



ELCIC Resolution on the Criminal Justice and Correctional Systems in Canada

Motion passed at the 2015 ELCIC National Convention

That the 2015 National Convention adopt the “ELCIC Resolution on the Criminal Justice and Correctional System in Canada” and that this convention:

- Commits the ELCIC to a prayerful approach for addressing the challenges of the criminal justice and correctional systems in Canada, and affirms support for restorative justice approaches that facilitate the righting of harms done, and foster the healing of relationships between offenders, victims and the larger community.
- Asks the National Church to identify educational resources to encourage and facilitate study by congregations and individuals of a wide range of materials relevant to developing a deeper understanding of the current concerns of Canada’s criminal justice and correctional system.
- Commits the ELCIC to continuing to work with ecumenical, interfaith and community partners, including the Church Council on Justice and Corrections, in order to minimize the use of mandatory sentencing and to facilitate the criminal justice and correctional system that embodies the values of restorative justice, and to make provision for effective spiritual care.
- Invites all congregations and members to seek a deeper understanding of Canada’s criminal justice and correctional system in order to express a critical evaluation of current practices and policies, and encourages congregations and members to engage in projects, programs and ministries that provide support for victims, offenders, correctional services staff, and others involved in the criminal justice system.
- Encourage the participation by all rostered ministers and congregations in the annual Restorative Justice Week sponsored by the Correctional Service of Canada in the third week of November.
- Asks the National Bishop to communicate the concerns raised in this policy resolution to the federal government and to the governments of each province and territory.
- Asks the National Bishop to share this policy resolution with our key ecumenical and interfaith partners, including The Lutheran World Federation, the World Council of Churches, the Canadian Council of Churches, and our Full Communion partner, the Anglican Church of Canada.

An ELCIC Resolution on the Criminal Justice and Correctional Systems in Canada

Part I: Examining the Current Context

Preamble

The biblical vision of the reign of God in the world is one of harmony and well-being for all human beings. This vision is fractured when individuals and groups transgress sacred and social standards of behaviour that foster shalom. Public safety is required for human well-being to be realized in Canadian society. The criminal justice and correctional systems are a human response to this essential social goal.

Statistics Canada reports that crime in Canada is at its lowest since 1969. Apparently all types of crime are down due to factors such as an aging population, changing police strategies, the use of technology, shifts in unemployment, changing attitudes toward various behaviours and in alcohol consumption.¹ Yet, court dockets are filled and prison populations overflowing. Currently the criminal justice and correctional systems face several challenges:

- Delays in the scheduling of trials which result in significant numbers being held on remand awaiting trial.
- Overpopulation of both provincial and federal correctional facilities.
- Increasing rates of incarceration.
- Prevalence of adversarial procedures and punishment, rather than practices that promote reconciliation, rehabilitation, healing and social harmony.
- Prison populations include a disproportionate number of Aboriginal Peoples.
- Prison populations include many people with mental illnesses.
- The importance of addressing the unique needs of women and youth in correctional facilities.
- Many who are released from prison go on to reoffend.

Echoing the insight of a social statement of a predecessor body, A Social Statement in Pursuit of Justice and Dignity: Society, the Offender, and Systems of Correction,² the Canadian criminal justice and correctional systems require reform to achieve the stated goals of fairness, impartiality and effectiveness to achieve positive social behaviours and accountability in the use of financial and human resources.

The Justice System

Canadians benefit from a well-developed and respected criminal justice system, which is an essential social institution constructed to ensure community stability and individual safety and security. The criminal justice system is a complex and interconnected network involving legislation, enforcement, courts—judges, prosecutors and defense attorneys—correctional facilities, and measures to reintegrate offenders into the community and meet the needs of victims. Canadians are deeply concerned when these institutional structures appear to fail. There is public outcry in the face of horrific criminal acts. Yet in spite of reports

of these perplexing crimes that fill the headlines, the majority of crimes are of lesser harm, though no less significant. Most crime occurs among persons who know one another rather than indiscriminate acts against strangers.

Legislation that structures the criminal justice system is continually reviewed and reworked to address ongoing social needs. The Criminal Code of Canada is federal legislation that defines criminal acts and sets out the policies that seek to ensure public safety. Sacred teachings such as the Ten Commandments have been central to the emergence of common law in western societies. International agreements, such as the Universal Declaration of Human Rights and other covenants, articulate an emerging sense of universal standards. There is considerable public debate about what constitutes crime in our Canadian society. Current debates are evident in such important matters as privacy, physician-assisted dying, the registration and classification of firearms, the decriminalization or legalization of marijuana, and prostitution. Although rates of criminal behaviours have generally been decreasing in Canada in recent decades, there is considerable concern about violent crimes, violations against children, sexual assaults, the growth of gangs among youth, and blatant white collar crime and corruption.

Enforcement of the criminal law is a joint endeavour of the federal, provincial and municipal jurisdictions through police services and other agencies of investigation and apprehension. Public awareness and appreciation of the exposure to danger by police on behalf of the community is accentuated when officers are killed or injured in the line of duty. While Canadians have a high regard for enforcement agencies, there is an ongoing need that police and other agencies have civilian oversight. Most police agencies would benefit from having more members from among Aboriginal Peoples and minority ethnic groups. Community policing which links closely with social agencies, families and neighbourhoods has proven to be a viable strategy for preventing crime.

Courts play a significant role in the administration of justice. It is important that judges be appointed through procedures apart from political or ideological interference to ensure fair and unbiased application of the law. The courts make judgements regarding guilt or innocence and determine appropriate sanctions. Current sentencing practices tend to equate the length of a sentence with the apparent severity of an offence—that sanctions be proportionate to the harm inflicted. While legislation mandating minimum sentences may have some merit, judges must be given sufficient discretion to consider the circumstances of each particular case. In the Canadian judicial system, crown prosecutors have considerable discretion in how cases are dealt with. Adequate legal aid is required to support and protect those who lack the means to defend themselves in the courts given the immense powers and resources of the state. Increasingly the voices of victims have a place in assessing harm done. Procedures are needed to protect and compensate both victims and those who are wrongfully convicted.

The Correctional System

Our society has developed multiple means to apply sanctions that uphold the law, to seek correction for offenders and to secure redress for those who have been victims of criminal acts. Criminologists suggest that the functions of the correctional system include retribution, deterrence, rehabilitation and social protection.

There is general consensus that incarceration should be the last resort to deal with those who violate the law and that those convicted should be detained in the least restrictive means to ensure public safety. There is little relationship between the length of sentences imposed and rates of criminal behaviours.³ When sentences are imposed, penalties less than two years in length become the responsibility of provincial jurisdictions and those two years and above are administered federally by Correctional Service Canada.

The task of corrections is to administer the sentences determined by the courts. Many sentences include a time of incarceration in a prison or correctional facility. The courts may grant conditional sentences in which those convicted remain in the community under supervision by probation or parole officers. The Parole Board of Canada may grant parole to prisoners by which part of the sentence is served in the community under supervision. The prospect of parole or eventual pardon (record suspension) motivates offenders to conform to community standards and put their misdeeds behind them. The Corrections and Conditional Release Act mandates that the primary function of correctional institutions and community resources is to prepare offenders held in custody to reintegrate into the community.

Unfortunately, in spite of insightful case management and the rehabilitation programs that are available, for many offenders the prison experience is one of simply being confined, and for some it may even become a school of crime in a deviant subculture. The demographic make-up of the prison population raises concerns about racial bias and inadequate response to those with mental illnesses in the correctional system. The fact that so many more men than women are in prison raises concerns about providing for the unique needs of female inmates. It also raises questions about the root causes for gender differences in criminal activities. The practice and frequency of holding prisoners in solitary confinement for excessive periods of time is a controversial matter. While the federal system has a special investigator to appeal cases, most provinces lack this backup service.

Chaplains and Spiritual Care Providers

International standards hold that those in prisons have a fundamental right to worship in their own tradition. Offenders who develop a faith commitment have the potential to express their faith in pro-social attitudes and behaviours. Chaplains, spiritual advisors and spiritual care providers facilitate the provision of freedom of religion and assurance that religious rights and spiritual accommodation are given appropriate attention. They care for spiritual needs, journey both with offenders and also with the staff and volunteers who work with offenders, and offer support for families. Chaplains and spiritual advisors/providers represent a holistic approach to treating offender issues.

Christian chaplains share the hope of the gospel message of forgiveness and new life. Our church certifies the status and suitability of ordained and diaconal ministers called to work in prisons. Through visible presence and Word and Sacrament they signal hope and light, performing a significant role in maintaining linkage with caring community and liaise with faith communities. They engage Canadian faith communities in addressing those affected by the consequences of crime: offenders, victims and the community. In Matthew 25, Jesus affirms the importance of visiting those in prison, saying I was in prison and you visited me.⁴

Restorative Justice

Canada has been a nurturing place for the emergence of restorative justice approaches to address criminal justice issues.⁵ In recent years there has been a convergence of Christian and aboriginal teachings in a movement of restorative justice. While established approaches have given emphasis to punishment as a solution to crime, restorative justice lifts up the importance of the restoration of broken relationships. While accustomed policies focus upon crime as a breaking of the laws of the state, restorative justice gives emphasis to the healing of broken relationships as a goal of bringing about justice. This changed lens views justice as restoring and healing relationships between victims and offenders and the larger community. The focus of restorative justice is on conflict resolution rather than adversarial postures between victims and offenders.⁶

At the heart of restorative justice is reconciliation rather than retribution. Through offender- victim mediation, family group conferencing and sharing circles, the restoration of broken relationships is sought through restitution and community service. While restorative justice is often chastised as being “soft on crime,” these measures actually increase accountability for offenders who must face directly the injury inflicted upon victims. In recent years there has been an increase in the use of alternatives which divert offenders from the courts and incarceration into restorative justice programs that increase accountability and healing. Restorative justice approaches are perhaps most suitable for first-time offenders, youth and in cases of non-violent altercations, but have also been found effective in more serious cases. The establishment of special courts for youth, the mentally ill and those whose crimes can be attributed to addictions, are positive steps.

Community

Those who come before the law have been formed in our communities. There is considerable debate about the sources of criminal behaviour. Some cite the unequal opportunity structures of our society. Others cite the varied social relationships in families and peer groups which shape identity, values and actions. Some point to significant psychological or emotional factors. Offenders often come from fragmented social backgrounds of family abuse, poverty, racial discrimination, poor educational attainment, substance abuse, addictions, inadequate child and family services and the failure to internalize social norms. Laws, enforcement, courts and prisons are only partial responses to criminal behaviours. The ultimate solutions to deviance lay in communities that exhibit greater opportunities, mutual respect and equity. The care and education of children is particularly important as a major preventive measure; addressing critical developmental and social needs will reduce the number of youth falling into or choosing lives of crime. These are values that are inherent in the Christian gospel and the theology and practices that have emerged in the church around the life, death and resurrection of Jesus Christ. Faith communities can be significant settings in which both victims and offenders can find healing.

Part II: Affirming the Courage of Faith

The ELCIC, as an expression of the body of Christ in the world, has significant resources to address current concerns in the criminal justice and correctional systems in Canada. The seminal foundations of Lutheran theology and ethics remain instructive and authoritative to address current challenges.⁷

Law and Gospel

Lutheran theology distinguishes between law and gospel as significant dimensions of the Christian message. The importance of law in our social affairs is essential for the formation of a healthy society. The biblical teachings of law provide a framework for ethical standards and social structures; function to convict the consciences of individuals and societies regarding the effects of sinful beliefs, attitudes and actions; and serve as guides for those who have sought forgiveness through sincere repentance. Guided by these enduring values, this church can utilize contemporary insights and research that seek to contribute to the harmony and social well-being envisioned in the reign of God.

<http://www.csc-scc.gc.ca/restorative-justice/003005-0007-eng.shtml>

The gospel of Christ is supportive of restorative justice practices. We are reminded of the teachings of Jesus: *So when you are offering your gift at the altar, if you remember that your brother or sister has something against you, leave your gift there before the altar and go; first be reconciled to your brother or sister, and then come and offer your gift. Come to terms quickly with your accuser while you are on the way to court with him, or your accuser may hand you over to the judge, and the judge to the guard, and you will be thrown into prison.*⁸

*You have heard that it was said, "An eye for an eye and a tooth for a tooth." But I say to you, Do not resist an evildoer. But if anyone strikes you on the right cheek, turn the other also; and if anyone wants to sue you and take your coat, give your cloak as well; and if anyone forces you to go one mile, go also the second mile.*⁹

We also remember the words of the Hebrew prophet:

O mortal, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?¹⁰

Looking through the eyes of Jesus and the prophets, reconciliation is a central principle informing our perspectives on criminal justice practices.

Church and Society

This church affirms the confessional teachings that understand that God is at work in both the church and society.¹¹ God offers the comfort of salvation through the means of grace, Word and Sacrament. God also works through the "left hand" of God to provide safety and security in the society through social institutions such as the family, government, the economy, health and social services. Human reason is a significant gift of God to order human relationships.¹²

Saints and Sinners

Public opinion about those who commit criminal offences often expresses critical judgment of those who are "criminals." Offenders are stigmatized which isolates them from the acceptance and respect offered to others. The label "criminal" becomes descriptive of the whole person, rather than being associated with specific behaviours. Religious notions often divide people into saints and sinners, the righteous and unrighteous, those who are good and those who are evil. Yet the Christian faith affirms that all persons are made in the image of

God and have intrinsic value. The scriptures also teach that...all have sinned and fall short of the glory of God.¹³ In his personal testimony of faith, St. Paul confessed this inner struggle: For I do not do the good I want, but the evil I do not want is what I do.¹⁴ Luther expressed this tension in the doctrine of simul justus et peccator, that a believer is at the same time both a sinner and a saint.

While Lutheran theology refutes the notion that salvation can be earned by good behaviour, it also affirms that faith brings forth good works.¹⁵ Caution is needed when categorizing other persons as good or evil. Although there certainly are some whose antisocial behaviour patterns are so engrained that there is little possibility of personal change, the overall vision of Jesus is that persons can be transformed through faith and a relationship with God. It is important not to confuse ultimate redemption which is in the hands of a gracious God, with deviance from social norms, which may be subject to correction and reform. The goal of the justice and correctional systems is to assist those who have broken the law to discover ways to live with freedom and responsibility as law-abiding citizens.

Biblical Interpretation

Our biblical foundations are built upon values of compassion, unconditional love, the theology of the cross that embraces the reality of suffering and an enduring hope. While Luther recognized the importance of natural law revealed to all persons and also positive laws established by legitimate authorities, he also encouraged a flexible administration of the law based upon values of equity, mildness and love. In Luther's words, the law must "make room for love."¹⁶

Part III: Imagining New Possibilities

The harm caused by crime leaves lasting effects, which make healing and reconciliation both challenging and essential. The ELCIC recognizes the tremendous needs in society of all who are affected by crime. As a church In Mission for Others, the ELCIC commits to raising awareness of the many and various ways by which congregations and individuals can participate in addressing such needs. We seek to be informed by the values of compassion, mercy and inclusiveness when dealing with offenders and victims. We understand the challenges and opportunities in promoting restorative justice to be both personal and systemic.

Affirmation and Commitments

1. The ELCIC is dedicated to a prayerful approach for addressing the challenges of the criminal justice and correctional systems in Canada, and commits to praying for all who are affected by crime and the criminal justice system, including victims, offenders and all who work in the corrections and public safety fields.
2. The ELCIC affirms restorative justice approaches that consider crime as the breaking down of human relationships among victims, offenders and the larger community, rather than simply the breaking of laws against the state. The ELCIC supports initiatives that facilitate the righting of harms done, and foster the healing of relationships between offenders, victims and the larger community.
3. The ELCIC encourages the use of conditional sentences, probation and parole rather than

incarceration as means of seeking correction and rehabilitation in the lives of offenders. The ELCIC supports judges being given sufficient discretion in sentencing to consider the circumstances of each particular case. The ELCIC encourages positive community based relationships with offenders and parolees in order to foster safe reintegration and crime prevention.

4. The ELCIC encourages initiatives to reduce the numbers of those awaiting trial, the numbers of those incarcerated and held in custody and measures that eliminate the overcrowding in Canada's prisons.
5. The ELCIC affirms that fostering economic justice, access to affordable housing, an effective public health system and encouraging healthy family relationships and the care of children are measures that help reduce deviance and crime in our society.
6. The ELCIC recognizes the impact that social inequality has on an individual's experience of the criminal justice and correctional systems. The ELCIC encourages reflection on meaningful approaches that will be effective for women, the aboriginal community and those who experience mental illness.
7. The ELCIC affirms that in the face of the expansion of correctional facilities, that increased funding for preventive, rehabilitative and re-integrative processes and programs be encouraged.
8. The ELCIC supports best practices in the operation of correctional facilities, including addressing the specific and unique needs of all those who are convicted.
9. The ELCIC regards the operation of correctional facilities in Canada as the responsibility of governments. This church urges extreme caution in any consideration of private ownership or administration of correctional facilities.
10. The ELCIC supports those who are victims of crime, through compassionate pastoral care, community support and constructive programs that may assist victims to deal with trauma, psychological and emotional distress and the loss of resources.
11. The ELCIC encourages congregations and individuals to give of their time and talents to engage meaningfully in projects, programs, and ministries that provide support for victims, offenders and others involved in the criminal justice system.
12. The ELCIC encourages all members to become informed about Canada's criminal justice and correctional system in order to express a critical evaluation of current practices and policies.
13. The ELCIC encourages members to consider their vocational call from God and supports those who enter occupations and professions in the criminal justice and correctional systems.
14. The ELCIC affirms the role of chaplains and other spiritual care providers who serve those in the criminal justice and correctional systems, and supports the public funding of these services.
15. The ELCIC advocates for those who are marginalized and suffering as a result of the challenges which currently exist in Canada's criminal justice and correctional system, by speaking forth through various venues of communication and ensuring that the necessary voices for accountability are heard especially by those in positions of authority and power.
16. The ELCIC recognizes that engaging the criminal justice and correctional systems is an opportunity for a ministry of reconciliation, and we hold the hope of enabling all people to contribute positively to the life of the community as family members, workers and persons who contribute positively to the life of the community as family members, workers and persons who respect the rights of others.

¹ <http://www.thestar.com/news/canada/2015/01/28/crime-in-canada-falls-to-lowest-point-since-the-60s.html>

² A Social Statement in Pursuit of Justice and Dignity: Society, the Offender, and Systems of Correction, Lutheran Church in America, 1972 www.elcic.ca

³ David Cayley, *The Expanding Prison*, Anansi Press, Toronto, 1998, pp.89–99

⁴ Matthew 25:36

⁵ Howard Zehr, *Changing Lenses*, Herald Press, Waterloo, 2005; Michael L. Hadley, editor, *The Spiritual Roots of Restorative Justice*, State University of New York Press, Albany, N.Y., 2001

⁶ See, for example, Correctional Service of Canada,

The courts have affirmed that in the sentencing of Aboriginal persons, special consideration is to be given to the history of mistreatment experienced by many Aboriginals. Incorporating additional insights from restorative justice into the criminal justice system has the potential to increase public safety.

⁷ George W. Forell, *Faith Active in Love*, Augsburg, Minneapolis, 1954; Karen L. Bloomquist and John R. Stumme, editors, *The Promise of Lutheran Ethics*, Fortress Press, Minneapolis, 1998

⁸ Matthew 5:23–25

⁹ Matthew 5:38–41

¹⁰ Micah 6:8, NRSV

¹¹ Augsburg Confession Article XVI

¹² Mary Gaebler, *The Courage of Faith*, Fortress Press, Minneapolis, 2013

¹³ Romans 3:23

¹⁴ Romans 7:19

¹⁵ Augsburg Confession Articles IV and VI

¹⁶ Paul Althaus, *The Ethics of Martin Luther*, Fortress Press, Philadelphia, 1972 p.135