perkins, C. (1996). Discriminatory imposition of the law. In M. O. Nielsen & R.A. Silverman (Eds.), *Native Americans, crime and justice*, pp. 197-208. Boulder, CO: Westview.

Benjamin, R., & Kim, C.N. (1980). American Indians and the criminal justice system. *Criminal Justice Abstracts, 12*, 314-315.

Bienvenue, R.M., & Latif, A.H. (1974). Arrests, dispositions, and recidivism: A comparisons of Indians and whites. *Canadian Journal of Criminology, 16*, 105-116.

Birkenmayer, A., & Besserer, S. (1997). *Sentencing in adult provincial courts: A study of nine jurisdictions: 1993 and 1994.* Ottawa, Canadian Centre for Justice Statistics, Statistics Canada.

Boe, R.E. (2000). Aboriginal inmates: Demographic trends and projections. *Forum on Corrections Research, 12* (1), 7-9.

Boldt, E., Hursh, L., Johnson, S., & Taylor, W. (1983). Presentence reports and the incarceration of Natives. *Canadian Journal of Criminology, 25*, 269-276.

Bonta, J. (1989). Native inmates: Institutional response, risk, and needs. *Canadian Journal of Criminology, 31*, 49-62.

Brantingham, P. (1985). Sentencing disparity: An analysis of judicial consistency. *Journal of Quantitative Criminology, 1*, 281-305.

Bynum, T.S., & Paternoster, R. (1984). Discrimination revisited. *Sociology and Social Research, 69*, 90-108.

Campbell, J. (2000). *An evaluation of the Aboriginal legal services of Toronto community council program: Final report.* Toronto: Aboriginal Legal Services of Toronto.

Canadian Sentencing Commission. (1987). *Sentencing reform: A Canadian approach.* Ottawa: Minister of Supply and Services Canada.

Canfield, C., & Drinnan, L. (1981). *Comparative statistics: Native and non-native federal inmates – A five year history.* Ottawa: Ministry of the Solicitor General.

Carroll, J.S., Perkowitz, W.T., Lurigio, A.J., & Weaver, F.M. (1987). Sentencing goals, causal attributions, ideology, and personality. *Journal of Personality and Social Psychology, 52* (1), 107-118.

Cawsey, R.A. (1991). *Justice on trial: Task force on the criminal justice system and the impact on the Indian and Metis people of Alberta.* Edmonton: Province of Alberta.

Chiricos, T.G., & Bales, W.D. (1991). Unemployment and punishment: An empirical assessment. *Criminology, 29*, 701-724.

Chiricos, T.G., & Crawford, C. (1995). Race and imprisonment: A contextual assessment of the evidence. In D. Hawkins (Ed.), Ethnicity, race, and crime. Albany, NY: State University of New York Press.

Clancy, K., Bartolomeo, J., Richardson, D., & Wellford, C. (1981). Sentence decision making: The logic of sentence decisions and the extent and sources of sentencing disparity. *Journal of Criminal Law and Criminology, 72*, 524-554.

Cole, D.P. (1999). Conditional sentencing: Recent developments. In J.V. Roberts and D.P. Cole's (Eds.), *Making sense of sentencing.* Toronto, ON: University of Toronto Press.

Connolly, D.A., & Read, J.D. (2003). Remembering historical child sexual abuse. *Criminal Law Quarterly, 47,* 438 - 480.

Corrections and Conditional Release Act, RSC, 1992, c. 20.

Criminal Code, (1985), R.S.C., c. C-46.

Daly, K. (1989). Neither conflict nor labelling nor paternalism will suffice: Intersections of race, ethnicity, gender, and family in criminal court decisions. *Crime & Delinquency, 35*, 136-168.

Daly, K., & Bordt, R. (1995). Sex effects and sentencing: A review of the statistical literature. *Justice Quarterly, 12*, 143-177.

Diamond, S.S. (1983). Order in the court: Consistency in criminal court decisions. In C.T. Scheirer & B.L. Hammonds (Eds.), *Master lecture series, Vol. II: Psychology and the law.* American Psychological Association.

Dioso, R., & Doob, A.N. (2001). An analysis of public support for special consideration of aboriginal offenders at sentencing. *Canadian Journal of Criminology, 43*, 405-412.

Doob, A.N., & Beaulieu, L.A. (1992). Variation in the exercise of judicial discretion with young offenders. *Canadian Journal of Criminology, January*, 35-50.

Dubienski, I.V., & Skelly, S. (1970). *Analysis of arrests for the year 1969 in the city of Winnipeg with particular reference to arrests of persons of Indian descent.* University of Manitoba.

Ebbesen, E.B., & Konecni, V.J. (1975). Decision making and information integration in the courts: The setting of bail. *Journal of Personality and Social Psychology, 32*, 805-821.

Ebbesen, E.B., & Konecni, V.J. (1981). The process of sentencing adult felons: A causal analysis of judicial decision. In B.D. Sales (Ed.), *The trial process* (pp. 413-458). New York: Plenum.

Faulkner, D. (2003). Sentencing reform: Policy, legislation, and implementation. *British Journal of Community Justice, 1*, 9-21.

Feimer, S., Pommersheim, F., & Wise, S. (1990). Marking time. *Journal of Crime and Justice, 73* (1), 86-102.

Feld, B.C. (1995). The social context of juvenile justice administration. In K.K. Leonard, C.E. Pope, & W.H. Feyerherm (Eds.), *Minorities in juvenile justice*, pp. 66-97. Thousand Oaks, CA: Sage.

Gaduet, F., Harris, G.S., & St. John, C.W. (1933). Individual differences in the sentencing tendencies of judges. *Journal of Criminal Law and Criminology, 23*, 811-818.

Griffiths, C.T., & Cunningham, A. (2000). *Canadian corrections*. Scarborough, Ontario: Nelson Thomson Learning.

Griffiths, C.T., Zellerer, E., Wood, D.S., & Saville, G. (1995). *Crime, law, and justice among Inuit in the Baffin Region, N.W.T., Canada*. Burnaby, B.C.: Criminology Research Centre, Simon Fraser University.

Hagan, J. (1975). Parameters of criminal prosecution. *Journal of Criminal Law and Criminology, 65*, 536-544.

Hagan, J. (1977). Criminal justice in rural and urban communities. *Social Forces, 55*, 597-611.

Hall, E., & Simkus, A. (1975). Inequality in the type of sentences received by Native Americans and whites. *Criminology, 13*, 199-222.

Healy, P. (2000). Six of the best. *Canadian Journal of Criminology, 42*, 389-404.

Hogarth, J. (1971). *Sentencing as a human process*. Toronto: University of Toronto Press.

Hood, D.L., & Harlan, J.R. (1991). Ethnic disparities in sentencing and the Washington Sentencing Reform Act. *Explorations in Ethnic Studies, 14*, 43-55.

Hood, D.L., & Lin, R.L. (1993). Sentencing disparity in Yakima County. *Explorations in Ethnic Studies, 16*, 99-114.

Jackson, M. (1988). *Locking up natives in Canada.* Ottawa: A Report of the Canadian Bar Association Committee on Imprisonment and Release.

Johnston, J. C. (1997). *Aboriginal offender survey: Case files and interview sample* (Report R-61) Ottawa: Correctional Service of Canada.

Juristat. (2000). *Adult correctional services in Canada*, 21(5).

Kautt, P., & Spohn, C.C. (in press). Crack-ing down on black drug offenders? Testing for interactions between offender race, drug type, and sentencing strategy in federal drug sentences. *Justice Quarterly.*

Kazdin, A.E. (1982). *Single-case research designs: Methods for clinical and applied Settings.* New York: Oxford University Press.

Kramer, J.H., & Steffensmeier, D. (1993). Race and imprisonment decisions. *The Sociological Quarterly, 34* (2), 357-376.

LaPrairie, C. (1990). The role of sentencing in the overrepresentation of aboriginal people in correctional institutions. *Canadian Journal of Criminology, 32*, 429-440.

LaPrairie, C. (1992). *Dimensions of Aboriginal overrepresentation in correctional institutions and implications for crime prevention.* Ottawa, ON: Ministry of the Solicitor General.

LaPrairie, C. (1996). *Examining Aboriginal corrections in Canada.* Ottawa, Ontario: Canada. Ministry of the Solicitor General.

Leiber, M.J.A. (1994). A comparison of juvenile court outcomes for Native Americans, African Americans, and whites. *Justice Quarterly, 11*, 257.279.

Lewis, D. (1989). *An exploratory study into sentencing practices in summary convictions court in British Columbia.* Vancouver: Legal Services Society. Unpublished.

Losel, F. (1996). Effective correctional programming: What empirical research tells us and what it doesn't. *Forum on Corrections Research, 8.*

Luckey, J.W., & Berman, J.J. (1979). Effects of a new commitment law on involuntary admissions and service utilization patterns. *Law and Human Behavior, 3*, 149-61.

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

Manson, A., Healy, P., & Trotter, G. (2000). *Sentencing and penal policy in Canada: Cases, materials, and commentary.* Toronto: Emond Montgomery Publications Limited.

Maxfield, M.G., & Babbie, E. (2004). *Research methods for criminal justice and criminology* (4th Ed.). Belmont, CA: Thomson-Wadsworth.

McCaskill, D. (1985). *Patterns of criminality and corrections among Native offenders in Manitoba*. Correctional Service of Canada, Department of the Solicitor General.

McDowall, D., McCleary, R., Meidinger, E.E., & Hay, R.A. (1980). *Interrupted time series analysis*. Beverly Hills, CA: Sage Publications.

Melton, G.B., Petrila, J., Poythress, N.G., & Slobogin, C. (1999). *Psychological evaluations for the courts*. New York: The Guilford Press.

Menard, S. (1992). *Applied logistic regression analysis*. University of Colorado, CO: Sage Publications.

Miethe, T.D. (1987). Charging and plea-bargaining practices under determinate sentencing: An investigation of the hydraulic displacement of discretion. *Criminology, 78* (1), 155-176.

Miethe, T.D., & Moore, C.A. (1985). Socio-economic disparities under determinate sentencing systems: A comparison of pre- and post-guideline practices in Minnesota. *Criminology, 23*, 337-346.

Moyer, S. (1987). *Homicides involving adult suspects 1962-1984: A comparison of natives and non-natives*. Ottawa: Ministry of the Attorney General.

Moyer, S., Billingsley, B., Kopelman, F., & LaPrairie, C. *Native and non-native admissions to federal, provincial, and territorial correctional institutions*. Ottawa: Ministry of the Attorney General.

Nafekh, M., & Welsh, A. (1999). *An examination of gang membership within the federally sentenced Aboriginal population*. (Research report), Ottawa: Research Branch, Correctional Service of Canada.

Naumetz, T. (1999, May 27). Home sentences could lead to vigilante justice, high court told. *The National Post*, p. A11.

Nobiling, T., Spohn, C., & DeLone, M. (1998). A tale of two counties: Unemployment and sentence severity. *Justice Quarterly, 15*, 401-427.

Ogloff, J.R.P., & Vidmar, N. (1994). The impact of pretrial publicity on jurors: A study to compare the relative effects of television and print media in a child sexual abuse case. *Law and Human Behavior, 18*, 507-525.

Palys, T.S., & Divorski, S. (1986). Explaining sentence disparity. *Canadian Journal of Criminology, 28*, 347-362.

Pankratz, A. (1983). *Forecasting with univariate Box-Jenkins models: Concepts and cases*. New York: Wiley.

Pelletier, R. (2001). The nullification of section 718.2(e): Aggravating aboriginal over-representation in Canadian prisons. *Osgoode Hall Law Journal, 39*, 469-489.

Pommersheim, F., & Wise, S. (1989). Going to the penitentiary. *Criminal Justice and Behavior, 16*, 155-165.

Poupart, L.M. (1995). Juvenile justice processing of American Indian youths. In K.K. Leonard, C.E. Pope, & W.H. Feyerherm (Eds.), *Minorities in juvenile justice*, pp. 179-200. Thousand Oaks, CA: Sage.

Public Safety and Emergency Preparedness Canada. (2003). *Corrections and conditional release statistical overview*. Ottawa, ON: Public Safety and Emergency Preparedness Canada.

R. v. *Brady*, (1998) A.J. No. 39 (Alta. C.A.).

R. v. *Glaude* [1999], 1 S.C.R. 688.

R. v. *Proulx* [2000], 1 S.C.R. 61.

R. v. *Wells* [2000], 1 S.C.R. 207.

R. v. *Williams*, [1998] 1 S.C.R. 1128.

R. v. *Wust* [2000], 1 S.C.R. 455.

Roberts, J.V. (1991). Sentencing reform: The lessons of psychology. *Canadian Psychology, 32* (3), 466-477.

Roberts, J.V. (1995). New data on sentencing trends in provincial courts. *Criminal Reports, 34*, 181-196.

Roberts, J.V. (1997). Paying for the past: The role of criminal record in the sentencing process. In M. Tonry (ed.), *Crime and justice: A review of research* (Volume 22). Chicago: University of Chicago Press.

Roberts, J.V. (1999). Sentencing trends and sentencing disparity. In J.V. Roberts & D. Cole (Eds.), *Making sense of sentencing*. Toronto: University of Toronto Press.

Roberts, J.V. (2001). Sentencing, parole, and psychology. In R.A. Schuller & J.R.P. Ogloff (Eds.), *Introduction to psychology and law: Canadian perspectives*. Toronto: University of Toronto Press.

Roberts, J.V., & LaPrairie, C. (2000). *Conditional sentencing in Canada: An overview of research findings*. Ottawa, ON: Department of Justice Canada.

Roberts, J.V., & Melchers, R. (2003). The incarceration of Aboriginal offenders: An analysis of trends, 1978-2001. *Canadian Journal of Criminology and Criminal Justice, 45*, 211-242.

Roberts, J.V., Antonowicz, D. H., & Sanders, T. (2000) Conditional sentences of imprisonment: An empirical analysis of optional conditions. *Criminal Reports, 30*, 113-125.

Royal Commission on Aboriginal Peoples. (1996). *Bridging the cultural divide: A report on Aboriginal people and criminal justice in Canada*. Ottawa: Supply and Services Canada.

Ruby, C.C. (1987). *Sentencing* (3rd ed.). Toronto: Buttersworth.

Rudin, J., & Roach, K. (2002). Broken promises: A response to Stenning and Roberts' "empty promises." *Saskatchewan Law Review, 65*, 3-34.

Schmalleger, F., MacAlister, D., & McKenna, P.F. (2004). *Canadian criminal justice today* (2nd Ed.). Toronto: Pearson/Prentice Hall.

Solicitor General of Canada. (1998). *CCRA 5 Year Review: Aboriginal offenders*. Ottawa: Minister of Supply and Services.

Son Hing, L., Li, W., & Zanna, M.P. (2002). Inducing hypocrisy to reduce prejudicial responses among aversive racists. *Journal of Experimental Social Psychology, 38*, 71-78.

Spohn, C.C. (2002). *How do judges decide? The search for fairness and justice in punishment*. Thousand Oaks, CA: Sage Publications.

Spohn, C.C., & DeLone, M. (2000). When does race matter? An analysis of the conditions under which race affects sentence severity? *Sociology of Crime, Law, and Deviance, 2*, 3-37.

Steffensmeier, D., Ulmer, J., & Kramer, J. (1995). Age differences in sentencing. *Justice Quarterly, 12*, 701-719.

Stenning, P., & Roberts, J.V. (2001). Empty promises: Parliament, the Supreme Court, and the sentencing of aboriginal offenders. *Saskatchewan Law Review, 64*, 137-168.

Tabachnick, B.G., & Fidell, L.S. (2001). *Using multivariate statistics* (4th Ed.). Needham Heights, MA: A Pearson Education Company.

Trevethan, S., Auger, S., Moore, J., MacDonald, M., & Sinclair, J. (2001). *The effect of family disruption on aboriginal and non-aboriginal inmates*. Ottawa,ON: Correctional Service of Canada.

Turpel-Lafond, M.E. (1999). Sentencing within a restorative justice paradigm: Procedural implications of *R.* v. *Gladue*. *Criminal Law Quartely, 43* (3), 34-50.

Uhlman, T.M., & Walker, N.D. (1980). He takes some of my time; I take some of his: An analysis of judicial sentencing patterns in jury cases. *Law and Society Review, 14*, 323 -

Vancouver Sun. (2001, July 22). Letter: The role of race in justice. *Vancouver Sun*, p. A13.

Welsh, A., & Ogloff, J.R.P. (2000). Full parole and the Aboriginal experience: Accounting for the racial discrepancies in release rates. *Canadian Journal of Criminology, 42* (4), 469-491.

Young, A. (1988). *The role of an appellate court in developing guidelines*. Ottawa: Department of Justice.

Zehr, H. (1990). *Changing lenses*. Scottdale, PA: Herald Press