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AN EMPIRICAL STUDY OF THE USE OF MITIGATING AND AGGRAVATING FACTORS IN SENTENCE APPEALS IN ALBERTA AND QUEBEC FROM 1980 TO 1985

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AN EMPIRICAL STUDY OF THE USE OF MITIGATING AND AGGRAVATING FACTORS IN SENTENCE APPEALS IN ALBERTA AND QUEBEC FROM 1980 TO 1985

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Department of Justice Canada
1988

This report was written for the Canadian Sentencing Commission.
The views expressed here are solely those of the authors and do
not necessarily represent the views or policies of the Canadian
Sentencing Commission or the Department of Justice Canada.

FOREWORD

This report was written in February 1986 under contract with the Canadian Sentencing Commission.

The purpose of this paper is to identify the variables that have become relevant in the sentencing process through an examination of the case law. It is hoped that these variables might inform us of the unwritten guidelines courts follow in a common law system, thereby helping us to structure written ones. In order to understand the operation of mitigating and aggravating factors in sentencing decisions it is necessary to examine these as they appear in appellate court decisions. For the purposes of this paper the courts of appeal of Quebec and Alberta were selected for study. The research for Alberta relied entirely on reported cases. The court of Appeal of Alberta is prolific and well reported. The research for Quebec was done at the Palais de Justice in Montreal. I owe a debt of gratitude to the Honourable Claude Bisson of the Quebec Court of Appeal for his kindness and his invaluable assistance in having the court's records made available for the research. I would also like to thank Renate Mohr and Jean-Paul Brodeur for their support and guidance. Lastly for their good humour, patience and in-depth knowledge of the Macintosh 512K micro computer I thank Riel Miller and Mark Schacter. None of those who have helped in various ways should, of course, be held responsible for any errors or omissions in this paper.

<div align="right">Shereen H. Benzvy-Miller</div>

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ABSTRACT

The empirical study of mitigating and aggravating factors in sentence appeals in the courts of Appeal of Alberta and Quebec from 1980 to 1985 is derived from an examination of the case law from these courts. These judgments do not lead themselves easily to quantification. However, certain patterns of judicial decision-making become evident when examining the frequency of the appearance of various factors.

In Alberta 106 reported cases from 1980-85 were available for study. In Quebec 307 files from 1983-85 were examined along with reported cases from 1980-83. A simple list of the aggravating and mitigating factors used by the courts in sentencing decisions was compiled and ordered by frequency for Alberta and Quebec. A total of thirty-six factors were included. The results indicated that in both provinces, plea of guilty, the absence of a criminal record and age were the most important mitigating factors. Not surprisingly, the seriousness of the offence and presence or use of weapons appear to be the most important aggravating factors.

The findings of the study show that there exist consistent and recurring patterns in the case law. It is hoped that by identifying these trends it will be possible to develop standards and guidelines for sentencing in the future.

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It is always difficult to compare the factors in one sentencing with those in another. The personal attributes of the accused and the facts of the offence itself are so infinitely variable that any valid comparison is virtually impossible.

Different judges on those facts, each bringing to the case his own lifetime of differing experience, will often disagree. The best that can be achieved is a range of sentences meeting the needs of a particular part of Canada at a particular time. The courts must also retain an element of flexibility in sentences to reflect the concerns of society which may differ with the passage of time.

Laycraft J.A.
in R v Burchnall and Dumont
(1980) 24 A.R. 17 at 32

CHAPTER I

INTRODUCTION

The paper sets out to examine the case law from the Courts of Appeal of Alberta and Quebec with respect to sentence appeals between the years 1980 and 1985. The cases were broken down into groupings by offence in an attempt to determine the frequency of appearance of various aggravating and mitigating factors in specific contexts, with a view to extrapolating general trends or patterns in the approach to sentencing at the appellate level.

The difficulties of quantifying essentially qualitative data are obvious. However,, it is useful to identify the "legally relevant" variables utilized in the sentencing process to determine whether any inappropriate factors influence the court. Certainly, frequency of mention is one indicator of which variables are being relied upon most often. The judiciary necessarily establishes guidelines, intentionally or inadvertently, by providing reasons for decisions which, in a common law system, will be added to the body of law of previous judgments. The precedential value of any particular decision varies but if there are patterns in the way judges justify sentencing decisions, whether the factors mentioned are actually the most important influences in the process, or simply those most used for presentation to the public at large, it is important to determine if the reasoning or perceived reasoning coincides with public policy.

In his paper entitled "The Operation of Mitigating and Aggravating Factors in Appellate Sentencing Decisions", Alan Young writes:

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The myriad of available factors defy a quantitative analysis and it is more usual for the court to approach the factors in an impressionistic manner. Instead of ascribing relative weight to each factor and carefully balancing the significance of each, it is far more common for the court to approach this task by listing the factors and then extracting an appropriate disposition as if the factors were all thrown in a melting pot. The final disposition is a sum of the parts (i.e. factors) but in its final form it is impossible to identify the contribution made by the individual parts.[1]

To a great extent this is true, as most appellate decisions on sentencing simply list the factors or "circumstances" relied upon without specifying whether each adds in mitigation or aggravation of the sentence[2] nor the relative weight any factor is being given. Decisions seem to be justified by acknowledging the existence of factual variables and sentencing principles. But this does not negate the need ascertain which ingredients contributed to the final product, and attempt to determine more than just the general flavour. It is true that empirical research tends to be "driven" by the nature of the available data, and that appellate court judgments do not lend themselves easily to quantification, but it is possible to determine the frequency, if not the weighted importance of offender and offence-related factors. The findings in this paper could prove useful in the preliminary stages of establishing sentencing guidelines or as an aid to members of the bar and bench in approaching sentencing problems. There is also value in analyzing and evaluating current knowledge to provide guidance on sentencing and to provide the basis for legislative initiative.

CHAPTER II

THE STUDY

1. Sample Selection

The data used were drawn from a sample of cases extracted from a population of appellate court judgments from Alberta and Quebec. A different process was used for developing the two sample groups. The techniques were not random sampling procedures. The methods of sampling could not ensure that the theoretical assumption of equiprobability was closely approximated. With respect to the decisions of the Court of Appeal of Albert, a detailed examination of Volumes 10-39 (and supplements) of the **Alberta Law Reports** (2d) and Volumes 18-62, **Alberta Reports** sufficed. The sample of 106 cases (of which 94 were useful) was a subaggregate drawn from the total population of sentencing cases available for the years 1980 to 1985. To the extent that the "cases available" population reflects the actual total population of decisions including those unreported, this sample is presumed to be unbiased. The breakdown, by year of these cases was:

> 1980 - 14
>
> 1981 - 7
>
> 1982 - 48
>
> 1983 - 12
>
> 1984 - 15
>
> 1985 - 10
>
> Total: 106

(12 cases were later deleted, leaving 94 in the sample)

Because the total population of judges does not change significantly over the six years examined and the composition of the bench differs for every case, there is no bias created by variation in the number of cases selected from each year (i.e. any personal biases or leanings of judges in particular cases tend to cancel out one another over the sample period).

The **Law Reports** for Quebec were less useful as relatively few sentencing decisions were included. It was, therefore, necessary to research all the unreported cases accessible at the Court of Appeal of Quebec in Montreal. The relevant years here too were 1980 to 1985. All case files for sentencing appeals brought from mid-1983 through 1984 to 1985 were examined. There were 307 files in total. Files for the years 1980 to mid-1983 were inaccessible and were therefore included in the study by using available reported cases. The breakdown by year of cases included in the sample for study was:

<div style="text-align:center">

1980 - 2

1981 - 6

1982 - 7

1983 - 9

1984 - 16

1985 - <u>29</u>

<u>Total</u>:   69

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2. Methodology

The primary purpose of this study was to prepare a list of the aggravating and mitigating factors used by the courts in sentencing decisions at the appellate level. The list was to have the factors organized in order of importance, as determined by the frequency each was mentioned overall. Given that the objective was not to test the actual substantive importance of each variable but rather to uncover the statistical frequency distribution, the samples, as detailed above, though not randomized, seemed balanced and unbiased. With this in mind, it is possible to describe and draw inferences about the numerical properties of the population of case law from the data collected.

Once the samples were drawn it was necessary to chart the frequency of mention of each factor for every case. The factors considered were grouped as offender or offence-related under the headings Mitigating and Aggravating. A total of thirty-six factors were included for study.[3] In addition to these, four general principles of sentencing[4] which are often considered by the courts were incorporated into the charts, but these were not included as factors in calculations for overall factor frequency data.[5]

3. The Data

(a) ALBERTA

The ninety-four cases in this sample were broken down by offence and placed under one of four offence categories: sex offences, violent crimes, drug-related offences and offences related to stealing of or destruction of property (see Table 1).

Upon examination of this table, it should be noted immediately that only the drug offences and gross indecency have a sample size of ten or more. It is, therefore, important not to attempt an analysis of each subcategory. The utility of spreading the findings according to specific offences in the first chart was to enable the reader to assess the source of any aberration in the totals used to calculate the ratio of factor categories to total number of factors. Clearly, of the 227 mentions of mitigating factors, in nineteen factor categories, in Alberta, Age was the most frequently used (17.62%). It should be mentioned here that this particular result must be considered with the stipulation that there is a certain built-in bias because age was recorded as being considered when specifically referred to as a mitigating (or aggravating) factor and when mentioned in relation to the description of the facts of the case.

The next two factors which appeared most often (13.22%) were **Plea of guilty** and **No record**.

Where the offender has little or not criminal history it is accepted that, as Ruby writes:

> It is not possible to treat all first offenders in the same manner.
> Some crimes are more serious than others and some offences,
> viewed as examples of their type, are more grave than others.

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Yet our courts have shown marked inclination to avoid or
minimize, wherever possible, imprisonment for first offenders,
relying on the lesson experience has taught: imprisonment leads
to more imprisonment.[6]

Though there is no means of measuring how much weight this factor is given in

mitigation of sentence, it is often mentioned.

Where the accused enters a plea of guilty it is usually discussed, at least in

passing, somewhere in the judgment. In **R. v. Sawchyn**, the Alberta Court of Appeal

said:

Evidence of remorse, as for instance by a plea of guilty, will
often justify reduction of a sentence below the level which would
otherwise be appropriate for the offence committed.... It remains
a valid principle that remorse, or indeed any other mitigating
factor, justifies leniency.[7]

The Aggravating Factors were dealt with in seventeen factor categories. Not

surprisingly the one most often mentioned, from a sample of 158, in relation to

aggravation of sentence, was **Seriousness of Offence** (23.42%). In **R. v. Wells**,

Belzil J.A. stated that:

This court has frequently stressed that the invasion of a private
house and the rape of its female occupant must attract a
substantial term of incarceration.[8]

This quotation is an indirect statement of the impact of the court's view of the

seriousness of an offence on the ultimate sentence. As in **R. v. Crowshoe**, the same

judge held:

> This court has recently had to deal with this type of unfortunate
> offence (sexual intercourse with a female under 14 - the
> accused's step-daughter in this case) in an increasing number of
> cases. It has laid down the guideline that a sentence of
> imprisonment should be imposed in a situation, such as the one in
> the present case, where the offender is in a position of parental
> authority over the young female victim.... The courts have no
> other way to protect young females from sexual abuse by those
> exercising parental authority over them than by imposing
> significant incarceration which will bring home to others having
> similar tendencies the gravity with which society views this form
> of abuse.[9]

The factor that is the second most mentioned in aggravation of sentence is the existence of a **Criminal record** (15.19%), which fits squarely with the results found in the mitigation data, which dealt with the other side of the coin.

Use of weapons and **Vulnerability of victim** were tied (13.92%) for next in frequency. Looking first at the role of weapons in the commission of crimes, it is not difficult to understand why the cases reflect a concern for the added threat and potential seriousness. It is explicitly mentioned as one of the key variables in setting sentencing guidelines.

In 1982, Harradence J.A. stated that:

> This court has made it clear that the penalty for robbery where
> a weapon is involved, particularly of convenience stores or small
> retail establishments, will be three years... that is the bench
> mark.[10]

while in 1984 Laycraft J.A. asserted that:

> The usual range of sentences for a bank robbery involving a note
> where no gun is produced starts at approximately four years
> imprisonment.[11]

The contrast provides a clear example of the fact that use of a weapon may be viewed as aggravating on the one hand but the absence of a weapon will not necessarily mitigate.

With respect to the **Vulnerability of victim** factor, it must be understood that this encompasses both cases where the accused is in a position of trust vis-à-vis the victim (i.e. the fiduciary relationship of step-parent, for example) in sexual assault cases, and where the accused violates a victim's home by breaking and entering for the purposes of robbery and/or sexual assault of the resident. The courts have made it clear that by including this factor as one that aggravates a sentence, society's denunciation of the conduct is being expressed along with the court's duty to protect vulnerable members of the community.[12]

The only other aggravating factor of any significance was that regarding **Degree of violence** used or harm imposed (9.49%). Though this was mentioned substantially less often than the factors mentioned above, it should be remembered that the sample size of each offence category varies and that crimes which potentially include violence - sexual assault, assault causing bodily harm, robbery and the combination category[13] in total comprise only twenty-four of ninety-four cases (i.e. approximately 25% of the cases).

(b) QUEBEC

The sixty-nine cases in this sample generated an equal number of mitigating (119) and aggravating (119) statistics. The table (no. 3) used for compiling the data is substantially the same as the one used for the cases from the Court of Appeal of Alberta.

Interestingly, the breakdown of cases by offence differed greatly from the first table examined in that a higher number of cases (15) fell within the category of drug-related offences,[14] and there were far fewer types of property offences and therefore fewer in this category generally.

In examining Table no. 3, what is immediately visible from the ratio of particular factors to the total number of factors in the mitigating section of the table is that **Plea of guilty** (20.17%) is the most frequently-mentioned factor. Again this does not speak to the **weight** it is given in determination of sentences, but the fact that it is followed by **Age** (17.65%) and **No record** (14.29%) indicates some sort of consistency in the system as these were (in different order) the three most frequently-cited mitigating factors in Alberta as well. The similarities are immediately apparent if one examines Graph no. 1.

Usually only passing reference seems to be made to these three above mentioned factors in the Quebec decisions. For example, in **Denis Paquet c. Sa Majesté la Reine** 5.6.85 (Que. C.A.) the court substituted two years' probation for two years' imprisonment with the following explanation:

> ...CONSIDERANT le jeune age de l'appelant (19 ans);
> CONSIDERANT que l'appelant n'a aucun casier judiciaire;

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CONSIDERANT que l'appelant a démontré une entière
collaboration avec les autorités policières...

Under the headings of aggravating factors, **Seriousness of offence** leads (28.57%)
once again. It is usually mentioned as if in passing "CONSIDERANT la gravité
objective des infractions" or "Vu la gravité objective des crimes"[15] along with a list
of other factors. A close second is **Criminal record** [16] (24.37%), again much like
Alberta. Surprisingly the third most often cited factor is only partly the same as it
is in Alberta, and it is mentioned substantially less often than the two above, that is
Vulnerability of victim (8.40%). In Alberta **Use of weapons** was tied for third in this
list whereas in Quebec it trails far behind at seventh (4.20%). Unfortunately, the data
do not provide any explanation for this, as it was not possible to quantify the total
number of cases that involved weapons, as the complete facts of the actual crimes
were not always included in the judgments. Here again the graphic representation of
the results (see Graph no. 2) is interesting. The contrast, for example, between the
two courts in the way they employ **Use of weapons** as a factor is stark (see factor 1
on Graph 2). In looking at the graphs one must bear in mind that these are meant to
assist the reader in visualizing the results, not as a scientific method of comparison
since the percentages for each province were drawn from ratios based on a different
sample sizes. The comparison is only possible given that the samples are each large
enough to permit the assumption to be made that no inherent biases exist.

(c) ALBERTA vs. QUEBEC

Tables 2 and 4 are the result of grouping the data compiled in Tables 1 and 3. Here, all sex offences were grouped, as were all violent crimes (or crimes against the person). Because the sample size for each category of offence within the drug-related offence heading was too tiny to be useful, even at the preliminary stages, these were put together for Table 1 and 3 (and remained the same subsequently for Tables 2 and 4). Property offences had to be broken down into two groups: the first, Property Offences 1, included all offences relating to stealing and the second, Property Offences 2, was made up of the rest.

In reading the results in these two tables, it is very important to bear in mind that the offence groupings cannot be compared one to the other because of the variations in sample size and that these results differ from those in the tables discussed earlier, because the percentages formed in the latter reflect equal weight for every observation whereas percentages found in the former are a reflection of the number of observations within the category. It is therefore not statistically significant for example that, within Drug offences, **Amount and type of substance** represents 50% of aggravating factors, since that comprises a total of three observations.

The most salient features of these two tables are all the offence and factor totals and the factor frequency for the entire population that was culled from these totals. Alberta had a sample size of 385 mentions of factors in all categories for all offences across 94 cases. And though Quebec shows only 238 across 68 cases, the figures are comparable in percentage breakdowns given that both samples are large enough to be unbiased.

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Turning to Graph no. 4 entitled, "Overall Factor Frequency as a Percentage of Total Factors for Mitigating and Aggravating, Alberta and Quebec", it is easy to see the variation for each province. These graphs are simple frequency distributions showing frequency of mention overall of the various factors. Essentially the data are self-explanatory in this form, but it is interesting to note how much stronger factors (21) **Seriousness of offence**, and (30) **Criminal record**, are in Quebec and how (16) **Remorse** is absent as a relevant factor in Quebec.

(d) RE SEXUAL OFFENCES

The earlier statement that offences ought not to be compared to each other within the tables (Tables 2 and 4) remains true; however, it is interesting to examine the offence categories separately. For example, the data included for Sexual Offences will be explored here (see column 1, Tables 2 and 4). There are limits to the utility of this exercise given the fact that the broad category referred to as "sexual offences" includes an array of offences which differ between the two provinces (see column 1-3, Tables 1 and 3). Another problem is that of different sample sizes between groups of factors (i.e. mitigating vs. aggravating - Alberta 61:29, Quebec 30:37) and between provinces. At least all groups contain more than 20 recorded observations, which permits inclusion of the data in an analysis. Looking first at "Mitigating Factor Frequencies for Sexual Offences, Alberta and Quebec" in the top half of Graph no. 3: it is immediately obvious that certain factors are never mentioned in either province with respect to sexual offences. These are: (3) **Presence, but no use of weapon**, (4) **Role of offender** (6) **Spontaneity of offence** and (13) **Low intelligence**. It seems futile to discuss factors mentioned less than 5% of the time because these reflect very few actual observations.

In Quebec (1) **Plea of guilty**, (8) **No record**, (10) **Age** and especially (12) **No violence**, are mentioned substantially more often than the same factors are in Alberta, while in Alberta (19) **Family background**, (17) **Rehabilitation of the offender**, (9) **Good record of employment** and (5) **Involvement of Drugs or Alcohol** mitigate much more often than in Quebec. And factor (16) **Remorse**, is a significant factor in Alberta and not used at all in Quebec with respect to sexual offenders. Clearly, (1) **Plea of guilty** is mentioned often in both provinces in mitigation of sentence, which is not surprising

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given the benefit this has in sexual crimes, of sparing the victim the ordeal of testifying in court.

The next graph to look at is in the lower portion of the same page, entitled: "Aggravating Factor Frequencies for Sexual Offences, Alberta and Quebec". Here many factors are not mentioned at all, and of those that are, many less than 5% of the time.

Commenting on the significant factors one must note that the following factors are mentioned in Alberta much more often than in Quebec: (1) Use of weapons, (2) Seriousness of the offence, (5) Frequency of the crime in society (i.e. its current prevalence) and (7) Vulnerability of the victim. While Quebec is ahead in the number of times (6) Violence/Harm and (11) Criminal record are counted as aggravating factors in sexual offence cases.

A similar examination of the data from the other offence categories could easily be undertaken, but will not be included here, as it is beyond the scope of this paper.

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(e) ORDERED LISTS OF MITIGATING AND AGGRAVATING FACTORS: LIST OF FACTORS MENTIONED IN ORDER OF FREQUENCY BY THE COURT OF APPEAL OF ALBERTA (Drawn from Table 2)

Age as a mitigating factor	10%
Seriousness of offence	8%
Plea of Guilty	8%
No record	8%
Existence of a criminal record	6%
Use of weapons	6%
Vulnerability of victim	6%
Family background	5%
Good work record	5%
Rehabilitation of offender (before sentencing)	4%
Violence/Harm	4%
Remorse	3%
Drugs/Alcohol (used when crime committed, mitigating)	3%
Marital Status	2%
Co-operation with police	<2%
Level of education of accused	<2%
Frequency of the crime in society	<2%
Status of the accused at the time of offence	<2%
Role of offender in crime, as follower	<2%
No violence used in commission of offence	<2%
Spontaneity of offence	<2%
Age as an aggravating factor	<2%
Amount and type of substance (same in aggravating as in mitigating)	<2%
Good reputation of offender in the community	<2%
Role of offender as a leader	<2%
Presence but no use of weapon	<2%
Low intelligence of offender	<2%
Drugs/Alcohol (aggravating)	<2%
Premeditation of offence	<2%
Poor work record	<2%
Violent propensity of offender	<2%
"Professional" or "Hardened criminal"	<2%
Degree of sophistication of offence	<2%
Attempts	<2%

LIST OF FACTORS MENTIONED, IN ORDER OF FREQUENCY
BY THE COURT OF APPEAL OF QUEBEC (Drawn from Table 4)

Seriousness of offence	14%
Existence of a criminal record	12%
Plea of guilty	11%
Age as a mitigating factor	9%
No record	7%
Vulnerability of victim	4%
Violence/Harm	4%
Rehabilitation of the offender	3%
Good work record	3%
Status of the offender at the time of the offence	3%
Co-operation of the police	3%
Drugs/Alcohol (used when crime committed, mitigating)	3%
No Violence	3%
Marital Status	2%
Use of weapons	2%
Amount and type substance (aggravating)	<2%
Professional criminal	<2%
Amount and type of substance (mitigating)	<2%
Education	<2%
Good reputation in community	<2%
Leader	<2%
Violent propensity	<2%
Presence, but no use of weapon	<2%
Attempts	<2%
Low intelligence	<2%
Degree of sophistication of offence	<2%
Frequency of crime in society	<2%
Work record	<2%
Age (aggravating)	<2%
Good family history (aggravating)	<2%
Remorse	<2%

4.   The Principles

The inclusion of this section in the study was experimental. To add a third category to the charts for "principles of sentencing" that are considered along with aggravating and mitigating factors was easily done. The results show that for both provinces, deterrence and protection of society were (in that order) the principles mentioned most often in justifying sentences.

Unfortunately, the results generated at the bottom of charts 2 and 4 (that group observations by crime as opposed to offence category) are not particularly enlightening. For example, in Alberta, under Drug Offences (column 3), of a total of 5 observations, 3 fall under **Deterrence** and 2 in **Rehabilitation** the percentages come out at 60% and 40% respectively. Clearly the sample sizes are much too small to allow any inference to be drawn. These data are therefore submitted for pedagogical interest, not for their statistical significance.

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CHAPTER III

CONCLUSION

In this paper, the objective was not in any sense to select a statistically rigorous sample, but rather to construct, in a qualitative manner, a picture of the factors that appellate judges take into account at sentencing.[17] An attempt has been made to cull the salient features of appellate decisions related to aggravating and mitigating factors in order to rank the factors by importance.

It should be remembered that there are some limitations on the data due to a lack of automated databases for this type of court research. First, reliance on reporting series for these purposes may present some problems in that the services responsible for reporting include only certain cases in the series. It is impossible to determine the selection criteria used and it is therefore impossible to determine what, if any, biases are built into this sample. Second, it is of some consequence that there are delays inherent in the reporting process. This was not an issue of great concern for this study as trends or patterns in sentencing do not vary drastically within a six month period. Therefore, an examination of reported cases from 1980-85 conducted early in 1986 might in fact capture cases heard from the June 1979 to June 1985. This may also stem from the delays often incurred by judges in rendering decisions.

Another factor to bear in mind with respect to analysis of the data presented herein is the absence of formal statistical comparisons due to the small number of cases in any subset or category.

These problems notwithstanding, it is essential to compile this sort of information in order to develop an understanding of an otherwise mysterious process. In fact it might prove most useful to attempt the same analysis on a larger scale, including a longer time frame and the whole country. The findings, as a reflection of appellate decisions generally, do confirm that there exist consistent and recurring patterns in the case law, which may be useful for preparing formal sentencing guidelines.

The advantage of research in this form is the equalizing effect of reducing judgments to their bare bones, so that no individual cases are any more important than any other and the results are a product of the whole sample. In this context it is possible to reach conclusions concerning two appellate courts that not only write in different languages, but that may respond to very different social and economic influences.

Perhaps one can say from an examination of the data that the Court of Appeal of Alberta has a tendency to use more factors on average in explaining its decisions (4.62) than the Court of Appeal of Quebec (3.96) but this is not significant in and of itself. It is the necessarily qualitative nature of the data that becomes important when the variance is so small. The findings in the study concerning which factors play an import role might assist in determining which factors to exclude or include in any formal sentencing guidelines. Generally, while reading the cases one becomes aware of the fact that the courts themselves have provided considerable guidance on relevant sentencing factors and principles, and plenty of grist for the reform mills.

FOOTNOTES

1. Prepared for the Canadian Sentencing Commission. April 25, 1985, at page 10.

2. In this analysis, the tone of the judgment and the context within which the factor was cited, determined its classification as aggravating or mitigating.

3. See Factor Codes for overall Factor Frequency charge.

4. Deterrence (general and specific).
   Protection of society
   Rehabilitation
   Disparity of sentence between co-accuseds.

5. The PRINCIPLES sections of the charts was included as a reference and for interest's sake, but does not contribute anything significant in this study, and for this reason is not analyzed separately in the paper.

6. Clayton, C. Ruby: **Sentencing** (2d), Butterworths 1980, p. 87.

7. **R. v. Sawchyn** (1981) 30 A.R. 314 at 324, 326.

8. **R. v. Wells** (1984) 53 A.R. 87.

9. **R. V. Crowshoe** (1983) 50 A.R. 105.

10. **R. v. Soroka** (1982) 40 A.R. 206.

11. **R. v. Trudell** (1984) 56 A.R. 77.

12. In incest cases, the court has explicitly attempted in **R.v. T.** (1983) 46 A.R. 87 at 91, to:

    ...offer some guide to sentencing in cases which involve sexual abuse of children by parents and where the family has been or might be restored....

    ...In conclusion one can roughly see three categories of cases: In the most severe, the sentence must be an adequate reflection of the crime even if restoration of the family is thereby prevented.... In the second category of cases the aggravating circumstances are substantial but the family is to be restored. In such a case a stern jail sentence and a stern probation order are appropriate (i.e. **R. v. B.** (1982) 19 Atla L.R. (2d) 245.... Lastly in cases where the crime was not so grave, a lesser sentence may be imposed (i.e. **R. v. Beere**)....To those who would say that these guidelines permit disparity, I repeat what we said in **R. v. Johnas** (1983) 41 A.R. 183; 32 C.R. (3d) 1): uniformity of approach is necessary.

13. The category entitled "Combination" was composed of cases that included convictions for sexual assault and robbery; attempted rape and theft; armed robbery, theft and weapons charges, to name but a few.

14. It is clear from the case law that both the Quebec and Alberta Courts of Appeal take drug-related offences very seriously. This is explained in **Sa Majesté la Reine c. Jean Couture** 11-1-85 (Que C.A.) which reads, at page 2:

Cette cour et d'autres cours d'appel, ont souvent exprimé, l'opinion que le trafic des drogues est un crime si odieux et si dangereux pour la société qu'il mérite une sentence exemplaire d'emprisonment à defaut de circonstances vraiment exceptionelles.

and in **R. v. Maskill** (1981) 29 (A.R. 107 (Alta CA) by Moir J.A. who said:

First it is necessary to repeat that all cases of trafficking in or possession of narcotics for the purpose of trafficking, a gaol sentence is to be imposed except in exceptional circumstances. There are none here. Secondly, this court has always distinguished between hard and soft drugs. For soft drugs, provincial time is usually fit unless the operation is on a large scale or the circumstances are unusual. This principle applies to the cannabis type drugs. Several decisions of this division have treated cocaine as a drug as serious as heroin (110)... cocaine is a very powerful drug.... Trafficking in the drug must be deterred. It is a very expensive drug so that huge profits can be made from its illegal sale. It is our duty to deter people from using it and from trafficking in it. Deterrence is and remains the most important element in the sentencing process. It calls for imprisonment and not for a short nominal term (111).... We have continued to preserve a hostile attitude towards heroin in Alberta insofar as heroin is concerned. If this were a case of social trafficking, or an isolated sale, adopting as we have the position that cocaine is not as serious or dangerous a drug as heroin, a lesser sentence may have been imposed considering the age of the appellant, the fact that he has no record at all, that he is a good student and has the support of his family and that he has produced many favourable letters (112).

15. As in for example **Sa Majesté la Reine c. Albert Murray** 7-9-83 at page 2 or in **Sa Majesté la Reine c. Richard Choquette** 7-3-84 at page 2.

16. Many examples of the mention of **Criminal-record** aggravating a sentence can be found, but most are similar to that in **Sa Majesté la Reine c. Gaston Tanguay** 6-3-83, where the court increased the sentence to two years less a day stating that:

CONSIDERANT que l'intimé, bien qu'agé de 18 ans seulement, a déjà a son passif un casier judiciaire chargé comprenant effractions, vols, recels, méfaits, complots, possession d'instruments de cambriolage, etc....

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17. A.R. Vining and C. Dean: "Towards Sentencing Uniformity: Integrating and Normative and the Empirical Orientation: from **New Directions in Sentencing**, Brian A. Grosman Ed., Butterworth and Co. (Canada) Ltd., Toronto (1980) at page 123.

APPENDIX I

TABLE no. 1

FREQUENCY WITH WHICH MITIGATING AND AGGRAVATING FACTORS WERE MENTIONED IN COURT OF APPEAL DECISIONS, 1980 TO 1985

ALBERTA

Column groups: SEX OFFENCES | VIOLENCE | DRUGS | PROPERTY OFFENCES | OTHER | TOTAL

Column headers:
- SEX OFFENCES: Sexual Assault; Sexual Intercourse Under 14; Gross Indecency
- VIOLENCE: Criminal Negligence; Manslaughter; Assault Bodily Harm
- DRUGS
- PROPERTY OFFENCES: Robbery; Breaking & Entering; Robbery & Breaking & Entering; Possession Stolen Property; Possession Burglary Tools; Arson; Theft; Extortion; Defraud Welfare/Unemployment; False Pretences; Conditional Sales
- OTHER
- TOTAL: (frequency / Ratio of Factor Categories to Total number of factors)

MITIGATING

OFFENCE
- Plea of guilty
- Cooperation with police
- Presence, no use of weapon
- Role of offender
- Drugs/Alcohol
- Spontaneity
- Attempt

OFFENDER
- No record
- Good work record
- Age
- Amount and type of substance
- No violence
- Low intelligence
- Education
- Good reputation in community
- Remorse
- Rehabilitation
- Marital status
- Family background

AGGRAVATING

OFFENCE
- Use of weapon
- Seriousness of offence
- Amount and type of substance
- Degree of sophistication
- Frequency of crime in society
- Violence/Harm
- Vulnerability of victim
- Drugs/Alcohol
- Premeditation
- Leader

OFFENDER
- Criminal record
- Very recent
- Age
- Violent propensity
- Good family history
- Professional criminal
- Status at time of offence

PRINCIPLES
- Deterrence
- Protection of society
- Rehabilitation
- Disparate sentence: co-accused

NUMBER OF CASES

TABLE no. 2

FREQUENCY WITH WHICH MITIGATING AND AGGRAVATING FACTORS WERE MENTIONED IN COURT OF APPEAL DECISIONS, GROUPED ACCORDING TO CRIME, 1980 TO 1983.

ALBERTA

	SEX OFFENCES TOTAL	FACTOR FREQUENCY	VIOLENT CRIMES TOTAL	FACTOR FREQUENCY	DRUGS TOTAL	FACTOR FREQUENCY	PROPERTY OFFENCES 1 TOTAL	FACTOR FREQUENCY	PROPERTY OFFENCES 2 TOTAL	FACTOR FREQUENCY	TOTAL ALL OFFENCES & FACTORS	FACTOR FREQUENCY TOTAL POPULATION
MITIGATING												
OFFENCE												
Plea of guilty	8	13.11%	2	6.25%	5	14.71%	12	16.00%	1	10.00%	30	7.79%
Cooperation with police	2	3.20%	0	0.00%	1	2.94%	4	5.33%	0	0.00%	7	1.82%
Provocation, no use of weapon	0	0.00%	0	0.00%	0	0.00%	2	2.67%	0	0.00%	2	0.52%
Role of offender	0	0.00%	2	6.25%	1	2.94%	3	4.00%	0	0.00%	6	1.56%
Drugs/Alcohol	7	11.48%	2	6.25%	0	0.00%	1	1.33%	0	0.00%	10	2.60%
Spontaneity	0	0.00%	1	3.13%	0	0.00%	3	4.00%	1	10.00%	5	1.30%
Attempts	1	1.64%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.28%
OFFENDER												
No record	7	11.48%	4	12.50%	5	14.71%	8	10.67%	3	30.00%	30	7.79%
Good work record	5	8.20%	4	12.50%	2	5.88%	5	6.67%	0	0.00%	16	4.68%
Age	8	9.84%	6	18.75%	5	14.71%	17	22.67%	3	30.00%	40	10.39%
Amount and type of substance	1	1.64%	0	0.00%	3	8.82%	0	0.00%	0	0.00%	4	1.04%
No violence	2	3.28%	0	0.00%	0	0.00%	3	4.00%	0	0.00%	6	1.56%
Low intelligence	0	0.00%	1	3.13%	0	0.00%	1	1.33%	0	0.00%	2	0.52%
Education	0	0.00%	0	0.00%	2	5.88%	5	6.67%	0	0.00%	7	1.82%
Good reputation in community	3	4.92%	1	3.13%	0	0.00%	0	0.00%	0	0.00%	4	1.04%
Remorse	7	11.48%	0	0.00%	0	0.00%	3	4.00%	0	0.00%	12	3.12%
Rehabilitation	6	9.84%	2	6.25%	4	11.76%	2	2.67%	1	10.00%	15	3.90%
Marital status	2	3.28%	3	9.38%	1	2.94%	1	1.33%	1	10.00%	8	2.06%
Family background	4	6.56%	4	12.50%	5	14.71%	5	6.67%	0	0.00%	20	5.19%
SUM	61		32		34		75		10			
AGGRAVATING												
OFFENCE												
Use of weapons	5	17.24%	2	5.88%	0	0.00%	12	23.53%	3	9.68%	22	5.71%
Seriousness of offence	10	34.48%	8	23.53%	0	0.00%	7	13.73%	8	25.81%	37	9.61%
Amount and type of substance	0	0.00%	0	0.00%	3	50.00%	1	1.96%	0	0.00%	4	1.04%
Degree of sophistication	0	0.00%	0	0.00%	0	0.00%	1	1.96%	0	0.00%	1	0.26%
Frequency of crime in society	3	10.34%	0	0.00%	0	0.00%	1	1.96%	2	6.45%	7	1.82%
Violence/Harm	1	3.45%	9	26.47%	0	0.00%	2	3.92%	3	9.68%	15	3.90%
Vulnerability of victim	9	31.03%	5	14.71%	0	0.00%	4	7.84%	4	12.90%	22	5.71%
Drugs/Alcohol	0	0.00%	0	0.00%	0	0.00%	2	3.92%	0	0.00%	2	0.52%
Premeditation	0	0.00%	0	0.00%	0	0.00%	2	3.92%	0	0.00%	2	0.52%
Leader	0	0.00%	2	5.88%	0	0.00%	0	0.00%	1	3.23%	4	1.04%
OFFENDER												
Criminal record	1	3.45%	4	11.76%	2	33.33%	12	23.53%	4	12.90%	24	6.23%
Work record	0	0.00%	0	0.00%	1	16.67%	1	1.96%	0	0.00%	2	0.52%
Age	0	0.00%	1	2.94%	0	0.00%	3	5.88%	1	3.23%	5	1.30%
Violent propensity	0	0.00%	2	5.88%	0	0.00%	0	0.00%	0	0.00%	2	0.52%
Good family history	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Professional criminal	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	6.45%	2	0.52%
Status at time of offence	0	0.00%	1	2.94%	0	0.00%	3	5.88%	3	9.68%	7	1.82%
SUM	29		34		6		51		31		385	
PRINCIPLES												
Deterrence	7	38.89%	5	55.56%	3	60.00%	4	44.44%	2	50.00%		
Protection of society	7	38.89%	4	44.44%	0	0.00%	2	22.22%	1	25.00%		
Rehabilitation	3	16.67%	0	0.00%	2	40.00%	1	11.11%	0	0.00%		
Disparate sentence: co-accused	1	5.56%	0	0.00%	0	0.00%	2	22.22%	1	25.00%		
SUM	18		9		5		9		4			
NUMBER OF CASES	21		15		10		28		12		94	

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FREQUENCY WITH WHICH MITIGATING AND AGGRAVATING FACTORS WERE MENTIONED IN COURT OF APPEAL DECISIONS, 1980 TO 1985.

QUEBEC	SEX OFFENCES			VIOLENCE			DRUGS	PROPERTY OFFENCES					OTHER	TOTAL	Ratio of Factor Categories to Total Number of Factors
	Sexual Assault	Incest	Combination	Criminal Negligence	Manslaughter & Murder 2	Assault Bodily Harm		Breaking & Entering	Theft Over & Robbery	Combination	Arson	Fraud			
MITIGATING															
OFFENCE															
Plea of guilty	3	3	1	0	1	2	2	3	5	2	1	1	0	24	20.17%
Cooperation with police	0	1	0	0	0	1	1	1	2	0	0	0	0	6	5.04%
Presence, no use of weapon	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0.84%
Role of offender	0	0	0	0	0	1	2	0	0	0	0	0	0	3	2.52%
Drugs/Alcohol	2	0	0	0	0	0	0	1	2	0	0	1	0	6	5.04%
Spontaneity	0	0	0	0	1	2	0	0	0	0	0	0	0	3	2.52%
Attempt	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0.84%
OFFENDER															
No record	3	1	1	1	2	2	1	1	3	0	1	1	0	17	14.29%
Good work record	0	1	0	0	0	1	0	1	1	0	0	2	1	7	5.88%
Age	1	1	2	0	1	2	3	1	6	0	2	0	0	21	17.65%
Amount and type of substance	0	0	0	0	0	0	2	0	0	0	0	0	0	2	1.68%
No violence	3	2	0	0	0	0	1	0	0	0	0	0	0	6	5.04%
Low intelligence	0	0	0	0	0	0	0	1	0	0	0	0	0	1	0.84%
Education	0	1	0	0	0	0	0	0	0	0	1	0	0	2	1.68%
Good reputation in community	0	1	1	0	0	0	0	0	0	0	0	0	0	2	1.68%
Remorse	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00%
Rehabilitation	0	0	1	0	1	0	3	0	1	0	0	2	0	8	6.72%
Marital status	0	0	0	1	0	0	0	1	0	0	2	1	0	5	4.20%
Family background	1	0	0	0	0	0	1	1	1	0	0	0	0	4	3.36%
														119	100.00%
AGGRAVATING															
OFFENCE															
Use of weapons	0	0	3	0	1	1	0	0	0	0	0	0	0	5	4.20%
Seriousness of offence	3	2	3	0	0	4	6	2	6	3	1	2	0	34	28.57%
Amount and type of substance	0	0	0	0	0	0	3	0	0	0	0	0	0	3	2.52%
Degree of sophistication	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0.84%
Frequency of crime in society	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0.84%
Violence/Harm	1	1	3	0	2	2	0	0	0	0	0	0	0	9	7.56%
Vulnerability of victims	2	0	4	0	1	1	0	0	0	0	0	2	0	10	8.40%
Drugs/Alcohol	0	0	2	1	0	0	0	0	1	0	0	0	0	4	3.36%
Premeditation	1	0	0	0	1	0	0	1	1	1	1	0	0	6	5.04%
Leader	0	0	0	0	0	0	0	1	1	0	0	0	0	2	1.68%
OFFENDER															
Criminal record	2	0	4	0	1	4	4	3	7	2	0	1	1	29	24.37%
Work record	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0.84%
Age	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0.84%
Violent propensity	0	0	1	0	1	0	0	0	0	0	0	0	0	2	1.68%
Good family history	0	0	0	0	0	0	0	0	0	1	0	0	0	1	0.84%
Professional criminal	0	0	0	0	0	0	0	1	2	0	0	0	0	3	2.52%
Status at time of offence	0	0	0	0	0	1	1	0	3	1	0	0	1	7	5.88%
														119	100.00%
PRINCIPLES															
Deterrence	2	1	3	1	1	1	3	0	1	0	1	1	0	15	42.86%
Protection of society	1	0	2	0	1	1	1	1	2	2	1	1	0	13	37.14%
Rehabilitation	0	1	2	1	0	0	0	0	1	0	0	1	0	6	17.14%
Disparate sentence co-accused	0	0	0	0	0	0	0	1	0	0	0	0	0	1	2.86%
														35	100.00%
NUMBER OF CASES	8	3	8	1	3	6	15	5	12	3	2	4	1	69	

TABLE no. 4

FREQUENCY WITH WHICH MITIGATING AND AGGRAVATING FACTORS WERE MENTIONED IN COURT OF APPEAL DECISIONS, GROUPED ACCORDING TO CRIME, 1960 TO 1985.

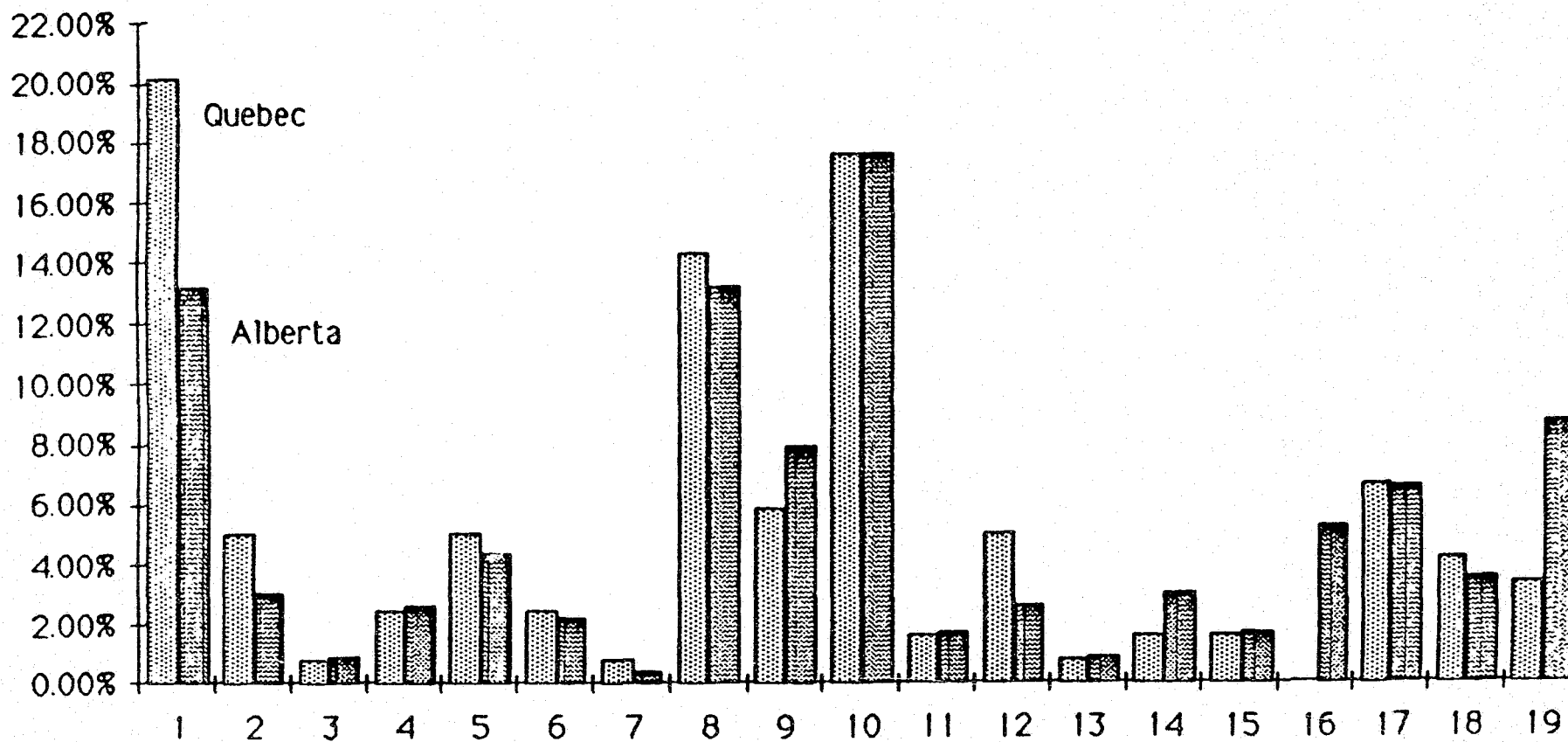| QUEBEC	SEX OFFENCES TOTAL	FACTOR FREQUENCY	VIOLENT CRIMES TOTAL	FACTOR FREQUENCY	DRUGS TOTAL	FACTOR FREQUENCY	PROPERTY OFFENCES 1 TOTAL	FACTOR FREQUENCY	PROPERTY OFFENCES 2 TOTAL	FACTOR FREQUENCY	TOTAL ALL OFFENCES & FACTORS	FACTOR FREQUENCY TOTAL POPULATION
MITIGATING												
OFFENCE												
Plea of guilty	7	23.33%	3	15.00%	2	11.76%	8	23.53%	4	23.53%	24	10.08%
Cooperation with police	1	3.33%	1	5.00%	1	5.88%	3	8.82%	0	0.00%	6	2.52%
Presence, no use of weapon	0	0.00%	0	0.00%	1	5.88%	0	0.00%	0	0.00%	1	0.42%
Role of offender	0	0.00%	1	5.00%	2	11.76%	0	0.00%	0	0.00%	3	1.26%
Drugs/Alcohol	2	6.67%	0	0.00%	0	0.00%	3	8.82%	1	5.88%	6	2.52%
Spontaneity	0	0.00%	3	15.00%	0	0.00%	0	0.00%	0	0.00%	3	1.26%
Attempts	0	0.00%	1	5.00%	0	0.00%	0	0.00%	0	0.00%	1	0.42%
OFFENDER												
No record	5	16.67%	5	25.00%	1	5.88%	4	11.76%	2	11.76%	17	7.14%
Good work record	1	3.33%	1	5.00%	0	0.00%	2	5.88%	2	11.76%	7	2.94%
Age	4	13.33%	3	15.00%	3	17.65%	9	26.47%	2	11.76%	21	8.82%
Amount and type of substance	0	0.00%	0	0.00%	2	11.76%	0	0.00%	0	0.00%	2	0.84%
No violence	5	16.67%	0	0.00%	1	5.88%	0	0.00%	0	0.00%	6	2.52%
Low intelligence	0	0.00%	0	0.00%	0	0.00%	1	2.94%	0	0.00%	1	0.42%
Education	1	3.33%	0	0.00%	0	0.00%	0	0.00%	1	5.88%	2	0.84%
Good reputation in community	2	6.67%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	0.84%
Remorse	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Rehabilitation	1	3.33%	1	5.00%	3	17.65%	1	2.94%	2	11.76%	8	3.36%
Marital status	0	0.00%	1	5.00%	0	0.00%	1	2.94%	3	17.65%	5	2.10%
Family background	1	3.33%	0	0.00%	1	5.88%	2	5.88%	0	0.00%	4	1.68%
SUM:	**30**		**20**		**17**		**34**		**17**			
AGGRAVATING												
OFFENCE												
Use of weapons	3	8.11%	2	9.52%	0	0.00%	0	0.00%	0	0.00%	5	2.10%
Seriousness of offence	10	27.03%	4	19.05%	6	40.00%	8	27.59%	6	40.00%	34	14.29%
Amount and type of substance	0	0.00%	0	0.00%	3	20.00%	0	0.00%	0	0.00%	3	1.26%
Degree of sophistication	0	0.00%	0	0.00%	1	6.67%	0	0.00%	0	0.00%	1	0.42%
Frequency of crime in society	1	2.70%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.42%
Violence/Harm	5	13.51%	4	19.05%	0	0.00%	0	0.00%	0	0.00%	9	3.78%
Vulnerability of victim	6	16.22%	2	9.52%	0	0.00%	0	0.00%	2	13.33%	10	4.20%
Drugs/Alcohol	2	5.41%	1	4.76%	0	0.00%	1	3.45%	0	0.00%	4	1.68%
Premeditation	1	2.70%	1	4.76%	0	0.00%	2	6.90%	2	13.33%	6	2.52%
Leader	0	0.00%	0	0.00%	0	0.00%	2	6.90%	0	0.00%	2	0.84%
OFFENDER												
Criminal record	6	16.22%	5	23.81%	4	26.67%	10	34.46%	3	20.00%	29	12.16%
Work record	1	2.70%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.42%
Age	1	2.70%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	0.42%
Violent propensity	1	2.70%	1	4.76%	0	0.00%	0	0.00%	0	0.00%	2	0.84%
Good family history	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	6.67%	1	0.42%
Professional criminal	0	0.00%	0	0.00%	0	0.00%	3	10.34%	0	0.00%	3	1.26%
Status at time of offence	0	0.00%	1	4.76%	1	6.67%	3	10.34%	1	6.67%	7	2.94%
SUM:	**37**		**21**		**15**		**29**		**15**		**238**	
PRINCIPLES												
Deterrence	6	50.00%	3	50.00%	3	75.00%	1	16.67%	2	28.57%		
Protection of society	3	25.00%	2	33.33%	1	25.00%	3	50.00%	4	57.14%		
Rehabilitation	3	25.00%	1	16.67%	0	0.00%	1	16.67%	1	14.29%		
Disparate sentence: co-accused	0	0.00%	0	0.00%	0	0.00%	1	16.67%	0	0.00%		
SUM:	**12**		**6**		**4**		**6**		**7**			
NUMBER OF CASES	**17**		**10**		**15**		**17**		**9**		**68**	

APPENDIX II

Factor Codes for Overall Factor Frequency Chart

```
MITIGATING
        OFFENCE
   1    Plea of guilty
   2    Cooperation with police
   3    Presence, no use of weapon
   4    Role of offender
   5    Drugs/Alcohol
   6    Spontaneity
   7    Attempts
        OFFENDER
   8    No record
   9    Good work record··
  10    Age
  11    Amount and type of substance
  12    No violence
  13    Low intelligence
  14    Education
  15    Good reputation in community
  16    Remorse
  17    Rehabilitation
  18    Marital status
  19    Family background
```
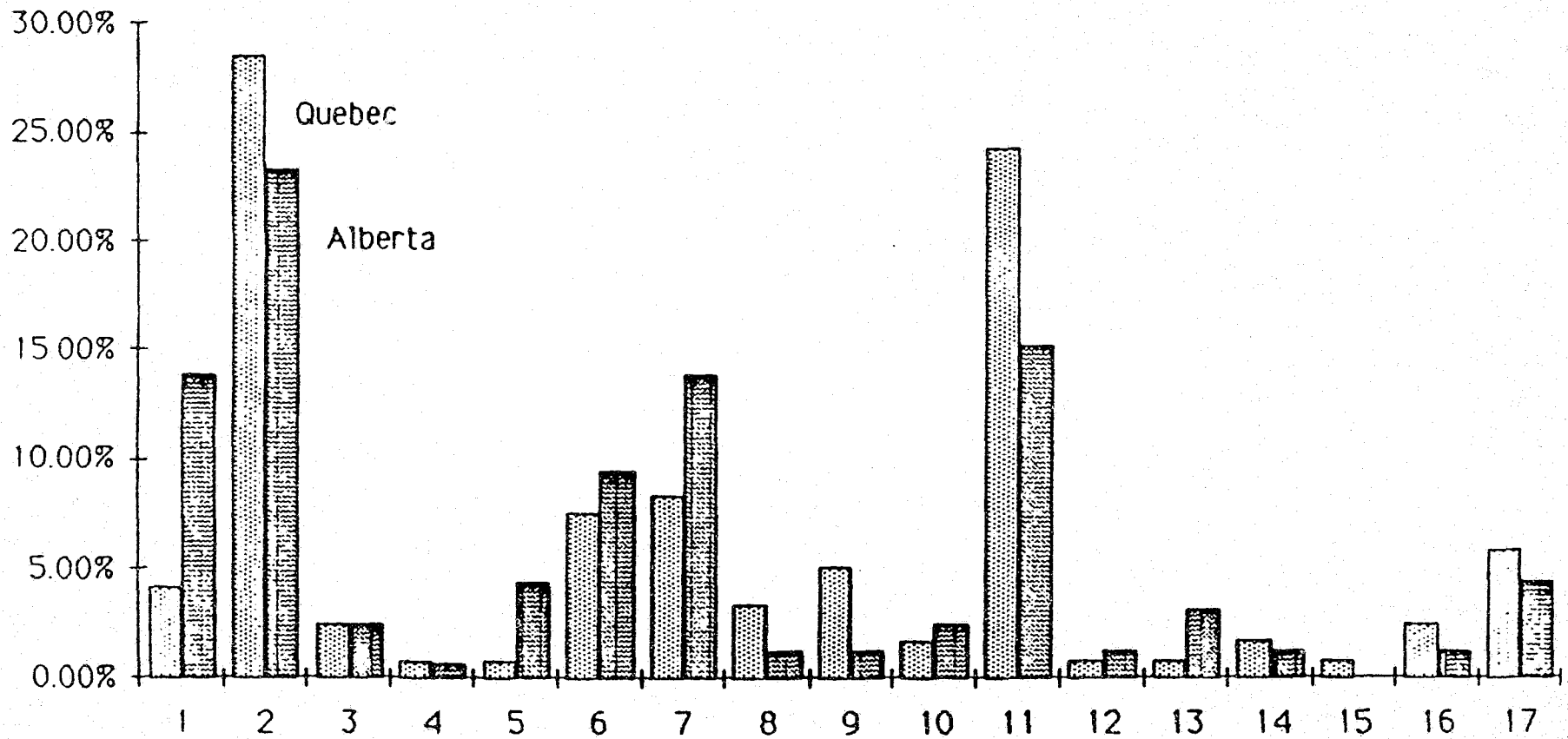
```
AGGRAVATING
        OFFENCE
  20    Use of weapons
  21    Seriousness of offence
  22    Amount and type of substance
  23    Degree of sophistication
  24    Frequency of crime in society
  25    Violence/Harm
  26    Vulnerability of victim
  27    Drugs/Alcohol
  28    Premeditation
  29    Leader
        OFFENDER
  30    Criminal record
  31    Work record
  32    Age
  33    Violent propensity
  34    Good family history
  35    Professional criminal
  36    Status at time of offence
```

Ratio of Mitigating Factor Categories to Total Number of Mitigating Factors, Alberta and Quebec.
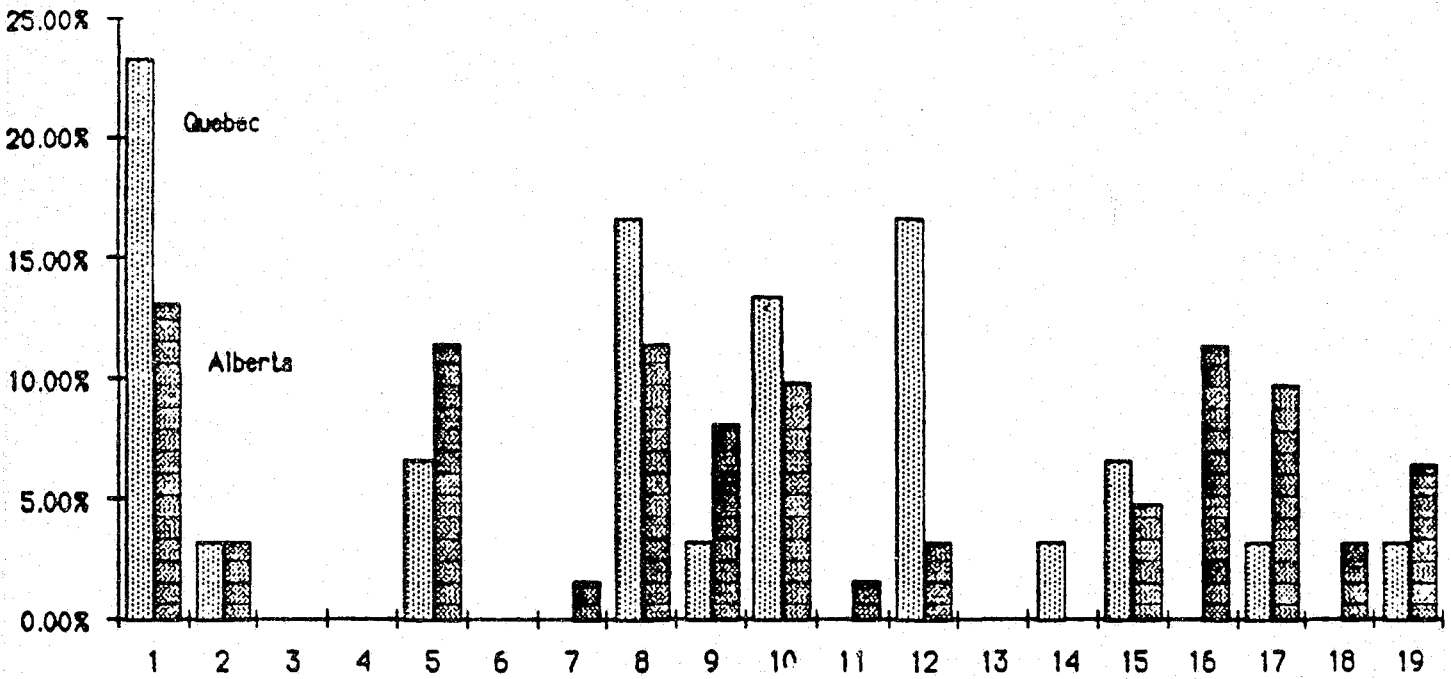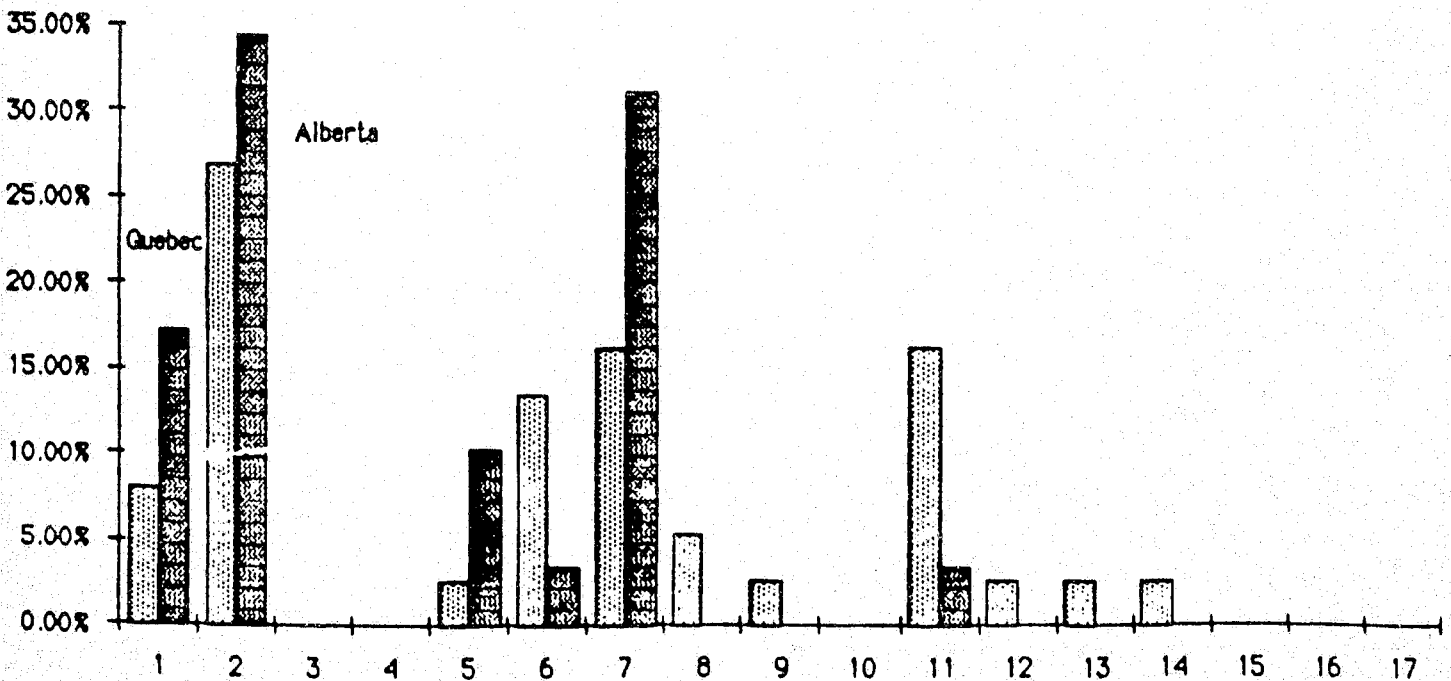
GRAPH no. 2

Ratio of Aggravating Factor Categories to Total Number of Aggravating Factors, Alberta and Quebec.

Mitigating Factor Frequencies for Sexual Offences, Alberta and Quebec.

Aggravating Factor Frequencies for Sexual Offences, Alberta and Quebec.

GRAPH no. 3

35

Factor Codes for Overall Factor Frequency Chart

MITIGATING	
OFFENCE	
1	Plea of guilty
2	Cooperation with police
3	Presence, no use of weapon
4	Role of offender
5	Drugs/Alcohol
6	Spontaneity
7	Attempts
OFFENDER	
8	No record
9	Good work record
10	Age
11	Amount and type of substance
12	No violence
13	Low intelligence
14	Education
15	Good reputation in community
16	Remorse
17	Rehabilitation
18	Marital status
19	Family background

AGGRAVATING	
OFFENCE	
20	Use of weapons
21	Seriousness of offence
22	Amount and type of substance
23	Degree of sophistication
24	Frequency of crime in society
25	Violence/Harm
26	Vulnerability of victim
27	Drugs/Alcohol
28	Premeditation
29	Leader
OFFENDER	
30	Criminal record
31	Work record
32	Age
33	Violent propensity
34	Good family history
35	Professional criminal
36	Status at time of offence

GRAPH no. 4

Overall Factor Frequency as a Percent of Total Factors for Mitigating and Aggravating, Alberta and Quebec.