What follows are not malicious rambling of rebellious prisoners. These are the expressed concerns of sincere people living in Canadian prisons. Accepting the fact that we are prisoners does not alter our desire to live and interact in a society which reflects social mores of equality and justice based on a humanitarian model.

Ron Lauzon, prisoner,
Collins Bay Penitentiary
INNER LIMITS
Gayle K. Horii

Space seems infinite and never-ending; free to accommodate material presence, energy, and thought existence. It sacrifices itself upon demand. When not saturated, it awaits filling; when open, it awaits enclosing. Space is the arena between the end and the beginning. It is a requirement for being, for without it, there would be no place to be. Where there was something, the removal of that something leaves space. It has temporary boundaries and when inevitably they dissolve, space once more regains its original place. Space expresses itself freely in the absolute absence of all things.

To accept an existence in an enclosed space for long periods requires an endless struggle with innate requirements; to move, to think, to feel, to act and to express; my desires to be. Walls of office towers and houses, restrictions of labels and identities, constraints of illnesses, barriers of age, bars of prejudice and judgement have all confined me to varying degrees over the past 44½ years. Space has proven an elusive entity. Still, I search it out with craving, and discovering any, revel in it, wallowing in its luxury. The freedom to choose, where, when, how long, and to what extent I wish to use it, to move freely into or out of any space will continue to be my path as long as time permits.

Time specifies the duration and the tempo of existence, of being. It continues whether one is conscious or unconscious; it flows on. Unlike space, it resists enclosure; rather, it is without even temporary capture. It restricts,
permits, measures and records the continuous threads of all existence.

Hold a photograph of an infant in your left hand and in your right hand, hold another photograph of the infant after sixty-five years has passed. Can you identify the photo in your left hand with the one in your right hand as being of the same person. The thread of time is the measure of this person. Time is the invisible which binds yesterday to today and today to tomorrow.

In Krishnamurti’s *Talks In India* (1953) the author states:

Though the mind tries to use the symbol (of eternity) to go beyond, obviously, it is still within the field of time, time being memory; what I remember of yesterday, today and tomorrow, is the process of time, is the process of thought.

My personal experience of time is of memory, for to experience is already passed.

Time sprints by when I act or think within my inner core of wishes. It passes slowly when I act out of obligation or duty, and distinctly crawls when waiting in anticipation. Time was once a joy to plan; now it is a curse, as I deny the confinement strung years ahead in time. Where time once meant sharing and the fullness of achievement and creation, it now means emptiness, for all is hollow when confined three thousand miles from those I love.

I cherish the memories of time in sensuous expressions, in contrasts and awareness: Christmas brunch toasting with cognac while a fat turkey browns in the oven and shrieks of delight sing out as favoured treasures are uncovered; the ecstasy in the eyes of my sons, Wayne and Arie, as they shared their inspirations and their triumphs with me; cherry blossoms floating onto grass-green carpets forming blankets thick with pink petals; twenty foot breakers pummelling the expanse of Sunset Beach, Oahu; the scent of sunshine on my lover’s skin, the touch of his lips to mine; the honking of one hundred Canadian geese in formation against a blue-grey sky; the snowflakes and the wind exhilarating as I skied through winding, forested trails of
Whistler Mountain; the warm glow of firelight on my face and arms, embracing the magic of romance, the passions of loving and being loved as time-honored dynamics.

Now, I serve time: existing in a white-washed, asylum called Prison for Women. Stricken from the records of society are the acts spanning forty-one years. A few short minutes — an act of uncontrollable rage — an act which erased another life — this act; this five minutes now calculates the quality of my time, and imposes the limits to my existence. The survival of my being will largely depend on my ability to hold tenuously to an ancient Chinese image: the winged horse — symbol of thought; that which transcends all barriers of space and time.
The history and present status of Canadian prisons provide ample evidence that, although "society has spent millions of dollars over the years to create and maintain the proven failure of prisons" (Government of Canada 1977:35), incarceration remains, as Brian MacLean notes, an ineffective method "to achieve the various officially stated goals of the penal system" (MacLean 1984). If we wish to end this madness then we might start by pointing out the necessity for the criminal justice system to radically restructure its practice concerning the treatment of drug abusers. Because the vast number of prisoners have been incarcerated for drug related offenses, any serious attempt to substantially reduce prison populations might logically begin with this group of offenders.¹

Penitentiaries and jails, as they are presently constructed, are simply not the places to rehabilitate, re-socialize, or cure a person with a "drug problem" (in this context, the linking of drugs and crime). Often, prisons reinforce patterns of behaviour associated with illegal drug use, patterns which the general public perceives as negative. Persons who continue to use drugs, despite the fact that acquiring them requires behaviors which may result in imprisonment, are unlikely to change these behaviors once imprisoned. For example, at first glance it seems

¹. For a discussion of the problems of developing "alternative ways for dealing with those who are criminalized" see Sauve (1988: 39).
obvious that a substantial prison sentence should at least serve to relieve a person of dependency, but nothing could be further from the truth. Many prisoners spend much of their time devising methods to “beat the system” and they invariably acquire enough drugs to maintain a certain degree of dependency, even in the most secure prisons. Although actual physical addiction might decrease under such circumstances, psychological addiction must increase in light of the time and effort employed in the pursuit of various drugs. All too often, “beating the system” becomes an exciting method of doing time, or a game. Many convicts first learn the game in prison, where the subculture views such behaviour as positive, and they go on playing it after release. Penitentiaries and jails, therefore, in some respects seem to compound the “drug problem” rather than help correct it.

Many solutions to the problems associated with the use of illicit drugs have been discussed, with very little in the way of new or creative ideas. 2 Such discussions usually centre around legalization, decriminalization, education, or policies of law enforcement. These arguments have proved and will continue to prove fruitless until specific programs are implemented in distinct opposition to the old practice of “lock-'em-up”. Because of their self-imposed status as experts in the pseudo-professions of law enforcement and corrections, heed carefully the warning that employees of the Correctional Service of Canada (most importantly the guards), and such related agencies as the courts and the police, are not about to stand by idly while any program is initiated which threatens the maintenance of the existing system.

I believe it is the responsibility of prisoners to agitate for programs that will reduce prison populations. If we stand by idly and accept the status quo, we are unwittingly supporting policies that may change the appearance of the

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2. This is not unique to the question of the “drug problem.” Robert Gaucher notes that when it comes to new approaches to understanding crime and punishment “what we currently see dominating books and journals is ‘the same old stuff’” (Gaucher 1988: 53).
prison (i.e. prison reform), while its fundamental character remains unchanged. Such negligence contributes to the perpetuation of prisons, when our goal is to significantly reduce their size and number. For this reason we must support policies which seek to achieve these reductions.

One such policy is a prison methadone maintenance program. Some countries (notably Sweden, Holland, and Denmark) already employ this type of program. Administered with control and efficiency from within remarkably progressive facilities, it is aimed at drug abusers who have been labeled as criminals. The decision to implement a program of this nature was not made without substantial investigation. Each of these nations, after experimenting with alternatives such as counselling, aversion therapy, and hypnosis, concluded that they were minimally effective on prisoner populations.

Note that these countries do not have a drug problem, as the term is used here, even approximating that of Canada; even more noteworthy, they imprison impressively fewer persons *per capita* than do Canadians. This might well indicate that methadone maintenance programs are effective measures to combat patterns of behaviour associated with illegal drugs. In any case, it reduces the behaviour associated with the acquisition of illicit drugs; and it is the behaviour, not the drug use, which is so often destructive and criminal, not drug use itself. Others would support this conclusion:

If a nurse gives a patient drugs under a doctor’s orders, it is perfectly proper. It is when it is done in a way that is not publicly defined as proper that it becomes deviant. The act’s deviant character lies in the way it is defined in the public mind (Becker 1971: 341).

Methadone is a synthetic narcotic invented by the Germans during World War II when their supplies of opium dwindled. It does not produce the euphoric effects associated with many other drugs and so we cannot criticize its prescription for satisfying hedonistic thrill-seeking. By binding itself to the opium receptors of the brain, metha-
done "blocks" the effects of narcotics such as heroin, morphine, and codeine. The primary criticism directed against methadone maintenance is that it serves to merely substitute one form of dependency for another. Even if such a criticism were valid, there are positive effects of methadone treatment which far outweigh the negative.

In 1978, a report which summarized the findings of a study of 750 subjects cited results which were nothing short of spectacular:

A four year trial of methadone blockade treatment has shown 94% success in ending the criminal activity of former heroin addicts... The results show unequivocally that criminal addicts can be rehabilitated by a well-supervised maintenance program (Dole et al. quoted in Ray 1978: 335).

Ten years later, a report published in Newsweek stated that perhaps seventy per cent of those enrolling in maintenance programs were eventually returning to some type of illicit drug use; however, the report also pointed out that "the death rate for those who stay on methadone is only one-fifth to one-half that of most addicts, and the crime rate among them is twenty times lower" (Alpern quoted in ibid.: 337). Even avowed opponents of methadone maintenance clinics were forced to admit that this was "better than what any of the alternatives can show" (Lennard et al. quoted in ibid.).

Today, some twenty years later, there are no alternatives which can demonstrate better results (See ibid.). Therapeutic communities, Synonon, X-Kalay, Narcanon, and Narcotics Anonymous, all at one time seemed to hold great promise; today they barely exist. Furthermore, prisoners perceive such programs as coercive and hypocritical. Prison officials consider participation in groups to be conforming behaviour and soon label those who do not participate "uncooperative". The majority of those who attend are simply trying to avoid this label to protect their parole, transfer, and so forth; and, along with those who do not participate, recognize and despise "the game".

To review the discussion to this point, the benefits of
a prison methadone program can be seen as three-fold. First, participants could channel their time and effort into pursuits other than devising methods to obtain drugs. Second, because methadone is legal, participants would not be stigmatized as deviants merely because they use it. Third, the program itself is unlikely to earn the disdain of other prisoners, for no one would be forced to participate in the sense that participation might be viewed as conforming behaviour.

Methadone is given to some persons in Canada under controlled conditions in community clinics, but rarely is it prescribed to anyone trapped in the web of the criminal justice system. The argument here is that methadone should be available within our prisons, especially to those with a long-term history of drug use associated with criminality; a good number of prisoners meet this criteria. If methadone were available to these people it would not only eliminate their efforts to acquire illicit drugs while in prison, but it would also serve to accustom them to a lifestyle not centered around its acquisition. Many people have so internalized the values of the drug sub-culture and are so physically and psychologically dependent on drugs that they are unlikely ever to escape the lifestyle. Rather than helping to change this behaviour, prisons are a part of it. If methadone were available, it would make the pursuit of other drugs a needless hassle. Thus, the drug-dependent prisoner, perhaps free of the need to continue in such pursuit for the first time in years, would at least have time to engage in activities not related to drugs. A prison methadone maintenance program could be seen as providing a means for making behavioral change possible.

Certain precedents already exist for some types of drug-maintenance programs within our prisons. Prisoners with even a hint of a psychosis are being maintained throughout their terms on large doses of anti-psychotic drugs such as Thorazine and Mellaril. These drugs are associated with extremely unpleasant, unhealthy side-effects, particularly pronounced in persons without a demonstrated medical need for them. Not surprisingly, prisoners view
them with distaste and suspicion, referring to them as "liquid straight-jackets" and "bug juice". While prison authorities might attempt to abuse methadone in the same fashion (that is, to control a prisoner's body through its use), the effects of methadone do not include confused thinking and a clouded mind. Because it does produce dependence, emphasis must be placed on the fact that a prison methadone program would require the presence and direction of trained medical personnel. Of course, they would be expected to ensure that its prescription was not misused by prison authorities in any attempt to physically or psychologically manipulate prisoners. Moreover, if drug-dependence is considered as a disease (which the majority of addiction authorities now appear willing to concede) then a comparison between methadone and insulin becomes obvious. Which is to say that under the supervision of medical rather than prison officials, methadone should be no more abused than insulin.

A prison methadone program is not going to benefit every prisoner with a drug dependence, but it is going to enable some to live happier, healthier lives, both in prison and out. And it is going to reduce prison populations, which is a minute step towards the abolition of prisons themselves. Whether the program is accepted or not remains to be seen, but in any case, articles such as this might serve to inform the public that people are being released from prisons every day with problems often far more complicated than those that got them there originally. These people may, of course, continue to commit a significant percentage of offenses and to form a significant percentage of our prison populations until we do something for them. Just because a prison methadone program would not provide the perfect solution is no reason to dismiss the idea, particularly in view of evidence indicating that no alternative approach can even remotely approximate its benefits.

Finally, consider the conclusion of a recognized expert on the subject of addiction.

Narcotics addiction... will remain with us.... No "cru-
sades" will wipe it out. The best we can hope to do is contain the problem, limit its scope, and offer to help the victims. In this context the victims are plainly both drug users and society. If methadone maintenance programs were initiated within our prisons, then we might be on a path matching, or even surpassing, what the experts feel is “the best we can hope to do” (Goldstein quoted in *ibid.*: 316).

References


This exposé is a critique of the internal controls and regulations used by Correctional Service Canada in its various institutions, particularly Collins Bay Penitentiary. A brief history outlining the inception of Inmate Disciplinary Courts, followed by some of the rules which are supposed to direct the conduct of that Court and the federal prisoners over whom it has jurisdiction, should orient the reader to the court's function and the topic of this paper. I will examine the level and nature of charges laid, the number of convictions brought down, and the punitive sanctions applied to those prisoners charged or convicted of internal offenses.

The author is currently serving the thirteenth year of a life sentence and has been incarcerated for the past seven years at Collins Bay Penitentiary. I have never been convicted of an offence in the Inmate Disciplinary Court; however, I have been a legal reference researcher in the prison library (assisting for four and one half years in the preparations for over one hundred internal charges), a witness before the Inmate Disciplinary Court for accused contemporaries, and a defendant with two charges laid against me. I cannot say that anything in this paragraph is reminiscent of pleasantry; nevertheless it certainly has been educational.

What follows are not malicious rambling of rebellious prisoners. These are the expressed concerns of sincere people living in Canadian prisons. Accepting the fact that
we are prisoners does not alter our desire to live and interact in a society which reflects social mores of equality and justice based on a humanitarian model.

The first Inmate Disciplinary court appeared in November of 1977 as the successor to Warden’s Court. The Wardens’ Courts were the subjects of extensive criticism, because they lacked impartiality (Rubba 1986); they were commonly and pejoratively referred to as kangaroo courts by prisoners. These courts were seldom chaired by actual wardens — more frequently by senior correctional staff from the administrative level.

The Parliamentary Sub-committee Report on the Penitentiary System in Canada (1977) and a Working Paper of the Steering Committee “Inmates’ Rights” set minimum rules for internal discipline. The latter led to the creation of the Inmate Disciplinary Courts. Administrative authority for disciplinary control within federal institutions is currently derived from the legislated Penitentiary Service Regulations (Conroy 1986: 932-932.4), initially published in 1980 and amended several times to date. The primary areas of authority for the court are spelled out in sections (38), (38.1), and (39) and are reprinted here in part since they pertain to the subject of this article.

Penitentiary Service Regulations

Inmate Discipline

38. (3) Subject to subsection (6), the punishments referred to in subsection (7), (8) and (9) may be imposed by order after a hearing has been conducted in the presence of the accused.

(4) An inmate who is present at his hearing is entitled

(a) to be informed of the nature of any consultations that takes place in his absence during the deliberations on the impositions of a punishment;

(b) to make submissions before the imposition of a punishment.

(8) An inmate who is found guilty of a disciplinary offence that is determined to be an intermediary misconduct is liable to one or more of the following punishments:

(a) a warning or reprimand;
(b) the loss of privileges;
(c) a fine of not more than $50 to be recovered in accordance with subsection (12);
(d) reimbursement of Her Majesty, in the manner established by the directives, up to a maximum of $500 for the amount of damages caused wilfully or negligently to:
   (i) any property of Her Majesty, or
   (ii) the property of another person where Her Majesty has reimbursed such person for the amount of the damages, and
(e) subject to subsection (10), dissociation from other inmates for a period not to exceed thirty consecutive days.

(9) An inmate who is found guilty of a disciplinary offence that is determined by the directives to be a flagrant or serious misconduct is liable to one or more of the following punishments:
(a) a warning or reprimand;
(b) the loss of privileges;
(c) a fine of not more than $50 to be recovered in accordance with subsection (12);
(d) reimbursement of Her Majesty, in the manner established by the directives, up to a maximum of $500 for the amount of damages caused wilfully or negligently to:
   (i) any property of Her Majesty, or
   (ii) the property of another person where Her Majesty has reimbursed such person for the amount of the damages, and
(e) subject to subsection (10), dissociation from other inmates for a period not to exceed thirty consecutive days; and
(f) forfeiture of one or both of the following remissions, namely,
   (i) statutory remission, and
   (ii) earned remission acquired after July 1, 1978....

Disciplinary Court

38.1 (3) Where a hearing is conducted by a person appointed by the Minister under subsection (1), the institutional head shall designate one or two officers of the Service with major responsibilities within the institution, who had no direct involvement in the in-
cident giving rise to the hearing, to assist that person during the hearing. 

(4) The officers designated pursuant to subsection (3) shall:

(a) Provide any details or documents requested by the person appointed by the Minister under subsection (1), and

(b) during the deliberations on the imposition of a punishment, advise the person appointed by the Minister when requested to do so on the most appropriate punishment having regard to administrative constraints and the involvement of the inmate in various institutional programs.

Disciplinary Offenses

39. (1) Every inmate is guilty of a disciplinary offense who:

(a) disobeys or fails to obey a lawful order of a penitentiary officer;

(b) assaults or threatens to assault another person;

(c) refuses to work or fails to work to the best of his ability,

(d) leaves his work without permission of a penitentiary officer,

(e) wilfully or negligently damages any property of Her Majesty or the property of another person;

(f) wilfully wastes food,

(g) behaves towards any other person, by his actions, language or writing, in an indecent, disrespectful, threatening or defamatory manner,

(h) wilfully disobeys or fails to obey any regulation or rule governing the conduct of inmates,

(i) has contraband in his possession;

(j) consumes, absorbs, swallows, smokes, inhales, injects or otherwise uses an intoxicant;

(j) deals in contraband with any other person.

(k) does any act that is calculated to prejudice the discipline or good order of the institution.

(l) does any act with intent to escape or to assist another inmate to escape.

(i,1) is in any area prohibited to inmates.

(m) gives or offers a bribe or reward to any person for any purpose.

(n) contravenes any rule, regulation or directive made under the Act.
(o) attempts to do anything mentioned in paragraphs (a) to (n) (ibid.).

All staff and employees of Correctional Service Canada, including outside contract personnel, are required to charge all prisoners with, and report in writing, infractions of section (39). Provisions for other actions by the witnessing officer(s) are available under the direction of Divisional Instruction Series 600 (Government of Canada 1987) but are seldom used, to the knowledge of this writer. These Instructions include ordering the offender to desist from an offending action, warning or counselling the offender, or temporarily dissociating the prisoners in her/his cell. Once an officer has submitted a written report of the infraction, an officer appointed by the warden then determines the severity of the charge, according to outlines contained in Divisional Instructions of the Commissioner’s Directives. (This section lacks specificity and is open to the arbitrary interpretation and judgement of a third party who was not a witness to the alleged offence.) The appointed officer then designates the charge as minor, intermediary, or serious. Prisoners are supposed to be notified in writing within twenty-four hours of “the court date” or “the laying of the charge(s).” A hearing for charges that are classified as intermediary or major is supposed to commence within seven days of that notice. These hearings are conducted in the Inmate Disciplinary Court by an independent chairperson, usually a local practicing lawyer appointed and paid by the Solicitor General’s office. Minor charges are heard by a senior correctional officer or staff person.

The charge-laying officer presents facts to the independent chairperson for prosecution and can call witnesses to support the evidence. Prisoners may testify on their own behalf, present defence evidence if the independent chair-

1. These Instructions derive their authority from the Penitentiary Service Regulation, “D.I.” as they are commonly called, which contain some forty-five subsections all of which deal with the procedures to be followed from the time the infraction occurs to final disposition of charges. It is unknown to this author if there is any case law concerning the legal force and effect in law that these D.I. may or may not hold.
person allows it, and call defence witnesses (again with the chairperson's permission). All questioning is supposed to be directed through the chairperson, who also decides whether the prisoner will be allowed to be represented by counsel — that is, another prisoner acting as her/his assistant or as a translator. If a prisoner cannot understand the charge against her/him, the chairperson is supposed to explain it to her/him. Explaining to a prisoner the meaning of a charge under subsection (39) may appear to eliminate any confusion arising during the actual hearing, and it may to some extent produce that end; however, in practice there is a great deal to be said on this particular issue, particularly as it relates to the problem of illiteracy, an issue I discuss further on.

How does the label kangaroo court relate to a system with so many rules and regulations? Prisoners claim it is too easy to be convicted and punished for internal offenses, while some staff say the independent chairperson is lenient with regard to convictions. On the surface this may present an image of the independent chairperson as somewhere in the middle of a continuum, but this is not necessarily true. Prior to the inception of Inmate Disciplinary Courts, Collins Bay's segregation area ("the Hole") contained four cells that were not double bunked except on very rare occasions during the late 1960s and early 1970s. Since the inception of the Inmate Disciplinary Court, "the Hole" has had fifteen cells, all but three of which are double bunked seventy to eighty per cent of the time. These double occupancies are for prisoners awaiting disposition of internal charges and for those prisoners already sentenced to the punitive sanction of dissociation for any of the infractions listed in "Disciplinary Offences".2

Imagine the dilemma that prisoners experience when vague and arbitrary rules are left open to the personal interpretation and enforcement of hundreds of prison staff.

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2. This information is based on the author's first hand observations made during bi-weekly rounds in the segregation area over the course of four and a half years delivering reading material and legal reference law books to prisoners.
Does it happen? The Federal Court of Appeals has ruled, in their wisdom, that not only are some charges lacking in particularity but they are notoriously vague and difficult to defend against.³

Correctional Service Canada tells prisoners that the rules of conduct are lawful and enforceable; that we are entitled to fair and impartial hearings by an independent chairperson trained in law; and that our constitutional, human, and prisoner rights are protected.⁴ In reality there is a constant violation of these rights since the rules of the prison have no force and effect in law. For example, referring to the Commissioner’s Directives, the Federal Court Trial Division in Weatheral v. the Attorney-General of Canada et al. and two other proceedings ([1987], 59 C.R. (3d) 247 (F.C.T.D.)) ruled, “Commissioner’s directives do not have the binding force of law...” (Government of Canada 1988: Annotation to Section 8[10]); nonetheless, prisoners still get punished for breaking them. While initially the Inmate Disciplinary Court was to have truly independent chairpersons, this has never been the case.⁵ Some presiding chairpersons get so personally involved they will sentence prisoners in excess of the allowed punishments.⁶ Rules and

3. For example, see the case of Howard and the Presiding Officer of Inmate Disciplinary Court of Stony Mountain Institution ([1985], 19 C.C.C. (3d) 195 (F.C.A.)) where the court ruled that the charges were “[n]otoriously vague” and difficult to defend against (Conroy 1986: 944-46).


5. The independent chairperson is not recognized as independent from the Correctional Service Canada by prisoners and some courts. In Re Russell et al. and Radley Chairman Collins Bay Penitentiary Disciplinary Court ([1985], 11 C.C.C. (3d) 289 (F.C.T.D.)), for example, the Court ruled that although the independent chairperson is not fully independent from Correctional Services Canada, he is about as close to independent as could reasonably be expected in a prison setting.

6. In some cases the sentences of the chairperson exceed their proscribed lawful limit. In Blaquirere et al. v. The Director of Matsqui Institution et al. ([1984], 6 C.C.C. (3d) 293 (F.C.T.D.)) the court said that “a prisoner convicted of a disciplinary offence is entitled to make submissions as to sentence and punishment and a failure to afford such a right violates the duty to act fairly.” The court went on to say that “a recommendation by the chairperson that a further thirty days already punitive disassociation in addition to thirty days already imposed was beyond the jurisdictional powers given to the chairperson in legislation.”
regulations are not always conveyed to prisoners at their request. In one incident I had occasion to question the source of authority for an officer’s “lawful order”. I was told the index number of a Standing Order (800-2-07). When I asked to be permitted to read this Order prior to complying with it, I was told by the guard, “No, it is a classified security document not available to inmates.” On 7 December 1985 after paying five dollars to the Federal Access to Information and Privacy Coordinator, I received the Standing Order, seven pages long with fifteen blacked-out areas (containing no more than sixty words in total) exempt under the Access to Information Act. The point being that I actually had to pay cash before I could find out what some of the rules were that govern prisoners’ conduct. Five dollars is more than a full day’s wages for most prisoners.

Other prisoners are not as fortunate in their misdealing with Corrections and the Inmate Disciplinary Court. Nor are these injustices unique to Collins Bay Institution. They are just as likely to occur in all federal prisons. Usually prisoners lack available funds to pursue further legal action for rights violations or to obtain counsel at hearings. In many cases prison officials refuse inmates access to their funds to pay legal fees, especially when the money will be used towards litigation involving Correctional Service Canada. Will lawyers represent prisoners if they know they will have to wait before they can be paid for their services?

The proceedings of the Inmate Disciplinary Court can be and are unfair and unjust. For example, in the case of Magrath v. The Queen ([1977], 38 C.C.C. (2d) 67 (F.C.T.D.)) a prisoner successfully obtained a declaration from the trial division that disciplinary proceedings taken against him were null and void due to a failure on the part of the au-

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7. In Henry v. Commissioner of Penitentiaries ([April 2, 1987], 1 W.C.B. (2d) 480 (F.C.T.D.)) the court ruled that section (32) of the Penitentiary Service Regulations violated section (7) of the Canadian Charter of Rights by preventing inmates from making withdrawals from their saving accounts to pay the expenses of legal litigations (Government of Canada 1988: Annotations to Section 7).
authorities to act fairly. An order expunging or erasing the convictions from his record was issued. However, decisions like this one do not compensate prisoners for punitive sanctions they have already endured such as lost employment, lost visits, mental anguish, legal fees, or the deterioration of family relationships.

Furthermore, the officers attending hearings give their opinions of a prisoner’s ability to defend her/himself against charges and whether a defence lawyer should be allowed to defend the prisoner. Duty counsels have recently been allowed to attend court at Collins Bay Institution; however, more often than not it is very difficult to arrange an appointment or receive legal aid to cover the costs of legal services. Some chairpersons simply refuse to abide with Federal Court rulings when they are presented with case law. In a recent incident (26 October 1988) before an independent chairperson at Collins Bay Institution, a prisoner requested that counsel be permitted to defend him and he made several motions for dismissal with case law in hand. The chairperson continually interrupted the prisoner and refused to follow decisions made by the federal courts. The prisoner was denied his right to counsel on the grounds that he was able to defend himself and understood the charge. His motions for dismissal were not entertained because of “the serious nature of the charge and administrative concerns.” The prisoner then cited the chairperson’s violations of the Charter of Rights and asked the chairperson to rule himself biased. The chairperson refused and remanded the prisoner for three weeks, affording the prisoner time to seek professional legal advice. This proved to be fruitful. By having counsel present at his trial, he was able to obtain a verdict of not guilty when Corrections Canada failed to prove its case in front of a different chairperson. This incident is not unique. In a large number of cases heard by the Court, the right to counsel is denied. Some have more serious ramifications than others on the lives of prisoners as one can see by reading these abstracts from three cases which concerned the Charter of Rights.
The first is drawn from *Re Russell et al. v. Radley, Chairman Collins Bay Penitentiary Disciplinary Court* ([1984], 11 C.C.C. (3d) 289 (F.C.T.D.)). In this decision the court held:

[Section 11 (b) of the Charter of Rights] guarantees prison inmates charged with disciplinary offenses the right to have those offenses tried within a reasonable time. A reasonable time, in regard to the trial of disciplinary offenses will be of very short duration in most cases because everyone who is essential to the proceedings, except the president of the disciplinary court, comes daily to work or is actually imprisoned "within the walls" of the institution (Government of Canada 1988: Annotations to Section 11 (b) [3]).

The second comes from *Howard and Presiding Officer of Inmate Disciplinary Court of Stony Mountain Institution* ([1985], 19 C.C.C. (3d) 195 (F.C.A.)).

In this case, the appellant faced ... charges under s.39 of the *Penitentiary Service Regulation*. Although the proceedings are essentially administrative and not judicial or quasi-judicial, the whole of the inmates 267 days of earned remission were in jeopardy. Earned remission, once forfeited, cannot be restored, making forfeiture a final and irrevocable deprivation of the right to liberty, conditional or qualified as earned remission may be. In addition, the charges here lacked particularity and one of the five charges, namely being guilty of an act calculated to prejudice discipline or good order of the institution, is notoriously vague and difficult to defend against. In all the circumstances, a refusal of the appellant's request for counsel would be a refusal of the opportunity to adequately present his defence. Accordingly, he had the right to counsel, and the presiding officer had no discretion to refuse his request (*ibid.*: Annotations to Section 7).

The third is taken from *Tremblay and the Presiding Officer of Disciplinary Tribunal of Laval Institution et al.* ([May 22, 1987], 3 F.C. 73 (T.D.)).

In this case...it was held that the inmate's rights as guaranteed by...[section 7 of the Charter] were infringed because of the decision of the presiding officer of the disciplinary tribunal hearing a charge of possession
of contraband contrary to the Penitentiary Service Regulations,... Three factors in particular made it necessary that the inmate have access to counsel. The first was the seriousness of the charge.... Although the charge was classified as “intermediary” rather than a “major” offence this does not reduce its seriousness. As far as penalty, while it is true that the presiding officer could not sentence the inmate to loss of his right to statutory or earned remission... nevertheless the theoretical consequences must also be taken into consideration and the inmate risked not being granted days of remission... because of the charges laid against him. Secondly, there were several legal issues which a person with legal training would have wanted to raise. Finally, the inmate may have had difficulty presenting his own case in view of the points of law and the fact that he is not a lawyer, and as a result of his imprisonment has rather limited resources for communication and obtaining information (ibid.)

Some staff attending the hearings provide information about particular prison conditions to the independent chairperson and recommend what they would prefer to have done about a case, with respect to the type or length of sentence which would best accommodate the situation. Prisoners consider this arbitrary, a result of improper investigations, and indicative of the inclination of staff to take the word of other staff over and above that of any prisoner. In the majority of cases heard, prisoners are asked (i.e. told) to leave the courtroom (at the request of the chairperson), while staff advise the chairperson about the position of the administration. Prisoners are seldom made aware of the substance of the discussions that take place in their absence from the hearing room. This blatantly violates the Penitentiary Service Regulation section cited in section (38.1) subsection (4)(a)).

The whole concept is a farce — from arbitrary charges through sentences that are illegal and severe. Over and above the sentencing of the independent chairperson, additional sanctions are always added by the prison administration. These may include a six month prohibition from attending family and sports socials where the prisoner would usually be allowed to invite family and friends, from
attending internal group socials with or without a guest, and from participating in the Private Family Visiting Program. A prisoner can be found guilty of an offence under the Criminal Code in provincial courts on the street and recharged within an institution and found guilty and sentenced again for the same event(s) for which s/he has already received punitive sanctions. Prisoners regard this as double jeopardy.8

Few inmates stand a chance of avoiding "the Hole" when charged with an offence or while waiting to be charged. Most prisoners charged with intermediary or serious misconduct(s) are transferred to the segregation area pending a segregation review board hearing, prior to the hearing on her/his charge(s). It may take a few days or even weeks to schedule or have the actual review which determines whether the prisoner should be released into the prison population while awaiting disposition of incurred charge(s). In a recent policy change (September 1988) Correctional Service Canada's National Headquarters stated that prisoners charged internally with drug or alcohol offenses shall be confined within the segregation unit until final disposition of internal charges have been completed. This "new policy" will no doubt add to the backlog of cases awaiting a hearing and to the amount of time prisoners will actually spend segregated from the prison population. With the inclusion of this new policy the segregation cells are not only fully occupied but also double bunked. One Collins Bay officer is quoted by a prisoner as telling him that "the Hole" is never full. We can put two, three, five, or fifteen prisoners in a cell at a time if we want."9

8. The British Columbia Supreme Court disagrees. In R v. Mingo et al. ([1982], 2 C.C.C. (3d) 23 (B.C.S.C.)) the court ruled that "internal disciplinary proceedings taken by the prison authorities under the Penitentiary Service Regulations...are not offenses within the meaning of...[the "double jeopardy" clause of the Charter]. Accordingly there is no breach of the right guaranteed in this paragraph in circumstances where a prison inmate is both disciplined by penitentiary officials through loss of remission and segregation and also charged under the Criminal Code and tried in the ordinary courts" (Government of Canada 1988: Annotations to Section 11(h)).
It has become apparent that the priority of the chairperson's Court (perhaps encouraged by the officer advisors) is to deal first with charges of those prisoners who are not in segregation, thus increasing the segregation time for prisoners awaiting trial and dissociation from the prison population.

The independent chairperson has access to a charged prisoner's record and file prior to conviction. Information of previous institutional convictions can bias the chairperson. In a street court the judge and jury are not allowed this information unless the person charged is personally taking the stand to testify on her/his own behalf.

Illiteracy creates another bias. In July 1987, the Solicitor General of Canada announced in a nationwide media release that forty per cent of all federal prisoners in Canada are functionally illiterate (i.e. having an education below the public school level of grade eight). I question to what extent these people are able to defend themselves in any court of law. I question their ability to properly instruct counsel as to their defence, when they are fortunate enough to have counsel. I am not claiming that illiterate prisoners do not know right from wrong; however, much of the confusion of prisoners who are and have been in conflict with the law can be explained by the oversights of taking that person's educational level for granted. New prisoners are supposed to be given a copy of the twenty-seven page Inmates Rights and Responsibilities handbook, which nowhere contains the rules and regulations so far listed in this paper. They are also supposed to have the prison rules and regulations fully explained to them. Consider the sheer magnitude of information contained on thousands of pages in the numerous volumes of Commissioner's Directives, Divisional Instructions, Standing Orders, Penitentiary Service Regulations, The Penitentiary Act, The Parole Act, and Policy and Procedure Manuals for Prison and Parole Administration. These

9. This statement may just reflect a particular staff's attitude, nevertheless it was said in front of more than a dozen witnesses housed in segregation on 9 October 1988.
volumes are written by professionals trained in various fields. I have never heard of a single prison administrator who was able to digest all of them in their entirety, let alone take the time to read one volume to a prisoner. What good is it to tell prisoners where they can find information if they do not possess the skill to read and comprehend these materials. Even when they have fair to excellent reading skills, the prevailing sense of injustice prompts prisoners to simply not bother keeping up to date with ever changing directives, rules, or regulations which they know to be not fairly applied and enforced.

Inmate's witnesses are often discouraged from testifying because of repercussions from some staff (usually harassment in the form of excessive searches, the implied threat of charges, or excessively slow responses to simple requests). Inmates sometimes discourage their contemporaries from testifying because of an unwritten and vague inmate code, which has numerous interpretations depending on the prisoner or group of prisoners' particular interests at the time. The independent chairperson practices a form of intimidation by repeated cautions to inmate witnesses about the ramifications of perjury during their testimony. Prisoners find this unsettling and claim it interferes with their ability to present their evidence in a dispassionate manner. The chairperson does not mention perjury charges while staff testify, even when they are obviously falsifying evidence. The independent chairperson also has the final say as to how many witnesses can be called on behalf of a prisoner, or whether they will be called at all. The chairperson often cites restraints that allegedly cover prisoner and staff transfers, the availability of transfers, and expenses. Witnesses do not always receive movement passes from guards, although they were issued. (Inmates cannot move freely throughout institutions without properly authorized movement passes stating their destination.)

Actions which are not criminal according to the Canadian Criminal Code are treated and punished as offenses in prisons. Prisoners can have their sentences increased for being improperly dressed, wasting food, acting
disrespectfully to others, having an empty cardboard box under the bed, being suspected of a suspicious activity (i.e. an officer may think that an inmate posses a threat to the good order of the institution for simply being present when an altercation takes place about which the prisoner may have no knowledge).

The practice of laying multiple charges when one charge would cover the situation, or of implying a major offence was committed when the infraction was of a lesser degree, is used by staff to get at least one or more convictions and make matters appear more serious than they necessarily are. This tactic appears to parallel normal police practices on the street.

Lengthy remands are excessive and a common practice which violates the Charter of Rights guarantee to a trial within a reasonable period of time; Correctional Service’s directives state that a prisoner’s hearing should commence within seven days of the offence. However, prisoners commonly experience hearing remands in excess of eight days without their knowledge, without their personal attendance, or without their consent as required by the Federal Court Act.

The question remaining is "What can and is being done to correct these problems?"

Very little progress is presently taking place to the knowledge of this writer. Federal Court rulings appear to have little effect. Some chairpersons refuse to enforce them. Others are either indifferent or do not apply the rulings unless an accused specifically brings them to the chairperson’s attention or has a lawyer handle his case, in which event the tables are turned and a no-nonsense ethic comes

10. In the Inmate Rights and Responsibilities issued by the Correctional Services it states that a “hearing should commence within seven working days of the date you were charged...” (Government of Canada 1985: 8).

11. A loss of jurisdiction to hear a charge will occur if an accused is remanded over eight consecutive days without her/his consent under Procedural Rules of the Federal Court Act. If this occurs while the accused is not present, the charge must be relayed in a higher court of jurisdiction or stayed. A higher court does not exist in Canadian prisons. Also see Re Russell et al. cited earlier.
The Correctional Service’s response to the Charter of Rights decisions on “prison law” and related court rulings presents another serious issue. When prisoners win a major decision disallowing certain administrative or legislated practices, Correctional Service Canada responds with an issue-skirting plan as in the case of the right to counsel for loss of remission charges. To avoid the presence of lawyers representing prisoners in the Inmate Disciplinary Court, the division of “intermediary offenses” was created. Prisoners cannot lose earned remission for conviction of an intermediary offence, but they cannot earn remission (fifteen days) for the month during which they are alleged to have committed an intermediary offence. The case of *Howard and the Presiding Officer Inmate Disciplinary Court of Stony Mountain Institution* prompted Correctional Service Canada to start a third division of charges and offenses that had not existed prior to this ruling. Correctional Service Canada’s reasoning on this case is that when the issue of loss of remission is not at stake, prisoners can be denied their right to lawyers in the Inmate Disciplinary Court.12

Not all Correctional Service Canada staff are in favour of the present policies, nor do most carry on their duties in a manner that is unacceptable to other staff and prisoners. However, they are silenced on a great many issues because of their oath and the Public Service Act secrecy clause. Prison staff can be fined, temporarily suspended from duty, or dismissed for publicly criticizing the policies of Correctional Service Canada, as occurred in the case of Mr. Barry Dennison. This former Collins Bay Correction’s Officer not only was critical of Correction’s policy but also publicly suggested policy changes, some of which are to be implemented soon at Collins Bay Institu-

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12. This is very similar to the Parole Board’s gating of prisoners: where prisoners were being released and then arrested immediately at the prison gate, their remission being taken away by the Parole Board in response to the “arrest.” Gating was successfully challenged in the Federal Court, but the glory was short lived. The Parliament passed Bill C-67 which allows for the detention of prisoners by the National Parole Board until sentence expiration, regardless of the amount of remission the prisoner had to her/his credit.
tion, according to current prison administrators.

On 9 June 1987 a program was implemented that has had serious ramifications on prisoners and their families. Prior to this date a person convicted by the independent chairperson was only subject to the sanctions handed down by the chairperson with the following exceptions: prisoners sentenced to segregation time and actually serving a portion of the sentence in "the Hole" would then be prohibited from participating in the Private Family Visiting Program for a period of six months from date of conviction; also they would be prohibited from attending social functions with invited guests from their approved visitors lists. If the sentence was other than actual "Hole" time (e.g. a warning or suspended sentence), the inmate would not be subjected to any further administrative sanctions. At any given time the actual number of prisoners prohibited from attending socials and participating in the Family Visiting Program usually ranged between eight and fourteen persons.

After June 9th the administration at Collins Bay Institution effected a program to obtain some desired behavioral changes with inmates convicted of internal offenses under section (39) of the Penitentiary Service Regulations. This program currently affects as many as eighty to one hundred prisoners at any given time. These inmates are, on conviction of an offence within section (39), prohibited from attending any visiting socials and from participating in the Family Visiting Program for a period of six months from the date of conviction. This is not labelled as a punishment by the prison administration. They claim that it is a failure to earn privileges for six months on the part of the prisoner. Prisoners on the other hand, see this as a severe punishment that affects them and their loved ones.13

Does this program work to achieve a reduction in

13. The Penitentiary Service Regulations sections 7(b), 8(b), and 9(b) clearly state that a loss of privileges is a punishment. Another disgusting form of attack on the human dignity of prisoners and their families by Corrections Canada – with their carrot on a stick routine – is aimed at psychologically debasing those prisoners that somehow manage to maintain family relationships in spite of the Services' family hostage plan. See Yves Bourque’s view on this (Bourque 1988: 33).
convictions and obtain the desirable behaviour from the small percentage of prisoners responsible for infractions?

A comparison of the number of convictions from 9 June 1986 through 31 December 1986 with the same period of the previous year reveals no significant difference in the total number of convictions but a significant increase in the number of individuals convicted. In 1986, there were 256 convictions for offenses committed by 118 individuals; in 1987, 241 convictions by 154 individuals. There were seventeen fewer convictions under the new program; however, thirty-six additional prisoners were convicted and punished for the lesser number of offenses. 14

In effect this program does not function as a deterrent and does no more than cause additional undue hardships, deterioration, and breakdowns in the relations of prisoners and their families already enduring difficult situations. According to Irvin Waller, in *Men Released From Prison* (1974), statistics show that those persons least likely to become recidivists are in fact those same persons that had strong family and community support during incarceration and upon release. Given these findings on the overwhelming importance of the family, common law relationships, and loved ones, the curtailment of family visiting programs and social activities can only act to increase the effect of social alienation in prisons. It is this writer's opinion that programs designed to assist a prisoner in a productive and legal life style after release are those programs that enhance family and social relations while the prisoner is incarcerated. Yet these very same programs are used to coerce and hold a prisoner's loved ones and friends hostage by prison administrations with their carrot on a stick mentality.

Cases from the Inmate Disciplinary Court, Collins Bay Institution, provide the following information. In the twenty

14. A closer examination of this information would provide some insight as to the number of charges laid between June 1986 and June 1988, their disposition, the sentences imposed, the time between offence and hearing, and the extent of additional punishments put into effect by prison officials over and above the sentence of the independent chairperson.
month period between 31 April 1986 to 31 December 1987, a total of 688 convictions were registered against 306 individual inmates, out of a possible 2027 prisoners. All of the convictions for the period included are then the responsibility of fifteen per cent of the prison population. A more accurate figure would be in the range of ten to thirteen per cent since some charges occurring at lower security level institutions are dealt with at Collins Bay upon transfer to Collins Bay of the charged inmate. It appears that a minimal number of the static prison population are responsible for offenses; yet the total population feels the extended ramifications of Corrections exercising their authority. The statistics also show that the length of time between the offence and the completion of the hearing is forty-four days. Only twenty-eight of the 688 convictions were dealt with within the time frame guaranteed by the Canadian Charter of Rights for a trial to begin within a reasonable amount of time.

The Inmate Disciplinary Court statistics speak for themselves when reviewed in their totality. This writer is hard pressed to understand the logic of anyone who claims that this process is fair, just, or otherwise representative of Canadian jurisprudence, ethics, or standards. It would be ludicrous to suggest that the present system was designed to fulfill a prophecy of recidivism within Corrections Canada. However, it does; this built-in fault is probably the result of implementing programs that lack proper research and structure.

The various Provincial Legal Aid Plans are hesitant to supply funding certificates for internal charges citing other priorities as more demanding. Although Queen’s Law Project will represent some prisoners, they too, in the majority of cases, give their “standard” response: “We lack the appropriate funding for the necessary litigation.”

15. The 2027 figure is not exact. It represents only those informally recorded as having been in or passing through Collins Bay Institution. However, the actual number of prisoners having passed through Collins Bay would be about five per cent higher. Because we are working with confidential records, the formula is slightly at error.
Police will investigate allegations against Correctional Service Canada staff if a prisoner is fortunate enough to be allowed contact with them. However, the local Crown refuses to lay informations and to prosecute some cases even after the Crown and police have agreed that the law had been violated by a prison staff member. His reply in one case was, "We will find someone to handle the case and prosecution if the prisoner is willing and able to pay court and litigation costs."\(^{16}\)

A considerable number of area lawyers refuse to take on cases against the Correctional Service Canada citing conflict of interest since the greater part of their income is derived from Correctional Service Canada or its employees. (The Service is one of the largest employers in the Kingston, Ontario area.)

Many prisoners are willing to talk in confidence about these issues when expressed anonymity is assured. Several inmates requested their names not be revealed because of pending parole and transfer applications, and because of apprehensions about administrative action being taken against them. It is felt by this writer that these expressed concerns, real or imagined, are nevertheless facts of prison life and part of the suppressive nature of Correctional Service Canada. Certainly these concerns denote a lack of justice and an increase in duress for prisoners.

This writer is of the opinion that the Inmate Disciplinary Court at Collins Bay Institution deserves the title of kangaroo court and is itself a problem in this prison society. Even from only a small number of available cases, serious flaws present themselves with regard to the charges heard and the manner in which they are handled in the Inmate Disciplinary Courts. That is, the independent chairpersons, although they must legally accept decisions from the respected courts of our land, do not apply the rulings to similar cases equally, if at all. This may be the result of mitigating circumstances in some instances, however, it is usually, in my opinion, a response to pressure from offi-

\(^{16}\) A Kingston police detective in conversation with the author (September 1983).
cials and staff who need to appear in control of the prison. This may very well contribute to (i) the attitudes of disrespect for the Inmate Disciplinary Court and the independent chairperson; (ii) the disregard for prison rules and regulations; (iii) the large number of convictions under Penitentiary Service Regulations; and (iv) the disrespect and disregard for the law by prisoners once released from prison.

Prisoners simply cannot afford the monetary expense for legal litigations against Corrections Canada, and the weight of the evil behind Correction's "legal" guns deters many others. Correctional Service Canada is or at least appears to be content with the present situation; they promote and utilize it. An overly simplified solution would be to deal only with offenses that are legislated in the Criminal Code in a proper court of law. Other types of behaviour considered adverse, unacceptable, or abnormal could be dealt with through social, psychological, psychiatric, or case management counseling. Any new system would have to be designed to overcome the arbitrary decisions and sanctions of the present system. Accountability to the public and the courts should be implemented to arrest any perceived or actual inequalities.

An ideal realistic solution should entail the implementation of safeguards to insure that: first, the constitutional rights of inmates are upheld; second, due process of law is applied equally to all inmates; third, the independent chairperson and Corrections Service Canada are required to act fairly when applying the law to prisoners; fourth, prisoners should have immediate access to swift appeals by an outside authority with the power to amend injustices that occur inside Canada's prisons; and fifth, Corrections Canada should not have the authority to silence Correctional staff on humanitarian issues originating within prison confines.
References


The crime of homicide is regarded as the most heinous of crimes by most members of Canadian society. Society's degree of condemnation is reflected in the severity of the sanctions and punishments for this crime.

There are two divisions of murder and one of manslaughter in Canada. First degree murder is one that is planned and deliberate; one in which the victim is a police officer, prison guard, hijack victim, sexual assault victim, or one committed by a person previously convicted of either first or second degree murder. Second degree murder is defined as all murder that is not first degree (i.e. not premeditated). Manslaughter is all culpable homicide that is not murder or infanticide, i.e. there is a lack of intent to kill (Government of Canada 1985: 222). The sentence for first degree murder is life with a minimum of twenty-five years before parole. The sentence for second degree murder is life with a minimum of ten years before parole. Sentences for manslaughter range from eighteen months to life depending on the perceived severity of the crime, the most common sentences being from three to five years with parole eligibility after one-sixth of the sentence has been served. Most prisoners serve one-third to half the sentence before release.

There is a great deal of confusion in Canada regarding the degree of homicide that has occurred in any given case and the amount of punishment that is appropriate. The various degrees of homicide may be interpreted very
differently and sentences often do not fit the crime. Second degree murder and manslaughter are especially ambiguous since both involve no intent to kill. In fact, the only difference between the two occurs when the police charge a person with one or the other as they chose, and they are choosing to charge most offenders with first or second degree murder when they are guilty of second degree murder, or second degree murder when they committed manslaughter only.

Statistics Canada’s report for 1987 demonstrates this. Between 1965 and 1971, while the death penalty was still in effect, police charged only six per cent with first degree murder, twenty-eight per cent with second degree, and the vast majority, sixty-five per cent, with manslaughter. Between 1977 and 1988, when the death penalty was replaced with the twenty-five year minimum sentence, police charged thirty-eight per cent with first degree murder, fifty-two per cent with second degree murder (almost double), and only nine per cent with manslaughter. This does not mean that more people were committing first and second degree murder and fewer people were committing manslaughter. It does mean that legislators and other agents of social control decided “to get tough” in exchange for parting very reluctantly with the death penalty. Police and lawmakers found the public willing to condemn many more accused of first degree murder once the death penalty was repealed. So, although many people did not agree with “an eye for an eye,” they were willing to condemn accused to at least twenty-five long, horrendous years in prison. So, instead of making the law more lenient or humane as it would at first appear, laws and sentences became far more severe for over eighty per cent of persons involved in homicide. The legal attitude seems to be, “We will take away the death penalty and appear to be more humane, but we will really nail all killers to the cross!”

Why have lawmakers gotten so strict with persons accused of homicide? What explains why police are charging more people with first degree and second degree murder and fewer people with manslaughter? Obviously,
it is not just a “trade off” for the death penalty. There seems to be some confusion on all parts. Lawmakers are ill informed and confused as to definitions of various forms of homicide and the sentences that are appropriate for each. It appears that they are assuming that police know. The public, while condemning all homicide, know very little about the distinctions between first and second degree murder and manslaughter and seem to assume that lawmakers and police know. What actually happens is that legislators and police take advantage of the public’s ignorance and fear of “cold-blooded” and “depraved” killers, as portrayed in the media. The public does not realize that lawmakers are encouraging police to charge most people with first and second degree murder and fewer people with manslaughter. They are ignorant of the change that has occurred following the abolition of capital punishment in 1976 and are easily convinced by police that murders are now “getting off easy” compared to before, when in fact the very opposite is true. So, not only are lawmakers and police exercising more vengeance than ever before, they are deliberately influencing the public to believe that killers are escaping just punishment. Hence the public demands the stiffer penalties which legislators have already implemented.

The confusion and ambiguity in the distinctions between second degree murder and manslaughter are even greater than between first and second degree murder. This allows police to charge most people with second degree murder as they chose, and based on the figures given above, it is clear that they almost always choose second degree if they do not feel they can “get” an accused for first degree. Lawmakers have thus given police greater power of vengeance, which I believe was done in order to appease police who were very strongly in favour of the death penalty. (Often police tell an accused that it is too bad s/he will not hang or “fry” with much hostility and bitterness in their voices).

By charging a degree higher than the crime merits, police know that the chance of getting an accused to plead
guilty to a lesser charge is very great; so if they want to "get" a person on second degree without the time and expense of a trial, they simply charge the person with first degree and offer to drop it to second degree if the person pleads guilty. Most people so fear the twenty-five year penalty that they plead guilty to second degree even though they know (and in most cases the police know) that the homicide was manslaughter. This happened to many, many women I know, including myself. Legally this is called plea bargaining, but what it really is is the worst form of coercion, intimidation, and blackmail all rolled into one. By forcing people to plead guilty to second degree murder, police and lawmakers automatically take away their right to a fair and fully informed trial, as well as condemning them to a minimum of ten years in prison when their crime merited perhaps one to three years. Without a trial, there can be no hope of justice. Without a trial, no one gets to hear the all important circumstances which led up to the crime.

When capital punishment was in force, police did not have such power over offenders. They could not press first degree unless the crime clearly was first degree because they knew that few juries would be willing to condemn a person to death. But juries do not seem to have the same aversion to sending a person away for twenty-five years, and the police use this to their advantage. They prey on the person's tremendous fear of twenty-five incredibly long years behind bars to obtain a guilty plea to second degree. This is aided and abetted by Crown attorneys and judges who appreciate the arrangement because if everyone had trials, courts would be overworked and over budgeted. It is not known how many people were thus forced to plead guilty to second degree murder since everyone in prison is registered as "convicted", even if they pleaded guilty without benefit of a trial. Police could not thus overcharge when capital punishment was law; then they had to assess cases more justly.

The public is constantly exposed to the murder stereotype through the media. It is not unusual for people
coming into prison and meeting “murderers” to be shocked and exclaim, “My God, you are just like normal people...I expected, I mean...., I thought....” They are surprised and confused because the majority of lifers are no different from average people on the street. Because newspapers and media, in general, sensationalize homicides and very rarely give a profile of the accused or the circumstances of her/his crime (while at the same time extolling the virtues of the deceased), the public receives a very biased view of the crime and the perpetrator. So the stereotype continues.

This is compounded by the fact that due to plea bargaining (which you must remember is really a means to threaten an accused with first degree so s/he pleads guilty to second degree) there are relatively few homicide cases which go before a jury. If an accused manages to get a trial, there is a strong possibility that the stereotype will cease to exist for those twelve people on the jury.

How can all the confusion surrounding the crime of homicide be remedied? I propose a very simple and fair solution. If lawmakers got rid of the categories of homicide and simply charged every accused with “homicide,” it would eliminate the difficulties of the police overcharging. This would have to be coupled with several other changes. Either a jury or panel of judges would have to assess each case. The accused could give full account of herself or himself and the circumstances of the crime so the degree of deviance could be clearly and fairly established. Also, instead of the horrendous minimum and life sentences, I propose a variable scale of, for instance, one to fifty years with parole eligibility after serving one-third of the sentence. I suggest that this provides for all degrees of guilt and corresponding degrees of punishment. It is not right to squeeze four hundred cases per year into the existing two sentence brackets of ten to twenty-five years and twenty-five minimum. Many, many cases really merit sentences of five years or less. Furthermore, every person accused should be guaranteed an experienced homicide lawyer in order to receive a fair chance at the trial.

These changes would appear to require much court
time and money. However, it must be remembered that the cost of keeping a person in prison is $65,000 per year. With the variable scale of sentencing suggested here, I am confident that most of those convicted of homicide would be sentenced to serve less than one-third of the combined time currently served by lifers. This would save the government many tens of millions of dollars: enough to build more courts, to hire more judges, and so forth. Millions would be left over to put into rehabilitation, youth centres, counselling facilities, job creation for ex-convicts, and post-release aid. So many positive things could be done with the money saved. It would be a positive reflection on the society which sees fit to implement them.

Reference

The following article is a recapitulation of opening statements and a brief presented to the Standing Committee On Justice and Solicitor General (Government of Canada 1988), chaired by David Daubney, by the Infinity Lifers Group of Collins Bay Institution. Original articles were produced by Rick Alexander, Rick Sauve, John Dunbar, and Ted Bennett. This article was prepared for the *Journal of Prisoners on Prison* by Rick Alexander. All views are strictly those of the Infinity Lifers Group and may not necessarily be held by other groups throughout the system.

This brief was put forth on behalf of the Infinity Lifers Group of Collins Bay Institution. It only deals with life sentences and the release of prisoners with that sentence and not with fixed or determinate sentences. We feel a number of misconceptions regarding the life sentence exists which must be thoroughly understood before one can adequately appreciate this or any other brief on this subject. We have deliberately omitted the use of statistics because, although they can be used to support any argument, their greatest effect is to dehumanize and cloud the issue.

Perhaps the most important, yet least understood, aspect of a life sentence is that it means just what it says, a life sentence is a life sentence. It is often misunderstood that when a number is affixed to a life sentence, that number becomes the date the prisoner is released back into society. This creates confusion for the public at large,
particularly when the number becomes the reference point that is used by prisoners and officials alike. The date attached to a life sentence is only the earliest date of eligibility for parole and is not an automatic release date. Prisoners released on parole with life sentences are on parole for the rest of their lives; that is reality. Rarely is a Lifer released at her/his earliest date; that too is a reality.

We respond to nine questions that the Daubney Committee has raised as they apply to life sentences. The views expressed in this brief are put forth by a lifers group and may not be held by other groups within the system. We are not experts in the field of criminology although collectively we have hundreds of years experience in the prison system. We have insight into what works and does not work, what is realistic and what is not. We are hopeful that the reader will consider seriously our views.

1. Should there be [a twenty-five year] minimum sentences?

   The twenty-five year minimum sentence is both inhumane and totally unmanageable. When the noose was abolished in 1976 in its place we were provided a mirror with which to watch ourselves fade away. We most often ask ourselves if we survive this sentence physically, can we survive it psychologically? We have watched as others with this sentence realize that they can no longer handle it and take their own lives, while others give up and go mad; and always that mirror is there. Will the face in it be the next to go?

   It is extremely frustrating to be told year after year that there is nothing that can be done for those of us with twenty-five year sentences; our sentences are too long. What realistic chance does a prisoner who is faced with this sentence have to find her/his place back in society after twenty-five years. Our parents may well have passed away, our children grown, and friends long since gone. What chance do we have to find any kind of employment after being removed from the work force for so long? For that matter, how many of us will face retirement age before or near our parole date.

   Since 1976 over 350 men and women have received
the twenty-five year sentence, enough to fill one of these prisons. There are more than fifty such sentences received each year. At this rate before the first prisoners have reached their parole eligibility date there will be enough twenty-five year prisoners to fill three federal penitentiaries in Canada. The twenty-five year sentence is just too unmanageable from our perspective and that of prison officials.

The minimum twenty-five year sentence should be removed. In its place a system should be implemented whereby the prisoner first appears after five years before a panel set up by the National Parole Board. After careful evaluation and examination of all files and court documents, the Board would spell out to the prisoner what is expected of her/him before s/he will be eligible for any type of release. The Board may indicate how far along through the prison system the person will have to go before s/he is eligible, what psychological assessments and treatment needs to be carried out. For example, skill training, alcohol and drug treatment would all be laid out by the parole panel for the prisoner to follow.

In some cases the prisoner may have addressed all or most of the areas already and the Parole Board may be in a position to initiate some form of gradual release, such as a limited Escorted Temporary Absence (ETA) program. The Board should make recommendations about the prisoner's program before s/he can expect any type of positive decision for release, or it should indicate why a negative decision was made. Information should be relayed to prisoners so they can have a clear understanding of what is expected of them. This will allow prisoners to effectively manage their sentences. Contrary to popular belief, this is not being done. At present, the main determining factor for movement down through the system is time. At present, it is conceivable that a prisoner can obtain release with minimal effort.

All too often prisoners serving a life sentence are left to try and develop their own programs. Prisoners may develop a successful program, but frequently they are left to stumble blindly looking for direction, or, in prison jargon
“just putting in time.” We feel Corrections Canada should place the emphasis on efforts to aid the prisoner’s progress down through the system and to help institute change and prepare her/him for release. The Parole Board should decide who will be released and when. In order for them to adequately and professionally make that decision, the Board should have as much contact with the prisoner as possible. Similarly the Board should have greater input by detailing programs in which prisoners should participate. This would assist the Parole Board in their decision making and benefit the prisoner by spelling out clearly what is expected of her/him.

When time is the determining factor, too much emphasis is placed on it. Programs suddenly get based on time frames. Many problems are left unchecked throughout a prisoner’s incarceration; as the eligibility date closes in, there is a sudden rush to find a quick fix solution.

2. Should there be maximum sentences?

A life sentence is a maximum sentence. Some individuals probably never will be released and sadly indeed never should be released. However, the Correctional Service and Parole Service would make that determination by thoroughly and professionally examining each case on an individual basis. Increased contact with the Parole Board and a better developed system for the sharing of information should help to identify cases falling within that category.

3. Is there undue disparity in sentences imposed by the same or different judges for the same offence?

In order to address this question it is necessary to understand that the Criminal Code of Canada has categorized murder as either first or second degree. This in theory may be appropriate, however, because human beings are not infallible, what most often determines whether a person is found guilty of first or second degree is how the case is presented and argued by both the Crown and defence. Sometimes, court decisions may be the result of plea
bargaining, which may not be an adequate reflection of what the case was all about. For example, all too often the excuse of striking a favourable deal in exchange for information to supposedly assist in police investigations distorts the judicial system, even from our point of view. Similarly, this same type of reward system plagues the penitentiary system today. We believe that people suddenly become credible and receive preferential treatment and favourable parole decisions for disclosing information to police and/or prison officials. Therefore, we propose that the distinction between first and second degree be removed, and a charge for murder become just one charge. Crown and defence counsel would argue a case on its merits and juries would reach verdicts on the same basis.¹

Our proposal to remove this distinction along with our proposal to eliminate the minimum time attached to life sentences would help decrease the likelihood of disparity in sentences. Similarly, the system of the Parole Board laying out what will be required of prisoners before they can achieve their release will help to insure that prisoners are putting their time to good use as opposed to “just putting in time.”

4. Should there be guidelines from which judges may vary a sentence in particular circumstances?

With respect to life sentences, the judge should, in our view, be in a position to dictate how a sentence should be handled and what, if any, special needs should be addressed. In most cases today, a judge may suggest to a prisoner what special needs or treatment s/he should seek out

¹. Often the distinction between first and second degree murder is not the result of the judge trying the case but of the efforts of police and Crown attorneys. All too often the main players in an offence receive preferential treatment over lesser players because of plea bargaining. One has only to examine the recent case of Wes Trudeau and the sentence he received after assisting the police. Trudeau, confessed to forty-three murders between September, 1970 and July, 1984. He was given a seven year sentence and $10,000 a year for his testimony against members of the Hells Angels who were on trial in Quebec for the slaying of several other members of the Hells Angels motor cycle club (See Lavigne 1987: 335-337).
upon entering the correctional system. However, it is often left at that.

We propose that an evaluative file be prepared by the judge which would accompany the prisoner into the prison system as a court document and be provided to all parties concerned. Often a case of murder is a situational offence and these situations are discovered and explored during the trial. These situations should be addressed, and, if possible, corrected. The file would be valuable in directing this process. It would provide information for greater insight for the Parole Board in determining what a prisoner should be doing to insure that the particular situation never arises again, and, if it does, how to deal with it. It would provide for the prisoner a clear definition of how and why his/her offence occurred and how s/he can work to correct that.

5. Should the victim[s family] be involved in the sentencing process?
   It is our view that the victim's family should not be involved in the sentencing process; however, they should be consulted as to the way the sentence should be carried out. This could be done when the evaluative file, which we have proposed, is prepared by the presiding judge; however, its influence on the prisoner's program should be limited. We feel that the Citizens' Advisory Board may be able to assist in overseeing that recommendations put forth by a victim's family are being carefully considered throughout the sentence.

6. What impact does conditional release have on sentencing?
   Conditional release is a process of gradual reintegration back into society. In the case of Lifers this process begins with Escorted Temporary Absences, then Unescorted Temporary Absences, followed by Temporary Absences, Day Parole and Full Parole. Conditional release may have some influence on the number attached to a life sentence. For example, a prisoner with a ten year mini-
mum life sentence in theory may be given a Day Parole after seven years. However, it is the policy of the National Parole Board not to grant a Day Parole to a halfway house until the prisoner has served at least nine years of his/her sentence. This is done regardless of any accomplishments and projected success of the prisoner. We do not feel that the conditional release should be interpreted as a blanket policy decision in this manner. It is our belief that the original intent of the conditional release was twofold. On the one hand it was to assist the prisoner in making that transition from a total institutional environment into a less restricted environment; on the other, it was to reward prisoners for successfully displaying a genuine and sincere change.

It is obvious to many prisoners that the Correctional Service interprets unfairly who should and should not appear in front of the Parole Board. At present the Service uses what it calls an Inmate Training Board to recommend who they will or will not support to the Parole Board. Often the decisions of the Inmate Training Board are contrary to the recommendations of the prisoner’s Case Management Team. Prisoners are often perplexed by how the decision is reached; most often, prisoners’ efforts to find out why they were rejected by the Inmate Training Board are frustrated.

It is our understanding that the role of the National Parole Board is to determine from the facts provided by those most closely associated with the prisoner (e.g. her/his Case Management Team) who should and should not be released. Similarly, it is confusing why such a shroud of secrecy surrounds the reasons for the decision, whether positive or negative. Without this feedback, the prisoner is often left with no clear understanding whether s/he is on the right track in her/his programs.

7. Should conditional release in any or all forms be retained?

Conditional release should be retained, but it should be controlled by the National Parole Board. Conditional
release for Lifers is an important factor for integration into society and should, in our view, be expanded and encouraged. It should be set up as a structure for reintroduction into society and used as a mechanism for them to establish some type of network which would enable them to be successful in remaining in mainstream society as law-abiding citizens.

Halfway houses should be set up and used for Lifers to help in easing the transition from a totally institutional environment to normal society. Lifers become isolated from society for great periods of time under a very structured and authoritative environment. It is often difficult for Lifers to establish links to mainstream society from an institution; halfway houses should be structured for that transition.

Parole Board officials feel that prisoners have difficulty staying in halfway houses for periods longer than six months. We question this. The line of reasoning has been developed from their experiences with prisoners with determinate and shorter sentences; in fact, the Parole Board has instituted a policy to deal with Lifers based on these beliefs.

We recommend that halfway houses be developed specifically for prisoners who are serving life and very long sentences. Many Lifers have developed programs for themselves which include education programs at various levels and skilled trades' training. Halfway houses should be developed with specific programming for these prisoners so they may continue with their established programs. For example, university education would be continued in an uninterrupted fashion. Halfway houses could provide an avenue for the prisoner to complete graduate and undergraduate programs.

One area that has been explored, and appears to have been successful, is the satellite apartment concept. Prison for Women under the direction of the Elizabeth Fry Society, began a pilot project where prisoners were first released to a halfway house and after a short period of time, relocated into an apartment. Perhaps this idea should be explored further. Prisoners could move through halfway
houses and into apartment complexes. Each individual would be responsible for the expenses associated with the new accommodations. Rules of conduct would be clearly laid out for them and it would be the person’s responsibility to abide by the conditions. Rules could be gradually reduced as prisoners prove themselves, eventually resulting in a Full Parole at the completion of the program.

8. Who should be involved in the decision to grant conditional release?

It is our position that the responsibility for granting conditional releases should rest solely with the National Parole Board. We feel that the onus of developing a package to present to the Parole Board is on the prisoner. The role of the Correctional Service is to help the prisoner in developing and instituting that package. At present the National Parole Board is only responsible for three-quarters of the conditional release process. It is their responsibility to grant Unescorted Temporary Absences, Day Parole, and Full Parole. However, the ETA program is under the control of each institution’s administration.

The ETA program was initially designed for those prisoners who required emergency passes because of a death or illness in the family. The Correctional Service needed to have the authority to grant these types of passes because of the short notice involved. Over the years an ETA program has emerged and been expanded, and it is now an integral part of any conditional release program for Lifers which must be successfully completed before the next stage of the release program begins. Nonetheless, the National Parole Board, at this time, only rubber stamps the decision of the Warden for an ETA and will not consider a program if no support is forthcoming from the respective institution.

The Inmate Training Board is the mechanism by which the Wardens make their decision about the ETA; however, there is no formal design for this board, nor any guidelines as to how the decision making is done. In some instances representatives of the prisoner’s Case Manage-
ment Team are not present to discuss her/his case and at no time is a prisoner allowed to attend. Members who comprise the Board can be anyone who works for the institution, and usually one can not find out who the voting members are. In a number of cases the Case Management Team offers full support for the ETA application, only to have it rejected for reasons they themselves were unable to explain. The personal bias of staff members is sufficient grounds to refuse the ETA application. Since the ETA program is part of the conditional release process for Lifers, we feel we should be afforded the same rights we are entitled to when going before the National Parole Board. The prisoner should be allowed to attend Inmate Training Board hearings, all information on which the decision will be based should be made available to her/him, a representative of the prisoner should be permitted to attend, and most importantly, reasons for the Board’s decision should be fully communicated to the prisoner and not kept secret. The decision itself should be made on the merits of the case and how productively the prisoner has spent her/his time. It is our belief that, in the case of Lifers, the Inmate Training Board should not be responsible for making the decision. When an ETA is denied, it prevents the Lifer from having her/his case fully evaluated by those with the most expertise in the area of conditional releases, the National Parole Board.

9. Is conditional release being granted to the wrong type of offender?

It is our experience that when left to the Correctional Service people have on occasion been released for the wrong reasons. Most often this seems to us to be the result of favors being granted for reasons other than appropriate behaviour. The prison system rewards prisoners who provide information about the activities of other prisoners within the prison in the form of transfers, early releases, and so forth (e.g. the rewards offered to Yves Trudeau for his testimony against the Hells Angels).

We feel that the procedures of the Parole Board
should be the releasing mechanism and that releases should be based on the merits of the individual and not as a reward for information provided to the Correctional Service. We recognize that officials may think that when a prisoner suddenly becomes co-operative by providing information to them that this indicates a positive change in the individual. In reality, prisoners who fall into that category are in fact buying their way out of jail, and those prisoners constitute a real threat to society. They have not been released because they have in any sense been rehabilitated but as a reward for providing information. We should be judged on and decisions should be based on our merits with careful examination of what we have done with our time and how we have tried to change.

Further points
Lifers are widely recognized as the best parole risks; yet, they do not, in general, receive any special consideration. Those with determinate sentences have the opportunity to earn time off for good behaviour. Lifers on the other hand do not qualify for that.

The Correctional Service has stated that Lifers are the most stable element of the prison population. We are recognized as being a distinct group within the prison population; yet, no special considerations are made for us in that respect; indeed, it appears that rules and regulations are developed and implemented with those with shorter and determinate sentences in mind. This is a constant source of frustration for Lifers, who make up a large part of the stable population. Furthermore, to be constantly reminded by prison officials that it is unfortunate that there is not much in the way of programs for us is very frustrating. On the one hand we are encouraged by officials to create our own programs, but it becomes most frustrating when we have serious problems getting them recognized by these same officials.

In the area of inmate employment we feel that because we will be out of the work force for so long, we should be allowed to engage in some form of employment that is
beneficial not only to ourselves but could be to the Correctional Service as well. Many of the building trades (e.g. plumbing) are contracted out to businesses on the street. Prisoners could work as laborers and apply the skills they develop towards earning credits for apprenticeships. Prisoners could be paid minimum wages which could be applied towards room and board or family support. Many of us still have contact with families and this type of arrangement could be most useful. A portion of the money saved by the government could effectively be used towards paying the wages.

Since Collins Bay Institution already has a new training and school complex, this Institution should be designated as the principal education and trades centre. During a discussion some time ago with Gord Pinder, Deputy Commissioner Inmate Programs, this idea was put forth. He thought it was a viable idea but Collins Bay would have to be changed to a multi-level security institution. Although we feel that in principle this would not be a problem, the experience of the Prison for Women with multi-level security has shown that the highest security needs are applied to all levels. If this problem could be resolved, the idea of the school complex would allow prisoners to establish long range uninterrupted programs.

Many Lifers have made use of education as an avenue to restructure their lives while in prison. Collins Bay receives the bulk of the education budget for this region; opportunities for post secondary education are much more available because of the proximity to schools. Prisoners engaged in these types of programs have shown that they become some of the most successful parole risks. It is our belief that prisoners should be actively encouraged to participate in these programs and, once involved, be allowed to stay and finish them, and not cascaded down through the system.

If yearly contact with the National Parole Board were implemented, the Board would have a much clearer picture of what the prisoner is all about. One of the concerns found in the Coroners Inquest into the 1987 Sweeny case,
for example, was the lack of information being exchanged between the Courts, Correctional Service and the Parole Board. This is precisely the common problem encountered by Lifers. In addition, there is a lack of information being relayed back to the prisoner. We are constantly kept in the dark as to what is expected of us and what areas to work on. We feel that if we had greater access to the Parole Board at the earliest point in our sentence, we could then have problem areas identified for us and we could work at correcting them.

Over time our group has put forth a number of proposals ranging from psychological evaluation groups to trades training. We intend to continue in this regard. We hope that these suggestions will be considered seriously, and our ideas not fall on deaf ears. We realize that we have to prove to ourselves as well as society that we should be allowed to reintegrate successfully into the community. The onus is on us; please allow us to share in that responsibility of developing successful programs to assist in the process.

References


WHAT IS TO BE DONE ABOUT THE CORRECTIONAL ENTERPRISE IN CANADA?

Brain MacLean

For the observation that prison fails to eliminate crime, one should perhaps substitute the hypothesis that prison has succeeded extremely well in producing delinquency. ... So successful has the prison been that, after a century and a half of "failures", the prison still exists, producing the same results, and there is the greatest reluctance to dispense with it (Michel Foucault, 1977: 277)

Introduction
The notion that the modern prison has proven to be the most spectacular failure of contemporary society has been expressed by many observers of the prison system, traditional and radical alike. In its Report to Parliament, the Subcommittee on the Penitentiary System in Canada observed that:

Society has spent millions of dollars over the years to create and maintain the proven failure of prisons. Incarceration has failed in its two essential purposes — correcting the offender and providing permanent protection to society. The recidivist rate of up to 80% is evidence of both (MacGuigan 1977: 35).

Yet as Foucault suggests, we may be moving in the wrong direction by continually pointing to the contradiction between official penal rhetoric and the practice of carceral politics. If we see the problem as a failure of the system to meet its stated objectives, then we encourage either piecemeal reform to the prison system, or a political reformulation of the official objectives of the correctional en-
Piecemeal reforms to the prison system have been around as long as the prison system itself and have not resulted in much more than recognized failure. As Senger (1988), Sauve (1988) and others convincingly argue, the system has an ability to incorporate such reforms without significantly changing itself, while the agents of penal reform are often co-opted into agents of social control. Reformulation of official objectives has also been on the political agenda for most of this century in Canada, and while correctional ideologies have been negated several times over and have come full circle (MacLean and Ratner 1987), the practice of incarceration has been accelerated rather than reduced. While at first incarceration was argued to be for the good of the community, later it was for rehabilitation and now, as pointed out by the Report of The Canadian Sentencing Commission (1987), incarceration is for the purpose of punishment, not rehabilitation.

On the other hand, we might see the problem as a system which has been largely successful by other criteria and a system which has been long in operation with the full commitment of the public, politicians, and agents of control alike. This approach would lead us to recognize that there are consequences of the maintenance of the Canadian "apparatus of repression" (Gosselin 1982) which serve the interests of the power structure. At the same time, our own interests may be better served by attempting to grasp the nature of these consequences in order to incorporate them into our strategies for change. In this paper I shall briefly pursue this latter issue.

The expansion of the correctional enterprise in Canada. One way to identify the interests served by penal expansion is to identify what kinds of changes have taken place in Canadian federal corrections in this century.\footnote{For the graphs that follow, I have used federal level data unless otherwise specified. In order to easily comprehend the comparative growth of various components of the correctional enterprise, the values have been standardized. For Figures 1 and 2 the reported values for 1920 become the base unit. For Figures} Figure 1 depicts the relative increases in the number of federal
prisoners, the number of staff, and the number of federal prisons. For the sake of clarity, all changes are shown in relation to the values for 1920. Graph A compares the growth of the prison population to the growth of workers staffing the prisons. We can see that while the number of prisoners per unit population slightly more than doubles in the sixty-six years from 1920, the number of staff per population increases eight fold. Strikingly, the increase in staff occurs only after 1960, and then very rapidly, while the growth of the prisoner population increases much more gradually. Graph B shows that the number of prisons in Canada increases approximately nine fold in the same period. Significantly, the major growth here occurs after 1960 as well. From these graphs we can clearly see that there is change in official policy after 1960 which is reflected in the acceleration of the construction and staffing of prisons. While the number of prisons increases from seven in 1920 to sixty-two in 1986, this growth appears to accommodate the growth in prison workers more than the growth in the number of prisoners.

Changes to the prison system of the magnitude illustrated in Figure 1 have had an impact on the internal nature of the Canadian prison, as illustrated in Figure 2. Graph C depicts the relative growth of the number of prisoners and staff per prison. Gosselin (ibid.) claims that the ten year capital building programme of the 1960s was justified by the argument that we had too few prisons that were warehouse-like in nature, and that subsequently, the construction of more prisons would reduce this pressure. More prisons with fewer prisoners each would improve prison conditions for prisoners. Graph C shows the outcome of the prison construction program. While this program brought a significant reduction in the number of prisoners per prison after 1950, in reality it resulted in a level of prisoners per prison not substantially less than 1920.

3 and 4, 1950 is the base year. In this way, whatever values were reported for the base year are constant at 1, and all further years appear as the proportion of the original value. In this way, simple comparisons of the magnitude of growth for a number of indicators can be readily made.
By contrast, the number of staff per prison increases almost threefold during the same period after remaining fairly constant for the previous forty years. The result of such growth has been a substantial increase in the average number of staff per prisoner, as shown in graph D. In 1930, there were about six prisoners for every staff; in 1986 there are approximately one staff for every prisoner (ibid.; MacLean 1986). If the expansion of the Canadian federal correctional system achieved anything at all, it would seem that it achieved a much higher level of staffing, reflecting a serious increase in its annual budget for salaries. As Gosselin is quick to point out, however, expenditures on salaries can not be seen as expenditures used for rehabilitative programming.

Clearly, with the publication of the *Fateaux Commis-
sion Report (1956), and the Ouimet Commission Report (1969) correctional experts began to talk in more rehabilitative terms. Following these reports, correctionalists argued that the purpose of the prison system was to rehabilitate prisoners and that one way this could be accomplished was by increasing both the numbers and professionalization of correctional personnel. Thus the increase is not merely an increase in the number of staff but also in the kinds of staff so that this period marks the emergence of the new “penal experts” such as classification officers, living unit officers, and case management officers. Within this context, the failure of the Canadian correctional enterprise to rehabilitate the prisoners in its charge is all the more remarkable. One cannot help but question whether the new found wisdom of the 1987 Canadian Sentencing Commission will lead to a decrease in the number of “penal experts” per prison. This writer is certain that such a decrease is unlikely.

A second justification for the increase of prisons and their staffing was the argument that the crime rate was increasing at an alarming rate, and that as a consequence more prisons were needed to accommodate the larger prisoner population that this sudden criminal upsurge was surely to produce. As we can see, however, nothing could be further from the truth. Figure 3 illustrates the actual growth in crime rates 2 between the years 1950 and 1966, the period during which the prison system was extensively studied and during which the expansionist policies were formed and implemented. Figure 3 shows, that if anything, and contrary to the above logic, during this period the rates of crime decrease. Significantly, the rate of crimes against the person actually decreases while the rate of property crimes increases. Since most Canadians are concerned about crimes of violence, one might conclude that the period 1950 to 1966 was one in which the “crime problem” was reduced. Despite such a trend, however, it is pre-

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2. The numbers in this graph represent the number of persons convicted of indictable offences, or those crimes considered serious by the criminal justice system. The rates are given as rates per 100 thousand population and have been indexed using 1950 as the base.
ciscely during this period that we see the expansion of the prison system.

One problem with using *per capita* rates of crime is that these mask absolute changes. On this basis Figure 3 shows a decline of crime per unit population; however, because the Canadian population increases by approximately fifty per cent in the period 1950-1966, we can expect an increase in the absolute number of people convicted for indictable offences during the same period.

Figure 4 illustrates the accommodation of the changes shown in Figure 3 by the Canadian criminal justice system. Graph E compares the growth rates of the number of convictions for indictable offences with the growth in the overall population and the prison population. Here we can see that there was a slight reduction in the *per capita* crime

![Figure 3: Changes In Crime Rates, 1950-1966](image1)

![Figure 4: Sentencing Trends and Results, 1950-1966](image2)

*SOURCE: Adapted from Canadian Committee on Corrections, R. Oulmet, Chairman, 1969.*
rates but that the absolute numbers of convictions increased by about fifty per cent (from 31,385 to 45,670). Thus, despite the fact that the number of persons convicted for indictable offences decreases slightly in relation to the population generally, the prison population increases at a faster rate than the population generally. This fact is particularly significant when Graph F is considered. This shows that the number of prisoners per population increases (as would be expected from graph E); however, what is surprising here is that the proportion of convictions for indictable offences which result in a penitentiary sentence decreases. This trend is further highlighted by the fact that the number of penitentiary sentences given by the courts does not increase at as fast a rate as the prison population. In short, penitentiary populations are growing during a period in which there are fewer crimes *per capita*; the proportion of convictions resulting in penitentiary sentences has been reduced; and the number of penitentiary sentences handed down by the courts increases at a rate less than the growth in the population, the number of offences, and the prison population.

These data clearly suggest that penitentiary sentences are getting longer during a period when the seriousness of offences is declining. This trend can be explained in part by the fact that fewer death sentences were being handed down by the courts, and more life sentences were being given out for culpable homicide; nevertheless, this transition accounts for only a small portion of the overall trend. The prison population has grown as a result of political processes not as a result of increased criminality or severity of crime. Because more people get longer sentences for less serious offences during this period than in the past, the penitentiary population rises more than it otherwise would have, all other factors being equal.

Given the trends of penal expansion during the past twenty-five years in Canada, it is clear that the justice system is becoming more repressive and not more lenient. The increase in the prisoner population is due to political will as is the growth in the number of prisons, the growth
in the number of workers staffing those prisons, the increase in the numbers of "penal experts", the increase in the length of sentences, and the increase in the amount of time that prisoners are required to serve on sentences once they have been sentenced (MacLean and Ratner 1987). Two insights can be gleaned from this analysis of the problem of prison expansion. Firstly, we must stop confusing the rhetoric of expansion with the reality of expansion. Rhetoric tells us that the crime rate is increasing and that we must try to rehabilitate those that come into the system. Such an approach leads us to conclude that prisons are failing. However, reality tells us that, increasingly, more Canadians are coming into contact with the federal corrections system, guarded by increasingly more other Canadians. Foucault’s insight draws our attention away from the rhetoric of penal expansion and towards its real objectives. That is the prison system has been successful in creating more prisoners, not unsuccessful in reducing their numbers. It has been successful in creating more staff and more kinds of staff not unsuccessful in reducing their numbers. It has been successful in professional development of staff not unsuccessful in rehabilitation of prisoners.

A second insight might be that we must recognize that the process of expansion is a political process and that as a consequence the expansion of the prison system can only be arrested politically. Again this shift of focus away from the prisoners and towards the system sensitizes us to the need for political solutions for the reduction in size of this apparatus of political repression.

**What is to be done?**

Since the discussion in the previous section points to the problem as a political one, only political solutions can suffice. At the same time this is the point at which people active in the prison reform movement begin to disagree. What constitutes the proper way forward given the political reality within which we are confined to operate? Some people argue for radical change within the prison, while others argue for moderate change. Some argue for large
scale decarceration, while others argue for complete abolition. Some argue that we cannot alter the prison system without a large scale restructuring of society, while others believe that the prison is here to stay. In the words of John Irwin, ex-prisoner of Soledad and professor of Sociology at San Francisco State College:

My other strong interest in prisons involves radical change. Here is a dilemma. I hate prisons; that is, I hate what happens to convicts in prisons (my people I suppose). But unlike many with whom I work for change, I find the simple solution — abolishing prison — unfeasible. I cannot convince myself that society will ever stop punishing people for serious crime and that there is a sufficiently punitive alternative that is not fraught with other problems as serious or more serious than those attached to the prison. I am convinced that we are stuck with the prison, at least for the future that we can anticipate (1980: xxiii).

Personally, I do not share Irwin’s pessimism, and my intellectual position should not be considered as utopian either. Like all movements for social change, the prison reform movement, or the abolition movement, is a political struggle. This means that we should not anticipate the future but rather that we forge the future through our own activity. In the case of the prison, this translates into a struggle for justice both inside and outside of the prison. Like all struggles this one is not an easy task. It is a struggle of the powerless against the powerful and such struggles should not be classified into the false dichotomy of reform or revolution. The first step in such a struggle is for those engaged in it to empower themselves. This Journal is a step in that direction. The contents of this edition provide us with a number of excellent arguments about what is to be done.

In his paper entitled Methadone Maintenance for Prisoners: A Realistic Programme, Dennis Lynes begins with the observation that prisons have failed to rehabilitate prisoners generally and that a strategy for reducing prison populations might start by a “radical restructuring of [penal] practices concerning the treatment of drug abusers.” While
the idea of methadone maintenance is not a new one, a point which Lynes is quick to point out, his argument in favour of such a strategy is well reasoned. Because a considerable proportion of the Canadian prison population is serving sentences for drug-related offences, if correctional alternatives for this group were developed, a significant reduction in the prison population might be achieved. For Lynes, it is not the usage of drugs that is problematic per se, rather it is the lifestyle surrounding the acquisition and use of drugs that leads the user into the process of criminalization. Due to their illegal status, the cost of drugs is exorbitant, and a lifestyle which centres around obtaining the cash necessary to acquire drugs, more often than not, keeps the user occupied in activities which ultimately lead to a prison sentence. Moreover, once inside the prison, the user maintains the activity of trying to acquire drugs, so that these prisoners are unable to improve themselves in ways that might make them productive persons. Thus the prison experience serves to reinforce rather than negate drug dependency and the lifestyle which it engenders. Drawing upon the work of Howard Becker and the labelling tradition, Lynes convincingly argues that not all use of drugs is regarded as deviant. This logic suggests that if all drug usage were decriminalized, we would not only achieve a serious reduction in property crimes, but because prisoners regarded as drug dependent would not find it necessary to engage in "the game" any more, they would be able to settle into a program of real self-improvement.

Lynes is not calling for a wholesale acceptance of drug use in our society, however. Rather, after carefully reviewing the successful results of a number of experimental methadone maintenance programmes, he advocates the development of such programmes in Canadian prisons; however, he further advocates that proper monitoring and well planned controls should characterize these programmes.

Of central importance to Lynes paper is the observation that prisoners share the responsibility of agitating for meaningful programmes and that to stand by idly accept-
ing what is currently practiced might lead to an unwitting support of negative prison reforms. Thus Lynes recognizes that prisoners must actively participate in the struggle for justice inside the prison; however, as Lauzon demonstrates in his paper, *Stonewalled*, the voicing of legitimate dissent often results in disciplinary charges. The hearing of these charges often leads to the wholesale denial of prisoner’s legal rights in disciplinary court. Recommendation 30 of the MacGuigan Committee states:

Independent chair-persons are required immediately in all institutions to preside over disciplinary hearings. Cases should be proceeded with within 48 hours unless there is reasonable cause for delay (1977: 164).

The logic behind this recommendation was that the Parliamentary Sub-Committee recognized that there was a crisis in Canadian Prisons concerning “Justice Inside The Walls” and that most prisoners viewed the old Warden’s Court as nothing short of a sham. Lauzon convincingly demonstrates, however, that ten years after its inception, the disciplinary court is still viewed by prisoners as being a sham. The systematic denial of prisoners’ rights by disciplinary courts around the country, and the abuses of the “reasonable delay” clause are discussed in detail. Excessive punishments such as “failing to earn the privilege” to attend open visiting family social functions within the prison are not only illustrations of vindictive and perverse forms of justice; they also reinforce the conception for prisoners that only the powerful get justice while the powerless get prison. How can the public expect prisoners to learn to accept justice on the outside, if there is no justice on the inside? Lauzon concludes with an answer to this question: a new internal justice system which is accountable to the public. Clearly, a restructuring of disciplinary procedures in Canadian prisons will only come as the result of struggle both inside and outside the prison. Lauzon also shows that repressive control tactics inside the prison have had the same effect as repressive justice practices outside the prison. On the inside segregation cells are overcrowded from the use of repressive control tactics; on the outside the fre-
quency of law-breaking is unaffected by repressive control tactics.

Perhaps, there is nothing more repressive than the current mandatory twenty-five year minimum life sentence for first degree murder in Canada. In her paper, *Homicide in Canada*, Bonny Walford convincingly argues that the abolition of the death sentence in Canada has resulted in harsher treatment for persons convicted of every classification of culpable homicide. Such practice is in direct contradiction to the public conception that the legal system is “soft on murderers”. Walford suggests that there are a number of reasons why the current procedure for dealing with murder is open to abuse on a variety of levels. Due to the classifications of first and second degree murder and manslaughter, the police tend to “upcrime” most cases of homicide to first degree murder. In so doing, the police give themselves an unfair advantage in the plea bargaining process which often results in the accused’s plea of guilty to second degree murder and a mandatory life sentence with a minimum of ten years. As Walford argues, while there is a saving of trial expenses in the guilty plea, these savings are more than expended in the costs of maintaining the prisoner for the indefinite duration of his/her sentence. Thus many prisoners are serving much longer sentences than would legally be adjudicated if a full and fair hearing of the case were held. For this reason, Walford recommends that the different classifications of homicide should be eliminated and replaced by a single classification. Once charged the accused would appear before a jury or panel of judges during which a full disclosure of the circumstances of the offence would be heard. In this way, Walford reasons that plea bargaining would be eliminated, the power to decide on the seriousness of the offence would be removed from the police and properly placed in the court,

3. The term “upcrime” has come to be used in the literature pertaining to policing practices. It refers to the practice of charging an accused with a crime more serious than the actual crime. For discussions of the implications of the practice of upcrime on the crime process generally see Ahluwalia and MacLean (1986); Blom-Cooper and Drabble (1982); Ericson (1981); Jones et al. (1986).
and the overall reduction in sentences would represent a saving of costs. If there is a flaw in Walford's argument, however, it appears in her recommendation to set sentences in a range of one to fifty years with the possibility of parole after one year. If the twenty-five year minimum sentence is overly repressive what can be said about a fifty year sentence? Clearly Walford would want to see the fifty year option invoked for the very few heinous murders, but as her own argument suggests, the tendency has been to oversentence in homicide cases. One is left wondering whether the same trend would continue and result in the majority of persons serving fifty year sentences for homicide.

Earlier, I suggested that a portion of the increase in the prison population can be attributed to the abolition of the death sentence and the increasingly excessive use of the life sentence. As pointed out by The Infinity Lifers Group at Collins Bay Penitentiary in their paper entitled Can You Hear Us?, any person sentenced to life in Canada must appear at some point before the National Parole Board who will decide if they will be conditionally released. One of the serious problems addressed by The Lifers is that because there are virtually no suitable programs for lifers operating in Canadian penitentiaries, how is it possible for the Parole Board to make reasoned decisions. Prisoners will undoubtedly be evaluated on their demonstrated progress; however, with few ways available to demonstrate this progress and with the sometimes false or misleading information given to The Board by correctional staff, who evaluate prisoners on other criteria, the Board is destined to arrive at bad decisions which ultimately affect the public, the prisoners, and the Board itself negatively. The well thought out recommendations found in this paper illustrate that the prisoners are well aware that the majority of correctional expenditures are not found in prisoner programming and that they themselves must struggle to achieve justice inside the prison.

If the articles in this edition accomplish anything, they illustrate that prisoners of the Canadian correctional enterprise, recognize the need for change and that they have
taken up the struggle for justice in a non-violent manner. Their weapons are reasoned argumentation and thoughtful critique; their aim is justice within the Canadian correctional enterprise. But the struggle for justice does not begin and end with a few prisoners advocating reasonable changes in the prison. It is a struggle which transcends the prison and goes to the root of contemporary society, a struggle in which we all must participate. Prisons in our society do little more than dehumanize all who are inside them, guards and prisoners alike. The only reasonable solution is massive decarceration out of prison and into a caring, just and humane society:

There is no need for any great penetration to see from the teaching of materialism on the original goodness and equal intellectual endowment of man, the omnipotence of experience, habit and education, and the influence of environment on man, the great significance of industry, the justification of enjoyment, etc., how necessarily materialism is connected with communism and socialism. If man draws all his knowledge, sensation, etc., from the world of the senses and the experience gained in it, then what has to be done is to arrange the world in such a way that man experiences and becomes accustomed to what is truly human in it and that [mankind] becomes aware of [itself] as man[kind]. If correctly understood interest is the principle of all morality, man’s private interest must be made to coincide with the interest of humanity. If man is unfree in the materialistic sense, i.e., is free not through the negative power to avoid this or that, but through the positive power to assert his true individuality, crime must not be punished in the individual, but the anti-social sources of crime must be destroyed, and each must be given social scope for the vital manifestation of being. If man is shaped by environment, then environment must be made human. If man is social by nature, he will develop his true nature only in society, and the power of his nature must be measured not by the power of the separate individual but by the power of society (Marx and Engels, 1975: 161–162).
References


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It becomes imperative to distinguish between two types of reform proposals: those which will result in strengthening the prison bureaucracy, designed to perpetuate and reinforce the system, and those which to one degree or another challenge the whole premise of prison and move in the direction of eventual abolition.


William Senger is correct in drawing attention to the possibility that “Prison Abolition [is a] Good Idea [with a] Bad Approach” in the Summer 1988 issue of the *Journal of Prisoners on Prisons*, but a more careful examination of his critique is also in order. In fact, there are various schools of prison abolition, as his fellow contributor, Rick Sauvé (1988), indicates in the same issue.

It is not altogether accurate to describe my efforts as “proceeding in the direction of prison reform...trying to change things at the level of the incarcerated when the solution lies in eroding the power of the entire system” (Senger 1988: 46). I am on record as drawing “political conclusions by examining the prison system as a function of the state — an instrument for class, racial and national oppression... based upon an unequal distribution of power and opportunity... [and describing] a twentieth century nation’s need to maintain its power [by] controlling the military, police and the prison system. Any person or group daring to criticise... will receive the full brunt of authori-
tarian vengeance (Culhane 1985: 147-48).

During my first and only meeting with the then newly-appointed Commissioner of Corrections, Rhéal LeBlanc, I elaborated on the reasons why, in my view, the Canadian prison system must be abolished; and as I worked toward this goal, how my efforts were consistently directed toward helping prisoners to stay alive and to get the earliest possible eligibility date. However, should it happen that my efforts contribute to a better functioning institution, it is purely coincidental for that is neither my concern nor my intention.

On the other hand, in his capacity as Commissioner, within the context of being responsible for their custody, he is obliged to help keep them alive.

"Shall we agree," I asked him, "to meet halfway— that we are both committed to assist in keeping them alive, you for your reasons and me for mine?"

I then proceeded to challenge such practices as "hog tying" known in official legalese as "restrictive restraint." A chain draws the prisoner's head backwards linking his hands cuffed behind his back, with his feet in shackles, often left naked on the cell floor in that most vulnerable position.

To repeat, I fully support William Senger's complaint about "activists working to better prison conditions...only to succeed in giving the system more power to oppress." However, I would also refer him to the statement on our Prisoners' Rights Group letterhead:

We can't change prisons without changing society. We know that this is a long and dangerous struggle. But the more who are involved in it, the less dangerous and the more possible it will be.

A young prisoner once reminded me (from his five and one half years stint in segregation) that while "all those ideas about abolishing prisons sure sound great, please don't forget those of us looking at twenty-five years minimum [before parole eligibility]." The long term goal is prison abolition. The short term goal is helping to keep them alive and back into general population as soon as
possible, and then, of course, OUT!

I see no betrayal in this game plan. I see very meaningful survival gains within this prison abolition philosophy.

References


ABOUT THE COVER

When *Mountain Echoes* first appeared in September 1951, it was one of the six major penal press magazines being published in Canada at that time. It was produced at Manitoba Penitentiary continuously until the summer of 1965, operating in the relative obscurity of the Prairies, unlike *Pen-O-Rama* from Vincent de Paul or *Telescope* from Kingston/Toronto.

Bud Winters and W. Lake were two of its outstanding editors and writers. The issue from which our frontispiece is taken was edited by Christy Brown, J.V.J., Bob Talbot, and Ralph Danton, who designed the cover. On the title page the editors have written:

Mountain Echoes is published by the inmates of the Manitoba Penitentiary.... It is designed to provide inmates with an opportunity for self-expression and a medium for discussion of public problems, and in the interest of promoting useful thought and action within the institution.

We are using a reproduction of their cover for this issue in order to recognize the link between the history of the penal press and the *Journal of Prisoners on Prisons*, a history we seek to continue and expand.

Those interested in the penal press, people with copies of early issues, and current or former editors of such publications should write to R. Gaucher Laurier East, Ottawa, Ontario K1N 6N5. He has been collecting publications for a book on their history.