

Vision for Justice in Canada



“When justice is done, it is a joy to the righteous but terror to evildoers.”

Proverbs 21:15

“We don’t want law; we want justice!”

Major James Walsh, Superintendent, NorthWest Mounted Police while dealing with a criminal trying to get off on a technicality.

A New Direction

The last newsletter traced the development of the underlying and foundational philosophy of Canada’s current justice system. Over a twenty-five year period, beginning in 1971, successive governments revamped the justice system so that rehabilitation of criminals took priority over the safety of citizens. This new direction reached its zenith in 1995 when the Criminal Code of Canada was amended to reflect this priority in the sentencing principles. The current “revolving door” of our justice system is a direct result of this skewed philosophy.

In a little-publicized announcement on June 6, 2008, Prime Minister Stephen Harper outlined the government's achievements and objectives in reforming Canada's criminal justice system. In a speech to the 6th Annual Gala and Fundraiser for the Canadian Crime Victim Foundation, the Prime Minister said the reforms are replacing a decades-old system that has coddled criminals and made Canadian communities less safe with a system that serves the interests of law-abiding citizens.

“Our government’s approach to criminal justice is fundamentally different from our predecessors’. *We believe the central purpose of a criminal justice system is not the welfare of the criminal, but the protection of law-abiding citizens and their property,*” said Prime Minister Harper. (Our emphasis.)

The Prime Minister used the opportunity to discuss four outstanding anti-crime bills, which, if passed, would build upon the government's achievements including the Tackling Violent Crime Act and putting an end to conditional sentences for serious violent offenders. The legislation proposes:

- Mandatory sentences for serious drug offences including those committed for the benefit of organized crime and those involving the use or threat of violence;
- Three new Criminal Code offences to stem the rising tide of identity theft;
- Measures aimed at organized auto theft rings making it a crime to alter, destroy, or remove a vehicle identification number, and knowingly, sell, give, transfer, transport, send or deliver goods that have been acquired criminally; and,
- Amendments to the Youth Criminal Justice Act making it easier to detain young offenders who pose a risk to public safety.

“Our government has no intention of allowing young criminals to avoid punishment and evade responsibility. Anyone who presents a serious threat to public safety should be held fully accountable for their actions,” said Prime Minister Harper.

While the Tackling Violent Crime Acts is important, of even greater significance is the fundamental shift in the underlying philosophical foundation of our justice system. After almost four decades where the public safety of law-abiding citizens was subverted in favour of criminal rehabilitation, this change, announced by the Prime Minister, offers a ray of hope for the future of public peace and safety.

Crime and Punishment - Part II

Our previous newsletter contained Part I of a paper I delivered at a speakers' conference on Crime and Punishment at Concordia University College of Alberta. We are re-printing Part II for this newsletter. This section deals with sentencing and rehabilitation - appropriate sections in light of Prime Minister Harper's announcements reported above.

Sentencing in The Criminal Code

Punishment is a concept not even acknowledged in the Sentencing Principles. Section 718 offers little with respect to the protection of society. With respect to the consideration of the criminal, it has much to say. For example, Section 718.2 states:

- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Time limitations this evening do not permit a lengthy analysis of the impact of the sentencing principles we've had in place for almost twelve years. Indeed, I may be accused at this point of simplifying things. So be it. But the bottom line is that our justice system today is built on the notion that rehabilitation is its touchstone.

Essential to rehabilitation is releasing criminals back into their communities as soon as possible or, as some pundits refer to it, "anything but jail."

According to the Canadian Centre for Justice Statistics,¹ between 1994/95 and 2003/04, the total adult correctional services population in Canada has increased by almost 5%. The average number of offenders under community supervision has increased by nearly 8%, while the custodial population decreased by 5%. True to our skewed approach to justice, we are taking people out of prison and returning them to their communities to serve their time.



How is this done? Let's imagine, for a moment, an individual charged under Section 280 of the Criminal Code - abduction of a person under 16. The maximum sentence is five years. Imagine John Smith waiting in prison for a year before his trial. Normally, he would be out on bail, but the crown makes a good case that he may be a danger to society if he is released on bail. In scenario one, John Smith is found guilty and the judge sentences him to four years. The judge gives him two for one credit for time spent in custody, even though the Criminal Code really only allows credit from the time he was arrested. But John Smith is now eligible now for a conditional sentence where he spends his two years at home with a curfew. Scenario two is when the Judge sentences him to five years. After two for one credit, he still has three years left to serve. After his first year in prison, he is eligible for parole. If the parole board is not satisfied with his rehabilitation, he must serve his second year in prison. After that, he is required to be returned to his community under the conditions of his statutory release.

¹Canadian Centre for Justice Statistics, Adult Correctional Services in Canada, 2003/04



The “revolving door” of the justice system.

The above example is a rather mild one. There are far too many examples that I could cite of a justice system so concerned with rehabilitation and “anything but jail” that it

must bear some degree of guilt for the actions of Peter Whitmore, Curtis Dagenais and James Roszko, just to name a few. Permit one last example.

Christopher Irvine went on an armed robbery spree in Winnipeg, Manitoba, confronting three women at knife-point. He forced his third victim to life her skirt whereupon he fondled her. Irvine was arrested and charged. He was released on bail for a period of time which spanned 600 days. During that time, the Winnipeg conducted two curfew checks. In other words, there were 598 days during which he was not accountable and free to go where he wanted and do whatever he pleased. In 2007, upon conviction, Judge Theodore Lismer sentenced Irvine to 30 months in prison. He then proceeded to grant him 9 months credit for his time spent on bail!! That reduced Irvine’s sentence to 21 months. According to Judge Lismer, that made him eligible for a conditional sentence which he in fact received. In other words, for armed robbery and sexual assault, Irvine will never have to spend one single day in prison. But for the rest of their lives, the three women he held at knife point will have those moments of terror etched in their memories. For the rest of her life, the woman who was sexually assaulted will bear the burden of that assault, knowing that her assailant never even received the proverbial “slap on the hand.” And

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what might be going through Christopher Irvine’s mind or the mind of other criminals? That crime does indeed pay? That there are no real consequences? Where is the opportunity for rehabilitation in that scenario, let alone the protection of society?

Can We Rely on Rehabilitation for Public Safety?

Can we expect rehabilitation to work? It might surprise most people to know that roughly one percent of the population falls under the classification of psychopathic. Sgt. Matt Logan of the RCMP Behavioural Science Unit in British Columbia notes “There may only be a small number of psychopaths relatively speaking, but the damage they inflict on society is widespread. It is estimated that 20 to 25 per cent of the prison population is psychopathic but this group is responsible for more than half of the violent crimes in our society.”² Dr. Robert Hare, a specialist in psychopathy at the University of British Columbia, states that psychopaths “...are lacking in conscience and in feelings for others.

Psychopaths cold-bloodedly take what they want and do as they please, violating social norms and expectations without the slightest sense of guilt or regret. As a result, they are more likely

to stick a knife in someone to get what they want. They just don’t care about the other person.”³

The psychopathic offender presents a unique problem to the justice system. Now add to that the challenge presented by those who simply choose crime as a way of life. These do not want

²Logan, M.H., Hare, R.D., O’Toole, M.E. (2004). The Psychopathic Offender. The RCMP Gazette, 66 (3), 36-38.

³Ibid.

to be rehabilitated and are simply “putting in time” until they can return to their life of crime. In the recently-released Correctional Service of Canada Review Panel report, it is noted, “CSC is to be commended for its efforts to rehabilitate offenders but it continues to face resistance from a portion of offenders who have no interest in rehabilitation and are content to ‘wait out’ the system until they reach statutory release (automatic release at 2/3rd of sentence).”⁴ The same report goes on to say that statutory release cases accounted for 79% of violent re-offending in the community, while representing 35% of the conditionally released population.⁵ It would seem that rehabilitation does not work for a significant number of people and that these people pose a serious risk to the general public.

Next Issue:

- The latest StatsCan report on crime
- The need for an annual victimization survey

The sole purpose of this newsletter is public education. It is sent to police, politicians, press and people. The federal Justice Committee is included in the mailing list. If you feel this newsletter is helpful, please forward it to everyone on your contact list.

Thanks for all of your ongoing help and support. Let's continue to work and lobby for change.

⁴Correctional Service of Canada Review Panel “A Roadmap to Strengthening Public Safety” 2007. p. v

⁵Ibid p. 109