



SMART ON CRIME

THE ST. LEONARD'S PERSPECTIVE ON
WHAT WORKS AND WHAT MATTERS
IN CRIMINAL JUSTICE

St. Leonard's Society of Canada (SLSC)

211 Bronson Ave., Suite 208

Ottawa, ON. K1R 6H5

www.stleonards.ca



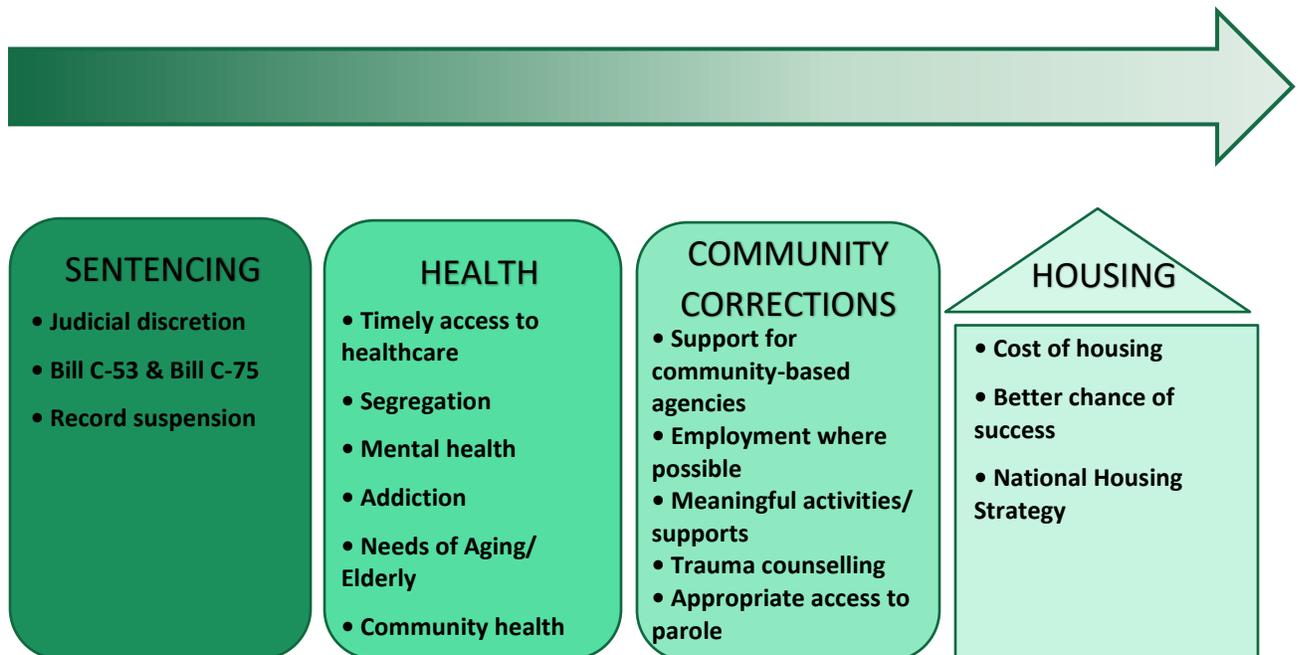
INTRODUCTION

St. Leonard's Society of Canada (SLSC) is pleased to present *Smart on Crime: The St. Leonard's Perspective on What Works and What Matters in Criminal Justice*, for your review. The upcoming Federal Election presents an opportunity for our organization to highlight some of the key issues and challenges faced by those working in and for Canada's criminal justice system. St. Leonard's Society of Canada (SLSC) is a membership-based, charitable organization dedicated to community safety. The mission of SLSC is to promote a humane and informed justice policy and responsible leadership to foster safer communities. It:

- i) endorses evidence-based approaches to criminal and social justice;
- ii) conducts research and develops policy;
- iii) supports its member affiliates; and
- iv) advances collaborative relationships and communication among individuals and organizations dedicated to social justice.

OVERVIEW

For the purpose of this brief, St. Leonard's Society of Canada has proposed **four** issues that require immediate focus and reform across the criminal justice system: **Sentencing, health, community corrections, and housing**. SLSC considers each of these issues to be integral components along a continuum of supports toward successful integration of people who have experienced incarceration.



SENTENCING

Judicial Discretion: Mandatory minimum sentences (MMS) have failed to deter the public from committing crime and, in fact, have caused major delays in the justice system. SLSC's membership recognizes that MMS prevent those in conflict with the law from achieving habilitation. These



sentences lack judicial discretion and the unique conditions of each case. This can result in punishments that, while appearing to be similar, have a disproportionate effect on different people who have experienced incarceration. For example, people have varying degrees of access to justice (i.e. lawyers/legal aid) and varying degrees of ability to pay court-imposed fines. Judges are appointed based on their expertise and receive

training to further equip them to assess an appropriate sentence. When mandatory minimums dictate the outcome, we not only fail to take advantage of the expertise and experience of judges; we also deny them the opportunity to fit the punishment to the crime.

Since the Judicial Review Hearing in 1987, there have been 227 court decisions, among which 76.2% resulted in a reduction of the required period to be served before parole eligibility (Public Safety, 2017). These court decisions must continue for appropriate sentencing to be applied to all.

Bill C-53 & Bill C-75: When Parliament rose in June 2015, a piece of legislation implemented was Bill C-53. This bill proposed new restrictions on applications for community supervision for some people with life sentences, placing the ultimate decision about whether applications could be made into the hands of future Cabinet members who would not be required to give justification for their decision. This demonstrates a lack of accountability and transparency on the part of the ultimate decision makers.

SLSC is also concerned with Bill C-75. This bill is an act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts (LEGISInfo, 2019). SLSC expresses concern that Bill C-75 is inconsistent with the Government of Canada's commitment to honour the recommendations of the *Truth and Reconciliation Commission* (TRC), namely Recommendation 32, which suggests the federal government "depart from mandatory minimum sentences and restrictions on the use of conditional sentences" (Truth and Reconciliation Commission of Canada, 2015). Mandatory minimum penalties impact all Canadians as they fail to achieve the objectives of sentencing outlined in the *Criminal Code of*

Canada of deterrence, rehabilitation, protection of the public, reparation and responsibility; focusing only on the principle objective of denunciation. Further, mandatory minimums contribute to delays in the system, which impact all Canadians and disproportionately affect Canada's most vulnerable.

Record Suspensions: In 2015, pardons were eliminated and replaced with record suspensions. SLSC has thoroughly consulted with politicians regarding the barriers created through the inaccessibility of record suspensions have on individuals. Pardons were granted to people who served and abided by their sentence and conditions, while living crime-free for a minimum period of time. Integrating into the community has a multitude of challenges for individuals. Adding further restrictions and standards to the legislation only exacerbates these challenges. The changes by the Parole Board of Canada contradict the goals of rehabilitation and public safety that are stated in the Corrections and Conditional Release Statistical Overview 2017 annual report. The increase to user fees for applicants also heightens their stigmatization and vulnerability, and increases strain on existing social services. Since the last federal election, SLSC's affiliate agencies directly served over 14,000 people in this client group across Canada. Of these clients, those who do hold jobs (most often low-paying, entry level positions), only an estimated 15-20% could afford to pay \$631 for a pardon. Given the extensive consultation on this issue, legislative reform must be instituted to not only acknowledging the prohibitive cost and stigmatizing effects, and actually work to improve the conditions for returning citizens.

HEALTH

Institutional and community health practices should reflect a community-based medical model by having accessible and adequate service providers in the community. SLSC encourages this type of healthcare as it reduces demands on emergency services and could accommodate treatments delivered by physicians, nurses, out-reach workers, counsellors, community support workers and more (Government of British Columbia, 2007).

Timely Access to Healthcare: According to the 2017 Corrections and Conditional Release Statistical Overview, the Office of the Correctional Investigator received 6,768 complaints with the most frequent complaint being the access and quality of healthcare. SLSC has seen parallel concerns with the people being supported in the community.

In 2017, SLSC signed a petition to improve healthcare in prisons that included several recommendations to the federal government such as: placing responsibility for the healthcare of



those in custody with community service providers instead of the prison staff (Huxtable, 2017). Per the OCI complaints, the most significant issue with healthcare within correctional facilities is the long wait times. Further investments in prison healthcare should emphasize access to community-based service providers to maximize opportunity for successful integration, as well as to combat existing challenges within Canada's correctional institutions. Moreover, low-risk individuals in custody should be given access to healthcare in the community to limit the institutional burden and allow for adequate treatment for all.

Segregation: Administrative segregation (previously known as solitary confinement) is a procedure used in Canadian prisons that is proven to have harmful effects on those who are placed in it (Haney, 2018). SLSC is a member of the coalition on reforming segregation in Ontario's correctional institutions which discusses the problems and potential solutions to segregation in correctional institutions. Many of those placed in segregation are suffering from mental illness and suicidality, often experiencing long-term effects; administrative segregation proves to be more detrimental than beneficial to the individual (Haney, 2018). The deaths of people in administrative segregation are compelling evidence of the need to find resources for the mentally ill which are not penitentiaries, and to limit the amount of time a person can be held both on one occasion and over multiple events. Public safety has been challenged in court regarding the cruel and unusual punishment to segregate those in correctional facilities for 23 hours minimum a day. SLSC is encouraged by the intent of Bill C-83 in eliminating Administrative Segregation as a correctional practice; however, we remain concerned that hurried implementation of structured interventions units risks unconstitutional practices without consideration for important international standards that Canada should be in line with.

Mental Health Too often mental health is addressed through criminal intervention when, in fact, the issue is health and social-based. The Office of the Correctional Investigator stated in the 2016-2017 report that CSC needs to fund and form alternative agreements and arrangements with mental health providers in the community that would allow for those in custody with complex mental health needs to be placed in community psychiatric facilities (Office of the Correctional Investigator, 2017). Alternatives to the limited mental health services offered in custody must be created and implemented to increase the safety of communities and increase the chance of successful community integration once released. Many of those who are labeled "offenders" have been victims before in their past, specifically trauma-producing events (Muftic et al., 2015).

Addiction: As 80% of people admitted to CSC have a substance issue at intake, the services available in custody and upon release are not adequate for the volume and complexity of this issue (Weekes et al., 2009). Many of these individuals claim that they want to limit or quit their substance use/abuse but do not have the proper supports to do so. Amidst an opioid crisis, addiction must be targeted with resources to support an effective strategy that will foster safe, healthy transitions to the community. This can be achieved by developing resources for an

addiction performance measurement framework for Canada. SLSC is encouraged by the mandate letter from Minister of Public Safety, the Honourable Ralph Goodale, to CSC Commissioner Anne Kelly that frames addiction as a necessary factor to view and treat as a medical problem rather than a behavioural one.

Needs of Aging/Elderly People: The number of people over the age of 50 in federal custody was 2,450 in 2008. In 2019, a report released by the Office of the Correctional Investigator indicated that in 2018 the total number of inmates over 50 years old increased to 3,534, demonstrating a 44% increase. The elderly prison population is a very unique group with special needs, specifically



with healthcare. Their needs are a challenge to assess and address in correctional system that is designed for an able-bodied population. The Office of the Correctional Investigator (OCI) and the Canadian Human Rights Commission (CHRC) released a report, *Aging and Dying in Prison* in January 2019, which addressed some of these needs, including: raised toilets, safety alarms handrails,

adjustable showerheads, ramps, and poles to help individuals pull themselves out of bed. Many elderly inmates require wheelchair accessibility but only 2.5% of cells are barrier free (OCI & CHRC, 2019). Accessibility improvements have been made, however, there are not enough institutions that have adequate accessibility to ensure every individual who requires such accommodations will receive them. Creative responses to the situation such as medical parole, and parole by exception for the aged should be introduced or made more accessible where appropriate.

SLSC supports all 16 recommendations within the *Aging and Dying in Prison* report, and are well positioned to implement the following four:

- Recommendation 1: that an independent review of all older individuals in federal custody be conducted with the objective of determining whether a placement in the community, a long-term care facility or a hospice would be more appropriate.
- Recommendation 10: that CSC introduce standardized peer assistance and peer support programs across all institutions. These programs should be modeled along the lines of the caregiver at Pacific Regional Treatment Centre, including a comprehensive manual, recurring training and ongoing support to peer caregivers.
- Recommendation 14: that CSC enhance partnerships with outside service providers and reallocate funds to create additional bed space in the community and secure designated spots in long-term care facilities and hospices for older individuals who pose no undue risk to public safety.
- Recommendation 16: that CSC significantly reallocate existing institutional resources to community corrections in order to better support the integration needs of aging offenders.

SLSC is able to support implementation of these four recommendations because a robust community corrections infrastructure is already in place. SLSC's membership is concerned for the aging and elderly population in correctional institutions, particularly in relation to the issues of isolation, physical vulnerability to assault, higher rates of completed suicide, difficulty integrating back into society due to modernization, and lack of adequate and timely healthcare, among others. Similar to those suffering from mental illness, the elderly have special age- and health-related needs that must be targeted on a case-to-case basis, taking into consideration the cognitive abilities of each individual. While many within the community corrections sector are striving to address these concerns, it is difficult to adequately meet all the needs of each individual without resources to meet the demand. This is reinforced by the OCI's report which notes that, "accessibility of residential spaces, appropriate care and timely referral to community services should be viewed as essential services, rather than best practices" (OCI & CHRC, 2019, p.71).

For over a decade, CSC has been aware of the challenges surrounding the aging and elderly population in correctional institutions. The implementation of an overall correctional strategy, specifically designed to meet the needs of elderly inmates and parolees in Canada is necessary. There is an abundance of information about this clientele and the increased challenges that both the aging/elderly and CSC will face if this the needs of this population are not met. Failing to address this issue places Canadian Corrections at risk of actively avoiding addressing bio-ethical concerns pertaining to aging people in prison. Evidence-based services and long-term strategies such as transferring individuals to community corrections as soon, based on level of risk not offence history to create safer communities for all Canadians.

Community Health: Access to Community-Based Supports: St. Leonard's agencies have long described the challenges associated with obtaining access to appropriate, community-based support for the people with whom they work. This is especially true for those with mental health problems and illnesses. The Mental Health Commission of Canada has promoted a core value of timely and equitable access to mental health care, yet much remains to be achieved in this area. For example, bridging the gap between the management of addictions and mental health as one issue, rather than two, must continue to be a focus for community-based services. Those who are the hardest to serve (i.e. the most seriously ill and difficult to reach), however, are often met with the greatest barriers to access which can place them at greater risk of being criminalized and returning to the sentencing process.

For those with physical health needs, access to community-based healthcare can be equally complex. While the majority of Canadians have access to the opportunities available to them through the use of health cards, access is limited for those served within community corrections by issues such as lack of identification, and/or a fixed address. Access to healthcare for all is reflected as a fundamental component of Canadian values and should be treated as such.

Support for Community-Based Agencies: For decades Canada enjoyed a positive profile for its approach to crime and corrections based on its emphasis on habilitation, community engagement, and sanctions that take place in the community. The damaging long-term effects of the “tough on crime” era has placed a significant amount of emphasis on correctional institutions and punishment. The focus on custodial-based resources is so drastic that only 8.2% of Correctional Service Canada staff work in the community (Public Works and Government Services Canada, 2018). Habilitation, community engagement, and community sanctions remain central to a positive and productive role for government. The relationship between government and the voluntary sector is bi-directional; there must be synergy between the two in order to achieve the best results for Canadians.

Employment Where Possible: Enhancing the employment capacity for those who have been involved with the criminal justice system addresses critical challenges such as the presence of a criminal record, obtaining employment post-release, building credibility and accountability within an employment setting, and obtaining a reference. There are many excellent examples of initiatives, such as the GreenBYTE social enterprise at the St. Leonard’s Society Hamilton, which seek to improve employment opportunities; however, adequate resources are required to sustain these programs and expand their availability more broadly.

Opportunities for employment have practical benefits for Canadian society, such as growing the labour supply and workforce capacity, improving economic activity by improving human capital, and focusing on long-term, sustainable community growth. These outcomes have the potential to reduce the cost of social assistance, as well as, benefit the stigmatized individual in a way that fosters meaningful work opportunities, credibility, employment skills, and references that can help develop positive social relationships and networks.

Meaningful Activities/Support: The prospect of employment is not a reality for certain sub-populations of those served by the community corrections sector. As people who have age-related and/or physical or mental health challenges that prevent them from seeking employment are released from custody, the community corrections sector is challenged to facilitate creative opportunities for these individuals to engage in meaningful activities without imposing what may be an impractical expectation of employment. For example, peer support groups, community volunteering, and the creation of positive pro-social environments that generate meaningful activities foster spaces for people to engage with their communities in a way that is tailored to their individual needs and abilities. By providing this type of opportunity, individuals are able to

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demonstrate their own strengths and contribute to their community in ways alternative to employment.

Trauma Counselling: Serving a custodial sentence of any length can prove damaging to an individual's mental, physical and spiritual well-being, especially for those who have experienced segregation. Services and support must be available for those in custody and in the community so that the trauma experienced while incarcerated can be addressed in order to improve personal wellness and increase chances of successful integration.



Appropriate Access to Parole: A growing issue within the criminal justice system is with the limited availability of community beds for those in custody granted parole of some kind, but are waitlisted inside the institutions for available community space. Those who have achieved day parole are not able to access beds in the community because those who are released at their statutory release are prioritized. A significant causation of this issue is the limited access to institutional parole officers and the benefits they can contribute. The proportion of sentences served before parole has decreased in the last year and continuous decrease is necessary for availability in community corrections (Public Works and Government Services Canada, 2018). Parole is a positive solution to many institutional issues, but communities should be resourced proportionally to ensure successful integration and positive public safety results.

HOUSING

Cost of Emergency Services versus Housing: Studies show that the cost of maintaining an individual in conflict with the law in the community is 73% less than the cost of maintaining him/her in custody (Public Works and Government Services Canada, 2018). Furthermore, the annual cost of maintaining a person in the community is \$31,052 versus \$116,364 in custody (Public Works and Government Services Canada, 2018). Providing emergency services to the homeless population is a short-term solution to a long-term issue, whereas housing and supporting this population would prove less expensive and more effective. Studies have shown that it costs taxpayers approximately 5 billion dollars a year to provide emergency services to the homeless population, many of whom return to the community from correctional institutions. It would cost significantly less to provide housing for this population and reduce their risk of becoming involved with the criminal justice system (Gaetz, Donaldson, Richter & Gulliver, 2013, p. 8).

Better Chance of Success: Statistics and literature show that access to safe housing is a major key for those in conflict with the law to successfully integrate—particularly for those with serious mental health and substance abuse-related issues (Gaetz, Donaldson, Richter & Gulliver, 2013). The concept is simple: if people feel safe, secure, and supported in their environment, then they can begin to engage positively with their communities and create or rejuvenate positive social relationships. A person’s involvement with the criminal justice system should not preclude or impede their ability to attain safe and secure housing. While significant efforts are made within the community corrections sector to provide safe and supported housing for people exiting prison, the reality is that many face ongoing difficulties to find and maintain housing after their release from Community-based Residential Facilities.

National Housing Strategy: SLSC is encouraged by the Government of Canada’s 10-year National Housing Strategy that aims to continuously decrease homelessness in Canada until it no longer exists. This strategy forces the federal government to maintain a national housing strategy and report back to Parliament on housing initiatives and results, a new federal housing advocate, a new national housing council, a new community-based tenant initiative, and a new public engagement campaign (A Place To Call Home, 2018, p. 9).



These requirements are vital to the success rate of the strategy and the successfulness of those in conflict with the law who do not have homes once released from custody. Since the strategy states that housing is prioritized by need, the individuals who are released from custody into the community should be able to access housing as soon as possible. Finally, it is critical for the National Housing Strategy to include and consider people who have experienced incarceration within the overall strategy.

WHY SHOULD YOU CARE?

Canada has a strong history of effective corrections rooted in values of humane and equitable, evidence-based practices. The risk of eroding these values in exchange for a less effective and more costly criminal justice system does not serve Canadians well. Incarceration costs the public in dollars and does not effectively serve Canadian values, or the goal of community safety. Investments in proven programs, community integration, and wellness within the criminal justice system will provide increased public safety. Such investments in no way take away from the importance of providing appropriate services for victims. Justice policies impact every Canadian, regardless of their political views and beliefs. Speaking up for public safety matters through a

Smart on Crime approach will demonstrate to Canadians that core values are being upheld while making communities safer. While it may be tempting for Canada's leadership to take a tough approach, Canadians are better served when leadership is *smart* on crime.

WHAT CAN YOU DO?

The criminal justice system too often uses its tools to undertake social problems rather than crimes. To reform this system, the government may wish to implement and enforce the oath of medical professionals of: "first, do no harm" to addressing those in conflict with the law. We ask you to be Smart on Crime. You can review the evidence and seek effective sentencing and support what we know to be effective in health care, community correction, and proper housing.

DESIRED OUTCOME

A humane policy for social and criminal justice that will result in a safer community with the ability for persons in conflict with the law to successfully integrate into society, further benefiting taxpayers and the community at large.

For further information, please feel free to contact SLSC at:

St. Leonard's Society of Canada (T): 613-233-5170
208-211 Bronson Avenue (E): info@stleonards.ca
Ottawa, ON. K1R 6H5 (Web): www.stleonards.ca

For links to research on topics such as supportive housing, and mental health please visit:
<http://www.stleonards.ca/publications/>

For links to policy submissions on topics such as sentencing issues, please visit:
<http://www.stleonards.ca/policy-briefs/>

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