

CANADIAN RESOURCE CENTRE FOR VICTIMS OF CRIME

BRIEF TO THE CSC REVIEW PANEL

June 4, 2007
Heidi Illingworth, Executive Director

INTRODUCTION

We would like to thank the Review Panel for providing us with the opportunity to submit a written brief in contribution to the review of the Correctional Service of Canada (CSC). We believe this review is long overdue.

Given that Canadian Resource Centre for Victims of Crime (CRCVC) is an organization dedicated to ensuring victims' rights and public safety, the work of CSC is of great interest to us. On a daily basis, we act as agents for crime victims in their dealings with CSC. We help many victims obtain and understand information on offenders and their rights under the *CCRA*, interact with corrections officials on their behalf, and accompany victims to parole hearings and on prison tours where possible. Please see the attached Appendix to review our mandate.

This brief will focus on the following issues, as they relate to the clients we assist on a daily basis:

- The availability and effectiveness of rehabilitation programming and support mechanisms in institutions and in the community post release, including the impact on recidivism and any legal framework issues;
- The availability and effectiveness of mental health programs and services in institutions and in communities;
- The availability and effectiveness of work programs, including impact on recidivism;
- The initial placement of offenders convicted of first- and second-degree murder;
- CSC's approach to the location of its CCC's and Parole Offices in urban areas;
- CSC's ability to deal with parole violations, and with frivolous and vexatious grievances by offenders;
- CSC's plans to enhance services for and support to victims; and
- CSC's efficiency in delivering on its public safety mandate.

AVAILABILITY AND EFFECTIVENESS OF REHABILITATION PROGRAMMING AND SUPPORT MECHANISMS

As an organization, we recognize the importance of rehabilitation programming and support mechanisms for offenders given that most will eventually return to society. CSC offers a number of valuable programs and is able to address the unique needs of most offender populations.

From a victim's perspective, rehabilitation is very important. Victims never want to see anyone else victimized in the same manner that they were. Thus, the CRCVC has long advocated for the provision of information to victims regarding the offender's institutional conduct, rehabilitative programming/assessments, psychological evaluations, employment (within the institution and work release programs), and educational upgrading. If victims knew what components of the Correctional Plan, if any, the offender has completed to address his¹ problems and the success of such programming, victims would have a better sense of whether the offender is taking genuine steps to improve himself. If such information was provided regularly throughout an offender's incarceration (instead of finding out months or even years later at a parole hearing), there might not be such fear or concern when he is released.

If CSC is providing programming from which offenders are benefiting, victims should be informed. Likewise, notification should be provided in cases where the offender is not making progress. The Correctional Plan should be shared with victims as it serves as a basis to monitor the offender's progress throughout the sentence. It outlines and prioritizes the areas that must be addressed to reduce an offender's likelihood of re-offending and to prepare him to safely reintegrate into society. With this knowledge, victims will be able to better assess what, if any, danger an offender may still present to them. Given that this type of information becomes available to observers at parole hearings or, in a less detailed form, by accessing decision registry, it should be available to victims at earlier

¹ Given that the vast majority of offenders that have harmed the CRCVC's clients are male, all personal pronouns will be masculine in this document. This is not meant to exclude the fact that female offenders have harmed and do harm the CRCVC's clients.

points in the offender's sentence.

Victims should also be informed in advance of an offender's transfer to another prison, and the reasons behind the transfer. Currently, victims do not have access to reasons why, and are generally given little, if any, notice prior to a transfer. This information should be provided because victims are left wondering whether a transfer occurred for positive or negative reasons. Often, when information regarding the transfer of offenders is not given until after the fact, it can trigger a variety of negative emotions for victims.

If an offender is ordered deported upon the completion of his sentence, victims should be provided the information they are lacking, for example; confirmation offender is deported, confirmation of where they are deported to, if not deported, reasons why, etc... Although Commissioner's Directive (Guideline #784-1) states, "When disclosure is approved, the victim shall be notified by CSC when an offender is released into the custody of the Canada Border Services Agency (CBSA) at warrant expiry or any time prior to warrant expiry date." It is rare that the victim is given any such information. Poor information sharing between these agencies can perhaps explain this failure nevertheless; it is unfair and agonizing for victims to not have confirmation of the deportation as they may continue to live in fear.

Victims have a "need to know" that is motivated primarily by security and safety reasons, not vengefulness. Providing information regarding programming throughout a sentence, transfers before they occur and deportation of offenders will help respond to this basic need to feel safe and secure.

MENTAL HEALTH PROGRAMS

The CRCVC believes that the criminalization of people with mental illness is not appropriate, and information from the Corrections and Conditional Release Statistical Overview 2006 is concerning. It shows that 10% of offenders committed to federal jurisdiction had a mental health diagnosis at time of admission and 5% were receiving outpatient services prior to admission. Further findings include:

- In 2005-06, 31% of female offenders compared to 15% of male offenders had previously been hospitalized for psychiatric reasons.
- The percentage of federally incarcerated offenders prescribed medication for psychiatric concerns at admission has more than doubled from 10% in 1996-97 to 21% in 2005-06.
- Female offenders are twice as likely as male offenders to have a mental health diagnosis or to be prescribed medication for mental health concerns at time of admission.

We imagine that CSC's role in controlling the behaviour of these inmates may prove difficult at times. Our concern is with regard to the assessment of risk of offenders with a mental health diagnosis. Are these offenders at increased risk of violent behaviour? It is especially important for public safety that these offenders receive the appropriate psychological interventions, therapy or medication while incarcerated and also upon release back into the community.

The CRCVC believes that victims should be informed in cases where there is a mental health diagnosis, particularly if there are personal safety concerns involving the victim.

WORK RELEASE PROGRAMS

A work release is a structured program of release of specified duration for work or community service outside the penitentiary, under the supervision of a staff member or other authorized person or organization. We feel that these programs are beneficial in preparing some offenders for return to society.

According to information from the Corrections and Conditional Release Statistical Overview 2006, the number of offenders receiving work releases peaked in 1998-99 and has decreased 66.8% since that time. The same report states the successful completion rates for work releases, escorted and unescorted temporary absences are consistently over 99%. Unfortunately, the report does not state what types of offences were committed by those

released on work release. We are concerned with the protocol and safeguards in place regarding granting work release for those serving sentences for violent crime, based on the risk this may pose to public safety.

Victims should be notified when their offender(s) is participating in a work release program, regardless of whether it occurs in the community where they reside.

THE INITIAL PLACEMENT OF OFFENDERS CONVICTED OF FIRST- OR SECOND-DEGREE MURDER

In 2001, CSC's policy in this area became clear – it requires those offenders convicted of murder to remain in a maximum-security institution for at least the first two years of their life sentence. The CRCVC continues to support the placement of convicted killers in a setting that is proportionate to the gravity of their offence. In fact, we believe the *CCRA* requirement to hold offenders in the “least restrictive setting” should be amended and replaced with the “appropriate level of intervention”.

A recent example of CSC attempting to place a convicted killer at a lower level of security immediately following his conviction is Ronald Fowler. Fowler was convicted of the first-degree murder of 61-year-old Diana Russell in her home, in March 2006. He was immediately sent to a medium-security facility in B.C. Ms. Russell's daughter, Valerie MacPherson, was outraged that Fowler was not sent to a maximum, as per CSC's policy. “This was his third federal offence and he was actually on a conditional sentence at the time he raped and murdered my mother. It's not a self-defence murder. This was a 61-year-old woman who was recovering from knee surgery. He put her through a lot of pain and agony before he murdered her.”

The rationale provided by CSC was that Fowler should be incarcerated in a less-secure facility based on his previous institutional behaviour. A letter from CSC regional deputy commissioner Anne Kelly reveals that Fowler's classification was based on his behaviour prior to his murder conviction. She states, “As offender Fowler has served previous federal sentences, we have a pattern of institutional behaviour that has led us to believe that his risk can

be managed in a medium-security institution.”

In 2005, CSC quietly amended the policy to allow Wardens the ability to grant exemptions to this two-year rule. Following the media coverage of the murderers avoiding the policy in November 2006, Public Safety Minister Stockwell Day instructed CSC to be more selective with the rule, reiterating that, “all murderers should spend at least two years in maximum-security.”

The Fowler case is particularly offensive to the victims since it is clear that all previous attempts by CSC to rehabilitate Fowler failed, evidenced by the escalation of his criminal pattern from theft to cold-blooded murder. Fowler was never moved to a maximum-security institution.

The CRCVC continues to support the use of this policy as a means to denounce the taking of a life by exercising strict controls and guidelines over the offender for the first portion of his life sentence.

CCC’S AND PAROLE OFFICES IN URBAN AREAS

In 2005, the CRCVC spoke out against a decision to relocate the Ottawa District Parole Office near Elgin Street Public School (an elementary school) and the Minto Park Monument to Murdered and Abused Women. In 2004, the office had been moved from an industrial area of the city to this residential area near the school, a park, and a community centre, which led to a backlash from the community. Residents spoke out when the office opened because no consultations were held, leaving the community without a voice. Despite the controversy, the Minister refused to remove the office and it remains there until the lease expires in 2009.

The relocation of CCC’s and parole offices to urban areas is questionable, especially to areas where young children are present. The same protocol with regard to talking to the community about the location of halfway houses should exist regarding parole offices and CCC’s. Parolees do come and go from the office, perhaps meeting with parole officers, handling administrative issues or for programming needs. Keeping offices in business or industrial areas could also help to be less stigmatizing for parolees.

CSC'S ABILITY TO DEAL WITH PAROLE VIOLATIONS

As an organization, we support the underlying philosophy of parole and believe that, for the most part, the public does as well. We acknowledge the logic in slowly reintegrating some offenders back into the community with controls over them. At the same time, we recognize that there are some people who have shown that they do not deserve the benefit of conditional release and will not benefit from it. Furthermore, there are a small group of offenders (murderers and dangerous offenders) who never need to be released and many who never should be.

Parole Violations

Violating conditions of parole must be taken very seriously by CSC in order to protect public safety. Violations should be recognized as a sign that the offender disregards the authority he is under and that he is not prepared for release. CSC has discretion with respect to breaches of conditions or other significant occurrences, thus the National Parole Board (NPB) is not always informed. In an instance where conditions are violated, parole may be temporarily suspended by CSC while a parole officer re-assesses the case and then, the suspension is cancelled returning the offender to the community with the same conditions. The offender is not forced to appear before the Board to answer to them.

As the victim's agent, we will receive notification from CSC that one or more conditions of release have been violated, however privacy laws protect the offender so victims are not told what the offender did to violate his/her conditions of release. The lack of reasons provided is difficult to explain to victims on the best of days. Since victims are able to receive information about violations of conditional release if they attend a parole hearing or receive parole decision sheets, it does not make sense that this information is restricted when the violation occurs, especially if it pertains to the safety of the victim, or could be construed as pertaining to personal safety by the victim.

Victims must be informed and given reasons why parole is suspended, if an offender is returned to custody or becomes unlawfully at large. The CRCVC strongly believes that victims must be informed if an offender is charged with or has been convicted of a new offence while on conditional release or unlawfully at large.

If an offender comes back to a halfway house stoned, even though this may be a violation of conditions to abstain from intoxicants, this case is considered a success because a failure requires an offender to be charged with a new offence. Such criteria undermine the true "success" rate of conditional release and simply create more public skepticism of the system. If anything, these "success rates" more accurately measure supervision abilities as opposed to the appropriateness of release making decisions. To measure successes in this way is misleading and self-serving.

Interestingly enough, different criteria are used for Temporary Absence (TA) passes. A TA is considered a failure if the offender is unlawfully at large, detained by the police, or breaches a condition of the TA, for example, to abstain from alcohol.

Statutory Release

Statutory Release (SR) is a release by law. An offender who has served two-thirds of his sentence must be released from prison despite the fact that he may not have participated in treatment programs, had poor institutional behaviour or refused to address any risk factors. It has been well documented by corrections research that the conditional releases with the highest success rates are those that rely on the judgments of professionals and are based on proper risk assessments that focus on public safety, where the lowest success rates are for those releases by law, including statutory release and accelerated parole review.

Given this fact, we strongly believe that SR should be abolished, and it should be a release decided on by the National Parole Board (if and when it is earned by the offender). If the point of incarceration is to truly prepare and rehabilitate, then parole should be earned.

Detention

The criteria for detention should be reviewed and serious consideration be given to lowering the incredibly high standards. The impact of numerous parole and/or detention hearings for victims cannot be understated. Annual detention reviews are devastatingly difficult for victims, as are two-year parole reviews for murderers. It is unacceptable that victims must repeatedly be made to suffer by the very system that should be protecting them. While victims do understand that offenders have the right to apply for parole at some stage in their sentence, it is emotionally painful and draining for them to prepare for a hearing potentially every two years for the rest of an offender's life (especially in the case of offenders who have done little to address their Correctional Plan and are simply wasting everyone's time). As one victim said, "coming before the Board every year for detention hearings is cruel and unusual punishment for the victims."

We would also like to see the NPB's role expanded in the area of detention, for example, by allowing the Board to detain offenders even without a referral from CSC.

Conditional Release

CSC has some conditional release decision-making authority (work releases, most escorted temporary absences (ETAs), some unescorted temporary absences (UTAs)), thus, it can grant ETAs to lifers after they reach eligibility for UTAs. It is our position that all conditional release decision-making power for offenders serving life sentences should rest with the National Parole Board.

Institutional heads should not have the authority to grant ETA's to those serving life sentences. When such passes are granted into the community and a Correctional Officer accompanies the offender, there is no obligation to inform victims because it is considered 'an extension of custody'. Imagine the horror of a victim to learn at the first parole hearing or at a judicial review that an offender has received numerous passes into the community

unbeknownst to them. It is contradictory to public safety that an institutional head can allow an escorted temporary absence to a lifer who has never faced the thorough questioning of the National Parole Board or who might never be granted full parole into the community by the Board. Both the *CCRA* and CSC policy should be amended to require informing the victim of all temporary absences, even if the absence is not to the community where the victim lives.

The supervision of all forms of conditional release is a CSC responsibility. It is our position that community volunteers should not be used to escort murderers and serious violent offenders into the community. We believe that trained Correctional Officers are more appropriate, especially in the early stages of the release process. It is very disconcerting for victims to learn that a non-security escort, such as a citizen escort, will escort the person who murdered their loved one into the community.

Board of Investigation Reports

When a federal offender on some form of conditional release commits a serious offence in the community, the Correctional Service of Canada and/or the National Parole Board may convene a Board of Investigation into the crime. They will examine the offender's criminal history, the circumstances surrounding his release and the circumstances of the new crime. The report summarizes the facts of the incident and may make recommendations about how to prevent similar tragedies in the future. It is crucial for such an investigation to include, without exception, a victim or victim advocate as part of the panel chosen to investigate in order to have true openness and accountability. Currently, such investigations rarely, if ever, include victims.

When someone is murdered or seriously/sexually assaulted, dealing with the emotional trauma and the criminal justice process is difficult enough. Add to that the knowledge that the offender was on parole at the time and the victim's ability to deal with the crime is tested even more. Very often in these circumstances, victims want answers as to why that person was on parole, who was supervising him, etc. Not getting those answers

prevents many victims from dealing with their own grief and denies them a sense of closure. Board of Investigation Reports can very often provide the answers that are so important to victims.

Problems needlessly arise when reports are not released for months, even years. Much of this is due to policy that only permits the release of the reports when an action plan has been completed, as well as media notes (potential questions and appropriate answers) in case there is any public interest in the matter. While CSC and the NPB must adhere to strict privacy legislation, there is no justification for the length of some delays. Accountability is not just providing the answers, it means providing the answers in a timely fashion. Lengthy delays simply foster skepticism and result in victims not trusting what the report says for fear it must have been a cover-up.

Further, when victims receive a report in which paragraphs and whole pages are blacked out, it is difficult to understand why this is so. The protection of third parties is acceptable, but the protection of the offender's privacy is not.

CSC'S PLANS TO ENHANCE SERVICES FOR AND SUPPORT TO VICTIMS

Research in victimology highlights the need of crime victims for information. We are pleased to see that CSC will enhance how it provides information and services to victims of federal offenders by creating new Victim Service Officers dedicated to assisting victims. During the last decade, there have been substantial improvements to the manner in which CSC treats victims and we appreciate the opportunity to comment on them. Designated victim service officers will help eliminate staff within CSC who avoid calling victims, who are not trained to work with victims or who do not want to work with victims. It is very important that staff who work with the offender should not also be in contact with his victim. Having dedicated victim services officers will also help avoid staff that might become desensitized to the horrific nature of the crime and the suffering the offender has caused.

As recently as April 2005, the then Liberal government introduced legislation that would amend the *CCRA* to expand the type of information victims could access, allowing for the release of more information to victims about reasons for transfers and programs taken while in prison, advance notification of transfer when the offender is going to a minimum-security institution, and allowing victims to listen to audiotape recordings of National Parole Board hearings. Although these proposed amendments did not become law, it was an important recognition of the information needs of crime victims.

It is our strong recommendation that a substantial expansion of information to crime victims be provided so that they may feel safer in their daily lives and have knowledge about the offender's rehabilitative progress (or lack thereof).

EFFICIENCY IN DELIVERING PUBLIC SAFETY MANDATE

The mission of the Correctional Service of Canada is, as part of the criminal justice system and respecting the rule of law, to contribute to public safety by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control. Are they fulfilling their mandate? We believe they are, for the most part. There are obviously grave concerns whenever an offender on conditional release commits a serious, violent crime in the community. One incident is one too many. Also, it would appear that the validity of the success rates of parole must be questioned. One of the most concerning issues for our organization occurs when the offender's right to privacy outweighs the right of the victim to be informed about the person who has caused them egregious harm.

We would also like to raise the concern of high-risk offenders. Neither Correctional Service Canada nor the National Parole Board has the legal authority to lengthen or shorten a court sentence. We have long voiced our concern in this matter especially with respect to high-risk offenders. There is a real safety concern pending the release of high-risk offenders who have served their entire sentences, as they remain a risk to commit serious,

violent sexual offences against children and others. There is currently no effective mechanism to deal with these offenders or information regarding their danger to society that may come to light while they are incarcerated (other than CSC alerting police of their impending release). In most cases, society is forced to simply wait for the next victim.

CONCLUSION

CSC policy states that they recognize that all victims of crime have a legitimate and significant interest in receiving information about the offender who has harmed them. We look forward to an expansion of information provided to victims in the near future and call upon the Review Panel to make victims a top priority in any recommendations made. We thank you for the opportunity to participate and appreciate the dedication of all the Panel members.

RECOMMENDATIONS

1. CSC must provide registered victims information updates regarding the offender's rehabilitative efforts throughout the duration of his incarceration. This information should be inclusive of all aspects of the Correctional Plan, including institutional conduct, rehabilitative programming/assessments, psychological evaluations, educational upgrading, and employment (within the institution or work release programs). This information must be provided to victims where the offender is making positive progress or not.
2. CSC must inform victims in advance of an offender's transfer to another prison, and the reasons behind the transfer.
3. CSC must approve disclosure to victims when an offender is released into the custody of the Canada Border Services Agency (CBSA) at warrant expiry or any time prior to warrant expiry date. Victims need confirmation the offender is deported, confirmation of where they are deported to, if not deported, reasons why, etc...
4. CSC must inform victims in cases where there is a mental health diagnosis, particularly if there are personal safety concerns involving the victim.
5. CSC must inform victims when their offender is participating in work release programs, regardless of whether it occurs in the community where the victim now resides.
6. CSC policy that requires those offenders convicted of murder to remain in a maximum-security institution for at least the first two years of their life sentence be kept. Amend the *CCRA* requirement to hold offenders in the "least restrictive setting" by removing it and replacing it with the "appropriate level of intervention".
7. CSC be required to advise a community before opening a parole office or CCC, so that the community may have a chance to voice their opposition. Where possible, these offices and facilities should be located in industrial areas.
8. Remove CSC discretion with respect to handling breaches of parole conditions or other significant occurrences. The National Parole Board must always be informed of breaches and offenders brought before the Board to answer for their breaches.
9. CSC must inform victims what an offender did to breach/violate conditions of parole, reasons why parole has been suspended or why an offender has been returned to custody.

10. CSC must inform victims what an offender was charged with or any convictions while on conditional release or unlawfully at large.
11. Amend the *CCRA* to abolish Statutory Release and replace it with earned parole.
12. The criteria for detention is incredibly high, thus the *CCRA* should be amended to give the National Parole Board authority to detain an offender without a referral from CSC.
13. Amend the *CCRA* to recognize the tremendous emotional toll on victims in facing an annual detention hearing, perhaps by allowing a paper review where there have been no significant changes in the case. It should be similarly amended regarding the two-year review for murderers.
14. Amend the *CCRA* to ensure that all conditional release decision-making power for offenders serving life sentences rests with the National Parole Board. Victims must be informed of all conditional releases from the institution, regardless of whether it occurs in the community where the victim now resides.
15. CSC policy be amended to require a security escort for conditional releases of lifers.
16. Amend CSC and NPB policy to require a Board of Investigation be convened following the commission of an offence by a federal offender on conditional release. The panel chosen to investigate must include a victim or victim advocate and the investigation must be completed without delay. Reports must be provided to victims without portions blacked out to protect the privacy of the offender.
17. CSC create dedicated victim service officers to work with registered victims by providing an expansion of information (as listed in recommendations number 1-5) needed in order for the victim to gain knowledge of the progress an offender has made (or lack thereof) throughout incarceration and to provide a sense of security.
18. Create a mechanism whereby the CSC and/or NPB can, with regard to high-risk offenders who reach warrant expiry, appear before a judge to seek a restrictive order of sorts (perhaps creation of provision under *CCRA* of designation similar to Long-term Offender status, or in extreme cases, Dangerous Offender status).

APPENDIX

Mandate Canadian Resource Centre for Victims of Crime

- To assist victims of crime and their families in dealing with the sentence administration or parole authorities to ensure that they are kept informed, if they so choose, of actions which affect their future safety and well being
- To, where appropriate and authorized by law, appear with victims of crime and their families and assist them in securing legal counsel at hearings in which they may participate as victims of crime
- To act as a resource centre for victims by providing understanding and knowledge of the Canadian Criminal Justice System
- To actively present the interests and perspectives of victims of crime to Government, at all levels, and its various agencies
- To generally promote the interests of public safety through the principles of openness and accountability within the Criminal Justice System and the Sentence Administration Process
- To advocate on behalf of crime victims and assist them in obtaining needed services and resources
- To act as a centre of information addressing the issues affecting victims of crime throughout Canada
- To promote and enhance the interaction and exchange of information and perspectives among other agencies and groups within the Canadian Criminal Justice System
- To assist victims in obtaining and understanding information on offenders
- To assist victims in understanding the parole process, and to attend parole hearings with or on behalf of the victims