

## **NIGHTMARES UNDER THE CONSERVATIVE REGIME**

Here are a few of my thoughts on, or nightmares experienced under, the Conservative regime. Specifically, I focus on attacks to Correctional Service Canada's (CSC) mandate to make our communities safer through rehabilitation. Originally, I had intended to list ten of the most damaging reforms, however, the list expanded as other prisoners approached me with suggestions for inclusion in order to protect their anonymity.

As way of background, I have been serving a life sentence in the Canadian penitentiary system since the 1980s, with a brief hiatus in the American federal system for a few years in the early 1990s following a walk-away from Collins Bay in 1988. I was returned to Canada under the *Transfer of Offenders Act* in the mid-1990s and was in Millhaven until late-1997. From there, I was sent to Joyceville where I remained until early 2016. I was sent to Beaver Creek Medium later that year and transferred to Beaver Creek Minimum since.

### **Least Restrictive Measures**

The removal of the "least restrictive measures"<sup>1</sup> priority from decision-making in the *Corrections and Conditional Release Act* (CCRA) with "measures that are consistent with the protection of society, staff members and prisoners and that are limited to only what is necessary and proportionate to attain the purposes of this Act", has introduced a subjective standard permitting arbitrary decisions without specific criteria. It permits the prolongation of imprisonment, while permitting harsher, more punitive decisions to be made with respect to the movement and treatment of prisoners while they are confined behind bars and supervised in the community. If imprisonment is to be a measure of last resort in Canada, the "least restrictive measures" principle needs to be restored.

### **National Drug Strategy**

Within Commissioner's Directive 585 *National Drug Strategy*,<sup>2</sup> the standard of review for triggering "administrative consequences" was replaced with a standard of review of "reasonable belief". That means that should a prisoner be charged or convicted under section 19 of a drug-related offence in the institution or where there are reasonable grounds to believe that they have been involved in drug-related activities, a reassessment of risk and

needs shall be completed, and a number of administrative consequences shall be considered. This policy could merit a full review on its own as it is a perversion of all of the *Charter* provisions to ensure decision-making bodies engage their duty to act fairly before losses of liberty ensue for the criminalized. The shift to “reasonable belief” does not require proof. This standard means the decision-maker does not need to provide evidence and denies the prisoner the chance to appear before an independent chairperson to adjudicate the matter. The language of section 19 equates a charge to a conviction, imposing punishments that usually have the same effects as sanctions requiring a formal charge to be laid with an independent chairperson hearing evidence and the protections of duty counsel being present for the hearing. Under this directive, there is not even a requirement to have a hearing. A “reasonable belief” can then be used to deny pay raises, employment opportunities, transfers to lower security units or penitentiaries with their increased liberty, access to releasing mechanisms like escorted temporary absences (ETAs), unescorted temporary absences (UTAs), work releases, and supervised release opportunities like day and full parole. All of these effects can occur on a say-so, without the protections of due process guaranteed under the *Charter* and embedded by law in other CSC policies.

### **Parole**

If the punitive or deterrent part of the sentence is the parole eligibility (see *Attorney General of Canada v Whaling*, 2014 SCC 20),<sup>3</sup> then for Lifers in particular, why after ten, or twenty, or thirty years behind bars are they not ready for parole? The Conservatives put in place barriers to access rehabilitation programs and release mechanisms. They pushed all of the releasing mechanisms involving community participation down to the minimum-security level through practices, while maintaining the guise of potential access at medium-security levels. They did not change the legislation or policy to directly deny access at medium-security levels, just the practices. Such practices include system-approved catch phrases such as “It is likely the prisoner would take the opportunity of placement in minimum security to escape”, expressing opinion as fact, with the effect of denying cascading opportunities. The arbitrary, untestable “reasonable belief” standard of decision-making spread beyond the drug strategy into concepts like accountability that require such things as pleading guilty to access Parole Board Canada (PBC) hearings. Reforms are needed to put in place more objective standards for release.

### **Unescorted Temporary Absences and Escorted Temporary Absences**

The *CCRA*, section 115(1)(a), has been changed to restrict access to UTAs and mandates successful UTAs over the period of a year before a Lifer can make supported, successful, day parole applications. This legislative change establishes time limits for frequency of access and duration. As a matter of practice, CSC asks for a year of ETAs, followed by a year of UTAs. This ensures a Lifer cannot gain day parole until eighteen months after their eligibility date because applications for a hearing can routinely take five months to process. I do not have access to the legislative archives, but simple online research should show the changes to access over the Conservative regime had the effect of extending imprisonment. Moreover, statistical analysis of incarcerated time spent in excess of day parole eligibility for Lifers, during the reign of the Conservatives, should show statistically significant increases across the entire country. The creation of practices ensuring an extended, expanded progression of community access increased the time Lifers (and others) spend excluded from the community.

If sentence release was represented by a temporal continuum, and releasing events like ETAs and UTAs were represented by nodes on the continuum, the Conservatives generated a demand for more nodes, before parole release was possible, while increasing the space between the nodes, often without the knowledge of prisoners themselves. Often excluded, but always the subject to a Case Management Team's created correctional plans flowing out of these hidden policies, the prisoner is left to suffer prolonged separation from loved ones and the community at large. The Conservatives did this without any proof that the public good was actually served in any way. While selling the public on their desire to protect 'public safety', the Conservatives sacrificed proven methods of reducing that very risk.

### **Compassionate Escorted Temporary Absences**

In Commissioners Directive 566-6 *Security Escorts*,<sup>4</sup> section 15, it notes that at least two escorting officers, both armed (except for incarcerated women), will be deployed for ETAs. This can make the availability of ETAs difficult, if not impossible. Particularly as the policy under the Conservatives was to make cost considerations a factor in approval decisions. Also, the practice of mandatory minimum staffing practices restricted the number of staff available for escorts. Significant numbers of approved ETAs were not completed due to "staff shortages". This practice continues. We just had an Indigenous man

denied a compassionate ETA because staff were not available. The pass was so he could attend the funeral of a man that was like a brother to him. The two men had grown up in and out of the system, from the juvenile system to present day, with the dead man having been able to stay out for years, while this fellow still struggles with his issues. Even though approved by the deputy warden, on the morning of the funeral the fellow was told he was not going. He had to call the daughter of his closest friend and tell her, as she cried, that he would not be coming. “But everyone is waiting for you”, she said.

### **Volunteers**

The oppression of volunteers has resulted in their reduced numbers and limiting activities including them. Boundaries became a hot topic and method by which to exclude volunteers. Huggers were removed from volunteer lists. Excessive screening practices for drugs and negative comments during visitor screening discouraged others. Negative comments might include, “Why do you want to help murderers and rapists?”, “They are only using you”, “If this machine goes off we are going to tell the police”, and the like. How does such rhetoric that undermines the ability of prisoners to build bridges into the communities where most of them will return to contribute to CSC’s promotion of rehabilitation and safe reintegration?

### **Prisoner Pay**

Through claw-back methods such as “room and board”, pay has been reduced to pennies per hour. The federal penitentiary system does not respect labour laws. We are being paid pennies while more and more costs of imprisonment are downloaded onto the prisoner population. It will cost me five cents a page to print this letter and a dollar for the stamp. Further, for our work there is no vacation time, no pension and no health care package above the “essential” limits. There is no overtime, no extra pay for working federal or provincial or religious holidays, no protections against being punished for quitting jobs hazardous to health or unsuited to the physical, mental or emotional realities of the individual. When prisoners work they should be afforded the same protections as every other worker in Canadian society.

### **Health Care**

The shift towards “essential health care” means that prisoners are continually forced to a lower standard of care than in the community. Prisoners addicted

to nicotine are expected to pay for substitutions like Nicorette gum, because tobacco is now against the law inside prison. Thirty chicklets of gum are costing Beaver Creek prisoners over fifteen dollars. Two weeks work at pay level C (\$5.80 per day) nets \$28 and change. Nicotine addicts can starve trying to meet their addiction needs if they want to remain viable minimum-security prisoners. When the ban on cigarettes came in to being, cessation products were supplied by CSC for a period of three to six months, depending on the penitentiaries. Lifers are in real trouble. If anyone there knows of some kind of financial support program for those so severely addicted to nicotine they are now addicted to the gum, please let me know so these prisoners do not have to spend all their wages and some of their food money to support their nicotine habit. Health care is worthy of its own study. The removal of Gabapentin from the treatment of nerve pain other than diabetic neuropathy or post-pain shingles is a study in the corruption of the medical profession and its ethics by the bureaucratic dynamics of a security-driven environment that is a CSC institution. Dental care is the barest of the most minimal standards. As I write this I have had a broken filling for three months. I can eat on one side of my mouth, for which I am thankful. Bridgework that I had done before coming to prison cannot be repaired or replaced unless I pay for it myself, which would be acceptable if I was paid minimum wage for my labour. As it is, it would cost me \$800 or every penny I can earn over a fourteen-month period at my present rate of pay. That would mean I could not replace clothing or shoes or subsidize my food allotment. I must survive on \$35 per week for groceries. As such, my teeth and other preventative health care steps must take a back seat to the daily round of punishment I and others endure.

**Prisoner Transport**

While not a federal reform, there is presently a failure to protect safety during transit of prisoners. Ontario law has included an exclusion for prisoner transports that violates the intention of seatbelt laws as it does not require transported prisoners in the province to wear them. Handcuffed and shackled prisoners are locked inside a metal box inside a van, which prevents the spread of feet to balance the prisoner against the g-forces of turns and being able to use one's hands to protect against being thrown against the front or back during rapid deceleration and acceleration. This is an accident waiting to happen.

**Correspondence**

Current correspondence practices within CSC facilities do not follow the *Post Office Act*. Mail deliveries have been reduced to two or three times a week, if lucky, when the Act still requires delivery within twenty-four hours of receipt.<sup>5</sup> Issues with mail also include search and seizure violations, as correspondence is routinely intercepted and returned to the sender often without notifying the intended recipient of the interception or providing written reasons to the sender for the return of the correspondence.

**Old Age Pensions**

The removal of access to Old Age Pensions for prisoners over the age of 65 in the name of denying Clifford Olsen benefits, means prisoners cannot accumulate savings that would contribute to their reintegration to communities. Of what benefit is it to Canadians as a whole to discriminate against prisoners in this way? More importantly, if the aged prisoner cannot work, which is often the case when a person gets older, their income is reduced to a net sum of \$13 every two weeks. The Old Age Security pension would allow the prisoner to supplement their income and permit them to pay for things like shoes, clothes and non-essential health care items. Denying such benefits to prisoners can also mean further destitution for their spouses or dependents who previously relied on these funds to make ends meet.

**Institutional Parole Officers**

Institutional Parole Officers (IPOs) have become increasingly risk averse in their decision-making. Decisions are delayed until other mechanisms force their decision. This way, the IPO can claim they did not have any choice in the matter. They avoid responsibilities and protect against being held accountable. A review of the governing policies and the practices of the entire Case Management Team, would be helpful. For example, even though COII's are supposedly a member of the team, they almost never attend case conferences. One of the things the Conservatives did was remove timelines from decisions. Rehabilitation and reintegration requires a positive mindset and goal setting. Moreover, according to upper management, all of the IPOs in Beaver Creek have psychology backgrounds and are trained risk assessment evaluators. We know one was a nurse. One has a degree in biology. One was a graduate in social work. And I could go on. I do not know that a degree in these fields qualifies as sufficient to replace those hired

to work within the psychology department. Should trained psychologists not be the ones making accurate, in depth use of psychological assessment tools to measure the progress of the prisoner in adapting to a pro-social community as one progresses through the steps of gradual release? If the concern about a gradual release that reduces the risk to public safety is so great, should there not be attempts to qualify and quantify character traits engaged in each step such that there can be an objective understanding of how the stressors of adaptation to outside communities may be managed more easily? For example, long-term prisoners may suffer from temporal dislocation. The pace of decision-making on the street appears to be at light-speed after years of having to wait days for simple decisions to be made by staff. What resources need to be in place to help the prisoner cope with this? Could we speed up decision-making inside the prisons? How do psychologists address temporal dislocation in therapeutic settings? Incarceration can exacerbate attention deficits. How would we treat this in such a way as to improve the releasing prisoner's chances of successful reintegration? Do we even bother with a base line test for any of these elements of "adaptability" potential? Not to my knowledge. As for training, should there not be manuals and materials made available to prisoners outlining objective measurements of successful completion of each step so the prisoner may move on to the necessary successive step without delay? What does each step measure and how does it measure that step (e.g. ETA, work release, UTA, day parole)? What social skill-sets does each step require of the prisoner? How is attainment of these skill-sets measured? But when questioned about just how, or with which criteria, decisions are made with regard to accessing the prisoner's progressive steps toward release we are left to depend on self-disclosure and self-reporting to the IPO, which can be subject to minimization or even denigration.

### **Social Programs**

The reduction of budgets and staff associated with social programming has resulted in one staff member covering two or three positions. This was only possible through changes to policies, practices, and their implementation that had the effect of crushing social programming activities. Social programming in this sense would be recreation, hobby craft, music, some socialization programs and group activities. Group activities include having guest speakers in. Social activities are a necessary part of rehabilitation for

people suffering from social dysfunctions. There used to be a community volunteer coordinator who would also function as an educator on prison realities for the community in the sense that, while visiting universities, colleges, vocational schools and other collections of peoples (e.g. Rotary Club, the Optimists, the Loyal Order of Moose, and churches, etc.) they would dispel myths about prisoners and prisons. Some would result in an awareness of restorative justice. There used to be a day, in the summer months, called “volunteer appreciation day” where family and people on the prisoners’ visiting lists, as well as volunteer’s active with the prison cultural and social groups could all come together. What this meant to the prisoner and the family, along with the volunteer, was a level and degree of communication impossible any other way. A prisoner can tell his or her family they are working on release. A prisoner can tell the volunteer about their relationship with family or friends. However, when all three meet a lot of that discussion is unnecessary. Families can be reassured that their incarcerated loved one is working toward release. The volunteer can see with their own eyes the support the family is willing to give. At the same time, networking and more effective efforts can be made toward release. This day needs to be restored in federal penitentiaries across Canada.

### **Room and Board**

If we have to continue to pay extra room and board then we should be shown how to claim our payments under the *Tax Act*. If we make under a certain amount in the community we are able to recover the payments from the government. The current setup reminds me of stories from the 1800s where in one-industry towns the company would also setup a store where workers would receive wages in chits only good for redemption at their store.

### **Multi-Level Institutions**

The clumping, lumping or amalgamation of institutions into multi-security level penitentiaries represents the best of collective failures under one umbrella. Conservatives made security God. The trouble with this is that security does not co-exist peacefully with any other mandate within a penitentiary setting. Security is expressed by force. Security is best served when risk is reduced to zero. Unfortunately, because to live is to risk and to risk is a matter of choice, reductions in risk translate into reductions of choice and a crushing of life. Witness the life of the four-year old child whose



mother never lets go of their hand. While she does it to keep the child safe, is this child developing life-skills? Can this child cope outside of the sphere of influence of the mother? Personal experience says the child will lack vitality. Without the liberty interests invested in lower security, the prisoner cannot grow positive socialization skills or prove trust necessary for release. In prison settings, security can easily become a monster. Domineering, armed with tear gas and lethal force, there are those whose desire to employ the tools at hand overcomes any consideration of alternatives. The guidelines for use of force exist because murder by staff is a historical truth. Almost every *Charter* right embedded by law in the policies and practices of CSC have tombstones in their shadowy past. Multi-security level institutions do not function at the lowest security-driven common denominator. The security practices of the more severe, more oppressive security levels seep into what are intended to be less restrictive environments. The systemic practice of operating at minimum staffing levels continuously within the institutions means that staff routinely float across barriers, where previously there was separations between security levels. Staff bear the burden of this as well, where they encounter poor planning and incomplete knowledge-sets about job-related performance needs, which constrict and conflict with their duties. Even though a job may bear the same title at differing levels of security, the functions, behaviours and concerns can change dramatically. Yet the demands upon the staff may not be adjusted accordingly. This is unfair both to staff and prisoners.

### **Parole for Foreign Prisoners**

Parole for foreign prisoners with a removal order have become exponentially more difficult because they are not offered the same privileges to prove low risk as prisoners of this country. There are no mechanisms or tools in place to prove trust. This is especially problematic for those serving indeterminate sentences (i.e. Lifers).

### **The Grievance System**

The grievance system is nothing more than lip service with a toothless watchdog. I have liked, on a personal level, most correctional investigators I have met. But the office is an offense to common sense. The Correctional Investigator's office is permitted to make endless reports year in and year out about the abusive situations within CSC, while being denied the least bit of

power to change the inner workings that generate and/or permit the abuses. The grievance system is worse than useless. It generates frustration and hostility. Even if the prisoner gains an admission that someone somewhere has behaved inappropriately in action or interpretation of policy, the grievance itself has no power to enforce proper behaviour. I am reminded of the prisoner buried in the hole who would endlessly explain, to anyone who came along, how he did not belong in the hole. Yes, after listening, they would agree. He did not belong in the hole and then they would explain to him why they could not change his status. They were only the dishwasher or the clerk or the turn-key. You need to speak to so and so, and he would say he had. Well, they would say, that is just not right. Something needs to be done about that. And I, buried next to him, would listen to them walk away.

### **Green Initiatives**

Last but not least, the Conservative government dismantled a number of green initiatives like recycling and composting that were taking place in the penitentiaries. It is extremely difficult to be green in the penitentiary setting if this environmental understanding is not supported by administrative decisions. In fact, the practices may actually be actively discouraged by the decisions made. This needs to be looked at as another element of rehabilitation. Building consensus and improving practices would mean prisoners returning to their greater communities would carry with them a more earth-friendly approach to life.

## **ENDNOTES**

- <sup>1</sup> Of note, the Liberal government's latest act to amend the *CCRA* includes the following: "The Bill proposes to reinstate the *CCRA* guiding principle "least restrictive measures" in Part I of the Act. For consistency, the guiding principle of "least restrictive determination" would be reinstated to deal with conditional release in Part II of the Act" (Canada, 2017).
- <sup>2</sup> See Correctional Service Canada (2017a) *Commissioners Directive 585 National Drug Strategy*, Ottawa. Retrieved from <http://www.csc-scc.gc.ca/lois-et-reglements/585-cd-eng.shtml>
- <sup>3</sup> Canada (Attorney General) v. Whaling, 2014 SCC 20, [2014] 1 S.C.R. 392.
- <sup>4</sup> Correctional Service Canada (2017b) *Commissioners Directive 566-6 Security Escorts*, Ottawa. Retrieved from <http://www.csc-scc.gc.ca/lois-et-reglements/566-6-cd-eng.shtml>
- <sup>5</sup> According to Commissioners Directive 085 *Correspondence and Telephone Communication*, paragraph 13: Distribution of mail: "Under normal circumstances,

incoming mail shall be distributed to inmates and outgoing mail forwarded to the Post Office within 24 hours of receipt” (Correctional Service Canada, 2017c). Correctional Service Canada (2017c) *Commissioners Directive 085 Correspondence and Telephone Communication*, Ottawa. Retrieved from <http://www.csc-scc.gc.ca/policy-and-legislation/085-cd-eng.shtml>

## REFERENCES

- Canada, P. S. (2017, June 19) An Act to amend the Corrections and Conditional Release Act (CCRA) and the Abolition of Early Parole Act (AEPA). Retrieved September 12, 2017, from [https://www.canada.ca/en/public-safety-canada/news/2017/06/an\\_act\\_to\\_amend\\_the\\_corrections\\_and\\_conditional\\_release\\_act\\_ccra\\_and\\_the.html?undefined&wbdisable=true](https://www.canada.ca/en/public-safety-canada/news/2017/06/an_act_to_amend_the_corrections_and_conditional_release_act_ccra_and_the.html?undefined&wbdisable=true)
- Canada (Attorney General) v. Whaling, 2014 SCC 20, [2014] 1 S.C.R. 392