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Commentary

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How Did Tori Stafford's Killer Get Transferred to a Minimum Security 'Healing Lodge'?

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Tori Stafford was eight years old in April 2009 when, while walking home from school in Woodstock, Ontario, she was lured into a vehicle by an 18-year-old woman named Terri-Lynne McClintic. McClintic drove the little girl to a field where her boyfriend, Michael Rafferty, raped the child repeatedly. McClintic refused to stop the horrific abuse despite pleas from Tori for help. Instead, McClintic helped Rafferty throughout his abuse and even went into a store and purchased the hammer that was used to kill her and the garbage bags ultimately used to bury her.

McClintic was identified as a suspect and eventually confessed to the police and pleaded guilty to first degree murder in April 2010 and was sentenced to the legally mandatory life imprisonment without eligibility for parole for 25 years. McClintic, who herself had endured a childhood of neglect, subsequently testified against her boyfriend, who was also convicted of first-degree murder.

Although the parole eligibility date of 25 years is set in law for first degree murder, McClintic will be able to take advantage of a pre-existing provision of the Criminal Code whereby convicted murderers can seek early release on parole after serving only 15 years of their sentence, which is further reduced by any pre-trial custody that was served.

This feature of our criminal justice system, known as the *faint hope clause* (it had an 83 percent success rate for offenders that applied), was finally repealed by the former Conservative government in 2012. The removal of the early release eligibility does *not* apply to McClintic because the murder she committed and the conviction she received pre-dated the repeal of the section in question. Although annoying, this is the appropriate result

as our laws should not be applied retroactively. This fact has only just been reported by the media and it means that McClintic will be eligible (not entitled) for early parole in 2024 and not 2035 as originally described.

The Stafford family should have been aware of this early eligibility when McClintic was sentenced because s. 745.01 *requires* the sentencing judge to explain that publicly. This amendment was enacted in the 1999 to increase public awareness and systemic accountability and was sarcastically described by its advocates, myself included, as the "Making Judges Tell the Truth Act" (An Act to Amend the Criminal Code (victims of crime) and another Act in consequence).

Following her conviction, McClintic was placed in a federal penitentiary. As a result, the Correctional Service of Canada (CSC) took control over her life circumstances, including what security classification she would be assigned and where she would be held in custody. It is important to appreciate that CSC exercises its complete control over offenders in the federal system pursuant to the incredibly detailed *Corrections and Conditional Release Act* (CCRA) and the Regulations enacted pursuant thereto.

Specifically, in s. 28 of the governing *Corrections and Conditional Release Act*, CSC is given enunciated criteria to determine the appropriate placement of an inmate and s.29 of the Act gives CSC the responsibility for any transfer of an inmate to a different facility based on criteria set out in Regulations enacted pursuant to s. 96 of the Act. CSC is also given the responsibility, on an ongoing basis, to determine the security classification of an inmate pursuant to s. 30 of the Act with three available options: maximum, medium, or minimum security. It is important to note that a mixed classification is not an option. The criteria for making the security classification are set out in detail in s. 17 of the Regulations.

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Section 26 of the Act also articulates the obligations *and* discretion of CSC to provide offender-related information to designated victims who have registered with the Service for that purpose. It is important to note that CSC has the discretion, and not an obligation, to advise victims of issues like the offender's in-custody behaviour or the transfer of an offender to a different location, which would include its security classification.

These provisions reflect changes to the legislation over the past decades brought on by repeated instances of highly questionable actions by CSC, which all too frequently resulted in the deaths of innocent Canadians by career criminals who should never have been allowed to be released from custody.

I first became aware of this reality in the late 1980s while working as a Crown Prosecutor in Alberta when my RCMP friends alerted me to this situation in a high-profile case where a career criminal and convicted murderer was somehow (illegally and improperly, as it turned out) granted a temporary absence from which he escaped and thereafter murdered two people before being recaptured. The truth was ultimately revealed thanks to public outcry, which led to an independent review. This turned out to be the beginning of the exposure of multiple examples of CSC misconduct and attempted cover-ups.

Most importantly, this exposure also led to systemic and legislative reforms to clarify the rules in specific circumstances and to increasing CSC accountability by finally giving victims a voice in the CSC decision-making process. These improvements were achieved not by CSC internal analysis but rather from the proactive advocacy from crime victims' groups, police organizations, individual elected officials and parties, and from an informed media that highlighted the need for targeted and specific reforms. For crime victims this meant that, while they didn't deserve a veto over CSC decisions, they deserved a voice in the process.

McClintic was assigned a maximum-security classification following her conviction in 2010 and placed in a maximum-security facility, which is not surprising given the savagery of her actions. In 2012 she was convicted of a severe assault against another female inmate and her detected comments revealed alarming psychological concerns. Despite this, she was downgraded to medium security in 2014 and transferred to the Grand Valley Institution, a medium-security facility. It has been reported that while at Grand Valley, McClintic was living in something called the Pathways unit, a nine-woman cottage for Indigenous offenders.

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This information does not appear to have been conveyed to the Stafford family. McClintic was subsequently transferred to the Okimaw Ohci healing lodge in early 2018, which is on the territory of the Nekaneet First Nation in Saskatchewan. McClintic was eligible for this after apparently self-identifying as Aboriginal; under the CCRA and CSC policy, this makes her eligible for such special treatment. Interestingly, Okimwaw Ohci Chief Alvin Francis has confirmed that his community was never consulted on this inmate transfer, which appears to contradict specific consultation requirements for CSC under s. 81 of the Act and s. 114 of the Regulations. This failure to consult as required may be extremely important in any review of how CSC handled the McClintic case.

Based on recent interviews with Tori Stafford's father, it appears that the family only learned of McClintic's transfer to the Aboriginal healing lodge a few weeks ago when, as required by s. 26(1)(c) of the Act, CSC advised the family that McClintic was seeking one day temporary absences from custody every week for the upcoming year. It was only then apparently that CSC revealed that the facility she wanted release from was not the medium-security penitentiary with lock up cells and razor wire fencing they thought she was in but rather the healing lodge, which has neither of those security measures and which welcomes children of offenders on the premises. It is currently unknown whether McClintic was granted the temporary absences she requested.

When Tori Stafford's father learned of McClintic's transfer, he immediately and appropriately spoke with the media. This helped to ensure that Canadians knew the truth about how their criminal justice system was performing.

Not surprisingly, the case generated huge public controversy, which exploded into a political crisis when the normally prudent Public Safety Minister Ralph Goodale tried to minimize the issue by referring to McClintic's horrific murderous crime as previous "bad practices." Two days after this blunder Minister Goodale did the right thing when he directed (or "asked") CSC to conduct a review of McClintic's transfer process specifically and of CSC policy generally regarding security classifications and transfers of inmates like McClintic. That review is underway but it is being conducted behind closed doors and will result in CSC reviewing itself.

This lack of transparency and independent review is not a trivial issue with respect to CSC. As the past decades have repeatedly demonstrated, CSC has a demonstrable history of closed-door decision-making to pursue its own policy objectives by ignoring or distorting the existing rules and thereafter being evasive and obstructive when asked questions regarding their actions on controversial cases. If the Minister wanted an objective analysis, he should have asked the Victim's Ombudsman to conduct the review with a clear direction to CSC officials that honest and full cooperation was required.

How and why McClintic's transfer happened became a political issue with Opposition MPs demanding answers from the Government and insisting that the minister, and by inference the prime minister, direct that McClintic be returned to the Grand Valley institution immediately. The Opposition has suggested that s. 6 of the CCRA authorizes this Ministerial authority as it provides:

> **6 (1)** The Governor in Council may appoint a person to be known as the Commissioner of Corrections who, under the direction of the Minister, has the control and management of the Service and all matters connected with the Service.

The government has denied that it has such ministerial control. It also claims that doing so would constitute an unauthorized and indeed unwise politicization of correctional operations that would also undermine the rule of law. The government is correct to resist this kind of case-by-case decision-making by politicians and, indeed, the "request" that has been made by the Minister for CSC to review the case should hopefully send a strong message to CSC senior officials.

While there has unquestionably been some politicization of the issues involved in this case, there are also fundamentally important issues raised by it that go to the core of the principles that guide the corrections system.

A key part of the guiding philosophy of Canada's prison system was established in 1971 when then Solicitor General Jean-Pierre Goyer noted: "We have decided from now on to stress the rehabilitation of individuals rather than protection of society."

The minister was referring to the entirely appropriate decision to convert the Canadian prison system from a penal focus to a corrections or rehabilitation focus. In fact, focusing on rehabilitation is a strategic measure that effectively contributes to the protection of society by using the time in custody to help offenders decide not to commit crimes in the future. In short, it's not an either/or situation.

"The adoption of the rehabilitation philosophy by Canada's corrections system has resulted in an internal culture where offenders are now viewed as clients."

Unfortunately, the adoption of the rehabilitation philosophy by Canada's corrections system has resulted in an internal culture where offenders are now viewed as clients rather than convicted criminals. Additionally, the CSC culture demonstrably follows a one-size-fits-all approach that fails to distinguish between different offenders based on their criminal history or, as the McClintic case and others demonstrate, the nature of the crime they committed that got them into prison in the first place. In fairness, it should be noted that this failure to differentiate based on offender profile is reflected in our laws especially with respect to repeat offenders. This is a glaring defect that needs to be addressed.

The CSC rehabilitation focus has also resulted in an attitude that is openly championed by the offender advocates: people are sent to prison as punishment not for punishment. This approach is embedded in CSC culture and it helps explain why case decisions like McClintic being moved to a minimum-security healing lodge occur.

This rehabilitative focus of our corrections system does not, however, exist in a vacuum; corrections is but a part of our larger criminal justice system that has existed as part of our public culture for hundreds of years. This specifically includes the principles that Courts are to consider in imposing a sentence that is reflected both in common law through judicial rulings and, more recently, as specifically articulated in s. 718 of the Criminal Code, which notes:

> **718** The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> **(a)** to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
> **(b)** to deter the offender and other persons from committing offences;
> **(c)** to separate offenders from society, where necessary;
> **(d)** to assist in rehabilitating offenders;
> **(e)** to provide reparations for harm done to victims or to the community; and
> **(f)** to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

These different principles are required to be considered and balanced by courts when sentencing convicted offenders and in some rare circumstances, like the first-degree murder offence McClintic was convicted of, Parliament has chosen to define what that balance should be by mandating a sentence of life imprisonment without eligibility for parole for at least 25 years.

Quite literally, our democratically created law specifically requires articulation of public values through the denunciation of criminal conduct that undermines them. Clearly, the administration of a sentence according to an institutional philosophy should not be allowed to compromise the principles of the sentence that were imposed, yet that is what has happened in the McClintic case and others.

A further problem with the current approach is that it creates a say-one-thing-do-another reality within our criminal justice system that betrays and revictimizes crime victims and undermines public confidence in our justice system. In summary, the McClintic case has, once again, revealed a contradiction of principles within our criminal justice system that needs to be addressed.

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Finally, over the past years our justice system has consciously chosen to give victims of crime an increased awareness of how cases are being dealt with and a voice when decisions are being made. This is based on both respect for what crime victims have suffered and the fact that their mandated participation enhances systemic accountability. The McClintic case clearly demonstrates a contradiction of these principles.

The insights gained from the McClintic case and others should be translated into legislative, regulatory, and policy changes to improve the Canadian corrections system. These reforms should include giving the Federal Ombudsman for Victims of Crime a *statutory* mandate to investigate victim complaints against Correctional Services of Canada and the Parole Board of Canada and amending the *Correctional and Conditional Release Act* and the Regulations enacted. Proposed amendments would:

- require notification of registered victims of defined offences of security reduction or transfer;
- provide victims with relevant offender information and the opportunity to make submissions in transfer decisions;
- include consideration of principles of sentencing in transfer decision-making;
- prohibit defined offender placement in dual medium/minimum-security facilities;
- mandate Indigenous consultation for healing lodge transfer and consent for non-Indigenous inmate transfer.

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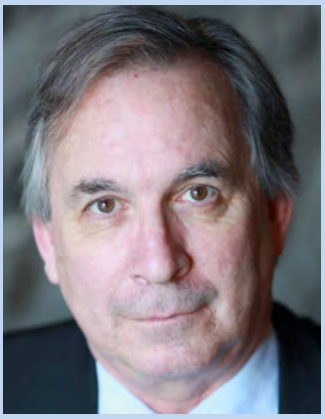
An additional amendment would be to s. 746.1(2) of the Criminal Code, adding a clause prohibiting defined offender transfer to a minimum-security facility within a specified time frame.

The Canadian criminal justice system is a complex process that includes multiple entities and balances different principles through a largely discretionary decision-making process. Critical components of this public system are public safety, respect for victims, offender rehabilitation, and transparency and accountability. Thanks to the courage and determination of the Stafford family we now have an opportunity to learn from what happened in the McClintic case and to make improvements. It is an opportunity that must be acted upon if justice remains our goal.

About the Author



Scott Newark is a former Alberta Crown Prosecutor who has also served as the founding President of the Canadian Resource Centre for Victims of Crime, Executive Officer of the Canadian Police Association, Vice Chair of the Ontario Office for Victims of Crime, Director of Operations for Investigative Project on Terrorism, and as a Public Safety and Security Policy Adviser to the governments of Ontario and Canada. He is currently an adjunct professor in the TRSS Program in the School of Criminology at Simon Fraser University.

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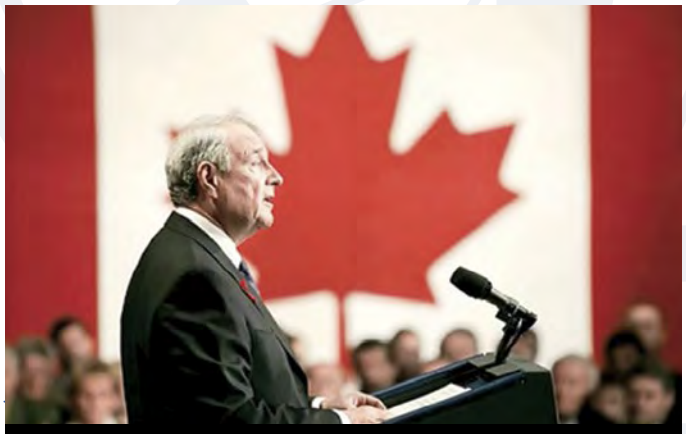

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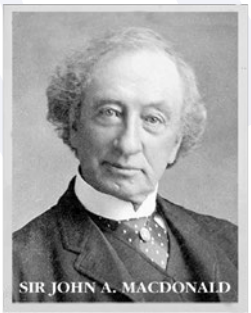
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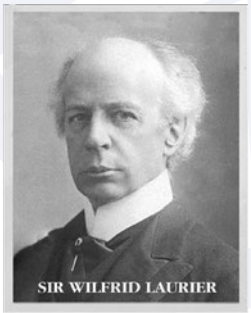
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