RULE OF LAW REPORT

VOLUME 6, ISSUE 2
JUNE 2023

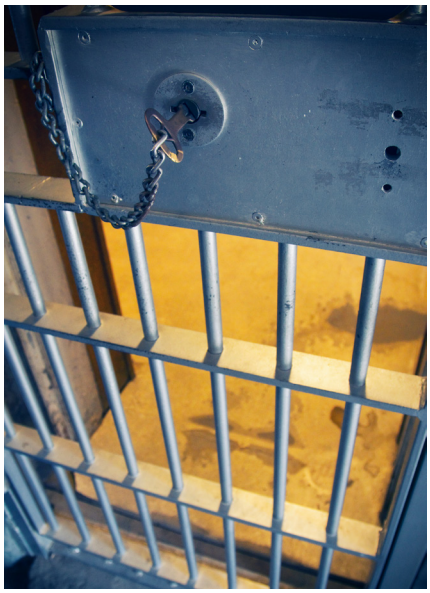
LexisNexis®

A DIFFERENT APPROACH: RETHINKING PROBATION

By Shaunna Kelly

The enactment of 718.2(e) of the *Criminal Code* mandated a different approach to sentencing for Indigenous accused persons engaged in the criminal legal processes. Since then, the Supreme Court of Canada has encouraged the use of restorative approaches to sentencing, stating most recently in *R. v. Parranto*,[1]

> Indeed, this Court has held that the 1996 sentencing reforms were intended to both ensure courts consider restorative justice principles and to address the problem of overincarceration in Canada.[2]



However, with limited sentencing options built into the *Criminal Code*, there is often a shortage of creative solutions presented to the Court which encourage genuine restorative processes, particularly where diversion is inappropriate. As a default, many justice participants rely heavily on probationary terms to encourage rehabilitation. Unfortunately, this well-meaning use of probation terms likely contributes to the over-incarceration of Indigenous people. This article will explore various considerations relating to reporting probation terms.

The Supreme Court of Canada has explained "restorative justice" as the restoration of the parties affected by the commission of an offence, including the victim, the community, and the offender. Restorative justice is not the same as rehabilitation: rehabilitation focuses on reforming the offender's underlying criminal antecedents, whereas restorative justice processes seek to remedy the adverse effects of crime in a manner that addresses the needs of all the parties involved. Rehabilitation is a component of restorative justice, but not its only component. True restorative justice approaches will also include reparations to the victim and community, promotion of a sense of responsibility and acknowledgement of the harm done. [3]

1 [2021] S.C.J. No. 46, 2021 SCC 46 at para. 45 (S.C.C.).

2 See also, *R. v. Gladue*, [1999] 1 S.C.R. 688, [1999] S.C.J. No. 19 at para. 57 (S.C.C.) and *R. v. Proulx*, [2000] 1 S.C.R. 61, 2000 SCC 5 at paras. 16-20 (S.C.C.).

3 *R. v. Proulx*, [2000] 1 S.C.R. 61, 2000 SCC 5 at para. 8 (S.C.C.).

There is a duty to consider the unique background factors of the Indigenous offender when determining the appropriate sentence. The unique circumstances of the individual, by necessity, include the effects of colonialism on the accused person's lived experiences. It also relates to all aspects of the criminal legal system, including probation and parole. Therefore, an effective application of 718.2(e) would lean heavily on innovative sentencing practices available through community-based sanctions. Given that many traditional Indigenous sentencing conceptions hold restorative justice as the primary objective, alternatives focusing on community-based sanctions must be explored.[4]

The Indigenous population across Canada comprises various groups of people: Metis, Inuit, and First Nation people. There are 13 distinct groups of First Nations and 207 reserves in Ontario alone. Each of the distinct groups of First Nation people has unique languages, customs, and traditions. Indigenous peoples are vastly different and are often erroneously thought to be uniform in their views on justice. This often leads to chronic misunderstanding and paternalistic approaches when attempting to determine what is right for Indigenous communities. This is best illustrated in the enactment of laws of general applicability meant to circumvent the over-representation of Indigenous people in the Canadian criminal legal system. The reality is that accessibility to programming specifically crafted for the community and identity varies from place to place in both availability and scale. Thus, restorative justice must incorporate those communities' views and available resources.

When addressing the over-representation of Indigenous people in the criminal legal system, it has been said by various academics and leaders that "substantive equality calls for a different approach."[5] This is a concept that is widely accepted and noted in Canadian political discourse and debate. A different approach to sentencing Indigenous people would include empowering and trusting community-based organizations to assist with rehabilitating the accused person and working with the accused person to obtain accountability for those harmed through their actions.

"A different approach to sentencing Indigenous people would include empowering and trusting community-based organizations to assist with rehabilitating the accused person and working with the accused persons to obtain accountability for those harmed through their actions."

Indigenous peoples are unique compared to their non-Indigenous counterparts within the criminal legal system. This uniqueness should be celebrated, but it also mandates a different approach that necessarily emphasizes the need

4 *R v. Wells*, [2000] 1 S.C.R. 207, 2000 SCC 10 at para. 38 (S.C.C.).

5 The Honourable John McKay, Chair, *Indigenous People in the Federal Correctional System: Report of the Standing Committee on Public Safety and National Security*(House of Commons, June 2018, 1st Sess., 42nd Parl.) at footnote 88: SECU, Savannah Gentile (Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies) (November 23, 2017), online: https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/meeting-86/evidence.

for creative alternatives to traditionally accepted sentencing approaches. Unfortunately, one of the ways this commonly manifests itself is through lengthy "reporting" probation orders.

Respectfully, a lengthy term of probation that requires reporting efforts to rehabilitate is not always the best practice to follow. A three-year term of probation will often guarantee that the accused person is kept within the criminal legal system for an extended period; one only needs to look at concepts of systemic discrimination and how they translate to the over-representation of Indigenous people to see how this plays out in practice. Allowing for such lengthy and potentially unnecessary terms of probation in support of rehabilitative efforts should be avoided.

In 2020, the Supreme Court of Canada released *R. v. Zora*,[6] which discussed the appropriateness of terms and conditions. Although the discussion, in that case, focused on the issue of bail, similar concerns can be related to the use of probationary terms. The Court noted that the ongoing use of conditions effectively set the accused person up to fail by regularly imposing terms that were "unnecessary, unreasonable, unduly restrictive, too numerous…".[7] This overuse of terms and conditions offends the principle of restraint. Looking back at *R. v. Gladue*, it is clear that Parliament created a duty "to undertake the process of sentencing aboriginal offenders differently, in order to endeavour to achieve a truly fit and proper sentencing…" ,[8] and the Supreme Court, as recently as the decision in *R. v. Sharma*, has stated that, "[t]he exercise of this duty pursuant to s.718.2(e) is to be undertaken in a manner consonant with principles of restraint, proportionality and individualization in sentencing."[9]

The reality is that onerous conditions disproportionately impact vulnerable and marginalized populations.[10] The overuse of conditions oftentimes disregards specific issues, such as undiagnosed ADHD or FASD or suffering from concurrent addictions and mental health-related issues. This is particularly true when, due to funding limitations, a full assessment of the individual's needs by a health care professional is unavailable, which is typically the case. The absence of proper assessments and resources to present to the Court has a negative effect on the overall sentence, as the absence of that information may instead support increased use of terms and conditions. If the purpose of the terms imposed is based on the need to provide oversight and accountability to the legal system, then the order is not truly encouraging rehabilitation. It may encourage the exact opposite. When too many onerous and demanding conditions are asked of the accused person, and they feel they are unable to follow through on all of them at once, they may give up entirely, unable to break those terms down to smaller goals to be accomplished individually. That is not truly rehabilitation.

6 [2020] S.C.J. No. 14, 2000 SCC 14 (S.C.C.).
7 *R. v. Zora*, [2020] S.C.J. No. 14, 2000 SCC 14 at para. 26 (S.C.C.).
8 *R. v. Gladue*, [1999] 1 S.C.R. 688, [1999] S.C.J. No. 19 at para. 33 (S.C.C.).
9 *R. v. Sharma*, [2022] S.C.J. No. 39, 2022 SCC 39 at para. 247 (S.C.C.).
10 *R. v. Zora*, [2020] S.C.J. No. 14, 2000 SCC 14 at para. 79 (S.C.C.).

Lengthy probationary terms should only be considered when the protection of the public is given primacy over rehabilitation. One such example is the need to protect the victim. It is not uncommon that a three-year term of probation prohibits the accused person from contact with a particular person or business. That term, however, does not require reporting probation to accompany it.

But suppose the goal of the probation order is, indeed, the rehabilitation of the accused person; before imposing a reporting condition, the parties may first want to consider what other community-based resources are available before turning to probation as an overarching part of their plan. It may be that there are no community-based programs or supports. In that case, a reporting probation would be able to connect the accused person in an otherwise deficient plan, but where there are real and substantive resources in place, one must ask how probation can truly contribute to that plan beyond mere oversight of Indigenous organizations and the community. It is problematic to insist that a colonialist construct oversee the actions and support of Indigenous organizations.

It is important to trust available resources and the community to assist through the process. Anecdotally, it appears that persons before the Court are no less likely to engage in cultural programming if they are forced to report it to probation. The impact of the individual's previous experience with probation, their relationship with a particular probation officer and the cultural competency of that officer are all relevant considerations when determining whether probation is going to be an effective tool in sentencing. It is quite unfortunate that the courts have no oversight into the role of the probation office. It is hard to predict whether the probation officer assigned to a particular case will have the necessary compassion and cultural competency to truly understand the complex relationship that an Indigenous person may have with the Canadian legal system. The probation officer is an employee embedded within the colonialist system, in which systemic discrimination and racism continue to run rampant. And this is the context in which the Court must be presented with submissions to properly contextualize whether a reporting probation is needed in the unique and specific case that is being presented to them. It is recommended by the author that where there are sufficient and realized community supports with tangible plans and an articulated path to move forward, deference should be given to those restorative justice processes, and proper submissions should align with this. It is pertinent for counsel to present a case to the court that can provide some assurance of accountability and that explains how that can be achieved without the use of a reporting term on a probation order, where appropriate.

It is common practice for community service providers to take the position that they should not be placed in a supervisory position that would require them to breach the accused person for failure to complete rehabilitative programs. This is partly due to the realism of rehabilitation: no path will be perfect, and there will be missteps and failures along the path to healing. Successes are not necessarily measured by the completion of a program, but rather by the engagement and the relationships that are formed to assist in reducing the underlying causes of the offending behaviour.

One may also want to consider using the term "Sign all releases as required by Probation Officer". As mentioned above, demanding oversight of community-based programs is problematic. It forces the community-based service provider to report back. It places the program managers in an awkward position, particularly if the probation office is demanding real and tangible "results" that may differ from what success looks like in the eyes of the service provider. Forcing this type of reporting back to probation may be fundamentally destructive to the purpose of the order. With the looming threat of criminal prosecution for failure to succeed in rehabilitative programming, the requirement to report may produce the opposite result; any little bump or hurdle faced by the individual may cause them to avoid continued attempts to engage for fear that a charge will be laid. The power imbalance in that circumstance puts that person in a deficit right from the initial release stage.

Thus, a focus on rehabilitation should not result in a condition requiring that probation be deemed "reporting" probation. In some cases, mandatory reporting of the rehabilitative terms does nothing to support the rehabilitative component other than to give the courts piece of mind that the work is being completed. When there are inherent barriers erected through lived experience and interactions with the legal system, it is more possible that the reporting condition will, in fact, contribute to further charging of the accused person rather than encouraging the individual to follow through with the discharge planning. There are other ways to satisfy the Court that the individual's rehabilitative needs are being met, but the Court must be informed of those alternatives and, thus, it is important that structured and descriptive submissions are made not only on the existence of resources in the community, but how they operate in relation to the plan that is presented.

In R. v. Bissonnette, the Court noted the following about rehabilitation:[11]

> Lastly, the objective of rehabilitation is designed to reform offenders with a view to their reintegration into society so that they can become lawabiding citizens. This penological objective presupposes that offenders are capable of gaining control over their lives and improving themselves, which ultimately leads to a better protection of society. M. Manning and P. Sankoff note that rehabilitation "is probably the most economical in the long run and the most humanitarian objective of punishment" (Manning, Mewett & Sankoff: Criminal Law (5th ed. 2015), at ¶1.155). Along the same lines, I would reiterate my comment in R. v. Lacasse, 2015 SCC 64, [2015] 3 S.C.R. 1089, that "[r]ehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world" (para. 4).

11 [2022] S.C.J. No. 23, 2022 SCC 23 at para. 48 (S.C.C.).

Thus, where there is strong community support expressed through character references, Gladue reports, or court support workers and a release plan, the need to assign a probation officer to oversee the rehabilitative attempts should be less necessary.

In conclusion, there are instances where unnecessary and often counterproductive lengthy terms of probation are imposed in an attempt to focus on rehabilitation. Section 718.2(e) not only justifies the need for a different approach for Indigenous people, but also demands it. That different approach is found in the empowerment and trust of community-based organizations.

BILL C-295'S BLIND SPOT? PERSONS WITH DISABILITIES IN COMMUNITY CARE

By Kate McInnes,
(Originally published in *The Lawyer's Daily*,

On Nov. 29, 2022, member of Parliament Hedy Fry, motivated by the "clear evidence of abuse of seniors in care facilities across the country" that came to light during the COVID-19 pandemic, introduced Bill C-295. This legislation would amend ss. 214, 215, and 718.21 of the *Criminal Code* to criminalize owners and managers of long-term care facilities who fail to provide the "necessaries of life" — such as food, shelter and medical attention — to people in their care.

These amendments hinge on what the drafters of Bill C-295 have clearly assumed is the primary vehicle for long-term care in Canada: the quintessential retirement home. The bill would amend section 214 to provide the following definition of a "long-term care facility":

> … a residential facility, or part of a residential facility, the primary purpose of which is to provide long-term accommodation, meals, assistance and care to three or more adults who reside in the facility and who
>
> (a) are unrelated to the owners and managers of the facility by blood or marriage, and
>
> (b) are unable to provide themselves with the necessaries of life by reason of age, illness, mental disorder, disability or frailty[.]

This definition might be sufficient if the only purpose of Bill C-295 was to tackle elder abuse in nursing homes. This legislation, however, is not restricted to the protection of any one demographic. As Fry herself has said, the bill would respond to the mistreatment of any "vulnerable" person who benefits from long-term care, including persons with disabilities.

Bill C-295's current drafting, however, reveals a fundamental misunderstanding of what long-term care actually looks like for thousands of Canadians with disabilities. The bill's definition of a "long-term care facility" is not only arbitrary and unnecessarily restrictive, but it is also contrary to the anti-institutionalization and pro-community living trends that have dominated public policy in every region of this country for the last 50 years. In British Columbia, for example, the most commonly requested housing support funded by Community Living B.C. — the Crown corporation responsible for arranging housing for persons with disabilities — is a "shared living arrangement," in which an adult with a disability lives in the home of a caregiver who is contracted to provide support.

> "As Bill C-295 defines a "long-term care facility" as a "residential facility" occupied by "three or more adults," almost all community-based care arrangements for persons with disabilities would be excluded from the ambit of this legislation. "

As Bill C-295 defines a "long-term care facility" as a "residential facility" occupied by "three or more adults," almost all community-based care arrangements for persons with disabilities would be excluded from the ambit of this legislation. This oversight is particularly egregious considering that the sole conviction of a caregiver under s. 215 of the Code involved a person with a developmental disability living in a shared living arrangement.

Florence Girard was born in 1964. She was described by those who loved her as "very social" but "sensitive." She loved the film *Titanic*, having sleepovers with her friends, and sitting outside in the summer and watching the birds. "Flo," as she preferred to be called, had Down syndrome, and required assistance in every aspect of her daily life. Her care had been taken over by the British Columbia Ministry of Children and Family Development in 1981, and she lived the majority of her life in group care homes.

In 2010, Flo became one of the 4,000 British Columbians with disabilities participating in a shared living arrangement when she moved into the home of her caregiver, Astrid Dahl. Flo's shared living arrangement with Dahl was co-ordinated and overseen by Kinsight, a non-profit agency that receives funding from Community Living B.C.

On Oct. 13, 2018, Flo was found dead in Dahl's Port Coquitlam home. She had died of starvation and severe malnutrition. At her death, she weighed just 51 pounds. Flo had not been taken to a doctor in four years; her autopsy revealed pneumonia in her lungs and a mouth full of rotted and broken teeth. For reasons that remain unclear, Flo had been weaned off her pain medication without the authorization of a medical professional. She was not allowed to leave her bedroom, and Dahl even went so far as to have a locked gate installed on her doorframe. Flo was not allowed to have the sleepovers that she so enjoyed, nor could she go onto the deck and watch the birds as she pleased. The evidence at trial was clear: Flo died a slow, painful and completely preventable death.

In my opinion, Dahl is not the only one to blame for Flo's death and the deplorable conditions she endured in the last months of her life. Per official Kinsight policy, Dahl, as an independent contractor, was required to submit quarterly or biannual reports concerning Flo's welfare and progress. No reports were filed by Dahl in 2017 or 2018, and no one from Kinsight flagged or questioned these omissions. When a Kinsight co-ordinator attended Dahl's residence on Aug. 24 and Sept. 11, 2018, she was advised by Dahl that Flo had gotten the flu and was being fed soup and Ensure, a meal replacement. The co-ordinator did not visit Flo to ask her how she was doing, and she did not follow up to inquire as to whether Flo had been seen by a doctor.

In 2022, Dahl was found guilty under s. 215 for failing to provide Flo with the necessaries of life (*R. v Dahl*, [2022] B.C.J. No. 1480, 2022 BCSC 1387). She was sentenced to just 100 hours of community service, 12 months of curfew and 12 months of probation. Kinsight was initially charged under s. 215 as well, but those charges were stayed when the B.C. Prosecution Service determined the facts of the case no longer met the charge approval standard. Even if they had, the amendments provided for in Bill C-295 would not have captured Kinsight's role in Flo's death, as Flo had died in a shared living arrangement rather than in "a residential facility" that provides care to "three or more adults".

The purpose of Bill C-295 is to criminally sanction organizations that fail in their duty to provide the necessaries of life to vulnerable adults in their care. Surely, this purpose ought not be restricted by the form the care in question takes — institutional, community-based, or otherwise. Whether Flo Girard died in a group home or in a bedroom in her caregiver's townhouse does not alter the duty Kinsight had to ensure she was provided the necessaries of life by Dahl, who they contracted, paid and supervised.

In the words of MP Majid Jowhari, “the reasoning behind Bill C-295 is quite simple: that organizations have a responsibility to the vulnerable, and failure to meet this obligation must be punished in a clear and unequivocal manner.”

If Parliament actually wants to achieve this goal, it must identify the different forms of long-term care that exist in Canada today and revise Bill C-295 accordingly. It must account for community-based care, including shared living arrangements. Most importantly, Parliament must consult with disability rights groups and self-advocates in refining Bill C-295, which has been drafted without consulting the very people that the legislation seeks to protect.

Justice for Flo Girard – and thousands of other Canadians with disabilities living in community-based long-term care – requires it.

Kate McInnes is a recent law graduate of the University of British Columbia. She will begin her M.Sc. in international human rights law at the University of Oxford in September 2023, where her research will focus on investigating and prosecuting violence against persons with disabilities.

ONTARIO INVESTING $6.5 MILLION TO TACKLE DELAYS AT LANDLORD AND TENANT BOARD

By Amanda Jerome, (Originally published in *The Lawyer's Daily*, © LexisNexis Canada Inc.)

The Ontario government is appointing an "additional 40 adjudicators" and five staff members to "improve service standards and continue to reduce active applications and decision timeframes at the Landlord and Tenant Board," while also proposing changes to strengthen a "broad range of tenant protections."

> "According to a government release, issued April 5, 2023, the appointment of more adjudicators, which will "more than" double the number of full-time adjudicators at the Landlord and Tenant Board, is made possible with a $6.5 million investment from the province."

According to a government release, issued April 5, 2023, the appointment of more adjudicators, which will "more than" double the number of full-time adjudicators at the Landlord and Tenant Board, is made possible with a $6.5 million investment from the province.

"Residents and rental housing providers deserve fast results, and government bureaucracy should not stand in the way," said Attorney General Doug Downey.

"That is why we're investing millions of dollars to increase the number of adjudicators and staff at the Landlord and Tenant Board, so the board can continue its work to reduce its case load, improve client service and resolve disputes faster," he added in a statement.

Ontario is also proposing changes that would "enhance tenants' rights to install

air conditioning in their units," and strengthen "protections against evictions due to renovations, demolitions and conversions, as well as those for landlord's own use."

Steve Clark, minister of municipal affairs and housing, noted the "record number of rental housing starts that have occurred in recent years…"

"We know this record is being challenged by external economic factors, but we will continue to take actions that lay the groundwork for long-term housing supply growth. Meanwhile, our government is also taking real steps to make life easier, stabler and more predictable for tenants and landlords alike," he added.

The province, the release noted, is "proposing to double the maximum fines for offences under the *Residential Tenancies Act* (such as bad faith renovictions) to $100,000 for individuals and $500,000 for corporations. Ontario has the highest fines in Canada for residential tenancy offences."

According to the release, if a landlord evicts a tenant "to use the unit themselves (or for their family)," the landlord (or their family members) "would have to move into the unit by a specific deadline."

"When evicting a tenant to renovate a unit," the release explained, landlords would be required to:

- "provide a report from a qualified person stating the unit must be vacant for renovations to take place
- update the tenant on the status of the renovation in writing (if they plan to return)
- give them a 60-day grace period to move back in, once the renovations are complete."

"If the landlord doesn't allow the tenant to move back in at the same rent, the tenant would have two years after moving out, or six months after renovations are complete (whichever is longer), to apply to the Landlord and Tenant Board for a remedy," the release added.

If a tenant is in arrears of rent, the release noted, they may "enter into a repayment agreement with their landlord to pay the rent they owe and avoid eviction."

"To make it easier for both tenants and landlords, the government is proposing to require use of the Landlord and Tenant Board's plain language repayment agreement form. This would help ensure all parties better understand their rights and responsibilities," the release explained.

According to the release, Ontario "remains focused on its long-term goal of creating 1.5 million homes by 2031, including rental homes."

In October 2022, the More Homes Built Faster action plan "introduced changes to reduce barriers for home builders to replace older, mid-sized rental apartments with larger, more modern rental buildings," the release added, noting that the government is "consulting on changes that will help to create a balanced framework governing municipal rental replacement by-laws."

As an example, the release noted that the government is "considering requiring replacement units to have the same core features (e.g., number of bedrooms) as original units."

"The proposals would also give existing tenants the right to move into the new unit while paying the same rent. This would help protect affordable housing while encouraging the revitalization of older, deteriorating buildings and increasing rental housing supply," the release explained.

This funding announcement builds on an investment of $4.5 million over three years as part of the More Homes Built Faster: Ontario's Housing Supply Action Plan 2022-23, which was made in April 2022, and an investment of $1.4 million made in November 2022 to hire operational staff for the Landlord and Tenant Board.

THE ACT OF "NO"

By John Chaif, (Originally published in *The Lawyer's Daily*, © LexisNexis Canada Inc.)

After serving almost 40 years in prison, I have lived in society for almost 11 months. I have discovered an interesting aspect to the impact of imprisonment. I have had to relearn the art of saying no.

In prison, the power imbalance between figures of authority and the prisoner means that one loses the practice of saying no. Compliance is an expectation of the authority figures. Compliance is understood by the authority figures to mean complete obedience to the whims of the staff. Non-compliance is seen as contributing to a degenerating attitude, which is understood to lead to a heightened risk to public safety. This means the prisoner loses the power that comes with the freedom to express an opinion as well as the freedom to say no.

The power imbalance skews the importance of any decision to say no because there is a distinct lack of criteria for such subjective defining of the relevance of the matter being decided. Decisions that might otherwise be minor in nature can be elevated in this way to a degree that impacts on releasing decisions. Refusals, or the act of saying no, require serious consideration regardless of the appearance of the matter being decided. This suppression of the power to refuse within the offender can lead to long-term habits that can be challenging to break. More importantly, within the community, there can be a dysfunction of the offender's ability to reach decisions of even minor irrelevance.

The practice of assertion of self by the offender is virtually non-existent within the relationships between staff and offender. Staff members have been heard to say that the moment an offender "tells" the staff member anything, the offender is being aggressive. There is zero tolerance for assertion. Any act of assertion is interpreted as aggression. This contributes to the tensions within the prison and the level of violence that occurs because the staff have, in this way, already

escalated the energies within the exchange.

These dynamics mean that the elements of assertiveness training within cognitive behavioural programming, such as anger management or substance abuse, programs designed to reduce the criminogenic factors leading to commissions of crimes, are not implemented or practised with the commitment required to affect meaningful change. The internal conflict within prison administrators between their mandate to reduce criminogenic behaviour by teaching assertiveness (as a means of reducing aggression towards oneself or others) and the challenges of handling empowered prisoners who have learned to assert themselves within the prison environment means a shortfall in the commitment to improve the prisoner's behaviour as the administrators choose the path easiest for them.

This means that society is short-changed. Society is cheated of the value that would be added to the prisoner if they were taught positive ways to address life's challenges. This has two distinct impacts on society. First, the released prisoner has not learned to apply assertion in everyday life, so their problem-solving skills lack depth and effective choices of expression. This does not help them create positive outcomes in their social interactions. Life is more challenging for them than it is for others, and prisoners have already demonstrated difficulty in dealing with social challenges.

"Yet, I struggled with expressing my opinion. Expressing one's opinion is an important aspect of social interaction."

I have had the experience of having the opportunity to express an opinion free of negative repercussions and still struggled with expressing myself. I was in an art store looking at two photographs. When presented with framing choices, I realized I did not want the pictures. Yet, I struggled with expressing my opinion. Expressing one's opinion is an important aspect of social interaction. This expression contributes to

an understanding of one another. The crippling of it through intensive suppression within the prison environment creates a significant social disability.

Secondly, the community is deprived of an educator who would share their learned practices with others simply through the way they live their life. Positive assertion in social interactions would become more common. Instead, the act of imprisonment inserts socially handicapped individuals into the very communities asking to be safer.

The power-imbalanced relationships between staff and prisoners and the lack of commitment to creating an environment of positive assertions means the released prisoner, now a member of the community, is not practised in making or implementing decisions of even the simplest kind. Every choice becomes a matter to be pondered. The difference in the speed of life and the number of choices possible between life inside prison and life outside prison can short-circuit the decision-making ability of the individual.

This brings us to the tensions that occur when someone says no. Saying no to administrators in prison generally creates a negative situation for the prisoner. Choices are not presented within a context where no is a viable option. And to assert one's right to say no can lead to escalated confrontation rather than meaningful discussion of options within the choices. So, the capability to express no with or without opinions becomes atrophied.

Socially, saying no is a part of life. We can learn to say no with assertion, but more importantly, we can learn to say no with socially accepted phrases that are without offence to the other party. We can learn to say no with grace.

In 1983, at the age of 27, John Chaif was sentenced to life in prison with 25 years until parole eligibility. In 1988 he escaped from Collins Bay Institution in Kingston, Ont. He was later rearrested in the United States and spent six years in the federal prison system there before being transferred back to Canada. Chaif has spent a great deal of time inside advocating against systemic abuses, including abuses relating to prison labour. His advocacy has at times attracted the attention and opposition of prison authorities. Earlier this year he won a Federal Court challenge he brought after being denied day parole (Chaif v. Canada (Attorney General), 2022 FC 182). Chaif was subsequently released from prison on day parole this past May at the age of 67. He now continues his activism on the outside, as a vocal proponent for the human rights of prisoners.

RULE OF LAW REPORT
is published four times per year by:
LexisNexis Canada Inc.,
111 Gordon Baker Road, Suite 900,
Toronto ON M2H 3R1

ISBN 978-0-433-49876-6