

Managing Risk- Whose Problem Is It Anyway?(1)

I would like to start by stating one of my biases. I have tremendous sympathy for you [Correctional Service of Canada employees] on certain days of your professional lives; I have tremendous admiration for you on the bulk of the rest of your working days; and some minutes, I have some criticism for your existence as a professional institution.

I have been asked to frame the issues of risk management from a community perspective, keeping in mind that I am speaking from outside the corrections continuum. In the public's view, the Correctional Service of Canada is part of this bigger thing called the criminal justice continuum, or the corrections continuum. But keep in mind that the public uses those two terms - criminal justice and corrections - interchangeably. They really don't have a clear grasp of where your obligations begin and where your responsibilities end - it is all just a great big muddle.

In my judgment, the public sees corrections as being most responsible for public safety. When something goes wrong, other people will get blamed in part, but I'm sure you must feel as if they only get the slop over from the blame you are taking. It is your institution, your organization and your work only that are seen by the public as being primarily charged with risk management and primarily responsible for their individual safety.

The police, for example, are part of the **criminal justice continuum**, but they are not necessarily seen as part of the **risk management continuum**. They can make arrests, bring charges, testify and put their properly gathered evidence in front of the courts, but from the public's perspective they do not manage risk. From the public's point of view, the police have done something really great just by catching the bad guy. By having a fairly high clearance rate, by catching the serial offender, the police have basically done their job.

As a person who works with victim groups, as a lawyer and simply as someone who reads the paper every day, I can say that the public has effectively lost confidence in the courts' ability to recognize appropriately the risk presented by an individual. The public does not think that the courts have the tools, the training or the understanding, fundamentally, of what it really means to manage risk.

For example, if someone has been charged by the police with break and enter with intent, by the time the Crown gets to it, a little bit of plea bargaining has likely gone on. By the time the evidence is all in, the best that may be registered on the conviction is break and enter. All concept of what the individual's intent might have been has been lost. It may have been intent to commit sexual assault, which would give you people a clue that you have a potential or real sexual offender on your hands. But in the end, the court sees the offender only as a break-and-entry artist. The conviction is not a clear indicator of risk, and therefore the sentencing does not bear any connection to the risk presented by a particular individual.

The Parole Board manages risk insofar as the legislation and its own policies provide for risk management. But the Board does not make the same contribution to risk management that you make, because it doesn't have the person in its custody. Rather, it sees the individual for a half hour or an hour at a hearing. The Board can certainly manage risk by ensuring that its information is the best, the fullest,

the most developed. But frankly, what the Parole Board does is influenced by how clearly you, in corrections, have been thinking, and by how well you have been assessing risk.

I am likely pointing out what is obvious to many of you. From the public's perspective, you are the people charged with risk management and you are basically on your own. It is entirely appropriate therefore, and indeed necessary, that you occasionally do what I call a "reality check." This research forum will give you an opportunity not only to train on the issues of risk management, but also to do a reality check on the issues of risk management. There are a variety of ways to do reality checks. One method is the short-sharp method. That is an inquiry into an incident such as the Stanton Inquiry, or a review of a process such as the temporary absence program, both of which I was involved in. Less traumatic to all involved are conferences such as this where you really get a chance to undertake some quiet deliberations and very thorough thinking.

It is fair to say that every decision in the criminal justice continuum is a form of risk assessment, but I cannot stress enough that the decisions you make are the most crucial. That is why it is so important that all information is shared. That is why it is so important that you get the police reports when making risk management decisions; this is how you find out whether the break and enter with intent got buried somewhere. That is why it is important to try to get access to the comments from the Crown, to know what plea bargaining went on; this is how you get appropriate information from the sentencing on file to allow you to make simple decisions on classification, on treatment, on programming, on assessments, on whether the individual is lying to you or not. It is important to know what the victim impact statement really said. The police may have enough evidence to charge an individual, but not enough evidence to reflect what the offender did or really intended to do. I can not stress enough that any decision is only as good as the information it is based on.

I am sure you realize that judges don't get all the information they need to make an appropriate decision on risk with the tools that they have available to them. As a result, you cannot consider a sentence as an indicator of the risk presented by an individual. **Risk management must be offender driven, not offence driven, and certainly not sentence driven.**

Judges are still labouring under a body of sentencing precedence that was built up 5, 10 or 15 years ago. This body of precedence was framed in the days when judges heard character evidence supporting the convicted offender but no victim impact statements to weigh against it. Judges are also charged with considering goals such as general deterrence, which are unrelated to managing the risk of the particular individual. They have to deal with plea bargains and the likelihood of appeal, and frankly, they are bound by what the Crown and the defence attorneys put in front of them. So if there is one thing I can emphasize, it is this: **do not be driven in your risk management assessments and decisions by the length of a person's sentence.** That does not determine risk. It becomes a very difficult risk management issue, however, because length of sentence determines how you are able to manage risk.

If offenders were in an institution for 50 years, you would probably have enough time to get through to each individual and make a difference (setting aside institutionalization problems and the like). But I have talked to enough caseworkers and wardens, and sat in on enough temporary absence panels, to know that there is this sense of hoolbeats at your back. For example, if their warrant expiry date is X and

their parole eligibility date is Y, you must get them ready and get them out. But please do not be seduced into that mentality; you must be satisfied that the risk that an offender presents right then is acceptable.

The second thought I wish to leave you with is probably not new to you: the public, no question about it, demands perfection in correctional services. And, impossible as it may sound, I believe that standard is being raised. The public is demanding it in louder voices and in larger numbers than ever before. But in its heart of hearts, the large majority of the public does not really expect what it demands. The social contract between the public and correctional services is that you will do your best, and that you will have sensible policies that are professionally applied by committed people who understand these policies and the reasons behind them - professionals who will look at things in a holistic fashion.

I think we all realize that understanding the rules and following the regulations are two very different things. The public does not trust rules and regulations. There are too many holes and exceptions. You cannot cover every single incident, or every single event, with a rule that is written down somewhere. So the public has to trust you to understand what the rules are attempting to accomplish. The public has to trust that you understand that your job is primarily to manage risk. You are putting offenders out in the community, and your ability to assess the offender's risk is key, because it is the public that is used to test the offender's ability to cope. That is a really tough thing to ask the public to accept.

Let me give you one small vignette on why it is so important to the public that risk management is viewed and implemented holistically. I was in Kingston a number of weeks ago at a municipal board hearing, and I happened to pick up the Whig Standard. It reported that the whole temporary absence program in this municipality and in the institutions in the Kingston area was being swept aside in the name of risk reduction. One example given was the cancellation of shopping outings for women from the Prison for Women. This was not what the temporary absence review panel intended. I remember sitting with the warden and some of the people charged with risk management at the Prison for Women. They talked about the therapeutic value of outings for some of their inmates. We didn't intend that they simply be truncated. What we intended was that they be tied to a program. And somehow our intentions, the eventual regulation and how it was interpreted, at least as reported in the paper, became unconnected.

Therefore - and I cannot stress it strongly enough - think about why the regulation is in place, understand its overall goal in risk management. By approaching your day-to-day decisions holistically with the big picture in mind, you will be able to live up to the standards the public has set for you - and the trust they have placed in you. I have full confidence that you are all able to meet the challenge.

(1) This article is based on comments delivered at a plenary address given by Ms. Pepino at the Correctional Service of Canada's Fourth Annual Research Forum, Kingston, Ontario, October 1992.

(2) N. Jane Pepino, Q. C., Aird & Berlis, BCE Place, P.O. Box 754, 181 Bay Street, Suite 1800, Toronto, Ontario M5J 2T9.