

**INQUIRY INTO SECURITY CLASSIFICATION AND
MANAGEMENT OF INMATES SENTENCED TO LIFE
IMPRISONMENT**

Name: Revd Colin Sheehan

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Partially Confidential

Legislative Council, NSW Parliament
Standing Committee on Law and Justice

Sunday 25th October 2015

Dear Sirs,

SUBMISSION: Chaplain C Sheehan

I write to provide information and a perspective for the Committee's inquiry into security classification and management of inmates sentenced to life imprisonment

The terms of reference calls on the committee to

- a) Examine the existing legislation, policies and procedures for determining the security classification and custodial management of (those generally referred to as) 'Serious Offenders' and determine whether these arrangements are appropriate and consistent with community expectations;
- b) The impact of security classification and custodial management of such inmates on registered victims and the role of registered victims in the classification and management decision making process
- c) Communication with registered victims prior to and following a security classification and custodial management decision being made ... (and if so How?)
- d) Whether it is appropriate to reclassify and provide inmates sentenced to life imprisonment with access to rehabilitative programs and services if they have ... no prospect of release
- e) The impact of inmate security classification and management decisions on the operation of the correctional system

My comments follow:

The Current system is meant to be '**objective**' not '**subjective**'

1. I will not need to explain in detail the role or operation of SORC and the commissioner of corrective services NSW in the matter of all inmate classifications
2. It will suffice to say the SORC is **a Council of eminent legal minds** who provide advice and make recommendations to the Commissioner Corrective Services NSW with respect to those inmates deemed serious offenders and high security inmates. The Council performs functions in relation to the management of **public interest inmates**. The importance of this Council has meant that the selection criteria¹ for candidates to go on a register in order to fill SORC member vacancies, states –
 - a. *'Interested persons must be either a sitting or retired judge of a NSW court or the Federal Court, a sitting or retired Magistrate or a person qualified to be appointed as a judge of a NSW Court*
 - b. *Interested persons should also possess effective oral written & interpersonal communication skills*
the ability to explain procedure & decisions the ability to exercise sound judgement & remain objective

The Current service by name implies it is rehabilitative not retributive or punitive for any inmate

1. In a paper by Dr Sarah L Bloom MD² (Certified Psychiatrist with the American Board of Psychiatry and Neurology ABPN), Dr Bloom says – speaking of the American system – 'many people sense that the justice system as it is now comprised is not working ... the present system (in the USA) is based on the notion of retribution – revenge cloaked in social acceptability ... retributive justice is preoccupied with blame pain and punishment is primarily negative and backward-looking and the victim plays little if any role in achieving justice
2. The question is not whether the victim, if they so choose, should play a role but rather what role should the victim play – should it be retributive and punitive or should it be restorative? The answer helps or harms healing
3. I commend the work of **Dr Bloom** (Reflections on the Desire for Revenge) to the Committee and have given the web site
4. I recently attended the international Prison³ Chaplains Association (IPCA) Worldwide Conference held in Sydney from 19th – 24th September. I attach a brief summary of note from a paper by Rev Dr Ulrica Fritzson. The paper, her work and that of Chaplain Jonathan Clayton with whom she spent time observing Pollsmoor Prison's Restorative Justice Program that I understand Chaplain Clayton heads up.

1 Per Minister Elliott's request recent for expressions of interest to be included on '*a register of suitable candidates to be consulted as SORC vacancies arise*'

2 <http://www.nonviolenceandsocialjustice.org/Research-Literature/Sanctuary-Model-literature-and-works-by-Sandra-Bloom/Reflections-on-the-Desire-for-Revenge/75/>

3 I note as an aside that around the world the term 'Prison' is still in use in whereas in every Australian State and Territory the term employed is **Correctional or Corrective** with the necessary implication that confinement will be **Corrective**

The Current system has produced inmate

1. I wrote about this inmate to the Minister and the Commissioner when they decided initially in the absence of SORC advice to cancel his C1 classification granted to him 22 ½ years ago and on 21st July 2015 returned this inmate to Maximum Security confinement in Goulburn
2. Both Commissioner and Minister kindly replied to my letter and both invited me to make a submission to this Committee
3. I feel that this letter may contain information that is pertinent to the Committee's deliberations –
4. I believe _____ that my concern and appeal in the case of _____ is relevant to and worthy of your consideration as you examine at the wider issues as framed by your terms of reference

I trust these will be received in the spirit in which they have been written, namely to bring about a improvement in the justice system in NSW and to be instrumental in reducing not increasing the level of violence both in community and within our Correctional Centres

Your Faithfully

Rev Colin Sheehan

Appendix A - Notes on my attendance at the recent IPCA Conference held in Sydney in late September with material pertinent to the terms of reference of the Committee and its terms of reference.

Appendix B – Substance of the letter I wrote to the Commissioner and the Minister with copy to the Premier.

Appendix C – The Minister’s invitation to select persons to make expressions of interest to be place on a register of candidates suitable to be contacted should a vacancy arise on SORC Council – Objectivity is crucial

I was pleasantly surprised by the recent *International Prison Chaplains Association* (IPCA) Conference held in Sydney's in September at St Ignatius College, Riverview

For me – apart from the pleasure of personal fellowship with Chaplains from far afield - Hong Kong, Germany, Sweden, Congo, New Zealand, New Guinea etc. – there was also good thinking on other matters by two gifted speakers, namely

- **Rev. Dr Ulrica Fritzon** (ordained minister, Church of Sweden, currently on study leave from placement as Prison Chaplain in Malmo, Sweden; has worked in the Restorative Justice program, Pollsmoor Prison, Cape Town SA, and
- **Rev Hennie Human** (National Director, Spiritual Care, Correctional Services, South Africa)

1. Rev Dr Ulrica led the 90 minute plenary session on Monday morning

Her topic: Restorative justice and reconciliation - (supporting her were two Chaplains from Pollsmoor Prison - Jenni and Jonathan)

Matters covered included – terminologies, such as ...

Restitution – the return of something to its original state (e.g. of dignity or of power) made necessary because ...

Crime creates irreparable damage; trauma and guilt.

Living and time merely preserves the trauma does nothing to return something towards its original state.

Restorative justice - allows the victim to find from the perpetrator some language to describe the event

Sharing the story and painful experience - victim and perpetrator

John de Gruchy - reconciliation and restorative justice: the art of R~

<http://www.restorativejustice.org/articlesdb/articles/4385/view?searchterm=reconciliation>

Punitive systems - do not recognise the language of trauma or of guilt

Whereas the experience of listening - depending on God and his ways makes reconciliation a possibility

Reconciliation begins by being reconciled in the grace of God

Hope is generated in the face of (and despite) *the trauma of extraction* (the taking away by force) & of evil

Dr Fritzon's session looked in some detail at **the Restorative Justice Program run by Chaplaincy in the Pollsmoor Prison**

It is: *a confronting outspoken and faith based program run over 6 days with a further ten weeks of follow up –*

'The program is one that is not natural to the ways of Sweden (where confrontation is avoided)'

The program - 3-4 offenders together with facilitator / supporter

Day 1 intro - damage caused by crime, families share their experience

Day 2 damage caused by crime and reality of the crisis - offenders background Victims share their experience

Day 3 core values

Day 4 responsibility accountability and confession

Day 5 repentance forgiveness and reconciliation

Day 6 closing function – with the voluntary involvement of the offender family - a very NB aspect

Then follows - Min 10 weeks in preparation for the '*victim-offender dialogue*' – with studies in

- **Lying** (pathological lying perpetuates the hurting of the victim);
- **Habit** formation (good and bad);
- **Reconciliation** and forgiveness (we will never forgive you ... I'm not here for your forgiveness I'm here to listen to you);
- **Anger** – all given in preparation for the meeting with victim, family and community.

NOTE: at the end - has anything changed? (The victims loss remains) - But they (the offender and the victim) have touched each other in a safe environment and there has been conversation

Why do it if you are an offender?

Participation arises out of a desire '*to become a better person*'

Many think they are too hopeless.

They think it is not possible.

Hurt people hurt more people... but the program is premised on the idea that:

- **Offenders are not evil** - almost always they are very hurt ... it is a very releasing (liberating) truth to discover as an offender that they have responsibility (even when their parents failed them in their parental responsibility).
- They are encouraged to not stop at this painful connection or insight but to go onto take personal responsibility for offending (they don't have responsibility for what their parents failed to do for them)

Confession - gospel –

But there's no common absolution or forgiveness in this program – there is however individual, personal and public confession in the front of other inmates. This is done in preparation for their meeting with the victim(s) and their families – this is where offenders practice personal confession.

Restorative justice (RJ) is '*asymmetrical*' – i.e. **this is not mediation; this is not** aimed at *sharing blame*

This understanding helps when approaching the meeting between the victim and the offender –

RJ isn't mediation - there isn't a shared moral inventory (or playing field) crime is a violation - it should be recognised and the offender must take responsibility for the offence.

Change-focus-**paradox** – when an offender shifts from self to 'the other' and seeks to answer Qns ... *as a result of my behaviour* ...

- *Who has been hurt?*
- *What are their needs?*
- *Whose obligations are these?*

To do so the offender must change the focus from ego (me myself and I) ... The paradox is that this shift also does something for the offender

By helping 'the other' he discovers that – he's actually helping himself

- I have been enabled to say I am so sorry - CAPABILITY ACT
- Victim has received admission of responsibility from the offender - CONFIRMATIVE ACT

Truth - in this process - will not be pleasant

But it is far better than glossing over the results and effects of the offending behaviour and pretending that things are okay

- Offenders may fear the confrontation - what the victim might say / what he (as offender) might be expected to say
- RJ is: stop pretending that things are not as bad as they really are. Real RJ reveals the detestable reality

The address concluded with

1. An analogy - The **Spiders web** – **Dr Ulrica insisted that these truths bear on us as humans in community** ...

- We humans live together (closest persons are interconnected)
- We are born in relationship and we continue to grow into and out of relationship
- When we violate each other we also violate ourselves.
- The spider mends the broken connections.
- **If the broken connections are not mended the spider will die** – is that the truth for humanity also?
- Our lives (all lives) are dependent on mending the broken connections.

2. **Martin Huber - philosopher theologian** argued that an offender must address guilt in three spheres OR fail

1. Legal sphere - where he atones for his legal guilt by serving a prison sentence
2. In front of God
3. Between you and me

If we imagine that we are guilty only towards our self ... then we never remove OR have our guilt 'covered' / 'remedied'

In very simple yet profound terms – this touches the direction of guilt – for the offender who has taken a life ...

FOR it was not the Judge's husband that I killed it was her husband that I killed

Confession - expresses a relief – uncovers the guilt shame and sorrow

3. **The movie: Railway Man** – a true story of POW Eric Lomax who harboured bitterness and hatred towards his wartime captors who cruelly and heartlessly tortured him in captivity – the final reconciliation scene is a moving testimony to the power of reconciliation to make restitution and build genuine lifelong friendship in the place of bitterness, anger and hatred.

4. **Then finally a 20 minute Q&A**

- An offender should never go into this RJ program with a requirement to get forgiveness.
 - It's about taking responsibility.
 - Some victims may never want to meet the offender
- **Restorative justice** is imbedded into the South African corrections system ...
- Offenders need to take on responsibility despite what a parent or other person in the family that he grew up in may have done to cause him harm.
 - Sitting with the family (has its own challenges).
 - Prepare the family - guide them, they aren't used to speaking to each other, the family may not even know whether or not their offending family member was guilty or not.... The Family has opportunity to take their own responsibility.

My take-away? Amongst other things - **a sense of shame at the NSW Service** for taking a recent U-turn towards **retributive justice** inspired by the raw legitimate pain of victims of serious crime stirred by certain very unhelpful radio shock jocks and newspaper tabloids who promote the theory that violence must be met by violence. Nothing is ever easy. Trust in a system that celebrates the culture of violence and is devoid of hope is a stark contradiction to the benefits espoused at this conference arising from restorative justice. **My prayer?** – That the NSW Upper House inquiry into current practices for classifying Serious Offenders will reject retributive justice and embrace principles consistent with restoration and reconciliation.

APPENDIX B

Minister for Corrections, Emergency Services and Veteran Affairs,
Commissioner of Correctional Services NSW

Dear Sirs,

I write to express concern at *Correctional Services'* response to recent adverse tabloid publicity concerning inmate

- Inmate 22½ year classification as a C1 minimum security inmate was cancelled on Tuesday 21st July;
 - He is now reclassified as an A2 maximum security inmate and moved to a maximum security cc;
- I am concerned that the role of *an army of professional and distinguished individuals* who have been administering the policies and practices of the *Correctional Services* over many decades may have been demeaned by that decision. They include:
 - General managers, managers of security, other executive custodial officers;
 - Psychologists, program managers, program workers;
 - Classification officers;
 - Chaplaincy;
 - The SORC board;
 - The CUBIT program, Drug rehabilitation, Kairos, Prison Fellowship and countless others who have been instrumental in the last 36 year + prison life of inmate .

I fear that this decision ultimately undermines confidence not only in the fundamental policies and practices of *Correctional Services* but also the professionalism of the staff who, over a period of almost 40 years, has worked with an inmate who did inexcusable things; was capable of violence almost beyond description; was uncontrollable except through the exercise of the most brutal force on the part of those who handled him on a daily basis; his one-time lack of respect for the sanctity of human life and total disregard for the legitimate rights of others and his total disregard for his own wellbeing, meant that this was a man who for a great swathe of his life was self-destructing and prepared to take as many as he could with him, on his headlong dash into oblivion.

But *Correctional Services* has that army of professionals who work with such men and women and who, in inmate case, observed transformation and change (his crimes remain horrendous, inexcusable and intolerably painful for those victims who survived). Nevertheless the recent leadership response to insatiable and unresolved pain, bitterness and thirst for revenge by victim survivors stirred by what seems a wind of public opinion (at least that which channels through the tabloid press/media) is unworthy of the time, passion, conviction, wisdom, dedication and skill of some of the Service's best people over almost 40 years including the last quarter of a century, when, this once violent man, on 8 January 1993 was given C1 classification and moved to minimum security confinement. That decision has been regularly and consistently reaffirmed and endorsed by the Office of the Commissioner, SORC, Inmate classifications, and every Executive Officer who has served in the system that continues to hold inmate in custodial confinement on a LIFE sentence (without determination).

Inmate crimes are inexcusable and will forever be. He offers no excuse; he has no excuse to offer.

Correctional Services' decision to cancel his quarter century C1 classification would seem to not only set an unfortunate precedent that is inconsistent with the name, *Correctional Services*; but is a rebuke to those who have worked and will continue to work in the future towards the *Correction* of inmates who do inexcusable things. I fear that it has the effect of undermining the programs, policies, processes and inmate outcomes that are fundamental to *Correctional Services*.

I appeal to you to reconsider your decision on the basis of the good policies and practices¹ that gave rise to inmate C1 classification and that have stood the test of time for the last 22 ½ years in the case of inmate

Yours faithfully,

Rev Colin Sheehan

cc The Hon Mike Baird, Premier of New South Wales

¹ John Winston Howard, once said 'you focus on good policy and good principles and the politics will take care of itself'

Attachment

My Concern: THAT the recent decision (to re-classify inmate) demeans established Correctional Services' policy, practices & personnel (including members of SORC) jeopardizing objectivity without healing the hurting.

1. As recently as 3 July 2015 the Minister invited qualified interested persons to apply for inclusion onto 'a register ... which will be consulted as vacancies arise' for part-time judicial members of the 'Serious Offenders Review Council'.

The Minister's invitation for '**expressions of interest / part-time judicial members / serious offenders review council**', was published by Minister Elliott with the closing date for applications on 3 July 2015.

- a. The invitation identified the 'selection criteria' for persons interested to become a part-time judicial member of SORC in 2015.
 - b. The Minister's 'selection criteria' emphasised and stipulated that '*interested persons must be either a sitting or retired judge of a NSW court or the Federal Court, a sitting or retired magistrate, or a person qualified to be appointed as a judge of a NSW Court*' AND further insisted that applicants possess '**the ability to exercise sound judgment and remain objective**'.
2. As a matter of fact – SORC Members, who meet the equivalent of that 'selection criteria', have over the last 22-½ years, regularly and consistently reaffirmed and endorsed inmate C1 minimum classification.
 3. On 21 July 2015, in the case of inmate , the Minister overruled **22 ½ years of SORC objective assessment**, abandoning professional objectivity, in this difficult area, in favour of revenge and retributive justice.

My Concern: THAT this decision will also have the opposite effect to that which is clearly desirable with regard to the level of violence both within 'Corrections' and outside in the wider community. This recent, and apparently comprehensive, endorsement of revenge and retribution as the, 'way forward policy' for many SORC inmates, may seem attractive to some but the result of four decades of work with inmate shows that 'violence on violence' is not the answer to 'healing the hurting' – there is a better way with better outcomes for NSW.

1. I believe that an article, such as '**REFLECTIONS ON THE DESIRE FOR REVENGE**' by Sandra L Bloom MD², is relevant to and challenging of the Minister's decision to act in the way that he has for SORC inmates such as inmate .

(Dr Bloom is a **Board-Certified³ psychiatrist**, graduate of Temple University School of Medicine and recently was awarded the Temple University School of Medicine Alumni Achievement Award. In addition to her faculty position at the School of Public Health at Drexel, she is President of CommunityWorks, an organizational consulting firm committed to the development of nonviolent environments. Dr. Bloom currently serves as Distinguished Fellow of the Andrus Children's Center in Yonkers, NY).

Abstract

2. Dr. Bloom's article examines the roots of the desire to seek revenge as a primary motivator of human behavior ... The review covers anthropological, historical, and literary examples to modern research on normal, clinical, delinquent, and criminal populations. For example, chimpanzees display retaliatory vengeance behaviors, defined as occurring long after the insult occurred ... Because notions of justice and fair play and of appropriate consequences for wrongdoing appear to be built into our human sense of justice, the implications of understanding revenge for treatment and social policy are discussed with the recommendation for social and legislative change ... Society has moved historically from tribal justice and blood vengeance to a world of laws in which the criminal justice system now practices its own form of legalized revenge ... (the article suggests) **that retributive justice be replaced by restorative justice: the restoration of relationship, and individual and social healing by asking who is hurt and what is needed to heal the hurt rather than to punish, with the acknowledgment that imprisonment can be recommended where the purposes of all three involved, the victim, the social group, and the perpetrator, are served.** This change will require a radical shift in basic assumptions of what justice is and how it can be best obtained.

² <http://.nonviolenceandsocialjustice.org/Research-Literature/Sanctuary-Model-literature-and-works-by-Sandra-Bloom/Reflections-on-the-Desire-for-Revenge/75/>

³ [American Board of Psychiatry and Neurology - ABPN](#)



**EXPRESSIONS OF INTEREST
PART-TIME JUDICIAL MEMBERS
SERIOUS OFFENDERS REVIEW COUNCIL**

The Honourable David Elliott, MP, Minister for Corrections, is seeking expressions of interest from qualified persons for appointment as a part-time judicial member of the Serious Offenders Review Council for a three year term that may be renewed. A register of suitable candidates will be created which will be consulted as vacancies arise.

The Serious Offenders Review Council (the Council) is created by the *Crimes (Administration of Sentences) Act 1999* and interested persons should refer to the Act. The Council's principle function is to provide advice and make recommendations to the Commissioner Corrective Services NSW (CSNSW) with respect to those inmates deemed serious offenders and high security inmates. The Council also performs functions in relation to the management of public interest inmates and escapees.

Selection criteria: Interested persons must be either a sitting or retired judge of a NSW court or the Federal Court, a sitting or retired magistrate, or a person qualified to be appointed as a judge of a NSW court. Interested persons should also possess effective oral, written and interpersonal communication skills, the ability to clearly explain procedure and decisions, the ability to exercise sound judgement and remain objective.

To Apply: Expressions of interest, accompanied by a detailed curriculum vitae and the names of at least two referees should be e-mailed to sorc@dcs.nsw.gov.au. Expressions of interest may also be posted to the Executive Officer & Registrar, Serious Offenders Review Council, Private Mail Bag 144, Silverwater NSW 1811.

Enquiries: Ms Alyson McDade, Executive Officer & Registrar, (02) 9289 5060, or via email sorc@dcs.nsw.gov.au

Closing Date: 3 July 2015