CBC The Current October 1, 2009

ANNA MARIA TREMONTI (Host): Over the past two years the federal government has been working on a plan to reform the prison system. Its idea was to improve public safety and make prisoners more accountable for their actions. But law professor Michael Jackson disagrees with the direction of the plan. He is the co-author of a report called: *A Flawed Compass, A Human Rights Analysis of the Road Map to Strengthening Public Safety.* Last week on The Current he outlined what he sees as the flaws.

MICHAEL JACKSON (Law professor): [clip] The problem with the government's blueprint, that nowhere in the whole of 200 pages does it once mention human rights. And in fact it gives an open invitation to the correctional service to turn the switch off any further work in relation to respect for human rights. And that will be a tragedy. It will not in any way strengthen, but fundamentally undermine public safety and Canada's commitment to help those who end up in prison improve themselves, and that way help them to re-establish themselves as productive, not outlaws.

Anna Maria Tremonti:

How do you respond to the allegations made by Professor Jackson and Graham Stewart that the prison reform agenda of your government is driven by ideology and will actually make Canada more dangerous?

Peter Van Loan:

Well, I have to disagree profoundly and if there is an ideology it is actually an ideology that comes from the authors. You know the professor has a particular philosophy and the John Howard Society is doing its job as advocates for prisoner's rights.

> *The John Howard Society played no role in the preparation of this report. Graham Stewart, one of the authors retired from his position with the Society two years before the report was released.*

From the governments perspective we have to look at it from another perspective and that is protecting all of society and the changes we have been engaging in and proposing are ones that seek to enhance the protection of society and of the community and that is our overall objective for the changes we are going through.

> *The John Howard Society is governed by citizens and has as its mission* ***Effective, just and humane responses to the causes and consequences of crime****" It has always considered public safety and well being to be its primary purpose and also believes that public safety requires that prisoners be treated in a manner that is consistent with them returning to the community better able to be law-abiding citizens. Differences between the Society's positions or those of Graham Stewart or Michael Jackson and those of the Minister relate to method, not objective.*

In the legislation we placed in the house, for example, we are going to make the paramount principle in parole decisions and all decisions in the correctional system the protection of society. That is something that wasn't there before.

> *The Minister is misinformed.The Corrections and Conditional Release act already has as its first principle "4.(a) that the protection of society be the paramount consideration in the corrections process." Bill C-43 that is currently before the house retains the same*

wording but places the sentence under section 3.1. This wording has been in the legislation since it was first introduced by the Progressive Conservative government and passed in 1992

We are looking at things like actually including, in decisions on parole, for the first time, considerations of the seriousness, the nature of the offence the person committed

The Parole Board has always been required to make a release decision on the basis of the risk the person posed to reoffend and t e seriousness of his offence if he were to offend. The same consideration applies to any decision that relates to security matters such as a transfer to a lower security prison. What is different is that the Parole Board would now, in effect, be considering the offence not just as a factor in assessing risk but as a standalone factor. In effect the Parole Board hearing would be a re-sentencing hearing in which punishment, rather than risk becomes an important factor that could determine the outcome.

– actually asking the Parole Board to look at whether or not they have been following their corrections plan.

For decisions relating to parole (as opposed to statutory release) the individual's progress including his compliance with the correctional plan has always been an important factor in assessing risk.

All of these things are designed , and a philosophy to move towards earned parole not where you automatically get of jail at two-thirds of your sentence regardless of whether you have been rehabilitated, but where you actually must show progress towards rehabilitation . We think that is better for prisoners, we think that is better for outcomes, they are less likely to reoffend if that happens, and that is better for society and makes society safer.

The Minister's use of terms like "earned parole" and his new Bill C-43 completely confuses statutory release with parole. Statutory release was introduced in 1970 to ensure that no one left prison that was not under supervision. Direct unsupervised release to the community was viewed as too high a risk for public safety. Statutory release was granted and enforced during the time when prisoners had previously been released free and clear through remission for good behaviour. Statutory release was never granted on the basis of effort or compliance but because public safety demanded that higher risk prisoners also go through a gradual release process. It was not a form of clemency but of extended supervision beyond what had been the effective end of their sentence.

Abolishing statutory release also abolishes post –release supervision. On average the amount to time involved is eight months

Anna Maria Tremonti:

We have long heard that the funding and resources for rehabilitation is not there. Is that part of the plan as well to put more into rehabilitation so that when prisoners are released ...?

Peter Van Loan:

In fact in the last two budgets we have seen significant increases in funding for Corrections Canada including care for mental health, including for programs for rehabilitation...

That is only true in part. Over the last two years CSC has had substantial budget increases. However most of those increased expenditures have been spent on security and enforcement. On September 30 the Correctional Investigator Executive Director Dr Ivan Zinger gave the following testimony to the Senate Justice and Legal Affairs Committee:

> *"The current problem with programming is access. The Correctional Service allocates only 2% (under $40M of a $2.1B) of its total annual budget to offender programming. For now, offenders have to contend with long waiting list for programs, cancelled programs because of insufficient funding or lack of trained facilitators; delayed conditional release because of the Service's inability to provide timely programs they require to complete their correctional plans; and longer time served before parole consideration. The situation is becoming critical as more and more offenders are released later in their sentences, and too often having not received the necessary programs and treatment to increase their chance of success in the community."*

... in fact in this legislation will be, for the first time, a requirement to ensure that prisoners receive attention for mental health issues. We have had a problem in our society where we de-institutionalized mental health hospitals in the seventies well unfortunately now because of the lack of community care – the provinces have failed on the mental health side – we are re-institutionalizing in our prisons. So we have to change our prisons so they can respond to that need. Our bill looks to do that as well, but all through the continuum, the principle and philosophy has to be one of how do we keep our society safe , how do we keep the community safe.

It is true that people likely to have been held in psychiatric facilities in the past are more likely to find themselves in prisons today. What the Minister fails to address is how their situation fits with the enhanced accountability model that he is emphasizing – especially when studies conducted by researchers on his staff at Public Safety have shown that those with mental illnesses actually have a lower recidivist rates than most other prisoners.

Anna Maria Tremonti:

How will you make inmates more accountable?

Peter Van Loan:

Well, there are all kinds of different ways of doing it but, as I said, if people are going to go forward for an application for parole, they are actually going to have to demonstrate that they have been following their corrections plan. That hasn't been the case so far. We are going to put that into the legislation.

This is a repeat of his earlier statement that has been rebutted already.

We are looking at the whole philosophy of looking towards more elements into earned parole where you don't.. right now we have these benchmarks of automatic eligibility ,, ah, accelerated parole for non-violent sentences first time out, people get out at one-sixth of their sentence - automatically - no discretion in the Parole Board. We want to move to a sentence where people actually show progress to rehabilitation, where they earn their parole and where decisions on whether to release them in to the community are based on whether they still represent a risk to the community.

> *Those referred to Accelerated Parole Review are those first time federal prisoners who are serving sentences for non-violent offences. Each case is reviewed by the Parole Board which has the authority to deny parole where there is a significant risk of the person committing a violent offence. The decision is not automatic. The great majority of such offenders are serving very short federal sentences. The Accelerated Parole Review measure was introduced to address the situation where those serving short sentences had no chance of being released on parole because the usual application process took them well past their eligibility date – in effect ensuring that first time non-violent offenders serving short sentences were almost always denied parole – a patently unfair process.The Minister appears to have no plan to address the inherent unfairness that his policies would reinstate.*

Anna Maria Tremonti:

Now, what is the percentage of people who actually reoffend and present a risk to the community of all the prisoners who are released?

Peter Van Loan:

Well there are all kinds of different statistics and one of the concerns has been statistics have been altered lately to only look at – some of the criminologists and experts have look at whether or not they reoffended within the first five years and while they are still under supervision, for example or not too long after and you have to look at a longer continuum. But we want to continue to get better outcomes but there still is, unfortunately, an unacceptably high level of reoffending.

> *Canadian statistics on recidivism are only available through the Ministry of Public Safety. Both the Ministry and outside criminologists and experts depend on the same data. The suggestion that the data has been "altered" is on its face absurd. The association of this statement with a reference to "criminologists and experts" implies that they have altered official data – a charge that has never been made or suggested before and for which there appears to be no basis in fact.*
>
> *CSC usually issues recidivism data for periods that ex-prisoners are in the community under supervision because that is the period that the person would otherwise have been in prison and represents the time during which his release entails a calculated risk. This data in comparison to what is known about those released at the end of their sentence without supervision has been examined by research staff in his Ministry who have concluded that gradual supervised release reduces recidivism. Knowing the recidivist rates for those past their period under supervision is of general interest but given that they would have been released anyway at that point, it has little bearing on evaluating the effectiveness of parole and other gradual release programs.*

Research shows that recidivism risk drops for most offenders the longer they remain in the community. Most reoffending occurs within months of release. After two years the recidivism rate is very low and after seven years the risk of an ex-offender committing a crime is no greater than that of any other person committing an offence for the first time.

To know life-time recidivism rate would take 50 years or more to collect the data. Data that old, or for that matter more than a few years old, would be useless for correctional officials who are trying to evaluate their programs. Short term data does not capture all crime but it captures most and gives very useful information on year over year trends – the data needed to evaluate programs. That is why his department, as well as outside experts rely on this data.

Recidivism rates for all offenders – both those on parole and those on statutory release have been steadily dropping for over 20 years.

Anna Maria Tremonti:

What is it?

Peter Van Loan:

Well it depends on the offence, it depends on the time lines that you are looking at, but we still have significant re-offending levels – sometimes in the double didgits.

Anna Maria Tremonti:

Low double didgits? I mean I'm asking, you're the Minister, I am just trying to get the sense how much recidivism is there?

The Minister, having indicated that only long term recidivism data was useful, could not answer the question because his own corrections Parole and Corrections department do not produce such long term data on a continuing basis for the reasons given above. In addition, long term data such as this is extremely difficult to collect with reasonable accuracy. Only occasional research papers have attempted, with difficulty, to establish long-term recidivism rates. As noted above, however, the absolute data is far less important in evaluating programs than the year-to-year trend data that is gathered over shorter terms as this is the data that tell them if their programs are working.

Peter Van Loan:

Recidivism is of course reoffending for your viewers – I could get you the numbers – I don't have them before me – but they are different for each particular offence, they are different for each time lines, what we are finding is that it has been going down over time as we have changed the focus on the corrections system but you have to wait over the long term to see real results.

The fact that the rates have been dropping consistently for all types of release is true. What is not true is that this drop is in response to any changes introduced by this government. The rates have been dropping steadily for over 20 years – a phenomenon not attributable to this government. We know of no publically available data that could substantiate his claim.

Anna Maria Tremonti:

What kind of rights do you think prisoners should have?

Peter Van Loan:

Well prisoners do have to have the rights for certain basic – they have to have basic human rights, they have to be treated with respect and with dignity – those are very well protected.

Rights are rights. We do not have "basic" rights and other rights. Human rights are derived from the Charter and interpreted by the Supreme Court. The proposal of the Minister that he can recognize "basic" rights and ignore others is wrong in principle and in law.

Prisoners retain the rights of all citizens when they go to jail – they are not granted special "prisoner's rights". However the law recognizes that when a person goes to prison some Charter rights are necessarily limited. Limiting those rights is allowed but only to the extent that it is necessary to carry out the sentence. Prison officials are not permitted to deprive people of their rights for purely punitive purposes. The term used to refer to this principle is "least restrictive means" and is the term that the Supreme Court has used and interpreted over the years. Because the term has legal meaning it was incorporated into the Correctional and Conditional Release Act in 1992 to ensure that the Act was consistent with the decisions of the Supreme Court.

We have a system with the Office of the Correctional Investigator to take up their concerns and complaints, but that being said, ah, you know, those things are all very well established and very well protected, we believe, right now.

The Correctional Investigator has no authority to require any changes in the treatment of a prisoner. He is an ombudsman who can only bring his concerns to the attention of the Minister. Unless the Minister and the staff in his departments are fully committed <u>personally</u> to respecting a person's human rights, the Correctional Investigatoris without power or influence.

The provision in the Act that address human rights most directly is the "least restrictive measure" requirement. <u>Bill C-43, the legislation that the Minister has put before the house has removed all references to "least restrictive measure".</u>

We believe that where there are gaps those gaps right now are on the protection of Society's side. Giving, for example, the prisoners the right to get out at two-thirds of their sentence regardless of whether they have been really showing progress towards rehabilitation – that that's an automatic right – we don't think that, for example should be an automatic right, you should have to prove that you have made efforts to try and become someone who is prepared to function in society.

This statement completely confuses human rights with legal requirements. The government can change such legislation effecting eligibility for statutory release without infringing on any rights but to change a right requires a Charter amendment. Referring as he does to such provisions as" rights can only leave the public confused about what human rights are.

Release on statutory release is not "automatic". It is subject to a review by the Parole Board who can and do deny release in cases where the person poses a serious risk of committing a violent offence, a serious drug offence or certain offences involving children, during the period they would be under supervision. The criteria for denial were deliberately made narrower than with parole but to call the decision "automatic" is not true.

For example, if you have an obligation to pay restitution from a court ordered decision to victims, the Parole Board will now under our proposals, for the first time, be able to look at whether you have made any effort to pay some of that restitution. That'll be a factor again. So, the rights that prisoners need to be balanced with some responsibilities for them to pay their debts to society and to victims.

Again, this distorts the meaning of human rights. Restitution orders are court orders that must be obeyed so long as the offender is able to do so and it falls to correctional officials to enforce the order. Although few federal offenders are able to make restitution, this law amendment is only stating what the law is already.

Anna Maria Tremonti:

Peter Van Loan, thank you for your time today.