

**Degradation During Emergencies: How the Pandemic Facilitated a State of Exception  
Within Canadian Prisons and Challenged Advocates to Become Hyper-Resilient**

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## **Abstract**

Prisoner rights in Canada have historically been met with disrespect and disregard. Advocates have continuously fought for better protections of prisoner rights and legislation that bans the harmful treatment of prisoners. However, during the outbreak of the COVID-19 pandemic concerns arose about how prisoners' rights were affected. Therefore, the question guiding this research is: *How have the human rights of prisoners and (anti) carceral advocacy for their rights been impacted by the COVID-19 pandemic?* To answer this question, a document analysis was conducted, using documents from academics who work in the field, government departments, and advocates working in a variety of areas. This thesis fills the gap in scholarly inquiry that the pandemic has created as the circumstances and the effects of the pandemic are unknown.

The government reacted to the pandemic by implementing protocols that suited them with little regard for how prisoner rights could be affected, and neglected advocates recommendations for change. Advocates reacted by shifting their strategies to ensure they could continue advocating during the pandemic.

The thesis revealed that during a crisis, both positive and negative reactions can co-occur. The pandemic created a state of exception within the penal system; therefore, an increase in rights violations occurred. However, an opportunity for positive change also emerged. Advocates used this opportunity to change their strategies and maintain their advocacy. By contrast, the government did not seize the same opportunity, as is evidenced by how the recommendations that advocates had been supporting were not implemented properly to protect prisoners.

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## **CHAPTER ONE: Introduction**

While growing up, I was exposed to the harsh realities that people endure when they go to prison. Mainly how those with mental health issues are at greater risk for encountering the system and the lack of support they get both inside and outside of these institutions. I saw the effects it had on family members, which drove me to question the system and motivated me to learn more about how it functioned. Therefore, I wrote a thesis that investigates the human rights of prisoners. When I started researching for my masters and choosing what area of this topic to examine, we were only a few months into the COVID-19 global pandemic, and even at that early stage, there were discussions surrounding the issues the pandemic had sparked for prisoners and the prison institutions. After seeing the discussions people were having and learning about the heightened risks for prisoners during the pandemic, I decided to take a closer look into the issues occurring.

In the past, research within the discipline of criminology has focused on crime but not always enough on state crime. Human rights are inextricably linked to the state, so this issue stems from a lack of human rights research in the discipline of criminology. Cohen (1993) questions how ordinary people react to knowledge of terrible actions. Why do people's reactions to the knowledge of others' suffering and pain, specifically from human rights violations, often take the form of denial, avoidance, and passivity? It is argued that the discipline of criminology must change its boundaries, toward global criminology that is critical and reflexive, to avoid becoming a servant to power networks (Stanley, 2013). There are states that plainly commit serious crimes, which you would expect to be a central concern in criminology, yet the subject remains neglected (Green & Ward, 2000). Based on this argument, it is evident that human rights violations have been neglected in past criminological research. This thesis seeks to further human rights research within the

discipline of criminology, specifically relating to the neglect of prisoner rights, as the state may be committing serious crimes during the pandemic.

Advocates have argued that the longstanding issues relating to prisoner rights can no longer be ignored (Saskatchewan-Manitoba-Alberta Abolition Coalition, 2020; John Howard Society, 2020; East Coast Prison Justice Society, 2021). They require immediate attention to stop the spread of COVID-19 and to protect the physical and mental health of prisoners in Canada. The pandemic has highlighted the need to examine how carceral institutions deal with times of crisis and how it affects the rights of those on the inside. For change to occur and for prisoner rights to be better protected, people need to be informed of what is happening behind the walls of these institutions and fight to hold the government accountable for the decisions they make.

While incarcerated your rights shouldn't go out the window. But they do because there is no accountability or transparency ensuring international or charter rights are protected (Budlakoti, 2022b).

During the pandemic, there has been ongoing discussions on how to protect prisoners from COVID-19 while also maintaining their human rights. The government authorities who make decisions regarding prisons may prioritize stopping the spread of COVID-19 which could result in the undermining of prisoner rights. Therefore, the research question guiding this study was: *How have the human rights of prisoners and (anti) carceral advocacy for their rights been impacted by the COVID-19 pandemic?* The sub-questions to answer this include: How have the human rights of prisoners been impacted by the decisions made in the federal and provincial institutions? Who has been advocating and what has been advocated for? How has COVID-19 been used to push forward advocacy perspectives (such as abolitionism)? Finally, what changes (both positive and negative) have occurred due to the decisions made within the institutions? To answer these

questions, documents from a variety of sources (i.e., government, advocates, and academics) discussing the pandemic in relation to the prison system were examined.

In the following, my thesis examines the literature on the evolution of prisoners' rights. The literature shows that prisoners' rights have evolved, from having no protection and being tortured for punishment to being protected under *The Canadian Charter of Rights and Freedoms* (Parkes, 2007). However, the efficacy of these protections is now in question due to concerns surrounding institutional transparency and an apparent absence of accountability when violations occur. The evolution of rights demonstrates progress; however, is the system equipped to handle mass healthcare crises while maintaining certain human rights standards?

In chapter three, I outline the theoretical framework and justify the use of different theories and concepts to guide this thesis. During times of crisis, governments have been known to take advantage of circumstances and pass laws or suspend legal processes that normally would be met with great pushback from the public (White, 2015). The state of exception theory discusses these circumstances and how they occur, but it alone is not enough to explain what has happened to prisoner rights during the pandemic. For this reason, I support the theory through a conceptualization of emergency. It is also important to consider that a crisis can create opportunity for positive change. The hyper-resilience theory is used to understand how this can occur. Lastly, this chapter looks at abolitionism as its theories underpin advocacy and contribute to the understanding of why people are resistant to change and why advocates argued for certain changes during the pandemic.

In chapter four, the study's methodology is discussed. A document analysis examining the current measures being implemented within Canadian prisons and advocates' reactions was

conducted. To answer the research question guiding this thesis, I use a variety of sources as some have biased opinions. The six groups I collected documents from were as follows: Canadian NGOs, Canadian government (Federal and Provincial), international sources (i.e., United Nations), professional associations (Canadian), academic sources (Canadian) and other Canadian sources (i.e., news articles). In this chapter, I discuss the decisions that I made while collecting, sorting, and analyzing the data.

The fifth chapter discusses and analyzes the data. I divided this chapter into two main sections. First, I discuss the issues that emerged during the pandemic within the institutions and the challenges that are connected to them. The findings show that human rights were being violated because of the virus itself and the restrictions. This includes rights violations of *the Corrections and Conditional Release Act*, *the Charter*, and the Mandela Rules. The second section discusses, advocacy and activism, including the following: why advocacy is important, who is advocating, pre- and post-pandemic strategies, what did advocates recommend, and the gains and losses seen during the pandemic.

The final chapter outlines the research contributions the thesis provided. As new research has emerged during the pandemic on prisoner rights violations, it was important to provide a unique perspective. Therefore, I used the state of exception, hyper-resilience, and the theory of the unfinished as a lens for this analysis. This chapter also provides ideas for future research as some areas could not be analysed due to time constraints and accessibility of data for this thesis.

## **CHAPTER TWO: Literature Review**

The human rights of prisoners have evolved since the 1800s and over time, prisoners have become more protected. In many different aspects of the law, it has been accepted that prisoners deserve to have rights while they are incarcerated. Despite the evolution, those who run the provincial and federal prisons are still under scrutiny. The literature shows that there are still areas that need further improvement for prisoner rights to be protected.

The following literature review highlights society's achievements in the protection of rights and shows where changes may be beneficial, including legislative changes, and other areas where the application of these laws is lacking. It also provides an understanding of the government bodies that run both the federal and provincial institutions in Canada and how they apply the law. Next, the literature on segregation is presented as it is an example of prisoner rights being eroded and is an ongoing issue. Prisoners' access to people on the outside and resources within the prison are a right and the literature provides an overview of how much access they had to these things before COVID-19. This is intended to identify the problems regarding the care of prisoners both physically and mentally and how their rights and well-being were respected (or not) before COVID-19. It is crucial to understand how things were before the pandemic to distinguish between ongoing problems that were amplified due to COVID-19 restrictions and new ones that have emerged from the restrictions brought about by COVID-19. If we examine this matter critically, then solutions of how to better protect prisoners' rights during times of crisis now and in the future can be discovered. Lastly, advocacy efforts are discussed to provide an understanding of how advocates have functioned in the past and helped to increase protections for prisoners.

### **SECTION 1: Evolution of Rights and Living Conditions in Canadian Prisons**

#### ***2.1 Evolution of Prisoner Rights (1800s-1900s)***

This section examines the evolution of prisoner rights with specific considerations for punishment, the living conditions within the penitentiaries, and the main legal changes that occurred over the last two centuries to protect prisoner rights.

In the early 19th century, human rights activists argued that prisoners were treated as people without any rights. This follows the concept of civil death, when “prisoners lost all civil and property rights” (Parkes, 2007, pp. 633); however, it was later abolished by the end of the 19th century. Historian Andre Cellard (2000) stated that penitentiaries were used to keep prisoners away from the public and give them the ability to reflect on their behaviour in the hopes they would reform. At this time, prisoners were not allowed to talk to each other while working during the day, and at night they were held in cells 1 by 2 meters wide (Cellard, 2000). Discipline in penitentiaries was strict, for example, prisoners who spoke, laughed, or stared at someone would be punished. The punishments included flogging or being put into isolation with only bread and water (Cellard, 2000). Prisoners were also expected to wake up at dawn and work in exchange for food.

The 20th century brought significant change for the Canadian correctional systems, “largely characterized by a legislative and judicial ‘hands off’ doctrine that entailed a broad delegation of power to administrative officials and a reluctance by courts to intervene in the affairs of prisons where prisoners claimed inhumane conditions or treatment” (Parkes, 2007, pp. 633). As the 1900s began, it was suggested by many legal experts that prisons needed to improve libraries and educational facilities and that inmates should be let out of their cells more often (Rodley & Pollard, 2011). By 1930 the idea of rehabilitation had grown in popularity and importance, leading to even more changes. This marked a turning point for prisoner rights as they now had advocate groups working on their behalf and slowly positive change occurred. Some of the changes that occurred

were as follows: the rule of silence was no longer enforced; inmates began to earn wages for their work and visitation rights were slowly introduced (Correctional Service Canada, 2014). Although this was progress, the wages were very low meaning they could not afford to buy a lot of essential items.

The Mandela Rules were introduced in 1955 setting the standard minimum rules for the treatment of prisoners. These have since been revised. Lawyers explain that these rules honour South Africa's president Nelson Mandela who documented his struggle against human rights abuse and dedicated his life to the promotion of equality and human dignity (McCall-Smith, 2016). The rules synthesize a range of international laws that are relevant to ensuring the dignity of anyone imprisoned. These rules set out the minimum conditions for humane treatment of prisoners accepted by the United Nations. The Mandela Rules are considered soft law, meaning they are not legally binding; however, they still have a large influence on legal decisions (McCall-Smith, 2016). In international law, soft law is typically referred to as guidelines that set standards of conduct. These rules "are significant normative references for national legislators, courts, correctional administrators, and advocates on a range of prison condition issues" (Peirce, 2018, pp. 263). The Mandela Rules include restrictions on segregation that are more stringent than Canadian law and practice. Criminologist Jennifer Peirce (2018) stated that these rules have been used in the past to inform the resolution of contemporary constitutional litigation (Peirce, 2018).

Another important piece of legislation was the *Penitentiary Act* of 1868 which was later amended in 1961. The amendments brought forward remissions and prisoners could get time off their sentences for good behaviour (Correctional Service Canada, 2014). Due to the Act, Canadian penitentiaries stopped using the number system and began using prisoner's names. Offenders were now allowed to take up hobbies, play sports, get newspapers, and write letters as a form of contact

with the outside world (Correctional Service Canada, 2014). The amendment also included the implementation of an oversight body that could receive and investigate prisoner complaints (Ricciardelli, 2014). Youth prisoners and prisoners with mental health issues were now separated from the general population. The goals of punishment began to shift, again focusing on reformation, and rehabilitation was still not a goal of punishment. When this Act was passed it brought attention to how prisons should be administered, monitored, and made accountable (Ricciardelli, 2014).

In the 1970s, rioting became a common occurrence within prisons, and Parkes (2007) argued that “this combined with a growing domestic and international awareness of human rights, led to numerous reports, such as a House of Commons Report in 1977, which was damning of the Canadian prison system” (pp. 633). The House of Commons recommended that the rule of law should prevail inside Canadian penitentiaries. After this recommendation, the ‘hands off’ approach stopped being used and prisoner rights claims started to be taken seriously (Parkes, 2007). When prisoner rights claims started to be heard, those responsible for administering prisons were faced with ensuring legal standards of humane detention (Zinger, 2006). Prisoners' routine daily activities are regulated by correctional authorities. This includes whether they have contact with family and friends, access to medical services, and when they eat and sleep (Parkes, 2007).

In 1980, a landmark decision from the Supreme Court of Canada showed that changes were being made to protect prisoner rights. The case of *Solosky v. the Queen* brought attention to the rule on solicitor-client privilege. Solosky argued that all correspondence by mail from his lawyer should be forwarded to him unopened (*Solosky V. Canada*). At the time, the *Penitentiary Act* allowed all mail entering the facilities to be screened by officers. Justice Dickson noted:

Recent case law has taken the traditional doctrine of privilege and placed it on a new plane. Privilege is no longer regarded merely as a rule of evidence which acts as a shield to prevent

privileged materials from being tendered in evidence in a courtroom. The courts, unwilling to so restrict the concept, have extended its application well beyond those limits (Létourneau, 2007, pp.114).

Justice Dickson then noted that communicating with your legal advisor in confidence is a civil and legal right due to the relationship between solicitors and clients. This case set the legal precedence going forward and has since been used within the courts to deal with similar issues. For example, *Descôteaux v. Mierzwinski*, where they elaborated on solicitor-client privilege as a substantive rule. The court found that this privilege can apply outside the courtroom (Létourneau, 2007). This is an example of positive changes that have occurred in the past.

Another important piece of legislation passed during the 1900's is *The Canadian Charter of Rights and Freedoms*. It was unveiled in 1982, recognizing and reinforcing the rights of all citizens. *The Charter* is important because it includes the rights of minorities (Parkes, 2007); however, it is not as specific as the *Correctional and Conditional Release Act (CCRA)* sections are. *The Canadian Charter* did not entrench prisoner-specific rights; however, it did provide that "most key rights are held by everyone or, in the case of equality, every individual" (Parkes, 2007, pp. 635). This means that prisoners are not excluded from the protection of *the Charter*. *The Charter* "guarantees freedom of expression, religion, association and conscience, as well as freedom from unreasonable search and seizure, and rights to equality and security of the person" (Parkes, 2007, pp. 634). In a study conducted by Parkes (2007), it was found that section 7 of *the Charter* is the most heavily litigated section by prisoners. This section of *the Charter* is interpreted to provide prisoners with procedural rights that relate to prison disciplinary hearings, involuntary transfers, and other significant correctional decisions (Parkes, 2007). Claims can be made based on procedural rights and substantive rights. The cases on procedural rights most commonly involve "procedural fairness and safeguards in prison decisions implicating the liberty interests of

prisoners” (Parkes, 2007, pp. 643). Some examples include hearings where prisoners may lose earned remission or may be placed in segregation.

In the late 1900s, The Supreme Court of Canada held that prison officials were bound by a procedural duty to act fairly when making decisions within penitentiaries and that prisoners had a right to communicate with their lawyers (Parkes, 2007). Zinger (2006) found that “a prison environment respectful of human rights is conducive to positive change, whereas an environment of abuse, disrespect, and discrimination has the opposite effect” (pp. 127). This means that treating prisoners with more respect and protecting their rights is essential for creating positive change within the penitentiaries. Also, if the human rights of prisoners are respected it conveys a message to the rest of society “that everyone, regardless of their circumstance, race, social status, gender, religion, and so on, is to be treated with inherent respect and dignity” (Zinger, 2006, pp. 128).

The *Penitentiary Act* was replaced by the CCRA in 1992, which contains sections that relate to mental health services and rehabilitation for offenders. In s.3 of the CCRA, it states that the purpose of the correctional system is to “contribute to the maintenance of a just, peaceful and safe society by providing for the safe and humane custody and supervision of offenders while assisting their rehabilitation and reintegration into the community” (1992). This means that prisoners' human rights are meant to be protected, and that penitentiaries should aim to rehabilitate them. Subsection 4 (e) states "offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of sentence" (Parkes, 2007, pp. 637). Also, subsection 4 (g) states that correctional decisions must "be made in a forthright manner, with access by the offender to an effective grievance procedure" (Parkes, 2007, pp. 637). These look to protect prisoner rights and can be amenable to judicial review. The specific rights include an “unqualified right to counsel in serious prison disciplinary matters, a

right to health care, and a right to notice and/or consultation concerning significant decisions other than those involving security” (Parkes, 2007, pp. 637).

## ***2.2 Evolution of Prisoner Rights (2000s)***

In the 2000s, a Conservative federal government took power and reverted to a ‘tough on crime’ approach that situated crime as the result of individual decision-making and social factors. The Conservative government argued that lenient sentences were too prominent and that victims and law-abiding citizens were not being protected (Zinger, 2016). Due to the 9/11 attacks, attitudes and political pressure favoured a ‘tough on crime’ approach. The Conservative government passed *The Safe Streets and Communities Act* (Bill C-10). This bill was first drafted in 2006, but was defeated in the House of Commons. It passed in 2011 and came into force in 2012 (Correctional Service of Canada, 2012). This government also introduced a Deficit Reduction Action Plan (DRAP) which aimed to return to a balanced budget by 2014/2015, by cutting, \$4 billion dollars in federal spending (Comack, et al., 2015). Once implemented, cost saving measures would need to be implemented by the Correctional service of Canada (CSC) to save \$295 million over three years. To do this they “closed three institutions, modernized food services, streamlined case management in the institutions and in the community, and increased prisoner accountability” (Comack et al., 2015, pp. 7). Prisoner expenses increased as they were required to pay more for rooms, boarding and telephones. The pressure to be more cost-efficient meant programming was also affected. “Programming previously provided by community-based organizations such as Forensic Psychological Services (FPS) is now the responsibility of correctional program officers inside the prisons” (Comack et al., 2015, pp. 14). Educational programs also suffered as schools inside the institutions closed in favour of self study, where prisoners are given books to read and a test to take in a given timeframe (Comack et al., 2015).

Ivan Zinger (2016), the correctional investigator, noted that “the Conservative government strived to follow an American-style criminal justice system, including its increased reliance on incarceration, bigger budgets for corrections, and prison expansion” (p. 611). When Bill C-10 was introduced it changed many things related to the criminal justice system. It led to the creation of new criminal offences related to sex and drugs. Mandatory minimum sentencing increased for many crimes and new minimums were created for others. Bill C-10 also made it so people who were convicted of offences that carried mandatory minimums were no longer eligible for conditional sentences. Pre-trial detention was increased, and young offenders were punished with harsher sentences. The Conservative government also decreased the use of parole, causing the prison population to increase (Ricciardelli, 2014). A study conducted in the Northwest Territories found that these changes led to higher adult custodial numbers and resourcing challenges (Department of Justice, 2012). For example, each offender who became ineligible for the conditional sentence order received an average of an additional 160 days in custody.

Overcrowding greatly affects the living conditions within the penitentiaries and in turn, erodes prisoner rights. Mass incarceration is tied to overcrowding, inadequate rehabilitative resources, and high economic costs (Ricciardelli, 2014). The CSC (2019) has stated that “on average it costs \$115,000 to maintain an offender within a CSC institution” (para 4). Many critics highlight that overcrowding hinders rehabilitation programming which has proven to help offenders become functioning members of society once released (Zinger, 2016). Lastly, the lack of funds means that offenders have limited access to medical resources and do not receive adequate mental health attention. Criminologists argue that “penitentiaries in Canada are already overcrowded, and resources geared toward assisting rehabilitation are strained or non-existent” (Ricciardelli, 2014, pp. 13). Similarly, psychologists Bonta and Gendreau (1990) found that

physiological and psychological stress responses were very common amongst prisoners in crowded institutions. They also found that aggressive behaviour was more likely and had a cumulative effect when high population densities occurred (Bonta & Gendreau, 1990). Overpopulation in prisons means that prisoners are forced to live in crowded areas and the conditions of the penitentiaries worsened.

### ***2.3 The Application of the Law in Canadian Corrections***

This section examines the administrators in charge of the federal and provincial institutions. The first section discusses the CSC as they are responsible for decision making in the federal institutions. It also provides an understanding of how the provincial prisons are run. The second section looks at the areas where the application of the law is limited, and the literature shows the gaps between the law and the application of it.

**Table 1:** *Bodies responsible for regulating Canadian prisons*

<b>Province:</b>	<b>Administered by:</b>
Alberta	The Correctional Services of the Ministry of Justice and Solicitor General.
British Columbia	B.C. Corrections under the Ministry of Public Safety and Solicitor General.
Manitoba	Manitoba Corrections, under the province's Department of Justice.
New Brunswick	The Community and Correctional Services of Department of Justice and Public Safety.
Newfoundland and Labrador	The Corrections and Community Services branch of the Department of Justice and Public Safety.
Nova Scotia	The Correctional Services of the province's Department of Justice.
Northwest Territories	The Corrections Service of the territory's Department of Justice.
Nunavut	Nunavut Ministry of Justice.
Ontario	The Ministry of the Solicitor General.

Prince Edward Island	The Community and Correctional Services Division of the Ministry of Justice and Public Safety and Attorney General.
Quebec	The Direction générale des services correctionnels of the province's Ministry of Public Security
Saskatchewan	The Ministry of Corrections, Public Safety and Policing.
Yukon	Community and Correctional Services Branch of the Ministry of Justice.
Federal	The Correctional Service of Canada (CSC)

The provincial prison system is used for offenders whose sentences are 2 years less a day. The provincial/territorial jurisdiction includes pre-trial supervision, community and custody sentences, and extrajudicial sanction programs. Those being detained for immigration reasons may be held in provincial/territorial institutions; however, immigration detention is run by the Canada Border Services Agency. The federal institutions hold offenders sentenced for 2 years or more (Government of Canada, 2021).

### *2.3.1 Roles and Mandates of Canadian Corrections Services*

After World War I and the Great Depression, there was an increase in the prison population. With the subsequent lack of funding, Canadian penitentiaries were unable to expand existing facilities or open new ones. Due to overcrowding and poor conditions, prisoners rioted in 1932 (Parkes, 2007). After this riot, it became clear that there was a need for an outside body to investigate prisoner complaints and protect their rights. Eventually, in 1973, the Office of the Correctional Investigator (OCI) was created to bring accountability and transparency to correctional decision-making (Parkes, 2007). According to s. 167 (1) of the CCRA, the OCI is responsible for investigating complaints and reporting on any problems (CCRA, 1992). The CCRA also includes a set of principles that are directly related to the human rights of prisoners as they outline the rules and regulations that the CSC must follow. The CSC has a duty to alert the

government and the public when serious abuse occurs in the federal prison system (Parkes, 2007). According to subsection 4(d), the CSC must "use the least restrictive measures consistent with the protection of the public, staff members and offenders" (Parkes, 2007, pp. 637). The CSC looked to implement correctional programs to help rehabilitate offenders and since its inception, they have researched different types of programming that could be introduced into the prisons (Ricciardelli, 2014). A correctional program is supposed to have controlled interventions that focus on the factors that motivate criminal behaviours and result in convictions (Correctional Service Canada, 2019). The CSC manages and maintains 43 federal institutions within Canada. They also maintain and control parole offices, community correctional centres, and community residential facilities. The CSC strives to help offenders become law-abiding citizens. Some of the ways they do this is by helping prisoners maintain access to appropriate intervention, reintegration support, mental health services, and helping them transition from prison life back into society (Correctional Service Canada, 2019). The CSC looks to review different treatment strategies to determine which programs are the most effective for prisoners and why they work. The mental health strategy was created using suggestions from the Final Report of the National Review Committee for Treatment Centres for enhancing mental health services for federal offenders (Correctional Service Canada, 2009). The mental health strategy begins with the Computerized Mental Health Intake Screening System, which is meant to screen consenting offenders with psychological tests when they enter the penitentiaries. When designed, it was intended to assess the functioning of offenders, provide information to the facilities to help create a correctional plan for each offender, and to identify which offenders are at higher risk (Correctional Service Canada, 2009). The initial screening is done through interviews with a nurse and a mental health worker within the first few days of an offender entering a federal institution. This screening is done to assess the danger they may have

to themselves or others and to identify any severe disorders (Livingston, 2009). This tool was created by the CSC to try and better protect the mental health of prisoners and have a plan when they enter the system (Miller, 2013). In Canada, the state is legally responsible for providing health services to prisoners. For prisoners in federal institutions, it is the CSC's job to provide essential health care and mental health services. This is written in the CCRA which also ensures that the CSC contributes to the offender's rehabilitation and reintegration into society (Miller, 2013). The services the CSC provide must be consistent with professionally accepted standards (CCRA, 1992). The health services and mental health care for federal offenders are not covered by the Canada Health Act, Health Canada, or provincial/territorial health services which means that the responsibility falls solely on the CSC. They need to take into consideration an offender's health care needs when they enter the system (Miller, 2013).

Each province in Canada governs its own health care and prison system; however, they are subject to the same federal laws, for example, *the Charter*. As they are run separately, differences may be seen in terms of living conditions, programs, and opportunities (Government of Canada, 2021). When passing provincial laws, each province uses a similar process, as the Lieutenant Governor gives royal assent for laws. Judges play a role in law-making as they develop common law by referring to and setting precedents. The different departments listed in Table 1 have a variety of responsibilities. Using the Solicitor General of Ontario as an example, some of the responsibilities include, establishing, maintaining, operating, and monitoring adult correctional institutions and probation and parole offices. They are also responsible for parole supervision, granted by the Ontario Parole Board (York University, n.d.). Both youth and adults being held in custody are entitled to make complaints on how their custody is administered. All prison institutions have an internal complaints process where prisoners can file their complaints. Each

province has an ombudsperson who then investigates each complaint (Nova Scotia Office of the Ombudsman, 2021).

### 2.3.2 *Critiques of the Application of the Law by the Federal and Provincial Bodies*

Despite the mandates and goals of the CSC and those running provincial prisons, there are many areas that the literature critiques. Criminologists argue that there is a gap between the rules and regulations outlined in legislation and the practices that occur within the institutions (Lehalle, 2007). For example, the CSC has wide discretion to create and implement prison policies. When creating policies, the CSC is bound by the Constitution, *the Canadian Charter of Rights and Freedoms*, and other relevant legislation (Iftene, 2019). When there is an issue with a CSC policy, a committee or task force is created to review it and make recommendations. Sometimes agencies with expertise on imprisonment will investigate, review, and provide recommendations. Examples consist of the Elizabeth Fry Society and the John Howard Society. However, recommendations from these committees are not binding and are therefore easy to ignore. Similar to these task forces, the ombudsperson in most jurisdictions does not have the power to make binding recommendations, nor does the OCI at the federal level. Iftene (2019) highlights the OCI's previous calls for reform and the CSC's negative response that existing initiatives are sufficient so no further plans for reform would be implemented. For example, segregation and the overrepresentation of Indigenous and Black prisoners.

The literature highlights that the complaint processes for both federal and provincial prisons are problematic as they lack impartiality, are hard to access, and are set up in ways that cause prisoners to fear reprisal (Benslimane et al., 2021). For example, the Ottawa Carleton Detention Centre (OCDC) complaint process has four options, starting with an internal complaint at the institution. Prisoners must fill out a form that is directed to the superintendent, but they must

first gain access to the form and writing utensils to fill it out, which reports suggest have been refused to prisoners in the past (Benslimane et al., 2021). Once the form is complete, the guards deliver them to the superintendent, although relying on the guards for delivery is another issue. If it reaches the superintendent, they have the discretion to determine whether the issue is within the Solicitor General's jurisdiction and how to proceed (Benslimane, et al., 2021). However, there is no direct appeal process if the prisoner is unsatisfied with the decision. The second and third options are the Client Conflict Resolution Unit (CCRU) and the Human Rights Legal Support Centre (HRLSC). These deal strictly with issues regarding human rights, therefore, they are useful for prisoners who feel their rights are being violated. However, the Human Rights Legal Support Centre (HRLSC) is external to the Solicitor General and prisoners are not provided detailed information regarding this option (Benslimane et al., 2021). The final option is to file a complaint with the Office of the Ombudsman of Ontario, who has the power to decide if they will investigate, but they will only do so if every other remedy has been exhausted. If this does not work, then the prisoner is left with only one option, writing to a member of parliament. Advocates find "this is not realistic nor is it adequate enough to hold their oppressors accountable for the injustices against criminalized people" (Benslimane et al., 2021, pp. 7).

The literature shows that the ability of outside bodies to provide recommendations is not a simple process. There is no way to appeal the institutional decision to deny access and the reasoning is typically vague (Iftene, 2019).

Lehalle (2007) argues that "when we look at the rights of prisoners, we can only note the gap between the declarations of rights of prisoners and the reality experienced by them" (pp. 5). One is that legal norms, that are meant to protect prisoners, need resources to make them a reality.

These rights have been acquired on paper but there are ongoing issues with obtaining their proper application (Lehalle, 2007).

## **SECTION 2: Rights Under Criticism in Canadian Prisons**

This section examines key issues that advocates critique including prisoners' access to people, such as visitation, prisoners' access to services, such as health care, and lastly, the material conditions of detention, emphasizing the overuse of segregation.

### ***2.4 Access to People***

Incarcerated prisoners have access to telephones as well as visitation rights which helps protect their mental health. This right is protected by the Mandela Rules, specifically rule 58 that states “prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals” (Mandela Rules, 1955, pp. 18). Communication includes correspondence through writing, telecommunication, and in person visitations (Mandela Rules, 1955). This is considered to understand how it may have been affected by COVID-19.

In the provincial and federal institutions, communication between offenders and people on the outside is heavily regulated. According to the CSC (2020a), a prisoner’s ability to make phone calls in federal prisons depends on the specific institution. They each have different operational routines with a scheduled period when the telephone system is available for use. The most common times that the phones are available is from 8:00 am until 10:45 pm. Time limits for telephone use also vary between institutions but typically each call has a one-hour time limit (Correctional Service Canada, 2020a). This number may be significantly less depending on the prison. The Ministry of the Solicitor General of Ontario states that within provincial institutions “visiting hours are normally held for a minimum of four hours each day, seven days a week” (2021, para 3). The

superintendent of each institution is the one who determines how many visitors a prisoner can have at one time and how long each visit will be (The Ministry of the Solicitor General, 2021).

Pierce (2017), evaluated Canada's private family visitation program, finding that "three quarters of the offenders acknowledged that the potential loss of visitation impacted their behaviours" (pp. 3). In another study from the United States, Clark and Duwe (2017) note that a major barrier to visitation is the nature of the visitation programs themselves, which occur in uncomfortable settings. Also, it is common for family members to have to travel a long way and to wait in line for hours once they arrive. Visitation rooms are sometimes equipped without a bathroom or vending machine and they have poor circulation. These rooms are large, visitors are monitored closely and are allowed little physical contact with their loved ones (Clark & Duwe, 2017). The visits help establish, maintain, or enhance networks of support and help to prevent prisoners from assuming a criminal identity; prisoners also rely on family and friends for employment opportunities, financial assistance, and housing (Clark & Duwe, 2017). Duncan and Balbar (2008) examined visitation in a Canadian penitentiary for men and the institutional benefits of visitation programs. Visits helped inmates cope with life in the penitentiary and build relationships, and helped visitors feel more empathetic and appreciative of their own lives. Staff members indicated that it was beneficial to have offenders who were more optimistic and in touch with the outside world (Duncan & Balbar, 2008). Relatives play an important role for prisoners during their time inside the penitentiaries. They help with successful reintegration into the community, and they are a primary source of emotional support (Datchi et al., 2016). The literature has consistently reported positive outcomes of prisoners having visitors and keeping in contact with people through other means. Some of these effects include a reduction in depressive symptoms, specifically in women and adolescent prisoners. Also, there was evidence showing that

visitation reduces rule-breaking, and recidivism (De Claire & Dixon, 2017). Despite the benefits of visitation, families still encounter hardships that reduce their ability to maintain bonds. They must deal with several geographic, personal, administrative, and institutional obstacles when visiting their loved ones (Lehalle & Plamondon-Dufour, 2021). The CSC website provides information on different types of visitations (e.g., video calls, or private family visits); however, there is a lack of information on how often prisoners get access to telephones, visitation schedules, and how often prisoners are allowed visitors.

### ***2.5 Access to Services and Health Care***

Prisoners also have the right to access resources including health care, educational classes, and other activities. These rights are protected by *The Corrections and Conditional Release Act* and the Mandela Rules. Institutions are required to provide prisoners with essential health care and services that meet community standards.

There are two main areas that are meant to be protected here: access to health care services and access to programs within the institutions. Access to proper health care ranges among prisons worldwide, but places such as Canada, the United States, and a lot of European countries are considered to have adequate health care within prisons (Miller, 2013). In most jurisdictions in Canada, the health care services for correctional institutions are governed by the ministry that is responsible for corrections. That means they are delivered parallel to the general population's health care system but disconnected from it (McLeod, & Martin, 2018). "*The Corrections and Conditional Release Act* stipulates that all federal prisoners shall receive 'essential health care' in conformity with 'professionally accepted standards'" (Iftene & Manson, 2013, para 4). This is important for prisoners as many suffer from mental and physical health issues. Those incarcerated have a higher prevalence of acute and chronic health conditions. Many also have a history of

trauma abuse, mental health conditions, or substance use (McLeod, & Martin, 2018). In 2009, 11% of offenders entering federal jurisdiction had a mental health diagnosis (Correctional Service Canada, 2009). This statistic represented a 71% increase since 1997, which showed how mental health issues were becoming more recognized and diagnosed. In a study conducted by Iftene in 2019, 28% of federal prisoners were found to be coping with 8-16 illnesses at one time. For people who suffer from chronic illnesses, the major challenge is getting access to the appropriate medical services while incarcerated. McLeod and Martin (2018) highlight how closely the provincial institutions are connected to the community, due to the shorter length of sentences. Prisoners are coming in and out of provincial institutions frequently which means disease and illness are more easily spread to the general population and affect the wider health care system. Improving prisoner health could lead to lower health care costs, lower re-incarceration, and improved public health (McLeod, & Martin, 2018).

Access to services and programs within the institutions is another important privilege to protect. The correctional counselling programs within the institutions typically have prisoners attend group sessions; however, individual sessions may be provided (Ricciardelli, 2014). Sessions typically run for a few hours at a time and multiple times a week. These aim to help offenders accept what they did and try to reduce the behaviours that are associated with the criminal activities they committed (Ricciardelli, 2014). Ricciardelli (2014) highlights that although these programs are said to be available, there is actually very limited resources and programming's inside, noting that the men she interviewed "felt what little programs were available were 'a 'joke,' a 'waste of time,' and geared towards the wrong ends" (p. 190). The literature also argues that the psychological programs do not sufficiently meet prisoners' needs for reintegration (Ricciardelli, 2014).

The Correctional Investigator has raised concerns about the issues in programming for years. In the 2011-2012 annual report, it was noted that there were significant waitlists for access to programs, which meant limited access and low participation (Office of the Correctional Investigator, 2012). During the same time, the Office of the Correctional Investigator surveyed seven institutions to get a better understanding of program participation. They found only 12.5% of the total number of prisoners were enrolled in a correctional program, and over 35% of prisoners were on a waitlist for one. These statistics are concerning because program completion is important in terms of securing release and helping to address criminogenic needs (Office of the Correctional Investigator, 2012). In 2015-2016, it was reported that although improvements were seen, “the Auditor General of Canada recently found that offenders who completed the new correctional programs are not recommended for release on parole any earlier than they had been in the past” (Office of the Correctional Investigator, 2016, pp. 50). The OCI recommended there be an action plan created to meet the demand for programming, such as meaningful work, vocational training, and apprenticeship programs (Office of the Correctional Investigator, 2016).

## ***2.6 Material Conditions of Detention***

As mentioned, when the government transitions after an election, there are significant effects on prisoner rights. This effect was seen when the Conservative government introduced 90 new pieces of ‘tough on crime’ legislation. The two material conditions of detention discussed herein are overcrowding and segregation that are seen in both provincial and federal institutions. The Mandela Rules and *The Charter* protect prisoners from being isolated for periods extending 14 days and from two or more prisoners being kept in a prison cell meant for one; but they do not outline what to do when overcrowding occurs (Mandela Rules, 1955).

Overcrowding refers to a situation when the number of prisoners exceeds the official capacity of the prison. This number varies depending on national or local standards, and the size of the institution. Some institutions allow four prisoners in one cell meaning if there were only three in a cell, they would have 'free space'. Some countries have single cells so would report overcrowding sooner (Lappi-Seppälä, n.d.). There is a relationship "between crowding and psychological and physiological stress for offenders" (Paquin-Marseille et al., 2014, pp.23). In Canada, cells designed to hold one individual are now occupied by two or three people (Hemsworth, 2016). There were allegations in the past that prisoners were sleeping on mattresses in segregation showers (Weinrath, 2016). Numerous criminal justice organizations, including the CSC have linked prison overcrowding and double bunking with safety concerns for staff, prisoners, and the public (Paquin-Marseille et al., 2014). It is not only the federal institutions that struggle with overcrowding as many researchers note that provincial institutions have similar issues. Researchers state that overcrowding in provincial institutions has become worse as it takes longer to get to trial, which increases remands (Weinrath, 2016). Criminologist Michael Weinrath noted that overcrowding in Saskatchewan's federal and provincial institutions has negative impacts on programs because gymnasiums or classrooms get converted into housing areas (2016). He also noted that health care, food services and prisoners' basic needs were affected by overcrowding.

Hemsworth (2016) argues that overcrowding alters the fragile emotional state of both prisoners and the staff as it causes an inevitable loss of privacy, dignity, personal space, and control. A 2013 study on double-bunking found that it causes an increase in tension and violence. Conflict among bunk mate(s) often leads to bottled up feelings that eventually reach a breaking point, which is unsafe for them and the staff. One of the prisoners stated, "I would have to start by

saying that having to share a box the size of a bathroom, with another man, has been the most degrading experience of my life” (Shook, 2013, pp. 54).

In 2016, the Minister of Ontario established a task force at OCDC that was meant to develop an action plan and increase accountability for the overcrowding (Independent Review of Ontario Corrections, 2017). The action plan had over 40 recommendations. In 2017, the task force submitted a progress report although critics did not believe the recommendations would improve the material conditions of confinement at OCDC. Lawyers stated:

It's not enough. That's the short answer. A fresh coat of paint and ending some of the most egregious behaviours like housing people in a shower isn't enough to fix a problemed system. There needs to be change from the top, from the political forces who are in charge of the institutions (Independent Review of Ontario Corrections, 2017, pp. 54).

Similar issues have been observed with segregation in the federal penitentiary system. When discussing segregation, Kilty and Lehalle (2019) stated that “prison is a desolate and uninviting habitation space, and segregation units are even more so; they are often described as a prison within a prison, playing host to the most austere forms of material and interpersonal deprivation in the penal sphere” (pp. 319). One major consequence of using a tough on crime approach is the increased use of segregation (Independent Review of Ontario Corrections, 2017, pp. 54). Segregation is an example of prisoner rights being eroded and “on any given day, there are 850 offenders in segregation in Canadian federal prisons” (Kelsall, 2014, para. 1). Segregation is defined as 22 to 24 hours of isolation per day without meaningful human contact (Kelsall, 2014). There are two forms of segregation used in Canadian prisons, disciplinary and administrative. Disciplinary segregation is used on those who breach institutional rules, whereas administrative segregation is not meant to be punitive and can be voluntary or involuntary. Prisoners segregated for administrative and disciplinary segregation occupy the same cells and endure the same conditions, such as the inability to leave the cell for more than one hour (Kilty & Lehalle, 2019).

Segregation is no longer allowed in federal prisons, it has been replaced by structured intervention units (SIU's) which are discussed in the paragraphs below.

In 2014-2015, there were 8309 placements in administrative segregation in Canadian penitentiaries, and 4999 of these prisoners were placed in segregation for more than one period. The average length was 27 days with many spending much longer in isolation (Parkes, 2017). Incarceration is supposed to prepare offenders for their life once they are released back into the community. This goal is affected when inmates are placed in lengthy segregation which can damage their mental and physical health. Despite the evidence of the harmful effects of being isolated for long periods of time, segregation continues to be prevalent. From 2009 to 2014, the use of segregation increased by 6.4% and the time spent in segregation was long (Kelsall, 2014). Administrative segregation has been found to be constitutionally invalid and contrary to s. 12 of *the Canadian Charter of Rights and Freedoms* and is considered cruel and unusual punishment (Parkes, 2017). The Correctional Investigator has stated that “administrative segregation is so overused that nearly half of the current inmate population has experienced segregation at least once during their present sentence” (Parkes, 2017, p. 168).

Segregation has been debated for decades and many adverse effects have been identified. Research in this area stems from many disciplines including criminology, psychology, sociology, and the field of human rights. Psychologists state while few people doubt the harmful effects of segregation, the degree to which it is considered by lawmakers and prison administration varies (Lobel & Scharff Smith, 2019). The emotional and physical harms of segregation occur due to

violent cell extractions, physical and chemical restraints, extreme levels of material deprivation and removal of personal items, lack of meaningful activity, sensory deprivation (e.g., by leaving the lights on in the cell 24 hours a day, delivering food through a mail slot in the cell door, denial of utensils), strip-searching, lack of access to programming, and limited access to yard time (Kilty & Lehalle, 2019, pp. 312).

One of the issues that the literature highlights is the constant changes in the terms used for segregation including administrative segregation, dissociation, isolation, seclusion, and protective custody (Zinger et al., 2001). The shift in terminology has occurred when segregation was deemed unconstitutional in the courts; when this happens, the government comes up with a new term and definition, despite the conditions of confinement remaining the same.

Prisoners' health is impacted in many ways when they are in segregation. It is believed that the effects are a result of the lack of stimulation and social interaction combined with a lack of control over one's daily life (Kelsall, 2014). Prisoners lose their identity without human contact and that can cause an increase in anxiety, depression, irritability, aggression, and suicidal feelings (Luigi et al, 2020). The inability to exercise and even stretch your legs, begins to get to you both physically and mentally (Lobel & Scharff Smith, 2019). Dellazizzo et al. (2020) found that any psychiatric disorder is a risk factor for placement into segregation. Since many inmates in segregation have pre-existing health issues, they are usually impacted more severely. Researchers highlight that social isolation affects those in the free world, increases mortality and greatly affects people's mental health. Prisoners already suffer substantially when imprisoned and segregation exacerbates the effects of social isolation seen in the free world (Lobel & Scharff Smith, 2019). The effects of being in segregation can develop within a few days and progressively worsens with time (Kelsall, 2014). The prison ombudsmen highlights that prisoners are more likely to commit suicide in segregation cells or maximum-security facilities than they are when housed in the general population (Kilty & Lehalle, 2019). Kilty and Lehalle (2019) stated that "the normalization and routinization of these practices can lead to the dehumanization of isolated prisoners and to a 'culture of harm' inside maximum-security units" (pp. 322). The negative effects of segregation have long been argued, yet its use has not been abolished.

The Mandela Rules and Bill C-83 prohibit indefinite or prolonged segregation and establish a new framework for reform (Consensus Statement, 2020). They also prohibit the use of segregation in any form for women, children, and people with mental and physical conditions that would be worsened by it (Parkes, 2017). According to the Consensus Statement (2020), the Mandela Rules called for a prohibition against the use of prolonged segregation for more than 15 consecutive days, which is defined as torture. The constitutional validity of administrative segregation used in federal penitentiaries was challenged. When this happened, the Attorney General of Canada claimed that it was different from segregation and that people should not confuse the two (Parkes, 2017). However, the definition outlined in the Mandela Rules makes it clear that segregation is an umbrella term (Parkes, 2017).

Bill C-83 was passed in 2019 and was created to amend *the Corrections and Conditional Release Act and another Act* (Parliament of Canada, 2019). This amendment happened as the Supreme Court of Canada ruled that the practices of segregation violate *the Canadian Charter of Rights and Freedoms*. Subsequently, the federal government created structured intervention units (SIU's) and an independent review process. SIU's were meant to provide prisoners with appropriate living environments and meaningful human contact while allowing access to services that the individual may require. Administrative segregation did not account for these aspects and caused psychological harm to prisoners (Parliament of Canada, 2019). SIU's still allow prisoners to be put into isolation. Sprott and Doob (2020) argue that prisoners have been spending long periods of time in SIU's and that they are not getting the required 4 hours of time out of their cells or the meaningful human contact required by law. In another research paper, Sprott and Doob (2021) argue that one year after SIUs came into operation, the CSC still had not examined them sufficiently nor had they made their findings public. Their concerns stem from the fact that while

an oversight panel was established in 2019, it ceased to exist and for over 7 months a new one was not re-established (Sprott and Doob, 2021). Sprott and Doob (2021) wrote three reports on this issue and demonstrated that SIUs do not operate consistently with the law.

### **SECTION 3: Advocacy for Prisoner Rights**

This section examines advocacy and discusses a few of the well-known prisoner rights advocacy groups from Canada, what they strive for, and how they advocate. Advocates typically consider themselves reformers or abolitionists. Reforming the system means changing its existing practices to create a system that better protects the rights of those incarcerated (Miller, n.d., para 1). Reformists aim to change the way the system runs by implementing new strategies, such as better access to health care, stopping the use of isolation, and increased sanitation. They want a system that punishes those who commit crimes while also helping them reform (United Nations, n.d.). Abolitionists want to dismantle the system and object to the prison's very existence (Miller, n.d., para 1). It was stated by Statewide Harm Reduction Coalition members that "a cage is a cage. We want strategies that let people out of cages, not ones that are for building nicer or better cages" (Miller, n.d., para 2). They advocate for "change and community alternatives to incarceration, including community centres, schools, and physical and mental health care resources" (Miller, n.d., para 3). Although this is a U.S. organization, Canadian abolitionist organizations argue for the same thing.

#### ***2.7 Advocates: Who, What, and How***

One of the well-known advocacy groups in Canada is the Canadian Association of Elizabeth Fry Society (CAEFS). The CAEFS envisions a world without prisons where communities are strong and provide proper resources for everyone (Canadian Association of Elizabeth Fry Societies, 2021). The first Elizabeth Fry Society in Canada was established in Vancouver in 1939, by MP Agnes Macphail and now 24 member societies across Canada make

up the association (Elizabeth Fry Society, 2022). The society works to address how “women and gender-diverse people are impacted by criminalization and how they are denied humanity and excluded from the community” (Canadian Association of Elizabeth Fry Societies, 2021, para 2). They address the issues that criminalized women experience both in and out of the carceral institutions and how they are affected by things such as segregation, access to health care, and visitation constraints. They participate in activist movements such as the Black Lives Matter march and offer a variety of services including housing and legal support, and try to increase public awareness, reduce the number of women imprisoned, and increase community-based services (Elizabeth Fry Society, 2022). The association advocates and helps in different ways, including legal intervention, publishing research, collecting donations, and hosting events open to the community. (Elizabeth Fry Society, 2022). A recent example of Elizabeth Fry advocacy was their Go Fund Me campaign to raise money to create 8-10 units of transitional housing in Thunder Bay (Kitching, 2022).

The John Howard Society is another major advocacy organization in Canada. They have similar goals to the Elizabeth Fry Society; however, they do not focus on women specifically but rather prisoners as a whole. The John Howard Society was named after John Howard, an 18th-century nobleman, who dedicated his life to improving prison conditions throughout England, Wales, and most of Europe (John Howard Society of Canada, 2022). They currently have branches in more than 60 communities in Canada, and have offices in all 10 provinces and the Northwest Territories. They look to provide public education, community services, and press for reform in areas relating to criminal justice (John Howard Society of Canada, 2022). They work with those who come into contact with the law and promote crime prevention by working with the community.

The goal for those working with these societies is to “understand and respond to problems of crime, work with people who have come into conflict with the law and engage in public education on matters involving criminal law and its application” (John Howard Society of Canada, 2022, para 1). There are John Howard organizations around the world that share a common purpose and philosophy to the ones in Canada. They rely on volunteers, public involvement, and donations to advocate. They have a presence and involvement in the field of reform and policy development. A major concern is that policymakers consider the implications for criminal justice, and in particular, corrections, when they revise or draft a policy. They regularly provide expertise to government, voluntary, and professional organizations (John Howard Society of Canada, 2022). The national society provides administrative support and advice to provincial offices and local branches as required. John Howard advocates in different ways including communications and research on federal matters, actively participating in consultative forums of government, and making submissions to legislative committees with respect to sentencing, conditional release, crime prevention, restorative justice, and young offenders. They also publish and distribute information, hold community support forums, and facilitate social discussions. The national society has a library of peer-reviewed evidence on correctional and criminal justice policy (John Howard Society of Canada, 2022b). In 2020, John Howard worked alongside Elizabeth Fry to discuss the issues of segregation. A new publication titled “By Any Other Name: a 15 Day Spotlight on Segregation” was released a year after SIUs were implemented and criticizes the lack of change to the use of segregation (John Howard Society, 2020b).

Another important organization is The Canadian Prison Law Association (CPLA), which is made up of lawyers who advocate for prisoners within the community, share legal information, and promote adherence to the rule of law (Fineberg, n.d). The CPLA seeks to protect and promote

the constitutional rights, interests, and privileges of prisoners and ensure the prison environment is consistent with the Canadian Constitution and *the Canadian Charter of Rights and Freedoms* (Fineberg, n.d). The West Coast Prison Justice Society is similar in that they represent prisoners in court (Prisoners Legal Services, 2022).

Located in Ottawa, Books 2 Prisoners (B2P) is a working group of the Ontario Public Interest Research Group (OPIRG) located at Carleton University (Crosby, 2020). Created in 2016, B2P is donation-based, run by volunteers, and includes a letter-writing group that advocates for individuals. B2P supports the educational, vocational, and personal development needs of prisoners, and holds a weekly letter writing/book mailing meeting. Similarly, the Criminalization and Punishment Education Program (CPEP), which started jointly at the University of Ottawa and Carleton University, includes critical criminologists, students, researchers, community members, front-line workers, and those affected by criminalization and punishment (CPEP, n.d.). They provide public education, activism, and conduct research that supports social change. CPEP aims to bring attention to the harms of criminalization and punishment, challenge inequality and dominant social structures, and reject efforts to further expand and entrench state repression. These examples are both within Ontario; however, it is important to note that all provinces have such advocacy groups. For example, Nova Scotia has the East Coast Prison Justice Society which was established in 2017. This group includes individuals and organizations working to advance social justice by advocating for the rights and interests of criminalized and imprisoned individuals. Their goal is to raise awareness of the issues affecting this population and promote change, which they do through research, scholarship, public campaigns, legal support, and education. They bring attention to the inequalities that impact this group in Nova Scotia and the Atlantic region (East Coast Prison Justice Society, 2021a).

## **2.8 Conclusion**

While Canada has made some progress when it comes to the protection of prisoner rights, some areas continue to be debated. As shown, advocates play a vital role in bringing attention to such issues and supporting prisoners in getting access to help and resources.

This thesis seeks to bring attention to the issue of prisoner rights during the pandemic and the effects it has had on advocacy strategies. Therefore, I explore the following question: *how have the human rights of prisoners and (anti) carceral advocacy for their rights been impacted by the COVID-19 pandemic?* While exploring this we need to consider the following: what decisions were made during COVID-19 to protect prisoners, how have the human rights of federal prisoners (including liberties and health) been impacted by COVID-19, what recommendations have been advocated for during the pandemic to protect prisoners, and how have human rights been advocated for during the pandemic?

### CHAPTER THREE: Theoretical Framework

Looking at historical instances of crises that led to the erosion of rights is important as it highlights why the rights of prisoners should be investigated during the COVID-19 pandemic. If rights have been eroded in the past, it may be reoccurring. When 9/11 occurred, the U.S reacted in ways that eroded the rights of Muslim people. They blamed a specific group and took their rights away to try and ‘protect’ themselves and stop another crisis from occurring (Boyle & Busse, 2006). During the war on terrorism, *the USA Patriot Act* was quickly passed in October of 2001. The Act expanded the powers of law enforcement agents to combat terrorism (Filomena & Critelli, 2008). Some of these expansions included access to personal records with minimal judicial oversight, the ability to conduct secret searches, and allowing the FBI to investigate citizens for criminal matters without probable cause (Filomena & Critelli, 2008). After 9/11, incidents that involved Muslim people were more likely to be considered terrorism, linked to violence, or labelled by their religious and ethno-racial identities (Kanji, 2018).

Similar legislative changes were seen in Canada, for example, *the Immigration and Refugee Protection Act of Canada*, which came into effect in June 2002, authorized security certificates which permitted the detention and expulsion of non-citizens who were considered a threat. Those detained did not have the opportunity to be heard before the certificate was issued and judges were reviewing these cases in hearings without the detainee or their counsel (Razack, 2007). Examining this crisis comparatively demonstrates that it is not uncommon for people’s rights to be affected during or following a crisis.

This chapter seeks to explain the theories and concepts that guide this thesis. Section one discusses the outcomes of a crisis, namely the erosion of rights. The state of exception theory helps to understand how a crisis such as COVID-19 can be used by politicians and decision makers to

make decisions that would typically receive public pushback. I use the concept of emergency to build on the state of exception and to explore its various outcomes. Then I discuss the concept of hyper-resilience which shows how people can use a crisis to promote positive change. The second section of this chapter examines reform and abolition perspectives to understand the type of changes that may occur, the extent of these changes, and why they may be resisted. Both perspectives seek change but to different ends which can cause tension. Lastly, I discuss the gaps and limitations of these theories.

## **SECTION 1: Conceptualizing Crisis as a Critical Moment**

This section is split in two to understand each side of what can occur during times of crisis. First, the negative side where the law is on hold is discussed, then the positive side, where hyper-resilience is displayed. This two-pronged approach helps to fulfill the objective set of questions regarding what decisions have (or have not) been made within the prisons to stop the spread of COVID-19, and how the human rights of prisoners (including liberties and health) were impacted.

### ***3.1 The Law is on Hold***

#### ***3.1.1 The State of Exception***

The state of exception is used to explain how “emergencies, crises, and disasters are used by governments to suspend legal processes” (McLoughlin, 2012, pp. 698). In simpler terms, it refers to the various ways the government reacts to national emergencies. Given the topic of this thesis, it is relevant to question whether the pandemic led to the suspension of legal processes within the prisons. During a crisis, government power is often extended, commonly resulting in diminished, superseded, or rejected constitutional rights (Baker, 2019). Declaring a state of emergency gives the state sovereignty and the ability to suspend the law to protect the public. When faced with an emergency, international human rights treaties and many constitutions allow

states to suspend the protection of certain human rights (Humphreys, 2006). During this time, some knowledge will be accepted as the truth and certain voices will be valued more than others. This state is oppressive which affects the production of knowledge during a time of crisis/emergency (Humphreys, 2006). Giorgio Agamben conducted research exploring the relationship between the sovereign state and those who are politically marginalized. His work includes refugees, prisoners of war, and anyone who the state excludes from participating in political arenas or who has a lack of humanity or liberty (Ross, 2008).

Agamben discusses the history of the state of exception as it was introduced in 1923 during a financial crisis in Germany. McLoughlin (2012) argues that “contemporary security politics is an extension of a crisis into which the liberal constitutional state entered after World War I” (pp. 680). He stated that emergency powers during the twentieth century undermined the rule of law. However, the state of exception often becomes the rule (Baker, 2019). Therefore, one must question whether the changes made during the pandemic have become the new norm?

For Schmitt, the state of exception reflects a dictatorship because the dictator or the sovereign decides on the state of exception and “unites the legal and non-legal by means of an extralegal decision having the force of law” (Humphreys, 2006, pp. 680). Meaning that judicial order is maintained during the state of exception when the law itself is suspended. This begs the question: how have laws been applied during the pandemic within carceral institutions? For example, rules, such as lockdowns and curfews, were introduced. However, no laws disappear, some are enforced, and others are not. For Schmitt, this happens in two ways. The first is through a suspension of the law; this occurs because the constitution provides protections, so the suspension is lawful. The second occurs when no constitution or law applies during the state of exception. The sovereign alone maintains the sole decision making power. Schmitt provides a base

understanding of the state of exception, arguing that this state is a judicial condition and that the law itself survives the suspension. During the pandemic, one must question: does the law remain and if so, does it protect prisoners' rights?

Unlike how Schmitt discusses a state without laws, Beckett discusses the state of exception, not as lawless but as a time where we suffer from an excess of laws that regulate customary practice being suddenly suspended (Morin, 2019). Beckett often argue that all too often, the law has been replaced by a hodgepodge of archaic rules and authoritarian practices that are as powerful as they are absurd (Morin, 2019, pp. 134). He became aware that when states experience an emergency it brings mass arrests, forced internment, and detention camps. These have not occurred during the pandemic, but it raises questions about the types of laws invoked during the pandemic.

Agamben does not agree that the state of exception is an annex to the law. He argues that the state of exception is a space without law, which he calls a zone of anomie (Humphreys, 2006). He believes that the state of exception is not the same as a dictatorship because laws are not continuing to be made and applied, they are emptied of content entirely (Humphreys, 2006). The purpose of his analysis is to create a new understanding of the relationship that exists between law and political action. He determined that the state of exception is situated between the political and the judicial, which situates the origins of the state of exception, rooted in the dictatorship within the practice of Justitium. An example of when this may occur is during a period of public mourning (Attell, 2005). Agamben suggests that there are two main schools of thought on the legality of the state of exception. The first views the state as an integral part of positive law, that today is codified in international law through the notion of derogation. When a public emergency occurs, it threatens the life of the nation, and many constitutions allow the state to suspend the protection of certain basic rights. The derogation is generally represented "as a 'concession' to the 'inevitability' of

exceptional state measures in times of emergency, and also as a means to somehow control these” (Humphreys, 2006, pp. 678). States can specify constitutional exceptions when faced with an emergency and it can threaten people's rights (McLoughlin, 2012). This derogation model creates a space between fundamental rights and the rule of law. In this space, the state can remain lawful while transgressing the rights of individuals (Humphreys, 2006). The state of exception may also be understood as extrajudicial, meaning it is something other than law. Agamben argues that it is not desirable to control executive action during emergencies using judicial accountability mechanisms (Humphreys, 2006). This means a legal space must be created for state action, but only for the time it takes to restore constitutional order. When considering these two schools, it brings up questions on which, if any, were applied during the pandemic. If the derogation model was being applied, one must ask: was it viewed as inevitable to deal with the demands of the pandemic?

Again, Agamben rejects both approaches because he argues that the state of exception is neither internal nor external to judicial order. He states that defining it involves a threshold or zone of indifference, where inside and outside become blurred (Humphreys, 2006). This begs the question, how was the law being applied during the pandemic and did it reflect the state of exception outlined by Schmitt, Beckett or Agamben?

This theory is important to consider for this thesis as it helps to understand how the COVID-19 pandemic could lead to rights being suspended. However, this theory has some gaps as these theorists do not discuss what constitutes an emergency or what the outcome of this state is.

### *3.1.2 Emergency*

A state of exception as explained and defended by Agamben, Beckett, and Schmitt occurs when emergencies happen. An emergency can be defined in many ways depending on the situation and who you ask. It has many different names including crisis, catastrophe, and disaster. Each term has its own set of meanings; however, there is a lot of overlap, “scholars, aid workers, politicians, and other experts, argue emergency has a technical definition that sets it apart” (Beckett, 2013, pp.85). Emergencies introduce feelings of uncertainty and threat that impact our understanding of the world (Boin et al., 2009). During an emergency, actions departing from conventional practice are rationalized as necessary responses to exceptional circumstances and urgent threats (White, 2015). Emergencies shock and affect society’s moral attitudes and beliefs, which enables certain unpopular policies to be pushed through as people are distracted dealing with the crisis itself. The strengthening of political capital becomes a priority, while government actors try to avoid blame for issues that arise and look to advance the policies for which they stand (Boin et al., 2009). The literature suggests that the disruptions emergencies cause to societal routines and expectations open a space where political actors can redefine issues, propose innovations and organizational reforms and various actors may seek to exploit this crisis-induced opportunity space (Boin et al., 2009). One example of emergency politics in recent history occurred with the collapse of Lehman Brothers in 2008, which established new levels of uncertainty in global political and economic life (White, 2015).

During a state of exception, the state can suspend the law, wherein public institutions are being affected; some will take a public beating and be forced to reform, while others weather the political storm, or become a symbol of heroic public service (Boin et al., 2009). Similarly, public policies and programs are affected as was seen after 9/11 when national policies were reformed in

many areas including, policing, immigration, data protection, and criminal law. Large-scale emergencies can also trigger investigations that impact political agendas, but which do not result in major policy changes (Boin et al., 2009). If both positive and negative outcomes have been seen in the past, it begs the question, did the pandemic bring about positive changes or were the outcomes mostly damaging?

Defining and conceptualizing ‘emergency’ helps show what outcomes are possible during a state of exception. Alongside the state of exception theory, defining an emergency shows how and why emergencies are connected to politics and how this relationship impacts wider society. Alone, this conceptualization of emergency is not enough on as it does not discuss how the government can take advantage of these situations. Together, the state of exception and emergencies conceptualize only one side of the crisis debate, that is, where the law may be suspended.

### ***3.2 Alternatives Arise, and a Moment of Potential Becomes Apparent***

During a crisis, alternative ways of functioning can arise that also bring about the potential for positive change, such as hyper-resilience.

The conditions of a crisis are thought to introduce the potential to accelerate learning (Kamkhaji, & Radaelli, 2017). This sequence begins with a crisis that acts as a trigger for learning, that itself “produces a surprise which then causes a behavioural change via a fast-paced associative mechanism and that policy learning follows change” (Kamkhaji, & Radaelli, 2017, pp. 714).

As the world progresses, organizations are forced to adapt to turbulent environments, globalization, economic crises, technological developments, legislation, and new markets. (Fragouli & Turlaki, 2020, pp. 23). A crisis can be considered a threat to organizations; however, effective leaders take advantage of the opportunities that arise pushing for organizational change

(Fragouli & Turlaki, 2020). Leaders play an important role when a crisis occurs as they decide how and if it will be managed. A crisis typically appears unexpectedly and requires immediate attention and response. Certain professionals spend their days predicting, preventing, and preparing for potential crises (Fragouli & Turlaki, 2020). The challenge is then a question of modifying the plan or planning for change because many people find comfort in following a plan and do not like the unknown. When a crisis occurs, plans must be reconsidered causing an increase in uncertainty. This uncertainty and lack of control leave room for new directions to be considered and new strategies to evolve. (Meyers & Holusha, 2018). A crisis can facilitate or hinder learning because “different conditions of crisis development and termination define its progression through time and hence affect the likelihood of learning” (Kamkhaji & Radaelli, 2017, pp. 714). A crisis creates incentives and motivations to change that can lead to new behaviours, policies, and the creation of new systems or structures (Kamkhaji & Radaelli, 2017). The government, who runs the penal system in Canada, were given this opportunity when the pandemic hit, the question therefore is, did the reactions of the Canadian government to the pandemic impact prisoners positively or negatively?

### *3.2.1 Hyper-Resilience*

It is clear that a crisis can bring about positive change but what route must be taken to implement these changes and what are the potential positive outcomes? The concept of hyper-resilience is used to show what can happen during a crisis, what decisions must be made to have a positive outcome, and what these positive outcomes are. This concept has been developed by theorists interested in ‘changing poison into medicine’ where leaders can use the toxicity of a crisis to learn and improve (Clair & Dufresne, 2007). When facing a crisis, resilience refers to the ability to bounce back after a tragedy. Clair and Dufresne (2007) suggest that “organizations are capable of ‘hyper-resilience,’ when the crisis becomes a catalyst for positive transformation” (pp. 63).

Resilience occurs when an organization engages in damage control during a crisis to keep things running smoothly. Hyper-resilience takes this concept one step further referring to instances when the outcome of a crisis is transformative, and the organization flourishes (Clair & Dufresne, 2007). These outcomes are interesting to consider when looking at prisons within the context of the pandemic. Did the prison system show resilience, hyper-resilience or no resilience at all? For example, following hurricane Katrina, resilience was shown through the rebuilding of infrastructure, the reparation of levees, and the return of citizens. Hyper-resilience was shown through the educational system's transformation, class and race awareness developed, and economic growth occurred. This example illustrates how the two concepts differ; repairing what was destroyed shows great resilience but using the crisis to transform the communities that were affected in a deeper way shows hyper-resilience (Clair & Dufresne, 2007). John F. Kennedy once said from "crises can emerge new and incredible opportunities, particularly if traditional approaches and paradigms are questioned and challenged" (Langan-Riekhof et al., 2017, para 2).

Some of the positive outcomes that can emerge from crises include: "change is accelerated; latent problems are faced; people can be changed; new strategies evolve; early warning systems develop; and new competitive edges appear" (Meyers & Holusha, 2018, pp. 31). There is also an increased mindfulness of organizational vulnerability. When surviving a traumatic experience, one tends to become hyperaware of their own safety and risky behaviours. Being awakened to vulnerabilities can be unsettling, but being mindful can protect from future harm (Meyers & Holusha, 2018). Another positive outcome is the renovation of deep-rooted organizational structures. Organizational structures become deeply ingrained in the organizations functioning. However, being put in a situation where these no longer work or are not efficient supports the need

for change. What is crucial to avoid is returning to patterns or ways of functioning that have proven to be unhealthy and do not work (Meyers & Holusha, 2018).

As old rules are set aside, the implementation of new ones is accelerated. For example, as seen during World War II, nations come together to fend off attackers, or “during the economic slump in the 1980s, formerly militant unions accepted contract concessions they would have vetoed earlier” (Meyers & Holusha, 2018, pp. 27). These circumstances provide rare opportunities to promote and implement change which scholars argue should be seized (Meyers & Holusha, 2018). The crisis compresses time which means that things that have been slowly unfolding or progressing begin to speed up. The crisis can cut years off the normal pace and those who are seeking change can capitalize from the crisis to push forward their ideas (Meyers & Holusha, 2018). The progress that can be made here outweighs the undesirable side effects accompanied by most crises. If rare opportunities to promote and implement change arose during this time, it begs the question, did prison rights advocates seize the opportunity to push for change once the pandemic hit?

As seen when looking at the concept of hyper-resilience, it is a mistake to think of crises only in negative terms. A crisis can provide unique opportunities that are not available at any other time. What is crucial to recognize is these rare moments and seize them. This perspective is important to consider for this thesis as it helps to understand how the COVID-19 pandemic could lead to positive change.

## **SECTION 2: Beyond the State of Exception: Mobilizing Abolitionist Theories**

One of the gaps in theorizing the state of exception, is that it does not suggest a form of political action that can overcome the power of the state (Passavant, 2007). Davide Giordanengo (2016) critiques the lack of consideration for the role society plays a role as societal beliefs can

affect decision making. The following section discusses theories that address these gaps; for example, Mathieson's theory on abolition is conceptualized to understand resistance to change. Abolition in the penal field has shifted over time towards a critique of the new punitiveness. Radical forms of abolitionism may still be informing some perspectives, but less radical forms are now favoured. This shift happened because "pragmatism dictates an orientation towards penal minimalism and the defence of human rights" (Carrier & Piché, 2015, para 2). The pragmatic strategies can "more or less immediately alleviate the conditions of penalized individuals" (Carrier & Piché, 2015, para 3), which is why abolitionists do not oppose them. Penal abolitionists question the existing uses and definitions of crime, the law, and common views on the effects of punishment (Matthews, 2018). "Abolitionism is not only a strategy, or a set of demands aimed at the reduction (or suppression) of custody, it is also a perspective, a philosophy, and an approach" (Ruggiero, 2015, para 1). This section examines abolitionists claims and overall goals, including Mathiesen's notion of 'the unfinished' and 'trust'.

### ***3.3 The Foundations of Abolitionism***

Christie, Hulsman, and Mathiesen are the most well known for their contributions to abolitionism. Both Christie and Hulsman reject the concept of crime and share the belief that behaviour is ambiguous and that the concepts of good, evil, order, and disorder are shallow (Moore, 2011). This means that the understanding of what constitutes a crime varies and lacks consensus. Mathiesen and other theorists reject reductionist justifications for prisons and argue they are "ideological devices disguising its dysfunctional character" (Moore, 2011, pp. 471). Christie argues that punishment is not about deterrence or reformation but the willful infliction of pain. Therefore, imprisoning someone does not just deprive them of their liberty but additionally causes physical and mental injury. When abolitionists make this argument, they expose

imprisonment as a mode of pain delivery. The question that remains then is how much pain is needed and how much is it justified (Moore, 2011)?

Since abolitionists are “concerned with the nature, function, and philosophy of punishment” (Ruggiero, 2015, para 12), if punishment causes a maximization of happiness rather than pain, it might be justified. Mathiesen (1974) contends that it does not and that imprisonment has no defence when offences possess a punishment value that is translated into an amount of time because time is subjective, and the perception of time is affected based on someone’s proximity to those who are serving a prison sentence. When considering this argument, it brings into question how arbitrarily prison sentences are determined. With no guiding principal, how could people ever determine the length of prison sentences fairly.

Abolitionists argue that there is no evidence that definitively supports the idea that a reduction of punitiveness leads to abolition, despite those who claim that “cultural shifts are possible via reduced punitive attitudes” (Woodall, 2018, para 17). Christie contends that once decarceration efforts are adopted, punitiveness decreases, and there may be movement toward human security logics that have abolitionist potential. Although the evidence cannot fully support these claims, abolitionists argue that “disrupting reifications of punitiveness that have come to constitute our penal system might produce unpredictable changes. When it is one’s self that is threatened with carceral subjugation, abolitionist visions may arise” (Woodall, 2018, para 17). Based on this information, questions arise regarding if the pandemic is the disruption that was needed to create change. As Mathiesen states, “over time, ‘my loyalty swung more clearly over from theory to the action itself’ (Moore, 2011, pp. 471). For things to change, people must imagine themselves being subject to prison impositions.

### ***3.4 Mathiesen: Trust, the Unfinished, Resistance to Change, and Decarceration***

For Mathiesen, some changes are not enough and do not provide the system with legitimacy, which is what he terms ‘negative reform’, or the removal of parts that the system depends on (Mathiesen, 1974). This type of reform may soften public criticism and is thought to potentially improve the system’s basis of legitimacy; however, that is not the case. The danger is that critics may lose sight of positive neutralizing reforms because of the system’s use of propaganda supporting the negative reform (Mathiesen, 1974). Mathiesen argues that these reforms are needed before positive reforms can occur; however, he urges people not to let them deflect attention away from the other issues positive reforms could help fix. It begs the question: which types of reforms were seen during the pandemic? Did the measures taken, and the policies passed, consider the abolitionist arguments or were they a part of the negative reform Mathiesen highlights?

Mathiesen also created the concept of the ‘unfinished’ and helped to conceptualize abolition as an alternative in the making. For Mathiesen, the long-term goal is to change how people think about punishment and replace the prison system with new measures that are adequate and up to date (de Folter, 1986). His short-term goal was to “tear down all walls that are not strictly speaking necessary; to humanize the various forms of imprisonment, and to soften the suffering which society inflicts on its prisoners... Abolitionism occurs when an established order is broken and we face the unbuilt ground” (de Folter, 1986, pp. 48). The unfinished is a new idea, while the finished is the thing we are trying to replace. For example, advocates who try to protect prisoners are trying to replace the prison system and look for better ways of rehabilitating those who commit crimes. For Mathiesen, the unfinished, or facing unbuilt ground, means that we do not substitute the established order with a new one. We must abolish what is finished, in this case, the prison

system or how it functions, to give the chance for the unfinished to emerge (de Folter, 1986). The alternative to the finished “needs to both contradict and compete with the old system it is trying to change or replace. The opposition though cannot be totally foreign to the present system, otherwise, no one will adhere to the message” (Ben-Moshe, 2013, pp. 84). Mathiesen contends there should never be a finished product and that there must be constant change. Considering the ideas of Mathiesen, did the pandemic bring attention to the need for change and allow the unfinished ideas to appear? Mathiesen also examines the variation in punishment where he relies on trust to provide an understanding of his arguments. Trust in the social system involves believing everyone can fit within it, even if they disagree with the norms of society. The way we punish shows the lack of trust and confidence in social arrangements, which has been replaced by trusting the authorities that inflict punishment. The level of trust and confidence in the elite is so high that people do not question the system’s practices such as responding to offenders who are powerful with greater leniency (Ruggiero, 2015). If we have over relied on the government elites to make the proper decisions in the past, did we do the same during the pandemic, or did the pandemic shed light on this and move us away from over reliance?

Mathiesen’s notions of the unfinished and trust can be used to understand resistance to change. Tensions arise when groups that have historically preferred a growing prison population encounter widespread momentum for prison reform. When this happens, a resistance develops that reveals the different ways through which prison industry stakeholders may disrupt reform efforts focused on reducing the prison population, improving prison conditions, and promoting successful re-entry (Meyer, 1972). There are strong currents of resistance to decarceration era goals and polls show “that people are less concerned about crime than about the economy” (Meyer, 1972). Mathiesen supports competing or negative reforms, which would compete with and contradict the

existing system and remain open-ended in terms of demands rather than advancing fully formed alternatives (Matthews, 2018). Radical actions must take place and they must be concerned with how to “commence and maintain a living and expanding - 'unfinished' - boundary transcending political movement” (de Folter, 1986, pp. 49). The unfinished gives perspective as to why people resist change as they experience insecurity about the ‘unknown’. If society continues to rely on the government to make the correct decisions for prisoners and the system, things may never change.

Within the discipline of criminology, there has been discussion about incarceration and decarceration, and the patterns within their movements. Forms of decarceration have been used and continue to be used today, for example, parole. This is a form of punishment that seeks to decrease the number of people within prison.

These movements are linked to reform and abolition debates. Abolition arguments range from people supporting gradual decarceration, to those who argue any reform leads to the growth of the prison system and should be avoided (Nagel & Nocella, 2013). The chasm between the pragmatists and those with a vision of the future that is a non-carceral society are not opposites. Some argue that to accomplish the long term goal of prison abolitions, there should be a chain of shorter campaigns, such as decarceration (Nagel & Nocella, 2013). The decarceration movement is at the opposite end to the cycle of social control models that focused on incarceration during the early 19th century (Scull, 1977). Decarceration is a policy that looks to close institutions used to control and treat criminals and deviants (Scull, 1977).

Criminologists in the 1960s and 1970s came together around radical political commitments, such as abolitionism and decarceration. Over time, there have been many different strategies used to support deinstitutionalization. The first is announcing closure in advance, so community support was gained. The second, is a swift and massive change from within and the

third is to depopulate the institution until it is eventually no longer cost effective to keep it open. This strategy is termed ‘abolition by attrition’ and relies on decarceration (Nagel & Nocella, 2013). The decarceration strategy is an aggressive reform effort and intends to slowly release people from the prison system. Problems seen with this approach is that it chips at the margins of the system while the center remains intact (Nagel & Nocella, 2013). So far, the decarceration movement has "led to deepening a retributive system in programs now billed as alternatives to incarceration, such as boot camps and parole sanctions" (Nagel & Nocella, 2013, pp. 89). These are beneficial but did not provide the necessary changes to alter the system from within. An example of this issue is shown because "restitution and probation are now added on to long sentences, not used as real alternatives to incarceration" (Nagel & Nocella, 2013, 89).

The literature on decarceration discussion shows the connection it has to abolitionism, the issues seen in the past for why decarceration has not been implemented, and the issues with the movement itself. My research relates to this as decarceration is being advocated for during the pandemic. The pragmatist view seeking gradual changes in the hopes of ending up at the long term goal is what advocates have been pushing for. This thesis furthers the discussion being had within the criminology discipline and shows how the decarceration movement is still prominent today.

### ***3.5 Conclusion and Limitations***

The concepts discussed herein constitute the theoretical framework for this thesis. The abolitionist perspective connects to the state of exception theory through the notion of global carceralization, which is a critique of preventative detention and its regimes of practice that are established through traditional juridical means or normalized suspension of law (Carrier & Piché, 2015). Abolitionist logic is influenced by the state of exception and the claims that “it tends increasingly to appear as the dominant paradigm of government in contemporary politics” (Carrier

& Piché, 2015, para 51). The state of exception theory causes factuality and legality to blend, creating a space where the law is suspended. What is important is Agamben's argument that "political life is premised on the exclusion of naked life from the realm of politics, and thus law..." as "no forms of life should be confined on any grounds, particularly not on the grounds that some forms of life are denied political existence and recognition" (Carrier & Piché, 2015, para 51).

Davide Giordanengo (2016) discusses Agamben's point that the inclusion of human life in the judicial order is a means of depriving people of the protections that the law affords. However, he does not consider that certain populations are more frequently subject to this dehumanization. Specifically, certain measures and stripping individual rights are often implicitly directed at prisoners and other minority groups, such as Black and Arab/Muslim people, who are overrepresented in the prison system. Giordanengo (2016) also critiques the lack of consideration for how society plays a role in our punishment agenda. Agamben's theory is a top-down approach where the sovereign acts on subjects and imposes this state of exception on them. Giordanengo (2016) argues that the sovereign operates by exploiting societal fears, uses historical norms to push their decisions and that jurisprudence is reflective of the society. An example of such a fear is the COVID-19 pandemic and the feelings of uncertainty it caused. For Mathiesen, the main objective is to change how people think about punishment and replace the prison system with new measures that are adequate, up-to-date and which remain 'unfinished'.

Passavant (2007) argues that Agamben's theory lacks suggestions as to possible solutions. Mathiesen provides an understanding of why the government is so resistant to implement change and why it consistently relies on outdated notions that erode minority rights. He includes the notion of the unfinished to overcome resistance and maintain constant change. Lastly, the concept of hyper-reliance shows that positive outcomes from a crisis are possible, emphasizing the

importance of acting upon the opportunity to see positive change. However, this concept does not discuss the types of change that can occur nor the variation in the level of change, which are better highlighted by abolitionist perspectives.

## **CHAPTER FOUR: Methodology**

The following chapter outlines the methodological approach for this research. The main goal of this thesis is to better understand the challenges and impacts the pandemic has had on prisoners' human rights and their advocacy. More specifically, this thesis seeks to explore the restrictions that have been put into place within carceral institutions, to understand how advocacy was impacted by the pandemic and how they adapted to it. This chapter begins with a discussion of the critical paradigm that underpins this thesis, followed by an outline of the research question and goals. Then, the research design and the techniques used to analyze and code the data are discussed. The chapter concludes with a discussion of the methodological limitations of this study.

### ***4.1 Ontology and Epistemology: Reflecting on the Paradigm***

There are four dominant paradigms that represent different views on reality, what knowledge is, and how we can acquire legitimate and valuable knowledge (Glesne, 2010). Each paradigm consists of ontological, epistemological, and methodological beliefs that underpin the framework. This thesis functions under the critical paradigm that critiques historical and structural conditions of oppression and seeks to transform those conditions (Guba & Lincoln, 2003). Relatedly, ontology refers to the nature of reality and what can be known about it (Guba & Lincoln, 2003). The critical paradigm follows the assumption that reality is malleable and can be shaped or changed due to social, political, and cultural forces. The world exists outside of someone perceiving it and can be altered by forces, meaning we can make the world something else (Guba & Lincoln, 2003).

Epistemology refers to the nature of knowledge and asks what can be known (Guba & Lincoln, 2003). The epistemology of the critical perspective functions through the belief that values should guide the research (Guba & Lincoln, 2003). Facts are not neutral, which means they

must be interpreted from a value position. Subjectivity is central to this paradigm, which suggests our understanding of the world is affected by our positioning within the social structure, and impacts how we conduct research and interpret data. Science shapes reality which means research is a political act (Guba & Lincoln, 2003). However, science is not neutral and is commonly used for social control. Critical researchers look to use it for social emancipation and empowering those who are oppressed (Guba & Lincoln, 2003). This means the research will challenge existing power structures and work towards a world that is just and equal.

I chose to adopt a critical perspective as my research question explores the reality of the prison system during the pandemic and considers the political pressures at play. Knowledge in the critical paradigm is subjective and influenced by social, political, and cultural feelings. This thesis reflects that as political and social pressures could play a role in decision-making processes within the penal system. The goal of the research is to observe if prisoner rights have been protected with various restrictions being implemented to stop the spread of COVID-19. My thesis looks at documents from government departments, as well as other sources to ensure multiple opinions were being considered and to allow for inconsistencies to be revealed. My research reflects this paradigm by looking to reveal how prisoners are being treated. It is important to investigate government bodies, such as the CSC, because they are responsible for making decisions regarding prisoner rights.

#### ***4.2 Research Question and Goals***

During the research process, I looked to analyze how the pandemic has been used to either erode prisoner rights or to promote change, seeking to understand if there are differences between what is happening experientially on the ground in Canadian prisons versus what prison officials and government organizations are saying. Therefore, the research question guiding this

study is: *How have the human rights of prisoners and (anti) carceral advocacy been impacted by COVID-19?* The sub-questions include:

- What decisions were made by the provincial and federal organizations in charge of the institutions?
- How have the human rights of prisoners been impacted by the decisions?
- What has been advocating?
- Who has advocated?
- How has COVID-19 been used to advance advocacy perspectives (such as abolitionism)?
- What changes (both positive and negative) have occurred?

The main goal of this thesis is to gain an understanding of whether a crisis such as COVID-19 could create a moment where the state of exception applies or an opportunity for hyper-resilience and positive change to emerge.

The specific objectives are to analyze what restrictions were put into place and the challenges that came with them, the human rights being violated due to the restrictions, who advocated, how and what have they advocated for, the role of abolitionist frameworks in advocacy frameworks, and lastly, what was gained and lost from this advocacy.

#### ***4.3 Design and Method of Data Collection***

I chose to conduct a document analysis as it allowed me to achieve the goals set out at the beginning of my research. The documents from this analysis can provide background information, historical insights, track changes, and development, and suggest questions that need to be answered (Bowen, 2009). My research looks to gain an understanding of the changes that have occurred in the carceral institutions and how they have affected human rights for incarcerated people. This includes understanding why certain decisions were made (or not). Similarly, how advocates were affected and what changed for them. Based on this, a document analysis provides the most accurate

data as many documents were released regarding the issues and changes that were occurring within prisons due to the pandemic. I opted for a document analysis as interviews were not feasible due to ongoing issues of getting access to carceral institutions and it would have been impossible given the time restraints of this thesis.

Information was collected from publicly available sources which made data collection more efficient and limited ethical concerns. A document analysis is a “systematic procedure for reviewing or evaluating documents” (Bowen, 2009, pp. 29). This requires the analysis, examination, and interpretation of data to elicit meaning, understanding, and develop empirical knowledge (Bowen, 2009). Data must be selected and the content within it must be synthesized in relation to the topic. “Document analysis yields data—excerpts, quotations, or entire passages—that are then organized into major themes, categories, and case examples through a method of analysis such as thematic or content” (Bowen, 2009, pp. 28).

I began my data collection in April of 2020, as my thesis topic was chosen, and data was frequently being released on this topic. At this time, I compiled documents sent to me by my professors, the university or documents I came across relating to COVID-19 in prisons. I collected data by conducting frequent searches online (for example, the school’s library database). I also kept a record of the various webinars and discussions that were being held regarding the issues the pandemic caused for the prison system.

In April 2021, I was ready to officially begin the process of data collection and analysis. I kept all the documents that were collected previously through convenience sampling and looked to deepen my data set by conducting further data collection. Convenience sampling obtains documents that are easily accessible to the researcher (Etikan et al., 2016). This form of sampling was not sufficient for my project, which is why I invoked the use of a purposive sampling

technique. Purposive sampling is a technique where a deliberate choice of the data occurs due to the quality and the content it possesses (Etikan et al., 2016). It is a non-random technique where underlying theories are not needed (Etikan et al., 2016). The researcher decides what they need to know regarding the topic and sets out to gather this information. This technique is used “to identify and select information-rich cases for the most proper utilization of available resources” (Etikan et al., 2016, pp. 2).

I used this form of data collection both before and after reading through my documents as it allowed for the gaps in the data set to be filled. Prior to beginning the second search, I divided the initial set of documents I had collected into categories based on the source of the document. This allowed me to see which areas needed further data and guided the second round of data collection.

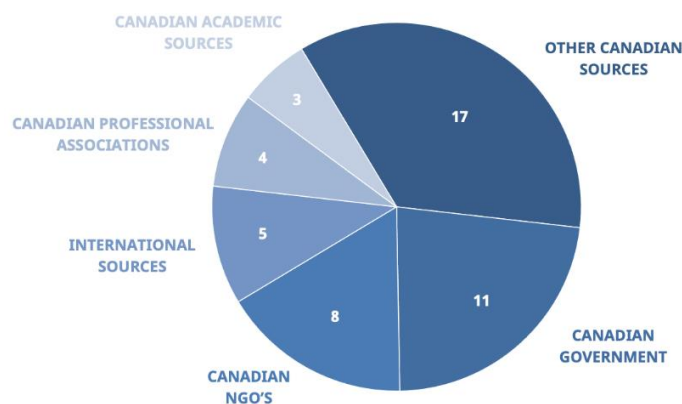
#### ***4.4 Formation of the Final Data Set***

The data was sorted into six different categories of production to ensure the diversity of sources within the dataset and that each category had sufficient data. The six groups were the following:

- Canadian NGOs: Any source that was not produced by the government, for example, a not-for-profit organization.
- Canadian Government (Federal and Provincial): Any department associated with the government.
- International Sources: Any source produced from a source outside of Canada or by a global association. For example, the United Nations.
- Professional Associations (Canadian): Lawyers, and Law foundations.
- Academic Sources (Canadian): Any source that was distributed or published by a university or was peer reviewed.
- Other Canadian Sources: Anything that does not fit into the above categories. For example, a variety of news reports.

**Table 2:** *The Number of Documents for Each Type of Organization*

\*See Appendix A for full chart



<https://1drv.ms/x/s!AgLUhplmurPejC6FtJfD4aMeajj3?e=eTVo3T>

Table 2 shows the breakdown of sources and indicates how many sources were within each category. Collecting documents from these diverse sources allowed for a wide variety of perspectives on the topic. Government organizations have a different outlook on these issues as they are the ones making the decisions, especially when compared with non-government organizations. For example, the CSC makes decisions for all federal institutions and their documents provide an understanding of why they make certain decisions. Advocates, on the other hand, question these decisions, look for alternatives, and above all else, fight to protect prisoner rights. Having data from a variety of sources ensured each perspective was considered, which provided a fuller understanding of the effects of the pandemic. As advocates are in contact with prisoners, they can provide an insider perspective on these issues. Prisoners do not have a platform where their voices can be shared, which is why it is important to research this topic. Over time what goes on behind prison walls has become hidden from society so ensuring the accuracy and

diversity of the data was crucial to avoid biases and get the most accurate understanding of what was happening within and outside the institutions.

The main challenge while collecting the sample was ensuring I had enough documents from each group to avoid considering only one perspective. My final data set consisted of 48 documents that were released between March 2020 and April 2022. As I examined the Canadian context, most of the documents included in the data set were published in Canada. There were 5 international sources; however, all of them directly mentioned or were related to the Canadian context. There are a variety of sources that these articles come from including some of the following: World Health Organization, Canadian Journal of Public Health, Government of Canada, Prison Transparency Project, and different universities across Canada. The categories of these documents included academic articles, books, news articles, petitions, and case studies.

#### ***4.5 Data Analysis***

The analytical technique used for this thesis was a thematic analysis. Thematic analysis is a method that identifies and analyzes codes and themes within a data set. I chose this technique because of the flexibility it offers and its ability to summarize large quantities of data (Braun & Clarke, 2006). As the pandemic is ongoing, data continues to be released, and including more data provided a fuller picture of what was happening within the institutions. While writing my analysis, more data was released; therefore, the ability to include new data was important. Braun and Clark (2017) state that codes are the smallest unit of analysis, capturing interesting features within the data. Codes are the building blocks of themes and themes are the framework to organize the researcher's analytical observations. Themes are repeated throughout the data set; however, greater saliency does not necessarily make one theme more important than another, which is why a researcher's judgement is needed when deciding what counts as a theme (Braun & Clarke, 2017).

During this process, the researcher reads the data set multiple times while taking notes and noting potential thematic codes (themes). This form of analysis has multiple steps which researchers follow to analyze a data set and produce a report. The process involves careful and focused reading, rereading, and review of data.

This analysis was both deductive and inductive. I had chosen one of the theories prior to the first reading of my documents (the state of exception), which created preconceived themes I expected to find within my data. However, the rest of my theories were added after analysing the data based on the themes that were coded.

I started my analysis by creating a chart that included every document used for the analysis. A breakdown of each document was included, listing elements such as author, content type, and publisher. After reading through each document for the first time, a list of initial codes was created. Some examples of these codes include, overuse of isolation, the need for decongestion measures, lack of personal protective equipment (PPE), overcrowding, and the need for health services. I conducted this step following the deductive approach as I had started with preconceived notions of themes within the data. The challenge here was ensuring that the codes lead to themes that captured the data but were not repetitive. The data discussed the issues and recommendations repeatedly which meant that I had to find a way to incorporate them without being repetitive. After the codes were created, I had identified five themes under which the codes were sorted that I decided best captured the information coming from the data:

- 1) The decisions made within the federal and provincial prisons to stop the spread of COVID-19.
- 2) The human rights of prisoners (including liberties and health) impacted by COVID-19.
- 3) The recommendations advocated for during the pandemic to protect prisoners.
- 4) The advocacy of prisoner rights.
- 5) The reactions to the advocacy by the public and the institutions.

These themes ensured that all elements of the data were included without repetition, and that the objectives (listed in section 4.2) were answered. Once these themes were created, I sorted the dataset by the type of organization that produced them (i.e., NGO's, government associations, professional association, academic sources, international sources and other; see section 4.4 for a detailed breakdown). This was important to ensure that each group had enough data within them. It was also important to have data from both the provincial and federal jurisdictions. During this step, multiple new documents were added to the initial dataset that fit within the research topic. The documents came from specific searches on online databases such as google scholar, the library database, and online platforms (such as advocacy pages).

Once this sorting was complete, a second reading of the data was done, and the data was coded into the different themes. During this step of the analysis, it was clear that the fifth theme (mentioned in the list above) was not feasible with this data set. Although some information discussed it during the initial analysis of the data, there was not enough to analyse it in depth. Due to this, the time frame, and the ongoing pandemic, the reactions could not be observed to their full capacity. Following my second scan of the data, codes arose that I had not expected to find within the data, for example, forms of resiliency. Therefore, as I continued my analysis, I followed an inductive approach which starts with data collection, data analysis, and then the development of generalizations (Blaikie, 2000). For this process, researchers start with multiple observations and by coding the data, patterns are established (Pascale, 2011). It is important to note that in the inductive analysis process you do not have pre-existing codes (Braun & Clarke, 2017), which in this case, I did not have. I further categorized the codes into themes to better reflect the data. The final themes were the following:

- 1) Violations of rights acceptable in the context of emergency.
- 2) Prisoners rights are worth prioritizing.

- 3) Advocacy resilience during times of crisis (who, what and how).
- 4) Gains and losses stemming from pandemic pressures.

These final themes emerged from the original set of themes; however, they more accurately captured what the data was showing. Theme 1 included both a discussion on the decisions made and the human rights that were affected by them. Themes 2 and 3 discussed the recommendations made by advocates, how they advocated, who was advocating, and why the advocacy was important. Theme 4 was a new addition as I realized there were some gains and losses seen from the advocacy. However, the reactions to the advocacy could not be assessed.

Following this breakdown, I searched for data to fill gaps seen during my initial analysis. For example, I decided a section on why prisoners needed to be prioritized should be included, so I looked for articles specifically discussing that. Similarly, I had some documents discussing the issues of overcrowding but because it was a major issue that was also seen pre pandemic, I needed to look for more data that delved deeper into that topic. I then conducted a final reading of the documents to sort and code the data into the themes more specifically, including quotes and charts. This follows the next steps Braun and Clarke (2006) discussed which were refining the specifics of each theme and lastly producing a report.

During the final reading of the data, I reached a point of saturation and determined that the data set was complete. Data saturation is a core principle in qualitative research that used to determine if a data set is adequate in developing a full understanding of the phenomenon (Saunders et al., 2018). This is important to include as it provides an indication of the validity of the findings and is included in the criteria to assess the quality of the research (Saunders et al., 2018). Saturation is reached during the analysis when observing more data does not lead to any new discoveries related to your research question (Saunders et al., 2018). This is a point of redundancy; the researcher ceases to gain new insights after collecting more data (Morgan, 2022).

#### ***4.6 Limitations and Reflexive Considerations***

Conducting a document analysis carries both benefits and limitations. There are fewer ethical concerns as there is a lack of obtrusiveness and documents are not affected by the research process in the way that human participants may be. However, researchers are unable to check for bias within the documents they are using. According to Morgan (2022), within some qualitative models of research, researcher bias is not considered a concern because all research is viewed as subjective. Being aware of the social, political, cultural, and economic factors that influence their perspectives as well as those of the participants they study, is part of the research process. What is most important for critical researchers is being reflexive about the social forces that could influence their work. The social pressures relevant to this thesis came from the public and government institutions. Politics played a role in my research because it looked at the decisions that were made during COVID-19 by the government. It is important to acknowledge the potential bias during the data collection and selection. Some of the data collection relied on documents being distributed by universities and professors. This part of the collection was not systematic; therefore, some data may have been missed. Similarly, it is important to note the potential bias that news stations display. Some take certain issues more seriously and critically than others. The news articles used in this thesis seemed to have the same overall messages; however, bias is still important to be aware of. When selecting news articles, I ensured there was a certain level of diversity by including news stations that were considered right and left leaning. There were limitations to the collection of news articles because using google scholar and the university database, rather than specified research tools for news articles (i.e. Factiva) meant there were gaps in the data set. Since I was not conducting a media analysis, I did not want a data set made up of entirely news articles and deemed it unnecessary to use that type of research tool. The news articles were included as supplementary documents and as I used the most publicly available sources, some news articles were included.

To avoid further bias that may be present within the documents, I collected data from a variety of sources. Ensuring I did not only obtain documents from government organizations, such as the CSC, was crucial, as they act as gatekeepers. The CSC only publishes certain information and does not let the public have access to certain information. Having a data sample that included documents from a variety of sources ensured I captured a fuller picture of what was happening within these institutions during the pandemic and ensured contradictions and inconsistencies could be revealed. Without these perspectives, only one side of the story would be considered, and the research could be biased. Similarly, I had to be aware of what was being published and ensure that what I published was an accurate representation of the data, as it helped to avoid academic fraud. This also avoids the data being inaccurately used by other researchers to make their own hypotheses.

Morgan (2022) also discusses the coding process of a document analysis. Since part of this analysis followed an inductive approach, the codes were not all predetermined. This means that codes can be created or split into two codes if doing so better reflects the interpretation of the data. This allows researchers to uncover unexpected meanings rather than just summarizing the data. However, the researcher's assumptions are still present even when the codes are not predetermined, meaning, another researcher could potentially come up with different findings. It would be interesting to look at how things change in the future due to what the institutions have experienced and the advocacy during the pandemic.

#### *4.6.1 Ethics and Rigor*

There were ethical considerations made when conducting my research in terms of credibility, dependability, confirmability, and transferability.

Credibility can be displayed through tactic knowledge and triangulation. Tactic knowledge is knowledge from beyond the surface of the data (Tracy, 2010). I dove beneath the surface of the data to avoid just seeing the assumed issues. That is why after my initial reading, new codes emerged, which brought up new ideas, themes, and additions to my theoretical framework. Triangulation ensures using multiple sources, methods, and theoretical lenses, as it is considered valuable in the critical paradigm (Tracy, 2010). As shown throughout the thesis, this was followed to ensure that different facets of this problem were explored.

Dependability requires the researcher to account for the ever-changing context where the research is occurring (Tracy, 2010). There is no doubt that the context of the pandemic greatly affected the prison settings and that had an impact on my research. As noted, some of the issues I analyzed were reoccurring and had been seen before the COVID-19 pandemic; however new issues emerged from the pandemic given the changing environment. This was highlighted and provided clarity on the research context which is evident throughout the thesis.

Confirmability was maintained by checking and rechecking the data throughout my analysis and ensuring I added additional data that was released after the initial data collection. This meant the research results could be corroborated by others.

Lastly, transferability of the research to other contexts or settings is possible, as the research context was made evident throughout the thesis. For example, the theoretical framework could be generalized or transferred to understand the rights violations within old age homes or halfway houses.

## CHAPTER FIVE: Findings and Analysis

In this chapter, the results from a document analysis that includes data from NGOs, international associations, professional associations, academic sources, government bodies, and news stations are presented. The analysis aimed to answer the following research question: *How have the human rights of prisoners and (anti) carceral advocacy for their rights been impacted by the COVID-19 pandemic?* To explore this question, we need to consider the following: what governmental and institutional decisions were made during COVID-19 and how did they affect prisoner rights? What did advocates recommend during this time and what changes occurred due to this advocacy?

The first section explores how the carceral living conditions and prisoner rights were affected in three areas. The first area describes how the virus caused issues for prisoner's health and hygiene. The second describes how prisoners were affected by the management of COVID-19 in prisons. For example, having less staff, delays in courts, and lockdowns. Lastly, the effects of overcrowding are discussed.

The second section explores the content of advocacy, how advocacy for prisoners was justified, who advocated, how advocacy occurred, what was being advocated for, and the gains and losses that resulted.

It is important to note that both provincial and federal institutions are included, therefore, decisions made by the CSC and the different departments that administer corrections in each province are included. Although they operate following similar laws, some of the decisions were different. However, similar issues and challenges were faced at both levels of institutions and the same human rights violations occurred.

## **SECTION 1: How Living Conditions and Rights Were Effected**

### ***5.1 How Living Conditions and Rights Were Effected by COVID-19***

The coronavirus increased certain issues that have long occurred in correctional facilities. Unsanitary conditions are one of the greatest challenges that these institutions face, which the pandemic exacerbated.

Infectious diseases thrive in these institutions which become the epicenters of disease for several reasons: “poor ventilation—under potentially unsanitary conditions, limited access to healthcare, overcrowding, and elevated health-related risk factors” (Frédéric et al., 2020. p. 480). Once an organism is introduced into these settings, it spreads very quickly and is hard to stop (Cervin, 2021). When COVID-19 was discovered, it was especially worrying for these institutions because they are “closed, overcrowded and poorly ventilated and sanitized spaces” (Moore et al., n.d., para 5). As one document stated, “prison environments are vulnerable to widespread severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) transmission” (Blair et al., 2021, p. 66).

A similar issue that was mentioned repeatedly was the lack of access to the means to properly sanitize the environment.

During the pandemic, access to protective equipment, soap, sanitizers, and any kind of support in the prisons was limited or non-existent. In addition to limited protections and supportive measures, there were very few, if any, additional community release specific resources available (Chartrand, 2021).

Many documents discussed inadequate access to soap, masks, PPE, cleaning products, and sanitizers (Saskatchewan-Manitoba-Alberta Abolition Coalition, 2020). The Correctional Investigator noted that PPE and sanitization were only being offered to staff, not prisoners (Flood et al., 2020a). By May of 2020, two months into the pandemic, lack of access to soap and masks was limited. In 2021, there was masks distributed; however, quantities were limited (West Coast Prison Justice Society, 2020). During the pandemic, the CSC released statements on the cleaning

protocols they followed, including, educating staff and prisoners on good hygiene practices, giving direction on the type of cleaning that needs to occur, identifying stock availability and distribution, and determining the need for disinfectant and hand sanitizer (Correctional Service Canada, 2021b). They emphasize the information being distributed but fail to mention if prisoners have access to PPE. As shown above, prisoners did not have access to PPE, although staff did. It is important for staff to have access, but it is equally important for prisoners too. These unsanitary conditions affect prisoners' personal hygiene as well. One mother stated that her son would only get 30 minutes out of his cell each day to shower or make a phone call (Hobson, 2020). The lack of access to showers and the surrounding unsanitary conditions of the institutions means prisoners are unable to maintain proper hygiene.

As prisoners living in a congregate setting, where many of us are immunocompromised, we're at a significantly higher risk than the general public to get COVID-19 and yet we're not provided PPE other than a mask when we leave our units (Budlakoti, 2022a, para 3).

Not only are closed institutions at higher risk for spreading the disease, but incarcerated people are also at a higher risk of contracting it and suffering more severe symptoms. "Many people held behind prison walls face ongoing health concerns, including high rates of tuberculosis and HIV" (Moore et al., n.d., para 5). The health status of those in prisons and penitentiaries is often poor to begin with, so the pandemic has affected them greatly (Cervin, 2021). There is a prevalence of chronic conditions that prisoners face especially among Indigenous women, meaning they are at an increased risk of having severe reactions and symptoms if they get COVID-19 (Ryan et al., 2020). In April of 2020, the Ontario Court of Appeal in the *R. v. Kazman* trial acknowledged that "the accused's age, prior health conditions put him at risk for the virus, while being in jail will make it difficult, if not impossible, to practice such social distancing" (Ling,

2020, p. 16). This information shows that prisoners are at greater risk of contracting the virus than other members of the public.

Most living units required significant renovation -Edmonton Institution for Women Warden (Senators Today, 2022, pp. 12).

In this report, Senators Forest-Niesing and Pate discussed the issues with corrections that they witnessed when visiting federal institutions around Canada. The introduction of Bill C-83 (*An Act to amend the Corrections and Conditional Release Act and another Act*) in 2018 led them to start this research which continued until the pandemic began. They contended that the conditions of confinement did not meet the legal requirements set out to protect from the issues mentioned above. They found Dorchester Institution, Joliette Institution, and the Edmonton Institution for Women have substandard conditions and units at the Grand Valley Institutions had leaky roofs, mold, and ventilation issues. At Kent Institution, they observed dried feces on the walls of prison cells that had not been cleaned. Ste. Anne-des-Plaines Regional Reception Centre had similar issues, where “cells were poorly ventilated, despite their location near air-conditioned and well-ventilated staff offices” (Senators Today, 2022, pp. 12). At the same institution, they observed one cell which had been flooded from a toilet that contained fecal matter and toilet paper (Senators Today, 2022).

Mandela Rule 18 is being violated due to these conditions as prisoners’ hygiene is negatively affected. Also, due to lockdowns, the ability to get out of their cells to use a shower has been limited. Mandela Rule 18 states that “prisoners shall be required to keep their persons clean, and to this end, they shall be provided with water and with such toilet articles as are necessary for health and cleanliness” (Mandela Rules, 1955, pp. 6). It also notes that prisoners should maintain a good appearance as a form of self-respect and will be provided with necessary items to properly

care for their hair and beards. (Mandela Rules, 1955). Due to the lockdowns, prisoners are not able to shower regularly as they are being held in their cells. When they are allowed out of their cells, they have limited time and must decide if they will use it to shower or call family members, friends, and lawyers. These living conditions are also violating the laws set out to protect prisoners. The CSC is required to “adhere to all applicable federal health, safety, sanitation and fire laws within each penitentiary, in order to ensure a safe and healthful penitentiary environment” (Senators Today, 2022, pp. 12). They are also required to provide prisoners with adequate clothing, food, bedding, hygiene items, and anything necessary for personal health and cleanliness (Senators Today, 2022); however, as shown this has not been the case. The pandemic has caused the list of necessary items to increase as access to PPE and sanitation is needed.

## ***5.2 How Living Conditions and Rights Were Affected by The Management of COVID-19 in Prisons***

### ***5.2.1 Total Lockdown and Isolation During COVID-19***

The main restriction and preventative measure that was put into place to stop the spread of COVID-19 in prisons and penitentiaries was the use of lockdowns. Once an outbreak was declared, “institutions went on total lockdown and even with no outbreaks prisoners were only allowed out of their cells for 2-4 hours a day” (Flood et al., 2020a, pp 375).

I am currently in custody at the Ottawa-Carleton Detention Centre (OCDC) where there’s an ongoing outbreak that has infected at least 28 prisoners and 42 staff members as of the start of this week. The facility-wide lockdown at the jail means we only get around 30 minutes per day out of our double- or triple-bunked cells (Budlakoti, 2022a, para 1).

Mission medium institution was hit hard (120 cases) from April 1-June 2020 they were on lockdown. For the first 8 days’ no one could leave their cells after that they were allowed out for 15-20 every 2-3 days. During these 8 days, they were also denied canteen, showers, phone calls, fresh air, and human interaction (West Coast Prison Justice Society, 2020, pp. 31).

These lockdowns occurred frequently just as they did for the general public, however, in these institutions, lockdowns and segregation were also used to quarantine new prisoners entering the prison and people who have tested positive for COVID-19 (Walby & Piché, 2020). Both the federal and provincial institutions banned in-person visits and access to volunteer organizations. In the federal institutions, they modified routines across the organization and reduced staffing levels, which meant group education and programs were suspended (Correctional Service Canada, 2020e). The following quotes demonstrate the consequences of the lockdowns within the institutions.

Institutions with outbreaks only offer daily yard and fresh air exercise every second day, half an hour, twice per week or sometimes completely suspended (Office of the Correctional Investigator, 2020, pp. 3).

Prisoners are only further isolated as all jurisdictions have suspended in-person visitations and programming in an attempt to mitigate opportunities for the virus to enter prisons (Ricciardelli & Bucerius, 2020, para 4).

They have suspended visits, programs, and other activities within facilities to stop movement within sites of confinement. Lockdowns have occurred frequently to stop the spread and segregation has been used for quarantining new prisoners entering the prison or people who have tested positive (Walby & Piché, 2020 pp. 2).

As shown, the CSC made the decision to suspend all visits, activities, services, temporary absences, transfers between federal institutions, and confined prisoners to their units with little to do each day (Blair et al., 2021). As a result of these restrictions, prisons were in lockdown for 23 hours a day and prisoners had no access to the library, gym, or cafeteria (Chartrand, 2021). To put into perspective how common it was for these lockdowns to occur, 45 federal penitentiaries had gone into lockdown at least once by March 1st, 2020 (Correctional Service Canada, 2020b). This was only one month into the pandemic and two months later, institutions had gone into lockdown numerous times as COVID-19 spread and new variants surfaced.

One of the most common responses to the COVID-19 outbreaks in prisons was the use of segregation (Flood et al., 2020). It was stated that “in institutions with active outbreaks those who are not infected are still held for 24 hours in their cells and get approximately 20 minutes a day out of their cells” (Flood et al., 2020a, p. 375). The institutions without outbreaks have stated that prisoners get 2-4 hours out of their cells each day (West Coast Prison Justice Society, 2020). Those who are infected or suspected to be must isolate and local public health authorities must be informed. This means that those isolating are denied access to the yard or any opportunities for fresh air (Office of the Correctional Investigator, 2020). Family members of prisoners at the Headingley Correctional Centre in Manitoba were interviewed. One prisoner’s mother noted that

When my son started to experience symptoms he requested testing for himself and the inmates in his block but the staff rejected the request. They were given nothing to occupy their time, for example, magazines or books (Hobson, 2020, para 13).

A spokesperson from the detention center stated that just as in the community, when prisoners test positive, they must isolate, and the center has designated isolation areas. However, they would not comment on whether segregation was being used (Hobson, 2020). In February 2020, a new report found “excessive isolation in Canada's prisons amounts to torture and inhuman treatment, with many federal inmates not receiving even a few hours a day out of their cells” (Rodriguez, 2021, para 26).

Segregation was abolished in Canada in 2019; however, just months later prisoners were put back into isolation. This shows that Canada is not taking the necessary steps to protect the lives and mental health of prisoners (West Coast Prison Justice Society, 2020). When abolished, segregation was replaced with structured intervention units (SIU) which have been used a lot throughout the pandemic. From March 1<sup>st</sup>, 2020 to August 30<sup>th</sup>, 2020, 1,131 prisoners were transferred into these units. During this same period, 1,155 prisoners were released from an SIU.

The average duration in the units was 36 days and the longest was 271 days (Correctional Service Canada, 2020c). Similar use of the SIU's occurred throughout the pandemic. Segregation was also used at the provincial level. For example, Newfoundland and Labrador published segregation numbers for both February 2021 and March 2021. On average 10 prisoners were placed in isolation each day (Correctional Service Canada, 2020f). Speaking about the Ottawa-Carleton Detention Centre, Budlakoti stated:

Our cells don't have windows and lack fresh air. We eat our meals feet away from the toilet. Imagine all this occurring without any mental health support to help your loved one manage; we don't even have access to a mental health nurse under lockdown (2022a, para 4).

Prisoners' mental health deterioration in relation to the restrictions being used, specifically isolation, was a major concern. The CSC stated they were unable to provide data on how long prisoners were held in medical isolation because it was not recorded. However, in April 2020, 963 prisoners were being held in medical isolation in federal institutions (Correctional Service Canada, 2020d). This medical isolation was used for any prisoner who showed symptoms. The CSC stated that every effort was made to provide prisoners in medical isolation with as much time out of their cell as possible (Correctional Service Canada, 2020e). Despite the OCI of Canada raising concerns about the violation of statutory obligations, legal rights, and potential harm to psychological well-being (Blair, et al., 2021). The CSC has shown a lack of consideration for prisoners' mental health during the pandemic (West Coast Prison Justice Society, 2020) and provincial prisons experienced similar lockdowns. When questioned on protocols issued and measures adopted to protect the health and mental health of prisoners and staff, Nova Scotia stated that "the level of care and services offered remain unchanged. We implemented universal precautions (PPE) for staff, universal testing for all new admissions to the facility, and a 14-day quarantine" (Nova Scotia Health, 2021, pp. 2). There was no mention of how prisoners' mental health was being protected.

The pandemic itself has caused many people's mental health to decline; thus, more than ever mental health supports are necessary.

In Canada, some people in prison reported deteriorating mental health that resulted in suicide attempts and self-harm. With few other options available, people in prison have resorted to hunger strikes as one way to protest the inhumane conditions (Moore et al., n.d., para 7).

There are many negative side effects to the conditions that prisoners are being forced to endure and it is causing them high levels of stress (Frédéric et al., 2020). An executive director of the Elizabeth Fry Society in Manitoba stated that “putting individuals in that kind of environment can have traumatic effects, especially when that individual is dealing with health concerns relating to COVID-19” (Hobson, 2020, para 19). Due to the lockdowns, prisoners were also left in the dark about what was happening on the outside, which only increased their levels of stress. Despite elevated mental health distress, during an outbreak some institutions only had two nurses and one part-time physician caring for 200 people. (Flood et al., 2020a). Considerations of people's mental wellness were largely ignored during the pandemic (Hobson, 2020).

Deepan Budlakoti, a prisoner who was held in Ottawa-Carleton Detention Centre (OCDC) during the pandemic, has commented on the toll these conditions take on prisoner's mental health and the lack of available support stating:

Cells have no windows which means you get no fresh air, you sleep on a 2-inch mattress, cells have an open toilet, you eat on the floors, there could be one or two more prisoners in the cell with you and it gets to you mentally (Budlakoti, 2022b).

While Ontario has policies on paper to limit the use of segregation, a form of forced isolation, there's nothing similar in place to address the inhumane conditions of prolonged lockdowns, which can occur for any number of reasons including COVID-19 outbreaks, staff absences owing to illness or other causes, or even maintenance issues (Budlakoti, 2022a, para 6).

The above quote is crucial to consider as the courts can abolish certain policies for being unconstitutional, but what happens in a time of crisis such as COVID-19 when institutions rely on these measures? Who is there to protect the prisoners from these inhumane conditions? The rights of prisoners are forgotten because there is no accountability or transparency ensuring international or charter rights are protected when inside (Budlakoti, 2022b).

### *5.2.2 Rights Violations stemming from the lockdowns: Segregation and Lack of Movement in the Prisons*

Due to the preventative measures that prisons and penitentiaries adopted, prisoners were isolated and subjected to prolonged segregation. Mandela Rule 44 defines segregation as “the confinement of prisoners for 22 hours or more a day without meaningful human contact” (Mandela Rules, 1955 pp. 14). If the confinement lasts 15 consecutive days or longer, it is considered prolonged segregation (Mandela Rules, 1955). It has been found that segregation is a breach of international norms and human rights. Both prolonged isolation and indefinite isolation (isolation without a clear end) constitute torture (Mandela Rules, 1955). The environment prisoners are in due to lockdowns have resulted in no more than 30 minutes out of their cells each day. S.12 of *the Charter* (1982) states that “everyone has the right not to be subjected to any cruel and unusual treatment or punishment”, which speaks to torture and excessive or abusive use of force by law enforcement officials. As mentioned in the previous section, it has been found that excessive isolation amounts to torture and inhumane treatment (Chartrand, 2021). S. 7 of *the Charter* (1982) protects the life, liberty, and security of the person and states that every citizen has the right to each. The government must respect these principles of justice whenever they intrude on rights. Using segregation as a solution to COVID-19 goes against s.7 of *the Charter* (Flood et al, 2020a).

Due to the well-documented consequences of isolation, individuals should not be segregated for prolonged periods as a routine preventative measure (Iftene, 2021).

The introduction of Bill C-83 (*An Act to amend the Corrections and Conditional Release Act and another Act*) led senators to visit the Federal penitentiaries in Canada to assess their compliance with the law. In a report released by Senators Today in 2022, senators visited 11 penitentiaries and the results were alarming. They found that the practices of the CSC often fail to comply with or uphold the provisions set out in the CCRA. They also found that “many practices violate *the Canadian Charter of Rights and Freedoms* and the principles of fundamental justice, while operating without the Rule of Law” (Senators Today, 2022, pp. 2). Bill C-83 specifically set out to replace the provisions of *the Corrections and Conditional Release Act* that authorize the use of administrative segregation in federal penitentiaries. There are several requirements for the treatment of prisoners when they are in segregation. Prisoners have the right to two hours of meaningful human contact, four hours outside of their cell between 7 am and 10 pm, daily visits from CSC registered health care professionals, and the CSC must refer them to the department responsible for healthcare within 24 hours of being placed in segregation (Senators Today, 2022).

Prisoners have been unable to take part in activities and access utilities which violates their right to move within the prisons. Mandela Rule 23 mentions exercise and sport and states that all prisoners should get at least one hour of exercise in the open air each day. Also, younger prisoners or those with suitable physiques are supposed to receive physical and recreational training during the period of exercise and equipment must be provided (Mandela Rules, 1955). The lockdown prevented outside exercise. The Senators collected statistics on the percentage of prisoners who received an average of less than the mandated 2 hours of meaningful contact and never received the 4 hours outside: Quebec: 48.6%, Ontario: 27.4%, Prairies: 17.1%, Pacific: 50.2%, Atlantic: 36.9%. These numbers show just how often prisoner rights are being violated during the pandemic. This report found that the CSC does not comply with *the Charter*, the CCRA and its Regulations,

or the UN's Minimum Rules for the Treatment of Prisoners. It also shows that Bill C-83 has failed, signalling the need for legislative reform to the CCRA (Senators Today, 2022).

When talking with prisoners, the West Coast Prison Justice Society (2020) stated that multiple prisoners expressed that during lockdowns they are lucky to even get 20 minutes out of their cell each day and sometimes they go days without being allowed out of their cells. This means any form of exercise is impossible unless they find a way to do it in their cells. Researchers and activists have argued that during the pandemic "individuals should have access to daily outdoor times, and the reduction of group activities should be replaced with other forms of entertainment" (Iftene, 2021, pp. 480).

Mandela Rule 58 relates to contact with the outside world and states that prisoners are allowed to contact their family and friends at regular intervals. This contact is done through writing and telecommunication, electronic, digital, and other means (Mandela Rules, 1955). This rule also includes visits and states "where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men" (Mandela Rules, 1955, pp. 18). The lockdowns have meant that in-person visits are not possible; however, there has not been sufficient effort to increase telecommunication capacities to maintain prisoners' communication with family and friends. This violates prisoners' right to contact the outside world while they serve their time. Many have argued that "even though in-person visits may have to be restricted, prisoners still have a right to be in touch with their family. All efforts should be made to ensure remote visits" (Iftene, 2021, pp. 480). This did not occur as prisoners are not let outside their cells to use the telephones.

### *5.2.3 Court Delays and the Inability to Attend Court*

A major issue that was discussed in detail was the court delays and people's inability to attend court. One example of this can be seen by looking at the Deepan Budlakoti trial. Budlakoti is suing the government of Ontario due to the conditions he suffered while incarcerated at the Ottawa Carleton Detention Center (OCDC). He is shedding light on the issues of segregation, excessive force, and access to medical services. (Budlakoti v. Canada 2021). This trial is a good example of how COVID-19 caused court delays and an inability for prisoners to attend court. The original trial date was May 31<sup>st</sup> till June 4<sup>th</sup>, 2021; however, the trial was postponed and only ended up starting on June 28<sup>th</sup>. This was because Mr. Budlakoti was not able to attend the trial in person and OCDC did not have video call-in capabilities, so the only option was to either postpone the trial or have him call and state his case over the phone, which Budlakoti felt would hinder his case (Budlakoti v. Canada 2021). This is an example of how the courts were unable to find alternatives to keep the court system going and avoid too many delays. The number of admissions was reduced which meant federal numbers were lower; however, this was not due to depopulation attempts, it was due to the court delays (Budlakoti v. Canada 2021). This also affects people who are being held in custody on remand as court delays may mean they are held for longer. As mentioned previously, advocates recommended using conditional release in lieu of segregation, which would decrease the risk of contracting the virus.

#### *5.2.4 Rights Violations Stemming from the Inability to Attend Court: Access to the Legal System*

In Canada, you are innocent until proven guilty which means the prosecution must prove beyond a reasonable doubt that the person committed the offence (The Charter of Rights and Freedoms, 1982). Delays in the legal system have worsened during the pandemic despite s.11 of *the Charter*, which states that anyone who is charged with an offence has the right to be tried in a reasonable time (Canadian Charter of Rights and Freedoms, 1982). This protects anyone charged

with an offence under federal, provincial, or territorial law. In 2016, the Jordan Rule was established by the Supreme Court of Canada, which sets limits on the time an accused can be made to wait to attend court, 18 months for provincial cases and 30 months for federal cases (Department of Justice, 2021). Researchers state that “it is essential that courts remain capable of hearing challenges to executive and legislative overreach during the pandemic” (Flood et al., 2020b, pp. 894). The pandemic stopped in person trials and there were delays in adopting remote court technologies, yet access to lawyers and the courts should remain (Iftene, 2021). As seen from the Budlakoti trial, getting access to the courts and being able to talk to lawyers has been much more difficult, which directly violates prisoner rights.

#### *5.2.5 Limited Access to Health Care (Including Vaccinations and Testing)*

Prisoners have been left in the dark about what is happening outside the prison, including a lack of information about vaccines (Rodriguez, 2021). At the beginning of 2022, when the newest outbreak of the Omicron variant was at its peak, many prisoners were still not vaccinated. The federal and provincial Conservative government publicly expressed concerns with prioritizing vaccines for federal prisoners stating:

The Conservatives are condemning a COVID-19 vaccine rollout plan that will prioritize some federal prisoners — a plan advocates say is a sound policy that will protect vulnerable people both inside and outside the prison system (Harris, 2021, para 1).

Once vaccines became available for prisoners there were still issues with getting them vaccinated. Prisoners have questions about the vaccines and need more information on them to trust the institutions administering it.

People have concerns and you need to try and have these fulsome discussions and take the time that's needed, and that doesn't appear to be happening and there are consequences for it, I mean, just look at this outbreak (Miller, 2022, para 13).

Prisoners are unable to research the vaccines and get information on the costs and benefits of it. They do not have the proper access to doctors or community support to help them make the decision. They also do not have the ability to book a shot at their convenience. A nurse shows up and they must decide on the spot if they will take it or not (Spratt, 2020, para 16).

These are the same inmates who have been denied health care and believe, with good reason, that the jail doesn't care about them. Forgive them if they don't trust an unexpected needle from their jailers (Spratt, 2020, para 18).

Getting prisoners vaccinated is crucial as preliminary data has shown the transmission rates are five times higher in prison than the general population (Walby & Piché, 2020). The CSC included prisoners in phase two of the vaccine rollout, meaning in January of 2021, vaccinations began in the federal institutions. The older, medically vulnerable prisoner population was made a priority when the vaccine rollout began (Boynton & Bimman, 2021). As of March 18<sup>th</sup>, 2021, only 600 federal prisoners had been vaccinated. At the same point in time, many provincial prisons had not received vaccines, and the provinces were not being transparent about their progress.

To date (March 2021), not one province or territory has publicly reported what progress, if any, has been made in offering vaccines to prisoners. Based on the vaccine distribution plans; however, in most jurisdictions, the vast majority of prisoners have not yet been offered a vaccine (Canadian Civil Liberties Association, 2020, p.5).

The issues with vaccination rates in the provincial prisons can be shown by looking at Nova Scotia. In December 2021, when the Omicron variant became a concern for public health, fewer than 50% of the total incarcerated male population had been vaccinated (East Coast Prison Justice Society, 2021b). Advocates argue that provincial governments should be following the federal government's decision to include prisons on their priority list for vaccinations (Taylor, 2021). In January of 2022, less than half of the 482 prisoners in provincial custody had at least one dose, almost two years into the pandemic (Miller, 2022). This is a far cry from the more than 60 percent of Ontarians who had their first dose by June of 2021 (Spratt, 2020). In Ontario, as of mid-June 2021, fewer than half the people imprisoned in provincial jails had received one dose of the

vaccine. Even worse rates were seen at OCDC with only 43% having had one dose as of January 2022 (Lachapelle et al., 2022).

It was stated that vaccinations in provincial prisons would depend on the supply of the vaccine, the immediate priority population group consists of health care workers, northern communities, and long-term care homes, retirements homes, and other congregated care settings in lockdown and control zones (Boynton & Bimman, 2021).

In Manitoba, staff were eligible for their vaccines in March 2021 and prisoners became eligible one month later. The second dose became available in June of 2021, but it is unclear how many received the vaccines when they became eligible (Manitoba Community Safety Division, 2021). This shows the gap between the federal and provincial prisons in relation to vaccinations. In September of 2021, institutions began to require all employees to be vaccinated and stated they had until October 31<sup>st</sup>, 2021, to have both first and second doses. Many provinces followed similar timelines and employees who were not vaccinated would have to undergo regular COVID-19 testing up to 3 times a week for full-time employees (Manitoba Community Safety Division, 2021).

There was also a lack of testing in institutions. A time-series analysis of testing and COVID-19 outbreaks in Canadian federal prisons to inform prevention and surveillance efforts run by the Public Health Agency of Canada (2021) studied the period from March 30<sup>th</sup> to May 27<sup>th</sup>, 2020. It was found that “of 50 facilities, 64% reported fewer individuals tested per 1,000 of the population than observed in the general population and 12% reported zero tests in the study period” (Blair et al., 2021, p. 72). They also found that the testing was reactive and only increased in prisons that had active outbreaks or positive cases, meriting public health attention because “symptom-based testing alone may not be optimal in prisons, given observations of widespread transmission” (Blair et al., 2021, p. 66). Increased testing is needed alongside infection prevention

practices to curb viral spread and to prevent future outbreaks. The CSC released a contact tracing guideline but there is a lack of information on how they have maintained contact tracing throughout the pandemic.

In the provincial prisons, similar issues were seen with testing. It was unclear what testing was occurring, as many provinces claimed they did not track these numbers. For example, in Nova Scotia, it was stated that they did not have records on COVID-19 cases that categorized patients as prisoners or prison staff. This meant they could not provide information on positive tests, negative tests, inconclusive tests, deaths, recoveries, or active cases. It was impossible to know how frequently they were testing prisoners and if they had similar access to testing as free citizens. They also were unable to provide a breakdown by race and gender that tracks COVID-19 cases amongst prisoners and prison staff (Nova Scotia Health, 2021).

#### *5.2.6 Rights Violations due to The Lack of Access to Health Care*

Similar to the accessibility issues discussed above, access to health care became more difficult during the pandemic. Mandela Rule 24 seeks to protect the provisions of health care services for prisoners. This rule states that the state has the responsibility to provide health care to prisoners and that they are meant to have access to the same standards as the rest of the community (Mandela Rules, 1955). This means that health care is supposed to be free of charge and provided without discrimination. This rule also states that the services should have a close relationship with public health administration to ensure continuity of treatment and care for infectious diseases, including drug dependence (Mandela Rules, 1955). S. 85, 86, and 87 of the CCRA also protect health care services for prisoners in federal penitentiaries. S. 85 defines health care as including medical, dental, and mental health care (Corrections and Conditional Release Act, 1992). S. 86 lists the obligation of the service stating all prisoners should be provided with essential health care and reasonable access to non-essential health care. Lastly, s. 87 states that there is a service to

consider health factors. This means that the prisoner's state of health and their health care needs must be taken into consideration, including when decisions are being made that affect the prisoner and in preparation for their release. Although there is no explicit mention of access to health care in *the Charter*, it has been argued that s.7 protects the access to timely health care. This is because the right to liberty and security of the person could be affected if access is not provided (Senate of Canada, 2003). Many advocates have fought for these protections to be added to *the Charter* (Jackman, 2010).

All these rights to health care were violated during the pandemic. As mentioned in the previous section, there is a lack of health care professionals in each institution, limited people are allowed into the institutions, and prisoners are being held in isolation (Walby & Piché, 2020). These factors alone greatly affected the ability to get health care. Similarly, the issues mentioned previously on the access to vaccines for prisoners is a violation of their rights. They should have privileged access as they are in closed institutions, the same as those in long term care facilities; however, this has not been the case. Access to essential and non-essential health care should also be provided at professionally accepted standards. During the pandemic, institutions have not been able to provide health care to prisoners and certain prisoners are at higher risk due to underlying health conditions; however, they have not used alternatives to protect those at risk.

COVID-19 has shown the government's unwillingness to seek alternatives to incarceration for those whose health becomes incompatible with imprisonment (Flood et al, 2020a).

### **5.3 The Combined Effects of Both COVID-19 Itself and The Management of it: Overcrowding**

#### *5.3.1 Overcrowding*

As aforementioned, overcrowding is not a new issue created by the pandemic, although the pandemic has increased this problem and subsequently the spread of the coronavirus due to the inability to socially distance. Overcrowding leads to double-bunking, and sharing bathroom and shower facilities. (Saskatchewan-Manitoba-Alberta Abolition Coalition, 2020). This leads to an inability to maintain safe physical distancing protocols and makes humanely quarantining prisoners who may have COVID-19 impossible (Ontario Human Rights Commission, 2021). Prisoners reported that “officers would not socially distance and new arrivals were introduced to units without quarantining” (West Coast Prison Justice Society, 2020, p. 21). Also, in May 2020, reports said interregional transfers were still occurring (West Coast Prison Justice Society, 2020). This only overcrowding and unsanitary conditions.

Some provincial prisons tried to release those who were eligible; for example, those at high risk for contracting the virus but at low risk of reoffending or those who were almost finished their sentences. They offered temporary absences, house arrest options, and release for those within 30 days of their release date. It was stated that “this resulted in an average of 15% reduction to the provincial/territorial prison populations. Also, Ontario reported a reduction as high as 25% within months of the pandemic being declared” (Chartrand, 2020, p. 93).

There was a lack of publicly available, timely, accurate, disaggregated data provided by governments on prisoners released in response to COVID-19 (Daily Piper, 2021, p. 10).

This meant that it was hard to tell if prisoners were getting released to help stop the spread and if the prison populations were decreasing as a result. The lack of transparency and the fact that fluctuation is common for prison numbers make it unclear if decarceration and early release efforts

are factors contributing to a decreased population (Daily Piper, 2021). Prisons looked to decrease overcrowding by lowering the rate of those being held in custody. It was stated that within the first few weeks, the number of people in Ontario prisons dropped by about 30% (Ontario Human Rights Commission, 2021). However, in May 2021, the custody numbers had been rising again for months and started to resemble pre-pandemic levels (Ontario Human Rights Commission, 2021). It is important to note that at that stage, Ontario was facing the most serious stage in the pandemic (Ontario Human Rights Commission, 2021).

The federal system approached the overcrowding and release of prisoners in different ways compared to the provincial system. Professors from The University of Ottawa alongside other professors and a former public health minister published research that discussed the law, policy, and ethics of COVID-19, stating that the CSC resisted calls to depopulate, and at the time (2020) only one person had been released from the federal system.

Similarly, it was stated that since the beginning of the pandemic, the federal government, who focused on curtailing the spread inside the prisons through isolation and restrictions, only released two people from prisons vulnerable to the coronavirus (Chartrand, 2021, p. 140).

The limited releases were an issue as hundreds of people in the federal system were listed as low risk for reoffending by the CSC, close to their release date, or were older and already sick (Flood et al., 2020a). It was also stated that during the first pandemic wave, no options were used to release federal prisoners. The CSC emphasized the importance of upholding public safety when it comes to releases and stated they were conducting an analysis of the offender population to position themselves to make evidence-based recommendations (Correctional Service Canada, 2020e). At the same time, neither the provincial nor federal systems discussed how these conditions of confinement not only affect prisoners, but also public safety. Many prisoners, especially at provincial institutions will rejoin society sooner rather than later (Lachapelle et al.,

2022, para 7). United Nations Peacekeeping (2020) released a list of prison decongestion measures on April 1<sup>st</sup>, 2020, which included releases of low-risk offenders, limiting arrests and detention, and considering the use of pardons. This list was set at the beginning of the pandemic and over two years later, some of these proposed measures have still not been implemented, let alone considered.

Overcrowding was also affected by the preventative measures that were implemented, namely lockdowns that made seeing a lawyer and having private telephone calls more difficult, which subsequently increased court delays (Murray, 2020). Those impacted the most from these delays are individuals in provincial prisons that may not be guilty and may not be violent or a danger to the public.

### *5.3.2 Rights Violations Due to Overcrowding*

Overcrowding creates poor living conditions and violates certain human rights. Mandela Rule 12 revolves around accommodation and states that “where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself” (Mandela Rules, 1955, pp. 5). It does include that for special reasons, such as overcrowding, prison administration can make exceptions to this rule. This rule also states that if dormitories are being used, those placed in them must be mentally and physically suitable for the conditions and regularly supervised to ensure their safety (Mandela Rules, 1955). *The Charter* (1982) and the precautionary principle require the government to control outbreaks in the least infringing way and revisit decisions when new evidence emerges. When people are put into prison, it limits liberty and restricts their freedom. However, it does not mean they completely forfeit their rights. As stated in the Mandela Rules (1955), “prisoners maintain the right to be treated with legality, dignity, and respect. They have the right to safety and security of the person, the right to be treated

humanely and be free from torture, degrading or inhuman punishment” (pp. 2). Putting them in these overcrowded situations is unethical and violates the right to dignity. As people continue to be caged with the knowledge that it undermines public safety, this will continue (Walby & Piché, 2020). Sections 29 and 81 of the CCRA, allow for prisoners to be released due to health reasons. If governments were willing to use this legislation, overcrowding would be improved (Harris, 2020).

The following tables summarize the restrictions implemented, the challenges caused by the restrictions, and the human rights violations that are occurring due to these restrictions. These restrictions come from a variety of sources listed in appendix A.

**Table 3:** *Restrictions and the Challenges That Followed Them*

<b>Restrictions/Issues Since COVID-19</b>	<b>Specific Challenges Due to the Restrictions</b>
Elevated health risks and unsanitary conditions	<ul style="list-style-type: none"> <li>• Prisoners are at a higher risk for serious complications if contracting COVID-19.</li> <li>• Inability to social distance.</li> <li>• Lack of personal protective equipment (PPE) and sanitation.</li> </ul>
Overcrowding and lack of release	<ul style="list-style-type: none"> <li>• Inability to follow guidelines (social distancing and limited social circle).</li> </ul>
Lockdown and isolation	<ul style="list-style-type: none"> <li>• Loss of visitation, activities, and time outdoors.</li> <li>• Limited access to health care.</li> <li>• Segregation.</li> <li>• Mental and physical health issues.</li> <li>• No information on what is happening outside of the prison (in relation to the pandemic).</li> </ul>
Lack of testing and vaccinations	<ul style="list-style-type: none"> <li>• Lack of information on vaccines.</li> <li>• Prisoners not being prioritized.</li> </ul>
Court delays and inability to attend court	<ul style="list-style-type: none"> <li>• Effects on prison population.</li> </ul>

**Table 4:** *The Rights Violated Due to These Restrictions*

<b>Human Rights Violated</b>	<b>Restrictions Occurring</b>
Mandela Rule 12 (accommodations):	<ul style="list-style-type: none"> <li>• Unsanitary conditions and lack of release (overcrowding)</li> </ul>
Mandela Rule 18 (personal hygiene):	<ul style="list-style-type: none"> <li>• Unsanitary conditions and lockdown (living in poor condition and lack of time out of cell to shower)</li> </ul>
Mandela Rule 23 (exercise and sport):	<ul style="list-style-type: none"> <li>• Lockdown (lack of outdoor time, loss of activities)</li> </ul>
Mandela Rule 24 (health care services):	<ul style="list-style-type: none"> <li>• Lack of testing and vaccines</li> <li>• Lockdown and isolation (increased effects on mental and an inability to access health services)</li> </ul>
Mandela Rule 44 (restrictions, discipline, and sanctions):	<ul style="list-style-type: none"> <li>• Isolation (segregation)</li> </ul>
Mandela Rule 58 (contact with the outside world):	<ul style="list-style-type: none"> <li>• Lockdown (lack of outdoor time)</li> </ul> *Connects to rule 23
Charter S. 11 (rights of those charged with an offence)	<ul style="list-style-type: none"> <li>• Court delays and inability to attend court</li> </ul>
Charter S. 12 (treatment or punishment)	<ul style="list-style-type: none"> <li>• Isolation (segregation)</li> </ul>
Charter S. 7 (life, liberty, and security of person)	<ul style="list-style-type: none"> <li>• Isolation (segregation)</li> </ul>
Corrections and Conditional Release Act (CCRA) S. 86 and 87 (health care)	<ul style="list-style-type: none"> <li>• Limited access to health care (physical and mental)</li> <li>• Lack of testing and vaccinations</li> </ul>
Right of Dignity (equality, security of the person, or privacy)	<ul style="list-style-type: none"> <li>• Overcrowding               <ul style="list-style-type: none"> <li>○ Elevated health risks, inability to socially distance, unsanitary conditions.</li> </ul> </li> </ul>

#### 5.4 The Emerging State of Exception Causing Rights Violations

The above conditions and rights that were affected tie directly to the state of exception theory. Many of these issues have been ruled unconstitutional in the past; for example, segregation. Emergencies cause feelings of uncertainty and threat that impact people's understanding of the world (Boin et al., 2009). An emergency creates shock, leading people not to question the decisions being made by those in power and to rationalize the decisions as necessary responses to the identified threats.

"The Rule of Law is absent, although rules are everywhere" (Senators Today, 2022, p. 13).

The above analysis shows that laws are being violated, which confirms Agamben's theory (Humphreys, 2006). Agamben, Schmitt and Beckett all advanced arguments on what happens to the law during the state of emergency. Schmitt argued that during the state of exception, the law is suspended, where either the law still applies, or no law applies (Humphreys, 2006). Beckett argues that during the state of exception, there is an excess of laws (Morin, 2019). For Agamben, the state of exception is a space without laws. This means new laws are not being made and old ones are not being applied (Humphrey's, 2006). While arguing his perspective, Agamben mentions the derogation model which creates a space between fundamental rights and the rule of law, where the state can remain lawful while transgressing the rights of individuals (Humphreys, 2006). His arguments and this model are seen when looking at the unsanitary conditions, the increased health risks, the lockdowns and isolation, the court delays, and the lack of access to the legal and health care system. Court delays are prevented by the Jordan Rule but it was paused because of the pandemic, which suggests that Canada's prisons are in a state of exception during this time. The inability to access people and services has increased due to the pandemic and the measures governments have been allowed to implement. Typically, this would not be allowed but the pandemic has given governments the ability to suspend legal processes. Similarly, when prisoners fall ill with virus and are forced into medical isolation, it should not result in de facto segregation. These circumstances connect to Giorgio Agamben's concept of the state of exception, when he stated that decisions departing from conventional practice are rationalized as necessary responses to exceptional and urgent threats (White, 2015). People are typically distracted by the emergency and how to deal with it, often resulting in controversial policies being advanced (Boin et al., 2009). This argument is shown when looking at the increased use of segregation and isolation, which

were struck down in the past but due to the crisis caused by the pandemic, governments have fallen back on the use of segregation to stop the spread.

What is interesting to consider is the lack of determination to provide prisoners with testing and vaccinations. When looking at how the rest of the public has been protected, the work that has gone into getting as many people vaccinated as possible, and having tests become widely available, it makes you question why prisoners have not received this same treatment? As mentioned, s.7 of *The Charter* has been used to protect people's access to health care, including prisoners (Jackman, 2010). There may not be direct legal protections for the pandemic but there are legal protections to ensure prisoners receive the same level of health care as the rest of the public (Jackman, 2010). Yet again, the law is being put on hold and prisoners are suffering because of it. Health care is a basic human right that, while affected by the pandemic; should still be available. Moreover, mental health care should have been enhanced during the pandemic due to its impact on people's well-being.

White (2015) states that emergency politics occur during times where the rule book is laid aside. While a state of exception has never been officially declared, elements of this exception have emerged during the pandemic and can be seen when looking at the above circumstances. Why has no state of exception been declared?

One of the main arguments that abolitionists make is that prisons deprive liberty and cause physical and mental pain (Moore, 2011). They argue that if punishment caused a maximization of happiness rather than pain then it might be justified; however, it does not. When looking at the conditions of the prisons, it shows an increase in suffering during the pandemic. Is the pain they are experiencing justified? My analysis suggests it is not justified and that the pandemic measures are a cause for severe concern as they violate legal protections.

When looking at the negative reactions from the Conservative party on prisoners being part of the prioritized group for vaccinations (Harris, 2021), it shows that politicians and many of their constituents do not want to help incarcerated people and are not open to early release. They want to rely on the way things were done in the past, even though there is evidence to suggest they do not work. This reflects Mathiesen's thoughts regarding resistance to change. Without greater social support, changes will not be made and trust in decision makers will allow their power to be maintained. The lack of drastic changes the government has made and the reliance on outdated practices (such as segregation) shows that Mathiesen's arguments are exactly what is happening during the pandemic.

The lack of changes also reflects the hyper-resilience of existing carceral regimes. Resilience is demonstrated when an organization continues to function by doing damage control to keep things going (Clair & Dufresne, 2007). Hyper-resilience is shown when the outcome of the event is transformative, and the organization flourishes (Clair & Dufresne, 2007). Some may argue that there was no resilience at all because the decision makers did not use the pandemic as an opportunity for positive change. However, because the system was still functioning, this reflects the definition of resilience that theorists created. The government was resistant to change plans and implement new techniques during the pandemic and prisoners' rights suffered because of it. Some steps were taken toward change, such as the release of prisoners in provincial prisons; however, not enough was seen for the government to be considered hyper-resilient. For them to be considered hyper-resilient, they would have needed to transform the system resulting in a positive outcome for all.

The following section looks at the advocacy that has occurred and the progress advocates have made with their strategies and their ability to advocate during the pandemic.

## **SECTION 2: The Advocacy Rational: Gains and Losses of Advocacy During the Pandemic**

### ***5.5 Why Should Prisoners Be Prioritized?***

Throughout the pandemic, there have been many debates on which efforts and populations should be prioritized for different interventions. For example, the distribution of vaccines was prioritized older and more vulnerable populations. There was much debate as to whether prisoners should be included as a high priority group.

COVID-19 vaccine distribution must prioritize prisoners. The virus is killing more of them. Allocating precious medical resources to people who are serving time may be anathema to many, but officials must show some backbone — for moral and health reasons (Prashar & DeAnna, 2020, para 1).

First, it is important to understand that prioritizing prisoners benefits the broader community. This is because members of the community who are working within the institutions will be at higher risk if prisoners are not vaccinated. Those working within the institutions will also be going in and out and if they catch something they can spread it either to the community or amongst prisoners. It is also important to note that if the numbers of COVID-19 cases rise within the institutions, it could add strain to the health care system.

When someone becomes seriously ill in our federal institutions, they don't receive treatment within the institution, they take up an ICU bed in a hospital in the local community (Boynton & Bimman, 2021, para 14).

The lack of treatment, along with the fact that prisoners are at greater risk of having serious health consequences if they contract the virus justifies prioritizing their vaccination. Many politicians and members of the public may object to this arguing that 'criminals' should not jump the line; however, advocates remind us that many people in custody in provincial facilities have not been convicted of any crimes (Boynton & Bimman, 2021).

The Conservatives are condemning a COVID-19 vaccine rollout plan that will prioritize some federal prisoners — a plan advocates say is a sound policy that will protect vulnerable people both inside and outside the prison system (Harris, 2021).

The Conservatives have spoken out against this prioritization; however, the Public Safety Minister confirmed that federal penitentiaries will follow the advice of the national advisory committee on immunization. This meant that elderly prisoners and those with pre-existing health conditions would be the first to get vaccinated within the institutions (Harris, 2021).

### ***5.6 Advocacy: Who, How and What?***

As shown in Table 2 of the methodology section, there are several different organizations that advocate for prisoner rights. This includes non-government organizations and professional associations. Prisoners and ex-prisoners engage in advocacy, and there are government departments who both look to defend the decisions they make and discuss relevant issues. For example, the CSC discusses their decisions for the federal institutions, whereas the OCI advocates for change. Many advocates released articles to support prisoner rights and educate people during this time, for example, in the Journal of Prisoners on Prisons and the East Coast Prison Justice Society. CPEP, the advocacy group from Carleton University, sent out prewritten email zaps for individuals to send letters to Members of Parliament and key Ministers. They also held a march in downtown Ottawa (CPEP, n.d.). John Howard released a call to ministers during the second wave of COVID-19 in Canadian prisons (The John Howard Society of Canada, 2020). New advocacy groups also emerged, such as the abolition coalition which was created to be a “community of resource, support, and creative decarceration initiatives for those confined behind the walls” (Chartrand, 2021, pp. 138). The coalition looks to make lasting change through decarceration efforts in the immediacy of the pandemic but also by building support for the future. “It helps show that abolition is a call to action in the face of the pandemic” (Chartrand, 2021, pp. 138).

The pandemic has pushed advocates to modify their approach and engage in “solidarity strikes, and actions, social media campaigns, fundraising initiatives, news releases, conferencing and interviews, videos and online speaker panels, protests and rallies, educational and awareness interventions and more” (Chartrand, 2020, pp 92). These are not new strategies, but they had to be relied on more during the pandemic as other strategies were no longer possible. For example, visiting prisoners, and having in person conferences to educate others. Some previous strategies can still occur but not to the same extent they used to. For example, written correspondence has slowed greatly during the pandemic. This meant that advocates could not rely on written correspondence to contact prisoners (Walby & Piché, 2020). The Journal for Prisoners on Prisons highlighted this issue because they rely on the prisoners’ contributions when releasing information to educate people. They were quoted stating that “in the bleakest scenarios, it is possible that some JPP contributors have contracted COVID-19 and been placed into segregation by another name, have been hospitalized or lost their lives” (Walby & Piché, 2020, pp. 3).

Prisoners advocated from inside, for example, detainees did an 8-day hunger strike at the immigration holding center for migrants in Laval. They also sent letters to Public Safety Canada demanding releases. This resulted in the Canadian Border Services Agency releasing half the immigration detainees by the end of April 2020 (Chartrand, 2020).

Looking at a specific advocacy group can help show the new approaches that most advocates adopted during this time; for example, The Books 2 Prisoner advocacy group mentioned in the literature review. The use of technology has drastically increased for advocates. They shifted their regular letter writing/book mailing meetings to an online forum. They did this with a focus on building stronger relationships between program staff from different institutions (Crosby, 2020). They held their first ever zoom meeting that included Books 2 Prisoners projects in

Vancouver, Montreal, and Nova Scotia, which allowed them to collaborate as a shared social justice collective. Books 2 Prisoners also expanded their use of social media, creating extra platforms in addition to the ones they already been using (Crosby, 2020) Books 2 Prisoners also found ways to send literature to prisoners inside Canadian jails, prisons, and penitentiaries, sending pads of paper, information pamphlets, and other printable games. Another improvement was an increase in the recruitment of volunteers. As things were changing, advocates needed more help to run these online forums and maintain the social media platforms. Books 2 Prisoners is just one example of an advocacy group that created many new ways to maintain their advocacy during this time; these same steps were taken by many other advocacy groups in Canada as well.

I created the table below to showcase the pre-pandemic and pandemic strategies advocates have used. I also included strategies that had been used in the past but whose usage dramatically increased during the pandemic, for example, strikes and petitions, social media, media campaigns, and webinars. The use of technology has made connecting with people around the world much easier.

**Table 5:** *Advocacy Strategies*

<b>Pre-Pandemic Strategies Affected</b>	<b>New Pandemic Strategies</b>
In person contact with those incarcerated	Increased use of social media
Visits to prisons (correctional investigator, and family members)	Increased media campaigns
Building partnerships	Increased petitions and solidarity strikes
Written correspondence (slowed during pandemic)	Increased ability to connect with partners and build partnerships (use of technology)
Face to face conferences	Webinars/ info sessions/ panel discussions/ zoom meetings

Protests and marches	Fundraising initiatives
	Increased outreach for volunteers
	Email Zaps

I created Table 6 below to showcase advocate recommendations. The most prevalent recommendation that advocacy groups made was the need to reduce overcrowding. The United Nations High Commissioner for Human Rights along with the Canadian Human Rights Commissioner called on the government to release low-risk and vulnerable prisoners as early as March 2020 (West Coast Prison Justice Society, 2020).

These efforts should encompass release mechanisms for people at particular risk of COVID-19, such as older people and people with pre-existing health conditions, as well as other people who could be released without compromising public safety, such as those sentenced for minor, non-violent offences, with specific consideration given to women and children (World Health Organization, 2020, para 4).

Advocates argued that releases needed to be immediate and should include those on remand, those whose sentences were almost completed, anyone immunocompromised, and those over fifty. This is crucial so that the prisons can follow proper health and safety protocols (Saskatchewan-Manitoba-Alberta Abolition Coalition, 2020). Similarly, the OCI (2021) recommended that the CSC collaborate with the parole board to increase the efficiency of releases.

There were also recommendations made to enhance sanitation, stating that “there needed to be a mechanism of accountability regarding cleanliness of facilities, and that all prisoners be given proper cleaning supplies” (Garson, 2020, p. 27). These include masks, hand sanitizer, soap, and mouth wash (Saskatchewan-Manitoba-Alberta Abolition Coalition, 2020). Further, it was argued that the accessibility issues that prisoners were facing due to lockdowns needed to improve

to ensure consistent access to counsel, health care, and information regarding the virus (West Coast Prison Justice Society, 2020). Just as important was accessibility to testing, vaccines, and information on them. “A more proactive testing approach may be needed to help curb the size of potential future COVID-19 outbreaks in Canadian correctional facilities, while avoiding the use of interventions with harmful social or mental health consequences” (Blair et al., 2021, pp. 72). Along with testing, prisoners should be vaccinated at the earliest possible chance (Saskatchewan-Manitoba-Alberta Abolition Coalition, 2020). The following table outlines each demand and identifies some of the groups/organizations who advocated for them.

**Table 6:** *What is Being Advocated for?*

<b>Recommendations/Strategies</b>	<b>Explanation</b>	<b>Who</b>  *This list is not exhaustive
Decarcerate/Release	Advocates pushed for the release of low-risk prisoners and those who are at higher risk for severe illness.	West Coast Prison Justice Society, Saskatchewan-Manitoba-Alberta Abolition Coalition, East Coast Prison Justice Society, John Howard Society, Daily Piper, FACETS journal, UN peacekeeping, The Royal Society of Canada, CPEP, OCI.
Community support/financial assistance for those released	If the above is done, then those released need to be supported in order to transition properly from prison into society.	Saskatchewan-Manitoba-Alberta Abolition Coalition, FACETS journal, OCI.
Vaccines and testing	There is a need to prioritize prisoners as congregated living, and lack of PPE. cause them to be high risk. Also,	Canadian Family Physicians, FACETS Journal, OCI.

	there should be frequent testing of prisoners for COVID-19.	
Keep custodial numbers down (diversion efforts)	This is important because to decrease the overcrowding in the institution's custody numbers need to lower and decarceration needs to occur.	Daily Piper, WHO, Ontario Human Rights Commission.
Increased Sanitation and PPE	There needs to be an increase in general sanitation of the institutions as well as access to PPE and sanitation products for prisoners.	Saskatchewan-Manitoba-Alberta Abolition Coalition, East Coast Prison Justice Society, University of Washington.
Continued access to medical services	As prisons limit who can enter the institutions, prisoners should still have access to medical services.	WHO, The Law Foundation of British Columbia, OCI.
Continued access to community and family. If not, more access to phone/video conferencing	As prisons limit visitation, prisoners should be provided alternative ways to contact family or others in the community.	OCI, The Royal Society of Canada, The Law Foundation of British Columbia.
Ongoing education and information given to prisoners about COVID-19 and vaccinations	Prisoners need to be educated on the pandemic and kept up to date with what is happening outside the communities.	OCI, Journal of Victims and Offenders.
No use of isolation/segregation	Prisoners should not be placed into segregation conditions while isolating or while the prisons are in lockdown.	Canadian Senators, OCI, WHO, Journal of Victims and Offenders, The Law Foundation of British Columbia.
Enforce safeguards for prison staff/ anyone entering the institutions	Safeguards should be put into place to ensure anyone new entering the prison is not putting prisoners at risk.	OCI, FACETS Journal, Journal of Prisoners on Prisons.
Increased transparency on the situation within the prisons	Those who run the prisons need to be more transparent about what is happening on the inside. This should already be occurring but is emphasized due to the pandemic. If	Saskatchewan-Manitoba-Alberta Abolition Coalition, John Howard Society, OCI.

	needed, external oversight should be increased.	
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Considering these recommendations raises questions such as, how did the pandemic advance support for these recommendations, and why were some not implemented?

### ***5.7 Gains and Losses***

Some of the biggest requests among advocacy groups is for decarceration, the release of low-risk offenders, and the release of those at high-risk for severe health complications if they contract COVID-19. While the federal system did not engage in release strategies,

the provinces and territories in Canada have reduced their prison population by more than 7000 prisoners. This is more than a 25% reduction since the pandemic was declared in March 2020 (Walby & Piché, 2020, pp.2).

The provincial systems have attempted to decrease the number of incarcerated people; however, the federal penitentiaries and CSC have been criticized for failing to do the same. A court challenge highlighted the duty of the CSC to take immediate steps to depopulate prisons to the greatest extent they can while ensuring public safety, which the CSC failed to do (Chartrand, 2020). At the beginning of the pandemic, releasing people on remand for non-violent offences was seen as the most important first step. This was the first group to be released and proved to be the easiest cases to deal with, as most had not been found guilty. Next, they focused on the release of prisoners who were close to the completion of their sentences. This group seemed to be the safest to release, especially if they were serving time for non-violent offences. The initiative to reduce the number of those incarcerated stopped at this point. This was largely due to courts shutting down which caused the backlog of cases awaiting trial to increase.

Fragouli and Tournalaki (2020) argue that a crisis can be considered a threat to organizations; but effective leaders can use a crisis as an opportunity to foster organizational change. The unique

circumstances created by the pandemic provided rare opportunities to promote and implement change (Meyers & Holusha, 2018). The support for decarceration resurfaced and new arguments arose as the need for them increased during the pandemic to stop the spread of COVID-19. However, COVID-19 also delayed possible releases due to court delays, meaning some individuals stayed in the system longer.

Increased vaccinations and testing within the institutions was another recommendation where losses can be seen.

There is a need to get both prisoners and prison staff vaccinated. Also, to give prisoners information on the vaccines because without this knowledge their stress levels continue to increase (Rodriguez, 2021).

As of March 18<sup>th</sup>, 2021, reports showed that 600 prisoners had been vaccinated in federal institutions. At the same point, many provincial prisons had not received any vaccines. There was a lack of transparency when reporting vaccination numbers and at this time, no provinces or territories had reported on vaccination rates. However, the vaccine distribution plan suggested most prisoners had not yet been offered a vaccine (Canadian Civil Liberties Association, 2020). This issue demonstrates a major loss for prisoners and their advocates. Although vaccination numbers have since increased, the lack of urgency for vaccinations witnessed during the peak of the pandemic shows a major loss in the protection of prisoners.

The increased use of telecommunications is another area where positive and negatives changes can be seen. Advocates have been unable to advocate in the way they used to, for example, they lost the ability to visit with prisoners to get their perspective on issues. It has pushed advocates to rely more on technology and now they are able to reach people across Canada more easily. Webinars, online conferences, and Zoom meetings allowed more people to attend than would have

previously at in-person events. Although advocates were forced to change their approaches the use of technology was positive and can continue to be used in the future.

Prisons have increased the use of technology to allow prisoners to connect with family or attend court. Previously, contact with family members occurred through telephone or in-person visits. I directly witnessed the use of technology during the Deepan Budlakoti trial, as he was connected via Zoom. The use of technology is ‘better than nothing’ during the pandemic to maintain contact with those on the outside and continue court cases; however, it is not without flaws. It is important to consider that this could start to push the state of exception and become the new normal. This would be problematic because in-person visitation is important for prisoners and, as shown in chapter 2 (literature review), is a protected right.

One of the major concerns raised by advocates is the increased use of isolation during the pandemic, which limited access to medical services, activities, visitation, and programming. Those infected during the pandemic were held for 24 hours in their cells and were fortunate to get 20 minutes a day outside of their cells (Flood, et al., 2020a). Even though segregation was banned in 2019 and isolation is considered torture (Rodriguez, 2021), the government has relied on it to stop the spread within institutions. Despite advocacy efforts this situation has not improved. This increased used of isolation has set advocates behind as the advances made in 2019 are being ignored. It seems that the battle against segregation is a never-ending issue.

When looking at the changes that occurred during the pandemic, it shows that many of the changes were negative reforms rather than positive ones. Governments began to release prisoners and increase the use of technology; however, these reforms just masked other issues that the government did not address. Unfortunately, little progress has been made to fully protect prisoners

from contracting the virus and to maintain their rights while implementing preventative measures. For positive reform to occur, more drastic changes need to be made.

**Table 7:** *Gains and Losses from The Advocacy*

<b>Gains</b>	<b>Losses</b>
<ul style="list-style-type: none"> <li>• Release/Decarceration (provincial)</li> </ul>	<ul style="list-style-type: none"> <li>• Release/Decarceration (Federal)</li> </ul>
<ul style="list-style-type: none"> <li>• Increased use of technology for prisoner communication with others in society</li> </ul>	<ul style="list-style-type: none"> <li>• Reliance on lockdowns: Lead to continued use of isolation/segregation and a lack of access to medical services, activities, and visitation.</li> </ul>
<ul style="list-style-type: none"> <li>• Increased use of technology to advocate</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of sanitation and PPE</li> </ul>
	<ul style="list-style-type: none"> <li>• Not quick enough to provide access to vaccinations and testing</li> </ul>
	<ul style="list-style-type: none"> <li>• Advocacy strategies               <ul style="list-style-type: none"> <li>○ Visiting prisoners</li> </ul> </li> </ul>

### **5.8 Hyper-resilience of Advocates During the Pandemic**

The strategies discussed above showcase the alternatives that arise during a crisis and how a crisis can be used as a moment for change if responded to properly. This moment for change happens because a crisis creates motivations to change, which can lead to new behaviours, policies, and the creation of new systems or structures (Kamkhaji & Radaelli, 2017). For this to happen organizations must be hyper-resilient and allow the crisis to become a catalyst for positive transformation (Clair & Dufresne, 2007).

Advocates have proven that they are hyper-resilient as the pandemic has become a catalyst for change. For example, the increased use of technology may continue to be used, which relieves family and friends of incarcerated people from having to travel long distances to visit their loved ones. Similarly, the gains made with decarceration and release reveal how the need for immediate change supports the abolitionist argument that disruptions in punitiveness can lead to change. The leaders of advocacy groups used the crisis to promote change and rose to the challenge of shifting

their plans and accepting the unknowns created by the pandemic. Being hyper-resilient means accepting the challenges, embracing the unknown, and moving forward in a positive direction (Fragouli & Turlaki, 2020). Advocacy strategies demonstrated this form of resilience.

Although minor changes were seen there are still many recommendations that advocates supported that were not implemented during the pandemic. Mathiesen (1974) argues that minor changes – or negative reforms - do not positively transform the system; they soften public criticism but do not improve the system drastically. Therefore, these reforms should not deflect attention away from other reforms that need to be implemented.

The losses noted are directly related to the concept of resistance to change. People are afraid of the unknown so do not like to change the way things have been done in the past. Mathiesen (1974) contends that groups that historically preferred a growing prison population may push back when they encounter widespread momentum for prison reform. When this happens, a resistance develops that reveals the different ways prison industry stakeholders may disrupt reform efforts focused on reducing the prison population, improving prison conditions, and promoting successful re-entry (Meyer, 1972). Mathiesen argues for the creation and maintenance of the unfinished approach to reform. He defines the unfinished as a new idea, and the finished as the object that needs to be replaced. However, there needs to be constant change, so there should never be a finished product (de Folter, 1986).

What is interesting is that the documents showed that advocates have focused more on promoting immediate change rather than pushing for complete abolition. It seems that advocates recognized the need for a pragmatic approach that leads to immediate changes, which is not uncommon for abolitionists, as shown when looking into the logic that underpins their perspective.

This focus occurs because a pragmatic approach typically leads to quicker change being implemented, which was needed during the pandemic to protect the health of incarcerated people.

The pandemic highlighted the fallacy of ethical incarceration and detention- that any kind of ongoing confinement can provide the resources and supports needed to face life's struggles, whether it be adequate health care or any other life support system such as mental health care, housing, education, employment, skills development, literacy, socializing, and family support (Chartrand, 2020, pp. 95).

As stated by Chartrand (2020), the pandemic is not the original motivation for anti-carceral work. The pandemic just exposed and shed light on issues that have occurred for decades and therefore,

the roots of abolition in the land now known as Canada were strengthened in the wake of the coronavirus and COVID-19 (Chartrand, 2021, pp. 138).

An example of this is shown when considering the creation of the abolition coalition. The coalition shows how advocates have used the pandemic to argue for immediate action that if implemented, should be maintained. Like ending the pandemic crisis, abolitionists argue that we must end the prison crisis by working towards abolishing human caging (Walby & Piché, 2020). COVID-19 was a novel viral strain that the world had to face and "it accentuated the long-standing inadequacies and inequalities of a punitive system" (Chartrand, 2021, pp. 139). COVID-19 has exposed the need for urgent and transformative change, which some people push against due to fear and a lack of trust (de Folter, 1986). However, the pandemic has allowed advocates to put even more pressure on the government as change is needed now more than ever.

Reform efforts were disrupted by an increased use of segregation to stop viral spread. It was ruled unconstitutional just months before the pandemic began, which was a positive step for prison advocates, but prison administrators have fallen back on its use. The COVID-19 pandemic expedited serious conversations and brought to light issues that have been occurring for a long

time. The issues discussed previously, such as overcrowding, poor conditions, and health issues, are not new; they have just been exacerbated by the pandemic. Therefore, prison advocates have been able to use this crisis to restate their beliefs and promote change, which makes way for new regulations to help protect the human rights of prisoners. Until the government stops resisting, human rights will continue to be violated.

### **5.9 Chapter Five Conclusion**

The findings of this document analysis show the importance of protecting prisoner rights during times of crisis. The findings highlighted the effects that the pandemic has had on prisoner rights and on advocates who had to switch their tactics to maintain their advocacy. All the documents discussed similar issues that the pandemic has exacerbated. The CSC and the provincial governments made decisions to try and stop the spread of COVID-19. However, advocates, academics, and even other government departments, including the Correctional Investigator have criticized their approach. When looking at what was implemented, advocates were able to identify areas where human rights violations were occurring and show how the pandemic has enabled the government to violate these rights. These were clear examples of when the law is put on hold during a time of crisis. Those making the decisions did not take advantage of the opportunity provided by the pandemic to implement positive change or demonstrate hyper-resilience. Advocates had to change the way they disseminated information to the public and how they communicated with those on the inside or family members of those on the inside. They did so by relying more heavily on social media and technology.

Prisoners across the country have called our line to tell us harrowing stories. From being locked down 23 hours a day, to being denied phone access, to being refused medical assistance and cleaning supplies, to having their virtual video visits in response to COVID-19 cancelled. This ‘new’ normal is not just unacceptable, it is dangerous (The John Howard Society of Canada, 2020, para 3).

As the coronavirus pandemic deepens, prisons are once again a site of severe coercion and dangerous inaction (Berger, 2020, para 2).

These findings showed that the pandemic has drastically affected the prison system and protections must be put in place to avoid human rights violations. Although there are many examples of such violations, advocates took the opportunity that the pandemic provided to push for more change. This was evident when looking at decarceration efforts. Lastly, the data shows the approaches advocates took as they pushed for change. Some elements may be considered more drastic and fit more closely with the abolitionist approach; however, all advocates seemed to work together as the need for change was urgent. As mentioned in the theoretical framework chapter, abolitionists do not necessarily oppose pragmatic strategies as they can be implemented much quicker. In the end, more change is needed, and the government has failed to implement enough changes to protect prisoners.

## **CHAPTER SIX: Conclusion**

While examining the effects of COVID-19 on prisoner rights and advocacy, my thesis shines a light on how a crisis can be used to erode prisoner rights and create an opportunity for change and advocacy. With the objective of understanding how the government handled COVID-19 within carceral institutions, how their strategies violated prisoners' rights, and the role advocates played during this time, my thesis reveals that both advocates and prisoners have been greatly affected by the pandemic. Not only have advocates had to modify the way they advocate for prisoners, but they have also had to adjust their advocacy to revolve around the issues the pandemic exacerbated. Many of the issues advocates identified existed before the pandemic, for example, overcrowding and unsanitary conditions. The pandemic has exacerbated these issues and made them more alarming than before. Certain conditions of confinement need to be improved immediately; otherwise, the spread of COVID-19 will not be minimized and prisoners will continue to remain at high risk for infection.

### ***6.1 Research Contributions***

The main goal of this thesis was to gain an understanding of whether a crisis such as COVID-19 could create a moment where the state of exception applies or creates an opportunity for hyper-resilience and positive change and it is clear that both occurred. This research is important for the discipline of criminology as it provides perspective on how the government can take advantage of a situation to circumvent restrictions.

Overall, the findings are clear that prisoners' rights were violated during the pandemic, their physical and mental health was not prioritized, advocates were ignored, and the government made decisions without considering advocates and expert opinions or recommendations. The government was not upfront about the decisions made during the pandemic. Many access to

information requests had to be made by researchers and advocates to get that information from the government. For example, little information was released about why prisoners were not seen as a priority in the vaccine rollout, despite their congregated living settings. Based on the reactions to a small number of prisoners receiving vaccines in phase one, it suggests that prisoners were not prioritized originally because of societal beliefs and pressures regarding prisoners and their rights.

My thesis expands on previous research regarding the human rights of prisoners by critiquing and contextualizing how the government handled the pandemic within the carceral institutions. This expansion is crucial as there was a lack of human rights research being conducted within the criminology discipline, as noted by Cohen (1993). My research adds a unique perspective due to the theoretical framework used, namely what happens during a state of emergency in the context of the prison system, which had not been done before. I uncovered a new outcome of the state of emergency during the pandemic that was not declared; however, after analyzing the rights violations, it was obvious prisons were experiencing a state where existing laws were not being applied and rights violations were allowed. There is another side during times of crisis, which is the side of opportunity and the ability to have positive change. During a crisis, both may occur, which was shown when comparing government decisions and advocacy strategies. Notably the pandemic showed the possibility of decarceration. This is an area prison advocates have been supporting for a long time, as it stops overcrowding and promotes rehabilitation within the community. The pandemic has allowed for decarceration to slowly be implemented and hopefully, its use will continue at a greater scale. It was important to use the hyper resilience theory alongside the state of exception because without it, I would not have been able to analyse the positive opportunities that arose. Advocates showed this during the

pandemic, and this should be seen as a lesson for those who must make decisions during a crisis in the future.

## ***6.2 Future Research***

This research seeks to fill the gaps from previous research, however, there are a few avenues for future research relating to this topic. For example, future research could examine how people react to advocacy. This would be interesting as the reactions may provide perspectives on public opinion with respect to protecting prisoner rights, which in turn affects the decisions the government makes. Mathiesen's theory on negative and positive reforms would be interesting to explore when looking at the reaction's society has. Negative reforms are the smaller changes that typically soften public critiques, which are needed but do not cause major changes, whereas positive reforms are the more drastic changes. Will the negative reforms be enough to ease public criticism? Would they fear bigger positive reforms? The public's reactions vary significantly in comparison to advocates and would be interesting to explore. Another area of research could involve examining the perspectives of prisoners to better understand how the pandemic has affected them physically and mentally while incarcerated. The lived aspect that prisoners experienced while incarcerated during the pandemic cannot be understood without hearing their stories. They are the only ones who can understand and explain what they went through. As mentioned by Deepan Budlakoti (2022b), there is a lack of transparency and accountability in the carceral system which means research is crucial. To develop greater transparency, understanding prisoner's experiences is important. As noted, news stations carry a certain level of bias when reporting, this could be an interesting avenue to pursue when conducting future research. Researchers could examine the ways in which various media outlets addressed these concerns (or not). Lastly, my research opens a new field to apply the state of exception, which is inside prison institutions. To further this type of application, it might be

worth exploring what other institutions or organizations it could be applied to. Further research could apply the state of exception theory similarly to its application in this thesis, and use it to understand areas where rights are put on hold, even though the state may not be declared.

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**Appendix A:**  
**Data Used for Document Analysis**

Title	Date	Country/ Province	Category	Content Type	Source
<b>NGO</b>					
Update on COVID-19 and prison settings: Increased crowding behind bars, outbreaks with new COVID-19 variants, most prisoners remain unvaccinated	20-Mar-21	Canada	Vaccinations, Prisoner Count	Recommendations and statistics	Canadian Civil Liberties Association
An open Letter in solidarity in solidarity with prisoners at the Saskatoon correctional centre	1-Dec-21	Canada, (Alberta, Manitoba and Saskatchewan)	Recommendations for Saskatoon correctional centre	Recommendations and Statistics	The Saskatchewan-Manitoba-Alberta Abolition Coalition
Justice required: vaccination in Canadian prisons	Mar-2021	Canada	Need for Vaccines in prisons	Recommendations	Family physicians Advocate and Prison Health Member Interest Group
How Our Advocacy Continues During a Pandemic	July-2020	Canada	Information on Advocacy	Information	Journal of Prisoners on Prisons
Why are people held at the Ottawa jail so vaccine-hesitant? In their shoes, you might be too	1-Apr-22	Ottawa Canada	Vaccine Hesitancy	Denunciations	CPEP

Voices from the Inside, Voices from Beyond: Reflections on the (Prison) Pandemic	N/A	Canada	Issues during the pandemic	Issues	Journal of Prisoners on Prisons
Conditions of Confinement in Men's Provincial Jails in Nova Scotia. ECPJS Visiting Committee Annual Report 2020-2021	1-Jan-21	Canada	Analysis of Nova Scotia Jails	Denunciations and recommendations	East Coast Prison Justice Society
Second Wave of COVID-19 in Canadian Prisons	1-Dec-20	Canada	Recommendations to the minister	Denunciations and recommendations	John Howard Society
<b>International Associations</b>					
Faculty Research: In a Pandemic, Prisons are a Problem	25-Mar-20	US	Issues of prisons	Denunciations	Washington University
A Global Analysis of Prisoner Releases Scheme in response to COVID-19	Dec-2020	Global	Prison and corrections reform (COVID-19)	Statistics	Daily Piper (report)
Correctional services during and beyond COVID-19	Jan-21	Canada	Issues of Transparency	Recommendations	Facets Canadian Science Journal
UNODC, WHO, UNAIDS AND OHCHR JOINT STATEMENT ON COVID-19	13-May-20	Global	Suggestions for prisons during COVID-19	Recommendations	World Health Organization, and United Nations
Prison decongestion measures.	1-Apr-20	Global	The need for decongestion and	Recommendations	United Nations

Justice and Corrections Service			recommendations of what to do		
<b>Professional Associations</b>					
Reconciling Civil Liberties and Public Health in the Response to COVID-19	25-Sept-20	Canada	Civil Liberties affected by COVID-19		Royal Society of Canada
Segregation By Another Name	1-Nov-20	Canada	The ongoing use of segregation in federal prisons (Section on pandemic response)	Denunciations and Recommendations	The Law Foundation of British Columbia
Prisoners Dilemma	21-Apr-20	Canada	COVID-19 affects on prisoners	Information	Canadian Bar Association
Ontario prison inmate vaccination program a failure	04-June-21	Canada	Access to information and vaccines	Denunciations	Canadian Lawyer
<b>Government</b>					
Correctional Investigator Releases Third Status Update on COVID-19 in Federal Corrections	23-Feb-21	Canada	Impact of COVID-19 on federal corrections	Statistics	Government of Canada (CSC)
A time-series analysis of testing and COVID-19 outbreaks in Canadian federal prisons to inform prevention and surveillance efforts	Jan-21	Canada	Outbreaks	Analysis and Recommendations	Public Health Agency of Canada

Access to Information Document	14-Jan-21	Canada	Lockdowns	Statistics and information	Correctional Service of Canada
Access to Information Document	25-Mar-21	Canada	Segregation	Statistics and information	Correctional Service of Canada
Access to Information Document	1-Apr-2020	Canada	Medical isolation and SIU	Statistics and information	Correctional Service of Canada
Access to Information Document	14-Jan-21	Canada	Releases	Statistics and information	Correctional Service of Canada
Access to Information Document	14-Jan-21	Canada	Segregation	Statistics and information	Correctional Service of Canada
Access to Information Document	03-Dec-21	Canada	Vaccines	Statistics and information	Manitoba Community Safety Division
Access to Information Document	01-Mar-21	Canada	Testing	Statistics and information	Nova Scotia Health
OHRC statement calling on Ontario's justice sector to fight COVID-19 by keeping prison custody numbers low	1-May-21	Canada	Release from Prison	Denunciations	Ontario Human Rights Commission
Senators Go to Jail: When why and what did they find?	15-June-22	Canada	Information on segregation, SIU, living conditions	Statistics and information	Senators
<b>Academic Sources (Canadian)</b>					
Human Rights and public health in prisons: A case study of Nova Scotia's experience during the first wave of the pandemic	12-Oct-21	Canada, Nova Scotia	Experiences of prisoners in Nova Scotia	Information	Dalhousie University

Vulnerable The Law, Policy and Ethics of COVID-19 (Chapter D5)	2020	Canada, Ontario	Canadian Prisons: policies, practice, and concerns	Recommendations	University of Ottawa Press
Webinar: Statelessness, Forced Isolation and Crimmigration in Canada	1-Apr-22	Ottawa Canada	Prison Conditions	Denunciations	Carleton University
Canadian Prisons in the Time of COVID-19: Recommendations for the Pandemic and Beyond	June-20	Canada	Recommendations during the pandemic	Recommendations	Criminology and Sociology professors
<b>OTHER</b>					
Public health crisis': Canada's prison conditions during pandemic being investigated	05-Apr-21	Canada	Conditions of confinement	Recommendations	CTV News
Families say inmates at Manitoba jail feel punished after being put in segregation due to COVID-19	18-Nov-20	Canada, Manitoba	Segregation during COVID-19	Denunciations	APTN National News
Some provinces yet to say when jail inmates to be vaccinated against COVID-19	21-Jan-21	Canada	Vaccinations	Denunciations	CTV News
FOR IMMEDIATE RELEASE: Provincial Response to	31-Dec-21	Canada	Releases	Denunciations	East Coast Prison Justice Society

COVID-19 in Nova Scotia Correctional Facilities					
Prison Reform and Prison Abolition	N.D	N/A	Defining Reform and Abolition	Definitions	N/A
Fewer than half of Ottawa inmates have 1 dose of COVID-19 vaccine	1-Jan-22	Ottawa, Canada	Vaccines	Denunciations	CBC News
Conservatives slam vaccine rollout plan that prioritizes some federal prisoners	06-Jan-21	Canada	Vaccines	Denunciations	CBC News
Canada begins vaccinating inmates in federal prisons with no active coronavirus cases	09-Jan-21	Canada	Vaccines	Updates	Global News
Budlakoti: Prisoners subjected to torturous conditions during latest COVID-19 outbreak at Ottawa jail	19-Jan-22	Ottawa Canada	Prison conditions during the pandemic	Denunciations	Ottawa citizen
Abolition in the land known as Canada in the wake of COVID-19	1-Jan-21		Abolitionist arguments during the pandemic	Strategy	Current Issues in Criminal Justice
Applying an Indigenous and gender-based lens to the exploration of public health	1-Oct-20	Canada	Issues Indigenous and Women have faced during COVID-19	Statistics and recommendations	Canadian Journal of Public Health

and human rights implications of COVID-19 in Canadian correctional facilities					
COVID-19: a prison-breaker?	Aug-20	Canada		Recommendations and Denunciations	Canadian Journal of Public Health
British Columbia Provincial Corrections' Response to the COVID-19 Pandemic: A Case Study of Correctional Policy and Practice	Oct-20	Canada	Provincial corrections responses and recommendations	Recommendations	Journal of Victims and Offenders
COVID-19 pandemic exposes how little we know about prison conditions globally	Mar-21	Canada, Spain, and Argentina		Denunciations	Prison Transparency Project
COVID-19 vaccine distribution must prioritize prisoners. The virus is killing more of them	9-Dec-20	US	Vaccines	Denunciations	NBC News