Making Up Transgender Prisoners in Ontario: An Intersectionality-Based Policy Analysis

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Abstract

In Ontario, Canada the number of transgender prisoners is unknown. However, advocates suggest that transgender individuals are a growing population within carceral spaces. This thesis provides an Intersectionality-Based Policy Analysis (IBPA) of the Ministry of Community Safety and Correctional Services' (MCSCS) transgender management policies. I explore the gendered and racialized ways in which the MCSCS constructs, manages, and makes up transgender prisoners in Ontario carceral spaces. By examining Ontario correctional policy, I conclude that transgender prisoners in Ontario are *made up* by various conflicting policy characterizations that position them as simultaneously at-risk and risky. These characterizations support the MCSCS' broader effort to (re)frame incarceration as a caring, inclusive practice, making it easier and supposedly safer to incarcerate transgender individuals. By emphasising risk and vulnerability, these MCSCS policies fail to challenge broader cultural constructions of transgender prisoners as always-already deceptive, thereby entrenching the carceral system as a vital instrument of crime control without considering viable alternatives, including decarceration.

List of Abbreviations

CBSA - Canada Border Services Agency
CCRU - Client Conflict Resolution Unit
CCRL - Client Conflict Resolution Line
CSC - Correctional Service Canada
MCSCS - Ministry of Community Safety and Correctional Services
OHRC - Ontario Human Rights Commission
OTIS - Offender Tracking Information System
SOLGEN - Ministry of the Solicitor General

Chapter 1: Introduction

"Prisons are horrifying. For transgender people, it's hell."

- *German Lopez (2016, April 11)*[1]

In Canada the number of transgender prisoners is unknown, yet advocates suggest that transgender and other gender non-conforming individuals are a growing correctional population (Gossett, 2014; Greene, 2023; Kilty, 2021; Montano, 2023; Ortlip-Sommers, 2020; Vitulli, 2010). Despite this, research examining the unique experiences of transgender prisoners in Canadian carceral spaces is largely piecemeal. Furthermore, previous Canadian literature has almost exclusively focused on the Correctional Service Canada's (CSC) treatment of federally sentenced transgender individuals (See Boyer et al., 2019; Hébert, 2020; Mann, 2006; Smith, 2014), leaving the various provincial and territorial correctional systems and policies largely unexamined. While research has shown that transgender individuals' face significant violence, as well as barriers with regards to housing, placement, and access to health care (See Caramico, 2017; Iftene, & Manson, 2013; McElligott, 2008; Moore & Hannah-Moffat, 2002), there is limited research that specifically examines the correctional policies that govern all aspects of a transgender prisoner's life. The current thesis responds to this gap in the literature by focusing examination on the Ontario Ministry of Community Safety and Correctional Services (MCSCS) and its' transgender correctional policies.

In 2015, the Ontario government announced multiple correctional policy reforms, implementing the *Trans Inmate Management* policy as their guiding document for the admission, classification, and placement of provincially sentenced transgender prisoners. These reformed

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[1] This quotation was taken from a news article headline which documents the experiences of transgender women within carceral spaces in the United States.

correctional policies were marketed as unproblematic vehicles of progress, claiming to ensure that the MCSCS would uphold the dignity and rights of transgender prisoners. However, correctional policies, which shape the broader life and health outcomes of incarcerated persons, are not unproblematic, rather they are key sites of meaning making in which social problems and/or groups of people are often problematically constructed (Hankivsky & Mussell, 2018; Scallan et al., 2021). No research has critically examined the implications or possible problematic identity constructions that exist within Ontario's transgender correctional policies and practices. As such, there is a pressing need for research that examines the ways in which such MCSCS policies construct, manage, and *make up* transgender individuals.

To do so, I utilize Intersectionality-Based Policy Analysis (IBPA) to identify "the way specific acts and policies address the inequalities experienced by various social groups" (Bishwakarma et al., 2007, p. 9; see also Hankivsky & Cormier, 2011). IBPA responds to the limitations of traditional methods of policy analysis by providing a more nuanced and multilevel analysis, seeing people's lives and experiences as informed by various categories of identity and systems of power (Hankivsky et al., 2012). IBPA provides the necessary framework to examine the ways in which gender and race are constructed in the MCSCS trans management policies. By analyzing 13 Ontario correctional policies and practices, I will outline *which policies must be considered when admitting transgender individuals into Ontario carceral spaces* and *how these policies shape correctional actors' understandings and management of transgender prisoners.* By answering these questions, I also seek to investigate the following question: *What do current policy responses attempt to achieve in relation to transgender individuals and the management of gender expression in Ontario carceral spaces?*

As this project is guided by IBPA, intersectional feminism, and a commitment to critical praxis, I also aim to respond to broader calls for research that supports the likelihood of survival for transgender prisoners (Baker, 2017; Gossett, 2014; Gossett & Spade, 2014). By examining Ontario provincial correctional policy, I seek to produce a transformative analysis that generates new insights regarding the MCSCS approach to managing transgender prisoners, challenging the assumption that correctional policy reform is inherently progressive. To contribute to such transformative goals, this thesis not only aims to critique policy reform, but also explores alternatives to incarceration (Hankivsky, 2012; Hankivisky & Mussel, 2018). It is my hope that this research will contribute to the social justice literature by critiquing the (re)affirming nature of policy reform and calling for decarceration.

This thesis begins with review of the literature related to the incarceration of transgender individuals within cisgendered carceral spaces, then outlines the broader aims and function of correctional policy and Ontario's specific correctional policy landscape. Chapter 3 outlines the foundational elements of Ian Hacking's *making up people* project and how these can function in tandem with intersectionality theory. The purpose of Chapter 3 is to outline how I utilize an *intersectional making up people* theoretical framework to examine the MCSCS transgender management policies. Chapter 4 examines the qualitative methodology utilized to examine the MCSCS policies, Intersectionality-Based Policy Analysis. This chapter summarizes the research objectives and provides a description of the project's research design. Chapter 5 provides the analysis of the ways both care and control are foundational to the ways in which MCSCS policies construct, manage, and *make up* trans individuals. By demonstrating the co-occurring nature of care and control I reveal the underlying logics that inform the management of trans prisoners in Ontario, allowing me to problematize the policy reform progress narrative. In the

final chapter, I reflect on the importance of the conclusions drawn, consider the limitations of this work, and propose recommendations for further research.

Chapter 2: Literature Review

The purpose of this thesis is to explore the ways in which Ontario correctional policies construct, manage, and *make up* trans individuals who are incarcerated within Ontario carceral spaces (i.e., jails, detention centres, remand centres, and correctional centres). While existing literature primarily focuses on the experiences of transgender individuals in Canadian federal correctional facilities (See Boyer et al., 2019; Hébert, 2020; Mann, 2006; Smith, 2014), no studies examine the ways in which the Ministry of Community Safety and Correctional Services' (MCSCS) policies and practices construct, manage, and/or *make up* trans individuals. Contextualized by the mass imprisonment[2] of trans and other gender non-conforming incarcerated individuals amongst increasing carceral populations more broadly (Gossett, 2014; Greene, 2023; Kilty, 2021; Montano, 2023; Ortlip-Sommers, 2020; Richie & Martensen, 2020; Rosenberg & Oswin, 2015; Vitulli, 2010), this research aims to bridge the gap in the literature by examining Ontario correctional policies and the ways they construct and manage trans bodies and identities.

Mobilizing an intersectional approach to research, this literature review begins with a brief introduction of what it means to identify as transgender, as well as what it means to identify as transgender within cisgendered carceral spaces. Next, I present the broader aims and function of correctional policy and correctional policy analysis by providing a historical contextualization of Ontario's correctional policy landscape for trans people. Lastly, I highlight Ontario's key policy document with respect to the management of transgender individuals, the *Transgender Inmate Management Policy* (2021).

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[2] I utilize the term 'mass' imprisonment or incarceration, rather than 'disproportionate' or 'over-incarceration', given that I do not assume that there is an appropriate level of imprisonment for any human.

Transgender Identities

Western culture is dominated by a cisgender binary which reflects the classification of gender into two rigid oppositional categories of ‘male’ or ‘female’ and the assumption that all individuals identify with their assigned sex at birth (Hill & Willoughby, 2005). However, sex and gender are not synonymous and should not be conflated. While sex refers to the biological differences between individuals that are often distinguished at birth by an individual’s external genitalia, gender identity refers to an individual’s internal sense of who they are and how they identify on the gender spectrum (Levitt & Ippolito, 2014; Szuminski, 2021). The gender spectrum refers to the idea that there is a multiplicity of gender identities and a diverse range of gender expressions. Gender expression reflects the ways in which individuals communicate their gender identity to others through self-presentation (e.g., styles of dress, behaviour, hair, voice, make-up, body language, chosen name, and pronouns) (Szuminski, 2021; Tuttle, 2020).

Gender binarism, or the gender binary, can be understood as the normalization and categorization of gender according to biological sex (i.e., one’s sex assigned at birth). From early childhood, gender binarism is enforced as a normative, compulsory (i.e., one cannot interact with others without classifying their gender), and omnirelevant (i.e., one cannot differ from ‘accepted’ cisgendered norms) practice, asserting that all individuals must present as and identify with the gender roles and identities associated with the sex they were assigned at birth (Callahan & Nicholas, 2019; Hefner, 2018; Rosenblum, 1999; Stanley, 2011a). As such, the gender binary enforces the assumption that there are only two ‘acceptable’ genders (i.e., cis-male or cis-female). To gain acceptance, individuals must present as one of the two ‘acceptable’ genders through associated cultural and social expectations of dress, behaviour, and sexual orientation (Hill & Willoughby, 2005). Gaining acceptance is often based upon one’s ability to present as

the sex they were assigned at birth. These gendered assumptions are foundational to many institutional structures within society (e.g., education, healthcare, and the criminal justice system), as well as one's interpersonal relationships (e.g., parental, romantic). As a result, all individuals are forced to navigate their gendered identities through a network of gendered expectations, controls, and self-(re)presentations that are regulated by various legal, social, and personal processes that require one to categorize their gender (Rosenblum, 1999; Stanley, 2011a). This binary constitutes a gendered status hierarchy that prioritizes and values white cisgendered[3] practices and neglects the diversity of gender expressions (Myyry, 2022).

The gender binary is inconsistent with the notion that we have multiple and fluid gender identities and expressions (Rosenblum, 1999). Individuals who express diverse gender identities, such as those who identify as non-binary, gender non-conforming, Two-Spirit, and transgender (Preves, 2000), are often met with hostility, physical violence, and exclusion from their peers; a heightened risk of confinement, detention, and isolation; and strain or disappointment in parental and interpersonal relationships (Stanley, 2011a). The term non-binary refers to individuals who are neither exclusively men nor women, while gender non-conforming refers to individuals who defy societal understandings of what a man or woman 'should' look like (Vaid-Menon, 2020). Some Indigenous people identify as Two-Spirit, reflecting their embodiment of diverse sexual and/or gender identities and expressions that resist colonial definitions of sex and gender (Hébert et al., 2022).

[3] It is important to note that the colonial project (i.e., the violent exclusion and erasure of Indigenous and other peoples of colour) is reinforced through the denial and eradication of diverse conceptualizations of gender identity and expression. The pervasive logic of the cisgender binary is embedded within the colonial project and tied to the ways the state has attempted to reduce one's Indigenous status to 'blood connection and direct descendancy'. As such, the colonial project is connected to the state's devaluing of 'atypical' family structures and Indigenous understandings of gender and sexuality (O'Sullivan, 2021).

Conceptualizations of what it means to be transgender are complex, multiple, fluid, and inherently challenge the cisgender binary, as well as the strict male/female sex dichotomy. The concept of being transgender or trans[4] is often utilized as an umbrella term to describe individuals whose gender identities and expressions differ from their assigned sex at birth (Erickson-Schroth, 2022). Approximately 1 in 200 Canadian adults from a diverse range of ages, occupations, and ethno-racial groups identify as trans (Bauer & Scheim, 2015). Thus, trans individuals "do not occupy one homogenous category of identity, but instead occupy multiple subjectivities across race, class, nationality, and ability" (Saffin, 2015, p. 161-162). As such, there is a multiplicity of ways for one individual to conceive their own gender (Buck, 2016). For example, the broader category of 'trans' can encompass both pre- and post-operative, as well as other gender non-conforming individuals (Agbemenu, 2015). Alternative conceptualizations of what it means to be trans reflects the unique culmination of various life stories and histories of survival, as well as personal and political identities (Erickson-Schroth, 2022). More broadly, being trans can be considered an active process of challenging formal structures that enforce a rigid cisgender binary (Erickson-Schroth, 2022).

Trans Individuals, Passing, and the Politics of Deception

As trans individuals navigate a cisgender society, they often experience various forms of transphobic discrimination, exclusion, confinement, and violence (Agbemenu, 2015; Hébert et al., 2022; Stanley & Smith, 2015; Stanley, 2011a) within all domains of their lives (e.g., school harassment; lack of familial and social supports; physical and sexual assault; being kicked out of one's family home; denial of medical services; loss of meaningful employment; and

[4] I acknowledge that there are alternative and fluid conceptualizations of what it means to be trans and that some individuals may prefer to identify as non-binary, gender non-conforming, or Two-Spirit (Hébert et al., 2022; Agbemenu, 2015; Stanley & Smith, 2015).

incarceration) (Grant et al., 2011; Kilty, 2021). These hate-motivated exclusionary practices (e.g., harassment, violence, and removal of support) reinforce one's experience of category problems, which can be understood as barriers "that arise when a transgender individual enters and navigates a space defined within the constricting framework of the gender binary" (Agbemenu, 2015, p. 12). To navigate these spaces, as well as the gender binary more broadly, trans and other gender non-conforming individuals often seek gender authenticity (i.e., when an individual gains full recognition as their gender identity); however, gaining gender authenticity or gender acceptance is fraught with barriers. As a result, many individuals manage and/or restrict gender expressions to effectively 'pass' or gain conditional acceptance as either 'male' or 'female' (Billard, 2019; Jenness & Fenstermaker, 2014).

Goffman (1974) first defined passing as the ability to be seen as a member of an identity group or category (e.g., race, class, sexual orientation, gender) that is different from their own. To cope with the stigma associated with a particular aspect of one's identity, passing allows individuals to increase feelings of social acceptance. For trans individuals, passing, which can undermine one's affirmative feeling of gender authenticity, constitutes a visual process that encompasses the ways in which trans individuals manage their gender performances to exist undetected within the gendered social group to which they were not assigned at birth (Billard, 2019). This visual process requires trans and other gender non-conforming individuals to present the 'proper' cisgender aesthetics (i.e., forms of dress, ways of speaking) to achieve conditional acceptance – meaning 'passing' is context-dependent, conditional, and may be brief (Billard, 2019). Social fears of passing are found in discourses that suggest trans identities are inherently deceptive falsehoods that hide one's 'natural biological gender' (Billard, 2019). Individuals who pass are effectively excluded from what Halberstam (2001) calls 'the domain of the real'. In

other words, their identities are defined as 'appropriations of realness' (Billard, 2019). As such, trans individuals' identities are discredited, stigmatized, and defined as sites of deception (Billard, 2019). As a result, punishments (e.g., public shaming, exclusion, violence, incarceration, and murder) are invoked to restore the dominant gendered narrative to its 'rightful' cisgendered hierarchical order (Billard, 2019). In sum, these gendered discourses reinforce the violent regulation and delegitimization of trans identities to effectively maintain the boundaries between 'acceptable' and stigmatized gender expressions. As such, the cisgender binary and discourses regarding 'passing' are particularly relevant to understanding the ways in which trans individuals are criminalized and subsequently managed while incarcerated.

The Criminalization of Gender

As the trans community consists of diverse gender identities and expressions, it is difficult to obtain accurate statistics regarding the number of trans incarcerated individuals in Canadian carceral spaces (Erickson-Schroth, 2022). Research and policy often falsely assumes that there is an easily identifiable and homogenous group of trans incarcerated individuals characterized by visible gendered differences (e.g., evidence of physical transition) (Sumner & Sexton, 2015). Some individuals may not identify with the often-limiting correctional definition of transgender (i.e., medical definitions based on the presence or absence of male or female genitalia) (Sumner & Sexton, 2015) as correctional policies that use the term 'transgender' often fail to consider diverse conceptualizations of gender variance (Rodgers et al., 2017). In addition, some incarcerated trans individuals may fear negative reprisals (i.e., secondary punishments[5]; Kilty, 2021) from disclosing their transness (Lamble, 2012). As a result, trans incarcerated

[5] Secondary punishments can be understood as the cumulative impact of serving a sentence within a hostile carceral environment (i.e., first punishment) and the pervasive experience of discrimination for those who are multiply marginalized (i.e., second punishment) (Kilty, 2021; Phillips et al., 2020).

individuals may conceal (i.e., 'closet') their trans identities within carceral settings to avoid potential stigma and experiences of violence (Erickson-Schroth, 2022; Lamble, 2012).

Due to these barriers, research examining incarcerated trans individuals is largely piecemeal. For example, as accurate statistics are not routinely collected and rarely disclosed (Kilty, 2021), it is unclear how many trans individuals are currently housed within Ontario carceral spaces (Adams & Emmerich, 2020; Tarzwell, 2006). However, the limited available data suggests that the province of Alberta housed 16 trans prisoners in 2015; in contrast, the provincial carceral systems in British Colombia, Manitoba, and Quebec all reported that they housed zero trans individuals in 2015 or that they did not routinely collect gender-identity-related information (Rudolph, 2021). Based on CSC's last published data (Farrell MacDonald et al., 2022), the federal correctional system housed 99 openly trans, non-binary, and Two-Spirit individuals in 2022. Of those that openly identified, 62 percent identified as trans women and 21 percent identified as trans men. Although there are several barriers to obtaining accurate statistics, research shows that trans individuals, who often experience gender discrimination, a lack of familial and community supports, and scarce housing and employment alternatives, are more likely to become involved with the criminal justice system (Daum, 2015; Spade, 2011). Police enforcement manages, regulates, and criminalizes trans individuals, ultimately facilitating their incarceration (Daum, 2015; Ortlip-Sommers, 2020; Spade, 2011). Specifically, trans Ontarians are often subjected to biased police profiling, criminalization, and incarceration following unprovoked arrests (White-Hughto et al., 2018; Scheim et al., 2015). Research shows that trans individuals are disproportionately arrested in various hate-motivated circumstances, including failing to produce 'correct' identity documents; using the 'wrong' bathroom;

disclosing their HIV status; and other 'quality-of-life crimes'[6] (e.g., sleeping in public spaces, homelessness, and engaging in sex work) (Rosenberg & Oswin, 2015). As such, stigmatized experiences of 'passing' (i.e., defining trans individuals as deceptive) and the broader maintenance of gender boundaries (i.e., the gender binary) are foundational to the ways in which systems of policing and surveillance target and charge trans individuals with 'quality-of-life crimes' (Daum, 2015). Moreover, the law and practices of enforcement increase the vulnerability of trans individuals, specifically trans women of colour, to criminalization for engaging in various survival strategies (e.g., use and/or sale of drugs, sex work) (Yarbrough, 2023). These racialized and gendered policing tactics contribute to the "systematic denial of life chances to people who are categorized as criminals and caught up in a cycle of police contact, institutional violence, and housing deprivation" (Yarbrough, 2023, p.149).

Once incarcerated, staff utilize correctional policy (often formed based on legal and medical constructions of gender) to pathologize trans identities, often defining them in problematic ways. Research shows that correctional staff often define trans individuals as inherently dishonest, increased security threats, but also as especially vulnerable to victimization (Francisco, 2021). Within cisgendered carceral spaces, trans individuals are seen as both vulnerable and threatening and are thus constructed as 'difficult prisoners' to manage. Such constructions delegitimize trans identities through assumptions of risk that are based on stereotypical and cisgendered interpretations of gender identity and expression (Adams & Emmerich, 2020). For example, trans women are often defined as imposters or deceivers (i.e., men pretending to be women) infiltrating spaces protected for 'real' women for some ulterior motive (i.e., to harm vulnerable women) (Boukli & Copson, 2019; Totton, 2020; Serano, 2016;

[6] This phenomenon is known colloquially as 'walking while trans' (Ortlip-Sommers, 2020).

Wodda & Panfil, 2014). As such, trans women are often constructed as risks to institutional security, correctional staff, and other prisoners. Simultaneously, trans men are reduced to their potential lack of a penis. In other words, trans men are defined by the standards of a normative female subjecthood (i.e., more like cisgender women) and are thus more vulnerable and less threatening, dangerous, and/or risky (Westbrook & Schilt, 2014). Furthermore, within the hypermasculine culture of men's carceral spaces trans men, who are often reduced to their assigned sex at birth and/or potential lack of a penis, are seen as 'failed women' and are thus hyper-vulnerable to sexual violence and abuse (Sanders et al., 2023). Such gendered logics also reinforce gender essentialism and reify the gender binary. Overall, cisgendered carceral spaces relieve us of our responsibility to address the fundamental issues afflicting trans communities from which prisoners are drawn in disproportionate numbers (Davis, 2003). In the subsequent section, I outline the experiences of trans individuals within the context of carceral spaces in more detail.

Trans Experiences in Cisgendered Carceral Spaces

Carceral spaces are often considered a permanent fixture of justice despite the austere conditions of confinement that are commonly marked by overcrowding, poor access to health and mental care, lack of culturally relevant programming, and excessive use of force by correctional staff (Caramico, 2017; Iftene, & Manson, 2013; McElligott, 2008; Moore & Hannah-Moffat, 2002). As such, these spaces, which rely upon interlocking systems of objectification, confinement, and surveillance, limit an individual's freedom, governing all aspects of their basic needs, including housing, food, and their access to medical and mental healthcare (Smith, 2014). Carceral spaces can also function as sites of conceptual control and identity regulation in which an individual's right to choose or engage in self-determination and

self-expression are severely limited, effectively inhibiting the life and health outcomes of prisoners (Iftene, & Manson, 2013; Smith, 2014). As such, carceral spaces are marked by a purposeful indifference for *all* human life (Phillips et al., 2020), demonstrating that experiences of incarceration are forms of intentional trauma and harm (Caramico, 2017). Taken together, these forms of coercion, harm, and control have been shown to reinforce the broader racialized and gendered regulation efforts of carceral management policies (Spade, 2011).

As the fundamental organization of modern carceral spaces is rooted within normative assumptions related to the cisgender binary (i.e., carceral spaces are sex-segregated), they often fail to consider the materiality of gender performativity and expression (Butler, 1990, 2006; Kilty, 2021; Kirkup, 2018; Sumner & Sexton, 2015). Thus, carceral spaces are gendered total institutions that also function to construct, regulate, and enforce a cisgendered binary (Adams & Emmerich, 2020; Goffman, 1961; Kirkup, 2018; Smith, 2014, Spade, 2011). As such, incarcerated people's experiences of these spaces are marked by trauma, harm and abuse which is often compounded and amplified for those who express fluid gender identities (Phillips et al., 2020; Rodger et al., 2017; Van Hout & Crowley, 2021). Through associated correctional policies and practices, carceral spaces reinforce various forms of institutional gender regulation (e.g., forcing individuals to cut their nails and hair; prohibitions on shaving; inability to wear makeup, bras, or feminine underwear; and the routine denial of hormone replacement therapy), that can result in treating gender diverse prisoners as inhuman and unworthy of protection (Adams & Emmerich, 2020; Kilty, 2021). These gendered experiences of imprisonment can also be understood as double punishments (i.e., secondary punishments) (Kilty, 2021; Phillips et al., 2020). Double punishments can be understood as the cumulative impact of serving a sentence within a hostile carceral environment (i.e., first punishment) and the pervasive experience of

discrimination for those who are multiply marginalized (i.e., second punishment) (Kilty, 2021; Phillips et al., 2020). Moreover, these experiences of punishment can also be understood as feelings of double imprisonment, or the imprisonment of one's body and identity through various forms of punishment that target and attempt to regulate how one presents both their body and identity (Agbemenu, 2015; Boyer et al., 2019; Kilty, 2021; Phillips et al., 2020; Tarzwell, 2006).

Experiences Related to Housing and Placement

The assumption that there are only two genders is deeply entrenched within the sex-segregated Canadian correctional system (Kirkup, 2018; Smith, 2014). Justified by safety concerns and contradictory gendered interventions[7], Canadian carceral spaces, much like other prisons around the world, are organized in terms of 'male' and 'female' housing classifications (Kirkup, 2018; Sumner & Jenness, 2013). Placement decisions within sex-segregated carceral spaces confirm or deny one's gender identity or gender expression (Smith, 2014). Although many jurisdictions, including the Correctional Service Canada (CSC) and MCSCS, have updated their housing placement policies to incorporate gender identity-based placements (i.e., a housing approach that correctional officials claim ensures that trans individuals are placed in institutions based on their self-identified gender) (Hébert et al., 2022), identity-discordant placements remain common (Lourenco, 2022).

The phrasing of many correctional placement policies facilitates obscure and vague decision-making processes wherein prison staff may approve or deny housing requests based on unclear health and safety concerns that are informed by various, often unfounded, risk factors

[7] Trans individuals are often housed to reflect the state's concern over the safety needs of 'real' (i.e., biological) women, yet when trans women are placed in identity-discordant facilities (i.e., a 'male' facility) they are often placed in segregation for their 'protection' from 'real' (i.e., biological) men (Hébert et al., 2022).

and safety assessments (Johnston et al., 2022; Lourenco, 2022). The Canadian approach to correctional placement mirrors these contradictions and requires a conflicting balance between maintaining individual rights and assessing one's 'risk' to institutional security (Hébert et al., 2022). More specifically, while trans women are at risk of transphobic and sexual violence, they are also unjustly considered to be a risk to cisgendered women and to the broader institutional order. As aforementioned, trans individuals who are living out their authentic gender identities and gender expressions are often associated with deception. In other words, socio-cultural discourses often position trans people as deceivers who live out their gender for some ulterior motive (e.g., seducing cisgender heterosexuals) (Billard, 2019). These discourses of deception are also embedded within carceral policies and practices, thus influencing placement decisions. Indeed, deception discourses suggest trans women falsely present as trans to get placed in a women's institution, (re)producing the fear that trans women are violent men who are looking to harm vulnerable women (Hébert et al., 2022). As a result, most trans individuals are placed in identity-discordant facilities (Hébert et al., 2022) despite critics suggesting that there is no safe way for trans and gender non-conforming individuals (or any human) to be imprisoned (Spade, 2011).

Experiences of Violence

Regardless of placement, trans individuals are often a hyper-visible target for multiple forms of transphobic violence, harassment, and discrimination by other incarcerated individuals and correctional staff (Bassichis, 2007; Kilty, 2021). Widespread neglect and state-perpetrated violence are integral to the conditions of confinement within cisgender carceral spaces. Some carceral violence against trans people aims to terminate life, while other forms effectively punish and torture individuals for gender non-conformity (Saffin, 2015). Specifically, the Canadian

correctional system has been criticized for its underinclusive reporting practices for sexual and physical violence (Rudolph, 2021), which reflects the broader normalization of violence and mistreatment within carceral spaces (Phillips et al., 2020). Despite this, trans individuals report experiences of sexual violence and harassment as a daily occurrence (Nulty et al., 2019).

The Office of the Correctional Investigator's 2019-2020 annual report (Zinger, 2020) acknowledges that trans individuals are particularly at risk and vulnerable to physical and sexual violence[8] within carceral spaces. However, this report fails to acknowledge that trans individuals' bodies and identities are also violently regulated through forms of identity documentation, surveillance, dress regulations, strip searches, verbal harassment, hate-motivated bullying, and mental and medical neglect (Spade, 2011). Most research examining the pervasiveness of sexual violence targeting incarcerated trans individuals emerges from the United States. For example, sexual assault is 13 times more prevalent among trans individuals incarcerated in California (Brömdal et al., 2019). In response to these pervasive experiences of violence, trans individuals often utilize various coping and protective measures (e.g., carrying weapons, hostile conduct, drugs), leading to increased victimization through associated disciplinary charges and violent strip searches (Caramico, 2017).

Strip and body cavity searches are prevalent forms of sexual violence perpetrated by the state within carceral spaces (Hébert et al., 2022; Kilty, 2018) that aim to regulate and discipline bodies that do not conform to the cisgender binary (Kirkup, 2009). Trans individuals often experience unnecessary frisks and searches, even when they are not explicitly suspected of having contraband on their person. These unprovoked and humiliating searches often occur in

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[8] Research on trans incarcerated experiences within New York State has shown incidences of forced prostitution by correctional officers and other prisoners. Ultimately, threats and abuses of authority are used to force trans incarcerated individuals into sexual relations (Bassichis, 2007).

the presence of other incarcerated individuals and correctional officers, thus exacerbating experiences of transphobic and hate-motivated name-calling and harassment (Bassichis, 2007). Moreover, public searches further stigmatize trans incarcerated individuals by increasing the visibility of their status as transgender (Caramico, 2017).

Within the context of these violent experiences, some trans individuals, who may fear further negative reprisals for seeking gender authenticity (i.e., when an individual gains recognition as their gender identity), conceal their trans identities within carceral settings (Erickson-Schroth, 2022; Kilty, 2021). 'Closeting' one's gender identity can be psychologically traumatizing, often resulting in a loss of gender autonomy and feelings of gender inauthenticity (Lamble, 2012). Gender autonomy can be understood as the feeling of having control and self-authorship over one's gender identity and expression (Horner et al., 2023). Feelings of gender autonomy are reinforced when one feels as if their gender identity is accepted and supported by others. As such, gender autonomy is intimately connected to one's sense of self, safety, and self-acceptance, self-esteem, and personal value (Horner et al., 2023). A lack of gender autonomy is often associated with feeling misunderstood and unsupported, as well as increased suicidal thoughts, post-traumatic stress, self-harm, auto-castration, and suicide (Horner et al., 2023; Kilty, 2021; Phillips et al., 2020; Van Hout & Crowley, 2021).

Justified as the provision of protection and security due to the widespread experience of carceral violence (e.g., physical violence, sexual assault, transphobic discrimination, psychological trauma), trans individuals are often placed in prolonged isolation via administrative segregation or solitary confinement (Hébert et al., 2022; Kilty, 2021; Kirkup, 2018). Long-term isolation is detrimental to one's mental health and well-being and can result in long-term psychological harm (Guenther, 2013; Kilty, 2018). For example, trans individuals are

often restricted from associating with peers or other incarcerated individuals, connecting with social support, or from accessing programing, educational opportunities, and exercise/yard time (Tarzwell, 2006). Prolonged isolation works to dissolve one's sense of self and being in the world and contributes to feelings of being withdrawal and an inability to meaningfully relate to others (Guenther, 2013; Kilty, 2018). Although placement in segregation is framed as a form of protection, it does not protect trans individuals from stigmatization, nor the verbal, physical, and sexual violence perpetrated against them by correctional staff (Caramico, 2017; Tarzwell, 2006). Placement in segregation is a form of psychological violence resulting in increased experiences of death-related thoughts, post-traumatic stress, self-harm, auto-castration, and suicide (Guenther, 2013; Kilty, 2018; Kilty, 2021).

Healthcare (In)accessibility

The provision of mental health and medical care within carceral spaces is often neglectful and inconsistent (Bassichis, 2007). Much research on the state of carceral health care notes that incarcerated individuals are the "sickest people in our society" (Bassichis, 2007, p.26; See also Scallan et al., 2021). Lack of access to healthcare is exacerbated by one's trans identity (See Agbemenu, 2015; Boyer et al., 2019; Brömdal et al., 2019; Grant et al., 2011; Kilty, 2021; Kirkup, 2018; Tarzwell, 2006), demonstrating that systemic barriers exist in accessing gender-affirming medical and mental care in carceral spaces. As a result, trans incarcerated individuals often experience significant traumatic distress.

The availability of gender-affirming mental health and medical care is crucial to trans individuals' survival and their overall mental and physical health (Mann, 2006). However, a lack of knowledge, skill, and expertise regarding trans-specific or gender-affirming healthcare often results in the regular denial of access to healthcare for trans prisoners (Boyer et al., 2019;

Brömdal et al., 2019; Tarzwell, 2006). The *National Transgender Discrimination Survey* (Grant et al., 2011), based in the United States, found that 17% of trans individuals in prisons or jails were denied routine medical care. Similarly, U.S. research shows that there is a routine denial of healthcare and a refusal of gender-affirming hormone replacement therapy within carceral spaces (Tarzwell, 2006). Interruptions in hormone treatment can be physically painful and damaging to an individuals' physical and mental health (Grant et al., 2011; Kilty, 2021; Kirkup, 2018). The forced discontinuation or refusal of hormone replacement therapy is a form of psychological violence and cisgendered body and identity regulation that is foundational to the generation of a long-term trauma response (i.e., loss of self and gender autonomy) (Kirkup, 2018; Tarzwell, 2006). Little research has focused on the ways in which correctional policies reinforce these experiences of violence.

Correctional Policy

Policy is a written directive that outlines an organization's approach to managing and responding to a particular issue. Correctional policy functions to ensure that correctional institutions are properly performing their defined roles, informing and setting expectations for staff practices (Kerr, 2015; Martin, 2002; O'Leary & Duffee, 1971). Policymakers claim that correctional mandates are rooted within defensible rationales that promote safety, security, sanitation, as well as 'inmate' welfare and rights (Martin, 2002). Thus, correctional policies can be understood as organizing carceral spaces while also summarizing a wide range of anticipated behaviour (O'Leary & Duffee, 1971). Consequently, policy is created with the purpose of administering punishments or rewards through a moralistic assessment that aims to reflect community concerns and norms regarding what the state considers to be 'good' and 'moral' behaviour (O'Leary & Duffee, 1971). Policy is utilized to manage correctional outcomes by

enforcing compliance with correctional standards. As carceral spaces are guided by a punishment paradigm these standards often serve the interest of institutional control rather than prisoner safety, wellbeing, or rehabilitation (Cohn, 1973; Cullen, 2007). Correctional policy grants or limits access to various forms of support (e.g., programming, education and vocational opportunities, external communication, and personal items). It is also used to try to prevent victimization through housing decisions and placements in administrative segregation (Drakeford, 2018).

Laws and policies are not simply tools of governance but are also sites of meaning making in which social problems and/or groups of people are constructed and managed (Scallan et al., 2021). Indeed, polices are productive, thus generating, maintaining, and legitimating functions of existing systems of power and authority in various institutions (Scallan et al., 2021). Correctional policies rarely discuss imprisonment in the context of the material conditions of poverty, discrimination, violence, and/or biased police profiling. Moreover, discussions of gender are often general and homogenous. In other words, conceptualizations of gender often fail to reflect the diversity of gender experiences (Hankivisky & Mussel, 2018). In sum, correctional policies shape the management of all aspects of a prisoner's daily life, including their identity performatives, with the justification of ensuring the safe and efficient operation of carceral spaces (Smith, 2014; Sumner & Jenness, 2013), thus impacting peoples' lived realities and access to basic human rights (Hankivsky, 2012; Martin, 2002). Although policy alone is unlikely to contribute to widespread social change, critical policy analysis can have a tangible role in the creation of safer and more equitable living conditions (Hankivsky, 2012). Thus, it is essential to analyse correctional policy as it has a direct influence on the lived experiences of incarceration (Drakeford, 2018).

History of the Canadian Correctional Policy's Gender Concern

As the creation of correctional policy is contextualized by broader institutional logics, it is essential to examine the historical changes that led to the creation of trans correctional policy in Ontario. In 2002, the Northwest Territories became the first Canadian jurisdiction to prohibit discrimination against trans individuals by amending its Human Rights Code to include discrimination against gender identity (Johnston et al., 2022). In 2012, Ontario followed and enacted Bill 33, *Toby's Act (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression)*, that amended the provincial Human Rights Code to include protection from discrimination due to gender identity and expression rather than on the grounds of sex (Johnston et al., 2022). This shift from sex to gender identity and expression indicates growing state recognition of the importance of protecting trans rights in Ontario (Boyer et al., 2019). Following her 2015 detention, Avery Edison, who was held in a men's institution in Toronto despite carrying a passport that identified her as a woman, made a human rights complaint that forced Ontario to amend its correctional policy. This amendment claimed to ensure that incarcerated trans individuals would be housed in facilities that align with their self-identified gender identity and expression and that staff must refer to them by their chosen names and pronouns (Johnston et al., 2022). Following Ontario's policy reform, British Columbia and Nova Scotia became the next Canadian provinces to consider gender identity when making correctional housing placement decisions. With minor variation across provincial jurisdictions, these reformed policies claim to affirm incarcerated individuals' self-identified gender, regardless of appearance or legal classification (Hébert et al., 2022). However, discretionary health and safety concerns continue to grant correctional authorities the power to deny housing placements that align with one's self-identified gender. In 2017, following provincial

correctional reform, Bill C-16 was enacted to amend the federal Canadian Human Rights Act, as well as the Criminal Code of Canada to incorporate gender identity and expression on the list of prohibited grounds of discrimination (Johnston et al., 2022). The CSC then amended 15 correctional policies to accommodate gender identity and gender expression within federal carceral spaces.

Most research analysing Canadian correctional policy in relation to the management and construction of trans individuals examines federal corrections. Although Ontario is considered one of the pioneering jurisdictions in its attempt to integrate gender identity and gender expression into its correctional policies, little research has examined the implications, possible problematic constructions, or the effectiveness of these policy interventions. This dearth of research may stem in part from conceptualizations of the Ontario government policy reforms and publications as unproblematic vehicles of optimism and change (Hankivsky & Mussell, 2018). However, as Kilty (2006) suggests, deconstructing policies reveals the "possibility that policy discourse may serve a more sinister unintended purpose; that it contributes to the social problem at hand" (p. 163). As such, there is a pressing need for research that examines how trans correctional policy may be harmfully reinforcing the status quo of violence in cisgendered carceral spaces.

Trans Individuals and Correctional Policy

Beyond the acknowledgment of gender identity, most jurisdictions do not have a specific correctional policy to guide prison staff regarding the unique needs of trans individuals. Attempts to create correctional policy that better addresses and manages trans individuals often reinforce recognition- and inclusion-focused policy strategies that reify the cisgendered nature of carceral spaces (Adams & Emmerich, 2020; Spade, 2011). Correctional policies often appear to be

gender-neutral, yet they reflect and sustain the gender binary (Sumner & Jenness, 2013). Correctional policies instruct prison staff on the management of trans incarcerated individuals and restrict ‘appropriate’ gender displays (e.g., housing policies requiring individuals to fit into one of two gender categories or clothing policies that delineate acceptable gender presentations). For example, Ontario’s trans management policy offers staff the ability to assign gender to prisoners based on dress, hair, make-up, body language, and voice (Section 4.3 of the *Trans Inmate Management* policy). Such policies reify gender binarism and gender essentialism while reinforcing (potentially stereotypical) ideas about appropriate expressions of masculinity and femininity (Oparah, 2010). Moreover, by offering staff the discretion to potentially misgender prisoners, correctional policies may restrict diverse gender identities and expressions.

Such policies also grant a high degree of discretion to correctional professionals, who often lack expertise in relation to gender diversity and trans-specific needs, to make important decisions regarding the housing, placement, and access to personal items for trans individuals (Adams & Emmerich, 2020; Kerr, 2015). As correctional policy enforces conformity to a cisgendered standard, it further restricts self-expression and reinforces feelings of double imprisonment via the loss of control over one’s body and the suppression of one’s gender identity (Agbemenu, 2015). The way that the correctional system defines what it means to be trans will inevitably influence the level of care and protection offered to incarcerated individuals who identify as such (Routh et al., 2017; Winter, 2023).

Definitions of gender within correctional policies tend to conflate biological sex with gender, thus, forcing trans and other gender non-conforming individuals to identify with restrictive male and female classifications (Winter, 2023). As a result, correctional definitions of sex, gender, gender identity, and gender expression (if these terms are included) influence the

rights afforded to different populations, while exacerbating barriers for certain groups of people (Routh et al., 2017). There is very little research on how correctional policies uphold cisgender norms and construct the lives of trans individuals. Further, there is little research on the Ontario context that seeks to uncover correctional policies as "sites of production and implementation of racism, xenophobia, sexism, transphobia, homophobia, and ableism under the guise of neutrality" (Spade, 2015, p.73). This type of analysis can aid in the production of resistance strategies that are effective in addressing the most pressing harms affecting incarcerated trans individuals (Spade, 2015). Examining the gaps within existing correctional policy documents that are relevant to trans individuals in Ontario requires analysing and critiquing the Ministry of the Solicitor General and the MCSC vis-a-vis their enforcement of the *Transgender Inmate Management Policy*.

Ministry of the Solicitor General

Divided into two branches of community safety and correctional services, the Ministry of the Solicitor General (i.e., the Ministry; 2021b) aims to ensure public safety and community reintegration for all communities in Ontario. The MCSCS, which includes all provincial correctional facilities and probation and parole offices, mandates that the ministry operate a safe and effective adult correctional system that remains accountable to the needs of incarcerated individuals. *The Ministry of Correctional Services Act* establishes the legislative framework for the MCSCS and governs all matters related to the detention and release of remanded and sentenced individuals in Ontario (Ministry of the Solicitor General, 2021b). As such, the MCSCS is mandated to provide care, custody, and humane control of incarcerated individuals who are remanded (i.e., held in custody while awaiting further court appearance) and/or serving a custodial sentence of up to two years less a day, and to provide supervision to individuals who

are serving their sentences in the community (i.e., probation, conditional sentences, and Ontario parole). The MCSCS created the *Transgender Inmate Management Policy* (2021) to outline their responsibilities and trans rights in these contexts.

Ontario's Transgender Inmate Management Policy

The *Transgender Inmate Management Policy* (2021) is the MCSCS's leading policy document for trans supervision and reflects the Ministry of the Solicitor General's policy reforms that acknowledge the human rights of those with diverse gender identities and expressions (Johnston et al., 2022). This policy document reflects the historical policy changes ensured by *Toby's Act (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression, 2012)* and is also guided by Ontario's *Human Rights Code* and the *Correctional Services' Human Rights Policy* (Ministry of the Solicitor General, 2021a).

The *Transgender Inmate Management Policy* (2021) claims that the Ministry of the Solicitor General must accommodate incarcerated trans individuals through an informed multi-disciplinary approach with insight from health care professionals, social workers, operational staff, and other community supports. First, it requires that housing and placement decisions be made on an individual basis and that accommodation decisions consider the safety of both the individual and the institution. Second, this policy notes that correctional officers must offer trans individuals a choice in terms of the sex of the officer(s) who searches them. It is important to note, however, that exceptions to this choice are granted when there are perceived security risks and in the rare circumstance where an officer might opt out of searching an individual. Third, following the CSC's development of a health care policy to amend its previous blanket prohibition on sex reassignment surgery, trans individuals in the Ontario provincial correctional system must have access to healthcare services related to transitioning while incarcerated.

Fourth, it outlines that "all inmates will be treated with the same dignity and respect regardless of their gender expression or gender identity" (Ministry of the Solicitor General, 2021a). In summary, this policy aims to ensure that incarcerated individuals will be recognized by their self-identified gender, referred to by their preferred name and pronouns, have access to personal items that are necessary for their gender expression, have their privacy concerns respected, and their housing preferences considered.

Conclusion

Although there are similarities between the federal and provincial correctional systems, much of the previous Canadian research on trans individuals has neglected to examine provincial carceral spaces. Moreover, previous research often examines the lived experiences (See Boyer et al., 2019; Hébert, 2020; Mann, 2006; Smith, 2014), not the policy constructions, of trans individuals within carceral spaces. As such, there is limited research that specifically examines how correctional policies construct and manage trans individuals' bodies and identities, a gap this research explores in the Ontario provincial carceral context. As correctional policies are sites of meaning making in which groups of people are often problematically characterized and represented, it is essential to produce critical research that challenges constructions that target and punish trans individuals' identities in Ontario carceral spaces.

Chapter 3: Theoretical Framework

This chapter reviews Ian Hacking's *making up people* project, as well as the literature on the feminist concept of intersectionality, which I mobilize as the theoretical framework to inform my analysis of the ways in which Ontario correctional policies construct and manage trans individuals' bodies and identities. I begin this chapter by reviewing the foundational elements of Hacking's theory of making up people, then introduce the main tenants of intersectionality theory, centering a genealogy of Black feminist thought. Next, I outline the ways in which these theoretical projects can work in tandem, then specifically explore how I utilize this intersectional making up people framework to investigate how Ontario correctional policies construct, manage, and make up trans individuals.

Representations and 'Making Up People'

Within complex modern societies we depend less on our own direct experience with individuals to inform our understandings of others, instead relying on a range of 'expert' descriptions or representations (Bourdieu, 1991; Hall, 1997). In other words, the categories that one utilizes to talk about particular 'types' of people are *not* usually based on one's own personal experiences interacting with "those types of people" (Bessant, 2021, p. 7). These categories and representations were of particular interest to Ian Hacking (See 1986, 1991, 1996, 1999, 2006, 2007, 2013), a prominent Canadian philosopher. Prompted by Arnold Davidson's conclusion that perversion was not simply an 'illness' that existed in nature, but an 'affliction' that is created by new and functional understandings, Hacking (1986) set out to analyze the possibility of producing a general theory of making up people (See also Martínez Rodríguez, 2021). Drawing from the foundations of symbolic interactionists and radical labelling theorists, notably Becker and Goffman, as well as Foucault's conceptualizations of classification and categorization,

Hacking was committed to investigating how classification systems often "uncritically and spontaneously" (1991, p. 254) *make up people*. Writing specifically about various clinical phenomena, including multiple personality disorder (now referred to as Dissociative Identity Disorder) and autism, Hacking's (1986, 2006, 2007, 2013) broader framework of *making up people* demonstrates the ways in which the human sciences (e.g., social sciences, medicine, psychology, and psychiatry) "bring into being" (p. 285) new *kinds of people* (i.e., a new way to be seen as a person).

As understandings of human identity are relational and historically situated, no two cases of *making up people* will be the same; however, Hacking (1986, 2006, 2007) provides an *adaptive* framework that can examine each unique case of *making up people* (Martínez Rodríguez, 2021). In his 2007 article, *Kinds of People: Moving Targets*, Hacking presents his framework of making up people, which includes five vectors of analysis, seven engines of discovery, and three elements of social character. The five vectors of analysis represent the various elements (i.e., classification, people, institutions, knowledge, and experts) that play a direct role in the categorization of human subjects (Hacking, 2007). The interactions between each vector of analysis demonstrates how names (i.e., classifications) come to exist, as well as how and to whom they are applied. Although Hacking's (2007) five vectors of analysis represent the main adaptive framework, the engines of discovery and the components of social character both provide nuance to the specific ways each vector contributes to the process of *making up* people. Hacking's (2007) engines of discovery (i.e., counting, quantifying, creating norms, correlation, medicalization, biologization, and genetization) describe the methods involved in developing knowledge about categories of phenomena (i.e., people). In other words, Hacking (2007) describes the engines of discovery as representing the various ways researchers or

policymakers pursue and describe ‘facts’ about types of people. The final three elements of Hacking’s (2007) framework, normalization, bureaucracy, and resistance (i.e., the three elements of social character), demonstrate the social effects of the categories or classifications that are produced by the five vectors of analysis and seven engines of discovery. Although every case of making up people will be different, each case utilizes some formulation of these 15 elements.

Five Vectors of Analysis

Through the interaction of Hacking’s (2007) five vectors of analysis (e.g., classifications, people, institutions, knowledge, and experts) new kinds of people are brought into being. Classifications consist of various linguistic components including names and descriptions that identify people as a relevant kind or specific *type* of person (Hacking, 2006, 2007). For Hacking (2007), these names or *classifications* are not simply static linguistic units or tags but are instead labels that interact with those *people* who are so named (i.e., dynamic nominalism). As such, even “seemingly innocent or inevitable scientific classifications” (Hacking, 2007, p. 290) exert power and are propped up by various *institutions*, systems of *experts*, and their *knowledge*.

Hacking (2007) defines institutions as “organized and structured entities” distinguishing them from “mere practice and custom” (p. 296). The main purpose of many institutions (e.g., universities, schools, government organizations, research programs, clinics) is to control, help, change, or emulate particular types of people (Hacking, 2007). Institutions are thus intimately connected to and rely upon experts and their knowledge to inform policies and practices of intervention that can be applied to various types of people. As a result, people often come to understand themselves through the definitions and treatments they receive within these institutions (Hacking, 1999). Indeed, while studying child abuse Hacking (1999) observed that “actors may become self-aware as being of a kind, if only because of being treated or

institutionalized as of that kind, and so experiencing themselves in that way" (p. 104). As such, the institutional application of a classification regime helps to legitimize the categorization of new kinds of people. Furthermore, an expert's affiliation with these institutions not only guarantees *their* "legitimacy, authenticity, and status", but also the legitimacy of their knowledge and the associated institutional classifications that they develop (Hacking, 2007, p. 297). As experts contribute to an evolving body of knowledge about *types of* people, presumptions are then "taught, disseminated, refined, and applied" as basic facts of an 'X' *type* of person (Hacking, 2007, p. 297).

Taken together, institutions and their experts legitimate and confine the practice of professional knowledge, informing the ways in which experts claim to 'help' others. In other words, knowledge is mobilized to offer professional recommendations on the 'proper' approach to manage, process, and/or control people who are classified as a particular *type* of person (Hacking, 2006). However, the application of professional or expert knowledge is not unproblematic (Sparti, 2001). Hacking (2007) asserts that while the aim of professional knowledge is often framed as producing 'helpful' interventions, most cases of making up people suggest that experts attempt to "change others for what is deemed to be for their own good" (p. 293). For example, by mobilizing Hacking's framework, Wong (1997) recounts a genealogy of definitions utilized by social scientists to describe teenage pregnancy. These definitions often treat teenage pregnancy as a social or technical problem, requiring the development of new categories to be studied and solved by the social and human sciences. For example, Wong (1997) asserts that utilizing the term teenage pregnancy, which demonstrates that an individual has made an error in timing or has interrupted their psychological development, appears more neutral or scientific than the previously used term unwed mother, which implies they have committed a

moral transgression. As a result, pregnant teens become a new kind of person requiring the creation of new knowledge and interventions.

Hacking's paradigmatic example of "the homosexual" demonstrates the ways in which the newly defined fields of psychiatry and psychology utilized their *expert knowledge* to *classify* homosexuals as 'mentally ill', justifying their need for treatment. Indeed, these classifications or beliefs were made official and legitimated through the inclusion of homosexuality in the first two editions of the Diagnostic and Statistical Manual (Stewart, 2019). As a result, legitimated expert knowledge, which was often conflated with discourses of 'helpfulness', enabled mechanisms of control and regulation for an entire population by classifying homosexual individuals through problematic medical taxonomies that (re)produced recognizable cultural stereotypes (Hacking, 2013; Stewart, 2019; Valentine, 2007). Thus, the language utilized to describe people and their identities can produce or perpetuate harmful stereotypes, while legitimating technologies of intervention through mechanisms of regulation, surveillance, and responsibilization (Bogosavljevic & Kilty, 2023; Valentine, 2007). As such, classifications not only aid in the comprehension of types of people, but also the prediction of features of the classified subject, producing interventions which require individuals to alter their behaviours to achieve the idealized standard set by experts and institutions (Martínez Rodríguez, 2021).

As discussed in Chapter 1, carceral spaces are gendered total institutions, where individuals cut off from wider society lead an enclosed, formally administered life (Goffman, 1961). Indeed, the very design and operation of carceral spaces are intended to "control both the behaviour *and* to impose a particular moral or ideological order upon prisoners" (Norman, 2017, p. 601). To achieve this, carceral disciplinary regimes employ various mechanisms of social control (e.g., regulation, surveillance, and responsibilization) (Smith, 2014), while also enforcing

dehumanizing rituals (e.g., strip searches); taken together, these methods of control strip prisoners of their sense of identity, "forcing them to reconstruct their sense of self within the institution" (Norman, 2017, p. 601). Correctional policies and practices, which offer official definitions and classifications (i.e., official correctional identities), represent one way in which prisoners come to (re)construct their sense of self. However, being classified with an official correctional identity (e.g., a trans prisoner) simultaneously enables and/or invites mechanisms of social control that maintain and legitimate certain types of treatment of and toward 'X' type of prisoner (Scallan et al., 2021). As such, correctional classifications concretely implement and legitimize discourses regarding groups of people (Nada, 2015), producing tangible implications on all aspects of an incarcerated individual's life (Winter, 2023). For trans prisoners, classifications may impact whether the system will recognize their gender identities and expressions, if they will be allowed to access health care and other gender-affirming personal items, and whether correctional staff will be held to a standard of treatment regarding the utilization of prisoner names and pronouns (Drakeford, 2018; Winter, 2023). Thus, carceral spaces (i.e., Hacking's vector of the institution) utilize and apply *expert knowledge* in the form of correctional policies and practices to *classify* prisoners (i.e., Hacking's vector of people) and inform treatment plans, interventions, and housing placements (Hacking, 1986, 2007). As such, carceral spaces are not only regimes of total control, but are also spaces in which people are *made up*.

To effectively *make up* people, expert knowledge (i.e., the knowledge of professionals) must also be exoteric, becoming understood and popularized in mainstream public discourse (Hacking, 2007). That expert knowledge becomes accepted when it becomes part of popular knowledge emphasizes the social dimension of knowledge production regarding specific *types of*

people (Hacking 2006, 2007). Although the expert knowledge that is taken up and accepted by the general public in mainstream discourse is validated and legitimated in particular geographical locations and at specific times, to Hacking, these 'facts' are not 'true' or 'beyond controversy'. For Hacking (1991), individuals are differently affected by the classifications available to them, limiting the ways in which they can describe their actions and choices, as well as shaping how they understand themselves. The effect of classifications on individuals can be understood as a feedback or looping effect in which "people classified in a certain way tend to grow into the ways that they are described" (Hacking, 1995, p. 21, see also Hacking, 2002). In other words, representations are not simply linguistic descriptions, but also have recursive effects (i.e., classifications affect those people it is said to 'describe') (Bessant, 2021). As such, Hacking's looping effect demonstrates that people are *made* both through expert discourses from above and the effects of these discourses in the actions of people from below (i.e., the classified individuals).

Seven Engines of Discovery

Making up people is also driven by seven engines of discovery, contributing to the development of expert knowledge which underlies the creation (i.e., making up) of *new kinds* of people. To Hacking (2007) the engines of discovery can be "defined simply as finding out the facts" (p. 305). Hacking's (2006, 2007) seven engines of discovery include counting, quantifying, creating norms, correlation, medicalization, biologization, and genetization. These engines of discovery can be further divided into two groups; the first four engines involve the identification, quantification, and generalization of groups of people, while the other three engines (medicalization, biologization, genetization) communicate methods that contribute to the pathologization of types of people. Each engine of discovery functions to demonstrate the

specific methods experts utilize to produce knowledge that is then legitimated and applied within various institutions (Hacking, 2007). Indeed, "it is thanks to the success of these engines that the rate of interaction among the five elements of our framework has accelerated to its present breakneck pace" (Hacking, 2007, p. 306). In other words, Hacking's (2007) engines of discovery work in tandem with his five-vector framework, providing nuance to the specific ways the vectors interact to *make up people*.

Hacking (2007) outlines that people have long been counted for the "purpose of taxation and recruitment" (p. 307); however, within the context of making up people, counting is conducted to generate quantifiable aggregated data. Within the social sciences, statistical techniques are often utilized to develop various classifications, subsequently creating a 'valid' database from which to 'make up' various standards and/or norms of identification for different groups or types of people (Hacking, 2007). Put simply, for Hacking (2007), systematic counting contributes to the development of various systems of classification because quantifiable data generated about individuals enables experts to identify patterns and relations and thus correlations between different variables. One such example is Correctional Service Canada's (CSC) use of the risk-need-responsivity (RNR) model for 'offender' assessment and rehabilitation. RNR is an actuarial risk assessment tool that assigns classifications based on quantifiable aggregated data. Based on an assessment of three principles (risk, need, responsivity), RNR determines to whom CSC offers the most intensive services (Bonta & Andrews, 2007). Touted as an evidence-based tool, the RNR assigns individual variables (e.g., history of substance abuse) a quantitative score. The higher one's score, the higher the risk that one might reoffend (Bonta & Andrews, 2007). As such, the CSC's use of the RNR model represents Hacking's (2007) vectors of counting, quantifying, creating norms, and correlation.

While Hacking (2007) asserts that all human sciences (e.g., social sciences, psychology, psychiatry, and clinical medicine) rely on and borrow from each other, it is biological scientists and medical doctors that tend to medicalize, biologize, and geneticize. These three engines of discovery highlight our tendency to naturalize our interpretations of various kinds or groups of people. The tendency to medicalize (i.e., the tendency to associate character with a medical diagnosis and or specific mental disorder) groups of people stems in part from the tendency to group people together based on a medical condition, the 'causes' of which are often linked to clusters of social psychological symptoms, or to one's biology or genetics (Hacking, 2007).

Hacking's (2007) discussion of the seven engines of discovery explicitly demonstrates the ways in which biological scientists attempt to locate causal relationships (typically at the genetic level) between unique types of people and their behaviours to develop 'valid' and 'reliable' results that can extend to new cases (See also Wong, 1997). Kind-making or categorization is essential for any science, including the social sciences, as patterns are utilized to direct specific programmes or interventions to predict and/or solve 'deviant' behaviour (Wong, 1997). Indeed, Hacking's (2006, 2007) engines of discovery also outline the procedures involved in the research of various target objects or phenomena (i.e., people) and the production of knowledge within the context of all human sciences, not just biology or psychology. Thus, the broader framework of *making up people* and Hacking's focus on the valorization of expert knowledge is also particularly relevant to the discipline of criminology, which Agozino (2010) describes as a "technology designed for the control of others" (p. ii). Similarly, policymakers often utilize causal logic to create 'reliable' policy documents that can be effectively applied to diverse populations and used to predict consistent policy outcomes (e.g., actions or behaviours).

However, individual actions, behaviours, and experiences cannot be completely determined, predicted, or generalized (Dryzek, 2002; Garcés, 2019).

As such, both criminological and policy-driven research (i.e., engines of discovery) are not value-free; people are constituted by representations that are mobilized to control and manage them, which typically positions them in ways that serve the interests of those in power (Bessant, 2021). In other words, the notion of causation in defining or *making up* various types of people within criminological and policy research often reinforces the broader oppressive political power structures that construct policy problems as individual rather than structural problems, which facilitates institutional efforts to manage and control marginalized populations (e.g., incarcerated individuals) (Dryzek, 2002). Indeed, placing too much emphasis on causal logic to predict behaviour or improve policy effectiveness is deterministic, neglecting to account for the underlying discourses that inform the multiplicity of lived experiences and realities that experts aim to construct, define, and/or control (Sanderson, 2002). In the next section I review Hacking's three social components of the *making up people project*: normalization, bureaucracy, and resistance.

The Social Components: Normalization, Bureaucracy, and Resistance

The final three social components of Hacking's (2006, 2007) making up people framework are normalization, bureaucracy, and resistance, which he separates from the other seven engines of discovery as they demonstrate a 'social character'. These three social components also reflect the implementation of expert knowledge developed through the various engines of discovery. Taken together, Hacking's (2007) seven engines of discovery and three associated social components "aim at the production of knowledge, understanding, and the potential for improving or controlling deviant human beings" (p. 310). Thus, the knowledge

developed regarding various *kinds* of people is utilized to devise various strategies of intervention and normalization which aim to "make unfavourable deviants as close to normal as possible" (Hacking, 2007, p. 311). As a result, various forms of therapeutic intervention, education programs, and pharmaceuticals are designed and mobilized to change people's behaviours to bring them closer to an idealized standard developed by experts through the engines of discovery (e.g., quantification, normalization, correlation).

Strategies of intervention are not confined to academic institutions and are implemented within various institutional bureaucracies including schools, hospitals, spaces of confinement, and government services. These institutional systems see themselves "as an objective way to determine who needs help" (Hacking, 2007, p. 311), utilizing expert-developed criteria to define who does and who does not fall under a particular classification. Within the context of these bureaucracies, classifications assigned to individuals are not simply static labels; instead, these classifications have recursive effects. Indeed, the classified individuals (i.e., made up people) are not passive subjects; rather, as previously mentioned, Hacking's (1986) conceptualization of the looping effect suggests that people may accept, reject, reinforce, or transform their classifications. While the process of labelling demonstrates the top-down application of power, individuals can also contest knowledge, as well as the associated strategies of intervention and normalization by authentically expressing their identities, which reflects the social character of resistance.

Importantly, Hacking (2006) notes that the making up people framework, including the five interactional features, seven engines of discovery, and three social dimensions, can be used in many cases of making up people, but the roles and weights will vary with each case. In other words, as some elements of the analytic framework may or may not be found in each case,

Hacking (2007) asserts that there are no two identical cases of *making up people*. In the next section, I explore how Hacking's theory of making up people facilitates analysis of the construction, classification, and management of trans people within Ontario correctional policies.

Correctional Policy and Making Up People

Policymakers mobilize 'expert knowledge' when drafting policy that imagines or makes up different kinds of people (Hacking, 2007), informing generalized, aggregated understandings of a diverse population and outlining 'best' institutional practices to adopt when interacting with them (Bessant, 2021). Within the correctional context, policies attempt to summarize a wide range of behaviours to anticipate various correctional outcomes and ensure the efficient organization of the institution (O'Leary & Duffee, 1971). To both summarize and organize a diverse carceral population, correctional policy documents require correctional staff to identify various bits of personal information (e.g., gender) about criminalized people and to code that information according to the available correctional definitions and standards. In turn, these classifications influence correctional housing and security placements, the interventions and treatments people will be subject to via their correctional plan, and other general management strategies. As such, policies classify people in terms of various attributes, imposing certain categories or characteristics that may or may not be true according to the ways in which people understand themselves (Bessant, 2021). Policy classifications are not static, but rather dynamic human creations, informed by expert and/or professional knowledge, that have tangible implications for the survivability of carceral spaces (Bessant, 2021; Hacking, 2007). Hacking's theory of *making up people* allows researchers to reveal the actors, experts, institutions, and processes (i.e., engines of discovery) involved in the knowledge production process that leads to

the legitimization and normalization of human classifications in different institutional and bureaucratic contexts (Rittich, 2022).

Scholars (Crane & Sewell, 2014; Rittich, 2022; Seddon, 2011) have demonstrated that Hacking's making up people framework can be applied in a multitude of ways to analyse a "disparate range of medical, social, and political categories" (p. 239). However, little research has examined trans correctional classifications (See Dalke & Greene, 2023; Dangaran, 2021; Hébert et al., 2022) and no research has examined the ways in which policy documents, correctional institutions, and policymakers construct, manage, and *make up* trans individuals in Ontario carceral spaces. By critically adapting Hacking's (2006, 2007) *making up people* framework, I analyze the ways in which Ontario correctional policies construct trans individuals' official correctional identities. To this end, I review how the Ministry of Community Safety and Correctional Services' (MCSCS) representations of gender are constituted via underlying classifications, expert knowledges, and normalization practices that aim to control gender expression.

Hacking (2007) has also written about the ways in which his *making up people* framework neglects to account for structural factors (e.g., misogyny, sexism, racism, neoliberal capitalism etc.), power structures, or institutions beyond knowledge generating organizations. Moreover, he acknowledges the limitations of analyzing *only* the linguistic nature of classifications, while neglecting to account for the ways in which these classifications, structural relations, and power differences are foundational to the creation of expert knowledge. As language, representations, and classifications are inextricably linked to power, as well as to the material, social, and symbolic world (Bessant, 2021), combining Hacking's framework with intersectionality theory is essential to advancing the feminist goals of the current thesis.

Hacking's framework, which reconceptualizes identity as relational, historical, and produced through the social world, while also emerging as a product of the structures and systems in which individuals are embedded, is consistent with an intersectional feminist theoretical approach. In the next section, I outline the main tenants of intersectionality and how this theory can extend the analytic power of Hacking's *making up people* framework.

Tenants of Intersectionality

Kimberlé Crenshaw is often credited with coining the term intersectionality within the legal context in her 1989 article *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. Although immensely important to the development of intersectionality as a critical social theory, Crenshaw alone did not invent the concept. Intersectionality is a product of multiple scholars, informed by various intellectual movements and rooted in a genealogy of critical race theory, Black feminist thought, and women of colour feminisms (Hankivsky, 2022; Houh, 2022). The central tenants of intersectionality also have long historic roots within Latina, post-colonial, queer, and Indigenous activism and scholarship which has revealed the myriad of ways complex factors and processes shape human lives (Hankivsky, 2022). Notably, Crenshaw's conception of intersectionality emerged from a long history of Black feminism, including notions of 'double jeopardy' (Beal, 1995), 'interlocking oppressions' (Collins, 1986), and 'simultaneity' (Combahee River Collective, 1977).

Drawing from this rich genealogy of feminist thinking, Crenshaw (1989, 1991) demonstrates that 'mainstream' feminist theories consistently fail to investigate the intersectional experiences of women of colour, focusing on gender as the sole or primary aspect of women's oppression, which tends to result in the problematic prioritization of white middle-class women's

issues and concerns (See also hooks, 1981, 1984). Simultaneously, Black women are also theoretically erased from male-dominated Black liberation efforts (Crenshaw, 1989). As a result, Crenshaw (1991) was particularly concerned with the ways in which contemporary feminist and anti-racist discourses were developed to "respond to one *or* the other" (p. 1244), meaning either gender or race, despite Black women's experience of marginalization within both the feminist movement and anti-racist discourses. Such approaches condition "us to think about subordination as disadvantage occurring along a single categorical axis" (Crenshaw, 1989, p. 140). As such, single-axis understandings of discrimination distort the multidimensionality of Black women's experiences. Similarly, double-axis approaches that simply add race to gender also misrepresent the complexity of people's experiences, as well as the interactions between gender and race.

Instead, Crenshaw (1989, 1991) advances that discrimination by gender and race occurs simultaneously and along (or intersecting with) other identity categories (e.g., class, sexuality, ethnicity, age, religion). Indeed, human lives cannot be explained by single identity categories; rather, people's lives are multi-dimensional, complex, and shaped by broader structures, systems, and power relations (Collins, 2022; Hankivsky & Jordan-Zachery, 2019; Hankivsky, 2022). Around the same time, Patricia Hill Collins (1990) described this complex interaction of multiple "interlocking systems of oppression" as a "matrix of domination" (p. 225), similarly defining the broader social structure as having multiple interlocking levels of domination (Andersen & Collins, 2018). Collins and Bilge (2020) outline six core ideas that are present within an intersectional analysis: social inequality, intersecting power relations, social context, relationality, social justice, and complexity. As such, they see intersectionality as an unfinished framework adept at capturing and theorizing a broad range of complex social phenomena (Collins & Bilge, 2020).

Intersectional analyses investigate the myriad ways different systems of oppression, as well as social identity structures and categories, intersect and affect individuals and groups of people in different ways. Social identity structures refer to a "pervasive system of human classification" (Gopaldas & Fischer, 2012, p. 395), while social identity categories or locations refer to a specific class within a broader classification system. In other words, social categories or locations refer to the position that an individual occupies within a particular society and culture (Gopaldas, 2013). One's social location is determined by categories of race, gender, age, ability, religion, socioeconomic status, and sexual orientation among others (Crenshaw, 1989). Social identity refers to how an individual understands themselves based on their membership within these social categories (Gopaldas, 2013). Intersectional analyses examine the ways in which various systems of power intersect and affect individuals to create experiences of privilege and/or disadvantage, depending on the categories and thus social location one occupies. Privilege refers to the unearned access to resources and social power that is available to some because of their advantaged social group membership (Quek & Hsieh, 2021).

Researchers from diverse disciplines (e.g., feminist and gender studies, sociology, cultural studies, criminology, psychology, and anthropology among others) have continued to expand the scope of intersectional analysis (Gopaldas, 2013). Notably building on Crenshaw's work, McCall (2005) defines intersectionality as "the relationships among multiple dimensions and modalities of social relations and subject formations" (p. 1771). Intersectionality can also be understood as "the interaction [among] categories of difference in individual lives, social practices, institutional arrangements, and cultural ideologies and the outcomes of these interactions in terms of power" (Davis, 2008, p. 68). By not specifying particular social categories or identity structures required within an intersectional analysis, these definitions of

intersectionality expand one’s analysis beyond race, class, and gender to include other categories of human populations: citizenship, education, ethnicity, immigration status, mental health, nationality, ability, religion, sexual orientation, and socioeconomic status (Gopaldas, 2013). Crenshaw (2011) supports the widening of intersectionality theory, contending that humans all “exist within ‘the matrix of power’” (p. 230) and intersectionality’s main tenants are applicable to all individuals. Indeed, intersectionality is seen by many scholars as an analytical tool that allows for the examination of a diverse range of topics (Collins & Bilge, 2020).

While drawing from its Black feminist legacy, trans scholars and activists also promote expanded conceptualizations of intersectionality to demonstrate how gender and sexual identities are dynamically intersectional (Nagoshi et al., 2022; Spade, 2013; Spade, 2015). Indeed, ‘queering’ intersectionality involves unsettling the normalization of identity categories, the cisgender binary, and heteronormativity (Collins & Bilge, 2020). As discussed in Chapter 1, western culture is dominated by a rigid cisgender binary, reflecting the classification of gender into two oppositional categories of ‘male’ or ‘female’ (Hill & Willoughby, 2005). These binary conceptualizations of gender limit our ability to assess “the spaces between” (Lutz, 2002: 68) or the multiplicity of gendered experiences. Intersectionality subverts dichotomous and binary understandings of race, class, gender, and sexuality, theorizing identity via a more complex approach (De Vries, 2015, Nash, 2008). Intersectional conceptualizations of gender suggest that trans individuals do not experience or enact gender separately from other identity categories or social positions such as race, class, and sexuality (De Vries, 2015). Indeed, De Vries (2015) asserts that “the identities experienced, performed, and resisted by trans people serve as reflections of the multidimensional ways in which institutions and social systems combine and produce specific positions and facets of inequality” (p.6). Intersectionality theory is thus

consistent with the current project's acknowledgment that there are multiple, alternative, and fluid conceptualizations of what it means to be trans.

Debates about its theoretical complexity aside, there is 'considerable confusion' around how to mobilize the concept of intersectionality as a critical social theory (Cho et al., 2013; Davis, 2008, p. 67). Indeed, while some scholars suggest that intersectionality "is a theory, others regard it as a concept or heuristic device, and still others see it as a reading strategy for doing feminist analysis" (Davis, 2008, p. 68). Going further, Nash (2017) asserts that "nearly everything about intersectionality is disputed: its histories and origins, its methodologies, its efficacy, its politics, its relationship to identity and identity politics, its central metaphor, its juridical orientations, its relationship to 'black woman' and to black feminism" (p. 118). As a result of these disputes, intersectionality is often described as a vague 'scholarly buzzword' (Davis, 2008; Nash, 2008). Utilizing intersectionality as a buzzword or shorthand is often utilized to "signify a host of meanings" (Davis, 2008, p. 68) that move one's analysis away from the theory's roots in critical praxis. Moreover, within the context of a corporate neoliberal university, intersectionality has also become conflated with institutional language of diversity and inclusion, often without engaging the theory's counter-hegemonic approach to knowledge production (Bilge, 2013; Nash, 2017). Carastathis (2016) defines this process as a mainstreaming approach to intersectionality which reduces the theory "to an inclusionary politics of diversity rather than to a coalitional politics of anti-subordination" (p. 95; see also Hankivsky & Mussell, 2018). Similarly, Nash (2017) describes this use of intersectionality as a 'racial alibi' (p. 118) utilized by privileged scholars to evade the actual labour necessary to produce transformative intersectional research. These performative intersectional analyses undermine a rigorous engagement with the theory and its foundation in critical praxis and social justice, ultimately

failing to ‘substantively challenge the status quo’ or contribute to positive social change (Wilson, 2013, p. 16)

Salem (2016) suggests that “we should not spend time debating what intersectionality *is* but rather focus on what it *does*” (p.405). While critics position intersectionality as conceptually vague and open-ended, others suggest that this might indicate its success in contributing to feminist analyses and political interventions (Collins & Bilge, 2020; Davis, 2008). Cho et al., (2013) see the widening of intersectionality’s scope as clarifying the theory’s critical capacity as “a gathering place for open-ended investigations of overlapping and conflicting dynamics of race, gender, class, sexuality, and other inequalities” (p. 788). Thus, utilizing intersectionality as a critical framework, not as a ‘totalizing theory of identity’ (Crenshaw, 1991, p. 1244, See also Crenshaw, 2011), can help one describe how individuals and groups of people experience interdependent forms of oppression and privilege, depending on one’s position in relation to various social and political categories, such as gender, class, race, and sexuality (Bilge, 2013; Bilge & Collins, 2016: Hankivsky, 2022). Indeed, intersectionality “insists that multiple, co-constituting analytic categories are operative and equally salient in constructing institutionalized practices and lived experiences” (Carastathis, 2014, p. 307). As such, intersectionality examines socio-power differentials and the ways individuals have multiple intertwined identities that are produced by the “the broader social structure and it’s dis/advantaged ordering” (Potter, 2015, p. 76). Intersectionality must also be mobilized with “rigor, integrity, and attentiveness to the theoretical and political aims which originally animated it” (Carastathis, 2014, p. 312), while also striving for theoretical and political inclusivity (Carastathis, 2014; Nash, 2008). Thus, mobilizing intersectionality requires researchers to acknowledge and examine the persistence of

"deeply entrenched inequalities of race, class, gender, sexuality, ability, and citizenship status" (Bilge, 2013, p. 407).

Intersectionality as critical praxis (i.e., linking theory and action) sees problem-solving as 'the heart' of analysis, which means that intersectional scholars must remain attentive to the theory's transformative foundations and roots in social justice (Collins & Bilge, 2020, p. 50). In other words, intersectional analysis must be aimed at generating counter-hegemonic discourses that unravel oppressive systems of power and promote action (Bilge, 2013; Gopaldas, 2013). Indeed "what makes an intersectional project *critical* lies in its connection to social justice" (Collins & Bilge, 2020, p. 34). As such, intersectional research should problematize and challenge oppressive structures not only to promote the discussion of injustice, but to also produce tools of liberation for disadvantaged communities (Jordan-Zachery, 2007). In the next section, I review the importance of an *intersectional making up people* framework to explore the ways in which Ontario correctional policies and practices define or construct trans individuals.

Intersectionality, Making up People, and Trans Correctional Policy

The social categories and/or representations embedded within policies are formulated in such a way as to produce the illusion of homogeneity; however, intersectionality theory reveals that these classifications are signifiers of multiple meanings with various implications (Gopaldas & Fischer, 2012). The ways in which correctional policies *make up* trans individuals' gender identities are not separate from representations of other categories of identity. As such, mobilizing intersectionality theory in tandem with Hacking's framework of making up people allows for a more nuanced investigation of the ways in which MCSCS constructs or makes up trans individuals, with specific attention to the interdependent relationship between various power structures and categories of identity. In other words, I review Ontario's trans correctional

policies by highlighting the gendered, sexualized, and racialized ways MCSCS constructs, manages, and makes up trans individuals.

Mobilizing an *intersectional making up people* framework also expands the critical scope of the current thesis, allowing for an investigation of the ways in which carceral spaces and various power structures (e.g., race, gender, sexuality) interact with processes of categorization and naming (i.e., making up people). To this end, intersectionality contributes to Hacking's framework by providing the language to effectively articulate injustice (i.e., the tangible implications of classifications) (Winter, 2023) and advocate for transformative social change (e.g., policy reform) (Hankivsky & Jordan-Zachery, 2019). Indeed, I suggest that an intersectional making up people framework can reveal the ways in which gendered analytic categories within correctional policy documents may problematically impose various stereotypical assumptions regarding the diverse trans population. As such, there is an inherently political component to developing and mobilizing an *intersectional making up people* framework. Indeed, I suggest that the current framework can reveal the technologies through which correctional aims are formulated and implemented to construct and control trans individuals (Rittich, 2022). An *intersectional making up people* framework can reveal the ways MCSCS policies create norms (engine of discovery) through classifications, people, institutions, knowledge, and experts (5 vectors of analysis), functioning to produce the normalization (social character) of a trans person's identity and behaviour within carceral spaces (which is the social character of bureaucracy). Notably, because I am examining policy documents, I am unable to speak to the ways in which trans prisoners might resist (social character) accept, reject, reinforce, or transform their classifications, at least beyond what has been identified in the existing literature. I suggest that the current framework can reveal the technologies through which

correctional aims are formulated and implemented to construct and control trans individuals (Rittich, 2022).

Conclusion

While some attention has been given to the lived experiences of trans individuals in Canadian federal correctional facilities (See Boyer et al., 2019; Hébert, 2020; Mann, 2006; Smith, 2014) there has been an absence of analysis attending to the ways in which Ontario correctional policies and practices construct, manage, and *make up* trans individuals. Indeed, Hankivsky and Jordan-Zachery (2019) express that there is an urgency to develop innovative critical approaches that examine diverse policy problems. I suggest that the current research project responds to Hankivsky and Jordan-Zachery's (2019) call to action, developing an intersectional analysis of the ways in which trans people are constructed or *made* through Ontario correctional policies.

Given that trans individuals' identities are dynamically complex, the literature on intersectionality is needed to examine the encoded discourses that uphold Ontario correctional policies' gender classifications. To this end, I review MCSCS policies as top-down applications of power with a specific consideration of the underlying assumptions related to race, gender, and sexuality. Moreover, by mobilizing Hacking's making up people framework in tandem with intersectionality theory, I explore the relationships between classifications, experts, knowledge, and correctional institutions. My theoretical framework also positions me to examine, reveal, and problematize the ways in which interlocking systems of power shape trans classification criteria within official Ontario correctional policies and practices. As such, by mobilizing an *intersectional making up people* framework, I aim to reveal the underlying discourses, experts, knowledge, and institutions that inform the creation of an official trans correctional identity and

how failures to express this ideal may lead to more punitive and secure forms of punishment and confinement. In the next chapter, I outline my research objectives and provide a detailed overview of the project's research design and methodology, namely, Intersectionality-Based Policy Analysis.

Chapter 4: Methodology

Theoretically rooted in Hacking's theory of making up people and intersectional feminism, the objective of this thesis is to examine the ways in which Ontario's correctional policies manage, construct, and/or *make up* trans individuals. To this end, I utilize a qualitative methodological approach, Intersectionality-Based Policy Analysis (IBPA), to examine the Ministry of Community Safety and Correctional Services' (MCSCS) policies and practices. The purpose of this chapter is twofold: to summarize the research objectives and to provide a nuanced description of the project's research design and the methods used to carry it out.

Research Objectives

Previous Canadian research has primarily focused on the Correctional Service Canada's (CSC) treatment of federally sentenced trans individuals (See Boyer et al., 2019; Hébert, 2020; Mann, 2006; Smith, 2014), leaving provincial correctional systems largely unexamined. Indeed, research regarding trans individuals in Ontario is largely piecemeal and uncritical, meaning that what little information is publicly available regarding trans prisoners is published by the Ministry of Community Safety and Correctional Services. It is also unclear how many trans individuals are currently housed within Ontario carceral spaces as accurate statistics regarding trans prisoners are rarely collected nor disclosed (Kilty, 2021). Regardless of the size of this carceral population, trans prisoners are worthy of academic attention because there is a need for research that addresses both the survivability and pressing needs of incarcerated trans people in Canada. Indeed, while researching trans issues, Vincent (2018) asserts that there is a "moral imperative to pursue research agendas which contribute towards resisting and dismantling inequalities, due to the privilege that accompanies researcher access to economic and social resources, to affect agency" (p. 105). Guided by an intersectional feminist approach to research, my analysis

attempts to respond to these calls for critical research, contributing to transgender activism and scholarship within the field of critical criminology.

Following the amendments enforced by *Toby's Act (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression, 2012)*, which recognizes and protects gender expression and gender identity in the *Ontario Human Rights Code*, Ontario became the national leader in strengthening human rights and individual freedoms for trans and other gender non-conforming individuals. The province claims that they are committed to ensuring that their correctional policies reflect the changes brought about in *Toby's Act* (2012). Although Ontario's policies for trans prisoners are touted as being "among the most progressive in North America" (Ministry of the Solicitor General, 2023, p. 3), no research has critically examined the implications or possible problematic identity and character constructions that exist within Ontario's correctional policies and practices. Indeed, policy reforms are typically conceptualized as unproblematic vehicles of optimism and change (Hankivsky & Mussell, 2018). Justified as ensuring the safety of the institution, correctional staff, and prisoners, correctional policies shape all aspects of a prisoner's daily life, including their chances of survival and access to basic human rights (Drakeford, 2018; Smith, 2014; Sumner & Jenness, 2013). As such, policy discourses are not simply tools of governance and change, but they are also sites of meaning making in which social problems and/or groups of people are often problematically represented (Codd, 1988; Scallan et al., 2021). Thus, there is a pressing need for research that examines *how the MCSCS correctional policies construct, manage, and/or make up trans individuals*.

This project is guided by intersectional feminism and rooted within a commitment to critical praxis[9], and thus responds to broader calls for research that supports the likelihood of

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[9] Following submission of the final draft of this thesis manuscript, I plan to prioritize building partnerships with community-based trans support organizations. The goal of such partnerships will be to facilitate

survival for trans individuals (Baker, 2017; Gossett, 2014; Gossett & Spade, 2014). Indeed, policy analysis represents one avenue of working toward social transformation for those who are often constructed as disposable (Gossett & Spade, 2014; Hankivsky, 2012; Hankivisky & Mussel, 2018). As policy reform alone cannot ensure widespread social change, this thesis aims to advocate for social transformation by critiquing the narrative of Ontario's progressive policy reform and exploring the possibility of decarceration. To achieve the research objectives discussed herein, I analyzed numerous Ontario correctional policies and practices via documents outlining MCSCS's existing decision-making frameworks, classification schemes, and case management processes with the aim of revealing the underlying discursive characterizations that inform Ontario's trans correctional policies.

Research Questions

My research objectives and questions were designed to guide the analysis of the ways in which MCSCS policies construct, manage, and/or *make up* trans individuals. To this end, I intend to develop an understanding of the following questions:

1. According to the MCSCS, which policies must be considered when admitting trans individuals into Ontario carceral spaces?
2. How do these policies address gender and gender variance?
3. How do these policies shape how correctional actors understand and manage trans incarcerated individuals?
4. Based on these understandings, what are current policy responses attempting to achieve in relation to trans individuals, as well as the management of gender expression in Ontario carceral spaces more broadly?

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knowledge translation opportunities that will make the content of this thesis more broadly accessible to trans individuals and networks.

5. What are possible alternative responses? How might alternative solutions promote social and structural change?

Taken together, these research questions allowed me to consider the broader power structures and underlying logics that contribute to the normalization of correctional classifications, definitions, and constructions of trans prisoners. Moreover, as the broader goal of this research project is to offer critique and to advocate for a vulnerabilized population, each research question is aimed at generating transformative analysis (Gossett & Spade, 2014; Guba & Lincoln, 2003). Indeed, the goal of this research aligns with Jordan-Zachery's (2013) assertion that social science research "has the potential to transform society even as we attempt to describe and analyze said society" (p. 102). In other words, each research question aims to generate new insights regarding a policy issue in carceral spaces, aiming to produce alternative knowledge that can disrupt and challenge the status quo by undermining cultural fears surrounding trans individuals (Hankivsky et al., 2019).

Question 1 was designed to identify all policies that correctional staff must consider when admitting trans individuals into Ontario correctional facilities. By identifying the policies that are relevant to the placement and management of trans individuals, I seek to uncover the underlying logics and discourses that inform the decision-making frameworks, classification schemes, and case management processes that are applied to trans prisoners in Ontario. Question 2 was designed to identify the ways in which MCSCS policies address, manage, and/or discuss gender diversity within Ontario carceral spaces. Question 3 aims to facilitate an interpretative analysis of the ways in which relevant policies and practices construct, manage, and/or *make up* trans individuals. By analyzing the ways that MCSCS policies and practices *make up* trans individuals, I aim to reveal the underlying assumptions (e.g., race, gender) that inform the construction of their official correctional identities. Subsequently, question 4 was designed to

identify and interpret the possible goals of these correctional constructions. Question 5 was created to align with the transformative goals of intersectional research. By identifying alternatives, the current research aims to problematize and challenge Ontario carceral spaces by promoting discussions of (in)justice and alternatives to incarceration (Jordan-Zachery, 2007). To answer these research questions, I utilize the IBPA framework developed by Olena Hankivsky and colleagues (2014, see also Hankivsky, 2012).

Critical Policy Analysis

Although younger generations' attitudes towards correctional policy have slowly begun to favour modestly punitive rehabilitative policies (Lee et al., 2022), politicians often appeal to the general public's fear of crime by sensationalizing punitive stances as platforms for (re)election (Cook & Lane, 2009). Indeed, public outcry surrounding criminal justice issues tends to support the implementation of draconian laws and policies (Cook & Lane, 2009). While it is ultimately the government's responsibility to create and implement policy, ideas underpinning correctional policy creation are informed by different logics and discourses, including debates over prisoner rights and public safety, public outcry toward current laws, policies and practices or high profile and sensational cases, and/or dissatisfaction with the government itself (Cook & Lane, 2009). As discussed in Chapter One, correctional authorities have the responsibility to produce clear and concise directives that ensure the safety and security of staff, prisoners, and community members. Correctional policies function as the foundation for all operations within carceral spaces, including setting expectations for staff behaviour and providing guidance on predictable correctional outcomes (Kerr, 2015; Martin, 2002; O'Leary & Duffee, 1971).

In Ontario, provincial correctional services fall under the direction of the Ministry of the Solicitor General (SOLGEN). SOLGEN claims to ensure that "communities are supported and protected by law enforcement, and that public safety and correctional systems are safe, effective, and accountable" (Ministry of the Solicitor General, 2024, Para 1). The MCSCS establishes, maintains, operates, and monitors adult correctional institutions, as well as probation and parole in Ontario. Based on and enforced through various official policies and procedures (e.g., Ontario Human Rights Code, Ministry of Correctional Services Act, Regulations under the Ministry of Correctional Services, and the Criminal Code of Canada), the MCSCS asserts that correctional authority is exercised within a culture of respect for prisoners' human rights, however it is tremendously difficult to monitor accountability in carceral spaces. As such, examining correctional policies is an essential avenue through which academics can question and critique the policymaking and implementation processes which shape the construction, classification, and management of incarcerated individuals.

Standard approaches to examining policy engage in cost-benefit analyses that illustrate what works and what does not according to certain standards and the broader aim of 'correcting' or improving policy outcomes (Diem et al., 2014; MacKenzie, 2013). As such, positivist strategies of policy analysis dominate evaluation within the policy arena (Diem et al., 2014; Garcés, 2019). The underlying philosophical assumption of positivism asserts that reality can be known, which, in turn, allows the world to be measured, resulting in knowledge that mirrors a singular reality (Garcés, 2019). Policy decisions informed by generalizable data generated using instrumental rationality and quantitative methods are often considered to be more reliable and thus useful. Indeed, justifications for policy decisions are often rooted within 'reliable'[10]

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[10] People's lived experiences cannot be completely determined (i.e., predicted or generalized: Dryzek, 2002). Indeed, positivist approaches to policy analysis have been critiqued for failing to account for the underlying

scientific inquiry, serving as the foundation for effective policy reform by objectively illustrating how policies function (Garcés, 2019). Stakeholders and policymakers demand objectivity to create generalizable or universal policy documents that can effectively respond to the needs of diverse populations and carceral environments (Garcés, 2019; Sanderson, 2002). Although it is often framed as such, policy is not neutral and reducing diverse policy problems and populations to predictable or measurable intellectual practices neglects the underlying logics and assumptions that inform them (Sanderson, 2002). Hankivsky and Mussel (2018) define methods of policy analysis more broadly as individualistic siloed approaches that rarely acknowledge that policy is often a harmful instrument of control, meaning that policy analysis often reinforces broader oppressive political powers that aim to manage marginalized populations rather than solving the structural issues that lead people to come into conflict with the law (Dryzek, 2002).

Critical policy analysis (CPA) aims to respond to the limitations of traditional positivistic approaches to policy analysis by broadening the scope and context of analysis. CPA requires policies to be analyzed within their social and historical contexts, as well as their impact on the policy arena (Diem et al., 2014; Hill, 2023; Taylor, 1997). CPA is both political and strategic, allowing researchers to expose the ways policy agendas are often imposed and framed in ways that favour dominant interests (Diem et al., 2014; Taylor, 1997). As such, CPA situates policy as a practice of power and governance, meaning policy texts represent the outcome of political struggles over meaning (Codd, 1988). In other words, policies often (re)enforce and (re)express broader (sometimes oppressive) political powers, which can work to maintain the status quo (Codd, 1988). CPA aims to illuminate the ways in which power operates through policy by

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discourses that inform the multiplicity of lived experiences and realities that policy aims to control (Sanderson, 2002). In other words, positivistic approaches to policy analysis place too much emphasis on casual logic to improve policy effectiveness while ignoring the valuable lived experiences of target populations.

uncovering who benefits, who is disadvantaged, whose voices are heard, whose voices are ignored, and how marginalized groups are differentially impacted (Bensimon & Marshall, 2003; Codd, 1988; Diem et al., 2014; Hill, 2023; Taylor, 1997). Aligning myself with the central tenants of CPA, I adopt the IBPA framework outlined by Olena Hankivsky and colleagues (2014) to systematically analyse how Ontario's correctional policies construct, manage, and/or *make up* trans individuals.

Intersectionality-Based Policy Analysis

The objective of IBPA is to identify and examine the ways in which policies address the inequalities experienced by those affected by them, while also considering that social identities such as race, class, gender, age, sexuality, and ability interact to form unique meanings and complex experiences within and between groups in society (Hankivsky & Cormier, 2011). Indeed, Bishwakarma and colleagues (2007) assert that the goal of combining intersectionality with policy analysis is to both identify and address "the way specific acts and policies address the inequalities experienced by various social groups" (p. 9). Hankivsky and Cormier (2011) assert that these experiences of inequality are further affected by what Collins (1990) coined as 'the matrix of domination'. As such, IBPA responds to the limitations and exclusionary nature of traditional methods of creating and analysing policy, instead providing a more nuanced and multilevel analysis (Hankivsky & Cormier, 2011). Sharing similarities with CPA, IBPA asserts that policies are not neutral and that they are "not experienced in the same way by all populations and that important differences and concomitant needs have to be taken into account when developing, implementing, and evaluating public policy" (Hankivsky & Cormier, 2011, p. 218). However, unlike other critical approaches which accommodate difference by targeting single identity markers (e.g., gender, race, class), IBPA asserts that people's lives and their experiences

are informed by various categories of identity. Gender-Based Analysis Plus (GBA+), a policy tool utilized by the federal government of Canada, is one such policy approach that targets single identity markers. GBA+, which begins with the consideration of sex or gender, to which other categories of identity are added, aims to examine how different women, men, and gender-diverse people experience policies and programs (Hankivsky & Mussell, 2018). By retaining a gender-first approach, GBA+ fails to substantively integrate intersectionality. Indeed, although GBA+ does produce a somewhat nuanced understanding of difference, an additive (i.e., start with gender and add) approach is antithetical to intersectionality, which seeks to capture the complex relationships between various identity categories and systems of power (Hankivsky & Mussell, 2018, p. 308). Furthermore, GBA+ fails to address the various processes and structures of power, neglecting to account for the relationship between systems of power and one's social location (Hankivsky, 2014; Hankivsky & Mussell, 2018). IBPA goes beyond such additive approaches and has been described as a "new and effective method for understanding the varied equity-relevant implications of policy and for promoting equity-based improvements and social justice within an increasingly diverse and complex population base" (Hankivsky et al., 2012, p. 33).

The IBPA framework has two core components: a set of eight guiding principles and a list of twelve overarching questions which help guide, frame, or shape the analysis (Hankivsky et al., 2012). IBPA's guiding principles (i.e., intersecting categories, multi-level analysis, power, reflexivity, time and space, diverse knowledges, social justice, equity) function to ensure that researchers ask and answer each question in ways that are consistent with an intersectionality-informed analysis. The twelve key questions are further divided into two categories: descriptive and transformative. Taken together the descriptive and transformative questions are "intended to expand and transform the ways in which policy problems and processes are understood and

critically analyzed to ensure fine-tuned and equitable policy recommendations and responses" (Hankivsky et al., 2012, p. 34). According to Hankivsky and colleagues (2012) the descriptive questions are intended to allow researchers to identify and address the critical background information about policy problems in their complete context. Descriptive questions reveal the assumptions that are foundational to existing government priorities, the populations who are targeted by specific policy interventions, and what inequalities and privileges are created by a policy response (Hankivsky et al., 2012; Hankivsky, 2014; Hankivsky & Jordan-Zachery, 2018; Hankivsky & Mussell, 2018). The set of transformative questions are intended to assist with the identification of alternative policy responses and possible solutions that are aimed at producing social and structural change that reduces inequalities and promotes social justice.

I tailored Hankivsky et al's (2012) framework to better address the objectives of the current research project, which resulted in four descriptive questions and three transformative questions to guide the analysis. The IBPA questions chosen to guide this analysis are as follows:

Descriptive Questions

1) *What are the current policy responses to trans prisoners (i.e., the policy problem)?*
2) *How have representations of trans individuals within Ontario carceral spaces come about?*
3) *What assumptions underlie the representation of trans individuals within Ontario correctional policies and practices?*
4) *How do these assumptions and current representations shape understandings of trans individuals?*

Transformative Questions

1) *How do race, gender, and sexuality interact in relation to this policy problem?*
2) *Can interventions be made to improve the survivability of carceral spaces for trans individuals?*

3) *How might policy interventions, made to improve the management and treatment (e.g., interventions, placements, or access to life saving health care) of trans individuals, reinforce carceral logics and perpetuate harm?*

Qualitative Research Design, Dataset, and Coding Strategy

I began by examining publicly available documents published by the Ministry of the Solicitor General (SOLGEN). Following my examination of Ontario's policies (the *Transgender Inmate Management Policy*, 2021, *The Correctional Services and Reintegration Act,* 2018, *Ministry of Correctional Services Act,* and *Correctional Services' Human Rights Policy*), I completed a Freedom of Information (FOI) request to gather additional policy and directive documents related to trans prisoners in Ontario. After confirming on Ontario's Directory of Institutions that the Ministry of the Solicitor General falls under the *Freedom of Information and Protection of Privacy Act* (FIPPA), I completed an official FOI electronic request form and paid the $5 application fee to request the following:

1) A copy of all policy and directive documents containing information related to transgender inmates' and their access to health care services (Section 57), the housing of transgender inmates (Section 45), conditions of segregation and restrictive confinement for transgender inmates (Section 65), and "non-intrusive" searches (Section 108) involving transgender inmates as per the Correctional Services and Reintegration Act, 2018.
2) All decision-making matrices/criteria, guides, and staff training material related to Structured Intervention Units (SIU) and segregation placement decisions, as well as restrictive confinement decisions as per the Correctional Services and Reintegration Act, 2018.
3) All decision-making matrices/criteria, guides, and staff training material/documents related to 'non-intrusive' searches of transgender inmates.

4) All documents, guides, and decision-making frameworks consulted/used when placing Transgender inmates in non-disciplinary segregation (Section 68) as per the Correctional Services and Reintegration Act, 2018.
5) All documents or decision-making frameworks that are used to evaluate and approve decision-making regarding the housing of transgender inmates.
6) All documents containing information related to the assessment and classification of transgender inmates, as well as any decision-making matrices, frameworks, case management models, policies and directives that guide this decision-making process.
7) All documents, decision-making matrices, and policies that aid staff in determining what a health and safety concern is in terms of transgender inmate placement decision-making as noted in Ontario's Transgender inmate management policy.

My FOI request produced 253 pages of correctional policy documents. Following an initial review of my data set, I noted that when discussing the admission, placement, and management of trans prisoners the MCSCS repeatedly referred to the use of compatibility assessments. As a result, I completed an additional FOI request, requesting access to the compatibility tools, assessments, and/or frameworks utilized for the admission, classification, and placement of trans inmates according to the *Trans Inmate Management Policy*. However, I was denied access to any records and/or policy documents related to compatibility assessments. To justify the denial of records, SOLGEN stated that they can refuse access to records where the disclosure could reasonably be expected to jeopardize the security of a centre for lawful detention and that the disclosure of such records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Due to the time constraints of the current degree, I was unable to file an appeal to this decision.

Due to the ever-changing nature of policy, several documents retrieved through the FOI request are duplicate versions of a policy with minor amendments. After careful review of these primary data sources, I decided to include only the most recent and/or up to date policies rather

than including multiple variations of the same policy. It is also important to note that examining every policy and procedure related to the management of trans prisoners is beyond the scope of the current research because the *Trans Inmate Management* policy is read in conjunction and accordance with all other institutional policies and procedures. As such, I focus specifically on the *Trans Inmate Management* policy which highlights the key policy sections, associated forms, and practices that are particularly relevant to the admission, placement, and management of trans individuals in Ontario carceral spaces. In total, I examined 13 MCSCS policies that relate to the management of trans prisoners in Ontario. The following offers a list of the policy documents included in the current analysis:

1) *Inmate Information Guide for Adult Institutions (48 pgs.)*
2) *Correctional Treatment Facilities Admission Criteria (7 pgs.)*
3) *Policy on Preventing Discrimination because of Gender Identity and Gender Expression (60 pgs.)*
4) *Undue Hardship: Providing Accommodation Short of Undue Hardship (4 pgs.)*
5) *Trans Inmate Consultation Summary (1 pg.)*
6) *Ontario Trans New Admission Information (1 pg.)*
7) *Intake/Assessment and Plan of Care for Trans Inmate (5 pgs.)*
8) *Trans Inmate Management in the Institutional Services Policy and Procedures Manual (11 pgs.)*
9) *Trans Inmate Management: Gender Identity and Gender Expression Related Definitions (1 pg.)*
10) *Correctional Services Polices and Guidelines: Trans Inmate Management Highlights (3 pgs.)*
11) *Admission, Classification, and Placement of Trans Inmates (14 pgs.)*
12) *Update to Case Management Team Consultation Process for Trans Inmates (3 pgs.)*
13) *Searches in the Institutional Services Policy and Procedures Manual (15 pgs.)*

The *Inmate Information Guide for Adult Institutions* and the *Correctional Treatment Facilities Admission Criteria* were selected because they apply to all provincially sentenced individuals in Ontario. Furthermore, these policies include sections related to human rights, discrimination and harassment, strip searches, classifications, and admissions that trans specific policies rely on and refer to. As the *Ontario Human Rights Code* (the Code) has primacy over all other Ontario legislation, unless the other legislation explicitly states otherwise, the MCSCS has an obligation to abide by the Code, as well as the Ontario Human Rights Commission (OHRC) *Policy on preventing discrimination because of gender identity and gender expression*. As such, both the Code and OHRC policy play an integral role in the ways in which MCSCS develops decision-making frameworks, classification schemes, and case management processes and practices in relation to trans prisoners. The remaining ten policies play an integral role in the development of a trans prisoner's plan of care, including decisions surrounding a trans prisoner's placement, classification, status, and access to accommodations. I have developed a corresponding policy map (Appendix B) as a visual aid and a legend of all policies included in my analysis (Appendix A).

The *Trans Inmate Consultation Summary*, *Trans New Admission Information,* and the *Intake/Assessment and Plan of Care for a Trans Inmate* forms are completed during intake by an operating manager and mark the beginning of the case management process for a trans individual. The *Trans Inmate Consultation Summary* summarizes the individual's current placement and status, highlights placement considerations made by the case management team (also referred to as consultation team) and provides a rationale for proposed placement accommodations. The *Trans New Admission Information* form captures identifying information relevant to trans prisoners and their needs, including, their legal names, date of birth, self-

identified gender (man, woman, trans, other), preferred name, housing preference (men, women), the escorting agency, offences, health or medical concerns, emotional mental health concerns, behavioural alerts, and risk factors (e.g., escape risk, suicide risk, violence, injuries, gang affiliations).

The *Intake/Assessment and Plan of Care for a Trans Inmate*[11] form summarizes information relevant to case management purposes and is divided into two sections. Section one captures information that is relevant to intake and should be completed in a private space, including information related to the individual's background (e.g., chosen name and pronouns, gender identity, birth-assigned sex, legal name on warrant), placement and transportation (e.g., housing preference, preferred housing arrangement[12], transportation preference), searches and monitoring (e.g., strip search preferences, frisk search preference, preference for video/audio monitoring in segregation or restrictive confinement)[13], clothing and personal items (e.g., preferred clothing and underclothing in the institution and to attend court, personal items), any other needs (e.g., urgent health care needs, Human Rights Code accommodation needs, any other considerations). The information captured during intake informs the superintendent's or designee's admission decision proving the rational for an individual's initial placement or immediate transfer. The second section, *Assessment and Plan of Care for a Trans Inmate*, documents the case management process including members of the case management team and

[11] According to section 4.9 of the *Trans Inmate Management* policy the *Intake/Assessment and Plan of Care for a Trans Inmate* template, first completed at admission, should be used as an ongoing assessment tool to help provide care and support to trans prisoners for the duration of their incarceration.
[12] At intake, trans individuals are given the opportunity to share their preferred housing arrangement within the institution. Placement options include specialized care, general population, single cell, or placement with a compatible cellmate.
[13] The *Intake/Assessment and Plan of Care for a Trans Inmate* form documents a trans prisoner's preference for searches and monitoring. The individual is allowed to request that their searches and monitoring be completed by only a man *or* a woman, or a combination (i.e., both a man *and* a woman). When an individual requests a split search correctional staff must record the individual's choice of which body parts are searched by whom.

all information that should be considered when deciding placement and developing a plan of care. Taken together, the information included in the *Trans Inmate Consultation Summary*, *Trans New Admission Information,* and the *Intake/Assessment and Plan of Care for a Trans Inmate* establish a knowledge base regarding the trans prisoner. This knowledge base serves as the foundation for various staff decisions including those pertaining to psycho-social rehabilitative interventions. As such, the information that is collected, summarized, and subsequently disseminated to correctional staff and members of the case management team inform the ways in which trans individuals are constructed, managed, and *made up*.

The *Trans Inmate Management* policy determines:

> requirements for the admission, placement, and management of trans, two-spirit, and non-binary inmates whose gender identity or gender expression is different from the sex they were assigned at birth or falls outside the man-woman binary. Intersex people have needs that, while they may overlap with those of trans people, are different and unique and must be assessed on a case by case basis using a case management approach.

As such, the *Trans Inmate Management* policy is the guiding policy for trans management within Ontario carceral spaces, establishing requirements relevant to the admission, placement, and ongoing management of trans prisoners. Trans prisoner management includes specific policies related to searches, classification, case management, mitigation strategies, interim or next best solutions, compatibility assessments, as well as access to programming and socialization. This policy is read in tandem with the *Ontario Human Rights Code* (Code), *Duty to Accommodate Short of Undue Hardship*[14], and all other Institutional Services policies related to admitting, searches, and classification. The Ontario Human Rights Commission (OHRC) *policy on preventing discrimination because of gender identity and gender expression* outlines

[14] The *Duty to Accommodate Short of Undue Hardship* is a MCSCS document based on information provided in the OHRC's policy and guidelines on *disability and the duty to accommodate* and *preventing discrimination and harassment because of gender identity and gender expression*.

protections from discrimination and harassment because of gender identity and gender expression in employment, housing, facilities and services, contracts, and membership in unions, trade, or professional associations. This OHRC policy also includes definitions (e.g., gender identity, gender expression, transgender) that are to be utilized within MCSCS policies.

Coding Strategy

I coded the selected policy documents using a thematic analysis (TA) approach (Braun & Clarke, 2006; Clarke & Braun, 2017). TA is a method for "identifying, analyzing, and interpreting patterns of meaning ('themes') within qualitative data" (Clarke & Braun, 2017, p. 297). TA is not simply an organizational tool for data, instead it allows researchers to identify themes or patterns within the data that address their research questions. By mobilizing TA in tandem with IBPA I was able to examine how correctional policy problems are defined by identifying the underlying and interconnected assumptions (i.e., patterns of meaning and/or themes) present within Ontario's *Transgender Inmate Management* policy. In other words, IBPA provides nuance to traditional methods of TA, enabling me to examine the ways in which single-axis understandings of gender, race, and sexuality are foundational to the ways in which trans prisoners are constructed, managed, and *made up* in Ontario carceral spaces (Hankivsky, 2012).

My process of coding was flexible and organic, evolving throughout the analytical process to account both for themes that are common in the existing literature as well as different, emerging themes. Although Braun and Clarke's (2006) six phases of analysis might seem like a linear approach, I worked to move back and forth throughout the steps until the themes accurately represented the underlying ideas, assumptions, and key themes present within the data. First, I read the policy documents in full to familiarize myself with and better understand the broader content of data. Second, I generated initial codes to describe the information

communicated within MCSCS policy documents regarding trans prisoners. As outlined by Clarke and Braun (2017), codes serve as the 'building blocks' (p. 297) to themes (i.e., larger patterns of meaning within the data). As such, these initial codes (e.g., placement, segregation, integration, classification, gender, health, safety etc.) represent the smallest units of analysis, allowing me to capture features of the data that may be relevant to my research questions. Third, I refined and combined the codes to identify two main themes (i.e., care and control) that spoke to the ways in which trans individuals are constructed, managed, and *made up* in Ontario carceral spaces. These themes represent the framework through which I have organized the data and my initial analytical observations (Clarke & Braun, 2017). Fourth, I reviewed the data again to ensure that the themes accurately represented the information communicated within MCSCS policies. Fifth, I named and defined each theme after establishing their nature and scope. The nature and scope of the thematic code of care included data related to self-determination, integration or inclusion, and techniques of normalization. This code more broadly reflected the ways in which the MCSCS endeavours to construct Ontario carceral spaces as progressive, respectful, and *caring*. Subsequently, the nature and scope of the thematic code of control included data relating to risk, deception, and the construction of difference. The control code broadly reflects the ways in which pretensions of care obscure more overt technologies of control (e.g., surveillance and punishment) within Ontario carceral spaces. Sixth, I selected sections, quotes, and/or phrases from the policy documents that best reflect the points made in relation to each theme. In the next section, I provide an overview of the limitations of this research.

Limitations

There are several challenges associated with mobilizing intersectionality-informed methodologies that stem primarily from a lack of literature that demonstrates how, when, and

where to utilize such frameworks. Given the complexity of intersectionality theory, there are often significant challenges associated with producing critical analyses that consider the intersectional effects of each social identity location and system of power (See Davis, 2008; Hankivsky & Cormier, 2011; Nash, 2008). Indeed, Christoffersen (2021) asserts that "intersectionality is widely thought to be a challenging theory to apply" (p. 474). As human lives are multidimensional and complex it is often unclear how many and which categories should be included in an intersectional analysis (Davis, 2014; Hankivsky, 2012). Within MCSCS policies, the inclusion of social or identity categories is predetermined. For example, MCSCS trans management policies do not explicitly discuss sexuality or race, flattening diversity and neglecting to account for differences across and within the trans community. As the current project examines Ontario correctional policy's conceptualizations of sex, gender, and race, I must therefore consider what is missing or absent from MCSCS policy. In other words, my analysis critiques the seeming objectivity and even vagueness of MCSCS trans policy, problematizing the ways in which exclusionary constructions are normative and used to justify the harmful treatment of trans prisoners in Ontario.

Intersectionality has also been criticized as failing to effectively infiltrate the policy arena (Mannuel, 2006). While interest in intersectionality-based policy is often welcome within the policy arena "the term has often been mobilized in ways that fail to redress inequities" (Kilty & Orsini, 2024, p. 16). Indeed, Hankivsky and Cormier (2011) assert that in Canada "intersectionality remains a relatively unknown and underdeveloped concept in policy discourse and application" (p. 220). When intersectionality is mobilized by policymakers it is often done so in a way that subverts its focus on transformative praxis, much like GBA+ which ultimately reinforces the status quo of inequality by promoting additive diversity policies (Christoffersen,

2021). These limitations also extend to the proposed policy reforms or recommendations that are produced through one's utilization of IBPA, as policymakers are often unsure how to reconsider their approaches to research and policy in a way that reflects the core tenets of intersectionality (Hankivsky & Cormier, 2011). As such, many decision-makers continue to utilize one-dimensional policy approaches, flattening the diversity of differences across and within populations (Etherington & Baker, 2018).

Furthermore, as policy analysis is purely textual it is also highly subjective (Torgerson, 1986). As such, my status as a privileged white, cisgendered, university-educated settler will ultimately influence my approach to knowledge production, including what I notice within the data; my utilization of theoretical concepts; the values I embed in my research; my citational politics (i.e., which authors I cite and who I exclude); my interpretation of the data; and the subsequent analysis. As a result, I may unintentionally silence certain voices, perpetuate domination within academic spaces, and offer suggestions that may be taken as expanding the punishing power of carceral systems or reinforcing the broader racialized and gendered control of carceral spaces (hooks, 1988; Spade, 2011). To counter these potential limitations, I used several questions to guide a more reflexive analysis (Glesne, 2010; hooks, 1988): What values and experiences shape my perspectives and research decisions? What data am I choosing to include and why? What data am I choosing to omit and why? What do I think I know about carceral spaces and who and what influenced this knowledge? What are the consequences of my choices?

Guided by these reflexive questions, I engaged in continual critical self-evaluation, recognizing my positionality and the effect that I may have on the research process and resulting analysis (Berger, 2015). Such reflexive questions were also developed to ensure that the current

project does not (re)produce harm and domination. Indeed, by repeatedly returning to and asking myself these reflexive questions I sought to ensure that how I framed the issue and my research questions, my use of language, and the inclusion of authors reflected the needs, experiences, and voice(s) of the trans community. Moreover, by identifying my positionality and interrogating my research decisions, I was able to remain transparent about the various social locations I occupy and how my experiences and beliefs shaped my research decisions and the politics of the research. By acknowledging that I am an ally to the trans community I sought to ensure that the current thesis, which advocates for trans individuals, does not claim to speak *for* them.

It is also important to note that trans lives have mostly been investigated, constructed, and understood by cisgender researchers, so future research should prioritize the voices, experiences, and work of trans scholars (Vincent, 2018). Moreover, although policy analysis is an effective method to interpret and provide meaning to a text, it is limited in its ability to provide a complete understanding of the context in which the text was written. Additionally, due to the time constraints of this degree, I was unable to interview trans individuals who have experienced incarceration in Ontario; therefore, I am unable to explore the ways in which trans individuals themselves might understand, navigate, and/or resist their correctional identities. Similarly, without access to conduct observational research inside Ontario correctional institutions or to examine the casefiles of incarcerated trans people, I am unable to determine how these policies are used in practice and how they shape correctional life for incarcerated trans people. I am also unable to analyze if, and if so, how, the implementation of updated MCSCS trans management policies have affected how trans individuals experience their time within Ontario carceral spaces. Future research should prioritize the use of interviews to access and privilege the knowledge and lived experiences of trans individuals.

Conclusion

Existing research has largely neglected to examine provincial correctional policies or the experiences of trans prisoners in Ontario. Responding to this dearth of research, as well as advocacy and academic calls for research that prioritizes trans people's survival (See Baker, 2017; Gossett & Spade, 2014), this project aims to produce a critical analysis of the ways in which MCSCS policies and practices construct, manage, and/or *make up* trans individuals. To this end, I adopt the IBPA framework to examine the encoded logics underpinning MCSCS policies and practices, paying specific attention to underlying assumptions related to race and gender. In the next chapter, I apply this methodological approach to analyse Ontario's trans correctional policies and practices.

Chapter 5: (En)gendering Risk

In this chapter, I examine the ways in which the Ministry of Community Safety and Correctional Services' (MCSCS) policies construct, manage, and/or *make up* trans individuals. Guided by my *intersectional making up people* framework, as well as the descriptive and transformative questions adapted from Hankivskiy's Intersectionality-Based Policy Analysis (IBPA), this chapter evaluates the ways in which discourses of care and control converge with conceptualizations of gender and race and are foundational to the ways in which the MCSCS policies construct, manage, and/or *make up* trans individuals.

This chapter begins with a summary to contextualize the development of the MCSCS trans management policies. I then move to outline the ways in which care and control are foundational to the ways MCSCS policies *make up* trans individuals. By demonstrating the co-occurring nature of care and control within MCSCS policies I reveal the underlying logics and assumptions that inform the interpretation and management of trans individuals' gender identities within Ontario carceral spaces.

The MCSCS's Policy on Trans Prisoners

In 2014, Avery Edison was arrested for a minor immigration infraction, an expired student visa, at Pearson International Airport in Toronto Ontario. Edison, a (trans) woman, asked to be placed in a women's detention facility, a request that was at first granted (Kirkup, 2017, Quero, 2016). However, before Edison was transferred to the Vanier Centre for Women, she disclosed that she had not undergone sex-reassignment surgery and was thus subjected to an invasive physical examination by a nurse. This examination was framed as determining her suitability for placement within in a women's facility. As a result, Edison was placed in Maplehurst, a men's provincial correctional institution in Ontario. Edison shared that while

incarcerated at Maplehurst she was placed in segregation as a form of 'protection' and was repeatedly misgendered (Kirkup, 2017). News of Edison's treatment spread across social media, sparking national and international criticism that eventually pushed the MCSCS to transfer her to Vanier Centre for Women (Kirkup, 2017). Edison was incarcerated in the Vanier Centre for Women for two days; she was placed in segregation, presumably because of her pre-operative status (Kirkup, 2017; Quero, 2016). After those two days, Edison was deported (Quero, 2016). In the following months, Edison would file a human rights complaint against the MCSCS for the treatment (e.g., invasive physical examinations, repeated misgendering, isolation and placement in segregation) she received while detained in Ontario carceral spaces (Kirkup, 2017). Edison's complaint urged the Human Rights Tribunal of Ontario and the Canadian Human Rights Commission to order Ontario correctional facilities and the Canada Border Services Agency to adopt policies that are more sensitive to the needs and experiences of trans people. The Ontario government announced their policy reform in 2015, just months before they agreed to a settlement with Edison and before Edison's case against the MCSCS reached the Human Rights Tribunal of Ontario. Indeed, following the changes made to Ontario's correctional admission and placement policy for trans people, Edison's lawyer stated that the case was resolved (Kirkup, 2017). However, the results of these policy reforms remain to be seen.

The MCSCS directly references the Ontario Human Rights code to justify the creation of the new *Policy for the Admission, Classification and Placement of Trans Inmates*, framing themselves as a national and international leader in protecting human rights (Kirkup, 2017). In framing itself as progressive and the new correctional approach as one of inclusive benevolence, the Ontario government effectively erased the lived experiences of Avery Edison and other trans individuals that experienced exclusionary violence at the hands of the MCSCS. Among the

multiple policy reforms that occurred in 2015, the Ministry of the Solicitor General (SOLGEN) asserted that the implementation of Ontario's *Trans Inmate Management* policy is among the most progressive in North America. As then Deputy Minister of Correctional Services, Stephen Rhoades, claimed, the *Policy for the Admission, Classification and Placement of Trans Inmates* provided "us with a progressive and inclusive approach to correctional programs and services for trans clients"[15]. In what follows, I provide an analysis of these MCSCS policies and practices, highlighting the ways they construct, manage, and *make up* trans individuals.

The Dark Side of Care

Care is often understood as intrinsically and instrumentally valuable and involves practices that help to ensure that individuals can survive different forms of harm, sickness, or trauma while protecting and maintaining their health and welfare (Coverdale, 2021; Hankivsky, 2004; Stewart, 2022). Care can be understood as expressing and acting upon a "concern for the well-being of another and a desire to sustain or enhance that well-being in a manner and direction agreed between carer and cared-for" (Harris, 1980, p. 169, see also Canton & Dominey, 2020). Haidt (2003) defines care as a *moral emotion* which motivates an individual to engage in goal-oriented actions to benefit, support, or comfort oneself, others, or the social order. These understandings of care emphasize the importance of empathy, sensitivity, and trust (Canton & Dominey, 2020) in performing care or caring actions. Manifestations of care are also associated with a particular set of virtues (e.g., kindness, compassion, and gentleness), while their opposites (e.g., cruelty, indifference, callousness) are condemned as vices (Canton & Dominey, 2020). While the point of carceral spaces is largely related to punishing lawbreakers and maintaining

[15] See memorandum to all Correctional Services Staff from Stephen Rhoades on the Policy for the *Admission, Classification, and placement of Trans Inmates*.

community safety and security through detention, correctional actors also hold a duty of care toward those who are incarcerated (Canton & Dominey, 2020; Dalzell et al., 2024). However, caring virtues (e.g., kindness, compassion, and gentleness) are not typically associated with the lived reality and function of carceral spaces. Indeed, care is often seen as non-existent[16], antithetical, or conceptually in conflict with institutions focused on the deliberate imposition of harm through security, surveillance, deprivation, and punishment (Canton & Dominey, 2020; Coverdale, 2021; Elliott, 2007; Stewart, 2022).

As discussed in Chapters Two and Three, carceral spaces are gendered total institutions where prisoners are kept separate from wider society and lead wholly controlled and formally administered lives (Goffman, 1961). Driven by the institutional goals of surveillance and punishment (Barcinski et al., 2017), these spaces aim to *control* behaviour while imposing order upon prisoners through disciplinary practices of regulation and punishment (e.g., strip searches, persistent identity documentation, surveillance, dress regulations, verbal harassment, social isolation, and administrative segregation) (Adams & Emmerich, 2020; Barcinski et al., 2017; Bassichis, 2007; Ellis, 2021; Hébert et al., 2022; Kilty, 2021; Kirkup, 2018; Norman, 2017). Indeed, carceral spaces rely on the principle of punishment to dehumanize prisoners, deliberately imposing pain, hardship, and deprivation (Canton & Dominey, 2020; Laws, 2022). These practices position carceral spaces as having complete control (Garland, 2001) or "almost total power over [the] prisoners" (Foucault, 1977, p. 236).

Despite the well-documented reality of carceral spaces, correctional services insist that care (often in the form of rehabilitation) is a central pillar of justice (Bonta & Andrews, 2007;

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[16] This is not to discount horizontal expressions of care (i.e., prisoners caring for other prisoners) that occur outside of formalized prison services (Stewart, 2022). Research has shown that prisoners often defy the highly structured and hierarchical relations of carceral spaces by demonstrating a willingness to engage in informal caregiving with their peers (Fayter & Kilty, 2024).

Canton & Dominey, 2020; de Finney et al., 2018; Genty, 1996). Care and opportunities for rehabilitation are supposedly applied equally to all prisoners, effectively (re)framing carceral spaces as a safe and supportive place to endure the punishment of incarceration. However, research has shown that prisoners are largely defined by their purported criminal conduct and are thus conceptualized as being morally underserving and/or ineligible to receive care (e.g., access to education and meaningful social interaction, as well as health, mental health and other supportive services) despite having some of the most notable socio-economic disadvantages and needs (e.g., intersectional vulnerabilities) (Canton & Dominey, 2020). To receive care a prisoner must obey the rules of the institution, while disciplinary infractions can lead to a removal of care or the application of more explicit and austere forms of control. In other words, care is dependent on the prisoner's ability to accept the total control to which they are subject (Harris, 1980).

The care that does occur within prisons can be understood as coercive caring, meaning care is offered to rehabilitate (i.e., reduce recidivism) or change those who are constructed as being 'carriers of risk factors' into prosocial citizens (Canton & Dominey, 2020, p. 20, see also Hacking, 2006, 2007). As carceral spaces are predicated on punishment and exclusion, the care provided within them often operates more like a practice of control (Canton & Dominey, 2020, Hacking, 1991, 2007). For example, Canton and Dominey (2020) define the treatment model of rehabilitation, which aims to change individual behaviour to reduce recidivism, as one example of coercive caring or the 'dark side of care'. They assert that the rehabilitative treatment model is "intrusive and even manipulative in its methods to effect change and mask the origins of much offending by regarding crime not as a function and symptom of social injustice but as a product of individual sickness or weakness" (Canton & Dominey, 2020, p. 19). Such logics also represent what Gilmore (2018) coins 'carceral humanitarianism', a strategy to promote prisons as

spaces of rehabilitation and care, masking the ways carceral spaces deliberately debilitate, disappear, and harm people (de Finney et al., 2018). Indeed, while the treatment model of rehabilitation is marketed as a *caring* intervention, it remains a technology of control that punishes and oppresses.

Similarly, Silow Kallenberg (2019) defines secure units for youth (i.e., residential care units located within the community) as sites where logics of punishment and care are articulated together. Secure units, much like carceral spaces, are closed sites of confinement that aim to *care* for and *change* youth who have committed crimes and/or engaged in behaviour that puts themselves or others at risk (Silow Kallenberg, 2019). Placement in a secure unit constitutes a form of imprisonment but is widely conceptualized as a form of protection and rehabilitation for 'delinquent teens' (Silow Kallenberg, 2019, p. 118). Within secure units, interventions (often framed and experienced as punishments) that aim to change behaviour through a moral stance concerning what is 'right' and what is 'wrong' are foundational to expressions of 'care'. Indeed, Silow Kallenberg (2019) contends that interventions mobilized within spaces of confinement are characteristically techniques for punishing, modifying, and changing supposedly 'dysfunctional' behaviour (See also Hacking, 2006, 2007).

Similarly, the Correctional Service of Canada's mobilization of mental health treatments reflects the contradictory nature of simultaneous care and control. The CSC mobilizes technologies of governance (i.e., techniques of control that aim to change behaviour) in the form of mental health treatments (defined as a caring intervention) which aim to control the "*ungovernable* [penal subject] or to create self-regulating moral citizens" (Pollack, 2005, p. 73). Such treatments responsibilize individuals for their experiences of structural disadvantages (which often brought them into conflict with the law in the first place), (re)framing intersectional

vulnerability and exclusion as a matter of choice rather than systemic injustice (Pollack, 2005). Thus, the ways correctional policies and practices construct who is deserving of care, and who, by contrast, has no such entitlement, significantly shapes the boundaries, scope, and character of carceral forms of care (Canton & Dominey, 2020).

While care is often defined as being conflictual or complementary to control, research suggests that care and control should be (re)conceptualized as simultaneous and in constant tension (Canton & Dominey, 2020; Coverdale, 2021; Elliott, 2007; Harris, 1980; Silow Kallenberg, 2019; Stewart, 2022). For example, Gelsthorpe and Canton (2020) conceptualize care and control as a 'patchwork quilt' of risk management (p. 60). Similarly, Hwang (2019) conceptualizes 'carceral care' as representing the (often deathly) liberal impulse to 'improve' the treatment and/or care of incarcerated populations through discretionary practices and/or performative measures (i.e., reforms) that "forestall the possibility of future interference and or interrogation of the underlying institutional violence of carceral spaces" (p. 561). Such piecemeal reform efforts, which claim to offer life-giving *care* in a 'death-making' space, rationalize the expansion of institutional punishment, control, and state violence.

Thus, carceral spaces, bound by a variety of coexisting and often incompatible goals (e.g., to simultaneously surveil and punish while also maintaining the health and safety of prisoners), reflect the perpetual and contradictory tension between care and control (Genty, 1996; Schnittker et al., 2022). Similarly, correctional policies, which mandate a particular standard of treatment for prisoners (e.g., programming, socialization), represent and reinforce the institutional goals of custody and control. For example, the MCSCS' emphasis on trans-affirming policy (i.e., 'care') co-occurs with often dangerous and regressive practices that position trans prisons as perpetually at-risk but also risky subjects (Farley & Leonardi, 2021). I

suggest that it is through this tension or paradox of care and control that trans prisoners' correctional identities are constituted or *made up.* In the next section, I explore how notions of self-determination, risk, inclusion, deception, as well as processes of normalization and the construction of difference are foundational to the ways in which MCSCS polices construct, manage, and *make up* trans individuals.

Classifying Gender Identity: A Caring Practice?

Different types of classification determine the entire nature of one's experience of incarceration: where one is housed, whom one is housed with, visitation rights, and the programs one has access to (Brennan, 1987; Frisch-Scott, 2020). These classifications also serve various purported goals: managing risk, reducing violence, minimizing escapes, allocating services, determining security levels, and assigning appropriate housing placements (Brennan, 1987; Frisch-Scott, 2020). In other words, classification processes aid correctional staff to understand and identify different 'types' of prisoners and to predict various features and characteristics of these classified subjects (Frisch-Scott, 2020), allowing MCSCS staff to provide individualized interventions (e.g., plan of care, housing placement, programming) and allocate appropriate resources (Hacking, 2007). While processes of classification are designed to identify types of prisoners, maintain order, allocate necessary services, and provide a transparent basis for decisions that affect a prisoner's life (Hacking, 2007; Frisch-Scott, 2020), the primary goal of correctional classification frameworks is to manage and mitigate risk (Brennan, 1987; Hacking, 2006; Kratcoski, 2017; Malkin & DeJong, 2019). According to the *Inmate Information Guide for Adult Institutions,* processes of classification in Ontario begin for all individuals after they are sentenced. In turn, a Classification Officer begins a Classification Report noting where they believe the person should serve their sentence and what programs will assist them to rehabilitate.

Being assigned and/or classified enables and/or invites various interventions, some of which operate as mechanisms of control that maintain and legitimate the treatment of 'X' type of prisoner (Hacking, 2007; Scallan et al., 2021; Valentine, 2007). It is through these correctional classifications and the associated interventions (e.g., including accommodations made based on one's gender identity) that prisoners come to understand themselves and (re)construct their correctional identity (Hacking, 1996).

Section 6.7 of the *Policy for the Admission, Classification and Placement of Trans Inmates* asserts that trans individuals:

> must be classified using factual and objective, real and direct criteria including, but not limited to, inmate health, security needs, custodial needs, and Human Rights Code related needs. Such decisions must not be made solely on remand or sentence status or on assumptions. The premise of this classification format ensures consistency with current requirements in Correctional Services.

Indeed, like all prisoners, trans individuals are classified according to their potential risk, as well as other health and safety concerns. Where the MCSCS' trans classification policies differ is in their supposed attention to gender diversity. Historically, gender has been viewed as a binary, reducing gender to biological sex (Levitt & Ippolito, 2014; Malkin & DeJong, 2019). However, this binary definition of gender is insufficient when attempting to classify trans and other gender non-conforming individuals (Ashley, 2018). Indeed, the ambiguity of identity cannot simply be reduced to neat gender categorizations, meaning that gender identities are not easily categorized into hegemonic male/female and/or masculine/feminine binaries (Malkin & DeJong, 2019). Section 3.2.2 of the *Trans Inmate Management policy* attempts to mirror these expanded conceptualizations of gender, asserting that prisoners "may not always identify as a man or woman: gender identity is not limited to only these two categories". As a result, trans individuals, whose gender identities are often difficult to classify yet simultaneously hyper-

visible (Kilty, 2021), require additional gender definitions and classifications. For example, the MCSCS has developed definitions of what it means to be demi gender, gender queer, gender nonconforming, intersex, non-binary, trans or transgender, transsexual, and Two-Spirit[17]. This indicates a cursory recognition of gender diversity and the gender spectrum, acknowledging that there is a multiplicity of gender identities and a diverse range of gender expressions. The MCSCS's recognition of different gender identities legitimizes classification discourses regarding variances in a wider group of people (Hacking, 2007), but it also demonstrates the boundaries regarding how the institution recognizes gender identity, which may impact whether correctional staff will be held to a standard of treatment regarding respecting gender diverse prisoners' names and pronouns (Drakeford, 2018; Nada, 2015; Winter, 2023). Furthermore, Ontario's trans management policies affirm that gender is a unique internal experience:

> It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth assigned sex. Gender identity is fundamentally different from a person's sexual orientation.[18]

The MCSCS mandates that all practices and procedures reflect these expanded definitions of gender, constructing Ontario carceral spaces as *caring* environments marked by self-determination, inclusion, and respect. Self-determination can be understood as a sense of inner freedom and the perception of one's actions as voluntary, intentional, and aligned with one's own beliefs, needs, and values (Ryan & Deci, 2004). While self-determination is considered one of the most basic and universal psychological needs of humans, carceral spaces are marked by the explicit denial of freedom, choice, and liberty. The MCSCS distances itself from the

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[17] The MCSCS takes these definitions from the Ontario Human Rights Commission's *Policy on preventing discrimination because of Gender Identity and Gender Expression*
[18] Section 4.3 of the *Trans Inmate Management Policy*.

narrative that carceral spaces are inherently controlling by mandating that trans individuals receive the opportunity to define and redefine their gender identities and expressions:

> A trans inmate's name and gender designation may be different from that which appears on their identity documents or holding documents. They may identify differently than they did during previous admissions. In light of this, assumptions about gender identity or placement should not be made on previous admissions… People who are transitioning might choose to change their pronouns. Staff must maintain a record of a trans inmate's legal name, chosen name and gender affirming pronouns. Staff must refer to a trans inmate in their chosen name and pronoun, both verbally and in written documents. If staff are unsure of a trans inmates [sic] gender affirming pronouns, privately ask what pronouns they use in a sensitive manner. For example, how would you like staff to address you? [19]
>
> In written documents that are created during an inmate's incarceration, including the admitting process, assessment, classification and placement, the inmate must be referred to and recorded using their chosen name and pronouns.[20]

Requiring staff to respect an individual's gender identity, chosen name, and pronouns indicates growing state recognition of the importance of protecting prisoners' rights in Ontario. By allowing trans individuals to claim subjecthood and define their gender identities, the MCSCS policies construct trans individuals as having the right to, at least partially, *make up* their own correctional identities (Hacking, 2007). However, research suggests that even when such policies are in place there is 'insufficient clarity' (Farley & Leonardi, 2021, p. 277) to ensure the acceptance and acknowledgment of diverse gender identities (Roberts & Marx, 2018). At best, these mandates offer some degree of legitimation and recognition (Hacking, 2007) to trans people and make carceral spaces more *tolerable,* but they also fail to address individual needs for trans survival. In other words, by adding additional gender identity categories, the MCSCS policy reforms fail to offer meaningful solutions that might reduce trans individuals' experiences of marginalization and violence within carceral spaces or address the underlying norms (i.e.,

[19] Section 3.2.3 of the *Trans Inmate Management Policy*.
[20] Section 6.6.2 of the *Trans Inmate Management Policy*.

gender binarism) that work to harm trans prisoners (Farley & Leonardi, 2021; Spade, 2012). These expanded policy considerations are slippery, offering the pretense of change while co-opting the language of marginalized groups (Gordon, 2012; Spade, 2013). Indeed, while expanded conceptualizations of gender are important in normalizing gender diversity, the MCSCS still requires trans prisoners to assimilate into cisgendered (i.e., sex-segregated) spaces, leaving intact or even reifying the cisgender binary (Crasnow, 2020; Farley & Leonardi, 2021; Gordon, 2012). Given that correctional actors also have the power to reject trans prisoners' housing placement requests for security reasons, these "formal declarations of equity" (Spade, 2013, p. 1042) do not necessarily create substantive material changes to the lived experiences of trans individuals in Ontario carceral settings.

Expanded Conceptualizations of Gender as Universal and Value-Neutral

While the MCSCS trans management policies officially acknowledge gender self-determination, they fail to address how one's gender intersects with other identity categories. Beyond a cursory definition of what it means to identify as Two-Spirit, the *Trans Inmate Management* policy does not mention any relationship between one's gender and other identity characteristics (e.g., race, age, sexuality, ability, immigration status, Indigeneity). Research shows that trans individuals do not experience or enact gender separately from other identity categories or social positions, such as race, class, and sexuality (De Vries, 2015; Roberts & Marx, 2018). Rather, one's transgender identity is internally differentiated and marked by both marginalization and privilege (Oparah, 2010). As such, the MCSCS trans management policies promote a single axis understanding of gender, flattening diversity, and obscuring the multidimensionality of trans people and their experiences (Crenshaw, 1989; Farley & Leonardi, 2021; Meyer & Keenan, 2018; Oparah, 2010; Roberts & Marx, 2018).

By focusing on gender as an isolated social category, the MCSCS creates a normative trans subject, which research shows "has been historically constructed through antiblackness" (Meyer & Keenan, 2018, p. 738). Indeed, as race is not formally mentioned by the MCSCS, such policies reflect the notion of racial innocence "whereby norms of whiteness underpin values, structures, decision-making frameworks, and practices, but are taken as universal and value-neutral" (Montford & Hannah-Moffat, 2021, p. 2). Vitulli (2010) similarly describes correctional policies as 'colour-blind', meaning that they are underpinned by racial logics that work to erase the inherent whiteness of carceral institutions while (re)entrenching racialized hierarchies that perpetuate the subordination of people of colour. Colour-blind policies effectively eliminate an institution's consideration of the unique experiences and needs of BIPOC[21] communities, enabling existing hierarchies to remain in place (Chow & Knowles, 2016). Furthermore, by neglecting to acknowledge that Black transgender people are incarcerated at significantly higher rates than their white counterparts, as well as the general population (Farley & Leonardi, 2021; Szuminski, 2021)[22], such policies invisibilize the ways in which carceral spaces warehouse and disappear trans and BIPOC individuals (Davis, 2003; Sudbury, 2009). In other words, the MCSCS trans management policies effectively ignore the ways in which imprisonment itself is a form of racialized violence (Spade, 2012).

Trans Identity as Vulnerable

Notions of care and concern for trans individuals are reflected more broadly by the MCSCS' requirement that staff "be open, respectful and professional when dealing with all

[21] BIPOC refers to Black, Indigenous, and other People of Colour.
[22] Lambda Legal found that one in two Black transgender individuals have been incarcerated in the United States (Lambda Legal, 2012; see also Ortlip-Sommers, 2020).

inmates, especially those who may be *vulnerable* [emphasis added]" [23]. Furthermore, Section 3.2.3 of the *Trans Inmate Management* policy notes that due to previous negative experiences trans individuals may *fear* physical harm and ridicule. Indeed, research shows that trans individuals are a hyper-visible target for transphobic violence, harassment, and discrimination (Agbemenu, 2015; Bassichis, 2007; Hébert et al., 2022; Kilty, 2021; Nulty et al., 2019; Stanley & Smith, 2015). Under the formal authority and control of carceral actors all prisoners are institutionally vulnerable (Davis, 2003; Vanliefde, 2023). This vulnerability is not inherent to the prisoners' identities themselves, rather it must be understood in relation to the specific structures, norms and values which *make up* prisoners as vulnerable (Hacking, 2006, 2007, 2013; Vanliefde, 2023). For example, Vanliefde (2023) argues that the vulnerability of women and LGBTQIA+[24] prisoners "is not inherent to their gender identity/sexual orientation in itself but must also be understood in relation to particular contexts (such as prisons) where particular forms of masculinity prevail, and where misogyny, homophobia and transphobia are prevalent" (p. 105).

Being *made up* as vulnerable invites a variety of different interventions or accommodations that justify and (re)assert the necessity of trans-specific housing, placement, and classification policies (Hacking, 2006, 2007). While acknowledging vulnerability to transphobic violence and harm and subsequently mandating respect and care for vulnerable populations is important, reducing trans individuals to a category of perpetual and inherent vulnerability has symbolic consequences (Hacking, 1991, 2006, 2007; Westbrook, 2008). Indeed, such classifications can alter the ways in which people understand and present themselves (Hacking, 1991, 2007). For example, Westbrook (2008) contends that constructing

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[23] Section 3.2.1 of the *Trans Inmate Management Policy*

[24] LGBTQIA+ refers to lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The plus sign refers to the multitude of other self-identifications under the umbrella of gender and sexuality that are not heterosexual.

'transgender' as a category of inherent vulnerability "potentially reduces the livability of that category" (p. 17). In their research on trans activists, Westbrook (2008) found that hegemonic constructions of trans individuals (i.e., associating both trans people and femininity with vulnerability) can instill a fear of violence, often influencing trans individuals to engage in actions (e.g., passing or closeting one's gender) that might reduce their risk of victimization. As such, some trans individuals who may fear further negative reprisals for seeking gender authenticity (i.e., when an individual gains recognition as their gender identity) conceal their trans identities within carceral settings (Erickson-Schroth, 2022; Kilty, 2021). Attempting to 'pass' or 'closet' one's gender can be psychologically traumatizing, often resulting in a loss of both gender autonomy[25] and gender authenticity (Horner et al., 2023; Lamble, 2012). Research shows that a lack of gender autonomy and/or authenticity can result in increased suicidal ideations, post-traumatic stress, self-harm, auto-castration, and death (Horner et al., 2023; Kilty, 2021; Phillips et al., 2020; Van Hout & Crowley, 2021). As such, the MCSCS policy classifications are not static, they have tangible material and experiential implications for trans individuals and their survival within Ontario carceral spaces (Bessant, 2021; Hacking, 1991, 2006, 2007).

By normalizing the construction of trans people as always-already vulnerable, the MCSCS has endeavoured to redefine their correctional practices as a caring form of protection (of trans individual's unique needs), thus manufacturing the illusion that Ontario carceral spaces are inherently respectful and inclusive. However, the extent to which carceral spaces and correctional practices can provide any form of care, safety, and/or protection to (trans) prisoners is limited. Indeed, critical scholars have noted that there is no 'safe' way for any human to be

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[25] Gender autonomy can be understood as the feeling of having control and self-determination over one's gender identity and expression (Horner et al., 2023).

imprisoned (Bey & Goldberg, 2022; Boyer et al., 2019; Davis, 2003; Montano, 2023; Rosenberg & Oswin, 2015; Spade, 2011, 2013; Stanley & Spade, 2012). By constructing Ontario carceral spaces as *caring* the MCSCS is able to relieve itself "of the responsibility of thinking about the real issues afflicting those communities" (Davis, 2003, p. 16). Indeed, policy reforms focused on providing accommodations or equal treatment perpetuate the idea that trans prisoners are the ones in need of intervention (Farley & Leonardi, 2021; Hacking, 2007), "rather than seeing the institution as a site in need of reform" or abolition (Meyer & Keenan, 2018, p. 744). As such, the MCSCS policies effectively ignore the ways in which Ontario carceral spaces are implicated in perpetrating transphobic violence (Farley & Leonardi, 2021; Meyer & Keenan, 2018). Other than brief references to the Client Conflict Resolution Unit (CCRU)[26] and the Client Conflict Resolution Line (CCRL), MCSCS policies do not address possible violence born from institutional arrangements (e.g., housing placement) or correctional staff. The MCSCS positions violence toward trans prisoners as resulting from other prisoners, effectively responsibilizing them for any transphobic harm that might occur within Ontario carceral spaces. As a result, these policies *make up* trans individuals as *undeserving* victims of harm while simultaneously *making up* other prisoners as dangerous and/or *deserving* of incarceration. This in turn reaffirms the value and legitimates the existence of carceral spaces as a necessary and normal response to harm (Bassichis et al., 2011; Spade, 2013), making it easier (and supposedly safer) to send trans individuals to prison. In the following subsections, I explore the ways in which the MCSCS

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[26] CCRU is a service-focused unit that aims to resolve human rights complaints affecting individuals incarcerated within Ontario carceral spaces. It is also important to note that referring to prisoners as 'clients' suggests that they are free to access supportive services when this is demonstrably not the case. By doing so, the MCSCS effectively ignores the systemic nature of violence and harm that exists within and is perpetuated by carceral spaces.

endeavours to (re)enforce vulnerability upon already vulnerable trans prisoners through more apparent technologies of control.

Making Up Trans Individuals as Vulnerable Through Strip Searches

Frisk and strip searches are technologies of intervention and control utilized by the MCSCS that violently reinforce vulnerability upon already-always vulnerable trans prisoners. The stated purpose of frisk and strip searches is to prevent contraband (e.g., weapons or drugs) from entering carceral spaces, thus requiring prisoners to remove their clothing, stand naked in front of correctional staff, and endure invasive inspections (e.g., looking, touching) (Hutchison, 2019, 2020; Vanliefde, 2023). In Ontario, the operating manager is responsible for authorizing a strip search of a trans prisoner upon admission. Section 6.4.3 of the *Trans Inmate Management* policy notes that:

> The operating manager must explain the strip and frisk search process at the institution and the option available to the inmate. This must be done in private. The operating manager must ascertain the inmate's preference[27] and answer any questions they might have about the search process. As part of this conversation, the admitting manager will acknowledge the discomfort the search process may cause the inmate and ask the inmate for input on how to maximize their dignity during the search process.

The MCSCS defines strip and frisk searchers as a mandatory and "necessary correctional practice to maintain facility security".[28] While the MCSCS claims that they will maximize dignity throughout the process, significant research suggests that strip and frisk searches are forms of explicit sexual assault or violence perpetrated by the state within carceral spaces (Davis, 2003; Hébert et al., 2022; Hutchison, 2019, 2020; Kilty, 2018; Kilroy, 2003; Kirkup, 2009). Hutchison (2020) asserts that sexual coercion is inherent throughout the performance of strip

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[27] Preference for frisk and strip searches refer to whether a trans prisoner would prefer that the search is done by only a man *or* a woman, or a combination of both a man *and* a woman.
[28] See section 6.4.1 of the *Trans Inmate Management* policy.

searches, as free and informed consent is antithetical to the highly hierarchized power structure(s) of carceral spaces. In other words, prisoners cannot actively resist or refuse a strip search, "as to do so can result in institutional charges, loss of privileges, and, in some circumstances, the use of physical force" (Hutchison, 2020, p. 163). Indeed, McCulloch and George (2009) state that:

> The failure to perceive routine practices of strip searches within prison as sexual coercion and institutionalized violence fits within a broader tendency to see crime and violence as residing almost exclusively within the realm of individuals as opposed to the state and its agents (p. 109).

While frisk and strip searches are inherently invasive and violent for all prisoners, trans individuals may be more affected by their demeaning nature. Indeed, search procedures were developed with "mainly male, cisgender and straight people in mind" (Vanliefde, 2023, p. 101), largely neglecting the specific needs of women and members of the LGBTQIA+ community. Kirkup (2009) argues that strip searches represent a larger system of power in which "bodies, genders, and sexualities outside the socially constructed 'norm' are routinely subjected to discipline and punishment' (p. 109; see also Boyer et al., 2019). Research shows that trans prisoners often experience frequent and unnecessary frisks and searches, exacerbating experiences of transphobic harassment and violence (Babbar, 2020; Bassichis, 2007; Tarzwell, 2006). Tarzwell (2006) describes such unnecessary searches as 'gender-checks'[29] (p. 180), meaning that correctional staff perform humiliating and terrifying strip searches to verify one's 'real' gender (See also

[29] Section 6.5.7 of the *Trans Inmate Management* policy asserts that a trans prisoner's *Plan of Care* is updated every 10 days (or whenever there are any changes in their situation). I argue that such check-ins, while framed as a caring and protective practice (e.g., to confirm that a trans prisoner feels safe with their cellmate) may also constitute what Tarzwell (2006) coins a 'gender-check', whereby the MCSCS continually verifies and 'tests' the sincerity of one's gender expression(s).

Babbar, 2020). Such practices reduce one's gender identity to their pre- or post-operative status, framing genitals as the ultimate indicator of gender. Furthermore, split strip searches (i.e., a search done by a (read, cisgender) man *and* a (read, cisgender) woman), a common 'accommodation' for trans prisoners, associates specific body parts to one's biological sex, (re)enforcing the idea that one's pre-operative trans body is split between a 'male' upper body and a 'female' lower body or vice versa (Kirkup, 2009). These 'gender-checks' increase experiences of transphobic harassment and harm, the mocking of one's genitals, verbal, physical, and sexual assault, and rape (Tarzwell, 2006). As such, strip searches position trans bodies as key sites for the regulation and control of gender within carceral spaces, (re)enforcing notions of cisgendered gender coherence (i.e., associating gender and/or body parts with biological sex) (Kirkup, 2009).

Strip searches also constitute a form of racialized violence perpetuated by the state (Latty, 2023). Experiential accounts note that violent strip searches are a regular occurrence for BIPOC prisoners (Lucashenko & Kilroy, 2005; see also Latty, 2023). Indeed, anti-Black logics underpin such legally authorized tools of violence, constructing BIPOC prisoners as inhuman and thus inherently disposable (Alexander, 2011). For example, Latty (2023) describes strip searches as part of a 'matrix of violence' (p. 26) used against Black women, (re)enforcing the racial hierarchy and granting white individuals unrestricted access to Black bodies. Research is limited on the specific experiences of trans BIPOC individuals; however, it is reasonable to suggest that such racial logics underpin the gendered violence of the MCSCS' use of frisk and strip searches and that such practices might disproportionately impact trans BIPOC prisoners. Future research should include survey methodologies to collect data on the frequency of these practices across different carceral populations. Although the MCSCS constructs correctional staff as sensitive,

respectful, *race neutral*, and *caring*, I argue that frisk and strip searches are fundamentally incompatible with respecting a trans prisoner's (or any prisoners') dignity. Rather, such practices represent a gendered and racialized mechanism of control (Hacking, 2013, Valentine, 2007), that (re)enforces the vulnerability of (already vulnerable) trans individuals.

Making Up Trans Individuals as Vulnerable Through Case Management

Constructing trans individuals as vulnerable also invites other technologies of regulation and control (Hacking, 2006, 2007), often hidden behind pretensions of care and accommodation (Westbrook, 2008). The MCSCS mandates that when an individual identifies as trans "a case manager is to be assigned as soon as possible by the superintendent or designate"[30]. Subsequently, according to section 5.11 of the *Trans Inmate Management* policy, "the case manager is responsible for creating an inter-disciplinary team and providing continuous monitoring, evaluation and recommendations related to the needs of trans inmates during incarceration". Case management team members may include healthcare professionals (e.g., healthcare manager, physicians, nurses, psychologists, community health practitioners), social work specialists (e.g., social workers, rehabilitation officers, probation and parole officers, Native inmate liaison officers), operating managers, living unit managers, as well as corporate supports (e.g., human rights unity, corporate health care, legal services branch). The purported aim of the inter-professional case management team is twofold: to offer self-determination to trans prisoners by granting them a central role in the case management process and to provide additional support and accommodations to a *vulnerabilized* population during their imprisonment.

[30] Section 6.1.17 of the *Trans Inmate Management Policy*

Notions of self-determination are reflected in the *Trans Inmate Management* policy, which requires that the case management team discuss, document, and routinely update[31] a trans individual's preferences for frisk and strip searches, clothing and underclothing for wearing inside the institution and for court, housing (i.e., to be housed in a men's or women's institution, in a single cell unit or with a compatible cellmate), medical needs (e.g., access to medication, hormone treatment), and any other items required to express one's gender identity[32]. These practices construct case management as a caring process that offers vulnerable trans prisoners' choices and therefore a certain degree of self-determination in their correctional experience. However, the phrasing of the *Trans Inmate Management* policy implies that requests related to preferences and/or accommodations may not always be approved by the case manager, superintendent, and/or designate. Indeed, section 6.4.6 states that "if approved, the inmate must be notified and the preference updated in OTIS[33] by the case manager. If the request is not approved, request and rationale for denial must be noted on Plan of Care form". While case managers are required to document a trans prisoner's preferences, these are subject to approval by key correctional professionals (i.e., experts) who must also establish and produce 'helpful' interventions or next-best accommodations (Hacking, 2006, 2007).

The MCSCS policies outline that next-best accommodations aim to mitigate the inherent risk associated with the incarceration of trans individuals, reifying the construction of trans individuals as vulnerable. For example, Ontario's policy on *Providing Accommodation Short of*

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[31] All information related to a trans individual's housing, accommodation, and classification preferences is documented in the *Trans Inmate Consultation Summary, Trans New Admission Information,* and the *Intake/Assessment and Plan of Care for a Trans Inmate* forms.
[32] Section 6.0 or procedures for the admission of trans individuals in the *Trans Inmate Management Policy.*
[33] OTIS stands for 'Offender Tracking Information System'. OTIS is an electronic database used to track and record individuals who are under the supervision of the Ministry. OTIS tracks and records demographic information, as well as one's criminal offence history and institutional housing and placement history. Gender is recorded as either 'male', 'female', or 'transgender alert'.

Undue Hardship suggests that the case management team mitigates the risk of incarceration for trans individuals by increasing supervision on the unit, offering single cell placements, and scheduling regular check-ins to assess comfort and safety levels. While these risk mitigation strategies are framed as a *caring* form of protection, they are in practice technologies of control (Hacking, 2006, 2007). Indeed, increasing surveillance and supervision, as well as housing a trans individual in a single cell (read, isolation) often exacerbates one's vulnerability by increasing their interactions with correctional staff who are often the primary perpetrators of transphobic violence and harm (Caramico, 2017; Greene, 2023; Ortlip-Sommers, 2020; Peek, 2018; Redcay et al., 2020; Tarzwell, 2006). Placements in segregation or isolation also contribute to significant mental distress and can result in long-term psychological harm (Guenther, 2013; Kilty, 2018, 2021; Labrecque & Mears, 2019; Ortlip-Sommers, 2020).

Moreover, while accommodations are typically constructed as a caring practice that fulfills an individual's needs; the application of expert knowledge is not unproblematic within the correctional case management process (Hacking, 2006, 2007). Indeed, within carceral spaces, expert interventions and/or accommodations often aspire to "change others for what is deemed to be for their own good" (Hacking, 2007, p. 293). I argue that the accommodations or interventions outlined by the MCSCS function more as technologies of control, constructing trans individuals as vulnerable and in need of continual risk management. This repeated construction of trans individuals' as vulnerable invites the use of accommodations to 'protect' them, (re)enforcing the institutional goals of custody and control and justifying the use of increased surveillance and/or placements in segregation as *solutions* to a trans individual's vulnerability (Hacking, 2006, 2007; Magnet & Rodgers, 2012), when isolation is known to

increase mental distress, self-harm, and suicide (Guenther, 2013; Kerr, 2017; Kilty, 2006, 2012, 2014, 2018; Labrecque & Mears, 2019; Ortlip-Sommers, 2020).

The case management process and the MCSCS policy solutions address only the individual- and not the system- or structural-level issues that affect the quality of life and even survival of trans prisoners (Farley & Leonardi, 2021). More broadly, these polices represent inclusion- and recognition-based reforms that simply address the surface level needs (e.g., respecting pronouns, acknowledging potential violence) of trans individuals (Spade, 2016, Westbrook, 2008). In other words, while MCSCS policies acknowledge that transphobic violence might exist inside Ontario carceral spaces, they do little to prevent its occurrence. Echoing the failures of inclusion- and recognition- based hate crime laws (Spade, 2016), MCSCS trans policies have two key goals, namely, to enshrine that trans individuals are deserving of rights and protections and to recognize that the violence experienced by trans people is a hate motivated offence (Westbrook, 2008). Such reforms fail to "challenge the use of incarceration and understand the state as committing additional heteropatriarchal and racist harms" and perpetuate the false promise that the criminal (in)justice system can and will keep us safe (Kilty & Bogosavljevic, 2022, p. 184; Ritchie, 2017; Spade, 2016; Westbrook, 2008). Indeed, Spade (2016) asserts that hate crime laws simply provide the illusion that the state cares about marginalized people by "increasing the surveillance of and punishment for homophobic and transphobic attacks" (p. 166). This in turn, functions to expand the punishing power of the state, reaffirming violent systems of criminalization and incarceration (Bogosavljević & Kilty, 2023; Ritchie, 2017; Smart, 1989) which contribute to the imprisonment of trans and other gender non-conforming individuals (Spade, 2016; Westbrook, 2008). Although hate crime legislation recasts

trans individuals as undeserving victims of crime, such reforms fail to substantively address or reduce trans individuals' experiences of marginalization and violence (Westbrook, 2008).

Unsurprisingly, MCSCS policies fail to acknowledge the need for structural change, (re)affirming the prison's continued existence by offering 'progressive' inclusion- and recognition-based reforms (Farley & Leonardi, 2021). Sumner and Sexton (2016) assert that carceral spaces are:

> faced with the choice between acknowledging difference in order to ensure the safety and security of a uniquely vulnerable population of prisoners – thereby conceding flaws in the sex-segregated premise of prison – and ignoring difference and subjugating the primary organizational goals of safety and security to illusory views of the prison as a single-gender institution (p. 637).

Indeed, while MCSCS policies offer recognition of the existence of trans individuals, the proposed correctional accommodations fail to acknowledge structural violence and do not guarantee trans individuals' entitlement to a specific standard of care beyond potential self-identified housing placements and pronoun choices. MCSCS policies that emphasize individualized protection measures to acknowledge and address anti-trans behaviours distract from the ways in which victimization is inherent to carceral spaces. Roberts and Marx (2018) claim that such policies "obscure the cultural, ideological, and structural systems that systematically perpetuate both social injustice and these systems themselves" (p. 284). Taken together, notions of self-determination and processes of case management *make up* trans individuals as at-risk and vulnerable subjects; however, such policies simultaneously construct vulnerable trans prisoners as *risks*. In the following section, I outline the ways in which MCSCS policies paradoxically position trans individuals as risks, justifying even more explicit expressions and forms of control.

Trans Identity as Insincere

Thus far I have shown how the gender classification and case management processes, while defined as outwardly *caring* practices, construct trans individuals as inherently *at-risk*. Without explicitly naming them as such, the *Trans Inmate Management* policy simultaneously positions trans prisoners as inherently *risky*. The construction of transgender identities as risks is a co-occurring feature of MCSCS classification, case management, as well as housing and placement policies. Indeed, these practices reflect and echo cultural fears surrounding trans individuals and gender deception (Jones & Slater, 2020) that often focus on traditionally gender-segregated spaces, like bathrooms.

Bathrooms are typically conceptualized as a protected space where access is dependent upon one's assigned sex at birth rather than one's gender identity or expression. Marked by normative binary restrictions, bathrooms have become the subject and site for debating social fears about purity (of the cisgender binary) and contamination (of cisgendered people by trans individuals), (re)enforcing trans-exclusionary and trans-hostile narratives (Crasnow, 2020; Farley & Leonardi, 2021; Westbrook & Schilt, 2014). These cultural fears reinforce the idea that women (read, white, heterosexual, and cisgender) need to be protected from 'men who are dressed up as women' (Crasnow, 2020, p. 1039, See also Herriott et al., 2018). These discourses (re)assert that biological sex is the ultimate marker of sincere gender expressions (Wodda & Panfil, 2014), reducing one's gender identity to their genitals or assigned sex at birth. These fears impact all trans people but are more commonly applied to trans women (See Boukli & Copson, 2019; Totton, 2020; Serano, 2016; Wodda & Panfil, 2014), constructing them as imposters or deceivers infiltrating spaces protected for 'real' women. These logics (re)produce and naturalize gender inequality, gender difference, and harm "under the guise of protecting [read, cisgender]

women" (Westbrook & Schilt, 2014, p. 35). The consequence of this gendered discourse is twofold: it applies the master status of victim to (white) cisgendered heterosexual women (i.e., women who are always at risk) (Comack & Brickey, 2007; Westbrook & Schilt, 2014; See also Hughes, 1945) and it constructs trans individuals as always-already potential perpetrators of sexual and physical violence. As such, (white, cisgendered, heterosexual) women are largely defined in terms of their potential victimization, while trans women (who may or may not have a penis) are reduced to deceptive would-be perpetrators; this narrative also problematically constructs heterosexual male desire as always 'violent and uncontrollable' (Westbrook & Schilt, 2014, p. 46; see also Farley & Leonardi, 2021; Serano, 2016). In contrast, interpretive logics position trans men (who have or who may lack a penis) as akin to normative vulnerable female subjecthood (i.e., more like cisgender women) and are thus seen as less threatening, dangerous, or risky (Westbrook & Schilt, 2014). Westbrook and Schilt (2014) assert that these logics "carry enough cultural power to temper institutional validation of identity-based determinations of gender" (p. 46), meaning that institutional policies and practices often favour biological sex over one's self-identified gender in the name of safety.

Discourses of deception are also racialized. Indeed, as critical race theorists have pointed out, racialized and white supremacist logics produce discourses of racialized criminality that construct people of colour as inherently deviant and/or criminal, thus normalizing the mass incarceration of communities of colour (Vitulli, 2010). Vitulli (2010) argues that such racialized logics also *stick* to trans prisoners, legitimizing some (white, 'passing') trans bodies, while largely delegitimizing trans bodies of colour by defining them as inherently deceptive. Such logics may mediate how the MCSCS manages trans people of colour, potentially restricting what

accommodations (e.g., gender (re)affirming healthcare, gender accordant housing placements) they have access to.

While the classification process for trans prisoners mandates that individuals may define and redefine their gender identity (i.e., identity-based determination of gender), section 6.5.8 of the *Trans Inmate Management* policy notes that:

> A person's gender identity is their own internal and individual experience of gender. The superintendent or designate must be notified to discuss further actions, if any, are to be taken if an inmate:
>
> a. acts in a manner that seems insincere: and or
> b. admits making a false statement in regard to their gender identity.
>
> Note: Consultation with the Region and or the Provincial Trans Inmate Consultation Committee should occur, to provide guidance including recommendations to case management and placement decisions. The involved staff must document the incident as per the Report Writing Policy.[34]

While a trans individuals' self-identified gender is supposed to be taken 'in good faith' (*Undue Hardship*, p. 38) by the institution, MCSCS policies simultaneously construct gender variation as proof of gendered deception (Valentine, 2007). Indeed, the use of the terms 'insincere' and 'false statement' constructs gender fluidity and gender variance as incidents, *making up* trans individuals' identities as unreliable, fraudulent, and dishonest. Contradictory to the MCSCS' assertation that trans individuals may continually redefine their gender, section 6.5.8 constructs gender fluidity as inherently deceptive. As such, trans individuals are *made up* as precarious subjects who fluctuate between two subject positions (Hacking 1991, 2007; Valentine, 2007): at-risk and risky.

Concerns related to gender deception also manifest in MCSCS housing and placement policies for trans prisoners which note safety (i.e., of the institution, staff, and other prisoners) as

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[34] Section 6.5.8 of the *Trans Inmate Management Policy*.

a guiding concern. I argue that this discourse potentially (re)produces the fear that trans women are violent men in disguise looking to harm vulnerable women. While the *Trans Inmate Management* policy mandates that a "trans inmate must be placed in an institution that corresponds with their self-identified gender or housing preference"[35], MCSCS staff may approve or deny housing requests based on unclear health and safety concerns that may be informed by often unfounded assumptions about risk factors and safety (Johnston et al., 2022; Lourenco, 2022).

Research shows that when discourses of deception are used by correctional actors to override health and safety concerns that are foundational to housing decisions, it often results in identity-discordant or incongruent placements (i.e., placing an individual in an institution that does not align with their self-identified gender identity or expression) (Hébert et al., 2022; Ortlip-Sommers, 2020). Incongruent housing placements have documented negative impacts on trans prisoners including misnaming, misgendering, segregation, isolation, name calling, harassment, as well as sexual and physical violence (Bassichis, 2007; Caramico, 2017; Ortlip-Sommers, 2020, Spade, 2011). Research also shows that trans women are more likely to be given incongruent housing placements (Hébert et al., 2022; Ortlip-Sommers, 2020). Indeed, much like other traditionally gender and/or sex-segregated spaces (i.e., bathrooms), institutions with designations for women can be understood as symbolising "the boundaries of womanhood: a 'safe' space where the terms of inclusion are vehemently regulated and protected" (Jones & Slater, 2020, p. 835). As a result, trans women are reduced to their biological sex, effectively erasing "the identity and the uniqueness of these people as individuals and instead defin[ing] them by anatomy and all that is associated with this anatomy" (Smith, 2014, p. 159). By

[35] Section 6.1.10 of the *Trans Inmate Management Policy*.

constructing trans identities as potentially dishonest and insincere, the MCSCS *makes up* trans women as inherently dangerous (i.e., restricting gender accordant placements to protect 'real women'), which reinforces broader cultural fears about gender deception and passing and produces barriers for trans women who request a housing placement in a women's institution.

Within the hypermasculine culture of men's carceral spaces, trans men are *also* put at risk (Sanders et al., 2023). When given gender accordant housing placements, trans men, who are reduced to their assigned sex at birth and/or potential lack of a penis, are seen as 'failed women' and are thus hyper-vulnerable to sexual violence and abuse (Szuminski, 2020). Such policy constructions fail to include trans men within discussions related to safety, demonstrating a significant lack of care for bodies that defy the (cisgendered) boundaries of womanhood.

The discourse of gender deception and insincerity that is embedded within classification and housing policies also serves to reinforce the legitimacy of MCSCS staff decision-making, constructing them as *experts* and reifying their definitions of what constitutes *sincere* expressions of gender (Hacking, 2006, 2007). Indeed, MCSCS policies appear to give a high threshold of discretion to their staff noting that although self-identification must be a primary consideration:

> a trans inmate presenting at A&D[36] may be identified through behaviour or outward appearance (e.g., dress, hair, make-up, body language, and voice) or information from outside sources (e.g., CBSA[37] or police) or they may self-identify as trans. Be aware that the inmate may or may not use this language to describe themselves.[38]

This policy section is starkly contradictory to the MCSCS directive that gender is one's own *internal* experience and that *assumptions* should not inform official gender classifications (See

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[36] Admission and Discharge
[37] Canada Border Services Agency
[38] Section 6.1.3 of the *Trans Inmate Management* policy.

Section 4.3[39] of the *Trans Inmate Management* policy). Offering staff the ability to *make up* an individual's gender identity based on dress, hair, make-up, body language, and voice reifies gender binarism and ideas about appropriate expressions of masculinity and femininity (Oparah, 2010). In other words, section 6.1.3 allows staff to utilize potentially stereotypical gender criteria (e.g., dress, hair, make-up, body language, and voice) to define (i.e., *make up*) who does and who does not belong to a particular gender classification (Hacking, 2006, 2007). Research shows that such gendered assumptions, which are employed as top-down applications of power, are often incompatible with gender self-determination (Hacking, 1986; Stanley, 2011a; Westbrook & Schilt, 2014). Gender self-determination is a theoretical and embodied practice that suggests:

> we collectively work to create the most space for people to express whatever genders they choose at any given moment … Gender self-determination believes that there are multiple ways to work one's gender and sexuality – and while they might have material differences, they must not be hierarchized in the name of *realness* (Stanley, 2011a, p. 11-12).

Rather than Stanley's (2011a) embodied practice of self-determination, that the MCSCS allows correctional actors to consider assumptions about trans prisoners' gender identities and the sincerity of their gender performativity echoes the notion of a hierarchy of realness that privileges gender normativity, meaning that trans individuals who effectively 'pass' as cisgender are more likely to be perceived as sincere. Therefore, the MCSCS' definitions of gender (re)enforce a 'charmed circle' (Rubin, 2011, see also Meyer & Keenan, 2018), defining what trans identities are legible and/or acceptable and which identities, by contrast are not. While Gayle Rubin's (2011) original concept of the 'charmed circle' represents a hierarchy of sex, whereby particular sex acts are seen as good or normal and other acts are treated as bad or abnormal, I suggest that trans identities that effectively 'pass' are treated, at least partially, as

[39] Section 4.3 of the *Trans Inmate Management* policy asserts that gender identity is each person's internal and individual experience of gender.

legible and acceptable, while other trans identities are seen as illegible and abnormal. As such, section 6.1.3 may aid in the maldistribution of vulnerability, protecting only the most privileged trans individuals (e.g., white, abled bodied trans people who are able to successfully ‘pass’) (Meyer & Keenan, 2018; Spade, 2011, 2012; Stanley, 2011b).

As written policy does not ensure how it is applied in practice, it is also unclear whether MCSCS staff use expanded conceptualizations of gender to make assumptions regarding trans individuals’ gender identities. Research shows that policies often problematically allow the cisgender gaze to determine the authenticity and acceptability of trans bodies, evoking notions of gender binarism, assimilation, and violence (Farley & Leonardi, 2021; Westbrook & Schilt, 2014). As such, these policies appear to allow staff to impose certain categories (i.e., characteristics associated with cisgendered understandings of masculinity and femininity) on people that may or may not be true according to the ways in which they understand themselves, effectively limiting notions of gender self-determination (Bessant, 2021, Hacking, 1996, 2006, 2007: Stanley, 2011a).

Cisgendered constructions of gender are also racialized (Arkles, 2012; Greene, 2019). Gender norms, which are based on idealized norms of *white* femininity and masculinity, position Black individuals’ gender identities and expressions as inherently deviant and/or abnormal (Greene, 2019). Such racialized logics intersect with gender binarism and essentialism to ‘systematically sanction’ trans BIPOC individuals for violating racialized gender expectations (Greene, 2019, p. 551). Indeed, while all trans people are vulnerable to discrimination and violence, “trans people of colour are targeted more intensely and pervasively” (Arkles, 2012, p. 864). It follows then that by offering staff the ability to impose and police ‘appropriate’ gender expressions, MCSCS policies may reinforce *targeted* racialized gender regulation, meaning that

BIPOC trans prisoners' gender identities and expressions may be defined as deceptive, illegible, and/or abnormal more often than their white counterparts.

The contradictory correctional narratives of gender self-determination and the subsequent construction of gender variation as proof of gender deception also invites the use of technologies of regulation and control (i.e., interventions) (Hacking, 2006, 2007). Indeed, trans individual's gender expressions are seemingly under continual surveillance and assessment. For example, section 6.5.7 of the *Trans Inmate Management* policy asserts that:

> Case managers must continuously monitor and evaluate the needs of the inmate. Any concerns or recommendations to change placement or the management of the inmate will be brought to the attention of the superintendent or designate. The Plan of Care must be reviewed and updated every 10 days or whenever there are changes in the situation and this review must include consultation with the inmate.

Continuous monitoring occurs in the form of compatibility assessments. A compatibility assessment is used to determine if two or more prisoners are compatible, can share accommodations, and/or complete programming together. This assessment compiles and considers all information included within a prisoner's institutional file (e.g., 'Offender' Tracking Information System's Client Profile, Special Management Concerns, Level Service Inventory-Ontario Revised (LSI-OR), current offences, and health and/or mental health records), noting their current condition (e.g., on suicide watch, on medical observation, appears under the influence of alcohol or drugs, at risk from 'inmates', a risk to 'inmates'; in specialized care, in segregation conditions, on disciplinary segregation), as well as management concerns and/or vulnerabilities (e.g., to abuse, gang affiliation/membership, predatory behaviour, assaultive while in custody, mental illness, other code related needs). To gather relevant information, compatibility assessments require repeated interviews with prisoners and consultations with clinical and correctional staff in supervisory positions. The MCSCS claims that these

assessments consider the "vulnerability of the trans inmate or other inmates, attitudes towards the trans community, offences, [and] previous institutional behaviour".[40]

While framed as a caring practice to ensure that trans individual's needs are being met, I suggest that the continuous assessment and monitoring of trans individuals constitutes an increase in surveillance with respect to gender identity and expression. The surveillance of gender (i.e., attempting to catch someone acting in a manner that seems *insincere*) echoes broader cultural fears related to trans individuals and gender deception. Indeed, these cultural fears are seemingly foundational to the ways in which gender is continually surveilled within Ontario carceral spaces. While it is unclear what the MCSCS constitutes as an insincere or inauthentic expression of gender, research suggests that trans individuals whose gender identities and expressions defy cisgender understandings of masculinity and femininity (Erickson-Schroth, 2022) are often constructed as a risk to the cisgender binary and 'real' women. As a result, trans prisoners are often constructed as deceivers who are living out transgenderism for some ulterior motive, notably to gain access to vulnerable women or to receive an 'easier' housing placement in a women's institution (Billard, 2019). In perceiving these ulterior motives, correctional actors *make up* trans individuals as *risks* to institutional security, which often results in harmful or negative consequences or punishments (e.g., distrust, exclusion, and transphobic violence) (Totton, 2020). Indeed, research suggests that constructing trans individuals as deceptive leads to misgendering and misnaming, disproportionate rates of sexual violence, removal of access to hormone therapy[41], isolation and segregation, and even death (Dalzell et al., 2024; Oparah,

[40] Section 6.5.6 of the *Trans Inmate Management Policy*. These trans-specific considerations only appear in the *Trans Inmate Management Policy*.
[41] Denial of hormone therapy is a well-documented 'punishment' in carceral spaces (See Grant et al., 2011; Kilty, 2021; Kirkup, 2018; Tarzwell, 2006). Interruptions in hormone treatment can be physically and mentally harmful (Grant et al., 2011; Kilty, 2021; Kirkup, 2018).

2010). In the next section, I demonstrate how MCSCS policies function as technologies of control through the paradox of inclusion.

The Paradox of Inclusion in a Violent System

While the linkages between society and prisons are complex and numerous (Turner, 2016), carceral spaces represent and reinforce physical and emotional boundaries, effectively defining who belongs in society and who does not (Ricciardelli et al., 2020). Once inside, carceral spaces serve as an additional assimilative sorting mechanism for both trans and cisgendered prisoners, assigning them a security level and placing them into either a men's or woman's institution. Once an initial placement decision is made, section 6.1.12 of the *Trans Inmate Management* policy mandates that "wherever possible, and subject to inmate preference, trans inmates will be integrated into the general population and not isolated". When the MCSCS fails to place trans prisoners in the most integrated setting it may constitute discrimination on the basis of gender identity and/or expression.

Undue Hardship and Risk Management as the Official Measure of Inclusion

Under the Ontario Human Rights Code, the MCSCS has the "legal duty to accommodate the needs of people because of their gender identity or gender expression, unless it would cause undue hardship".[42] Undue hardship[43] is a legal test utilized by MCSCS staff (as well as all employers, unions, and housing and service providers in Ontario) whenever there is a health and safety related concern associated with providing trans individuals with accommodations (e.g.,

[42] Section 8 (The Duty to Accommodate) of the Ontario Human Rights Commission's *Policy on preventing discrimination because of gender identity and gender expression.*
[43] The Ontario Human Rights Commission's *Policy on discrimination and harassment because of gender identity* requires MCSCS staff to utilize the Undue Hardship test when providing housing or placement accommodations for trans prisoners.

integrated placement, access to programming, socialization). When providing an accommodation to a trans prisoner, the institution must notify the regional office so that the regional director or designate can work in consultation with the Legal Services Branch to assess if undue hardship exists and explore possible alternative accommodations. The Ontario Human Rights Commission states that accommodations for trans individuals must ensure that everyone has equal opportunities, access, and benefits.

Notions of *inclusion* within carceral spaces, which are predicated on *exclusion*, represent yet another paradox. Indeed, MCSCS policies utilize the language of diversity, integration, and inclusion to justify correctional accommodations which often result in the increased surveillance, regulation, and control of trans prisoners (Bassichis et al., 2011). As such, I argue that notions of correctional inclusion function to (re)affirm the existence and value of carceral spaces by *making up* trans individuals as risks in need of management (Bassichis et al., 2011). This paradox is evident in section 6.7.4 of the *Trans Inmate Management* policy which states that:

> All trans inmates must be assessed for access to programming and socialization with other inmates, as decided by the superintendent or designate on the advice of the case manager in consultation with the inmate and the inter-professional team.

Much like the processes of housing and gender classification for trans prisoners, access to programming and socialization is treated as a risk to be managed. Indeed, MCSCS staff are required to take steps to try to mitigate and/or reduce the potential risks of integrated placements, access to programming, as well as socialization for trans prisoners (e.g., transphobic harassment and violence). The MCSCS provides an example to highlight their approach to at-risk or risky trans prisoners:

> Before concluding that it would cause undue hardship to house a transgender man with the general population because of potential risks to the man's health and safety, the case management team considers how to minimize risk by:

- Increasing supervision on the unit
- Offering him a single cell or offering to place him with a compatible cellmate
- Considering the criminal histories of other inmates
- Placing him on a unit with compatible inmates
- Doing regular, private (but discreet), check-ins with the inmate to assess his comfort and safety levels [44]

It is only after these risk mitigation strategies have failed that the MCSCS will consider if the undue hardship threshold has been reached. MCSCS policies offer a non-exhaustive list of questions and hypothetical considerations that must be considered when assessing if a correctional accommodation for trans prisoners might cause undue hardship. The questions listed in the policy on *Providing Accommodation Short of Undue Hardship* are the following:

1) What could happen that could be harmful?
2) Are we concerned that someone will be bullied, harassed, traumatized, physically or sexually assaulted, shunned, or other?
3) How serious would the harm be if it occurred?
4) Are we concerned about serious injury or trauma, death, or other?
5) How likely is it that the potential harm will actually occur?
6) Is it a real risk, or merely hypothetical or speculative?
7) Who will be affected by the event if it does occur?
8) Are we concerned about the transgender inmate, the other inmates, the staff, or other?

These hypothetical questions define trans individuals in two ways: as *at-risk* of transphobic violence from other prisoners and/or a *risk* to institutional security, correctional staff, and other prisoners. The MCSCS asserts that it is only when there is a high probability or risk of substantial harm that the hardship will be considered undue, meaning that the correctional accommodation (e.g., placement, access to socialization and/or programming) will be denied. If the requested or most appropriate accommodation cannot be implemented because of undue

[44] See policy on *Providing Accommodation Short of Undue Hardship*. This approach to risk management is applied to all prisoners in Ontario, which demonstrates that the MCSCS utilizes a one-size-fits all approach to difference. Such an approach neglects important differences and flattens diversity, obscuring the multidimensionality of people's identities, social locations, and experiences.

hardship, the MCSCS claims that they "have an obligation to do whatever we can to meet the inmate's needs by implementing interim or next-best solutions"[45].

Segregation as a Solution to the Paradox of Inclusion

While the high threshold of undue hardship aims to ensure that trans individuals are meaningfully integrated into carceral spaces, the MCSCS also asserts that:

> in some cases, trans inmates may need to be temporarily separated from the general population in order to ensure their health and safety and that of other inmates pending an individualized assessment of their needs and circumstances.[46]

Indeed, while the MCSCS asserts that administrative segregation (i.e., solitary confinement, isolation) is a last resort and not a 'next-best accommodation', their policies also frequently suggest that single cell and administrative segregation placements are solutions for both vulnerable and risky trans prisoners. Placements in segregation reinforce the view that trans individuals should face additional barriers or restrictions simply because of their gender identity (Redcay et al., 2020). As such, these 'solutions' frame trans individuals as simultaneously at-risk, but also risky, *making up* trans individuals as in need of separation both for their protection and the safety of others (i.e., to mitigate risk) (Arkles, 2008; Vitulli, 2020). As a result, the MCSCS seemingly mandates explicit forms of exclusion that entail additional practices of surveillance, regulation, and control. Research shows that trans individuals are often placed in prolonged social isolation, administrative segregation, or solitary confinement as a means of 'protection' and security due to widespread experiences of carceral violence (e.g., physical violence, sexual assault, transphobic discrimination, harassment) (Greene, 2023; Hébert et al., 2022; Kilty, 2021; Kirkup, 2018; Labrecque & Mears, 2019).

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[45] See policy on *Providing Accommodation Short of Undue Hardship*.
[46] Section 6.1.12 of the *Trans Inmate Management Policy*.

However, housing trans individuals in segregation, isolation, or a single cell does not prevent their mistreatment, rather this separation often exacerbates their vulnerability to violence (Arkles, 2008; Kilty, 2021; Redcay et al., 2020). Indeed, Guenther (2013) defines solitary confinement as an intensely social space as it subjects prisoners to constant surveillance and control, as well as forced relationality with correctional staff (See also Kilty, 2018, 2021). Research suggests that even if placing trans prisoners in isolation prevents attacks from other prisoners, it does not prevent harassment, assault, or abuse from correctional staff who are often the primary perpetrators of transphobic violence and harm (Arkles, 2008; Caramico, 2017; Greene, 2023; Kilty, 2021; Peek, 2018; Redcay et al., 2020; Spade, 2012; Tarzwell, 2006). Arkles (2008) contends that increased "surveillance, searches, and lack of privacy in segregation increase[s] the frequency and level of explicitly state-sanctioned sexual violations" (p. 540).

Placements in segregation also disrupt potential networks of solidarity and support, as well as political resistance between fellow prisoners (Arkles, 2008). Indeed, placements in isolation deprive prisoners of support systems, friendships, and/or "opportunities for solidarity that could help them to avoid and survive violence" (Arkles, 2008, p. 539; see also Fayter & Kilty, 2024). Peek (2018) found that trans individuals in segregation are repeatedly denied the services and programs that are available to other prisoners (e.g., phone calls, visitation, showers, recreational and/or religious activities), further emphasizing their stigmatized status.

It is unclear how often trans prisoners are housed in administrative segregation, although Ortlip-Sommers (2020, p. 362) found that solitary confinement is often used as a 'precautionary' safety measure, which suggests it is likely used regularly rather than as a last resort. Indeed, trans prisoners are often subjected to higher rates of isolation than their cisgender counterparts (Ortlip-Sommers, 2020; Vitulli, 2020). Even temporary placements in isolation can contribute to the loss

of one's sense of self and being in the world and to feelings of withdrawal and an inability to meaningfully relate to others (Guenther, 2013; Kilty, 2018, 2021). Although MCSCS policies define placement in segregation as a temporary protective measure, segregation is a form of psychological violence which results in increased experiences of death-related thoughts, post-traumatic stress, self-harm, auto-castration, and suicide (Arkles, 2008; Guenther, 2013; Kilty, 2018, 2021; Labrecque & Mears, 2019; Ortlip-Sommers, 2020). Indeed, "medical experts have found the psychological harm that results from solitary confinement tantamount to torture" (Ortlip-Sommers, 2020, p. 364).

Unsurprisingly, the MCSCS does not address how utilizing segregation as a 'protective' measure might be disproportionately applied to trans BIPOC prisoners. Carceral spaces represent a site in which BIPOC individuals are concentrated for surveillance, punishment, targeted abandonment, and premature death (Alexander, 2011; Davis, 2003; Spade, 2012). These racial logics extend to the use of segregation as BIPOC prisoners are more likely to be placed in solitary confinement (Guenther, 2013; James & Vanko, 2021; Logan et al., 2017). Correctional officers are also more likely to perceive BIPOC prisoners as engaging in aggressive or hostile behaviour, placing them in administrative segregation more often than their white counterparts despite the fact that they commit similar rates of disciplinary infractions (Olson, 2016). Similarly, Jones (2021) found that BIPOC LGBTQIA+ prisoners are placed in solitary confinement at twice the rate of their white counterparts. As solitary confinement is more broadly implemented to control minorities (Kerness & Lewey, 2014), I argue that despite promoting the use of segregation as race-neutral, the MCSCS contributes to the highly racialized practice of isolating trans BIPOC prisoners.

Conclusion

Mobilizing IBPA and an *intersectional making up people* framework allowed me to examine the ways in which MCSCS policies construct, manage, and *make up* trans individuals. While constructed as unproblematic vehicles of optimism and progression (Hankivsky & Mussell, 2018), MCSCS policy reforms are not unproblematic. Indeed, it is not 'progressive' to advocate for inclusion in a space that actively functions to warehouse, displace, discard, and destroy vulnerable populations (Bassichis et al., 2011; Morgan, 2019). I suggest that Ontario's trans management policy framework represents a productive site of meaning making in which trans individuals are often problematically constructed and managed (Scallan et al., 2021). To *make up* trans individuals, Ontario carceral spaces rely on various experts (e.g., the case management team) and cultural discourses that effectively reduce trans identities to two contradictory but simultaneous subject positions: at-risk and risky. My analysis suggests that MCSCS policies legitimate and justify these problematic constructions through various classification frameworks (e.g., gender, housing, and placement), as well as mandated correctional practices and interventions (e.g., segregation or isolation). These correctional constructions are slippery, as they continually reassert the position that incarceration is a necessary and normal response to harm. This analysis shows that the MCSCS branding of their policy reforms as inclusive and caring have made it easier to incarcerate trans individuals in potentially more austere forms of holding like segregation. By emphasising risk and vulnerability, these policies fail to substantively alter or challenge broader cultural constructions of trans prisoners as always-already deceptive, further entrenching the carceral system as a vital instrument of crime control without considering viable alternatives, including decarceration.

Chapter 6: Conclusion

This thesis examined the ways in which the Ministry of Community Safety and Correctional Services (MCSCS) constructs, manages, and *makes up* trans prisoners in Ontario correctional policy. By merging Hacking's theoretical work with intersectionality theory, I mobilized an *intersectional making up people* framework to consider the gendered and racialized correctional technologies (e.g., classifications, knowledge, and experts) that construct trans correctional identities and have been implemented to manage and control trans individuals while incarcerated. Guided by the descriptive and transformative questions developed from the Intersectionality-Based Policy Analysis (IBPA) framework, my analysis showcases the paradoxes of inclusion/exclusion and vulnerability/riskiness inherent in MCSCS trans policy. By doing so, the current project expands the scope of critical prison studies research in Canada, drawing attention to the provincial level of corrections and prioritizing an often invisiblized population.

Is Reform Possible?

Throughout this thesis, I have argued that trans prisoners are *made up* by various conflicting policy characterizations that position them as simultaneously at-risk and risky. These characterizations support the MCSCS' broader effort to (re)frame incarceration as a caring, inclusive practice. Rather than transformative structural change, the MCSCS policy reforms only offer various correctional accommodations that aim to manage risk and often result in actions (e.g., strip searches, isolation, repeated affirmations of gender identity) that punish gender diversity. As such, the findings of the current research align with Canton and Dominey's (2020) assertion that care and control are inseparable, demonstrating that expanded technologies of control and regulation are often hidden behind avowals of benevolence and progression. While I

recognize that the MCSCS is limited by their existing carceral infrastructure, the primary goal of their 'progressive' policy reforms remains binary gender inclusion. In other words, Ontario's trans specific policies aim to integrate or add trans people into an existing violent binary space without substantively altering its conditions, which can detrimentally impact their life chances (Farley & Leonardi, 2021). I argue that the MCSCS policy reforms are an inadequate response to structural and systemic systems of violence (i.e., incarceration) that threaten the lives of trans people in Ontario.

Rodriquez and colleagues (2020) define such policy reforms as "state-led rescue attempts" (p. 538) that only work to expand and legitimate incarceration, subsequently shoring up the continued mass incarceration of marginalized populations (Hereth & Bouris, 2020). These critiques were first identified by critical race theorists who, by critiquing the limits of legal inclusion, recognized the failures of civil rights legislation to alleviate the systemic and racialized distribution of life chances. Critical race theorists have described the insidious ways the state avoids blame for such legal failures as 'preservation-through-transformation' (Davis & Rodriguez, 2000; Richie, 2015; Siegel, 1997). In other words, the policy reforms examined in this thesis may be understood as (re)affirming the value of carceral spaces, providing "just enough transformation to stabilize and preserve status quo conditions" (Spade, 2013, p. 1035). Furthermore, continued correctional policy reforms may also result in new systems and structures that expand the carceral state (Cohen, 1985; Mathiesen, 1983). Indeed, many recommended alternatives to incarceration (e.g., diversion programs, conditional sentences, temporary absences, probation, and parole), which on the surface appear less punitive, are synonymous with 'net-widening' or carceral expansion (Cohen, 1985; Mathiesen, 1983). Such reform strategies simply "relocate penal control in non-prison settings" (Carrier et al., 2018, p.

325, see also Arnett, 2019; Gossett, 2014) proliferating extended modes of surveillance and control without addressing the systemic nature of injustice (Davis & Rodriguez, 2000). As such, continued reforms to Ontario's trans correctional policies that market correctional practices as increasingly more 'progressive' may continue to facilitate the incarceration of vulnerable populations, while failing to substantially alter the 'informal' practices and procedures (i.e., the reality of policy in practice) that shape quotidian life in Ontario's carceral spaces (Kirkup, 2017, Spade, 2012).

Inspired by critical scholars (See Ben-Moshe, 2013, 2020; Boyer et al., 2019; Davis, 2003; Davis et al., 2022; Kilty & Bogosavljevic, 2022; Rosenberg & Oswin, 2015; Spade, 2013; Stanley & Spade, 2012; Uhlman, 2024), I suggest that the pursuit of decarceration ought to be taken seriously. Prison abolition represents a broader political vision of eliminating imprisonment, policing, and surveillance by creating lasting alternatives to incarceration that requires the redistribution of resources to community supports and investments (Ben-Moshe, 2013; Davis & Rodriguez, 2000; Davis, 2003; Hereth & Bouris, 2020). Such radical investments involve a collective attempt at *building* and *imagining* life-affirming communities of *care* that reject a reliance on the carceral state (i.e., systems of policing, surveillance, and imprisonment) (Welch, 2021). A (re)imagining of care allows us to interrogate how spaces of confinement, that *claim* to practice *care*, continually work to conceal the systemic relationship between criminalization, gender binarism, racism, colonialism, ableism, and sexism (Thompson, 2021). While such abolitionist (re)imaginings represent an 'unfinished' project (Mathiesen, 1986), Ben-Moshe (2013) suggests that abolitionist efforts must also be connected to other activist strategies,

such as non-reformist reforms[47] (See also Gossett, 2014). As such, decarceration has a role to play in working toward a radical, non-carceral society (Ben-Moshe, 2013, 2020).

Rather than liberal reform efforts that have inevitable net-widening effects, decarceration is a non-reformist reform that aims to improve the likelihood of survival for trans communities, while simultaneously promoting the more ambitious project of prison abolition (Arani, & Winget, 2022; Carrier et al., 2018; Spade, 2012). Hereth and Bouris (2020) support this contention, suggesting that decarceration efforts are compatible within a broader abolitionist approach by advocating for the removal of carceral systems by tearing down the "societal norms, systems, and structures that have created the conditions that have produced and reproduce the carceral state" (p. 360, see also Jennings, 2023). Guided by a larger abolitionist ethos, decarceration efforts attempt to move beyond the accepted practices of incarceration and entertain the possibility that we can build a world where no one is disposable (Hereth & Bouris, 2020, Jennings, 2023, Kaba, 2021). Davis, Dent, Meiners and Richie (2022) assert that a non-carceral future will require consistent revisioning, experimentation, and active engagement, not simple policy reform and/or the absence of prisons (See also Carrier et al., 2018; Gilmore, 2019, Kaba, 2021; Piché, 2022). Indeed, the closure of prisons, while necessary, is not sufficient (Ben-Moshe, 2013). As such, decarceration efforts represent one step on the way to achieve the larger, more revolutionary goals of prison abolition.

As accurate statistics are not routinely collected and rarely disclosed (Kilty, 2021), it is unclear how many trans individuals are currently housed within Ontario carceral spaces. Based on CSC's last published data (Farrell MacDonald et al., 2022), the federal correctional system

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[47] Non-reformist reforms challenge existing power relations and transform existing systems of injustice (Ben-Moshe, 2013; Mathiesen, 1986). Rather than reformist reforms which rationalize and maintain status quo conditions (i.e., do not threaten the existing system), non-reformist reforms work to undermine carceral systems (Mathiesen, 1986).

housed 99 openly trans, non-binary, and Two-Spirit individuals in 2022[48]. Of those that openly identified, 62 percent identified as trans women and 21 percent identified as trans men. Although there are several barriers to obtaining accurate statistics, scholars have shown that trans individuals, who often experience gender discrimination, a lack of familial and community supports, and scarce housing and employment alternatives, are more likely to become involved with the criminal justice system (Daum, 2015; Ortlip-Sommers, 2020; Spade, 2011). Indeed, research has shown that trans Ontarians are disproportionately arrested in various hate-motivated circumstances, including failing to produce 'correct' identity documents; using the 'wrong' bathroom; disclosing their HIV status; and other 'quality-of-life crimes' (e.g., sleeping in public spaces, homelessness, and engaging in sex work) (Rosenberg & Oswin, 2015).

Instead of making it easier to justify the continued criminalization and subsequent incarceration of trans Ontarians, we must push for the "decriminalization of transgender identities, decarceration, and prison abolition, as any measures short of these are doomed to reify the existing social structures that (often surreptitiously) harm transgender individuals" (Uhlman, 2024, p. 1093). It follows then that the first step to trans liberation requires us to offer 'relief' to trans individuals by pushing for immediate decarceration (Stanley & Spade, 2012, p. 122). Such calls are rooted within an abolitionist ethic of care which refuses the disposability of humans and requires us to radically rethink what we mean by *care* and *caring for* others (Thompson, 2021; Welch, 2021). Rather than '*caring*' policy reforms that continue to rely on incarceration (Davis et al., 2022), a violent punishment-based system, and that neglect alternative solutions to harm and crime, decarceration offers a fundamental step towards transformative social change in the

[48] In the United States, nearly one in six transgender people are incarcerated at least once in their lifetime (compared to one in seventeen for the general population) and more than one in five trans women have been incarcerated during their lives (Ortlip-Sommers, 2020).

form of carceral abolition that will help to ensure the survival of trans individuals (Boyer et al., 2019; Gossett, 2014; Spade, 2013; Uhlman, 2024). Policymakers and other social actors must take seriously the critique that state 'protections' often fail to substantively alter the health and safety of trans individuals and that the only way to ensure safety for trans prisoners is by eliminating the system itself.

Limitations

Due to the time constraints of this degree, I was unable to interview trans individuals who are currently incarcerated or have lived experience of incarceration in Ontario. As such, I cannot speak to the lived realities of trans individuals nor to what they think about the ways in which they are constructed or *made up* in correctional policy. Furthermore, I am unable to explore the possible differential lived experiences or impacts of such policy constructions across race, ability, Indigeneity, immigration status, and/or sexuality. Without access to conduct observational research inside Ontario carceral spaces, I am unable to determine whether these policies are used in practice, and if so, how they are applied and how they affect trans peoples' experiences. By focusing on policy, I was unable to explore the ways in which trans individuals understand, navigate, and/or resist their correctional identities, potentially reducing trans prisoners to passive subjects.

There are also limitations and barriers associated with conducting intersectionality-based research. Intersectionality has been critiqued for failing to adequately infiltrate the policy arena. As such, intersectional critiques of policy may unintentionally inspire and reinforce continued policy reform, subverting potential transformative alternatives.

Future Research

Based on my analyses and the limitations discussed herein I have several suggestions for future research. Given the lack of demographic data available related to trans prisoners in Canada, future research should utilize survey methodologies to document how many trans people are currently incarcerated in Ontario (and across Canada), how they identify, if they feel the policies are applied correctly, their experiences with such policies (e.g., are they given identity accordant placements, are they misgendered or segregated), and whether they are repeatedly asked to affirm gender by way of compatibility assessments (i.e., gender checks). As identified above, the inability to account for the lived experiences of trans individuals was also a key limitation of the current project. As such, it would be invaluable to hear from individuals who are directly impacted by the MCSCS trans management policies. Future research should prioritize the use of interviews[49] to access the knowledge and lived experiences of trans individuals in Ontario carceral spaces. By focusing on individuals' lived experiences, future research might be better positioned to advance a more nuanced intersectional analysis that includes race, class, ability, age, sexuality, Indigeneity, immigrant status. Moreover, as carceral spaces are disabling institutions (Ben-Moshe, 2020), future research should examine how technologies of gender regulation and control (e.g., continual gender checks, placements in segregation) might intersect with disability and potentially produce different forms of oppression, harm, and impairment. Future researchers should also prioritize building close ties with the trans community (e.g., engage with trans activists, trans scholars, and trans individuals with lived experiences of incarceration) to avoid silencing, leaving people behind, and/or alienating individuals from the

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[49] Future research should also consider interviewing policy makers and individuals who work in advocacy organizations to potentially shed light on the development process for Ontario's *Transgender Inmate Management* policies. Such research might reveal if, and to what extent, trans individuals and/or advocacy organizations were involved in the development of the MCSCS trans management policies.

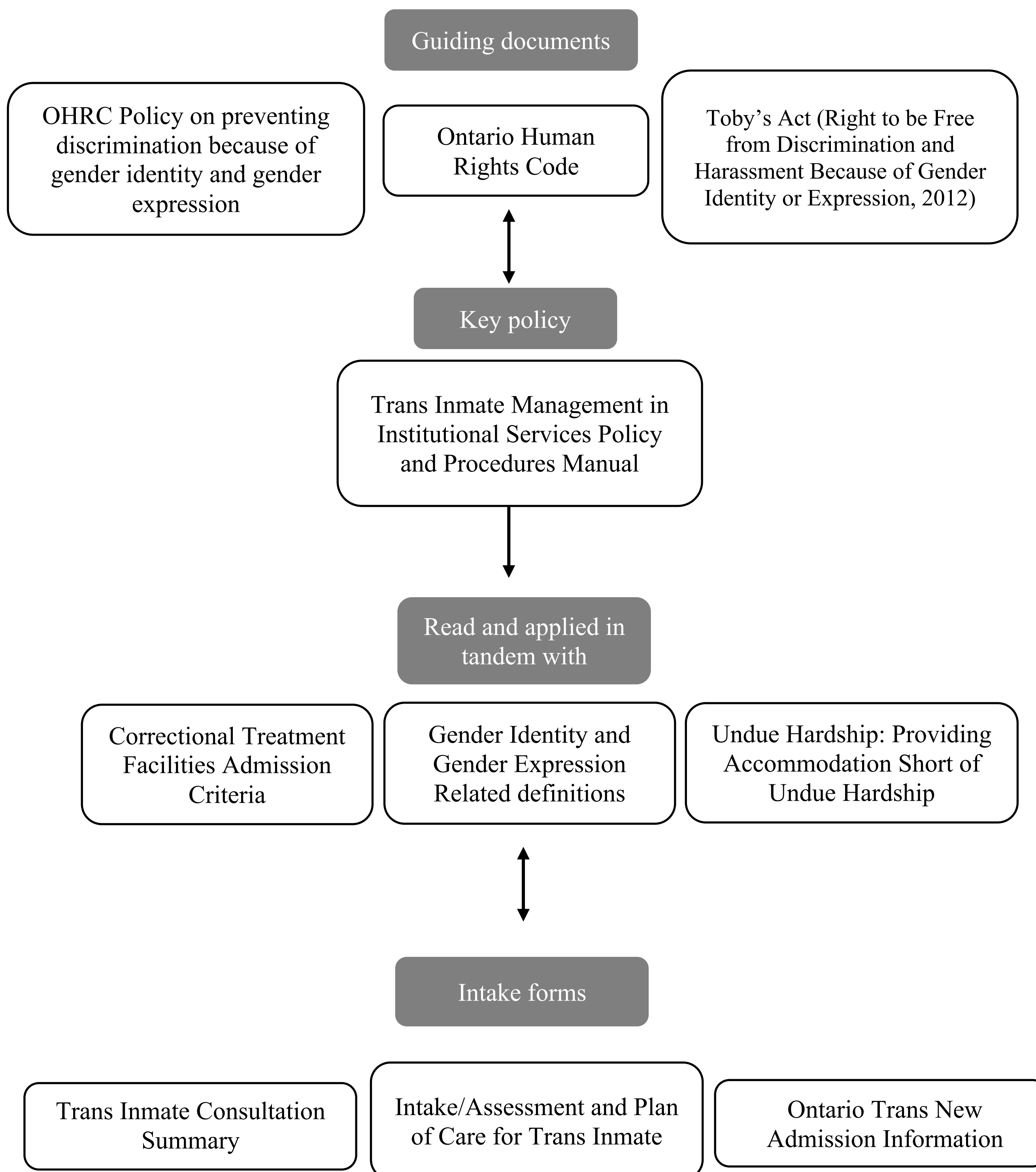
research process (Vincent, 2018). Future researchers should engage in rigorous community engagement to ensure that their research objectives align with the goals of affected communities.

Uhlman (2024) highlights the tension "between illuminating the harms being inflicted on oppressed peoples and resisting the tendency to re-victimize these individuals by representing their oppression through the dominant gaze" (p. 13). In other words, research, including this thesis, which examines trans individuals as victims of violence, may unintentionally reproduce it (i.e., violence) by "re-isolating the dispossessed" (Uhlman, 2024, p. 13). In closing, I suggest that it is worthwhile for future studies to examine the possible resistance strategies utilized by trans prisoners. It is through these lived experiences that we can expand our critique of Ontario carceral spaces, thereby promoting tangible steps towards trans survival and prison abolition.

Appendix A: Policy List

1) Inmate Information Guide for Adult Institutions
2) Correctional Treatment Facilities Admission Criteria
3) Policy on Preventing Discrimination because of Gender Identity and Gender Expression
4) Undue Hardship: Providing Accommodation Short of Undue Hardship
5) Trans Inmate Consultation Summary
6) Ontario Trans New Admission Information
7) Intake/Assessment and Plan of Care for Trans Inmate
8) Trans Inmate Management in the Institutional Services Policy and Procedures Manual
9) Trans Inmate Management: Gender Identity and Gender Expression Related Definitions
10) Correctional Services Polices and Guidelines: Trans Inmate Management Highlights
11) Admission, Classification, and Placement of Trans Inmates
12) Update to Case Management Team Consultation Process for Trans Inmates
13) Searches in the Institutional Services Policy and Procedures Manual

Appendix B: MCSCS Policy Map



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