

May 22, 2007

Mr. Robert Sampson,
Chair, CSC Review Panel
c/o Ms Lynn Garrow,
Head, Secretariat, CSC Review Panel
Suite 1210, 427 Laurier Avenue,
Ottawa, Ontario
K1A 1M3

Re: CSC review Panel Consultation

Dear Mr. Sampson:

I am writing on behalf of the John Howard Society of Canada regarding the CSC Review Panel's terms of reference. The short turnaround date for this submission makes it impossible to address in detail the many complex issues that comprise your mandate. As a result we are limited to a letter that sets out broad principles that The John Howard Society of Canada thinks should continue to be the foundation of correctional policy and practice in Canada.

The Purpose of Corrections:

The John Howard Society of Canada has always endorsed and promoted the *Purpose of Corrections* as set out in the Corrections and Conditional Release Act (CCRA). According to Section 3 of the Act:

The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by

- (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
- (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

We can see no other legitimate or safe purposes for a professional correctional service in a democratic state other than those articulated in the CCRA. The *Purpose of Corrections* expressed in Section 3 is essential to any effort to improve the potential of individuals to live

peacefully as law-abiding citizens after release from prison. The John Howard Society has dedicated itself to identical purposes for over 80 years.

In our view your Review must begin with, and be conducted in the context of, these *Purpose of Corrections* for two reasons:

1. the CCRA's Purpose constitute the law under which CSC has sole authority to act; and,
2. the CCRA's Purpose reflect fundamentally solid, ethical, humane and constructive principles.

All considerations for correctional policy must therefore be tested against these principles and should be logically derivable from them.

For instance, a safe and humane prison environment is one that deprives individuals of their liberty *no more than is necessary* to carry out the sentence of the court. Controls and deprivations, which prison by definition implies, are necessary but only to the extent that they are demonstrably justified. Hence we have a system of increasing levels of freedom of movement and choice to reflect the willingness and capacity of individual prisoners to act appropriately. Similarly, we cannot justify deprivations that are added to the unavoidable aspect of imprisonment for any purpose that is not consistent with the *Purpose* set out in the CCRA.

The second *Purpose* – “assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community” – dedicates the CSC to the reintegration of offenders as law-abiding citizens *and nothing else*. As your Review proceeds the constant question that should be posed is whether the efforts of CSC consistently promote or inhibit this *Purpose*. Administrative convenience, expediency or other objectives should not frustrate the dedication of CSC to fulfill its legislated *Purpose*.

We know that no destructive or harmful mechanisms have ever been developed that *improve* a persons capacity for citizenship. People may be frightened into compliance with rules but cannot be frightened into good citizenship by threat of harm or deprivation of fundamental liberties. Being a responsible citizen is something we learn in an environment that is pro-social and provides opportunity for those lessons to bear rewards. Harsh prison conditions with rules that are arbitrary or self serving, that ignore the law or the rights of individuals, are inherently harmful and as such violate the correctional law and, in particular, frustrate its capacity to fulfil the *Purpose of Corrections*.

Thus, we submit that:

No analysis or review of CSC can be justified that falls outside of, or undermines efforts to achieve, the Purpose imposed on the CSC by the CCRA.

Safe and humane custody and supervision:

Avoiding and preventing harm to both staff and inmates is essential, humane and good policy. An environment that is unsafe for prisoners is invariably unsafe for staff too. Safety is not a matter of negotiating interests between staff and prisoners but must be achieved for all.

The foundation of a safe environment is one premised on respect for the individual. Respect for the individual is why we care that a prison is a safe environment in the first place. In law, respect takes the form of rights and due process. We do not wield the authority of the state in a biased, discriminatory or arbitrary manner. The same must hold true for the treatment of staff and prisoners. Staff has the particular obligation to ensure that the rights of prisoners are respected. Staff must follow the law; not as a work target, but as a fundamental requirement of their jobs. Staff must dedicate themselves to creating environments that are safe in the physical sense but also in terms of psychological or mental harm. To do otherwise is to accede to brutalization and brutalization is completely inconsistent with the first *Purpose of Corrections*.

Offenders, by definition, have violated the rights of others. That is what constitutes crime and as a society we are justified to punish those who violate our rights. At the most extreme end of the spectrum of acceptable punishment is imprisonment. *But it is the loss of freedom that is the punishment not the loss of all rights*. Prisoners retain many rights in law. We respect those rights not *just* because the law requires us to, but because we know that we cannot encourage good citizenship by denying the rights of others. We cannot teach desirable citizenship through the practice of hypocrisy. Authority, power and force are only legitimate tools in the prison environment when used with restraint and with full accountability. They must be justified by the principles implied in the *Purpose* and articulated in the Act: *i.e.*, safe and humane custody and supervision.

Two Years in Maximum Security:

An example of deviation from the *Purpose of Corrections* in the CCRA that infringes on the rights of individuals to be treated in a manner that is consistent with their residual rights is the requirement that all prisoners serving life sentences spend at least the first two years in maximum security. Maximum security is intended as the last resort for holding prisoners who cannot be controlled in less restrictive environments. It is not a system that is to be used to enhance punishment. Decisions as to the level of security should be based on evidence-based assessments of risk. The two-year rule should be rejected as inconsistent with the CCRA.

“Frivolous and vexatious” grievances:

It is only after grievances have been reviewed in a fair and independent manner that any fair decision can be reached as to whether they are frivolous and vexatious. What may seem to be frivolous and vexatious to some can have a very different impact on those confined for years in a federal prison. Such complaints should not be dismissed easily. Respect for a person’s rights

implies a fair and thorough review of grievances – preferably by an independent body.

Thus we submit that:

“Safe and humane” can only occur in an environment that respects the dignity of people and their rights. All other safety considerations flow from this concept.

Initial placement of those serving life sentences should be based on objective risk measurement scales.

All complaints and grievances should be reviewed carefully and not dismissed as “frivolous and vexatious.”

Reintegration as law-abiding citizens:

It is not always easy to reliably identify which programs assist in the rehabilitation of an offender. While “effectiveness” cannot be boiled down to a single metric, there is a substantial and coherent literature that now addresses the myriad of factors that reduces reoffending by those leaving prison (much of it produced by the competent research staff at CSC and the Corrections Directorate of Public Safety). These researchers are recognized as leaders internationally, and with good cause; their reputations have been earned by examining the facts and proposing treatments, practices and policies that are evidence-based, methodologically sound, rigorously evaluated and subjected to peer review.

In our view it is unreasonable to expect the CSC Review Panel to – in the short time permitted – address effectiveness questions in the complicated context of corrections, addictions, mental health and the complex social environments that prisons represent. This would be difficult even for those who were *already* experts and required no time to read synthesize and consult.

Thus, we submit that:

What the Review Panel can do is identify the principles on which treatment and rehabilitation ought to be developed in order to be consistent with the Act and with the fundamental values of free and democratic society.

The Perspective of The John Howard Society of Canada:

In recent years, treatment and rehabilitation rhetoric have become driven more by a desire to punish than by knowledge of what is humane or effective in correctional policy. Your Review Panel, Mr. Sampson, could provide an essential public service by *insisting* that, within the legal authority of CSC, all programs be developed in accordance with evidence-based knowledge. The panel should proceed on the understanding that good evidence flows from good research, and that good evidence grounded in good research is conducive to good and humane policy. CSC

should develop and/or solicit the best evidence about the practices, programs and strategies that maximize successful transition to the community of prisoners as law-abiding citizens.

Given the importance of safe and successful reintegration to the community, and the enormous expenditures made on criminal justice in Canada, the research budget and capacity of the federal government – either directly or through other institutions such as universities – must be enhanced and sustained over time. Further, the Review Panel report should promote a culture within CSC that acknowledges the importance of *evidence-based knowledge as the basis of good policy*. Without that expectation, treatment becomes another tyranny.

Evidence about “what works” in corrections changes over time as scientific methodologies improve and evaluations are refined. Treatments that seemed hopeless 20 years ago now show great effect as data accumulates and practices shift in the light of new evidence. Treatment of sex offenders is one area where this change is substantial.

The fact is that CSC must focus on treatment in safe and humane environments because that is the only legal mandate it has. But CSC must not let the desire for retribution trump the peer-reviewed evidence if it wants to obey the law and fulfill its mandate in a just and humane manner.

We know with certainty that solid evidence applied over time to refine and develop rehabilitation programs works to reduce recidivism *and* victimization. CSC’s own researchers – and the international literature – endorse this conclusion.

Thus, we submit that:

A commitment to the iterative development of just, humane and effective correctional practice must be the basis for policy development. Anything less puts the public at risk and politicizes correctional policy. Canadians tolerate no less from medicine and should not tolerate anything less from corrections..

As with all programs, those that specifically address aboriginal and women’s issues need to be evidence based in their own right. However, it is essential that such evidence be tested to ensure that it is appropriate for those with whom they are to be used.

On Gradual Release:

Enhancing the prospect of successful reintegration cannot be achieved by doing nothing. Leaving people in prison until their term expires is tantamount to doing nothing. The sentence is a window of opportunity within which correctional systems can make positive changes. Doing something constructive means actively working to influence the choices that individual prisoners make on release and influencing the environment into which they are released. Both are achieved through gradual release.

One cannot learn citizenship in prison any more than one can learn to play tennis in a submarine. In both cases one can learn the rules but there is little opportunity for practice. Being a good citizen is a way of life – not a memorized code of conduct. Gradual release is the only way to give offenders the opportunity to practice their citizenship before the expiry of their sentence. Earning greater freedom, engaging in pro-social activities, finding help with problem areas, forming relationships and generating a source of legitimate income cannot occur in prison. These necessary conditions for success after prison can only occur when actively supported under appropriate community supervision.

Gradual release is not provided as a reward for good conduct. Indeed, without it, we place the community at greater risk. The prisoner *needs* gradual release whether he *deserves* it or not. That is the rationale for Statutory Release. This mechanism of release and supervision was introduced in 1969 by cancelling remission that allowed people to be released from prison earlier than the expiry of their sentence as an incentive for good behaviour. Remission continues to this day in the provincial prison system. The remission time for federal offenders was converted into what was then called “Mandatory Supervision” and later renamed “Statutory Release.” Because Statutory Release replaced remission, it extended by 50 percent the period of control during which an offender could be held in custody or supervised in the community. No one ever served less time in prison through Statutory Release than was the case before it was introduced.

The purpose of Statutory Release was to ensure that both supervision and support were in place for all people leaving prison – not just for the best bets who were released on parole. Anything we do to restrict release on this gradual release mechanism is inconsistent with the second *Purpose of Corrections* and amounts to little more than an arbitrary and massive increase in incarceration outside of sentencing provisions. The economic and social costs of eliminating or seriously reducing Statutory Release will be enormous and the impact on the capacity and operation of our prisons will be unprecedented. Such a move would be entirely inconsistent with the mandate and opportunity for CSC to achieve either clause of the *Purpose of Corrections*.

Thus, we submit that:

Gradual release provisions, consistent with the best available evidence, enhances public safety and fulfills the Purpose of Corrections. Statutory release is an essential part of a comprehensive gradual release program.

Contribution of The John Howard Society to CSC’s priorities:

While puzzled by the requirement to address this matter – given that it does not appear to be part of the terms of reference of the panel and seems to make misguided assumptions concerning the relationship between CSC and this Society – it is nonetheless the case that all services that JHS provide to, or on behalf of, CSC are subject to detailed contracts. These contracts specify the service in detail and the deliverables. It is not a “contribution to CSC” but rather a contractual agreement. Any measures that CSC finds relevant are spelled out explicitly within each contract.

Aside from contracts, JHS does not make direct “contributions” to CSC. We are a charity governed by and accountable to boards of directors. Our interest in corrections and criminal justice has grown out of our experience and observations that reintegration of offenders into the community is a crucial step in reducing crime and improving public safety. Our work is premised on the firm belief that for people to become engaged as law-abiding citizens they must be subjected to safe, humane and just treatment within the criminal justice system and have access to and be encouraged to use opportunities on release upon which they can build new lives.

Our purposes and beliefs are quite consistent with the *Purpose of Corrections*. In fact, we would argue that few Canadian public institutions or voluntary sector organizations have purposes *as compatible* with the *Purpose* and mandate of CSC. The same can be said regarding CSC’s Mission Statement.

Thus, we submit that:

Our concern is not with CSC’s “priorities” but with CSC’s mandate as expressed through the Purpose of Corrections. We insist that CSC’s priorities reflect their legal mandate and have consistently expressed this view.

Because of the common elements of our purposes with those of the CCRA and of the Mission statement of CSC, we have many opportunities to work collaboratively with CSC outside of contractual relationships. We consult regularly with CSC and with other parts of the Ministry of Public Safety – such as the Corrections Directorate and the National Crime Prevention Centre as well as other ministries including Justice, Health and Human Resources. This engagement is broad based and relevant to specific and horizontal issues faced by Canadian society generally and CSC specifically. It occurs in Ottawa and across the nation through the JHS offices located in approximately 70 communities.

The advice and challenges we make to CSC are intended to promote compliance with the *Purpose of Corrections*. We acknowledge that this is not an easy task for CSC to fulfil, but their goal is valid and must be realized to the greatest extent possible. In promoting this expectation we advance our own purposes and also the cause of social justice appropriate to an advanced democracy. CSC, however, is not the client of the John Howard Society and our activities are not designed to “contribute” to CSC priorities. Rather, *we endorse CSC’s work to the extent that it fulfills its purpose in a principled and evidence-based manner*. Constructive feedback – that holds CSC to its *Purpose* and *Mission* – is an important way by which CSC benefits through obtaining an informed outside opinion on how its activities, policies and practices are or are not consistent with their legal mandate.

Our relationship with CSC reflects a constructive and positive relationship between organizations with similar mandates and who work with often difficult people; people who – for various reasons – are vulnerable, marginalised, poorly socialized and who, from time to time, need to be incarcerated for the purpose of public safety. Ours is not always a comfortable relationship and, for that matter, *should not* always be comfortable.

We do not think that a “measurement strategy” should be put in place to “measure the results of this contribution” – presumably by CSC – because our contribution to hold CSC to its *Purpose* and Mandate is only as good as CSC’s willingness to meet its own *Purpose* and *Mission*. From our community-based mandate we provide a public service that benefits CSC but is not funded by CSC. Outside of contractual agreements it is our business alone to measure our results and justify our efforts. We do not measure our “contribution to CSC” because that is not one of our purposes even though it is clear that CSC benefits from our presence. Presumably it is the recognition of the benefits of having informed and committed community groups provide feedback to CSC that prompted the request that we participate in the consultation phase of the Review Panel’s work.

Conclusions:

In summary, the foregoing constitutes the substance of our recommendations to the CSC Review Panel for the completion of its work:

The John Howard Society of Canada recommends that the Panel conduct its review disciplined and informed by the following considerations:

The CSC must act within the CCRA and promote the *Purpose of Corrections* in a just and humane manner;

1. Safe and humane conditions must, at the very least, always be congruent and consistent with respect for the individual and the residual rights of citizens – whether incarcerated or not;
2. Rehabilitation and treatment policies must always be evidence-based. Where evidence is absent or weak there must be research initiated to address the relevant questions. Effectiveness must be understood to be an evolving and iterative process and in particular:
 1. *No analysis or review of CSC can be justified that falls outside of, or undermines efforts to achieve, the Purpose imposed on the CSC by the CCRA.*
 2. *“Safe and humane” can only occur in an environment that respects the dignity of people and their rights. All other safety considerations flow from this concept.*
 3. *Initial placement of those serving life sentences should be based on objective risk measurement scales.*
 4. *All complaints and grievances should be reviewed carefully and not dismissed as “frivolous and vexatious.”*
 5. *What the Review Panel can do is identify the principles on which treatment and rehabilitation ought to be developed in order to be consistent with the Act and with the fundamental values of free and democratic society.*
 6. *A commitment to the iterative development of just, humane and effective correctional practice must be the basis for policy development. Anything less puts the public at risk and politicizes*

- correctional policy. Canadians tolerate no less from medicine and should not tolerate anything less from corrections.*
7. *As with all programs, those that specifically address aboriginal and women's issues need to be evidence based in their own right. However, it is essential that such evidence be tested to ensure that it is appropriate for those with whom they are to be used.*
 8. *Gradual release provisions, consistent with the best available evidence, enhances public safety and fulfills the Purpose of Corrections. Statutory release is an essential part of a comprehensive gradual release program.*
 9. *Our concern is not with CSC's "priorities" but with CSC's mandate as expressed through the Purpose of Corrections. We insist that CSC's priorities reflect their legal mandate and have consistently expressed this view.*

Thank you for considering this submission.

Sincerely,

Graham Stewart,
Executive Director (outgoing)

And

Craig Jones
Executive Director (incoming)