



Role of Government Background Paper

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Role of Government Working Group**

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1. Issue

St. Leonard's Society of Canada (SLSC), a national charitable organization founded in 1967,¹ works with government, as well as others in Canadian society, to fulfill its mission to promote a humane and informed justice policy to foster safer communities. It conducts research, endorses evidence-based approaches, supports its 12 member affiliates, and collaborates with others dedicated to achieving social justice. To reach the full potential of our mission, SLSC seeks a positive relationship with the public sector² that is both productive and collaborative. The foundation of a healthy and strong relationship is built on a clear understanding of each other's roles. We require a comprehensive understanding of both the role that government sees itself as fulfilling and the role which SLSC, based on its values,³ expects government to perform.

For over a century the criminal justice sector in Canada has been strengthened by increasing linkages between voluntary sector⁴ organizations, including SLSC, and government. This rich history is summarized in the presentation *Community Corrections: We All Live in Community*.⁵ Not surprisingly, the relationship between these sectors has developed and changed throughout this time. For the purposes of this document, we will address the changes that have had the most impact in the last twenty years.⁶

In the past, SLSC and its members have successfully partnered with government in the following ways:

- developing transitional residences (halfway houses);
- developing funding models and standards for residential care;
- co-creating and running the *LifeLine*[™] program;
- designing and participating in a task force on community corrections; and,
- conducting mental health and housing research.

Research showed a constellation of clients' complex needs, particularly in the areas of mental health, homelessness, and histories of abuse.⁷ In the 1990s, voluntary sector agencies expanded

¹ Registered charitable organization # 12894 6829 RR0001.

² Government of Canada. 2001. *An Accord Between the Government of Canada and the Voluntary Sector*, p.2. The public sector is defined as including all levels of government – federal, provincial, territorial, regional, and local.

³ SLSC values social responsibility, integrity, vision, commitment, and human worth.

⁴ *Supra*, note 2, p.2. The voluntary sector is also described as non-profit, third sector non-governmental, community-based, and charitable sector.

⁵ In 2014 a National Associations Active in Criminal Justice (NAACJ)/Correctional Service of Canada (CSC) working group designed a workshop on *Community Corrections: We All Live in Community* and piloted it three times. It includes references to reports which document the rise of community-based corrections.

⁶ This timeframe loosely matches the period since 1992 when the *Corrections and Conditional Release Act* came into force.

⁷ See for example: Standing Senate Committee on Social Affairs, Science and Technology. 2006. *Out of the Shadows at Last: Transforming Mental Health, Mental Illness and Addictions Services in Canada*; Baun, K. 2009. Stigma Matters: The Media's Impact on Public Perceptions of Mental Illness. *OttawaLife Magazine (Mental Health Series: A Friend, A Home, A Job)*; Laboucane-Benson, P. 2009. *Reconciliation, Repatriation and Reconnection: A Framework for Building Resilience In Canadian Indigenous Families*. University of Alberta Faculty of Graduate Studies and

their direct service and policy analysis in the corrections field by providing safe and effective integration opportunities with a wider range of government departments. This was exemplified through the mutual acceptance of the importance of sharing evidence-based research through events such as SLSC's *Bolton Days*, the International Community Corrections Association's *What Works* conferences, and Congresses held by the Canadian Criminal Justice Association. Another key event was the development by the Correctional Service of Canada (CSC) and its voluntary sector partners of a Principles-based Relationship paper adopted by both sectors. Highlights from that paper include:

- *Where the benefit of community based support and involvement is clear, the voluntary sector should be the delivery agent of choice (p. 18).*
- *Partnership between the government and the voluntary sector is a strategic alliance (p. 10).*
- *A degree of enlightened self-interest underlines the partnership between government and the voluntary sector (p. 16).*

These highlights reflect the values that continue to drive the voluntary sector, and demonstrate an effective example of collaboration between sectors that SLSC continues to strive for and improve upon.

2. The State of Criminal Justice Legislation in Canada

Criminal justice legislation has proliferated in recent years. Bills tend to address a specific slice of the system, rather than effect comprehensive and cohesive measures. Exceptions include the following events that influenced legislation:

- Youth Criminal Justice Act (YCJA): awareness of Canada's high custody rate for youth and information about alternatives resulting in the YCJA in 2003.
- Royal Commission on Aboriginal Peoples: Under the Corrections and Conditional Release Act, Sections 81 and 84 facilities have been opened as a result and there have been transfers of responsibility to aboriginal communities in some instances.

Tragedies have driven many amendments to the Corrections and Conditional Release Act and the Criminal Code:

- The murders of a Sudbury police officer by a person on parole, and of Tema Conter⁸ and Christopher Stevenson by Melvin Stanton and Joseph Fredericks respectively.

Research, p. 119. Retrieved from: <http://www.collectionscanada.gc.ca/obj/thesescanada/vol2/AEU/TC-AEU-29730.pdf>; Saddichha, S., Fliers, J.M., Frankish, J., Somers, J., Schuetz, C.G., Krausz, M.R. 2014. Homeless and incarcerated: an epidemiological study from Canada. *International Journal of Social Psychiatry*. 60:8, p. 795-800. Retrieved from: <http://isp.sagepub.com/content/60/8/795>.

⁸ For more information about Tema Conter and the positive steps that have grown from the impact of her death see: <http://www.tema.ca/#!tributetotema/cnt6>. Good can follow bad. For further information on the Pepino

These sensational tragedies, which are not intended to be a complete listing, but rather to serve as examples, focused government and the general public on legislation governing sentencing and conditional release. Reaction was swift and punitive. It is not desirable, however, to frame legislation as a result of singular, high profile tragedies. Legislation rooted in evidence has stood the test of time as opposed to enactments made in haste.⁹ These do not produce good public safety results.

Constructive consultation continued to be active in the early 2000's. While government had started to pull back financially on funding streams that contracted services with the voluntary sector, there remained a real sense of a partnership – of dialogue and a respect for consultation.

A concerted effort to align the relationship between the voluntary sector and government developed in the early 2000's. As stated in *An Accord Between the Government of Canada and the Voluntary Sector* (known as the Voluntary Sector Accord):

*The voluntary sector is one of three pillars that constitute Canadian Society, together with the public and private sectors. Our quality of life, our economic strength and the vitality of our democratic institutions depend on the vibrancy of these interdependent sectors and the support they provide to one another.*¹⁰

The Voluntary Sector Accord stressed the importance of ongoing synergy between the sectors in order to achieve the best results for Canadians. Including policy and financial protocols this was a high point in the prominence given to establishing a solid framework for collaborative action.

In 2006, a Conservative government was elected with a platform that emphasized a 'tough on crime'¹¹ approach and a reduction in the role of government writ large. The government has recognized and reacted to the needs of victims by creating focused services for victims; Victim Awareness Week, and a Victims Bill of Rights, for example.¹²

Inquiry Recommendations see: A Report of the Correctional Service of Canada, the National Parole Board, and the Secretariat of the Ministry of the Solicitor General. 1989. *Action Taken in Response to Recommendations of the Ruygrok Inquest, Sentence, Management Review, and Pepino Inquiry*. p. 48. Retrieved from: <http://www.publicsafety.gc.ca/lbrr/archives/hv%208395.a6%20a2%201989-eng.pdf>; also see www.schliferclinic.com.

⁹ See for example: Petrosino, A., Boruch, R.F., Soydan, H., Duggan, L. and Sanchez-Meca, J. 2001. Meeting the Challenges of Evidence-Based Policy: The Campbell Collaboration. *Annals of the American Academy of Political and Social Science*. Retrieved from: <http://www.jstor.org/stable/1049865>; Latimer, C. 2014. *The Decline of Evidence-based Law Making (The Broadbent Blog)*. Retrieved from: <https://www.broadbentinstitute.ca/en/blog/decline-evidence-based-law-making>; Seidman, A., and Seidman, R. 2009. Drafting Evidence-Based Legislation for Democratic Social Change. *Boston Law Review*. 89:2, p. 435. Retrieved from: https://www.bu.edu/law/central/jd/organizations/journals/bulr/volume89n2/documents/SEIDMAN_000.pdf.

¹⁰ *Supra* note 2, p.2. Companion pieces are the *Codes of Good Practice on Funding and Policy*.

¹¹ For more information see: <http://toughoncrime.ca/>

¹² Bill C-32: *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*. Second Session, 41st Parliament. 2013-14. In 2014, SLSC developed a brief in response to the proposed Victims' Bill of Rights and

Since 2006, the government has introduced 88 crime Bills and 48 sentencing Bills, and 34 of these have been enacted.¹³ A number of Private Members' Bills also have come forward. These do not have the same level of oversight and analysis as do government Bills. Given the number of changes, several of which came into force close together in time, it is difficult to state the exact impact of longer mandatory minimum sentences, longer periods of parole ineligibility, and reduced access to conditional sentences as well as reduced calculations for time spent in pre-trial detention.¹⁴ At the same time, the rate of reported crime has dropped steadily, now reaching a low in terms of percentage not seen since the 1960's.¹⁵

Following the economic downturn of 2008, the government applied targeted incentives to some aspects of the economy and then initiated a strict program of reducing government spending and services. This has reduced markedly support for government voluntary sector interactions and voluntary sector justice services.

3. Lessons from the Past – Key Concepts

The Canadian model of federalism divides responsibility for programs and service between the federal government and the provinces. For criminal justice and corrections this has created a complex and difficult to manage situation. Sentences over two years are federal; but, as soon as a person leaves a prison even while under federal mandate, the person's health care and more become the responsibility of the province.¹⁶ Navigating this division of responsibilities and other discrepancies is time-consuming and expensive. It is more difficult for the federal government than for the voluntary sector to adjust to changed circumstances.

Following deinstitutionalization of mental health services in the 1960's prisons became the largest mental health facilities in the country. A key lesson learned was that it is imperative to have proven community-based services established before removing institutions or other programs.¹⁷

submitted it to the Department of Justice. The brief is available on our website at: www.stleonards.ca/policy-briefs.

¹³ Doob, A. N. *Limiting the Use of Imprisonment: Learning from Successes*. February 22, 2015. Presentation on compassionate justice at Eglinton St. George's United Church, Toronto.

¹⁴ Estimates are that the federal prison population has risen 8 – 10% in the last 3-5 years, while crime rates have come down. National Newswatch Feb. 18 2015 by Frances Russell "Canada's Crime Rate is Plunging".

¹⁵ Boyce, J., Cotter, A., Perreault, S. 2014. *Police-reported crime statistics in Canada, 2013*. Canadian Centre for Justice Statistics. Retrieved from <http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14040-eng.htm?fpv=2693#a8>.

¹⁶ Her Majesty the Queen in Right of Canada (Department of Justice). 2012. *Mental Health Strategy for Corrections in Canada. A Federal-Provincial-Territorial Partnership*. Retrieved from:

<http://www.justice.gov.sk.ca/Default.aspx?DN=ca398c7d-99d1-41d6-bc18-425298f8388b>; Zinger, I. 2012. Mental Health in Federal Corrections: Reflections and Future Directions. *Health Law Review*. 20(2). Retrieved from: http://www.cashra2012.ca/documents/presentation_ivan_zinger.pdf.

¹⁷ Chaimowitz, G. 2012. The Criminalization of People with Mental Illness. *The Canadian Journal of Psychiatry*. 57(2) 1-6; St. Leonard's Society of Canada. 2008 and Second Edition, 2013. *Towards an Integrated Network: Working Together to Avoid Criminalization of People with Mental Health Problems*. Ottawa.

To address this very difficult situation correctional services, both federal and provincial, have ramped up services to the mentally ill. The mentally ill, however, belong in health facilities, not prisons. Arranging balanced approaches to managing this critical issue have proven problematic. The number of suicides in prisons is a testament to our failure to find a solution.¹⁸ There are too many Ashley Smiths in the system.

Federally, up to 30% of women and 15% of men now in federal prison have a diagnosed mental health problem or illness. A 2012 study showed that 87% of women in Canadian federal correctional institutions had medication orders for prescription and over-the-counter medications. On average, women have been prescribed 4.4 different medications. Of all the prescriptions, 42% are for psychotropic drugs and of the women taking these psychotropic drugs, 51% are taking two or more types of these prescription medications.¹⁹ Indications are that there are many more prisoners who have undiagnosed mental health problems and illnesses. Men, in particular, are known to underreport.

The fall-out from too often ‘treating’ mental illness with incarceration is most obvious in the municipal setting. To meet the multiple and complex needs of these individuals, municipalities have increased the coordination of services. The government has a real opportunity to draw on the experience of municipalities and both support and encourage further collaborations at this level to address properly the needs of complex cases in cost-effective ways superior to incarceration. Each winter there are deaths on our city streets of homeless persons with mental health concerns. Effective responses involve government collaboration with the voluntary sector such as in London ON, where the sector supports an Order to Reside program by the provision of safe, supported housing. In Halifax and Brampton, and many other communities the provision of shelter programs with the flexibility to meet the diverse needs of clients is keeping people safe.²⁰

The Canadian narrative on Aboriginal relations reveals a history that is painful and patriarchal. The Royal Commission on Aboriginal Peoples allowed for the emergence of renewed relations between Canada and Aboriginal peoples. While governments and community leaders chart an exciting future for relations, systemic racism, violence and the historical trauma from residential

¹⁸ Office of the Correctional Investigator of Canada. 2014. *A Three Year Review of Federal Inmate Suicides (2011-2014) Final Report*. Retrieved from: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20140910-eng.aspx>; Solicitor General's Study Group on Dissociation, 1975. Retrieved from: <https://www.ncjrs.gov/pdffiles1/Digitization/55141NCJRS.pdf>; Roberts, J. and Gebotys, R. 2001. Prisoners of isolation: Research on the effects of administrative segregation, *Canadian Journal of Criminology*. 43:1. p. 93; Correctional Service of Canada. 2014. *Response to the Coroner's Inquest Touching the Death of Ashley Smith*. Retrieved from: <http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml>.

¹⁹ Kilty, J.M. 2012. ‘It’s like they don’t want you to get better’: Psy control of women in the carceral context. *Feminism & Psychology*, 22:2, pp. 162-182.

²⁰ London Canada, *Homelessness Prevention and Housing Plan*. Retrieved from: <https://www.london.ca/residents/Housing/Housing-Management/Pages/HomelessPreventionandHousingPlan.aspx>. YWCA Halifax, *Homelessness to Hope*. Retrieved from: <http://ywcahalifax.com/our-focus/homelessness-to-hope.html>.

schools continue to scar communities.²¹ The Truth and Reconciliation Commission has highlighted the need for healing as a result of residential schools, jurisdictional complexities, the excessive rate of criminalization of aboriginals, and their overrepresentation in the criminal justice system.²²

The last two mentioned constitute a crisis for Canada.²³ Addressing them is key in the broader process of redefining the relationship between Canada and Aboriginal peoples. Dialogue, openness, respect and, ultimately, trust will be essential components in the evolution of the relationship and will necessitate clear leadership from government.

In the 1990's the federal government tended to place emphasis on the 'human face' of justice while today it deals more with ideology and moral regulation.²⁴ There has been an active turning away from the once prevalent allowance of discretion to look at the circumstances of a situation in order to determine an effective response. Reliance now centres on set outcomes for specific incidents.

4. Our view of the role of government

Key Components:

- Partnership with stakeholders
- Transparency
- Dialogue
- Values-based

The relationship between government and the voluntary sector is bi-directional; there must be synergy between the two in order to achieve mutual goals and outcomes.

Canadian policies and practices should be grounded in research, reasoned, and reflective of Canadian values and experiences. Constant messaging that our communities are not safe and that we must apply ever harsher penalties creates fear. It is counterproductive to public safety to generate an unrealistic level of public apprehension. Measured responses to crime by government will keep its significance in proportion to its gravity in the context of our social system.

²¹ Laboucane-Benson, P. 2009. *Reconciliation, Repatriation and Reconnection: A Framework for Building Resilience In Canadian Indigenous Families*. University of Alberta Faculty of Graduate Studies and Research, p. 169. Retrieved from: <http://www.collectionscanada.gc.ca/obj/thesescanada/vol2/AEU/TC-AEU-29730.pdf>.

²² Truth and Reconciliation Commission of Canada website. Retrieved from: <http://www.trc.ca/websites/trcinstitution/index.php?p=7>

²³ The Aboriginal Justice Implementation Commission. 1999. *Report of the Aboriginal Justice Inquiry of Manitoba*, Vol. 1, Chapter 4. Retrieved from: <http://www.ajic.mb.ca/volumel/chapter4.html>.

²⁴ Hunt, A. 1999. *Governing Morals: A Social History of Moral Regulation*. UK: Cambridge University Press, p.1-2. Moral regulation is defined as a form of politics whereby individuals act to problematize the conduct, values, or culture of others and seek to impose regulation upon them. Moral regulation is historically significant, with social problems becoming framed under different labels to better suit current political and legislative times.

The experience in the United States has relevance in this context. When it declared the “war on drugs”²⁵ and massive incarceration as policies, it proved costly in finances and human toll. When California was spending more on crime than on education, it found that its role as government was out of sync with its mandate. Recently, governments in the United States have begun to move away from what had been a virtual fixation on crime and are reconsidering areas such as health and citizenship.

For decades Canada enjoyed a positive profile for its approach to crime and corrections based on its emphasis on rehabilitation, community engagement, and sanctions which took place in the community.²⁶ In our opinion, these elements remain central to a positive and productive role for government.

Be it resolved that:

SLSC believes that:

- SLSC promotes the role of the Canadian government in protecting public safety, and reiterates the importance of coordinated, evidence-based rehabilitation initiatives and community partnerships in achieving the successful reintegration of sentenced persons as law-abiding members of the community.
- The role of government is to engage in partnership with stakeholders, operate transparently, dialogue with interested groups and people, and function in a values-based manner.
- The relationship between government and the voluntary sector is bi-directional; there must be synergy between the two in order to achieve mutual goals and outcomes.
- Canadian policies and practices should be grounded in research, reasoned, and reflective of Canadian values and experiences.
- Measured responses to crime by government will keep its significance in proportion to its gravity in the context of our social system. It is counterproductive to public safety to generate an unrealistic level of public apprehension.
- In the area of criminal justice and corrections the government should focus its efforts on the concepts of rehabilitation, community engagement, and sanctions which take place in the community.

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²⁵ Drug Policy Alliance. For more see: <http://www.drugpolicy.org/new-solutions-drug-policy/brief-history-drug-war>.

²⁶ For additional information, see: <http://www.cbc.ca/doczone/episodes/new-season-state-of-incarceration>.