FROM 'DEVIANT GIRL' TO 'UNEMPOWERABLE WOMAN': RECONSTRUCTING RESISTANCE IN THE CASE OF ASHLEY SMITH

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ABSTRACT

This research explores the traditional and contemporary construction of undesirable female behaviour as both 'risky' and 'abnormal', and the implication this had on the Correctional Service of Canada's response to Ashley Smith's self-injurious behaviour. Smith was kept in segregation for 11.5 months of federal custody until she ultimately ended her own life while correctional staff watched without intervening. In order to capture the evolution of Smith's undesirable behaviour and the institutional responses leading up to her death, this thesis begins with an examination of her experiences prior to her confinement in federal prison. This research offers a feminist reading of self-injury and the use of segregation and an in-depth critical examination of the systemic factors that influenced Smith's self-injury.

In order to gain a thorough understanding of Smith's experiences and how they are systematically situated, a qualitative content analysis was conducted of all public documentation of her case released by the Correctional Service of Canada (CSC), the Office of the Correctional Investigator (OCI), and the Office of the Ombudsman and Child Youth Advocate, as well as federal correctional policies related to segregation, self-injury, institutional transfers, use of force, and use of restraints. Findings suggest that the therapeutic-risk logic adopted by the CSC and OCI to 'make sense' of Smith's undesirable behaviour, led to the reconstruction of Smith's self-injurious behaviour as both 'abnormal' and 'risky', rather than as a response to her oppressive correctional environment. This reconstruction ultimately legitimized the perpetual disciplinary and governmental responses Smith endured (e.g. segregation, use of restraints and force, involuntary transfers, involuntary therapeutic injections), which then worsened her behaviour in a cyclical pattern. Reliance on therapeutic-risk logic in different social institutions (the school, hospital and prison) trapped Smith in a carceral network that ultimately responsibilized her for her own victimization and punishment.

While it was arguably the collective carceral response that exacerbated Smith's undesirable behaviour, findings suggest that it was ultimately the extreme disciplinary and governmental forces exerted in the federal prison system that led to her ultimate death. While this research provides ample evidence to support this conclusion, the CSC ultimately silences the gendered injustice in which Smith endured by denying responsibility for her experiences, while disciplacing it onto frontline staff, the medical system, the lack of institutional resources and Smith herself by normalizing her death as merely one of many that remain 'unpreventable' within the Canadian prison system.

DEDICATION

This dissertation is dedicated to Ashley Smith, along with all women whose lives were lost behind the prison walls.

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INTRODUCTION

On the evening of April 24, 1994, a male Institutional Emergency Response Team (IERT) was called in to complete a cell extraction and strip search of the eight women confined in the segregation unit at the Kingston Prison for Women (Arbour, 1996). Warden Therese LeBlanc, who was interviewed during the aftermath by the Fifth Estate (1995), stated that the verbal assaults and the hostage taking of a female correctional officer leading up to this incident constituted violent attacks on the staff, and legitimized the decision to call the IERT. According to the Fifth Estate (1995), by the time the IERT raided the units the tension had already minimized, the women were secured in their cells, and most of them were asleep.

After the Fifth Estate (1995) broadcasting of this incident, the Canadian government appointed Justice Louise Arbour to head the *Commission of Inquiry into Certain Events at the Kingston Prison for Women* (Arbour, 1996). Arbour (1996) determined that the eight hour long raid by the IERT violated not only institutional regulations, but also the human rights of these women due to the dehumanizing and degrading response they received by the male guards. From Justice Arbour's (1996) perspective, this incident shed light on a number of issues requiring change, including: the unjust duration, conditions, and use of segregation; the inappropriate use of force; the exploitative nature of strip searches, and the illegality of having those searches conducted by male officers. This highly publicized incident represented a presumed turning point in the history of Canadian corrections for women, after which the conditions of and responses carried out in women's institutions were to be improved in policy and in practice (Dell, Fillmore, & Kilty, 2009; Hannah-Moffat, 1995, 2004a; Parkes & Pate, 2006).

According to Hannah-Moffat (2001), there were a string of high profile events and deaths prior to the 1994 P4W incident that intensified pressures to reform the treatment of criminalized women (Hannah-Moffat, 2001). These incidents capitalized on the need to adopt fundamental adjustments to the current correctional response, as "[f]or many, [these deaths] underscored how our mental health system and penal institutions had failed to respond to the needs of incarcerated women" (Hannah-Moffat, 2001: 142). Consequently, following these events and corresponding pressures to reform, the CSC put together a Task Force who produced the report *Creating Choices* (Task Force on Federally Sentenced Women,1990), outlining a string of recommendations aimed at reforming the treatment of criminalized women (Hannah-Moffat, 2000a, 2001; Kendall, 2000).

This Task Force differed from any other, as it was not only made up of correctional officials but also feminist reformers, including representatives of the Canadian Association of Elizabeth Fry Societies (CAEFS) and Aboriginal women (Hannah-Moffat, 2001). Recommendations outlined in the report included the closure of P4W and the opening of four regional prisons and a Healing Lodge specifically for Aboriginal women, as well as the implementation of gender-specific programming to be used in these new prisons, centering on "survivors of abuse, substance abuse and mother-child programming, cognitive skills" (Hannah-Moffat, 2002: 202). Lastly, the Task Force recommended the implementation of a community based strategy that aimed to "expand and strengthen residential and non-residential programmes and services for women offenders who are conditionally released" (Hannah-Moffat, 2002: 202). All of these suggestions were said to center around five main principles: "empowerment, meaningful and responsible choices, respect and dignity, supportive environment and shared responsibility" (Task Force, 1990: 147). The idea underlying these guiding principles was that through their implementation, criminalized women would be 'empowered' to gain a stronger sense of autonomy and control over their own lives, thereby accepting responsibility for their past, present and future choices and eventually achieving successful community reintegration through pro-social choices (Hannah-Moffat, 2001).

These recommendations were presented in April 1990, and within five months of their release the Canadian government announced that their implementation would in fact take place (Hannah-Moffat, 2001). In opposition to what was agreed upon, *non*-correctional members of the Task Force were largely disregarded and remained uninformed during the decision-making and implementation phases (Carlen, 2010; Hannah-Moffat, 2001). In fact, CAEFS, which held the position of Executive chair, separated from this initiative in 1992 out of frustration with what were considered to be counterproductive implementation of *Creating Choices* (Hannah-Moffat, 2001).

Although the CSC (2007) claims to champion the new women-centered approach as a means to empower *all* women prisoners, a number of additional institutional incidents occurred around the same time the Arbour report was released (1996), which resulted in the correctional construction of an exceptional few women who were deemed 'unempowerable' (Hannah-Moffat, 2000a, 2001). Specifically, a number of incidents occurred "at the NOVA Institution and the Edmonton Institution for Women (EFIW), two of the new regional prisons (involving self-injury, suicide attempts, escapes, a prisoner's death and assaults on staff)" that caused the CSC to reject some of the more progressive governance strategies outlined in *Creating Choices* (Hannah-Moffat, 2000b: 35). Following these incidents, the CSC concluded that there was a selection of prisoners who presumably required increased security, control and more 'intensive treatment' than what was available in the new ‘empowering’ prisons. Thus, contrary to the original ‘empowering’ women centered model, those designated as maximum-security status or who had ‘intensive mental health needs’ were denied this new approach, and were instead confined in secure units within P4W and a number of male prisons (Hannah-Moffat, 2001, 2000a).

This approach was solidified with the CSC’s implementation of a national strategy for high risk/need female prisoners in 1999, referred to as the Intensive Intervention Strategy (IIS). This strategy consisted of two components, one of which was: “Intensive Intervention in a Secure Environment (Secure Unit)” (CSC, 2003), whereby the CSC expanded and modified the existing secure units at each regional prison in order to confine those who were designated maximum security. According to Laishes (1997), this model is founded upon the essentialist notion that all “unmanageable” women have severe mental disorders. The secure living environments require increased security at the regional facilities, heightened supervision, and intensive therapy aimed at changing women’s thoughts, actions and behaviours that are deemed to be the source of their criminality (Laishes, 1997).

The second component involved the creation of a new ‘Mental Health Strategy’, which consisted of: “Structure Living Environment houses” (CSC, 2003), located at every regional prison for minimum and medium security women and those with “mental health needs” requiring “more intensive support”. This strategy is promoted as providing “safe and secure accommodation for these women while emphasizing intensive staff intervention, programming, and treatment” (CSC, 2003). According to Laishes (1997), this Mental Health Strategy set the agenda for all mental health correctional services and programs for federally sentenced women. These services and programs, along with the Case Needs Identification and Analysis Protocol (CNIA) used to assess one’s level of criminogenic need, i.e. those needs/behaviours that are thought to be linked to recidivism and thus require specific interventions, are based on normative assumptions that individualize and pathologize women prisoners (Laishes, 1997). For example, according to Brown (2012), items on the CNIA specifically include marital/family, associates/social interaction, substance abuse, personal/emotional and attitude. These items are rooted in normative assumptions regarding what type of lifestyle constitutes a higher risk/need thus requiring punitive responses.

In 2002, the CSC introduced a modification of the 1999 mental health strategy, whereby treatment is no longer withheld for only those with criminogenic needs, but rather will be provided for all mental health needs (CSC 2007). Nevertheless, what qualifies as a mental health need, regardless of whether they are deemed criminogenic or not, is still determined based on a normative standard, along with the allocated treatment that continues to, as Kendall (2000) puts it, responsibilize women for their own misery. While there are signs that the CSC improved the treatment of all criminalized women following the 1994 incident at Kingston penitentiary, these efforts did not achieve the desired outcome envisioned by feminist reformers (Dell et al., 2009; Hannah-Moffat, 1995, 2004a; Parkes & Pate, 2006). Pollack (2009) states that rather than providing significant positive impact, the correctional policies that emphasize a women-centered approach are not sufficiently reflected in the prison experience of women. While women in her study expected a more therapeutic, supportive treatment approach, in reality the correctional approach primarily centers on control and punishment, which further disempowers them (Pollack, 2009***).*** In reality, a Canadian initiative to implement a women-centered approach over the last two decades has hidden behind feminist and rehabilitative ideals (Hannah-Moffat, 2001; Kilty, 2012b). The result is that the CSC has been able to legitimize the (re)production of punitive strategies aimed at responsibilizing and controlling criminalized women in the name of reform.

Despite these promising attempts at reform, corrections continues to function based on a normative risk management model, that places risk assessment, management, and control at the forefront of their initiatives. The notion of 'risk' refers to the safety and security threat that one presents to one's self and to others (Andrews & Bonta, 2010), which is normative in the sense that its calculation is based on a white, heterosexual, middle class, male-generated standard (Kilty, 2006). This raises the question of whether or not this gendered risk-based approach is the underlying barrier to achieving appropriate responses to women in the Canadian federal prison system.

Practices that raise serious concern include the use of segregation, involuntary transfers, and the use of restraints and force as the chosen political responses to 'self-injurious' behaviour among women prisoners, which is "the deliberate act of physically hurting oneself, usually without conscious suicidal intent, in a manner that results in superficial, rather than traumatic, damage to body tissue" (Thomas et al, 2006: 193). According to the Office of the Correctional Investigator (2012), the rate of self-injury within the Canadian prison system as more than *doubled* in the last five years, reaching an all-time high of 912 incidents in 2011-2012. Of this total, women prisoners account for 1/3 of all incidents (OCI, 2012), while only making up 6% of the total federal prison population (Mahony, 2011).

The disproportionate number of women who self-injure continues to be the pattern in the Canadian Federal prison system (Gordon, 2010; Kong & Aucoin, 2008; Majony, 2011), which is particularly concerning given that the correctional understanding continues to be formed by a (male) normative standard that constructs such undesirable behaviour exerted among women as both ‘risky’ and ‘abnormal’ rather than identifying the influence of carceral and patriarchal forces that influence and encourage such behaviour. CSC continues to fail to acknowledge the impact of these broader forces on women prisoners, despite the fact that in 2011-2012- 3/4 of the total federal incidents took place within the maximum-security prisons, the “five regional treatment centres”, and the regional prisons for women; while 1/3 of this total occurred in segregation units (OCI, 2012). In order to explore both the correctional understanding and response to self-injury among women prisoners further, a case study of the correctional response and ultimate death in custody of Ashley Smith was conducted. The following consists of a brief overview of the Smith case in order to provide a better understanding of her experience in the federal system.

Ashley Smith (1988-2007):

After being incarcerated for the better part of 2003 to 2006 in the New Brunswick Youth Centre for a number of minor offences she committed as a juvenile, 18 year old Smith was transferred to the adult correctional system. The New Brunswick system made a request for her transfer due to her unruly behaviour (Richard, 2008). According to the Provincial Ombudsman, the three reasons justifying the transfer included:

> Smith’s ‘poor choices’ and the resulting effects on herself, other youths and staff; the burden and strain that this young woman posed on the resources available at the NBYC; and finally the NBYC’s apparent inability to offer any more solutions to this 18 year old offender (Richard, 2008: 26).

Based on the justification for transfer, it appears that Smith was classified as a high risk case and thus was a candidate for enhanced security and control.

Smith received a total of nine institutional transfers over the 11. 5 months she was incarcerated in the federal system. Since 2003, when she entered the youth correctional system, and throughout the 11.5 months she spent in federal custody, Smith was assigned a 'segregated status', primarily as a response to her self-injurious behaviour and threats to staff and fellow prisoners (Sapers, 2008). On October 19, 2007 at the age of 19, Smith strangled herself to death with a ligature around her neck while correctional staff watched without intervening (Richard, 2008). After an investigation conducted by Howard Sapers, the Correctional Investigator of Canada, a number of recommendations were made, including: improve the treatment of the mentally ill, produce alternative methods of responding to those with mental health needs; review policy on correctional responses to behavioural problems within the institution; and review and revise policy on administrative segregation (2008).

Purpose of the Proposed Research

The Smith case was chosen for this research because it raises a number of questions concerning whether her self-inflicted death was the result of CSC inappropriately conceptualizing her self-injurious behaviour as both 'risky' and 'abnormal' and whether their subsequent responses (lengthy segregation, involuntary transfers, and the use of restraints and force) precipitated her death. The purpose of this proposed research project is to gain insight into the ways in which CSC's political understanding and response to self-injurious behaviour influenced Smith's death. Through a critical document analysis, the following research question are addressed:

- What influence, if any, did the political response applied within each social institution have on Smith's undesirable behaviour?
- What influence, if any, did CSC's political response to self-injurious behaviour have on the ultimate death of Ashley Smith?

- What influence, if any, did therapeutic-risk discourse play in legitimizing the institutional response to Smith's behaviour?
- What role, if any, did the psy[1] expert play in determining what response was most appropriate in responding to Smith?

Significance of the Problem and Justification for Research

The Canadian correctional system for women has been widely criticized since the inception of the first prison for women in Kingston Ontario in 1934 (Dell et al., 2009; Frigon, 2003; Parkes, & Pate, 2006; Pollack, 2009). Efforts made by CSC to improve the system were identified after the highly publicized and controversial incident at P4W in 1994, which exemplified the inadequate treatment of women prisoners (Arbour, 1996; Dell et al., 2009; Frigon, 2003). While CSC's efforts following the 1994 incident illustrated a movement promising positive change, as previously discussed, several scholars have argued that these efforts did not achieve the desired outcome envisioned by feminist reformers (Arbour, 1996; Dell et al., 2009; Frigon, 2003). Arguably, the insufficient outcome of these efforts is largely do to the normative reconstruction of women's undesirable behaviour as both 'risky' and 'abnormal', which legitimizes the reliance of the risk-based model as the forefront in women's corrections. This approach continues to dominate in spite of the fact that a number of the recommendations raised in Justice Arbour's evaluation of the 1994 incident at P4W, such as the (over)use of segregation and the use of force, were readdressed a decade later in the Correctional

[1] According to Kilty (2008b), the 'psy' expert refers to those who specialize in "the disciplines of psychology and medical psychiatry".

Investigator's inquiry into the death of Ashley Smith case. These reoccurring problems signify the importance of examining the broader systemic implications of the Smith case.

CHAPTER 1 – LITERATURE REVIEW

UNDERSTANDING ‘RISK’ THROUGH A FEMINIST VERSUS CORRECTIONAL LENS

This chapter reviews the literature regarding the controversial issue of risk management that has been embedded in the Canadian criminal justice system over the past four decades. The chapter is organized around two broad themes, the first examines the discourse of proponents of risk management, who believe that the ultimate goal of reducing recidivism and enhancing public safety can be achieved by minimizing an offender's criminogenic risks through the application of cognitive social learning approaches. The second theme examines the discourses of opponents of risk management, who argue that it is problematic because it responsibilizes offenders while neglecting the macro-structural inequalities that influence criminality. Women in particular are negatively affected by these processes, not only by actuarial techniques that are based on a normative standard (i.e. a standard based on data generated from white, heterosexual, middle class, and male sample populations), but also the overall gendering of risk that disempowers women and coerces them to consent to an unrealistic ideal of femininity. I begin by examining the two bodies of literature and then I discuss how my proposed project contributes to these debates.

CSC's Philosophy of Risk Management:

From the early 1970s to 1990, the decline of the clinical and welfare-based model of corrections coincided with a rise in actuarial models of corrections (Hannah-Moffat, 2005). This shift in corrections is described as reflecting the transformation in punishment from a subjective, individualized approach to an objective standardized method of classifying, managing, and controlling the risk population while in the institution and upon release (Hannah-Moffat, 2005; Peterson and Kempf-Leonard, 2000; Simon and Feeley, 1992). According to Hannah-Moffat (2005), while there was a shift towards a more risk-based approach, CSC continues to rely on rehabilitative logic as a means to legitimize punitive governance strategies in the name of reform. This fusion of risk and rehabilitative logic can be traced back to the 1970s, when in response to heavy criticism concerning correctional rehabilitation as a means of reducing recidivism (Kendall, 2000) a number of correctional affiliated psychologists attempted to disprove these criticisms by endorsing a new and improved approach (Andrews, 1989; Kendall, 2000). Four principles outlined in this new approach were deemed essential to effective intervention that reduced recidivism, including: the ‘risk principle’, ‘need principle’, ‘responsivity principle’ and the ‘programme integrity principle’ (Andrews, 1989).

The risk principle refers to the notion that those who are classified as high risk require the most programming and intervention in order to reduce their chances of reoffending in the future, while those who are classified as low risk should receive minimal treatment in order to save costs through the avoidance of unnecessary treatment and prison overcrowding (Andrews, 1989; Andrews & Bonta, 2010; Andrews & Dowden, 2005, 2006, 2007; Andrew, Zinger, Hoge, Bonta, Gendreau, & Cullen, 1990; Bourgon & Armstrong, 2005; Coulson, Ilacqua, Nutbrown, Giulekas, & Cudjoe, 1996; French & Gendreau, 2006; Hannah-Moffat, 2006a; Kendall, 2002; Lowenkamp, Latessa, & Holsinger, 2006). In addition, it is only criminogenic needs that are targeted in order to avoid providing unnecessary, costly treatment (Dowden & Andrews, 1999; Lowenkamp & Latessa, 2005).

The need principle is the idea that prisoners have two different types of needs, referred to as ‘criminogenic’ and ‘non-criminogenic’. The former refers to dynamic or changeable risk factors statistically linked to recidivism, including: employment; associates; antisocial behaviour; relationships; substance abuse; and personality traits (Andrews, 1989; Hannah-Moffat, 2006a; Kendall, 2002). The assumption is that prisoners should be classified and managed based on their risk level, which is determined by identifying and assessing their criminogenic needs (Andrews, 1989; Kendall, 2002). Through appropriate intervention, namely cognitive behavioural based programming, criminogenic needs are said to be reduced, thus reducing chances of recidivism. According to Kendall (2002), non-criminogenic needs include: "self-esteem, anxiety, depression, a history of abuse or victimization, gender, race and class" (190).

The responsivity principle involves structuring the treatment strategy in a manner that will achieve the most effective response from the prisoner based on their level of motivation, behaviour, attitude, and learning capabilities (Andrews & Dowden, 2006, 2007; Andrews et al., 1990; Bonta & Motiuk, 1992; Kendall, 2002; Lowenkam, Latessa & Holsinger, 2006). According to proponents of the model, the incorporation of the responsivity principle produces a more objective and standardized actuarial assessment tool that can be generalized to all population groups (Andrews & Bonta, 2010; Andrews & Dowden, 2006, 2007; Bonta & Motiuk, 1992; Bonta & Cormier, 1999; Bourgon & Armstrong, 2005; Coulson, Ilacqua, Nutbrown, Guilekas, & Cudjoe, 1996; Dowden & Andrews, 1999; French & Gendreau, 2006; Hoge, 2001, 2002; Lowenkamp & Latessa, 2005; Lowenkam et al., 2006; Ogloff & Davis, 2004). Kendall (2002) refutes this model for simultaneously referring to the responsivity principle as individualized *and* generalizable, stating that there is a generalized assumption concerning the "learning styles" of prisonersoffenders that is rooted in their alleged "poor social skills, inadequate problem-solving skills, concrete thinking, little motivation to change and poor verbal skills" (190). Based on these factors, it is assumed that programming that "set[s] clear behavioural goals and tasks are the most effective" (190).

Subsequently, cognitive behaviourism underpins all correctional programmes, thus aligning them with the social-psychological approach "rooted in the medical model" (Kendall, 2002: 187). Specifically, while correctional programs are shaped in a way that identifies environmental influences to one's criminality, "the fault is ultimately conceptualized as lying within an individual's flawed mental and emotional capacity to withstand hardship or take advantage of the opportunities provided" (Kendall, 2002:187). Andrews and Bonta (1998) legitimize this approach by claiming that it is scientific and thus objective, rational, neutral and generalizable. They note that through this scientific approach they were able to uncover a generalizable criminal typology where cognitive deficiencies correlated with criminal conduct remains a central characteristic. This model suggests that due to the combination of psychological and external factors, criminalized persons lack the cognitive skills necessary for pro-social behaviour (Andrews & Bonta, 1998). Therefore, according to Andrews and Bonta (1998), treatment is required in order to provide them with the necessary skills to make appropriate choices.

Lastly, the programme integrity principle refers to the notion that reliable, consistent results are achieved through a greater focus on improving professional discretion, ensuring responsible and systematic professional judgment and through the consideration of effectiveness, and legal, ethical and humanitarian factors (Andrews, 1989; Andrews et al., 2006). According to Andrews (1989) and Andrews et al. (2006), appropriate results (pro-sociality and a reduction or elimination in recidivism) are predicated upon the proper selection, training, and clinical supervision of staff.

The emphasis placed on public safety in Canadian social policy continues to fuel the methodological and conceptual advancements in the risk/need approach (Motiuk, 2009). This approach remains the foundation of risk management for the duration of the offender's federal sentence (Motiuk, 2009). Through risk assessment and intervention the overarching goal of protecting public safety and producing effective community reintegration is said to be achieved (CSC, 2011c). CSC emphasizes that public safety is upheld through the encouragement and assistance of offenders to lead pro-social lives, while at the same time "exercising reasonable, safe, secure and humane control" (2012b). The objective is to create a balance between not only the needs of the offender, but also the correctional staff, their fellow prisoners, the victims, and the general public as well (CSC, 2012b). In order to obtain this balance, CSC claims that the assessment and management of an offender's risk is imperative (CSC, 2011c).

According to the description provided by CSC (2011c), balance is created by simultaneously treating the offender's needs *and* controlling and managing their degree of risk. This is reflected in the fourth principle of the *Corrections and Conditional Release Act* (1992), which states that when administering an offender's sentence, "the Service uses measures that are consistent with the protection of society, staff members and offenders and that are limited to only what is necessary and proportionate to attain the purposes of this Act" (Department of Justice, 2012:5). *Necessary* and *proportionate* measures are dependent on whether the offender is viewed as a safety threat to themselves or others, thus making risk management the primary objective.

Prisoners identified as high risk are removed from the general population and placed in a segregated unit as either a disciplinary or administrative response (Wichmann & Taylor, 2004). CSC (2007) defines disciplinary segregation as a form of punishment for those who are found guilty of committing a serious institutional offence. On the other hand, administrative segregation is used to confine those who either interfere in an ongoing institutional investigation, or who are determined to be a threat to themselves, correctional staff, or other prisoners (CSC, 2007; Wichmann & Taylor, 2004). According to CSC (2007), the latter is used not as a punitive measure, but rather to better meet the needs of high risk/need prisoners. Dean (2005) questions how this approach could be deemed *non*-punitive, noting that "[i]t is difficult to imagine…how hours or days alone in a small cell with little human contact can be helpful to someone experiencing such intense emotional pain" (40). Not surprisingly, according to Wichmann and Taylor (2004) prisoners perceive administrative segregation in a similar fashion, viewing it as more punitive, and causing greater deprivation than disciplinary segregation. This is due to correctional policies stating that while a prisoner can only be contained in disciplinary segregation for a maximum of 30 days, there is an indeterminate time limit on those placed in administrative segregation (Wichmann & Taylor, 2004).

Self-injury is one of the many behaviours dealt with through a transfer to administrative segregation (CSC, 2007). According to the CSC (2007), prisoners who self-injure are not to be punished but rather are to be administratively segregated while on suicide watch. This response is used as a means of protection, since the individual is viewed as a risk to themselves and/or to others (CSC, 2007; Power & Brown, 2010). On the contrary, a number of sources argue that segregating those who self-injure only worsens the problem, as many prisoners engage in this behaviour as a way to cope with their current environment and life conditions (Kilty, 2006, 2012b; Martel, 2006a,b; Smith, 2006; Canadian Human Rights Commission, 2003).

The evolution of risk management reflects a shift from managing and controlling who Hannah-Moffat (2005) calls the *static risk subject*, during a period of mass confinement, to simultaneously controlling and rehabilitating the *transformative risk subject*. The assumption is that once prisoners change their own behaviour, their risk for reoffending is minimized and safe reintegration and maintenance of public safety will be achieved (Hannah-Moffat, 2005). Those who resist change or demonstrate high risk behaviour, based on CSC's standards, including those who self-injure, will receive heightened restrictive measures, such as placement in segregation.

The Gendering of Risk: Feminist Responses to Risk Management for Women

According to Hannah-Moffat (2005), the introduction of risk/need assessment techniques in the 1980s meant that risk is both a requirement for intervention and a marker of future reoffending. Kilty (2006) defines the concept of need as requiring "programming, counselling" and/or "health, educational, and vocational" support (p.162), while she defines the concept of risk assessment as the "level of threat to the security of the institution, society, themselves, staff, and other prisoners" (p.162). Correctional strategies that combine both risk and need led to a number of unequal and contradictory risk-focused penal strategies, such as the use of segregation, restraints, and force as a correctional response for those who self-injure (Hannah-Moffat, 2005).

This is further reinforced through the creation of risk assessment tools developed based on a normative standard that fail to appropriately address the gender-specific needs of women. While proponents of risk theory argue that the calculation and measurement of risk is universally applied, in actuality it is highly dependent on gender as a critical determinant of how risk is negotiated, understood, legitimized, and measured (Chan & Rigakos, 2002). The gendering of risk reflects a distinct divide in how men and women are socially constructed into separate ideals (Chan & Rigakos, 2002). These tools reconstruct women's needs, including those who self-injure (Dell et al., 2009; Frigon, 2003; Hannah-Moffat, 2000a, 2001, 2005; Kilty, 2006, 2008b), as risk factors that require disciplinary interventions (Farr, 2000; Hannah-Moffat, 1995, 1999, 2004,a,b, 2005; Hollin, & Palmer, 2006; Kilty, 2006; Maurutto & Hannah-Moffat, 2006, 2007;

Pollack, 2009; Scraton, & Moore, 2006; Shantz, Kilty, & Frigon, 2009; Silver, & Miller, 2002; Sorbello, Eccleston, Ward, & Jones, 2002; Turnbull, & Hannah-Moffat, 2009; Van Voorhis, Wright, Salisbury, & Bauman, 2010; Ward, & Stewart, 2003). Kilty (2006) problematizes this approach, because needs become "institutional risk factors" (p.178), meaning that those who pose a 'risk' to the institution are administratively segregated in order to prevent other women from copying such behaviour.

In addition to constructing needs as risks that require disciplinary interventions, the construction of intervenable risks – referred to as criminogenic needs – has led to the categorization of other needs, such as those pertaining to poverty and/or the promotion of health, as illegitimate intervenable targets (Hannah-Moffat, 2005). As these needs are not statistically linked to recidivism they are viewed as low priority for intervention, and therefore often go untreated (Hannah-Moffat, 1999, 2005; Kilty, 2006; Maurutto & Hannah-Moffat, 2006). This is problematic because critical needs of prisoners are disregarded simply because they are not statistically linked to enhanced recidivism. Ironically, these untreated needs often escalate and worsen certain problematic behaviours, such as self-injury (Kilty, 2006; Maurutto & Hannah-Moffat, 2006). Dell et al. (2009) note that the gendering of risk is not a new phenomenon, and that the CSC has long used policies and practices that endorse patriarchal concepts of femininity, such as compliance and passivity. Both of these concepts disempower women prisoners by denying them agency and pathologizing them as irrational when they fail to act in those prescribed ways (Dell et al., 2009).

Regulating ‘Deviant’ Girls

According to Dean (2005), gendered correctional discourse is mirrored in the youth correctional legislation where “sexism, racism, and a harsh paternalism” continues “to trap girls in a system in which their access to justice remains a distant and unfulfilled promise” (5). Specifically, oppressive patriarchal underpinnings of youth correctional legislation continues to reinforce broader gender inequalities by further punishing girls for transcending beyond the feminine ideal. This is illustrative throughout the 1900s, where youth courts deemed it their responsibility to not only determine what behaviour was punishable, but also to instil gendered ideals of behaviour and femininity into all girls who entered this system (Dean, 2005). This perspective was supported by middle-class women reformers who believed that girls were in need of ‘protection’ from the external forces that would guide them down a road of criminality (Dean, 2005). Dean (2005) argues that the reformist and judicial emphasis on ‘protection’ and ‘safety’ refers to the sexuality and morality of the girls, rather than to their “physical or emotional well-being” (6). She also highlights how “[e]fforts to ‘protect’ young women through incarceration” is a false reality, as they were often “*...sentenced to* the very abuses that imprisonment was supposed to protect them from” (Dean, 2005: 7).

Beginning with the creation of a separate correctional system for youth in 1908 with the implementation of the *Juvenile Delinquents Act* (JDA)[2], (Hylton, 2001), girls remained disproportionately convicted and imprisoned for committing ‘status offences’, i.e. non-violent and non-criminal but ‘risky’ conduct, which included “sexual immorality, truancy, running away or disobeying one’s parents” (Reitsma-Street, 1993: 285). These actions were perceived as a

[2] Juvenile Delinquents Act. R.S., c. 160, s. 1.

sign of eventual criminality if the welfare state did not intervene (Dean, 2005; Corrado, Odgers & Cohen, 2001; Reitma-Street, 1991, 1993, 1999; Reitma-Street & Clark, 2001). The JDA was eventually replaced in 1982 with the *Young Offenders Act* (YOA)[3] in efforts to eradicate the sexist, racist, and punitive nature of the former through the abolition of status-offences and the re-emphasis on due process within the courts (Muncie, 2005).

These efforts were soon met with criticism however, as, on the one hand, the YOA was seen as too soft on delinquent youth "by punishment and deterrence advocates" (Hylton, 2003: 569), given its focus on protecting and treating convicted youth, rather than responsibilizing and punishing them (Dean, 2005; Hylton, 2003; Muncie, 2005; Reitsma-Street, 1991, 1993; Reitma-Street & Clark, 2001). This criticism arguably arose in response to the punitive political climate at the time, that was shifting away from a welfare state (Muncie, 2005), and through the perception of a rising 'girl crime problem' as a result of the dramatization of isolated cases by the mass media (Dean, 2005; Reitsma-Street, 1991, 1993; Reitma-Street & Clark, 2001).

On the other hand, "rehabilitation advocates" (Hylton, 2003: 569) deemed the YOA overly punitive, as its enactment was met with dramatic rises in imprisonment rates, and a significant decline in the distribution of necessary treatment-based resources (Hylton, 2003). Blame for the inadequate implementation of the YOA was placed on provincial governments for "failing to implement some of the Act's more progressive provisions", while others placed blame on the federal level, for failing to provide provinces sufficient financial backing for effective implementation (Hylton, 2003: 569). Frontline workers on the other hand deemed the

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[3] Young Offenders Act. R.S.C., 1985, c. Y-1.

insufficient delivery of the YOA as being a problem inherent to the legislation, as it was deemed overly “complex and cumbersome” (Hylton, 2003: 569).

Moving even farther away from the rehabilitative ideal, the YOA reforms from 1986 to 1992 (Reitma-Street & Clark, 2001) “began to erode the protection of youth rights, which had been a significant part of the original intent of the act” (Dean, 2005: 8), as new status-like offences were introduced and continued to disproportionately imprison girls for non-violent, non-criminal, but ‘risky’ acts (Corrado et al., 2001; Dean, 2005; Reitma-Street & Clark, 2001). These status-like offences were referred to as ‘administrative’ offences, often involving probationary breaches that led to the handing down of more punitive punishments in response to those who had a history of non-compliance (Hylton, 2001). This continued reliance on prison sentences demonstrates how girls “continue to receive paternalistic and punitive forms of justice” (Corrado et al., 2001: 425) as a means to regulate their moral and sexual character (Reitsma-Street, 1991). According to Muncie (2005: 41) “the punitive and the preventive may sit uneasily together but their combination suggests a broadening and deepening of regimes of surveillance, inspection, regulation and control”.

By 2003, the YOA was replaced by the *Youth Criminal Justice Act* (YCJA)[4], which in theory was less punitive because it incorporated guiding proportionality principles in order to ensure that the offence was proportionate to the mitigating and aggravating factors for each particular case, while also emphasizing that imprisonment shall be used only as a last resort (Hylton, 2001). According to Parkes and Pate (2006) and Zinger (2006), while there was a reduction in imprisonment rates with the implementation of this legislation, this reduction was

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[44] Youth Criminal Justice Act. S.C. 2002, c. 1.

not met with an increase in community based funds for alternative measures, thus at times leading to the use of imprisonment as a *de facto* judicial response, even in cases of non-violent and even non-criminal offences, including probationary breaches.

The Emergence of the 'Transformative Risk Subject'

The emergence of the 'psy-sciences' arose during the beginning of the 20th century as a means of "identifying, treating, curing, and managing populations seen as risky because of their strange or inappropriate behaviours" (Kilty, 2008a). The psy disciplines emerged as a new stream of expertise in both correctional and mental health systems, whereby practitioners gradually increased their control and regulation of those deemed 'mentally ill' both within the private and public sphere (Kendall, 2000; Kilty, 2008a).

The growth of the psy-sciences in the Canadian prison system can be traced back to the 1938 Archambault Report, which was released just four years after P4W opened. Based on an investigation into the conditions of the Canadian prison system, the report recommended shifting to a more rehabilitative model with an increased role for specialists, including psy-experts, in delivering appropriate intervention and treatment (Cellard, 2000; Kendall, 2000). These recommendations were later reinforced in 1956 by the Fauteux Committee Report, which insisted that prisoners should be recognized as "an abnormal being, an ill person whose treatment should be left in the hands of specialists and scientists" (Cellard, 2000: 16). According to Kendall (2002) this understanding and response to criminality led to a string of controversial involuntary interventions in the 1960s that raised much concern about the role of the psy sciences in correctional settings (Garland & Sparks, 2000; Haggerty, 2004).

While psychiatric power continues to produce and legitimize normative truths about behaviour in the criminal justice context, the pressure placed on psy experts to preserve their power in corrections during the age of risk led to a shift in focus from a therapeutic approach (Kilty, 2008a, 2012b) to an alignment with the demands of risk logic, which centers not only on regulating and controlling behaviour deemed 'risky', but also ensuring self-regulation among the prisoners remains constant (Barron, 2011; Hannah-Moffat, 2001; Hudson, 1996; Kilty, 2008a, 2012b; Maurutto & Hannah-Moffat, 2006; Pollack, 2006; Robert, Frigon & Belzile, 2007). According to Kilty (2008a), this latter objective reflects a contradiction in psy understandings of mental illness, as it suggests that healing and reform is the responsibility of the individual at the same time that it deems mental illness as beyond the control of the individual.

In accordance with the risk logic, mental health needs are no longer determined based on the traditional in-depth clinical analysis of the individual, but rather are assessed through actuarial risk assessments (Kilty, 2006), case file review, incident reports and consulting correctional staff and community support workers (Barron, 2011; Hannah-Moffat, 2001; Hudson, 1996; Kilty & DeVellis, 2010). This approach leads to contradictory outcomes regarding treatment, as women's needs are reconstructed as risk factors based on standardized (male) assessment tools (Kilty, 2006) and tainted accounts of regulatory agents who have, often unconsciously, adopted the risk rationale (Barron, 2010; Kilty & DeVellis, 2010; Robert et al., 2007). Specifically, by interpreting 'normal' behaviour, such as sadness or anxiety that emerges in response to one's imprisonment and criminalization, through the risk rationale (Kilty, 2008a), it becomes questioned and deemed 'abnormal', which fails to capture the complexity of the behaviour (Barron, 2011; Kilty, 2008a; Robert et al., 2007). The dual construction of women as 'bad' *and* 'mad' is reinforced through the cognitive behavioural model used in institutional programming and services, which pathologizes criminalized women as “troublesome others - dangerous and inherently different to non-criminals” (Kendall, 2000: 183). Consequently, while Ussher (1992) notes how the pathologization of female behaviour extends beyond that which is deemed criminal, whereby madness has become “both a signifier to ‘what it means to be a woman, regulating us through the discourse of madness, and serves as a description of the distress of many individual women” (289), it is undeniably most oppressive to those who *are* criminalized, as the reconstruction of one’s needs as institutional risks often results in punitive consequences.

Even when individualized counselling is offered, the individual is responded to first as a ‘prisoner’, while their ‘patient’ status remains secondary as safety and security concerns override treatment and care within the institutional setting (Robert et al., 2007). The dual role of correctional officers as disciplinarians and health care providers further reinforces the contradictory and oppressive response to women’s needs (Barron, 2011; Kilty, 2012b; Robert et al, 2007). Thus, whether a mental health care provider perceives a prisoner/patient as a potential risk to themselves or others is based on information provided by other correctional staff or through information disclosed by the individual, this information is used to justify punitive interventions (Barron, 2011; Kilty, 2008a; Robert et al., 2007). Awareness that certain disclosures to institutional health care providers could lead to more restrictive management and control practices has led to the weakening of prisoner’s trust and relationships with staff, which reduces the effectiveness of intervention, as these components are necessary for success (Barron, 2011; Kilty, 2008a, 2012; Robert et al., 2007). Subsequently, criminalized women may choose not to disclose information and avoid forming relationships with correctional staff in order to avoid being perceived as high risk (Barron, 2011; Hannah-Moffat, 2001). This avoidance strategy can have counterproductive consequences, as the decision not to disclose is assumed to reflect the prisoner's failure to take responsibility for their actions (Barron, 2011; Hannah-Moffat, 2001). When women prisoners fail to participate in their own empowerment through their engagement "in 'meaningful and trusting relationships with institutional staff" (Hannah-Moffat, 2001: 155), any relationships they have with fellow prisoners is used "as evidence to support claims about a women's continued involvement in, identification with, and commitment to a criminal subculture".

According to Sim (2005: 216), while there are mental health providers who wish to transform the prison system to be more humane and therapeutic, the role of the medical model within the prison system,

> ... has failed to dent the prison's disciplinary armoury, is unlikely to alleviate the gendered nature of the pains of imprisonment and, crucially, will not challenge the structured inequalities and divisions that demonstrably confront the women beyond the prison gates. Contemporary support to expand and enhance the medical model presents the danger of reinforcing and legitimizing punitive efforts (Sim, 2005).

In Hannah-Moffat's (2001) view, this danger has already materialized through CSC's realization of *Creating Choices* (1990) which utilized well intentioned feminist discourse to produce "a feminized social control dressed up in therapeutic and feminist language" (197). The CSC continues to champion a women-centered approach as more therapeutic than traditional correctional regimes, which ultimately "minimize[s] and obscure[s] the oppressive aspects of involuntary treatment and disciplinary regimes" (Hannah-Moffat, 2001: 195). Pollack (2009) agrees, stating that correctional policies that emphasize a women-centered approach are not positively reflected upon in women's discussions of their prison experiences. Kilty (2006) and Thomas, Leaf and Kazmierczak (2006) problematize the implication this model has on women prisoners who self-injure in particular, as its reconstruction as an indicator of mental illness pathologizes the behaviour with little consideration of the social and structural factors that contribute to it. Pathologizing women's needs can lead to the removal of a woman's individual agency through attempts to "take care of them", which in the correctional risk-based regime, materializes in the form of increased discipline (Kilty, 2006: 165).

Self-Injury & Segregation

The medicalization of self-injury has been heavily scrutinized by critical feminist scholars, (Kilty, 2006; 2008, a, b; 2012a, b), as has the psy construction of self-injury as a form of manipulation (Fillmore & Dell, 2000; Heney, 1990), attention seeking, childish, or as an act of seduction (Dell et al., 2009). In order to capture the broader socio-political impact, critical scholars have instead interpreted self-injury as a means of coping with one's past and current victimization and inequality (Dean, 2005; Smith & Kaminski, 2009; Kilty, 2006, 2008b, 2012a; Martel, 2006a, b). Although acknowledging self-injury as a coping mechanism may reinforce the normative construction of women as 'passive', and 'lacking agency' (Kilty, 2006, 2012b). Instead, one should conceptualize self-injury as both a coping mechanism *and* as a means of 'resistance'; in the prison context, resistance is defined as the negotiation of power, where one expresses, reasserts, challenges and reclaim their own sense of identity, which is informed by one's socio-political context (gender, race, class, ethnicity, etc.). Within an institutional setting, this context is reinforced through carceral and patriarchal power that challenge and shape one's identity as 'opportunities' and 'choice' remain limited (Bosworth, 1996, 1999; Bosworth & Carrabine, 2001; Kilty, 2012a).

Self-injury as an act of resistance within the prison setting is both complex and contradictory, as it both *challenges* these carceral and patriarchal forces by countering the civilizing objectives rooted within the prison (i.e. aligning women into adopting the normative, feminine ideals) in efforts to reclaim a sense of self; while *maintaining* these forces by behaving in a way that (re)produces the 'risky identity' that is legitimized through feminist-therapeutic-risk discourses (Barron, 2011). These forces are also maintained by relying on self-injury as means of self-punishment, whereby one complies to the responsibilizing goal of the prison through internalization of guilt surrounding one's own criminalization and victimization (Kilty, 2006, 2012a).

Women continue to be segregated as a response to self-injurious behaviour, in spite of Arbour's recommendations following the 1994 incident at P4W (Dell et al., 2009, Kilty, 2006; Zinger, 2006). Dean (2005), Kilty (2006) and Thomas et al. (2006) state that correctional policy on self-injury is punitive, rather than attempting to address the wider institutional problems that may contribute to such behaviour. As a result of correctional authorities choosing to ignore the contributing factors that can lead to self-injury, policy responses actually tend to sustain or encourage the behaviour (Thomas et al., 2006). Segregating prisoners who self-injure reflects the correctional understanding of self-injury as a threat to the security of the institution, but it also constructs the behaviour as unfeminine and thus as inappropriate and irrational (Dell et al., 2009). Punitive techniques are applied as a consequence of resisting or failing to meet traditional notions of femininity, and as a method to control and regulate women's behaviour (Dell et al., 2009; Howe 1994; Shantz, Kilty, & Frigon, 2009). CSC continues to legitimize these practices by constructing women's behaviour as manipulative and as a risk to the safety and order of the institution (Dell et al., 2009; Kilty, 2006). Constructing forms of resistance as misbehaviour and unfeminine exemplifies the transformation of women's needs into institutional risks (Kilty, 2006). While the CSC argues that the use of administrative segregation for those who self-injure is a tactic to both intervene and preserve the safety of staff, fellow prisoners, and the offender, the failure of this approach used over several consecutive months in Ashley Smith's case reflects otherwise.

While Canadian policies outline segregation as a means to prevent prisoner interactions that produce harmful behaviour inflicted on the self as well as against others, Martel (2001) found that less serious forms of (mis)behaviour also lead to segregation. Her findings illustrate how segregation was imposed when prisoners laughed, as it was seen as a sign that they were high on drugs; cried, for it was perceived as a reflection of suicidal thoughts; or, were silent, due to the belief that they were consciously creating plans to harm others. In this light, segregation as a correctional response is an oppressive tool used to control or punish innocent behaviour, rather than maintain institutional order (Martel, 2001). While it is argued by some scholars that segregation does not have a deteriorating effect on those confined, (Coid, Petruchevitch, Bebbington, Jenkins, Brugha, Lewis, Farrel, & Signleton, 2003; and Zinger, Wichmann, & Andrews 2001), others provide evidence supporting the opposite effect (Bonner, 2006; Martel, 2006a,b; Miller, 1994; Smith, 2006). According to Bonner (2006), prisoners who suffer from psychosocial vulnerability are ill prepared to cope with stressful conditions of solitary confinement and are at risk for developing suicidal ideation and depression. Miller (1994) found that while participants had similar symptoms of psychological distress, the intensity of these factors were strongest among those who were confined in the most restrictive units in the prison (Miller, 1994).

Smith (2006) illustrates that the escalating number of health problems resulting from segregation is primarily due to the minimal social contact experienced in that setting. Martel

(2006a,b) states that it is not only the lack of social stimulus that leads to the deteriorating effects of segregation, but also the loss of control over time and space. While isolated, women are unable to pinpoint their location, denied personalized objects, and have no knowledge of when they will be removed from segregation (Martel, 2006a,b). This disconnection with time and space weakens one's connection with past and future experiences in the social world (Martel, 2006a,b).

Administrative segregation continues to be used despite the fact that it demonstrates a serious violation of human rights in accordance to the *Canadian Charter of Rights and Freedoms*[5] (Kilty, 2006; Parkes & Pate, 2006). Specifically, Section 7 of the *Charter*, which guarantees the right to "life, liberty and security", is violated through the transfer of prisoners into this highly restricted environment (Kilty, 2006), as they are subject to conditions with documented deteriorating effects (Bonner, 2006; Martel, 2006a,b; Miller, 1994; Smith, 2006;). According to Kilty (2006), this section of the *Charter* is violated when segregating self-injurious women as their confinement amongst other self-injurious women within one restrictive unit may lead to "an epidemic of self-injury, particularly if there is a 48-hour wait for psychological intervention" (174). Parkes and Pate (2006) also highlight how the right to security as protected by section 7 is violated for those on segregation status, particularly the right to security, as these prisoners are subjected to routine mandatory, authorized strip searches that are authorized in this unit.

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5 This Canadian Constitution Act was created in 1982 as a means to ensure all fundamental rights and freedoms are granted and protected, while subjected to "reasonable limitations prescribed by law as can be demonstratably justified in a free and democratic society".

Kilty (2006) also argues that segregating women in response to self-injury violates section 15 of the *Charter*[6], as the gender-neutral policy that authorizes this response to self-injury fails to preserve substantive equality, as it disregards the fact that it is a highly gendered behaviour that requires a tailored response for men *and* women. Specifically, according to the OCI (2012), women self-injury as a means of "communicating to others about their problems and their need for care", and as a coping with their current and/or past distress. Following this expression, they are often reported feeling a sense of guilt, and "emotional release and relief". Men on the other hand appear to self-injure more as a means to release their aggression and frustration, as the OCI (2012) found that it is exerted for "instrumental reasons', including to "make a statement, to make demands at staff, to protest a disciplinary measure among others".

Not only does the correctional policy on self-injury fail to meet gender-specific needs, women remain further oppressed by being disproportionately subjected to these punitive policies, as they continue to be overrepresented in self-injurious incidents within the federal prison system (Gordon, 2010; Kong & Aucoin, 2008; Majony, 2011). In agreement with the Canadian Human Rights Commission (CHRC) (2003), Kilty (2006) highlights that in order to achieve substantive equality; gender-specific needs must be acknowledged when constructing policy. While both the Arbour Inquiry (1996) and the federal policy document for women's corrections, *Creating Choices* (TFFSW, 1990), recommended that CSC decrease its reliance on risk and make improvements to better address women's needs, what has in fact occurred has been an enhanced reliance on risk management (Kilty, 2006).

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[6] Section 15: All shall receive equal protection and benefit "before and under the law"

A Case of Human Rights

As exemplified by Kilty (2006) and Parkes and Pate (2006), the CSC not only fails to comply with national standards, which "constitute an external reference point" with regards to " the treatment of prisoners" (Stern, 2002: 131). they continue to authorize such non-compliancy through their own punitive policies (Arbour, 1996; CHRC, 2003; Dean, 2005; Del et al., 2009; Zinger, 2006). These human rights violations transcend the national to the international level (CHRC, 2003; Dean, 2005; Del et al., 2009; Zinger, 2006;), which includes (but is not limited to) the *United Nation's Standard Minimum Rule of the Treatment of Prisoners*[7] (Arbour, 1996; CHRC, 2003) and the *United Nations Convention on the Rights of the Child*[8] (Muncie, 2005). According to Parkes and Pate (2006), "[i]n many countries it is possible to claim an adherence to the principle of universal rights while simultaneously pursing policies that exacerbate structural inequalities and punitive institutional regimes (47). Muncie (2005) highlights how the violation of these types of international standards is due to the fact that although "the convention is persuasive", breaches result in "no formal sanction" (46), thus their value is purely symbolic.

A number of scholars note that the violation of human rights within the prison environment will persist unless an external oversight mechanism is implemented. This mechanism could be aimed at monitoring these issues, providing remedies in cases where violations do take place, and holding accountable those responsible for these violations (Arbour, 1996; CHRC, 2003; Del et al, 2009; Parkes & Pate, 2006; Zinger, 2006). Dean (2005) broadens

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[7] This United Nation's International standard, created in 1955, drafts the necessary components in model institutional systems deemed most appropraite for treating prisoners and managing the institutional environment at an international scale.

[8] This United Nation's Convention, created in 1989, outlines the human rights that should be protected for those under the age of 18. According to Muncie (2005), this convention "estabilished a near-global consensus that all chicldren have a right to protection, to participation and to basic material provisions" (p.45).

this scope, noting that human rights violations will only cease if there is a change in public attitudes regarding broader social inequalities. With this shift, the public would need to become much more critical of what is going on in prisons in order to ensure they are conforming to "the various laws, conventions and treaties that they are already subject to" (Dean, 2005, p.49). Despite the fact that there are numerous reports calling for external oversight, the CSC continues to ignore this recommendation in favour of their more punitive risk logic (Arbour, 1996; CHRC, 2003; Dell et al, 2009; Parkes & Pate, 2006; Zinger, 2006).

According to Zinger (2006), this external mechanism would only be effective if the internal governance mechanism is strengthened, which would require a change in institutional philosophy from that which is punitive, to one centered on human rights. Stern (2002) is in agreement with Zinger (2006), noting that "[s]eeing prisoners as citizens, albeit incarcerated for a time, should help us to move the great prison labyrinths of the 19th century into a model that accords more properly with the 21st century view of democracy and human rights" (138). When considering the failed efforts to effectively shift the prison philosophy to a more feminist-therapeutic model, one must take Zinger's (2006) recommendation with caution. As exemplified by past reform efforts, the traditional punitive regime of the prison continues to persevere either by disregarding alternative recommended approaches, or merely reinterpreting these approaches through existing penal logic so as to realign it with traditional objectives (Carlen, 2010; Del et. al., 2006; Hannah-Moffat, 1999, 2001, 2006a; Kilty, 2006; Maurutto & Hannah-Moffat, 2006).

As illustrated through the literature, risk management couched in feminist and rehabilitative discourse in Canadian corrections raises many questions concerning the ways in which offenders are classified, managed, and controlled. While proponents of the risk-based model claim it is an objective, efficient, and effective method of managing and reducing risky behaviours amongst a risky population, feminist opponents argue that this approach remains oppressive and is an unjust means of responding to the needs of women in prison.

Where the Proposed Project Fits in the Literature

While there are a number of studies that examine segregation and/or self-injurious behaviour among prisoners, there are no in-depth case studies within the Canadian context that attempt to explore the broader systemic factors that potentially influence this behaviour, nor the role discourse plays in both the understanding and responses to such behaviour. A case study of Ashley Smith will illustrate how CSC's risk-based model influenced her untimely death. Such findings could lead to the exploration of similar cases that will further uncover the material realities of not only self-injurious behaviour amongst women prisoners, but of all women prisoners in Canada.

CHAPTER 2 – THEORETICAL FRAMEWORK

REGULATING THE UNEMPOWERABLE FEMALE IN THE NAME OF ‘SAFETY’ AND ‘REHABILITATION’

I began this research journey by exploring the critical feminist critique of how girls' risk is constructed and responded to by the school system following their adoption of zero tolerance policies, as well as how this is done for women and girls in the Canadian youth and adult criminal justice systems. I begin this chapter by situating the current gendered approach to risk management within a broader socio-political context. I then discuss the triangular interdependency between sovereignty, discipline and government, which are relied upon in the criminal justice context to preserve compliance to normative standards of femininity. I also consider the role feminist and psy discourses play in legitimizing these strategies. In closing, I examine how although those deemed 'high risk' can resist this triangle of power to some extent, it is ultimately inescapable as their resistance is interpreted by correctional officials in ways that reinforce and legitimize existing punitive risk logics.

Neoliberal Political Rationality in the Age of Risk

State discourses often legitimize dominant ideologies and preserve compliance to normative standards (Althusser, 1971; Foucault, 1977; Ratner & McMullan, 1983) that are maintained through covert ideological or what Foucault (1979a) refers to as 'disciplinary' techniques that shape individual experiences (Althusser, 1971; Foucault, 1977; Hesse-Biber & Leavy, 2006). The population is socialized into adopting and reproducing these knowledges through techniques embedded in social institutions, including, but not limited to the school, the hospital, and the prison (Althusser, 1971; Foucault, 1979a). According to Foucault (1979a), social compliance in response to these disciplinary techniques, as well as the avoidance of solidarity, resistance, and revolt among the masses is ensured through hierarchical categorization, normalization, surveillance, and supervision.

The use of dominant discourses to regulate human action has both oppressive and exclusionary results for segments of the population (Foucault, 1980; Hesse-Biber & Leavy, 2006). There are specific consequences for women and girls in a patriarchal society, where discourse is constructed based on a white, middle-class, heterosexual, and male normative standard (Hesse-Biber & Leavy, 2006; McCotter, 2001). Often times, the exploitative and repressive nature of dominant knowledges remains largely unquestioned since that which poses a contradictory or opposing message is either excluded or masked in order to strengthen the perceived uniformity and objectivity of those dominant knowledges (Carlen, 2010; Foucault, 1977). Hannah-Moffat (2001, 2006b) argues that in the context of penal reform, in addition to excluding or masking knowledges that do not align with dominant knowledges, subjugated knowledges are "appropriated, redefined, and harmonized with the pre-existing and new managerial and political priorities of an organization" (190).

Over the past four decades, state efforts to preserve the normative ideological structure have been most notable in the midst of complex social transformations, including: economic recessions; globalization; reorganized class relations; changes in the labour force; transformation of the family structure; advancements in technology; and demographic and ecological changes (Garland & Sparks, 2000). Specifically, these social transformations had "begun to erode" the myth surrounding the role of the sovereign state – that being that the government holds monopoly over all social action (Garland, 1996: 448). This erosion threatened the normative ideological structure, as the sovereign state's inability to fully regulate crime (Garland, 1996), national economic activity (Braithwaite, 2000; Ratner & McMullan, 1993) and overall social welfare, became socially recognized (Braithwaite, 2000).

When there is a threat to sovereign power there is typically a reinforcement of disciplinary and governmental power, illustrating the triangular interdependency (Foucault, 1979b); contemporary neoliberalism as the dominant socio-political rationality is a case in point (Hannah-Moffat, 2001). Neoliberal discourses redefine macro and micro problems in a way that displaces responsibility of the state, in terms of the existence and control of social problems, (Manderson, 1997) onto each individual member of the public citizenry (Braithwaite, 2000; Garland, 1996; Garland and Sparks, 2000; Haggerty, 2004). According to Rose (1996b), "…the most powerful way of acting upon the actions of others is to change the ways in which they will govern themselves" (3). Thus, in order to achieve social control in the name of managing the risk of crime, citizens are mobilized to become prudent, responsibilized subjects through increased self-government (Garland, 1996). Specifically, the state decentralized power to a network of private and public agencies and institutions as well as to the individual with the objective of activating them to become regulatory agents responsible for governing their every day activities (Garland, 1996). While the state apparatus may appear smaller as a result of the decentralization of power, it grows by governing-at-a-distance, where discretion is maintained in terms of coordinating, monitoring, and activating regulatory activity in a manner that meets the overall state objectives (Garland, 1996).

The strategies used to achieve these objectives, particularly within the context of crime control, were further legitimized by theoretical explanations (Garland, 1996). According to Garland (1996) and Haggerty (2004), there was a theoretical shift from understanding crime as a product of inadequate socialization or individual pathology requiring state intervention, towards a *criminology of the self* (Garland, 1996), whereby crime is understood as the result of rational choice and routine activities, and consequently as a calculable, motivated, situational and thus predictable event (Garland, 1996; Haggerty, 2004). Not only is criminality conceptualized as the irrational choice of the individual criminal (Garland, 1996; Haggerty, 2004; O'Malley 1992), but victimhood is similarly reconceptualised as a failure to take the necessary precautions (e.g. avoiding dangerous locations) to uphold one's own safety (Garland, 1996).

According to Fee (2000), what Garland (1996) calls 'adaptive strategies' reflect a shift from sovereign power to a reliance on disciplinary power, as the attempt to govern and responsibilize the public has less to do with controlling crime, strengthening the economic structure and enhancing the delivery and availability of social welfare, and more to do with penetrating the public's every day thoughts, behaviour and actions in order to produce docile, productive, and consensual subjects (Ratner & McMullan, 1983). It is by masking these control strategies in the name of broader social, economic and political goals that make these efforts most effective (Garland, 1996; Ratner & McMullan, 1983). While I agree with Fee (2000) that there has been a shift towards a more disciplinary mode of power in light of the threatened sovereign, I would argue that this shift illustrates the dual reinforcement of both disciplinary *and* governmental power, as it is through the latter that the former is often most effective in achieving general compliance.

Barron suggests that we are now witnessing "a culture of risk management, public safety and security consciousness" (2011: 29) that creates connections among state and non-state agencies (Garland, 1996), such as the partnership between the CSC and non-profit organizations like the Elizabeth Fry Society that extends carceral surveillance and control into the community (Kilty & DeVellis, 2010). Aligning state incentives with the goals and aspirations of non-state 'experts' (Hunt, 1993a,b; O'Malley, 1992) and empowering individuals to reduce risk by upholding their own security and reducing opportunity for crime (Foucault, 1977; Garland, 1996; Haggerty, 2004; O'Malley, 1992), contributes to the production of this culture of risk management. Not only are state and non-state agencies, institutions, and members of the general public responsibilized for controlling and managing the risk of crime, so too are criminalized individuals (Garland, 1999; Pratt, 2000). Consequently, prisoners are now responsibilized to manage and control their own risk, most often seen through institutional programming, in attempts to re-socialize those who are criminally motivated to becoming "responsibilized, security-conscious, crime-preventing subjects" (Garland, 1999, p.23). This responsibilization strategy continues beyond institutional release through a string of restrictive conditions placed on the individual that continue to monitor their behaviour and demand self-regulation (Kilty & DeVellis, 2010; Pratt, 2000).

A Women-Centred Approach within a Neoliberal State

According to Hannah-Moffat (2001) and Kilty (2006), the governance strategies and criminological knowledges that emerged during these complex social transformations has had a major impact on the reform of women's corrections in Canada. Specifically, governance strategies employed as a means to preserve compliance to the normative standard have become a central feature of the CSC's "new women-centred approach to the management, reform, and healing of incarcerated women" (Hannah-Moffat, 2001: 164). This strategy has hidden behind feminist and therapeutic ideals, as its selective adoption strengthens penal power by producing and reproducing new and existing governance strategies (Carlen, 2010; Carlen & Worrall, 2004; Dell et al., 2009; Hannah-Moffat, 2001; Kilty, 2006).

As feminist reformers adopted Garland's notion of the *criminology of the self* to explain female criminality, the CSC was able to use this framework to further their existing governance objectives. However, instead of medicalizing and pathologizing criminalized women, feminist reformers involved in drafting *Creating Choices* (TFFSW, 1990) had deemed them rational actors sharing a general set of needs, social inequalities and victimization that mitigate their decision-making. Reformers argued that denying responsibility and accountability often leads to women's disempowerment (Barron, 2011; Bosworth, 1999; Hannah-Moffat, 2001) by assuming they lack agency or the ability to make pro-social choices or to resist and overcome oppressive situations (Hannah-Moffat, 2000a).

In order to overcome these inequalities, feminist reformers recommended empowering women by "transforming […] their […] lives […] by limiting gender oppression through a restructuring of power relations that allow women to make choices and regain control of their life" (Hannah-Moffat, 2000a: 521). Specifically, they recommended the implementation of a number of principles to guide the new women-centered approach in corrections, including empowering women through the providence of meaningful choices, a supportive institutional environment, and fostering dignity and respect among prisoners and staff. Ideally, these changes would help women gain a sense of autonomy, strength, and control over their own lives, which would lead to them accepting responsibility for their choices in spite of their conditions, and thus to make responsible decisions. Lastly, shared responsibility refers to the holistic involvement of the individual, the government, and the community to help "foster the independence and self-reliance among federally sentenced women which will allow them to take responsibility for their past, present and future actions" (TFFSW, 1990).

According to Hannah-Moffat (2001) "'a women-centered empowerment model' of punishment" (521) is uncritically supported by reformers and bureaucrats, as "it feminizes the discourse and practices of imprisonment without fundamentally challenging or restructuring the disciplinary relations of power in prisons" (521). Specifically, the recommendations advocated are both problematic and limited within the criminal justice context, as notions of choice and control are highly constricted and determined by correctional authorities (Hannah-Moffat, 1999, 2001c 2006; Kilty, 2006, 2008; Pollack, 2006). Consequently, these guiding principles, although well-intentioned, were co-opted by the dominant risk logic which "essentializes gender, reframes victimization, and produces contradictory interpretations of choice and responsibility" (Hannah-Moffat, 2006, p.251). By aligning the Task Force recommendations with the risk logic, the CSC (re)produced existing punitive governance strategies while giving the illusion that the treatment and reintegration of criminalized women is being improved (Carlen, 2010; Dell et. al., 2006; Hannah-Moffat, 1999, 2001, 2006a; Kilty, 2006; Maurutto & Hannah-Moffat, 2006). The following section examines the technologies of the self and the technologies of discipline utilized in correctional attempts to govern and rehabilitate criminalized women.

Technologies of the Self: *Empowering the Powerless*

Although the TFFSW (1999) highlights women's gender-specific needs, including women's victimization experiences and feelings of powerlessness, there remains "a sense of optimism that women's prison programming could help women to become empowered and to heal from the effects of experiences of victimization" (Pollack, 2006: 216). Contrary to this belief, rather than empowering or healing women, correctional programming individualizes and responsibilizes women for not only their past and current condition, but also for their own healing and reform (Barron 2011; Hannah-Moffat, 1999, 2000a, 2001, 2006a; Kilty 2006, 2008a,b).

Specifically, the CSC, as well as the Youth Criminal Justice System (Barron, 2011) creates the illusion that they are empowering criminalized women and girls (Barron, 2011;

Hannah-Moffat, 1999, 2000a, 2001, 2006a) by providing them with the opportunity to empower themselves through their involvement in correctional services and programmes. In reality, these options are far from empowering (Barron, 2011; Hannah-Moffat, 1999, 2000a, 2001, 2006, Kilty, 2006, 2008a,b, 2012b); women have no input on what needs require intervention, as this is decided based on what areas are statistically linked to recidivism (Hannah-Moffat, 2001, 2006a), and available programming is saturated with correctional assumptions regarding the moral character of women, judging them on their "past present and future conduct and choices" (Hannah-Moffat, 1999: 83). According to Pollack (2006), this illustrates how the central target of correctional programming "is the notion of the criminal mind or personality" (243) and teaching prisoners that how they perceive the world is deficient, requiring them to instead adopt the normative correctional perspective of what choices are deemed responsible and moral (Barron, 2011; Hannah-Moffat, 1999; Kilty, 2008b; Pollack, 2006).

Rather than understanding criminalized women and girls (Barron, 2011) "as victims of circumstance" they are deemed "incapable of adequately managing needs in a way that averts the seemingly foreseeable risks of victimization, poverty, racism and unemployment" (Hannah-Moffat, 2005: 42). They are thus regulated through their needs, as they are expected to "'cure' [themselves] and manage [their] own risk by satisfying [their] criminogenic needs" (Hannah-Moffat, 1999: 84). Ideally, by responsibilizing criminalized women (Barron, 2011; Hannah-Moffat, 1999, 2001, 2005; Kilty, 2006, 2008a,b) and providing them with the skills to become prudent security-conscious subjects (Garland, 1996, 1999), their compliance to the normative standard is strengthened (Garland, 1990, 1996; Hannah-Moffat, 2001; Pratt, 2000; Ratner & McMullan, 1983).

A False Sense of Freedom

Women are also falsely empowered through their presumed freedom to voice their concerns whenever they feel as though they have been unjustly treated (Arbour, 1996; CHRC, 2003; Parkes & Pate, 2006; Zinger, 2006) or accused of committing a particular offence (Abramovitch, Petersen-Badali & Rohan, 1995; Dean, 2005). One avenue through which they may do so is their role in the court system; however according to Dean (2005), this experience is often defined by youth as both "degrading and disempowering", as prisoners may be unaware of "their rights or the procedures unfolding before them" (23). Some women choose to resist "the authority of the courts" (28) by refusing to actively participate in court proceedings (Dean, 2005).

The second institutional means of providing a (false) sense of empowerment is through the internal Offender Complaints and Grievances System that exists in federal prisons in Canada (Arbour, 1996; Parkes & Pate, 2006; Zinger, 2006). In theory, this system provides prisoners with an outlet to voice their concerns by writing a letter regarding their treatment and/or institutional environment. According to policy, these letters are to be responded to either in 15 working days, if deemed a high priority[9], or 25 working days, which is standard for complaints deemed routine priority (CSC, 2011). This system has been criticized for being inefficient in providing remedies or holding anyone accountable when a grievance is justified (Arbour, 1996; Parkes & Pate, 2006; Zinger, 2006). According to Parkes and Pate (2006), this system is especially unjust for women designated as high-risk, as their grievances are often deemed a reflection of them as "difficult to manage" and failing to adjust to their institutional environment, which often means that their security level is not reviewed.

[9] Grievances are defined as 'high priority' if they concern a violation of the prisoners "rights and freedoms" (CSC, 2011a).

Barron (2011) suggests that correctional efforts to empower women are achieved through the expectation that girls abide by "the 'coaching and correcting' rules" (79). Specifically, they are expected to coach and correct their own behaviour, as well as that of their fellow peers. While the objective of this governing technique, according to authorities, is to protect both prisoners and staff, it also plays a strong role in breaking prisoner solidarity so that they turn on rather than support one another (Barron, 2011). According to Fee (2000), responsibilizing strategies, while disciplinary, are not coercive. Rather, disciplinary power can be carried out based on the willingness and/or desire of submission where the abiding subject is awarded for their compliance to the normative expectations and rules. Criminalized women are rewarded through the reduction of their security levels both inside and outside the prison (Barron, 2012), or through early parole release (Hannah-Moffat, 2004b; Hannah-Moffat, Maurutto & Turnbull, 2009). On the other hand, failure to comply with these expectations, including following one's medication plan and required programming, can result in an increase in one's security level (Barron, 2012), and early release being denied (Hannah-Moffat, 2004b, 2011; Kilty, 2012b; Hannah-Moffat, Maurutto & Turnbull, 2009), or revoked (Kilty & DeVellis, 2010).

Extending the Carceral Continuum

While prisoners who are seen as having been successfully empowered are often granted release, they are still deemed too risky to fully self-regulate (Kilty & DeVellis, 2010; Shantz, Kilty & Frigon, 2009). Specifically, ex-prisoners are granted a false sense of autonomy, as they remain subject to a string of conditions that regulate their behaviours and actions upon release (Barron, 2011; Hannah-Moffat, 2000a, 2001; Kilty & DeVellis, 2010; Maidment, 2006; Pratt, 2000; Shantz, Kilty & Frigon, 2009; Sim, 2005; Turnbull & Hannah-Moffat, 2009; Worrall, 2011). Not only are they governed through the expectation that they abide by their parole conditions, the CSC governs-at-a-distance through a regulatory web of community agencies including transitional houses, and social work and medical agencies (Kilty & DeVellis, 2010). This regulatory web is reinforced through the Task Force's (1990) guiding principle of shared responsibility. In reality, responsibility is displaced onto the individual, who is monitored by public agencies through techniques of "cross-governance", including constant surveillance, documentation and communication among professionals "as they move through the different social spheres (Kilty & DeVellis, 2010: 141). As community agencies are often fiscally dependent on the state, they similarly employ correctional governance strategies that responsibilize ex-prisoners and further deny them a sense of agency (Kilty & DeVellis, 2010). This regulatory web that invokes cross-governance strategies reflects what Foucault (1979a) describes as the carceral network.

For girls, this carceral network extends to include the school system (Barron, 2011). Following the adoption of zero tolerance policies, the school has become increasingly punitive towards those who resist institutional rules (Skiba & Peterson,1999, 2000; Wald & Losen, 2003). A common punitive response to 'unruly' behaviour is to "dis-invite" unruly "youth back to school" (56) by transferring them to an alternative system (Barron, 2011). By transferring risky youth to an alternative school, their behaviour is "individualized and problematized as an infraction of other students' freedom" (Barron, 2011: 56). According to Barron (2011), transfers are relied upon in order to ensure the risky subject does not contaminate the preservation of compliance amongst the student body. While discontinuation of school is avoided through institutional transfers, this solution often has exclusionary outcomes for most, as it "reinforces the message to them that they do not 'fit' in conventional institutions" (Barron, 2011: 57). It has been suggested by Wald and Losen (2003) that the adoption of a more punitive school model has produced a 'school-to-prison pipeline', whereby youth deemed high risk have a heightened chance of ending up in prison in the future. According to Cohen (1985), the school's adoption of a more punitive approach is not uncommon, as responses to 'unruly' behaviour are often replicated throughout multiple regulatory agencies.

Technologies of Discipline and Modern Day Gate-Keepers

Explanations of 'unruly' behaviour may legitimize and/or reassert the power of the institution; in the carceral context these explanations are rooted in psychiatric power (Foucault, 1974). According to Rose (1996a), this reliance stems from the fact that psy experts have "[a] particular kind of social authority, characteristically deployed around problems, exercising a certain diagnostic gaze, grounded in a claim to truth, asserting technical efficacy, and avowing humane ethical virtues" (86). The truth producing power of psychiatry is problematic, however, as it is an ideological tool used in not only the hospital (Leifer, 2000), but in multiple social institutions (Kilty & DeVellis, 2010) and is subsequently used to disguise mechanisms of social control as mental health treatment (Barron 2011; Kilty & DeVellis, 2010; Leifer, 2000).

Within the correctional setting, psy power legitimizes knowledges about the criminal subject that are used to responsibilize the individual via correctional programming (Pollack, 2006), as well as a number of punitive disciplinary responses, including involuntary psychopharmacological injections and segregation, in the name of treatment and reform (Hannah-Moffat, 2001; Kilty, 2006, 2008a,b; Maurutto & Hannah-Moffat, 2006; Rose, 2000). Kilty (2012b) problematizes the continued use segregation-like practices when transferring women "to regional treatment or psychiatric centers [as] this strategy contradicts the women-centered philosophy that has been adopted by the service" (Kilty, 2006: 172).

The unquestioned acceptance of the psy-sciences as a means of understanding and responding to undesirable behaviour further marginalizes criminalized women in particular, by constructing their distress as pathological (Barron, 2011; Chesler, 2005; Kendall, 2000; Kilty, 2008a, 2012b; Pollack, 2006; Riessman, 1998; Robert et al., 2007; Ussher, 1992). This response is unsurprising to Kendall (2000), who writes: "[t]he further away individuals are from the dominant norm, the greater is their perceived difference and deviance. People's 'otherness' is then used against them to legitimate their own oppression and maintain social inequalities" (85).

While the CSC continues to employ the hybrid feminist-therapeutic-actuarial governance model (Hannah-Moffat, 2000) to produce responsibilized, prudent, security-conscious subjects, this approach continues to be resisted by a number of criminalized women. Resistance to dominant governance strategies is considered highly problematic by the CSC, as these strategies are deemed necessary to preserve the gendered ideological structure (Hannah-Moffat, 2001). The following section examines institutional strategies used to reaffirm sovereign power during times of crisis, and how these strategies are used in response to the resistant prisoner to achieve their compliance.

Disciplinary Strategies: Responding to the Unempowerable Subject

As adaptive strategies are implemented to activate a network of public, private and individual regulatory activity, strategies of denial are used to reaffirm sovereign power (Garland, 1996: 459). Specifically, these strategies, promoted by the 'political arm of the state', refer to the implementation of punitive policies as a way of reaffirming the myth that the state does in fact have a monopoly on criminal justice matters, (Garland, 1996) as well as to displace attention away from broader structural problems (Box, 1983; Braithwaite, 2000; Garland, 1996; Pratt, 2000; Ratner & McMullan, 1983). In attempts to preserve compliance to normative standards of behaviour during times of crisis, repressive state strategies (Althusser, 1971; Ratner and McMullan, 1983; Sim, 2005), or what Foucault (1979b) refers to as government and disciplinary powers, are reinforced.

According to Haggerty (2004), the reliance on punitive strategies reflects how crime policies are no longer based on research or empirical evidence, but are instead determined by 'political action committees and political advisors' who are in line with the ideological standpoint of the government (226-227). However, Garland (1996) suggests that there is criminological knowledge that accompanies these punitive policies, which he refers to as *criminology of the other* (461). According to this theoretical perspective, the criminal subject is constructed as "the threatening outcast, the fearsome stranger, the excluded and the embittered" (Garland, 1996: 461). Consequently, the political response deemed most appropriate consists of demonizing the offender, mobilizing public fear, and promoting a punitive state response (Garland, 1996: 461).

The process of pathologizing and demonizing criminalized women is illustrated by CSC's treatment of women deemed high risk and high need. Although high risk/need women and girls are presumed to receive the majority of institutional resources, this materializes into increased punitive rather than therapeutic interventions (Barron, 2011; Hannah-Moffat, 2001; Kilty, 2006), which runs counter to the empowerment philosophy envisioned by the 1990 Task Force (Hannah-Moffat (2000a). As a result, the "mental health statuses" of criminalized women are "inscribed as merely one of many other prospective criminogenic risk factors" (Kilty, 2008b: 320). Kilty (2008a) questions the correctional fusion of therapeutic and correctional discourses, stating: "[i]f it is the absence of reason that separates madness from badness, madness is beyond the individual's control and should be treated differently from punishable behaviours". According to Rhodes (1998), the prison system distinguishes accountability based on whether the disorder(s) fall under Axis I versus Axis II in the Diagnostic and Statistical Manual of Mental Disorders[10]. Those whose disorder is identified under Axis II, personality disorders, are determined to be "a purposive agent" (304) whose "misbehaviour is presumed to be a deliberate manipulation" (Rhodes, 1998: 304). Persons diagnosed with such disorders are seen as defective in character while still preserving the will to act freely. As a result, correctional staff are able to construct women who arguably fall under Axis II as "manipulative 'bad women'" who fail "to self-responsibilise" and who are "attention seeking" (Kilty, 2008a). Consequently, as undesirable behaviour such as self-injury is interpreted as a deficiency with one's mental health, punitive responses are legitimized as the behaviour is reconstructed as an act of choice (Kilty, 2006; Thomas et al., 2006).

Disciplinary techniques employed to those categorized as high risk/need, include: removal of personal belongings (Martel, 2001); denial of temporary absences, phone calls, and visitations (Barron, 2011); lengthened sentences; use of restraints (Barron, 2011; Hannah-Moffat, 2000a; Kilty, 2006); (over)medication (Barron, 2011; Kilty, 2006, 2008a,b); "use of force, involuntary transfers, searches…and the transfer of some women to segregation units in men's maximum security pen" (Hannah-Moffat, 2000a: 526-527). Lastly, according to Barron (2011), high risk/need girl prisoners pose the chance of being stripped of their 'youth' title by

[10] The Diagnostic and Statistical Manual of Mental Disorders (DSM), first published in 1952 by the American Psychiatric Association, is a five version universal document outlining a uniformed set of criteria for classifying and categorizing mental disorders (American Psychiatric Association, 2000).

transfer to the adult system where they can be responsibilized and punished as adults. Not only does segregation exacerbate existing problematic behaviour in some, it may produce other forms of undesirable behaviour (Frigon, 2003; Kilty, 2006; Martel, 2006a,b; Thomas et al., 2006).

While segregated, women often punish themselves via self-injury to manage and negotiate the assaults on their identity (Kilty, 2006, 2008b; Martel, 2006a,b). Thus, in spite of the unequal power relations between prisoners and correctional staff, prisoners are capable of resistance as a means of negotiating power by preserving a sense of agency (Bosworth, 1999; Dell et al., 2009; Frigon, 2003; Kilty, 2006, 2012a). In this context, self-injury is a strategy of resistance that exemplifies Frigon's (2003) claim that the body acts as not only a site of control, but also a site of resistance. While it is possible to resist institutional efforts aimed at producing a docile, consenting subject, according to Foucault (1979a) such resistance will inevitably lead to one being constructed as an 'institutional product'. By 'institutional product', Foucault (1979a) is referring to the fact that incarceration not only punishes those identified as delinquent, it also produces delinquency.

Whether it is through refusal to disclose information, follow rules and regulations, build relationships with correctional staff, or self-injury, these methods of resistance ultimately lead to the (re)production of a 'risky identity' that is legitimized through feminist, psy, and risk discourses (Barron, 2011). Hannah-Moffat (2001) states that according to the CSC, those designated as high risk/need have the power to strip away this label and the associated punitive consequences, by participating in their own empowerment through submission to the "carceral regime by engaging in risk-minimizing conducts such as participating in programs, refraining from self-injury and from injuring others, and complying with the institution's regulations" (p.

186). In actuality, this implies that it is only when the prisoner accepts her institutional oppression and refrains from resisting the gendered ideological structure that the disciplinary methods will cease to be employed.

Conclusion

Whether or not the resistant woman prisoner submits to dominant objectives, the risky identity is permanent. Either deemed mad, bad and/or risky, women who come in contact with different social institutions in a patriarchal society are expected to align themselves with gendered behavioural and aesthetic ideals. Continued resistance only leads to continued discipline, and as governance and disciplinary power simultaneously intensify, their oppressive and marginalizing effects remain hidden behind feminist and therapeutic risk discourse.

In the next chapter, I discuss the methodological approach I used to conduct the analysis. First, after revisiting my research problem and objectives, I discuss the research paradigm and theoretical lens that helped me understand my data and draw conclusions. Second, I provide an overview of my data set and the methods (i.e. case study and thematic content analysis) I adopted to systematically conduct my analysis. Last, I outline the themes that emerged from the data, and the evaluative criteria considered when finalizing these themes.

CHAPTER 3

THE METHODOLOGICAL TOOLBOX

Research Problem & Objective

The treatment of women in the Canadian federal correctional system is widely criticized, and dates back to the opening of the first Prison for Women in Kingston, Ontario, in 1934 (P4W). Contemporary efforts made by the CSC to improve the treatment of women prisoners were identified after the highly publicized and controversial 'incident' at P4W in 1994[11]. These efforts followed Justice Arbour's (1996) review of the incident and illustrated a movement promising positive change that feminist scholars have called largely unsuccessful. Arguably, the insufficient outcome of these efforts is largely do to the normative reconstruction of women's undesirable behaviour as both 'risky' and 'abnormal', which legitimizes the reliance of the risk-based model as the guiding structure of women's corrections. In light of these insufficient attempts, Correctional services continue to function through a gendered risk-based model that places risk assessment and control at the forefront of their initiatives (Dell et al., 2009; Frigon, 2003; Parkes, & Pate, 2006; Pollack, 2009). Correctional responses that raise the most concern for this thesis are the use of segregation, restraints, and force as the chosen political responses to self-injurious behaviour by women prisoners. In order to explore this further, I conducted a case study of the correctional treatment and ultimate death in custody of Ashley Smith.

The case of Ashley Smith was chosen for this research because it raises a number of questions concerning whether her self-inflicted death was partially the result of CSC's political understanding and response to her self-injurious behaviour as both 'risky' and 'abnormal'. Specifically, it is debated whether the correctional understanding of women's undesirable

[11] On the evening of April 24, 1994, a male Institutional Emergency Response Team (IERT) completed a cell extraction and strip search of the eight women confined in the segregation unit at the Kingston Prison for Women (Arbour, 1996). An inquiry conducted by Justice Louise Arbour (1996) determined that the eight hour ordeal was a violation of human rights.

behaviour (including self-injury) as ‘risky’ and ‘abnormal’ influenced their response to Smith’s self-injurious behaviour in particular (notably, lengthy time in segregation, restraints, and the use of force) and precipitated her death. The objective of this comparative analysis is to identify how Smith, her behaviour, and the correctional responses to her behaviour, are constructed and legitimized, and the relationship in which construction has on broader social constructions of women’s undesirable behaviour. Through a comparative analysis, I am able to identify how CSC (2009), Correctional Investigator Howard Sapers (2008), and New Brunswick Ombudsman and Child and Youth Advocate Bernard Richard (2008) construct this case, Smith, the correctional system writ large, and the different actors in the correctional system, and how they explain who and what is responsible for Smith’s death. While conducting the analysis, I (re)visited the feminist literature outlined throughout the previous chapters in order to draw the connection between Smith’s individual experiences, and the broader systemic forces that appear to play a critical role in shaping these experiences. The following research questions guided this study:

- What influence, if any, did the political response applied within each social institution have on Smith’s undesirable behaviour?
- What influence, if any, did CSC’s political response to self-injurious behaviour have on the ultimate death of Ashley Smith?
- What influence, if any, did therapeutic-risk discourse play in legitimizing the institutional response to Smith’s behaviour?
- What role, if any, did psy experts play in determining what responses were most appropriate for Smith?

Methodological considerations

Research Paradigm: Understanding & Emancipation

Before exploring a particular phenomenon of interest, a researcher must identify the research paradigm in which they are positioned (Blaikie, 2006). According to Annells (1996), a paradigm is a way of viewing the world and an understanding of how the world is perceived. It informs the researcher of what is important, legitimate, and reasonable in relation to the inquiry (Annells, 1996). A research paradigm is thus the source of one's epistemological framework and it is the ontological and epistemological assumptions embedded within this paradigm that guide a researcher's methodological decisions (McCotter, 2001).

As discussed in greater detail later in this chapter, acknowledging one's subjective position is imperative in order to understand and justify one's decisions throughout the research journey. According to McCotter (2001), your theoretical framework is situated under one of four broad paradigms of inquiry, namely: prediction, understanding, emancipation, and deconstruction. After reviewing these four paradigms, I recognize that I do not fall under one sole category, but rather my theoretical assumptions are situated under both the understanding and emancipation paradigms. The understanding paradigm is suitable since my objective is to gain a deeper understanding of how Smith, her self-injurious behaviour, the correctional response to this behaviour, were constructed by the CSC the Correctional Investigator, and the Youth Ombudsman. My research objectives also fit well in the emancipation paradigm, since I problematize how CSC constructs Ashley Smith, self-injury, and their correctional response in ways that go beyond what has or can be suggested by Sapers (2008). While Howard Sapers (2008) criticizes CSC policies and their violation of these policies in the Ashley Smith case, as a federal government employee he is still limited by his political positioning. Subsequently, I am able to think beyond prison reform, a framework that shapes Sapers' (2008) evaluation and recommendations, by problematizing not only the violation of CSC policies, but also CSC's continued legitimization of these policies. Unlike Sapers, I advocate for emancipatory action in the form of alternatives to incarceration given the systemic problems that compromise the treatment of women prisoners in Canada.

Epistemological Position: Constructivism

It is important to acknowledge the epistemological assumptions situated within your research paradigm and how they influence how you understand and justify the knowledges that are collected and produced, as these assumptions influence data interpretation (Blaikie, 2009). Epistemologically speaking, I must specify my assumptions concerning what can be known, how the knowledges I am examining were produced, and what the criteria are to help me decide what is considered legitimate and adequate knowledge (Blaikie, 2009). According to Hesse-Biber and Leavy (2006), epistemology influences every step of the research journey, including: topic selection, research questions, method(s) of analysis, and the theoretical lens. Often times our understanding of the world and our assumptions about truth are unconscious, but they are influenced by our cultural and historical context (Carter & Little, 2007; Mills, Bonner, Francis, 2006).

Constructivist scholars look at how knowledge is constructed by each individual, dependent upon the historical, situational, and/or temporal context of each individual (Best, 1995; Charmaz, 2000; Mills et al., 2006; Jonassen, 1991; Phillips, 1995; Stern, 2007). Guzzini (2000) notes that the existence of external natural phenomenon, separate from thought, is not denied by constructivism. Rather, the constructivist position rejects the notion that natural phenomena are concepts of knowledge that are independent of discursive and social practices (Guzzini, 2000). What is identified as a meaningful event or object is dependent on how the world is interpreted, and therefore socially constructed (Guzzini, 2000). According to Jonassen (1991), individuals comprehend several interpretations of the world, and then use these as a way to reach their own interpretation.

When acknowledging the interactive role of knowledge construction, it is also imperative for the researcher to acknowledge themselves as an integral participant in the construction of meaning, rather than an objective observer (Best 1995; Charmaz, 2000; Guba & Lincoln, 2004; Mills et al., 2006). In order to fully recognize their role, researchers should acknowledge how their underlying assumptions and experiences influence the construction of meaning (Best 1995; Charmaz, 2000; Guba & Lincoln, 2004; Mills et al., 2006). Charmaz (2000) encourages researchers to engage in creative writing in order to express how their participants (or in this case, texts) construct their lives (or contexts). Keeping a research diary is recommended by a number of scholars as a means to maintain an in-depth account of decisions, motives, and assumptions that influence the analysis process (Rolfe, 2004; Mauthner & Doucet, 2003; Koch, 1998; Malterud, 2001). In line with these recommendations, I have engaged in reflexivity by recording my thoughts, concerns and biases throughout the research process.

Constructivism Debate:

According to Best (1995), critics argue that constructivists are biased in a political or moral sense, and that they will overlook the often times invisible or marginalized claimsmakers. Constructivists disagree, stating that the marginalized are not overlooked, as exemplified in case studies on social movements that support the rights of the marginalized (Best, 1995). Furthermore, Best (1995) argues that contrary to popular belief, it would be an inaccurate assumption to state that social conditions are objective while claims are subjective (Best, 1995). In fact, all social problems, and the conditions that presumably lead to such problems, are only of interest to researchers because the issue is constructed as a problem requiring examination. Whether referring to social problems, conditions, or even social structures, all knowledge is constructed through social interactions and interpretations.

I disagree with Best's (1995) opinion on subjectivity and objectivity, because while knowledges are individually constructed, these constructions have material effects and are reproduced and legitimized through dominant discourses and practices in an attempt to maintain the status quo. Phillips (1995) emphasizes movement away from the relativist position of constructivism, arguing that the tendency to justify knowledge production as entirely a result of consensus or social process disregards the constraints that influence the production of knowledge. In terms of my research, I wish to look at the production and reproduction of correctional knowledges about Ashley Smith and how these are influenced by gender.

Theoretical lens: Critical Feminism

According to Creswell (2003), epistemological assumptions are engrained within a theoretical framework. The theoretical lens that will guide and shape the way I interpret the construction of knowledge is critical feminism. Critical feminism is interested in the production and reproduction of divisions of power with respect to race, socio-economic status, gender, and sexuality, as well as how these divisions are influenced by historical and social conditions (Annells, 1996; Kincheloe, 2002; McCotter, 2001). Critical feminist scholars share an interest in looking at the material conditions of our lives and how they result from socially oppressive structures and identify the changeable nature of these conditions (Annells, 1996; Hesse-Biber & Leavy, 2006; Kincheloe, 2002; McCotter, 2001; Plummer & Young, 2010).

CSC implements policy and practices that are deeply embedded in a structure of gendered inequality, and continue to endorse patriarchal concepts of femininity, such as compliance and passivity[12] (Dell et al., 2009). Those who resist this feminine ideal, through behaviour such as self-injury, are perceived as both unfeminine and misbehaved. Such resistance is responded to through punitive measures, such as segregation, as a strategy to control and regulate women prisoners (Dell et al., 2009). CSC continues to legitimize these practices by constructing women's behaviour as manipulative and as a risk to the safety and order of the institution (Dell et al., 2009; Kilty, 2006).

Language in particular, is a common tool used to regulate and dominate human action and consciousness (Hesse-Biber & Leavy, 2006). Specifically, I identify how language and correctional discourse are potentially used to remove responsibility from CSC. By acknowledging dominant discourses and practices, such as those which centre on the notions of responsibility, safety and mental illness, I may work to destabilize and uncover the oppressive and gendered underpinnings in order to encourage emancipatory action in relation to the treatment of women prisoners (Hesse-Biber & Leavy, 2006).

Data Selection & Collection

According to Berg (2006), when determining what data will be collected to conduct a case study, it is critical to decide upon the extent to which you will examine the social

[12] While the correctional goal of achieving compliance and passivity is expected for women *and* men, women remain disproportionately punished when resisting this objective (Dell. et al., 2009).

phenomenon in question. Based on the available data, time constraints, and the specificity of my research question in relation to one particular case, I will collect a purposive sample of publicly available textual data (Berg, 2007; Blaikie, 2009; Hesse-Bieber, 2006). It is critical for a researcher to identify what data will and will not be included in order to acknowledge the barriers to transferability (Blaikie, 2006). For the purpose of this research, I analyzed all public documentation with respect to Smith's case, released by the CSC, the Office of the Correctional Investigator (OCI), and the Office of the Ombudsman and Child Youth Advocate, along with the CSC policies on self-injury, segregation, institutional transfers, and use of restraints and force. Specifically, I analyzed Richard's 2008 report on the Smith case, titled: *The Ashley Smith Story*; Sapers' 2008 report titled: *A Preventable Death;* and CSC's 2009 report responding to Sapers' (2008) report, titled: *Response to the Office of the Correctional Investigator's Report: A Preventable Death and the CSC National Board of Investigation into the Death of an Offender at Grand Valley Institution for Women*, as well as federal correctional policies related to segregation, institutional transfers, self-injury, and the use of restraints and force. This particular data set was chosen in order to capture the diverse state positions on Smith's behaviour, incarceration, and death. Any document that was not published by the CSC, the OCI, or the New Brunswick Office of the Ombudsman and Child Youth Advocate in relation to the Smith case was excluded from the sample.

Methods of Analysis: Case Study & Thematic Content Analysis

Case Study

While the case study method was widely accepted after its development in the 1920s, it was largely disregarded by the 1950s, presumably a result of the rise in positivism. By the

1980s, coinciding with the resurgence of qualitative approaches to social science research, case study method re-emerged specifically in the area of evaluation, nursing research, and British sociological research (Blaikie, 2009). Ruddin (2006) and Stake (1978) acknowledge that case studies, both subjective and episodic in nature, are often opposed in favour of correlational or experimental research. While the case study method may not be an appropriate approach when the goal is to produce explanations or causal laws, it is appropriate when the aim is to produce in-depth descriptive inferences and to facilitate situated knowledge and understanding (Blaikie, 2009; Gerring, 2004; Ruddin, 2006; Stake, 1978). This is due to the fact that it would not be wise to make generalizations from a singular unit of analysis. For my research, I have conducted an in depth examination of the Smith case; therefore my data focus on federal correctional policies regarding self-injury, segregation, institutional transfers, use of restraints and use of force policies, as well as documents related to her case. While I do not generalize findings to all women in segregation, my unit of analysis may be generalizable to other like cases.

According to Siggelkow (2007), case study research should be a chosen method in order to create motivation, inspiration, and illustration. More specifically, in-depth analysis on a single unit can enhance motivation for further research on the broader phenomenon; it can inspire the generation of new theories to understand a particular phenomenon; and it can illustrate causal relationships in a more direct fashion that would be unattainable through a larger empirical study (Siggelkow, 2007). I chose the case study method in order to increase the motivation to conduct further research on the CSC's response to women's undesirable behaviour; inspire further inquiry into how the CSC comes to understand this behaviour; and to investigate possible links between the construction of women's undesirable behaviour, the CSC's policy on self-injury, and the ultimate death of Ashley Smith.

Coding techniques incorporated from grounded theory were utilized to conduct a thematic content analysis of the data. While my strategy is inductive, I acknowledge that framing this research with a critical feminist lens allowed me to re-centre gender and power relations as a central component of the analysis. The following section consists of an overview of the analytic process.

Thematic Content Analysis

Qualitative content analysis is a method of interpreting data through the systematic process of identifying and coding patterns or themes concerning a particular phenomenon (Hsieh & Shannon, 2011). It examines and interprets both the manifest content, i.e. surface level meaning; and latent content; i.e. the underlying meaning, motives, consequences, and process of verbal and written productions of language (Boyatzis, 1998; Bros & Tarnai, 1999; Elo & Kyngas, 2007; Graneheim & Lundman, 2004; Gray, Williuamson, Karp, & Dalphin, 2007; Kolbe & Burnett, 1991; Sandelowski, 1995; Stern, 2007).

The overall objective of content analysis is to develop a better understanding of a phenomenon and to generate new knowledge (Bros & Tarnai, 1999; Hisieh & Shannon, 2011; Kolbe & Burnett, 1991; Schilling, 2006). Specifically, I have identified themes regarding the political responses to the Smith case offered in published documents by CSC, Howard Sapers, and Bernard Richard as well as correctional policies concerning self injury, segregation, institutional transfers, and use of restraints and force. By generating themes, namely: (1) *Perpetual Resistance: From Delinquent Girl to Unempowerable Prisoner*; (2) '*Unempowerable' Prisoner: Dual Workings of Governance & Discipline*; (3) *Strengthening the Triangle of Power: Enforcing Compliance at all Cost*; and (4) *Technologies of Power Hidden Behind a Therapeutic-*

Risk Cloak, I was able to explore how the authors legitimize and/or delegitimize Smith's correctional treatment, as well as the responsibility for her death, at a much deeper level. With this method, I have been able to draw a broader understanding of how these themes relate to the systemic treatment of women prisoners in Canada.

According to Elo and Kyngas (2007), the thematic content analysis approach chosen by an individual researcher is dependent on their conceptual or theoretical framework, as well as the phenomena of interest. While utilizing an inductive strategy (Baikie, 2009), by allowing themes to emerge through the data rather than formulating pre-determined categories, my theoretical lens has influenced how I interpreted my data – namely, by maintaining gender and power relations as the central point of analysis. I borrowed coding techniques offered by the grounded theory approach, which Boyatzis (1998) suggests influences the organizational and coding process. Specifically, I identified concepts from the data through an iterative analysis[13] process. According to Ryan and Bernard (2003), this approach is useful because it allows the researcher to be open to the presence of unanticipated themes that may arise from the data.

A common criticism of qualitative content analysis is in relation to the subjective nature of data interpretation and meaning construction, which may result in the failure to fully understand or identify meaning and patterns presented within the text (Boyatzis, 1998; Bros & Tarnai, 1999; Hsieh & Shannon, 2011; Irving, 2009; Kolbe, Burnett, 1991). Graneheim and Lundman (2004) and Ryan and Bernard (2003) stress the need for awareness and

[13] An iterative analysis process is one where the researcher systematically "moves back and forth between design and implementation to ensure congruence among"(Morse, Barrett, Mayan, Olson & Spiers, 2002: 17) one's research questions, methodological approach, literature and analysis.

acknowledgement of one's subjective influence on the production of meaning. Since the researcher collects, analyzes and produces the conclusive results, it is critical to ensure adequate training and transparency in the coding and analytic process (Graneheim & Lundman, 2004). The researcher must balance their subjective perspective of the phenomena in order to allow meaning to unravel, rather than imputing meaning that may not actually be present. Kracauer (1952) notes how even when multiple qualitative assessments on the same issue produce nearly equal findings you cannot objectively determine that the findings reveal "truth". While this may be the case, it does not reflect a lack of control on the part of qualitative content analysts since determining truth is not a goal of the research enterprise. The data analysis process consisted of open coding, axial coding and identifying the conditional/consequential matrix within the data. The following offers a detailed overview of my analysis process, followed by a description of how I visually illustrated my findings.

Grounded Theory Coding Techniques

Open coding involves developing initial codes (Mills et al., 2006) that represent thematic indicators (Boyatzis, 1998); once a minimum of three interrelated codes were identified, I categorized them as a specific theme of the data. The purpose of ensuring that there are three codes confirming the generation of a particular theme is to minimize my own biases and strengthen the reliability of my analysis. Through the open coding process, I formulated four themes:

The first theme, titled: *Perpetual Resistance: From Delinquent Girl to Unempowerable Prisoner* was identified based on a number of thematic indicators, including: Smith's perpetual resistance to institutional rules and her unruly behaviour within the school; the numerous minor offences she committed while in the community; her constant self-injurious behaviour and refusal to follow staff orders while both in the youth and adult correctional system; and her continued 'unruly' behaviour and refusal to follow staff orders while in the regional treatment centers.

The second theme, titled: *'Unempowerable' Prisoner: Dual Workings of Governance & Discipline* was identified based on a number of thematic indicators, that primarily revolved around the institutional response to Smith's resistance, which included: school authorities reliance on suspensions; sending Smith to the principal's office; the eventual discontinuation of her schooling in response to Smith's resistance; correctional staff's continuous use of restraints and force; segregation; repeated institutional transfers; the hospital staff's use of segregation and involuntary therapeutic injections; and Smith's internalization of being both bad/mad, as illustrated in her journal entries written while in the youth prison.

The third theme, titled*: Enforcing Compliance: Revisiting the Triangle of Power:* was identified based on a number of thematic indicators, including: the exertion of disciplinary measures that transcended beyond the CSC's legal scope (as outlined in their correctional policies); the CSC's displacement of responsibility for the violation of these polices onto frontline staff, the mental health system, the lack of institutional resources and on Smith herself.

The fourth and final theme, titled *Technologies of Power Hidden Behind a Therapeutic-Risk Cloak,* was identified based on a number of thematic indicators, including: the reliance on psy experts after disciplinary measures were exhausted within each social institution, as a means to understand and correct Smith's behaviour; Smith's internalization of herself as both 'mad' and 'bad', as exemplified in her journal entries while at the youth prison; and the CSC's (2009) presentation of Smith's self-injurious behaviour as both an act of misbehaviour, and as an outcome of mental illness; the legislative requirement for the psy expert to administer and monitor the effects of arguably punitive techniques applied within correctional and hospital settings; their lack of physical involvement with Smith's correctional management plan; and the heavy emphasis on the psy model by the Ombudsmen and the CSC in light of the inconsistent diagnostic impressions Smith received;

Contemporary grounded theory also includes axial coding (Mills et al., 2006), which involves questioning the actions, interactions, consequences and conditions of each category, and how each category is connected based on these properties (Mills et al., 2006). In addition to axial coding, I utilized the grounded theory technique of creating a conditional/consequential matrix (Mills et al., 2006). By using this device, I identified the source of each thematic relationship at the micro *and* macro level. The researcher is thus able to reconstruct the meaning of data in a manner that will capture the larger context in which it is situated (Mills et al., 2006). Once these micro and macro influences were identified, I was able to generate the core category, i.e. core theme, from my data (Mills et al., 2006). My critical theoretical lens was particularly influential at this stage.

The first theme, *Perpetual Resistance: From Delinquent Girl to Criminalized Female*, involved an examination of how Smith's method of resisting the gendered ideal (actions), was responded to by institutional staff through punitive measures (interactions), and how such responses led to a simultaneous increase in both resistance and discipline, which potentially influenced her ultimate self-inflicted death (consequences). I assessed the punitive response of institutional staff and their claim that the restrictions they faced in terms of how they were permitted to respond to Smith's behaviour, left them with no alternative approach. These restrictions were due to the broader normative ideological structure that places risk management at the forefront of corrections (macro conditions), and the apprehension of frontline staff to intervene (micro conditions).

The second theme, *'Unempowerable' Prisoner: Dual workings of Governance & Discipline*, involved examining how the institutional disciplining of Smith's needs was hidden behind therapeutic-risk discourse (actions) that legitimized her perpetual disciplining by institutional staff (interactions), and how the Ombudsmen legitimized these responses by failing to problematize the use of these methods of discipline (consequences) in the first place. I examined not only how institutional staff rely on therapeutic-risk discourse to legitimize punitive responses (micro conditions), but also the continued institutional reliance on these discourses to legitimize broader punitive risk logic (macro conditions).

The third theme, *Enforcing Compliance: Re-visiting the Triangle of Power*, highlights how the CSC's failure in achieving compliance (interaction) in Smith's case, through legislated correctional disciplinary techniques (actions), led to the reinforcement of disciplinary, governmental *and* sovereign power. Namely, the CSC intensified the exertion of disciplinary and governmental power to an extent that transcended the legal scope of their policies to ensure consent (consequences). While governmentality inspired literature has highlighted a move away from sovereign power since the reign of the King, the correctional responses in Smith's case demonstrate that this power has merely taken on a contemporary form, since this Service is capable of manipulating laws to accommodate their own objectives. I examined the employment of disciplinary technologies by frontline staff (micro conditions), to the degree that they transcended the legal scope of CSC policies, and the presence of governmental power at play (macro conditions) through the CSC's displacement of responsibility for these violations onto the frontline staff, the mental health system, the lack of institutional resources and Smith.

The last theme, *Technologies of Power Hidden Behind a Therapeutic-Risk Cloak*, involved the examination of the role of the 'expert' in contributing to: Smith's behaviour and her construction as mentally ill (actions), the punitive correctional response to her needs (interactions), which in turn produced and reproduced punitive governance strategies in the name of reform (consequences). The 'expert', refers not only to 'psy' experts, but all frontline staff who took on the dual role as both disciplinarians *and* health care providers by relying on risk and therapeutic discourse as a means to both understand and correct Smith's unruly behaviour within each social institution she came into contact with. Smith's unruly behaviour was constructed as risky but an act of choice, as well as an outcome of systemic dysfunction. I examined not only the implications of this dual contradictory role, and how this role is legitimized by the ombudsmen and the CSC, but also how psychiatric power continues to be relied upon to legitimize both disciplinary and governmental power as a means to preserve gendered power relations.

According to Stemler (2001), it is important for themes to be mutually exclusive. Specifically, the classified text should fall into one particular category rather than being compatible to multiple overlapping categories. By ensuring the independent and exclusive nature of each category, the researcher can ensure consistency and accuracy throughout the coding process (Stemler, 2001). I verified the connections between categories by continuously re-reading my data and comparing it to the literature (Mills et al., 2006). I did not utilize this approach as rigidly as Stemler (2001) insists, in order to ensure that I capture the dynamic connection between categories, and the complexity of how they interrelate rather than coding categories to resemble the existing literature.

Evaluative Criteria

Rolfe (2004) argues that a universalized set of evaluation criteria is inappropriate when there is no one unified qualitative research approach. Moreover, concepts traditionally used to determine trustworthiness and rigour, such as validity, reliability, and generalizability, may also be inappropriate to evaluate qualitative research (Carter & Little, 2007; Graneheim & Lundman, 2004; Koch, 1998; Rolfe, 2004). Instead I discuss evaluative criteria based on qualitative terminology, such as credibility (Carter & Little, 2007; Graneheim & Lundman, 2004; Koch, 1998; Rolfe, 2004) and transferability (rather than generalizability) (Ganeheim & Lundman, 2004). While I identify the limitations of my methods, strategies to minimize these limitations are also discussed.

Transferability is determined by the reader (Bassey, 1981; Kennedy, 1979; Koch, 1998; Malterud, 2001; Mauthner & Doucet, 2003; Rolfe, 2004; Ruddin, 2006; Stake, 1978), therefore, it is the responsibility of the researcher to provide a thick rich description of the research process (Graneheim & Lundman, 2004; Koch, 1998; Malterud, 2001; Mauthner & Doucet, 2003; Rolfe, 2004). According to Cutcliffe and McKenna (1999), the credibility of qualitative research should not be judged based on positivist criteria concerning objectivity and validity. Given that the themes I generated are not predetermined, uncovering one truth or reality is not only impossible, it is not the goal of the project. The credibility of my study will be strengthened by remaining reflexive and engaging the constant comparative method in order to identify any inconsistencies in coding (Finlay, 1998, 2002; Ganeheim & Lundman, 2004; Rolfe, 2004). Dependability will also be strengthened by this technique and by providing a thick rich description of my research decisions. This has also provided me with the opportunity to enrich my understanding of the Smith case. The credibility of this project is strengthened by my having continually re-read the data, coding schemes, and interpretations, in order to identify errors.

Conclusion

The methodological approach adopted for this research allowed me to extend beyond a micro-level focus on Smith's experiences within the federal prison system, to also situate her case within the broader constructions of gender – and the institutional consequences faced by women who deviate from their normative roles. By analyzing the data through a critical feminist lens, I was able to draw attention to the power of language in producing 'truths' about Smith's behaviour and in legitimizing technologies of discipline and government.

In the following chapter, I present the findings that emerged from my analysis. In order to capture the evolution of Smith's construction as a risky and unempowerable subject, I examine the correctional responses to her undesirable behaviour by each social institution she came into contact with; the roles the 'experts' and therapeutic-risk discourses played in legitimizing these responses; and the impact these discourses and responses had on her behaviour. I also discuss how the ombudsmen's uncritical acceptance of therapeutic-risk logic in part responsibilizes Smith for her institutional mistreatment – even after her death.

CHAPTER 4 – ANALYSIS:

TRAPPED WITHIN THE CONFINES OF THE ‘CARCERAL NETWORK’

The following is a chronology of the significant events Smith experienced throughout her young life. While it begins at the time of her birth, the following provides a snapshot of how quickly she moved through the carceral continuum. While analyzing the intricacies of these events is beyond the scope of this thesis, highlighting their occurrence demonstrates a pattern (including the extent and frequency) of her institutional mistreatment that led to her death while confined in the federal prison system.

Chronology of Smith's Life and Correctional Involvement

January 29, 1988: Smith is born.

January February 3, 1988: 5 day old Smith is adopted. According to Richard (2008), "she developed normally, reaching all expected milestones" (p.15).

1998: At the age of 10, Smith's oppositional behaviour began in the form of excessive talking and disruption at school.

2001-2002: Smith's behaviour worsened by the age of 13, whereby her oppositional and defiant behaviour was exerted towards adults and peers alike. Richard (2008) deems this year the one in which "the more serious problems began to creep up in Ashley's life", which "considerably challenge[d] her ability to function within the established school curriculum" (p.14).

October 31, 2001: Smith's principal writes a letter to the psychologist summoned to assess Smith, highlighting the school's inability to control her constant unruly behaviour (Richard, 2008).

March14 2001-February 13, 2002: In response to Smith's unruly behaviour she is suspended six times, and set to an alternative school seven times (Richard, 2008).

March 14, 2002: 14-year-old Smith received her first criminal charge for "public disturbances, trespass or violence (harassing telephone calls to unknown persons, assaulting strangers on the streets, banned from public transportation for insulting passengers and drivers, insulting a parking attendant)" (Richard, 2008, 15). During this period, Smith's parents hired a community psychologist who ruled out mental illness as a possible explanation to her behaviour (Richard, 2008).

February 21,2002: The school district suspended Smith for 5 weeks following an incident whereby police came into the school to physically remove Smith and charges were laid after a "stalking incident involving a member of the school personnel" (Richard, 2008, p.15).

March 2002: Smith receives her first sentencing date for her involvement in several unspecified offences during this time frame; resulted in her being assigned 1 year probation and enrolled in the Intensive Support Program, which lasted 19 months (Richard, 2008).

September 2002 - December 2002: During the 3 months Smith was in grade nine she accumulated 17 infractions and several suspensions in response to her unruly behaviour. By December, her involvement in the public school system discontinued, whereby she was transferred to the alternative system. During this short period, Smith was: banned from the city transit; had a strained relationship with her parents after she ran up their long distance bill upwards of $1,000 on more than one occasion; had little positive interaction with fellow youth and was suspended for 4 weeks from the alternative school (Richard, 2008).

March 4, 2003: 15 year old Smith completed 27 of her recommended 34-day assessment at Pierre Caissie Treatment Centre; her stay was discontinued due to her unruly behaviour. During her stay, Smith received a full “psychological, psychiatric and educational assessments” (Richard, 2008, p.17), whereby she was diagnosed with a string of disorders. She was recommended to have individualized counselling in the community by a psy expert and “follow-up” medication prescribed while at the Centre (Richard, 2008).

April 2003: The Youth Criminal Justice Act was enacted on the 1st of this month as a means to guide decision makers in handing down “meaningful consequences” to youth, as well as placing emphasis on considering the underlying reasoning behind criminality to ensure appropriate intervention is provided in order to strengthen successful community reintegration. It was during this same month that Smith was remanded to the NB youth prison for close to a month due to a: “breach of probation, common assault, trespassing and causing a disturbance” (Richard, 2008, p.18). During this short period Smith exceeded 30 institutional incidents, which “ranged from refusing staff orders and becoming aggressive, to making threats of self-harm”. In response, Smith was institutionally charged, and often restrained and segregated. Once remanded, Smith’s involved with ISP and her individualized counselling was eventually discontinued (Richard, 2008).

April 2003 - October 2006: Smith remained “either a part-time or full-time” prisoner at the NB youth prison Richard, 2008, p.17).

April 28, 2003: Smith is involved in 4 incidents on this day. Two regarding her refusal to abide by the Sheriff’s requests, the third concerned her refusal to be strip searched upon return from court and the fourth was due to her being “overheard telling another youth that she was going to inflict self-harm with an earring” (Richard, 2008, p.19).

May 8, 2003: Smith verbally assaults correctional staff and refuses their request to hand over a pencil. She was then caught making “noose in her cell” and telling “another youth that she was suicidal, and assaulted staff” (Richard, 2008, p.19).

September 2003: Smith’s alternative schooling was reduced by half, as she was deemed to have “little or no tolerance to attend full days of schooling” (Richard, 2008, p. 17).

October 21, 2003: Smith is remanded for violating her probationary conditions when she left her parent's property and threw crap apples at the mailman. This represents the beginning of "Smith's prolonged experience within" the youth prison (Richard, 2008:18).

Sentencing date (unspecified)- December 29, 2003: Smith was "in and out of the NBYC a total of five times" (Richard, 2008, p.18). When released on community supervision, it was not long before Smith was brought back to prison for breaching her probationary conditions and being involved in an incident that resulted in new charges. Consequently, she would be remanded to the youth prison again until her sentencing date. During this period Smith was placed in three different foster homes, which, according to reports, were all unsuccessful due to Smith's unruly behaviour (Richard, 2008).

November 2003: 14-year-old Smith was completely removed from all forms of education (Richard, 2008).

December 2003: Smith received her first lengthy closed-custody prison sentence (Richard, 2008).

February 26, 2004: Although released on February 26, 2004, it was only a few hours before Smith was arrested for breaching her probationary conditions and pulling a fire alarm. After pleading guilty, the court handed down "an additional 75 days of secure custody" (Richard, 2008, 18). This 75-day incarceration sentence was extended 'several months' in response to the several criminal charges Smith received while in the youth prison, which extended Smith's imprisonment until February 10, 2005 when she was set to be released. According to Sapers (2008) Smith had obtained 50 criminal charges while in the NBYC, while Richard notes there were "upwards of eight hundred documented incidents" that took place during the over three year period she was in the youth system (Richard, 2008, p.19).

June 1, 2004: While segregated, Smith "smeared feces throughout her cell, covering the cell window which obstructed supervision checks" (Richard, 2008, p.21). Once Unit Manager Officer was made aware of this incident, staff spoke with Smith and cleaned her cell. Smith then "became non-compliant with staff and attempted to exit the cell, which lead to her being physically restrained by staff" (Richard, 2008, p.21). Smith then proceeded to cover her window and the cell camera with torn cloth; she was consequently placed "in a body belt restraint" and given a "pat search". She was eventually removed from this restraint in order to allow her to clean up the mess and was provided "a tear proof mattress and blanket" (Richard, 2008, p.21).

June 4, 2004: Smith is found guilty for the institutional charge she received regarding the incident that took place on June 1, 2004. As staff indicate that "all other options of discipline were unsuccessful" (Richard, 2008, p.21) she was to remain in segregation until June 5, 2004.

June 26, 2004: While segregated, Smith refused staff requests to remove the items she placed over the window and cell camera to obstruct their vision into her cell. As a consequence, "staff were authorized to place Ashley in a restraint belt called the 'WRAP'" (Richard, 2008, p.22); she remained in this state for "approximately 50 minutes" (Richard, 2008, p.22).

September 2004: Although individualized counselling within the prison was recommend by a psy expert, there is no evidence that this occurred (Richard, 2008).

March 1, 2005: The Superintendent authorized correctional staff to pepper spray Smith after she refused their request "to leave the shower area and return to her cell"; she was then found "in possession of a piece of metal, possibly a razor blade" (Richard, 2008, p.23). Once becoming compliant, Smith was transferred to segregation "where the decontamination process (applying copious amounts of water to the eye area) was commended" (Richard, 2008, p.23).

January 27, 2006: While on the "regular unit", Smith "became extremely vocal towards staff; yelling names, and throwing items around in her cell" (Richard, 2008, p.22). She then refused to hand over utensils to correctional staff upon request, stating that she would only do so if she was transferred back into segregation. She also threatened to self-injure "or trash…her cell if her requests were not met" (Richard, 2008, p.22). While initially correctional staff took away Smith's belongings, her self-injurious behaviour and the fact that she "began walking around in her cell naked" (Richard, 2008, p.22) led to management deciding to transfer her back to segregation.

February 14: 2005: Smith is handed down an additional 15-day prison sentence after being charged for "pulling a fire alarm in a public building" (Richard, 2008, p.18).

February 29, 2005: Not long after she was released Smith would be charged again for stealing a CD from a local store. Consequently, Smith was sent back to NYBC "and would spend most of the remainder of her time as an incarcerated youth" (Richard, 2008, p.18).

April 11, 2005: Smith is court ordered to undergo a 36-day assessment at the Restigouche Hospital Centre (RHC) in order to determine whether or not she understood her actions. The psy expert determined that Smith was in deed aware of her actions and the consequences, and could therefore control her behaviour if she so desired (Richard, 2008).

May 18, 2005: During Smith's court appearance, "she was sentenced to 180 consecutive days which was to be added to the sentence she was already serving" (Richard, 2008, p.19) as a result of the psy results she received from RHC.

September 28, 2005: Smith accumulated three incident reports this day. One report was regarding her refusal of staff orders and becoming aggressive towards them, while the other two reports centered on her self-injurious behaviour (Richard, 2008).

January 29, 2006: Smith turns 18 while segregated in the NB youth prison, meaning that any future convictions laid against her will result in an adult sentence (Sapers, 2008).

July 18, 2006: Smith accumulated 4 incident reports during this day. Two of them for tying ligatures around her neck, another concerned her refusal "to wear footwear while being escorted" (Richard, 2008, p.20) into segregation, and the fourth for being "overheard telling another youth that she may assault a staff member" (Richard, 2008, p.20).

September 2006: After showing visible signs of her self-injurious behaviour and informing correctional staff that she wanted to die for fear that she would be handed more charges that would extend her sentence, the correctional response made by the Unit Manager Officer was to segregate Smith and remove her self-injurious tools. During this same month, Smith self-injured a total of 16 times, which was the most since her arrival at the NB prison. When questioned about them, Smith stated that they were written as a joke. This resulted in nothing more than placing Smith on “15 minute checks” (Richard, 2008, p.24).

July 29, 2006: The application to transfer Smith to the adult system is filed (Richard, 2008).

September 28, 2006 - October 5, 2006: Smith appears in court for the purpose of the request to transfer her to the adult system (Richard, 2008).

October 5, 2006: The transfer application is granted by the youth court judge. This same day, Smith is immediately sent to the Saint John Regional Correctional Center (SJRCC), whereby she receives her first incident within mere hours, remained segregated for the majority of the 26 days she remained at this prison, and was threatened with the taser for refusing a strip search (Richard, 2008).

October 5, 2006 - October 31, 2006: Smith accumulated 34 incidents; she pleads and was found guilty for several of those she was criminally charged for. This resulted in her prison term being extended from her original sentence (Richard, 2008).

October 15, 2006: Smith’s self-injury was getting increasingly worse, whereby she indicated to staff during one particular incident that she “wanted to die” (Richard, 2008, p.29).

October 17-19 2006: Smith immediately requested her return to segregation when removed and placed within the general population. Within 24 hours Smith’s unruly behaviour was responded to with her return back to this unit (Richard, 2008).

October 19 2006: Failure to comply to a strip search resulted in eight correctional staff being dispatched to restrain Smith while a nurse cut her clothing off with scissors (Richard, 2008).

October 21 2006: Smith was tasered for not complying to correctional staff orders to get down off her bed, where she was standing while holding “two cups filled with an unidentifiable liquid substance” (Richard, 2008, p.28).

October 24 2006: Smith is both pepper sprayed and tasered after “allegedly refusing to back away from her cell door” (Richard, 2008, p.53). On this same day, following criminal charges she accumulated while at the NB prison, Smith was sentenced to an “additional 348 days of custodial time added to the already existing 1,455 days” (Richard, 2008, p.29). As this exceeds 2 years, Smith is transferred to the adult federal system.

October 31, 2006: 18-year-old Smith is transferred to “Nova Institution for Women in Nova Scotia, a federal correctional facility” (Richard, 2008, p.29).

January 2007- February 2007: Smith is transferred to the CSC Prairie Regional Centre in Saskatoon for a few short months in order "to obtain a clear diagnosis, and to develop and implement a specialized treatment plan" (Sapers, 2008).

March 2007: Smith is assaulted by correctional Staff at the CSC Praire Regional Centre (Richard, 2008).

April 2007: Following assaults by correctional staff, Smith was voluntarily transferred out of CSC Prairie Regional Centre "for her own personal safety" (Sapers, 2008) and into "Institut Phillippe-Pinel de Montreal for treatment" (Sapers, 2008).

May 10, 2007: Smith's treatment at Pinel Institution is discontinued after only two weeks due to her fears and eroded trust resulting from her experience at the CSC Prairie Regional Center (Richard, 2008).

June 2007: During an institutional visit, Sapers' (2008) staff were informed by correctional staff at GVI that Smith taunted them and would "play with the ligatures".

August 2007: Smith was transferred to Grand Valley Institution for Women (GVI). During the first month she was at GVI she submitted seven complaints regarding unjust segregation and treatment. The Correctional Service denied all seven of these complaints (Sapers, 2008).

September 2007: Smith made one last effort to fight for fair treatment by placing one last "complaint in the sealed envelope and placing it in the receptacle located on her unit" (Sapers, 2008).

October 18, 2007: Smith was placed on "24 hour suicide watch under direct staff observation". Sapers (2008) notes how her high suicidal risk was never formally documented or "clearly communicated to all staff on duty".

October 19, 2007: 19-year old Smith was pronounced dead while in segregation at "Grand Valley Institution for Women, located near Kitchener-Waterloo, Ontario" after she strangled herself with a ligature while correctional staff watched without intervening (Sapers, 2008).

Mid December, 2007: The Correctional Service opens Smith's sealed complaint two months following its submission (Sapers, 2008).

> *"One could conclude that Ashley became a young punishable offender in prison*" (Richard, 2008: 47).

The production of truth claims through dominant discourses not only shape how we think and act, they also legitimize strategies applied to overcome undesirable social phenomenon without questioning the motives underlying these claims, or the oppressive outcomes they may have on those deemed 'undesirable' (Althusser, 1971; Carlen, 2010; Foucault, 1977; Garland, 1996; Gramsci, 1957; Hannah-Moffat, 2001, 2006b; Hesse-Biber & Leavy, 2006). This has been particularly problematic since the 1970s, when states in western nations adopted a risk logic to categorize and govern human behaviour (Garland, 1996). Specifically, as a means to reduce state responsibility while maintaining societal control during a period when sovereign power was in question[14], the state came to rely upon risk discourse to reconstruct 'undesirable' behaviour from a product of broader systemic fails requiring state intervention – to an outcome of individualized choice. Through this reconstruction, responsibility for the existence and control of undesirable behaviour was displaced onto the individual citizen (Braithwaite, 2000; Garland, 1996; Hannah-Moffat, 2001; Ratner & McMullan, 1993).

According to Hannah-Moffat (2001) and Kilty (2008a, 2012b), the emergence of risk discourse did not replace psy discourses, which remain and work with risk discourses to interpret undesirable behaviour as a dysfunction within the individual (Foucault, 1974). Rather, these two discourses have fused, whereby psy explanations of behaviour are now reinterpreted through risk logic (Hannah-Moffat, 2001). Consequently, this dually reductionist approach legitimizes the exertion of disciplinary and governmental technologies within different social spaces in response to 'undesirable' behaviour as a means to achieve compliancy in the name of avoiding future risks (Garland, 1996) via rehabilitation (Barron, 2012; Hannah-Moffat, 2001).

The case of Ashley Smith offers a glimpse into the life of a young woman who exhibited 'undesirable' behaviour that the state, in the form of provincial and federal corrections, explained

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[14] As discussed in Chapter 1, the 1970s were a decade fraught with complex social transformations (Garland & Sparks, 2000), which led to mass questioning of the role of the sovereign state, as these changes illustrated its failure to fully regulate crime (Garland, 1996), national economic activity (Braithwaite, 2000; Ratner & McMullan, 1993) and overall social welfare (Braithwaite, 2000).

by drawing on therapeutic-risk discourse and which was used to legitimize her repeated transfers through the carceral system. Smith's perpetual resistance to the disciplinary and governmental technologies embedded within each social institution she came into contact with, including the school, the hospital, and the prison, were met with increasingly punitive carceral responses. Namely, when regulatory agents felt they were losing the rehabilitative battle, the decision was made to transfer her to another institution, as her level of risk/need was considered beyond their capacity to control. According to Foucault's (1979) notion of the 'carceral network', not only was Smith transferred to different social institutions, she was transferred to ones where the power of these technologies were increasingly potent and thus increasingly subject to normative rules and regulations, heightened surveillance, and disciplinary consequences for violating those rules. The objective underlying these technologies was to curtail Smith's resistance and coerce her into complying with the normative ideological structure embedded within each social institution. This appears to have been the destructive trend that began for Smith as early as age 13, and which continued until her untimely death at the age of 18.

In the next chapter I use critical feminist literature to examine the battle between Smith and the carceral agents and technologies applied within each social institution. I also provide an overview of not only the therapeutic-risk discourse used to define Smith's 'unruly' behaviour and legitimize the reinforcement of the two modes of governance, but also the instrumental role of the expert in reasserting this discourse as objective truth. Last, I discuss how the CSC (2009) was able to adopt therapeutic-risk discourse to legitimize their technologies of government, in particular those aimed at displacing responsibility for the violation of their own policies onto frontline staff, the mental health system writ large, and onto Smith herself, which served to preserve the existing punitive carceral regime.

The School: From Deviant Child to Delinquent Girl

The school remains a critical social institution for the (re)production of normative power structures, as it offers an opportunity to preserve the social order by moulding youth through disciplinary and governmental technologies into responsible, productive, law-abiding subjects (Althusser, 1971; Foucault, 1977). However, compliance with these technologies is not always achieved, as illustrated in Smith's case by her resistance as early as age 10 and which significantly worsened by age 13 (Richard, 2008). According to Richard's (2008) report, from the age of 13 to 15, Smith continued to be "disrespectful, noncompliant with school rules and disruptive in class" (15), and would engage in such activities as "playing chicken' in the street with on-coming traffic" (15).

As resistance to institutional demands illustrates a major threat to sovereign power, those who do resist are met with the exertion of disciplinary and governmental technologies to try and enforce compliance and ensure that others are not corrupted or led astray (Garland, 1996; Foucault, 1979). According to Barron (2011), the disciplinary technology commonly used within the school setting as a means to achieve this goal, is exclusion, whereby resistant youth are removed for either a period of time, or all together. The school system relied upon physically removing Smith from the school environment as a primary response to her unruly behaviour throughout the last two years she spent in school (Richard, 2008).

In less than two years, Smith was repeatedly sent to the principal's office; suspended several times in the regular school system, including one five-week duration; and assigned a temporary placement to an alternative school seven times (Richards, 2008). According to Richard's (2008) report, following 17 infractions accumulated over the first three months of her grade nine year, Smith was removed entirely from the public school system and transferred to an alternative school. While enrolled in the alternative school, the same disciplinary method of suspension applied within the public system was again the chosen response to Smith's oppositional behaviour (Richard, 2008).

The failure of the disciplinary technologies exerted by the school in response to Smith's resistance comes as no surprise, as this political response is shown to exacerbate undesirable behaviour rather than effectively achieve compliance (Barron, 2011; Skiba, Russell & Peterson, 1999; Skiba & Peterson, 2000; Wald & Losen, 2003). Richard (2008) agrees, noting how "a severely oppositional and defiant youth will not necessarily be able to process the underlying "life lessons" of conventional disciplinary measures" (30). Although evidence indicates that the negative effects of this disciplinary response was acknowledged by one of the school's Smith attended, efforts to produce positive change never occurred. Instead, the only solution deemed appropriate was to transfer Smith out of the public school system all together (Richard, 2008).

Barron (2011) problematizes this punitive tactic, as it suggests that there is something 'wrong' with the individual youth, so much so that they require permanent removal from the general student population. The counterproductive effect of this response appears to have come into effect for Smith at the age of 14, only two months after her transfer in March of 2002 when her behaviour appears to have worsened; illustrated through her first charge for "public disturbances, trespass or violence (harassing telephone calls to unknown persons, assaulting strangers on the streets, banned from public transportation for insulting passengers and drivers, insulting a parking attendant" (Richard, 2008: 15). From the time of her first charge until April 2003, Smith received charges for several non-specified additional offences (Richard, 2008).

According to Foucault, (1979), disciplinary technologies continue to be relied on in order to preserve the carceral network, often leaving persistently resistant youth to travel down the school-to-prison pipeline, whereby they are transferred to a more punitive social institution aimed at exerting increased control to reshape their conduct (Barron, 2011; Skiba, Russell & Peterson, 1999; Skiba & Peterson, 2000; Wald & Losen, 2003). This appears to have been Smith's fate, as she was remanded to the New Brunswick Youth Centre in April 2003, only four months after her transfer to the alternative school system, for breaching her probation and for charges of "common assault, trespassing and causing a disturbance" (Richard, 2008: 16). From the time she was first remanded until October 2006, Smith was removed from all forms of education following failed efforts to reintegrate her back into the school after a four-week suspension (Richard, 2008).

Richard (2008) disagrees with the decision to remove Smith from all forms of education, stating: "It is obvious that a number of children and youths are still falling through the cracks of the existing education and 'alternative education' systems" (31). While Richard (2008) criticizes the school for not changing their approach when becoming aware of its ineffectiveness in reducing Smith's oppositional behaviour, it remains unchanged, as according to Foucault's (1977) notion of the carceral network, these disciplinary technologies play an integral role in creating docile, responsibilized subjects. A less punitive method was not supported, as a more 'lenient' approach is thought to risk weakening the overall objective of this network and thus threatening the power of the sovereign state.

During the period in which she was first remanded until October 2006, Smith remained either a part-time or full time resident of the NB youth prison. Her long term imprisonment began in October 2003, when the 15-year old was sentenced as a part-time resident for breaching her probation by leaving her parents property and for throwing crab apples at a postman. From the time Smith was sentenced until December 2003, Smith was in and out of the NB youth prison a total of five times, as her unruly behaviour led to new charges handed down shortly after release. These charges revolved around minor infractions committed by Smith, including for example two incidents for pulling a fire alarm in public buildings, and stealing a CD at a store (Richard, 2008). What was initially a month-long sentence (Fifth Estate, 2009) eventually extended to over four years, largely in response to the 50 institutional infraction charges she accumulated for minor incidents then committed while in the NBYC (Richard, 2008).

Smith's experience in and out of the youth prison illustrates the false sense of freedom in which those who enter the criminal justice system receive upon release (Barron, 2011; Hannah-Moffat, 2000a, 2001; Kilty & DeVellis, 2010; Maidment, 2006; Pratt, 2000; Shantz et al. 2009; Turnbull & Hannah-Moffat, 2009; Sim, 2005; Worrall, 2002), as she remained governed by arbitrary conditions aimed to prolong correctional regulation. Specifically, the conduct that led to Smith's numerous transfers back into the prison were 'non-criminal' in the legal sense, thus demonstrating her entry into what Kilty and DeVellis (2010) refer to as a 'transcarceral space', whereby certain community spaces and practices become 'grey-washed' for those exiting the most restrictive, punitive 'black space' of the prison; but who are not granted the full right to the 'white space' of the community; here, freedom is symbolically granted and governance is less visibly punitive. As illustrated in Smith's experience, the 'grey-washed' space is contradictory (Kilty & DeVellis, 2010), as it is both inclusive, by granting her the freedom to re-enter the community, and exclusive, by subjecting her to a string of arbitrary conditions that lead to easy return to the punitive 'black space' of the prison when the expectation to align one's self to these conditions fails.

Technologies of Power Hidden Behind a Therapeutic-Risk Cloak

The unruly woman is the undisciplined woman. She is a renegade from the disciplinary practices which would mold her as a gendered being. She is the defiant woman who rejects authority which would subjugate her and render her docile. She is the offensive woman who acts in her own interests. She is the unmanageable woman who claims her own body, the whore, the wanton woman, the wild woman out of control. She is the woman who cannot be silenced. She is a rebel. She is trouble (Faith, 2011: 1).

Risk discourse is most oppressive when applied to the female population, who are deemed 'doubly deviant' (Worrall, 2011), as their unruly behaviour is understood through a normative lens as both bad and abnormal (Kilty, 2008a). This construction is relied upon not only to interpret women's behaviour as unruly, but also to regulate women (Ussher, 1992) and legitimize institutional responses by the school, the hospital, and the prison (Foucault, 1974). This constructed identity as bad, risky, at risk, mad, or even abnormal ultimately denies that the experiences of women and girls are gendered and responsibilizes them for resisting, challenging and transcending the feminine ideals of passivity and compliance (Hesse-Biber & Leavy, 2006; Kendall, 2000; Kilty, 2006; McCotter, 2001). Not only are women responsibilized, but disciplinary and governmental technologies are reinforced in efforts to reshape their behaviour to realign with the ideal. This approach was rarely effective for Smith, for whom these methods of intervention exacerbated the problematic behaviour.

Constructing the Risky Identity

The simultaneous understanding of Smith's behaviour as both risky and abnormal appears to have begun during the last two years in which she was in the school system, when disciplinary technologies proved to be ineffective in achieving her compliance. This is illustrated in the understanding among school authorities that sending Smith to the principal's office as a last resort solution "was precisely what she wanted in most cases" (17), and that she "remained unmoved when targeted with reprimand" (Richard, 2008: 17). This discourse illustrates the understanding that Smith's behaviour was an act of choice and a form of manipulation, thus responsibilizing her for her behaviour and deeming her risky for failing to abide by the disciplinary and governmental technologies embedded within the school system.

Similar to the school, the perception of Smith's identity as risky is illustrated in the discourse used to understand her behaviour while in the prison. Namely, "[f]or over three years, documentation on file indicates that Ashley pushed the staff of the New Brunswick Youth Centre to their limits" (Richard, 2008: 17). Once transferred to the adult system, Sapers (2008) notes that "[o]ver time, Ms. Smith's behaviours began to exhaust frontline staff. For example, during an institutional visit in June 2007, my staff was advised that Ms. Smith would often 'play with ligatures' (i.e., tie it in a bow-like fashion around her neck) and then taunt staff with it" (10). This discourse constructs Smith's unruly behaviour as an act of choice, with the perceived objective being to taunt and manipulate staff, rather than being an act of resistance to the unjust treatment she was enduring. Consequently, the former discourse provides correctional staff with the justification to respond through disciplinary measures, rather than questioning how these exact measures are creating the very behaviour they are trying to control.

The CSC (2009) reinforces the correctional perception of Smith as risky through their decision to increase security measures in response to Sapers' (2008) inquiry. Specifically, they indicate that they will be implementing measures to heighten security and surveillance of prisoners, including adopting "proximity card technology that identifies, tracks, and records the presence of Correctional Officers conducting security patrols and inmate counts". The fact that the CSC (2009) recommends heightening security in response to a case involving a perpetually isolated prisoner on constant suicide watch illustrates their perception that, contrary to the counterproductive effect, the solution to responding to self-injurious behaviour among prisoners is to further enhance control measures.

The institutional response to Smith's intensifying resistance demonstrates how although women may continue to resist disciplinary and governmental technologies embedded within social institutions, this response ultimately leads to the (re)production of their risky identity (Barron, 2011). While this is illustrated in Smith's case, this risky identity also intensified over time. Specifically, Smith's risky identity shifted from that of the deviant child, prior to her first criminal charge at the age of 14; to the delinquent girl once she received her first charge; to the criminalized woman, which was shaped once she entered the prison system and strengthened once she was stripped of her youth identity upon transfer to the adult correctional system. Lastly, Smith's risky identity was shaped into what Hannah-Moffat (2001) refers to as the unempowerable woman, which signifies the most responsibilized identity.

Embodied Guilt: Deemed Risky & Abnormal

Institutional discourses simultaneously constituted Smith as risky and abnormal due to her failure to align with the compliant and passive role that accompanies the ideal construction of femininity. Perceiving Smith as abnormal is illustrated in the emerging reliance on psy expertise to make sense of her behaviour in light of her continued resistance to the disciplinary technologies employed to enforce compliance. Smith's dual treatment as both risky and abnormal appears to have been highly instrumental in her destructive journey from the time it was determined that disciplinary technologies were ineffective, until even after her death.

Beginning in the school, the principal wrote a letter to the psy expert who was summoned to assess Smith, in which he highlighted the ineffectiveness of the school efforts to achieve her compliance, and how Smith's "disrespectful attitude and defiance of authority were now manifesting themselves during instructional and non-instructional times" (Richard, 2008: 14-15). Smith's parents then hired a psy expert who reached out to local and provincial social service agencies following Smith's removal from the public school system (Richard, 2008). Ultimately, the community psy expert ruled out mental illness as a possible explanation for 15-year-old Smith's unruly behaviour (Richard, 2008).

Although Smith's principal portrays Smith as risky in the letter, the very nature of reaching out to a psy expert by both the principal and Smith's parents when the school's disciplinary approach fails illustrates the assumption that these experts hold the power to produce a more truthful explanation of her behaviour (Barron, 2011; Chelser, 2005; Foucault, 1974; Kendall, 2000, 2002; Kilty, 2008a; Kilty & DeVellis, 2010; Leifer, 2000; Pollack, 2006; Riessman, 1998; Robert et al. 2002; Rose, 1996a; Ussher, 1992) to aid school staff in producing and justifying a more appropriate response. This is however problematic, as it fails to conceptualize Smith's misery beyond both the medical (Kendall, 2000, 2002; Ussher, 2010) and risk-based models that fail to take into account social, relational or cultural impacts on her behaviour (Barron, 2010; Hannah-Moffat, 2001; Kilty, 2006, 2008a,b).

This dual perception of Smith continued once she was admitted on March 4, 2003 to the Pierre Caissie Treatment Centre at the age of 15 for a 34-day assessment, prior to being remanded to the youth prison. According to Richard (2008: 16), "it was not very long before she started demonstrating highly oppositional behaviour. The police had to be called twice because of assaults on staff". In fact, she was deemed such a severe disruption to the psychological assessments of the fellow youth at the center that the authorities halted her 34-day assessment at 27 days (Richard, 2008). Reports indicate how staff felt as though "they had no choice but to cut her stay short" (Richard, 2008, p.16) on account of her unruly behaviour (Sapers, 2008). While Smith's stay at the Pierre Caissie Treatment Centre was discontinued early, psy- experts still linked her behaviour to mental illness, and diagnosed her with "[a] learning disorder, ADHD, [and] borderline personality disorder". "Narcissistic personality traits" was then added "in an addendum" by the psychiatrist in charge of the assessment (Richard, 2008: 16).

Smith was again treated as both risky and abnormal when court ordered to undertake another 36 psychiatric assessment at the age of 17, in April 2005, at the Restigouche Hospital Centre (RHC), in order to establish whether she understood her own actions (Richard, 2008). Smith spent the majority of her time in isolation in the "seclusion room" (Richard, 2008: 19) under constant supervision in order to prevent her from self-injuring or injuring others. The psychiatrist argued that "the seclusion room [gave] [Smith] a chance to be away from noise and stimulation" and that she was afraid that Smith would "act out" if not isolated (Richard, 2008: 19).

Mechanisms of social control applied within the hospital include forced confinement and involuntary drugging, which are presented as techniques to prevent harm caused to the self (including suicide) and to others (Leifer, 2000). Both of these techniques were used in Smith's case, as she was forced to take medication on an involuntary basis at the RCH, (Richard, 2008) and then again in the federal prison system. This decision was granted following the psychiatrist's application "pursuant to section 12 of the *Mental Health Act*" (19), where the psychiatrist requested "an Admission of a Person as an Involuntary Patient" (Richard, 2008, p.19). The ability to legitimize those responses as appropriate mental health treatment highlights the truth producing power of the psy sciences (Barron 2011; Hannah-Moffat, 2001; Kilty, 2006, 2008a,b; Kilty & DeVellis, 2010; Leifer, 2000; Maurutto & Hannah-Moffat, 2006; Rose, 2000). Problematically, neither Richard (2008) nor Sapers (2008) call these disciplinary strategies into question in their reports.

According to Richard (2008), the psychiatrist concluded that: "Ms. Smith clearly understands her responsibilities and their consequences and can control her behaviours when she chooses to" (19). Although Smith's diagnostic impressions varied greatly, the court ordered assessment was taken as 'truth'. Consequently, on May 18, 2005 when Smith reappeared in court, she "was sentenced to 180 consecutive days which was to be added to the sentence she was already serving" (Richard, 2008: 19). This accumulation of time undeniably played a role in Smith being sentenced under the federal adult correctional system, as her sentence exceeded the limit under the provincial system. Richard (2008) disapproves of this decision, stating that the prison "is not the appropriate environment for these youth. A court-ordered assessment should simply not lead to a de facto incarceration" (60). While critical of this use of incarceration, constructing Smith's self-injurious behaviour as an act of 'choice' exemplifies the alignment of the psy model with the risk logic, which responsibilizes the individual, rather than seeing this behaviour as requiring a more therapeutic response. (Barron, 2011; Hannah-Moffat, 2001; Hudson, 1996; Kilty, 2008a; Maurutto & Hannah-Moffat, 2006; Pollack, 2006; Robert et al., 2007).

Constructing Smith as bad/mad is mirrored in prison discourses, which removed responsibility from the CSC for her unjust treatment. Specifically, while the CSC (2009) demonstrates their understanding of Smith's behaviour as risky, through their emphasis on enhancing security measures in response to Sapers' (2008) inquiry into her case, they simultaneously construct their understanding of her behaviour as abnormal so as to responsibilize her and legitimize the punitive regime to which she was subjected. This is evident in how the CSC (2009) emphasizes the challenges faced by correctional staff regarding the management and rehabilitation of the increasing number of high needs prisoners who enter with known or suspected mental health concerns. CSC (2009) separates the correlation between mental health, behavioural concerns and the prison environment and instead constructs it as the problematic behaviour of the individual prisoner. Ironically, the CSC (2009) also highlights the importance of identifying and addressing prisoner needs, in particular those with mental health concerns in order to reduce self-injurious behaviour and any risks they pose to others.

The CSC's (2009) construction of self-injury as both misbehaviour exerted by dangerous prisoners requiring an enhanced security response, and as an outcome of a mental illness requiring appropriate intervention in order to reduce this behaviour, demonstrates their contradictory position that ultimately delegitimizes the latter response, as safety and security concerns produced through the risk logic remain the primary objectives of the correctional system (Kilty, 2006). As illustrated in Smith's case, it is this former construction that legitimizes punitive responses, including segregation, involuntary transfers, and the use of restraints and force; which, for Smith, worsened the behaviour the CSC was attempting to control.

This duel construction of Smith as mad/bad was presumably internalized by Smith herself, as illustrated within her journal entries; in one instance she describes herself as abnormal, stating: "I don't know why I'm like I am but I know she didn't do it to me. People say there is nothing wrong with me. Honestly I think they need to f*** off because they don't know what goes on in my head" (Richard, 2008: 23). Smith then responsibilizes herself in the following excerpt, wherein she highlights her efforts to control her unruly behaviour:

> Although I know that my record looks bad, I would never intentionally hurt anyone. I am really scared about the thought of going to an adult facility with dangerous people. It has occupied my mind for a long time. I have wanted to behave to ensure that I would not ever go to adult and was sure that I would succeed (...) (Richard, 2008: 26).

This dual perspective is also mirrored in Smith's experience at the Prairie Regional Psychiatric Centre, where she was first transferred upon entry into the federal system as a means to "stabilize…[her]…behaviour, to obtain a clear diagnosis, and to develop and implement a specialized treatment plan". While the objective underlying this transfer was 'therapeutic', Smith was removed from this centre "for her own personal safety" after a correctional staff physically assaulted her a few months after her arrival. Sapers (2008) highlights how "[c]learly, the Correctional Service failed to guarantee Ms. Smith's basic right to safe and humane custody at that facility". While Smith was voluntarily transferred to the Institut-Philippe-Pinel de Montreal (Pinel) following this incident in order to provide her with therapeutic treatment, by week two she requested to discontinue her stay. According to Sapers (2008), this request was in response to her heightened fear and distrust of those whom she thought would offer therapeutic assistance (Sapers, 2008).

By incorporating the medical model into prison administration, the CSC is able to legitimize punitive modes of social control on the basis of treatment, safety, and security (Kendal 2000, 2002, 2005; Hannah-Moffat, 2001). This is reflected in Smith's experience in the adult system, where perpetual segregation and restraints were legitimized as a means to uphold safety and security. While silenced by both the CSC (2009) and Sapers' (2008), the Fifth Estate (2010) documentary: *Behind the Walls* informed the public that Smith was again voluntarily injected with psychiatric medications once transferred to the adult prison system. In Sapers' (2008) interview, he states that correctional staff "…were using medication instead of treating her" and that there is reason to believe that this treatment is a violation of CSC policy (Fifth Estate, 2010). He notes that, "there are significant concerns with CSC to follow their own policy framework" (Fifth Estate, 2010). Kilty (2006) problematizes the act of medicating women prisoners, stating that "pathologising criminalized women will only worsen their correctional treatment by dismissing their claims as irrational, all the while medicating away their very real and normal responses to imprisonment" (49).

This construction of Smith's behaviour as abnormal is not only achieved by the CSC in their efforts to legitimize their punitive measures and subjective policies, it was reinforced by the Ombudsmen, Richard (2008) and Sapers (2008), for accepting the notion that Smith was mentally ill without problematizing the fact that her self-injurious behaviour began once she *entered* the prison systems and that it was this behaviour that made up the majority of her 501 institutional incidents in the NB youth prison and 150 incidents in the adult correctional system. This reliance continued in spite of the fact that mental illness was ruled out by the community psychologist hired by Smith's parents prior to her imprisonment and the failure of the correctional system to provide a full psychological assessment.

While Richard (2008) identifies the importance of looking beyond the problematic behaviour of youth in order to address the issues underlying it, in Smith's case he too fuses those underlying issues to the state of her mental health. Consequently, external factors are disregarded in lieu of looking at internal problems as a form of mental illness requiring treatment (Kendall, 2000, 2002; Kilty, 2006). Richard (2008) concludes his report stating:

> Investing in the care, treatment, rehabilitation and reinsertion of youths involved in the youth criminal justice system is not a debatable issue. It must be viewed by all as an essential investment made by citizens and government toward the improvement of our social structure. This is especially true for youths who suffer from a mental illness or a severe behavioural disorder. Ignoring the problem will not make the problem go away. And managing this issue with archaic methods will only serve to worsen an already disturbing trend (59).

Sapers (2008) also emphasizes the fact that Smith "required specialized care" (p.5), as she "had significant mental health issues…which had been aggravated by years of isolation in secure provincial youth facilities". The insistence on obtaining a diagnosis is also shared by Richard (2008), as illustrated in the following excerpt:

> There is a self-admitted reluctance on the part of mental health professionals to label children and youths with a mental health/psychiatric diagnosis. This is probably wise but it is also true that without a diagnosis, services are difficult to access. That is a significant problem. If there are still presenting behaviours, there is still the likelihood, that an underlying problem is present. Treatment is needed without delay even though there is no formal mental health/psychiatric diagnosis (39).

Although not a trained psychologist, after being informed by a number of professionals that the majority of youth prisoners at NBYC suffer from "some form of attachment disorder" [15], Richard concludes that Smith "was one of those very troubled youth placed at NBYC" (36). Labelling Smith with this disorder again responsibilizes her by linking her behaviour to an inadequate emotional attachment to her adopted parents. According to Richard (2008), the

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[15] According to Richard (2008) "...disorganized attachment is seen as the beginning of a developmental trajectory that will take the individual ever farther from the normal range, culminating in actual disorders of thought, behaviour, or mood. Early intervention for disorganized attachment, or other problematic styles, is directed toward changing the trajectory of development to provide a better outcome later in the person's life" (36).

troubled pasts and underdeveloped emotional and intellectual state of youth prisoners makes them *less responsible* for their behaviour.

> [They] often function at a younger level than their chronological age, having missed important emotional development stages earlier in their lives. They have impaired social skills, disorganized thinking, and are in a constant state of hyper-vigilance or alert, often feeling much anger. In all likelihood, many of them don't get the rules, are so far from understanding their responsibility for their actions (37).

As he did when problematizing the transfer of youth into the more punitive adult system, Richard (2008) indirectly legitimizes the use of these disciplinary techniques by only problematizing their application on account of one's youth status. Although mandated to center his inquiry on youth, Richard's (2008) reliance on age as the leading argument against the exertion of certain punitive responses implies that if Smith was legally an adult, i.e. only one year older from when she was transferred to the adult system, she would have been deemed more responsible for her behaviour, and in turn more deserving for the punitive treatment she endured within the adult prison system.

Therapeutic-Risk Discourse within the Correctional Environment

Despite the counterproductive result of the disciplinary technologies Smith experienced in the school system, her transfer to prison illustrated a shift to an even more punitive social institution, as it involved more intense and physical methods of social control. According to Frigon (2003), the institutional power used to coerce women into conforming to the feminine ideal within the prison environment goes beyond the behavioural level by centering on the female body in its entirety. Through punitive measures that mark, coerce, humiliate, alienate, train, and victimize the body, men and women alike "are stripped of their identity as subjects" (Frigon, 2003: 143). Based on Richard's (2008) and Sapers' (2008) reports, it is evident that such disciplinary technologies, including isolation, use of force, deprivation and strip searches, were repeatedly applied to Smith during her four year imprisonment.

While the perpetual application of these punitive technologies is clear with respect to Smith, similar to her experiences at school, it was largely masked by therapeutic-risk discourse. In fact, it is through this discourse of upholding *public safety* and ensuring the *successful reintegration* of prisoners that CSC's legitimizes punitive responses to undesirable behaviour (see Motiuk, 2009). This discourse was similarly applied in both the New Brunswick Youth Centre, which functions based on the 'Therapeutic Community Model' (originally created as a means to rehabilitate 'substance abusers') (Richard, 2008) and the adult women's prison system, which functions based on the 'Women-Centered Approach' (Dell et al. 2006; Hannah-Moffat, 2001; Kilty, 2006). According to a number of scholars, while therapeutic-risk discourse has in-part worsened the treatment of women in the adult correctional system through its ability to mask the punitive regime that encompasses the prison environment (Dell et al. 2006; Hannah-Moffat, 2001; Kilty, 2006), its application in the NB youth prison appeared to have the same effect.

Specifically, while the correctional reliance on therapeutic-risk discourse presents a more positive picture regarding the treatment of those confined, it ultimately masks the punitive regime of the prison by falsely representing it as an environment where empowerment, autonomy and equalized power relations are possible (Barron, 2011; Hannah-Moffat, 1999, 2000a, 2001, 2006a; Kilty, 2006, 2008b; Pollack, 2006). Namely, both the NB youth and adult correctional model place great emphasis on 'empowering' prisoners to participate in educational and therapeutic activities that will aid them in accepting responsibility for their past, present, and future behaviour, and providing them with the skills deemed necessary to self-govern and live a pro-social life. They also state that this empowering model is carried out within a 'meaningful environment' that fosters a relationship of 'dignity and respect' among prisoners and staff in order to help the former build a sense of autonomy, and produce a positive relationship between both parties in order to improve the functioning of the prison (Hannah-Moffat, 2001; Richard, 2008). Last, and in line with the notion that disciplinary power exerted within prison is not necessarily coercive but rather is carried out based on the prisoner's willingness to submit to institutional ideals (Fee, 2000; Hannah-Moffat, 2004b; Hannah-Moffat et al., 2009), both systems operate on a hierarchal model, whereby compliance with the disciplinary and governmental technologies result in increased privileges and fewer restrictions.

In practice, the therapeutic discourse found within both the NB youth prison and the adult women's correctional system continues to be subordinated by the dominate risk discourse that coerces prisoners to conform to institutional ideals (Barron, 2011; Garland, 1990; Hannah-Moffat, 1999, 2001, 2006a; Kilty, 2006, 2008,a,b; Pollack, 2006; Pratt, 2000; Ratner & McMullan, 1983). For example, the reinterpretation of 'empowerment' through risk discourse suggests that only those who conform to the ideals of the system and thus take full responsibility for their actions and life circumstances are empowered (Hannah-Moffat, 2000a, 2001; Hannah-Moffat & Shaw, 2000). Those who perpetually fail to submit to these expectations, such as in the case of Smith, are treated as if they were 'unempowerable', and are consequently subject to punishment (Hannah-Moffat, 2000a, 2001; Hannah-Moffat & Shaw, 2000).

The following section provides an overview of Smith's resistance to the disciplinary and governmental technologies exerted within the prison environment, and the intensification of these technologies in response to Smith's continued resistance.

The Prison: From Delinquent Girl, to Criminalized Female, to 'Unempowerable Woman'

"Most people are scared to die. It can't be any worse then living a life like mine."(Smith, as found in: Richard, 23, 2008)

As the institutional modes of social control shifted to physically controlling Smith's body, Smith's modes of resistance also shifted from solely exerting verbal and physical aggression toward others, to also including self-injurious behaviour (Richard, 2008; Sapers, 2008). It was in fact Smith's self-injurious behaviour that made up the majority of her institutional charges and incident reports for the four years she spent in prison (Richard, 2008; Sapers, 2008).

While in the youth prison, Smith accumulated "upwards of eight hundred" documented incident reports" and 501 institutional charges "over a three year span" (Richard, 2008:19), which ranged from "covering her cell window and the monitoring camera with paper, threatening to self-harm, obstructing her air way, refusing to return plastic utensils, destroying her institutional clothes and damaging her mattress or other institution property" (Richard, 2008: 27). While these charges resulted in Smith's involvement in numerous internal court hearings (as later discussed), according to Sapers (2008) she found herself in and out of traditional youth court for the 50 criminal charges[16] she had accumulated from minor but numerous incidents she acquired while at the NBYC.

[16] According to Richard (2008), an 'institutional charge' is handed down when youth fail to comply to instituitonal rules. These charges are dealt with internally within the youth prison, rather than inside the traditional youth judicial system. While a guilty verdict in response to these charges will not lead to the lengthening of one's prison sentence, it can result in the restricting of privileges or heightening of security level while confined. On the other hand, 'criminal charges' are handed down in response to actions that are prohibited by the Canadian Criminal Code. These latter charges are responded to in a formal matter- external to the youth prison. A guilty verdict in response to these charges can result in the lengthening of one's prison term (Richard, 2008).

Over the 11.5 months Smith remained in the adult system, “[she] was involved in approximately 150 security incidents, many which revolved around her self-harming behaviours”, which consisted of “superficially cutting herself, head-banging or, most frequently, fashioning a ligature out of material and then tying it around her neck” (Sapers, 2008). Similar to Smith’s experience within the school, as staff continued to treat her acts of resistance as pathological ‘misbehaviour’ (Barron, 2011; Chelser, 2005; Kendall, 2000; Kilty, 2008a, b; Kilty & DeVellis, 2010; Pollack, 2006; Riessman, 1998; Robert et al 2007; Thomas et al. 2006; Ussher, 1992), these acts intensified.

Segregation

The prison applied a similar but more isolating exclusionary approach than did the school, which became increasingly punitive in response to Smith’s constant resistance to the institutional control. Specifically, as the school progressed from suspensions to school system transfers to eventual cancelation of all forms of schooling, Smith spent two thirds of her youth prison sentence isolated (Richard, 2008), which progressed to perpetual isolation once entering the adult prison system (Sapers, 2008). This disciplinary technology is arguably the most criticized response to self-injurious behaviour, as it fails to identify the impact the prison environment has on producing and exacerbating this behaviour (Kilty, 2006; Martel, 2007a,b; Thomas et al., 2006).

While exclusion via segregation is practiced, it is significantly masked by therapeutic-risk discourse as a means to legitimize these measures in the name of *safety*, *security* and *rehabilitation*. Specifically, the use of segregation in response to self-injury, which is referred to as ‘administrative segregation’ in the adult system, ‘therapeutic quiet time’ in the NB youth prison and ‘isolation’ in the hospital, is relied on as a means to uphold safety and security in a *non-punitive* practice through the isolation of prisoners who pose a threat to themselves and/or others within the prison (Richard, 2008; Wichmann & Tayler, 2004). According to Wichmann and Taylor (2004), efforts to soften the perception of segregation as *non-punitive* is not a reality for those on this status, as the isolating, indeterminate nature of this treatment is experienced as highly punitive.

The damaging effect of segregation in Smith’s case is illustrated not only by the growing intensity of her self-injurious behaviour over time, but also by her desire to remain in the segregation unit during efforts by correctional staff to ‘empower’ her while in the adult system by removing her from segregation and placing her in the general population with older women prisoners in hopes they would have a positive influence on her (Sapers, 2008). The attempt to lesson the perpetual disciplinary approach Smith had already experienced for roughly three years at this point, appears to have had no effect in changing Smith’s unruly behaviour, as she would in fact threaten to “cause a disturbance” if staff did not place her back in the segregation unit when removed (Richard, 2008). According to Hannah-Moffat and Shaw (2000), it is not uncommon for women who have been segregated to wish for their return to isolation, as they feel a great deal of discomfort in the general population after being disconnected from human contact for such a long time.

Both Richard (2008) and Sapers (2008) share a similar perspective as a number of scholars who criticize this correctional approach for its deteriorating effect on those confined (Bonner 2006; Martel, 2006,a, b; Miller, 1994; Smith, 2006). Specifically, Richard (2008) states:

> I found it distressing to think that for approximately two thirds of her sentence, this teenager was alone in a cell most of the time, with very little loving physical contact (the

> only constant physical contact she had with others was mainly when she was restrained, sometimes forcefully). There is in fact evidence in what we have shown in this report that Ashley's mental health state was deteriorating as the months went by. I challenge anyone with a sane mind to live in conditions similar to the ones described above, for half the time Ashley had to endure, and to come out having maintained a perfect mental equilibrium (41).

Sapers (2008) holds similar views, constructing Smith's self-injury as a:

> …means of drawing staff into her cell in order to alleviate the boredom, loneliness and desperation she had been experiencing as a result of her prolonged isolation. This behaviour was Ms. Smith's way of adapting to the extremely difficult and increasingly desperate reality of her life in segregation (Sapers, 2008).

According to Sapers (2008), "[t]here is reason to believe that Ms. Smith would be alive today if she had not remained on segregation status and if she had received appropriate care".

In addition to the vast literature illustrating the deteriorating effects of segregation, as indicated in Richard's (2008) report and the literature review outlined in chapter 1, similar concerns were raised by Arbour (1996) in her report responding to the 1994 P4W incident. Specifically, Arbour (1996) highlighted how "[t]here is no rehabilitative effect from long-term segregation", and that "there is every reason to be concerned that it may be harmful". In fact, Arbour (1996) presented the use of this correctional approach as a violation of human rights in accordance with the *Canadian Charter of Rights and Freedoms*. Specifically, she highlighted how this response is "a deprivation of liberty", which is prohibited under section 7 of the *Charter*, as well as Section 12[17], which prohibits any excessive or unjust treatment inflicted on prisoners.

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[17] Section 12: "[c]ruel and unusual treatment or punishment" is prohibited.

Not only does segregation demonstrate a significant human rights violation in accordance with the national standard, it also, although an unenforced reference point, violates international standards such as those highlighted under Article 37[18] of the *Convention on the Rights of the Child*, and Section 27[19]; 29[20]; 30[21]; 31[22]; 32[23]of the *UN Standard Minimum Rules for the Treatment of Prisoners*. Additionally, Smith's right to 'life, liberty and security', as outlined under section 7 of the Canadian *Charter*, is also highlighted under Article 37[24] of the *Convention of Rights of the Child* and Section 57[25] of the *UN Standard Minimum Rules for the Treatment of Prisoners*.

In addition to the destructive nature of the legal use of segregation, which demonstrates significant rights violations in accordance with national and international standards, Smith's case

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[18] Article 37: Unlawful and arbitrary deprivation of liberty is prohibited. Additionally, youth shall be treated with dignity and respect that accounts for their needs in accordance to their age.

[19]Section 27: Excessive, cruel and unusual punishment is prohibited.

[20]Section 29: Punishable behaviour, and the type and duration of discipline, is determined in accordance with law and regulation

[21]Section 30: Prisoners should be punished only in accordance with "law or regulation, and never twice for the same offence", and unless they have "been informed of the" alleged offence and provided the opportunity to appeal, which the case would then be granted a thorough investigation by authorities.

[22]Section 31: Cruel and unusual punishment is prohibited.

[23]Section 32: Dietary restrictions and "close confinement", or other forms of discipline "that may be prejudicial to the physical or mental health of a prisoner" are prohibited forms of punishment "unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it. According to this section, "in no case may such punishment be contrary to or depart from the principle stated in rule 31. Prisoners who are enduring such disciple shall be visited by "the medical officer" on a daily basis, "and shall advise the director" if the said discipline should be terminated or altered "on grounds of physical or mental health.

[24]Article 37: Unlawful and arbitrary deprivation of liberty is prohibited. Additionally, all youth shall be treated with dignity and respect that accounts for their needs in accordance to their age.

[25]Section 57: As imprisonment in and of itself deprives prisoners of their liberty by disconnecting them from the greater society, "the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation".

demonstrates that CSC also violated their own segregation policy. Sapers (2008) explains that CSC violated of Commissioner Directive 709, as they failed to conduct the 60-day mandatory regional segregation review of Smith's segregation status, which would have drawn attention to the deteriorating effects this placement had on her self-injurious behaviour and overall wellbeing. In light of the CSC's (2009) failure to conduct this review and Sapers (2008) recommendation to ensure this policy is followed in future cases, the CSC's official response (2009) simply states that they are 'in support' of this advice; while merely reiterating the policy rather than acknowledging or explaining their failure to uphold it in this particular case.

Not only does the CSC (2009) refuse to acknowledge their failure to uphold the segregation policy in Smith's case, they also refuse Sapers' (2008) request to amend the policy in order to ensure an initial psy review takes place within the first 24 hours of segregation, rather than providing this review only by the 25 day mark as is currently required. Instead, the CSC (2009) again reiterates their existing policy and note that any signs of emotional deterioration will be spotted by the authorities who surveil the prisoner, i.e. the daily visiting nurse, correctional officers on the unit, and the "Institutional Head or a delegate" (17) who also conducts daily visits. Additionally, the CSC (2009) notes that they are taking the initiative to "increase staff ability to verify offender well-being, especially during the night shift" (CSC, 2009) but they make no mention as to how staff will be able to do this.

Similar to CSC's response to Sapers' (2008) request regarding 60 day reviews, they reiterate the value of their existing policy while failing to acknowledge that their current approach significantly failed in Smith's case. Instead, CSC indirectly blames frontline staff for failing to act in accordance to policy (CSC, 2009). Specifically, the CSC (2009) notes that after their review of their ability to meet behavioural and mental health needs of women prisoners, they created a short and long term plan to improve their services, which consists of providing more defined roles for correctional and psy staff working within the segregation unit at the "national, regional and institutional levels".

The failure of the CSC's internal segregation review process has been highlighted by a number of reputable sources over time (Arbour, 1996; CHRC, 2003; Jackson, 2002; Zinger, 2006), who all were similarly assured by the CSC in response to their concerns that "an enhanced segregation review process can achieve fairness and compliance with the rule of law" (Zinger, 2006: 131). However, even if the CSC *did* follow their segregation policy as it stands, or by providing more clearly defined roles, appropriate treatment cannot be ensured because correctional agents have unconsciously adopted the risk rationale embedded within this system (Barron, 2011; Kilty & DeVellis, 2010; Kilty, 2008a; Robert et al. 2007), which ultimately continues to reconstruct women's needs as institutional risks (Barron, 2011; Hannah-Moffat, 1999, 2001, 2005; Kilty, 2006). Consequently, the response deemed most appropriate to Smith's construction as risky and unempowerable would consist of increased punishment, rather than questioning the punitive conditions she endured (Kilty, 2006; Thomas et al., 2006).

This risk logic is illustrated in the CSC's (2009) mention of incorporating 'secure interview rooms' within the segregation unit, and creating standardized means of responding to self-injurious behaviour. Specifically, this response suggests that the CSC (2009) still refuses to understand self-injurious behaviour as a response to criminalization and incarceration, as they fail to problematize the environment in which Smith first exerted this behaviour. This political approach offered by the CSC is in line with their shift away from the welfare model (Hannah-

Moffat, 2005; Peterson & Kempf-Leonard, 2000; Simon & Feeley, 1992, 1995) to a risk-based method of managing prisoners and establishing control (Peterson & Kempf-Leonard, 2000).

Although, in response to Sapers' (2008) advice, the CSC (2009) states they will be conducting "an operational examination of long-term segregation using representative sampling methodology and an external review process" in April 2010. However, the fact that they have continued to disregard the large body of evidence highlighting the deteriorating effects of segregation suggests little hope for positive change. The insufficiency of CSC's women-centered-approach, which was created in response to a range of concerns regarding the treatment of women prisoners – including the unjust use of segregation (Dell et al. 2009; Hannah-Moffat, 1995, 2004a; Parker & Pate, 2006; Task Force, 1990), demonstrates the continued correctional reliance on the risk-based model that centres on responsibilization and control (Hannah-Moffat, 2000, 2001; Hannah-Moffat & Shaw, 2000).

This correctional response also demonstrates their refusal to consider already existing critical (often empirical) research, in favour of only that which is produced internally within the Service. While in theory, CSC's research sector is an objective avenue to produce accurate findings and recommendations for political change, in practice, internal evaluations are subjective, and will present recommendations for change only in so far as they do not compromise the fundamental ideals that make up the system. In Smith's case, the very fact that the CSC fails to acknowledge their responsibility for her mistreatment speaks volumes in regards to how they determine what they research and publish.

Transfers

According to Richard (2008):

> From a custodial perspective, the turning point in Ashley Smith's life occurred upon the successful application by the Superintendent of the New Brunswick Youth Centre to have her transferred – even though still a youth – to a provincial adult institution. This application was submitted pursuant to a provision found in the *YCJA*, section 92. This section is not without controversy (24).

From Barron's (2011) perspective, this response towards girl prisoners deemed high risk/need strips them from their 'youth identity', thus illustrating the institutional perception that they are in deed more responsible for their actions and therefore require increased punishment. Efforts to transfer Smith to an even more punitive regime were successfully achieved through the application of therapeutic-risk discourse. Significant weight was placed on the assurance that transferring Smith to the adult system would grant her access to programs that focus "on self-esteem, anger management, relationships and substance abuse" (26-27), which were unavailable in the youth prison. In fact, during her confinement in the youth prison, Smith had limited access to "productive activities" and was denied access to "regular" institutional programs. The availability of these programs led the judge to believe that a transfer to the adult system "may very well serve this young person's best interests" (Richard, 2008: 27).

Richard (2008) highlights the failure of the court to recognize that programs offered at the Saint John Regional Correctional Centre are only provided to women prisoners who maintain 'good' behaviour. This is critical information, as Smith's record suggests the likelihood that she would be provided access on account of good behaviour was limited. Even if Smith had greater access to correctional programming once transferred to the adult system, which center on "a wide range of issues that may lead to criminal activity including violence, family violence, sexual offending, substance abuse, and general criminality" (CSC, 2009), her needs would still not be met, as they are structured based on the risk logic that responsibilizes prisoners while failing to consider the broader structural, cultural, political inequalities that influenced her criminality in the first place (Barron, 2011; Hannah-Moffat, 1999, 2001, 2006a; Kendall, 2000, 2002; Kilty, 2008b; Pollack, 2006). The failure of correctional programs to ‘empower’ prisoners is illustrated by Smith’s experience while in the NB youth prison where she was involved in “anger management interventions…group activities” (21) and minimal schooling, which remained ineffective in controlling her undesirable behaviour as it was provided within a system that simultaneously *responsibilizes* and *punishes.*

The unquestioned reliance on these programs comes as no surprise, as the underlying neoliberal objectives remain hidden behind therapeutic (Kendall, 2000, 2002) and risk discourse that center on treatment and upholding public safety (Hannah-Moffat, 1999, 2001, 2006a; Kilty, 2006, 2008b; Pollack, 2006). According to the philosophy underlying the risk/need style of correctional management, exerting ‘good’ behaviour alone would not be enough to grant Smith access to institutional programming in the adult system, as the majority of services and resources are reserved for those deemed ‘high risk/need’ in order to reduce their chances of recidivism (Andrews, 1989; Hannah-Moffat, 2006a; Kendall, 2002). Since Smith’s needs were not statistically linked to recidivism, they were instead constructed as institutional risks. As such, the correctional response to these needs reject therapeutic treatment, in favour of relying on disciplinary technologies (Barron, 2011; Dell et al. 2009; Frigon, 2003; Hannah-Moffat, 1995, 1999, 2000a, 2001, 2004a, 2005, 2006a; Kilty, 2006, 2008b).

The reinterpretation of Smith’s needs as institutional risks is also illustrated in the CSC’s decision to transfer her a total of 17 times over 11.5 months, in order to keep her segregated. This included “three federal penitentiaries, two treatment facilities, two external hospitals, and one provincial correctional facility" (4). Specifically, she was placed in "Nova Institution for Women (Truro, Nova Scotia), Prairies Regional Psychiatric Centre (Saskatoon, Saskatchewan), Joliette Institution for Women (Joliette, Quebec), L'Institut Philippe Pinel (Montreal, Quebec), Grand Valley Institution for Women (Kitchener, Ontario) and Central Nova Scotia Correctional Facility (Nova Scotia provincial facility)" (Richard, 2008: 7).

The justification for the majority of these institutional transfers, according to Sapers (2008), was to "address administrative issues such as cell availability, incompatible inmates and staff fatigue, and had little or nothing to do with Ms. Smith's needs". Here, CSC (2009) implies that the 17 transfers that Smith experienced over her 11.5 month incarceration in federal prison were a necessary, and thus institutionally justified, action. Sapers (2008) argues that the frequency of these transfers negatively impacted the CSC's capability to meet her "very real human and mental health needs". In addition, "[e]ach transfer eroded Ms. Smith's trust, escalated her acting out behaviours and made it increasingly more difficult for the correctional Service to manage her" (Sapers, 2008).

The fact that the CSC (2009) violated their own laws and policy, namely Section 84 of the CCRA and Commissioner Directive 540 and by transferring Smith largely due to her continued self-injurious behaviour (Sapers, 2008), highlights how this behaviour was not viewed as an outcome of Smith's real misery, but rather as an institutional risk and an act of choice. Not only were these constant transfers a violation of CSC policy, they also demonstrated significant human rights violations, as outlined under Section 7 of the Canadian *Charter*, Article 37 of the *Convention on the Rights of the Child*, and Section 57 of the *UN Standard Minimum Rules for the Treatment of Prisoners* regarding the protection of 'life, liberty and security'. This is particularly the case since these transfers had nothing to do with meeting Smith's needs and/or providing her with an appropriate treatment plan, but rather was a means to enforce the disciplinary approach of segregation and use of force techniques that characterize contemporary corrections (Sapers, 2008).

It is unsurprising that the CSC (2009) supports Sapers' (2008) recommendation to raise staff awareness regarding the policy requirement for the mental health state of prisoners to be considered prior to prisoner's transfers or removal to segregation. Specifically, Sapers' (2008) request that the CSC (2009) only minimally change their original transfer policy so they would maintain their authority to conduct multiple transfers even in the case where one's state of mental health or risk of self-injury or suicidal ideation is in question, as long as these transfers are to any of the five psychiatric prisons in the country. As illustrated in Smith's experience at two of these psychiatric correctional treatment centers, transfers to these locations are understood through a therapeutic-risk lens where punitive measures such as segregation and use of restraints remain a common response (Kilty, 2008a).

Use of Force

In addition to relying on segregation as a response to Smith's self-injurious behaviour (Sapers, 2008; Richard, 2008), the CSC also responded through their use of force techniques, which they also deemed a *non-punitive* preventative approach to curtail further self-injury (Richard, 2008). This approach continued once Smith entered the adult prison system, as use of force was applied during "well over 150 incidents" throughout an 11.5-month span (Sapers, 2008). According to Sapers (2008), "there were days when multiple staff interventions took place and when the Institutional Emergency Response Team was deployed".

Richard (2008) problematizes the CSC Use of Force policy, i.e. Commissioner Directive 567-1, for being too subjective. Specifically, the policy states that "chemical agents and restraints are only considered to be used as a reasonable level of force when exercised against an inmate who is 'actively aggressive'" (53), thus, pepper spray can be used as an alternative to physical restraints when it has been determined that "a threat to personal safety and security exists" (Richard, 2008: 53). Determining when this threat exists is a subjective decision, which can result in the inconsistent and inappropriate use of chemical agents and physical restraints (Richard, 2008).

Interestingly, the CSC's use of restraints in response to Smith's self-injurious behaviour aligns with Section 33 of the *UN Standard Minimum Rules for the Treatment of Prisoners*, as it states that although restraints are prohibited as a form of 'punishment', it is acceptable if directed by medical staff or the director of the institution when it is determined that all other responses failed in preventing further self-injury. While it does state that the type and use of restraints must be determined "by the central prison administration" and only applied for a period deemed "strictly necessary", this is still highly subjective especially considering how self-injury is understood within the correctional system. Not only are restraints authorized by this international standard, the use of force also accords to section 54, in cases where "active or passive physical resistance to an order based on law or regulations" has taken place. While Richard (2008) criticizes the CSC's Use of Force policy for its subjective discretion regarding how much force is actually exerted, Sapers (2008) fails to do so. This is concerning, since it is Sapers (2008) who investigates the CSC's actions. Through his silence, Sapers (2008) legitimizes the Use of Force policy while providing the CSC with the opportunity to avoid this issue all together in their official response to his recommendations.

The CSC (2009) does appear to problematize the frontline staff's level of discretion regarding the use of force by noting how, following nationwide consultation, they reinforced policy guidelines; provided enhanced discretion at the managerial level; allowed the Institutional Head to "create an intervention plan using line staff to manage a situation" (CSC, 2009: 4); and created an accelerated review process for incidents involving (an unjust) use of force to ensure corrective measures are taken quickly. While the CSC (2009) presents this initiative as a reactive effort to improve their system, in actuality they are merely reiterating their 'programme integrity principal', as discussed in Chapter 1. Specifically, this principal, which centers on the importance of proper selection, training and monitoring of front-line staff as a means of achieving pro-sociality and reducing recidivism among prisoners, was initially advocated by correctional affiliated psychologists in the 1970s as one of the guiding principals of the CSC's risk-based model (Andrews, 1989; Andrews et al., 2006, Kendall, 2000). While these initiatives continue to appear to demonstrate a positive initiative by restricting frontline staff's level of discretion, Smith's case suggests that it is not solely the inappropriate application of correctional policy, but is also the policies themselves that authorize the unjust force she endured.

According to correctional reports, while staff initially intervened immediately when Smith self-injured or had retrieved items used to self-injure, this approach shifted to prolonging intervention (later dubbed a 'wait and see' approach) as her oppositional and self-injurious behaviour intensified (Richard, 2008; Sapers, 2008). At the youth prison, Richard (2008) notes that institutional staff were told to maintain distance from Smith when they intervened following one of her self-injurious incidents in order to avoid sending her the "wrong message", namely that misbehaviour will achieve "positive attention" (36). This approach to Smith's self-injury reflects the correctional perception that this behaviour is manipulative (Filmore & Dell, 2000) and attention-seeking and childish (Dell et al. 2009), rather than a means of coping (Dell et al., 2009; Kilty, 2006; Thomas, et al., 2006) with the misery she was enduring while imprisoned.

According to Richard (2008), while it appears that a more effective alternative approach to deter Smith's oppositional behaviour was not available at the youth prison, he finds it disturbing that "staff would not always reach out to [Smith], conveying the message they were worried about her, and needed to keep her safe" (36). Similar to Smith's experience in the school, Richard (2008) found it problematic to see how little effort was applied in attempts to understand "the underlying reasons why Ashley continued to self-harm and behave the way she did" (35). While in the adult system, this wait and see approach continued when she was confined at Nova Institution where staff efforts to immediately intervene when Smith self-injured eventually shifted to allowing Smith to keep the tools she used to self-injure for longer periods of time (Sapers 2008). The wait and see approach became more extreme once Smith was transferred to GVI.

Sapers (2008) also criticizes the CSC for failing to communicate to frontline staff at GVI that 48 hours prior to her death she had been segregated on suicide watch following a psychological assessment that determined her to be "a very high risk of committing suicide" (Sapers, 2008). If informed of this information perhaps staff would have immediately intervened instead of relying on the wait and see approach that called for them to "assess and reassess" Smith when she self-injured and where intervention would only follow when visible signs of distress were apparent. According to Sapers (2008), frontline staff received orders from senior administrators to follow the *Situation Management Model* (SMM[26]) that advises assessing and reassessing Smith so as to intervene after she had lost consciousness (Sapers, 2008). Sapers (2008) notes how "[v]ideo evidence indicated that there were times at GVI when Ms. Smith would turn blue, have trouble breathing, and break blood vessels from her ligature use, before staff would physically intervene". The wait and see approach ultimately created a situation where staff intervened only after 19-year-old Smith had strangled herself to death with a ligature around her neck (Sapers, 2008).

Sapers (2008) criticizes the fact that staff were disciplined when they attempted to stop Smith from committing any additional harm through immediate intervention, instead of following orders to wait until Smith was visibly in distress (Sapers, 2008). As reflected in their previous responses to Sapers' recommendations, the CSC (2009) continues to displace responsibility from the operational and regional level and places it on their frontline staff, despite instructions from senior administrators for them to wait to intervene.

Sapers (2008) recommends revising the policy in order to ensure that staff consider the prisoner's history for signs of self-injurious behaviour or potential risks for future self-injurious behaviour when deciding whether or not "immediate intervention" is appropriate. Smith's past record clearly illustrated that "preventing harm and preserving life should have been the overriding principles governing staff intervention" (Sapers, 2008). In response, the CSC (2009)

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[26] According to Sapers (2008), the SMM, i.e. the Situation Management Model followed by the CSC staff; outlines that "all interventions employed by CSC staff must be reflective of an inmate's behaviour at the point of intervention". Thus, when force is applied, it must be justified based on the exact behaviour of the offender in that moment of intervention. If the offender's behaviour changes, then so too must the chosen intervention in terms of its form and severity.

notes that in the September 2009 bulletin issue[27] they will *clarify* to staff "that past behaviour includes an offender's history of self-harm", rather than actually implementing this recommended policy revision. By refusing to amend Commissioner Directive 567, the CSC (2009) delegitimizes the grave impact that the wait and see approach had on Smith while imprisoned. As illustrated in their policy on self-injury, institutional transfers, segregation and use of restraints and force, and by maintaining the subjective nature of the policy, the CSC (2009) is able to preserve greater control regarding how their policy is applied in practice, which materializes into greater control over the prisoners whom they confine.

The CSC (2009) also note that they sent out a bulletin issue in 2008 that reinforced to staff that "preservation of life" is a "paramount responsibility" at all levels of CSC and that any tool used to self-injure must be immediately removed in a reasonable and safe manner. They also note that a weekly report containing statistics on self-injurious prisoners are sent to all the regions in order to "bring their attention to these cases for further action, if required" and that all incidents of medical distress or self-injurious incidents are assessed at both "the operational and regional levels for compliance with policy" and that "[c]orrective action is taken if necessary" (CSC, 2009).

It is questionable how often and by whom CSC's (2009) weekly and daily reports are read, or how seriously the content is taken, as Smith appeared in CSC's Situation Report (SITREPS), *both* "on a weekly and often daily basis". Sapers' (2008) draws attention to this concern, noting that "[t]here is no evidence to indicate that the use of force reviews at the Regional and National levels identified these inappropriate changes in response to Ms. Smith's

[27] The CSC bulletin issue is an online document sent to all levels of the correctional service to raise awareness about relevant daily and weekly issues when they arise in any federal institution in Canada (CSC, 2009).

self-injurious behaviour" at either Nova or GVI (Sapers, 2008). The fact that the 'wait and see approach' did not raise Regional and National attention devalues the reliability of their efforts to promote their security bulletin as an effective means of ensuring appropriate intervention. Thus, while "awareness of Smith's constant self-injurious behaviour would have been high, there is little evidence that anyone beyond the institutional level effectively intervened before Ms. Smith died" (Sapers, 2008).

Deprivation

The correctional disciplinary techniques exerted on those deemed high risk/need includes not only lengthening sentences, use of force (Barron, 2011; Hannah-Moffat, 2000a; Kilty, 2006), involuntary transfers and segregation (Hannah-Moffat, 2000a; Kilty, 2006; Martel, 2001a, b; Thomas et al. 2006) as illustrated in Smith's case, but also the denial of personal belongings and visitation rights (Barron, 2011). On at least one occasion while confined in the youth prison, Smith was denied the right to a visit from her mother as punishment for her misbehaviour. Not only was Smith denied visitation rights while in the youth prison, she was also denied personal items in her cell when her behaviour was deemed inappropriate (Richard, 2008). Richard (2008) illustrates the importance of maintaining, mending, nurturing and enhancing family relationships with youth prisoners in order to achieve successful community reintegration. He notes that it is critical for NBYC staff to apply all their effort to ensuring family contact with youth prisoners, including providing family based therapy (Richard, 2008).

Barron (2011) and Richard (2008) problematize the denial of familial visitations, as it violates the therapeutic philosophy of fostering community relationships to aid in the young person's successful reintegration that is said to characterize youth corrections. Barron (2011) questions how such a punitive response that acts as a form of bribery is supposed to teach the prisoner a positive lesson, as it has absolutely no connection to the behaviour or conduct in question. Not only does the denial of familial visits within the NB youth prison violate its own 'therapeutic' philosophy, it also demonstrates a violation of Smith's human rights in accordance to section 37[28], 70[29], 79 and 80[30] of the *UN Standard Minimum Rules for the Treatment of Prisoners*. Specifically, these sections highlight the importance of fostering community and/or familial relationships, and the fundamental right of the prisoner to have this access. Attempts to enforce compliance through deprivation illustrate the institutional effort to further remove Smith's agency. According to Martel (2006a,b), while such tactics are successful in enhancing women's uncertainty of their own identity and self-image, they often use various resistance strategies, such as self-injury, to manage and negotiate these assaults on their identity. Similar to her response to segregation, use of restraints and force, involuntary transfers, and involuntary therapeutic injections, Smith's acts of resistance and self-injury became progressively more severe when deprivation techniques were applied.

The deprivation Smith endured while in the NB youth prison was replicated when she entered the adult system. While incarcerated in federal prison, Smith documented a number of denials she believed violated her rights, including: deprivation of basic hygienic necessities; denial of access to writing utensils or paper; denial of release from her cell for any period of time

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[28] Section 37: Regular communication and visits with "family and reputable friends" under appropriate supervision.

[29] Section 70: Privileges and treatment deemed appropriate for prisoners based on their classification "shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment"

[30] Section 79 & 80: Prisoners "shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institutions as may promote the best interests of his family and his own social rehabilitation".

for four days; insufficient amounts of toilet paper and soap; provisions of finger foods only; access to small amounts of deodorant on her finger at a time; denial of access to underwear or sufficient sanitary products to meet her hygiene needs. Smith also complained about the excessive use of force by staff, their refusal to accept her written complaint that was written by a fellow prisoner, “even though she was not permitted paper or writing instruments”; and their failure in providing Smith with “a copy of the decisions from the first and fifth working day reviews of her segregation status” (Sapers, 2008). In response to two incidents concerning inadequate amount of sanitary products and toilet paper, the CSC denied Smith’s grievances, arguing, Smith “had been ‘misusing’ the toilet paper and sanitary products”, indicating that she would receive more “when she reduced her self-injurious behaviour” (Sapers, 2008).

The unjust treatment Smith endured is mirrored in what was experienced by the prisoners involved in the 1994 P4W incident (Arbour, 1996). According to Arbour (1996), the women confined within the segregation unit at P4W had submitted grievances regarding, but not limited to: excessive use of force; prolonged segregation; concern regarding the IERT strip searches and ‘body cavity searches’, denial of visitations, denied release from their cells for exercise, denial of sanitary products and lack of programming while on this status. Similar to Smith’s case, the treatment these women experienced demonstrates significant human rights violations.

In accordance with the *UN Standard Minimum Rules for the Treatment of Prisoners*, the deprivation Smith endured while in the adult system, which is eerily similar to what occurred to the women involved in the 1994 P4W incident, illustrates a significant violation of section 15[31],

[31] Section 15: Prisoners shall be provided with basic hygiene products.

20[32] and 21[33] of this international standard. Specifically, Smith was denied her fundamental right to basic hygienic needs (section 15), nutritional and well-balanced meals (section 20) and the granting of a minimal one hour of daily exercise outside of her cell (section 21). Additionally, it illustrates a violation of Smith's rights to "life, liberty and security of the person", as outlined under section 7 of the Canadian *Charter*, Article 37 of the *Convention on the Rights of the Child* and Section 57 of the *UN Standard Minimum Rules for the Treatment of Prisoners*. Lastly, as there was no indication that medical staff authorized providing Smith with only finger foods, this treatment also violates section 32 of the *UN Standard Minimum Rules for the Treatment of Prisoners*.

Offender Complaint & Grievance System

In September 2007, Smith "made a final attempt to improve these conditions" by writing one last complaint, sealing it in an envelope, and placing it in the designated area on the GVI unit where she was stationed (Sapers, 2008). According to Sapers (2008), this complaint was not opened until two months following Smith's death. While policy states that in cases where the griever dies, the CSC must prepare a response and provide it to those conducting the case investigation; in Smith's case, "there is no evidence that this grievance has been either reviewed or answered". Similar to Smith's failed attempts to grieve her unjust treatment while segregated, this too happened to the women who experienced similar conditions back in 1994 in

[32] Section 20: Prisoners shall be provided with adequate quantities of liquids and quality, nutritional food.

[33] Section 21: Prisoners who do not already work outside for their job, shall be granted a minimum of 1 hour of daily exercised outside "if the weather permits". For "[y]oung prisoners, and others of suitable age and physique", they shall be provided with recreational and physical activities during this hour of outdoor exercise.

the segregation unit at P4W. According to Arbour (1994), a number of grievances submitted by these women were never actually responded to by the CSC, and those that were responded to "almost always" were late and "in some cases" were not responded to until "several months after the answers were due".

As done by Arbour (1996) over a decade prior to this case, Sapers (2008) problematizes the Offender Complaints and Grievance system for its "inability…to appropriately and reasonably resolve inmate complaints in a timely manner". Specifically, Sapers (2008) voices concern over the fact that the CSC never reviewed Smith's institutional conditions, in spite of the severity of Smith's complaints, in order to ensure "they were in keeping with law, policy and Ms. Smith's basic human rights". He notes how "[g]iven the severe restrictions placed upon Ms. Smith, the Correctional Service had a heightened duty to remain vigilant of her care and treatment, inclusive of any allegations of human rights violations" (Sapers, 2008).

In both cases, Arbour (1996) and Sapers (2008) criticize the Offender Complaints and Grievance system for not only failing to provide timely responses, but also for not adequately prioritizing these grievances. As correctional policy dictates that only those grievances deemed 'urgent' are responded to quickly and efficiently, all of Smith's grievances were inappropriately deemed routine priority, which, according to Sapers (2008), demonstrates CSC's violation of Commissioner Directive 567, as "many, if not all of Ms. Smith's complaints at Nova Institution should have been designated as requiring a high priority response".

Additionally, Sapers (2008) notes how the CSC failed to provide Smith an interview for five of her seven complaints, as required by policy in order to provide a holistic response; this was justified by a CSC (2008) representative who stated that attempts to interview Smith failed due to her “being disruptive at the time or because she refused to engage in conversation”. Despite these challenges, according to Sapers (2008) there is no evidence suggesting any additional effort was “made to discuss these complaints” with Smith (Sapers, 2008). Ultimately, Smith was not provided with a complete written response for any of her grievances until “well after she had been transferred from Nova Institution”, when all of them were rejected by the CSC (Sapers, 2008).

The CSC’s failure to take Smith’s grievances seriously violates section 36 (4) of the *UN Standard Minimum Rules for the Treatment of Prisoner*s, which states: “unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay”. Additionally, it also illustrates a violation of one’s “life, liberty and security of the person”, as outlined under section 7 of the Canadian *Charter*, Section 57 of the *UN Standard Minimum Rules for the Treatment of Prisoners*, and in Smith’s case while still at the NB youth prison it demonstrates a violation of Article 7 of the *Convention on the Rights of the Child*. Failing to respond to prisoner grievances leaves no direct legal avenue for the imprisoned to challenge or resist the conditions in which they are confined, which ultimately affected the overall deterioration of Smith’s state of emotional and physical wellbeing.

In light of these factors, the CSC (2009) supported Sapers’ (2008) request that they conduct an external review of the offender Complaints and Grievances System, in order to ensure quick and fair “resolution of offenders’ complaints and grievances at all levels of the process”. In fact, they note that they have already conducted an “internal audit”, and are in the process of implementing the recommendations that were produced following the presentation of their findings to the “CSC Audit Committee” that includes “three external members”. They also comment that they were going to begin the external review of this system during the fiscal year in which Sapers' (2008) report was published, following their consultation with stakeholders, including Sapers himself. While the CSC (2009) shows some will to improve this system their failure to incorporate these recommendations when presented by Arbour in 1996 raises much scepticism as to the seriousness of their conviction and to the value of internal rather than external audits.

The CSC's (2009) unwillingness to not only make significant improvements, but to acknowledge how they failed Smith is illustrated in their refusal to implement Sapers' (2008) recommendation to ensure all grievances concerning institutional treatment and conditions are labelled "as priority to the institutional head and be immediately addressed" (Sapers, 2008). Instead, the CSC (2009) simply reiterates their current policy by stating that grievances deemed high priority will be brought to the immediate attention to the institutional head without indicating that all cases concerning institutional treatment and conditions would be labelled high priority (CSC, 2009). Their refusal to prioritize issues regarding institutional treatment and conditions ultimately legitimizes unjust responses to those imprisoned, suggesting that this is an appropriate consequence for unempowerable prisoners.

The CSC's (2009) refusal to acknowledge their unjust treatment of Smith is also illustrated in their failure to concede that they provided no alternative response to punishment for Smith's undesirable behaviour, nor did they respond to Smith's grievances while she was *alive*, as required by policy. Furthermore, contrary to their stated support, the CSC (2009) disregard Sapers' (2009) request to take "appropriate corrective action and policy clarification" in response to these grievances, by failing to identify that they will and how they will do so.

Granting a Voice to the 'Voiceless'

Not only did the punitive institutional response to Smith's needs further exacerbate her self-injurious behaviour, she was also denied any adequate means of challenging the injustice she endured. Within the youth system, while prisoners have the right to appeal an institutional charge or file a grievance concerning their treatment or the circumstances surrounding the incident, according to Richard (2008), "[i]n practice, […] the opportunities given to youths who wish to challenge institutional charges or actions taken by staff members are not as effective as they are meant to be" (37). Smith's case exemplifies this, as she pled guilty in 90.07% and not guilty for only 9.93% of the 501 institutional charges she received while imprisoned in the NB youth prison; moreover, she only appealed 11.43% of the time in spite of the fact that a guilty verdict was found in 100% of these charges. According to Richard (2008), these figures are disturbing, noting that the "internal disciplinary system" did not offer "any actual recourse to" Smith. He concludes that "[i]t comes as no surprise that she turned down the right to appeal or challenge the decisions taken by this "internal court" well before she left the NBYC" (47).

The internal correctional court system demonstrates one avenue in which a false sense of empowerment and autonomy is presented, as prisoners are not "free to make choices rather than feeling coerced into a decision", which is a key component of the legal standard required to "assign the competence of an individual's waiver of legal rights" (Abramovitch, Peterson-Badali & Rohan, 1995). This is due to the fact that while prisoners are deemed to have the power to challenge institutional injustice, they are only given the opportunity to do so within the same punitive confines that reconstructed their legally non-criminal behaviour as criminal in the first place. The failure to provide Smith with an external legal representative is a violation of her rights in accordance to article 37[34] of the *Convention of the Rights of the Child*. Holding internal court proceedings in response to the 501 institutional charges Smith accumulated fails to provide her with the opportunity for fair representation and objective decision-making.

While Smith diligently resisted institutional efforts to enforce her compliance, the increasing exertion of punitive technologies within the prison aggravated her embodied misery (Kilty, 2006, 2012a; Maurutto & Hannah-Moffat, 2006). The following excerpt highlights the complexity of Smith's self injury, as it appears to have been both an expression of resistance, as well as a means of self-punishment (Kilty, 2012a) as she internalized the correctional response and consequentially too responsibility for the resulting pain she experienced:

> If I die then I will never have to worry about upsetting my Mom again. It would have been nice today to stick my head in the lawn mower blade. F***, I really did have to hold back the urge. Maybe next time I will give it a try (Smith, found in Richard, 2008: 23).

Smith's self-blame and guilt for the conditions of her own imprisonment illustrates the successful workings of technologies of government that aim to responsibilize individuals in terms of how they think and act in efforts to align them with the institutional ideal (Garland, 1996). While Smith's words do not indicate her compliance to this ideal, it does show how she responsibilizes herself for her own misery; for the institution, this way of thinking was interpreted as Smith taking a potential step closer to making changes that would prevent this misery from continuing – meaning they believed she would soon comply. However, according to Kilty (2006; 2008b; 2012a), women who blame themselves for their misery and feelings of

[34] Article 37: All youth "shall have the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority"

low self-worth often resort to self-injury as a means to self-punish. The following excerpt illustrates how this appears to be the case with Smith:

> When I use to try to hang myself I was just messing around trying to make them care and pay attention. Now it's different. I want them to f*** off and leave me alone. It's no longer a joke. It kind of scares me to think that they might catch me before it's done and then I will be a vegetable for the rest if my life. That's why the most important thing right now is to stay unlocked so they don't think anything is up. It's over (Richard, 2008: 23).

While Smith self-injured to punish herself, the following excerpt illustrates how she simultaneously cut as a means of resisting punitive control (Kilty, 2006; 200b; 2012a; Martel, 2006a,b):

> On September 6, 2006, staff members found bruises on Ashley's neck. She had also constructed a noose and tied it to a ceiling vent in her cell. She told staff members that she was scared of receiving more charges that would prolong her sentence and therefore wanted to die (Richard, 2008: 20).

According to Richard (2008), Smith wrote the above excerpt during the month prior to her transfer to the adult system in 2006 when she was reportedly involved in 16 self-injurious incidents – the highest number of self-injurious incidents Smith committed throughout the three-year period in which she was imprisoned at the NBYC (Richard, 2008). Similar to Smith's experience in the school, the motivation to completely remove her from the youth prison at the point where her 'unruly' behaviour is most intense illustrates the institutional perception of Smith as both risky and abnormal, which fails to identify her living conditions as a stimulus for the problematic behaviour.

Mirroring the outcome of Smith's school experience, the disciplinary approach applied in the prison only exacerbated her undesirable behaviour, which also led to increased discipline. Not only did her self-injurious behaviour intensify (Richard, 2008; Sapers, 2008), according to Sapers (2008) her "assaultive behaviour (grabbing, spitting, kicking, biting)" also intensified, as she would for the most part only respond in this manner when staff used force, which also increased over time. According to Richard (2008), Smith was constantly "under a highly restrictive, and at times, inhumane regime" (19) while being denied any meaningful, positive contact (Richard, 2008; Sapers, 2008). Similar to the school, while there is evidence that correctional authorities were well aware of the counterproductive results of their constant disciplinary response, there is no evidence that an alternative approach was applied or generated ex post facto.

The inconsistent diagnostic impressions that occurred prior to her confinement in the adult system continued until her death (Sapers, 2008). According to Sapers (2008): "[a] few days prior to her death, an institutional psychologist recognized that Ms. Smith's mental health had further deteriorated. At that point she was allowed out of her segregation cell for brief periods of time in an attempt to establish meaningful interaction with staff" (Sapers, 2008). According to this excerpt, the institutional psychologist identified the lack of positive interaction to be the source of Smith's deteriorating mental health. In fact, Smith "was identified by an institutional psychologist as being highly suicidal" (Sapers, 2008). Sapers (2008) acknowledges the lack of communication within the CSC as "[s]taff monitoring Ms. Smith in her cell, some of whom had been only temporarily and recently assigned to Grand Valley Institution for Women, were not formally provided this crucial piece of information in the 48 hours prior to her death". An external psychologist who conducted a review of Smith's case following her death had a similar understanding of her behaviour (Sapers, 2008).

The inconsistency in Smith's diagnostic impressions illustrates the subjective and even unsound state of psychiatric assessments. As mental illness and disorder are difficult to determine, it is clear that in Smith's case the number experts within the carceral network that attempted to understand her unruly behaviour did so through their own particular lens. While diagnostic impressions are used to understand behaviour, Leifer (2000) argues that "…psychiatry serves as an ideology which camouflages this covert form of social control as medical treatment" (2). By diagnosing undesirable behaviour, the individual becomes vulnerable "to being managed by a ubiquitous mental health system" (Leifer, 2000: 2).

While both Ombudsmen adopt the position that Smith was mentally ill, they also demonstrate concern over the fact that the correctional management plan was "largely security-focused, lacked mental health components, and were often devoid of explicit directions for addressing Ms. Smith's on-going self-harming behaviours" (5). Even therapeutic attempts within the community, including weekly individualized counselling sessions and the Intensive Treatment Program[35] in which she was placed as part of her probationary conditions, were discontinued shortly after being first remanded to the youth prison in April, 2003 (Richard, 2008). Instead, while Smith was still constructed as abnormal, this identity was reinterpreted through risk logic, which led to the disregard of any positive therapeutic approach in favour of a disciplinary management plan hidden behind therapeutic-risk discourse.

Richard (2008) highlights the contradiction of this approach in the following excerpt by questioning the disciplinary measures taken with Smith:

> How this was supposed to rehabilitate and promote her reinsertion in the community escapes me. As a modern society, we must be held accountable for subjecting youths with limited life experiences and coping abilities to this kind of treatment. The fact that no one from the correctional system was able to see or effectively intervene in the out of control spiralling condition Ashley was in is shameful (Richard, 2008: 42).

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[35] Managed by Public Safety, the ISP is an alternative approach to confinement that provides high risk youth with intensive support in the community (Richard, 2008). The objectives of ISP is to divert youths from custody, introduced and integrate them into activities identified as pro-social, improve psychological and physical health, and improve interactive, vocational, educational, and social abilities (Richard, 2008).

Sapers (2008) also problematizes this contradiction, stating how "[e]ach transfer further eroded any possibility of establishing a therapeutic relationship with Ms. Smith and negatively impacted her willingness to co-operate with treatment staff'. Not only did the transfers hinder the possibility for Smith to form relationships with psy-experts, the inconsistency of the treatment also had a negative impact. At the GVI for example, Smith was "monitored by four different mental health practitioners" which made "it practically impossible to develop a consistent and trusting therapeutic relationship" (Sapers, 2008).

Particularly concerning to the ombudsmen is how Smith never received a full psychological assessment or comprehensive treatment plan (Richard, 2008 & Sapers, 2008), which, according to Sapers (2008), occurred in spite of the fact that she was certified eight times by the provincial mental health legislation and was transferred a number of times to CSC's psychiatric centres (Sapers, 2008). Sapers (2008) states that this information "should have highlighted to the Correctional Service the urgent need to have a comprehensive mental health assessment completed for this young woman". In fact, Sapers (2008) notes how his "…staff [was] advised by CSC that an intervention plan had been created for Ms. Smith and that frontline staff had been engaged and informed of how to best intervene-from a therapeutic perspective with Ms. Smith". However following further inquiry, Sapers (2008) discovered:

> …that Ms. Smith's access to appropriate mental health support was severely limited. She received only cursory mental health assessment, care and treatment. This was due to the lack of mental health resources in federal Corrections as a whole, and the lack of specialized treatment options available for women with specialized needs in particular. Moreover, despite having been transferred on several occasions to provincial mental health facilities, little suggests that her care and treatment in those institutions helped her beyond addressing immediate concerns.

The CSC (2009) also notes that they created "an internal Mobile Interdisciplinary Treatment Assessment and Consultation Team (MTAC) to assist with complex mental health cases" (CSC, 2009). They claim that they are "an on-demand mobile skills-building team, comprised of CSC experts from various backgrounds" who "provide consultation services to institutional staff as needed". Richard (2008) suggests that there is no indication that Smith's state of health "was ever of such concern to SJRCC staff that the mobile mental health unit would have been dispatched to assist her" (28). According to senior correctional staff, this measure was saved for only "really very distraught individuals", meaning those who verbalize "a high level of suicidal threats" (29) in cases where they could not take control of the situation at hand, and where there is an "absolute need to ensure compliance to institutional rules and protect her from herself" (29). The failure to provide adequate medical services demonstrates the violation of Smith's rights in accordance to section 22[36], 24[37], 25[38] and 26[39] and

[36]Section 22: a minimum of "one qualified medical officer who should have some knowledge of psychiatry" shall be available within every prison. Additionally, "[t]he medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality". Ill prisoners requiring specialized "treatment shall be transferred to specialized institutions or to civil hospitals". Prisons that have a hospital unit shall have the appropriate resources necessary to treat ill prisoners, and shall be staffed with "suitable trained officers".

[37] Section 24: All prisoners shall be examined by a "medical officer" soon following admission, and whenever deemed necessary. This officer shall pay particular attention to the present of mental or physical illness, and shall take the necessary measures in response to their presents, including "the noting of physical or mental defects which might hamper rehabilitation"

[38] Section 25: All prisoners who are, or claim to be, mentally or physically ill, or who require "special attention", shall be aided daily by the medical officer. Additionally, "[t]he medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment".

[39] Section 26: The medical officer shall inform and provide recommendation that are to be considered in by the institutional head accordance to the institutional rules regarding the living conditions within the prison, including but not limited to: the state of services and food provided; sanitation; hygiene; cleanliness; bedding and clothing.

31[40] of the *UN Standard Minimum Rules for the Treatment of Prisoners*. Broadly speaking, Smith's right outlined in section 58, 65, 66[41], 59[42], 60[43], 62[44], 69[45] and 78[46] of the *UN Standard Minimum Rules for the Treatment of Prisoners* were also violated, as she was denied access to the same resources and services available to the general prison population while remaining segregated for the duration of her incarceration.

Richard (2008) highlights how although correctional staff at the NB youth prison applied "their best efforts" and had a "genuine commitment to the wellbeing of the youths in their care", they, as well as outsiders providing institutional services, "did not possess the necessary training or tools to address some of the most fundamental needs of Ashley's mental health" (47). Sapers (2008) on the other hand illustrates grave concern over the fact that while in the adult system, Smith's management plan was never appropriately communicated to those who held the greatest

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[40] Section 31: Cruel and Unusual Punishment is prohibited.

[41] Section 58, 65 & 66: A term of imprisonment shall be used to provided prisoners with the necessary resources and services that will prepare them to successfully reintegrate them back into the community.

[42] Section 59: Resources and services to ensure successful community reintegration shall be applied in a manner that meets the individual needs of each prisoner.

[43] Section 60: A pre-release plan involving gradual community entry shall be provided to prisoners in order to ensure successful full reintegration.

[44] Section 62: The institutional medical services "shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation".

[45] Section 69: Shortly after conducting the risk assessment of the prisoner upon admission to the prison, a treatment plan tailored their individual needs shall be prepared and carried out.

[46] Section 78: "Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners".

responsibility for the monitoring and security of Smith's well-being, i.e. the frontline correctional staff.

According to Hannah-Moffat (2001), Pollack (2009) and Sim (2005),

no matter the training experts have, therapeutic efforts within the punitive correctional environment will continue to fail to adequately address mental ill health. Rather, psy efforts within the correctional setting only reinforce the punitive regime through their alignment with risk logic; thus, providing a supportive treatment environment will be unsuccessful so long as punishment and control continue to be the central focus of corrections.

CHAPTER 5

SUMMARY OF FINDINGS & AREAS FOR FUTURE RESEARCH

The Carceral network does not cast the unassimilable into a confused hell; there is no outside. It takes back with one hand what it seems to exclude with the other. It saves everything, including what it punishes. It is unwilling to waste even what it has decided to disqualify (Foucault, 1977, p.301).

The above quote captures the inescapable regulatory web Foucault described as the carceral network. Social institutions, whether they be schools, hospitals, or prisons (to name a few), maintain disciplinary and governmental power in order to produce and shape compliant, responsible social subjects. While the inner workings of this power often remains below the level of consciousness (Foucault, 1977), it is when resistance occurs that these technologies become stronger, increasingly punitive, and more visible – Ashley Smith's experience contextualizes this scenario.

Summary of Findings

This research is exploratory in nature, as I set forth on this journey to gain further insight (Klenke, 2008) into the correctional responses to Smith's self-injurious behaviour, the broader systemic factors implicated in these responses, and to identify further questions requiring future research. I borrowed a number of concepts from multiple theoretical perspectives (including: critical feminism, constructivism, and Foucauldian, risk and governmentality inspired works), which aided me in formulating the following research questions:

- What influence, if any, did the political responses applied within each social institution have on Smith's undesirable behaviour?
- What influence, if any, did CSC's political responses to self-injurious behaviour have on the ultimate death of Ashley Smith?
- What influence, if any, did therapeutic-risk discourse play in legitimizing the institutional response to Smith's behaviour?
- What role, if any, did the psy expert play in determining what responses were most appropriate in responding to Smith?

These questions were answered following my analysis of Richard's 2008 report on the Smith case, titled: *The Ashley Smith Story*; Sapers' 2008 report titled: *A Preventable Death;* and CSC's 2009 report responding to Sapers' (2008) report, titled: *Response to the Office of the Correctional Investigator's Report: A Preventable Death*, and the *CSC National Board of Investigation into the Death of an Offender at Grand Valley Institution for Women.* This particular data set was chosen in order to capture the diverse state positions on Smith's behaviour, incarceration, and death.

The first research question was answered through two broad themes that emerged from the data: *Perpetual Resistance: From Delinquent Girl to Unempowerable Prisoner* and *'Unempowerable' Prisoner: Dual Workings of Governance & Discipline,* which captured the impact that the institutional responses had on Smith's undesirable behaviour. Namely, as each institution appeared to rely on the therapeutic-risk logic to understand Smith's behaviour, she became solely constructed as both 'abnormal' and 'risky', thus legitimizing a response that centered solely on 'control' and 'punishment', in spite of the counterproductive effect of aggravating her resistant behaviour.

Richard (2008) and Sapers (2008) note that Smith's death was not solely the fault of frontline correctional staff; rather, they claim it illustrates the broader systemic failures of different social institutions. Specifically, Richard (2008) concludes that:

> …the story of Ashley Smith illustrates the need to go beyond the operational aspect of correctional services within the province of New Brunswick. There is a much greater need in that all provincial governmental stakeholders involved in providing services to young people in contact with the youth criminal justice system must broaden their perceived scope of responsibilities and work towards a more coordinated and efficient collaboration (8).

Sapers (2008) shares similar views to that of Richard (2008), noting how:

> The tragic death of Ms. Smith not only speaks to breakdowns within federal corrections, but also to a lack of coordination and cohesiveness among federal/provincial mental health and correctional systems…[they] collectively failed to provide Ms. Smith with the appropriate care, treatment and support she desperately required (17).

Consequently, Smith's worsening behaviour was merely understood as her becoming 'riskier' and further removed from the normative standard, rather than a response to the intense disciplinary and governmental power exerted within each social institution she came into contact with. This interpretation ultimately legitimized her transfer along the carceral continuum to an institution containing far more powerful disciplinary and governmental power, i.e. the prison.

This brings me to the next research question regarding whether or not the CSC's response to self-injurious behaviour may be implicated in Smith's death, which was answered with the help of my third theme, titled: *Enforcing Compliance: Re-visiting the Triangle of Power*. Ultimately, while it was the collective failure of each institution that led her to self-destruct, Smith's death was arguably in response to the extreme punitive treatment she endured while in the federal system. As Smith's behaviour continued to worsen in the federal system, her 'risky' identity was eventually reinterpreted as 'unempowerable', which legitimized the exertion of perpetual discipline to an extent that was beyond the legal scope of CSC law and policy. Specifically, the CSC conducted illegal segregation transfers, enforced prolonged segregation, failed to meet Smith's basic needs while segregated, used unnecessary levels of force, and denied her the right to effectively grieve her unjust conditions.

Rather than identifying Smith's death as a reflection of their own systemic failure, the CSC (2009) remains silent on the Smith case in their response to Sapers' (2008) findings. For example, in the opening paragraph of their report they state: "…we recognize the difficult reality, that despite the measures we have taken and those we plan to introduce in the future, some deaths in custody may not be preventable" (CSC, 2009). Instead of acknowledging how their own failures may contribute to preventable deaths, the CSC constructs the outcome of this case as inevitable, as they do with others that occur in the Canadian prison system. In effect, the CSC is (2009) discursively legitimizing punitive control mechanisms and removing institutional responsibility while at the same time normalizing deaths in custody. This is mirrored in the CSC's response to the 1994 P4W incident, which they portrayed as a common violent incident for male prison populations. Such comments silence the gendered injustice that the women faced in this incident, namely the unjust strip search conducted by an all-male emergency response team.

The desire to preserve the punitive regime of the correctional system is not only emphasized in the CSC's (2009) refusal to make any major changes to any of their correctional policies and through their displacement of responsibility for any injustices committed against prisoners by frontline staff, but also through their refusal to implement a separate governing stream for women's corrections. Specifically, as they had done in response to Arbour (1996) and Justice Glebe (2006), the CSC (2009) refuses Sapers' (2008) recommendation to appoint an independent female adjudicator responsible for overseeing women's corrections within each region as a means to better meet their gender specific needs.

While refusing to give discretion regarding women's corrections to the Deputy Commissioner for Women (DCW), the CSC (2009) notes that this position will continue to hold a "robust functional role and strong leadership rather than a line of authority". It comes as no surprise that the CSC (2009) wishes to maintain the functional role of the DCW, as it adds to what Hannah-Moffat (2001) refers to as a more feminized appearance to the continual punitive regime of women's corrections, without enforcing fundamental changes.

The fourth theme, *Technologies of Power Hidden Behind a Therapeutic-Risk Cloak,* aided me in answering the third and fourth research questions regarding the roles therapeutic-risk discourse and the psy expert played in legitimizing the perpetual disciplinary responses Smith experienced. Findings highlight how this discourse and the role of the psy expert were fundamental in understanding Smith's behaviour as both 'abnormal' and 'risky', and as a result were used to justify applying perpetual discipline in response to her behaviour, including transferring her when it was determined that more intensive discipline was required. The uncritical reliance on therapeutic-risk discourse not only responsibilized Smith for her mistreatment while she was imprisoned, but continues to do so after her death on account of its adoption by those inquiring into her case.

Specifically, as a solution in hopes of avoiding cases like Smith's in the future, both Sapers (2008) and Richard (2008) recommend implementing a strengthened holistic approach to respond to the specific needs of mentally ill prisoners. Specifically, Richard (2008) recommends the adoption of a "mental health treatment team" (62), led by a clinician and staffed with professionals, *within* the NB prison in order to provide one-on-one counselling and clinical programs. Second, he advises the implementation of a "national strategy for correctional services in Canada that would ensure a better coordination and information sharing among federal/provincial correctional and mental health systems" (65). Last, he recommends the providence of "specialized training" involving a "two day workshop on mental health, mental illness and stigma reduction" to all those who are involved with mentally ill youth, including: parents, support workers, paramedics, police officers and correctional staff.

Similarly, and following Sapers' (2008) advice, the CSC (2009) acknowledge their support for implementing a "National Strategy", whereby they will continue to provide collaborative efforts with the "Mental Health Commission of Canada and the National Strategy for Corrections" in order to effectively coordinate "mental health systems" with the correctional system. They also note that they support Sapers' (2008) advice to collaborate with stakeholders to improve mental health services provided to federal prison populations. The CSC (2009) claims to have already collaborated with these sources on a national scale in order to improve information sharing and identify gaps, challenges and best practices so as to better respond to prisoners' mental health needs.

The CSC (2009) note that they are currently "a member of the Federal/Provincial/Territorial Heads of Corrections Working Group on Health", as well as the chair "of the Federal/Provincial/Territorial Heads of Corrections Working Group on Mental Health", which aim to improve the way in which the health care needs of the criminalized are assessed and responded to on a national scale, within both the community and the prison environment. The CSC (2009) also note that they held a Mental Health Symposium in May 2008, where Canadian and international experts "examine[d] practical solutions to improving delivery of health services". Last, they indicate that they hosted a forum exploring the connection between the Canadian criminal justice system and mental health (CSC, 2009). According to the CSC (2009), criminal justice and mental health experts, as well as the Chair of the Mental Health Commission of Canada attended this forum and examined systemic obstacles in addressing issues of mental health within both the fields of mental health and the criminal justice system.

This holistic approach, as emphasized by both Ombudsmen and the CSC, illustrates the objective guiding principle referred to as 'shared responsibility' originally outlined by the Task

Force (1990) in *Creating Choices*, which involves joined collaboration amongst institutional and non-institutional based partners. According to Kilty and DeVellis (2010), rather than improving the treatment and successful reintegration of prisoners, this approach would merely intensify their governance throughout the carceral network, as their surveillance and control would be intensified by a string of social agents whose therapeutic-risk lens would fail to capture the broader systemic factors that aggravate undesirable behaviour.

Even if those exerting undesirable behaviour were diverted from the prison all together in favour of providing "consistent and contin[ual] treatment and intervention in the community" (Richard, 2008: 39), as recommended by Richard with regards to youth, their resistance may still be defined as the result of their mental ill-health. Consequently, covert cries for help would continue to be muffled with psychiatric labels and medication, with little consideration for structural inequalities and systemic influences that are beyond the individual's control.

Recommendations for Future Research

As this research examined one case, a number of questions arise for consideration in future research studies. First, while I was able to gain significant insight regarding the correctional response to self-injurious behaviour by examining Smith's case, future research would benefit from investigating the larger population of women prisoners especially those who endured similar experiences (in order to strengthen the argument for systemic change), but to do so from the standpoint of the women themselves. Through this approach, the researcher is able to provide a voice to those who have historically been denied this opportunity (Devault, 1990), either due to not being asked to share their experiences, or to their standpoint being reinterpreted through masculine language (Devault, 1990).

Second, throughout my exploration of the traditional and contemporary research regarding segregation and self-injury, I quickly realized that there is a significant lack of research within these areas of inquiry with regards to youth. An examination of self-injury and the correctional response to it, especially from the standpoint of youth prisoners is an important avenue for future research, and should include a comparative gender analysis to examine if boys and girls exhibit similar behaviours and the potential differences in their treatment by institutional authorities. Additionally, comparing experiences within each Canadian region would be beneficial, in order to see if there are different responses to self-injurious behaviour among youth depending on the province in which they are incarcerated. Last, future research would benefit from further examining the role of language within the correctional system in masking the use of medication as a means of control. While the role of medication was not largely discussed in Smith's case, the fact that Sapers mentioned its involuntary use on the *Fifth Estate* (2010) but failed to do so in his official report strikes my interest for further investigation. Of particular interest would be as examination of the degree to which prisoners are able to refuse medication and the potential punitive consequences for doing so.

In conclusion, this case study of the preventable death of Ashley Smith sheds light on the tenacity of correctional discourses in spite of continued efforts at correctional transformation and reform. Refusing to acknowledge past mistakes in order to facilitate real change appears to be a hallmark of correctional reform logic – as demonstrated by the similarities between Justice Arbour's inquiry of the 1994 incident at P4W and the details of the Smith case. It appears as though achieving any substantive change, with regards to the treatment of women prisoners, will require destabilizing the oppressive and gendered underpinnings rooted both within and beyond the prison walls. To do so, will hopefully create a forum where emancipatory action may finally be possible.

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