

# **ETHICS OF PUNISHMENT: A CANADIAN PERSPECTIVE**

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## TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	1
<b>METHODOLOGY</b> .....	2
<b>SCOPE OF WORK</b> .....	4
<b>CHAPTER 1: IDENTIFICATION</b> .....	6
History of Punishment .....	6
Theories of Punishment .....	12
History of Corrections in Canada .....	20
Overview of Modern Penology .....	34
<b>CHAPTER 2: CLARIFICATION</b> .....	53
Influences on the Canadian Penal System .....	53
Punishment: Ethical Considerations .....	82
Defences and Criticism .....	88
<b>CHAPTER 3: INTERPRETATION</b> .....	96
Issues in Real Time .....	96
Analysis .....	108
A Eulogy of Truth .....	117
<b>CONCLUSION</b> .....	122
<b>WORKS CITED</b> .....	125
<b>ANNEX 1: EVIDENCE OF HARASSMENT AMONG CORRECTIONAL OFFICERS IN CSC</b> .....	132
<b>ANNEX 2: CORRECTIONAL OFFICER SATISFACTION OF TRAINING PROVIDED BY CSC</b> .....	134
<b>ANNEX 3: STATUTORY RELEASE STATISTICS</b> .....	135

## ACRONYMS

**A4D:** Assessment for Decision

**APR:** Accelerated Parole Release

**CA:** Community Assessment

**CCRA:** Corrections and Conditional Release Act

**CCRR:** Corrections and Conditional Release Regulations

**CDSA:** Controlled Drugs and Substances Act

**CMT:** Case Management Team

**CS:** Community Strategy

**CSC:** Correctional Service of Canada

**CSN:** Confédération des syndicats nationaux

**CX:** Designation for correctional officer positions

**DPE:** Day Parole Eligibility

**FPE:** Full Parole Eligibility

**OCI:** Office of the Correctional Investigator

**PBC:** Parole Board of Canada

**PFV:** Private Family Visits

**PRELIM:** Preliminary Assessment

**PSCA:** Post Sentence Community Assessment

**SR:** Statutory Release

**UCCO:** Union of Canadian Correctional Officers

**V&C:** Visits and Correspondence

**WP:** Designation for various other correctional professionals (parole officer, parole officer supervisors, correctional program officers, programs manager, etc.)

**WWI:** World War 1

**WWII:** World War 2



This thesis is dedicated to those who struggle and the people who support them.

## INTRODUCTION

Punishment is a concept we learn about early in life. It unquestionably plays a significant role in our upbringing and development. However, although some forms of punishments are acceptable, time has shown that others are inappropriate and often fail to produce the positive outcomes we look for.

In adulthood, behaviours warranting a punishment are often dealt with by the penal system and in some cases, offenders pay with their freedom. Since the abolition of the death penalty in 1976, imprisonment has been the ultimate punishment in Canadian society. Imprisonment is the confinement or incarceration of a person in an institution, such as a prison, penitentiary or detention centre, often imposed as a sanction for an offence. Through imprisonment, offenders face the loss of freedom, the possible rupture of interpersonal relationships, loss of employment, public disgrace, rejection and the risk of institutionalization. Furthermore, the effects of imprisonment will be felt by offenders far beyond the completion of their sentence, when they are deemed to have “paid their debt to society”. I find it surprising that in a modern society such as ours, there continues to be overwhelming support for this primitive practice. Although the practice is primitive, efforts have been made to improve its use. Similarly and ironically, efforts have been made to carry out the death penalty in more humane ways; for example, the lethal injection is seen as more humane than the electric chair.

Although capital punishment (the death penalty) has been greatly criticised, debated and defended, substantially less attention has been paid to the practice of imprisonment, except to criticise its conditions (human rights violations, abuses, etc.). An important

question that remains unanswered is whether imprisonment per se is ethical. In the case of the death penalty, morals, religious beliefs and laws have given cause to an ethical debate. But for some reason, an honest public debate on the use of incarceration has yet to take place. It is my hope that this paper contributes to an increase in public awareness and the intensification of this worthwhile debate.

Accordingly, I will use the theory of ethical questioning (Deckeyser, 2007) to expose the lack of ethical constructs around the use of imprisonment in the Canadian penal system and propose ethical solutions for improvements in the mechanisms of moral reasoning behind the formulation of correctional policy in Canada; thus ensuring the ethical functioning of Canadian corrections. In other words, I will argue that in order for the penal system to be ethical, improvements in the areas of public awareness and media relations, the consideration given to the opinion of unelected experts, striking a balance between retribution and rehabilitation, the professionalization of forensic workers, meaningful oversight of the institutional environment and the promotion of human rights are necessary.

## **METHODOLOGY**

To achieve the aforementioned, I will employ the theory of ethical questioning as described by Aubin Deckeyser in *Michel Foucault: L'actualité de la vérité* (2007). Deckeyser argues that the theory of rational questioning is the foundation of ethical questioning. More than a manner in which to judge, ethical questioning opens the door to “good speech”, “good behaviour”, “good existence” and “good life”. In other words, ethical questioning is a tool that allows its user to look at a problem and analyse it in “real time” to identify gaps and make recommendations for ethical solutions. According to Deckeyser,

these ethical solutions are best presented in the form of a eulogy. The term “eulogy”, derived from the Greek, signifies the art of good (*eu*) speech (*logia*). Dekeyser likens this meaning to the work of John Austin, which suggests that to speak well is to do well (Dekeyser, 2007).

In philosophy, the eulogy manifests itself as an ethics of truth. Eulogy is the truth's ethics; it states the right way to question an individual by correctly identifying and wisely clarifying the emerging framework of his speech and constitution as an ethical subject. This is why it can be said that the subject's eulogy of truth is truly the beginning of ethical questioning (Dekeyser, 2007).

As stated above, the theory of ethical questioning consists of three major exercises. The first involves the process of ***Identification***. In order to adequately apply the theory of ethical questioning to the Canadian penal system, particularly as it pertains to incarceration, we must first understand the system itself. To this end, I present an overview of the historical and theoretical foundations of punishment, which will help the reader understand the different justifications for imposing sanctions in Canada. I conclude this first section with a general outline of Canadian corrections. Overall, the aim of this section is to situate and introduce the reader to Canadian Corrections and the use of incarceration as a form of punishment in Canada.

The second element of the theory of ethical questioning is the exercise of ***Clarification***. This entails the pursuit and subsequent questioning of the “*truth*”. Looking at the Canadian penal system in “*real time*” (Dekeyser, 2007), allows me to go beyond the static qualities by which it defines itself and delve into the dynamics of “*reality*”.

Specifically, I will explore external and internal influences on the penal system, consider ethical concerns about punishment and look at various arguments both in favour and against the penal system and incarceration. According to Dekeyser, only through the method of a eulogy as a form of ethics combined with the courage to tell the truth is there a possibility to point out the real issues found in the work being analyzed (Dekeyser, 2007).

In view of that, the final exercise of *Interpretation* involves the presentation of the issues in “real time” to expose the truth of Canadian corrections. This allows me to bring forth elements that can facilitate the establishment of an ethics of truth. To conclude, I deliver a “eulogy of truth” as described by Dekeyser (2007) in the hopes that to “speak well” is to “do well”.

## **SCOPE OF WORK**

For the purpose of this paper, “the Canadian penal system” refers to the conglomeration of governmental entities responsible for the administration of penal sanctions in Canada (i.e. imprisonment, parole and probation). This term is synonymous with “corrections”, which sometimes pertains more closely to the punishment, treatment and supervision of offenders.

Special attention is given to the Correctional Service of Canada (CSC), the federal department responsible for the administration of sentences of imprisonment of two years or more, Long Term Supervision Orders (LTSO) and parole. The CSC must administer federal sentences in accordance with the Corrections and Conditional Release Act (CCRA). The CCRA governs the operations of the CSC (Part 1), the Parole Board of Canada (PBC) (Part

II) and the Office of the Correctional Investigator (OCI) (Part III), which work together to ensure the safety of both the offender and the public through the administration of sentences of imprisonment.

“Punishment” is a broad term and can be used in various contexts. In the context of this paper, “punishment” pertains primarily to sentences of imprisonment, which is, I argue, the most severe form of punishment available in Canada. The CSC is the only national entity responsible for the administration of criminal sentences of imprisonment, which is why I limit my research to the activities of this government department. While I recognize that infractions may result in a number of alternative forms of punishment (i.e. probation, restorative justice, fines, etc.), only federal sentences of imprisonment are considered here.

## **CHAPTER 1: IDENTIFICATION**

We cannot look at punishment without first understanding what punishment is and how it came to be what it is in Canadian society. With this in mind, the first section of this paper will provide the reader with a historical background on punishment, an overview of different theories on punishment and a look at the past and present of penology in Canada.

### ***History of Punishment***

Corporal punishment, likely the oldest form of sanction, has been inflicted on “wrongdoers” for ages. The practice is recorded as early as the 10<sup>th</sup> Century B.C. in a book of the Hebrew bible named Solomon’s Proverbs “MishlêShlomoh” (Wikipedia, 2012) and was widely used by classical civilizations such as Greece, Rome and Egypt for both educational and penal purposes (McCole Wilson, 1999).

Even though the history of criminal justice dates back to antiquity, it was during the last centuries that the current perception of punishment was formed. In fact, the European penal system experienced a fundamental change in the late twelfth and early thirteenth century (Laplante, 1996). Wrongdoings, which until then were a private matter between two parties, became a state affair, an offence against the King. From this point on, conflict, the determination of guilt and punishments were litigated in the King’s court. At the same time, the King forged a powerful alliance with the Church and together they worked to enforce the rules and morals of the Kingdom. Those who offended faced public disgrace, corporal or capital punishment and even banishment (excommunication). The process by which these “wrongdoers” were selected appeared to target the poorest or most disruptive layers of society; particularly those provoking power struggles with the King (Laplante, 1996).

State involvement in this process instrumentalized crime and punishment. By substituting himself as the victim, the King was able to exercise new forms of control on his Kingdom. This newly formed penal system proved to be an effective tool for the state in dealing with the undesirable members of society and established a new form of power. The Church was especially supportive of the new royal powers and benefitted from its relationship with the King through the pursuit of its own interests.

Together, they held the power over offences against both State and Church. The King and Pope became extensions of the “God” their nation so faithfully worshiped (Laplante, 1996). With this partnership came the horrors of the Inquisition; the persistent hunt for heretics and the introduction of public displays of torture and suffering. A climate of fear reigned in Europe and its colonies as the Inquisition was unrelenting for the next seven centuries (1231 until circa 1860). The persecution of witches and thieves being burned at the stake are a stark reminder of this era.

By the sixteenth century, the rate of internment increased as the Church embraced this form of punishment to deal with a society marked by the plague of witches, vagabonds, mad, poor and other marginalized citizens. This more humane alternative to corporal punishment was intended to make the offender repent of his actions. However, for the next two centuries, hospices, hospitals, asylums and penitentiaries were inundated with arbitrarily detained “problematic citizens”. There was no direct link between crime and punishment (Laplante, 1996). In *Lettres persanes* (1721) and *Esprit des lois* (1748), Montesquieu was the first to publicly criticize the arbitrary practices of justice in his time. However, his critique was limited to management issues and did not address the legitimacy of the act of

punishing itself. Nevertheless, his work paved the way for the emergence of the concept of the proportionality of punishment (Laplante, 1996).

The rising interest in this subject captured the attention of an Italian lawyer, Cesare Beccaria (1738-1794), who wrote extensively on punishment. Beccaria is considered as the founder of modern day penology (Johnson & Wolfe, 2003) and was the first to propound arguments against the death penalty. He also opened the centuries old debate between proponents of prevention and repression. In *Crime and Punishments* (1764), Beccaria examines the concept of punishment, establishes the basis on which to punish, and sets limits on the right to punish. He also speaks out against disproportionate, cruel and unusual punishment and denounces torture and capital punishment as barbaric (Beccaria, 2009). Beccaria did not believe the State had the right to put a man to death, adding that in all circumstances, killing was wrong. His sharp criticism is easily deciphered in his now famous statement on the death penalty: *“In the midst of this absurdity the laws, which are the expression of public will, which proscribe and punish murder, commit one and the same crime, and, to deter citizens from assassination, order a public one”* (Beccaria, 2009).

Despite some strong resistance, Beccaria’s criticism of the justice system was well received in some circles and even led to a number of reforms. Principles of equity and equality emerged, but in reality the obvious target on the back of society’s less fortunate told a very different story. Beccaria influenced several other early day criminologists such as John Howard and Jeremy Bentham. Together, they paved the way for the offender’s rights movement.

It wasn’t until the end of the eighteenth century that attempts to redefine punishment were made. Interest in penology deepened in the middle of the nineteenth century when

Enoch Wines joined forces with Theodore Dwight to publish the Report on the Prisons and Reformatories of the United States and Canada in 1867. This report solidified the involvement of the New York Prison Association with offender rehabilitation in New York Prisons (Johnson & Wolfe, 2003). A new interest in the beneficial effects of offender rehabilitation for society made headway. It wasn't until the first National Congress on Prisons held in Cincinnati in 1870 that people really questioned themselves on the possibility of rehabilitating an offender and the impact this could have on society (Marshall, 2001). Henceforth, the offender was no longer an object to cast away; he became the subject of study.

With the recognition of the offender and the possibility of rehabilitating him, came a radical change in the meaning of "punishment". Corporal punishment slowly disappeared in North America, but the expansion of imprisonment was greater than ever before. This can be attributed to a trend that Foucault calls the « Grand Renferment » (the big lock up). By this, Foucault refers to the provisional or prolonged confinement of marginalized people such as the insane, the poor, the homeless and the delinquent. Now that they can be rehabilitated, their confinement can be justified because it is done in the interest of society. Confinement is based on the principle of discipline, thus making it a political tool. This period allowed scientists to examine deviants in the hopes of identifying the source of their behaviour. Through the access to detained persons and the ability to study their remains for scientific purposes, criminological theories were copious.

One of the earliest theories on criminal behaviour was presented by Cesare Lombroso, who described the offender as "biologically" different. His post-mortem studies led him to believe that criminality could be predicted in a person based on physical traits,

such as a sloping forehead, the size of the ears and the asymmetry of facial features, to name a few. Lombroso's work led to the foundation of the Italian School of Positivist Criminology.

Lombroso's theories were challenged and in time, further study of the "criminal" as a subject revealed him to be "psychologically different" (Laplante, 1996); hence the birth of psychiatry. Punishment provided the medical profession with an opportunity to deliver an intervention to an offender who was perceived as requiring a treatment rather than simply being punished. The "criminal" and the "insane" became the subjects of this desire to treat. Institutions (asylums and penitentiaries) were the perfect setting for this treatment to occur and they filled quickly with a range of characters. The line between criminal, insane, deviant and rebellious was blurred.

This gravity of treating "at all cost" didn't become evident until the 1970s and in Canada its emergence can be traced through a number of Public Commissions of Inquiries into the administration of justice (Laplante, 1996). In Canadian corrections, the Brown, Archambault, Fauteux, Swackhamer and Ouimet Reports all shed light on life behind prison walls. These reports shaped how penitentiaries are used in Canada and changed the ultimate goal of incarceration as a form of punishment. Most supported the idea of rehabilitation and criticised the penal system for lacking greatly in this area.

Imprisonment has become an accepted form of punishment. People are more likely to protest against the death penalty, criticise prison conditions or bring attention to human rights violations, but rarely do we hear criticism on the actual morality of confinement. Globally, prison rates (presented per capita - number of offenders for every 100,000 of the national population) are indicative of how incarceration is used around the world. For

example, the prison rate for the United States is 730 (ICPS, 2012), the highest in the world, while Canada is in 128<sup>th</sup> place with a prison rate of 117. How can two countries so close to each other and sharing an apparently similar culture have such divergent prison rates? Perhaps, the answer lies in the manner in which each of these countries use incarceration as an instrument of penal justice. If it does, how can we then determine which is more ethical? Critical criminologists would question the validity of the entire penal system, never allowing us to look closely at the use of incarceration independently. Human Rights activists are focussed on inmate rights and contribute to a more ethical penal experience, but don't specifically put the use of incarceration through the test of ethics. In fact, the criticism of incarceration comes primarily from Christian and faith-based organizations and is largely focussed on the effects of incarceration (Logan, 2008). Logan found that there is a lack of ethical criticism about the use of incarceration, specifically in the case of the United States, which has the highest incarceration rate in the world:

A serious concern related to the problem of imprisonment in the United States [...] has been the general lack of systemic and constructive critical investigation on the parts of Christian theologians and ethicists with regards to the social cost of imprisonment of such a large scale [...] Christian theologians, ethicists, pastors, and laypersons have published works on various issues in relation to criminal punishment [...]. What has not been done, however, is a Christian social ethics of punishment that focuses specific attention on the devastating social function of punitive large scale imprisonment as a social practice (Logan, 2008).

This underlines the need to start looking at imprisonment more critically, not simply for its social cost, but for the reasoning behind the practice.

### ***Theories of Punishment***

Although presented independently from one another, theories of punishment can overlap and form pillars for arguments supporting or contesting punishment.

***The theory of deterrence*** is founded on the belief that the application of punishment reduces the incidence of further offending by the offender (specific deterrence) and by the public at large (general deterrence) (Marshall, 2001). Specific deterrence focusses on punishing offenders in order to prevent them from re-offending in the same manner through the rational use of punishment as a negative sanction. General deterrence supposes individuals will engage in criminal and deviant activities if they do not fear apprehension and punishment.

But there are differing views as to how punishment deters. Some argue that the severity of punishment has the greatest deterrent effect while others, like Beccaria, argue that the certainty of being punished is more effective. The latter implies that cruel and unusual punishment, such as torture and public executions, are not necessary to deter offenders or the public from committing offences. Nevertheless, the overall objective is to use punishment to deter from future offending; all this for the benefit of society.

Deterrence supporters argue that the best way to protect society is to fill the streets with more police officers to apprehend offenders and to increase the severity of punishment these offenders receive. This, according to them, will cause those who are contemplating deviant behaviour to abstain from committing offences for fear of receiving this severe punishment themselves. This train of thought is still present today. An excellent example

can be found in the Speech from the Throne of the 39<sup>th</sup> Legislature, Session 2, October 16, 2007:

In the last session, our Government introduced important and timely legislation to tackle violent crime. Unfortunately much of this legislation did not pass. That is not good enough to maintain the confidence of Canadians. Our Government will immediately reintroduce these measures with a single, comprehensive Tackling Violent Crime bill to protect Canadians and their communities from violent criminals and predators. This will include measures on the age of protection, impaired driving, dangerous offenders and stricter bail and mandatory prison sentences for those who commit gun crimes. Canadians expect prompt passage of this crucial legislation.

This statement clearly indicates this government believes more severe punishment will prevent gun crimes from reoccurring and provide Canadians with the security and stability they strive for. In this particular instance, the government is reacting to an increase in gun crimes in large metropolitan centers, such as Toronto and Vancouver. High profile cases include those of the Boxing Day Shooting of fifteen year old Jane Creba (December 2005) and the biggest mass murder in Ontario history of seven Toronto area Bandidos affiliates (April 2006). According to the theory of deterrence, which appears to be supported by this government, the increase in any type of crime suggests that the punishment reserved for that offence is simply not severe enough; the only way to stifle the increase is to deter through an increase in the severity of the penalty. This explains why, in their speech from the throne (October 16, 2007), the Harper government set out to deal with the increase in violent gun crimes with stricter bail and mandatory prison sentences for those who commit them.

In his book "Prison on Trial", Mathieson underlines significant ethical questions in regard to the theory of deterrence. Namely, he asks if it is appropriate to imprison an

individual in the hopes of deterring others from committing the same offence, while they enjoy their freedom (Mathieson, 1990). Furthermore, he questions the moral ground we rest on to justify punishing, sometimes harshly, those who have already been marginalized by society and who would likely benefit more significantly from a source of support than they would from a more severe punishment (Mathieson, 1990).

*The theory of retribution*, another theory of punishment, suggests that punishment must be proportionate to the crime committed, with an emphasis on the need to re-establish the order. In simplistic terms, it can be referred to as “vengeance”. Although this concept appears simplistic at first glance, literature on the matter reveals there is considerable confusion on the subject (Marshall, 2001). Marshall (2001) retains four common elements of retribution: guilt, debt, proportion and denunciation.

Retribution recognizes that Man is a rational and responsible being who accepts, by his participation in the social contract, that the laws of the land must be enforced and that failure to abide by these laws will result in punishment. Punishment allows Man to regain his place among his peers in the community because the application of this sanction has the effect of neutralising the wrongdoing. Proportionate punishment must only be imposed on the guilty. This is in contrast to the theory on deterrence whereby a harsh (disproportionate) punishment would be imposed on an offender to deter others from acting out similarly. In retribution, the act committed prescribes itself the severity of the punishment to be imposed. The idea of proportionality is central to Retribution; the punishment must always be proportionate to the harm caused to the victim. By enforcing a punishment, society communicates to its citizens the limits of its tolerance; not through deterrence, but by the establishment of norms.

According to Howard Zehr, a society that functions through a model whereby sanctions are imposed (which are inherently negative) in response to a wrongdoing sends an entirely different message. Instead, the message implies that two wrongs make a right and that vengeance must be carried out on the wrongdoer (Zehr, 2005). A study on the death penalty by Bowers and Pierce shows that it is possible for this reasoning to lead people to commit murder. According to them, the message does not signal that killing is bad, but rather that those who commit wrongdoings deserve to be punished (Zehr, 2005). Bowers and Pierce align themselves with Beccaria where they do not accept that a disproportionate punishment be imposed on an individual for the sake of deterrence.

Despite this, today, justice is anchored in the notion of punishment. Punishment threatens all delinquents. If you commit a wrongdoing, you will be punished. A common axiom, “paying your debt to society”, also reflects this. Since the State has taken the administration of punishment into their hands, it can be said that they exercise a “legitimate” monopoly on violence (Zehr, 2005). Abolitionists attack the mechanisms of modern day justice for the same reasons.

*Marxist Theory* claims that “delinquents” are not incarcerated to prevent the commission of new offences, but to cast away members of society deemed to belong to the lower social classes. The theory also underlines that, although criminality does not discriminate among the social classes, punishment is often reserved for inferior social classes. According to Marxists, the criminal justice system is responsible for these inequalities, ensuring that the rich benefit from better treatment by either being more lenient with them or by the simple fact that they can access better lawyers. Even then, if convicted, the more serious penalties are imposed more freely on the poor, unemployed, mentally ill or

addicts. Consequently, this results in a “class bias”. Fernando Acosta wrote that the production of the penal norm is presented as a unilateral process ensuring that the “upper crust”, in a massive and everlasting way, maintains its domination over the working class (Acosta, 1987). This theory received a great deal of attention in the seventies and it is reported to have contributed to the maintenance of the “problématisation théorique de l’impunité pénale” (Acosta, 1987).

*The theory of reintegration or rehabilitation* is founded on the idea of rehabilitating the offender in the interest of society as a whole. This approach appeared towards the end of the eighteenth century and was developed through the nineteenth century in parallel to the emergence of the “moral treatment” in psychiatry (Deckeyser, 2006). But it wasn’t until the twentieth century that this approach expanded through the introduction of social sciences and the creation of correctional programs addressing offenders’ specific needs. In Canada, correctional programs are enshrined in legislation; they must always take into account the offender’s needs, level of risk and focus on a structured intervention specifically addressing the offender’s criminogenic factors. This intervention aims to rehabilitate the offender in the hopes that he can be returned to the community as a law-abiding citizen. The notion of rehabilitation is so important to the CSC that it is clearly stated in its mission:

*The Correctional Service of Canada, as part of the criminal justice system and respecting the rule of law, contributes to public safety by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.*

Two other important notions appear in the above mission statement; they are *public safety* and *control*. The idea is that the CSC contributes to public safety through rehabilitation and control.

Marshall (2001) states that the theory of rehabilitation's strong point is that it recognizes that the offender continues to be part of society, even while serving a sentence of imprisonment. This recognition is the origin of the CSC's view that public safety is served through the rehabilitation of offenders. Through addressing offender needs that the CSC can address the needs of society as a whole. This position is supported by Mathieson who, in his book "*Prison on Trial*", claims that it is the most marginalized individuals who get caught up in the criminal justice system and that they require support far more than a prison sentence. If we accept this principle, the CSC finds itself in a contradictory situation; although they provide offenders with correctional programming, most are exposed to the negative effects of imprisonment. Furthermore, they are subject to a labelling process, whereby they become known as "offenders", "criminals" and "cons". Through this labelling process, "criminals" face rejection from their communities long after the completion of their sentence and they will be reminded of this each time their criminal record emerges as an obstacle for future opportunities. This is especially true in the case of high-profile offenders, whose cases have been highly publicized. This is something that Abolitionists address in their critique of the criminal justice system.

***Abolitionists*** maintain that, above all, criminal justice is not necessary. Furthermore, they focus on exposing the criminal justice system's limited ability to resolve conflicts. To support their case, Abolitionists show how supporters of the current criminal justice system justify the need for its existence. Some of the reasons invoked are deterrence, the need to act and to refute the illicit (while recognizing a scale of gravity), that criminal law ensures the same legal rights for all and that it appeases the victims; and that without it vengeance

would prevail. All these arguments, which rest on many of the theories presented above, are false according to Abolitionists.

Abolitionists agree that deterrence may, in some cases, be effective; however, they believe it more often fails to accomplish what it sets out to do. To this, the Abolitionists add that even if deterrence were effective, it is not always a priority in our criminal justice system, especially in the case of crimes against persons. Rather, it focusses on identification, exclusion, punishment and incarceration of the offender.

Abolitionists also agree with the promoters of modern day criminal justice that there is a need to act, refute illicit actions and to establish a scale of gravity for wrongdoings. Although they recognize the significance of these three points, Abolitionists fail to see how modern day criminal law can appropriately deal with these matters, as claimed by its promoters. Instead, Abolitionists believe criminal law aggravates the problem in these instances.

As it pertains to the equality of legal rights, Abolitionists are convinced of the contrary. They do not believe all individuals are equal before the law and that several social factors affect the way in which we are treated by the legal system, namely race, socio-economic state and level of education among others. This view is supported by the Marxists, according to whom the criminal justice system is designed to cast away marginalized individuals. Even Mathieson supports that today, the criminal justice system attacks the “lower” layers of society rather than the “upper” layers and that in addition to

this, the harsher the penalty, the poorer and more stigmatized are the persons who receive them (Mathieson, 1990).

According to Abolitionists, it cannot be said that victims are appeased by the intervention of the penal system; in fact, research conducted on the victim's experience with the penal system suggests that the experience often leads to a secondary victimization. In other cases, the victim is completely excluded from the penal system.

Finally, Abolitionists do not accept that vengeance is the only sentiment that can arise from a crime. A perfect example to illustrate this is a case that was publicised in 2007; a young soldier shot his close friend in Afghanistan, when his rifle accidentally discharged during a routine military exercise. The soldier was convicted of manslaughter in military court for his actions. Media reports showed that the victim's father cared little for the sentence imposed and did not want vengeance in the case:

It really doesn't matter what charge would be laid," Walsh said from his home in Regina. "It's certainly not going to bring back my son. "I would say it's like if I hit you in the head and you fell and died. It would be a manslaughter charge. It's a bit severe, but ... I guess in this case, it may be necessary." Walsh added he sympathized with Fraser [the shooter] and his heart went out to the soldier's family. "He and his family ... are grieving now and in very, very much pain (Canadian Broadcasting Corporation, 2007).

This statement demonstrates that even in the face of tragedy, victims can experience feelings of sympathy, acceptance and disenchantment with penal sentences. However, despite having no desire to seek vengeance, there is a blind trust in the system to what is perceived as "necessary".

If the current penal system portrays itself as a substitute for vengeance, Abolitionists say it fails miserably because it hasn't yet managed to control crimes of vengeance, such as mass shootings in school by young bullied boys/girls or in the workplace by disgruntled ex/employees. Abolitionists will go as far as to say that the current criminal justice system institutionalizes vengeance rather than prevent it. We could add here that this critique of the existing criminal justice system implies that it rests, at least in part, on the mechanics of retribution, which was discussed earlier.

In order to better understand the role of the theories of punishment in the Canadian Penal System, a look at the history of corrections in Canada is in order.

### ***History of Corrections in Canada***

As stated earlier, penitentiaries were first introduced in the eighteenth century as a more humane alternative to the harsh punishments of the time, such as hangings, whippings, brandings and pillorying, often administered in public. Physical pain and humiliation were the preferred forms of punishment. It was in reaction to these harsh punishments that the Philadelphia Quakers in the United States introduced penitentiaries as an alternative form of punishment in 1789; they believed that a sentence of imprisonment would allow the offender to labour and reflect, thus serving as a form of penitence. The idea of sentencing spread to other parts of the world, including Canada. Accordingly, Canada's first penitentiary was built in Kingston, Ontario in 1835. The Correctional Service of Canada's web site states that:

The opening of Kingston Penitentiary in 1835 marked the beginning of a new age in Canadian corrections – one in which the notion of a principled, truly institutional approach was undertaken for the first time (CSC, 2009).

The Provincial Penitentiary of Upper Canada (now Kingston Penitentiary) was run as a provincial facility until 1867, when the British North American Act established federal and provincial jurisdictions for justice. The Penitentiary Act of 1868 officially placed Kingston Penitentiary under federal authority, as well as two other pre-confederation facilities in Saint John, New Brunswick (1841), and Halifax, Nova Scotia (1844). Throughout the remainder of the nineteenth century and early twentieth century, other penitentiaries were built across the country (St. Vincent de Paul, Manitoba Penitentiary, British Columbia Penitentiary, Dorchester Penitentiary, etc.), all of which were maximum security facilities. Inmates were subjected to a strict regime of forced labour by day and confinement at night, all the while only receiving bread and water to subsist. Furthermore, inmates were forced to stay silent at all times, a rule that was strictly enforced. Any leisure time was spent in solitary confinement and there was no chance of parole, as it did not exist yet. Inmates could however accumulate remittance (credit) for good behaviour towards their sentence.

The person responsible for this strict regime was Henry Smith, the first to occupy the role of warden at Kingston Penitentiary, between 1835 and 1849. His reign as warden is possibly one of the most controversial in Canadian history. He was renowned for his brutal treatment of inmates including men, women and children as well as for his unremitting use of flogging (despite it being an acceptable form of punishment at the time). He also used shackling, solitary confinement, darkened cells, submersion in water, 35 pound yokes and imprisonment in the “box”, an upright coffin that can now be viewed at the CSC’s Penitentiary Museum in Kingston, Ontario. His behaviour attracted enough attention that in

1848, George Brown, a Member of Parliament, led an investigation into Warden Smith's abuses. In 1849 he drafted the "Brown Report", which contained enough evidence to support 121 counts of 11 different criminal charges against Warden Smith. Warden Smith was first suspended from his position but was ultimately relieved of his duties by Governor General Lord Elgin.

The exposure of Warden Smith's abuses led some groups to question the conditions of prison life altogether. Concern over life in society following imprisonment grew. The Prisoners' Aid Association of Toronto was founded in the early 1870s and acted as an advocate for offenders who were released from penitentiaries without work or support from families. The Association argued that without support to find work, lodging, food and clothes, many of them would likely re-offend and return to jail.

This movement led to Canada's first penal convention in 1891, where alternative practices were discussed, such as the segregation of men and women, special tribunals for young offenders, and parole. These issues became recurrent subjects of royal commission reports over the next decades, some of which were acted upon in the years leading up to the 1920s (CSC, 2009), examples being the Ticket of Leave Act in 1899 and the Dominion Parole Office in 1905. The ticket of leave was an experiment and although the government was cautious with its application, the Minister of Justice could, following a thorough investigation, grant parole (which was more closely related to what is now known as a pardon).

The expansion of the penal system and its strict regime carried into the twentieth century. In 1920, a Committee appointed by the Department of Justice, the Biggar, Nickle, Draper Committee, was mandated to make recommendations for changes to the penitentiary

system to address some of the concerns of the time. Their recommendations included inmate pay (although minimal), improvements to institutional libraries and educational facilities and greater freedom of movement for inmates within the institution. All of these were considered quite radical for the time.

Another advocate of change, also considered radical for her time, was Agnes MacPhail. In 1922, MacPhail became the first elected women Member of Parliament. Despite expectations that she would be quiet, as a woman of her time should be, MacPhail was outspoken on a range of issues close to her heart: farming, foreign affairs and prison reform. She made her mark in 1925 with the introduction of a resolution for a meaningful program of prison labour (Mirable Dictu, 2008). Despite her successes, she was ridiculed by other Members of Parliament (some say more so by then Justice Minister Hugh Guthrie) and she was labelled as being “soft” (Mirable Dictu, 2008).

When the Great Depression struck in 1929, Canadians were hit harder economically than at any other time in history. Many families were affected by unemployment and lost all their possessions. Naturally, crime rates rose as did the inmate population. This influx of inmates played a role in the opening of the Prison for Women in 1934. Despite efforts to expand existing facilities to accommodate the increasing population, there were limited financial resources due to the Depression. Overcrowding became a problem across penitentiaries in Canada. Overcrowding led to increased tensions, which set the scene for a series of riots between 1932 and 1937; sixteen riots to be exact. The most noteworthy was the six-day Kingston Penitentiary Riot of 1932. All these events caused Canada’s penitentiary system to become the subject of increasing attention and socially conscious groups drew attention to the poor conditions to which inmates were subjected.

Agnes MacPhail persisted in her efforts to reform prisons. In 1935 she made an unannounced visit to the Kingston Penitentiary. This visit is portrayed in a *Historica by Minute* movie, television ads recounting exciting and significant moments in Canadian history (Institut Historica Dominion Institute, 2011). Her visit made prison officials nervous, but she used her status as Member of Parliament to ensure she would not be kept out. As expected, but still to her surprise, she witnessed the appalling conditions of the prison, which confirmed all of her beliefs. This new information fuelled her campaign for prison reform. She pressed the government to launch an inquiry. She was met with resistance and some reports say that Justice Minister Guthrie attempted to discredit her by saying she received her information from a known sex offender (Mirable Dictu, 2008).

Nevertheless, she pressed on with her campaign and when the Conservative government lost the elections that year (1935), the Liberal government took power. A year later, in 1936, they announced the creation of a royal commission to examine every aspect of Canada's penal system. The commission was led by Justice Joseph Archambault, who published his report in 1938. The findings confirmed what Agnes MacPhail had been claiming for years. Among other things, the report pointed out that penitentiaries had been used to punish, not to rehabilitate, which had been their initial purpose. This was supported by the fact that 70% of inmates were recidivist offenders and that this number could have been mitigated by more effective efforts to rehabilitate them. Instead, inmates were mistreated and abused for over a century.

On a side note, it is worth mentioning that a similar tendency was observed with the use of asylums, the expansion of which correlated with that of the penal system. Both intended to help deal more appropriately with social problems, were instead used to

segregate discarded citizens from the rest of society. Rockwood Hospital was built next to Kingston Penitentiary and inmates, arbitrarily diagnosed as mentally ill, were transferred from the penitentiary to the hospital. In the 1940s, the belief that all criminals were insane was common and proponents of this view believed penitentiaries should be converted into psychiatric hospitals. The criminally insane were shuffled between institutions (hospitals, penitentiaries and asylums) without ever being treated (CSC, 2009). Ethical considerations of the expansion of asylums are fully explored by Aubin Deckeyser in *Éthique du Sujet: Problématiser à partir de Foucault* (Deckeyser, 2006)<sup>1</sup>. The reader will refer to this reading for more information on this corresponding event.

The Archambault report made more than a hundred recommendations to overhaul the Canadian penal system, pushing for a shift from retributive justice to one focussed on rehabilitation. The recommendations addressed issues with the administration of penitentiaries, staff training, classification, discipline, use of firearms, inmate recreation, education, religious and medical services, prison employment, International Standards Minimum Rules, parole, sentencing, remission, rehabilitation and prison conditions. Several of the recommendations were inspired by the British Principle of Administration Model and the teachings of the Prison Officer Training School in Wakefield, England. The Wakefield Training School was established in 1925 to familiarize prison staff across England with the practices employed at the Wakefield Prison, which had a reputation for being innovative. Their methods became known as the Wakefield System. The system was based on the goal to:

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<sup>1</sup> pp. 114-134

...create an atmosphere of trust and self-responsibility in which an intensive system of training could be carried out. The main characteristics of the system were the development of good quality industries and vocational training classes in skilled trades; the organisation of full and varied education and recreational programmes so that little time need be spent in the cells which were allowed to stand open all day; and finally daily freedom of association and freedom of movement within the prison without direct supervision so that self-discipline and self-responsibility might come to replace enforced obedience (Court, 2011).

Though the Archambault Report (1938) was supported by the government at the time, efforts to implement the recommendations for change to the Penitentiary Act were overshadowed by the onset of World War II.

After World War II ended, the focus shifted back to prison reform. Following a reorganization of the penitentiary system in 1947, Major General R.B. Gibson became the first Commissioner of the Penitentiary Branch of the federal government. Gibson was a firm believer in the reform of prisons and implemented more than one hundred of the Archambault Report's recommendations. Some of the changes included the construction of new penitentiaries, formal training for prison guards, allowing inmates to practice hobbies, sports, listen to the radio and read the newspaper. Generally, the pendulum shifted from a retributive approach to one geared towards humane practices and rehabilitation. In his own words, Archambault stated that the Canadian penal system should provide "strict but humane discipline and the reformation and rehabilitation of prisoners" (Archambault Report, 1938).

At the same time, crime rates began to rise dramatically. As a consequence, between 1947 and 1969, the inmate population grew by nearly 89% (3362 to 6344 respectively; (CSC, 2009)). As the numbers grew, so did the tension within prison walls. Prison disturbances were occurring around the country, the most notable ones being at the Kingston

Penitentiary. The first incident, in 1954, involved approximately a quarter of the nine hundred inmates and lasted a few hours. Inmates set fire to the institution and destroyed property. This episode sparked public outrage and people spoke out against offender liberties (CSC, 2009). Thankfully, the authorities persisted with their progressive measures and the focus remained on offender rehabilitation.

Nevertheless, another Commission was ordered to take a closer look at the correctional practices of the organization and make recommendations to help manage the growing inmate population (*Committee Appointed to Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada*). The Fauteux Report, published in 1956, criticised the use of prisons to warehouse offenders; instead, it stated the need for facilities that would provide programs and activities bent on changing offender attitudes and behaviour. He also recommended that specialized personnel, trained in social work, psychology, psychiatry, criminology and law, be hired. The report's recommendations led to the establishment of the National Parole Board in 1959, amendments to the Penitentiary Act in 1961 and the construction of new penitentiaries across Canada. The National Parole Board (now the Parole Board of Canada) would serve as an independent body with whom rested the authority to grant offenders' conditional releases. The changes to the Penitentiaries Act stipulated new operational procedures, including repealing the Ticket of Leave Act and outlining provisions for parole and the construction of 10 new penitentiaries.

In 1969, another important report led to additional changes, particularly to the National Parole Board. The Report of the Canadian Committee on Penal and Correctional Report, also known as the Ouimet Report, which mirrored the findings of both the

Archambault and Fauteux reports, distinguished itself from the latter by emphasizing that offenders with the greatest likelihood of being rehabilitated would most likely exercise this potential in a community setting. In its recommendations, the Ouimet Report called for the decentralization of the National Parole Board and that the Branch responsible for the case preparation and supervision of paroled offenders (National Parole Service) be separated from the National Parole Board and joined to the Canadian Penitentiary Service under the direction of one Commissioner of Corrections. However, it would be some time before this change would occur.

Despite efforts to reform prisons, unrest persisted and in 1971 the Penitentiary Service witnessed one of its bloodiest riots in history. According to the Royal Commission of Inquiry into Certain Disturbances at Kingston Penitentiary, chaired by J.W. Swackhamer, groups of inmates were assaulted by their peers, two died and thirteen seriously injured, five correctional guards were taken hostage and parts of the prison were destroyed over the course of four days of rioting. The main issues raised by the inmates were prison conditions and that prison officials were unresponsive to grievances.

Overall, the Swackhamer Report concluded that the riot was the result of a systemic failure, that the system was "...unable to establish and maintain a strong rehabilitative program" (Swackhamer, McGrath, Scott, & Popp, 1971). These findings led to a number of recommendations surrounding classification, staff training, inmate programs, institutional discipline and grievances. It also pointed out the need for an ombudsman who could provide an independent response to inmate complaints. In that vein, the OCI was created on June 7, 1973.

Finally, in 1976-77, recommendations put forth by the Ouimet Report relating to the reorganization of the National Parole Board and the Penitentiary Service finally came to life. The responsibility for case preparation and supervision of paroled offenders now rested with the Penitentiary Service. Shortly after (1979), the newly formed entity was renamed the Correctional Service of Canada. The main objective of the change was to enhance the impartiality of the National Parole Board's decision-making authority.

Overall, the correctional system saw major changes in terms of restructuring during the 1960s and 1970s (CSC, 2009). New approaches on rehabilitation and reintegration were introduced. With the National Parole Board now considering offenders' individual circumstances before reaching a decision, it became "increasingly accepted that individual behaviour and experiences had to be addressed; corrections were no longer merely about the offence committed" (CSC, 2009). Towards the end of the 1960s, Collins Bay Institution near Kingston, Ontario, implemented a pilot project where inmates were allowed to leave the institution to work during the day and return at night (now known as a work release). This was the first ever gradual release program of its kind in Canada (CSC, 2009).

The 1970s were marked by turmoil and challenges (CSC, 2009). The 1971 Kingston Penitentiary riot spearheaded an era of offender rights and the introduction of measures of reform. The former (and impersonal) number system was abandoned and inmates were called by their names, received enhanced visitor rights, could write as many letters as they wanted, flogging and other regressive sanctions were eliminated and in 1976, the death penalty was abolished. This signalled a major shift in the meaning of punishment in Canadian society. Other human rights movements were underway in Canada and human rights advocates, such as Michael Jackson, pushed for advancements in the treatment of

offenders. In 1972 he conducted a four month review of the institutional disciplinary process and recommended that offenders accused of institutional charges be adjudicated by an independent disciplinary tribunal, a duty that until then was performed by Wardens and Deputy Wardens. It was not until 1977 that Jackson's recommendation was endorsed by the Parliamentary Sub-Committee on the Penitentiary System in Canada (also known as the MacGuigan Task Force), but by then, the need for an unbiased judicial authority over disciplinary matters was viewed as a basic demand of justice. The MacGuigan Task Force was created in response to an escalation in violence within penitentiaries and was tasked with outlining the principles of the service and making recommendations regarding the purpose of imprisonment, correctional staff, organization and management of the Penitentiary System, offender programs and parole (CSC, 2009). More and more, the evolution of human rights on the world scale influenced Canadian corrections. In 1982, the Canadian government adopted the Charter of Rights and Freedoms, which further influenced the Canadian penal system.

The OCI became increasingly involved in offender complaints, particularly as a result of the offenders' newly acquired Charter rights, and made recommendations to the CSC on how to resolve matters. In the early 1980s, the OCI criticized the CSC for not acting promptly on their recommendations (OCI, 2011). In their Annual Report for the 1985-86 fiscal year, the OCI focussed on four outstanding offender concerns: double bunking in segregation, timeframes for processing offender grievances as well as the objectivity in CSC's dealing with grievances, telephone access and the duty to act fairly in the processing of involuntary offender transfers.

The political climate of the 1980s shifted the CSC's objective to focus on crime prevention, victims of crime and public protection (CSC, 2009). The introduction of detention cases and residency conditions in legislation enabled the CSC to detain or place under strict residential condition offenders who were considered at higher risk to reoffend. This period was also marked by three more influential reports; namely, the Ruygrok Inquest, the Sentence Management Review and the Pepino Inquiry (CSC, 2009). Overall, these reports helped shape current policy and case management practices as they pertain to offender supervision. Essentially, they called for a comprehensive offender release plan that spanned throughout the offender's sentence, including any time spent in the community. These practices would be implemented in the pursuit of Public Safety.

A legislative overhaul of correctional procedures produced the CCRA, which was enacted in 1992. The CCRA effectively replaced the Penitentiary Act of 1961 (formally 1868). The CCRA provided a legislative framework for the governance of the Correctional Service of Canada (Part I), National Parole Board Decisions (Part II) and the Office of the Correctional Investigator (Part III). The CCRA clearly outlines how the CSC is to administer every aspect of federal sentences, from the time of sentencing to the expiration of the sentence. The focus of the legislation now required those governed by it to consider the level of risk posed by the offender. Case management and release decisions would have to assess an offender's level of risk and outline how that risk would be managed as part of the rationale for their decision. The legislation also established that "the fundamental purpose of the Canadian correctional system is the protection of society and that the public safety is paramount" (CSC, 2009). These and other CCRA changes also ensured correctional policy was aligned with the Canadian Charter of Rights and Freedom.

The Canadian Charter of Rights and Freedom also created grounds for the consideration of minority groups. Women offenders, who until this point had been incarcerated at the Prison for Women in Kingston, Ontario (1934), the only federal institution for women in the country, were seriously disadvantaged when compared to their male counterparts. A 1989 Task Force Report on Federally Sentenced Women (Creating Choices) changed the CSC's approach on how it managed women offenders and led to the construction of five regional facilities for women during the 1990s and the closing of Prison for Women in 2000. Another defining report was that of a commission of inquiry into a 1994 incident between correctional officers and six women offenders. Allegations of prisoner abuse (use of mace, strip search and movement to segregation cells at Kingston Penitentiary for men) were investigated by the commission, which was chaired by Justice Louise Arbour. The result of the inquiry led to the amendment of the CSC's mission statement to include "*the rule of law*". The topic of women offenders in the Canadian correctional system is a field of study on its own. For the purpose of this paper, the focus is limited to the male offender population.

Other groups that have received special attention in the Correctional process are people of First Nations, the Inuit and persons affected by mental health illnesses. Again, each of these areas open the door to further study, which will not be undertaken in this paper. Programs and initiatives have been developed to respond to the specific risks and needs of each of these sub-groups. These include women offender programs, Aboriginal offender programs, healing lodges, community mental health initiatives and the adherence to the Continuum of Care Model, to name a few.

The events of September 11, 2001, redefined security around the world, and Canada is no exception. In 2003, the Department of the Solicitor General (to which CSC reports) was renamed Public Safety and Emergency Preparedness in direct response to the 9/11 terrorist attacks (CSC, 2009). But in 2006, when the Conservative government came into power, the new Minister of Public Safety and Emergency Preparedness dropped the latter part of the Department's name, effectively making it the Department of Public Safety Canada and amended the CSC's mission statement to replace "protection of society" by "public safety".

Another major decision made by then Minister Stockwell Day was to task a panel of appointed professionals with completing a review of the CSC's operation priorities, strategies and business plans. In its report, entitled *A Roadmap to Strengthening Public Safety*, the Panel makes 109 recommendations and elaborates a plan to "position the Correctional Service of Canada for the next 10 to 15 years" (Correctional Service of Canada Review Panel, 2007).

The *Roadmap to Strengthening Public Safety* called for improvements in five key areas: offender accountability, eliminating drugs from prisons, employability/employment, physical infrastructure and eliminating Statutory Release: moving to earned parole. This would lead CSC to launch the "*Transformation Agenda*", which reprised these themes almost in their entirety, namely Enhancing Offender Accountability, Eliminating Drugs from Institutions, Enhancing Correctional Programs and Employment Skills of Offenders, Modernizing Physical Infrastructure and Strengthening Community Corrections.

Perhaps the most obvious amendment by CSC was the renaming of the fifth key area, which pertains to the elimination of statutory release; the *Transformation Agenda*

instead reads “*Strengthening Community Corrections*”. It’s unclear why this adjustment was made, but as a practitioner, I will argue that the belief that the elimination of statutory release will “strengthen” community corrections is highly debatable.

In addition to pursuing the abolition of statutory release, several other Bills are before Parliament in response to the *Roadmap to Strengthening Public Safety*; in March 2011, the Conservative government abolished accelerated day parole. It has also made fundamental changes to Canadian pardons, has instituted mandatory sentences and has its “tough on crime” platform in full swing. It is still too early to tell the true impact of these and upcoming changes but the concerns these changes raise will be addressed later in this paper.

### ***Overview of Modern Penology***

One of the goals of this thesis is to bring attention to the need to bridge the obvious gap between public perception and reality. In that vein, the following is an overview of the administration of federal sentences of imprisonment in Canada. All federal sentences of imprisonment (two years or more) are administered under the jurisdiction of the CSC and pursuant to the CCRA and CCRR.

### ***Sentencing***

Once convicted, offenders are generally remanded in a provincial prison. Upon sentencing, information on offenders who receive a federal sentence of imprisonment is forwarded to the CSC. In accordance with policy, a community parole officer is required to conduct a Preliminary Assessment (PRELIM) within five days of sentencing. This is the

first contact between CSC and the offender (provided it is the offender's first federal sentence). The purpose of the PRELIM is to orient the offender to CSC, identify his immediate needs, have him provide his version of the offence and identify community contacts with whom to conduct the Post Sentence Community Assessment (PSCA).

The purpose of the PSCA is to gather information on the social and criminal history of the offender. The interview is usually conducted by a community parole officer with one or more of the offender's community supports (parents, siblings, friends, spouse, etc.). This report must be completed within forty days of initiation, which usually occurs once the PRELIM is completed. The information contained in the PSCA is used during the intake process.

#### *Intake Assessment Process*

Within days of sentencing, the offender is transferred from provincial to federal custody. CSC is divided into five administrative regions which include all of Canada's provinces and territories: the Atlantic; Quebec; Ontario; Prairies and Pacific. Generally, each region is composed of a Headquarter, Reception Centre, Institutions, Community Parole Offices and Community Residential Facilities.

Upon transfer to federal jurisdiction, offenders are placed at the Reception Centre for the region in which they have been convicted and sentenced; they then undergo a thorough assessment over the course of approximately ninety days. Actuarial tools are used to identify offenders' risk levels in different areas (general recidivism, violent recidivism, risk of family violence, sexual recidivism, etc.). Actual tools use static (i.e. age at the time of

first offence or number of previous convictions) and/or dynamic (i.e. relationship status or employment) factors to obtain statistically supported results, which are combined with clinical judgement to form a global assessment of offenders' risk and needs. The complete assessment will lead to referrals for correctional interventions targeting offenders' program and security needs that will be laid out in the correctional plan, which also includes a criminal profile. The intake assessment period is also designed to orient and counsel offenders on life in the institution. They are also advised of their rights and responsibilities while serving their sentence.

#### *Case Management: Institution*

Case management is a dynamic process that includes interventions to assess, clarify, counsel, plan programs for, and supervise an offender throughout his or her sentence (CSC, 2007). The case management strategy is laid out in a correctional plan which also includes the criminal profile.

The criminal profile provides a synthesis of all information gathered from the police, the courts, Crown Attorney, victims, the offender and other sources to give the best possible understanding of the crime, the causes of criminal behaviour, the offender's offence cycle and risk (CSC, 2007).

The correctional plan is an important document which outlines the necessary interventions required for the offender to manage and reduce the risk he could pose to the public during his custody and upon release to the community. It also sets goals and milestones for the offender to work towards with the help and support of his case

management team to ensure his risk has been mitigated sufficiently to fully benefit from the various types of conditional releases he may be eligible for. An inmate must also show a genuine interest in addressing his risk factors and participating in his correctional plan to gain support for other types of institutional programs, such as Private Family Visits (PFV). The correctional plan sets out the case management strategy for the duration of offenders' sentences and the case management team will assess offender progress against it throughout the sentence, including time spent in the community.

### *Penitentiary Placement*

Offenders at the Regional Reception Centre are not placed in the general offender population until their assessments are completed. The custodial assessment, which includes the use of actuarial tools, such as the Custody Rating Scale (CRS), allows the case management team to identify offenders' appropriate penitentiary placement. Possible placements are in Maximum, Medium or Minimum security institutions. A Special Handling Unit is located in Laval, Quebec, which could be considered a "super-max"; it is the only facility of its kind in Canada. Once the penitentiary placement of an offender is completed, he is considered to be in his "parent" institution, where he can fully engage in his correctional plan.

### *Sentence Management*

Sentence Management is possibly the least understood aspect of sentencing. A practice which has significant value in correctional case management is that of "gradual release". Research shows that the gradual release of an offender reduces his risk for

recidivism. In other words, the risk to the public is greater when an inmate is released abruptly from an institution without any form of supervision. The value of a gradual release is so great that when the CCRA was amended in 1992, changes were made to the statutory release of offenders to include the last third of their sentence as a period of supervision. Prior to this, an offender's sentence would end abruptly at their SR eligibility date (not a gradual release).

The CCRA and CCRR provide the legal framework for the administration of federal sentences. Sentence management is a complex process which requires the interpretation and application of legislation and case law. While offenders' eligibility dates are calculated on a case by case basis, the various types of conditional releases and the criteria for eligibility are presented below. It should be noted that conditional releases are not automatic. Each time a conditional release is considered, the CSC must prepare an assessment for decision, including a supervision strategy and recommendation, which is presented to the PBC, with whom rests the decision-making authority.

***Visits and Correspondence (V&C)*** Each penitentiary has its own V&C office. They administer the policy on visits and correspondence between offenders and their family. Effort is made to encourage offenders to maintain their relationships with community contacts in order to better prepare them for their eventual release to the community. V&C also coordinates social event for offenders and their families (at Christmas time for example). Any member of the public visiting an offender is subject to a screening and may be searched upon admission into the penitentiary. Security measures are in place to ensure

the entry of contraband into the institution is kept at a minimum. Every aspect of the visit is regulated by policy (eligibility, frequency, timing, duration, type of contact, etc).

***Private Family Visits (PFV)*** Several institutions are equipped with apartment style facilities to allow eligible offenders to have private contacts with their loved ones. PFVs are subject to strict policy requirements and the units are equipped with alarms in case of emergency. Authorities can also conduct random check-ins during the visits, which can last up to 72 hours. These trial visitations are especially valuable for cases of domestic violence, where the offender has undergone treatment and is involved in an intimate relationship. This provides the CSC and the offender the ability to assess progress (ability to use skills learned in the program) against risk factors and to better prepare for life in the community (additional programming, placing restrictions on contact or accommodation upon release, etc.).

***Temporary Absences (TA)*** implies the temporary absence of an offender from an institution for a specific purpose; namely for medical treatment, contact with family, undergoing personal development and/or counselling and participating in community service work projects. Temporary Absences can be escorted (ETA) or non-escorted (UTA); escorts are provided by CSC correctional officers (guards). Inmates can apply for ETAs at any time during their sentence, while eligibility dates for UTAs are determined according to sentence length. These types of release are viewed by correctional specialist as being an important step in the gradual release process. For example, a UTA could allow an offender to participate in interviews with prospective employers in view of an upcoming release. It also

allows for family members to reconnect with the inmate following a sometime lengthy absence. These are only some of the benefits temporary absences can have.

*Day Parole* is a form of gradual release, which enables offenders to be released to the community six months (in most cases) before their eligibility for full parole. Upon recommendation from the CSC, the PBC could grant an offender day parole if it is satisfied that the offender meets the criteria set out in section 102 of the CCRA, that is that he would not, by reoffending, present an undue risk to society before the legal expiration of his sentence and that his release would contribute to the protection of society by facilitating his reintegration as a law-abiding citizen. If granted, the offender is released to the community but must report nightly to an institution or a halfway house, while under the supervision of the CSC. They are generally subject to more restrictive conditions than offenders on Full Parole. This transitional period is beneficial for a number of reasons.

Firstly, it provides structure to the newly released offenders who may be tempted to “celebrate” their new found freedom. Given that the first six months of offenders’ releases are the period where the risk of recidivism is at its greatest, the added structure during this period is sensible. It also prepares the offender for full parole. Furthermore, the accommodations provided during day parole allows offenders the time to secure employment and fiscal independence for their full parole. Offenders released on day parole are kept to a high standard of cooperation and compliance owing to the privilege they are being afforded.

*Accelerated Day Parole (APR)* is a form of early day parole. Eligibility for APR was limited to typically non-violent offenders (see repealed section 125 of CCRA) and enabled them to apply for day parole after serving one sixth of their sentence. APR was abolished by the Harper government in March 2011.

*Full Parole (FP)* refers to a type of conditional release during which the offender may reside in approved private accommodation and benefits from a greater amount of freedom than someone on day parole. Nevertheless, they remain under the supervision of the CSC and must abide by release conditions designed to manage risk. Eligibility for full parole is set by the CCRA, which states an offender is eligible for full parole once he has completed one third of his sentence or seven years, whichever is less. The exceptions are that offenders serving life sentences for first-degree murder are eligible after serving 25 years, while offenders serving life sentences for second-degree murder have their eligibility set by the court from 10 to 25 years.

*Statutory Release (SR)* is the legislated release of offenders once they have completed two thirds of their sentence. Offenders serving life or indeterminate sentences are not eligible. This type of release ensures that offenders who do not meet the criteria for other types of conditional release are released to the community with some form of supervision before the legal expiration of their sentence. Because this release is legislated, the PBC is limited to imposing special conditions on the release, which assist community parole officers in managing the risk the offender poses to public safety while in the community. It should be noted that the current government (41<sup>st</sup> Parliament, led by the

Honourable Stephen Harper) is seeking the abolition of SR. The rationale for this legislative change is addressed in a subsequent section.

***Detention*** In some exceptional cases, the CSC may make the recommendation that an offender be detained (incarcerated) until the end of his sentence. The criteria for detention beyond SR are that there is a reason to believe the offender will commit an offence causing death or serious harm to another person, commit a sexual offence involving a child or commit a serious drug offence before the end of their sentence. In these cases, the recommendation that an offender be detained is upheld and he is to serve out the remainder of his sentence in custody.

*Case Management: Community*

Conditional releases are all subject to general and special conditions of supervision. General conditions apply to all offenders on conditional release while special conditions are imposed to manage the specific risk posed by an offender (i.e. a condition to abstain from intoxicants for an offender who has a history of committing offences while under the influence of intoxicants). When an offender is allowed to serve a portion of his sentence in the community, he agrees to abide by these conditions and continue to work with his case management team towards the completion of his correctional plan. The details of this process are presented in the form of a community strategy, which is included in the decision-making report. The community strategy outlines the various supervision and monitoring strategies required to ensure the offender's success in the community while ensuring public safety.

Community supervision is led by the community parole officer who is a member of the offender's Case Management Team (CMT). Other members of the CMT can include parole officer supervisors, psychologists, psychiatrists, psychiatric nurses, social workers, correctional program officers as well as any other actively engaged participant. As a team, their role is to encourage and assist the offender in becoming a law-abiding citizen, while exercising safe, reasonable and humane control. Accordingly, the least restrictive measure to manage risk is preferred. To accomplish this, a number of tools are available.

Parole reporting is an essential element of community supervision. These contacts, which can occur in a parole office, in public places, the offender's home or his place of employment, help establish a therapeutic alliance. Frequency of contact can range from eight times per month to four times per year. Generally, a newly released offender has his frequency of contact set at four times per month and will gradually be reduced, based on progress made while in the community.

Other mechanisms of supervision and monitoring are collateral contacts with family, friends and employers, liaising with police, verification of police reporting and the criminal records database, keeping of casework records, case conferencing with other members of the CMT, travel and territorial restrictions, curfews (for day parole), call-ins, reporting to a Community Residential Facility and urinalysis. The CMT may also impose special directions, so long as they are consistent with the principle of least restrictive measure and they relate to the offender's risk factors.

When an offender demonstrates pro-social and compliant behaviour, monitoring can be accomplished through less restrictive measures. Nevertheless, at any time during an offender's conditional release, the parole officer may increase supervision and monitoring at any time if the offender displays any deterioration in behaviour.

### *Breach of Conditions*

Thus far, we have discussed conditional release in the context of successful supervision. However, the reality is that some offenders struggle on conditional release and are unable to abide by all of their conditions of supervision. It's important to note that a breach of conditions does not always amount to a new offence (recidivism). The conditions are put in place by the PBC to help the community parole officer manage the offender's risk while in the community and ensure public safety. Accordingly, a breach of a condition of supervision indicates an increase in the risk presented by the offender. Consequently, the CMT must put safeguards in place in order to contain the elevation in the offender's risk level. A number of options are available to the CMT.

Disciplinary meetings are usually conducted with the offender and the parole officer but may include any other member of the CMT, if deemed appropriate. This gives the offender the opportunity to address serious concerns the CMT has about his behaviour or collateral information received from other sources. If the CMT is of the opinion that the offender has breached his conditions or is demonstrating deterioration in behaviour, they may make the decision to either maintain or suspend the offender's conditional release.

***Release Maintained*** Any breach of condition must be reported to the PBC in writing. In the event the CMT has information supporting a breach of conditions by an offender, but believe they can manage the increase in risk in the community, they may maintain the offender's release by amending his community strategy and giving an update on his progress to the Parole Board.

***Suspension*** In other cases, a breach may result in the immediate suspension of an offender's release. Once a decision to suspend an offender's release is made, a Canada wide suspension warrant is issued by the parole office and executed by the police. Once apprehended, the suspended offender is taken into custody. A post suspension interview is conducted with the offender to gather information and help the case management team determine the outcome of the suspension.

***Referral to the Parole Board with recommendation to Release Maintain with Change Conditions*** A possible outcome of suspension is to refer the decision to maintain the offender's release to the Parole Board of Canada. In this scenario, the parole officer supports the offender's re-release and prepares an amended community strategy taking into account the increased risk, but the final decision is made by the Parole Board. Once the Board is made aware of the referral, a post suspension hearing is scheduled; both the offender and parole officer attend. During the hearing, the parole officer presents the rationale for the recommendation and the board members (usually two or three) question the offender on the circumstances of his suspension and the progress he has made to date. The Board makes their decision to either maintain the offender's release (and may impose additional special conditions) or revoke his conditional release.

A revocation of conditional release implies that the Board believes the offender's re-release would amount to an undue risk to public safety. Once revoked, the offender is returned to his parent institution to serve the remainder of his sentence in custody. In order to return to the community, he must re-apply for conditional release. It is worth mentioning here that suspended offenders are eligible for SR, but if they are back in custody as a result of a revocation, SR will be calculated at two thirds of the remainder of their sentence, rather than the entire sentence (i.e. an offender serving a twelve year sentence, who sees his full parole revoked in the sixth year of his sentence, would not reach his new SR date until approximately four years after his return to custody, in the tenth year, rather than his original eligibility in year eight).

***Referral to the Parole Board with recommendation to revoke conditional release***

In the event the parole officer is of the opinion that the offender's risk can no longer be managed in the community, the decision to revoke his release must be handed down by the Parole Board. Accordingly, the parole officer presents the rationale for the revocation in the post suspension assessment for decision. The offender is given two options in this scenario. He may waive his right to a hearing or choose to see the Board to make representations for himself.

In most cases, the Parole Board will align their decision with the recommendation of the CMT in the assessment for decision. However, the board has full decision-making authority and having the parole officer's support is not always a guarantee that the offender's release will be granted/maintained. The Parole Board decision may be appealed.



## *Rehabilitation*

The Correctional Service of Canada provides a number of services for the various groups it interacts with. These include male offenders, women offenders, Aboriginals, ethnocultural offenders, offender's families, victims and Canadians incarcerated abroad. The following section focusses on programs available to male offenders (generally, the same programs are adapted to meet the specific needs of offender sub-groups) throughout their sentences, both in the institutions and in the community.

***Core Correctional Programs*** Paragraph 76 of the CCRA states that the CSC must offer a range of programs addressing offender needs and assisting in the successful reintegration of the offender. Accordingly, over the past 20 years (since the CCRA went into force, 1992), CSC has prioritized the use of correctional programs to reduce the rates of recidivism and contribute positively to public safety. They have accomplished this by developing evidence-based programs designed to encourage offenders to take accountability for their criminal behaviour, change the criminal attitudes that support criminal behaviour and significantly reduce the risk presented by offenders upon release.

To ensure correctional program integrity and to ensure that rates of program delivery meet offender needs, CSC has put in place management procedures. That includes a quality assurance process and a correctional program accreditation process to ensure that correctional programs are appropriate and effective in reducing rates of re-offending. It is a structured evaluation of a correctional program against evidence-based criteria. In addition, CSC has a site accreditation process that ensures integrity of correctional program delivery

and compliance with policy. It is a structured evaluation of the delivery of correctional programs at specific operational sites (CSC, 2009).

In part, these management procedures have turned correctional programs into CSC's greatest success. Having the innovative freedom to work alongside intellectual innovators (i.e. Larry Motiuk, Paul Gendreau, Don Andrews and Frank Porporino, to name a few) and anchor their initiatives in research with little or no political interference has likely allowed correctional programs to be CSC's greatest asset in the area of rehabilitation. The success CSC has achieved with correctional programs has placed Canada in the lead for development, implementation and delivery of evidence-based programs around the world.

***Education and Employment Programs*** Offenders are able to work towards furthering their education while incarcerated. The CSC offers an Adult Basic Education (ABE) program (grades 1 to 10), secondary education, vocational education and facilitates post-secondary education on a case by case basis. In-house statistics show that approximately 65% of offenders test at a completion level lower than Grade 8, and 82% lower than Grade 10 during the intake process (CSC, 2011). The importance of addressing this need is supported by research showing that specific intellectual skills gained through ABE may equip offenders to deal more effectively with daily problems encountered in the community (CSC, 1992).

Vocational opportunities are also available for offenders while incarcerated. CORCAN is a vocational rehabilitation program of CSC, which is mandated with providing employment training and employability skills to offenders. CORCAN operates shops in

institutions across Canada in as businesslike a manner as possible given their institutional setting and training imperatives. It operates in four business lines: textiles, manufacturing, construction and services (such as printing and laundry). Most shops are ISO-certified (CSC, 2009).

Incarcerated offenders also have the opportunity to secure institutional work, such as working in the kitchen or janitorial services, for which they receive a small wage (maximum of \$6.90 per day). When released to the community, other services are available to help offenders secure work in the real world. These initiatives can vary from an area to another, but generally, the services provided are designed to help the offender with *résumé* building, interview skills, references, job search, etc. In some cases, offenders can receive limited financial support to pay for training which directly relates to an employment opportunity. Overall, the offender receives support throughout his job search, but is still expected to find employment on his own.

Employment initiatives are currently being expanded as a result of the Roadmap to Strengthening Public Safety, which emphasises the need to enhance offender's employability skills. The report points out that "employment has been eclipsed as a priority over the past decade by programs that address other core needs (i.e. substance abuse and violence)". In section 2 of this paper, I will explore the validity of this statement as well as the concerns raised by it.

***Restorative Justice*** is a non-adversarial, non-retributive approach to justice that emphasizes healing in victims, meaningful accountability of offenders, and the involvement

of citizens in creating healthier, safer communities. One of the more salient examples of restorative justice is the opportunity for offender-victim mediation. This process is entirely voluntary and is moderated by a trained professional who will prepare participants for their structured meeting. During the meeting, the victim is able to share his experience and seek answers to unanswered questions, while the offender is given the opportunity to provide information and gain insights that could contribute to his accountability and personal growth. This approach differs from conventional mediation because both parties agree they are respectively the offender and the victim. Furthermore, the process is focussed on communication, not a settlement. This approach is consistent with the values and principles of restorative justice, including choice, inclusion, interaction, accountability, safety and community engagement (CSC, 2011).

*Volunteers* Incarcerated offenders are encouraged to build relationships with community organizations that will assist them in their reintegration. In some cases, these support groups are independent from the CSC while other are long standing partner. For example, staff from halfway house will visit the offender in the months leading up to his release to build a rapport before he moves into the house. This is consistent with the principle of gradual release. If the offender has not had the opportunity to establish such relationship prior to his release, he will have access to the Parole Office's Volunteer Program. Most community parole offices manage a group of volunteers from the community who are able to assist the offender with a number of tasks. These can include filing taxes, accompanying them to important appointments, helping them find

accommodations, open a bank account, manage their finances and even organise social group activities.

## CHAPTER 2: CLARIFICATION

### *Influences on the Canadian Penal System*

Deterrence and retribution acted as a justification for punishment long before the birth of the modern Canadian penal system, which started taking shape in the late eighteenth century. It was common practice for penal systems around the world to impose barbaric punishments on offenders in the hopes of deterring them from re-offending (specific deterrence) or others to do the same (general deterrence). There was also a need to act to re-establish order and ensure the offender paid his debt to society in order to regain his place in the community (retribution). These practices were widely debated by great lawyers and philosophers such as Cesare Beccaria, Jeremy Bentham, John Austin and John Howard. John Howard was particularly instrumental in the introduction of rehabilitation in the area of penology in England. By the time of the Canadian Confederation in 1867, the theory of rehabilitation was emerging and inspiring change around the world. We saw Kingston Penitentiary being built in 1835 as an alternative to the harsh punishments of the times, allowing offenders to “labour and reflect” as a form of penitence. The reasoning underlying this emerging practice was that the offenders could “think” about what they had done in the hopes they would not re-engage in the offending behaviour (rehabilitation). Although in its primitive stages, rehabilitation was an integral part of the birth of the Canadian penal system. Despite changes to move towards a rehabilitative approach in corrections, the presence of corporal punishment lasted for years after the creation of the penitentiaries. The Brown Report (1849) was perhaps the best documented evidence of abuse behind prison walls in Canadian history. The shift from a punitive (retribution) approach to one based on

rehabilitation proved difficult. The outing of Warden Smith's abuses raised awareness in the public domain; concerns over prison conditions formed and advocates for prisoners (including the Prisoners' Aid Association in the early 1870s) pushed for the recognition that work, lodging, food and clothes were all needed to reduce the chances for offender to re-offend and return to jail. These views all supported the importance of integrating rehabilitative practices into the penal system. Despite efforts to reform the penal system in the late nineteenth and early twentieth century, global events significantly impacted the work being done here in Canada. Yet, proponents pushed on and in 1938, some of the most significant revelations were made in the Archambault Report. Among them, the fact that penitentiaries were being used to "punish" rather than to "rehabilitate" (Archambault, 1938). This statement illustrates well how the penal system continued to struggle with implementing rehabilitative reforms despite the results of the Brown report. At the end of WWII, nearly all of the hampered reforms promoted in the Archambault report were finally implemented. The end of WWII also marked the birth of Modern Human Rights Instruments in response to the historic loss of life and gross human rights violations during the World Wars. The Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 significantly impacted social policy. By 1960, the enactment of the Canadian Bill of Rights led to the emergence of Human Rights in Canada and the abolishment of the death penalty in 1976, which dramatically changed the face of punishment for Canadians. This movement ultimately led to the adoption of the Canadian Charter of Rights and Freedoms in 1982. Offender rights champions used the Charter to challenge the constitutional integrity of the penal system and its policies. In 1992, the

Corrections and Conditional Release Act was enacted to align correctional legislation with the Charter (Jackson & Stewart, 2010).

In addition to commissions of inquiries and world events, the media and politics have also played significant roles in the evolution of the Canadian penal system. While a range of punishments exist in Canada, none is better known than imprisonment. Why is imprisonment so predominant in the public space and why is there an underlying belief that punishments imposed by the penal system in Canada are too lenient? Oxford University Professor Julian V. Roberts has focussed most of his career on sentencing and public opinion. Roberts and Doob (1990) have established that opinion polls conducted in Canada (and other countries) suggest most members of the public feel the penal system should hand out harsher sentences. Moreover, they found most people derive their information on sentencing from the news media, where violent crimes and imprisonment as a form of punishment are both overrepresented. Their article references a content analysis report completed by Graber (1980) in which it was determined that murder accounted for 25% of crime stories when in fact, murder constitutes less than 1% of all reported crimes. In the case of sentences, it was reported that 70% of the stories reporting a crime resulted in a sentence of imprisonment, while fines appeared in less than 10% of news articles (Roberts & Doob, 1990).

Roberts & Doob illustrate how media coverage influences public opinion (Roberts & Doob, 1990). Their research involves three studies, each contributing insight into the relationship between media and public opinion. The results of the first study, which targets the public's evaluation of sentences reported in the media, establish two significant points.

First, that members of the public are statistically likely to evaluate a sentence as too lenient on the basis of a brief newspaper article. Second, that members of the public generally have a high degree of confidence in their evaluation.

The second study focusses on the experimental comparisons of different stories to determine if different accounts of the same sentencing hearing can further influence public opinion. The results from this study establish that the "...context is critical in determining public reactions to sentences, [...that] the nature of the account of a single sentencing hearing affects the view that sentences in general are too lenient" (Roberts & Doob, 1990), and raises the question of whether the participants of the study would respond differently if they were presented with all the facts (or at least all the information available to the judge at the time of sentencing).

Accordingly, the final study involves a comparison of media versions and official documents. The goal is to determine whether the participants (who in study one predominantly found sentences too lenient) will react differently if presented with all the available facts. The results of this study show that 63% of the subjects who were presented with the media version of a case found the sentence to be too lenient while only 19% of the subjects who were provided with the court documents for the same case shared this view (Roberts & Doob, 1990). Not only were these results recreated in other contexts (for different crimes) but it also showed that even with significant media coverage of a specific case, subjects generally maintained their position that the sentences were too lenient and had more negative views of the offender when compared to those who were privy to court documents.

Some of the conclusions that can be drawn from this research are that public opinion is largely based on media misinformation and that the media's overrepresentation of violent crimes promotes negative views of the offender and the criminal justice system. Furthermore, Roberts and Doob believe that ultimately, the influence of the media on public opinion directly impacts sentencing policy.

This is where the media, public opinion and politics intersect. Although the above study shows that the general impression the public holds on sentencing is that it is too lenient, it also makes the point that with more information, such as court documents, the public would not necessarily be as punitive as they appear to be in the first study (Roberts & Doob, 1990). In fact, with information on alternative sentences and an expanded view of the crime and the offender, imprisonment may not be their first choice for sentencing. In fact, the same audience reported that in their view, reducing unemployment would be a much more effective strategy to combat crime (as opposed to imprisonment) (Roberts & Doob, 1990).

Robert and Doob use their findings to recommend alternative sentences (other than imprisonment) for some cases. However, policy-makers, primarily elected politicians, are reluctant to support such sentencing reforms for the simple reason that they fear retaliation from the public (possibly in election polls) for appearing too lenient towards crime.

Accordingly, political parties in Canada have taken different political stances on crime. Some political parties have been known to be "tough" on crime. It's not surprising that a political party with this platform would garner support from a public that already

believes sentences are too lenient. Regardless of a political party's position on crime, is it responsible for policy-makers to react hastily to public opinion? I would argue that a careful evaluation of the case is almost always preferable. A good example of a hasty reaction is the Government's passing of a Bill in 2010, barring convicted serial killer Karla Homolka from receiving a pardon under existing Canadian Law. At the time, offenders convicted of summary offences were eligible to apply for a pardon three years after the completion of their sentences, while offenders sentenced by indictment could apply five years after the completion of their sentence.

News that Homolka planned to apply for a pardon five years after the completion of her sentence (the length of which was already controversial) was widely publicised and quickly provoked public outrage (it should be noted Homolka was never quoted as saying she was pursuing a pardon and the media coverage on this subject surfaced a few months before her legal eligibility). Politicians were at work within days to carry out changes to the existing legislation prior to Homolka's eligibility, preventing her as well as similar offenders from applying within the existing time frames; the legislation increased waiting times from three and five years to three to ten years, depending on the nature of the offence. A federal lawyer speaking on behalf of the government was quoted in the media as saying (in relation to the Homolka case) that:

One of the criteria for the National Parole Board [now the Parole Board of Canada] is that you can't give a pardon that could bring the administration of justice into disrepute [...so] from a practical point of view, she will never get a pardon. But to be clear, she will be able to apply (CTV News, 2010).

There is no doubt that the actions of Karla Homolka were reprehensible. It is uncommon for individuals convicted for murder (although Homolka was convicted of manslaughter) to be eligible for a pardon, as they generally receive life sentences. The Homolka case was an exceptional case since it received extensive media coverage. Under existing law, the PBC could have simply refused Homolka's request for pardon. Instead of being able to privately carry out the administration of justice, the PBC was thrown in the middle of a media frenzy which prompted changes to its legislation. I find it ironic that some believed it was the case of Karla Homolka that would pervert the administration of justice, when all the actions around that case appear to have perverted justice for Karla Homolka and more importantly the other ex-offenders who were inadvertently affected. Again, there is no denying the gravity of her crimes, but it is important to question whether it is ethical for the administration of justice to be altered in such a way in reaction to a single case as a result of media and public pressures.

It is this type of ongoing pressure that promotes the presence of retribution in the Canadian penal system. The control it exercises is warranted by the punishment imposed on the offender (sentence of imprisonment). Therefore, the enforcement of control on the offender amounts to retribution. Yet, rehabilitation which is more concerned with changing the offender's behaviour (not simply restraining it) is central to the work of the CSC. This raises an interesting conundrum. How can one promote rehabilitation while at the same time be responsible for imposing a retribution? These two basic theories of punishment are what our current system is largely anchored in. Nevertheless, the pendulum shifts back and forth between either of these correctional philosophies, each time reshaping Canadian corrections.

These shifts are largely the result of what we have discussed above; human rights, the media, public perceptions and politics. It would be wrong to say that public pressure alone is responsible for change in corrections. Some would argue that politicians use public perceptions to their advantage. Crimes attract media attention because people are interested; furthermore, people have strong reactions when they hear about crimes, particularly when they involve violence against children or other vulnerable victims (and we have already established violent offences are overrepresented in the media). It is inevitable that these types of stories can lead to high emotions; what are policy-makers to make of them?

The current government (41<sup>st</sup> Parliament) has set out to get “tough on crime”. Their strategies have been greatly criticised by Michael Jackson and Graham Stewart (2010), who have dedicated their careers to promoting prisoner rights. The primary target of their criticism is the government’s 2009 report entitled *A Roadmap to Strengthening Public Safety* which is currently serving as the basis for the “*Transformation Agenda*” of the CSC. The report’s findings are also leading to significant policy changes, which are changing the face of corrections; several Bills promoting the “tough on crime” approach are currently before Parliament. What troubles Jackson and Graham is not only the directions in which corrections is going but the lack of insight and research supporting the recommendations in this report. Not only do they point out obvious flaws in the analysis provided (which will be discussed later), they underline the absence of public discussion on the subject, the hastiness with which the recommendations were implemented and the unilateral and “...fundamental [...] change in the philosophy and direction of our correctional service” (Jackson & Stewart, 2010). They also accuse the Harper Government of playing on the emotions of an aging

population who fears crime and criminals and is “...generally convinced that life is getting more dangerous” (Jackson & Stewart, 2010). It’s not a coincidence that these demographics also represent a large proportion of the voting public. How can research compete with such convictions...it is indeed difficult.

What is possibly the most shocking of Jackson and Stewart’s (2010) allegations is that the panel presented their recommendations in the report and subsequently requested from CSC that they conduct research supporting their policy direction. In their words “*policy-based evidence instead of evidence-based policy*” (Jackson & Stewart, 2010). It is not surprising they entitled their essay *Fear-Driven Policy*. This type of ideology-based policy raises other ethical questions.

Is it wrong for politicians to listen to the voices of their constituents? After all, they have been elected to represent them. In a modern day democracy, what role should public opinion play in the development of public policy? This question is not simply answered. In 2010, the Walter Gordon Massey Symposium considered this very delicate topic. A survey by EKOS named *Public Perceptions on Politics and Emotion: The Paradox of the Rational Imperative* (EKOS Research Associates, 2010) was conducted with a sample of Canadians. Their conclusions however were not very revealing. Despite their being a high level of emotions in the public domain during potential policy changes (such as legalizing same sex marriages) the results showed that Canadians preferred that politicians act rationally when considering policy changes. Furthermore, they expressed that they valued a politician being rational over his ability to connect emotionally with the public. These results were a little

surprising given the public's actual reaction to proposed changes to sensitive public policy. Perhaps these limited findings paved the way for the 2011 Symposium which "*explored the growing tension between unelected experts, elected politicians and the unmediated voice of the public*" (University of Toronto, 2011). This is by far where the focus needs to be. The relationship between these three very significant actors is what shapes public policy. However, their relationship is dysfunctional and there is a need to carefully consider each of these actors' roles in the establishment of an ethics of truth.

These influences are primarily observed at the macro level. Some equally interesting influences are found at the micro level, among frontline staff and offenders. Given the dual objective of the CSC (and of the penal system), that is custody and rehabilitation, there is a polarization that can lead to tensions in the correctional environment. This subculture, which operates "behind bars", is well known amongst staff, but is rarely addressed systematically by management. Although another paper could be dedicated exclusively to this subject, I will only attempt to shed light on some of the complexities found in the frontlines.

Firstly, employees of a penal system driven by opposing ideologies (retribution and rehabilitation) are inevitably faced with ethical dilemma. The pull between exercising powers and providing a source of support to the offender is constant. Although mandated to exercise a balance between the two, the reality is that on the frontline, this balance is not easily achieved. In addition to staff's personal beliefs gravitating towards either of the opposing views, different groups have different responsibilities, each slightly more inclined to either of the objectives sought. This dichotomy inescapably leads to tensions between

staff within the same or different group. It would not be uncommon for staff who are supportive of offenders' reintegration to be called "con-lovers" by co-workers, especially by correctional officers. Although innocent as an isolated incident, this type of behaviour on a large scale encourages a culture of bullying within the organization and is a form of intimidation towards staff carrying out their legal duties to assist and encourage the offender to become a law-abiding citizen. Other known occurrences among staff on the frontline include stories of "parking lot attitude adjustments". These are alleged cases of tire slashing of employees who challenge the institutional culture (primarily run by guards). This practice was exposed in an investigative report by The Fifth Estate (CBC) which aired on November 13, 2010 entitled "*Behind the Wall*" (The Fifth Estate, 2010). In the segment, a prison nurse tells the story of witnessing an assault on an inmate and not reporting the incident due to her fear that the persons involved would retaliate against her. When she changed her mind and reported the incident, she received threats and began fearing for her life. While I recognize these are all alleged incidents, I only make the point here that the frequency at which these stories circulate on the frontline is indicative of a polarization in staff's views on how offender's should be treated while incarcerated. It also results in a work environment that is rife with harassment. A survey conducted with correctional officers of the CSC (Samak, Qussaï; Prevention Group (Health-Safety-Environement) Labour Relations Departement, 2008) gave ample evidence of harassment by co-workers and supervisors (Annex 1). In fact, offenders were at the bottom of the list of perpetrators of harassment against correctional officers. Hence, it would not be surprising that employees, who initially hoped to help offenders, shy away from this activity as a result of harassment

by their peers. The consequence is that inmates and supervised offenders do not benefit from the full assistance they should receive.

This brings us to a second complexity in the correctional environment. One of the most controversial issues in institutional security these days is the use of force. When a prison employee, normally a guard, is required to use force in order to have an inmate comply, an administrative process is unleashed and everything is documented, from the guards' observation reports, video recording and the administrative chain of custody to Regional and National Headquarters. These high stress situations are routinely carried out without incident. However, a serious incident at Kent Institution in British Columbia, between January 8 and 18, 2010 raised a red flag and was investigated by the OCI. In short, the institution went into a "lock down" state for ten consecutive days to carry out authorized legal searches of the institution following intelligence that a contraband "zipgun" had been smuggled in through an offender's personal effects. Due to the Union of Canadian Correctional Officers' (UCCO) threat to refuse dangerous work, negotiations between management and UCCO led to the dispatching of a tactical team equipped with bullet-proof vests, masks, and laser pointer semi automatic rifles (among other things). Once dispatched, it appears the tactical team was left to their own devices, without any managerial oversight, to conduct the legal search for the "zipgun". What ensued over the course of the next ten days was a series of violation of human rights, policy and law governing the use of force. In their final report, published on March 21, 2011, the OCI found that the cell extraction of compliant inmates at gun point was an unwarranted and dangerous use of force, that the conditions in which strip searches were conducted deprived offenders of privacy and dignity and that the physical conditions of inmate confinement were unreasonably and unnecessarily

restricted over several consecutive days. Furthermore, in item 139 (OCI, 2011) of their report, the OCI makes a bold remark, stating that this incident was not isolated to Kent institution. In fact, they noted serious deficiencies in CSC's capacity to apply the 'least restrictive' use of force option as per the legislative requirement. In short, the issue that emerges is one where management is unable to adequately ensure the use of force (static security) on the frontline is compliant with its legislative requirements.

There is a possibility that staff-inmate dynamics complicate this legal ideal. There is no doubt that the inmate-correctional officer relationship is adversarial. Because we know that one group (the correctional officers) exercises complete authority over the other (inmates) and that there is an adversarial relationship between the two, oversight of the daily operations involving them is imperative. Failure to adequately monitor these can be disastrous. Philip Zimbardo illustrated well in the Stanford experiment (presented below) how, if left to their own devices, these two groups can behave. Similar concerns were noted in the Swackhamer report into the riot at Kingston Penitentiary in 1971:

...schismatic and dangerously polarized nature of the life inside the prison institution itself. The polarization between inmates and custodial staff, between custodial staff and professional staff, led inevitably to the destruction of the program and deterioration in the life of the institution. These facts were established beyond doubt by the testimony heard by the Commission (Swackhamer, McGrath, Scott, & Popp, 1971).

The Swackhamer Report attempts to explain the nature of the relationship between these two groups:

We therefore propose to deal with what the evidence suggests are the two prison subcultures. The evidence from all groups within Kingston Penitentiary reveals the fractionalized and divided character of the relationships which existed. To state the obvious, there were basically two factions within the prison; the staff on the one hand, and the inmates. That there will always be two such groups is an inalterable fact. What, however, is not inalterable, is the gaping distance separating them. As

long as there continues to exist an antagonistic relationship of mistrust and misapprehension as was amply demonstrated by the evidence before this Commission, the twin objectives of order and rehabilitation will not be attainable. There was demonstrated a marked tendency on the part of both staff and inmates to ascribe uniform and stereotypical characteristics and motivations to each other. The consequence appears to be that individuals continue to conduct themselves on the basis of these preconceived and false formulations. Hence, each group is able to find ample justification for its decisions, actions and attitudes in what has become a self-perpetuating circle of mutual recrimination (Swackhamer, McGrath, Scott, & Popp, 1971).

Without first dealing with this basic issue, which to date largely remains unaddressed, I would argue that the risk for human rights violations and other serious (and potentially unethical) incidents in the institutional setting remains high.

This risk was clearly demonstrated in 1971, when the use of human subjects was not yet classified as “unethical” for psychological experiments. Stanford Professor Phil Zimbardo and his research team called for volunteers to participate in a “prison experience”. A total of 18 participants (mostly university students) were selected and placed in a makeshift prison in the basement of the Psychology Department of Stanford University. Nine were assigned to the position of guards while the remaining participants were to act as prisoners. The experiment was expected to last two weeks, but had to be terminated after six days only, as the guards began to engage in sadistic behaviour towards the prisoners, who began to show signs of depression and extreme stress. It was even noted that guards were abusing prisoners out of boredom during the night, when they believed the cameras were off and researchers were not looking. During debriefing, students were unable to give explanations for their behaviour. For all participants, the line between fiction and reality had blurred to the point where they fully identified with their role in the prison setting. For Dr. Zimbardo, this study is a good example of the “*power of social situations to distort*

*personal identities and long cherished values and morality as students internalized situated identities in their roles as prisoners and guards*". More than 30 years after the conclusion of this experiment, Dr. Zimbardo carefully revisited the data he collected over the course of the six days in an attempt to explain "how good people turn evil" (Zimbardo, 2007). Having acted as an expert witness in the Abu Ghraib Seven Trials (U.S. Soldier abuse of prisoners of war in Iraq), Dr. Zimbardo drew parallels between his experiment and the behaviour of the U.S. soldiers. Most interestingly, he brings attention to the Bush Administration's open tolerance for controversial interrogation techniques (which in most circles are considered torture) as playing an important role in creating the social conditions that made it possible for such abuses in military prisons. In short, this quote from Dr. Zimbardo sums it all: "*“Bad systems” create “bad situations” create “bad apples” create “bad behaviours”, even in good people*" (Zimbardo, 2007).

The most important lesson to learn from this experiment is that prisons (as they are currently managed) are a breeding ground for bad behaviour, even when run by "good" people. How then can the system be changed to avoid creating bad situations, bad apples and bad behaviour?

It should be noted that there are dangers in adopting the other extreme (supportive) and becoming so close to an offender that professional boundaries become unclear and even lead to boundary violations. Plainly stated, I refer here to intimate relationships between institutional staff and inmates. This phenomenon is more common than you may think and is well documented in research. An article entitled "*Sexual Boundary Violations Committed by Female Forensic Workers*" (Faulkner & Regehr, 2011) published by the Journal of the

American Academy of Psychiatry and the Law Online provides an interesting look at the dynamics of the correctional setting. It speaks of the complex relationships amongst staff, exposing a masculinized prison setting, where female officers believe they are treated unfairly by their male counterparts and become easy targets for verbal and sexual harassment from male officers and management, thus leading to feelings of isolation. This isolation is exacerbated on the other side of the prison walls, where family, friends and the public are apathetic to the work of the forensic worker. The authors found that women who were in the midst of divorce, sexual frustration or other vulnerable states were more at risk of committing sexual boundary violations and were also more likely to be targeted by offenders who would use the relationship for personal gain. This isolation has also led to affairs between co-workers.

Relationships between offenders are also interesting. It is a relatively well known fact that behind prison walls, offenders have an established hierarchy. What is more obscure is the nature of this hierarchy. Long gone are the days of the “con-code” which clearly defined prisoner ranks. Loyalty is a rare quality and alliances are complex. The expansion of gangs on both sides of the wall has resulted in members having “options”. Having their own interest at heart, individuals shift their alliances, always in search of the highest bidder. This type of behaviour leads to what the correctional system terms “incompatibles”. Population management is an important part of the correctional environment. The Canadian Charter of Rights and Freedom guarantees the right to life, liberty and safety. Naturally, inmates are deprived of their freedom as a result of their actions, but this does not absolve the correctional system from ensuring the life and safety of the offender. Accordingly, care is taken to ensure incompatible offenders are not placed together. A good example of the

care taken to ensure this is in Donnacona Institution (Quebec), where arrangements were made to manage two distinctive groups on one site; one composed mainly of Hells Angels, and the other of Rock Machines (including associates). However, this clear divide between organised criminal organizations is no longer the norm. Several new smaller criminal operations are being intercepted and the speed at which they are expanding is making it difficult for correctional officials to keep track of incompatible organizations in addition to individual incompatibilities (Correctional Service of Canada Review Panel, 2007). Gangs Management is an area that is garnering a lot of attention in Canadian corrections and strategies are being developed to ensure the safe management of offenders.

Aside from this, the traditional hierarchy still has its place on some level. For examples, the more sophisticated the crime, the more respect the inmate can garner. At the other end of the spectrum are ex-law enforcement officers and sexual offenders. These inmates tend to receive more negative attention from their peers. This can range from bullying and harassment to violence and prison rape. Drugs and gambling are rampant on the inside and offenders who continue to engage in this problematic behaviour can quickly run up debts. This can result in intimidating behaviour, muscling, violence and possibly death. For an interesting read on an offender's point of view on life in prison, I recommend the article "*How to Survive as an Innocent Man Convicted of a Sex Crime*" by James D. Anderson (Anderson, 1997).

I have treaded carefully in addressing the subject of "use of force" on inmates by guards and the relationship guards have with inmates and other workers at the institution. But an issue that cannot be ignored here is the longstanding power struggle between CSC's management and the Union of Canadian Correctional Workers (UCCO). This is perhaps the

most complex issue involving CSC operations. Plainly put, it is a well-known fact that correctional officers, who are represented by UCCO, have the strongest bargaining force of any group in CSC. This is largely due to the fact that correctional officers (CX group) branched off from the traditional public service union and joined forces with the CSN to form UCCO in 1999. This has enabled the union to bargain the specific needs of this group. This is in contrast with parole officers and correctional program officers who have been lumped in with the bargaining unit of the government's clerical and administrative staff. This makes it more difficult for the voices of parole officers and correctional program officers to be heard as their group (WP) is minuscule in comparison to the number of clerical (CR) and administrative (AS) staff (among others) within the government. Furthermore, CSC employs the majority of WPs across the government, 85%, and 100% of CXs; together they form 54% of CSC's total workforce (CSC, 2007). To show how UCCO's ability to represent the CX group's interests affects the daily operations of CSC, please consider the following.

A recurring practice on the frontline is the ability for correctional officers to refuse "dangerous work". Although this right is granted by the Canada Labour Board, UCCO plays a significant role in the handling of these situations in CSC. The aforementioned Kent incident of January 2010 is an example of UCCO's involvement in the handling of a presumably dangerous situation. The negotiation between CSC and UCCO for this incident was followed by a lack of oversight from management and abuses of powers by guards. The OCI greatly criticised CSC in their Annual Report for 2010-11:

What happened at Kent Institution amounts to an abuse of correctional power and authority, systemic breakdowns in management accountability and oversight, gaps in use of force review and reporting procedures, deterioration in dynamic security

practices and principles, and violations of human rights law and policy. These are significant deficiencies that increasingly call into question the effectiveness of CSC's internal use of force review process (OCI, 2011).

However, what is surprising is that a situation which, by some accounts was a routine search, attracted the attention of UCCO and CSC management, and despite all the attention and negotiation undertaken to carry out the search with care, it turned into an embarrassing human rights encroachment. Similar breaks in communications appear to have occurred in the preventable death of Ashley Smith. Ashley Smith was a troubled young girl who, after years in the provincial system, arrived at the CSC at the age of 18. Suffering from mental health issues, her behaviour was overwhelming for correctional staff, who were relieved by Ms. Smith's rotational transfers to other institutions. Ms. Smith, who had a history of self harm, was involved in a record number of security incidents, which resulted in the frequent use of force and restraints. Attempts to manage her case were foiled when she succeeded in taking her own life as correctional guards provided 24 hour watch. In a backgrounder prepared by the OCI (OCI, 2010), it is stated that "senior management at the highest levels of the Correctional Service were aware of the ongoing challenges presented by Ms. Smith; however, not one person of authority took direct ownership or responsibility to ensure that she was treated in a humane and lawful manner". In a Fifth Estate interview, Howard Sapers, Canada's Correctional Investigator, stated that CSC never conducted a comprehensive mental health management plan for Ms. Smith, he added that in fact the management plan became much more security focussed.

My aim here is not to point the finger at the guilty party. Rather, I find it is imperative to shed light on the lack of continuity between management and the frontline,

specifically in the management of complex situations such as the ones described above. I strongly believe that the dual objective of the CSC plays a big role in this deficiency. Specifically how it materializes in reality. The fact is that, while CSC's senior management is a step back from the frontline and is able to see the big picture, those on the frontline have a much different reality. Not all situations can be simultaneously managed out of a policy booklet, which is why during complex situations, leadership and communication are key. But in order to achieve this, partnerships and a shared vision have to be in place. So what is the state of the partnership between the frontline and the senior managers of CSC's headquarters? Do they share the same vision?

We know that the vision of the CSC as a whole is to rehabilitate offenders while exercising safe and humane control. But how do guards on the frontline feel about this? A paper published by UCCO and CSN, entitled *Towards a Policy for Canada's Penitentiaries* (UCCO, 2002), reveals a great deal on the correctional officers' position. The main purpose of the report is to show how changes in Canadian corrections have affected the role of the correctional officers between 1950 and 2000. The paper is divided into three sections.

The first section addresses the evolution of the prison system with a focus on the coercive (centralized organization centred on order and discipline) and the normative (organization that favours decentralization and reintegration into the community) institutions. The paper states at the onset that they view these two types of institutions as being "incompatible". They present the coercive and normative prison types as part of an evolution beginning with enlightenment, followed by warehousing, remedial phase and ending with the interactive phase. They explain the changing role of the guard through this evolution as a shift in power between the offender and the guard. In the coercive prison

system, more reflective of the enlightenment period, the authority is unipolar, in that the inmate is cut off from society and completely dependent upon the guard. In the warehouse period, the authority is viewed as bipolar in that the inmates exist as a group alongside a group of guards and as such, cooperation between the two groups is required. In the remedial phase, the inmate achieves the status of an individual, which again causes a shift in power; now that prisons are open to the public through programs and parole, the power is shared between educators, guards and inmates, a tripolar authority. In the final and current (interactive) phase, the authority becomes multipolar as society penetrates the correctional environment. In their views, this leads to a shared authority between offenders, correctional officers, educators, administrators, governments, judges, the mass media and public opinion.

These findings are consistent with the information presented in this paper. What is of concern is UCCO's position in the face of these findings. In their words, they state that "*[f]rom one phase to the next, power becomes more and more diffuse and the correctional officer's authority is progressively eroded. An evolution has occurred from a coercive institution to a normative institution, without ever existing as such as a finalized model*". Though they have a point in stating that the model has yet to be finalized, which is in part what this paper addresses, it is unsettling that correctional officers feel their authority cannot be assumed in a normative model. They criticise the reforms recommended in the Fauteux report and support the MacGuigan Commission's attacks on the reforms and proposed return to discipline. They also criticise the current normative approach as being "*syncretistic*". This comment has worth as the dual objective of the CSC does lead to confusion.

In the second section, UCCO stresses the importance of developing prison policy based on the striking of balance between these opposing approaches (static vs. dynamic

security). The imperativeness of this pursuit is based on their assumption that the CSC falsely reports a decline in violent incidents behind prison walls and that instead, violence is cyclical and random. In other words, they do not believe dynamic security can have a significant impact on the occurrence of violence in the prison setting. In fact, they state that any decline in prison violence is a coincidence and has nothing to do with CSC's new prison philosophy, which is based on dynamic security. Furthermore, UCCO believes that any decline is at least due in part to static security. Despite accusing CSC of making unfounded claims of a decrease in violence, UCCO offers little evidence to support the contrary. However, they do acknowledge that prison violence is a complex phenomenon and that it is poorly understood.

Perhaps, this is the most telling statement of prison violence. How can either CSC or UCCO begin to adequately deal with prison violence without understanding it more thoroughly? Clearly static force is an effective measure to neutralize violent acts; which is UCCO's position. And rehabilitative approaches are slow-moving and ineffective in crisis situations (with the exception of negotiation). But we know too well what strictly static approaches to crisis situations can lead to. It does little to curb the behaviour in the long-term and in extreme circumstances, we have the case of Ashley Smith. CSC was not equipped to deal with the level of behavioural aggression exhibited by this inmate. Consequently, segregation and other static measures were prioritized. In a report addressing the death of Ms. Smith (UCCO, 2008), UCCO complains of a lack of direction and accountability from management. This complaint has some value, which I will address, but regardless of where the responsibility lies in this case, it is clear that a static approach is not the answer. I do believe CSC must put in place a system that is able to capture such cases,

allow for resources to fund specialized (and possibly external) expertise to assist in the elaboration by management of appropriate case management strategies (both static and dynamic) which can be clearly articulated to staff on the frontline, while allowing frontline staff to maintain an ongoing line of communication with management (two way communication) to help determine the need to re-assess the effectiveness of the intervention. This type of approach is lacking at the moment as there appears to be too many ideological differences between the two parties to form a symbiotic approach.

In their push for prioritization of static security, UCCO favours the principle of precaution over that of prevention. This is because, in their view, the principle of precaution requires that a constant balance be maintained between opposing and extreme trends (again in relation to CSC dual objective) in order to minimize risk and they do not believe CSC has been able to accomplish this. This failure on the part of the CSC is creating, in my opinion, a lot of confusion.

In the third and final section of their paper, UCCO addresses prisonization; the process through which inmates are integrated into the penitentiary and the correctional officer's role in this process. Though UCCO would see it otherwise, prisonization could also be interpreted as institutionalization or the effects of the total institution as described by Erving Goffman (Goffman, 1968). UCCO illustrates how correctional officers' major functions in this process are contradictory. On the one hand, correctional officers are responsible for the security of the institution. On the other, they play a significant role in inmates' adjustment to the prison environment (prisonization). However, this is at odds with CSC's desire for correctional guards to also prepare them for their eventual reintegration into the community. How can they simultaneously accomplish these three tasks? UCCO

states that prisonization can no longer be measured through traditional benchmarks; in their view, this is a problem resulting from the permeability of the prison setting (with the community). This is largely the result of efforts by human rights activists and the penal system to mitigate the negative effects of incarceration, which have been clearly demonstrated by Foucault (1995), Goffman (1968) and Mathieson (1990). UCCO encourages a return to traditional prisonization by arguing that it does not hinder offenders' ability to reintegrate the community, but that it in fact complements reintegration. This is based on the belief that offenders who abide by prison rules will be more likely to obey rules once in the community. Hence, UCCO concludes that integration into the prison environment is a prerequisite to reintegration to the community. I find this to be a very simple and unilateral approach to this issue as there is ample evidence that supports the contrary. Parole officers, who are responsible for the majority of offender risk management (including pre-release decision making) are well informed on the prediction of risk. In case preparation, it is widely accepted that problematic institutional behaviour is predictive of problematic behaviour in the community; however, good institutional behaviour has never been a predictor for good behaviour in the community. For that reason, I have to disagree with UCCO's belief that prisonization is a prerequisite to reintegration.

I mentioned earlier that a symbiotic approach in handling exceptional circumstances is lacking within CSC. Despite having a very structured and policy oriented organization, serious incidents continue to expose its inadequacy in this area. I believe that this can be attributed, in part, to CSC's insistent focus on policy compliance and its inability to take into consideration factors outside of this equation. Internal investigations rarely approach

incidents with a broad scope. Instead, a band-aid solution (often a new policy) is applied.

UCCO does point to this as an issue in one of their reports:

...a National Investigation Team from CSC headquarters was conducting a[n] [...] investigation [...] into all the uses of force involving [inmate] during her four months at RPC. The CSC investigation did not, however, look into the conditions of [inmate's] confinement. "They were only concerned about uses-of-force," observed a correctional officer at RPC. "They never looked into management practices. They were already looking for someone to scapegoat (UCCO, 2008).

Internal investigations can be detrimental to the relationship between frontline staff and management, but this isn't an automatic response. If CSC were able to address the larger scopes of the problems they face, investigations could be far more beneficial. They would serve as a medium for meaningful collaboration between frontline staff and management. However, in order for this to happen, a show of trust and respect from both sides is required. Upon reviewing UCCO's reports, I would argue that this has yet to occur. With CSC management's hyper focus on policy compliance, it ignores the everyday hardships of frontline staff and the fundamentals of the problems they attempt to solve. In doing so, they erode the relationship they have with their biggest asset, the frontline (which is also a core value of the CSC).

A poor relationship between management and the frontline is detrimental to correctional operations. The disconnect between National Headquarters, Regions and the frontline has been an obstacle to overcome for as long as I have been in the Service (nearly 14 years) and, I am sure, long before that. In an organization that has, as we have established, a dual objective that is both contradictory and complimentary, it is imperative for management to show a clear direction in which employees are to follow. This means

that disciplinary measures are taken against staff who behave in ways that are inconsistent with CSC's vision and not be limited to staff who are involved in incidents that attract outside attention, in an attempt to do some damage control. This type of management is both confusing and detrimental to frontline staff. It also sends mixed messages about the organization's expectations. UCCO expresses frustration about this in their reports; excerpts are provided here to support this:

The CSC's prison policy and routines are based upon the twin contradictions between the goal of security and of reintegration into the community, on the one hand, between the objective of reintegration into the community and of integration into the prison environment, on the other (UCCO, 2002);

Staff at Nova Institution repeatedly struggled with unclear directions on how to deal with [inmate]. The repeated assaultive behaviour, coupled with the ever-present threat of disciplinary action from distant management, had a major impact on staff well being, leading several officers to take stress leave after this period (UCCO, 2008);

For six years now, the union has demanded, pleaded and requested that the CSC clarify how correctional officers should be working in the institutions for women," Mallette said. "We have regularly asked that the Commissioner's Directives apply everywhere, consistently and uniformly, in both the institutions for men and for women. On several occasions, we have asked that should the Commissioner's Directives in effect not be applied in the institutions for women, then clear and precise directives that do apply to women inmates should be issued (UCCO, 2008);

To date, the CSC has always refused to listen to us regarding these proposals. The consequences of this refusal have led to a situation where ambiguity now exists in the work that correctional officers are required to perform in the prisons for women. "In addition, over the years, this has had the effect of making correctional officers hesitate before taking action, before making decisions in the course of their work (UCCO, 2008);

Mr. Commissioner, in a workplace such as ours, our members are professionals who in order to be effective must have clear guidelines, and we can openly affirm today that this has not been the case for several years [...] (UCCO, 2008).

Several other examples of this type of sentiment are found in the UCCO reports. Although I do not address them in their entirety, similar frustrations are felt by other frontline groups, however, with less intensity. Parole officers would like to benefit from a union representation similar to that of the correctional officers. Parole officers' major complaints are in relation to workload, the abundance of administrative tasks, policy that is too prescriptive and the fact that too much emphasis is placed on policy compliance (i.e. tasks to ensure policy compliance take precedence over meaningful face to face contacts with supervised offenders). Nevertheless, parole officers and correctional program officers have a better understanding of their role in the offender's reintegration process. Correctional officers are more susceptible to being confused by the dual nature of CSC's mission as they are the primary provider of CSC's responsibility to exercise the reasonable, safe, secure and humane control of offenders, which is the responsibility that most contrast with that of rehabilitation. And because rehabilitation is not explicitly stated in the mission, it's not surprising that correctional officers are of the opinion that the purpose of an activity or program must be compatible with the needs of the prison milieu and not solely with those of the community (UCCO, 2002).

What should be noted here is the importance for CSC'S management to establish a clear vision that reaches every level of the organization and to communicate it effectively; not simply stand by and expect the Mission Statement to come to life. Philip Zimbardo, an expert on social behaviour in prison settings has stressed the importance of the social context in cases of unethical (what he calls "evil") behaviour in prison settings. He claims that people often rely too deeply on the individual qualities of a person and underestimate the power the social setting can have on the individual in question. In an attempt to explain

how human rights violations occur on the frontline, particularly in the case of the Abu Ghraib, Dr. Zimbardo offers the theses that “powerful situational and systemic forces were operating to cause these abuses” (Zimbardo, 2007). To better understand these systemic forces, Dr. Zimbardo states that one must identify what were the systemic pressures that existed outside of the situation that existed inside Abu Ghraib’s hard site of interrogation. Furthermore, he states the importance of identifying the particular parties involved at all levels in the chain of command for creating the conditions responsible for the implosion of human character in the military personnel at Abu Ghraib. Although I recognize it takes a great deal of moral fibre for an organization to look at itself in this manner, it is only then that it can begin to work towards an ethical solution. Dr. Zimbardo’s recognition that the social context on the frontline is highly influenced by the upper layers of management (all the way to the top) further support the notion that a disconnect between the two is detrimental to work on the frontline and ultimately to the organization as a whole. Actions and inactions by senior managers are all open to interpretation by the frontline. That is why it is essential for CSC’s senior management to send a clear and consistent message throughout the organization, especially given its dual objective.

It is clear in UCCO’s reports (UCCO, 2002; UCCO, 2008) that in addition to frustrations over conflicting directives, they feel they are being ignored and that policies are implemented with disregard for their role; furthermore, they do not feel they are treated as professionals. This is illustrated in the following statement by UCCO: “In order that correctional officers can fully participate in the formulation of prison policy on the basis of their know-how, they must be recognized as professionals and no longer as subordinate civil servants”. I agree that in some circles, correctional officers are not viewed as professionals;

specifically by police and other law enforcement bodies. This is largely due to the perception that correctional guards are overpaid (with overtime, correctional officers can earn as much as some senior managers) simply for “turning keys” and “reading the newspapers”. They are also viewed as unprofessional as a result of their own behaviour and overt negative attitudes towards inmates. Correctional officers, as a group, have a role to play in the perception they wish to distance themselves from. Nevertheless, they are a significant player in the administration of Canadian corrections and attempts to professionalise this and other frontline groups are essential to working collaboratively to ensure the most ethical outcomes.

It is necessary for UCCO’s and CSC’s management to establish a working relationship that does not limit itself to union matters. Although correctional officers (and UCCO) have a unilateral view of the complexities on the frontline, a responsible organization could not dismiss it completely. The correctional officers’ desire to involve themselves in the development of correctional policy is valid and some room should be made to take into account their feedback. This is not to say that more significance should be given to static security. Instead, to engage this group in the elaboration of CSC’s policy structure would enable correctional officers to participate in the development of their own dynamic responsibilities and strengthen the direction of correctional interventions by allowing frontline staff to better understand CSC management’s improved handling (static and dynamic) of complex cases/situations.

The idea of an integrated approach is not a new one. In 1958, the Fauteux report pointed to the importance of an integrated system:

A well ordered system of corrections is the product of the work of the legislature, the police and prosecuting authorities, the courts, penal institutions, parole authority and the State, by which the prerogative of mercy is exercised. Each of these parts of the correctional system has an important, and sometimes vital, role to play. Each should play its part in the light of the fundamental purpose of correction, namely, correction of the individual. Each will fulfill its function better if it acts in co-operation with and with an understanding of the others. Integration of activity is essential (Fauteux, Common, Edmison, & McCulley, 1956).

***Punishment: Ethical Considerations***

Early criminologists focussed their attention on the “criminal” as a subject. Research was undertaken to understand what it was about an individual that “made him” a criminal. This approach is known as traditional criminology. In more recent years, the field of criminology has expanded to include a variety of different approaches. None distinguishes itself more from the others than Critical Criminology. As stated by Quirion, Critical Criminology concerns itself with the persistent questioning of the a priori knowledge on crime and the measures taken to counter it. In that vein, Critical Criminology considers all new theories, however good, to be refutable. Hence, it would be naive to believe one could one day reach the ultimate truth. Consequently, Critical Criminology limits itself with simply getting closer to the truth through a process of trial and error, all the while preserving its critical reflexes (Quirion, 2012). It is this quest to challenge the a priori knowledge that grants this type of criminology its critical character and this is particularly important in the researchers’ look at subjects that carry strong social and institutional biases. The Canadian penal system is no exception; crime, criminology’s primary object of study, is clearly the product of judicial and social norms aimed at establishing order and repressing marginal behaviours (Quirion, 2012). Consequently, it is important in Critical Criminology not to take these constructs for granted and to expose their origins while suggesting new

conceptual definitions and theories. Specifically, this type of criminology questions the objectivity of society's take on crime, criminality and the criminal himself. An example of how this approach has shed light on gaps in the system is their questioning of the empirical validity of statistics on criminality produced by various law enforcement agencies. Through this exercise, they were able to show that the numbers only reflected crimes reported to a given agency (at the time they believed all crimes were reported to police) and did not adequately represent the actual presence of criminal activity in the public space. The latter became known as the "dark figure" (*chiffre noir de la délinquance*) (Statistics Canada, 2009). This quest for redefining the concepts that guide the penal system is at the heart of Critical Criminology.

Louk Hulsman uses the term "problematic situation" to describe a situation in which one finds himself in conflict with the law. He goes on to say that the problematic situation only becomes a "crime" when it is taken on by the penal system, which is not always necessary. Arguments like this one are at the heart of the Abolitionist movement. In a paper entitled "*Themes and Concepts in an Abolitionist Approach to Criminal Justice*", Hulsman redefines the concepts of criminal justice, proposes the abolition of the criminal justice system and gives the mechanism on how to accomplish this. Interestingly, he states at the onset that he will not address the question of punishment. He goes on to say:

I see punishment as a specific form of human interaction which can be observed in many social practices [...]. With respect to what is called professionally inside the system "punishment" (certain judicial decisions and their implementation) a relationship between the "punisher" and the "punished" that characteristic of "punishment" (as opposed to violence) has to be found. So in criminal justice the activities (and experiences) formally called punishment have no similarity with events which are outside criminal justice considered as punishment. In practice to call those activities punishment is creating an unfounded legitimation. So I do not

consider criminal justice as a system that dispenses punishment but a system that uses the language of punishment in a way which hides the real processes going on and generate support by presenting those processes uncorrectly as similar to processes known and accepted by the public. The conventional language in the public discourse hides the realities about problematic situations (crime) and criminalization (Hulsman, 1997).

Although Critical Criminology appears to be a good starting point to question the Canadian penal system, as I am attempting to do in part in this paper, it would not allow me to genuinely look at punishment, as it refutes the legitimacy of the penal system as a whole.

Within the Abolitionist movement, there are two main stances. The first denies the legitimacy of the penal system as a way to deal with “problematic situations” and promotes its abolition (as slavery and the persecution of witches were abolished). According to the second stance, it is not criminal justice itself but the way in which we look at criminal justice that should be abolished. More specifically, the language surrounding criminal justice needs to be deconstructed, specifically by universities who should model academic independence from the existing social practices to permit objective assessment of those practices (Hulsman, 1997).

The theory of ethical questioning allows me to look past the legitimacy of the Canadian penal system and to better assess the ethical worth of imprisonment as a form of punishment in Canada. In this vein, I accept that the Canadian penal system is legitimate and that punishment is an appropriate response to a wrongdoing. The actual punishment is what is being questioned here; more precisely, whether the guiding principles for imprisonment in Canada are ethical.

An article on community ethics and punishment (Peter, 2006) explains that community ethics requires self-sacrifice and altruism. It also stated that the members of a community share a common goal. The author then discusses how punishment can be reconciled with community ethics, which predicates that it is ethical to act in the best interest of the community and unethical to act against the best interest of the community. In the same breath, it states that it would be:

[...] unethical to remove someone from the community against their will, which prevents ethics from mandating that we treat some people badly in order to benefit the rest of the community, because this would be equivalent to removing those people from the community. Punishment is another tricky subject for ethical theories. It is easy for an ethical theory to condemn some acts as wrong, but it is less easy to see how ethics mandates we treat people who commit such acts. After all punishment can be seen as an ethically wrong act itself if it is performed on individuals who didn't commit a crime. What justifies treating people who have done wrong differently, and why should we punish people who have done different wrongs differently? In my eyes most modern forms of punishment, namely imprisonment and execution, are equivalent to removing someone from the community (Peter, 2006).

At first glance, one would think that community ethics and punishment are at odds, leaving little room for mechanisms to deal with offending. However, the author goes on to give a very logical approach to punishment in the ethical community. In the first instance, the author considers habitual and violent offenders. For these individuals, the author finds their behaviour to be indicative of their choice to cut themselves off from the community, and despite their interaction with the victims, they are not acting in a “mutually beneficial fashion” or “accomplishing a common goal”. The offender is therefore choosing not to be part of a community as defined by Community Ethics and therefore the imposition of a punishment, such as imprisonment, is perfectly acceptable. I would add here that I disagree in part with the statement that an offender “chooses” not to be part of a community; rather, I

would argue that offenders may cut themselves off from their home community, as a result of being marginalized. Consequently, they may identify better with the rules and norms of a range of other communities, possibly gangs, other criminal associates, cults, etc. Furthermore, there may be other social obstacles forcing the offender out of the ethical community prior to his decision to commit an offence, which strongly suggests that punishment would not be the only mechanism through which a citizen's ties with his community could be severed. Nevertheless, in these cases, the protection afforded to them by Community Ethics no longer applies (Peter, 2006).

More importantly, what becomes of those offenders who commit crimes while maintaining their desire to participate in the community they offended against? The author presents another logical explanation here. Despite their desire to maintain their ties to their community, there is a need to punish offenders as the absence of punishment would send the wrong message and likely condone future acts in the community. Accordingly, a system designed to identify, detect and punish crimes is good for the community. However, in keeping with Community Ethics, this system must not have the effect of cutting off the individual/offender from his community. In the author's opinion, "only punishments such as fines and community service are acceptable" (Peter, 2006). Should the offender fail to comply with these, he would consequently be viewed as making the choice to cut himself from his community, and could subsequently be imprisoned. Based on the above, it is fair to say that, according to Community Ethics, imprisonment as a form of punishment has the effect of severing the ties between an individual and his community and that to do so would

be unethical, unless the individual has clearly demonstrated his desire not to be part of said community.

Evidence of the retribution theory is noted in Community Ethics. All of the accountability rests on the shoulders of the offender. His actions determine the outcome of his treatment, yet no weight is given to the role played by the community as a whole. Through this rationale, Community Ethics is able to justify the use of incarceration to punish offenders, despite finding the practice unethical.

According to this premise, in all cases, incarceration has the effect of severing the inmate's ties with his community, but is this accurate? Can the way in which we administer sentences of imprisonment impact the effect it has on the relationship between an offender and his community? Would a system of imprisonment that enables inmates to maintain and nurture their relationship with their community make it more ethical? To what extent should the penal system nurture this relationship? These are some of the considerations required to assess whether the guiding principles of Canadian corrections are ethical.

Currently, the CSC has a well developed policy for visitors and correspondence as well as provisions for the offender's participation in private family visits. These programs are vital for ensuring offenders nurture and maintain their ties to community contacts. The permeability of the institutional setting with the community creates a link for offenders to the friends and family that support them. This has the effect of reminding the offender of the value he has in the community while providing him with an opportunity to "correct" himself so that he may resume his place among his peers. The role the community plays in

this process is essential and I find it difficult to believe how any ethical consideration could ignore the value of this variable in the study of punishment.

### ***Defences and Criticism***

We have seen how theories of punishment have influenced penal practices in Canada, yet how do the theories lead to concrete arguments for and against punishment? Below, I present some of the more common arguments for each perspective.

Proponents of the penal system argue that punishment is necessary because the state must intervene in the face of criminal acts. On that premise, they believe the imposition of a prison sentence will deter future offences by the general public and the offender himself. In their opinion, incarceration naturally reduces crime rates (i.e. the more people in prison, the lower the crime rates). This is achieved not only through deterrence, but through the incapacitation of the incarcerated offender. This in turn contributes to the safety of the public, who requires that the state protect it from offenders. The victim also needs to be appeased by knowing the offender is being punished for his crime. The period of incarceration affords the offender the opportunity to “pay his debt” to society and take responsibility for his actions. It is also necessary because it allows the state to reform and rehabilitate the offender, who is in need of treatment. Without incarceration, these goals could not be accomplished.

Let us consider the argument supporting the idea that the use of incarceration reduces crime rates, by looking at crime rates in both Canada and the United States. At first glance, statistics show that the crime rates have been declining for several years and are

currently at the lowest levels in decades (Statistics Canada, 2011). This is true for both Canada and the United States (Statistics Canada, 2001). However, the reasons for this decline cannot be attributed to the use of incarceration alone because how incarceration is used in Canada varies greatly from custodial practices in the United States. While Canada is recognized internationally for its rehabilitative correctional programs, the United States is better known for warehousing offenders. A testament to this is the fact they have the highest incarceration rate in the world.

The United States is also known for its retributive approach to corrections and for controversial initiatives, such as the ones developed by notorious Maricopa County Sheriff, Joe Arpaio. This elected sheriff of Maricopa County, Arizona has introduced contentious practices such as creating a “tent city” for inmates (inside which temperatures were recorded as high as 60 degrees Celsius), forcing inmates to wear pink underwear (intended to embarrass them), the reinstatement of chain gangs (although on a volunteer basis) and forcing inmates to sign organ donor cards. He is so popular locally that he continues to be re-elected and has a store where Maricopa County paraphernalia are sold. However, Arpaio is not popular with human rights activists, having been publicly criticised by Amnesty International, the American Civil Liberties Union, the American Jewish Committee, and the Anti-Defamation League in addition to being investigated by the United States Department of Justice (Wikipedia, 2012).

I do not want to use the worst example of American custodial practices to make my point, but I would argue that this is not an isolated case and that practices such as these are illustrative of the extreme to which American correctional philosophy can lead to and how

significantly they set themselves apart from Canadian practices. That being said, given the American penal system relies heavily on incarceration as a form of punishment, and that they defend incarceration as an effective crime reduction tool, should the crime rates in the United States not be among the lowest in the world? Actually, the United States has never been in a position to boast about low crime rates. In fact, a 2001 Statistics Canada report comparing crime in Canada and in the United States indicated that homicide rates (per 100,000) in Canada was at 1.8 while the rate in the United States was more than three times higher with a value of 5.5. In 2011, Statistics Canada recorded Canada's homicide rate at 1.6, which is consistent with the trending decline in North American crime rates, while the United States Census Bureau recorded the 2009 homicide rate at 5.0, which continues to be greater than Canada. This does not support the argument that incarceration acts as a general and specific deterrent, thus reducing crime rates. Unfortunately, proponents of this position are unable to support this claim and more evidence supporting the contrary appears to be surfacing.

So to say that incarceration contributes to public safety through the reduction of crime rates and deterrence is erroneous. Critics of the penal system refute the proposition that incarceration reduces crime. In fact, they argue that the criminal justice system increases criminality through the creation of legislation criminalizing victimless crimes. Abolitionists actually promote the decriminalization of certain drugs (particularly marijuana) and prostitution as a means of reducing crime rates. Their argument is that a situation can be just that, a situation, but that once legislation defines the situation as problematic, a conflict arises which requires remedy. In their 2011 report on crime, Statistics Canada

noted some exceptions to the declining trend in crime rates; interestingly enough, increases were recorded for child pornography offences (+36%), firearm offences (+11%), criminal harassment (+5%) and sexual assault (+5%). Furthermore, they reported an upward trend, starting in the early 1990s, in the number of drug offences (+10%) driven primarily by cannabis offences. These results are not surprising when considering the political agenda of the Harper government, which pushed its “get tough on crime” approach on child pornography, firearm offences and drugs since 2006. These results give some credibility to the abolitionist’s position that the criminal justice system can have the effect of increasing crime rather than reducing it. This is the result of the increased efforts to prosecute certain types of crime. The added resources (funding, additional police officers, mandate, etc) can only have the effect of increasing statistical data.

As for incarceration offering an opportunity to rehabilitate the offender, critics will argue that prison is a poor setting in which to rehabilitate and that it instead acts as a “school of crime” by exposing low-level offenders to violent and seasoned criminals. This is especially true in the case of gang recruitment in Canadian institutions. Furthermore, critics are of the opinion that the penal system exposes individuals to social isolation, dehumanization and a stigmatization that will last well beyond the completion of the sentence imposed, particularly in the case of imprisonment. These are all obstacles to a successful reintegration. At the same time, the Canadian parole system offers released offenders structured support upon entry to the community following incarceration. A gradual transition is key to good case management in Canada. The introduction of earned release and the abolition of statutory release are both contrary to the idea of gradual release

and will therefore limit the system's ability to offset the effects of incarceration upon an offenders release to the community. This is especially true in the case of offenders who will be released at the expiration of their sentence.

Critics of the penal system also point to the lack of adequate and equitable legal representation across the board. This, in their opinion, is leading to the incarceration of the lower socio-economic layers of society. Those who have more money are able to retain superior legal representation and consequently are less likely to serve time in a penitentiary. This is problematic because all citizens are thought to be equal before the law, which is not the case.

Another concern by critics is the use of incarceration as a "default" asylum. Mental health cases are becoming more and more prevalent in the correctional setting. So much so that dealing with mental health comprises an important part of the CSC's Report on Plans and Priorities for 2011-12. Abolitionists believe that the incarceration of mentally ill individuals is a prime example of the depravity in the penal system (Wikipedia, 2012).

Finally, critics argue that incarceration comes at a great financial cost to the public and that positive results (in reducing crime) could be achieved through the imposition of community-based sanctions. A research conducted in the U.K. appears to support this position (Matrix Knowledge Group, 2007).

The above simplifies the more common arguments for and against incarceration. More extensive critiques of the penal system and punishment have been developed by great thinkers such as Beccaria, Foucault and Mathieson, to name a few. In my opinion, one of the

most interesting interpretations of work on prisons (indirectly) is Eving Goffman's conceptualization of the Total Institution. Without explicitly being a critique of the prison setting, Goffman exposes the lack of humanity in the practice of initiating the recluse to the Total Institution.

Aside from the obvious consequences of incarceration, such as the loss of freedom, isolation, prison violence and stigma, Goffman explains in *Asylum: Essay On The Social Situation of Mental Patients and Other Inmates* the plight of inmates in the "total institution". His work shows in detail how the "total institution" takes charge of the inmate and controls his social relationships, either by breaking them off or by depriving the inmate of any privacy. According to Goffman, by taking charge of the confined person, the total institution wipes their slate clean to turn them into "acceptable" citizens. Goffman describes the "total institution" as producing a coercive setting designed to alter personalities (Goffman, 1968). Through this process, the "total Institution" establishes a large void between those in authority and the detainees. The inmates harbour feelings of inferiority, weakness and guilt. At times, they even believe that society has given up on them and that they are rejected by their loved ones. Goffman explains how this results in inmates, overcome by shame, isolating themselves from the outside world and slowly beginning to better identify with his fellow inmates. When this process is completed, inmates become subjects of the "total institution".

Today, in the penitentiary environment, elements of the "total institution" are still present. There is evidence of the void between correctional officers and inmates and correctional officers still look to ensure the "prisonization" of the inmates (UCCO, 2002). Is

this process ethical? Should inmates acclimatise to the institutional setting and can this be accomplished in an ethical manner? Is the “total institution”, as described by Goffman an ethical model for this to occur? In my experience, I do not believe that the institutionalization of human beings is beneficial to either the inmate, the guards or the public at large. Offenders can be subjected to such lengthy prison terms that when they become institutionalized, they struggle to make the simplest decisions once released. Their identity is almost exclusively dictated by the prison routine of the institution and adjusting to the outside world can be daunting. Furthermore, the “total institution” strips the offender down to the point where his criminality overshadows his identity. They are no longer human, they become monsters by association, no matter what their offences. They will face rejection from the public as their criminal record impedes their efforts to reintegrate. This is a manifestation of Goffman’s belief that an inmate in the “total institution” identifies better with fellow inmates as a result of years of isolation from the outside world. Unfortunately, for such inmates, a return to the institution can be more reassuring than a life of freedom.

Although I state that elements of the “total institution” are still present in Canadian corrections, I also believe that a number of reforms have been implemented to counteract the effects of institutionalization. Correctional programs, work release programs, temporary absences and gradual release strategies are all part of this shift motivated by the rehabilitative theory. When considering the effects of the Total Institution, as presented by Goffman, I am satisfied that a correctional model based on the Total Institution is unethical. The analysis of the Total Institution exposes something ugly about penitentiary life and

should empower us to strive for something better. As long as elements of the total institutions are present in our system, efforts to eliminate them should persist.

## CHAPTER 3: INTERPRETATION

### *Issues in Real Time*

When I first set out to write this paper, I had my own points of view on what needed to change in the penal system. Still, I was surprised to find that through the history of the Canadian penal system, the problems I identify today are those that plagued the system since its inception. Although I address these issues in “real time”, I have shown how these issues have been reported time and time again and how they have helped shape the philosophy behind Canadian corrections. In light of what has been discussed, I have grouped the issues in six categories.

### *Lack of Public Support and Media Portrayals*

The lack of public interest in Canadian corrections is documented as early as 1938, in the Archambault Report (Archambault, 1938)<sup>2</sup>. Despite having nearly all of its recommendations implemented, this issue has persisted. In 1956, the Fauteux Report pointed out that improvement in Canadian corrections lagged far behind other social sciences and attributed this to the “continuing lack of public interest in the subject” (Fauteux, Common, Edmison, & McCulley, 1956). Furthermore, the report states that “at no time does there appear to have been any real understanding by the public at large of the manifold problems involved or any widespread demand, by the public, for the logical and orderly development of a system of corrections compatible with the national character of Canada” (Fauteux, Common, Edmison, & McCulley, 1956). By 1971, when the

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<sup>2</sup> pp. 10

Swackhamer Report was published, the importance of public engagement was underlined, acknowledging that little progress had been made since the Archambault report (Archambault, 1938)<sup>3</sup>. It also noted that the penitentiary system was one of the last remaining public institutions that was closed to the general public and that the communication barrier that separates the prison, its administration and general population from the general community carries unwarranted risks.

It is true that some initiatives have been implemented to mitigate this risk. One significant example is the Citizen's Advisory Committee (CAC). Entrenched in legislation, these committees exist across the country and are almost without exception associated with each federal correctional facility in Canada (institutions and parole offices). They are composed of community members who interact with offenders and the CSC and, as part of the CAC, provide impartial advice to the CSC on correctional policy and case management decision. Other initiatives include meeting with Members of Parliament, schools, and holding community forums. While these are all good initiatives, they tend to attract people who are already interested in corrections, such as retired professionals and students hoping to one day work in corrections. Furthermore, these projects are initiated locally; this means that one office can establish good community contacts in its neighbourhood, while another commits little to no time to establishing relationships with their community partners. This is especially the case when an already overworked personnel isn't afforded the time to take on "side jobs". Nevertheless, the responsibility to solve this problem does not rest solely on the frontline. A widespread national campaign to educate the public and counter the image that

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<sup>3</sup> pp.62

has been portrayed in the media is needed. Such campaigns have been launched by the ministry of Public Safety and CSC to promote the eradication of drugs from penitentiaries and to promote victims' rights.

The Media has so badly damaged the image of the penal system that the task may seem insurmountable. Roberts and Doob have shown the influence the media have and the degree to which they sensationalize criminality. The push for retribution in the media is relentless and it is rarely met with resistance. The system's inability to stand up against the public's ill-founded criticism is problematic. The Archambault report scolded an institutional head for his decision to have the charges brought against an inmate reduced in an attempt to avoid having the case go to trial in a public court, for fear that evidence of prison conditions would be exposed and the prominence it would be given in the press. The report went on to say that the case was "illustrative of the secrecy that prevails and has prevailed in the administration of Canadian penitentiaries and that this behaviour leads to public distrust in the administration, where it ought to exist" (Archambault, 1938). Again, there have been improvements in this area, like information on websites, in media releases, having a communications sector with specially trained staff to speak on behalf of the CSC. However, media releases are generally reactionary and neutral. Information on websites is basic and one-sided. CSC has little or no voice in the debate on punishment. They stand by their mandate to ensure public safety and rehabilitate offenders. Perhaps it is too much to ask from this small department, or even the government, to engage in a public awareness campaign that would quash all of the misconceptions about corrections in the public arena. How then is the public to become more knowledgeable on corrections as

outsiders? Why is the public offered so few opportunities to see inside corrections? Conceivably, because the public serves a greater purpose.

Regularly, we see how public pressure can lead to swift action by political parties. The relationship between the two is an important one (Paparozzi & DeMichele, 2008). Political parties survive only with the support of the public. To garner the public's support, political parties have to develop political platforms that will please the public. Because crime is so poorly understood, the public is easily persuaded to support a tough approach on crime. This has proven to be an effective way of gaining support during election time. My concern with this method is that it leads to more ideological political platforms than one based on research and expert opinion.

#### *The Unelected Expert and the Elected Politician*

Public policy is primarily developed through the combined efforts of the elected politician, the unelected expert and in part by the public. The tensions between these actors were studied at the 2011 Walter Gordon Massey Symposium. These tensions are the result of trying to determine which of these actors' voices should have more weight in the creation of public policy. In a democracy, it would be logical to say that the "people's" voice should take the lead. And ultimately, politicians are elected by the people for the people. So the two work together to advance their interests. But where does this leave the experts? They are the guardians of knowledge and reason; the subject matter experts. What systems are in place to ensure their voices are heard?

In Canada, at this very moment, politicians are moving corrections in a direction that some experts would advise against (Jackson & Stewart, 2010). The get tough on crime agenda suits the public and the ensuing legislative changes are met with little resistance. The neutral public servants must carry out their duties, as defined by the government in power, irrespective of their expertise on the matter. This places the public servant in the position of a peon, a reality that was made evident in the abovementioned UCCO report, where correctional officers documented their frustrations over being treated like “subordinate civil servants” (UCCO, 2002). This feeling is not limited to correctional officers; it is felt throughout the organization.

Mario Paparozzi raises some very pertinent dangers in having unskilled or unqualified policy makers; specifically in the case of corrections. He explains that giving credibility to unqualified and uncommitted individuals has profoundly negative implications for the day-to-day practice (Paparozzi & Lowenkamp, 2000). The lack of interest in expert advice by politicians is problematic. Paparozzi offers an explanation whereby criminal justice is viewed as a “soft science”, as well as an “eclectic” discipline, in that it calls on a variety of social sciences to shape itself. In Paparozzi’s opinion, this multidisciplinary approach results in a fragmented hodgepodge of theories, “facts”, and policy recommendations. He states that in the end, “politics, personal ideology, and preconceived but often erroneous, common sense notions predominate. Respect for evidence is secondary” (Paparozzi & Lowenkamp, 2000).

This is a significant problem in corrections today. Ideologically based policy is dominating the field and there is a lack of respect for evidence-based correctional practice.

There is little experts can do to make their voices heard and those carrying out the changes on the frontline are expected to be poised and neutral in the face of these changes.

*Lack of Professionalization in the field of Corrections*

In Papparozzi's view, a professionalization of the field of corrections would help avoid misguided correctional policies. Currently, there is a gap in the area of corrections. There is a lack of standardization of evidence based approaches, procedures and practices (the only exception being correctional programs). In my experience as a parole officer, I found that new staff were thrown into positions with little guidance and given a great deal of responsibility without being fully apprised of the standards by which they would be assessed. The core advantage of this was that each parole officer could handle their cases in their own style. The disadvantages however are numerous; especially in the community setting. The varying styles of parole officers can, at the best of times, be noteworthy. The inconsistency in the application of parole practices signals mixed messages to offenders. As offenders experience parole under the supervision of different parole officers, they soon learn which parole officers they prefer and which to avoid. This leads to a personalization of the task whereby the individual parole officer's behaviour becomes more significant than what the organization stands for. And in extreme cases, the broadness of discretionary authority (with minimal oversight) by the parole officer may be viewed as a personal attack on the offender, thus being construed as a lack of professionalism. I am not ignoring the fact that offenders often make this accusation, but it quickly becomes clear in which cases this accusation is made in the heat of the moment and when it is a genuine conviction.

Having worked as a parole officer, I can appreciate the value of discretionary authority. However, I was faced with ethical and complex issues in this capacity and other than being referred to policy, keeping in mind the least restrictive measure and some prompting from a parole officer supervisor, there was, at best, limited support for the resolution of ethical dilemmas or for the development of moral reasoning. Despite ensuring yearly personal development plans and a mandatory five days of “professional” development, there is no actually qualified or recognized training offered to parole officers. The five days of “in house” training are usually crammed into the last few months of the fiscal year and usually consist of a “plug” for issues that are of interest to CSC senior management (i.e. increase in walkways from minimum security institutions, what not to do based on the findings of an international investigation that led to media attention, etc). In other words, the focus is on addressing problems that are flagged by the executive management, acting as information sessions, rather than a strengthening of the workforce. Lack of professional training is also reported by correctional officers (Samak, Qussaï; Prevention Group (Health-Safety-Environement) Labour Relations Departement, 2008); approximately 75% of correctional officers surveyed found that the technical training and supervision offered to them was average to poor ([Annex 2](#)).

As a result of these unfortunate attempts to offer professional development, staff often feel like the training is a waste of their time, that the goal of the training offered is simply geared towards compliance (with the five days of promised development) and usually views the time away from their already overloaded schedule as a huge

inconvenience. It could be said that the training would be more likely to lead someone to burnout than professional growth.

The lack of interest by the organization to provide quality training and qualifications is a problem. Unlike some correctional services, the CSC does operate a Correctional Management Learning Centre (CMLC). As its name suggests, the CMLC is geared towards developing staff for management positions. While I recognize the excellence of the CMLC, it is only available to a very small percentage of the frontline staff, which almost certainly will subsequently move off the frontline. This staff will move into management positions and will presumably get the training required to take on more responsibility, but they will still have a poor understanding of what is required on the frontline. This is why despite having frontline staff moving through the ranks in the organization, the gap between frontline staff and management still has not been mended.

Aside from the CMLC, induction training is offered to prospective correctional officers, parole officers, correctional program officers and new employees. Correctional officers receive a 13-week training at one of CSC Regional Staff College. This is perhaps the most strenuous, professional program operated by the CSC. By the end of the 13-week, prospective guards must “pass” the program to be offered employment. Training for correctional program officers is research-based, skills oriented and also concludes with an evaluation, which participants must succeed in before delivering programs. As for parole officers and other new employees to the CSC, a general orientation is given and there is no requirement to demonstrate a level of understanding prior to employment. From personal experience, I can say that the parole officer training was superficial at best. Anyone

employed by the CSC prior to completing this training would likely have known most of the information presented. In my opinion, nothing in this training prepares the participant for work as a parole officer. Through the completion of additional training, I soon realized that CSC continually provides knowledge-based rather than skills-based training. While there is some value in knowledge-based training, there are limitations; there is a famous saying that states “*if you want to help someone who is hungry, you don’t give him a fish, you give him a fishing rod*”. Skills training can be compared to teaching someone how to fish. It is giving tools to the student that can be used in the workforce to ensure their long-term success. While this is good for new parole officers, veteran parole officers have different developmental needs. It may be a good idea to develop training that emphasizes skills in the early years of a correctional worker’s career and slowly shift towards research-based and specialized approaches in the latter years. None of this appears to be taken into consideration when training is organized in CSC.

I find it surprising that with the resources the CSC has, like a prolific research branch, that it does not do more to communicate evidence-based approaches to frontline staff. CSC employs several professional groups such as psychologists, social workers, nurses, lawyers, etc. Each of these groups is subject to professional licensing that keeps them in line with deontological and professional standards. This is in contrast to correctional “professionals”, who lack a standardization of approaches, procedures and practices across the discipline. This is an extremely valid concern raised by Paparozzi and Lowenkamp. They state that in the absence of such a process:

...corrections operates in non-systematic ways and sometimes represents something akin to a free for all in terms of policy development. This kind of process makes a profession vulnerable to “panaceaphilia.” In summary, the constant search for panaceas in correctional policy, coupled with weak, nonexistent or inappropriate standardization of professional credentials, policies, and practices, establishes a fertile environment for acceptance of the notion that virtually anyone can lead and do the work of corrections in publicly relevant ways. Because such individuals do not have the necessary training, and are bound by few legal and virtually no professional boundaries, they are ill prepared to sensibly defend or advocate for policies and practices that are tied to the results desired. More often than not, these kinds of leaders are led by, rather than providing leadership to, political processes (Paparozzi & Lowenkamp, 2000).

The current climate in Canadian corrections appears to give cause to this concern.

#### *Retribution vs. Rehabilitation*

The dual objective of the Canadian correctional system is central to everything it does. In the context detailed above, the lack of advocacy for evidence-based policy by CSC leaders opens the door to political ideologies. Consequently, the pendulum shifts from the left to the right. In the end, we are left with a politically motivated system that, with each shift, forces the CSC to re-adapt to new political platforms and policy. The result of this constant re-direction of operations hinders CSC’s ability to form its own integrated and research-based approach to corrections. The evolution and current state of Canadian corrections appear to suggest that the management of federal sentences can no longer be handled in accordance with the principles of retribution and rehabilitation. That is because, especially in the past 30 years, the rise in human rights has changed corrections to the point where entire sectors have been created within CSC to recognize the special needs of aboriginal offender, women offenders and now offenders with mental health needs. This compartmentalization is leading to problems and this is another example of CSC’s imminent

need to form an integrated approach to what it does and to ensure its workforce not only understand, but be equipped to deal with the multitude of obstacles they face.

### *The Institutional Element*

The prison environment is dehumanizing, demoralizing and violent by nature. As we have seen, these effects are not only experienced by offenders; they are equally powerful with correctional staff. One of the most shocking displays of this is the Stanford experiment (Zimbardo, 2007). Goffman also illustrates well the dehumanizing effects of the Total Institution. No one can argue that the prison setting is not a harsh one. This social setting, as demonstrated by Dr. Zimbardo (Zimbardo, 2007) and noted in the Canadian system by the Swackhamer Report (Swackhamer, McGrath, Scott, & Popp, 1971), can lead to a schismatic and dangerously polarized nature of life for custodial staff and inmates. The various Commissions of Inquiry conducted on Canadian corrections have all exposed the potential and very real dangers of the fractional relationship between these two groups.

It's surprising that none of the reforms in the history of Canadian corrections has ever specifically targeted the improvement of the relationship between guards and prisoners. Some minor changes have taken place, such as the ability for offenders to speak to custodial staff, but most changes to legislation and policy have been around standards. UCCO explains well, in their 2002 report on the changes to the correctional officer position, that correctional officers today feels as though the changes have occurred without their involvement. They feel the push for rehabilitation has been at the expense of the correctional officer's authority and they are frustrated by the lack of consideration given to

them in the policy development process. This has strained correctional officers' relationships with both inmates and management. The Archambault report identified poor relationships between guards and inmates as an obstacle for offender rehabilitation (Archambault, 1938)<sup>4</sup>. From that moment on, it should have become clear that the relationship between guards and prisoners deserved more attention.

Knowing what we know about human behaviour and the social context of prisons, more should be done to improve the climate in which the core of correctional operations is carried out. This should be a priority for CSC.

### *Human Rights*

Why is a system in the developed world that is an international leader in correctional programs, research and human rights, unable to eradicate human rights violations in its own prisons? This is an important question, because human rights are a standard by which all can be held accountable. The application of human rights, and possibly research-based treatment, are possibly the only standard against which the system can demonstrate measured improvements.

Prison conditions have improved significantly in Canada, and they are among the best in the world. However, there is an ongoing need to re-establish standards by which we operate, as these too have changed over time. Accordingly, we must continually assess ourselves against evolving standards. As we have seen in this paper, violations of existing standards still occur. These violations must be analyzed in "real time", not simply through

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<sup>4</sup>pp. 68

the comparison of earlier, less favorable, conditions (i.e. early 1900s). When analyzed in “real time”, it becomes evident that despite significant improvements in prison conditions, violations of standards have been recorded over and over again. Notwithstanding the various recommendations made to correct this embarrassing problem, the fundamental issue remains unchanged. The lack of action in targeting the abuse itself and the people who perpetrate it has been masked by the overall improvements to the conditions inside prisons. Dr. Zimbardo has shown us how the lack of action in addressing both the social context and individual behaviour can lead to evil acts. It is imperative that in order to ensure the respect of human rights behind prison walls, that the standards in place not only exist, but must be enforced at every level of the organization.

### ***Analysis***

In the aforementioned, I have identified areas of concern in Canadian corrections, specifically, the lack of public interest and the media’s portrayal of the correctional system, the presence of political interference in correctional policy, the dual objective of the CSC, the institutional element and human rights violations.

These concerns are not entirely foreign to CSC; so what is being done to improve on these areas. Rather than looking at any of CSC’s initiatives, I think would be more appropriate to consider the report of the Correctional Service of Canada Review Panel, *A Roadmap to Strengthening Public Safety*. The report has been the elementary document for correctional policy since its completion in 2007. Some of the recommendations, ensuing action and how they pertain to the areas of concerns are visited below.

Among the recommendations, the first that attracted my attention was the recommendation to change wording in section 4 (Principles) of the CCRA to read that offenders should be “obligated” to obey penitentiary rules and to respect the authority and position of the staff. Traditionally, the wording stated that offenders were “expected” to obey the rules. The new wording is part of an attempt to enhance offender accountability. The desire to have the offender be accountable for his behaviour and accept the punishment is consistent with the retributive school of thought. Within the same recommendation, we find the addition of the word “basic” in the CCRA’s subsection “... *that offenders retain the basic rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence*”. In my opinion, this type of wording is counterproductive to good and ethical corrections. I am not an expert in human or civil rights, but I have a reasonable understanding of the Canadian Charter of Rights and Freedoms and the guarantees that are made to all Canadians under this piece of legislation. It is widely accepted that offenders who are sentenced to imprisonment have their right to liberty compromised in accordance with Section 1 of the Charter, which states that the guarantee of rights and freedoms is only assured to reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Hence, though trial and conviction, the law demonstrates its justification for withholding an offender’s right to liberty. As for the other rights guaranteed under the Charter, namely fundamental freedoms, democratic rights, mobility rights, legal rights and equality rights, most can be maintained (within reason) throughout an offenders sentence. Accordingly, Section 4 of the CCRA addresses this through the acknowledgement that offenders retain the rights and privileges of all members of society with the exception, by

law, of those compromised by their sentence. In light of the aforementioned, the addition of the word “*basic*”, as recommended by the Correctional Service of Canada Review Panel, adds a third dimension, which I argue is detrimental to offender rights. It somehow creates a nebulous class of citizens, caught in a grey area that has yet to be defined. This new dimension opens the door to interpretation by correctional staff while at the same time suggesting that not all rights need to be afforded to offenders. To adopt such an approach is irresponsible and perilous. Especially in a context where the offender would now be “*obligated*” to obey penitentiary rules and respect the authority and position of the staff. Plainly put, I argue that this ideology places the CSC at risk for future human rights abuses.

Concerns about the lack of consideration for human rights in the Roadmap to Strengthen Public Safety were highlighted by Jackson and Graham (2010). They pointed out that unlike most previous reports and commissions; there is no mention of prisoners’ human rights in the Panel’s report. For Jackson and Graham, the lack of consideration given to human rights is counterproductive to an effective correctional system. Not only do I agree with this statement, but I would argue that other recommendations in the report will also impact negatively on effective corrections.

The elimination of Statutory Release and other forms of conditional releases (such as accelerated day parole, which was abolished in March 2010) raises concerns not only with correctional professionals; the Panel itself recognizes the importance of gradual release by voicing John Howard Society of Canada’s concerns:

Enhancing the prospect of successful reintegration cannot be achieved by doing nothing. Leaving people in prison until their term expires is tantamount to doing nothing. The sentence is a window of opportunity within which correctional systems can make positive changes. Doing something constructive means actively working to influence the choices that individual [offenders] make on release and influencing

the environment into which they are released. Both are achieved through gradual release (PWGSC, 2007).

Yet the Panel states in its Report that “presumptive release is a key disincentive to offender accountability”. The Panel claims that the gaps created by the elimination of conditional releases, such as APR and SR, can be bridged through the enhancement of community programs and interventions while the offender is on conditional release (Correctional Service of Canada Review Panel, 2007). However, it fails to address the issue of offenders who will serve out their sentence in custody and be release at the expiration of their sentence without any form of supervision.

In order to demonstrate how the elimination of statutory release could be effective, the Panel should have investigated the percentage of offenders it believed would submit to their proposed “offender accountability” scheme vs. waiting out the end of their sentence. There is no evidence in this report that offenders who have a history of being uncooperative (and figuratively sat on their hands until their statutory release) would be more likely to cooperative with authorities under the new scheme. Without fully understanding the impact of their proposed earned parole system, the claim that the elimination of Statutory Release will reduce recidivism rates cannot be made. Furthermore, the term “reduction of recidivism” is subjective. Some researchers may regard recidivism as the perpetration of offences *during* an offender’s sentence, while he is still under the jurisdiction of the CSC. From that perspective, the abolition of statutory release may appear to reduce the rate of recidivism. However, if public safety is paramount to the work of the CSC, recidivism beyond the expiration of an offender’s sentence should also have significance. With this perspective, we are looking at a very different picture. A ten to fifteen year longitudinal

study (Annex 3) shows that offenders who are statutorily released are 2 to 2½ times more likely to be re-admitted on a federal sentence than their counterparts, who completed their sentence on parole. Conversely, offenders who were released at the end of their sentence (warrant expiry) were found to be 2½ to 4 times more likely to be re-admitted on a federal sentence than their counterparts, who completed their sentence on parole. If one were to seriously consider this, it would become apparent that the elimination of SR would naturally increase the number of offenders released at warrant expiry, which would simultaneously have the effect of increasing recidivism rates as a whole. The saving grace for CSC and the ministry of Public Safety is that this increase would not occur under the watch of the CSC; offenders' would have completed their sentence. Consequently, it would appear, for the time being, that the most significant impact of the elimination of Statutory Release would be to give the public the appearance that the CSC is able to keep recidivism rates low. Who then assumes the moral obligation for the presumably high risk offenders who could not be conditionally released before the expiration of their sentence? For a Report that is so strongly geared towards accountability, it is surprising that this aspect of case management was not explored in greater depth.

Another position taken by the Panel is that “employment has been eclipsed as a priority over the past decade by programs that address other core needs (i.e. substance abuse and violence)”. In other words, the Panel believes that the CSC’S prioritization of correctional programs over employment skills development is a flaw. They support this position with statements made by external partners of the CSC, who all believe employment can facilitate offenders’ ability to abide by their conditional release conditions and abstain from reoffending. Although this rational approach appears to be a logical one, a trained

criminologist is better able to consider the complexities of the relationship between employment and recidivism.

As a general rule, employment is beneficial for offenders' long term success. In some cases, offenders are able to secure employment very quickly following their release. In fact, with the Panel's recommendation, it is likely more offenders will be able to secure employment upon their release. However, the Panel fails to consider the offender's ability to "maintain" employment. Therein lies the challenge. Without first addressing offenders' criminal behaviour, their ability to develop or sustain a livelihood is seriously hampered. Offenders who secure employment upon their release must abide by conditions directly related to their criminogenic factors. Without the skills necessary to manage the contributing factors to criminal behaviour, offenders not only risks losing their job, they may also face a return to custody. Furthermore, research on the effectiveness of correctional programs is overwhelming, while the Panel offered no solid evidence to support their position to have CSC prioritize employment skills in their efforts to rehabilitate offenders. In fact, the Panel has even been accused of soliciting research from the CSC Research to support their findings, after the fact, making it policy based evidence rather than evidenced based policy (Jackson & Stewart, 2010).

Another recommendation made by the Panel to improve the chances of offenders' successful reintegration is to eliminate drugs from prison. While they applaud CSC's efforts to date (Prevention, Treatment and Enforcement Model), the Panel is of the opinion that much more should be done. The presence of illicit substances and other contraband within prison walls is a legitimate concern and evidence that more should be done. I have already pointed out the risks involved with substance use while incarcerated, i.e. debts, muscling,

assaults, infectious diseases, etc. There is a genuine belief that the eradication of drugs from prison would lead to safer environments for both staff and offenders. However, the Panel proposes almost exclusively static security measures to deal with the problem. Some of the proposed measures are the enhancement of the drug detector dog program, mandatory testing for infectious disease, enhancements to perimeter controls, searches and technology used to detect drugs and other illicit substances, intelligence gathering and changes to the visits program. The latter is particularly significant, because the Panel states staff and unions have told them visitors are considered one of the major sources of drugs coming into the penitentiaries. The Panel agreed with this statement and found that there were inconsistencies in the searches carried out across Canada and that the CSC could improve on the quality assurance of the existing policy. While all of this may be true, the Panel fails to consider an important aspect of prison life in their attempt to eliminate drugs from prisons. Nowhere do they mention the possibility of institutional staff being involved in the smuggling of drugs into prisons. Although there is little literature on this subject, the occurrence of such cases is often reported in the news. Such occurrences lead to the permeability of prisons. Consequently, any attempt to eliminate drugs from prisons without addressing this issue will almost certainly fail. What is more surprising is that in the case of visitors, the report recommends that visitors who are caught smuggling drugs into prisons be barred from entering penitentiaries for no less than ten years and they call for the Controlled Drugs and Substances Act (CDSA) to create an aggregating factor (or a separate offence) for the introduction of drugs into a penitentiary with a minimum penalty consecutive to any existing sentence. This is clearly indicative of the “tough on crime” approach the Harper government has taken. Would we not expect then that institutional staff who, in this climate,

transgress the laws that prohibits the entry of drugs into penitentiaries be used as examples? In August 2010, a manager at a maximum-security federal prison was caught smuggling a substantial quantity of drugs in a scheme apparently orchestrated by the Hells Angels biker gang (Tripp, 2011). He was convicted and received a ninety day custodial sentence and twelve months probation. While I am sure this is not an isolated incident, I am unable to give the frequency at which this type of activity occurs. This is in part due to the lack of recognition by the government and a failure to look at the issue more closely. A genuine attempt to accomplish this key objective of the Panel would have attended to this issue rather than simply lead the CSC into “arms race”.

The final key objective of the Panel is the improvement of CSC’s infrastructure. Specifically, the Panel wishes for CSC to have complex style institutions, which would facilitate the population management of inmates. I mentioned earlier that population management has become more complex in recent years and that this has presented obstacles for CSC. The idea of complex style institutions is in contrast with the traditional belief that offenders’ should be managed as a general population. To cope with recent population management, CSC has relied heavily upon administrative segregation. In light of CSC’s obligation, under the CCRA, to “endeavour” to return the offender to the general population at the earliest opportunity, the OCI has highlighted concerns with CSC’s use of segregation. The Office's concerns, which are outlined in their 2010/11 Annual Report, arise as

...an increasing number of special “temporary” units are being used to accommodate (effectively segregate) groups of offenders who, though not meeting the legal criteria for segregation, are nonetheless held in conditions of confinement that replicate or approach that of administrative segregation. The problem is that these units do not generally observe the same procedural, review and monitoring safeguards that legally govern administrative segregation placements (OCI, 2011).

In light on these concerns by the OCI, it is unclear how the complex-style design of the new infrastructure will ensure compliance with legislation. The law currently only recognizes two populations: general population and administrative segregation. The Panel states that regional complex design would enable CSC to better handle the challenges associates with safely managing a diverse range of subpopulations with varying needs and risk profiles. This would be achieved through the placement of offender in different areas within the complex, directed by the motivation and participation level of offenders in their correctional plan. According to the OCI, *“all other 'temporary' units that have proliferated since the late 1990s amount to 'segregation by any other name,' and, in effect, run contrary to what the law directs”* (OCI, 2011). It appears as though the Panel wishes to formalize the creation of sub-groups within institution through the development of the infrastructure but has not made any recommendation to ensure the new design complies with existing legislation. This is another example of the lack of thoroughness in the Panel’s report.

Overall, the Panel groups their recommendation into five key areas, namely Offender Accountability, Eliminating Drugs from Prison, Offender Employability, Physical Infrastructure and Eliminating Statutory Release. Most of the recommendations have been implemented into a “Transformation Agenda” that is currently re-shaping Canadian corrections. Of the five key areas in the Panel’s recommendation, none tackle any of the issues underlined by this paper. An ethical approach to corrections would have highlighted the need to act on these issues but the persistent lack of ethical constructs around the administration and elaboration of correctional policy allows ideologically-based programmes to take precedence.

## *A Eulogy of Truth*

I have established that some of the problems at the core of what needs to change in corrections today have existed since the inception of the Canadian penal system. More recently, Abolitionists have attacked the penal system and questioned its legitimacy. While I agree with many of the Abolitionists' arguments, I find that their refusal to recognise the legitimacy of the penal system precludes the critical analysis of the penal system itself. Still, there is a need to justify the legitimacy of incarceration and ask whether the framework that supports it is ethical.

In view of the aforementioned, I can only conclude that there is currently a lack of will by the public, politicians and the government to ensure the Canadian correctional system develops into an ethical one. Incarceration continues to be "marketed" as the ultimate punishment, without any consideration for the people who will be subjected to it.

The lack of ethical consideration in the pursuit of "locking up" criminals is remarkable. Perhaps the lack of knowledge by the public extends to prison conditions. Stanford and Milgram (Encina, 2004) experiments have shown us that under the right social context a good person can do evil things and that people will inexplicably submit to the power of authority to carry out evil acts. These studies have been used to explain violations of human rights in various settings (prison, war, military prisons, etc.). Despite the knowledge of these dangers, little has been done to address them. It is clear that a cautious re-crafting of the prison's social environment, would lead to a more ethical setting.

Before things can change on the frontline, the framework around it must also be ethical. I would argue that the minimum components to an ethical framework are an

educated public, the support of evidence-based policy by politicians, the standardization of correctional practice through the professionalization of the field, the symbiosis of punishment and rehabilitation, the promotion and respect of human rights and evidently, a sanitation of the prison setting.

It is my impression that most of the changes to date have focused on rules and regulations, several of which have been ideologically motivated. While these are necessary, the human element cannot be ignored. In corrections, it appears as though each incident leads to the creation of a new policy. This reactionary approach does not deal with the core of the problem, which is in part attributable to the people who are responsible for them. I am not implying that sanctions be applied each time a policy is breached, but instead, I recommend that the organization invest in the strengthening of its workforce to achieve their goals rather than rely on policy alone.

Correctional workers carry out responsibilities that constantly call on them to reflect on the dichotomy between punishment and rehabilitation. Mario Paparozzi describes this dual role as a blend between police and social work (Paparozzi & DeMichele, 2008). The balance between these two areas of responsibilities is unique to corrections. Research conducted by Paparozzi and Gendreau in 2005 showed that offenders who were supervised by parole officers who possessed exclusively police or social work professional orientations were more likely to recidivate than offenders who had been supervised by parole officers who adopted a balance (blended) professional orientation (Paparozzi & Gendreau, 2005). To this, they add that further studies supporting the idea that a parole officer's "style" can impact recidivism rates would inevitably be linked to the correctional system's desired

outcome: public safety. Accordingly, any political, organizational or individual inclinations towards either of these extremes (law enforcement or social work) negate the purpose of the system (Paparozzi & Gendreau, 2005).

In March 2009, Carleton University Professor Ralph C. Serin presented his findings on “change” at a conference held in Ottawa for parole officers from across the country. He revealed that in all the studies he had conducted on change, one of the most significant triggers for offender change was the therapeutic alliance he had with the correctional worker responsible for them. This finding is, in my opinion, valuable to the pursuit of good and ethical corrections. It is another indication that the competency of the staff on the frontline is key to CSC’s desired outcome: public safety. Since the findings were shared with CSC, there have been no observable initiatives to make this a priority. In fact, parole officers continue to complain about the volume of reports they must generate; this at the cost of valuable time spent with offenders.

In this context, parole officers are left to use their own judgment in managing their caseloads. While some take the time to conduct meaningful supervision meetings, other are satisfied with “seeing the offender’s face” and getting back to their computers to complete sometimes overdue reports. It is unfair for frontline workers to work in these conditions. They are given all of the responsibility (trust that any incident will reflect badly on the parole officer, not management or the organization), expected to comply with thousands of policies all the while engaging in meaningful contacts with an offender caseload that is dangerously high.

When CSC's mission statement includes a core value that states "*We believe that our strength and our major resource in achieving our objectives is our staff and that human relationships are the cornerstone of our endeavour*", one would expect that more support would be provided to employees who work with offenders. Instead of providing them with skills, the CSC directs their employees through policy alone. However, I strongly believe that to ensure an ethical framework in corrections, correctional employees should be guided not only by policy, but by moral and ethical reasoning.

Where are correctional practitioners to look for to set their ethical compass? Ward and Salmon (2009) found that the dual nature of correctional practitioners' role, this time in regards to therapeutic and legal obligations, suggest that neither traditional mental health ethical codes or norms regulating punishment are able to satisfy the range of tasks confronting them (Ward & Salmon, 2009). Much like Paparozzi and DeMicheli, Ward and Salmon propose the creation of a mixed or hybrid (blended) ethical code, specifically for correctional practitioners. This correctional practice code of ethics must, according Ward and Salmon, explicitly addresses both the punishment and rehabilitation tasks and must be complimented with established values on human rights and human dignity. Jackson and Graham also support the promotion of human rights:

it is out contention – and both academic analysis and Canadian case law back this up – that the discipline and control necessary in the correctional system can be effective in promoting positive change in the individual and avoid being self-defeating only if it is inherently moral and justifiable. Promoting and respecting human rights is not about being soft; it is about being decent. It is also the most effective way of doing corrections (Jackson & Stewart, 2010).

To this, I add that organization wishing to uphold these values ought to have the tools to assess staff prior and following their hiring. According to my research, there are no

such instruments for the recruitment and/or retention of correctional staff. In fact, unlike police officers, employees who are placed in positions warranting the designation of peace officer under the criminal code are not even subject to a psychological evaluation. Given the powers and authority bestowed on these positions, I find that surprising.

Staff training is another aspect of good corrections. Evidence gathered the various inquiries and reviews on corrections show that staff have been and continue to play a significant role in what goes wrong in corrections, particularly in institutional settings. Skills development and a research-based approach to corrections are essential, especially given the dual nature of the role and the difficulty of the task at hand. Through the strengthening of the workforce, positive results are likely and ultimately, public safety is enhanced.

In order for the correctional system to be the best it can be, Jackson and Stewart also point to the recognition of a culture of respect for the rule of law and human rights in addition to holding correctional authorities accountable for abuses of power. This is reminiscent of Justice Louise Arbour's recommendation, following the Commission of Inquiry into certain events at the Prison for Women in Kingston, to add the working "rule of law" in the CSC's mission statement, which it did.

The CSC must strive to lead in the area of human rights and respect for the rule of law as they set the example for the ones who need it the most. In the delivery of a correctional program, the facilitator is told to "model"; this is perceived to be an effective tool in changing offender attitudes and behaviours. Why then not adopt this valuable idea across the front line. Once correctional workers are made aware of the values and ethics they

represent, they can begin to model them in every aspect of their role and any deviation from this could be more easily identified.

All of the measures presented above can help to make the Canadian penal system more ethical. Only then, will it be in a position to defend itself in the face of public scrutiny; that is because it will be able to demonstrate through research-based evidence, the respect for the rule of law and human rights that what they are doing is the “right thing”.

## **CONCLUSION**

The purpose of this thesis was twofold. First, employ the theory of ethical questioning to expose the lack of ethical constructs around the use of imprisonment in the Canadian penal system. Second, propose ethical solutions for improvements in the mechanisms of moral reasoning behind the formulation of correctional policy in Canada; thus ensuring the ethical functioning of Canadian corrections.

What I learned was that the problems that exist today have for generations of correctional workers and that little has been done to get to the core of the issues holding Canadian corrections from being ethical. Not only is correctional policy at the mercy of ideologically motivated politicians, it is divided by the dual objective of the CSC; punishment and rehabilitation. With the exception of correctional programs, research has little to no bearing in the development of correctional policy. This results in frustration for staff who, on the front line, bear the weight of policy changes. This frustration is exacerbated by the lack of guidance and support for professional development to acquire skills and tools to improve performance. In an already difficult work environment, as portrayed by Dr. Zimbardo, frustrations and lack of professional values can lead to

detrimental results. Correctional workers are faced with difficult decisions on a daily basis and the apathy from the public and family members can lead to isolation, which in itself can also lead to problematic behaviours that compromise the integrity of the CSC.

These are all roadblocks to an ethical correctional system, and no amount of policy, directive or law will fix them because the will to act on these issues is what is preventing the CSC from moving towards an ethical model. I've recognized that a great deal of moral fibre is required to look at oneself from this vantage point, but the CSC can no longer praise itself for being amongst the best in the world; at least not until it can demonstrate that it is prepared to act.

There are problems at all levels of the penal system and the only standard by which the system has improved is through the application of Human Rights and possibly research based treatment. The ability to use moral reasoning would be ideal, but in such a complex organization, it is unlikely that a standardized approach can be achieved. Consequently, ensuring the ethics of the penal system's framework through the adoption of the above mentioned solutions, the adherence to the rule of law and the promotion of human rights on the frontline, is the most ethical way to proceed at this juncture. On that note, I conclude with a quote from Swaaningen, which stayed with me through my writing:

Human Rights can function as a moral standard which sets limits to purely instrumental law enforcement, while leaving enough space for normative pluralism in a democratic society. Questions of morality cannot be answered in a detailed way without imposing a false consensus. Human Rights are global enough to avoid this danger. As concrete rules, they embody a formalized ethical threshold beyond which legitimate state intervention cannot go. If a state lowers its standards of morality and subjects those standards to a rationale of efficiency, we fall into a downward spiral of violent despair, a never-ending penal arms race between "criminal" and law enforcement. A Human Rights culture also encourages positive state intervention by specifying the social provisions needed to realize such rights.

The more detailed questions of morality become, the more procedural the orientation needs to be. Law as a moral-practical discourse is more a procedural guaranteed management of dissensus than the controls of a fictitious consensus. This position does justice to the cultural and moral pluralism of present day society without sliding down into the moral minimalism of actuarial justice (Swaaningen, 1997).

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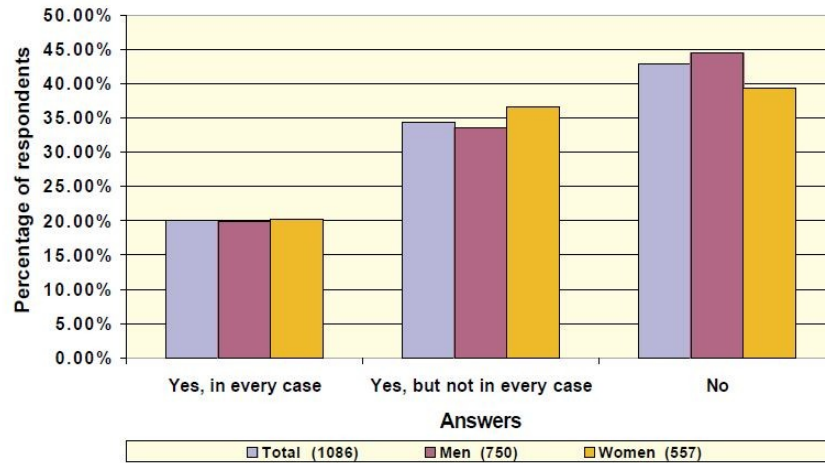
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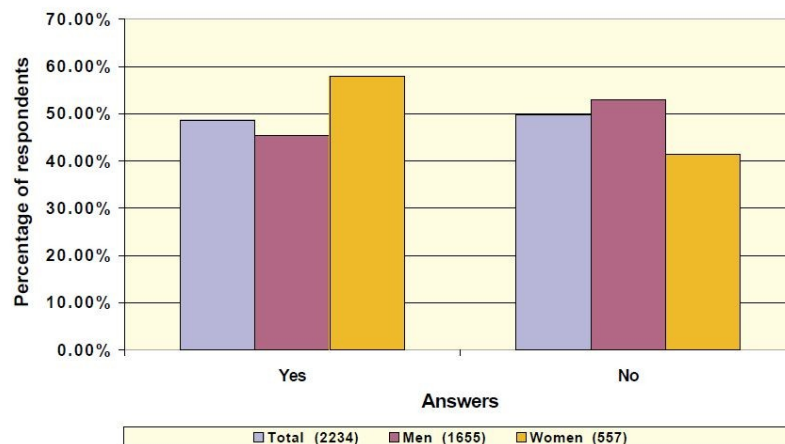
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**ANNEX 1: EVIDENCE OF HARASSMENT AMONG CORRECTIONAL OFFICERS  
IN CSC (Samak, Qussai; Prevention Group (Health-Safety-Environment) Labour  
Relations Department, 2008)**

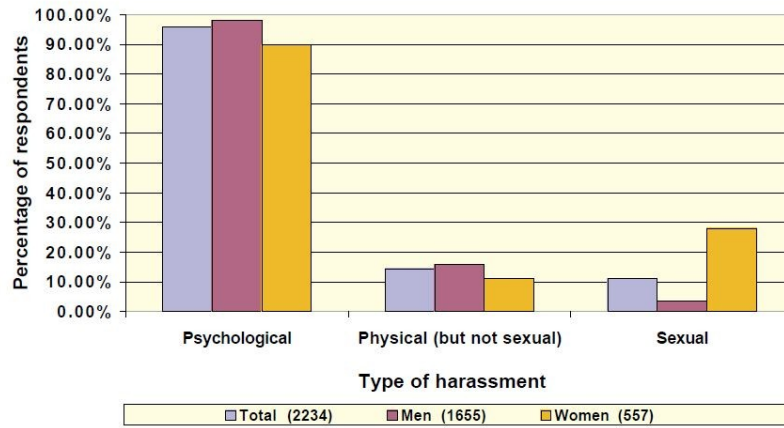
**FIGURE 30 HARASSMENT CASES REPORTED OVER THE LAST 5 YEARS  
AMONG CORRECTIONAL OFFICERS**



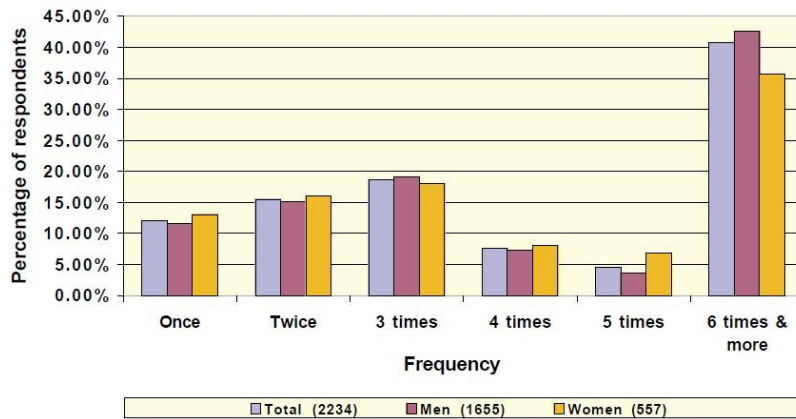
**FIGURE 22 CASES OF HARASSMENT OVER THE LAST 5 YEARS  
AMONG CORRECTIONAL OFFICERS**



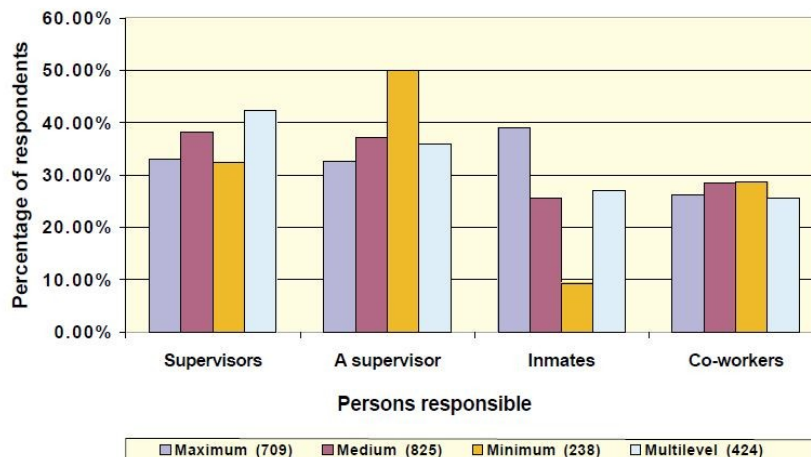
**FIGURE 25 TYPE OF HARASSMENT ENCOUNTERED OVER THE LAST 5 YEARS AMONG CORRECTIONAL OFFICERS**



**FIGURE 24 FREQUENCY OF HARASSMENT CASES OVER THE LAST 5 YEARS AMONG CORRECTIONAL OFFICERS**

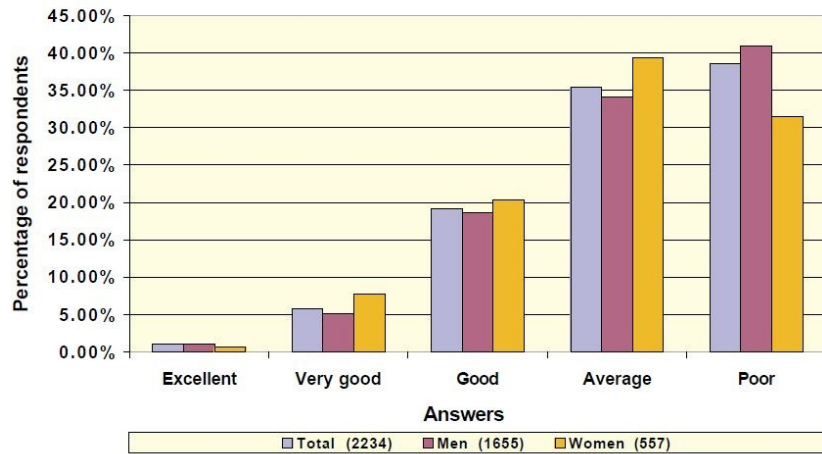


**FIGURE 27 PERSONS RESPONSIBLE FOR HARASSMENT OVER THE LAST 5 YEARS AMONG CORRECTIONAL OFFICERS, ACCORDING TO THE INSTITUTION'S SECURITY LEVEL**

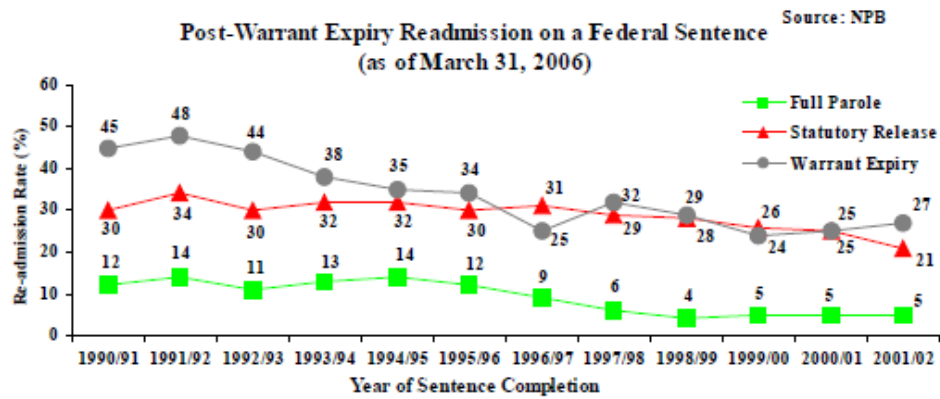


**ANNEX 2: CORRECTIONAL OFFICER SATISFACTION OF TRAINING PROVIDED BY CSC (Samak, Qussaï; Prevention Group (Health-Safety-Environnement) Labour Relations Departement, 2008)**

**FIGURE 18** QUALITY OF TECHNICAL TRAINING AND SUPERVISION AMONG CORRECTIONAL OFFICERS



**ANNEX 3: STATUTORY RELEASE STATISTICS** (Correctional Service of Canada Review Panel, 2007)



The chart above shows that over the long-term (10 to 15 years after sentence completion):

- offenders released at warrant expiry are between 2½ and 4 times more likely to be re-admitted on a federal sentence than offenders that completed their sentences on full parole; and

A Roadmap to Strengthening Public Safety

- offenders that completed their sentences on statutory release are between 2 and 2½ times more likely to be re-admitted on a federal sentence than offenders that completed their sentences on full parole.