2005 CSAC WOMEN'S FORUM.

HUMAN RIGHTS, PRISONS AND WOMEN PRISONERS – 20 APRIL 2005

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INTRODUCTION

THE ACT *HUMAN RIGHTS ACT 2004* IS EXERCISING MORE THAN A LITTLE ATTENTION AS THE TERRITORY EMBARKS ON THE CONTRUCTION OF ITS NEW PRISON – WE SEEK TO UNDERSTAND HOW THIS LEGISLATION WILL IMPACT ON THE MANAGEMENT OF THE CRIMINAL JUSTICE SYSTEM IN GENERAL AND ON THE CORRECTIONAL SYSTEM IN PARTICULAR.

NOT SURPRISINGLY, THE DOOMSAYERS HAVE RESORTED TO ALARMIST REPORTS TO DISCREDIT THE *ACT*. FOR EXAMPLE, JANET ALBRECHTSEN REPORTED IN THE AUSTRALIAN ON 30 JUNE 2004 THAT A BRITISH PRISONER, DENNIS NILSEN, UNDER THE UK HUMAN RIGHTS ACT HAD SUCCEEDED IN ESTABLISHING A RIGHT TO EXPLICIT HOMOSEXUAL PORNOGRAPHY – IT MAY HAVE MADE GOOD COPY, BUT IT WAS WRONG.
.
IT MAY APPEAR THAT SINCE ACT IS THE ONLY AUSTRALIAN JURISDICTION WITH HUMAN RIGHTS LEGISLATION, THEN THIS ISSUE IS OF LITTLE RELEVANCE TO OTHER CORRECTIONAL JURISDICTIONS.

YET THE VICTORIAN ATTORNEY GENERAL'S JUSTICE STATEMENT OF MAY 2004 CONTEMPLATES A *CHARTER OF HUMAN RIGHTS*, AND A CHARTER OF PRISONERS RIGHTS WAS INCLUDED IN THE *CORRECTIONS ACT 1986*, ALTHOUGH IT HAS NOT BEEN INVOKED SUCCESSFULLY BY A PRISONER. A SIMILAR CHARTER IS INCLUDED IN THE TASMANIAN *CORRECTIONS ACT 1997*. IN ADDITION, THE WOMENS ADVOCACY GROUP *SISTERS INSIDE* HAS MOUNTED DISCRIMINATION CASES IN QUEENSLAND.

AND FOR THE FURTHER REASONS I WILL EXPLAIN, I THINK YOU WILL AGREE THAT THE ACT *HUMAN RIGHTS ACT* DOES HAVE RELEVANCE TO OTHER JURISDICTIONS.

I WILL TALK ABOUT AND CORRECTIONAL JURISDICTIONS AND PRISONS IN GENERAL. WHAT I HAVE TO SAY WILL APPLY IN VARYING DEGREES TO THE SEPARATE CORRECTIONAL JURISDICTIONS IN AUSTRALIA.

SINCE THE DEPRIVATION OF LIBERTY IN ITSELF IS A HUMAN RIGHTS ISSUE, A LEGITIMATE AREA OF ENQUIRY IS THE EXTENT TO WHICH STATES USE PRISONS FOR OTHER THAN CRIME CONTROL PURPOSES, THE EXTENT TO WHICH THEY RESORT READILY TO IMPRISONMENT AS A FIRST, RATHER

THAN A LAST, OPTION, AND MAKE LITTLE USE OF ALTERNATIVES TO INCARCERATION. BUT THAT IS OUTSIDE THE SCOPE OF MY PRESENTATION.

<u>THE PRISONERS</u>
BEFORE CONSIDERING THE APPLICATION OF HUMAN RIGHTS IN THE PRISON SETTING, IT IS APPROPRIATE TO REMIND OURSELVES OF THE PROFILE OF PRISONERS. OVERWHELMINGLY, THE PRISON POPULATION IN AUSTRALIA IS CHARACTERISED BY DISENGAGEMENT, DISABILITY, ADDICTION AND DISEASE AND SIGNIFICANT INDIGENOUS OVER-REPRESENTATION.

BY ANY MEASURE, THESE PEOPLE ARE "DAMAGED GOODS" AND THE STATE HAS ALMOST TOTAL CONTROL OVER THEM. AND WE, THE AGENTS OF THE STATE, EXERCISE THAT CONTROL. IN PRISONERS EYES, WE EMBODY THE FAIRNESS, OR OTHERWISE, OF THAT STATE CONTROL.

AND IT IS COMMONALLY RECOGNISED THAT WOMEN PRISONERS ARE THE MOST DAMAGED OF ALL. BUT NOT UNIVERSALLY:

SA PREMIER MIKE RANN, IN 2003, AFTER BEING CRITICISED ON THE STATE OF THE ADELAIDE WOMEN'S PRISON BY THE PRESIDING MEMBER OF THE SA PAROLE BOARD, FRANCES NELSON QC, RESPONDED ON 26 AUGUST 2003 *"ITS NOT THE HILTON…AN EASY WAY TO AVOID GOING INTO A SUBSTANDARD PRISON AND THAT'S DON'T OFFEND."*(ABC MEDIA TRANSCRIPT 26 AUGUST 2003). AND YOU MAY RECALL THE KENNETT GOVERNMENT'S TERMINATION OF THE VICTORIAN EQUAL OPPORTUNITY COMMISSIONER WHEN SHE ATTEMPTED TO CONDUCT AN INQUIRY INTO THE CIRCUMSTANCES OF WOMEN PRISONERS IN THAT STATE.

<u>EXTERNAL ENVIRONMENT</u>.
THE ARGUMENTS AGAINST THE INTRODUCTION OF HUMAN RIGHTS LEGISLATION IN AUSTRALIA ARE WELL –DOCUMENTED. IN ADDITION, THERE ARE OTHER ASPECTS OF THE ENVIRONMENT WHICH SUGGEST THAT THE TIMES ARE NOT CONDUCIVE TO HUMAN RIGHTS IN GENERAL AND TO THEIR APPLICATION TO PRISONS IN PARTICULAR. THESE ASPECTS OF THE ENVIRONMENT ARE:

<u>COMPASSION FATIGUE</u>.
THERE ARE INDICATORS OF A DEGREE OF COMPASSION FATIGUE IN OUR COMMUNITY AND GOVERNMENTS. THE LOW RATE OF ORGAN DONATION AND DECLINING RATE OF VOLUNTEERING; THE GROWING PRIMACY OF "SELF", NOT THE COMMUNITY, ENCOURAGED BY THE DEVELOPMENT OF ADMINISTRATIVE LAW. THE "CERTAIN MARITIME INCIDENT", TAMPA, THE OFFSHORE SOLUTION AND MORE RECENTLY THE CORNELIA RAU DISGRACE.

AND WHILE THE AUSTRALIAN RESPONSE TO THE SOUTH EAST ASIAN TSUNAMI WAS GRATIFYING, BUT OPENING WALLETS IS NOT THE SAME

AS OPENING DOORS.

GLOBALISATION HAS SEEN THE UNHOLY TRINITY OF GOVERNMENTS, THE MEDIA AND BUSINESS FOCUSED ON US AS CONSUMERS WITH WANTS AND NEEDS, RATHER THAN AS CITIZENS WITH RIGHTS AND OBLIGATIONS.

A GENERAL "DUMBING DOWN" OF THE COMMUNITY – AN ASSUMPTION THAT THE PUBLIC CANNOT HANDLE COMPLEX ISSUES.

AND WITH IGNORANCE, COMES FEAR AND INTOLERANCE.

ALL OF THIS HAS GIVEN THE ICONIC NOTION OF "A FAIR GO" A BATTERING.

<u>PENAL POPULISM</u>
THE OBJECTIVES OF SENTENCING, WHICH ARE USUALLY HELD TO BE RETRIBUTION, REHABILITATION, RESTORATION AND INCAPACITATION. OVERWHELMINGLY, THE CURRENT OBJECTIVES ARE THOSE OF PUNISHMENT OR RETRIBUTION.

THE EMPHASIS GIVEN TO PUNISHMENT AND INCAPACITATION IS LARGELY A PRODUCT OF THE MANNER IN WHICH SOME AUSTRALIAN POLITICIANS, AT BOTH STATE AND FEDERAL LEVELS, HAVE SOUGHT TO EXPLOIT THE FEAR OF CRIME IN THE COMMUNITY AND TO DEMONISE OFFENDERS FOR ELECTORAL ADVANTAGE.

AS JEFF SHAW QC, FORMER NSW ATTORNEY GENERAL, OBSERVED *"LAW AND ORDER IS AN EASY THING FOR POLITICIANS TO PUSH…".* (COWDERY 2001:VII)

WHAT THEY HAVE PUSHED IS PENAL POPULISM, THE MANIFESTATIONS OF WHICH ARE THE INCREASED USE OF IMPRISONMENT, HARSHER SENTENCES, NEW OFFENCES AND LONGER SENTENCES – ALL DESPITE CONTRARY EVIDENCE THAT THEY ARE NOT EFFICIENT CRIME CONTROL MECHANISMS. OTHER FEATURES INCLUDE SENTENCING REFORMS, RESTRICTIONS ON ACCESS TO PAROLE, "THREE STRIKES" STATUTES, MANDATORY SENTENCING, ADULT SENTENCES FOR JUVENILE OFFENDERS, "CIVIL DEATH" AND ATTACKS ON THE JUDICIARY.

IN THIS ENDEAVOUR, THOSE POLITICIANS WHO EXPLOIT COMMUNITY FEARS ARE ASSISTED BY A COMPLICIT MEDIA, WHOSE REPORTING CONSISTENTLY OVERSTATES THE VOLUME OF CRIME, ESPECIALLY THE VOLUME OF VIOLENT CRIME AND DISTORTS THE RISK OF VICTIMHOOD.

THIS IS PARTICULARLY THE CASE WITH "TALKBACK RADIO" ON WHICH THE FORMER AUSTRALIAN BROADCASTING TRIBUNAL, IN 1990, DRYLY COMMENTED, *"TALKBACK RADIO ENCOURAGES ROBUST DEBATE*

ON ISSUES BY PEOPLE WHO ARE NOT FULLY INFORMED." **(COWDERY 2001:XI)**

TERRORISM

IN LATE 2004 THE MEDIA REPORTED THAT THE COMMONWEALTH GOVERNMENT WOULD SEEK TO INTRODUCE 3 BILLS DEALING WITH NATIONAL SECURITY AND TERRORISM. IN NSW, THE GOVERNMENT HAS PROPOSED NEW POWERS FOR POLICE TO DEAL WITH TERRORISM. THE POWERS ALSO PROVIDE FOR FURTHER RESTRICTIONS ON PRISONERS. THIS BILL, *THE TERRORISM (POLICE POWERS) BILL* HAS BEEN CRITICISED BY THE INTERNATIONAL COMMISSION OF JURISTS.

JUSTICE MICHAEL KIRBY AT THE NATIONAL SECURITY LAW CONFERENCE ON 12 MARCH THIS YEAR HIGHLIGHTED THE NEED FOR PROPORTION AND PERSPECTIVE IN RESPONDING TO TERRORISM – AND COMMONSENSE.

HIGH COURT DECISIONS

THERE ARE SOME HIGH COURTS DECISIONS I WISH TO NOTE;

IN *BEHROOZ* THE HIGH COURT HELD THAT COMMONWEALTH LEGISLATION PROVIDING FOR THE DENTION ON NON-CITIZENS WAS WITHIN THE LEGISLATIVE POWER CONFERRED BY THE AUSTRALIAN CONSTITUTION, EVEN IF THE DETENTION POSSIBLY INVOLVED HARSH OR INHUMAN TREATMENT OF DETAINEES.

IN *AL-KHATEB* AND *AL-KHAFIJI,* THE MAJORITY OF THE HIGH COURT SAID THAT PROVIDED THE IMMIGRATION MINISTER RETAINED THE INTENTION OF EVENTUALLY DEPORTING A PERSON, THE DETENTION WOULD BE VALID, EVEN IF IT WAS POTENTIALLY INDEFINITE.

AND IN OCTOBER 2004, IN THE *FARDON* CASE, THE HIGH COURT UPHELD THE QLD *DANGEROUS PRISONERS (SEXUAL OFFENDERS) ACT 2003* WHICH PROVIDED FOR THE CONTINUED INCARCERATION OF SEXUAL OFFENDERS AT THE END OF THEIR SENTENCES, EVEN IF THEY HAVE COMMITTED NO NEW OFFENCES, IF THEY ARE CONSIDERED TO BE A RISK TO THE COMMUNITY.

I DON'T SEEK TO PASS JUDGEMENT ON THESE DECISIONS – I WILL LEAVE THAT TO YOU AND THE EXTENSIVE COMMENTARY THAT THEY HAVE GENERATED.

BUT ALL OF THIS HAS ASSISTED TO CREATE AN ENVIRONMENT WHERE ARGUING FOR A HUMAN RIGHTS-BASED APPROACH TO CORRECTIONAL MANAGEMENT IS INCREASINGLY DIFFICULT.

HOWEVER, THE COROLLARY APPLIES - IT CAN ALSO BE ARGUED THAT THE TIMES ARE SUCH THAT HUMAN RIGHTS LEGISLATION IS URGENTLY NEEDED

PRISONERS' RIGHTS

IN THE ATMOSPHERE CREATED BY ALL OF THE ABOVE, IN WHICH THE PRIMACY OF PUNISHMENT IS SUPREME, IT IS NOT SURPRISING THAT RESEARCHERS HAVE CONCLUDED THAT PRISONERS' RIGHTS IN OUR JURISDICTIONS ARE LIMITED.

THE REALITY IS THAT UNITED NATIONS COVENANTS AND OTHER INSTRUMENTS, SUCH AS THE *STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS* AND THE *AUSTRALIAN STANDARDS* DERIVED FROM THESE, ARE ONLY ADVISORY AND ARE NOT ENFORCEABLE. NOT ONLY ARE *AUSTRALIAN STANDARD GUIDELINES FOR CORRECTIONS* NOT ENFORCEABLE, BUT SOME CORRECTIONAL JURISDICTIONS ARE RELUCTANT TO ENDORSE THEM EVEN AS AN ADVISORY DOCUMENT, LEST THEY PROVIDE A FERTILE FIELD FOR JUDICIAL REVIEW BY PRISONERS OR THEIR ADVOCACY GROUPS. WHILE THESE STANDARDS DO REFLECT AN INTERNATIONAL AND NATIONAL CONSENSUS ON ACCEPTABLE TREATMENT, IT IS DEBATABLE IF THEY ARE *CURRENTLY* OF PRACTICAL RELEVANCE TO PRISONERS OUTSIDE THE ACT.

AS A RESULT, IT IS DIFFICULT TO CONTEST PETER BAILEY'S OBSERVATION THAT "*THE LACK OF RIGHTS FOR PRISONERS MUST REPRESENT ONE OF THE MAJOR DEPRIVATIONS OF HUMAN RIGHTS, AND ONE OF THE MORE IMPORTANT LONGER TERM PROBLEMS, IN THE AUSTRALIAN CRIMINAL JUSTICE SYSTEM.*"(BILES 2004:192).

IN THE SIR JOHN BARRY MEMORIAL LECTURE IN 1985 CRIMINOLOGIST PROFESSOR GORDON HAWKINS ALSO CONCLUDED THAT IN AUSTRALIA, PRISONERS WERE "*RIGHTLESS OR CLOSE TO RIGHTLESS.*" (BILES 2004:193).

MORE RECENTLY, PROFESSOR DAVID BROWN, THE PRINCIPAL EDITOR OF *PRISONERS AS CITIZENS: HUMAN RIGHTS IN AUSTRALIAN PRISONS* (2002) EXPLORED THE LIMITATIONS OF CITIZENSHIP EXPERIENCED BY PRISONERS AND OBSERVED THAT IT IS PARTIAL OR CONDITIONAL WITH PRISONERS "*NEITHER ENJOYING FULL CITIZENSHIP NOR ENTIRELY OUTSIDE IT.*" (BROWN & WILKIE 2002:321).

AND CLOSER TO HOME, HERE IN NSW, IN A 1998 REPORT INTO CORRECTIONAL OFFICER CORRUPTION, THE INDEPENDENT COMMISSION AGAINST CORRUPTION STATED "*WHILE OTHER FORMS OF CORRUPT CONDUCT MIGHT BE REGARDED AS UNDESIREABLE BECAUSE THEY IMPACT ON FAIRNESS, EFFICIENCY AND EFFECTIVENESS OF THE MACHINERY OF EXECUTIVE GOVERNMENT, CORRUPT CONDUCT IN A PRISON ENVIRONMENT MAY, BECAUSE OF THE PARTICULAR VULNERABILITY OF PRISONERS TO ABUSE, LEAD TO A DENIAL OF BASIC HUMAN RIGHTS.*"

IN THE ACT WE HAVE BENEFITTED FROM WORKING CLOSELY WITH AND SEEKING ADVICE FROM THE HUMAN RIGHTS COMMISSIONER IN UNDERSTANDING HOW WE ARE TO REFLECT OUR *HUMAN RIGHTS ACT* IN CORRECTIONAL LEGISLATION,

REGULATIONS AND PRISON PROCEDURES IN THE SETTING I HAVE JUST DESCRIBED. FOR EXAMPLE, WHILE THE AUSTRALIAN GOVERNMENT HAS PLACED A RESERVATION ON ITS RATIFICATION OF *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)* MANY PROVISIONS OF THE *ICCPR* HAVE BEEN INCORPORATED INTO THE ACT *HUMAN RIGHTS ACT*. THUS, REGARDLESS OF THE JURISPRUDENCE OF THE COMMONWEALTH AND OTHER JURISDICTIONS, THE ACT WILL BE HELD TO A "HIGHER DUTY" BY THE COURTS.

THIS "HIGHER DUTY" WE WELCOME.

PRISON MANAGEMENT

OUR FIELD OF ENDEAVOUR, CORRECTIONS IN GENERAL AND PRISONS IN PARTICULAR, TENDS TO BE A CLOSED, RATHER THAN OPEN, ENVIRONMENT. IT HAS A TENDENCY TO BE SELF-REFERENTIAL AND EXHIBIT DEFAULT SETTINGS OF INSTITUTIONAL CONVENIENCE OR INERTIA. (OWERS 2004:3)

THE CLOSED ENVIRONMENT OF PRISONS IN PARTICULAR ENSURES ITS MANAGEMENT IS NOT VOLUNTARILY TRANSPARENT, AND INDEED, SOME JURISDICTIONS WITH A WELL-DEVELOPED PARA-MILITARY CULTURE, ALSO TEND TO EXHIBIT THE SYMPTOMS OF A LAAGER MENTALITY.

NOT INFREQUENTLY, PRISON MANAGEMENT AND PRACTICES ARE ONLY MADE PUBLIC THROUGH THE INTERVENTION OF EXTERNAL AGENCIES, SUCH AS THE OMBUDSMAN. THIS ABSENCE OF TRANSPARENCY IS FACILITATED BY THE FACT THAT MANY PREFER NOT TO KNOW WHAT REALLY HAPPENS IN CORRECTIONS. THE POPULISM OF POLITICIANS IS WELL-DOCUMENTED; THE MEDIA PREFERS THE SENSATIONAL AND THE SALACIOUS AND THE PUBLIC RETREATS INTO IGNORANCE, APATHY AND REVENGE.

GOVERNMENTS ALSO TEND NOT TO BE KEEN TO DIG TOO DEEPLY INTO CORRECTIONAL AND PRISON MANAGEMENT AS LONG AS THEY CAUSE NO POLITICAL DIFFICULTIES. RECENT UNFORTUNATE EVENTS IN WA AND THE MINISTER'S ANNOUNCEMENT ON 24 MARCH OF AN INDEPENDENT INQUIRY INTO THE PRISON SYSTEM IN RESPONSE, IS A CLEAR EXAMPLE OF THIS DYNAMIC AT WORK.

PERFORMANCE MANAGEMENT

THE RESPONSE OF AUSTRALIAN CORRECTIONAL JURISDICTIONS TO HUMAN RIGHTS ISSUES HAS BEEN TO REPORT THE EXTENT TO WHICH THEIR MISSION STATEMENTS, OPERATIONAL PROCEDURES AND MANAGEMENT ACCORD WITH HUMAN RIGHTS COVENANTS, LEGISLATIVE AND REGULATORY PROVISIONS AND ASSOCIATED GUIDELINES.

A VISIT TO MOST PRISONS IN AUSTRALIA WOULD LEAD THE VISITOR TO CONCLUDE THAT PRISONERS DO ENJOY A RANGE OF RIGHTS. THE REALITY, AS PROFESSOR DAVID BILES HAS OBSERVED, IS THAT MOST

OF THESE APPARENT RIGHTS ARE, IN FACT, PRIVILEGES WHICH ARE CONDITIONAL; CONDITIONAL ON BEHAVIOUR, ARCHITECTURE, STAFFING, AND OTHER RESOURCES AND IN SOME CASES ON THE WHIMS OF MILITANT CORRECTIONAL OFFICER UNIONS. (BILES 2004:195).

THUS THE ESTABLISHMENT OF BENCHMARKS OR STANDARDS ARE ESSENTIAL IF THE ELUSIVE CONCEPTS OF HUMAN RIGHTS ARE TO BE EFFECTIVELY MONITORED.

NOTWITHSTANDING THIS CLEAR NEED, THE HUMAN RIGHTS EXPERTS, SCOBLE AND WISEBERG (1981), NOTED THAT THERE WAS NO SINGLE ACCOUNTING SCHEME THAT WAS ADEQUATE, EITHER IN TERMS OF CONCEPTUAL VALIDITY OR QUANTITATIVE RELIABILITY, FOR COMPREHENSIVELY MONITORING HUMAN RIGHTS INTERNATIONALLY.

THE 1991 *UNITED NATIONS DEVELOPMENT PROGRAM* ALSO RECOGNISED THIS, OBSERVING THAT *'APPLYING A SYSTEM OF MEASUREMENT TO HUMAN FREEDOMS WILL ALWAYS BE A PRECARIOUS EXERCISE."* (UNDP 1991:15).

THE CORRECTIONAL PERFORMANCE MANAGEMENT REGIME CURRENTLY IN PLACE AT THE NATIONAL LEVEL WILL GIVE LITTLE COMFORT TO THOSE SEEKING MEASURES OF THE EXTENT TO WHICH A PARTICULAR CORRECTIONAL JURISDICTION MEETS HUMAN RIGHTS OBLIGATIONS.

THE *REPORT ON GOVERNMENT SERVICES* DATA PRODUCED BY THE PRODUCTIVITY COMMISSION INCLUDES A LIMITED RANGE OF EFFICIENCY AND EFFECTIVENESS MEASURES WHICH ARE COMPROMISED BY SIGNIFICANT COUNTING RULE INCONSISTENCIES.

ALSO, THESE MEASURES ONLY REPORT WHAT WE DO, RATHER THAN WHAT WE SHOULD BE DOING AND GIVE A VERY INADEQUATE INDICATION OF THE QUALITY OF LIFE IN A PRISON.

AND TINKERING WITH DATA REPORTED TO AVOID CRITICISM IS ALSO NOT UNKNOWN.

THUS A CORRECTIONAL JURISDICTION OPERATING IN A FRAMEWORK PROVIDED BY HUMAN RIGHTS LEGISLATION WILL NEED TO INTRODUCE A COMPLETELY NEW APPROACH TO PERFORMANCE MANAGEMENT WHICH WILL NOT EXCLUDE OTHER VALUES OF GOVERNMENT ACTIVITY, WHICH NSW CHIEF JUSTICE JIM SPIGELMAN SUGGESTS ARE ACCESSIBILITY, FAIRNESS, IMPARTIALITY, OPENNESS, LEGITIMACY AND TRANSPARENCY. (SPIGELMAN 2001:2). THIS MIGHT ACTUALLY TELL US SOMETHING ABOUT THE NATURE OF THE PRISON EXPERIENCE.

THIS IS EXPLORED IN DETAIL BY DR ALISON LIEBLING IN HER RESEARCH PUBLISHED IN *PRISONS AND THEIR MORAL PERFORMANCE* 2004.

WITH LITTLE EXPERIENCE IN AUSTRALIA OF CORRECTIONAL AND IN PARTICULAR PRISON MANAGEMENT UNDER A HUMAN RIGHTS FRAMEWORK, OVERSEAS HISTORIES ARE INFORMATIVE.

UNITED KINGDOM

IN THE UNITED KINGDOM, THE *HUMAN RIGHTS ACT 1998* CAME INTO OPERATION ON 3 OCTOBER 2000 BUT, IN ITSELF, HAS YET TO MAKE A MAJOR IMPACT ON CORRECTIONAL MANAGEMENT OR REFORM.

AN INSPECTOR GENERAL OF PRISONS WAS ESTABLISHED IN 1981 WHICH PREDATES THE *HUMAN RIGHTS ACT*. THE INSPECTOR GENERAL HAS BEEN SUCCESSFUL IN MAKING TRANSPARENT AND IMPROVING CONDITIONS AND PRACTICES IN THE PRISONS OF ENGLAND AND WALES, ALTHOUGH IT SHOULD BE POINTED OUT THAT, IN SOME CASES, THE BASE WAS VERY LOW TO BEGIN WITH. FOR EXAMPLE, AS LATE AS 1991 THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE CRITICISED THE PRACTICE IN SOME PRISONS IN ENGLAND OR WALES OF *"SLOPPING OUT"*; THAT IS PRISONERS, IN THEIR CELLS, DEFECATING INTO A BUCKET IN THE PRESENCE OF ANOTHER PRISONER AND THE SUBSEQUENT MANUAL DISCHARGING OF THAT HUMAN WASTE. THE EUROPEAN COURT OF HUMAN RIGHTS ALSO DETERMINED IN 2002 THAT THE BRITISH GOVERNMENT WAS IN BREACH OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS IN FAILING TO PERMIT LEGAL REPRESENTATION IN A PRISONER HEARING BEFORE A GOVERNOR IN WHICH A 40 DAY EXTENSION TO A SENTENCE WAS IMPOSED.

THE INSPECTOR GENERAL'S ENDEAVOURS HAVE BEEN ASSISTED BY THE THREAT AND REALITY OF THE PRIVATISATION OF POORLY PERFORMING PUBLIC PRISONS, THE DEVEOPMENT OF THE *"HEALTHY PRISON"* MODEL AND, MORE RECENTLY, BY THE WORK OF THE INTERNATIONAL CENTRE FOR PRISON STUDIES (ICPS) OF THE UNIVERSITY OF LONDON. IN 2002 THE ICPS PRODUCED *A HUMAN RIGHTS APPROACH TO PRISON MANAGEMENT* WHICH PROVIDES AN ANALYSIS OF THE BODY OF INTERNATIONAL INSTRUMENTS DEALING WITH HUMAN RIGHTS AND WHAT THEY IMPLY IN PRACTICAL TERMS FOR PRISON MANAGERS AND STAFF.

THE ICPS IN 2003 ALSO PUBLISHED *HUMANITY IN PRISON-QUESTIONS OF DEFINITION AND AUDIT*. THIS DOCUMENT STATED THAT ITS OBJECTIVE WAS TO HELP PRISON STAFF IN ENGLAND AND WALES TO MEASURE THE '*EXTENT TO WHICH THEY TREAT PRISONERS WITH RESPECT.*' (COYLE 2003:5). THE AUDIT TOOL EMBRACES THE IDEA THAT HUMAN RIGHTS ARE ABOUT ATTITUDES, BEHAVIOURS AND CULTURE, RATHER THAN EXTERNAL MONITORING. THE TOOL IS THUS SEEN AS AN AID TO INTERNAL REFLECTION AND IMPROVEMENT; TO ALLOW PRISON STAFF TO ASSESS FOR THEMSELVES WHETHER THEY ARE

MEETING THE PRISON SERVICE OBJECTIVE OF TREATING PRISONERS WITH HUMANITY AND WHETHER THEY ARE OPERATING A "DECENT" PRISON.

THIS IS AN IMPORTANT DEPARTURE FROM THE EXPERIENCE OF THE UK PRISON SERVICE WHICH HAS SUFFERED, IN RECENT YEARS, FROM A PLETHORA OF PERFORMANCE MEASUREMENT TOOLS AND A DYSFUNCTIONAL HEAD OFFICE BUREAUCRACY WHICH IS RECORDED AS HAVING GENERATED 230 LETTERS, 65 FAXES AND 24 E-MAILS TO ONE PRISON IN A SINGLE DAY. (RAMSBOTHAM 2003).

NEW ZEALAND.
THE NEW ZEALAND DEPARTMENT OF CORRECTIONS REFORMS BASED ON THE *BILL OF RIGHTS* STARTED WITH A NEW *CORRECTIONS ACT* IN 2004. ITS PURPOSE CLAUSE INCLUDES A REFERENCE TO THE *UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (30 AUGUST 1955).*

THE *ACT*, AMONGST OTHER THINGS, OUTLINES PRISONERS' RIGHTS, OR "MINIMUM ENTITLEMENTS", WHICH WERE TRANSFERRED FROM REGULATION TO THIS PRIMARY LEGISLATION, ASSIGNING TO THEM THE SIGNIFICANCE THE *BILL OF RIGHTS* EXPECTS.

GIVING OPERATIONAL EFFECT TO THE *BILL OF RIGHTS* ENTAILED REVIEWING ALL POLICIES AND PROCEDURES TO ENSURE COMPLIANCE WITH THE *ACT*. AS OF JULY 2004, THIS PROCESS WAS STILL ON FOOT.

THE NEW ZEALAND APPROACH WAS ALSO SENSIBLY PRAGMATIC; IT RECOGNISED COMPLIANCE WITH THE *BILL OF RIGHTS* AND THE MAINTENANCE OF HUMAN DIGNITY WITHIN A CORRECTIONAL SYSTEM IS FUNDAMENTAL AND IS 'GOOD BUSINESS'; IT REDUCES TENSIONS AND ASSAULTS. NEW ZEALAND ALSO IMPROVED ITS PRISONER COMPLAINTS SYSTEM AND INITIATED TWO NEW PROCESSES. THE FIRST IS 'ACTIVE MANAGEMENT' WHICH SEEKS TO STIMULATE THE POSITIVE INTERACTION BETWEEN STAFF AND PRISONERS ON THE BASIS THAT EVERY CONTACT SHOULD BE VIEWED AS AN OPPORTUNITY TO CONTRIBUTE TO REHABILITATION. THE SECOND IS TO DEVELOP A CULTURE OF PROFESSIONALISM. THESE TWIN INITIATIVES REFLECT A RECOGNITION THAT WHEN PROBLEMS ARISE IN THE CORRECTIONAL SETTING, MAJOR FACTORS ARE USUALLY THE QUALITY OF MANAGEMENT AND THE QUALITY OF CORRECTIONAL OFFICER TRAINING.

NEW ZEALAND DEPARTMENT OF CORRECTIONS HAS A PRISON INSPECTORATE, BUT WHILE IT CLAIMS THAT THE INSPECTORATE IS INDEPENDENT, IT IS NOT AN EXTERNAL BODY, BUT IS PART OF THE AGENCY AND REPORTS TO THE AGENCY CHIEF EXECUTIVE OFFICER. WHILE THIS MIGHT BE ADEQUATE TO MEET THE LETTER OF RULE 55 OF THE *UNITED NATIONS STANDARD MINIMUM RULES*, THE LACK OF REAL INDEPENDENCE IS NOT CONSISTENT WITH THE INTENT OF THE

RULE. THE NEW ZEALAND OMBUDSMAN DOES PROVIDE INDEPENDENT OVERSIGHT OF THE PRISON SERVICE, BUT THE EFFORTS OF THAT OFFICE ARE SPREAD ACROSS GOVERNMENT AND ITS FOCUS TENDS TO BE ON COMPLAINT IDENTIFICATION AND RESOLUTION, RATHER THAN ON SYSTEMS DEVELOPMENT.

CANADA.

THE CANADIAN GOVERNMENT APPROACHED THE EVALUATION OF CORRECTIONAL SYSTEM REFORM, BASED ON HUMAN RIGHTS, BY ESTABLISHING THE WORKING GROUP ON HUMAN RIGHTS. THE REPORT OF THE WORKING GROUP OF DECEMBER 1997, *A STRATEGIC MODEL FOR ASSESSING COMPLIANCE WITH HUMAN RIGHTS OBLIGATIONS IN A CORRECTIONAL CONTEXT* ADVOCATES A MORE FORMAL, LEGALISTIC APPROACH THAN THAT OF THE UNITED KINGDOM.

THE *STRATEGIC MODEL* DEFINES ITS OBJECTIVES AS: *'SATISFACTORY AND DEMONSTRABLE COMPLIANCE WITH LAWFUL HUMAN RIGHTS OBLIGATIONS AND COMPLETE, EFFICIENT AND COMPATIBLE SYSTEMS FOR ACHIEVING AND EVALUATING COMPLIANCE WITH HUMAN RIGHTS RULES.'* IT ALSO DEFINES THE PREMISES FOR EFFECTIVE HUMAN RIGHTS MONITORING AS BEING *'CLEAR, COMMON UNDERSTANDING OF THE HUMAN RIGHTS RULES; UNAMBIGUOUS LEGAL AUTHORITY FOR THOSE RULES; AND COMPLIANCE MECHANISMS THAT ARE BOTH TRANSPARENT IN THEMSELVES AND OPEN TO PUBLIC SCRUTINY.'*

THE CANADIAN SYSTEM ALSO HAS AN INDEPENDENT OFFICE OF THE CORRECTIONAL INVESTIGATOR, BUT, LIKE THAT OF THE UNITED KINGDOM'S INSPECTOR GENERAL, IT LACKS ENFORCEMENT POWERS. AND WHILE THE BRITISH INSPECTOR GENERAL IS CONCERNED WITH THEMATIC AND SYSTEMIC ISSUES, THE CANADIAN CORRECTIONAL INVESTIGATOR IS FOCUSSED ON INVESTIGATING AND RESOLVING INDIVIDUAL COMPLAINTS.

FOR ONE SIGNIFICANT STAKEHOLDER GROUP, CANADIAN CORRECTIONS' EFFORTS WERE INADEQUATE TO PRESERVE HUMAN RIGHTS OF WOMEN PRISONERS.

ON 14 MAY 2003 THE CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES FILED A COMPLAINT WITH THE CANADIAN HUMAN RIGHTS COMMISSION CLAIMING DISCRIMINATION AGAINST FEMALE FEDERAL PRISONERS AND THE BREACHING OF THEIR HUMAN RIGHTS. THIS IS RELEVANT TO AUSTRALIA AS THIS CASE HAS GIVEN SUPPORT TO THE ACTION LAUNCHED BY SISTERS INSIDE INC LAST YEAR IN QLD.

IN DECEMBER 2003, THE HUMAN RIGHTS COMMISSION ISSUED A *SPECIAL REPORT TO PARLIAMENT, PROTECTING THEIR RIGHTS: A SYSTEMIC REVIEW OF HUMAN RIGHTS IN CORRECTIONAL SERVICES FOR FEDERALLY SENTENCED WOMEN.*

THE REPORT ESTABLISHED PRINCIPLES WHICH LINK PRISON ACTIVITIES WITH HUMAN RIGHTS VALUES. THE PRINCIPLES SHOULD INCLUDE:

- **USING THE LEAST RESTRICTIVE MEASURES CONSISTENT WITH THE PROTECTION OF THE PUBLIC, PRISONERS AND STAFF;**
- **ENSURING THAT CORRECTIONAL PROGRAMS AND PRACTICES RESPECT GENDER, ETHNIC AND CULTURAL DIFFERENCE; AND**
- **RESPONDING TO THE NEEDS OF INDIGENOUS PEOPLE, WOMEN AND PRISONERS WITH SPECIAL NEEDS.**

THE HUMAN RIGHTS COMMISSION ACKNOWLEDGED THAT THERE WILL BE TENSIONS BETWEEN THESE PRINCIPLES IN THE PRISON CONTEXT.

THIS IS ESSENTIALLY WHAT LORD JUSTICE WOOLF RECOGNISED IN HIS REPORT INTO THE 1990 BRITISH PRISON RIOTS WHERE HE DEFINED THE PROPER CHARACTER OF PRISONS IN A DEMOCRATIC SOCIETY BOUND BY INTERNATIONAL LAW. IN HIS REPORT HE IDENTIFIED *'THREE REQUIREMENTS WHICH MUST BE MET IF THE PRISON SYSTEM IS TO BE STABLE: THEY ARE SECURITY, CONTROL AND JUSTICE. "SECURITY" REFERS TO THE OBLIGATION OF THE PRISON SERVICE TO PREVENT PRISONERS ESCAPING. "CONTROL" DEALS WITH THE OBLIGATION OF THE PRISON SERVICE TO PREVENT PRISONERS BEING DISRUPTIVE. "JUSTICE" REFERS TO THE OBLIGATION OF THE PRISON SERVICE TO TREAT PRISONERS WITH HUMANITY AND FAIRNESS.'* WOOLF (1991: 1.149).

THE CANADIAN HUMAN RIGHTS COMMISSION REPORT DETAILED THE REQUIREMENTS FOR THE CORRECTIONAL SYSTEM TO AVOID DISCRIMINATION BASED ON PRACTICES AND POLICIES THAT EXCLUDE INDIVIDUALS OR GROUPS OR TREAT THEM ACCORDING TO STEREOTYPES; FAILING TO ENSURE THAT INDIVIDUALS OR GROUPS BENEFIT EQUALLY FROM CORRECTIONAL SERVICES OR FAILING TO ADDRESS DIFFERENCES BY TREATING PEOPLE THE SAME. THIS CLEARLY ESTABLISHES THE NEED FOR RIGOROUS AND VALIDATED INDIVIDUAL ASSESSMENT INSTRUMENTS TO DETERMINE RISKS AND NEEDS AND TO ENSURE ASSOCIATED CLASSIFICATION AND CASE MANAGEMENT SYSTEMS ARE OF DEMONSTRABLE INTEGRITY.

THE COMMISSION ALSO DREW ATTENTION TO THE SUPREME COURT OF CANADA DECISION IN *ZURICH INSURANCE CO. V ONTARIO HUMAN RIGHTS COMMISSION [1992] 2 SCR 321,* WHICH RECOGNISED THAT THERE MAY BE LIMITS ON WHAT CORRECTIONAL SERVICES MUST DO TO PROTECT THE RIGHTS OF PRISONERS.

THE COURT DETERMINED THAT TO PROVE DIFFERENTIAL TREATMENT WAS NOT DISCRIMINATION, CORRECTIONAL SERVICES MUST SHOW THAT THERE IS NO OTHER WAY TO PROVIDE THE SERVICE SHORT OF "UNDUE HARDSHIP" RELATED TO CONSIDERATIONS OF HEALTH, SAFETY AND COST.

THE HUMAN RIGHTS COMMISSION REPORT IS HEAVY WITH THE LANGUAGE OF DATA COLLECTION AND ANALYSIS, COMPLIANCE, MONITORING, REPORTING AND EVALUATION, AND IN THAT REGARD CONVEYS A DIFFERENT SENSE FROM THAT OF THE COMMENTARIES DEALING WITH THE IMPACT OF THE NEW ZEALAND *BILL OF RIGHTS*, WHICH FOCUS ON ATTITUDES AND BEHAVIOUR.

THIS MAY WELL BE A PRODUCT OF THE FRUSTRATION OF GROUPS, SUCH AS THE CANADIAN ASSOCIATION OF ELIZABTHE FRY SOCIETES, BORN OF CANADIAN CORRECTIONAL SERVICES' PERCEIVED INACTION FOLLOWING THE 1996 *COMMISSION OF INQUIRY INTO CERTAIN EVENTS AT THE PRISON FOR WOMEN AT KINGSTON.*

THE *SISTERS INSIDE* SUBMISSION TO THE QLD ANTI DISCRIMINATION COMMISSIONER, WHILE LOCALLY INSPIRED, HAS DRAWN STRENGTH FROM THE CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES CASE. THE MEANS OF DISCRIMINATION OUTLINED IN THE SUBMISSION WILL BE FAMILIAR TO YOU. THEY INCLUDE:

- **THE CLASSIFICATION SYSTEM AND DISCRIMINATION OF INSTRUMENTS;**
- **THE NUMBER OF LOW SECURITY BEDS ACCESSIBLE BY WOMEN;**
- **ACCESSTO CONDITIONAL AND COMMUNITY RELEASE;**
- **ACCESS TO PROGRAMS;**
- **ACCESS TO WORK; AND**
- **STRIP SEARCHING.**

WITH REGARD TO THE LATTER, I VENTURE AN OPINION HERE – I THINK IT IS A PRACTICE THAT WILL BE INCREASINGLY CHALLENGED ON THE BASIS THAT ITS IMPACT ON DAMAGED WOMEN IS OUT OF PROPORTION TO THE POTENTIAL THREAT AND THE RESULTS ACHIEVED.

STAFF

MOST OF THE DISCUSSION ON THE APPLICATION OF HUMAN RIGHTS-BASED APPROACH TO PRISON MANAGEMENT HAS CONCENTRATED ON THE PRISONERS, AND RIGHTLY SO. BUT THE HUMAN RIGHTS LEGISLATION APPLIES EQUALLY TO STAFF. IN THIS REGARD, THE CORRECTIVE SERVICES OF CANADA DOCUMENT *HUMAN RIGHTS AND CORRECTIONS: A STRATEGIC MODEL (2003)* STATES *"THAT EMPLOYEES RIGHTS ARE AS MUCH A PRIORITY AS THOSE OF THE INMATES."*

A SIMILAR PERSPECTIVE IS ADVOCATED BY THE INTERNATIONAL CENTRE FOR PRISON STUDIES IN THE UNITED KINGDOM WHICH HAS RECOMMENDED THAT *"GOVERNMENT MINISTERS AND SENIOR ADMINISTRATORS SHOULD MAKE IT CLEAR THAT THEY HOLD PRISON STAFF IN HIGH REGARD FOR THE WORK THEY DO AND THE PUBLIC SHOULD FREQUENTLY BE REMINDED THAT PRISON WORK IS AN IMPORTANT PUBLIC SERVICE…"*(COYLE 2002:13).

THE NEED FOR SUCH AN APPROACH WILL NOT BE A SURPRISE TO ANYONE HERE TODAY. THE NATURE OF THE STAFF SUB-CULTURE (IN ANY ORGANISATION) IS DIRECTLY RELATED TO THE PERCEPTION OF HOW THEY ARE MANAGED. THERE IS ALSO A CONGRUENCE AMONGST STAFF AND PRISONERS AS TO WHAT REALLY MATTERS IN PRISONS, WITH THE NOTION OF PRISON QUALITY BEING LINKED TO FAIRNESS FOR BOTH STAFF AND PRISONERS.

FOR MANAGEMENT, THERE ARE SEVERAL ADDITIONAL AND MAJOR IMPLICATIONS OF A HUMAN RIGHTS BASED-APPROACH TO MANAGEMENT OF A PRISON AND THE PEOPLE WITHIN IT.

FIRSTLY, WHILE IT WOULD BE HOPED THAT PRISON MANAGEMENT WOULD ASPIRE TO BE RECOGNISED FOR THE HUMANITY OF ITS ADMINISTRATION AND THE BASIC DECENCY IT DISPLAYS, THIS WILL CERTAINLY BE THE FOCUS OF EXTERNAL SCRUTINY OF THE INSTITUTION AND THE MANNER IN WHICH IT GIVES EFFECT TO ITS RESPONSIBILITIES. IN THIS REGARD, IT IS INSTRUCTIVE THAT THE PRISON SERVICE OF ENGLAND AND WALES HAS IDENTIFIED SEVEN ELEMENTS OF A "DECENT" PRISON, WHICH ARE:

- **THAT PRISONERS ARE NOT PUNISHED OUTSIDE THE RULES OF THE PRISON;**
- **PROMISED STANDARDS WITHIN THE PRISON ARE DELIVERED;**
- **CLEAN, PROPERLY EQUIPPED FACILITIES;**
- **PROMPT ATTENTION TO PROPER CONCERNS;**
- **PRISONERS SHOULD BE PROTECTED FROM HARM;**
- **ACTIVELY FILLED TIME; AND**
- **FAIR AND CONSISTENT TREATMENT BY STAFF. (COYLE 2003: 27-28).**

THE IDEA OF A "DECENT" PRISON REFLECTS ATTEMPTS BY THE PRISON SERVICE TO ADD TO NARROWLY CONCEIVED PERFORMANCE INDICATORS CONCERNS WITH RESPECT FOR PRISONERS AND THE CULTURE OF A PRISON. (LIEBLING 2004: 478)

SECONDLY, PRISONERS IN AUSTRALIA ARE GENERALLY SEEN TO BE UNDESERVING. WOMEN PRISONERS HAVE, ACCORDING TO ALISON LEIBLING, BEEN THE OBJECTS OF VARYING PERCEPTIONS -THE SAD BUT NOT DANGEROUS WOMEN OF THE EARLY 20TH CENTURY, THE MAD WOMEN OF THE 1970s AND 1980s AND THE BAD BUT REASONING WOMEN OF THE LATE 20TH CENTURY. THERE MAY BE LOCAL VARIATIONS OF THESE THEMES. WOMEN PRISONERS ARE OFTEN VIEWED BY SOCIETY AS BEING "DOUBLY DEVIANT"; THEY HAVE BROKEN THE LAW AND HAVE DEVIATED FROM THEIR SOCIAL ROLE AS MOTHER, NURTURER, CARER OR MADONNA.

HOWEVER, WE CAN UNDERMINE THESE STEREOTYPES. A HUMAN RIGHTS BASED APPROACH ENCOURAGES US TO LOOK AT PRISONS THROUGH A MORAL, NOT LEGAL, PRISM. WE ARE ALSO ENCOURAGED TO LOOK AT PRISONERS FROM A PERSPECTIVE THAT RECOGNISES

THEIR HUMANITY AND INDIVIDUALITY AND GIVE EXPLICIT RECOGNITION TO THE PSYCHOLOGICIAL, EMOTIONAL AND PHYSICAL NEEDS OF WOMEN ARISING FROM ACCUMULATED ADVERSE LIFE EXPERIENCES, INCLUDING WIDESPREAD CHILDHOOD AND LATER SEXUAL ABUSE. AND IF WE CAN SHAPE THE PERCEPTION OF WOMEN PRISONERS, THEN WE CAN SHAPE THE MODE OF CONTROL WHICH IS APPLIED TO THEM.

A HUMAN RIGHTS FRAMEWORK PROVIDES A MEANS TO PURSUE THESE OBJECTIVES AND PERHAPS OVERCOME SOME OF THE LIMITATIONS OF THE "RISK-NEEDS" APPROACH AS IT CURRENTLY APPLIES TO WOMEN PRISONERS.

FINALLY, THE ADVENT OF HUMAN RIGHTS LEGISLATION PROVIDES A POWERFUL TOOL FOR CORRECTIONAL ADMINISTRATORS TO BUTTRESS BUDGET SUBMISSIONS FOR RESOURCES TO APPROPRIATELY ACCOMMODATE AND ADDRESSES THE MANIFOLD NEEDS OF A POPULATION EXHIBITING THE PHYSICAL AND MENTAL HEALTH PROFILE PREVIOUSLY MENTIONED. WHILE SOME GOVERNMENTS HAVE BEEN PREPARED TO DENY PRISONERS ADEQUATE AMENITIES AND SERVICES, THEY DO HAVE SOME SENSITIVITY TO CRITICISM OF THEIR ACTIONS WHEN THESE BREACH HUMAN RIGHTS. THUS HUMAN RIGHTS-BASED ARGUMENTS TO GOVERNMENTS CONCERNING OVERCROWDING, PEOPLE WITH MENTAL HEALTH PROBLEMS, THE RATE OF IMPRISONMENT OF INDIGENOUS WOMEN, AND YOUNG PEOPLE BEING IN ADULT PRISONS MAY BE MORE EFFECTIVE THAN APPROACHES TO DATE HAVE BEEN; THEY CERTAINLY COULD NOT BE ANY LESS EFFECTIVE.

CONCLUSION

PERHAPS THE MOST SIGNIFICANT ASPECT OF THE INTRODUCTION OF HUMAN RIGHTS LEGISLATION IS THE OPPORTUNITY IT PROVIDES TO ASK WHAT WOULD A PRISON (OR INDEED COMMUNITY CORRECTIONS) LOOK LIKE IF IT WAS "JUST", "DECENT" OR "FAIR" AND TO ESTABLISH MEANINGFUL MEASURES OF THE EXPERIENCES OF SUCH DIMENSIONS, PARTICULARLY IN THE PRISON SETTING.

THE ENHANCED TRANSPARENCY OF CORRECTIONAL MANAGEMENT WHICH WILL BE FOSTERED BY HUMAN RIGHTS LEGISLATION MAY NOT NECESSARILY BE WELCOMED BY ALL JURISDICTIONS, OR UNIONS, OR INDEED BY SOME MANAGERS, BUT IT WILL LEND SOME MORAL, IF NOT LEGAL, FORCE TO A CHANGE PROCESS. ANY CORRECTIONAL JURISDICTION EMBARKING ON THIS ENDEAVOUR WILL HAVE A UNIQUE OPPORTUNITY TO REVIEW AND CHALLENGE WHY IT DOES WHAT IT DOES, WHICH IN SOME CASES WILL HAVE THEIR ORIGINS IN POPULISM, PREJUDICE, OBSCURE TRADITIONS, MANAGEMENT INERTIA OR IN OSSIFIED INDUSTRIAL ARRANGEMENTS.

TO GUIDE US THROUGH THIS PROCESS IN THE ACT, WE HAVE A HUMAN RIGHTS WORKING GROUP WHICH INCLUDES REPRESENTATIVES OF THE HUMAN RIGHTS COMMISSIONER, THE OMBUDSMAN AND DEPT OF JUSTICE. THE WORKING GROUP IS DEVELOPING THE OPERATING PROCEDURES FOR THE NEW PRISON SO THAT WE CAN DEAL WITH POTENTIAL AREAS OF CONTENTION, NOW, NOT AFTER COMMISSIONING.

WE ARE NOT DOING THIS THROUGH ROSE-COLOURED GLASSES. CORRECTIONAL HISTORY IS LITTERED WITH WELL-MEANING "LIBERAL" CORRECTIONAL REGIMES THAT WENT WRONG. ALSO, WE ARE ACUTELY AWARE THAT IF THE PUBLIC PERCEPTION IS THAT THE *HUMAN RIGHTS ACT* IS SIMPLY A "PRISONERS' CHARTER" THEN THE *ACT* WILL BE DAMAGED, AND THAT, WILL BE IN NO-ONE'S INTERESTS.

FINALLY, AS WHAT WE HAVE BEEN DISCUSSING ARE ESSENTIALLY MORAL AND ETHICAL ISSUES, THEY HAS SIGNIFICANT IMPLICATIONS FOR THE STRUCTURE AND MEMBERSHIP OF CORRECTIONAL EXECUTIVES. AFTER ALL, IT IS KEY TASK OF LEADERSHIP TO ARTICULATE AND MODEL THE VALUES OF AN ORGANISATION.

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