

# **A New Approach to the Punishment of Crime in Canada**

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The subject of the panel I am participating in questions whether punishment is an ethical or political response to offending. Rather than examine why we act as we do, I would prefer to examine the effectiveness of the punishment of crime. Canada has long been known as the land of rights and equality. If we are to make meaningful changes to the effectiveness of the punishment of crime, we must put those principals aside.

To do this, we must first ask ourselves what the purpose and function of the Canadian criminal justice system is. Is it established to provide rehabilitation to those who break the law? Is it a system designed to create deterrents to the commission of crime? Is it a system of retribution to simply punish those who break the law? Is it a system designed to identify societal problems and develop solutions to those problems? Judging from the topics and explanatory notes for the conference agenda, it seems that all of those are considerations in our justice system. However, I believe that each of those and other philosophies are only secondary segments of the true purpose of our justice system. That purpose is the protection of law-abiding citizens and their property. All other considerations must keep this prime purpose in mind.

To develop a new and effective approach to the punishment of criminals, it is necessary to accept to some degree that the rights of those who obey the laws of this country are different from the rights of those who do not. The system currently approaches the punishment of criminals from the point of view that criminals still have almost all of the rights of a law-abiding citizen. I fundamentally reject that approach. I believe that any person who has been convicted in a Canadian court gives up their

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rights as a Canadian with the sole exceptions of the right to humane and healthful treatment. I define this as the right to be incarcerated in accommodations with reasonable environmental control, to be provided with basic personal care supplies, to be fed according to the Canadian nutrition guide, and to be provided with access to basic medical treatment. Beyond this, prisoners should have the ability to earn other rights such as more freedom within the prison, transfers to more desirable facilities, training programs, sports programs, visitor privileges, payment for work performance, canteen privileges, temporary absences and parole. Each of these rights must be earned by appropriate behaviour which in turn means that they can also be taken away for inappropriate behaviour.

Over the course of the last year, I have visited prisons in every region of this country. While I have seen many good programs in operation, I have also seen prisons where the entire operation of the prison revolves around the need to keep two motorcycle gangs and those associated with them separated. In essence, officials need to operate two entirely separate prisons within a single facility. That suggests to me that the prisoners, rather than the prison officials, control those facilities. I have seen case after case of prisoners who break all the rules inside a prison, acting in ways that are beyond the comprehension of ordinary Canadians, and yet they still get many of the privileges extended to other prisoners including television, computers, conjugal visits and even parole consideration. I have heard prison staff and even various prisoners complain about the lack of control of these types of prisoner. Guards lament the fact that they have little ability to deal effectively with prisoners who destroy prison property, fight with other prisoners and attack guards either physically or by throwing excrement at them. Prisoners themselves complain about the interference of other prisoners in their attempt to serve their time quietly, learn a trade, obtain effective counselling, earn early parole consideration and even about basic personal safety. I believe that prisoners need to understand and experience the consequences of their actions in prison, both positive and negative. Law-abiding citizens experience this all the time, from early childhood through their educational time and into adulthood. The best way to make punishment effective is to mirror this consequence of action in prisons as well.

When you find a methodology that works in one area, it seems reasonable that you should try to expand those methods to other areas. There are now many young offender diversion programs in operation that have proven to be very effective in dealing with certain levels of youth

crime and rehabilitating the offenders. The intent of these programs are to keep the offender from entering the court system and giving them a chance to straighten themselves out. In my federal riding, there is a young offender's diversion program in operation. The program is initiated by local police authorities who recommend a young offender to the program. To qualify, it has to be a non-violent first offence, the young offender has to accept full responsibility for the offence, the victim has to agree to the diversion, and restitution has to be possible from the young offender. It is a very intense and emotional program for the offender. In my riding, this program has now processed well over one hundred first time young offenders with only one single incident of a repeat offence. If programs like this can work so well for youth, should we not consider some version of it for certain adult offenders? If someone commits a crime such as stealing cash from their employer and that person is tried, convicted and placed in prison, the employer becomes a victim because the stolen money is lost. Society becomes a victim through court and prison costs and if the offenders lose their drive or ability to re-establish their lives after being released, society becomes a victim again through social program costs or those associated with the person re-offending. The criteria could be similar to the youth diversion program. First offence; non-violent crime; approval of the victim; restitution program. The applicable charge could be held without filing throughout the restitution period. A pre-determined percentage of the offender's pay would be collected through the income tax system. Where the victim suffers a financial loss, the restitution would be paid directly to that victim or victims. Where the offence did not involve a specific victim or direct financial loss, the offender would pay the same percentage into a fund to be used for restitution of losses of victims in other situations. The period of repayment in such cases could be tied to the normal prison sentence for the offence committed. If at any time during the restitution period the offender is convicted of any indictable offence, the original charges are filed as well. This would reduce victim impact, court costs, prison costs and societal costs that often result from an offender's inability to rejoin society after being convicted.

For those non-violent first offenders who are convicted and sent to prison, we need to provide them with every opportunity for rehabilitation, early release and resumption of productive lives. To the greatest degree possible, they should be incarcerated in facilities with similar prisoners and should have the broadest access to earnable rights. Serious infractions of prison rules should place them at risk of being reassessed and transferred out of such a special facility.

All other prisoners should be assigned to maximum, medium or minimum facilities according to level of crime (i.e. violent vs. non-violent), repeat offences, escape risk and demonstrated or anticipated behaviour. Each should have the ability to earn rights but it should be progressively harder for violent criminals to earn those rights. Someone who earns a right and then loses it by breaking the rules should find it a little harder to earn that same right the next time.

Crime committed inside a facility should be subject to the same penalty as that crime committed outside of the facility. One specific incident I dealt with involved a Hepatitis C positive prisoner who attacked and bit two prison guards. This occurred in a medium security prison. The sentence for the offence was measured in days. The prisoner was transferred to a maximum security prison, but was back in medium in about one year. Also, sentences for offences inside the prison must be consecutively served or they have no meaning.

Paroles should be earned through appropriate behaviour including willingness to participate in programs that address problems where applicable. Where a prisoner is approved for either a temporary absence or parole and then breaks the conditions of that release in a significant manner, a similar release should not be as easily attained the next time. For prisoners who either do not qualify for parole due to unacceptable behaviour or simply not applying for it, there should still be a mandatory parole period even at warrant expiry. It is unacceptable to public safety to have a situation where a prisoner has a serious behavioural problem, perhaps has never participated in any rehabilitation programs and may never have progressed beyond maximum security incarceration, suddenly have the door opened and be turned loose upon society. Where the initial crime was serious enough, perhaps a change to the dangerous offender designation is required. If the crime was not of a nature or repetition that called for dangerous offender designation at time of sentencing as is now required, the ability to reassess that designation should be available to authorities throughout that criminal's period of incarceration for serious additional offences inside the prison. There should exist an ability to detain a prisoner even at warrant expiry where authorities can demonstrate with reasonable certainty that the prisoner would likely commit a serious personal injury offence after being released.

This presentation only deals in a general way with changes that should be considered in our approach to crime and punishment in this country. I strongly believe in providing a second chance to those who earn it, but earn it they must. We need to show compassion to those who

make a mistake and are remorseful about it. We also need to show a new level of firmness for those who continuously ignore society's rules. My whole philosophy can best be summed up by quoting an old saying:

*Fool me once, shame on you. Fool me twice, shame on me.*