

April 18, 2001

Mr. Ed McIsaac
Office of the Correctional Investigator
275 Slater Street, Suite 402
Ottawa, Ontario
K1P 5H9

Dear Mr. McIsaac:

RE: Security Classification of Prisoners Serving Life Sentences for Murder

We are writing on behalf of the Canadian Bar Association's (CBA) National Criminal Justice Section to support the John Howard Society's request for an inquiry by the Correctional Investigator into a recent Corrections Service of Canada (CSC) policy directive. We believe that the change in CSC policy is contrary to Canadian law, and urge you to commence a special inquiry.

The CBA is a national organization representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. Among the Association's primary objectives are improvements in the law and the administration of justice.

The policy at issue requires all offenders convicted of murder to spend two years in maximum security before being considered for placement in an institution with another security level. As the John Howard Society outlines in detail, this completely overrides and ignores the existing statutory framework of the *Corrections and Conditional Release Act (CCRA)* and its Regulations, which require an individualized classification decision for each offender and each offence.

The new policy states:

Since first and second degree murder are the most serious crimes that can be committed in Canada, and are subject to the most severe penalty in the *Criminal Code*, CSC's policies and procedures must more clearly reinforce this aspect of our criminal justice system.

Instantly, without statutory change, this policy turns the classification process into an arm of the sentencing process. Under Canada's constitution, it is judges who, within the framework provided by Parliament, decide sentences. The CSC's powers under the *CCRA* relate only to the implementation and administration of sentences, not to their denunciatory elements.

More importantly, this new policy represents a huge step backward in terms of the rule of law and the applicable statutory framework. It is reminiscent of practices strongly condemned by the Arbour Inquiry Report, practices where policy is used to avoid legal obligations.

We also believe that there is an issue of the adequacy of consultation that must be addressed. Throughout our involvement in the recent *CCRA* five-year review, we were aware of no proposals to amend the classification framework in such a manner, or any suggestion that the existing framework was at all problematic.

Political concerns motivated by criticisms regarding a small number of cases in which people serving life sentences for murder have been classified and moved to medium security institutions do not justify recourse to a policy that raises serious issues of legality and constitutionality. We support the request made by the John Howard Society. We urge you to conduct a thorough inquiry into this particular CSC policy directive and to take the steps required to have it reversed.

Thank you for considering the views of the Canadian Bar Association's National Criminal Justice Section.

Yours truly,

A handwritten signature in black ink, appearing to read 'Heather Perkins-McVey'.

Heather Perkins-McVey
Chair, National Criminal Justice Section

A handwritten signature in black ink, appearing to read 'Allan Manson'.

Professor Allan Manson
Chair, Committee on Imprisonment and Release
National Criminal Justice Section

c.c. **Mr. Steve Orr**, Executive Director - John Howard Society of Kingston
Mr. Bob Bater, President - John Howard Society of Kingston