

# MANDATORY MINIMUM SENTENCES: LAW AND POLICY<sup>©</sup>

BY ELIZABETH SHEEHY\*

This special issue of the Osgoode Hall Law Journal takes up the theme of mandatory minimum sentencing in Canada: the historical and current manifestations in criminal laws; its public policy dimensions; its impact on diverse communities; the pressures it exerts at different points in the criminal process; and its constitutional implications. Mandatory minimum sentences are sentences that are dictated by legislation as either an absolute mandatory sentence, for example life imprisonment for an individual convicted of murder in Canada, or as a minimum sentence below which a judge cannot descend in considering sentencing options for a given offence. When framed as a minimum sentence, the judge's only discretion is to sentence above the minimum threshold up to the legislated maximum.

Although the legal scholarship on mandatory minimum sentencing in the United States is vast<sup>1</sup> and there is a developing body of Australian jurisprudence on the topic,<sup>2</sup> the Canadian literature remains sparse.<sup>3</sup> In

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\* Professor of Law, Faculty of Law, University of Ottawa.

<sup>1</sup> See, for example, United States Sentencing Commission, *Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (1991); H.S. Wallace, "Mandatory Minimums and the Betrayal of Sentencing Reform" (1993) 40 Fed. Bar News & J. 158; P. Oliss, "Mandatory Minimum Sentencing: Discretion, the Safety Valve, and the Sentencing Guidelines" (1995) 63 U. Cinn. L. Rev. 1851; Federal Courts Study Committee, *Final Report* (1990); B. Vincent and P. Hofer, *The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings* (Washington D.C.: Federal Judicial Centre, 1994); M. Mauer, *Intended and Unintended Consequences: State Racial Disparities in Imprisonment* (Washington D.C.: The Sentencing Project, 1997); Human Rights Watch, *Punishment and Prejudice: Racial Disparities in the War on Drugs* (New York: Human Rights Watch, 2000); V. Schiraldi, J. Ziedenberg and J. Irwin, *America's One Million Nonviolent Prisoners* (Washington D.C.: Justice Policy Institute, 1999); M. Males and D. Macallair, *Striking Out: The Failure of California's "Three Strikes and You're Out" Law* (San Francisco: Justice Policy Institute, 1999).

<sup>2</sup> See H. Bayles, "Punishment is Blind: Mandatory Sentencing of Children in Western Australia and in the Northern Territory" (1999) 22 U.N.S.W.L.J. 14; R. Goldflam and J. Hunyor, "Mandatory Sentencing and Concentration of Powers" (1999) 24 Alt. L.J. 211; R. Hogg, "Mandatory Sentencing Laws and the Symbolic Politics of Law and Order" (1999) 22 U.N.W.L.J. 262; C. Howse, "Covering a Multitude of Sins?" (1999) 24 Alt. L.J. 224; N. Morgan, "Capturing Crims or Capturing Votes? The Aims and Effects of Mandatories" (1999) 22 U.N.S.W.L.J. 267; N. Morgan, "Mandatory Sentences in Australia: Where Have We Been and Where Are We Going?" (2000) 24 Crim. L.J. 164; C. Thomson, "Preventing Crime or Warehousing the Underprivileged? Mandatory Sentencing in the Northern

particular, the literature that might advocate reliance upon mandatory minimum sentencing is almost non-existent. The sole proponents of mandatory minimum sentencing in Canada appear to be politicians whose positions on the advantages of these laws are without a clear basis in either research or policy. For example, when Justice Minister Alan Rock introduced the new mandatory minimum sentences for crimes committed with a firearm as part of the gun control bill before the House of Commons in 1994,<sup>4</sup> and when Stockwell Day advanced a platform for the Alliance Party in the federal election campaign in 2000 that included a mandatory sentencing law modelled after California's "three strikes" law,<sup>5</sup> neither politician referred to any Canadian data or studies that would support general deterrence as a benefit of the new laws. In fact, there is little basis in research for these assertions;<sup>6</sup> the only Canadian study undertaken to assess the effects of the earlier legislation that imposed a mandatory one year jail sentence for the use of a gun in the commission of an indictable offence failed to provide any support for the hypothesis that mandatory sentences deter offenders.<sup>7</sup>

Additional arguments in support of mandatory minimum sentencing include the idea that specific deterrence and incapacitation for

Territory" (1999-2000) 4:26 *Indigenous L. Bull.* 4; G. Zdenkowski, "Mandatory Imprisonment of Property Offenders in the Northern Territory" (1999) 22 *U.N.S.W.L.J.* 302.

<sup>3</sup> With the exception of the work of Professor H el ene Dumont, the Canadian literature cited below does not focus on mandatory sentencing issues in great detail: A. Doob, "Sentencing Reform: Where Are We Now?" in J. Roberts and D. Cole, eds. *Making Sense of Sentencing* (Toronto: University of Toronto Press, 1999) 349; H. Dumont, "D esarmons les Canadiens et armons-nous de tol erance: Bannir les armes a feu, bannir les peines minimales dans le contr ole de la criminalit e violente, essai sur une contradiction apparante" (1997) 2 *Crim. L. Rev.* 43 [hereinafter "D esarmons les Canadiens"]; H. Dumont, "De la Loi C- 41 a la Loi C-55: La d etermination de la peine avec une main de fer dans un gant de velours" in P. Healy and H. Dumont, eds. *Dawn or Dusk in Sentencing*" (Montr al:  ditions Th emis, 1997) 83; A. Manson, "The Reform of Sentencing in Canada" in D. Stuart *et al. Towards a Clear and Just Criminal Law: A Criminal Reports Forum* (Toronto: Thomson, 1999) 457; P. Stenning, "Solutions in search of problems: A critique of the federal government's gun control proposals" (1995) 37 *C.J. Criminology* 184.

<sup>4</sup> *Debates of the House of Commons* (30 November 1994) at 1510 (A. Rock).

<sup>5</sup> A. Dawson, "Day vows to get tough with cons" *The Ottawa Sun* (6 October 2000) 1.

<sup>6</sup> For a thorough review of the rationales in support of mandatory minimum sentencing and the available data, see T. Gabor and N. Crutcher, *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures* (Ottawa: Department of Justice, forthcoming 2002).

<sup>7</sup> C. Meredith, B. Steinke, and S. Palmer, *Research on the Application of Criminal Code Section 85* (Ottawa: Department of Justice, 1994), as cited in Dumont, "D esarmons les Canadiens," *supra* note 3 at footnotes 56, 61.

persistent offenders may be achieved because mandatory imprisonment will, at least, prevent the commission of offences by this group during their terms. Another possible benefit of mandatory minimum sentencing is that disparity in sentencing might be reduced, thereby controlling the discriminatory effects of judicial discretion. Aside from these sentencing rationales, it is clear that politicians often support mandatory sentencing laws because such sentences are said to send a denunciatory message and because harsh penalties are supported by large numbers of the general public,<sup>8</sup> even if they cost a great deal and accomplish little.

On the other hand, mandatory minimum sentencing has been criticized by the Canadian Sentencing Commission,<sup>9</sup> the Law Reform Commission of Canada,<sup>10</sup> the Self-Defence Review,<sup>11</sup> and several national women's organizations such as the Canadian Association of Elizabeth Fry Societies<sup>12</sup> (CAEFS) and the National Association of Women and the Law (NAWL).<sup>13</sup> The Canadian Sentencing Commission, appointed in 1984 by the federal government,<sup>14</sup> took the position that mandatory sentences cannot deter people from committing crimes because most people do not even know of the existence of minimum sentences. The Commission concluded that potential offenders are deterred not by mandatory sentences, but rather by the probability of detection. It argued further that mandatory sentences are unjust because they prevent sentencing judges from imposing sentences that fairly reflect the specific circumstances surrounding the commission of offences and the offender.

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<sup>8</sup> See A. Doob and C. Cesaroni, "The Political Attractiveness of Mandatory Minimum Sentences," this volume at footnote 40.

<sup>9</sup> Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach. Report of the Canadian Sentencing Commission* (Ottawa: Minister of Supply and Services, 1986).

<sup>10</sup> Law Reform Commission of Canada, *Homicide* (Ottawa: Law Reform Commission of Canada, 1984) at 68-70; Law Reform Commission of Canada, *Recodifying Criminal Law* (Ottawa: Law Reform Commission of Canada, 1987) at 59.

<sup>11</sup> Her Honour Judge Lynn Ratushny, *Self-Defence Review. Final Report* (Submitted to the Department of Justice and the Solicitor General of Canada, 11 July 1997) at 192-95.

<sup>12</sup> Canadian Association of Elizabeth Fry Societies, *Response to the Department of Justice Re: Reforming Criminal Code Defences: Provocation, Self-Defence and Defence of Property* (Ottawa: CAEFS, 2000).

<sup>13</sup> A. Côté, D. Majury, and E. Sheehy, *Stop Excusing Violence Against Women! NAWL's Position Paper on the Defence of Property* (Ottawa: NAWL, 2000).

<sup>14</sup> The Sentencing Commission was appointed in 1984 pursuant to an Order in Council of May 10, 1984, P.C. 1984-1985, as amended on 8 February 1985; P.C. 1985-441, in accordance with the Terms of Reference assigned therein, under Part I of the *Inquiries Act* by the Governor General in Council.

The Law Reform Commission recommended that the mandatory life sentence for second degree murder be repealed and that discretion be left in the hands of the judge to impose a sentence up to a maximum sentence of life imprisonment. It argued that judges are best positioned to tailor a sentence to fit the offender's motive and that the appeal process can be used to correct inappropriate exercises of sentencing discretion. It also pointed out that if the mandatory penalty were abandoned, the unique and technical rules now in place to mitigate murder's hefty penalty, like the defence of provocation, the "excessive force" limitation on self-defence, and the special offence of infanticide, could be abolished.

The Self-Defence Review, established in 1995 by the Solicitor General and Minister of Justice, recommended a modification to the mandatory life sentence for murder such that a jury be given the power to recommend a more lenient sentence "in exceptional circumstances" when returning a guilty verdict to a charge of second degree murder. In reviewing the files of ninety-eight women convicted of homicide who claimed that they had acted in self-defence to avert the threat posed by an abusive partner, Judge Ratushny, as she then was, the head of the Review, found cases of women who pled guilty to manslaughter, even with very strong evidence supporting a defence of self-defence, rather than going ahead to trial on murder. She attributed these pleas to inappropriate and systemic pressures placed upon women accused of murder, among which the most important was the risk of conviction for murder, with its mandatory life sentence and lengthy periods of parole ineligibility. While acknowledging the impact of this pressure on all accused people, she identified additional factors that bear on battered women. These factors include responsibility for young families, fear of testifying publicly and in front of the families and friends of the deceased about his physical and sexual violence, and excessive self-blame for killing another person.

Women's groups like CAEFS and NAWL have opposed mandatory sentencing laws for these and additional reasons, including a concern that the power of prosecutors and police is unfairly increased by mandatory sentencing. These groups have also argued that fundamental sentencing principles, constitutional rights, and the division of powers are disrupted by these laws; that systemic inequalities like racism are deepened and reinforced by mandatory minimums; and that mandatory jail sentences contribute to the swelling of prison populations across Canada.

Despite these criticisms of mandatory minimum sentences, many debates about their role and appropriateness continue, including whether mandatory sentencing laws serve important symbolic functions that protect the interests of vulnerable groups or condemn the crimes of the powerful, and whether discretionary sentencing laws can be rendered accountable to

equality principles. The Colloquium on Mandatory Minimum Sentencing, held at Osgoode Hall Law School in March 2001 and chaired by His Honour Judge David Cole of the Ontario Court of Justice, Provincial Division, was convened in order to generate Canadian legal scholarship and informed discussion on mandatory minimum sentencing. By publishing papers presented at the Colloquium, the Osgoode Hall Law Journal hopes to widen the debate on mandatory minimum sentencing within the scholarly literature and at the public policy level.

In this special issue, articles by Nicola Crutcher, Anthony Doob and Carla Cesaroni, and Julian Roberts set up a framework within which the policy decision to invoke a mandatory minimum sentence should be considered. Crutcher charts the legislative history of mandatory minimum sentences of imprisonment in Canada. She notes that while in 1892 Canada's *Criminal Code* contained only six offences carrying a mandatory jail sentence, the current *Code* stipulates a mandatory sentence of imprisonment for twenty-nine offences. More significantly, she documents the increasing rate at which legislators are proposing, through a flurry of bills to Parliament in the past several years, to add more offences to the list of offences carrying a mandatory sentence of imprisonment.

Mandatory sentencing laws of this sort are, according to the analysis pursued by Doob and Cesaroni in this special issue, the politician's "quick fix" for crime. These authors put current policy debates in a broader context in order to answer the question of why this sentencing device continues to be lauded by politicians when every Canadian commission since 1952 has condemned its use and recent data casts serious doubt on its deterrence effect. After exploring the role of the judiciary and the media in perpetuating the myth that mandatory minimum sentences deter crime, Doob and Cesaroni provide a number of suggestions to shift the public debate toward less punitive and more cost-effective crime control strategies.

Roberts interrogates the judicial response to the introduction of mandatory sentencing laws, since sentencing judges bear the responsibility of implementing these new laws within a pre-existing sentencing framework and principles. His research focuses on the ten offences that gained a mandatory minimum sentence with the passage of the *Firearms Act*<sup>15</sup> in 1995. This new minimum sentence was four years imprisonment for those convicted of using a firearm while committing the offence. Roberts argues that the legislative record does not support the proposition that Parliament

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<sup>15</sup> *Firearms and other weapons Act*, S.C. 1995, c. 39.

intended the new four year minimum to be interpreted through the proportionality principle, which would, if applied, result in an overall inflation of the sentences for these and other more serious offences. In fact, the available data for the sentencing patterns under the new legislation suggest that judges have jettisoned proportionality and other sentencing principles in order to confine the vast majority of the sentences meted out under the new regime to the bare minimum required by law.

Two articles in this volume, by H el ene Dumont and Kent Roach, examine the constitutional implications of mandatory minimum sentences. Dumont's article<sup>16</sup> was written in response to the passage in 1995 of the largest package of new mandatory sentences to be enacted in Canada's history—nineteen in all—contained in the *Firearms Act*. She argues that the new minimum four-year sentence of imprisonment for ten of the nineteen offences contained in the 1995 amendments to the *Firearms Act* violate ss. 7 and 12 of the *Charter*,<sup>17</sup> as well as fundamental sentencing and democratic principles. While supporting the “disarmament” of Canadians represented by the *Firearms Act*, Dumont argues that a feminist and humanist approach must eschew minimum sentences on the ground that legal practices requiring “excessive punishment” can only degrade human dignity and increase societal intolerance.

The Supreme Court of Canada's response to the constitutional challenges to mandatory minimum sentencing based on *Charter* s. 7 is studied in detail by Roach in his contribution to this volume. He traces the evolution of the Court's jurisprudence on challenges to mandatory minimum sentences, describing the retreat from the 1987 decision in *Smith*<sup>18</sup> through the subsequent decisions in *Luxton*<sup>19</sup> (1990) and *Goltz*<sup>20</sup> (1991), to the failed *Charter* challenges in *Morrissey*<sup>21</sup> (2000), and *Latimer*<sup>22</sup> (2001). Roach identifies several significant shifts in the Court's judgments over this fourteen year period: from activist to minimalist judicial review,

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<sup>16</sup> This article is a translation generously provided by the Department of Justice of a paper that was previously available only in the French language.

<sup>17</sup> *Canadian Charter of Rights and Freedoms*, Part I of *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

<sup>18</sup> [1987] 1 S.C.R.1045.

<sup>19</sup> [1990] 2 S.C.R. 711.

<sup>20</sup> [1991] 3 S.C.R. 485.

<sup>21</sup> [2000] 2 S.C.R. 90.

<sup>22</sup> [2001] 1 S.C.R. 3.

and from careful attention to the individual deterrence and rehabilitation needs of potential offenders to a perfunctory vetting of the constitutional adequacy of the *mens rea* requirement of the offence itself. He posits that these shifts in *Charter* adjudication parallel changes in federal sentencing policy, which has increasingly invoked just deserts rationales over restorative justice principles. Roach calls for a reinvigorated dialogue between the Court and Parliament in order to revive both *Smith* and a constitutional commitment to individual justice.

The lessons that might be gained from comparative law perspectives on mandatory minimum sentencing are pursued in the articles by Julie Stewart and Jamie Cameron. Stewart's article presents an introduction to mandatory sentencing laws in the United States at the federal and state level and their arbitrary, yet profound, impact upon ordinary citizens convicted of drug offences. Her description of the legislative process that led to the determination of the sentence for various offences as a bidding war contrasts sharply with her account of the painstaking and arduous law reform campaigns undertaken to chip away at mandatory sentences. Stewart echoes Doob and Cesaroni's insight that politically, mandatory sentences are far easier to enact than to repeal.

In her contribution to this volume, Cameron reviews the United States' jurisprudence on the Eighth Amendment's protection against "cruel and unusual punishment" as applied to mandatory sentences of imprisonment. Given the legal and constitutional differences between the two countries and the very different forms that mandatory sentencing regimes have taken in the U.S., her article cautions against reliance on United States' law by Canadian law and policy-makers. She suggests that if the death penalty is not considered unconstitutional by the United States Supreme Court, then it is possible to understand why mandatory, lengthy imprisonment, even for minor property offences, is seen by this Court as cruel, but not necessarily unusual. Cameron's conclusion is that the U.S. has only negative lessons to offer to Canada, particularly in light of the similar stance of judicial deference to legislative sentencing policy taken by the Supreme Court of each country.

A number of the articles included in this special issue address the specific impact of mandatory sentences on particular groups. Larry Chartrand and Renée Pelletier both examine the effects for Aboriginal peoples in Canada, and Faizal Mirza's article examines the unequal impact of mandatory minimum sentencing upon African-Canadians. In his article, Chartrand uses the data generated by recent Australian sentencing laws in Western Australia and the Northern Territory to speculate about the effects of mandatory sentencing practices for Aboriginal people in Canada. He refers to the over-representation of Aboriginal people in prison, the

nature of offences that Aboriginal people are charged with, and the role of firearms in Aboriginal hunting as significant factors that will produce a disparate vulnerability of Aboriginal offenders to mandatory imprisonment for offences committed with firearms. Chartrand points out that the ameliorative purpose of s. 718.2 (e) of the *Criminal Code*, which directs sentencing judges to consider sanctions other than imprisonment for all offenders, “with particular attention to the circumstances of aboriginal offenders,” will be obliterated by mandatory minimum sentences of imprisonment. He thus makes out a case that these laws violate ss. 12 and 15 of the *Charter*.

Pelletier focusses her article on the further evisceration of s. 718.2(e) by two Supreme Court decisions, *Gladue*<sup>23</sup> and *Wells*.<sup>24</sup> While crediting *Gladue*'s broad statements regarding the significance of s. 718.2(e) for Aboriginal peoples as a legislative attempt to reduce their over-representation in provincial and federal prisons across Canada, she identifies a number of systemic issues for Aboriginal offenders that were left unaddressed in *Gladue*, which blunt its potential to change the Aboriginal incarceration rate. In *Wells*, the Court set out the legal analysis to be undertaken when a sentencing judge must consider s. 718.2(e) and s. 742.1, which permits a judge to order that a sentence of imprisonment be served in the community as opposed to an institution. Pelletier argues that *Wells* also contributes to the nullification of the legislative effort to de-incarcerate Aboriginal people by requiring judicial consideration of s. 718.2(e) only after a judge has decided to impose a sentence of imprisonment, thereby facilitating net-widening.

The effects of mandatory sentencing laws on racialized Canadians, particularly African-Canadians, are the subject of Mirza's article. He relies on statistics from the United States on mandatory sentences for drug offences and “three strikes” laws to paint a picture of the massive over-representation of African-Americans among those imprisoned under these laws. Mirza uses the available data in Canada to argue that since African-Canadians experience targeted policing, negative exercises of prosecutorial discretion in elections about how to proceed with the charges, greater opposition to bail, fewer opportunities to plea bargain, and sentencing decisions that are more punitive than those received by similarly situated white offenders, it is reasonable to expect that African-Canadians will have an increased chance of being on the receiving end of a mandatory minimum

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<sup>23</sup> [1999] 1 S.C.R. 688.

<sup>24</sup> [2000] 1 S.C.R. 207.

sentence, especially the new mandatory sentences for offences committed with firearms. He cautions that the long-term effects of mandatory sentences will be to legitimize systemic racism and to forestall the development of an anti-racist legal analysis in the criminal justice system.

Two of the articles in this special issue examine the implications of mandatory minimum sentences on the integrity of the prosecutorial process. Using the available knowledge and experience that has diagnosed how wrongful convictions are systematically produced by the structural and ideological parameters of criminal investigation and prosecution, Dianne Martin argues that mandatory sentencing schemes play a significant role in generating informants and, in particular, jail house informants. In turn, informant evidence is precisely the kind of evidence that was critical in wrongly convicting Donald Marshall Jr., David Milgaard, and Guy Paul Morin, as well as the Birmingham Six, the Guildford Four, and the Maguire Seven in the U.K. Martin uses the U.S. experience that shows that many accused will turn informant and others will confess to crimes demonstrably not committed to avoid mandatory prison sentences, to caution against the pursuit of new mandatory minimum sentencing schemes in Canada.

In her contribution, Sheehy argues that mandatory sentences distort defences to murder, and particularly defences for battered women on trial. She identifies three ways in which self-defence for battered women is distorted by the mandatory life sentence: women systematically abandon legitimate self-defence arguments and plead guilty to manslaughter; when they do proceed to trial for murder, their self-defence claim is frequently framed in syndrome and stereotype rather than in the brutal realities of their lives; and their defence may also be re-cast as an effort to defend their children rather than their own lives. The transcript of a murder prosecution of a battered woman who faced trial in Manitoba in 1998 is used to make vivid the power of a mandatory life sentence to extract guilty pleas from vulnerable women and to provide concrete illustrations of the many distortions of self-defence in the evidence presented at trial. Sheehy concludes that no law reform other than abolition of the mandatory life sentence can shift the enormous power imbalance between battered women and prosecutors, and that no other legal strategy can restore a measure of democracy to the murder trial by separating the roles of prosecutors, juries, and judges to pursue, to judge, and to sentence.

Archie Kaiser and Fiona Sampson are two of the three contributors to this volume who express reservations about abandoning mandatory minimum sentences. Both write from a disability rights perspective and give serious attention to the symbolic meaning of the mandatory sentence for murder when the victim is a person with disabilities. Kaiser and Sampson focus on the *Latimer* case, in which Robert Latimer was on trial for the

murder of his daughter Tracy, who lived with serious disabilities. Poonam Puri is the third author who makes a case for the retention and expansion of mandatory sentencing, arguing that for corporate offending, mandatory fines may be the optimal symbolic and economic sanction.

In his article, Kaiser examines the “insidious images of disability” used in the *Latimer* case to describe both the victim and Latimer’s motivation, arguing that these images undermine the equality rights of the victim, as well as of all Canadians who experience disability. He argues that if *Latimer* is to be the crucible within which we evaluate the merit of mandatory sentencing, then the case against mandatory sentencing cannot be made out given the violations of the rights of a child with disabilities that would follow from such a position. Kaiser rejects proposals to extend clemency to Robert Latimer or to create a new, mitigated offence of “compassionate homicide.” Instead he argues that the risks to the lives of Canadians with disabilities demand new offences and sentencing structures that are specifically designed to respect their equality rights and to condemn parental violence against children with disabilities.

Sampson’s article describes the contradictions confronted by the DisAbled Women’s Network (DAWN) Canada in its intervention in the *Latimer* litigation and the invitation it received to join a feminist coalition advocating the abolition of all mandatory minimum sentences, including life imprisonment for murder. While acknowledging the many equality rights violations occasioned by mandatory sentencing laws, she notes that the proposal to abolish the mandatory sentence for murder in order to allow judges to account for extenuating circumstances by mitigating sentence simultaneously raises difficult issues for women with disabilities, particularly in light of DAWN’s position supporting the mandatory sentence in *Latimer*. Sampson reads the decision of the Supreme Court in *Latimer* upholding the mandatory life sentence as a qualified success for women with disabilities. As such, DAWN cannot support the abolition of the mandatory life sentence for murder until judicial sentencing powers are effectively constrained by the equality rights guarantees of s. 15 of the *Charter*.

Puri’s contribution to this special issue discusses another context within which mandatory sentences may serve a significant function: the legal sanctioning of corporate criminality. She argues that public enforcement of criminal law prohibitions against corporate wrongdoing is desirable, but notes that most corporate crimes have been effectively decriminalized such that only quasi-criminal, regulatory frameworks are available to condemn these activities. Further, the enormous doctrinal hurdles that must be surmounted to obtain convictions make effective sentences even more critical for these offenders. Using an economic

analysis, Puri argues that fines must be fixed at a level that exceeds the expected gain to the offender, but she reports that corporate offenders almost invariably receive the benefit of a discretionary sentencing scheme. The category of offences that currently uses a minimum fine structure, income tax offences, should be expanded to include other corporate crimes, according to Puri. She also advocates raising the level of mandatory fines to account for the risk of detection in order to make corporate criminal activity less profitable.

Finally, in the article that concludes this volume, Isabel Grant examines alternatives to the use of a mandatory life sentence for murder. She undertakes a thorough review of Canada's murder laws, noting unfairness and inconsistencies in the laws that purportedly reserve the "worst" mandatory sentences for the "worst" offenders and offences. Grant then picks up the comparative law thread in order to identify the similarities and points of departure between Canada's sentencing law for murder and those of the United States, England, and Australia. One important insight that she culls from this survey is that the discretionary sentencing regime for murder in New South Wales has introduced some degree of sentence disparity. Turning to the reform of Canada's murder law, Grant urges abandonment of the categorization of degrees of murder and of the lengthy parole ineligibility that is specific to murder. She would, however, retain a presumptive life sentence for murder that can be avoided by the trial judge only if this sentence would amount to a "miscarriage of justice."

The articles in this special issue represent an effort to respond to the growing political and legal importance of mandatory minimum sentences in Canada. While the majority of the contributors counsel against the use of mandatory minimum sentences, this analysis is enriched by the significant dissent registered by authors advocating for the rights of people with disabilities, by the efforts to hold corporations to account for criminal wrongdoing, and in light of the patterns of judicial discretion under more open-ended sentencing regimes.

There is much research and analysis left to be done if Canadian researchers and policy-makers are to understand fully the effects of mandatory sentences and to develop sentencing alternatives. Greater focus on the ordinary mandatory sentences administered daily by the lower courts, such as drivers' license revocation for drunk driving and hefty mandatory fines for driving without insurance, is necessary if we are to examine mandatory sentences in all of their forms. Empirical research on mandatory sentences and their role in the incarceration rates of racialized people in Canada is needed. Investigation of the specific effects of mandatory sentences for women, including racialized and Aboriginal

women and women prisoners, should also be undertaken. Legal devices other than mandatory sentences to control discriminatory exercises of prosecutorial and judicial discretion should be considered in order to protect the interests of people with disabilities, the poor, and racialized people. Creative attention to new legal forms and sentencing for the criminal conduct of corporations is rare but critical to the development of sentencing literature. Finally, Grant's proposal to re-conceptualize the sentencing structure for murder in the absence of a mandatory life sentence raises a very significant question as to what parole for murder might look like under such a revised law. These and many other issues will, hopefully, engage future scholars and contribute to rational reform of mandatory minimum sentencing laws in Canada.