PROPOSED REFORMS

Mary E. Campbell
Sentencing and Corrections Expert
(Former Director General, Corrections and Conditional Release, Public Safety Canada)

October 4, 2017

1. CURRENT SENTENCING AND CORRECTIONS SYSTEM:

- Since 2006, the system shifted from values-, principles-, and rights-based to an ideological grab-bag of repression and meanness. A return to an 1800s approach to justice, with modern twists.

- Canada shifted from being an international model of criminal justice to one swimming completely against the tide, and one that was pitied by other countries.

- Even more than the meanness, it shifted to tactics that have been demonstrated to be completely ineffective in reducing crime. Far from being “tough on crime”, the government was in fact soft on crime because it didn’t do any of the things that we know actually are effective. Research was completely ignored.

- Taxpayer money was wasted on pointless changes, even while we know of better options to invest in that will pay real public safety dividends.

- Most skilled public servants over the age of 50 left, leaving behind a demoralized and largely uninformed public service that simply followed orders in order to survive.

2. “BIG PICTURE” CHANGES TO DIFFERENTIATE THE EFFECTIVENESS OF THE NEW GOVERNMENT:

- The government will articulate a coherent vision and values for criminal justice and corrections – not engage in endless ad hoc reforms.

- The Charter will be respected, in legislative and policy reforms.
• Policies and laws will be evidence-based; research will once again play a role.

• The government will not use Private Members Bills to routinely avoid the scrutiny that is required for government bills, nor will it use Omnibus Bills to force “all or nothing” reforms. Nor will it give Bills “names”, an American practice embraced by the outgoing Canadian government.

• The costing that is done for each bill will be made public.

• Offenders will not be demonized as evil creatures who can never be rehabilitated.

3. PRIORITIES:

A. Immediate term:
• Establish a small group of experts to draft a green paper (consultation document) to develop a coherent vision for modern sentencing and corrections. (Examples: “Criminal Law in Canadian Society (CLICS)”, which sparked massive reform of the criminal justice system in 1982; “Directions for Reform”, 1990 consultation paper leading to the CCRA 1992 and sentencing reforms 1996.)
• Review the tenure of the heads of CSC and PBC. New directions will require new leadership.

Legislative reforms:
• Enact either Joe Comartin’s or Irwin Cotler’s previous bills to add one section to the Criminal Code that allows judges to sentence below Mandatory Minimum Penalties, including mandatory consecutive sentences, and the mandatory Victim Fine Surcharge. Or some formulation of their bills. (Note this is what the UK did when they enacted more MMPs.)
• Reintroduce conditional sentences in some form (and with a new name). Example: Deferred Custody sentences in the YCJA.
• Amend the purposes and principles of corrections (Parts I and II CCRA) so that they again reflect the Charter and years of case law.
• Review all CSC policies (Commissioner’s Directives) and PBC policies (Policy Manual) to move substantive matters into the CCRA.
• Repeal all elements of former C-479 (delayed parole and detention reviews) and former C-483 (temporary absences).
• Repeal CC provision that allows for consecutive parole ineligibility periods.
• Consider a streamlined model for effective release of low-risk offenders (do not just re-create APR).
• Eliminate “standard conditions” of parole, unchanged since 1960, and require the Parole Board to impose only conditions tailored to each individual. Conditions to be reviewed at set intervals, and amended as necessary. Consider new American innovations that recognize and reinforce good behaviour on parole.
• Eliminate option of return to penitentiary where a breach is purely for breach of condition.
• Return to in-person decision-making rather than “paper reviews”, as the courts have mandated.
• Require review of release conditions at specified intervals.
• Separate the PBC “Appeal Division” from the management team, to ensure true independence.

Policy and operations reforms:

Treatment/training/employment:
• Re-create the prison farms -- not just as they were but rather where they need to be for the future.
• Conduct and use an annual labour market analysis to guide vocational training, and maximize partnerships with community partners (eg. provide training in Red Seal trades and link with community colleges and employers for seamless transition; make maximum use of volunteer opportunities with partners, eg. fire-fighting, flood control, etc.)
• Use evidence-based Risk-Need-Responsivity principles in the design and delivery of treatment programs (eg. do not waste resources on giving programs to low-risk offenders). Provide education and vocational training appropriate to needs and abilities.
• In particular, no expansion of Electronic Monitoring unless/until demonstrated to be of value.
• Conduct research on peer support models and (re)introduce as appropriate (such as previous LifeLine).
• Make optimal use of Work Releases and Temporary Absences to support vocational and rehabilitative goals.
• Develop an “older inmate” strategy (age 60+) as well as a “younger inmate” strategy (18-23).

Victims/public:
• Re-double efforts to provide victims with services they need, rather than empty promises. For example, psychiatric community recognizes “Complex Grief Syndrome”, which requires specialized treatment.
• Engage the public in an informed way, not based on lies and fears. Minister to engage in community forums, in-person or online.
• Provide core funding to NGO partners that reflects current fiscal realities; review the list of recipients.

Construction/infrastructure:
• Require an accounting of all new penitentiary construction in the past 10 years and its current status. Publish monthly numbers for each region on rated and actual capacity.
• Stop putting 2 adults in a cell built for 1, except in emergency situations.
• Provide some “quality of life” reforms that will assist in maintaining non-violent institutions and working conditions – such as inmate email (used in all federal prisons in the U.S.); increased inmate wages.

(Mental) health:
• Re-vamp solitary confinement in compliance with recent findings and recommendations.
• Strengthen intermediate mental health care, not at the expense of other health care.
• Provide mental health services for women that meet community standards. Adopt a true gender-informed approach to corrections, and give the Deputy Commissioner for Women actual authority.
• Repeal blanket policy requirement for all lifers to have both a psychological and psychiatric assessment, in the absence of any individual need for the latter.
• Work with partners to develop options for people who need life-long supports, whether due to FASD, mental health, etc. in order to keep them out of the correctional system.

Compliance with domestic and international law:
• Massively improve institutional and community staff training on the law.
• Follow the obligation in the CCRA to consult with offenders about policy changes.
• Endorse and be a leader in implementing the “Nelson Mandela Rules” – revised UN Standard Minimum Rules for Prisoners adopted by the UN General Assembly in 2015.
• Return all Canadians incarcerated abroad back to Canada upon request, recognizing that that is the most effective public safety tool to manage them. And foreign partners (esp. US) will be ecstatic that we are once again carrying our weight in this international partnership.
• Conduct an external review of all CSC policies to ensure compliance with the law.
• Repeal the blanket policy requirement for all lifers to spend the first 2 years in maximum security.

Aboriginal offenders:
• Create the position of Deputy Commissioner for Aboriginal Offenders.
• Make ss. 82 & 84 real priorities, or consider new options.

Misc. management
• CSC to provide PBC with assessment of cases, but not to make a recommendation re release – similar to probation officers’ function with PSRs, which provide facts but not a recommendation the sentencing judge.
• All CSC staff (other than purely clerical), up to and including Commissioner to have university degrees. Intensive and regular staff training in correctional and administrative law.
• Return CSC’s Ghaddafi-like senior management uniforms to Libya (including their swords), and stop wasting money on such inanities.
• Inculcate an attitude of valuing reintegration among Board members – likely means replacing most members.
• All Board members and staff (other than purely clerical) to have university degrees, up to and including the Chairperson.
• Improve initial and ongoing Board member training, especially in the law and in risk assessment. Publish all Appeal Division decisions. See current VRAB as a model. Share decisions among members, who currently are discouraged from reading each others’ decisions.
• Achieve a more equitable balance between male and female Board members. Aboriginal and minority representation to be at least concordant with community representation.
• Focus on the test for release: risk. Not remorse. Most inmates will be coming home, how do we make the return the most successful. Not “how do we use parole to punish people more”.
• Streamline the system in relation to low-risk offenders, money is being wasted on keeping them behind bars and accountability can usually be better achieved through community service. Focus resources on the highest-risk offenders.
• Stop sending everyone on Day Parole to a halfway house if they have an appropriate home.
• Increase the size of the PBC Legal Services unit and encourage Members to proactively consult with them.
• Switch to modern technology! Use email to work and communicate. Release decisions in electronic format! Please! I beg you.

B. Medium term:

Sentencing:
• Remand over-population and CC credit – DOJ Research to do a serious study of why remand numbers are still so high, in collaboration with a few provinces and NGOs. Then FPT Ministers to propose some options for meaningful, evidence-based reform – not just messing around with the credit issue.
• Amend the Warrant of Committal so that sentencing judges are required to be more explicit in how they have applied sentencing principles.
• Reintroduce 15 year reviews for homicide life sentences.

Release:
• Review new conditional release models as per expert study noted at outset – is DP/FP/SR still the best scheme?
• Expand “parole by exception” to include lifers.
• Return “parole reduced” status to what it was, i.e. reporting once a year.
• Create presumptive termination of parole/SR after 10 years of supervision.
• Use RPM remission of sentence in the interim for low-risk lifers.

Criminal Records Act Pardons:
• Dismantle the expensive and unproductive changes made by the previous government. Do not require a Board member vote on every single application. Reduce the waiting periods for eligibility. Return eligibility to all offences/offenders. Reduce the $631 fee to something more realistic for most people – that fee is only making a pardon unaffordable and hurting the reintegration of a lot of people.
• Get electronic, for the love of god.

International Transfer of Offenders Act:
• Return to decision-making that complies with the spirit and letter of the law, i.e. bring Canadians back to Canada.

MEC
October 2017