

<b>Institution: University of Oxford</b>
<b>Unit of Assessment: 20 - Law</b>
<b>Title of case study:</b>  <b>Enhancing sentencing in Canada and England and Wales</b>
<b>1. Summary of the impact</b>  <p>Professor Julian Roberts' work on victim impact and on public attitudes towards sentencing produced empirically reliable and theoretically sophisticated findings. His victim impact research has been used by lawyers and judges across Canada, has been cited with approval by courts in Canada and England and Wales, and has formed the basis of a teaching module in the national judicial education curriculum in Canada. A second strand of his research on public attitudes to sentencing has helped to shape sentencing guidelines (sentencing ranges) in England and Wales.</p> <p>In Canada and in England and Wales, those charged with sentencing offenders are now better informed about the nature of victim impact and public attitudes to mitigation. Judges and policy-makers are using this research to achieve a closer fit between sentences and community views of the seriousness of crimes. Taken together these studies helped make the practice of the courts more evidence-based.</p>
<b>2. Underpinning research</b>  <p>This research was conducted between 2005 and 2011 while Roberts was Professor of Criminology at Oxford. It involved exploring—both empirically and theoretically—the way the sentencing process accommodates input from victims and input from the public. Roberts' research demonstrated the theoretical relevance of both victim input and community standards. Roberts also conducted empirical studies to explore ways in which such input could inform the sentencing process.</p> <p><i>Victim Impact Statements (VIS) [see Section 3: R1-4]:</i>        This phase of the research demonstrates the benefits of, and theoretical justification for, considering VIS at sentencing. Its theoretical strand generated one of the first principled justifications for using VIS at sentencing; its second, empirical, strand, produced a more robust understanding of the influence of VIS on victims' welfare. These ideas were not unprecedented, but Roberts' research put them on a firmer and more evidenced basis. It further showed that allowing victims to depose impact statements at sentencing promotes their welfare, and—contrary to what conventional wisdom previously held—it could also lead to more proportionate sentences without prejudicial effects upon the interests of offenders. Drawing upon a wide range of case law and meta-analysis of research in several jurisdictions, Roberts' work increased confidence in the reliability and validity of these findings.</p> <p><i>Public Attitudes to Sentencing [R5-7]:</i>        This phase of the research involved a sophisticated analysis of opinion data using representative samples of the general public. People were asked to impose sentences in specific criminal cases, and asked to rate the importance of various mitigating and aggravating factors. The research uncovered the structure of underlying public attitudes to the seriousness of various offences. Surprisingly, it showed a much greater tolerance than</p>

many had assumed for important mitigating factors at sentencing, even in serious personal injury offences. Research into attitudes to sentencing of driving offences causing death provided further insight into the degree of correspondence between community views and the practice of sentencing for high profile offences. The findings provide a much clearer idea of how sentences could 'fit' community values, by establishing how perceptions of seriousness and mitigation jointly shape attitudes.

### 3. References to the research

#### Victim Input at Sentencing

**[R1]** Roberts, J.V. (2009) Listening to the Crime Victim: Evaluating Victim Input at Sentencing and Parole. In: M. Tonry (ed.) *Crime and Justice*. Chicago: University of Chicago Press.

**[R2]** Roberts, J.V. (2010) Victim Impact Statements at Sentencing: Exploring the Relevance of Ancillary Harm. *Canadian Criminal Law Review*, 15: 1-26. (with Manikis, M).

**[R3]** Roberts, J.V. (2010) Victim Impact Statements at Sentencing: Expressive and Instrumental Purposes. In: *Hearing the Victim*. Cullompton: Willan Publishing (with E. Erez).

**[R4]** Roberts, J.V. (Eds.) (2010) *Hearing the Victim*. Cullompton: Willan Publishing. (with A. Bottoms)

#### Public Attitudes to Sentencing

**[R5]** Roberts, J.V. (2009) Public Attitudes to Sentencing Purposes and Sentencing Factors: An Empirical Analysis, *Criminal Law Review*, November, 771-782 (with M. Hough et al.)

**[R6]** Roberts, J.V. (2008) Public attitudes to sentencing offenders convicted of offences involving death by driving. *Criminal Law Review*, July: 525-540 (with M. Hough et al.).

**[R7]** Roberts, J.V. (Ed.) (2011) *Mitigation and Aggravation at Sentencing*. Cambridge: Cambridge University Press.

**[R1]** appeared in *Crime and Justice*, published after peer review in a volume that is the most cited criminology publication in the world. **[R4]** is the first collection of essays exploring the role of the victim in the criminal justice system in England and Wales. The *Criminal Lawyer* described it as "a most impressive book... essential reading for every criminal practitioner". The *New Criminal Law Review* described it as a "very useful and thought-provoking collection". **[R7]** was described in the *Criminal Law Journal* as "a tremendously valuable contribution" (2012; 36 *Crim LJ* 317). The other articles appeared in leading peer reviewed journals. **[R5, R6 and R7]** report research commissioned by the *Sentencing Advisory Panel*, a statutory authority responsible for devising sentencing guidelines for England and Wales.

### 4. Details of the impact

Roberts' research has been used to better inform sentencing practices in two jurisdictions. In Canada, it was used in sentencing judgments to produce a greater sensitivity to victims' interests. In England and Wales, it informed sentencing patterns that increasingly reflect legitimate mitigating factors. Its reach is sentencing law and practice in criminal cases in these jurisdictions; it has further influence across Canada through judicial training. The significance of these changes is substantial, and while Roberts' research was one of several contributing factors, it is distinguished in the breadth and reliability of its results, and in showing judges and policy makers that the public are interested in 'fit' with respect to the seriousness of crimes, but also with respect to mitigating factors. The ultimate

beneficiaries of these changes are the public at large. The path to this impact was through (1) arguments of counsel using Roberts' work, (2) judicial notice of and reliance on Roberts' findings, (3) the use of his research by NGOs to make recommendations, which were then adopted, for its use in judicial training, and (4) statutory bodies in England and Wales commissioning empirical research by Roberts and revising their sentencing guidelines in response to his published findings.

The impact of the research on Canadian courts is marked. **[R2]** was the sole academic authority cited by the Quebec Court of Appeal in its leading judgment of *R. v. Cook* (2009) which first held that VIS constitutes a legitimate aggravating factor at sentencing. In so deciding, Hilton, JA said:

[68] I see no reason in principle why a victim impact statement, however it may be prepared or delivered, cannot be used by a trial judge in assessing whether any of its contents can constitute aggravating or mitigating factors. As Prof. Julian Roberts, a recognized scholar in the field of sentencing has recently written, there is no statistical data that suggests that doing so increases the severity of sentences.

[69] The author also notes that it is generally preferable that the offenders hear of the consequences of their conduct directly from those who were affected by it rather than from a prosecutor, since this has the effect of enhancing the possibility of the offender expressing remorse. In such circumstances, a sentencing judge is likely to consider the expression of remorse as a mitigating factor, thus showing that victim impact statements should not be regarded exclusively as a device designed to increase sentences. In that respect, they also contribute to the attainment of one of the objectives of sentencing described in subsection 718(f) *Cr. C.*, namely, the promotion of "a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community". **[C1]**, paras 68-69]

This decision set a new and binding precedent on lower courts and has been followed by them, and the *Cook* judgment, and Professor Robert's research, repeatedly re-cited in their decisions. (See, e.g. *R v Therrien* (2012) **[C2]** ) Other research on this subject by Roberts has also been cited by courts in other jurisdictions, including Newfoundland and Labrador, to similar effect; for example, **[R2]** is cited in *R v Keogh* (2011) **[C3]**.

A second pathway of impact flows from Professor Roberts' role in Canadian judicial education. In Canada, the National Judicial Institute (the equivalent of the UK Judicial Studies Board) set up a group to construct a national curriculum on the use of victim statements at sentencing. Roberts was invited to be a member of this group in 2010 and in 2011. Using materials from his published research, above, he co-taught three sessions with a judge from the Court of Appeal to judges across the country. A printed summary of his research findings was also provided to the judges as part of the seminar curriculum. The Department of Justice Canada retained Roberts to write a review of the relevant case law in the area of victims and sentencing for the benefit of legal professionals in Canada. The publication **[C4]** is distributed to legal professionals, and in this way the findings reach not only the judiciary but also leading counsel and other members of the legal profession. Roberts' research on victim impact statements has also been cited as an authority by the Court of Appeal in England and Wales **[C5]**.

The impact of Roberts' public opinion research in England and Wales has come through its influence on, and use by, bodies charged with developing sentencing guidelines for courts. Until replaced by a new body in 2010, the *Sentencing Advisory Panel* had the role of helping devise sentencing guidelines for courts in England and Wales. In an effort to

ensure that these guidelines reflect community values, the Panel commissioned two large-scale research projects, one to document public attitudes to sentencing principles and purposes, and the second to document public attitudes to sentencing for driving offences resulting in death. In collaboration with Professor Mike Hough of Birkbeck, Roberts conducted both studies. The findings were published in peer-reviewed journals [R5,6] as well as a peer-reviewed collection of essays published by Cambridge University Press [R7]. Their substance was also made directly available to the Panel. The Panel noted that in order to make sure its proposals were aligned with the public it commissioned research by Roberts and colleagues. This research thus shaped the guidelines relating to the determination of offence seriousness and the specific sentencing ranges for driving offences resulting in death. The two studies were conducted in 2008-2009. The Panel released its advice about sentencing principles for driving offences in 2009 and its guidelines on determining seriousness in 2010. Relying on Roberts' research, the Panel produced more principled and consistent sentencing, and sentencing guidelines that better reflect community values. [C7] Courts have a statutory obligation to follow these sentencing guidelines, and do so.

In recognition of his research-based expertise, Roberts was appointed in 2008 to the Sentencing Commission Working Group headed by Lord Justice Gage and in 2010 to the *Sentencing Council of England and Wales*, a statutory body which is headed by the Lord Chief Justice. It issues guidelines that are statutorily binding on all courts in England and Wales. Roberts is the only academic member of the Council and he was re-appointed to the Council for a further term in 2013.

#### 5. Sources to corroborate the impact (indicative maximum of 10 references)

[C1] *R. v. Cook* (2009) 71 C.R. (6<sup>th</sup>) 369, 250 C.C.C. (3d) 248.

[C2] *R. v. Therrien*, 2012 SKPC 121 (CanLII) 2012-07-30, para 42, citing *R v Cook* and Professor Roberts.

[C3] *R. v. Keogh*, (Newfoundland and Labrador Provincial Court Judgment: May 16, 2011.)

[C4] Victim Impact Statements at Sentencing: Developments in Caselaw. *Victims of Crime Research Digest*, 5: 2-6.

[C5] *R. v. Perkins and Ors.* [2013] EWCA Crim 323 at para 8.

[C6] Sentencing Advisory Panel: (2008) Consultation Paper on Overarching Principles of Sentencing, p.1: "The Panel considers that the time is right to review the principles governing sentencing practice with a view to producing a coherent set of principles that will be followed by all courts in England and Wales... We decided to supplement our normal consultation process by commissioning independent research designed to test public opinion.. *the findings of that research will play a significant part in framing the revised guideline.*" (emphasis added, p. 1).

[C7] Driving Offences – Causing Death by Driving. Chairman's Foreword. (2009).