

Submission
to the
Legislative Assembly of Ontario
Standing Committee on Public Accounts

regarding

Special Report on Accountability and Value for Money (2000)
Provincial Auditor of Ontario
3.04 The Ministry of Correctional Services:
Institutional Services and Young Offender Services



John Howard Society of Ontario
February 22, 2001

Focus of the Submission

This submission will focus on those areas in the Provincial Auditor's *Special Report on Accountability and Value for Money (2000)* which are of greatest concern to the John Howard Society of Ontario, specifically:

- the dramatic decline in the use of Temporary Absences,
- the lack of attention to the management of mentally-disordered inmates, and
- the "rush" towards Infrastructure Renewal and privatization.

We believe that these matters reflect an approach to corrections in Ontario followed by this government since it assumed power in 1995 which, while based on the notions of public safety and cost-effectiveness, will not result in either cost-control or reduced crime. We have consistently argued that the current approach ignores alternatives that present greater opportunities for controlling the costs of corrections and for reducing re-offending. Also in jeopardy under the current approach are the values of justice and humane treatment which, we believe, must be reflected in the kind of correctional system that Ontario citizens want and deserve.

Temporary Absences

The John Howard Society of Ontario strongly believes in the value of conditional release programs as an effective means of:

- providing opportunities for rehabilitation,
- minimizing the destructive effects of incarceration,
- reducing re-offending, and
- controlling the costs of corrections.

Within provincial corrections, Temporary Absence is the primary conditional release mechanism for the majority of sentenced offenders. The dramatic declines in the use of the Temporary Absence program in Ontario, which began when the current government assumed power in 1995, has been most disturbing to the Society and, we believe, worthy not only of the Provincial Auditor's notice but also of the public attention generated by this matter. We, therefore, want to re-emphasize points made by the Provincial Auditor and bring the Committee's attention to current research relevant to Temporary Absences.

First, it is important to note some facts about sentenced admissions to Ontario prisons, facts which demonstrate that the majority of people in Ontario prisons are serving short sentences for non-violent and relatively minor offences. Of the 30,747 sentenced admissions to custody in the 1999/2000 year, 83 percent (25,657) had sentences of less than six months. One-half of admissions are serving a sentence of 45 days or less and 14 percent of all admissions have a sentence of one to seven days. Given the length of the sentences, one can reasonably assume that the nature of the offences for those who are serving such short sentences has been deemed by the court as less serious and the risk posed by the individual assessed as relatively low.

While we have consistently argued that greater efforts should be made to reduce the use of sentences of imprisonment for non-violent, relatively minor offences, we recognize that this is not within the purview of the Ministry of Correctional Services, but rather more with the will and the actions of the Attorney General and those within that ministry. The Ministry of Correctional Services has no control over its intake.

This does not mean that nothing can be done by the Ministry of Correctional Services to reduce the use of incarceration of low-risk, non-violent offenders within existing schemes. The Ministry is charged with the management of the sentence and can use Temporary Absences to ensure that community options are employed during part of the sentence. If we accept the notions of restraint in the use of imprisonment and of targeting prisons at serious offenders, effective use of Temporary Absences makes sense. In fact, *the de-incarceration of low-risk offenders* was one of the 11 recommendations of the Report for Federal/Provincial/Territorial Ministers Responsible for Justice¹, which was endorsed by the relevant Ontario Ministers in 1996. Temporary Absence was identified as one of the community-based measures to achieve this goal.

Temporary Absences, however, have declined dramatically during this period. The total number activated in a year decreased from 20,583 in 1994/95 to 4,429 in 1998/99. During these same years, Temporary Absences activated for employment purposes went down from 2,703 to 322 and, for academic/vocational purposes, from 416 to 13.

The importance of Temporary Absences for the majority of sentenced offenders in Ontario must not be underestimated. When one looks at the eligibility for Ontario parole (automatic review for those serving six months or over and review only by application for those serving less) and the time involved to meet the administrative requirements of parole applications, it should be obvious that the Temporary Absence Program is the only avenue for conditional release for the vast majority of provincially-sentenced offenders.

Some may argue that conditional release programs such as Temporary Absences undermine the punitive purpose of a sentence of imprisonment and, therefore, its deterrent effect. We maintain that this position is a fundamental belief of the current government and lies at the heart of the declining use of Temporary Absences in Ontario. However, this stance ignores the following considerations, all of which are essential to principled, evidence-based correctional policy:

- While punishment is clearly a purpose of sentencing, it is not the only purpose of sentencing. Sentencing also has a rehabilitative purpose. It is, therefore, essential that the correctional system provides opportunities for rehabilitation;
- The deterrent value of “tough” punishments is highly questionable. Decades of research have failed to prove that harsh punishment deters people from committing crimes.

¹ Report for Federal/Provincial/Territorial Ministers Responsible for Justice, “Corrections Population Growth”, Ottawa, May 9-10, 1996.

- Recent research examining 50 studies on the effect of prison sentences on criminal behaviour found that the recidivism rate for offenders who were imprisoned as opposed to given a community sanction were similar. In addition, longer prison sentences were not associated with reduced recidivism. Longer sentences were associated with a three percent *increase* in recidivism.²
- Current Canadian research about “what works” to reduce re-offending, research that has been widely accepted internationally, shows that the effects of appropriate interventions aimed at the rehabilitation of offenders are increased when these services are offered in the community, as opposed to a custody setting.³
- Imprisonment is costly, both in economic and human terms. We must be assured, therefore, that the benefits outweigh the costs and that needless or excessive use of imprisonment is avoided.

This last point bears further discussion with respect to Temporary Absences. The Provincial Auditor, in his report, has detailed the potential savings from better utilization of Temporary Absences - \$50 million a year or alternatively the costs of building and operating one institution, if Ontario’s rate was similar to that in Alberta. And Alberta’s rate is modest when compared to that of Quebec. This came as no surprise to the John Howard Society of Ontario. We authored a brief in 1993⁴ which had a similar analysis, including a comparison to Alberta, and submitted it to the government of the day and, subsequently, to the current government. Our arguments about alternative cost reduction strategies were ignored in the din of the Infrastructure Renewal espousing efficiencies through large institutions, technology and privatization.

As the Provincial Auditor states, the success rates of Temporary Absences demonstrate that the cost savings through greater utilization will not jeopardize public safety. It bears repeating that the success rates of Temporary Absences has remained at about 97 percent for the last eight years, that most of those terminated were for a breach of a condition, not for a commission of a new offence, and that there was not one case reported by Ministry staff of a serious crime committed by a person on Temporary Absence. All of this would suggest reasons for the program’s expansion, not for its reduction.

We would also take the discussion of public safety one step further. Given what we know about “what works” to reduce re-offending and the effects of prison on criminal behaviour, it

² P. Gendreau, C. Goggin and F.T. Cullen, “The Effects of Prison Sentences on Recidivism”, Ottawa: Solicitor General of Canada, 1999.

³ J. A. McWhinnie and D. A. Andrews, *Corrections Utilization Study: A review of the international literature and recommendations for a national study on recidivism*, Ottawa: Canadian centre for Justice Statistics, 1997.

⁴ John Howard Society of Ontario, “Decarceration Strategies and Community Corrections: Proposals for the Province of Ontario”, Toronto: John Howard Society of Ontario, 1993

may be argued that not utilizing community programs compromises public safety. If keeping people in jail longer can result in increased recidivism and taking advantage of opportunities for intervention in the community can reduce recidivism even more than good prison programs, how can the Ministry argue with any legitimacy that the current approach to Temporary Absences is because “public safety is the Ministry’s first priority”?

Finally, the human costs must be assessed in light of purported benefits. There can be severe long-term costs for those who are incarcerated, such as family breakdown, losing one’s job, the loss of stable employment, interruptions or even termination of educational activities, witnessing or even being a victim of violence. The unintended costs associated with imprisonment are destructive to the individual. We must ask ourselves whether keeping someone in jail for a few more days or weeks, which is the what happens to the majority of people in Ontario prisons without access to Temporary Absences, is worth the human costs and the short- and long-term consequences, both for the individual and for society. We know that Temporary Absences allow people to be released to maintain employment, go to school, and carry out family responsibilities, including child care. Temporary Absences provide an opportunity to engage individuals in community-based programs and services to assist them in becoming law-abiding citizens (i.e., substance abuse counselling, assistance with housing and employment) as appropriate to their needs.

A few words of caution are warranted, we believe, about how Temporary Absences are implemented. We do not support the use of Electronic Monitoring for those on Temporary Absences. A recent Canadian study found that Electronic Monitoring does not reduce recidivism and can add significantly to the cost.⁵ If we are to be successful in reducing re-offending rates, supervision of an offender in the community must be more than just surveillance. Services of a practical nature (housing, financial assistance) and of a developmental nature (literacy training, addictions counselling, employment skills development) delivered on the basis of need and available even after the sentence is completed if necessary is a critical component of a comprehensive “corrections” strategy. It is extremely short-sighted, particularly when one examines the research evidence on “what works” to reduce re-offending, to limit interventions to punishment and surveillance.

In summary, we support the recommendation in the Provincial Auditor’s special report which reads as follows:

To afford non-violent inmates better opportunities for successful reintegration into the community and to reduce institutional expenditures, the Ministry should make more effective use of community programs.

Further, the Ministry’s response detailed in the special report is unacceptable, as the evidence does not support the current underutilization of Temporary Absences as an effective strategy of public protection.

⁵ James Bonta, Jennifer Rooney, Suzanne Wallace-Capretta, “Electronic Monitoring in Canada”, Ottawa: Solicitor General of Canada, 1999.

Mentally Disordered Inmates

Evidence from mental health organizations and our own experience working with people in provincial correctional facilities seem to confirm the figure noted in the Provincial Auditor's report of the proportion of inmates in provincial with mental health problems (15% - 20%). Research suggests that individuals with mental disorders are more vulnerable to arrest and detection for nuisance offences, more likely to be remanded into custody for these minor offences and spend more time on remand and awaiting a sentencing disposition.⁶ With what we know about the about the effect of pre-trial detention on sentencing, it would stand to reason that mentally disordered individuals are also more likely to be given a sentence of imprisonment. Also given what we know about the treatment of other disadvantaged groups, they would be less likely to be granted from conditional release.

We would suggest that there are a number of reasons for this. The social and economic barriers of the mentally ill disadvantage them at all stages in the criminal justice process. Further, many point to the relationship with psychiatric de-institutionalization and the lack of necessary investments in community care. Swelling numbers and greater visibility in the community of those who exhibit behaviour that is either a nuisance or "scary" has led to less tolerance and less understanding. Combine this with unfair stereotypes of the mentally ill, particularly their risk of violence towards others, and the rare sensational incidents involving the mentally ill and more pressure to get them off our streets seems inevitable. With appropriate alternatives in short supply or, in some areas, non-existent, either through community care or psychiatric facilities, criminal justice solutions become the only way to manage the problem.

We believe and, it would appear that the Provincial Auditor shares this view, that there is a general consensus that this is not right. Mentally disordered individuals are being treated unfairly, especially with respect to the use of imprisonment. Prison environments can exacerbate the problems of the mentally ill. Treatment is extremely limited and correctional staff are not trained to handle inmates with mental disorders. The undue reliance on criminal justice solutions, particularly the use of imprisonment, to deal with mental health problems is not effective, just or humane.

Working to change this scenario demands first an acceptance of the principle of restraint in the use of the criminal law and its powers, particularly that of imprisonment. Currently, however, government rhetoric and action seems to reflect the opposite. The John Howard Society of Ontario believes that no significant action with respect to reducing the needless and inappropriate incarceration of mentally disordered individuals will happen unless the government and its ministries operates on the basis of the principle of restraint.

As well, significant change cannot happen through actions instituted by the Ministry of

⁶ Frank J. Porporino and Larry L. Motiuk, "The Prison Careers of Offenders with Mental Disorders", Ottawa: Correctional Services of Canada, 1992.

Correctional Services alone. People end up in prisons because of decisions made by the police and the courts. Sometimes, people end up in prison because the alternatives for diversion are not pursued by the police and the Crown Attorney. Any change requires the involvement of the Ministry of the Attorney General and the Ministry of the Solicitor General to ensure that:

- police are supported in their decisions to use alternatives to lay a charge (through guidelines for the use of police discretion not to charge, training and evaluation);
- Crown Attorneys are supported in their decisions to divert minor offenders (through guidelines, a screening process and provision of alternatives to the formal court process);
- there is greater consideration of the use of specialized courts for mentally disordered accused⁷; and,
- bail conditions are set appropriately and alternatives to pre-trial detention are developed in order to reduce the use of pre-trial detention.

Detailing the need for action by other ministries does not mean that the Ministry of Correctional Services has no role or is absolved of responsibility. We support the recommendation of the Provincial Auditor regarding the need for the Ministry to expedite efforts to deal with mentally disordered inmates. In furtherance of this objective, we specifically propose that the Ministry ensure that:

- community mental health professionals are involved in case management in the prisons and are integral in the process of developing plans for release, with those on remand as well as those sentenced;
- an assessment process is in place to identify mentally disordered inmates upon admission and, where a placement in a psychiatric facility is warranted, the transfer takes place as quickly as possible;
- there is greater use of conditional release mechanisms to support the use of community care programs;
- there is on-going feedback to the Ministry of the Solicitor General and to the Ministry of the Attorney General about the trends with respect to mentally disordered inmates and ongoing inter-ministerial dialogue about strategies to reduce their numbers; and,
- there is an over-arching plan and targets for reducing the numbers of minor offenders in prison who could safely and more effectively be managed in the community.

Our last point seems almost too obvious to state: there will be limited success in reducing the numbers of mentally disordered individuals in prison if the mental health resources and other support services, such as housing and welfare assistance, do not exist or are inadequate. The government must make the necessary investments in these areas. Like most social problems, the solution lies in the actions of many ministries. We ask that the Committee keep this in mind in making its recommendations.

⁷ As recommended in the Report of the Criminal Justice Review Committee (Ontario), February 1999.

Infrastructure Renewal and Privatization

The John Howard Society of Ontario understands the need for change in our correctional system to ensure effectiveness and efficiency, as well as humane environments for those who are incarcerated. We believe that such changes must be based on clearly articulated principles which can be supported by sound research, relevant data and experience. The Society has certainly taken care to do so as we have developed our proposals for corrections in Ontario.⁸ Ideology alone can never be enough to support how our correctional system is structured, managed and operated, the results of which can so profoundly affect individuals and society as a whole.

Any change should be preceded by thorough and careful analysis of all of the alternatives models, as has been pointed out by the Provincial Auditor. In addition, we believe that there should be public consultation and debate. This is especially true when the change is dramatic and has long-term consequences. The Ontario correctional system is undergoing fundamental and profound change which entails not only new prison construction and high costs, but also a radically different approach to the care and management of prisoners (large prisons, indirect supervision) and the introduction of the private sector in the operation of prisons. These changes cannot easily be turned around, will limit future policy choices and, therefore, will have a significant effect on the shape and direction of Ontario corrections for many years to come.

However, neither the plan for Infrastructure Renewal nor the decision re: privatization has undergone the kind of analysis that the Provincial Auditor considers to be required to ensure “best value”. To date, the result has been: retrofit projects that have not realized the anticipated cost-savings, a \$9.5 million investment in the Cook-Chill facility that likely will not result in any significant cost-savings and cannot meet the demand, \$14 million over the contract price for the expansion of the Maplehurst Institution, and not following prudent business practices in assessing private sector involvement.

As well, public consultation and opportunities for public debate and discussion as to the wisdom of the government’s approach has been limited.

The Society believes that the concerns expressed by the Provincial Auditor are a manifestation of ideology taking precedence over an evidence-based approach. In the “rush” to implement their approach to corrections, in which Infrastructure Renewal and privatization plays a crucial role, facts, research, and thorough analysis seems to have become irrelevant. The decision to expand the use of the strict discipline model for young offender facilities prior to the completion of the pilot contract and of the evaluation is a prime example of the precedence of ideology over an evidence-based approach.

⁸ See briefs developed by the John Howard Society of Ontario, “Decarceration Strategies and Community Corrections” (1993) and “An Agenda for Change: Building on our vision for corrections in Ontario” (1999)

Going beyond the Provincial Auditor's report, the current approach for corrections in Ontario is not supported from the viewpoint of social science and correctional research. Research tells us that:

- increasing the severity of sanctions actually results in slight increases in the recidivism rate⁹;
- prisons do not reduce recidivism¹⁰;
- surveillance alone does not reduce recidivism¹¹;
- boot camps do not reduce recidivism¹²;
- human services do reduce recidivism¹³; and,
- appropriate correctional interventions in the community result in greater reductions in the recidivist rate than do similar interventions in a custody facility¹⁴.

Increased re-offending means more correctional costs and more victims while reducing re-offending leads to less correctional costs and fewer victims. Why would we do what does not work to reduce re-offending and ignore approaches that would result in “value for money”, not only in economic terms but also in human terms? All of this leads to the conclusion that we should be working towards a decarceration strategy, rather than the current direction.

Research also brings into question the notion that “no frills” prisons would be a deterrent to future criminal behaviour.¹⁵ Further, questions should be raised about the effect of indirect supervision (use of technology and fewer staff), given the duty to protect the health and safety of both inmates and correctional staff. An analysis of indirect and direct supervision models shows that institutions that rely on direct supervision by staff have less conflict among inmates and between inmates and staff.¹⁶

The privatization initiatives have been a serious concern for the John Howard Society of Ontario. While the Provincial Auditor's comments have been more related to how these initiatives are being implemented (choice of financing and ownership in the case of adult facilities and, in the case of the young offender facility, not verifying invoiced amounts and a

⁹ McWhinnie and Andrews, *op. cit.*

¹⁰ Gendreau, Goggin and Cullin, *op. cit.*

¹¹ Bonta, Rooney and Wallace-Capretta, *op. cit.*

¹² National Institute of Justice, *Preventing Crime: What works, what doesn't, what's promising*, 1998, available on the Internet: <http://preventingcrime.org>

¹³ McWhinnie and Andrews, *op. cit.*

¹⁴ *ibid.*

¹⁵ Gendreau, Goggin and Cullin, *op. cit.*

¹⁶ Richard Wener, William Frazier and Jay Farbstein, “Building Better Jails” in *Psychology Today*, June 1987.

\$400,000 payment in excess of the contract price), our concerns are more basic, specifically:

- *there is insufficient evidence to say, with any degree of confidence, that privatization will result in cost savings.* While some will point to studies that demonstrate the cost-effectiveness of private prisons compared to those operated publicly, these are generally short-term results and we really do not know whether these cost savings will be maintained in the long-run. For example, a study in the U.K. found an overall narrowing in the operating costs between public and private prisons over a three year period.¹⁷
- *assurances of the same level of accountability are uncertain.* Right now, those who operate provincial prisons are directly accountable to the public. Once privatized, those who operate the prisons will be accountable to the government, through operating standards, performance indicators and monitoring systems. Even now the details of these mechanisms of accountability are not open to public scrutiny because of the bidding process.

On this point, we have requested but been denied access to the Operating Standards (draft), currently being developed for all adult institutions both public and private, because they are part of the Request For Proposal (RFP) and, therefore, deemed to be accessible only to qualified bidders. We are extremely concerned that the privatization process is interfering with the public's right not only to know what the standards are but also to be involved in their development.

- on moral grounds, we believe that *the authority to govern those behind bars must be a direct state function.* Incarceration of an individual is the most serious act that a government can commit upon its citizens. When a government deprives its citizens of their liberty, it exercises state power. The great amount of control over inmates and the capacity of the correctional staff to exercise this control questions whether this power can be delegated to a private, for-profit corporation, whose business is to make a profit, not to do good.
- *privatization limits our ability to develop alternative policies and practices.* The debate around garbage in Toronto is a case in point, where the concern was that the solution proposed with its contractual relationship with a private company would redirect resources from recycling efforts, the more appropriate long-term solution. We would argue that privatization of correctional facilities will limit our ability to implement a decarceration strategy, the more appropriate long-term direction for corrections in Ontario.

The John Howard Society of Ontario believes that, given the evidence, the current Infrastructure Renewal plan and the privatization initiatives should be halted. At the very least, the concerns of the Provincial Auditor should be addressed before any future contracts are entered into with the private sector, including the one in process for the Central North Correctional Centre in Penetanguishene, and before any further agreements are made with respect to prison construction and retrofits. We agree with the Provincial Auditor of the need

¹⁷ Jo Woodbridge, "Review of the Comparative Costs and Performance of Privately and Publicly Operated Prisons, 1997/98", London: Home Office, 1999.

to prepare sound business cases and, therefore, we believe that any future commitments should have to satisfy this requirement. We submit that the assessment of costs and benefits, an important component of a sound business plan, should include that which is gleaned from social science and correctional research. Further, the Ministry should be required to satisfy the Provincial Auditor that all feasible alternatives have been examined, including a strategy that focuses on decarceration measures.

Summary Remarks

The John Howard Society of Ontario welcomes the review by the Standing Committee on Public Accounts of matters relating to the Ministry of Correctional Services detailed in the Provincial Auditors' *Special Report on Accountability and Value for Money (2000)*. Given the importance of these matters to the citizens of Ontario, we had hoped that such a review would permit public hearings with the invitation to individuals and organizations to express their views in a public forum. The following statement published on the website of the Legislative Assembly of Ontario emphasizes our viewpoint:

Public hearings conducted by legislative committees provide an important opportunity for interested groups individuals and organizations to express their opinions and participate in formulating public policy.

Public discussion and debate, as public hearings encourage, are critical to the democratic process and to government openness and accountability. We would, therefore, urge the Committee to expand the opportunities for public hearings. Having said this, however, the Society appreciates the opportunity to present our views in a written submission and the co-operation of the Clerk of the Committee in arranging for its timely distribution to Committee members.