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Acceptance Speech for Lifetime Achievement Award from Canadian Prison Lawyers Association

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Business Law

A Survey and Critique of the “Seller in Possession”
Statutory Regimes of Common Law Canada: An
ABC Prequel

Clayton Bangsund

Disrupting Business as Usual: Considering Teaching
Methods in Business Law Classrooms

Jeffery Hewitt and Shanthi E. Sente

Manufacturing Consent to Climate Inaction: A Case Study
of *The Globe and Mail’s* Pipeline Coverage

Jason MacLean

Third-Party Liability of Directors and Officers: Reconciling
Corporate Personality and Personal Responsibility in Tort

Michael Marin

Reorganizations, Sales, and the Changing Face of
Restructuring in Canada: Quantitative Outcomes of
2012 and 2013 CCAA Proceedings

Alfonso Nocilla

Evaluating Canadian Tax Remission Orders: A Debt
Relief Vehicle for Taxpayers

Samuel Singer

Corporate Risk and Climate Impacts to Critical Energy
Infrastructure in Canada

Rudiger Tscherning

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from Canadian Prison Lawyers Association

Michael Jackson, QC

Judicial Treatment of Aboriginal Peoples’ Oral History
Evidence: More Room for Reconciliation
[Winner of 2019 Tory Legal Writing Prize]

Jimmy Peterson



Michael Jackson, QC*

Acceptance Speech for Lifetime
Achievement Award from Canadian
Prison Lawyers Association

I am deeply honoured by this award, particularly from an organization that shares my commitment to respect for human rights and in the presence of people who have contributed so much to the vindication of those rights in the darkest places in our country's prisons.

My first and foremost vocation has been as a law professor, teaching and writing in the fields of correctional law and Indigenous rights. My work in these areas has taken me on long historical journeys, in the case of imprisonment back to the 18th century and the birth of the penitentiary as the foundation of the carceral archipelago. In the case of Indigenous relationships back to legal debates in Spain in the 16th century on the legalities of colonization. And to the great speeches of Haudenosaunee statesmen in the 18th century Covenant Chain treaty making with British colonial governments where they insisted that justice, peaceful relationships and reconciliation must be predicated upon a recognition of inherent Indigenous rights to their land, their laws, diplomatic protocols and systems of governance. As I reflect on the humbling concept of lifetime achievement it is the struggle for justice that looms large.

As a legal academic and in my research and writings I have turned my mind to the theme of change and continuity in the history of Canadian imprisonment and correctional law. This evening I want to share with you some thoughts, focusing on the last quarter of the 20th century and the first of this century. I am not the first to address this. Michel Foucault, Michael Ignatieff, David Rothman, Stanley Cohen and David Garland have written eloquently in this field drawing on the historical experiences in Europe, the United States and the UK.¹ While sharing many common elements, Canada has its own story.²

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1. See Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon, 1977); David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little Brown, 1971) and *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (Boston: Little Brown, 1980); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1705–1850* (New York: Pantheon, 1978); David Garland, *Punishment and Modern Society: A Study in Societal Theory* (Chicago: University of Chicago Press, 1990); Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification* (Cambridge, MA: Polity Press, 1985).

2. Michael Jackson, *Prisoners of Isolation: Solitary Confinement in Canada* (Toronto: University of Toronto Press, 1983). *Prisoners of Isolation* has been re-published on the internet at <<http://www.justicebehindthewalls.net/book.asp?cis=760>>.

When I began my work in prisons 45 years ago, justice and respect for human rights were distinguished by their absence. At the end of my first study of the federal prison disciplinary process in 1972, I concluded that the Canadian penitentiary was an outlaw of the criminal justice system.³

My first foray into litigating prisoners' rights in 1974 involved the conditions of confinement in the solitary confinement unit of the BC Penitentiary, conditions placed before the Federal Court of Canada in the case of *McCann v The Queen*.⁴

The cells measured 11 feet by 6½ feet and consisted of three solid concrete walls and a solid steel door with a 5-inch-square window which could only be opened from outside the cell. Inside the cell, there was no proper bed. The prisoners slept on a cement slab four inches off the floor; the slab was covered by a sheet of plywood upon which was laid a four-inch-thick foam pad. About 2 feet from the end of the sleeping platform against the back wall was a combination toilet and wash-basin. An institutional rule required that the prisoner sleep with his head away from the door and next to the toilet bowl to facilitate inspection of the prisoners by the guards. Failure to comply with this rule would result in guards throwing water on the bedding or kicking the cell door. There were no other furnishings in the cell. One of the expert witnesses described the physical space as "one step above a strip cell... a concrete vault in which people are buried."

The cell was illuminated by a light that burned 24 hours a day. The 100-watt bulb was dimmed to 25 watts at night. The light was too bright to permit comfortable sleep and too dim to provide adequate illumination . . . Prisoners only had cold water in their cells. Twice a week they were given a cup of what was supposed to be hot water for shaving but which, they testified, was usually lukewarm. They were not permitted to have their own razors, and one razor was shared among all the prisoners on the tier...

The prisoners were confined in their concrete vaults for 23½ hours a day. They were allowed out of their cells briefly to pick up their meals from the tray at the entrance to the tier and for exercise. That exercise was limited to walking up and down the 75-foot corridor in front of their cells. Exercise was taken under the continuous supervision of an armed guard who patrolled on the elevated catwalk. For the rest of the day prisoners were locked up in their cells.⁵

Between 1970 and 1974, the seven plaintiffs in the *McCann* case had spent a total of eleven and a half years in solitary confinement. Jack

3. Michael Jackson, "Justice Behind the Walls: A Study of the Disciplinary Process in a Canadian Penitentiary" (1974) 12 Osgoode Hall LJ 1.

4. *McCann v The Queen*, [1976] 1 FC 570, 1975 Can-LII 1104.

5. *Prisoners of Isolation*, supra note 3 at 48-49, online: <<http://www.justicebehindthewalls.net/book.asp?cid=772>>.

McCann had spent 1,471 days in solitary; the longest continuous periods of that total were 754 and 342 days. Donald Oag was in solitary for 682 days, including one period of 573 days; Andy Bruce had been locked up for 793 days, including one period of 338 and another of 258 days.⁶

Ironically the segregation unit was referred to as the “Penthouse,” based upon its location at the very top of the BC Penitentiary. Unlike any other penthouse, however, prisoners never saw the panorama of the Fraser River nor the royal city of New Westminster from their solitary cells.

By contrast in terms of location, but no different in terms of its brutal and brutalizing conditions, at Oakalla, the biggest provincial jail and the site of the last execution in British Columbia, the segregation cells in the 1970s were underground in a building referred to as the “cow barns,” dating from its use when the institution ran a prison farm. Prisoners were locked in cells that had a double door with the outer door being of solid wood, excluding all natural light. Prisoners had no toilet access beyond a bucket.

In my early writing, I suggested that the arbitrariness of prison discipline was a reflection of the scant attention the legal system paid to the rights of prisoners and of the courts’ attitude that the decisions of prison administrators were not reviewable. In *Prisoners of Isolation*, I wrote that the effect of this hands-off approach was “to immunize the prison from public scrutiny through the judicial process and to place prison officials in a position of virtual invulnerability and absolute power over the persons committed to their institutions.”⁷ It is a telling commentary on the state of prisoners’ rights in Canada that in my first study on prison discipline, conducted in 1972 at Matsqui Institution, I could cite only a single case in which a Canadian court had ruled that prison disciplinary proceedings, under certain restrictive conditions, could be subject to judicial review.

My indictment was endorsed by the 1977 Parliamentary Sub Committee on the penitentiary system which reported following the 1976 riots in three maximum-security institutions. The intensity of prisoners’ anger underlying the riot in the BC Penitentiary was reflected in the complete destruction of the interior walls of the cells in the main dome.

In its own indictment of Canada’s penitentiary system, the Subcommittee stated:

[This] fundamental absence of purpose or direction creates a corrosive ambivalence that subverts from the outset the efforts, policies, plans and operations of the administrators of the Canadian Penitentiary Service,

6. *Ibid* at 45-46, online: <<http://www.justicebehindthewalls.net/book.asp?cid=770&pid=841>>.

7. *Ibid* at 82, online: <<http://www.justicebehindthewalls.net/book.asp?cid=777>>.

saps the confidence and seriously impairs the morale and sense of professional purpose of the correctional, classificational and program officers, and ensures, from the inmate's perspective *that imprisonment in Canada, where it is not simply inhumane, is the most individually destructive, psychologically crippling and socially alienating experience that could conceivably exist within the borders of the country.*⁸

A visceral image from those dark days that has stayed with me the last 45 years illustrates the corrosive atmosphere in the BC Penitentiary and the adversarial relationship between the prisoners and the guards. After the riot most of the prisoners were moved to a makeshift tent city at Matsqui Institution, but by the end of the year there were still a few prisoners left in the BC Penitentiary. Jack McCann, one of the plaintiffs in the successful Federal Court challenge to the conditions in solitary confinement, was one of those prisoners. On Christmas Eve in 1976, I visited Jack McCann and spoke to him through the bars of his cell. The glass in the Dome's tiers of shattered windows had not yet been replaced and hanging light bulbs provided the only dim illumination. It was bitterly cold and the damp from the Fraser River hung heavily inside the Pen. I would be returning home that night to wrap presents for my three-year-old son, Shane and my three-month old daughter, Melissa. Jack McCann informed me that just prior to my visit a prison guard had placed some razor blades on the ledge of one of the cell doors. As he left the range he shouted to the prisoners, "have a merry Christmas and a slashing New Year." I found out later that a number of prisoners had in fact slashed themselves that evening. The Parliamentary Subcommittee felt this allegation to be credible enough to include it in its report to Parliament.

A great deal has changed since 1977 and the Subcommittee's indictment:

- The Supreme Court of Canada has brought the prison within the scope of judicial review, first in the 1979 Martineau litigation⁹ initiated by John Conroy; reinforced with an expansive view of *habeas corpus* in the 1985 trilogy of *Miller*; *Morin and Oswald* and *Cardinal*¹⁰ argued

8. House of Commons Sub-Committee on the Penitentiary System in Canada, *Report to Parliament* [Ottawa: Minister of Supply and Services, 1977] [Chairman: Mark MacGuigan] at 156, online: <<http://johnhoward.ca/wp-content/uploads/2016/12/1977-HV-9507-C33-1977-MacGuigan.pdf>>.

9. *Martineau v Matsqui Institution Disciplinary Board* [1980] 1 SCR 602, 1979 Can-LII 184.

10. *R v Miller* [1985] 2 SCR 613, 1985 Can-LII 22; *Morin v National Special Handling Unit Review Committee* [1985] 2 SCR 662, 1985 Can-LII 24; *Cardinal v Director of Kent Institution* [1985] 2 SCR 643, 1985 Can-LII 23.

by Chip O'Connor, Rene Millette and John Conroy, and more recently reinvigorated by the Court in *May*¹¹ and *Khela*.¹²

- The *Canadian Charter of Rights and Freedoms* (the “*Charter*”) has entrenched in the Constitution fundamental human rights that apply to prisoners. Most significantly, in *Sauve* the Supreme Court struck down the prohibition on prisoners’ voting rights. Chief Justice McLachlin rejected the proposition that prisoners are less deserving of *Charter* protection. “*Charter* rights are not a matter of privilege or merit, but a function of membership in the Canadian polity that cannot lightly be cast aside.”¹³
- Parliament passed a new *Corrections and Conditional Release Act* (*CCRA*), drafted to reflect the rights guaranteed by the *Charter*.¹⁴
- Paralleling these developments, the Correctional Service of Canada (CSC) has developed a mission statement that incorporates respect for human rights and dignity. Volumes of correctional policy and case management manuals have been developed to guide prison officials and correctional officers in implementing both the new law and mission statement.
- There is a dedicated, albeit small, cadre of lawyers and advocates whose presence in the prison and the courts is no longer an exceptional event.
- Changes in the legal architecture of imprisonment have been accompanied by a massive investment in new correctional institutions, at both the federal and provincial level, which while they may lack the austere and physical presence of the stone and granite walls of old penitentiaries and jails, compensate with an interior that in its

11. *May v Ferndale Institution*, 2005 SCC 82.

12. *Mission Institution v Khela*, 2014 SCC 24.

13. *Sauve v Canada (Electoral Officer)*, 2002 SCC 68 at para 14.

14. Mary Campbell, has suggested that the enactment of the *CCRA* “marked the pinnacle of reform in the modern era.” See Mary E. Campbell, “Revolution and Counter-Revolution in Canadian Prisoners’ Rights” (1996) 2 *Can Crim L Rev* 285 at 320. She highlights the statutory recognition of three principles of corrections which are of particular relevance to the protection of prisoner rights: that “the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders”; that “offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence”; and that “correctional decisions be made in a forthright and fair manner, with access by the offender to an effective grievance procedure.” In Mary Campbell’s assessment, “these statements reflect a truly fundamental, indeed revolutionary turning point in statutory protection of inmates’ rights. Just these restatements on their own sent a clear and unequivocal message to all players in the system, whether legislators, judges or correctional authorities” (at 321). See also Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons* (Toronto: Douglas & McIntyre, 2002), online: <<http://justicebehindthewalls.net/book.asp?cid=9>>.

electronic surveillance capacity more than ever reflects Bentham's Panopticon.

On the cusp of the Millennium, in September 1999, I was involved in a debate about the nature of these changes in the legal, administrative and architectural framework of imprisonment at a conference in Saskatoon organized by the Canadian Institute for the Administration of Justice. The conference theme was "Changing Punishment at the Turn of the Century: Finding a Common Ground". The then Commissioner of Corrections, Ole Ingstrup, and I were part of a panel entitled "The Ongoing Struggle for Justice." The Commissioner, in reflecting on the changes within the CSC, began with the quotation from the 1977 report of the House of Commons Sub-Committee on the Penitentiary System in Canada. The Commissioner made the case that corrections in Canada had come a long way since 1977, and that nobody today could use those words to describe imprisonment in a federal institution. In place of a corrosive "absence of purpose," there was now the mission statement—which he had animated—and the statement of purpose and principles set out in the *CCRA*. He pointed to minimum security healing lodges for Aboriginal women and men; a correctional strategy based on the earliest reintegration of the prisoner back into the community; a research-based spectrum of correctional programs designed to address prisoners' needs and risks; and an array of oversight mechanisms that included the Auditor General of Canada and the Office of the Correctional Investigator, in addition to the service's internal grievance mechanisms and audit procedures. The Commissioner ventured to suggest to an audience including representatives from both the judiciary and law enforcement that federal corrections had changed more than any other part of the criminal justice system.

As I listened to Commissioner Ingstrup, I thought about the history of the penitentiary and the different ways that history can be read. The Commissioner had told what the English criminologist Stanley Cohen would have called "a good story," the latest chapter in the progression from barbarism to civilization, from arbitrary and inhumane imprisonment to principled corrections. When it was my turn to speak, I acknowledged that much in the Commissioner's story deserved recognition. I suggested, however, that his story, while an important tributary of change, had to work hard against the main flow of penitentiary history. That history, as characterized by David Rothman, had demonstrated that "conscience"—whether manifest in the professed desire to rehabilitate prisoners or the professed commitment to protect their human rights—seemed time and again to be trumped by "convenience," in which the exigencies of prison

administration and the appeal to security prevailed over the practice of justice.

Undercutting the Commissioner's "good story" of progressive reform is a consistent theme that runs the historical course of 180 years between the early days of the Canadian penitentiary and the first part of the 21st century. It is that the experience of imprisonment, intended to inculcate respect for the law by punishing those who breach its commands, actually creates disrespect for the very legal order in whose name it is invoked. The institution of imprisonment is itself criminogenic. Some more images, drawn from history both distant and recent, help make this point:

In 1835 Canada's first penitentiary received its first six prisoners. A sepia-toned photograph of the North Gate of Kingston Penitentiary shows a row of white Doric columns created from local limestone, announcing, to those who entered within, a new era in the treatment of prisoners, with reformation and moral recalibration fashioned along the Enlightenment ideals embraced by prison reformers on both sides of the Atlantic and reflected in the reform blueprints of John Howard. As legislative accompaniment to the new institution, Canada enacted its first Penitentiary Act. Borrowing from the preamble of the English Penitentiary Act of 1779, it set out the intentions behind Kingston: "If many offenders convicted of crimes were ordered to solitary imprisonment, accompanied by well-regulated labour and religious instruction, it might be the means under providence, not only of deterring others from the commission of like crimes, but also of reforming the individuals, and inuring them to habits of industry" (An Act to Provide for the Maintenance by the Government of the Provincial Penitentiary, [1834], 4 Will. IV, c. 37).

Yet in contrast to the promise of this preamble, the first decade at Kingston Penitentiary saw the establishment of a regime of cruel and escalating punishments which, while less public than the spectacle of the gallows, were unimagined by those who drafted the Penitentiary Act. The litany of abuses practised by Kingston's first warden are documented in the report of the Brown Commission, which was set up to investigate the penitentiary in 1848. In *Prisoners of Isolation*, my study of solitary confinement in Canada, I summarized the findings of that commission.

For the first seven years of the penitentiary's operation the warden had relied exclusively upon flogging as the sole punishment for offences of all types. The Commissioners reported that many of these floggings were inflicted on children: during his first committal in Kingston, an eleven-year-old whose offences were talking, laughing, and idling was flogged, over a three-year period, thirty-eight times with the rawhide and six times with the cats; another boy whose "offences were of the most trifling description—such as were to be expected from a child of 10 or 11...was stripped of the shirt and publicly lashed thirty-seven times in eight and a half months." The Commission referred to these and similar

cases as examples of “barbarity, disgraceful to humanity.”¹⁵

Another theme that history and the research literature of the penitentiary reveals in this country and in others, is that the law and policy carefully crafted by judges, legislators and senior administrators is not necessarily translated into the daily practice of imprisonment. There is often a vast distance between the rhetoric and the reality. This distance was clearly revealed a century and a half after Warden Smith’s reign of terror, across the road from Kingston Penitentiary at the Prison for Women (opened in 1934) when there was another series of events that drew the condemnation of another royal commission:

Some of these events were captured on a dramatic Correctional Service of Canada videotape which, for the first time, in 1995 allowed the Canadian public to see deep inside the prison cells. The videotape and the 1996 report of the Arbour Commission documented how a small group of women, who were locked in their cells, had been descended upon by a male emergency response team from Kingston Penitentiary. The women, facing a phalanx of men outfitted in Darth Vader suits with full face visors, security shields and batons, were forced to disrobe, and in some cases had their clothes literally cut off with razor tools. Justice Arbour commented that “upon viewing images taken from the videotape... members of the public have expressed reactions ranging from shock and disbelief, to horror and sorrow.”¹⁶ She concluded that «the process was intended to terrorize, and therefore subdue.»¹⁷ Terror in the name of the law, but in violation of the law, had also been the charge of the Brown Commission.

Justice Arbour saw the events at the Prison for Women not simply as examples of individual deviations from law and policy, which was the official view of the Commissioner of Corrections but as systemic failures demonstrating the absence of a culture that respected the rule of law or individual rights: “The Rule of Law is absent although rules are everywhere.”¹⁸

In 2007, 13 years after the Arbour Report, in one of the new women’s institutions opened to replace the old Prison for Women, under a supposedly new regime of women-centric corrections, Ashley Smith, a 19-year-old girl, died in a bare segregation cell. Many of you have seen the horrifying video of her last moments as correctional staff, acting under

15. *Ibid* at 19-20, online: <<http://www.justicebehindthewalls.net/book.asp?cid=7&pid=273>>.

16. *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, Louise Arbour (Canada) [Ottawa: Public Works and Government Services Canada, 1996] [Commissioner: Louise Arbour] at 86, online: <<http://justicebehindthewalls.net/book.asp?cid=142>> [“Arbour Report”].

17. *Ibid* at 88.

18. *Ibid* at 181.

superior orders, stood by, watching. For those who would argue that the inhumane and deplorable conditions endured by segregated prisoners in the BC Penitentiary in the 1970s and in the Prison for Women in the 1990s can safely be consigned to the lessons of history, the Correctional Investigator's findings and verdict of homicide by the jury at the Coroner's Inquest stand as an indictment of the failure of the CSC to take those lessons seriously.¹⁹

Ori Kowarsky, one of the students in my Penal Policy seminar in 1998, concluded that "the story of the penitentiary in the 20th century may be the story of a system straining *against* the law in order to remain true to its nature....[T]he ideology of the penitentiary is like DNA, it is encoded in every brick, in every bar and every report."²⁰ One of the things I love about teaching is that you get to work with really smart students. 'Professing' is continually a learning experience.

In the first decade of the 21st century we have seen how easy it is for punitive ideology to become transparent and how quickly the already difficult task of inculcating a culture of respect for human rights can be eroded.

Prior to the 2006 federal election, the Conservative party, at the urging of police, victim and prison guard associations, made promises to examine the operation of the CSC. Much of the pressure came through the "club fed" campaign that presented to the public the distorted notion that life for those in our federal prison system was equivalent to a holiday resort.

After its election in 2006, the Harper government made no effort to hide their intention to make the operation of our justice system much tougher. The Prime Minister also articulated his disdain of academics and others who use "statistics" and lawmakers who recognize that prisoners do not forfeit their human rights.

Beginning in 2007, as a matter of operational reality at national headquarters, in wardens offices and on the correctional line, the *CCRA* was no longer the measure of good corrections. It was displaced by the "2007 Roadmap to Strengthening Public Safety," a report prepared by a panel of experts chaired by a former Minister of Corrections in the Harris

19. Howard Sapers, Correctional Investigator of Canada, "A Preventable Death" (2008), online: <<http://oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20080620-eng.pdf>>.

20. Ori Kowarsky, "Penitent and Penitentiary: The Problem of Situating Zones of Outlawry and Punishment" [University of British Columbia, Faculty of Law, 1998] [unpublished on file with the author] at 8)

Conservative Ontario government and hastily put together without full consultation.²¹

In stark contrast to the *CCRA* process where the fullest consultation took place, the time constraints under which the Panel operated severely limited the ability of non-governmental organizations, offenders, and other citizens (including academics) interested in the future of corrections to fully participate and contribute to the Panel's work. Unlike previous major reviews into the correctional system, no consultation documentation containing questions or proposals was prepared that would guide those interested in making a submission. Hearings were quickly arranged, and those wishing to make written submissions were given short lead times and limits of 20 pages within which to make them.

Instead of broad and deep consultation on the Panel's recommendations, almost immediately the Minister and the CSC indicated that they had adopted a new "Transformation" agenda based on the Panel recommendations. Within months the Government announced that \$122 million dollars had been allocated to fast track the changes. The total investment over five years amounted to \$478.8 million dollars. Since then many more millions have driven the transformation.²²

But the greatest contrast between the underlying framework for corrections that informed the *CCRA* process and that of the Roadmap/Transformation is that in the Roadmap's latest rendition of public policy there is no reference to human rights. In an almost 200-page report there was no reference to the *Charter* or to the common law and *Charter* jurisprudence of the Supreme Court of Canada, which together give Canadian legal content to the international human rights standards set out in the Universal Declaration of Human Rights and other international covenants to which Canada is a signatory. The Roadmap's only references to legal rights are presented in the context of diminishing them.

While the Roadmap purports to chart a transformative pathway for Canadian corrections, it fails to acknowledge or give due consideration to the relevant historical context in which many of its recommendations must be situated. Remarkably, of the 180 years of available "historical

21. Correctional Service Canada Review Panel, Report of the Correctional Service of Canada Review Panel: A Roadmap to Strengthening Public Safety (Minister of Public Works and Government Services Canada, 2007), online: <<https://www.publicsafety.gc.ca/cnt/cntrng-crm/csc-ccc-rvw-pnl/report-rapport/cscrprprt-eng.pdf>> ["Roadmap"].

22. A critical account of the composition of the expert panel, the limitations of its terms of reference and consultation process, together with a detailed analysis of the shortcomings of its report, is contained in Michael Jackson and Graham Stewart, *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety* (2009), online: <<http://justicebehindthewalls.net/news.asp?nid=78>>.

perspective” since the opening of the Kingston penitentiary in 1835, the Panel’s analysis provides just two short paragraphs. The history is limited to post 1992. Even in their short two-paragraph historical review, the Panel patently misconceives the historical context of the *CCRA*. They seem to believe that the legislative purpose of the *CCRA* was to serve the needs of the CSC. The report treats the *CCRA* as if it were simply a piece of legislation designed to facilitate a narrow set of correctional goals that are subject to amendment depending upon changes in the prison population and operational requirements. However, one of the primary purposes of the *CCRA* was to bring correctional legislation into conformity with the *Charter* and to ensure that Canadian correctional authority was exercised within a *Charter* culture of respect for rights rather than according to the dictates of administrative convenience.

In light of the unfinished business of entrenching a culture of respect for human rights within Canadian penitentiaries and the wavering commitment within CSC to such an agenda, any report on the future of corrections must include a clarion call to reinvigorate that commitment and identify measures and initiatives to implement it. No such call was to be found in the Panel’s report. Instead of a clarion call for greater vigilance in protecting human rights, the Panel’s report offered an open invitation to CSC to dismantle the existing legal and administrative framework.

In 2012, I was asked to speak at a conference on the 20th anniversary of the *CCRA*. Looking back to 1992, I would never have imagined we would be facing legislative and administrative initiatives that undermined the essential elements of the process that led to this landmark legislation and assailed many of its most important principles. *I could not have imagined that within the space of twenty years a Canadian Government would demonstrate a contemptuous disregard for a generation of reform, discount the relevance of evidence-based corrections, and dismiss the promotion of a legal and correctional culture that respects the human rights of offenders as “out of fashion” with the times and the demands of a punishment driven ideology.* In the almost decade of Harper corrections the correctional screws were tightened, the conditions of confinement hardened.

During the Harper years, the restrictions on prison movement inside medium security institutions resembled the old maximums and some of the ranges of the maximums became attenuated special handling units. Use of force was normalized. The increased use of ion scan technology and drug dogs at the front gate, without any effective constraint on administrative discretion, has made visiting a terrifying prospect for families of prisoners who fear the consequences of false positives.

The regression and intensifying of the pains of imprisonment that took place during this decade cannot be seen as a historical anomaly, nor one whose effects ended with the election in 2015 of the Liberal government. Although new mandate letters were given by Prime Minister Trudeau to both the Minister of Justice and the Minister of Public Safety, until very recently the same senior officials that had implemented the Roadmap and the Transformation Agenda remained at the helm of corrections and parole. Those of us who anticipated a return to principled and evidence-based corrections and a clear focus on respect for human rights have been sorely disappointed and dismayed at the inability or unwillingness to reverse the regression to the mean.

A prisoner with a long history in the Canadian penitentiary sent a letter in 2017 to all members of Parliament. In it, he documented, as only a prisoner can, the continuing fallout from the decade of punitive driven corrections.

It is difficult to capture all of the tangible changes that have affected offenders following a decade of Conservative governance. Certainly there has been a fundamental shift in the attitude of correctional staff and administrators, as offenders are commoditized and treated more as “defective products” than human beings who have made bad choices. Resolving conflict through discussion and negotiation has been abandoned for an authoritarian power dynamic that serves personal egos at the cost of effective rehabilitation. It only takes a few hard-liners to set the tone of the work environment, and without effective management, the tone has become very hard indeed. The animosity and hostility prevalent among correctional staff has affected offenders as well, and the law of reciprocity has resulted in a feedback loop that is destructive of the rehabilitative process.

Where it was once recognized that institutionalization was a threat to successful rehabilitation and reintegration, correctional policies now promote institutionalization, and normalization has been abandoned as “soft.” The changes are many and none are positive. In an environment with few privileges, any additional restriction is keenly felt, and these restrictions are piled on daily. Just a few noteworthy examples follow:

- Recreational spaces for offenders within which to pursue social activities have been sterilized of all comforts in order to “enhance security.”
- The reintroduction of mandatory dress codes, requiring offenders to wear prison issue clothing, has reinforced the roles of convict and keeper. Forcing prisoners to dress in a “prison uniform” creates an unhealthy power dynamic that foments hostility between staff and offenders, and undermines the CSC mandate to facilitate and encourage reintegration.

- Not only has cell configuration been standardized to facilitate ease of searching, but the imposition of institutional colours and a prohibition on decorations in or personalization of one's cell ignores the need for prisoners to have livable spaces. These actions stifle expression of individuality and further serve to dehumanize offenders while creating a polar dynamic where both officers and offenders are contrasted in uniforms and uniformity.
- Recently, the CSC introduced a new national purchasing system that requires all offenders to purchase all personal items from a central nationalized supplier. This has eliminated purchases from local suppliers and has adversely affected local community businesses. The uniformity of selection of even personal T-shirts, shoes, and underwear further dehumanize prisoners and send them the message that they are "products," not people.
- Unable to accept that incarceration itself is punishment, the Conservatives reduced offender pay to pre-1980 levels and turned the correctional progress clock back more than thirty years by reducing offender pay by more than 30 per cent. Most offenders today earn less than three dollars per day. The highest pay level that is attainable is \$6.90 per day, of which 30 per cent is remitted to pay for "room and board" and "telephone administration." Each pay period, another six to nine dollars is deducted for cable. After deductions, offenders earning at the highest pay level are left with about \$13.00, a paltry sum which must be allocated for the canteen, personal effects, and even health and hygiene purchases.
- Many offenders leave prison after more than a decade of incarceration with no more than the mandatory minimum of \$80.00 to start their lives over.
- The CSC once promoted community involvement in corrections, but this has been abandoned. Community-based groups and clubs that promoted education, sports, theatre, creative writing, arts, gardening, and many others had once entered Canada's prisons and formed meaningful relationships with offenders. These interactions contributed to both rehabilitation and reintegration. Now every person entering a penitentiary is scrutinized from a security intelligence perspective, and visitors and volunteers are indoctrinated with the belief that every offender is a conscienceless gang member or a drug addict. Even young children are required to watch a video that speaks of the danger of bringing drugs into the institution, a video that also portrays offenders as two-dimensional caricatures of human beings. Visitors and even volunteers have noted overt hostility from CSC staff, and polite and friendly interaction has diminished to the point where most visitors are happy not to speak at all to a member of the CSC. All visitors are treated as suspected drug couriers. The attitude that visitors are confronted with is hostile and suspicious, and every opportunity is taken to restrict visits. The policies that are in place to protect the rights of both prisoners and visitors are routinely ignored,

and even senior managers turn a blind eye to problems, policies, and even their legislated obligations.

- Medium security institutions have adopted maximum security routines. Offenders are physically isolated within defined control zones and spend much of their day locked in their cells. Offenders are denied a healthy lifestyle by this confinement, which is not required for security purposes, but is enacted as a measure to force offenders to work in employment positions that fail to promote any rehabilitative function.
- Two years ago, the Conservative government initiated the “cook-chill” food preparation program. Rather than meals being cooked and prepared at each institution, meal preparation was centralized to one institution and quick-frozen to be shipped to nearby satellite institutions. While the Conservative government cited substantial cost savings as a result of this program, the per-diem costs have steadily risen while the quality of the meals has steadily declined.
- Funding and resources for educational and institutional libraries have been systematically reduced or limited. In an age when information resources are becoming more ubiquitous and necessary to the daily lives of all citizens, the CSC has purposely instituted policies that restrict offender access to information and resources. Offenders are prohibited from owning personal computers, and institutional libraries do not have access to the internet or even to information that is on the internet. Institutional librarians have been eliminated, and in many institutions the library is only staffed part-time.
- Prisoners are more socially isolated than ever. The confinement of offenders to their cells, accusations of associating with gang members and criminals (as though there are other options?), a reduction in community involvement, and a hostile visiting environment have synergized to promote the physical, psychological, and social isolation that obstructs rehabilitation and frustrates successful reintegration.

The above is not exhaustive and, taken individually, these changes may not seem dramatic or draconian, but taken together these changes to the lives of prisoners have resulted in prisons where prisoners have little left to lose, little left to look forward to, and little hope that things will improve. While it has been said that “men with little to lose and much to hope for will always be more dangerous, more or less,” it must be remembered that men with little to lose and little to hope for are made dangerous by necessity.

This road to ruin has not been paved by happenstance. It was the conscious doing of individuals who believe that prisoners are in prison to be punished.

The conditions of confinement within Canadian penitentiaries continue to deteriorate as this is written. Offender moral is worse than ever, the grievance system is kindly described as dysfunctional, and violence is rising. I have no doubt that you care about public safety, but crime and

criminality are complex issues, and reductionist ideologies that seek fast fixes and simplistic sound bites serve only partisan politics. A holistic approach that is humanist and humane—an approach that promotes normalization and recognizes that true rehabilitation is the only means to enhancing public safety, must be demanded, adopted, and defended.²³

This letter echoes themes that drew the condemnation and indictment of the 1977 Parliamentary Subcommittee and remind us of the cumulative degradations that imprisonment bring in its train.²⁴

In reflecting on the nature of change and continuity, Aboriginal overrepresentation in Canadian prisons casts the darkest shadow of injustice. My first visit to Halifax in 1989 was to participate in a panel discussion at the Donald J Marshall Commission of inquiry regarding the wrongful conviction of a young Mi'kmaq man. I was asked to make a presentation on a 1988 study I prepared for the Canadian Bar Association, titled "Locking Up Natives in Canada," in which I provided this account:

[A]lmost ten per cent of the federal penitentiary population is native (including 13 per cent of the federal women's prisoner population) compared to about two per cent of the population nationally....Even more disturbing, the disproportionality is growing. In 1965 some 22 per cent of the prisoners in Stony Mountain Penitentiary were native; in 1984 this proportion was 33 per cent. It is realistic to expect that absent radical change, the problem will intensify due to the higher birth rate in native communities...

Prison has become for young Native men the promise of a just society which high school and college represents for the rest of us. Placing this in a historical context, the prison has become for many young Native people the contemporary equivalent of what the Indian residential school represented for their parents.²⁵

23. John McKenzie, *Corrections in Canada: the Conservative Legacy and the Path Forward*. 16 February 2017 (letter to MPs and Senators, on file with the author).

24. Of great contemporary relevance is the remarkable speech of Winston Churchill in the House of Commons in 1910 (see Canada, Parliament, *House of Commons Debates*, 29th Parl, 6th Sess, Vol 19 (3 August 1910):

We must not forget that when every material improvement has been effected in prisons, when the temperature has been rightly adjusted, when the proper food to maintain health and strength has been given, when the doctors, chaplains, and prison visitors have come and gone, the convicts stands deprived of everything that a free man calls life. We must not forget that all these improvements, which are sometimes salves to our consciences, do not change that position. The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country.

online: <http://www.justicebehindthewalls.net/03_voices_01_01_01.html>.

25. Michael Jackson, "Locking up Natives in Canada," a Report by the Canadian Bar Association, 1988, reprinted in [1989] 23 *UBC L Rev* 215-300, online: <http://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1027&context=emeritus_pubs>.

In 1999, the Supreme Court of Canada cited this passage in *Gladue* as a “disturbing account of the enormity of the disproportion.”²⁶ The Court issued this call to action: “These findings cry out for recognition of the magnitude and gravity of the problem and for responses to alleviate it. The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system.”²⁷

In the decade between “Locking up Natives” and *Gladue*, the overrepresentation deepened. By 1997 “Aboriginal peoples constituted closer to three per cent of the population of Canada and amounted to 12 per cent of all federal inmates.”²⁸ Later in its judgment the Court referred to the “staggering injustice” these figures represented.²⁹ In the 20 years since *Gladue*, the figures have only worsened and so it is not surprising that when the Supreme Court of Canada revisited *Gladue* in its 2012 decision in *Ipeelee* it did not try to conjure up the next gradation in the scale of injustice.³⁰

The most recent figures from the 2017 Corrections and Conditional Release Statistical Overview further darken the mirror of justice. Indigenous women in custody represent 36.6 per cent of all women in federal custody while Indigenous men represent 26.3 per cent of men in federal custody.³¹

An inescapable fact and an inconvenient truth that has been exposed by the Correctional Investigator is that systemic discrimination does not stop at the prison door. This is how Howard Sapers described the situation inside the walls in addressing parliamentarians in 2006 in the tabling of his Annual Report:

While the Correctional Service is not responsible for the social conditions and policy decisions which help shape its offender population, it is responsible for operating in compliance with the law and ensuring all offenders are treated fairly. It is therefore with grave concern I am underscoring today that the Correctional Service of Canada falls short of this standard by allowing for systemic discrimination against Aboriginal inmates. For example:

- Inmates of First Nations, Métis and Inuit heritage face routine overclassification resulting in their placement in minimum security institutions at only half the rate of non-Aboriginal offenders.

26. *R v Gladue*, [1999] 1 SCR 688 at para 60, 1999 Can-LII 679.

27. *Ibid* at para 64.

28. *Ibid* at para 68.

29. *Ibid* at para 88.

30. *R v Ipeelee*, 2012 SCC 13.

31. 2017 Corrections And Conditional Release Statistical Overview, Table C-11, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2017/index-en.aspx>>.

- The over-classification for Aboriginal women is even worse. For example, at the end of September, native women made up 45 per cent of maximum security federally sentenced women, 44 per cent of the medium security population and only 18 per cent of minimum-security women.
- This over-classification is a problem because it means inmates often serve their sentences far away from their family and the valuable support of other community members, friends and supports such as Elders.
- Aboriginal offenders are placed in segregation more often than non-Aboriginal offenders.
- Placement in a maximum-security institution and segregation limits access to rehabilitative programming and services intended to prepare inmates for release and successful reintegration into society.
- Aboriginal inmates are released later in their sentences than other inmates.
- The proportion of full parole applications resulting in reviews by National Parole Board is lower for Aboriginal offenders.

In short, as stated by the Canadian Human Rights Commission, the general picture is one of institutionalized discrimination. That is, Aboriginal people are routinely disadvantaged once they are placed into the custody of the Correctional Service.³²

In his 2007–2008 Annual Report the Correctional Investigator summarises the cumulative effect of systemic barriers to reintegration: “The combination of over-classification and lack of Aboriginal programming best illustrates how systemic barriers can hinder offender reintegration. Aboriginal offenders are over-classified because of a poorly conceived actuarial scale. As a result, Aboriginal offenders are disproportionately and inappropriately placed in higher security institutions, which have limited or no access to core programs designed to meet their unique needs. This scenario, for the most part, explains why the reintegration of Aboriginal offenders is lagging so significantly behind the reintegration of other offenders. Clearly, correctional outcomes cannot be explained by individual differences alone.”³³

That there has been little significant change since 2008 is reflected in the 2016 report of the Office of the Auditor General of Canada:

32. Annual Report of the Correctional Investigator, 2005–2006, online: <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20052006-eng.pdf>>.

33. Annual Report of the Correctional Investigator, 2007–2008, online: <<http://www.oci-bec.gc.ca/rpt/annrpt/annrpt20072008-eng.aspx>>.

Overall, we found that of the Indigenous offenders who were first released from custody to serve the remainder of their sentences in the community in the 2015–2016 fiscal year, very few had been released on parole: 69 per cent were released at their statutory release dates. Moreover, we found that three quarters of Indigenous offenders who were released at their statutory release dates were released directly into the community from maximum-security (14 per cent) and medium-security (65 per cent) institutions, limiting their ability to benefit from a gradual release supporting successful reintegration.

3.12 We found that significantly fewer Indigenous offenders were released on parole relative to non-Indigenous offenders. In the 2015–2016 fiscal year, 31 per cent of Indigenous offenders were released on parole, compared with 48 per cent of non-Indigenous offenders

3.38 Overall, we found that Indigenous offenders did not have timely access to Correctional Service Canada’s correctional programs, including those specifically designed to meet their needs. We found that 20 per cent of Indigenous offenders were able to complete their correctional programs by the time they were eligible to be considered for conditional release by the Parole Board. We also found that case files did not document how offenders participation in Indigenous correctional interventions, such as Healing Lodges or Pathways Initiatives, contributed to their potential for successful reintegration into the community.³⁴

This mass incarceration of Indigenous prisoners has accelerated in spite of the provisions in the *CCRA* which require the CSC to “provide programs designed particularly to address the needs of Aboriginal offenders.” Those provisions specifically recognize Aboriginal spirituality and the role of Aboriginal elders, authorize the Minister of Public Safety to enter into agreements with Aboriginal communities to provide correctional services to Aboriginal offenders, mandate the establishment of a National Aboriginal Advisory Committee and permit the creation of regional and local advisory committees to advise CSC on the provision of correctional services to Aboriginal offenders. The “staggering injustice” has intensified despite the Supreme Court of Canada’s requirement in *Gladue*, and reiterated in *Ipellee*, that sentencing judges consider the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts, factors that the Supreme Court recently in *Ewert* affirmed apply also in a correctional context.³⁵

I and others have written extensively about the systemic reasons for Aboriginal overrepresentation in the criminal justice system and how it is both a legacy of and a burden on the cumulative effects of colonization

34. Office of the Auditor General of Canada, Report 3, Preparing Indigenous Offenders for Release-Correctional Service of Canada, 2016, online: <http://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html>.

35. *Ewert v Canada*, 2018 SCC 30.

and dispossession of Indigenous peoples. The residential school system represents the most shameful episode and has justly received condemnation as cultural genocide. While as a lawyer I can point to landmark cases on my CV on Aboriginal and treaty rights, the inescapable fact is that despite the Supreme Court's and the federal government's affirmation of recognition, respect and reconciliation, the legacy of colonization has over the last 20 years accelerated towards the gates of and within Canadian prisons.³⁶

When I started to write this acceptance speech I had thought that, befitting the occasion, it would contain at least some celebratory elements. In recent months the government has appointed both a new chairperson of the Parole Board of Canada and a new Commissioner of Corrections. The mandate letter issued to the new Commissioner was, for the very first time, made public. In the press release announcing the mandate letter, Minister Goodale embraces a vision of corrections that on its face seeks to reject the punitive, mean-spirited, rights-depriving policies of the Harper government in favour of a return to the rehabilitative ideal, building upon collaborative partnerships with community groups and Indigenous peoples.

With this mandate letter, the Government of Canada is providing clear direction on its priorities and vision: that the safety of the public is best protected by effective rehabilitation and safe reintegration of people serving a federal sentence. The mandate emphasizes that external partnerships and engagement will be essential to the success of our correctional system, which ensures the safety of our communities. Building relationships with community groups, Indigenous Peoples, volunteers, and others is invaluable to achieving positive rehabilitative

36. The points of intersection of my work in advancing the claims of justice in prisons and in the lives of Indigenous peoples in different forums has sometimes been stark. In *Justice Behind the Walls* I describe one of those points:

In the summer of 1997, I entered the deep end of the two parts of Canada's system of justice that have occupied most of my professional life. On June 16 and 17, I was in the Supreme Court of Canada appearing as co-counsel in *Delgamuukw v Attorney General of BC*, the final stage in the landmark Aboriginal title case brought by the Gitksan and Wet'suwet'en Hereditary Chiefs of Northwest British Columbia. The case had begun in the courts of British Columbia a decade earlier, but as with the history of the penitentiary, it was grounded in the events, and challenged the attitudes, of earlier centuries. On June 18 and 19 I entered the gates of Québec's Special Handling Unit...and spent two days interviewing prisoners regarded as the most dangerous in Canada. The contrast could hardly have been greater. In the Supreme Court building I sat amid the formality of the court, surrounded by marble, polished hardwood, deep red leather, and the rustling of gowns and listen to the barristerial tone of arguments on the nature and scope of Aboriginal rights then. In the Special Handling Unit, my surroundings were made up of chain-link fences, razor wire, steel doors, guns and the bang of electronic locks being thrown, what I listened to were accounts of the precarious state of prisoners' rights in Canada's harshest prison.

Justice Behind the Walls, *supra* note 15 at 7-8.

outcomes that help prevent re-offending. Exploring new, supervised uses of information technology can help prepare offenders for today's job market and maintain the family and community ties that help foster their eventual safe reintegration as law-abiding Canadians. The input of independent researchers can help identify what works and what doesn't, strengthening correctional approaches to protect Canadians.³⁷

The letter is encouraging, although coming almost three years into the government's mandate and as we are about to enter a new election cycle, a little belated. Taking the letter at face value there is much to give hope that a change to the repressive conditions of the last decade is on the horizon. I would certainly like to believe so and we must do everything to hold the Commissioner to the aspirational words of the mandate letter. But my cautious optimism is tempered by the history of the institution of imprisonment, its DNA and the long and repeated story of the dissonance between rhetoric and reality. Is the mandate letter just the latest example of the "good story" of corrections, with its promise of progressive reform? Of particular concern to many of us is the government's decision to challenge on appeal the well-reasoned and documented judgement of Justice Peter Leask of the BC Supreme Court, placing constitutional limits on the practice of administrative segregation.³⁸

Most of my academic and advocacy work in the correctional system has been focused on the federal system. Provincial and territorial correctional systems have for many years been low visibility elements of the justice system, only sporadically the subject of litigation and commissions of inquiry and reports of ombuds offices. That the DNA of imprisonment and its dehumanizing effects extend to the spaces of even those who are awaiting trial and presumptively innocent has become increasingly evident in the last few years.

Earlier this year I gave evidence in the application for a stay of proceedings by counsel for Adam Capay, a young Indigenous man, who while awaiting trial for the murder of another prisoner, spent four years between 2012 and 2016 in solitary confinement in the Thunder Bay and Kenora jails. My evidence was limited to providing an opinion on whether

37. Commissioner's Mandate Letter, 2018, online: <<http://www.csc-scc.gc.ca/about-us/006-0006-en.shtml>>.

38. *British Columbia Civil Liberties Association v Canada (AG)*, 2018 BCSC 62. Since delivering this address the federal government has introduced new legislation which it claims abolishes segregation imposed under the regime found unconstitutional by Justice Leask. The new legislation replaces the language of segregation with the concept of a "structured intervention unit." The linguistic history of the penitentiary is replete with benevolent sounding changes, from penitentiaries to correctional facilities, from convicts to offenders, from cells to living units. It remains to be seen whether this latest change is the harbinger of real reform or a makeover and another chapter in the book of "good stories."

the institutional authorities had considered the *Gladue* factors in reviewing his placement in segregation and his Aboriginal social history in his case management. While in Thunder Bay I was shown some photographs of one of the solitary confinement cells in which he was confined. As I told the court, I was horrified by what I saw. In terms of the deprivation of anything that was conducive to meaningful human interaction it was harsher than the conditions in the BC penitentiary in the 1970s that had drawn the condemnation of Justice Heald of the federal court in 1975, more restrictive than the conditions in which the women who had been confined in segregation in 1992 at the Prison for Women that had drawn the condemnation of Justice Arbour. It shocked my conscience that any human being could be treated this way. On 28 January 2019 Justice Fregeau of the Ontario Superior Court granted a stay of proceedings of the murder charge under section 24(1) of the Charter as a remedy for breaches of his Charter rights under sections 7, 9, 12 and 15 of the Charter. In his judgment Justice Fregeau held:

[415] The treatment of the accused was, in my opinion, outrageous, abhorrent, and inhumane. It is a shocking and intolerable violation of s. 12 of the Charter.

[481] The evidence on this particular issue is overwhelming – for four and one-half years the Ministry took absolutely no action in an attempt to mitigate the disproportionately negative impacts of prolonged segregation on this mentally ill inmate.

[482] As a result, I find that the accused’s s. 15 Charter rights have been violated.³⁹

Most recently here in Halifax prisoners at the Burnside Jail, although not subject to the total dehumanization suffered by Adam Capay, have in the context of a 20-day hunger strike that only ended last week, peacefully protested the conditions of their confinement. I have read their statement of grievances regarding the lack of rehabilitation programs, inadequate healthcare, lack of access to personal clothing, inadequate nutritional food and denial of contact visits with family. These are not new complaints, but what is an important development is that they have reached public attention without resort to a riot or institutional violence but through peaceful protest.⁴⁰

39. *R v Capay*, 2019 ONSC 535.

40. *Halifax Examiner*, News Release, “The prisoners at the Burnside Jail are engaged in a non-violent protest; here is their statement” (19 August 2018), online: <<https://www.halifaxexaminer.ca/province-house/the-prisoners-at-the-burnside-jail-are-engaged-in-a-non-violent-protest-here-is-their-statement/>>.

Another revealing but historically recurring theme is reflected in an interview reported by the Halifax Examiner with a former correctional officer who spoke about the climate of fear at the Burnside institution.⁴¹

“The moment you walk in the door at Burnside you are stripped of your dignity and humanity, no matter your sex, religion or creed. No matter if you are an inmate or staff member.” According to staff working at Burnside, the chronic and dangerous conditions are due to systemic failures of management. Correctional officers described “a culture of fear” where staff who question policies or raise problems face retaliation. Correctional officers claim that this punitive culture results in staff being too afraid to report problems and leads to reports being followed ignore and downplay serious issues.”

The symbiotic relationship between prison conditions and a regime that denies human dignity to prisoners and their families and their impact on institutional safety for those who work within the institution as public servants is one that receives too little attention.

Andrew Coyle, a former director of a prison in the United Kingdom and one of the most respected international experts on prison management has written on this issue in his manual “A Human Rights Approach for Prison Management”:

Staff behavior and the humane and dignified treatment of prisoners should underpin every operational activity in a prison. This is not merely a question of human rights principles. In operational terms it is also the most effective and efficient way in which to manage a prison.⁴²

On the provincial horizon Ontario’s new *Correctional Services and Reintegration Act*, 2018, drafted under the guidance of Howard Sapers, in his role as special advisor to the Minister of Corrections provides a model for principled and evidence based correctional legislation. But as yet unproclaimed and with the advent of a new government in Ontario, a cloud now hangs over the implementation of this legislation.

At the conclusion of the last class in my seminar on Penal Policy I read some paragraphs from my final chapter of *Justice Behind the Walls*. I offer it here with some contemporary references:

41. *Halifax Examiner*, News Release, “Culture of fear: a former guard relates his experience at the Burnside jail” (11 September 2018), online: <<https://www.halifaxexaminer.ca/province-house/culture-of-fear-a-former-guard-relates-his-experience-at-the-burnside-jail/>>.

42. Andrew Coyle, *A Human Rights Approach for Prison Management: Handbook for Prison Staff* (London: King’s College, International Center for Prison Studies, 2002) at 33, online: <http://www.prisonstudies.org/sites/default/files/resources/downloads/human_rights_prison_management.pdf>.

The cords that link a sentence of imprisonment to the practice of justice must not only be girded with the steel of the law but must also be subject to the most careful scrutiny, because it is at precisely this juncture that the greatest strains will occur. What happened to Ashley Smith, Adam Capay, the men and women remembered in the opening poem of El Jones, and so many other prisoners should not be seen as the correctional equivalent of mental fatigue in the otherwise robust metallurgy of modern corrections, but instead as a flaw encoded in a system that in every generation has trampled on human rights.

It takes vigilance and courage, both individual and collective, to ensure that human rights are protected at those points where they become most vulnerable. Within Canada, that vulnerability is nowhere more evident than inside penitentiaries.

Two weeks after the Saskatoon conference, I travelled to Paris on my way to a meeting with the international representatives of Avocats Sans Frontieres. Inscribed in stone high on the splendid façade of that city's Hotel de Ville is the cri du coeur of the French Revolution: "Liberté, Egalité, Fraternité." Imprisonment may take away a prisoner's freedom, but it does not nullify a prisoner's right to equal treatment under the law, and it must never be allowed to sever the ties that link a prisoner to the brotherhood and sisterhood the Universal Declaration of Human Rights accords us all.

It is that conviction that has driven and will continue to drive my work. I am not finished yet, but I have great confidence there are many of you here who will, with passion and intelligence, continue this work so that the arc of history, straining against a deep cultural legacy encoded in stone and steel, bends towards justice.