

**Themes of Parole as Presented in *Bill C-10*: Contributing to the
Conservative Government's 'Tough on Crime' Approach to
the Criminal Justice System?**

by

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ABSTRACT

Canada's federal prison population has been rising for the past 10 years. This is perplexing given Canada's national official crime rate has been declining since the 1970's. One possible explanation for the rising prison population could be related to the restrictive measures imposed on parole policies during the last forty years. This thesis intends to analyze the recent parliamentary discourses surrounding recent legislative changes brought to parole by the conservative government. In doing so, a document analysis is conducted on the Parliamentary debates pertaining to section 6 and section 7 of *Bill C-10* as well as the content of the amendments within section 6 and section 7 of *Bill C-10*. The purpose of the document analysis is to analyze the themes within these documents and determine whether or not these themes represent a potential change in the punitive approach towards parole. Given that a more punitive approach could have negative impacts on certain offenders and on society in general, this thesis aims to better understand the discourses and values of the Parliamentary debate participants' changes to the legislation and the potential impacts these restrictions may have for Canada's federal prison population.

Keywords: Parole, Parliamentary Debates, Document Analysis, 'Tough on Crime'.

RÉSUMÉ

La population des prisons canadiennes est en augmentation depuis les dix dernières années. Ceci peut étonner, étant donné que le taux de criminalité officielle enregistré au Canada est en déclin depuis les années 1970. Selon plusieurs chercheurs, une telle augmentation pourrait s'expliquer par les restrictions successives imposées à la libération conditionnelle au cours des quarante dernières années. Les discours officiels entourant le vote de changements législatifs demandés par le gouvernement conservateur semblent encore accentuer cette tendance dure en matière de libération conditionnelle. Dans le but de mieux saisir et comprendre ce problème, j'ai mené une analyse documentaire sur les débats parlementaires concernant l'article 6 et l'article 7 du *projet de loi C-10* ainsi que les modifications apportées à ces articles. L'objectif de cette analyse de documents est de dégager les thèmes qui ressortent de ces discours et de vérifier dans quelle mesure ces changements favorisent des mesures encore plus restrictives en matière d'accès à la libération conditionnelle. Sachant qu'une approche plus punitive peut avoir des impacts négatifs sur les détenus et sur la société en général, cette thèse vise à mieux comprendre les discours et les valeurs des promoteurs de cette nouvelle législation et s'interroge sur les impacts des détenus.

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INTRODUCTION

In the 10 year period between March 2003 and March 2013, the federal incarceration population in Canada grew by close to 2,100 inmates¹, representing an overall increase of 16.5% with more than half of that increase coming in the three year period between March 2010 and March 2013 (The Correctional Investigator Canada, 2013). More recently, during the 2013-2014 fiscal year, the daily federal incarcerated population was above 15, 000 inmates, representing an over 10% increase in the last 5 years (The Correctional Investigator, 2014).

Many researchers have attempted to provide explanations for this increase and one such explanation explores the role that parole plays in the increased prison population². In *The Expanding Prison*, Cayley (1998) examines the relationship between parole and increased prison populations. He states, “[s]entences have lengthened, and parole rates have been cut. The prison rate has surged” (Cayley, 1998, p. 6). In 2014, the Correctional Investigator³ reported that the rate at which federal offenders are granted parole in Canada continues to set new historic lows as a higher percentage of offenders are spending longer portions of their sentence in federal institutions. More specifically, “[i]n the past five years, parole grant rates have declined by 20%... Overall, 71% of all releases from a federal penitentiary in 2013-2014 were by statutory release...” (The

¹ Similarly, the United States and England and Wales have also had dramatic increases in their prison populations, however their prison populations have been increasing for a number of decades (Webster & Doob, 2007).

² For the purpose of this thesis, any mention of the term ‘prison population’ only refers to the federal prison population in Canada. The federal prison population is made up of offenders serving sentences of two years or more. Comparatively, provincial offenders are serving prison sentences of two years less a day and serve their sentences in provincial institutions (Correctional Service of Canada, 2013b).

³ The Office of the Correctional Investigator was established in 1973 to function as an independent ombudsman for federally sentenced offenders. The Correctional Investigator is authorized to conduct investigations into problems of offenders related to decisions, recommendations, acts and omissions of the Correctional Service of Canada (The Correctional Investigator Canada, 2012).

Correctional Investigator Canada, 2014, p. 7). Similarly, the Reports of the Auditor General of Canada (2015) found that the Correctional Service of Canada⁴ (CSC) made fewer recommendations for early release to the Parole Board of Canada (PBC) in fiscal year 2013-2014 compared to fiscal year 2011-2012 resulting in fewer offenders obtaining parole. The report concludes that 80% of male prisoners are still incarcerated past their first opportunity for parole (Reports of the Auditor General of Canada, 2015).

The phenomenon of an increasing prison population in Canada is not new. In the 2012 *Annual Report* of the Office of the Correctional Investigator, it was noted that the rising number of inmates in federal institutions is inseparable from a number of legislative measures (The Correctional Investigator Canada, 2012). The Correctional Investigator Canada (2012) noted that since 2006⁵, these reforms have resulted in the expansion of mandatory minimum sentences for certain offences (particularly drug offences, gun crimes and child exploitation offences), the abolition or tightening of parole review criteria and the restricted use of conditional sentencing. Additionally, Zinger (2012) points to the recent abolishment of accelerated parole reviews⁶ in Canada. Zinger (2012) argues that this action will result in more offenders serving longer portions of their sentence in prison before being considered for parole, and thus increase the prison population. Thus, it is possible that parole amendments that affect how parole is practiced in Canada may impact the prison population. Following the trend of legislative measures

⁴ CSC is responsible for managing federal institutions and supervising offenders under conditional release in the community. It operates under the rule of law and in particular, the *Corrections and Conditional Release Act*, which provides its legislative framework (Correctional Service of Canada, 2013a).

⁵ The legislative measures mentioned by the Correctional Investigator have all taken place since Stephen Harper's Conservative party was elected in 2006 (Mallea, 2010). However, the trend of enacting 'Tough on Crime' legislation was present before 2006 (Piché, 2012).

⁶ Accelerated parole review is the positive presumptive release of first time offenders after one sixth of their sentence has been served provided the offender is unlikely to commit a violent offence upon release. Offenders do not have to attend a hearing, and leave prison earlier (Zinger, 2012).

that may be related to the rising prison population are amendments made in the *Safe Streets and Communities Act (Bill C-10)*. Section 6 of *Bill C-10* is made up of amendments made to parole in the *Corrections and Conditional Release Act*⁷ (*CCRA*). Briefly, these amendments were created to increase offenders' accountability and in doing so, tighten the rules governing conditional release (Parliament of Canada, 2012e).

Relatedly, the creation of federal legislation is the responsibility of the Canadian Parliament (Parliament of Canada, 2010). At the beginning of the process, legislation is tabled by either a Minister, Member of Parliament or Senator of Parliament (Parliament of Canada, 2010). After a bill is tabled, its contents are reviewed and debated during a number of stages in the House of Commons and in the Senate by Members of Parliament, Senators of Parliament and witnesses⁸ (Parliament of Canada, 2010). As such, the discourse of Parliamentary debate participants ('official discourse' hereafter) can potentially influence the content of legislation (Parliament of Canada, 2010). As a result, how parole is perceived within the official discourse may influence parole legislation. For example, if the official discourse presented parole in a negative manner, legislation may be enacted to tighten⁹ parole. On the other hand, if the official discourse presents parole in a positive manner, legislation may be enacted to soften¹⁰ parole. Given this, it is possible that the official discourse pertaining to section 6 of *Bill C-10* may have influenced the parole amendments included in section 6. Taken together, there may be a

⁷ Enacted in 1992, the *CCRA* is the legislation that guides corrections in Canada. It is divided into three parts: Part I concerns matters pertaining to the custodial portion of the sentence; Part II deals with aspects of conditional release under the jurisdiction of the Parole Board of Canada; and Part III governs the Office of the Correctional Investigator (Correctional Service Canada, 2015).

⁸ The process of creating federal legislation is explained in detail in chapter 3.

⁹ For the purposes of this thesis, legislation that 'tightens' parole refers to legislation that restricts an offender's ability to access to parole (Robert, 2001).

¹⁰ For the purposes of this thesis, legislation that 'softens' parole refers to legislation that loosens the restrictions of an offender's ability to access to parole (Robert, 2001).

potential relationship between how the official discourse presents parole, parole legislation and the rising prison population in Canada. This potential relationship can be problematic for two significant reasons.

First, the fundamental assumption of parole is that timely and appropriate conditional release decisions contribute to the protection of the public through the controlled and supervised release of prisoners into the community¹¹ (Zinger, 2012). Research has demonstrated that gradual supervised release promotes a safer return of offenders to society (Andrews & Bonta, 2010a; Motiuk, Cousineau, & Gileno, 2006; Reports of the Auditor General of Canada, 2015; Zinger, 2012). Given this, a negative perception of parole within the official discourse combined with the tightening of parole legislation may result in a less safe society; with offenders spending longer portions of their sentence in prison and not being given timely and appropriate conditional release.

Second, it has been argued that tightening parole can contribute to an increasing prison population (Ricciardelli, 2014; The Correctional Investigator, 2012; Zinger, 2012). Relatedly, an increasing prison population can lead to huge economic and social problems. The cost of housing an offender in prison compared to in the community is enormous. The annual average cost of keeping an offender in a federal institution in Canada was over \$113,000 in 2009-2010 (The Correctional Investigator Canada, 2012; Public Safety Canada, 2012). In contrast, the average cost to keep an offender in the community is about \$29,500 (The Correctional Investigator Canada, 2012). Additionally, the living conditions of offenders with an increased prison population are also of concern.

¹¹ In 2012, Ivan Zinger was (and still is) the Executive Director of the Office of the Correctional Investigator (The Correctional Investigator, 2012). Given this, this definition of the fundamental assumption of parole is provided by an academic affiliated with the Canadian correctional system. This is important to note as this definition is not used universally. As will be seen throughout this thesis, parole has been and continues to be defined differently by many people in Canada.

The Correctional Investigator Canada (2014) notes that double-bunking (placing two offenders in a cell designed for one) has increased dramatically in recent years due to increased prison populations. In fact, 19.2% of the incarcerated population was double-bunked in fiscal year 2013-2014 representing a 93% increase in the last five years (The Correctional Investigator Canada, 2014). Prison crowding can have negative impacts on the correctional system's ability to provide humane, safe and secure custody.

Overcrowding has been linked to higher incidences of violence, prison volatility as well as the spread of infectious diseases (The Correctional Investigator Canada, 2012). CSC has reported that inmate assaults have increased over 32% between 2007-2010 (The Correctional Investigator Canada, 2012). Additionally, there was a 56% increase in incidents of reported self-injury from 2009-2014 (The Correctional Investigator Canada, 2014). As prisons become more populated, the physical conditions of confinement are worsened (The Correctional Investigator Canada, 2012).

Another implication of an increased prison population is the lack of available programming for offenders. In 2012, 35% of federal offenders were on a waitlist to enroll in a correctional program (The Correctional Investigator Canada, 2012). Without access to programming, offenders may not be able to address their criminogenic risks and needs which are keys to the rehabilitation process (The Correctional Investigator Canada, 2012). Despite the changes being brought to correctional policies, rehabilitation is still defined as a key principle for corrections and these statistics indicate that it may not be addressed (The Correctional Investigator Canada, 2012). Longer stays in prison may also induce the institutionalization of offenders. Institutionalization is described as the continuous and systematic destruction of the psyche as well as the adoption of new

attitudes and ways of behaving which are not only unsuited for life in the outside world, but are known to frequently make it impossible to act successfully in a “normal” social world (Bukstel & Kilmann, 1980). Furthermore, longer stays in prison increase the stigma associated to imprisonment that offenders experience upon release (Celinska, 2000). Combined, a punitive perception of parole within the official discourses, the tightening of parole legislation and an increasing prison population can have grave implications on society as a whole.

Given the potential relationship between the official discourse on parole, parole legislation that tightens parole and the negative impacts of a rising prison population, the official discourse of section 6 of *Bill C-10* as well as the content¹² of the amendments in section 6 of *Bill C-10* should be further analyzed. The way parole was presented in the official discourse of section 6 of *Bill C-10* may have influenced the content of the amendments in section 6 of *Bill C-10*. If parole was presented in a punitive manner, it is likely that this legislation may contribute to the current Conservative government’s ‘Tough on Crime’ approach. If this is the case, these amendments may tighten parole and may contribute to Canada’s increasing prison population. As a result, the primary research question guiding this thesis asks: ‘what are the themes and sub-themes of parole within the Parliamentary debates of section 6 of *Bill C-10* and in the content of the amendments of section 6 of *Bill C-10*?’¹³ In asking this question, the primary objective of this thesis is to identify the themes and sub-themes of parole as per official discourses of participants within Parliamentary debates and within the content of the amendments in

¹² Note, I am not conducting a ‘content analysis’ of the amendments. When referring to the ‘content of the amendments’, I am referring to the way parole is described in the amendments.

¹³ I will not be analyzing the entirety of the Parliamentary debates. The reasons for this decision and the particular debates that will be examined will be detailed in the methodology chapter.

section 6 of *Bill C-10*. Doing so is important for a number of reasons.

As explained earlier, the MPs, Senators of Parliament and witnesses that participate in the Parliamentary debates can play an integral role in determining whether or not paroled offenders are perceived negatively in Canada. This can be potentially problematic for a number of reasons. For example, if the Parliamentary debates participants perceive parole negatively, their official discourses may dictate harsh penal policies or legislation be put in place to tighten parole¹⁴. As a result, this could favour a more punitive approach towards parole as seen with recent parole legislation (such as the abolishment of accelerated parole). Favouring a more punitive approach to parole can have grave social (Celinska, 2000; Bukstel & Kilmann, 1980) and economic implications (The Correctional Investigator, 2012; Public Safety Canada, 2012). Furthermore, a punitive approach to parole may result in moving away from secondary principles of parole: offender rehabilitation and offender reintegration (Parole Board of Canada, 2014a). If this is the case, parole may contrary to the principle that guides parole: public safety. The remainder of this section will provide an overview of the chapters that create this thesis.

Overview of the Thesis

The literature review follows the chronological timeline of Canada's parole system. In doing so, a historical overview of each of the four major pieces of parole legislation that have been created is provided. This includes the *Penitentiary Act*, the *Ticket of Leave Act (TLA)*, the *Parole Act (PA)* and the *CCRA*. As will be seen, parole

¹⁴ For instance, the current Conservative government enacted *Bill S-6* which abolished the 'faint hope clause' to eliminate the 'faint hope clause' in 2011 because members of the Conservative government perceived that Canadian citizens believed parolees should not be eligible to apply for parole after serving 15 years (House of Commons, 2011b).

legislation has been altered by many factors, including the official discourses. Presenting the literature review in a historical context allows the reader to understand how the concept of parole has transitioned and is necessary to understand the current concept of parole. Additionally, the literature review also cites and incorporates literature related to other concepts of parole. These include: ‘offender rehabilitation’, ‘offender reintegration’, ‘Old Penology’, ‘New Penology’, ‘risk assessments’ and the twin-track theory. These concepts are included to provide context to some of the changes to parole. Given that official discourses can influence the content of legislation, an overview of the political context in which *Bill C-10* was introduced is included in the literature review. This political context includes an overview of the current Conservative government’s ‘Tough on Crime’ agenda. Finally, the literature review concludes by identifying the research hypothesis.

The second chapter shifts focus towards the theoretical framework which guides the analysis of this thesis. Specifically, the theory of social constructionism is introduced, which provides the epistemological lens for the ensuing analysis. Within this epistemology, the social construction of social problems will be presented to ground the methodology in the subsequent chapters. This study seeks to examine the themes of parole found in the section 6 and section 7 amendments of *Bill C-10* produced by Members of Parliament (MPs), Senators of Parliament and expert witnesses through a social constructionist lens.

Building on the theoretical framework, the third chapter introduces the research methodology used in this thesis: document analysis (thematic analysis of documents). This is followed by a detailed description of the collected data: the Parliamentary debates

pertaining to section 6 and section 7 of *Bill C-10* as well as section 6 and section 7 of *Bill C-10*. The next section details the phases of thematic analysis and describes how I applied theme to my document analysis. This chapter concludes by examining the limitations of this research.

The fourth presents the findings of the analysis. In doing so, three broad themes are identified: 'parole', 'record suspensions' and 'victims of crime'. The broad themes are divided by sub-themes made up of the official discourse pertaining to section 6 and section 7 of *Bill C-10* as well as the content of the amendments in each section. Analysis is provided in each sub-theme, suggesting that some of the themes and sub-themes in the data are similar to those in the literature review. Additionally, the Conservative government's vision of punishment is also examined in this chapter. This chapter is concluded with answers to my research question.

Finally, this thesis concludes with a comparison of past themes of parole compared to current themes of parole, an examination of whether or not members of the Conservative government perceived 'offenders' as social problems during the Parliamentary debates and suggestions for future research.

CHAPTER 1 – LITERATURE REVIEW

1.1 Introduction

In order to accurately present the Canadian context of parole, the first portion of the literature review is organized in chronological order to provide a historical overview of parole in Canada. This was done with the intention to help the reader understand how the concept and meaning of parole in Canada has transitioned throughout its history in Canada. This is important in order to understand the current meaning of parole¹⁵ in Canada. In addition to providing this historical overview, other documents and articles were analyzed and referenced in order to include other concepts related to parole in the literature review. Some of these concepts are: ‘rehabilitation’, ‘reintegration’, ‘risk assessments’, ‘Old Penology’, ‘New Penology’, and the ‘twin-track policy’. These references provide additional context to the changes made to parole in Canada. The second portion of the literature review focuses on the political context in which recent changes (since 2006) to parole have been made. This political context is included to explain the context in which *Bill C-10* was created. Taken together, the literature in this chapter depicts the past themes of and legislation on parole¹⁶.

1.2 Historical Overview of Parole in Canada (1868 – 2012)

This section of the literature review presents and analyzes the existing literature on past Canadian parole legislation and the accompanying past official discourses on Canadian parole. In doing so, the underlying themes and Canadian parole legislation are presented in chronological order. This section of the literature review is divided into four

¹⁵ For an overview of the current official definition and forms of parole, see Annex A.

¹⁶ For the purposes of this thesis, literature pertaining to other topics related to parole such as the experiences of parolees or the experiences of parole officers were not included. These references were not included because they would not help identify the official discourses on parole or Canadian parole legislation.

sub-sections which is followed by a section that provides an overview of the existing literature on more recent parole amendments (from 2005-2012), the political context in which *Bill C-10* was introduced and a brief overview of *Bill C-10*.

1.2.1 Parole as Remission: 1868 - 1899

Before 1868, Canada's correctional system did not have a recognized form of parole (Working Group of the Correctional Law Review, n.d.). During the early 1860's the Irish Prison System came to prominence and was strongly advocated by correctional officials and reformers for the introduction of earned remission, gradual release and open institutions (Working Group of the Correctional Law Review, n.d.). Many elements of its system influenced Canadian corrections (Working Group of the Correctional Law Review, n.d.). As a result, the *Penitentiary Act* was enacted in 1868 (Cole & Manson, 1990). This Act was the first piece of legislation in Canada to introduce the option of releasing offenders from prison before the expiry of their sentence (Cole & Manson, 1990). At the time, this concept was termed 'remission' (Cole & Manson, 1990). The Act provided three ways offenders could earn remission (Cole & Manson, 1990).

First, in order to encourage good behaviour of offenders, "...penitentiary directors were authorized to establish rules permitting prisoners to earn up to 5 days' remission (reduction of sentence) for each month served" (Cole & Manson, 1990, p. 163). Second, remission could only be taken away for findings of guilt for offences that take place both inside and outside the penitentiary (Cole & Manson, 1990). Third, "...remission amounted to an absolute reduction of sentence; when the number of days of remission earned equaled the number of days remaining in the sentence, the prisoner stood to be released..." (Cole & Manson, 1990, p. 255). Remission was considered a privilege for

offenders who complied with prison rules and exemplify good behaviour. This in turn was rewarded with unsupervised early release. By the late 19th century, it was realized that a more structured system of release was required to assist prisoners to bridge the gap between incarceration and release as offenders released on remission did not provide any support upon release (Cole & Manson, 1990). After officials of the federal Ministry of Justice studied examples of English, Irish and American parole systems, the *TLA* was enacted in Canada (Cole & Manson, 1990).

1.2.2 The Emergence of the Notion of Rehabilitation: 1899 – 1959

The *TLA* was the first piece of legislation in Canada to recognize the need to be released from prison as part of the rehabilitation process (Bottomley, 1990). As such, the *TLA* highlighted the use of clemency¹⁷ and rehabilitation¹⁸. When the *TLA* was enacted, there was a change in the official discourses and themes of parole among some Canadian politicians and correctional authorities. This change was brought about for a number of reasons. First, the Canadian Prime Minister at the time (Wilfrid Laurier) noted that prisoners could be divided into two classes: first, the dangerous ones that needed to be confined in order to protect the public and second, those that prison could only make worse and who should be given a chance to redeem their character (Bottomley, 1990). Second, as previously mentioned, it was realized that a more structured system of release was required to assist offenders to bridge the gap between confinement and release (Cole & Manson, 1990).

¹⁷ Clemency is an exercise of mercy used to shorten a term of imprisonment and release the offender from imprisonment (Fauteux, 1956). Clemency was initially the only way to free prisoners for factors such as health, impaired mentality, youth or great age, assistance given to the Crown, improbability of guilt, lack of criminal intent and extraordinary provocation (Cole & Manson, 1990).

¹⁸ Rehabilitation in this context refers to the aim of reforming offenders into law-abiding citizens and reduce the risk of recidivism (Chamberlain, 2012).

The *TLA* was also the first piece of legislation in Canada to include the concept of offender supervision while on parole (Cole & Manson, 1990). However it did not define criteria of eligibility and offenders could be released at any time prior to the completion of their sentence (Goldenberg, 1974). The *TLA* granted the Governor General the authority to grant offenders early release from prison (Cole & Manson, 1990). When the Governor General granted an offender a 'ticket of leave'; the offender was given a license (which could contain certain conditions) permitting the offender to be at large until the end of their term of imprisonment (Fauteux, 1956). Initially, offenders were expected to report monthly to local police after release for the duration of the unexpired balance of their sentence (Bottomley, 1990). If the offender did not follow his conditions or committed a new offence, his license could be revoked and the offender could be sent back to prison to serve the balance of time that remained unexpired when the license was first granted (Fauteux, 1956).

Voluntary organizations such as the Salvation Army took up the challenge of offender supervision after release and developed aftercare work for parolees (Bottomley, 1990). Brigadier Archibald of the Salvation Army joined the staff of the Department of Justice in 1905 and became the first Dominion Parole Officer (Fauteux, 1956). At the time, the job of a Dominion Parole Officer was to assess the parolee's release plan and interview parolees during meetings (Bottomley, 1990). The importance of assisting offenders while on parole was highlighted in the Archambaut Commission in 1938 and resulted in an increase in voluntary organizations helping offenders with aftercare (Bottomley, 1990). The Commission later commented that, as these organizations become stronger, parole results (and rehabilitation efforts) will become stronger

(Fauteux, 1956).

Under the *TLA*, only the Governor General of Canada could grant conditional release (Bottomley, 1990). The eventual transition from the *TLA* to the *Parole Act (PA)* stemmed from the recommendations of a report published in 1956 by the Fauteux Committee which envisioned releasing prisoners on a more structured form of parole (Bottomley, 1990). This report recommended that a quasi-judicial body rather than the Governor General grant parole in order to avoid undue external or internal pressures (Bottomley, 1990). The Committee expressed concern that parole being granted by the Governor General effectively made parole a clemency measure rather than a rehabilitative mechanism (Cole & Manson, 1990). When the *TLA* was first introduced, several parliamentarians objected to the fact that the Governor General granted tickets of leave on the advice from the Cabinet as a whole (Cole & Manson, 1990). It was then proposed that the Minister of Justice alone would advise the Governor General (Cole & Manson, 1990). However even after this change, the Fauteux Committee was still unconvinced that the Minister of Justice was satisfactorily impartial nor that this method adequately revealed the prisoner's rehabilitative progress (Cole & Manson, 1990). Moreover, the Committee commented that it is in the best interest of Canada that a quasi-judicial body be set up so that its decisions are only based on the merits of a particular case and that it is not influenced by extraneous considerations (Fauteux, 1956).

1.2.3 Prevalence of Rehabilitation: 1959 – 1973

The Fauteux Committee report changed the theme of parole from clemency and rehabilitation to one of strictly rehabilitation. At this time, the concept of rehabilitation was the idea that people could change and that offenders deserved a second chance at

becoming law-abiding citizens (Ward & Brown, 2004). This change was reflected with the enactment of the *PA* in 1959 (Bottomley, 1990). The *PA* included the creation of the National Parole Board¹⁹ (NPB) (Bottomley, 1990). The NPB is an administrative court, independent from political power (Cole & Manson, 1990). It only reviews parole cases of offenders serving two years or more (Cole & Manson, 1990). The *PA* also introduced regulations for when the NPB should review these cases (Cole & Manson, 1990). The *PA* also stated that if a parolee breached a condition or committed a new offence while on parole, the NPB was to decide whether or not their parole should be revoked (Stenning, 1995).

The NPB was granted the authority to release an inmate when rehabilitation of the offender could be aided by parole and it was deemed the offender was no longer an undue risk to society (Bottomley, 1990). The Fauteux Committee (1956) commented that at this time, parole had two main goals: to rehabilitate the offender and to preserve the safety of the community (Jobson, 1972; Robert, 2001, p. 88; my translation). Furthermore, these two purposes can be tied together. If an offender is successfully rehabilitated and reintegrated into society, s/he will be less likely to reoffend and thus contribute to a safe society (Robert, 2001, p. 88; my translation). According to the Fauteux Committee (1956), parole is designed to be a logical step of an offender's sentence. During this time, some segments of society had begun to recognize that if they were to be protected to the greatest extent possible, offenders should receive appropriate treatment in the institutions and while on parole to promote their rehabilitation (Fauteux, 1956). This process aimed to assist offenders resume a "normal", law-abiding life in society (Fauteux, 1956). The Committee concluded by stating that if parole was to succeed in Canada, it should

¹⁹ In 2011, the NPB was renamed as the Parole Board of Canada (Michael, 2014).

be through the rehabilitation of offenders (Robert, 2001, p. 88; my translation). The Fauteux Committee report helped implement an official discourse of offender rehabilitation when discussing parole (and correctional philosophy in general) during the 1950's and 1960's.

Prisons at this time were generally considered institutions that promoted rehabilitation and were considered to be a place where offenders could change into law – abiding citizens (Fauteux, 1956). However, various committees criticized this notion. According to the Fauteux Committee, “[p]rison life is considered an unnatural form of life” (Fauteux, 1956, p. 46). Similarly, the Ouimet Report criticized the use of imprisonment as a means of rehabilitation (Lalande, 2000, p. 6; my translation). Additionally, the Law Reform Commission of Canada stated that imprisonment should only be used as a means of last resort (Lalande, 2000, p. 6; my translation). In order for imprisonment to aid in the rehabilitation of the prisoner, efforts should be made to provide an experience that will contribute to the rehabilitation of the offender in a positive way (Fauteux, 1956). It was recognized that individualized treatment was a fundamental principle of a rehabilitative prison system (Fauteux, 1956).

This emphasis on individual rehabilitation is part of what is considered to be the “Old Penology” (Feeley & Simon, 1992). McNeill, Burns, Halliday, Hutton, & Tata state: “‘Old penology’ is essentially about individual offenders – their culpability, their guilt, the diagnosis of their deviance, discovering and applying the proper treatment” (2004, p. 421). Furthermore, Feeley and Simon (1992) define this concept as criminal sanctioning that has been aimed at individual based theories of punishment that emphasized individuals’ normalization and rehabilitation. Normalization is meant as the process of

changing an offender into a law abiding citizen and pro-social member of society. During this time, normalization and rehabilitation focused on the treatment of the individual offender (Feeley & Simon, 1992). The individual offender is considered as an unforced actor who can be reformed or treated while imprisoned (Lynch, 1998). Accordingly, prisons during the 1950's were expected to be more than a place of human storage (Fauteux, 1956). During the era of 'Old Penology', it was thought that prison programs should involve attempts to change basic behaviour attitudes and patterns of the offender (Fauteux, 1956). Treatment in these programs included emphasizing basic education of individual offenders and vocational training programs in the institutions (Fauteux, 1956). As the importance of employment after release was realized as part of the rehabilitation process, certain programs focused on improving individual work habits (Fauteux, 1956). The Fauteux Committee emphasized that it was only by sustained and determined efforts in these directions that imprisonment could serve a rehabilitative purpose (Fauteux, 1956). Furthermore, the prospects of parole should stimulate the offender into maximizing the benefits of the rehabilitative programs offered in prison to increase his/her chances of being granted parole (Fauteux, 1956).

Following this recommendation, one of the criteria for the NPB to grant parole was when it has been determined that the offender had derived the maximum benefit from his/her term of imprisonment (Fauteux, 1956). With the official discourses and themes of parole emphasizing rehabilitation, the NPB began approving more parole applications over time (Bottomley, 1990). The approval of parole started modestly with a 29 percent approval rate in 1963 but rose up to 49 percent by 1968 while fluctuating in between (Bottomley, 1990). This fluctuation can be explained by the fact that the NPB

did not have many specific guidelines to follow when granting parole and in turn, the parole board members were using discretionary power (Bottomley, 1990). As a result, in 1973, the Huguessen report criticized the existing criteria for parole release for being too vague as neither offenders nor parole board members could articulate which positive or negative factors were considered in parole decisions (Bottomley, 1990). This report led to the procedure of the NPB providing written explanations to offenders explaining why they were denied parole (Bottomley, 1990). Another report a year later initiated the transition from the theme of parole to one of risk management.

1.2.4 Emergence of Risk: 1974 – 1992

In 1974, the Goldenberg Committee²⁰ reported that parole's basic purpose is to protect members of society from harmful and dangerous conduct (Bottomley, 1990). This Committee recommended that greater attention be paid to identifying high risk, dangerous offenders that are in need of more structured release supervision (Bottomley, 1990). In the same year Robert Martinson's famous article *What Works? Questions and Answers About Prison Reform* was published (Pratt, Gau and Franklin, 2010). This article "...attempted to assess the effectiveness of various prison reforms, particularly those aimed at rehabilitating criminal offenders and reducing recidivism" (Pratt, Gau & Franklin, 2010, p. 72). In concluding his article, Martinson reported that modern rehabilitation (in 1974) could only be characterized as widespread failure giving way to the proclamation that "nothing works" in prison reform (Pratt, Gau & Franklin, 2010).

While Martinson proclaimed that "nothing works" in prison reform, the concept of "New Penology" became prevalent. The "New Penology" shifts the emphasis from

²⁰ The chairman of the National Parole Board had supervisory control over the service at this time. This relationship troubled the Senate committee which delegated to Senator Goldenberg in 1971 to examine parole in Canada (Stenning, 1995).

rehabilitation to crime control (Feeley & Simon, 1992). The emphasis on crime control is not attached with aspirations to rehabilitate, reintegrate, or even re-train offenders (Carrier, 2010; Feeley & Simon, 1992). Instead, crime control seeks variable detention depending upon the level of risk found in risk assessment (Feeley & Simon, 1992). As such, “New Penology” is defined as being less concerned with intervention and treatment of the individual offender but rather it is concerned with techniques of identifying and managing groups sorted by dangerousness (Feeley & Simon, 1992). It seeks to regulate levels of deviance, not intervene or respond to individual deviants (Feeley & Simon, 1992). The “New Penology” is conceived as a penal strategy that incapacitates and manages offenders but does not seek to produce productive transformations of individual offenders (Carrier, 2010; Maurutto & Hannah-Moffat, 2006). Within the era of “New Penology”, the NPB initiated research to determine which factors were most strongly related to the outcome of parole decisions (Nuffield, 1982). This was done to set up its own guidelines in 1975 (Bottomley, 1990). The research was carried out by the research division of the Ministry Secretary of the Solicitor General of Canada. According to Nuffield, “[i]t reflects the recent tendency to question the validity of rehabilitation as an achievable goal” (1982, p. 62). This resulted in creation of guidelines that focused on risk assessment in parole decision making (Bottomley, 1990).

As part of the parole granting process, the NPB assesses the risk that each offender poses (Gibson, 1990). It determines if the risk can be managed in the community and sets necessary conditions that the parolee must follow in order to manage the offender’s level of risk (Gibson, 1990). The NPB details the conditions (i.e. keep the peace, avoid certain people, etc.) of the offender’s release and provides rationale for the

application of each condition (Turnbull & Hannah-Moffat, 2009). All parolees are released with a standard set of conditions while some also have special conditions added to the standard set (Parole Board of Canada, 2009). Special conditions (such as abstaining from alcohol) are imposed when the NPB considers it reasonable and necessary to further manage an offender's risk in the community (Parole Board of Canada, 2009). These conditions are targeted toward specific risks for that individual offender reoffending (Turnbull & Hannah-Moffat, 2009).

When the NPB set up its own guidelines in 1975, first-generation risk assessments were used to assess the risk level of violent recidivism of offenders (especially against other prisoners) (Simon, 2005). As Hannah-Moffat (2005) explains, first-generation risk assessments relied on unstructured clinical judgment by practitioners. However, this method of risk assessment was discredited because it was considered to be purely subjective and mainly based on the clinician's opinion (Simon, 2005). Furthermore, this form of assessment was characterized as having poor predictive accuracy in terms of predicting violence (Simon, 2005). Simon (2005) also notes that clinician predictions resulted in a large amount of false-positives (i.e. predicting that an offender will reoffend when in fact they would not have reoffended upon release) and false-negatives (i.e. predicting that an offender will not reoffend when in fact they do reoffend upon release). The concern with false-positives and false-negatives was also raised when looking at how well the NPB could predict if an offender would commit a new offence while on parole (Mandel, 1975). Simon (2005) also notes risk assessments during this period were also challenged by the lack of specification of the dimensions of risk. The need to find more accurate ways to assess risk was recognized.

Second-generation risk assessments were created from the notion that defining certain risk factors could help identify an offender's level of risk (Simon, 2005). This model of risk assessment formed when new technologies of statistical prediction were popularized (Hannah-Moffat, 2005). These technologies used static historical risk factors²¹ to determine the level of risk of an offender (Hannah-Moffat, 2005). This form of risk assessment was eventually criticized by psy-professionals in the correctional literature because of its rigidity of using static risk factors (Hannah-Moffat, 2005). The use of static risk factors resulted in a 'fixed level of risk', which could not be changed by using intervention (Hannah-Moffat, 2005). In other words, the assessment would produce a 'fixed risk subject' who was then designated a particular risk category of high, medium or low (Hannah-Moffat, 2005). Furthermore, these assessment tools did not take into account that offenders were subject to events and experiences while incarcerated that may have produced shifts in their chances of recidivism and overall risk level²² (Hannah-Moffat, 2005). This resulted in the need to consider other factors when assessing risk.

The aforementioned limitations to second-generation risk assessments led to new ways to understanding risk and the need to understand the offender on an individual basis (Hannah-Moffat, 2005). It was during this time (the early 1980's) that the transition in corrections was being made to focus more on risk/needs based philosophies (Hannah-Moffat, 2005). With this came the creation of third-generation risk assessments which measured both static and dynamic risk factors as well as criminogenic needs (Hannah-Moffat, 2005). Third-generation risk assessments seek to "...objectively and systematically measure static and dynamic risk or criminogenic need factors" (Hannah-

²¹ Such as age or number of convictions (Hannah-Moffat, 2005).

²² A low risk offender may become a high risk offender during their time of incarceration and vice-versa (Hannah-Moffat, 2005).

Moffat, 2005, p. 33). These risk assessment tools emerged in the early 1990's and were believed by many practitioners to be better assessment tools and predictive devices than both first and second-generation risk assessment (Hannah-Moffat, 2005). The inclusion of dynamic risk factors and criminogenic needs in third generation risk assessment tools were based on the insights of meta-analysis conducted by correctional researchers (Hannah-Moffat, 2005). Dynamic variables or criminogenic needs are factors such as employment, pro-social associates, personality traits, substance abuse, etc. (Hannah-Moffat, 2005). The combination of dynamic variables and criminogenic need factors creates a 'transformative risk subject' which is amendable to change based on treatment strategies targeted towards said risk and need factors (Maurutto & Hannah-Moffat, 2006).

The emphasis on criminogenic needs and risk factors in third-generation risk assessments led to the creation of fourth-generation risk assessment tools. According to Bonta and Andrews (2007), the fourth-generation of risk assessment tools incorporate responsivity factors which are then combined with criminogenic needs and risk factors. Bonta and Andrews explain "...responsivity refers to the fact that cognitive social learning interventions are the most effective way to teach people new behaviours regardless of the type of behaviour" (2007, p. 5). In simpler terms, according to the responsivity principle, intervention must be matched to the learning style of each offender (Maurutto & Hannah-Moffat, 2006). Accordingly, responsivity factors have emerged as a key consideration in the development of case management in corrections (Maurutto & Hannah-Moffat, 2006). Responsivity factors are divided into two groups. First, general responsivity indicates the use of cognitive social learning methods to influence behaviour (such as the appropriate use of reinforcement or disapproval) (Bonta

& Andrews, 2007). Secondly, specific responsivity takes into account specific characteristics of the offender (such as personality or motivation) (Bonta & Andrews, 2007). Furthermore, fourth-generation risk assessments also assess 'protective factors' (such as pro-social associates) which can lower the level of risk (Baglivio, 2009).

Fourth-generation risk assessment tools are also designed to aid in the case planning of offenders (Latessa & Lovins, 2010). Latessa and Lovins (2010) state, "[f]ourth generation tools are designed to integrate the results of the risk/need assessment directly into the case plan process to ensure that agents of change target those criminogenic needs that are tied specifically to reoffending" (p. 213-214). These tools provide practitioners a specific 'map' to address the needs of individual offenders (Latessa & Lovins, 2010). They are intended to guide practitioners from the time of offender intake to the time the offender is released from the institution (Latessa & Lovins, 2010).

Through the development of third and fourth-generation risk assessments, the 'need' principle has been linked to the understanding of dynamic risk factors and the 'responsibilization' of the offender (Hannah-Moffat, 2005). This means that the new technologies of need management rely on the creation of an independent autonomous subject and are now encouraged to take responsibility for their offending (Hannah-Moffat, 2005). Offenders are no longer seen as victims of circumstance (people influenced by external factors) but individuals who are incapable of adequately managing their needs in a way that avoids foreseeable risks (Hannah-Moffat, 2005). Thus, only manageable criminogenic needs are targeted for intervention (Hannah-Moffat, 2005). Manageable criminogenic needs are those that can be resolved through behavioural or

lifestyle changes through tools that seek to teach offenders to think rationally and logically (Hannah-Moffat, 2005). These tools seek to teach offenders to deal with their inadequacies (Hannah-Moffat, 2005). However, these tools also have critiques. These tools do not take the external factors (such as the economic or social status) of each offender into account when assessing for risk (Andrews, Bonta & Wormith, 2011). Additionally, some of the criteria used reflect moral values of the middle class (Pate, 2002). For example, a tool may ask whether or not an offender has a profession, a bank account or has used social assistance (Pate, 2002).

The importance of being able to assess an offender's level of risk in corrections has been pertinent during the evolution of the various generations of risk assessment. One reason for this is that this information is significant to the NPB decision-making process (Robert, 2001, p. 91; my translation). This was emphasized in the Daubney Report (Robert, 2001, p. 91; my translation). This report stated that risk assessment and the decision to grant parole relied on the quality of information provided to the NPB by CSC (Robert, 2001, p. 91; my translation). This information can include but is not limited to: pre-sentence reports, victim impact statements, and institutional case files (Daubney, 1988). In 1986, the NPB released its first mission statement which asserted the protection of society was its primary objective (Bottomley, 1990). Furthermore, Hannah-Moffat states that “[r]isk/need languages are fully integrated into... the National Parole Board and the Correctional Service of Canada's policies and training manuals, which explicitly instruct practitioners ‘how to govern through risk’” (2005, p. 34-35).

Furthermore, it has been argued that during the era of ‘the prevalence of risk’, parole legislation in Canada has produced a ‘twin-track policy’. This concept was

prevalent in Dominique Robert's (2001) analysis of parole legislation in Canada between 1970 and 1992. 'Twin-track policy' refers to amendments in legislation that tightens parole release for certain offenders and softens it for others.

Robert (2001) notes that the 'twin-track policy' first appeared in Canadian parole legislation in 1978. This marked the distinction between 'violent offenders'²³ and 'other' offenders in parole legislation (Robert, 2001, p. 83-84; my translation). In 1978, policy was created to lengthen the time of ineligibility of full parole for 'violent' offenders (Robert, 2001, p. 83; my translation). With this policy, violent offenders are not eligible for full parole until they have served one half or seven years of their sentence (whichever is shorter) whereas non-violent offenders are eligible for full parole after serving one third or seven years of their sentence (whichever is shorter) (Robert, 2001, p. 83-84; my translation).

In 1986, two parole bills were enacted and further strengthened the 'twin-track policy' (Robert, 2001, p. 84; my translation). *Bill C-67* allowed the NPB to deny statutory release for offenders who were deemed likely to seriously harm someone or cause death while on release (Robert, 2001, p. 84; my translation). Moreover, if parole was granted, the NPB could impose a residency condition (requiring a parolee to reside at a community residential facility) on the offender (Robert, 2001, p. 84-85; my translation). Whereas *Bill C-67* tightens control over violent offenders, *Bill C-68* accelerates the release of others (Robert, 2001, p. 85; my translation).

Bill C-68 applies to non-violent offenders who are serving three years or less. It allows these offenders to apply for day parole or full parole as soon as they are eligible

²³ Violent offenders may be convicted of violent crimes including but not limited to any form of assault or murder as described in the *Canadian Criminal Code*.

and prevents any administrative delays from preventing their files to be reviewed (Robert, 2001, p. 85; my translation). In 1992, the creation of the *CCRA* included a section on accelerated parole (Robert, 2001, p. 85; my translation). Accelerated parole review is considered to be ‘soft’ legislation because it allows for parole review six months before day parole eligibility (Robert, 2001, p. 85; my translation). The category of offences that fall under the ‘hard’ legislation in the ‘twin-track policy’ was also expanded to also include sexual offences against children and drug related offences (Robert, 2001, p. 86; my translation).

Bill C-17 was enacted in 1997 to advance the date of eligibility for parole for certain categories of offenders (Robert, 2001, p. 86-87; my translation). *Bill C-17* changed accelerated parole review to allow for the positive presumptive release of first time offenders after one sixth of their sentence has been served, provided the offender is unlikely to commit a violent offence upon release (Robert, 2001, p. 87; my translation). Combined, these laws illustrate a ‘twin-track policy’ in Canadian parole legislation (Robert, 2001, p. 87; my translation). On one hand, legislation states that offenders who pose a low risk to society should be released as soon as possible (soft policies) and on the other, steps have been taken to prolong the incarceration of offenders who have committed or who are deemed at risk to commit serious offences (hard policies) (Robert, 2001, p. 87; my translation).

According to Robert, the ‘hard’ policies enacted in the late 1980’s and 1990’s stem from the public’s lack of confidence in the criminal justice system’s ability to control parolees (2001, p. 90; my translation). This concern stemmed from highly publicized violent reoffending by certain parolees in the late 1980’s (Robert, 2001, p. 90;

my translation). Afterwards, the public believed that the fact that all offenders were eligible to return to society after serving one their of their sentence was too lenient (Robert, 2001, p. 91; my translation). As a result the Daubney Report suggested that the selection of full parole candidates should be more strict (Robert, 2001, p. 91; my translation). These legislative changes illustrate that protection of society and risk management have garnered increased importance in Canadian corrections which follows the principles of the *CCRA* (Robert, 2001, p. 93; my translation). According to the ‘twin-track policies’, parole is no longer a logical step in the rehabilitation process but is instead, a privilege for low risk offenders (Robert, 2001, p. 94; my translation). It is important to note that Robert’s article was published in 2001. As a result, there is a fourteen-year gap until the present time. Given this, I will analyze recent parole legislative amendments in the next section to determine whether or not the ‘twin-track policy’ is still in effect in Canada’s parole system. With the prevalence of risk, new parole legislation was passed in 1992.

1.2.5 Prevalence of Risk and Public Safety 1992 – 2005

The *CCRA* was enacted in 1992 and is currently still in effect. It provided a single piece of legislation that governs both the correctional system and parole regimes in Canada (Stenning, 1995). The motivation to create this legislation came from “...a broad-based government review process of the criminal justice system, involving intensive study, consultation, and planning (i.e., the Correctional Law Review, 1984, consisting of 11 projects)...” (Zinger, 2012, p. 119). During this review, the *PA* was identified to not reflect current realities (Correctional Service of Canada, 2015). The *PA* contained no statement of philosophy or principles of corrections and provided minimal offender rights

(Correctional Service of Canada, 2015). With the creation of the *CCRA*, the primary purpose of the correctional system is to contribute to the maintenance of a just, peaceful and safe society (Correctional Service of Canada, 2015). Furthermore, the first principle to guide CSC is that the protection of society is the paramount consideration for all decisions related to release and treatment of offenders (Correctional Service of Canada, 2015).

The *CCRA* requires offenders to apply for day parole as opposed to the automatic review of day parole for each offender that was required under the *PA* (Parole Board of Canada, 2009). The reforms made to full parole in the *CCRA* reflect public safety – it provides sentencing judges with the option to set full parole eligibility at one half of the sentence for violent and drug offenders (Parole Board of Canada, 2009). Much like the *PA*, PBC members are able to apply conditions to parolees under the *CCRA*. In doing so, they are able to apply any condition deemed necessary for the protection of society and successful reintegration into society (Turnbull and Hannah-Moffat, 2009).

The *CCRA* also recognizes the increased need of accountability in corrections and parole (Parole Board of Canada, 2009). As a result, three major changes can be identified. For the first time in the history of parole legislation, the role and entitlements of victims²⁴ were provided for in the *CCRA* (Parole Board of Canada, 2009). Additionally, citizens were allowed to attend parole hearings as observers. Lastly, the *CCRA* created the establishment of a decision registry in which people could request Parole Board decisions (Parole Board of Canada, 2009).

Turnbull and Hannah-Moffat (2009) state “with the enactment of the Corrections

²⁴ The *CCRA* provides victims the right to receive information about specific offenders. It also allows victims to submit a victim impact statement to the Parole Board members to incorporate in its decision making process (Parole Board of Canada, 2009).

and Conditional Release Act, the federal system of parole in Canada has shifted its *raison d'être* from rehabilitation to managing risk” (2009, p. 534-535, italics original; Silverstein, 2001 also notes this shift). With this legislation, the aim of parole is still to assist with offender rehabilitation and reintegration but it is primarily oriented towards public safety through techniques of surveillance and risk management (Turnbull & Hannah-Moffat, 2009). Furthermore, “[i]n this context, parolees’ avoidance of ‘risky’ situations, people and spaces is an important risk reduction strategy...” (Turnbull and Hannah-Moffat, 2009, p. 535). Parole conditions play a key role in this strategy as they can specify what parolee’s need to avoid and require some parolees to participate in correctional programming within their communities or through residency requirements (Turnbull & Hannah-Moffat, 2009). In fact, the *CCRA* declares the fundamental purpose of corrections is to protect the public and parole decisions should always favour public safety ahead of the need of the offender (Parole Board of Canada, 2009).

Additionally, with the enactment of the *CCRA*, the PBC continued to determine whether there is a risk an offender will re-offend, and anticipate the nature and seriousness of the offence should the offender recidivate (Parole Board of Canada, 2009). However, the *CCRA* allows the PBC to distinguish violent and non-violent recidivism (Parole Board of Canada, 2009). The *CCRA* also emphasized the need for CSC staff to ensure PBC members to be given timely and reliable information about offenders in order to aide their ability to conduct an effective risk assessment (Parole Board of Canada, 2009).

The role of the PBC was also expanded in 1992 by amendments to the *Criminal*

Records Act. These amendments gave the PBC authority to grant and issue pardons²⁵ (Parole Board of Canada, 2013). PBC was given this authority in order to help keep up with the increasing volume of pardon applications (Parole Board of Canada, 2013). While pardons are different than parole, this change is still important to note for the purpose of this thesis because pardons are considered evidence that a conviction should no longer reflect negatively on a person's character (Parole Board of Canada, 2013). Thus, granting an offender a pardon is a means to further facilitate offender reintegration (Parole Board of Canada, 2013). Relatedly, while parole's primary concern is public safety, it is still considered part of the offender reintegration process (Hannah-Moffat, 2004). As a result, PBC parole and record suspension decisions are integral in formally recognizing the reintegration efforts of offenders. (Parole Board of Canada, 2015b). This indicates that it is possible that the PBC plays a role in formally recognizing offender reintegration. Given the gap between Robert's (2001) review of parole legislation and present time, I will provide an overview of recent parole legislation.

1.3 Recent Political Trends Related to Parole: 2005 – 2012

Since the publication of Dominique Robert's (2001) article, there have been legislative amendments that have changed parole legislation in Canada. I will briefly provide an overview of these bills and identify where they fit in the twin-track policy. The first piece of legislation is *Bill S-6*. This bill was enacted in March 2011 (Parliament of Canada, 2011d). It abolished the 'faint hope clause' which allowed offenders serving a sentence for treason or murder to apply for parole after serving 15 years in prison if their parole ineligibility exceeds 15 years (Parliament of Canada, 2011d). In doing so,

²⁵ The term 'pardon' was replaced with 'record suspension' in an amendment in section 7 of *Bill C-10* (Parliament of Canada, 2012f).

this legislation can be classified as ‘hard’ legislation and continues the trend of tightening parole for violent offenders. Next, *Bill C-59* was enacted in 2011 and abolished accelerated parole review (Parliament of Canada, 2011c). The, “[t]he objective of *Bill C-59* is to tighten the rules governing eligibility dates for parole...” (Parliament of Canada, 2011b, p. 1). Provided that *Bill C-59* eliminated accelerated parole review for non-violent offenders, this legislation can be considered ‘hard’ legislation.

Bill C-10 also amends the *CCRA*. *Bill C-10* is an omnibus bill²⁶. The amendments created in section 6 of *Bill C-10* were created in order to tighten parole (for violent and sexual offenders) (Parliament of Canada, 2012e). As such, it is obvious that section 6 of *Bill C-10* fits into the ‘hard’ legislation category. Additionally, legislation related to parole has recently been tabled in Parliament and if enacted, would amend the *CCRA* or the *Canadian Criminal Code*.

Bill C-587 - Respecting Families of Murdered and Brutalized Persons Act was tabled in April, 2014. If enacted, it would amend the *Canadian Criminal Code* to increase the parole ineligibility from 25 years to a maximum of 40 years for a person convicted of the abduction, sexual assault and murder of the same victim (Open Parliament, 2015d). If enacted, this would fit into the ‘hard’ legislation category. *Bill C-53 - Life Means Life Act* was tabled in March, 2015 (Open Parliament, 2015b). This bill aims to amend the *Canadian Criminal Code* to make a life sentence without eligibility for parole mandatory for certain offences and amends the *CCRA* to allow an offender who is sentenced without parole to apply for executive release after serving 35 years of their sentence. If enacted, it

²⁶ An omnibus bill seeks to amend, repeal or enact several Acts, and it is characterized by the fact that it has a number of related but separate parts (Parliament of Canada, 2000). *Bill C-10* amends the *State Immunity Act*, the *Criminal Code*, the *Controlled Drugs and Substances Act*, the *Corrections and Conditional Release Act*, the *Criminal Records Act*, the *International Transfer of Offenders Act*, the *Youth Criminal Justice Act* and the *Immigration and Refugee Protection Act* (Parliament of Canada, 2012g).

would fit into the ‘hard’ legislation category. Finally, *Bill C-56 Statutory Release Reform Act* was introduced in Parliament in March, 2015 (Open Parliament, 2015c). This bill seeks to amend the *CCRA* to eliminate statutory release for certain violent offenders. Again, if enacted, this bill would fit into the ‘hard legislation category.

Bill C-12 – Drug Free Prisons Act received royal assent on June 18, 2015 (Parliament of Canada, 2015c). This bill requires the PBC to cancel an offender’s parole if, before the offender’s release, the offender tests positive in an urinalysis, or fails or refuses to provide a urine sample, and the PBC considers that the criteria for granting parole are no longer met (Open Parliament, 2015a). Additionally, *Bill C-32 – An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts* received royal assent on April 23, 2015 (Parliament of Canada, 2015d) amends the *CCRA* to allow victims the right to certain information of offenders (Parliament of Canada, 2014).

When analyzing the parole legislative amendments that have been enacted or tabled since Dominique Robert’s article in 2001, one may ask whether or not these parole bills continue the trend of the twin-track policy or if they move away from this policy and fit into a new trend – one of enacting strictly ‘hard’ parole legislation. *Bill S-6, Bill C-59, Bill C-10, Bill C-587, Bill C-12* and *Bill C-32* can all considered to be ‘hard’ parole legislation. This follows a trend highlighted by Zinger:

Despite the positive outcomes associated with conditional release, every legislative initiative since the enactment of the *CCRA* has resulted in an increased reliance on custody; in raising periods of parole ineligibility; or in limiting or eliminating access to conditional release. With one exception, which has now been repealed, no legislative initiative has been enacted to specifically facilitate the rehabilitation of offenders – one of the key legislative purposes of both the Correctional Service of Canada and PBC. The rehabilitation of offenders has just not been the subject of any legislative effort by Parliamentarians since 1992 (2012, p. 120).

In addition, the amendments in section 7 of *Bill C-10* are also important to note for the purpose of this thesis. While they do not amend the *CCRA*, these amendments amend the *Criminal Records Act* by extending the ineligibility periods for applicants for a record suspension for summary conviction offences and indictable offences as well as making individuals convicted of sexual offences against minors and those who have been convicted of more than three indictable offences ineligible for a record suspension (Parliament of Canada, 2012f). The amendments that deem sex offenders that offend against minors and repeat offenders ineligible for record suspensions are similar to ‘hard’ parole legislation that has targeted certain types of offenders. While conditional release is considered part of the rehabilitation and reintegration process of an offender (Parole Board of Canada, 2014a), being granted a record suspension facilitates offender reintegration (Parole Board of Canada, 2014a). Thus, PBC members may consider the reintegration of offenders in both decisions and some of the themes in the content of the amendments in section 7 of *Bill C-10* may be linked to themes of parole.

When looking at recent parole legislation amendments, it is important to consider the context in which these pieces of legislation have been enacted. Although there is a ten year gap between Robert’s article in 2001 and the first piece of parole legislation identified (*Bill S-6* in 2011), *Bill S-6*, *Bill C-59*, *Bill C-10*, *Bill-12* and *Bill C-32* have all been enacted while the Harper-led Conservative government has been in political power in Canada. The next portion of this chapter will analyze the role that the Harper-led Conservative government has played in passing these pieces of legislation.

Bill C-10 is not the first ‘Tough on Crime’²⁷ bill that has been tabled, passed and

²⁷ ‘Tough on Crime’ policies refer to legislation that aim to increase the incarceration of offenders, for longer periods of time, with fewer chances of release prior to the end of their sentence (Piché, 2012).

enacted since the Harper-led Conservative government was elected in 2006 (Mallea, 2010)²⁸. The Harper-led government has introduced many ‘Tough on Crime’ bills before *Bill C-10* and many of them have been successfully enacted. These include bills that increase mandatory minimum sentencing, abolish 2-for-1 pre-trial credit, abolish the Faint Hope Clause, limit house arrest for certain offenders, make it easier to label offenders as ‘dangerous offenders’, tighten parole and increase youth sentencing (Cook & Roesch, 2012; Mallea, 2010).

During Stephen Harper’s election campaign of 2006, one of the party’s major objectives was to implement ‘Tough on Crime’ policy (Mallea, 2010; Office of the Prime Minister, 2006). In fact, in 2010, one-third of the House of Commons Government bills were related to crime. This legislation was (and is currently still) being proposed at a time when virtually all Canadian crime statistics have stabilized or are declining for over 20 years (Cooke & Roesch, 2012; Mallea, 2010; Statistics Canada, 2014). Given this information, it is necessary to ask the following question: why would the Conservative government propose and enact this type of legislation at a time when Canadian crime statistics have stabilized or are declining? Although many explanations can be proposed to answer this question, some researchers (Mallea, 2010; Pratt, 2007) interpret this legislative agenda as a way to gain additional political votes by using the rhetoric of ‘victims of crime’ to arouse sympathy from a part of public opinion. This political strategy is termed by some researchers as ‘penal populism’.

²⁸ As an aside, ‘Tough on Crime’ policy was being enacted before the Harper government was first elected in 2006. Zinger (2012) notes that every legislative initiative since the enactment of the *CCRA* in 1992 has been a form of ‘Tough on Crime’ policy except the accelerated parole review which has since been eliminated. Piché (2012) also notes that previous Conservative and Liberal governments are responsible for past penal policies. Furthermore, the UK and USA have been implementing these ‘Tough on Crime’ policies for years (Webster and Doob, 2007).

Penal populism is "...the notion of politicians tapping into and using for their own purposes, what they believe to be the public's generally punitive stance..." (Pratt, 2007, p. 2; also cited in Carrier, 2010). Thus, penal populism means the political instrumentalization of crime-related issues (Carrier, 2010). In other words, political gains are prioritized over the efficiency of crime control policies (Carrier, 2010). Politicians may use punitive measures to give the impression to citizens that they are doing something to deal with crime. For example, the public's supposed 'need' for vengeance against violent crime could be satisfied by political action with the use of penal populism (Carrier, 2010). Political groups may also try to influence the public's opinion to be more in line with its own political ideologies through the use of penal populism (Pratt, 2007). Additionally, victims of crime have gained iconic status in populist discourse as politicians frequently refer to victims of crime to justify their 'Tough on Crime' approach (Barlett, 2009; Pratt, 2008). Victims of crime play a key role in political and penal policy arguments as their experiences are assumed to be common and collective (Garland, 2001).

The penal populist strategy commonly draws on 'personal' experiences and/or 'common sense' approaches rather than evidence-based research and analysis to advance a political agenda because they resonate better with the public that politicians are in fact addressing victims' concerns (Pratt & Clark, 2005). In fact, in this context, these approaches are better able to convey the authenticity of crime than statistics and experts (Pratt, 2007). In sum, penal populism can be summarized as follows: "...to turn *punishment of offenders into a symbolic spectacle of reassurance and vengeance for an onlooking public, humiliation and debasement for its criminal recipients...*" (Carrier,

2010, italics original). However, it should be noted that Walby and Piché (2011) argue that the concept of penal populism cannot be applied to the Canadian context. Instead, Walby and Piché state:

[w]hile the political climate in Canada is one that has increasingly been dominated by law-and-order rhetoric and the passage of longer sentences, this has occurred in the name of the ‘public’ and victims, rather than with general public support (2011, p. 467).

As such, Walby and Piché (2011) argue that this is more indicative of populist punitiveness. Piché (2012) states populist punitiveness is described as attempts from politicians to draw on the perceived punitive sentiments held by the general public for political gain. The next portion of the literature review will highlight the Conservative government’s political strategy to advance its ‘Tough on Crime’ political agenda.

Relatedly, many Canadians think crime is rampant across the country and much like other governments, the Harper government uses this to its advantage (Cook & Roesch, 2012; Mallea, 2010; Snow & Moffit, 2012). This fact is exacerbated by the tendency of some media to give priority to sensationalized crimes (Mallea, 2010). The Harper-led Conservative government has also contributed to emphasizing the public’s fear of crime. Mallea explains, “[o]ut of the 64 bills before the House of Commons at prorogation in 2009, 17 (or 25%) were related to criminal justice issues...” (2010, p. 9). Harper also uses inflammatory language to convince Canadians that their communities are unsafe and uses this language to feed voters’ fear of crime (Mallea, 2010; Snow & Moffit, 2012). Moreover, Harper’s government strategically names some crime legislation that his government tables in order to convince the public that these pieces of legislation will help make communities safer. For example, the name of *Bill C-25* –

“Truth in Sentencing” implies that there was no truth in sentencing before this bill was enacted (Cook & Roesch, 2012; Parliament of Canada, 2009a).

The Harper government further justifies its ‘Tough on Crime’ policy initiatives by stating that the government is acting on behalf of crime victims (Mallea, 2010; Snow & Moffit, 2012). For example, *Bill C-52* is named the *Retribution on Behalf of Victims of White Collar Crime Act*, suggesting that the bill is the first that has been created to help victims of white-collar crime obtain retribution (Mallea, 2010). One logical inference that Canadian citizens may make from these actions is that crime is out of control in Canada and the government must dedicate a huge amount of resources to control crime and punishment (Mallea, 2010).

By combining these strategic actions, the Harper-led government has been able to justify its ‘Tough on Crime’ agenda to the public without empirical evidence. Mallea (2010) explains that Harper’s government is able to do so by frightening many Canadians and by providing their ‘Tough on Crime’ solutions for those fears, it is pushing these citizens towards a more punitive model in the criminal justice system. This political strategy can once again be tied back to penal populism as “[p]enal populism consists of the pursuit of a set of penal policies to win votes rather than to reduce crime or promote justice” (Pratt, 2007, p. 3). It is believed that Opposition political parties do not publicly voice against these ‘Tough on Crime’ bills because they do not want to appear ‘weak’ on crime in the eyes of the public and lose votes (Mallea, 2010; Snow & Moffit, 2012).

Given the lack of empirical evidence produced by the Harper-led government in order to justify the need for these ‘Tough on Crime’ bills, it is unsurprising that correctional experts and academics alike do not believe that these tough measures will

produce greater public safety (Mallea, 2010; Snow & Moffit, 2012). In fact, academics believe it will have the opposite effect (Andrews & Bonta, 2010a; Jackson & Stewart, 2009; Mallea, 2010; Smith, Goggin & Gendreau, 2002; Snow & Moffit, 2012; Tonry, 2008; The Correctional Investigator Canada, 2012). They state that these bills will result in longer prison sentences, harsher prison conditions and an increased incarceration population. Recidivism is also more likely to occur because offenders will be incarcerated for longer with access to fewer programs of rehabilitation and in turn, will be less prepared to reintegrate into society post incarceration (Jackson and Stewart, 2009; Mallea, 2010; The Correctional Investigator Canada, 2012). In fact, there is evidence that these prison conditions already take place in Canada (The Correctional Investigator Canada, 2013).

Despite this, the Harper government continued their trend of ‘Tough on Crime’ policy in 2012 with the enactment of *Bill C-10*. Many of the parole amendments in section 6 of *Bill C-10* stem from recommendations made in a report named *Roadmap to Strengthening Public Safety*²⁹. This report was created by a Correctional Service Review Panel (the Panel hereafter) in 2007 which was commissioned and hand picked by the Harper government (Mallea, 2010). The Panel was chaired by Rob Sampson (former Minister of Corrections under Michael Harris’ Conservative government in Ontario) (Mallea, 2010). The report contains 109 recommendations organized around strengthening five key areas that the Panel considered would enable the CSC to offer greater public safety to Canadians (Jackson & Stewart, 2009). One of the main recommendations for parole is to move the Canadian parole system to a system of

²⁹ See Sampson et al. (2007) for details on parole recommendations that make up the parole amendments in Section 6 of *Bill C-10*.

‘earned parole’³⁰ (Sampson, Gascon, Glen, Louie & Rosenfeldt, 2007). The Panel provides little empirical evidence for its recommendations and the recommendations seem to accept that incarceration is the best solution to all criminal issues – which is on par with the Harper-led ‘Tough on Crime’ policy (Mallea, 2010).

By enacting *Bill C-10*, it appears that the government ignored warnings within academia that this type of crime policy does not make communities safer. For instance, Michael Jackson (a law professor at the University of British Columbia) and Graham Stewart (former Director General of the John Howard Society of Canada), severely criticized the Report³¹. Overall, the authors argue that the suggested transformation of the correctional system fails to respect human rights and state that it is based on ideological myths³² (Jackson & Stewart, 2009). Jackson and Stewart (2009) also point out that the Panel does not take the history of corrections in Canada into consideration when making its recommendations. They state that the Panel’s analysis of the history of corrections in Canada was limited to two short paragraphs limited to post 1992 and does not draw upon the lessons learned in previous years because it’s analysis was guided by ideological beliefs. Given this, Jackson and Stewart (2009) also criticize the Panel for reflecting ideological and populist views that being ‘Tough on Crime’ is a sufficient basis for public policy. In sum, the reader will note that the Harper government has been able to strategically enact many of the ‘Tough on Crime’ pieces of legislation by

³⁰ *Bill C-39* – “Ending Early Release for Criminals and Increasing Offender Accountability Act” introduced ‘earned parole’ to Parliament but died on the legislative table when the federal election was called in 2011 (Parliament of Canada, 2011b).

³¹ In 2009, Jackson and Stewart wrote a response to the Report entitled *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*.

³² Some of the ideological myths that Jackson and Stewart (2009) highlight in their report are: the Panel used carefully selected crime statistics without any historical perspective that give a distorted view of crime trends, the misconception that violent crime is increasing in Canada, that life inside a penitentiary should promote a positive work ethic, the belief that correctional programming should focus less on vocational skills and more on preparing offenders to work upon release.

using employing the use of populist punitiveness through its use of ‘law-and-order’ rhetoric in the name of the ‘public’ and victims as well as aspects of penal populism by ignoring warnings from academics and professionals as well as scaling back judicial discretion. Given the Harper government’s pursuit of ‘Tough on Crime’ policy, it is worth further examining the concept of the ‘punitive turn’ and if Harper’s ‘Tough on Crime’ policy fits into the ‘punitive turn’.

Brown defines the ‘punitive turn’ as:

...a range of interconnected factors: ‘get tough’ crime policies; increased politicization of crime and use of fear-inducing crime control rhetoric and action for political gain; the emergence of increasingly value-laden and symbolic crime control rhetoric; continued social, structural and institutional race and class biases; general concerns among the public and social disorder and so-called ‘moral panics’; pervasive fear-inducing news and mass media coverage of crime; increasing economic polarizations and materialism; institution of mandatory sentences, harsher parole and probation systems and increased criminalization of substance use and other behaviors (2006, p. 288).

Brown (2006) explains that many scholars believe that the interconnected factors listed in the definition above have caused the ‘punitive turn’ in American crime control over the past 35 years. When analyzing Brown’s definition, it is apparent that many of these factors can be found in Harper’s ‘Tough on Crime’ policies. For instance, since Harper’s government tabled and has enacted many ‘Tough on Crime’ policies much like the first factor listed in Brown’s definition. Harper’s government’s use of aspects of the penal populist strategy is similar to the second factor listed in Brown’s definition. According to Snow and Moffitt, “[t]he retributive function of a tough-on-crime platform appeases social conservatives by reinforcing public morality and safety, and by ensuring proportionality between crime and punishment” (2012, p. 281). Furthermore, these policies have proven popular with much of the Canadian electorate (Snow and Moffitt,

2012). Another factor listed by Brown – ‘structural and institutional race and class biases’ – can be found in the Canadian federal prison system³³. Next, while ‘pervasive fear-inducing news and mass media coverage of crime’ is not new in Canada, it continues to be a reality (Mallea, 2010).

Lastly the ‘institution of mandatory sentences, harsher parole and probation systems and increased criminalization of substance use and other behaviours’ have all been implemented in crime bills enacted by the Harper-led Conservative government. In sum, when analyzing Canadian crime legislation and policies within the context of the Harper-led Conservative government ‘Tough on Crime’ policies, one can see that many characteristics of the ‘punitive turn’ as explained by Brown (2006) are apparent in Canada. However, some academics argue that the ‘punitive turn’ has not been implemented in Canada³⁴ (Carrier, 2010; Doob & Webster, 2006; Webster & Doob, 2007). Additionally, the adoption of concept ‘punitive turn’ in Canadian context can lead to some misinterpretations because it gives the idea that Conservative measures changed the way punitivity was conceived and put into practice in Canada. Instead, the historical analysis provided throughout this literature review proved the contrary: punitive measures were progressively incorporated into corrections and parole legislation since the early 1970’s. As a result, this phenomenon should be more appropriately described as a ‘punitive strengthening’³⁵ rather than a ‘punitive turn’ (Carrier, 2010). Given this, I will

³³ Approximately 4% of the Canadian population is Aboriginal, yet approximately 21% of the federal incarcerated population is Aboriginal (Office of the Correctional Investigator, 2012).

³⁴ Doob and Webster argue that while Canada has been implementing harsher criminal justice policies, these policies are not as harsh as those of other Western nations (2006). Other researchers argue that while Canada’s prison population has not increased at the dramatic rate of that of the United States prison population (Carrier, 2010; Webster & Doob, 2007).

³⁵ Carrier (2010) argues that advocates of the punitive turn take the ‘symptoms’ for granted and use them as a starting point rather than providing empirical support to the ‘symptoms’. Moreover, the concept of ‘punitiveness’ is an under theorized concept. See Carrier (2010) for further details.

now provide a brief summary of section 6 of *Bill C-10*.

Bill C-10 received royal assent³⁶ March 13, 2012 (Parliament of Canada, 2012g). The amendments in this legislation were allegedly created to make communities across Canada safer (Department of Justice Canada, 2011). The purposes of these amendments attempt to make communities safer by improving the protection of the most vulnerable members of society, improving the ability of the criminal justice system to hold criminals accountable for their actions and lastly, to improve the safety and security of all Canadians (Department of Justice Canada, 2011).

One of the purposes of the section 6 amendments is to: "...tighten the rules governing conditional release..." (Parliament of Canada, 2012e, s. 6.1). Section 6 proposes to 'tighten the rules' of conditional release by: increasing the waiting period from six months to a year following the refusal of an application for day parole or full parole, expanding the categories of offenders subject to continued detention after their statutory release date (including offenders convicted of child pornography, luring a child, breaking and entering to steal a firearm, or aggravated assault of a peace officer), and emphasizing the importance of offenders being active participants attaining the objectives of their correctional plan (Parliament of Canada, 2012e, s. 6.1). These amendments are important to examine because they may indicate a continued prevalence of punitive official discourses and themes of parole in Canada. This chapter will be concluded by identifying the research hypothesis.

1.4 Conclusion

In conclusion, this chapter has provided the historical context of the parole system

³⁶ Royal Assent is when the Senate and the House of Commons have both passed a bill in identical form. At this time, the Governor General or one of his deputies, gives the bill Royal Assent on behalf of the Queen and it becomes an Act of Parliament (Parliament of Canada, 2015a).

and the official discourses on and values of parole in Canada. In doing so, it has provided an overview of each of the four major pieces of parole legislations that have created and subsequently altered the official discourses on and values of parole within Canada. Following this, additional concepts related to parole, the recent political context of parole and the context in which *Bill C-10* was enacted were all presented according to the literature. The amount of bills recently tabled and/or enacted that are related to parole suggest that parole is has recently been and remains an important issue for politicians when amending criminal justice legislation.

Given this, I hypothesize that the combined themes and sub-themes of parole within the official discourses pertaining to and in the content of section 6 and section 7 of *Bill C-10* continue to demonstrate the prevalence of the current punitive approach established in 2006 by the Conservative government³⁷. This is important to note because this may prompt future research to be conducted on the potential repercussions of this punitive approach. For example, if proven correct, a punitive approach to parole can be detrimental to the correctional system in Canada. Promoting a punitive approach to parole may increase the length of time offenders are incarcerated which can hinder the possibility of safe offender reintegration into the community and is detrimental to public safety (Reports of the Auditor General, 2015). Furthermore, this in turn may be contrary to the fundamental principles of the *CCRA* (which are to contribute to the maintenance of a just, peaceful and safe society) (Correctional Service of Canada, 2015). As a result, it is possible that a punitive approach to parole may be contrary to public safety, thus making

³⁷ While research illustrates that punitive measures were incorporated into Canadian criminal policy before the Conservative party was elected in 2006 (Piché, 2012), the ‘Tough on Crime’ approach of the Conservative government started in 2006. As such, I am only concerned with the ‘Tough on Crime’ approach of the current Conservative government that began in 2006.

the parole system in Canada the exact opposite of what guides parole: public safety. This would indicate that the punitive approach to parole should be rethought and that the parole amendments should be retracted or altered in order to better follow the principles that guide the *CCRA*. The next chapter will present the theoretical framework chosen to guide the analysis of this thesis.

CHAPTER 2 – THEORETICAL FRAMEWORK

2.1 Introduction

This chapter shifts focus towards the theoretical perspective which guides the analysis of this thesis. The theory of social constructionism will be introduced in this chapter to provide an epistemological lens. This is followed with an in-depth analysis of the social construction of social problems which will be presented to ground the methodology and analysis in the subsequent chapters. Thus, this research proposes that the themes of parole found within official discourses are social constructions and that offenders are constructed as social problems by certain MPs, Senators of Parliament and expert witnesses that participated in the Parliamentary debates pertaining to section 6 and section 7 of *Bill C-10*.

Before defining social constructionism, it is important to note that ‘official discourses’ refers to the dialogue between the MPs, Senators of Parliament and the expert witnesses that participated in the Parliamentary debates. These debates took place between September 20, 2011 and March 3, 2012 (Parliament of Canada, 2013a). During this time, the Conservative Party held a majority government in Canada (Brethour, 2012), meaning that this political party had more elected MPs than any other political party represented during these debates^{38, 39}. As a result, the opinion of the Conservative Party was more prevalent than any other political party during the debates. In addition, the opinions of members of the New Democrat Party (the official opposition at the time), the Liberal Party, the Green Party and the Bloc Québécois were also represented in the

³⁸ See Parliament of Canada (2015b) for the number of MPs from each political party in the House of Commons.

³⁹ See Parliament of Canada (2015e) for the number of Senators affiliated with each political party in the Senate.

debate. Finally witnesses also participated in some of these debates. Therefore, the discourses of only this very specific population will be analyzed. The next section will shift focus to the epistemology of social construction.

2.2 Social Constructionism

In order for this research to better analyze how official discourses on parole are portrayed in the Parliamentary debates and in section 6 of *Bill C-10*, a theoretical framework must be explored. This will allow me to specify the way in which this research will attempt to determine whether or not offenders were socially constructed as social problems within the Parliamentary debates and in the content of section 6 and section 7 of *Bill C-10*. This framework will therefore help give further basis for the research hypothesis and methodological choices. Prior to elaborating this theoretical framework, the epistemological stance must be noted. For the purpose of this research, the social construction epistemology will be used. There is no single definition of social constructionism (Burr, 2003; Pearce, 1995). Instead, there is a set of key assumptions and any approach that has one or more of these assumptions, can be said to fall under social constructionism. The next portion of this section will provide an overview of the key assumptions of social constructionism and relate them to the topic of this thesis.

One, social constructionism takes a critical stance towards taken-for-granted ‘knowledge,’ and challenges the view that conventional knowledge is based on objective, unbiased observation of the world (Burr, 2003; May & Mumby, 2005; Ore, 2003; Parton & O’Byrne, 2000; Schulz, 2005). The social construction epistemology opposes the positivist paradigm, denies the existence of a “real” world; a reality external to the subject. Instead, this perspective affirms the interdependence of subject and object

(Burr, 2003; Parton & O'Byrne, 2000). It "...encourages us to be suspicious of how we understand the world and ourselves" (May & Mumby, 2005, p. 37). In other words, it is suspicious that the world can be revealed simply by observation and that what exists is what we perceive to exist (Parton & O'Byrne, 2000). Thus through this lens, what someone identifies as the current official discourses and themes of parole is not an 'objective' finding. Instead, it is their interpretation and another person may identify them differently.

The second assumption is the ways we commonly understand our world as "...historically and culturally specific" (Burr, 2003, p. 4; May & Mumby, 2005, p. 37; Schulz, 2005, p. 119). This implies that "...[l]abels, classifications, denotations and connotations of social identity always are products of their times" (May & Mumby, 2005, p. 37). Thus, an individual should not assume that their way of understanding is necessarily the same as another individual's (Parton & O'Byrne, 2000). The second assumption of social construction indicates that the official discourses and themes related to parole can be said to be constructed uniquely by each individual depending on their historical and cultural experiences. The third assumption is that our 'knowledge' is not derived as a direct reflection of reality, but is rather created through various social interactions (Burr, 2003; May & Mumby, 2005; Parton & O'Byrne, 2000). In other words, social processes sustain knowledge (May & Mumby, 2005). For example, one prevalent social process in a person's daily life is language. People use language to produce and reproduce knowledge as they enact various roles within various contexts (Braun & Clarke, 2006; May & Mumby, 2005). Throughout daily interactions, people receive and repeat recurring variations of 'language' (May & Mumby, 2005; Parton &

O’Byrne, 2000). Based on the third assumption, an individual may construct official discourses and themes of parole based on their social interactions with the criminal justice system, federal legislation, parole policies, federal offenders, parolees, what they hear or see in the media, what their friends tell them, what they read online etc. The fourth and final assumption is that ‘knowledge’ and social action are seen as intertwined (Burr, 2003; May & Mumby, 2005). The basic understanding is that particular versions of knowledge or truth produce or allow for particular outcomes, actions or effects (Burr, 2003; Parton & O’Byrne, 2000). Based on the fourth assumption, an individual’s understanding of the official discourse of parole may be a combination of what has been promoted in the media (social action) and their knowledge (e.g. their understanding of parole legislation and/or parole policies).

Furthermore, this epistemology attempts to understand and interpret the meaning of things that humans create which may vary from person to person. For example, one person may say their dining room table is the perfect size while another person may say the table is too small (Burr, 2003). Neither of those statements is necessarily the ‘truth’ but each description is driven by a different perspective of the table (Burr, 2003). As a result, this research does not propose that there is one ‘truth’ when it comes to official discourses and themes of parole. Instead, it acknowledges that one person’s interpretation of the current official discourses and themes of parole may differ compared to another’s.

In sum, this research will not adopt a positivist perspective, affirming how the world is, but rather a social constructionist perspective, concerned with how humans believe the world is. I will use this epistemology in order to understand the meaning of the term ‘social problem’ and determine whether or not offenders are referred to as a

social problem within the official discourses during the Parliamentary debates. Doing so may provide insight into why certain topics of parole were emphasized during the Parliamentary debates as well as why certain portions of the content of the Parliamentary debates were included in the amendments in section 6 of *Bill C-10* while other portions of the content of the Parliamentary debates were not.

2.3 The Social Construction Definition of a ‘Social Problem’

According to Spector and Kitsuse (2001), the key to any condition becoming a social problem is subjective. Simply put, “[t]he existence of social problems depends on the continued existence of groups or agencies that define some condition as a problem and attempt to do something about it” (Spector and Kitsuse, 2001, p. 415). As such, Spector and Kitsuse (2001) define social problems “...as *the activities of groups making assertions of grievances and claims with respect to some putative conditions...*” (p. 415, italics original). Likewise, Blumer (1971) states, “...social problems lie in and are products of a process of collective definition...” (p. 301). Thus, these definitions do not focus on social conditions per se, but rather on the process of collective definition (Goode & Ben-Yehuda, 2009; Holstein & Miller, 2006). This approach breaks conventional and commonsensical conceptions of social problems by analyzing the process of the creation of collective definition (Holstein & Miller, 2006).

The above definition of social problems clearly rejects the possibility of social problems falling within a positivist paradigm that treats them as objective conditions in the social environment that cause harm (Best, 1995; Goode & Ben-Yehuda, 2009). For example, “[a]ny condition that causes death or disease, which shortens life expectancy or deteriorates the quality of life on a large scale, must be defined as a social problem...”

(Goode & Ben-Yehuda, 2009, p. 150). Within the positivist perspective, social problems are about conditions that can be seen or identified; they are about measurable conditions in the environment and about the living people who are hurt by these conditions (victims) (Goode & Ben-Yehuda, 2009; Loseke, 1999; Sacco, 2005). Those who have invested interest in a social problem from a positivist point of view “...advocate for social policy to address this social problem, which they feel is real, unique in its characteristics and grave in its consequences” (Kappeler & Potter, 2005, p.1). Examining my research topic from a positivist point of view may view offenders as a social problem because of the ‘real’ harm they cause to themselves, other individuals and society. From this perspective, a researcher may focus on measurable aspects of the problem such as the financial cost of crime caused by offending.

The other way of conceptualizing the existence of social problems in society (through the social constructionist epistemology) opposes the first conception of social problems. Spector and Kitsuse (2001) argue that the relationship between “objective” conditions and the development of social problems is variable and problematic. Instead “[s]ocial construction perspectives are concerned with social problems as *subjective conditions* (Loseke, 1999, p. 13, italics original). By conceptualizing social problems through this lens, social problems are not objective conditions to be studied and corrected; rather, they are produced through an interpretive processes (Holstein and Miller, 2006). Within the social constructionist stance, interpretation of reality depends on the person(s) who define it (Griswold, 2012). In other words:

[a]ny objective condition is not a social problem until it is named and given meaning. This is why it’s possible to argue that a *social problem doesn’t exist until it is defined as such*. Conditions might exist, they might hurt people, but conditions are not social problems until humans

categorize them as troublesome and in need of repair (Loseke, 1999, p. 13-14, italics original).

Simply put, conditions that create harm can exist without being qualified as social problems (Loseke, 1999). However, "...there's no necessary relationship between the measurable characteristics of any given social condition or the people in it and a definition of that conditions as troublesome" (Loseke, 1999, p. 8). For example, Loseke (1999) explains that the term 'child abuse' did not appear in the United States until the 1960's. Research shows that this condition had existed long before the 1960's. Thus, the practice of child abuse was not new, but rather the term being defined as a 'social problem' and the worry about the conditions associated with it was (Buckingham, 2011 also notes this example). As a result, the objective existence of a harmful condition does not, by itself, constitute a social problem. Generally, social constructionists may be interested in the following questions when researching social conditions: How do conditions come to be defined or felt or seen as problematic? Why does public concern emerge over one condition and not another? Why do the members of a given society get aroused about certain issues?

The second conception about social problems (social constructionist theory) will be utilized in this thesis. Thus, the potential construction of social problems around official discourses and themes of parole will not be treated as something that exists in reality, but rather as subjective conditions that have been defined as social problems in a specific time frame by federal legislation (section 6 and section 7 of *Bill C-10*) and the people who contributed to creation of this legislation (i.e. MPs, members of the Senate and the expert witnesses who participated in the Parliamentary debates).

Considering this conception of social problems, I am interested in the process of the construction of the social problem between claimants who press and develop claims about what they conceive to be a social problem (Spector & Kitsuse, 2001). This process is referred to as the claims-making process and is an integral part of the social construction of social problems (Best, 1995; Buckingham, 2011; Goode & Ben-Yehuda, 2009; Griswold, 2012; Loseke, 1999; Sacco, 2005; Spector & Kitsuse, 2001).

2.4 Claims-Making Process

Claims-making activities are everyday activities in all societies and occur at all levels of social organization (Spector & Kitsuse, 2001). Additionally, claims-making is an integral part of social and political life (Spector & Kitsuse, 2001). Loseke's (1999) concept of the 'social problem game' will be utilized to explain the claims-making process. Loseke (1999) explains: "The *goal* of the social problems game is to convince enough people to do something about a social problem... the social problems game has *activities* and *players* who compete; there are *competitions* and *strategies* for winning" (p. 19, italics original). In the 'social problem game', the players are the claims-makers. They say and do things (activities) to convince others that a social condition is a social problem. These activities take the form of claims, which are "...any verbal, visual or behavioral statement that tries to convince audiences to take a condition seriously" (Loseke, 1999, p. 26). Within the claims-making process, the focus is not on whether or not the claims being made are really corresponding to the needs of the people but on determining which claims the audience believes and which they do not (Giswold, 2012; Loseke, 1999).

The social problem game includes ‘winners’ and ‘losers’ (Buckingham, 2011; Loseke, 1999). The ‘winners’ in this game are the claims-makers who successfully convince the audience that a social condition is a social problem and that something must be done to fix this problem (Loseke, 1999; Sacco, 2005). The prize for winning the social problems game is “...the power to lead social change, to change the objective world in which we live, to change the ways we make sense of ourselves and others” (Loseke, 1999, p. 19). Similarly, Best (1995) explains that social problems can be fixed with solutions. Consequently, claims-makers who fail to convince the audience that a social condition is a social problem are considered the ‘losers’.

As a result, the role of claims-makers is of particular importance. They simply do not only draw attention to a social condition, but they also construct and frame that social condition as a particular social problem (Good & Ben-Yehuda, 2010; Loseke, 1999). The construction of the social problem that will lead to a particular way of addressing it in social change (Best, 1995; Loseke, 1999). It is necessary to highlight the importance of the claims-making process for the purpose of this thesis because the data that will be analyzed in the next chapter followed the federal legislation making process in Canadian Parliament⁴⁰. Briefly, in order for proposed legislation to become law, the majority of MPs and Senators of Parliament must agree to pass the legislation. In order for them to agree to pass the legislation, they must be convinced that passing the legislation will address a problem. With this, the next portion of this section will examine who claims-makers are.

Everyone has the potential to define a social condition as a social problem and attempt to convince an audience that such a problem exists. However, “...groups that

⁴⁰ This process will be explained in detail in the next chapter.

have a larger membership, greater constituency, more money, and greater discipline and organization will be more effective in pressing their claims...” (Spector & Kitsuse, 2001, p. 143; Buckingham, 2011 also notes this). Just because everyone has the potential to define a social condition as a social problem does not mean everyone does. Those who view social problems through a social constructionist framework typically attribute the conception and definition of social problems to mass media, social activists, political power, lobby groups, ideologies and scientists (Kappeler & Potter, 2005; Loseke, 1999). Of these, politicians⁴¹ will be further examined because they are seen as claims-makers. Politicians are most notably social problems claims-makers during election periods (Loseke, 1999). More specifically, “... ‘political campaigning’ is another way of saying ‘claims-making activities.’ What politicians *do* is construct social problems (here is what our trouble is) and solutions to social problems (here is what I will do if elected)” (Loseke, 1999, p. 29, italics original; Buckingham, 2011 also notes this). Simply put, during an election period politicians attempt to convince voters (their audience) that if elected, they will remedy certain social conditions that they are portraying as social problems. As a result, politicians are known to be claims-makers to their ‘representative audience’⁴² (Saward, 2006).

Furthermore, elected claims-makers (politicians) are likely to have an easier job making convincing claims than non-elected claims-makers since the elected representation decrees that they have a higher chance of recognition from their audience (Severs, 2010). However, it is important to note that the public is not always the principal

⁴¹ In Canada, politicians can be elected municipally, provincially or federally. For the purpose of this thesis, the term ‘politicians’ specifically refers to federally elected.

⁴² ‘Representative audiences’ are audience members that politicians target because they believe they will not only accept their claim but also the politician’s point of view (Saward, 2006).

audience of elected politicians (Saward, 2006). Once elected, politicians must also focus on convincing other elected politicians that certain social conditions are social problems in order to fulfill their political agenda (Saward, 2006). Furthermore, in the realm of government and politics, there are also political lobby groups. The persons that comprise these groups are paid by others to make claims about social problems to politicians in order to influence social policy (Loseke, 1999).

Highlighting politicians as claims-makers is important for the purpose of this thesis because it will help me better analyze my data. The data analysis will not only analyze the content in section 6 and section 7 of *Bill C-10* but also the discourse of MPs, Senators of Parliament and witnesses during the Parliamentary debates. This population was selected because the official discourses that took place during the Parliamentary debates contributed to the creation of the amendments in section 6 and section 7 of *Bill C-10*. Therefore, by analyzing the Parliamentary debates, I will be able to determine whether or not offenders were seen as a social problem. That being said, I will now describe possible motives for claims-makers.

Loseke (1999) lists three motives to explain why a person or group may become a claims-maker in the social problem game. First, a person or group may become a claims-maker because of their subjective values and personal moral beliefs. Their belief that a condition is wrong and is in need of change may lead the person to want to do something to change the condition (Loseke, 1999). An example of this can be found with the social change group named Mothers Against Drunk Drivers (Loseke, 1999). This group was started by a woman when her own child was killed by a drunk driver (Loseke, 1999).

Second, a person or group may become a claims-maker because of their personal objective interests. Simply put, ‘objective’ means ‘real and tangible’ while ‘interests’ means ‘what personally benefits that person or group’ (Loseke, 1999). Furthermore Loseke (1999) explains that the concept of ‘objective’ interests draws attention to the real world and what can be won or lost in that world. An example of this is a mother who has an interest in making the community she lives in a safer place for her child to grow up in (Loseke, 1999). The third and final motive may have little or nothing to do with a claim-maker’s values or interests. Instead, a person may become a claims-maker because doing so may offer that person a community with other claims-makers of like-minded people (Loseke, 1999).

Provided that I conducted a document analysis of my data, combined with the fact that documents are unresponsive⁴³, I am unable to determine the motivation of why some of the participants in the Parliamentary debates claim offenders are a social problem. I cannot ask participants about their motivation. As a result, I can only make inferences of the motivation of particular Parliamentary debate participants. In doing so, I am able to determine who vote ‘for’ or ‘against’ the bill but I do not know exactly why. For example, an MP or Senator may vote in favour for a bill because they may agree with the contents of the bill or it may serve their personal political interests. The process of constructing effective claims will be examined next.

Many ‘harmful’ social conditions do not garner enough attention in order to be considered a social problem (Blumer, 1971). As such, successful claims contain certain characteristics. The first characteristic of successful social problems conditions is constructing a social problem that is simple and easy to understand (Buckingham, 2011;

⁴³ This will be detailed in the next chapter.

Loseke, 1999; Saward, 2006). Audience members tend to be more receptive to simple solutions where audience members need to make simple changes to their behaviour (Christensen, 2013; Loseke, 1999). Along with a simple and easy to understand social problem, constructing solutions as inexpensive also increases the effectiveness of a claim (Loseke, 1999). Cost is not limited to the financial cost to implementing a social problem solution. Cost can also refer to required life-style changes. For instance, audience members may be much quicker in starting to 'recycle aluminum cans' as a solution to pollution rather than 'abandon their cars' (Loseke, 1999).

The second characteristic of constructing an effective claim is framing the solution through individual change (Perrin & Miller-Perrin, 2011). Individual level solutions are quicker and easier than solutions requiring changing the organization of social order (Loseke, 1999). An example of this is training children to 'just say no' to drugs rather than attempting to completely eliminate the sale of illegal drugs (Loseke, 1999). The third characteristic of constructing an effective claim is to construct images of severe and devastating conditions (Best, 1995; Kappeler & Potter, 2005; Loseke, 1999). Constructing a social problem this way leads to images of social emergencies that must be immediately resolved (Best, 1995; Kappeler & Potter, 2005; Loseke, 1999). This is easier than convincing audiences of ways of preventing social emergencies (Loseke, 1999). The fourth and final characteristic of successful social problems conditions is effectively constructing the solution as better than the problem (Loseke, 1999). This can be better understood by asking the question: "[i]s what we give up to solve the problem more important than the problem itself?" (Loseke, 1999, p. 111). Having examined how

to construct a more successful claim, I will now provide an overview of who the audience is in the social problems game.

Simply put, those who hear or see the claims of claims-makers are the audience (Griswold, 2012; Loseke, 1999; Saward, 2006). They play a very important role in the social problems game since a social problem is only created when it is believed and deemed to be important by the audience (Best, 1995; Goode & Ben-Yehuda, 2010). It is important that claims-makers identify the correct audience to address. If they address the wrong audience, they may not be successful in the social-problems game (Saward, 2006; Severs, 2010; Spector & Kitsuse, 2001). This is because differing experiences of audience members will lead to different evaluations of claims (Loseke, 1999).

Audience members also differ in how likely they will be convinced that a claim is in fact a social problem (Loseke, 1999; Saward, 2006; Severs, 2010). Again, someone who has been a victim of ‘police brutality’ is more likely to be convinced that it is a social problem compared to someone who has never been a victim of ‘police brutality’. Audience members also differ based on their power to create change. As a result, the entire population does not need to be convinced in order for a social problem game to be won (Loseke, 1999). In fact, it is possible to win the social problems game with a very small number of audience members support as long as that support is from powerful segments of the audience (Loseke, 1999; Severs, 2010). Once a claims-maker has convinced an audience that a particular social condition is a social problem, the next step is to convince the audience of a particular solution.

It is important to provide a brief overview of those who are considered audience members in the data of this thesis. Since MPs and Senators of Parliament are able to vote

whether or not a bill will receive royal assent and become law, they are considered the audience members in my thesis. Before Parliamentary debates begin, each MP and Senator of Parliament is considered equal because each of their votes are weighted equally. However, for the purpose of this thesis, Conservative MPs and Senators affiliated with the Conservative Party are considered more powerful audience members because the Conservative Party held a majority government during the time of the Parliamentary debates (i.e. when combined, they had the most votes). As a result, speakers needed to convince Conservative MPs and Senators affiliated with the Conservative Party in order to gain the majority of votes.

2.5 Constructing Solutions

Once claims-makers have successfully convinced an audience that their claim is in fact a social problem, they must construct a solution for this problem (Christensen, 2013; Goode & Ben-Yehuda, 2010; Michailakis & Schirmer, 2014). As a result, the question ‘what should be done to solve a social problem?’ must be asked. The answer of course depends on what the claims-makers believe caused the problem. According to Loseke (1999) there are two general types of solutions. First, solutions can be about individual changes. These solutions take place at the individual level and can be seen to solve social problems through claims such as “...we should stop thinking in racist (sexist, ageist) ways, that we should recycle, carpool, and pick up trash along the highway...” (Loseke, 1999, p. 99). For this solution, the social problems game is won when individual audience members make individual changes in how they act and think with regards to a social problem (Christensen, 2013; Loseke, 1999). However, claims of individual change may be unsuccessful in leading to enough change to solve a social problem (Loseke,

1999). This is because actually convincing individual audience members to change can be very difficult due to the incredible diversity among audience members (Loseke, 1999). This diversity often prevents agreement among a significant portion of the audience preventing a potential solution to the social problem (Loseke, 1999).

The second type of solution that can be constructed is changing social policy; solutions that use social resources to repair social conditions and/or social resources to encourage or coerce individual change (Loseke, 1999; Best, 1995). Changes to social policy can take many forms. For example, new laws can be enacted or old ones can be struck down (Loseke, 1999; Best, 1995). New taxes can be enacted to discourage certain behaviours, or tax advantages may be enacted to encourage other behaviours (Loseke, 1999; Best, 1995). This is the type of solution that will be analyzed in this thesis. More specifically, section 6 and section 7 of *Bill C-10* are the solution created by the Conservative government in my data.

Best (1995) explains that claims-makers will typify social problems by giving them an orientation, arguing that the problem is best understood through a certain perspective. For example, claims-makers can assert that a social problem is best understood through moral, criminal, medical or political lenses (Christensen, 2013; Loseke, 1999). This orientation will typically locate the cause of a problem and recommend a particular type of solution (Best, 1995). For instance, by categorizing a social problem as a medical problem, medical treatment will be seen as an appropriate solution. In contrast, by categorizing a social problem as a criminal problem, legal action, criminalization or imprisonment may be seen as appropriate solutions. Thus, the way a problem is categorized by claims-makers will have important implications on the

solution.

Similarly, as highlighted in the literature review, the way offenders are categorized by law affects their eligibility for parole. If offenders are categorized as violent offenders, sexual offenders or as drug users, their eligibility for parole is much more restricted compared to non-violent offenders (see section *1.6 Emergence of Risk: 1974 – 1992* for details). Thus categorizing certain offenders in these categories is of particular importance because such categorization gives meaning to the perceived social problem and encourages society to deal with it through a particular lens (Loseke, 1999). Additionally, constructing victims may also help convince the audience that a solution is needed for that particular social problem (Loseke, 1999). The audience tends to reserve the status of ‘victim’ for people they feel sympathy towards and when it is judged that morally good people are harmed through no fault of their own (Loseke, 1999).

Similar to competitions about claims within the social problems game, there are also competitions about solutions to social problems. These competitions can take several forms. There can be competitions about the characteristics of the condition and the people in the condition (Loseke, 1999). An example of this type of competition for social problems solutions can be found in the New York City problem of people living on the streets (Loseke, 1999). According to Loseke:

...the policy of mandatory incarceration in mental hospitals wasn't accepted until an image of the condition (living on the streets is worse than living in shelters) and an image of the person (homeless people are mentally ill) became accepted by sufficient numbers of people (1999, p. 104).

There can also be conflicting moralities underlying competitions about solutions (Loseke, 1999). These competitions argue to do one thing over another as a solution

because it is perceived as the morally right thing to do. Competitions can also emerge about the consequences of chosen solutions (Loseke, 1999). For example, creating a school policy where all students must wear uniforms as a solution to ‘gangs in schools’ may not be supported by police (Loseke, 1999). The police may state that creating a policy where all students must wear uniforms will make it harder for police officers to identify gang members (Loseke, 1999).

The last type of competition of solutions involves competitions for the time, energy and money to solve a social problem (Loseke, 1999). Since we live in a world of limited resources, only a limited number of solutions will be successful (Loseke, 1999). Having examined how to construct effect claims and solutions, I will now provide an overview of how to construct the social problem as a government concern. It is important to do so because the data analyzed in the next chapter (i.e., section 6 and section 7 of *Bill C-10*) was created and enacted by some members of the Canadian government.

2.6 Constructing a Social Problem as a Government Concern

In order for a solution to change government policy, the solution and the condition must be formed in ways that make the problem a matter of government concern (Loseke, 1999). According to Loseke (1999), there are certain components to doing so. Social conditions receive attention when there is agreement amongst politicians that a specific type of problem exists and that condition provokes enough moral outrage among citizens likely to vote about that social condition (Loseke, 1999). Additionally, not all social conditions are matters of government concern. Loseke (1999) uses the example of ‘child abuse’ to explain this point. At first, ‘child abuse’ was seen as a ‘family’ problem and the government did not have the right to intervene (Loseke, 1999). Policy makers had

to be convinced that family violence was extremely widespread and that it had devastating consequences for not only victims, but America in general (Loseke, 1999). Timing is also important when trying to construct a social problem as a government concern. For example, in a year of severe budget deficits, problems may be dismissed because there is 'no money' whereas during election years they tend to be associated with increased numbers of policies (Loseke, 1999; Tonry, 2010).

Another characteristic to consider when constructing a social problem as a government concern is that the claims-maker must remember that even if a politician personally believes that a condition is a social problem, they may not offer their support for policy changes if that does not follow their political party's agenda (Loseke, 1999; Tonry, 2010). In this sense, the winners in the political claims-making realm may be the most politically connected or politically knowledgeable of the claims-makers within a competition. Furthermore, in any democracy, politicians need votes if they are to remain in office. Based on this fact, certain policies are enacted based on public opinion because policymakers follow this in making their decisions (Loseke, 1999). From a social problems game's perspective, 'public opinion' is the audience that votes during political elections. In other words, "[s]omething *becomes* politically acceptable when it reflects public opinion" (Loseke, 1999, p. 118, italics original). Constructing offenders as a government concern was key to passing the amendments in section 6 of *Bill C-10*. If the MPs and Senators of Parliament that voted for section 6 of *Bill C-10* were not convinced that parole is a social problem within Canada, that section or certain amendments within that section may not have been included in the omnibus bill.

2.7 Conclusion

To summarize, this chapter has introduced the theory of social constructionism as the epistemological lens for this research project. In doing so, Burr's (2003) key assumptions of social constructionism have been defined. Once defined, the chapter provided the definition of social problems as per a positivist and a social constructionist approach. This was followed by an in-depth analysis of the claims-making process. As noted throughout this chapter, certain characteristics of the social construction of social problems will not be used to guide my analysis. I will conclude this chapter by outlining the characteristics that will be used to guide my data analysis in the subsequent chapters. First, the definition of 'social problems' as per a social constructionist will be used. Again, this means I am not interested in whether or not parole can objectively be measured as a social problem but instead, the process of defining parole as a social problem. The literature review illustrated that paroled offenders have been seen as a social problem in the past. Second, I am interested in determining who 'claims-makers' are within my data. As previously stated, only the participants of the Parliamentary debates within my data will be considered in order to determine this. Third, I am interested in determining who the audience is within my data. As with any claims-making process, there needs to be an audience to legitimize a social condition as a social problem. Lastly, determining whether or not parole is seen as a government concern is also of interest. Overall, these theoretical framework characteristics are the most appropriate aspects adopted for the purpose of this thesis. Doing so will allow me to determine whether or not parole has been constructed as a social problem and help me

determine the official discourses on and themes of parole. All in all, this chapter has been presented to ground the methodology and analysis in the subsequent chapters.

CHAPTER 3 – METHODOLOGY

3.1 Introduction

Again, research question guiding this thesis ask: ‘what are the themes and sub-themes of parole within the Parliamentary debates of section 6 of *Bill C-10* and in the content of the amendments of section 6 of *Bill C-10*?’ In asking this question, this chapter shifts focus from the theoretical framework guiding this research paper to detailing the methodology used to analyze the data. Thus, this chapter is divided into four additional sections. The first section explains the choice of the sampling technique use and instruments of data collection. It also details the characteristics and collection of the data. The second section explains the methodology used – document analysis (thematic analysis of documents). This section also details the phases of thematic analysis and the rationale for choosing this method. The third section details the limitations to this research and the fourth section concludes this chapter.

3.2 Sampling Technique and Instruments of Data Collection

There are many different sampling techniques available to qualitative researchers. For instance, convenience sampling is a method available to qualitative researchers. It encompasses selecting the most accessible subjects (Marshall, 1996). Although my data was conveniently accessible, this was not the only reason I chose my data. Theoretical sampling necessitates building interpretive theories from the data and selecting a new sample to elaborate that theory (Marshall, 1996). I did not choose this technique because as detailed in the previous chapter, the components of my theoretical framework (the social construction of social problems) were related to my research topic in order to ground my research. Thus, I did not need to select a new sample to elaborate on the social

construction theory. After much consideration, I decided to use purposeful sampling. With purposeful sampling, the researcher actively selects the most productive sample to answer the research question (Elo et al., 2014; Marshall, 1996). Similarly, Love (2003) states: "...purposive sampling... means identifying any documents that make conceptual sense for including in the study" (p. 88). Based on my research question and the premise of purposeful sampling, it made sense for me to start my data collection with section 6 of *Bill C-10* and section 7 of *Bill C-10*. Furthermore, the official discourse of parole expressed by the participants within Parliamentary debates pertaining to section 6 and section 7 of *Bill C-10* helped shape the themes in *Bill C-10*. As such, I also collected the Parliamentary debates.

Additionally, the logic and power of purposeful sampling lies in selecting information-rich cases that can be studied in-depth (Coyne, 1997; Patton, 1990; Sandelowski, 1995b). Information-rich cases are those from which one can learn a great deal about issues of central importance to the purpose of the research (Patton, 1990). Again, section 6 and section 7 of *Bill C-10* and the Parliamentary debates can be considered information-rich cases as they provide in-depth understandings of the themes of parole.

After a researcher identifies the primary documents of their data, s/he must ask themselves how to determine when they have collected enough data. In order to do this, Love (2003) suggests combining purposeful sampling and data analysis at the same time (Guthrie et al., 2004; Sandelowski, 1995a also suggest this). By doing so, the researcher is able to determine that they have collected enough documents once they reach the point of analytical saturation (Guthrie et al., 2004; Love, 2003; Marshall, 1996; Sandelowski,

1995a). Saturated data ensures there is no replication in categories, which in turn verifies and ensures comprehension and completeness (Elo et al., 2014). When analytical saturation is not achieved, it is often difficult for the researcher to group the data and create concepts (Elo et al., 2014; Guthrie et al., 2004). I knew I had collected enough documents once the analytical categories I was creating became redundant and I was unable to create new themes. The next sub-section will examine the characteristics of the Parliamentary debates.

3.2.1 Characteristics of the Parliamentary Debates

In Canada, federal law making is the responsibility of Parliament (Parliament of Canada, 2010). Federal law usually takes the form of legislation (Parliament of Canada, 2010). A Minister, Senator or a Member of Parliament may introduce a bill in Parliament (Parliament of Canada, 2010). Within Parliament, there is the Senate⁴⁴ and the House of Commons⁴⁵ and “[a] bill must go through a number of specific stages in the House of Commons and the Senate before it becomes law...” (Parliament of Canada, 2010). There are generally twelve steps⁴⁶ that take place before a bill is enacted and becomes law.

They are as follows:

[n]otice of motion for leave to introduce and placement on *Order Paper*; preparation of a bill by a committee (where applicable); introduction and first reading; reference to a committee before second reading (where applicable); second reading and reference to a committee; consideration in committee; report stage; third reading (and passage); consideration and passage by the Senate; passage of Senate amendments by the Commons

⁴⁴ “The Senate was created to **counterbalance representation by population** in the House of Commons... The Senate was also intended to provide Parliament with **a second chance to consider bills** before they are passed” (Parliament of Canada, n.d.6, bold original).

⁴⁵ According to the Parliament of Canada website, “[t]he House of Commons is the popularly elected component of Parliament, consisting of 308 members. Members of the government sit in, and are answerable to the House of Commons. Most major government legislation is introduced in the House.” (Parliament of Canada, 2012a).

⁴⁶ Each piece of legislation does not need to go through the twelve general steps. See Parliament of Canada (2010) for alternative steps that a Member of Parliament or a Senator can take to pass federal legislation.

(where applicable); Royal Assent, and coming into force⁴⁷ (Parliament of Canada, 2010).

Most importantly, a bill can only become law once the same text has been approved by the House of Commons and the Senate (Parliament of Canada, 2010).

The House of Commons is made up of elected MPs (Parliament of Canada, 2011a). MPs are elected through federal elections, as representatives of a major political party in Canada or as ‘independents’ (Parliament of Canada, 2011a). Once elected, they spend most of their time debating and voting on federal legislation (Parliament of Canada, 2011a). MPs spend their time debating bills within House of Commons committees⁴⁸. The *Standing Committee on Justice and Human Rights (JUST)* was the House of Commons Committee that studied *Bill C-10* (Parliament of Canada, n.d.3). During committee meetings, committee members can invite witnesses to provide information or an opinion on a particular subject or to provide technical advice with respect to the bill under study (Parliament of Canada, 2015a).

Once the House of Commons has voted to pass a bill, the Senate studies, amends and either rejects or approves it (Parliament of Canada, 2011a). Unlike MPs, members of the Senate are appointed by the Governor General based on the recommendation of the Prime Minister (Parliament of Canada, 2011a). Like MPs, Senators study bills in the form of committees. The *Standing Senate Committee on Legal and Constitutional Affairs (CLCA)* is the Senate Committee that studied *Bill C-10* (Parliament of Canada, n.d.4). Senate Committees can also invite witnesses to provide to provide information with respect to the bill under study (Parliament of Canada, n.d.5). The following are the

⁴⁷ For a detailed explanation of each step, see Parliament of Canada (2010).

⁴⁸ A committee is a body of MPs, or MPs and Senators selected to consider proposed legislation and at the end of the of their study, they may report their findings to the House of Commons (Parliament of Canada, n.d.2).

specific twelve steps included in the Parliamentary debates of *Bill C-10*:

The Introduction and First Reading, Second Reading and Referral to Committee, Standing Committee on Justice and Human Rights (meetings and sittings), Report Stage, Third Reading, the Senate First Reading, Second Reading and Referral to Committee, Standing Senate Committee on Legal and Constitutional Affairs (meetings and sittings), Consideration of Committee Report, Third Reading, Consideration of Messages between the Senate and the House of Commons and the Royal Assent (Parliament of Canada, 2012d).

Bill C-10 passed through both the House of Commons and the Senate before it received royal assent. This is important to highlight because as previously explained, it means that the official discourses on and themes of parole that came out of my analysis of section 6 and section 7 of *Bill C-10* and the Parliamentary debates are primarily limited to the views of the MPs, Senators of Parliament and witnesses that participated in the debates⁴⁹. Furthermore, these debates took place between the years 2011 – 2012 (Parliament of Canada, 2013b). During that time, the Conservative party held a majority government in Canada (Brethour, 2012). This means that although members of other elected Canadian political parties (the Liberal Party, the New Democrat Party, the Green Party and the Bloc Québécois) participated in the Parliamentary debates, the opinion of members of the Conservative party were most prevalent because they had the most representatives present at all stages of the Parliamentary debates. As a result, their opinions are what is most reflected in the content of the legislation.

An official record of each Committee meeting is kept with the Library of Parliament^{50, 51} (Parliament of Canada, 2010). Official records are kept as ‘Committee

⁴⁹ If a proposed bill passes through the Second reading stage, Committee members can call members of the public to appear as witnesses to comment on the legislation (Parliament of Canada, n.d.1). As such, multiple witnesses were called to appear before the Parliamentary debates.

⁵⁰ To view the record of each *JUST* meeting on *Bill C-10*, see Parliament of Canada (n.d.3).

⁵¹ To view the record of each *CLCA Affairs* meeting on *Bill C-10*, see Parliament of Canada (n.d.4).

Documents’ and are kept in the form of ‘Notices of Meetings’, ‘Minutes of Proceedings’, ‘Evidence’ and ‘Reports to the House’⁵² (Parliament of Canada, 2010). The only type of document that I analyzed is ‘Evidence’. ‘Evidence’ is: “...a transcript of the proceedings of all public meetings of the committee (similar to *Debates* in the House).” (Parliament of Canada, 2010, italics original). In other words, the documents that I analyzed are official transcripts of the Parliamentary meeting.

The oral recording of each of the *JUST* meetings pertaining to *Bill C-10* and eight of the twelve meetings have camera recordings (visual) are available to the public⁵³. There is no explanation as to why four of the meetings were not recorded by camera but the transcript of each meeting is available to the public. Additionally, each of the twelve *CLCA* meetings pertaining to *Bill C-10* is available to be viewed by the public. Each of the documents I analyzed is written in English. However, if participants spoke French, on site translators translated their comments into English. As a result, some of the opinions expressed by the participants in the documents I analyzed are interpreted by others. Moreover, meetings are generally open to the public⁵⁴ (Parliament of Canada, n.d. 2). However, members of the public cannot influence what is said during the debates because they are not permitted to speak during the debates. Although only a small segment of the Canadian population’s opinion is represented in this data, it is nonetheless important to analyze because these official discourses led to the creation of *Bill C-10*. The next sub-section details my collection of the Parliamentary debates.

⁵² See Parliament of Canada (2010) for further details of each type of ‘Committee Document’.

⁵³ *Supra* note 23.

⁵⁴ Although Committee meetings are generally open to the public, certain meetings are not. These are called in camera meetings. These meetings exclude the public and media and are usually done to deal with administrative matters and to consider draft reports (Parliament of Canada, n.d.2)

3.2.2 Collection of the Parliamentary Debates

I used the Library of Parliament website to access the Parliamentary debates. The Library of Parliament offers information, references and research services to parliamentarians and their staff, Parliamentary Committees, associations and delegations, senior Senate and House of Commons officials and maintains an open and accessible Parliament to the public (Parliament of Canada, 2006). I first attempted to retrieve the documents by typing “*Bill C-10* Parliamentary Committee debates” into *google.ca*’s search cue. However, none of the results provided me with a result that allowed me to access the Parliamentary debates on the Library of Parliament website. As such, I contacted the general email address *info@parl.gc.ca* found on the ‘Contact Us’ Library of Parliament web page. I sent an email to *info@parl.gc.ca* asking where to locate the *Bill C-10* Parliamentary debates. The respondent replied with a link⁵⁵, stating that after selecting the link, to select “show meetings” and “show sittings” to view the various Parliamentary Committee meetings. After selecting the link I located the Parliamentary debates. I then printed the Parliamentary debates for further analysis. The next subsection details the characteristics of section 6 and section 7 of *Bill C-10*.

3.2.3 Characteristics of Section 6 and Section 7 of *Bill C-10*

Bill C-10 is federal legislation (i.e. it is law that has legal jurisdiction across the country). Alternatively, provincial legislation only has legal jurisdiction in the province in which it is enacted. Federal legislation is made for one of two reasons – to introduce a new law or to change or clarify existing laws (N.A., 2014). Again, it is an omnibus bill that amends multiple pieces of federal legislation and thus changes exiting laws (Parliament of Canada, 2012g). Legislation is “...the deliberate creation of legal precepts

⁵⁵ <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode+1&billId=5120829>

by a body of government that gives articulate expression to such legal precepts in a formalized legal document” (Vago and Nelson, 2008, p. 126). In other words, legislation creates legal rules.

Legislation usually does not reflect a consensus opinion of those that debated on the content of the bill. Instead, it usually reflects the opinion of the MPs and Senators that voted in favour of the content of the bill. More specifically, the content of section 6 of *Bill C-10* mostly reflects the opinion of Conservative MPs⁵⁶ and Senators⁵⁷. While legislation creates legal rules, it does not provide any information about the ways in which these rules will be applied in the future. As a result, these rules may be interpreted differently by those that apply it. Hommels et al. (2013) contend that “[a]chieving policy coherence is a daunting task” (p. 444). Moreover, political scientists agree that policy incoherence is commonplace and usually unavoidable (Hommels et al., 2013).

Also of note is the fact that *Bill C-10* is a primary source. Love (2003) states that a primary source is a direct account of an event or activity without interpretation. For example, the minutes of a meeting is a primary source (Love, 2003). Comparatively, secondary sources “...are accounts that are ‘second-hand’ interpretations of an event, activity, or action” (Love, 2003, p. 104). Thus, the content of *Bill C-10* that I will analyze is a primary source because I am directly interpreting the legislation enacted by Parliament. I am not interpreting someone else’s interpretation of the legislation.

Bill C-10 received royal assent March 13th, 2012 (Parliament of Canada, 2012g). I analyzed section 6 – which came into force⁵⁸ on June 13, 2012 (Correctional Service of

⁵⁶ See Parliament of Canada (2012c) for a breakdown on which MPs voted in favour of *Bill C-10*.

⁵⁷ See Parliament of Canada (2012b) for a breakdown of which Senators voted in favour of *Bill C-10*.

⁵⁸ ‘Coming into force’ is the date that the legislation, or part of it, becomes enforceable (Parliament of Canada, 2015a).

Canada, 2012) of *Bill C-10*. This section contains the parole amendments that amend the *CCRA*. These amendments were previously introduced to Parliament in two separate bills (Brethour, 2012). They were first introduced in *Bill C-43*⁵⁹ and subsequently in *Bill C-39*⁶⁰. After the Conservative government was elected as a majority government, former Minister of Justice MP Rob Nicholson⁶¹ tabled *Bill C-10* to Parliament in the House of Commons on September 20, 2011 (Canadian Civil Liberties Association, 2015). Federal legislation can be introduced two separate ways – either as a ‘public bill’⁶² or a ‘private bill’⁶³ – each serving two different purposes. In general, a ‘public bill’ is concerned with matters of public policy whereas a ‘private bill’ relates to matters of personal interest or of particular interest to a corporation (Queens University, 2013). Given that the amendments relate to the criminal justice system, this bill is public policy.

Additionally, I also analyzed the amendments in section 7 of *Bill C-10*. Section 7 of *Bill C-10* amends the *Criminal Records Act* (Parliament of Canada, 2012f). These amendments came into force on November 6, 2012 (Alberta Law Libraries, 2012). The amendments included in section 7 of *Bill C-10* were first introduced in *Bill C-23B*⁶⁴ (Parliament of Canada, 2012f). Similar to section 6 of *Bill C-10*, section 7 is also considered public policy as its amendments relate to the criminal justice system. The next sub-section details my collection of section 6 and section 7 of *Bill C-10*.

⁵⁹ *Bill C-43: An Act to amend the Corrections and Conditional Release Act and the Criminal Code* died in Committee in the House of Commons on October 29, 2009 (Parliament of Canada, 2009b).

⁶⁰ *Bill C-39: An Act to amend the Corrections and Conditional Release Act and to make consequential amendments to other Acts* died on the *Order Paper* when an election was called on March 26, 2011 (Parliament of Canada, 2011b).

⁶¹ Rob Nicholson was a member of the Conservative Party at the time (Open Parliament, n.d.1).

⁶² Federal legislation can either be introduced as ‘Public Bills’ or ‘Private Bills’ in Canada. Simply put, ‘Public Bills’ are introduced by MPs in the House of Commons (Parliament of Canada, 2010).

⁶³ ‘Private member bills’ can only be introduced by Senators or MPs who are not in the Cabinet (Parliament of Canada, 2010).

⁶⁴ *Bill C-23B: Eliminating Pardons for Serious Crimes Act* died on *Order Paper* when Parliament was dissolved on March 26, 2011 (Parliament of Canada, 2012g).

3.2.4 Collection of Section 6 and Section 7 of *Bill C-10*

I accessed section 6 and section 7 of *Bill C-10* on the Library of Parliament website. Again, I conducted a general search of *Bill C-10* by entering ‘Library of Parliament *Bill C-10*’ into the search cue on *www.google.ca*. Once the search was complete, I selected the “Legislative Summary of *Bill C-10*” result. I then selected: “6. Amendments to the *Corrections and Conditional Release Act* [Bill C-10, Part 3, Clauses 52-107 and 147 (formerly Bill C-39)]”. This selection allowed me to specifically view the content of section 6 of *Bill C-10*. I then printed this section for analysis. After collection section 6 of *Bill C-10*, I collected section 7 of *Bill C-10* on the same webpage. I selected: “7. Amendments to the *Criminal Records Act* (pardons) [Bill C-10, Part 3, Clauses 108-134, 137 – 146, 148 – 165, and the schedule (formerly Bill C-23B)”. This selection allowed me to view and analyzed the amendments in section 7 of *Bill C-10*. I then printed this section for analysis. After locating these documents, I had collected all of the data for my thesis. The next section will detail the method used to analyze my data.

3.3 Method – Document Analysis (Thematic Analysis of Documents)

In order to determine the themes and sub-themes of parole, I conducted a document analysis of the Parliamentary debates pertaining to section 6 and section 7 and the content of the amendments within section 6 and section 7 of *Bill C-10*. Simply put, document analysis is considered a systematic procedure for reviewing documents – both electronic and printed (Bowen, 2009). Bowen (2009) indicates that document analysis combines elements of content analysis and thematic analysis. For the purposes of my research, I chose to use a thematic approach while conducting my document analysis.

3.3.1 Characteristics of Thematic Analysis

According to Braun and Clarke (2006) thematic analysis provides the researcher a flexible and useful research tool, which can provide a rich and detailed account of data. Furthermore, Bowen states: “[t]hematic analysis is a form of pattern recognition within the data, with emerging themes becoming the categories for analysis...” (2009, p. 32; Braun & Clarke, 2006; Fereday & Muir-Cochrane, 2008 also note this). A theme captures something important about the data in relation to the research question and represents some level of patterned response or meaning within the data set (Braun & Clarke, 2006). Braun and Clarke (2006) also state: “[i]deally there will be a number of instances of the theme across the data set, but more instances do not *necessarily* mean the theme itself is more crucial... So researcher judgment is necessary to determine what a theme is” (p. 82, italics original). Similarly Clarke and Kitzinger (2004) explain the value of a theme is not necessarily dependent on quantifiable measures but more in terms of whether it captures something important in relation to the overall research question. In other words, it is up to the researcher to determine what a theme is within the data.

It should be noted that although thematic analysis is widely used, there is no clear agreement amongst researchers about what thematic analysis is and how to conduct it (Attride-Stirling, 2001; Braun & Clarke, 2006; Tuckett, 2005). That being the case, no thematic analysis is exactly the same. Furthermore, some of the phases of thematic analysis are not unique to thematic analysis as some of them overlap with content analysis (Bowen, 2009; Braun & Clarke, 2006). In order to include elements of thematic analysis within my document analysis, I conducted some of the ‘thematic analysis’ phases guidelines of Braun and Clarke (2006).

3.3.2 Phases of Thematic Analysis

According to Braun and Clarke (2006), the first phase of thematic analysis is the 'preparation stage' (Vaismoradi et al., 2013 also note this). During this stage, the researcher familiarizes him/herself with their data. In other words, the researcher must immerse him/herself in the data to the extent that s/he is familiar with the depth and breadth of the content (Braun & Clarke, 2006; Elo & Kyngäs, 2008; Vaismoradi et al., 2013). In order to do so, the reader must repeatedly actively read through their data. Actively reading through data consists of the researcher taking notes to make ideas for thematic coding at this stage (Braun & Clarke, 2006; Malik & Coulson, 2008; Vaismoradi et al., 2013). Thus, during this stage, I combined a deductive and inductive approach to my analysis. Researchers use a deductive approach when the analysis is operationalized on the basis of previous knowledge (Elo & Kyngäs, 2008). In other words, this approach works from the more general to the more specific (Trochim, 2006). As such, I familiarized myself with my data by reading through it and simultaneously taking note of points that were related to 'parole' based on my general understanding of the term from the literature. Additionally, my deductive approach was combined with an inductive approach. An inductive approach consists of identifying concepts that are related to the research topic (Love, 2003). In other words, a research employing an inductive approach looks for patterns or regularities within their data and develop conclusions from them (Trochim, 2006). As a result, I also noted inductive points of interest within my data that may help me answer my research question.

More specifically, while reading the Parliamentary debates, I started marking points of the text where the speakers spoke about the amendments in section 6 or section

7 of *Bill C-10*. For example, during the Second Reading of *Bill C-10*, Conservative MP Rob Nicholson spoke at length about each section of the bill. However for the purpose of this thesis, I only took note his testimony that spoke to the amendments in section 6 or section 7 of *Bill C-10*. For example I noted the following quote: "...it includes technical modifications that would delete provisions that were ultimately passed as part of the Abolition of Early Parole Act..." (Rob Nicholson, House of Commons, 2011a) because it spoke to the amendments in section 6 of *Bill C-10*. Alternatively, I did not take note of his testimony that spoke to amendments that reform the *Youth Criminal Justice Act* (House of Commons, 2011a).

Additionally, while reading through the content of the amendments in section 6 and section 7 of *Bill C-10*, I took note of the sub-sections included in the 'background' and 'description and analysis' sections but not the others. This allowed me to concentrate on the amendments that would help me answer my research question. Other sections such as 'forms of parole' were irrelevant to answering my research question because the amendments in section 6 of *Bill C-10* did not alter the forms of parole. While analyzing House of Commons and Senate committee debates, I only analyzed the debates that spoke to section 6 or section 7 of *Bill C-10*. In order to do so, I searched the topic of each debate. As a result, I did not analyze the House of Commons or Senate committee debates pertaining to the other sections of *Bill C-10*⁶⁵. This means that I did not analyze the entire testimony of the Parliamentary debates or each section of *Bill C-10*. In other words, the themes that I identified may not represent the all of the Parliamentary debates or the entirety of *Bill C-10*. Instead, they specifically represent the testimony or content

⁶⁵ By doing this, I may have missed some testimony that spoke to the amendments in section 6 or section 7 of *Bill C-10* if a speaker referred to them while speaking to amendments in one of the other sections of the bill.

of the amendments that relate to parole in section 6 or section 7 of *Bill C-10* as this specific data best helped me answer my research question.

Once the researcher is familiarized with the data, s/he must determine if s/he is analyzing the manifest or latent content of the data. The manifest content is the obvious meaning of the data and the latent content is the underlying meaning of the data (Braun & Clarke, 2006; Bryman et al., 2012). I chose to analyze the latent content of my data because a latent analysis is best suited for researchers that use a constructionist paradigm (Braun & Clarke, 2006). As explained in the previous chapter, the social construction epistemology is guiding my research. As a result, analyzing the latent content of my data allowed me to determine the underlying themes within my data⁶⁶.

Phase two starts with the production of initial codes (Braun & Clarke, 2006; Vaismoradi et al., 2013). Codes identify a feature of the data that appears interesting to the researcher based on the research question(s) (Bowen, 2009; Boyatzis, 1998; Braun & Clarke, 2006; Elo & Kyngäs, 2008; Hsieh & Shannon, 2005). Researchers must work systematically through their data while coding (Bowen, 2009; Braun & Clarke, 2006). At the start of phase two, I took note of the points of interest that I had highlighted during phase one while making sure to pay equal attention to segments of the data not yet highlighted. Doing so allowed my analysis to be completed with a higher degree of credibility. Elo et al. (2014) suggest that the credibility of research projects that are analyzed by one person (as is the case with this thesis) is often questioned because the researcher is unable to produce intercoder reliability⁶⁷. However, Thomas and Magilvy

⁶⁶ For example, as will be seen in the next chapter, some of the official discourse of members of Opposition political parties focused on the lack of offender rehabilitation in section 6 of *Bill C-10* (House of Commons, 2011). Here, the underlying theme can be interpreted as: offender rehabilitation is not a concern of the Conservative government.

(2011) suggest that the credibility of the single researcher can be confirmed by check the representativeness of the data as a whole. Following this recommendation, I attempted to increase the credibility of my analysis by reviewing my data multiple times during this stage to ensure that I did not miss any parts of my data that could be coded. In doing so, I actively read and reread the testimony of each stage of the Parliamentary debates multiple times as well as the content in section 6 and section 7 of *Bill C-10*.

In order to organize my data during this stage, I created a coding manual⁶⁸ and coding schedule⁶⁹ to guide my coding process. A coding manual is a set of instructions for the researcher(s) that includes all of the possible categories for each dimension to be coded (Bryman et al., 2012). The dimensions allow the researcher to identify where each code came from within the data (Bryman et al., 2012).

The dimensions I created in my coding manual are as follows: ‘date’, ‘location of parliament’, ‘speaker’, ‘time’, ‘political affiliation’, ‘quote’ and ‘theme’. The date refers to the date of the Parliamentary debates. This was important to note because Parliamentary debates that I analyzed took place during different days. The location of Parliament refers to one of House of Commons or the Senate – the Parliamentary debates took place in both. Making note of the speaker allowed me to determine who said the quote. This in turn is important because I was able to make note if the same speaker made the same point in multiple debates. Noting the time allowed me to make a point of reference within the document in case I needed to subsequently retrieve a specific code within my data more than once. Identifying the political affiliation of the speaker allowed

⁶⁷ Intercoder reliability is achieved when a second researcher analyzes the data. The second researcher is able to follow the same coding techniques as the first and ensure that no codes are missed within the data (Elo et al., 2014).

⁶⁸ See Annex B for the details of my coding schedule.

⁶⁹ See Annex C for my coding manual.

me to determine if the speaker was speaking on behalf of the Conservative government, an Opposition political party or independently. Lastly, the theme of each code was noted. When I first created my coding manual, I included the deductive themes from my literature review. As my thematic analysis progressed, I included new themes based on my inductive approach (these themes will be detailed in the next section). After creating my coding manual, I created my coding schedule. Simply put, a coding schedule is a form onto which the data are entered (Bryman et al., 2012). Each dimension of the coding manual receives a column in the coding schedule and as the researcher conducts his/her analysis, codes are entered into each column as appropriate.

As each code was created, I included the necessary information in my coding schedule as per my coding manual. For example a quote from the data that I coded is: “[v]ictims have always been central to our government’s crime reduction agenda” (House of Commons, 2011c). For this quote, input the following details into my coding schedule: September 27, 2011 (the date), Second Reading (stage of the bill), House of Commons (the location of Parliament), John Williamson (the speaker), Conservative Party (the political affiliation of the speaker), 16:10 (the time) and victims of crime (the theme). Since this code was found within the Parliamentary debates, I did not input anything into the ‘section of *Bill C-10*’ box of my coding schedule⁷⁰.

In phase three, the researcher must search the codes for broader level themes (Braun & Clarke, 2006; Vaismoradi et al., 2013). This means sorting the different codes into broader level themes (Braun & Clarke, 2006). Employing a deductive approach allowed me to start placing codes into themes found in the literature review. Thus, I began placing codes in the ‘parole’ theme taken from my literature review. Given that I

⁷⁰ See Annex C to see the various information included in this example inputted into my Coding Schedule.

only had one deductive broad theme, some of my codes did not fit into this theme. Braun and Clarke (2006) suggest creating a ‘miscellaneous’ theme for codes that do not fit into deductive broad level themes so that these codes will not be lost. Thus, any of my codes that did not fit into the ‘parole’ theme were placed into the ‘miscellaneous’ theme. Once I finished this, I reviewed all of the codes within the ‘miscellaneous’ theme to again determine whether or not they could be placed into the ‘parole’ theme. If they could not, I looked to see if they could be grouped together to create an inductive theme. As I reviewed the ‘miscellaneous’ theme, I noticed that two groups of codes could create two new broad level themes: ‘victims of crime’ and ‘record suspensions’. I placed the codes that referred to ‘victims of crime’ from testimony pertaining to section 6 of *Bill C-10* as well as the content of section 6 of *Bill C-10*. I placed codes that referred to ‘record suspensions’ from testimony pertaining to section 7 of *Bill C-10* as well as content of section 7 of *Bill C-10*. After this, I reviewed the codes placed in my deductive theme to see if they could be placed in my inductive broad level themes⁷¹.

Phase four involves refining the broad themes created in phase three to determine whether or not sub-themes can be created in the broad themes (Braun & Clarke, 2006; Vaismoradi et al., 2013). In order for a sub-theme to be created they must have identifiable distinctions between them (Patton, 1990). As I analyzed the codes within each theme, I decided to group codes together based on the political affiliation of the speakers. Doing so helped me recognized whether or not paroled offenders were constructed as social problems by a particular group of speakers⁷² (as per my theoretical framework). Thus, four groups were created within each broad theme. The first group

⁷¹ Braun and Clarke (2006) stated that the same code can be placed in multiple themes.

⁷² This will be further explored in chapter 5.

included codes with which the speaker was identified as a member of the Conservative government. The second group included codes with which the speaker was identified as a member of Opposition political parties or witnesses. The third group included codes with which the speaker was identified as a witness. The fourth group was made up of codes from the content of the amendments in either section 6 or section 7 of *Bill C-10*. Once complete, I reviewed the codes within each of the four groups to determine whether or not any sub-themes could be created. As I reviewed the newly formed groups, I discovered patterns in the quotes of every code in each group. As a result, sub-themes were created based on the patterns in the quotes.

Within the ‘victims of crime’ broad theme, the following four sub-themes were created: (1) ‘the Conservative government listens to the demands of victims of crime’ (found in the codes of the discourse of members of the Conservative government), (2) ‘amendments in section 6 of *Bill C-10* will not improve the support available to victims of crime’, (found in discourse of members of Opposition political parties), (3) ‘support the victims of crime amendments’ and (4) ‘the victims of crime amendments have been tabled before and are redundant’ (found in the discourse of witnesses).

Within the ‘record suspension’ broad theme, the following five sub-themes were created: (1) ‘empowering victims of crime with the ability to forgive offenders’, (2) ‘certain offenders should remain ineligible for record suspensions’ (found in the discourse of members of the Conservative government), (3) the record suspension amendments will be detrimental to the offender’s ability to rehabilitate and reintegrate back into society’ (found in the discourse of members of Opposition political parties), (4) ‘support the members of the Conservative party rhetoric’ and (5) ‘support the members of

the Opposition political parties rhetoric' (found in the codes of the discourse of witnesses)

Finally, within the 'parole' broad theme, the following five sub-themes were created: (1) 'the Canadian parole system is too soft and should be tightened' (found in the discourse of members of the Conservative government), (2) the parole amendments are not the least restrictive', (3) 'the parole amendments may hinder offender rehabilitation' (found in the discourse of members of Opposition political parties, (4) 'support the members of the Conservative party rhetoric' and (5) 'support the members of the Opposition political parties rhetoric'(found in the discourse of witnesses). Once these sub-themes were created, I reread my data in order to determine whether or not I missed any parts that could now be placed in these sub-themes. After this, I reviewed the codes in the 'miscellaneous' theme to determine whether or not any codes from that theme fit into any of the sub-themes. Once this was complete, I collapsed the 'miscellaneous' theme and disregarded the codes within this theme because they were no longer relevant to the analysis of my data (as suggested by Braun & Clarke, 2006).

During phase five, the researcher defines, further refines each theme and analyzes the data within each sub-theme (Braun & Clarke, 2006; Vaismoradi et al., 2013). Doing so helps the researcher identify the 'essence' of what each theme is (Braun & Clarke, 2006). Braun and Clarke (2006) recommend that the researcher does not only paraphrase the content of the data. Instead, it is suggested that the researcher choose vivid examples or extracts that capture the essence of each theme (Braun & Clarke, 2006; Malik & Coulson, 2007; Vaismoradi et al., 2013). In order to determine whether or not this phase is complete, the researcher must be able to define what each theme is and is not (Braun &

Clarke, 2006). Overall, the analysis is supposed to “...make an *argument* in relation to your research question” (Braun & Clarke, 2006, p. 93, italics original).

During this stage, I selected vivid quotes from each sub-theme (as per Braun and Clarke’s (2006) suggestion) in order to determine the essence of each sub-theme and to help answer my research question. Additionally, I defined each broad-theme during this stage with a definition found in the literature⁷³. Furthermore, I also identified key concepts present in the selected quotes. As a result, I also defined these key concepts. Each concept was given two definitions. The first definition was from the literature. The second definition was an interpretation of how the concept was defined in the Parliamentary debates.

Taking note of the quotes within each code is important to demonstrate the trustworthiness of my data. Sandelowski (1995a) explains that listing quotations from the data in the findings section is necessary for the researcher to demonstrate that the themes are represented in the data. As will be seen, I included multiple quotations in each sub-theme in my findings chapter. I did this in order to attempt to demonstrate a stronger connection between my results and the data. However, Graneheim and Lundman (2004) suggest that researchers can overuse quotations when presenting their findings. They state that doing so may make their analysis unclear (Graneheim & Lundman, 2004). In order to attempt to avoid this from happening, I only included a few quotes in each sub-theme in my findings chapter and I made sure to write an analysis of each sub-theme before providing quotes for the next sub-theme.

Additionally, Braun and Clarke (2006) suggest avoiding analytic claims that cannot be supported by data or contradict the claim. In order to mitigate doing this, I cited

⁷³ These definitions are listed in the next chapter.

references from my literature review as well as other peer reviewed references to support the analytic claims in my sub-themes. Additionally, I also highlighted that my analytic claims are not transparent and are thus, open to interpretation in order to indicate that these claims are consistent with my theoretical framework (as suggested by Braun and Clark (2006)).

3.3.3 Rationale of Methodology

I chose to conduct a document analysis for a number of reasons. The first reason fits within Bowen's (2009) explanation of the applicability of document analysis. Bowen (2009) states: "...document analysis is particularly applicable to qualitative... studies – intensive studies producing rich descriptions of a single phenomenon..." (p. 29).

Relatedly, this thesis is a qualitative research project. The phenomenon being studied is the themes of parole. Document analysis is the best research method to use to determine the themes of parole. As previously seen in the literature, the official discourse of parole influences parole legislation. Additionally, parole legislation guides the practice of parole. By analyzing documents, I am able to not only analyze the official discourse on parole but also the legislation. Doing so allows me to potentially find a more well rounded answer to my research question.

The lack of researcher obtrusiveness is another reason for my choosing to conduct a document analysis. Researcher obtrusiveness is measured by the stability of qualitative research determined by whether or not the researcher's presence may alter the information provided by data collection (Bowen, 2009). Documents are unaffected by the research process (Bowen, 2009). *Bill C-10* has been enacted since 2012 and its content was not changed by my collection or analysis. Likewise, the Parliamentary debates had

taken place before my collection of them and the content of the debates were not affected by my collection or analysis. Comparatively, the physical presence of a researcher observing a phenomenon in the field may alter the process associated to the phenomena under study (Bowen, 2009). In that case, the data source may be unstable. As a result, the dependability of my data increases the credibility of my data.

3.4 Limitations and Reflexive Considerations

Every research method has limitations. However, the best thing a researcher can do is choose the methodology that is best suited to help answer their research question(s) (Elo et al., 2014). As explained earlier, document analysis is the best research method to use to answer my research question. However, it does have limitations. First, my findings are subjective. The analysis derived from the data was conducted by one person (the author) and the codes identified were created based on my opinion. Despite the measures put in place to maintain credibility and trustworthiness of this research, a second researcher may attempt to replicate the study and come to a different conclusion based on the subjectivity of document analysis.

Another limitation, is that my conclusion may only be generalizable to the documents I analyzed. This means that if another researcher analyzed documents related to section 6 of *Bill C-10* not included in my data collection (such as how the media portrayed section 6 of *Bill C-10*); s/he may come to a different conclusion. Additionally, provided that my analysis focuses on the official discourses of a very small and specific segment of the Canadian population, it may be difficult for a researcher to come to the same findings. One reason for this is that different documents may not include the discourse of the specific MPs, Senators of Parliament and expert witnesses that

participated in the Parliamentary debates analyzed in this thesis. Another reason is that even if the researcher analyzed different documents that included the same MPs, Senators of Parliament and expert witnesses, they may not have expressed the same opinion as they did in the analyzed Parliamentary. Finally, if the researcher analyzed different documents that included the same MPs, Senators of Parliament and expert witnesses, the researcher may interpret these opinions differently than I did.

Another limitation to my research is a result of analyzing Parliamentary committee debates in the form of documents. These documents have been already been produced and published. Therefore, I am limited to analyzing what is written in the documents. Documents "...are noninteractive and nonreactive; that is, where meanings can be immediately checked with an interview participant, documents remain silent" (Love, 2003, p. 86). While analyzing the documents, I could not ask the opinion of any speaker that participated during the Parliamentary debates.

I will complete this section by identifying some reflexive considerations that I identified throughout my research. As such, personal biases may have influenced my interpretations and findings. Elo et al. (2014) state: "[a]ny qualitative analysis should include continuous reflection and self-criticism by the researcher (Pyett, 2003; Thomas & Magilvy, 2011). The researcher's individual attributes and perspectives can have an important influence on the analysis process (Whittemore et al., 2001)" (as cited in Elo et al., 2014, p. 8). In the past, I have worked part-time at a Community Residential Facility (CRF) in Ottawa. The particular CRF that I worked at houses parolees on full parole and statutory release. Additionally, I conducted a student placement (during the completion of my M.A. in Criminology) at CSC and while there, I spoke to staff at the Ottawa Parole

Office and other CSC staff about their opinions of parole. As a result, I developed my own personal opinions on certain aspects of parole including: the purpose of parole, release conditions, the expectations of parolees for following their correctional plans, the expectations that are placed on the parolees by CSC and the role of parole for offenders. These opinions may have affected how I interpreted and analyzed my data. However, I attempted to prevent this from happening by writing my biases down before conducting my analysis and constantly checked them while conducting my analysis in order to prevent my findings to mirror my biases.

3.5 Conclusion

This chapter introduced and explained the sampling technique, characteristics and collection of the data. In doing so, the characteristics and collection of the Parliamentary debates of *Bill C-10* and section 6 and section 7 of *Bill C-10* were explained.

Additionally, the method of analysis was explained. Within this explanation, the characteristics of thematic analysis and rationale of thematic analysis were explained. Moreover, examples from the data analysis conducted for this thesis were provided. The decision to conduct a data analysis was also explained. This chapter concluded with an explanation of the limitations of the analysis. The next chapter will detail and analyze the findings of the themes of sub-themes found within the analyzed data.

CHAPTER 4 – FINDINGS

4.1 Introduction

The purpose of this chapter is to detail the findings of my document analysis of both the discourse of the Parliamentary debates pertaining to section 6 and section 7 of *Bill C-10* and the content of the amendments in section 6 and 7 of *Bill C-10*. In order to do so, this chapter has been divided into six additional sections. The first defines key concepts that were found within the data and present in the quotes presented in this chapter. Sections three, four and five present the findings and subsequent analysis of the three broad themes ('parole', 'record suspensions' and 'victims of crime') found in the data. Each of these sections includes four sub-sections which present and analyze the sub-themes of each broad theme. The first three sub-sections include quotes from members of the Conservative government, members of Opposition political parties and witnesses that participated in the Parliamentary debates. The fourth sub-section presents and analyzes the content of the amendments in section 6 and section 7 of *Bill C-10*. The results from each theme are compared and contrasted against the existing literature. The sixth section of this chapter examines the Conservative government's current 'vision of punishment'. This chapter concludes by tying the findings to the research question and research hypothesis. The findings in this chapter form the basis of the discussion and additional analysis in chapter five.

4.2 Definitions of Key Concepts

Each of the concepts discussed in this section will be defined in two separate ways. First, they will be defined according to the literature⁷⁴ and second, according to the

⁷⁴ The author acknowledges that there are multiple definitions of each concept present within the literature. In other words, each of these definitions are defined as they relate to parole instead of other concepts of the criminal justice system.

official discourse. The first concept to be defined is ‘public safety’. For the purposes of this thesis, ‘public safety’ is defined as: minimizing the risk of harm to society that is caused by crime. In this sense, the term ‘public safety’ acknowledges that crime causes harm to society in multiple ways, including but not limited to: harm to an individual, harm to infrastructure or harm to culture, etc. (Taxman, Byrne, & Young, 2002).

Alternatively, ‘public safety’ was ideologically defined⁷⁵ as: ‘eliminating the risk of crime in society by means of incarcerating offenders’ (i.e., offenders are to be incapacitated in order to eliminate their potential to commit crime) throughout the Parliamentary debates. Given that this definition is ideologically defined, one must critically question its limits. Usually, most offenders will be released from incarceration once they have served the required term of their sentence. As such, this ideological definition of ‘public safety’ can only be said to enhance public safety (in non-incarcerated society) in the short-term while offenders are incarcerated. This stance does nothing to prevent a crime from taking place. Research has demonstrated that evidence-based crime prevention practices can improve ‘public safety’ more efficiently and for longer durations compared to incarceration (Canada, 1990; Mallea, 2010).

The second concept to be defined is ‘social rehabilitation’. Lynch defines ‘social rehabilitation’ as:

...any language or action that indicates an aim to reform the parolee, either psychologically (i.e. through counseling or psychotherapy), interpersonally and situationally (i.e. through family interventions, training, and education), more structurally (i.e. through employment or housing intervention), or some combination (i.e. placement in residential

⁷⁵ This ideological definition of ‘public safety’ was seen in the discourse of members of the Conservative government (see House of Commons, 2011b; House of Commons, 2011d; Senate, 2012a). Alternatively, members of Opposition political parties define ‘Public Safety’ as: aiding with the rehabilitation and reintegration of offenders so that they do not reoffend (see House of Commons, 2011k, House of Commons, 2011m).

therapeutic programs) (2000, p. 45).

Thus, according to this definition, ‘social rehabilitation’ aims to reform an offender or parolee in order to better prepare the offender to reintegrate into society. ‘Social rehabilitation’ as defined throughout the Parliamentary debates was somewhat similar to Lynch’s definition. Members of Opposition political parties highlighted their belief that offenders need to participate in correctional programs in order to facilitate their rehabilitation⁷⁶. When examining the critical limits of this ideological definition, we can assume that it is not all encompassing. It does not consider that some offenders do not have the mental capacity to succeed in these programs. Furthermore, it does not consider that some researchers argue that correctional programs may be punitive in nature (Moore & Hannah-Moffat, 2005). Moore and Hannah-Moffat (2005) argue that some correctional officials strictly believe that program participation increases an offender’s chance of being granted parole where as a lack of program participation decreases an offender’s chance of being granted parole (Moore & Hannah-Moffat, 2005). In this sense, some correctional officials do not consider the potential various reasons of why an offender may not participate in correctional programs. For example, the correctional program may have been unavailable during an offender’s time of incarceration. Instead, they just observe that the offender did not participate in correctional programs and as a result, contextual the offender’s chances of being granted parole are decreased.

Next, the concept of ‘offender reintegration’ is defined as: the resettlement of an offender as a functioning member of society and as such, is able to contribute to a pro-social life (Friffiths, Dandurand, & Murdoch, 2007). In other words, an offender who has

⁷⁶ This dialogue will be further discussed in section 4.2.2 and 4.3.2 of this chapter. A definition of the concept of ‘social rehabilitation’ was not present in the discourse of members of the Conservative government because it was rarely referred to.

reintegrated into society is expected to not recidivate and to be a law-abiding citizen. Likewise during the Parliamentary debates, members of Opposition political parties defined ‘offender reintegration’ as: an offender becoming a functioning member of society who does not recidivate⁷⁷. When critically examining this definition, it is possible that it does not consider that some offenders may not have the social tools to reintegrate efficiently (i.e., pro social factors such as education, family support, etc.). Research demonstrates that some offenders are confronted by a range of social, economic and personal challenges that tend to become obstacles to a crime-free lifestyle upon their release (Borzycki, 2005; Borzycki & Baldry, 2003; Visher, Winterfield & Coggeshall, 2005). As such, this definition may not be all-encompassing.

Additionally, the concept ‘punitivity’ was also found in the Parliamentary debates. For the purposes of this thesis, ‘punitivity’ is defined as: penal policies that are less (or not at all) concerned with offender rehabilitation and result in the implementation of longer prison terms and harsher conditions of confinement⁷⁸ (Piché, 2012). Members of Opposition political parties defined ‘punitivity’ similarly during the Parliamentary debates⁷⁹. Thus, I will subjectively analyze the concept of ‘punitivity’ through this particular lens. In doing so, when measuring ‘punitivity’, my analysis will focus more on the use of incarceration and the lack of ‘offender rehabilitation’. Each of these concepts will be seen throughout this chapter. Again, the purpose of this document analysis was to answer the following research question: ‘what are the themes and sub-themes of parole

⁷⁷ See House of Commons (2011j) for examples. The term ‘reintegration was not discussed in the dialogue of members of the Conservative government enough to create a definition.

⁷⁸ This definition was chosen because the literature describes the objective of the Conservative government’s ‘Tough on Crime’ agenda is to incarcerate more people for longer times (Mallea, 2010; Piché, 2012).

⁷⁹ See House of Commons (2011i). Members of the Conservative government did not discuss the concept of ‘punitivity’ during the Parliamentary debates.

within the Parliamentary debates of section 6 of *Bill C-10* and in the content of the amendments of section 6 of *Bill C-10*?

4.3 Parole

Despite the fact that an entire section of *Bill C-10* (section 6) contains parole amendments, only a small portion of the discourse in the Parliamentary debates focused on the amendments in this section. For the purposes of this thesis, ‘parole’ is defined as: a form of conditional release that is available to federal offenders (Correctional Service of Canada, 2013b). It allows some federal offenders to be released from imprisonment and serve the remainder of their sentence outside of a federal institution (Parole Board of Canada, 2011).

4.3.1 Parole – According to Members of the Conservative Government

Much of the discourse on parole from the members of the Conservative government focused on the rhetoric that they believe ‘the Canadian parole system was and is too soft and it needs to be tightened’. As such, this rhetoric makes up the sub-theme for the codes placed in this group. Before speaking to the need to tighten the current parole system with the amendments in section 6 of *Bill C-10*, some Conservative MPs reiterated that the current Conservative government has previously passed legislation to tighten parole. This rhetoric was started by Conservative MP Vic Toews in the House of Commons. He stated:

Our government has passed the Serious Time for the Most Serious Crime Act to ensure first-degree murderers serve their life sentences of 25 years without the possibility of early parole through the so-called “faint hope clause”. This was unacceptable to Canadians, and our government has taken action (House of Commons, 2011b).

Conservative MP Bernard Trottier added to this rhetoric, stating: “[w]e have also passed

legislation to restore the faith of Canadians in the corrections and conditional release system by ensuring that offenders can no longer be released at one-sixth of their sentences” (House of Commons, 2011c). The official discourse in these two quotes is unsurprising given that authors cited in the literature review indicated that the Harper led Conservative government has previously tightened the parole system (Mallea, 2010; Zinger, 2012). Furthermore, as previously suggested in the literature review, these quotes suggest that recent legislative amendments to Canadian parole legislation have moved away from the twin-track policy to one of strictly tightening parole.

The official discourse also suggests that members of the Conservative government may have been employing the populist punitiveness strategy when speaking to the previously enacted parole amendments. The dialogue in the above quotes suggests that the politicians claimed that they enacted legislation to tighten parole because Canadians were concerned (note that the concerns of offenders were not mentioned). Politicians employing populist punitiveness indicate that they are pushing penal policies in the name of the ‘public’ (Walby & Piché, 2011). Relatedly, by only expressing the concerns of citizens, the testimony of the members of the Conservative government demonstrates that they did not mention that these parole amendments may have contributed to the recent prison population increase in Canada. Additionally, the testimony also suggests that none of these politicians mentioned the possible link of extending the period of incarceration of certain offenders may result in an increase to the cost to housing these offenders in federal institutions compared to in the community (The Correctional Investigator Canada, 2014). Finally, the testimony suggests that none of these politicians mentioned the possibility that eliminating early release for certain offenders could be detrimental to the

rehabilitation or reintegration efforts of those offenders (Reports of the Auditor General, 2015; Zinger, 2012). Instead, they claimed that the previous parole amendments helped address concerns of citizens. Again, these findings are unsurprising given that it fits into the current Conservative government's 'Tough on Crime' approach (Mallea, 2010).

Other Conservative politicians stated that they believed that the current parole system remained too soft during the Parliamentary debates. Conservative MP Dave MacKenzie stated:

(...)with respect to the parole system, perhaps tighten it up and make the rules a bit different and a bit tighter... people need to understand that when individuals are sentenced to prison there is a certain prison term involved and it is not eliminated because of extremely early parole (House of Commons, 2011d).

Conservative MP Stella Ambler stated:

[t]he third area of reform relates to the management of offenders and their re-integration into the community. In short, we need to do better so that we better protect law-abiding Canadians in all conditional release decisions(...) the bill would automatically suspend the parole or statutory release of offenders who receive a new custodial sentence (House of Commons, 2011c).

Conservative affiliated Senator Jean-Guy Dagenais stated:

As for me, I make it my duty to never miss an opportunity to find out what people expect from our justice system. I listen to them, I talk to them and I understand their perspectives. And that is exactly why we have to take action today to put an end to the cynicism that exists with regard to(...) the ease with which offenders in Canada are able to get parole (Senate, 2012d).

The discourse of these members of the Conservative government suggests that the parole system needed to be tightened because of ideological beliefs rather than evidence-based justifications. For example, the above quotes indicate that these members of the Conservative government believe that the parole system needed to be tightened because

Canadians want it to be tightened and doing so will better protect Canadians. Again, this reasoning can be linked to the populist punitiveness strategy. Enacting ‘Tough on Crime’ legislation in order to protect citizens suggests that these politicians are doing so for the public (Piché, 2012). Doing so suggests that the Conservative government is acting on behalf of Canadians and putting their interests above all else. This can be considered problematic because it ignores the research and evidence that demonstrates that tightening parole and ‘Tough on Crime’ policies in general do not better protect citizens long-term (Andrews & Bonta, 2010a; Jackson & Stewart, 2009; Tonry, 2008).

Additionally, the quoted testimony suggests that members of the Conservative government did not mention ‘social rehabilitation’ or ‘offender integration’ when discussing the section 6 amendments. This suggests that they are continuing the trend of deemphasizing the importance of offender rehabilitation and offender reintegration with regard to parole. This trend was noted throughout the historical progression of parole in the literature review (Hannah-Moffat, 2005). Again, every legislative amendment to the *CCRA* (except for accelerated parole which has since been abolished) has resulted in an increased reliance on incarceration (Zinger, 2012). This is concerning given that research demonstrates that offender rehabilitation and offender reintegration contribute to successful terms of parole (Andrews & Bonta, 2010a; Motiuk, Cousineau & Gileno, 2006; Zinger, 2012). In sum, this sub-section illustrates that the dialogue of members of the Conservative government discourse focused on the need to tighten parole in Canada without any evidence-based justification.

4.3.2 Parole – According to Members of Opposition Political Parties

The discourse of members of Opposition political parties contrasted that of

members of the Conservative party. The codes placed into this group were divided into the following two sub-themes: (1) 'the parole amendments may hinder an offender's ability to rehabilitate' and (2) 'the proposed parole amendments are not the least restrictive'. Quotes placed in the first sub-theme will be listed and analyzed first.

NDP MP Jack Harris stated: “[p]art of the parole provisions is to seek the rehabilitation of the offender. I don't think it's necessary to be punitive in every respect on every occasion” (House of Commons, 2011). Additionally, NPD MP Charmaine Borg stated: “[w]here are the programs, and what about the prospect of people being released from prison and reintegrating into society? This bill takes that away from them. No new funding is being allocated to these programs. There's nothing” (House of Commons, 2011). Finally, Liberal affiliated Senator Elizabeth Hubley stated:

(...)jail is not a permanent home. They will complete their sentences and return to their communities. (...)From research and experience, we know that when correctional programs are properly targeted and sequenced, well-implemented and delivered to meet earliest parole eligibility dates they can reduce recidivism, save money in the long run and enhance public safety (Senate, 2012b).

The above testimony suggests that the speakers believed that correctional programs can be an important part of the offender rehabilitation process. As indicated in the literature review, correctional programs have been used in the past as a tool to attempt to rehabilitate offenders (The Correctional Investigator Canada, 2012; McNeill, Burns, Halliday, Hutton & Tata, 2009). Research suggests that correctional programming that adheres to an offender's learning style and targets specific criminogenic needs and supports protective factors, can support offender rehabilitation (Green, 2011; Usher & Stewart, 2011). In fact, when properly conducted, some research indicates that Liberal affiliated Senator Elizabeth Hubley was correct in suggesting that properly implemented

and targeted correctional programming and parole can combine to reduce recidivism and save money (Mallea, 2010; Smith, Goggin & Gendreau, 2002; Snow & Moffit, 2012). However, despite this, the Correctional Investigator Canada (2014) reported that there is currently a shortage of correctional programming available to federal offenders. This finding is unsurprising given that the official discourse of members of the current Conservative government during the Parliamentary debates suggests that they did not focus on offender rehabilitation.

The second sub-theme found in the official discourse of members of Opposition political parties suggests that some of them believe ‘that the proposed parole amendments are not the least restrictive’. This discourse speaks to the amendment in section 6 of *Bill C-10* that removes the phrase “...use the least restrictive measures consistent with the protection of the public, staff members and offenders” and replace it with the principle that the measures “...are limited to what is necessary and proportionate to attain the purposes of this Act” (Parliament of Canada, 2012e, s. 6.2.1.1). NDP MP Jack Harris stated:

We want to see parole boards take as a paramount consideration the protection of society, but in so doing they ought to be restrained by the constitutional protection that their decisions are at least restrictive(...) that they don't just add conditions to parole because they can or because they think they're “necessary and proportionate”, when they ought to be, in fact, “least restrictive” (House of Commons, 2011).

It's a bit of a big-brother type of approach, rather than one that recognizes that these conditions of temporary release or temporary work releases or parole are part of the rehabilitative process(...) My fear here is that this becomes another punitive approach that may come from a view that every single person who is subject to a sentence, of any kind, is going to have a monitoring device(...) It ignores totally the notion we talked about earlier of the least restrictive method of dealing with prisoners (House of Commons, 2011).

Liberal Party MP Irwin Cotler continued this dialogue when he stated: “[f]or reasons of constitutional principle, as well as policy management within the parole board, I would recommend again that the principle of least restrictive determination be included as the normative principle in this regard” (House of Commons, 2011).

As previously described in the literature review, federal correctional legislation did not contain a statement of philosophy, principles of corrections or provide minimal offender rights before the enactment of the *CCRA* (Correctional Service of Canada, 2015). As a result, when the *CCRA* was enacted, the phrase in question was included to guide all decisions made in the federal correctional system (including parole decisions). By removing this language, it is possible that corrections officials may not use the least restrictive measures when dealing with offenders. According to the Canadian Bar Association, this phrase was a “...constitutionally derived standard based on restraint in the exercise of state power...” (Fine, 2014). Hommels et al. (2013) argue that policy is commonly interpreted differently by those that apply it. Howard Sapers (Correctional Investigator, Office of the Correctional Investigator) suggests it is possible that the new standard may be left to the discretion of correctional staff (Fine, 2014). In other words, Sapers explains that if two offenders are misbehaving in the same way in two different institutions, they may be dealt with differently (Fine, 2014). For example, one may be physically restrained while the other offender may not be (Fine, 2014). In sum, this suggests that there may no longer be a constitutional standard to protect offenders. Despite the concerns raised by members of Opposition political parties, the section 6 amendments do not include any amendments to improve offender rehabilitation nor did they maintain the “keep the least restrictive measures” language.

4.3.3 Parole – According to Witnesses

The discourse of witnesses that commented on the parole amendments in *Bill C-10* is divided into two sub-themes. First, discourse indicates that certain witnesses may have supported discourse of members of the Conservative government dialogue. Second, discourse of other witnesses indicates that they may have supported the discourse of members of Opposition political parties. The findings of witnesses that supported the discourse of members of the Conservative government will be presented and analyzed first. The quotes below indicate that some witnesses may support the notion that ‘Canadians have been requesting the proposed amendments to parole legislation’ and that ‘Canada’s parole system is too soft’.

The first two quotes support the Conservative government’s discourse and indicate that some Canadians may have requested the parole amendments in *Bill C-10*. Witnesses provided this support in both the House of Commons and the Senate. Witness Vince Westick (General Counsel, Legal Services, Ottawa Police Service) stated:

I think there are a number of changes in the Correctional and Conditional Release Act being put forward that are very important, some of which our association and police across Canada have been requesting for years—some very significant ones (House of Commons, 2011g).

Additionally, Tom Stamatakis (President, Canadian Police Association) stated:

(...)I would like to offer a specific mention of support for the provisions within this legislation that will, if passed, authorize a peace officer to arrest without a warrant an offender who is on a conditional release for breach of conditions. This common-sense change to the Corrections and Conditional Release Act is long overdue (Senate, 2012e).

It is interesting to note that both Mr. Westick and Mr. Stamatakis are associated with police officers in Canada. Police officers have been documented as supporters of the Conservative government (Piché, 2012). Given this, it is unsurprising that their discourse

suggests that they may support for some of the parole amendments tabled by the Conservative government. However, it is equally important to note that their testimony indicates that neither witness provided any concrete justifications as to why they may support these amendments. Mr. Stamatakis' testimony indicates that he believes that some of the amendments are 'common-sense' changes. Making 'common-sense' changes to criminal justice policy is part of the penal populist strategy (Pratt & Clark, 2005). As noted in the literature review, this strategy commonly draws on 'common-sense' approaches rather than evidence-based approaches to addressing criminal justice issues. Pratt (2007) argues that this approach resonates better with the public.

Additionally, some of the witnesses' dialogue indicates that they may have also supported the Conservative government's discourse that the 'Canadian parole system is too soft'. Witness Tom Stamatakis (President, Canadian Police Association) contributed to this discourse stating: "[v]iolent offenders are not deterred by our current sentencing, corrections, and parole policies(...)We need stronger intervention that combines general deterrence, specific deterrence, denunciation, and reform" (House of Commons, 2011i). Additionally, witness Sam Katz (Mayor, City of Winnipeg) stated:

[t]here's very little doubt in my mind that it is time for change, and this change will have a very positive impact for the citizens of our city and our country. We've had way too many situations where either repeat offenders or people on parole have been involved in a murder (House of Commons, 2011i).

Despite Mr. Stamatakis' testimony, general deterrence, specific deterrence and denunciation have not guided parole decisions in the past. Instead, the literature review has demonstrated that public safety is given paramount consideration in all parole decisions (Parole Board of Canada, 2011). Despite this fact, section 6.2.1.1 of *Bill C-10*

requires "...the "nature and gravity of the offence" and the "degree of responsibility of the offender" to the requirement that the CSC be guided by the principle that the sentence be carried out having regard to all relevant available information" (Parliament of Canada, 2012e). Although this amendment does not include the sentencing principles identified by Mr. Stamatakis, it was criticized for including other sentencing principles that may be irrelevant to granting parole⁸⁰. Much like Stamatakis' testimony, research also contradicts Watz's testimony. Public Safety Canada (2012) reports that paroled offenders commit an extremely low amount of violent offences (Public Safety Canada, 2012). Thus, research does not support the testimony of these two witnesses. This finding is similar to that of the discourse of members of the Conservative government.

Some of the discourse of witnesses indicates that they may have also supported the discourse of members of the Opposition political parties by suggesting the parole amendments do nothing to support offender rehabilitation. Witness Jean-Marc Fournier (Minister of Justice and Attorney General of Quebec, Government of Quebec) contributed to this rhetoric when he stated:

(...)even if you accept the argument that offenders should serve the longest sentences possible without any opportunity for parole, the fact remains that they will be released at some point. What steps will have been taken to prevent them offending again?(...) This Bill changes priorities. There will no longer be a significant focus on rehabilitation... (House of Commons, 2011i).

Additionally, Daniel MacRury (Chair, National Criminal Justice Section, Canadian Bar Association) stated:

The situation is that the system we had in place, where we had sentencing principles and correction policies, is all being changed, all in the name of

⁸⁰ Catherine Latimer (Executive Director, John Howard Society of Canada) stated that CSC should not be concerned by the 'nature and gravity of the offence' since these are sentencing principles and are dealt with at the time of sentencing the offender (House of Commons, 2011g).

toughness. At the end of the day, we would submit that it will not achieve the safety that everyone is saying it will. We will have more people coming out unsafe (Senate, 2012f).

The above testimony suggesting that there is no longer a focus on rehabilitation is similar to what the literature indicates. As seen in the literature review, the notion of rehabilitation has progressively changed throughout the history of Canada's parole system. In fact, since the 1970's there has been a greater emphasis on risk assessment and risk management (Hannah-Moffat, 2005; Simon, 2005). Furthermore, maintaining public safety is given the upmost importance in all parole hearing decisions (Parole Board of Canada, 2011). Second, Daniel MacRury's testimony is in line with other correctional experts and academics that argue 'Tough on Crime' approaches to correction policies will not achieve the level of public safety (Jackson & Stewart, 2009; Mallea, 2010; Smith, Goggin & Gendreau, 2002). Given that I conducted a document analysis, I am unable to determine whether or not members of the Conservative government considered the testimony of these witnesses. However, since none of the amendments in section 6 of *Bill C-10* seek to improve offender rehabilitation efforts, this suggests that there was no significant focus on offender rehabilitation within the parole amendments. The next subsection will analyze the content of the section 6 amendments in *Bill C-10*.

4.3.4 Parole – Content of the Amendments in Section 6 of *Bill C-10*

After analyzing the content of the amendments included in section 6 of *Bill C-10*, it was apparent that some of the parole amendments within section 6 were not discussed during the Parliamentary debates. For example, while some of the testimony of members of the Conservative government listed in subsection 4.3.1 indicated that the parole system needs to be tightened to better protect Canadians; they did not explain the explicit

purpose of enacting the amendments in section 6 of *Bill C-10*. However, after analyzing all of the amendments in section 6 the purposes of these amendments are clearly stated. Section 6.1 of *Bill C-10* states: “[b]ill C-10 is designed to increase offenders’ accountability and tighten the rules governing the conditional release of federal offenders...”, “[t]he bill seeks to increase public safety...” and that it “...also focuses specifically on the interests of victims...”⁸¹ (Parliament of Canada, 2012e). According to the discourse of members of the Conservative government, it appears the intent of the parole amendments was to tighten parole.

Clause 55 seeks to tighten parole by:

...expanding the categories of offenders subject to continued detention after their statutory release date when they have served two thirds of their sentence (e.g., offenders convicted of child pornography, luring a child, breaking and entering to steal a firearm, or aggravated assault of a peace officer)... and increasing the waiting period from six months to a year following the Parole Board of Canada’s decision to refuse an application for day parole or full parole... (Parliament of Canada, 2012e, s. 6.1).

The scope of this thesis does not allow me to determine the number of offenders that were impacted by expansion of the categories of offenders subject to continued detention after their statutory release or that had to wait a year to reapply for day or full parole after being rejected. However, as indicated in the literature review, tightening parole may be linked to the increasing Canadian prison population and ultimately increase social and economic costs of incarcerating offenders for longer periods of time. Despite this, these possible implications were not discussed during the Parliamentary debates.

Next, certain amendments in section 6 were included to increase public safety.

These amendments include:

⁸¹ The amendments that increase the ‘interests of victims’ will be described in section 4.5.4 and will not be further discussed in this section.

...authorizing a peace officer to arrest without a warrant an offender who is on conditional release for a breach of conditions and... granting the Correctional Service of Canada permission to oblige an offender to wear a monitoring device as a condition of release, when release is subject to special conditions regarding restrictions on access to victims or geographical areas (Parliament of Canada, 2012e, s. 6.1).

As previously noted, some of the witnesses were in favour of the government including these amendments while members of the Opposition political parties suggested that this is a punitive approach that may hinder offender rehabilitation. It is important to note that researchers have argued that punitive crime policies do not increase public safety in the long term (Jackson & Stewart, 2009; Mallea, 2010; Smith, Goggin & Gendreau, 2002). Again, given the method of data analysis used in this thesis, I am unable to determine whether or not public safety has increased since the enactment of *Bill C-10*. The next amendment in section 6 reads:

Clause 54 of the bill also proposes adding the notions of the “nature and gravity of the offence” and the “degree of responsibility of the offender” to the requirement that the CSC be guided by the principle that the sentence be carried out having regard to all relevant available information (Parliament of Canada, 2012e, s. 6.2.1.1).

The literature indicates that PBC members consider a number of factors when determining whether or not to grant parole (Parole Board of Canada, 2014a). Given the vast array of information they are required to consider, it is difficult to determine whether or not considering the “degree of responsibility of the offender” will contribute to their ability to determine whether or not releasing an offender will present an undue risk to society. The next amendment removed a principle of the *CCRA*. It reads:

The bill also proposes removing from current section 4(d) the principle that the CSC “use the least restrictive measures consistent with the protection of the public, staff members and offenders” and replace it with the principle that the measures “are limited to what is necessary and

proportionate to attain the purposes of this Act” (new section 4(c))
(Parliament of Canada, 2012e, s.6.2.1.1)

As previously noted in this section, discourse of members of Opposition political parties and witnesses suggested they did not favour this amendment. The discourse of members of Opposition political parties also suggested that including this amendment may potentially be problematic given that offenders may no longer be protected by a constitutional principle.

When combining the analyzed discourse in this theme and the content of section 6 of *Bill C-10*, a few conclusions can be made. First, the discourse suggests that the members of the Conservative government did not use empirical evidence to justify tightening parole. This is unsurprising given that the official dialogue members of the current Conservative government suggests that they did not empirically justify tightening parole in the past. Second, the discourse of members of the Opposition political parties and some witnesses indicate they may be concerned these amendments could hinder offender rehabilitation. Additionally, none of the content of the amendments in section 6 of *Bill C-10* indicates they promote offender rehabilitation. This follows the trend that offender rehabilitation has been emphasized less and less when related to parole as seen in the literature review. Most importantly, these findings suggest that there is disagreement amongst members of the Conservative government, members of Opposition political parties and some of the witnesses about how parole is perceived in Canada. In other words, it is likely that one group’s perception of parole may be different if compared to another. As a result, it is difficult to say that there is one definition of parole amongst the official discourses. The findings in this section will be incorporated into my analysis of the current Conservative government’s vision of punishment. This topic will

be analyzed at the end of this chapter.

4.4 Record Suspensions

A large part of the Parliamentary debates focused on the record suspension amendments in section 7 of *Bill C-10*. While ‘record suspensions’ are not the same as parole, the reasons for presenting these findings are twofold. First, much of the dialogue of members of the Conservative government focused on ‘sex offenders, and ‘repeat offenders’. As noted in the literature review, ‘sex offenders’ have been the target of the ‘hard’ parole legislation as per the ‘twin-track theory’ (Robert, 2001). Additionally, members of the Conservative government’s dialogue also included a ‘victims of crime’ rhetoric. The literature review also noted that the Conservative government has used a ‘victims of crime’ rhetoric to advance its ‘Tough on Crime’ agenda in the past (Mallea, 2010). Second, the dialogue of members of the Opposition political parties focused on ‘offender rehabilitation’ and ‘offender reintegration’. As seen in the previous section, members of Opposition political parties consider them to be two key elements of successful parole.

For the purposes of this thesis, the PBC definition of ‘record suspension’ will be used. “A record suspension... allows people who were convicted of a criminal offence, but have completed their sentence... to have their criminal record kept separate and apart from other criminal records” (Parole Board of Canada, 2014d). Additionally, the PBC states: “[a] record suspension is a means to facilitate social reintegration” (Parole Board of Canada, 2013). By obtaining a record suspension, an offender can travel to other countries, rent property, purchase insurance, be bonded and s/he does not have to tell

future employers that s/he has a record⁸² (Parole Board of Canada, 2013). Lastly, “[a] record suspension is evidence that the conviction should no longer reflect negatively on a person’s character” (Parole Board of Canada, 2013).

4.4.1 Record Suspensions – According to Members of the Conservative Government

The discourse of members of the Conservative government pertaining to section 7 of *Bill C-10* during the Parliamentary debates is divided into the following sub-themes:

(1) some parts of their discourse suggest that they may believe it is important to ‘empower victims of crime with the ability to “forgive” offenders’ and (2) some elements of their discourse suggest that they may believe ‘certain offenders should remain ineligible for record suspensions’. The first sub-theme will be presented and analyzed first. Conservative MP Vic Toews stated:

We believe the term “record suspension” better reflects the purpose of the legislation, that being to close off general access to a criminal record in appropriate cases as opposed to expressing forgiveness for the offence. After all, it is up to the victims to decide whether or not to forgive the criminals who have abused them, not the government⁸³ (House of Commons, 2011b).

Conservative MP Candice Hoepfner continued this rhetoric by stating:

First and foremost, it proposes to change the term “pardon” to “record suspension” as the word “pardon” implies that the government has forgiven the individual. We firmly believe that it is not the role of the government to forgive someone for his or her crime. That can only come from the victim or the victim's family, certainly not from the government. Indeed, we are aware that it adds insult to injury when a victim discovers his or her offender has received a pardon (House of Commons, 2011b).

Conservative MP Bernard Trottier also added to this rhetoric when he stated:

⁸² Record suspensions were first created in 1970, “...to provide relief from the legal and social stigmas of a criminal records for rehabilitated persons...” (Parole Board of Canada, 2013).

⁸³ It is important to note that even when the *Criminal Records Act* was first enacted in 1970, granting an offender a pardon was never done with the purpose to ‘forgive’ an offender. Instead, pardons were created to allow minors to “...become respectable members of society...” and to “...relieve adults who have paid their debt to society and taken their place as law-abiding citizens, from the continuing stigma and harassment of past criminal records.” (Nadin-Davis, 1980, p. 223)

We have heard from victims and victims' rights groups that the word "pardon" indicates that somehow the government has forgiven the person for their crime. Forgiveness is not the government's to give. No one can forgive an offender for a crime except the victim, or the victim's family (House of Commons, 2011c).

Despite the fact that the dialogue in the above quotes suggests that these members of the Conservative government may believe that only 'victims of crime' can forgive offenders, the PBC⁸⁴ (a department of the federal government) remains responsible for determining whether or not an offender will be granted a record suspension. Whether or not a 'victim of crime' forgives an offender has no bearing on whether or not the offender is granted a record suspension. The PBC remains an independent judicial body and is not influenced by members outside of the organization. In fact, the only way the federal government can legally 'forgive' an offender is by granting a 'Royal Prerogative of Mercy' (Parole Board of Canada, 2014a). Granting a 'Royal Prerogative of Mercy' is different from granting a 'record suspension' as it is the act of granting the offender a clemency (Parole Board of Canada, 2014a). Moreover, the act of granting a request for a 'Royal Prerogative of Mercy' is extremely rare. In 2012, 52 were requested and only 12 were granted (Parole Board of Canada, 2014b). Thus, it appears that the testimony suggesting that 'victims can forgive offenders' may not be empirically justified. Given this, one possible explanation for why these Conservative Party MPs made this proclamation is because they may have used the 'victims of crime' rhetoric in their discourse to justify the record suspension amendments.

Continuously mentioning that only 'victims of crime' can forgive offenders

⁸⁴ As stated in the literature review, the PBC "...is an independent administrative tribunal that has exclusive authority under the *CCRA* to grant, deny, cancel, terminate or revoke day parole and full parole." (Parole Board of Canada, 2015a). The PBC "...is also responsible for making decisions to order, refuse to order and revoke record suspensions under the *Criminal Records Act* and the *Canadian Criminal Code* (Parole Board of Canada, 2015a).

suggests that these Conservative Party MPs may have attempted to divert attention away from the actual amendments and instead focusing on the emotion of victims. This strategy is commonly used by penal populists (Pratt, 2007). In essence, these Conservative Party MPs may have been attempting to hide the fact that their justification for changing the term ‘pardon’ to ‘record’ suspension has no impact on the act of granting a record suspension.

The second sub-theme was found in the following quotes: Conservative MP Vic Toews stated:

Bill C-10 would ensure that no one convicted of committing a sexual offence against a child would be eligible for a record suspension. There are some crimes that should never have the opportunity to be sealed... On top of this, individuals convicted of more than three indictable offences would not be eligible to apply for a record suspension if they have received a federal sentence for each of those offences (House of Commons, 2011b).

Additionally, Conservative MP Ryan Leef stated: “(...)there are some people who should never be eligible for a criminal record suspension(...) targeting our children is one of the most despicable forms of crime, and sexual abuse of a child is among the most heinous” (House of Commons, 2011c). Conservative MP David Wilks stated: “[i]n the government's view, anyone convicted of a sexual offence related to a minor does not deserve a record suspension” (House of Commons, 2011d). Conservative MP Candice stated:

What does this mean in practice? It means that if an individual is convicted more than three times of a serious crime and sentenced to more than two years in jail for crimes such as a major drug crime or home invasion, that individual would not be eligible to apply for a record suspension. Suffice it to say that an individual who is convicted of indictable offences on more than three occasions and has received a federal sentence for each has certainly demonstrated a pattern of behaviour that establishes a serious risk that he or she will commit grievous harm to

members of our society (House of Commons, 2011b).

Conservative affiliated Senator Pierre-Hugues Boisvenu⁸⁵ stated:

I would like to remind you that, last year, almost 800 sexual predators obtained pardons, many of whom had reoffended three or four times. The predator lingers near an elementary school. The police officer checks the license plate, but there is no longer any record. Does that protect the public? No (Senate, 2012a).

By continuously referring to a specific type of sex offender and repeat offenders, the Conservative government dialogue indicates they are referring to two highly publicized types of offenders. Research demonstrates that doing so is a good way to justify being 'Tough on Crime' (Cavadino & Dignan, 2006). These types of offenders are often vilified in the media and receive little to no sympathy from the public. Additionally, if other politicians argue against penal reforms that target these types of offenders, they are usually depicted as 'soft' on crime (Newburn & Jones, 2005). This is politically significant because it is often considered 'political suicide' to appear 'soft' on crime (Newburn & Jones, 2005). In essence, targeting these types of offenders indicates that the above discourse suggests that these members of the Conservative government were trying to advance its 'Tough on Crime' agenda. Additionally making certain offenders ineligible for record suspensions is significant because it can be interpreted as a lack of faith in the effectiveness of the criminal justice system and in the potential for individuals to change.

As explained in the literature review, offenders are not granted early parole unless the PBC determines they are a low risk to reoffend. If they remain at a high risk level while incarcerated, they will remain incarcerated until they obtain their warrant expiry or

⁸⁵ It is important to note that when Prime Minister Stephen Harper appointed Pierre-Hugues Boisvenu to the Senate in 2010, he was known as a victims advocate after his daughter was kidnapped and murdered by a man who had been released on parole (N.a., 2010). This was considered controversial because of his vindictive discourses of punishing offenders (N.a., 2010).

the end of their sentence (if they are eligible). After this, they must wait a specific period of time before they can apply for a record suspension (they must not obtain new criminal charges during this time). If the PBC still believes the offender is a high risk to reoffend, they can deny the record suspension application. Despite this fact, the dialogue of some members of the Conservative government suggests they may believe ‘certain offenders should be ineligible to obtain a record suspension’. Again, this suggests that evidence-based approaches are deemed less relevant in the current Conservative government’s approach to issues involving the criminal justice system. In fact, this is not the first time the current Conservative government’s ‘Tough on Crime’ policies have demonstrated a lack of faith in the criminal justice system. For example, the current Conservative government enacted *Bill C-25: The Truth in Sentencing Act* (Mallea, 2010). The title of *Bill C-25* suggests that previously there was no ‘truth’ in sentencing because judges were able to credit offenders 2 days for every 1 day spent in pre-trial custody. In other words, the Conservative government gave the impression that judges were not doing their job properly (Mallea, 2010). All in all, the discourse of this sub-theme indicates that members of the Conservative government may have used the ‘victims of crime’ rhetoric and targeted specific types of offenders in order to attempt to advance their ‘Tough on Crime’ agenda.

4.4.2. Record Suspensions – According to Members of Opposition Political Parties

The discourse of members of Opposition political parties pertaining to the record suspension amendments was drastically different than that of members of the Conservative government. When combined, the quotes within this group created the sub-theme: ‘making certain offenders ineligible for record suspensions will be detrimental to

their ability to rehabilitate and reintegrate back into society'. NDP MP Jasbir Sandu contributed to this discourse in the House of Commons. She stated:

By summarily making pardons more difficult to get, and by doing it without any study or rationale, the Conservative government will make it more difficult for people to rehabilitate and reintegrate into society. If the Conservatives make it more difficult for deserving people to get pardons, those people will not be able to get back into society and will be far more likely to commit crimes in the future. It is entirely possible, in fact very likely, that in some ways this legislation will actually increase crime (House of Commons, 2011j).

NDP MP Francois Boivin also focused on the rehabilitative aspect of the previous pardon system. She stated: “[o]verall, we are against this because this is a complete shift that is distancing us from what the concept of a pardon was previously based on, which was linked to rehabilitation” (House of Commons, 2011m). NDP MP Charmaine Borg stated:

As regards pardons, people who have a family, who want to reintegrate into society, go back to work, maybe work abroad, can no longer obtain a criminal record suspension. There is no longer any room for them in society. We're forcing them back into a life of crime. I think that's totally ridiculous. We should focus on rehabilitation and programs (House of Commons, 2011k).

Lastly, NDP MP Jack Harris stated:

Deleting the definition of “pardon” takes away that possibility for continuing and assisting and sustaining the rehabilitation of an individual as a law-abiding citizen, and that fact is particularly important(...) As it turns out, of course, 96% of people who are granted pardons never have their pardon revoked. And why is that? Well, it's because the system is working. People who are granted pardons are almost guaranteed, with the exception of 4%, to sustain their rehabilitation as law-abiding citizens (House of Commons, 2011m).

The discourse of members of Opposition political parties that references the past success of the record suspension system may refer to internal record suspension statistics reported by the PBC. The PBC's website states that 96% of the pardons and record suspensions granted to Canadians are currently still in force (Parole Board of Canada,

2014b). According to these statistics, the majority of offenders who have been granted a pardon or record suspension have remained crime free. Based on these statistics, it is confusing as to why the Conservative government appears to want to eliminate the ‘record suspension’ review process for certain offenders.

The discourse of members of Opposition political parties also suggests that they may believe that eliminating record suspensions may inhibit certain offenders’ chances at social rehabilitation and reintegration. Research demonstrates that most employers will not employ citizens that possess criminal records (Boryzcki & Baldry, 2003). In turn, this can be detrimental to the chances that an offender achieves social rehabilitation and reintegration. Research suggests that legal employment can minimize the risk of re-offending (Huebner, 2005). However, ignoring statistics and evidence is in line with the current Conservative government’s approach to criminal policy (Mallea, 2010). This again suggests that the Conservative government is not interested in ‘offender rehabilitation’ or ‘offender reintegration’, two key components of Canada’s parole system and correctional system more generally. The analysis of the findings in this sub-theme is similar to analysis of the discourse of in the previous sub-section. Again, these findings will be incorporated into my analysis of the current Conservative government’s ‘vision of punishment’.

4.4.3 Record Suspensions – According to Witnesses

The discourse of witnesses in this theme was again split between contributing to either the rhetoric of members of the Conservative government or members of the Opposition political parties. This section will provide examples of both. I will begin by detailing the discourse of witnesses that contributed to the rhetoric of members of the

Conservative government.

Pierre Chalifoux (Director General, Parents-Secours du Québec) stated: “(...)by adding section 49, which means that an offender found guilty of certain offences will not have the right to a record suspension. I think that not allowing certain individuals to request a pardon is an excellent idea...” (Senate, 2012g) Additionally, Sheldon Kennedy (Co-Founder, Respect Group Inc.) contributed to the Conservative party discourse when she stated: “[i]s there a parent in this country who would have an issue with protecting their children from this predator and others like him? Pardons should be eliminated for all child sex offenders, period” (House of Commons, 2011g).

Suggesting that certain types of offenders should be dealt with by punitive criminal justice policies is not new. Some authors argue that as long as voters continue to support this type of approach to criminal justice policy, governments will continue to be ‘Tough on Crime’ (Mallea, 2010; Pratt, 2007). In other words, the Conservative government is likely to continue to table and enact this type of policy regardless of the potential negative impacts that are highlighted by academia and opposition politicians. Next, Sheldon Kennedy’s comments suggest that the record suspension amendments may have influenced the emotion of victims of crime. By suggesting that the amendments may help parents protect their children from sexual predators, anyone that vocalizes an issue with Sheldon Kennedy’s comment could be labelled ‘soft on crime’ or ‘against victims’ and be discredited (Newburn & Jones, 2005). However, the amendment may not help parents protect their children. This is because this amendment is reactive and does nothing to prevent a person from committing sexual offences against children in the first place. Again, this example suggests that the current Conservative government’s ‘Tough

on Crime' approach may not be justified by evidence.

Much like the members of the Opposition political parties, the discourse of some witnesses indicate that they may believe the record suspension amendment that makes certain offenders ineligible for a record suspension may inhibit their ability to rehabilitate or to reintegrate into society. Witness Michael Jackson (Member, Committee on Imprisonment and Release, National Criminal Justice Section, Canadian Bar Association) contributed to this discourse. He stated:

There is no demonstration that the pardon process has in fact been flawed. Ninety-six percent of them have never been revoked. I again ask: Why as legislators would you want to put impediments on the reintegration of people who have in fact started out afresh and demonstrated that they are accountable for their actions? There is no rational or legitimate correctional reintegration purpose (House of Commons, 2011f).

Additionally, Howard Sapers (Correctional Investigator, Office of the Correctional Investigator) stated:

It's worth noting that the vast majority of individuals who receive a pardon do not reoffend. The current system is based on a case-by-case analysis of all relevant risk assessment information. The system appears to work well. It's my view that we need to assist offenders to make a successful transition to a law-abiding life--not create additional obstacles (House of Commons, 2011i).

Furthermore, witness Randall Fletcher (Sexual Deviance Specialist) stated:

However, if you are talking about record suspension, parole boards already have the ability to deny that to them. They have the ability to look at whether the person has been successfully treated, has been rehabilitated and whether they still pose the same level of risk. The people who are a risk can continue to be denied that and have that on their record. I think it is important, for any type of crime, to recognize that everyone can be rehabilitated and that there is a need to get on with their lives. Being able to do that is part of what makes for the community being safer (Senate, 2012g).

The discourse in the above quotes suggest that these witnesses attempted to make

similar points to those made by members of Opposition political parties. More specifically, some of the witnesses mentioned the PBC statistics demonstrate that the vast majority of offenders who have been granted pardons and record suspensions in the past have not committed new crimes. Again, ignoring these statistics suggests that members of the Conservative government may lack confidence in the record suspension procedures. Additionally, Howard Sapers' testimony highlighted the record suspension review process. As previously stated, this process allows the PBC to deny a record suspension application if the application reviewers deem that the offender continues to present a risk to reoffend (Parole Board of Canada, 2014c). Eliminating this review process for certain offenders means that they may never be able to prove they are no longer a risk to society.

Finally, some of the witnesses' testimony suggested they are concerned that the record suspension amendments may hinder an offender's ability to achieve social rehabilitation. As previously noted, making certain offenders ineligible for record suspensions may be detrimental to their ability to reintegrate into society due to their struggle to gain legal employment (Huebner, 2015). However, despite the combined concerns noted in the discourse of both the Opposition political parties members and witnesses, section 7 of *Bill C-10* contained an amendment which makes certain offenders ineligible for record suspensions. This will be further explored in the next sub-section.

4.4.4 Record Suspension – Content of the Amendments in Section 7 of *Bill C-10*

The first amendment in section 7 of *Bill C-10* emphasizes that record suspensions are not automatic. Section 7.2.2 of *Bill C-10* reads:

Clause 110 will amend this section to specify that the Board will also have absolute discretion to order, refuse to order, or revoke a record suspension. This change in wording places a greater emphasis on the decision-making role of the Board and the fact that the grant of a record suspension is not

automatic.

This amendment suggests that the Conservative government may not want people to think that record suspensions are automatically given to offenders. This is important to highlight because literature suggests that the Conservative government does not want to be seen as ‘soft’ on crime (Mallea, 2010). However, as previously described, record suspensions were not automatically granted before this amendment was enacted (Parole Board of Canada, 2015). Clause 115 in section 7 increases the wait time to apply for record suspensions to 10 years for all indictable offences before offenders convicted of indictable offences can apply for a record suspension (Parliament of Canada, 2012f, s. 7.2.3). Previously, offenders that committed certain indictable offences had a wait period of 5 years while others had a 10 year wait period (Parliament of Canada, 2012f, s. 7.2.3). This change distinctly tightens the record suspension system. Furthermore, increasing the wait period may further hinder an offender’s chance at social rehabilitation and social reintegration. The longer an offender must wait before potentially successfully applying for a record suspension, the longer amount of time s/he may be stigmatized for possessing a criminal record (for e.g., they will have a more difficult time finding legal employment) (Huebner, 2015).

Furthermore, clause 115 also makes certain offenders ineligible for record suspensions. It reads:

Those who have been convicted of an offence referred to in Schedule 1 (sexual offences in relation to minors)... or of more than three offences, each of which either was prosecuted by indictment or is a service offence that is subject to a maximum punishment of imprisonment for life and for each of which the person was sentenced to imprisonment for two years or more, are not eligible to apply for a record suspension (Parliament of Canada, 2012f, s. 7.2.3).

The fact that these amendments were included in *Bill C-10* is unsurprising given that many members of the Conservative government highlighted their desire to include this them in section 7. However, given this emphasis it is surprising that this amendment includes exceptions. This exception is highlighted in the latter part of clause 115:

An exception to the ineligibility to apply for a record suspension is made in the case of persons who have been convicted of an offence referred to in Schedule 1 if the Board is satisfied that: the person was not in a position of trust or authority towards the victim of the offence and the victim was not in a relationship of dependency with him or her; the person did not use, threaten to use or attempt to use violence, intimidation or coercion in relation to the victim; and the person was less than five years older than the victim. The onus of proving these conditions is on the applicant (Parliament of Canada, 2012f, s. 7.2.3).

The discourse of members of the Conservative government gave no indication that they would create exceptions to allow certain types of sex offenders to remain eligible for record suspension. Thus, perhaps the concerns of members of the Opposition political parties and certain witnesses may have influenced members of the Conservative government to create the exceptions. Other amendments included in section 7 were not debated in depth during the Parliamentary debates⁸⁶. As such, they were not included in this analysis.

When analyzing the findings of the record suspensions theme, it is apparent that the discourse of members of the Conservative government and members of Opposition political parties contrasted each other. Members of the Conservative government focused on tightening record suspensions. Much like the findings in the ‘parole’ theme, their discourse suggests they did not have any empirical justifications to explain why they wanted the record suspension system tightened. Instead, they see ‘victims of crime’ as the only ones who can ‘forgive’ offenders. Additionally, the findings in this section

⁸⁶ See (Parliament of Canada, 2012f) for the details of the other amendments.

indicate that members of the Conservative government mostly ignored the concerns of members of the Opposition political parties that the amendments may inhibit their ability to rehabilitate and reintegrate. All in all, the discourse of this theme and subsequent tightening of the record suspension eligibility contribute to the current government's 'Tough on Crime' agenda.

4.5 Victims of Crime

Given that certain amendments within section 6 of *Bill C-10* refer to victims of crime, it is only natural that this was identified as a theme⁸⁷. For the purposes of this thesis, I have defined 'victims of crime'⁸⁸ as: individuals who are harmed by any act that is considered a criminal offence in the *Canadian Criminal Code*.

4.5.1 Victims of Crime – According to Members of the Conservative Government

The codes placed into the members of the Conservative government dialogue pertaining to 'victims of crime' group created the following sub-theme: 'the Conservative government listens to the concerns of victims of crime'. This dialogue was present in both the House of Commons and the Senate. This sub-section will present quotes from both. In the House of Commons, Conservative MP Vic Toews stated:

Victims have long requested access to more information on offenders and to have a greater say in the justice system. Bill C-10 would deliver on this a number of ways. The bill would allow victims to obtain information on the reasons for a temporary absence, offender transfer, offender program participation and any offender convictions for serious disciplinary offences (House of Commons, 2011b).

Conservative MP Stella Ambler stated:

⁸⁷ The 'victims of crime' sub-theme found within the discourse of members of the Conservative government when discussing the section 7 amendments was presented and analyzed in the previous section. As a result, the discourse that will be presented and analyzed in this section pertains to the amendments in section 6.

⁸⁸ Comparatively, Waller and Weiler (1985) define a 'victim of crime' as a person who suffers some form of psychological, physical and/or financial harm from an intentional or accidental act of another person.

The current act clearly recognizes that victims of crime have an interest in the correctional process and yet victims and their advocates have expressed dissatisfaction with the current law. They have consistently called for improvements that would ensure a stronger voice in the process. The government has heard their concerns. We have listened and now we are acting on those concerns (House of Commons, 2011c).

Conservative MP John Williamson stated: “[v]ictims have always been central to our government’s crime reduction agenda” (House of Commons, 2011c). Additionally, this rhetoric was also prevalent in the Senate. Senator Majory LeBreton stated: “[w]e, as a government, have acknowledged and done more for victims than any other government in the history of the country” (Senate, 2012c). Furthermore, Senator Pierre-Hugues Boisvenu stated: “(...)victims of crime and their advocates unanimously support Bill C-10, which enshrines in the legislation the demands that they have been fighting for for decades” (Senate, 2012d).

The fact that multiple members of the Conservative government dialogue referenced ‘victims of crime’ is unsurprising given that some of the amendments in section 6 of *Bill C-10* specifically relate to ‘victims of crime’. However, there are multiple points in the above quotes that require deeper analysis. First, Conservative MP John Williamson’s claim that victims have been ‘central’ to the current Conservative government’s crime agenda is to be expected. The literature review indicated crime victims have gained iconic status in populist discourse as politicians often refer to victims of crime to justify their ‘Tough on Crime’ approach⁸⁹ (Barlett, 2009; Pratt, 2008). This suggests that members of the Conservative government may have been referring to

⁸⁹ It is important to note that because someone is speaking on behalf of ‘victims of crime’, it does not mean that they are developing a penal populist discourse. Other speakers speaking on behalf of ‘victims of crime’ may also be considered victims’ advocates, who may seek to increase support given to ‘victims of crime’. For example, Susan O’Sullivan (Federal Ombudsman for Victims of Crime) advocates for ‘victims of crime’. Her role is to ensure that the federal government meets its responsibilities to victims of crime (Office of the Federal Ombudsman for Victims of Crime, n.d.).

‘victims of crime’ in an attempt to garner additional support for their political agenda.

Second, Senator Pierre-Hugues Boisvenu’s claim that all victims support the ‘victim of crime’ amendments in *Bill C-10* may be inaccurate because the Conservative government’s ‘vision’ of the needs of ‘victims of crime’ may not be expressed by all victims⁹⁰. Victimization differs for every person but the Conservative government frequently focuses on the need to enact punitive measures on behalf of the victim (Mallea, 2010). However, studies show that some victims do not want to take revenge on an offender (Bolivar, Pelikan & Lemonne, 2013; Herman, 2005). Instead, some victims of crime would rather the offender take responsibility for their actions and acknowledge the harm done to victims (Herman, 2005).

Third, claiming that the current Conservative government has done more for victims than any other government in the history of the country⁹¹ may also be inaccurate. As will be seen in section 4.4.4. *Victims of Crime – Section 6 of Bill C-10*, the ‘victims of crime’ amendments in section 6 of *Bill C-10* may not improve the situation of ‘victims of crime’. The amendments do not provide additional concrete support to victims nor do they affect parole hearings in any major way. For example, victims were already able to attend parole hearings (Parole Board of Canada, 2009) prior to the enactment of *Bill C-10*. The act of the government stating it will do something and then not doing it can be linked to Cohen’s (1985) discussion of the discrepancy between ‘word’ and ‘deed’. Cohen (1985) explains that politicians and other people (professionals, researchers, etc.) who produce talk of change (promise to make changes) all attempt to give the impression

⁹⁰ For example, see Senate (2012a).

⁹¹ It is important to note that while the current Conservative government introduced and ultimately voted to pass the *Canadian Victims Bill of Rights* (Open Parliament, n.d.2), this bill has been criticized for not improving rehabilitative programs and services or additional compensation from the government (Perkel, 2014).

that their promises will solve social problems when in fact, they do very little besides convince people that change will take place.

Overall, these quotes illustrate that the dialogue of some of the members of the Conservative government suggests that they specifically emphasized that the government ‘listens to victims of crime’ rather than explaining how the amendments in section 6 of *Bill C-10* will help victims of crime. This is consistent with the Conservative government pushing its ‘Tough on Crime’ agenda in the name of victims as it has been since it was first elected to a minority government in 2006 (Mallea, 2010; Walby & Piché, 2011). By using this strategy, members of the Conservative government can neutralize any critiques directed at their political agenda because anyone that disagrees must spend time correcting the record rather than advancing their arguments against the ‘Tough on Crime’ approach (Piché, 2012).

4.5.2 Victims of Crime – According to Members of Opposition Political Parties

The dialogue of members of the Opposition parties pertaining to ‘victims of crime’ was different than that of members of the Conservative government. The sub-theme found in this dialogue is: ‘the amendments in section 6 of *Bill C-10* will not improve the support available to victims of crime’. Liberal MP Irwin Cotler stated:

(...)when I go through this legislation, I do not see what I would like to see with respect to the protection of the victims. I do not see what I would like to see with regard to victims' voices. In fact, Mr. Chairman, I found, in the hundreds of pages of this legislation, only a few provisions that in fact would enhance the rights of victims in the corrections and parole system (House of Commons, 2011k).

Additionally, NDP MP Francoise Boivin stated:

I carefully read the 208 clauses of the bill and I found absolutely nothing that really helps the victims... I can tell you that there is very little that could make the victims feel that they are being looked after... (House of

Commons, 2011e).

Liberal Party affiliated Senator Grant Mitchell stated:

(...)the government... they resort to the argument that they are doing this for victims... but this bill does not particularly speak for victims. This is not a bill about psychological services for victims. It is not a bill about compensation for victims. It is a kind of bill about somehow helping victims if we are punitive to the people who victimize them (Senate, 2012c).

NDP MP Jack Harris stated: “[y]ou can’t just talk about how we support victims and we believe in victims” (House of Commons, 2011j).

By commenting on the Conservative government’s frequent use of the ‘victims of crime’ rhetoric, it suggests that members of Opposition political parties may like to see more concrete support provided to ‘victims of crime’ in federal legislation. However, the speakers did not specifically state what type of concrete support they would like included in the legislation. As noted in the previous sub-section, victims differ in what they would like in the criminal justice system (Bolivar, Pelikan & Lemonne, 2013). Additionally, by highlighting the lack of additional support provided to ‘victims of crime’, it suggests that members of Opposition political parties may believe that the amendments in section 6 may not actually address the concerns of many crime victims. This finding is similar to the findings in the previous sub-section.

4.5.3 Victims of Crime – According to Witnesses

After analyzing the codes that make up the group of witnesses that spoke to the ‘victims of crime’ amendments in section 6 of *Bill C-10*, the following sub-theme was identified: ‘some of the witnesses favour the victims of crime amendments but want more concrete support provided for victims of crime in legislation’. Susan O’Sullivan (Federal Ombudsman for Victims of Crime) stated:

I would like to begin by commending the government for moving forward with the changes proposed on behalf of victims of crime to enhance the CCRA. We have spoken to a number of victims and victim advocates who have fought for these changes for years and who are extremely pleased to see them come to fruition... That being said, there is still much more work to be done and further changes to be made in order to truly address a broader scope of victims' concerns⁹² (House of Commons, 2011f).

Steve Sullivan (former Federal Ombudsman for Victims of Crime) stated:

There are provisions in the bill that we do support, particularly the enhancements of victims' rights within the Corrections and Conditional Release Act. Those are enhancements that many victims' advocates have been calling for, for some time. They originally crept up, I think, in 2000 in the committee's report on the review of the CCRA, and were first introduced through similar amendments by the Liberal government in 2005. So we've been waiting for these provisions to become a reality for a long time (House of Commons, 2011h)

Irvin Waller (President, International Organization for Victims Assistance) stated: “[t]he one on greater standing for victims in the parole hearing is also progress. But it's a drop in the bucket compared to what is needed”⁹³ (House of Commons, 2011g).

Two conflicting points can be found in the above quotes. On one hand, the testimony of the witnesses suggests that they may have advocated for the interests of victims to be included in the correctional process. This may indicate that the dialogue of members of the Conservative government suggesting that they ‘listen’ to the victims of crime may be somewhat accurate (examples of this dialogue are listed in sub-section 4.3.1). On the other hand, the testimony of the witnesses in this sub-section also suggests that many of the ‘victims of crime’ concerns they have been advocating for remain

⁹² Susan O’Sullivan testified that some of the broader concerns are: “(...)they need to have tangible supports put in place to assist them in the aftermath of crime... providing victims with advanced notification regarding all offender transfers between institutions...” (House of Commons, 2011f). See House of Commons (2011f) for full list.

⁹³ Irvin Waller did not specify “what is needed” but he did state: if the government matched the amount of money spent on additional prisons with crime prevention and improving services for victims, there would be a reduced need for incarceration and ultimately be less victimization (House of Commons, 2011h).

unaddressed. This may indicate that the claims made by members of the Conservative government that they ‘listen’ to victims of crime may be inaccurate. These two perspectives can be summed up by part of witness Joëlle Roy’s (President and Representative, Laurentides-Lanaudière, Association québécoise des avocats et avocates de la défense) testimony. She stated: “[t]he victim issue is also a somewhat pernicious argument, but it does sell well” (House of Commons, 2011j).

This statement can be linked to the Conservative government use of the populist punitiveness strategy and their ‘victim of crime’ rhetoric to advance its ‘Tough on Crime’ agenda. As previously mentioned, victims play a key role in political and penal policy arguments (Garland, 2001) and suggesting policies will benefit victims resonates better with the public (Pratt & Clark, 2005). While each of the witness’ testimony cited in this sub-section indicates they may like to see more concrete support given to victims, their discourse also suggested that they also supported the amendments. In other words, despite the fact that the parole amendments did not address each of the concerns of members of Opposition political parties, witnesses as well as other victims of crime and victims of crime advocates, none of them asked that the amendments be taken out and they may have ultimately helped the Conservative government advance their ‘Tough on Crime’ agenda.

4.5.4 Victims of Crime – Content of the Amendments in Section 6 of *Bill C-10*

The victims of crime amendments in section 6 of *Bill C-10* are included in the following subsections: 6.2.1.3 *Victims of Crime* and 6.2.1.3.1 *Definitions, Disclosure of Information to Victims, Parole Board of Canada Hearings and Victim Statements* (Clauses 52, 57, 96 and 98) (Parliament of Canada, 2012e). These amendments were

included “[i]n order to give greater consideration to the victims of crime, the bill provides for their attendance at parole hearings and seeks to broaden the range of information that CSC and the PBC can disclose to them” (Parliament of Canada, 2012e, s. 6.2.1.3). It is important to note that victims were previously given offender information, permitted to attend parole hearings and make statements before *Bill C-10* was enacted. For example, the PBC “...adopted an informal policy in the 1980’s... to inform victims of the parole date for the person who had harmed them...” (Parole Board of Canada, 2009).

Furthermore, when the *CCRA* was enacted in 1992, it formally recognized the role of victims in the corrections and conditional release process. It gave victims “...the legal right to receive information about specific offenders... [and] [v]ictims are also allowed to submit an impact statement in writing for the Board’s consideration in its decision-making” (Parole Board of Canada, 2009). Thus, it appears that some of the ‘victims of crime’ amendments are redundant.

Section 6.2.1.3.1 expands the definition of ‘victim’ in the *CCRA* to “...include anyone who, in law or in fact, has custody of or who is responsible for the care and support of a dependent of the primary victim, if that person is deceased, ill or otherwise incapacitated” (Parliament of Canada, 2012e). This amendment appears to be insignificant as it was not discussed at length during the Parliamentary debates. Clause 57(1) of *Bill C-10* identifies the type of offender information that can be disclosed to victims when their interest outweighs the invasion of offender privacy (Parliament of Canada, 2012e, s. 6.2.1.3.1). Again, victims were previously allowed to receive certain offender information (Parole Board of Canada, 2009). Clause 96(2) of *Bill C-10* amends the *CCRA* to allow victims to present statements at PBC hearings (Parliament of Canada,

2012e, s. 6.2.1.3.1). Again, this has been part of the *CCRA* since it was enacted in 1992 (Parole Board of Canada, 2009).

Finally, “[c]lause 98(2) of the bill amends section 142(1)(b) of the *CCRA* by providing for the notification of the victim if the offender waives the right to a hearing under section 140(1) and the offender’s reason for doing so where applicable” (Parliament of Canada, 2012e, s. 6.2.1.3.1). Some members of the Conservative government (see House of Commons, 2011c), some members of the Opposition parties (see House of Commons, 2011l) and some witnesses (see House of Commons, 2011f) identified that this amendment is important. Despite the fact that some of the Parliamentary debates participants identified some of these amendments as important, none of these amendments seem to provide any additional concrete support to victims nor do they affect parole hearings in any major way. For example, none of the amendments seek to increase financial support given to victims of crime or seek to increase the amount of victims services (such as psychological support, counseling, legal aid, etc.). As a result, one may question whether or not the Conservative government actually listens to ‘victims of crime’ or whether or not the amendments improved the situation of ‘victims of crime’ in Canada. Furthermore, it is unapparent whether or not any of these amendments will affect an offender’s ability to obtain parole. The next section will draw on the findings and analysis presented in this chapter to determine to current Conservative government’s vision of punishment.

4.6 Vision of Punishment: According to the current Conservative Government

The literature review indicates that the criminal justice policies enacted by the current Conservative government between the years 2006 – 2012 are ‘Tough on Crime’

policies (Mallea, 2010; Piché, 2012). Piché states that the Harper led Conservative government ‘Tough on Crime’ agenda goal “...continues to be clear: the Conservatives want to put more people in prison, for longer periods of time, with fewer chances of release into the community prior to the expiry of their sentences in the name of public safety” (2012, p. 73). Additionally, their ‘Tough on Crime’ agenda has consistently expressed their desire to ensure that offenders are incarcerated for longer portions of their sentences (Mallea, 2010; Piché, 2012; The Correctional Investigator Canada, 2012). Taken together, the analysis conducted in this chapter suggests that the Harper led Conservative government ‘Tough on Crime’ agenda as defined by Piché (2012) has continued with the enactment of section 6 and section 7 of *Bill C-10*.

The findings suggest that the current Conservative government’s vision of punishment of offenders is twofold: certain offenders should remain incarcerated for longer portions of their sentences (as evidenced by the tightening of parole) and certain offenders should continue to be punished for their crime(s) once their sentence has expired (as evidenced by the tightening of record suspensions). Thus, according to my findings, their vision of punishment has not changed. The dialogue of members of the Conservative government highlighted that their political party had previously enacted legislation to tighten parole and suggested that they wanted to further tighten parole because they believed the parole system remained too soft. By including the amendment that requires certain offenders to be incarcerated for longer portions of their sentences, Canada’s parole system was tightened again. This indicates that the Conservative government continues to heavily rely on incarceration.

Additionally, the discourse of members of the Conservative government indicated

that they believed certain offenders should remain ineligible for record suspensions and that certain offenders should have a criminal record for their lifetime. By enacting section 7 of *Bill C-10*, the record suspension system was tightened. This suggests that members of the Conservative government perceive offenders to be less than equal members of society. This can be linked with Garland's (1996) 'criminology of the other'. The 'criminology of the other' is said to be advanced by politicians and populist mass media (Hallsworth, 2000). Garland further explains:

[i]n this rhetoric, and in its policy effects, offenders are treated as a different species of threatening, violent individuals for whom we can have no sympathy and for whom there is no effective help. The only practical and rational response to such types is to have them 'taken out of circulation' for the protection of the public... It is, moreover, a 'criminology' which trades in images, archetypes and anxieties, rather than in careful analysis and research findings – more a politicized discourse of the unconscious than a detailed form of knowledge-for-power (1996, p. 461).

Simply put, incarceration is considered the proper response to those that view offenders through a 'criminology of the other' lens. The combined findings in my analysis suggest that members of the Conservative government view offenders as 'others'. They make no mention of social rehabilitation or offender reintegration (i.e., offer no effective help) and their focus is on offender incapacitation (i.e., take offenders out of circulation). Again, this is not a new rhetoric of the current Conservative government. In fact, Prime Minister Stephen Harper once referred to the purpose of incarceration as "...taking the bad guys out of circulation for a while" (as cited in Piché, 2012, p. 72). Once again, this suggests the Conservative government's vision of punishment has not changed. Finally, similarly to the literature review (see Mallea, 2010), members of the Conservative government did not provide any empirical evidence to justify why they continued this vision during the

Parliamentary debates. As a result, the rationale for their vision of punishment was not obvious. This will be further discussed in the next chapter.

4.7 Conclusion

The findings of this chapter illustrate that the following three broad themes were found within the data: ‘parole’, ‘record suspensions’ and ‘victims of crime’. On the surface, these three broad themes do not explain how parole is presented within the themes and sub-themes of the Parliamentary debates and in the content of section 6 and section 7 of *Bill C-10*. However, comparing the sub-themes of each group within the broad themes suggests that parole is presented differently amongst the groups of speakers. This suggests that there is no single definition of ‘parole’ amongst the official discourses.

Simply put, the findings suggest that the discourse of members of the Conservative government present the parole system as being too soft and claim that it needs to be tightened. Their testimony suggests that they did not present any evidence-based justifications for this. Instead, they used a ‘victims of crime’ rhetoric and targeted certain types of offenders. Additionally, their testimony across all three broad themes indicates that members of the Conservative government do not place much emphasis on social rehabilitation or offender reintegration. Furthermore, the testimony also suggests that the speakers oppose using the ‘least restrictive measures’ when dealing with offenders. Again, none of these sub-themes suggest that members of the Conservative government see parole as part of offender rehabilitation or reintegration. Instead, they suggest that parole is seen as something that may upset ‘victims of crime’ or put society at risk. All in all, these sub-themes are very similar to the current Conservative

government's 'Tough on Crime' approach to the criminal justice policy seen in the literature review.

Next, the combined discourse of members of Opposition political parties suggests that they may view social rehabilitation and offender reintegration as important aspects of parole. Their testimony suggested a number of times that the amendments in both section 6 and section 7 of *Bill C-10* do not support social rehabilitation and offender reintegration efforts. In fact, some of the testimony suggests that some members of the Opposition political parties believe that these amendments inhibit certain offenders' abilities to achieve social rehabilitation and offender reintegration. Finally, their testimony also suggests that despite the fact that section 6 of *Bill C-10* contains 'victims of crime' amendments, they claim that none of the amendments provide additional concrete support for victims of crime. Given that the amendments in both section 6 and section 7 indicate that the parole system and record suspension systems have been tightened for certain offenders, it appears that the amendments do not reflect the view of members of Opposition political parties. Finally, the combined discourse of witnesses suggests that some witnesses generally agreed with the discourse of members of the Conservative government and other witnesses generally agreed with the discourse of members of Opposition political parties.

Simply put, the combined sub-themes of parole contribute to the current Conservative government's 'Tough on Crime' approach for a number of reasons. First, the findings suggest that members of the Conservative government lacked evidence-based justifications for the amendments and that they used the 'victims of crime' rhetoric. Doing so suggests that they employed a populist punitiveness strategy and characteristics

of the penal populist political strategy during the Parliamentary debates. Second, employing this strategy suggests that they may be employing a ‘Tough on Crime’ approach to gain votes by way of ‘Tough on Crime’ legislation. As previously noted in the literature review, employing this political strategy is similar to the one they used when enacting previous ‘Tough on Crime’ legislation. Third, their testimony combined with the content in the amendments suggests that members of the Conservative government may not have listened to the concerns of members of Opposition political parties and some of the witnesses. Again, the literature review suggests that the Conservative government did not listen to the concerns expressed by academics or researchers when enacting previous ‘Tough on Crime’ legislation. Thus, this finding suggests that the parole amendments may not help protect society like their intended purpose is to do. The meaning of these findings will be further discussed in the next chapter.

CHAPTER 5 – DISCUSSION/CONCLUSION

5.1 Introduction

This chapter aims to build on the findings outlined in the previous chapter. In doing so, it has been divided into four additional sections. First, I will examine the themes of parole found in the previous chapter and compare them to the themes of parole found in the literature review. Second, the theoretical framework of the social construction of social problems will be used to determine whether or not members of the Conservative government claimed that a social condition is a social problem during the Parliamentary debates. Third, the future implications of this research will be discussed. The fourth section will conclude this thesis.

5.2 A Comparison of the Themes of Parole – Past (Opposition Political Parties) vs. Present (Conservative Government)

The literature review provided a historical overview of parole legislation in Canada. Based on the findings in the previous chapter, some of these themes from the literature review were found within the data while others were absent. The first theme from the literature review that was found in the findings was ‘offender rehabilitation’. The notion of rehabilitation emerged (between 1899-1959) when Canadian Prime Minister Wilfred Laurier recognized that certain offenders should be given a chance to redeem their character in society (Bottomley, 1990). In other words, Prime Minister Wilfred Laurier recognized that certain offenders could be changed in order to become responsible citizens. Although that statement was made over 100 years ago, the concept of ‘offender rehabilitation’ is still present in the official discourse on parole but it has a different meaning. Much like Canadian Prime Minister Wilfred Laurier, certain members

of the Opposition political parties⁹⁴ and some witnesses⁹⁵ stated that they believe offenders could be rehabilitated during the Parliamentary debates. Again, these members of Opposition political parties and witnesses stated that the amendments in section 6 of *Bill C-10* do not promote offender rehabilitation⁹⁶.

Once offender rehabilitation became more prevalent (1959-1973), it was recognized that offenders should receive treatment while incarcerated and while on parole in order to promote their rehabilitation (Fauteux, 1956). Again, some members of the Opposition political parties⁹⁷ mentioned the importance of rehabilitation programs during the Parliamentary debates. Years of research have demonstrated that effective and targeted rehabilitation programs can help facilitate offender rehabilitation and ultimately lower offender recidivism rates (Andrews & Bonta, 2010b; Green, 2011; Usher & Stewart, 2011). Since the 1970's the notion of rehabilitation has progressively changed in order to comply with a more risk assessment based model. Some authors (such as Hannah-Moffat, 2005; Robert, 2001; Simon, 2005) have demonstrated how the notion of risk had progressively changed the mandate and the policies of parole. Presently, risk predominates and, in some cases, totally excludes the values associated to rehabilitation as was seen in the Parliamentary debates analyzed in this thesis. Furthermore, none of the members of the Conservative government discussed the importance of rehabilitation

⁹⁴ Jasbir Sandhu (House of Commons, 2011j), Charmaine Borg (House of Commons, 2011k; House of Commons, 2011l), Jack Harris (House of Commons, 2011m), and Elizabeth Hubley (Senate, 2012b) all stated that they believe offenders can be rehabilitated during the Parliamentary debates.

⁹⁵ Michael Jackson (House of Commons, 2011f), Howard Sapers (House of Commons, 2011i), Randall Fletcher (Senate, 2012g), Jean-Marc Fournier (House of Commons, 2011i) all stated their belief that offenders can be rehabilitated during the Parliamentary debates.

⁹⁶ By identifying this similarity, I am not attempting to explain that offender rehabilitation is ideal but rather that research has demonstrated that offender rehabilitation can generally contribute to a safer society (Lipsey, & Cullen (2007).

⁹⁷ Charmaine Borg (House of Commons, 2011k; House of Commons, 2011l) and Elizabeth Hubley (Senate, 2012b) both stated the importance of rehabilitation programs during the Parliamentary debates.

programs for offenders during the Parliamentary debates.

Given the emphasis that some Opposition political party members placed on the need to support offender rehabilitation through correctional programming, it is worth critically analyzing this possible ‘strategy’ as opposed to the Conservative government’s punitive approach. Moore and Hannah-Moffat argue “...the definition of punitiveness as it exists within the penal-turn literature is too narrow. What remains understudied is how welfare practices, which continue to exist, have evolved and are central to Canadian penalty.” (2005, p. 85). Furthermore, these authors state that while Canadian correctional programming appears liberal and progressive; they argue they are punitive (Moore & Hannah-Moffat, 2005). Briefly, Moore and Hannah-Moffat (2005) state there are notable similarities between the penalty of correctional programming and contemporary punishment. More specifically, they state:

...[b]oth the federal and provincial penal systems [in Canada] place a good deal of emphasis on the centrality of the individual within the context of individual choice-making. This emphasis draws on two central themes: that individuals can and should be able to make rational choices and that individual must take personal responsibility for the choices they make (Moore & Hannah-Moffat, 2005, p. 92)

The emphasis on these two themes do not take a number of factors into consideration. By emphasizing individual choices and personal responsibility, these programs do not consider social explanations for criminality. For instance, these programs do not consider an offender’s impoverished history, the potential of marginalization or past traumas that may have contributed to the criminal acts committed (Moore & Hannah-Moffat, 2005). Offenders are denied choices and the ability to feel empowered as they are told which programs they must take in the first place (Moore & Hannah-Moffat, 2005). In addition, an offender may find himself/herself facing the fact that s/he was sexually abused as a

child or that s/he has a mental illness. Despite this, the offender is expected to address and deal with these issues without the option of seeing a therapist or crisis worker of his/her choice on demand or support of friends and family (assuming s/he has any outside of their federal institution). Moore and Hannah-Moffat (2005) also argue that offenders in Canadian federal institutions have little choice with regards to participation in the correctional programs because should they decide not to participate, they invariably significantly weaken their chances of attaining parole as parole board members see non-participation in a negative light. Finally, once an offender is released from prison, the same social factors that may have played a role in his/her incarceration (e.g. poverty, racism, etc.) have most likely not disappeared. As seen in the many points raised by Moore and Hannah-Moffat (2005), there are many potential problems with promoting the importance of correctional programming for offenders as a way to increase their ability to rehabilitate. None of the discourse of members of Opposition political parties that supported the use of correctional programming discussed the potential problems or potential punitive nature of these programs. As such, it is possible that the use of correctional programs for certain offenders are punitive much like the punitive approach promoted by the Conservative government. Neither members of the Conservative government nor members of Opposition political parties suggested any solution to the social problems many offenders face before and after incarceration.

While the focus on risk management and on restricted access to parole was present before the Conservative government was first elected in 2006, rehabilitation was also maintained as a secondary objective of granting parole. In the analyzed official discourses of Conservative MPs, the objective of offender rehabilitation has disappeared.

As a result, section 6 of *Bill C-10* did not include any amendments to facilitate offender rehabilitation. Thus, it can be concluded that offender rehabilitation is not as prevalent in the analyzed official discourses of parole as compared to the literature review. This lack of attention paid to ‘offender rehabilitation’ during the Parliamentary debates may be problematic for a number of reasons.

Offender rehabilitation is fundamental to an offender’s ability to be granted parole. The PBC will only release an offender on parole if PBC members assess that the offender will not present an undue risk to society before the end of their sentence and the release of the offender will contribute to the protection of society by facilitating the offender’s return to the community as a law-abiding citizen (Parole Board of Canada, 2011). Access to rehabilitative programming while incarcerated and on parole can influence an offender’s ability to rehabilitate which may lower an offender’s risk to public safety (Reports of the Auditor General, 2015; The Correctional Investigator Canada, 2014).

Additionally, a lack of focus on rehabilitation as evidenced on limited allocation of funds to rehabilitative programming may result in a longer stay in prison (Reports of the Auditor General, 2015; The Correctional Investigator Canada, 2014). In practice, more and more offenders are being released on statutory release rather than parole. In fact, in the fiscal year 2013-2014, 71% of federal offenders were released on statutory release⁹⁸ (The Correctional Investigator, 2014). Part of this may be because just 4.7% of CSC’s planned spending is on correctional reintegration programs (the Correctional Investigator Canada, 2014). When the *CCRA* was first enacted, statutory release was

⁹⁸ Public Safety Canada (2012) reported that offenders on statutory release have the lowest rates of successful completion of parole.

intended to be the release option of last, not first resort (The Correctional Investigator, 2014). Releasing the majority of offenders through statutory release is contrary to the fundamental assumption of parole (Zinger, 2012). Additionally, longer stays in prison can also incur huge economic implications for society and social implications for offenders (refer to the literature review for a detailed explanation on these topics). If timely and appropriate conditional release decisions are not being made, the parole system may be less effective (Andrews and Bonta, 2010a; Zinger, 2012). Thus, given the historical transition of Canada's parole system, it currently may not be as effective as it could be.

Comparatively, the discourse of members of the Conservative government focused on 'victims of crime', 'restricting the record suspension system' and 'tightening the Canadian parole system'. Again, since the enactment of the *CCRA*, every legislative measure to amend it (except one that has since been abolished) has resulted in an increased reliance on custody, in raising periods of parole ineligibility or in limiting or eliminating access to parole (Zinger, 2012). When comparing the themes found in the discourse of members of the Conservative government to the themes in the literature review, their discourse can be tied to the 'Tough on Crime' approach of the current Conservative government that started in 2006. Despite the fact that research has demonstrated that an effective parole system can reduce recidivism and increase public safety (Zinger, 2012) the Conservative government continued its 'Tough on Crime' approach with section 6 of *Bill C-10*. Again, one must ask why? According to the findings, members of the Conservative government did not justify the need to further tighten Canada's parole system and instead focused on repeating the same 'Tough on Crime' rhetoric. Thus, as illustrated in the literature review, one possible conclusion is

that members of the Conservative government reiterated its ‘Tough on Crime’ rhetoric in order to gain political votes⁹⁹ through the use of populist punitiveness (Walby & Piché, 2011) and characteristics of penal populism (Mallea, 2010; Piché, 2012).

According to Walby and Piché, 2011, politicians employ populist punitiveness when attempting to draw on the perceived punitive sentiments held by the general public for political gain by passing law in the name of the ‘public’ and victims. Furthermore, politicians who frequently use the ‘victims of crime’ rhetoric when discussing ‘Tough on Crime’ policies try to attract sympathy from potential voters who are emotionally empathic with ‘victims of crime’ (Pratt, 2008). Additionally, some potential voters may also agree that sensational criminals should be punished for their crimes (Garland, 2001; Pratt, 2007). The amendments in section 6 and section 7 of *Bill C-10* suggest that sex offenders and violent offenders were targeted to further the support of the bill. Finally, when using the penal populist strategy and focusing on ‘Tough on Crime’ measures, politicians that speak out against these policies are often accused of being ‘with’ the offender and ‘soft’ on crime as was prevalent in the Parliamentary debates (Newburn & Jones, 2005; Mallea, 2010). This strategy may limit the debate of the content of the bill in question because politicians that speak out against over incarceration and non-punitive measures are portrayed as speaking out against the good of society. Combined, by tabling and enacting ‘Tough on Crime’ policies, politicians and political parties hope to gain votes. By doing so, parole is reflected as a tool used in their discourse to enhance their public image. However, there is no evidence to demonstrate that the parole amendments included in section 6 of *Bill C-10* will then improve the Canadian parole system, favour a

⁹⁹ A recent example of this is: Stephen Harper stated he will resurrect the *Life Means Life Act* if re-elected as Prime Minister during the 2015 fall Prime Minister election.

safer and more peaceful society and respect the basic rights of all Canadian citizens.

Ultimately, these amendments are used to tighten parole and demonstrate a prevalence of the punitive approach demonstrated by the current Conservative government since they were first elected to a minority government in 2006.

5.2 Was a Social Condition Constructed as a Social Problem during the Parliamentary Debates?

In discussing whether or not a social condition was constructed as a social problem during the Parliamentary debates, I will examine each characteristic of the social problems game and relate it back to the analyzed data. As previously noted in the second chapter, Loseke's (1999) concept of the 'social problems game' was used to explain the claims-making process. Briefly, the existence of a social problem depends on the continued existence of groups to define a condition as a problem (Spector & Kitsuse, 2001). Thus, the first characteristic that must be examined in the 'social problems game' is determining whether or not there were any claims-makers present during the Parliamentary debates. As noted in the findings chapter, the data was divided by the political affiliation of the speakers: participants affiliated with the Conservative government, participants affiliated with Opposition political parties and witnesses. Based on my analysis, the witnesses were generally divided into two groups in each theme: those that generally agreed with members of the Conservative government and those that generally agreed with Opposition political parties. As such, two groups may be considered as claims-makers within my data: participants affiliated with the Conservative and participants affiliated with the Opposition political party. However, given that a member of the Conservative government tabled *Bill C-10*, the Conservative government are considered the claims-makers within my data.

The next characteristic that must be identified is the form of the claims-makers claims. Since I analyzed transcripts of the Parliamentary debates, the form of the claims-makers claim in my data is 'verbal statements'. I must also determine what the social condition is that the claims-makers claims is a social problem. One common characteristic can be found within the three broad-based themes (parole, record suspensions and victims): 'offenders'. There would not be 'victims of crime' if offenders did not commit crime(s). Stating that 'certain offenders should remain ineligible for record suspensions' indicates that members of the Conservative government believed certain 'offenders' should continue to be recognized as offenders for the rest of their lives. Additionally, stating that 'Canada's parole system is too soft' indicates that members of the Conservative government believed that offenders should be incarcerated for longer portions of their sentence.

The next characteristic that must be determined when examining the social problems game is the motive of the claims-makers. I am unable to determine the motive of the claims-makers because I analyzed documents and thus, was unable to ask the participants what their motive(s) was/were. However, Saward (2006) indicated that politicians try to convince other politicians that a social condition is a social problem in order to fulfill their political agenda (Saward, 2006). That being the case, I can speculate that the participants claimed that offenders are a social problem in order to advance their political agenda. Once the claims-makers and their claims have been identified, the next characteristic of the social problems game that needs to be identified is the audience.

Within the Parliamentary debates, those that can vote to pass the bill are considered the audience members. As a result, the MPs that voted on the bill in the House

of Commons and the Senators that voted on the bill in the Senate are considered the audience members within the analyzed data. Spector and Kitsuse (2001) explain that some audience members are more important than others based on their ability to do something about the social problem. Given this, members of the Conservative government or Senators affiliated with the Conservative government are considered the most powerful audience members within the analyzed data. This is because the Conservative government held a majority while the bill and correspondingly, if each of them voted in favour for the bill, they would have enough votes to pass the bill. The next characteristic that must be examined is the solution constructed by the Conservative government. The analyzed data suggests that the solution presented by the Conservative government was to further tighten parole and tighten the record suspension system. In doing so, their dialogue indicates that they identified offenders are being dangerous to society and without any form of reparation. More specifically, the amendments in section 6 and section 7 of *Bill C-10* were presented as the solution to the claimed problem. As a result, the only solution presented was further incarceration. Having identified the solution, I will now examine what may have made this solution successful.

Loseke (1999) highlights four characteristics that may can be attributed to a successfully constructed solution. Of these, three may apply to the members of the Conservative government that claimed ‘offenders’ are a social problem in my data. First, their solution was simple and easy to understand (Loseke, 1999). More specifically, they claimed that if *Bill C-10* passed, offenders would spend longer portions of their sentence in prison and certain offenders would continue to be punished once their sentence expired with their inability to be granted a record suspension. Second, my analysis indicates that

some members of the Conservative government included ‘devastating images’ in their claims (Loseke, 1999). For example, some members of the Conservative government spoke of children being sexually assaulted and multiple repeat violent offenders during the discourse of the Parliamentary debates. Third, my analysis suggests that some members of the Conservative government may have constructed their solution as being better than the social problem. For instance, by suggesting that some offenders may spend longer portions of their sentence incarcerated, these offenders will have less opportunity to commit new crimes. All in all, the data suggests members of the Conservative government did construct a social condition as a social problem and many characteristic of the social construction of social problems were present in the analyzed data.

5.3 Future Research

The findings of this thesis indicate that the themes and sub-themes within the official discourses and in the content of section 6 and section 7 of *Bill C-10* continue to demonstrate the prevalence of the punitive approach established in 2006 by the current Conservative government. Based on my document analysis, I have concluded that this is in fact the case. Research also demonstrates that a punitive approach to crime policies and crime practices (including parole) can have huge negative economic and social implications. Given this, future researchers should use the findings in this thesis to trigger further research on how much the increased costs of offenders serving longer terms in prison will cost society – both economic costs and social costs. Perhaps by determining these costs, Canadian politicians may be inclined to amend the *CCRA* to soften parole and increase the role of offender rehabilitation while offenders are in prison and while

they are on parole.

Furthermore, while I was able to conclude that members of the Conservative government were claims-makers, I was unable to determine one characteristic involved of the claims-making process – the claims-maker’s motivation. As a result, future researchers should conduct interviews or focus groups with members of the Conservative government that participated in the Parliamentary debates. By conducting research with one or both of those methodologies, researchers may be able to determine the motivation of these claims-makers. Additionally, I am unable to determine exactly why members of Opposition political parties were unconvinced that section 6 and section 7 are the solution of ‘offenders’ being social problems. Therefore, future researchers may also consider conducting interviews with members of Opposition political parties and Senators affiliated with the Liberal Party in order to determine why they were not convinced of the solution presented by members of the Conservative Party. Doing so would provide an additional layer to support or refute my findings.

Given the amount of research conducted on the ‘Tough on Crime’ approach, future researchers may also combine my research with other research on the topic to conduct a meta-analysis of the possible problems with this approach. Given that the amendments in *Bill C-10* are not based on evidence but instead on political strategy, it is important to further highlight the issues with this. Doing so may finally convince politicians to focus on evidence-based rehabilitative practices rather than ideological crime prevention practices which create economic savings to society at large.

5.4 Conclusion

This thesis began with a historical context of Canada’s parole system.

Throughout this historical overview, the themes found within the official discourses of parole and language found in parole legislation in Canada was detailed. Additionally, each of the four major pieces of parole legislation that have been created and subsequently amended by the official discourses on parole were examined. Following that, an overview of Dominique Robert's 'twin – track policy' was provided. Lastly, the context in which *Bill C-10* was created was also detailed. This included an overview of the Harper-led Conservative government's 'Tough on Crime' agenda and their use of the penal populist political strategy.

The second chapter shifted focus to the theoretical framework. More specifically, the theory of social constructionism was introduced to provide the epistemological lens. Within this epistemology, an in-depth analysis of the theoretical concept of the social construction of social problems was presented to ground the methodology in the subsequent chapters. In doing so, I took the stance that social problems are not objectively constructed but instead, are based on the continued existence of groups that define a condition as a problem and attempt to do something about it (Spector & Kitsuse, 2001). As a result, the chapter provided an overview of the claims-making process, who claims makers are, the possible motivations for making claims, who audiences are, the difference in power of audience members, and how to construct solutions. Finally, the chapter also explained how to construct a social problem as a government concern.

Building on the theoretical framework, the third chapter introduced document analysis as the research methodology used in this thesis. Within this chapter, the research objective and hypothesis were explained. This was followed by an overview of the phases of thematic analysis which were used while conducting my document analysis. Next, the

rationale for choosing to conduct a document analysis were explained which was followed by the sampling technique and instruments of data collection. The characteristics and the collection of the Parliamentary debates and section 6 of *Bill C-10* were also detailed. Furthermore, the scientificity of this research was justified in this chapter. Finally, this chapter concluded with an explanation of the limitations of this particular research project.

Chapter four presented the findings of my document analysis. In doing so, three themes were highlighted: ‘victims of crime’, ‘record suspensions’ and ‘parole’. The discourse of members of the Conservative government, members of Opposition political parties and witnesses were presented in each theme. Additionally, the language of the amendments in section 6 and section 7 of *Bill C-10* were also analyzed.

When combining the findings of all three themes, three general findings can be found. First, the Conservative government rhetoric from all three themes demonstrates that they continued their ‘Tough on Crime’ approach established in 2006. Second, members of Opposition political parties and witnesses are concerned over the lack of attention to offender rehabilitation and the lack of additional support provided to ‘victims of crime’ in the section 6 amendments of *Bill C-10*. Third, the language in section 6 and section 7 of *Bill C-10* clearly reflect the Conservative government’s discourse during the Parliamentary debates. Together, these general findings demonstrate an emphasis on punitiveness compared to offender rehabilitation and offender reintegration as evidenced in the official discourse of the Conservative government versus the official discourse of Opposition political parties and the language in section 6 of *Bill C-10*.

Finally, this chapter has compared the themes found in the data analysis

compared to the themes found in the literature review. The discourse of members of Opposition political parties that focused on 'offender rehabilitation' was most similar to parole legislation and practices between the 1959-1973 timeline. Comparatively, themes found within the discourse of members of the Conservative Party was unsurprisingly most comparable to the 'Tough on Crime' approach of the Conservative government prevalent since 2006.

While Zinger (2012) notes that every legislative initiative since the enactment of the *CCRA* in 1992 has been a form of 'Tough on Crime' policy except the accelerated parole review which has since been eliminated, this thesis has demonstrated some of the perils of doing so. Some of them are the following: offenders are remaining incarcerated for longer portions of their sentences, they are given less access to correctional programming, there are huge economic and social costs to keeping offenders incarcerated for longer portions of their sentences and all of this is being done for ideological reasons. As a result, it is evident that the Canadian parole system no longer follows the fundamental assumption of parole. Given that 'Tough on Crime' trend in Canadian criminal justice policies has been ongoing for a number of years, it does not seem like these policies will cease any time soon. Not only is this harmful for the economy but it is also harmful for society at large. Canadians should start to take a more critical look at these policies and push politicians to be 'smart' on crime by way of evidence-based legislation and policies. In doing so, society at large would be safer and all the money spent to in favor of incarceration and social exclusion of offenders' could then be used to promote social justice, equity and democracy.

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Annex A – Current Forms of Parole

Parole is a form of conditional release that is available to federal offenders¹⁰⁰ (Correctional Service of Canada, 2013b). It allows some federal offenders to be released from imprisonment and serve the remainder of their sentence outside of a federal institution (Parole Board of Canada, 2011). However, parole does not mean that offenders are completely free. While on parole, offenders have the opportunity to become contributing members of society – as long as they follow their conditions of parole¹⁰¹. If these conditions are not met, the PBC has the power to revoke the offender's parole and return the offender to prison (Parole Board of Canada, 2011).

There are currently four types of parole available to federal offenders in Canada: temporary absence, day parole, full parole and statutory release (Parole Board of Canada, 2010). According to the *CCRA*, all federal offenders must be considered for some form of parole during their sentence (Parole Board of Canada, 2010). However, it is important to note that although an offender may be eligible for early release, it is not guaranteed that parole will be granted (Parole Board of Canada, 2010).

Temporary absence is generally available to federal offenders after they have served one sixth of their sentence¹⁰² (Parole Board of Canada, 2010). Temporary absences can be granted in the form of escorted, unescorted or work release (Parole Board of Canada, 2010). Escorted or unescorted temporary absence is usually granted for

¹⁰⁰ Federal offenders are those serving sentences of two years or longer (Correctional Service of Canada, 2013b). Thus, the term 'offenders' in this thesis refers to 'federal offenders'.

¹⁰¹ All parolees are released with a standard set of conditions while some also have special conditions added to the standard set (Parole Board of Canada, 2011). Special conditions (such as abstaining from alcohol) are imposed when the Parole Board of Canada considers it reasonable and necessary to further manage an offender's risk in the community (Parole Board of Canada, 2011).

¹⁰² Although escorted temporary absences are generally granted to federal offenders after they have served one sixth of their sentence, they may be granted at any time during an offender's sentence (Parole Board of Canada, 2010).

reasons such as allowing offenders to participate in community service work or to receive medical treatment (Parole Board of Canada, 2010). Work release is a structured program of release, established for a specified period of time, involving work or community service (Parole Board of Canada, 2010). This type of release is supervised by a staff member or authorized person of the program (Parole Board of Canada, 2010). Day parole is also generally available for offenders after they have served one sixth of their sentence (Parole Board of Canada, 2010). It is granted to prepare offenders for full parole or statutory release (Parole Board of Canada, 2010).

Full parole, is generally available to offenders after they have served one third or seven years of their sentence – whichever is shorter (Parole Board of Canada, 2010). Offenders on full parole usually serve the remainder of their sentence under supervision in the community (Parole Board of Canada, 2010). Lastly, statutory release is available to most offenders and is granted by law after an offender has served two thirds of their sentence (Parole Board of Canada, 2010). Since statutory release is required by law, the PBC does not grant this form of parole (Parole Board of Canada, 2010). However, CSC may recommend an offender be denied statutory release¹⁰³ (Parole Board of Canada, 2010). In such cases, the PBC may decide the offender remain incarcerated until the end of their sentence or add specific conditions to their statutory release plan (Parole Board of Canada, 2010). Now that the current forms of parole have been explained, a historical overview of parole in Canada will be examined.

¹⁰³ CSC may recommend an offender be denied statutory release if they believe the offender is likely to: commit an offence causing death or serious bodily harm to a person; commit a sexual offence involving a child; or commit a serious drug offence before the end of the sentence (Parole Board of Canada, 2010).

Annex B – Coding Manual

Date	
Stage of Bill	<ul style="list-style-type: none"> 1- Second Reading 2- House of Commons Committee 3- Third Reading 4- Senate Committee
Location of Parliament	<ul style="list-style-type: none"> 1- House of Commons 2- Senate
Speaker	
Political Affiliation	<ul style="list-style-type: none"> 1- Conservative Party (Majority Government) 2- New Democratic Party (Official Opposition) 3- Liberal Party 4- Green Party 5- Independent N/A
Time	
Quote	
Theme	<ul style="list-style-type: none"> 1- Victims of Crime 2- Parole 3- Record Suspension
Section of Bill C-10	<ul style="list-style-type: none"> 1- Section 6 2- Section 7

Annex C – Coding Schedule

Date	Stage of Bill	Location of Parliament	Speaker	Political Affiliation	Time	Quote	Theme	Section of Bill C-10
Sept 27, 2011	1	1	John Williamson	1	16:10	Victims have always been central to our government's crime reduction agenda	1	