CANADIAN GRADUATE JOURNAL
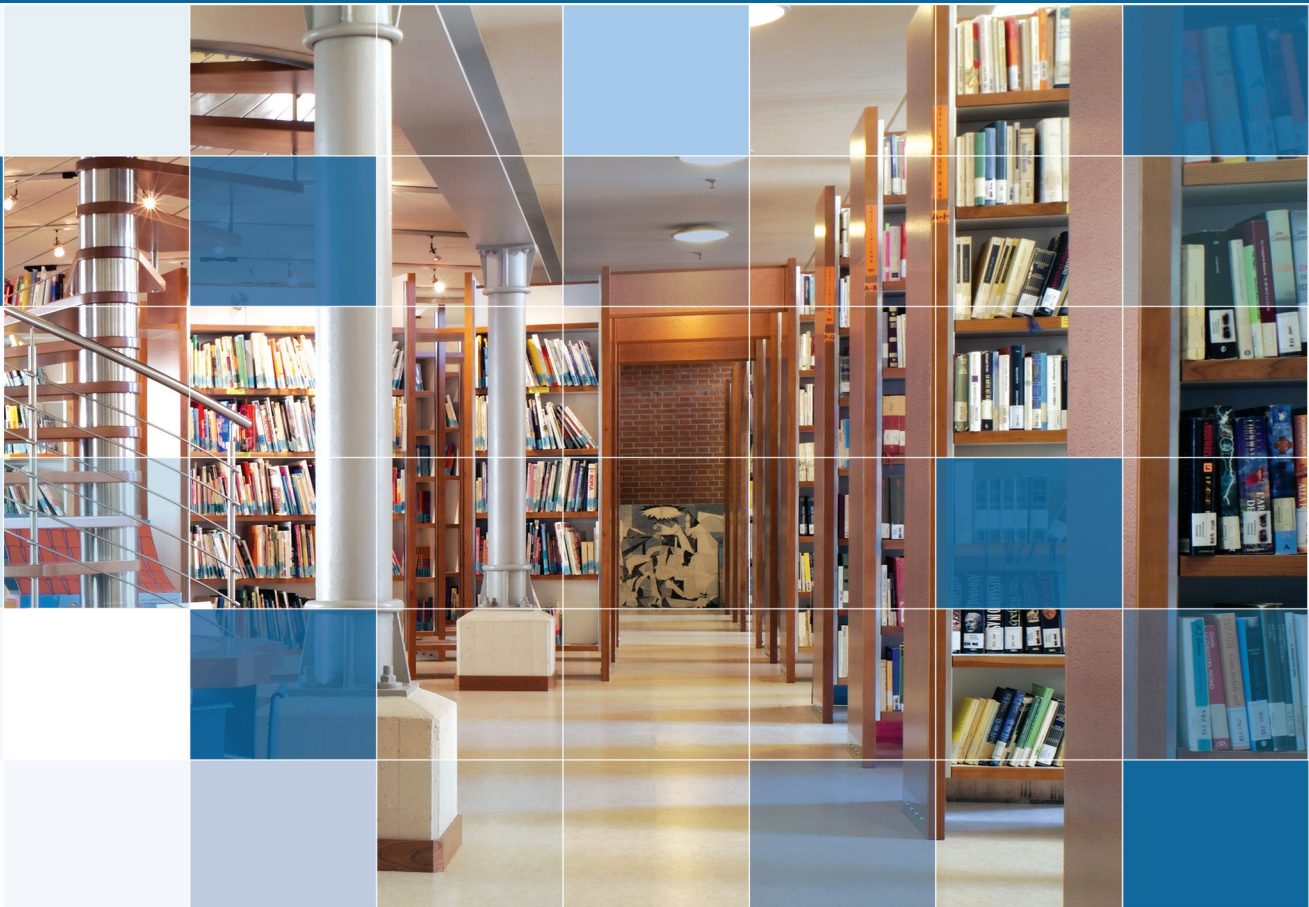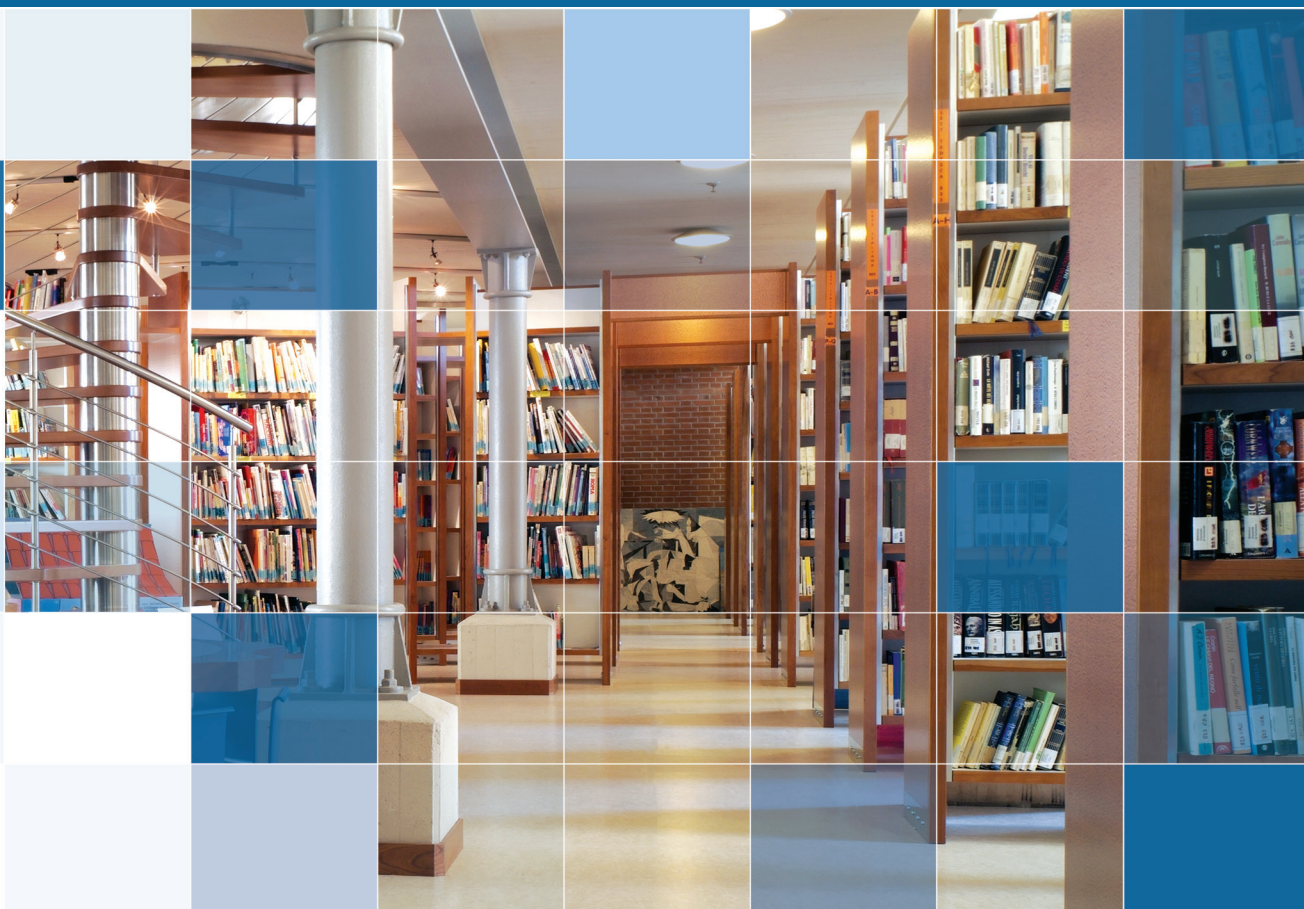## OF SOCIOLOGY AND CRIMINOLOGY

CANADIAN GRADUATE JOURNAL
OF SOCIOLOGY AND CRIMINOLOGY

REVUE CANADIENNE
DES ÉTUDES SUPÉRIEURES

EN SOCIOLOGIE ET CRIMINOLOGIE

REVUE CANADIENNE
DES ÉTUDES SUPÉRIEURES
EN SOCIOLOGIE ET CRIMINOLOGIE

The Canadian Graduate Journal Of Sociology And Criminology
La Revue Canadienne des Études Supérieures en Sociologie et Criminologie

Focus and Scope:
CGJSC is a peer-reviewed graduate journal seeking original content and discussion by graduate students researching within the disciplines of sociology and criminology. The scope of CGJSC is purposefully broad in order to offer a diverse range of graduate students the opportunity to submit their research for publication. Examples of acceptable submissions that fall within the journal's scope are, but not limited to: **theory pieces, conceptual pieces, critical analyses, substantive explorations and book reviews.** Qualitative, quantitative and mixed methodologies are accepted. We aim to publish insightful and well-written empirical pieces that enrich the collective knowledge within the disciplines of sociology and criminology.

CGJSC welcomes submissions from graduate students involved in research outside of, but related to, the disciplines of sociology and criminology. All fields within the social sciences (ex: Political Science, History, Psychology, Religious Studies, Women's Studies, Labor Studies, Health Sciences, Economics, Anthropology) are encouraged to submit provided that they demonstrate a direct link to a sociological and/or criminological area of study.

Peer Review Process:
Submissions selected for blind peer-review are distributed to at least two (2) graduate student or faculty reviewers within the same field of expertise. CGJSC uses a blind peer-review process where the identities of the submitting author as well as those of the peer-reviewers are unknown to each party. All efforts will be made by the managing editor(s) to keep the identities of the submitting author and peer-reviewers confidential.

Publication Frequency:
CGJSC publishes semi-annually: once in the summer and again in early winter/spring.

Open Access Policy:
This journal provides immediate open access to its content on the principle that making research freely available to the public supports a greater global exchange of knowledge.

Centre d'intérêt :
La RCESSC est une revue scientifique évaluée par les pairs sollicitant des textes originaux et des discussions auprès des étudiants diplômés faisant des recherches dans les disciplines de la sociologie et de la criminologie. Le domaine couvert par la RCESSC est délibérément large afin d'offrir à une gamme diversifiée d'étudiants diplômés l'occasion de soumettre leurs recherches pour publication. Les exemples de soumissions acceptables relevant du domaine couvert par la revue comprennent, sans s'y limiter, les textes théoriques, les textes conceptuels, les analyses critiques, les explorations de fond et les comptes-rendus de livres. Des méthodologies qualitatives, quantitatives et mixtes sont acceptées. Nous cherchons à publier des textes empiriques pénétrants et bien écrits qui sauront enrichir le savoir collectif à l'intérieur des disciplines de la sociologie et de la criminologie.

La RCESSC sollicite des articles des étudiant(e)s des cycles supérieurs qui participent à des recherches dans diverses disciplines qui peuvent être reliées à la sociologie et à la criminologie. Tous les étudiant(e)s des cycles supérieurs appartenant à domaines pertinents aux sciences sociales, comme les sciences politiques, l'histoire, la psychologie, les études religieuses, les études des femmes, les études du travail, les sciences de la santé, l'économie, l'anthropologie, sont encouragés à proposer des articles qui établissent un lien direct à la sociologie et à la criminologie.

Processus d'évaluation par les pairs:
Les soumissions sélectionnées pour un examen aveugle par les pairs seront distribuées à au moins deux réviseurs étudiant(e)s des cycles supérieurs dans le même champ d'expertise. La RCESSC utilise un processus aveugle de révision par des pairs où les identités de l'auteur(e) et des réviseurs sont inconnu(e)s de chaque partie. Tous les efforts seront faits par le(s) éditeur(s) en chef pour conserver les identités de l'auteur(e) et des pairs confidentielles.

Périodicité:
La RCESSC publie semestriellement : une fois durant l'été et à nouveau au début de l'hiver/printemps.

Politique d'accès libre:
Cette revue fournit un libre accès immédiat à son contenu selon le principe que de rendre la recherche gratuitement accessible au public supporte un plus grand échange mondial de connaissance.

Guest Editor / Rédactrice invitée

Dr. Sarah Turnbull, Ph.D.

Women and Prisons Special Issue: March 2014

Sarah Turnbull is a Postdoctoral Research Fellow with Oxford Universty's Centre for Criminology (2013-2016). She responsible for the 'Home and Away: Gender, Nation, Deportation' project, which is part of a broader European Research Council funded research endeavour entitled 'Subjectivity, Identity and Penal Power: Incarceration in a Global Age', led by Dr Mary Bosworth. Sarah recently completed her PhD in Criminology and Sociolegal Studies and the Collaborative Program in Women and Gender Studies at the University of Toronto (2012). Her doctoral research explored the integration of 'gender' and 'diversity' into Canadian federal parole policy and practice, with a specific focus on how ideas about 'difference' shape penal responses for particular groups of offenders. Sarah also has an MA in Criminology and Sociolegal Studies (University of Toronto) and a BA in Women's Studies (Simon Fraser University).

CGJSC / RCESSC

VOLUME 3 - ISSUE / NUMÉRO 1 - SPRING / PRINTEMPS 2014

CONTENTS / TABLE DES MATIÈRES

Editor's Note

Sarah Turnbull, Ph.D.
University of Oxford, Centre for Criminology

This special issue focuses on the broad topic of 'women in prison' and includes the work of graduate students at Canadian universities who are examining contemporary issues related to the punishment of women. What is perhaps telling is that these papers scrutinize long-standing concerns related to women's imprisonment at the federal level—human rights, mental health, and mothering—that have been examined time and again over the past thirty years since the Task Force on Federally Sentenced Women (TFFSW) released its report, *Creating Choices*, in 1990. This report encouraged the creation of a women-centred model of punishment for female prisoners in federal penitentiaries, with specific focus on Aboriginal female offenders through the creation of a healing lodge. The TFFSW's recognition of the ways and reasons that women and men differ in terms of criminal offending, pathways to crime, experiences of violence and trauma, treatment and reintegration needs, and experiences of imprisonment supported the development of so-called gender responsive approaches to assessment and treatment within Canada's prisons for women.

Yet, the extent to which the current model of imprisonment of federally sentenced women is gender responsive or reflects an understanding of diverse women's needs and experiences has been contested, both by scholars (Hannah-Moffat 2001; Hannah-Moffat and Shaw 2001; Monture-Angus 2001; Hayman 2006) and public entities such as the Arbour Commission (Canada 1996), the Canadian Human Rights Commission (2003), and the Office of the Correctional Investigator (OCI) through its annual reports. The tragic and untimely loss of 19 year-old Ashley Smith at a federal penitentiary in 2012, and the recent findings of the Chief Coroner of Ontario's inquest into her death, has once again put the issue of women in prison in the spotlight, raising questions about their treatment and the limits on the state's power to punish.

The papers in this special issue speak to a context in which the number of women entering federal corrections is increasing. The OCI (2013) indicates that over the decade between March 2003 and March 2013, the federally sentenced female population has risen by 60%, and one out of every three women prisoners is Aboriginal. In addition, incidents of self-injurious behaviour among incarcerated women have increased over the past ten years (OCI 2013). The Ashley Smith case has also drawn attention to such issues of self-harm and mental health in the federally incarcerated female population.

This special issue is composed of papers that reflect graduate work on women confined in Canadian prisons. Two of the papers focus on the recent failure of the prison system to uphold the human rights of women prisoners—the case of Ashley Smith. The third concentrates on mothering in Canada's prisons for women. Using different methodological and conceptual tools, these papers address important themes emerging from the sociological and criminological study of women's imprisonment.

Rebecca Anne Sutton considers the feasibility of a class action law suit against the Correctional Service of Canada (CSC), with specific focus on incarcerated women with mental health issues, including a subset of Aboriginal women prisoners. In exploring the relevance of civil litigation to drive change in the treatment of federally sentenced women, this paper foregrounds the prevalence of mental health issues among female prisoners in Canada. Sutton's analysis and arguments for a class action law suit point to the potential utility of legal action against the Government of Canada as a means to bring about substantive reforms to women's imprisonment.

Jessi Ring's paper examines media representations of Ashley Smith in four mainstream Canadian newspapers. Using the insights of modified labelling theory, she focuses on the mental illness labels circulated in news coverage describing Ashley and her behaviour, highlighting the feminist criminological literature on how women's crime and incarceration is often viewed and represented. Ring shows how gendered and racialized notions of mental illness converge in the coverage of Ashley, yet do so differently depending on the political orientation of the newspaper. Importantly, she shows how counter-narratives may also have space to emerge, pointing to the complexities of mental illness labelling.

Drawing on quantitative and qualitative data, Sarah Brennan's paper analyses the CSC's Mother-Child Program, which allows for full- and part-time visitation for children with their incarcerated mothers. The analysis focuses on tracing participation in the program since its inception in 2001 to its usage in 2012, and considers the different barriers to the implementation of the program as it was intended. Brennan finds that the participation in the Mother-Child Program has been low over the eleven-year period under study, leading her to conclude that the program has been hardly used. Potential barriers to the full realization of the program include the changes to eligibility in 2008, security classifications, overcrowding, and an increasing punitive environment of women's corrections.

Taken together, the three papers comprising this special issue highlight the ongoing relevancy of human rights, mental health, and mothering for women who are incarcerated in Canada's federal correctional system.

References

Canada, Government of. (1996). *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Ottawa: Public Works and Government Services Canada.

Canadian Human Rights Commission. (2003). *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Government of Canada. Available at: http://www.chrcccdp.ca/legislation_policies/consultation_ report-eng.aspx (accessed on 29 March 2014).

Hannah-Moffat K. (2001). *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada*. Toronto: University of Toronto Press.

Hannah-Moffat K. and Shaw M. (eds.) (2000). *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing.

Hayman S. (2006). *Imprisoning Our Sisters: The New Federal Women's Prisons in Canada*. Kingston: McGill-Queens University Press.

Monture-Angus P. (2000). Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women. In K. Hannah-Moffat and M. Shaw (eds.) *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada* (52-60). Halifax: Fernwood Publishing.

Office of the Correctional Investigator. (2013). *Annual Report of the Office of the Correctional Investigator 2012-2013*. Available at: http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx (accessed on 29 March 2014).

Task Force on Federally Sentenced Women. (1990). *Report of the Task Force on Federally Sentenced Women – Creating Choices*. Ottawa: Solicitor General of Canada.

Note de la rédactrice invitée

Dr. Sarah Turnbull
Université Oxford, Département de Criminologie

Ce numéro spécial porte sur le thème élargi des « femmes en prison » et inclut les travaux des étudiants diplômés dans les universités canadiennes, qui examinent les questions contemporaines liées à la répression carcérale des femmes. Ce qui est peut-être révélateur dans ces présentations est l'examen de préoccupations de longue date qui sont de compétences fédérales reliées à l'emprisonnement des femmes, qu'il s'agisse des droits de la personne, de la santé mentale et de la maternité. Ces sujets ont été examinées maintes et maintes fois au cours des trente dernières années depuis la publication en 1990 de : « La création de choix : rapport du groupe d'étude sur les femmes purgeant une peine fédérale ». Ce rapport a encouragé la création d'un modèle de punition pour les femmes détenues dans les pénitenciers fédéraux, en mettant l'accent sur les délinquantes autochtones, par la création d'un pavillon de ressourcement. La reconnaissance du rapport du groupe d'étude de 1990 sur les moyens et les différences entre les hommes et les femmes dans leur cheminement criminel, leurs expériences de violence et de traumatismes, le traitement et le besoin de réintégration, et les expériences d'emprisonnement, ont permis l'élaboration d'approches qui tiennent compte des différences entre les sexes et du traitement réservé aux femmes dans les prisons du Canada.

Pourtant, dans quelle mesure le modèle actuel d'emprisonnement des femmes purgeant une peine de ressort fédéral tient compte de ce facteur ou reflète une compréhension des expériences et des besoins différents des femmes a été contesté, tant par des érudits (Hannah-Moffat, 2001; Hannah-Moffat et Shaw, 2001; Monture-Angus 2001; Hayman 2006) et des organismes publiques comme la Commission Arbor (Canada, 1996), la Commission canadienne des droits de la personne (2003) et le Bureau de l'enquêteur correctionnel, par le biais de ses rapports annuels. La perte tragique et prématurée d'Ashley Smith, 19 ans, dans un pénitencier fédéral en 2012 et les récentes découvertes du Coroner en chef de l'enquête de l'Ontario sur son décès, a une fois de plus remis la question des femmes en prison sous les projecteurs, suscitant des interrogations sur leur traitement et les limites du pouvoir de sanction de l'État.

Les articles dans ce numéro spécial présentent un contexte où le nombre de femmes qui entrent dans le système correctionnel fédéral augmente. Le Bureau de l'enquêteur correctionnel (2013) indique qu'au cours de la décennie située entre mars 2003 et mars 2013, la population des femmes purgeant une peine de ressort fédéral a augmenté de 60 %, et une prisonnière sur trois est autochtone. En outre, les incidents de comportements autodestructeurs chez les femmes incarcérées ont augmenté au cours des dix dernières années (Bureau de l'enquêteur correctionnel, 2013). L'affaire Ashley Smith a également attiré l'attention sur des questions de santé mentale et d'automutilation dans la population carcérale fédérale féminine.

Ce numéro spécial est composé d'articles qui reflètent le travail des études supérieures sur les femmes confinées dans les prisons canadiennes. Deux articles soulignent l'échec récent du système pénitentiaire à défendre les droits de la personne chez les prisonnières ― le cas d'Ashley Smith. Un troisième article met en scène la question de la maternité dans les prisons pour femmes du Canada. À l'aide de différents outils méthodologiques et conceptuels, ces articles abordent des thèmes importants qui découlent de l'étude sociologique et criminologique de l'emprisonnement des femmes.

Rebecca Anne Sutton considère la possibilité d'un recours collectif de droit contre le Service correctionnel du Canada (SCC), en mettant l'accent sur les femmes incarcérées qui ont des problèmes de santé mentale, y compris un sous-ensemble des femmes autochtones détenues. En évaluant la pertinence des procédures civiles pour stimuler le changement dans le traitement des femmes purgeant une peine de ressort fédéral, l'article souligne la prévalence des problèmes de santé mentale chez les prisonnières au Canada. L'analyse et les arguments de Sutton pour un droit au recours collectif soulignent l'utilité potentielle des poursuites judiciaires contre le gouvernement du Canada comme moyen d'instaurer des réformes approfondies à l'emprisonnement des femmes.

L'article de Jessi Ring examine les représentations médiatiques d'Ashley Smith dans quatre journaux canadiens à grand tirage. En utilisant les outils de la théorie d'étiquetage modifiée, l'auteure se concentre sur les étiquettes des maladies mentales communiquées par les médias décrivant Ashley et son comportement, en présentant la littérature féministe criminologique sur la perception et la représentation fréquente de l'incarcération des femmes. Ring montre comment des notions de maladie mentale sexuées et basées sur la race convergent différemment dans la présentation médiatique d'Ashley selon l'orientation politique du journal. Tout aussi important, elle montre comment les contre-récits peuvent également avoir un espace d'émergence, indiquant les complexités de l'étiquetage de la maladie mentale.

En prenant appui sur des données quantitatives et qualitatives, l'article de Sarah Brennan étudie le programme mère-enfant du SCC, qui permet des visites à temps plein et à temps partiel des enfants avec leur mère incarcérée. L'analyse met l'accent sur la participation du traçage depuis la création du programme en 2001 jusqu'à son utilisation en 2012, et elle considère les différents obstacles à la mise en œuvre du programme, tel qu'il était prévu. Brennan trouve que la participation au programme mère-enfant a été faible au cours de la période des onze années d'étude, ce qui l'amène à conclure que le programme a été peu utilisé. Les obstacles possibles à la pleine réalisation du programme comprennent les modifications à l'admissibilité en 2008, le classement de sécurité, la surpopulation et un environnement punitif croissant des services correctionnels de la femme.

Dans leur ensemble, les trois articles qui composent ce numéro spécial soulignent la pertinence continue des droits de la personne, la santé mentale et le droit à la maternité pour les femmes qui sont incarcérées dans le système correctionnel fédéral du Canada.

Références

Canada, Government of. (1996). *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Ottawa: Public Works and Government Services Canada.

Canadian Human Rights Commission. (2003). *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Government of Canada. Available at: http://www.chrcccdp.ca/legislation_policies/consultation_ report-eng.aspx (accessed on 29 March 2014).

Hannah-Moffat K. (2001). *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada*. Toronto: University of Toronto Press.

Hannah-Moffat K. and Shaw M. (eds.) (2000). *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing.

Hayman S. (2006). *Imprisoning Our Sisters: The New Federal Women's Prisons in Canada*. Kingston: McGill-Queens University Press.

Monture-Angus P. (2000). Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women. In K. Hannah-Moffat and M. Shaw (eds.) *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada* (52-60). Halifax: Fernwood Publishing.

Office of the Correctional Investigator. (2013). *Annual Report of the Office of the Correctional Investigator 2012-2013*. Available at: http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx (accessed on 29 March 2014).

Task Force on Federally Sentenced Women. (1990). *Report of the Task Force on Federally Sentenced Women – Creating Choices*. Ottawa: Solicitor General of Canada.

Canada's Mother-Child Program: Examining Its Emergence, Usage and Current State

Sarah Brennan

University of Guelph, Department of Sociology and Anthropology

One of many issues a mother must face while incarcerated is separation from her child(ren) for an extended period of time. Empirical findings have consistently highlighted various negative effects for both mothers and their children as a result of this separation. To curb some of the negative effects, Correctional Service Canada's Mother-Child Program offers full- and part-time visitation between children and their incarcerated mothers at various women's federal correctional facilities in Canada. The current study involves an in-depth critical analysis of Canada's MCP by asking three related questions. First, to what extent has the MCP been used since its full implementation in 2001? Second, to what extent is the MCP used today? Third, do any barriers exist currently that are inhibiting the success of the MCP and, if so, how can these be addressed? The results of the study reveal that, since the full implementation of the program in 2001, the participation rate declined from an already low starting point and has remained relatively low since. Further, three main factors were suggested as potential barriers impeding the success of the MCP: correctional overcrowding, a more punitive institutional culture, and a series of changes to the program's eligibility criteria. Recommendations on ways to increase the usage of the program are offered and suggestions for future research are made.

Keywords: correctional visitation; incarcerated mothers; Mother-Child program; Canada

Parmi les nombreux problèmes auxquels sont confrontés les mères en prison est la séparation avec son ou ses enfant(s) pendant de longues périodes. Des résultats empiriques continuent de démontrer les multiples effets négatifs de cette séparation sur la mère et l'enfant. Pour contrecarrer certains d'entre eux, le Programme Mère-Enfant (PME) du Service Correctionnel du Canada offre des visites à temps plein et à temps partiel des enfants dans le milieu carcéral de la mère dans de multiples institutions carcérales au Canada. L'étude en cours constitue une étude critique approfondie du PME du Canada fondé sur trois questions. Dans quelle mesure le PME a-t-il été utilisé depuis sa mise en œuvre intégrale en 2001? Dans quelle mesure le PME est-il utilisé aujourd'hui? Quels sont les obstacles actuels au succès du PME et, le cas échéant, comment peuvent-ils être surmontés? Les conclusions de l'étude révèlent que depuis la mise en œuvre du programme en 2001, le taux de participation, déjà assez faible, a diminué avant de se stabilité à un niveau encore plus faible. En outre, trois grands facteurs ont été avancés pour entraver le succès du PME : la surpopulation carcérale, une culture institutionnel plus punitive et une série de modifications aux critères d'admissibilité au programme. Des recommandations seront proposées pour augmenter le recours au programme, ainsi que de suggestions pour des études à venir.

Mots clés: visites correctionnel; mères incarcérées; programme mère-enfant; Canada

Introduction

Research has shown that the impact of incarceration extends beyond those individuals whom are themselves incarcerated (Gadsden, 2003). In particular, incarcerating mothers is commonly associated with negative implications for her family and especially her children (Enos, 2001), including depression, anger, poor school performance, and environmental disruptions (Acoca &

Raeder, 1999; Cunningham & Baker, 2004; Kampfner, 1995; Sharp & Marcus-Mendoza, 2001). Many of these and other negative effects can be linked to the fact that incarceration involves the separation of mother from child (Cunningham & Baker, 2004), which disrupts the crucial bonding process (Johnston, 1995; Sharp & Marcus-Mendoza, 2001). To curb some of the negative effects of incarceration, visitation programs exist to give mothers the opportunity to maintain familial relationships and bonds. In Canada, the Mother-Child Program (MCP) "aims to provide a supportive environment that fosters and promotes stability and continuity for the mother-child relationship," by offering full- and part-time visitation for children with their incarcerated mothers at the federal prisons for women (Correctional Service Canada, 2007, para. 1). Children who participate in the full-time program live with their mothers at the correctional institution whereas part-time participants would have prolonged visits that take place on weekends and/or holidays (Lebrecque, 1995). This paper presents an analysis of Canada's MCP by asking three related questions. First, to what extent has the MCP been used since its full implementation in 2001? Second, to what extent is the MCP used today? Third, do any barriers exist currently that are inhibiting the success of the MCP and, if so, how can these be addressed? Multiple methods were utilized to answer these questions including a review of existing documents and publications, basic statistical analysis, and interviews.

Impact of Incarceration on Mothers and their Children

Significant scholarly attention has focused on the negative impacts of incarceration for mothers and their children (cf. Baunach, 1985; Cummingham & Baker, 2004; Enos, 2001; Hagan, 1996; Johnston, 1995; Kampfner, 1995; Myers, Smarsh, Amlund-Hagan, & Kennon, 1999; Sharp & Marcus-Mendoza, 2001). Incarcerated mothers describe separation from their children as one of the greatest "pains of imprisonment" they endure (Booker Loper, Carlson, Levitt & Schaefer, 2009; Enos, 2001; Gentry, 2003; Hairston, 1991), which contributes to a range of emotions that compromise their mental health during their time in custody. They frequently report feeling stress (Celinska & Siegel, 2010; Houck & Booker Loper, 2002) and experiencing anxiety and/or depression as a result of being separated from their children (Booker Loper et al., 2009; Fogel & Martin, 1992; Houck & Booker Loper, 2002). A number of other negative feelings, including shame (Celinska & Siegel, 2010), embarrassment, fear, guilt, bitterness, and despondency (Baunach, 1985), are experienced by incarcerated mothers. Practical issues surrounding childcare also plague their minds (Barker, 2009; Baunach, 1985; Enos, 2001; Fogel & Martin, 1992; Hairston, 1991; Kiser, 1991). Trying to find suitable living arrangements for their children (Enos, 2001) and adequate child care (Kiser, 1991), for example, are just two of the many challenges incarcerated women face in securing care for their children.

For children, the negative effects of maternal incarceration have behavioural, emotional, and environmental roots. The effects differ depending on the age of the child and his/her developmental stage (Myers et al., 1999). According to Cunningham and Baker (2004: 2), "it is arguably the impact of the separation caused by incarceration that is most salient for children". The disruption of the bonding process can create withdrawal and distress in children (Cunningham & Baker, 2004). Research shows that infants and preschool age children whose mothers are incarcerated are more likely to experience depression (Sharp & Marcus-Mendoza, 2001). Children also have difficulty controlling their emotions (Johnston, 1995).

Overt behavioural issues also appear in the children of incarcerated mothers. Cunningham and Baker (2004: 5) note that adjustment problems "can manifest in a variety of ways including

aggression, difficulty concentrating, multiple absences, and even school avoidance". Adolescents experience similar effects including poor school performance, which is defined by poor grades, 'dropping out', as well as engagement in high risk activities including drugs and alcohol use (Sharp & Marcus-Mendoza, 2001). As Cunningham and Baker (2004: 6) remark, adolescents "may feel anger at their mothers and at the 'system', shame, sadness, confusion and guilt," in addition to feeling stigmatized and isolated. Johnston (1995) found that older adolescents tend to develop adverse opinions of the justice system, which in turn may lead to their involvement in criminal activity.

Children can also experience changes in their social environment. Myers et al. (1999) report that changes in caregivers largely depend on the child's living situation prior to the mother's incarceration. Research suggests that the majority of these children are in the primary care of their mothers prior to the mother's incarceration (Fishman, 1983; Greene, Haney, & Hurtado, 2000; Johnston 1995b; Kampfner, 1999; Myers et al., 1999; Sharp & Marcus-Mendoza, 2001). As a result, the majority of the children will be placed with their grandparents – particularly their grandmothers – during their mother's incarceration (Dressel & Barnhill, 1994; Fishman, 1983; Johnston, 1995a). However, it is not uncommon for children to experience one or more changes in caregivers or placement (Acoca & Raeder, 1999; Johnston, 1995; Johnson 1995a), be separated from their siblings (Acoca & Raeder, 1999; Cunningham & Baker, 2004; Johnston, 1995a; Sharp & Marcus-Mendoza, 2001), and/or undergo multiple changes in schools (Cunningham & Baker, 2004). It is clear, then, that children of incarcerated mothers experience instability with regards to their environment during their mothers' incarceration in addition to emotional and behavioural problems. As a way to address or minimize these negative effects of maternal incarceration, visitation programs that allow incarcerated mothers and their dependent children to spend more time together in custodial facilities have been developed.

Correctional Service Canada's Mother-Child Program

In Canada, mothers can apply to have their children reside with them at the federal facilities for women through the controversial MCP. Generally, the idea of prolonged correctional visitation has been met with considerable contention. Belknap (2007) summarizes the arguments surrounding this debate:

> One of the most controversial debates surrounding the imprisonment of women is whether they should be allowed to keep infants and small children with them in prison. On the one hand, some argue that innocent children should not be raised in prisons. On the other hand, others claim that is it unfair for innocent children to be separated from their mothers (p. 203).

The program provides full-time on-site residency for children with their incarcerated mothers. Children up to the age of four are eligible for this portion of the program (Lebrecque, 1995). For children aged five to 12, a part-time (weekends and holidays) component exists (Lebrecque, 1995). The emergence of the program is linked to the Task Force on Federally Sentenced Women's (TFFSW) final report entitled *Creating Choices*. The TFFSW was established in 1989 in order to address the many issues facing female inmates at the time at the Prison for Women (P4W) in Kingston, Ontario. According to MacDonald and Watson (2001), geographical isolation was one of the more urgent issues facing female offenders. This issue was especially significant for mothers

as it made visitation with their children difficult. Geographical distance, transportation needs, and cost of travel were just some of the challenges of arranging visitation between incarcerated mothers and children (Law, 2009; McGowan & Blumenthal, 1978). The TFFSW was formed to make recommendations on how to solve these and other issues related to female offenders at the federal level.

Creating Choices identified a plan for female offenders, which was to be guided by five principles: empowerment, meaningful and responsible choices, respect and dignity, a supportive environment, and shared responsibility (TFFSW, 1990). A central recommendation of *Creating Choices* was the implementation of five regional facilities and a Healing Lodge for federal offenders in place of P4W. The recommended internal workings of the institutions and the programs to be established provide the most compelling attempt to actualize these five principles for female prisoners in Canada.

According to *Creating Choices,* each facility would have a similar layout that includes a core building and several cottages, where women would each receive a single bedroom (TFFSW, 1990). Cottages would also include "communal living space, a quiet room for study and relaxation, a kitchen, bathrooms, a utility room, a staff office, a yard with a play area for visiting children, garden space, and a veranda or patio" (TFFSW, 1990: 116). *Creating Choices* highlighted the need for a serene and tranquil atmosphere brought about by an emphasis on numerous factors including: "natural light, fresh air, colour, space, privacy, and access to land" (TFFSW, 1990, p. 115). The report also stressed the importance of developing programs for offenders that will facilitate a smooth transition back into society (TFFSW, 1990).

Creating Choices identified the importance of the mother-child relationship. This was significant as it is this recognition that can be credited with the development of Correctional Service Canada's CSC MCP. When describing the contact between incarcerated mothers and their children, *Creating Choices* emphasized the importance of the opportunity for them to be able to live together. Taking into consideration the needs of the children first and then the mothers, the report recommended that the facilities "provide an appropriate environment to enable a child or children to live with the mother...[a]ny woman who identifies continuing responsibility for her children as an element of her personal plan will be offered a variety of child oriented programs" (TFFSW, 1990, p. 120). One outcome of the recommendation was the emergence of the MCP, which is the focus of this paper.

It is clear that children are negatively impacted when their mothers are incarcerated. The Mother-Child Program seeks to alleviate some of the negative effects experienced by these children and their mothers. Unfortunately, information about the program is sparse. The current study seeks to trace the usage of the program from its inception to its current state. By doing so, factors that may be impeding its usage can be identified so that recommendations on ways to increase program participation can be made.

Methods

Given the paucity of information regarding the MCP, multiple methods were employed in this study. Existing documents and publications and basic statistical analysis were conducted to trace the emergence, usage and current state of the MCP. Interviews with representatives of Elizabeth Fry Societies were used to determine any barriers that may be impeding program usage.

First, existing documents and publications were utilized to establish a basic understanding of the program. A noticeable gap in the literature was the lack of information pertaining to the

number of participants at the various federal institutions for women. In order to establish whether program participation had increased, decreased or remained stable since its implementation, the second strategy for obtaining information about the MCP involved contacting the Women Offender Sector (WOS) of CSC. The WOS provided a document showing the number of program participants at each of the five federal correctional institutions for women – Nova Institution for Women (NIW) in Truro, Nova Scotia; Edmonton Institution for Women (EIW) in Edmonton, Alberta; Grand Valley Institute for Women (GVI) in Kitchener, Ontario; Joliette Institution (JI) in Joliette, Quebec; Fraser Valley Institution (FVI) in Abbotsford, British Columbia; and, the Okimaw Ohci Healing Lodge (OOHL) in Maple Creek, Saskatchewan. The data range from January 2001 to August 2012. Numbers indicating full and part-time participants every month are listed separately for each institution.

Two important caveats regarding these data are in order. First, the document indicates that "CSC cannot guarantee the accuracy of the numbers provided as these are tracked manually" (CSC, 2012: 1). CSC has since introduced an electronic tracking system to improve the accuracy of the tracking process. Second, given the presentation of the data in aggregate form, it is impossible to tell precisely how many different women and/or children have utilized the program. For instance, if an institution reported one participant each month for eight months, it is not known whether one woman participated for eight consecutive months, whether two women participated for four months each, consecutively, and so on. Therefore, it is impossible to determine whether an increase in participation at any given institution is reflective of a new participant or a returning participant. Similarly, it is impossible to determine whether a decrease in participation is due to the mother completing her sentence, a mother no longer being eligible for participation. or the institution no longer being able to accommodate the child(ren).

Despite these limitations, the data provided by CSC still provide valuable insights into the usage of the program. For instance, it is possible to determine a general level at program participation by looking at the percentage of time with at least one participant. Furthermore, the data allow one to determine what institutions have never utilized the program. Finally, the generally low numbers of program participation are apparent through the maximum number of program participants at any given time across Canada. In order to ascertain the general trend of program participation across Canada, the total number of program participants each month (full- and part-time combined) was graphed. The percentage of months with participants was also calculated for both the full- and part-time programs at each institution. To assess any trends in program participation at each institution, the maximum and minimum number of program participants each year for both the full- and part-time program were identified.

To supplement both the existing documents and publications accessed and the data received from CSC, an interview component involved speaking with representatives of Elizabeth Fry Societies across Canada. The Canadian Association of Elizabeth Fry Societies (CAEFS) is "an association of self-governing, community-based Elizabeth Fry Societies (EFS) that work with and for women and girls in the justice system, particularly those who are, or may be, criminalized" (CAEFS, 2005). Importantly, EFS have experience working with the population of women who utilize the MCP, giving them key insights into women's experiences with the program and making them a key group to interview. Furthermore, CAEFS and CSC co-chaired the TFFSW which developed *Creating Choices,* the document that supported and prompted CSC to allow children to live with their incarcerated mothers. Therefore, employees of EFS would have knowledge of the program and be able to provide information about how the MCP developed over time as well as how it is being used today.

Six EFS locations were contacted to participate in the study based on their geographical proximity to the correctional institutions utilizing the MCP. Semi-structured interviews with four EFS employees were conducted between December 2012 and January 2013 and consisted of six questions. Interview respondents were first asked about their familiarity with the MCP. Three out of four respondents indicated that they were quite familiar with the program or provided evidence that suggested adequate familiarity. One respondent indicated limited familiarity with the MCP. The remaining questions focused on such issues as the participation rate in the program, potential barriers impeding program success, and whether or not the program should continue.

Results

Statistical Overview: To what extent has the MCP been used?

Records provided by CSC were used to establish the extent to which the program has been used. The first three years of data include all institutions except Fraser Valley Institute in British Columbia as CSC began recording FVI's MCP in August 2004. At the time of full implementation in January 2001, there were a total of eight program participants at three institutions (CSC, 2012). Figure 1 shows the total number of full- and part-time participants across Canada on a monthly basis from January 2001 until August 2012. The maximum number of participants at any given time across Canada was 12 in August of 2001 (CSC, 2012). This represents 3 percent of the 375 women incarcerated at the federal level during the 2000-01 fiscal year (CSC, 2003a).

Figure 1 shows that participation in the MCP across Canada was in constant flux but, generally speaking, has declined from an already low starting point since its implementation. Participation dropped in late 2001 from its highest point in August 2001 and has remained relatively low since. In fact, the average number of participants at any given time across Canada was only 2.9 each month (CSC, 2012), indicating that the MCP was hardly used in Canada since full implementation. These numbers represent Canada-wide participation in both the full- and part-time program. A clearer representation of the program emerges when each institution's full- and part-time participation rate is examined individually.

Table 1 shows the percentage of months with participants for the full- and part-time programs at each institution. Some months contained missing data which accounts for the discrepancy in the number of months of data provided. No detailed explanation was provided by CSC for the missing data; however, given that the numbers are tracked manually it is plausible that the missing data are due to human oversight.

Table 1 shows that institutions used the program to varying degrees but that participation was generally low overall. JI has had the highest participation rate of all the institutions for both the full- and part-time program (CSC, 2012). GVI had the second highest participation rate for the full-time program followed by FVI (CSC, 2012). With the exception of JI, the part-time program was rarely used in Canada. EIW has never had any program participants (CSC, 2012).

Figure 1
Total Number of Participants Across Canada from January 2001 – August 2012
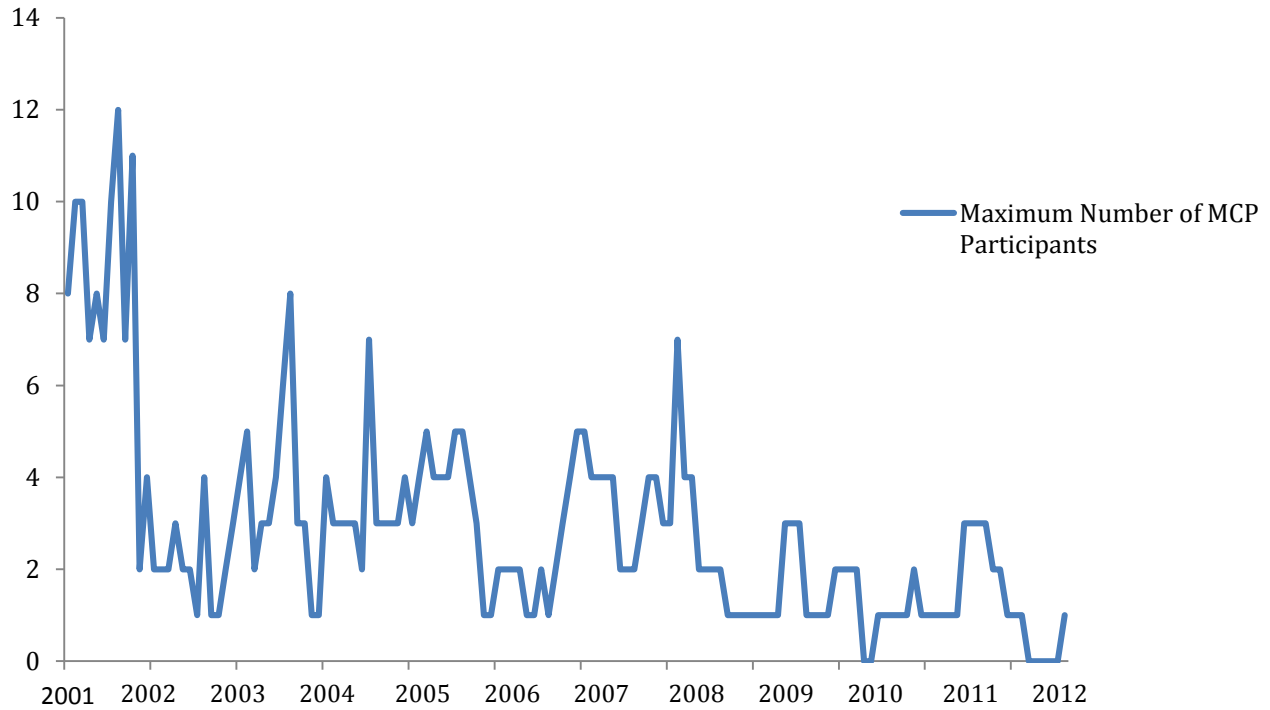
Source: CSC, 2013

Table 1
Number of Months with MCP Participants in the Full- and Part-time Program by Institution from January 2001 to August 2012

Institution	Full-Time		Part-Time	
	Months with participants / Months of data provided	%	Months with participants / Months of data provided	%
Joliette Institute	77/132	58	67/132	51
Grand Valley Institute	58/134	43	1/134	1
Okimaw Ohci	22/139	16	8/139	6
Nova Institute for Women	17/138	12	0/138	0
Edmonton Institute for Women	0/132	0	0/132	0
Fraser Valley Institution[i]	32/97	33	0/97	0

Source: CSC, 2012 - i Data are available from August 2004 onward

The maximum and minimum numbers of participants for the full- and part-time program are shown in Tables 2 and 3, respectively. Together, these tables help illustrate individual trends in program participation for each institution. For JI, participation was fairly evenly disbursed over the years covered by the data for both programs. This was also the case for the full-time program at GVI. NI and FVI had a slightly different trend with no reported participants in the full-time program until a few years after it was fully implemented in 2001 (CSC, 2012; CSC, 2002). The OOHL has not had any participants in either program since September 2005.

The data provided by CSC were also used to determine the extent to which the MCP is currently used. The most recent data show the number of MCP participants as of August 2012. At that time, the program had only one full-time participant in Canada (CSC, 2012). There have been no participants in the part-time program since 2009 and only two institutions had participants in 2012 (CSC, 2012).

Interview Data: Insights about the low participation in the MCP

The interview data from four representatives of EFS were used to determine whether any barriers exist that are inhibiting the usage of the MCP. Aspects of the institutional environment were identified by a majority of respondents as the primary cause of the low participation. First, in terms of the physical environment, institutional overcrowding meant that there was no room for children. Respondent #4 noted that because women live in cottage-like houses, the environment becomes unsafe for children when the houses are over capacity, which has been the trend in recent years. Second, the inclusion of women classified as maximum security at the institutions themselves was thought to have made the environment more risky and not conducive for children. Third, respondent #1 noted a change in the nature of the institutions themselves; specifically, institutions were described as becoming less about healing and rehabilitation and more punitive.

The next most common response as to why the program has not had a higher participation rate centered on the eligibility criteria for the MCP. In 2008, after requesting a review of the program, Public Safety Canada instituted four changes to the eligibility criteria. The changes include:

- Excluding offenders from the program who have been convicted of serious crimes involving violence, children or those of a sexual nature;
- Restricting the part-time program to children aged six and under;
- Requiring the support of local Child and Family Services before the participation of an offender is approved; and
- Re-evaluating the participation in the program of any offender who refuses to allow her child to be searched for drugs or other contraband before entering an institution (Public Safety Canada, 2008).

Respondent #3 indicated that the 2008 eligibility changes decreased the number of women who would be eligible for the program. It was also suggested that the change in eligibility criteria had

Table 2
Maximum and Minimum Number of Participants in the Full-Time Program by Institution

Institution		Year											
		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012[iii]
Joliette	Max	1	1[i]	2	2	2	1	3	2	0	1	1	1
Institute	Min	0	0[i]	1	1	0	0	1	0	0	0	0	0
Grand	Max	2	2	2[i]	1	1	1	1	1	1	1	0	0
Valley	Min	1	1	0[i]	0	0	0	0	0	0	0	0	0
Okimaw	Max	6	0	0	1	1	0[i]	0	0	0	0	0	0
Ohci	Min	0	0	0	0	0	0[i]	0	0	0	0	0	0
Nova	Max	0[i]	0	0	0	0	1	1	1	0	1	1	1
Institute	Min	0[i]	0	0	0	0	0	0	0	0	0	0	0
Edmonton	Max	0	0[i]	0	0	0	0	0	0	0	0	0	0
Institute	Min	0	0[i]	0	0	0	0	0	0	0	0	0	0
Fraser	Max	-	-	-	0[ii]	0	0	0	2	1	1	1	0
Valley	Min	-	-	-	0[ii]	0	0	0	0	0	0	0	0

Source: CSC, 2012
i Data missing. ii Data begins in August. iii Data until August.

indirect effects on potential participants. Respondent #4, for instance, explained that if a mother was housed with an inmate who had committed an offence against a child, a child could not be placed in the same house with that inmate. Therefore, because women are housed together in federal institutions, one woman's charges can preclude another woman from participating in the MCP. Interestingly, all of these factors represent institutional or systemic barriers. It is noteworthy that not a single respondent identified a lack of interest on the part of incarcerated women as a possible reason for the low participation rate in the program.

Respondents also commented on the factors they felt were impeding the success of the program. All of the responses contained at least one factor previously identified in question two: new rules and eligibility criteria changes, overcrowding, the physical environment, and the increasingly punitive nature of corrections. In addition, respondent #1 suggested that the diverse needs of female offenders were impeding the success of the program but did not elaborate. Respondent #3 suggested that the inaccurate perception of women as more violent coupled with the criminalization of certain behaviours has precluded many women from participating in the program. This respondent gave the example of the dual arrest policy for domestic disputes which

Table 3

Maximum and Minimum Number of Participants in the Part-Time Program by Institution

Institution		Year											
		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012[iii]
Joliette	Max	6	2[i]	3	3	2	2	2	2	2	0	0	0
Institute	Min	0	0[i]	0	0	1	1	1	0	0	0	0	0
Grand	Max	0	0	0[i]	0	0	1	0	0	0	0	0	0
Valley	Min	0	0	0[i]	0	0	0	0	0	0	0	0	0
Okimaw	Max	0	3	5	2	1	0[i]	0	0	0	0	0	0
Ohci	Min	0	0	0	0	0	0[i]	0	0	0	0	0	0
Nova	Max	0[i]	0	0	0	0	0	0	0	0	0	0	0
Institute	Min	0[i]	0	0	0	0	0	0	0	0	0	0	0
Edmonton	Max	0	0[i]	0	0	0	0	0	0	0	0	0	0
Institute	Min	0	0[i]	0	0	0	0	0	0	0	0	0	0
Fraser	Max	-	-	-	0[ii]	0	0	0	0	0	0	0	0
Valley	Min	-	-	-	0[ii]	0	0	0	0	0	0	0	0

Source: CSC, 2012

i Data missing. ii Data begins in August. iii Data until August.

has resulted in more women are being charged with assault. According to Pollack, Battaglia & Allspach (2005: 1), mandatory charge policies have resulted in "a startling increase in the number of women arrested, either solely or dually, in domestic violence situations". Since assault is classified as a violent crime, this would preclude women from participating in the program given the 2008 eligibility changes.

All four respondents indicated that they felt the program should continue. Respondent #2 felt it was beneficial for the women's rehabilitation and noted that it supports the rights of both the mother and the child. Respondent #3 echoed this latter sentiment, suggesting that the rights of the child should be the primary consideration in accordance with the United Nations Convention of the Rights of the Child (UNCRC). This respondent indicated that Canada should be considering the rights of the child during sentencing to prevent incarcerating the mother if at all possible. It was felt that Canada was not currently living up to the UNCRC which clearly indicates that there must be overwhelming reason to prevent individuals from having a relationship with their children. Respondent #3 also indicated that the program could be greatly enhanced by looking at a similar program at Bedford Hills Correctional Facility in Bedford Hills, New York. It was suggested that

the MCP could help achieve the long-term goal of corrections which is to contribute to a safer society.

The relationship between being the child of a prisoner and having subsequent involvement with incarceration later in life was also identified. This response suggests a belief that the MCP may benefit the children of incarcerated mothers by making them less likely to be involved with the prison system later in life. Respondent #4 felt it was crucial for children to be able to bond with their mothers, especially during the early years. Likewise, respondent #2 discussed how the program was critical for both mothers and their children. This respondent spoke about the importance of the child being able to develop a relationship with the mother and the importance of this relationship for the mother on her path to reestablish herself within her community and with her family. It was felt that even though there were risk factors, the alternative – no relationship between mother and child – would only create future problems for both.

Respondents were asked what, if any, changes they would make to the program if they had the resources and decision-making power. One response was to effectively implement the program which reflects the opinion that the program is virtually non-existent today. Indeed, respondent #4 spoke about the program being good in theory but that, in reality, it was not being actively utilized. The addition of a prolonged daily visitation component was suggested by respondent #1, whereby a child could stay with his or her mother for a few hours at a time. One respondent suggested that there needed to be a "family environment that supports visitation at every facility" (Respondent #2). In this situation, the institutions would allow for a *real* visitation where the mother has sole responsibility to care for the child and the opportunity to establish a stable tie with the child. Respondent #4 suggested having a house specifically designed for mother and baby. Respondent #3 suggested the program should be expanded and that it should not be viewed as strictly for mothers with young children only. It was noted that programming has not increased with the growth of the institutional population, resulting in reduced contact between prisoners and their families overall.

When given the opportunity, all four respondents provided additional thoughts or comments regarding the program. One respondent spoke about a personal experience viewing the program. Respondent #1 reported that "the experience is opposite of what stereotypes lead us to believe". This respondent indicated that the child s/he witnessed was safe, well-loved and that it was "like the child had 120 mothers during [his/her] time at the correctional institution". It was also stated that an inmate's mothering instincts "kick in" and results in an overall healthier environment for all prisoners. This suggests that children may have a 'civilizing' effect in prisons. Respondent #2 alluded to the program's importance by saying that, without it, children would not have a relationship with their mothers which would be problematic for both. Respondent #3 offered a rebuttal to the argument that the prison environment is sterile and not conducive to supporting healthy development and communication for the children and their mothers. It was felt by respondent # 3, however, that this argument involves comparing the prison environment to a middle-class environment. It was suggested that the women who would be utilizing the MCP would not have access to enriching developmental resources in their communities due to their low socioeconomic status. Therefore, respondent #3 believed that the argument that children participating in the MCP would be missing out on these opportunities is invalid since there are other variables influencing their lack of participation.

In sum, the interview data from representatives of EFS revealed possible explanations for the MCPs low participation rate. Institutional and systemic barriers were identified as key contributors to the MCP's low participation rate. Despite these barriers to program success, all

four respondents felt the program should continue and offered suggestions on ways to enhance the program.

Discussion

The results of this study reveal that the use of the MCP has declined from an already low starting point since its full implementation in 2001. A closer look at the results suggests that the limited usage of the program might be explained by a series of factors that impacted the program both directly and indirectly, most notably the physical environment of the institutions, the institutional culture, and the program's eligibility criteria. It is important to note that while these factors may help explain the declining participation rate of the program over time, they do not account for the fact that participation never thrived at any point since its full implementation. The consistently low participation rate makes it clear that the program was never really embraced in Canada nor given the opportunity to flourish. Therefore, the factors identified above should not be viewed as exhaustive, and other factors contributing to the participation rate should be explored.

Physical Environment

Overcrowding was identified as a possible contributing factor for the program's low participation rate. The current Conservative government's tough-on-crime agenda has been described as a key contributor to the increasing number of federally-sentenced offenders. According to Mallea (2010: 7), "a burgeoning of inmate populations, the building of new jails, and an American-style 'throw away the key' attitude" is associated with this approach to crime control. Indeed, the total number of incarcerated offenders in Canada went from 33,396 in 2005-06 to 38,560 in 2010-11 (PSC, 2012). Increased correctional expenditures have coincided with the larger numbers of incarcerated individuals. According to Public Safety Canada (2012), federal expenditures have seen a 30 percent increase since 2006-07. For 2011-12, a total of 5,115 individuals were sentenced to federal terms in Canada of which 346 were women (PSC, 2012). This latter number represents a 70 percent increase in the number of women given federal terms in the last ten years (PSC, 2012). These trends have occurred despite the fact that police-reported crime has decreased 26 percent since 1998 (PSC, 2012). These statistics provide support for the idea that a relationship may exist between tough-on-crime approaches to crime control and increased incarceration rates. Therefore, Canada's decision to adopt this particular approach to crime control may contribute to the low participation rate of the MCP by increasing the number of women incarcerated at the federal institutions, which in turn has implications for many aspects of the program.

Table 4 shows the capacity of each institution and the number of inmates at the identified times. It should be noted that the total number of inmates listed only includes those at the five federal institutions and the Healing Lodge and is therefore less than the total number of incarcerated female offenders serving federal sentences across Canada. Notably, women serving their sentences at other locations such as the Isabel McNeil House, the Burnaby Correctional Centre for Women, and the Regional Psychiatric Centre Prairies were not included.

Table 4 reveals that the number of inmates at these six institutions increased between 2003 and 2010 bringing each closer to capacity. In the case of GVI and OOHL, the number of inmates has nearly doubled, as it did for NIW. Numbers are not available for April 2013; however, as of April 15, 2012 a total of 603 women were serving federal sentences in Canada (PSC, 2012), which

Table 4
Number of Inmates by Institution in Relation to Capacity

Institution	Capacity	April 2003		April 2007		April 2010	
		Number of inmates	+ / - capacity	Number of inmates	+ / - capacity	Number of inmates	+ / - capacity
Joliette Institute	102	61	- 41	72	- 30	87	- 15
Grand Valley	129	63	- 66	121	- 8	123	- 6
Okimaw Ohci	40	22	- 18	24	- 16	38	- 2
Nova Institute	64	33	- 33	65	+ 1	66	+ 2
Edmonton Institute	140	82	- 58	119	- 21	119	- 21
Fraser Valley	80	--	--	59	- 21	57	- 23
Total	555	261	- 216	460	- 95	490	- 65

Source: CSC, 2003a; 2007b; 2010; 2010a

is 48 women above the institutional capacity of 555. This supports the idea that the institutions are operating over capacity and are thus overcrowded. We can identify a potential impact on the MCP by comparing this information with the program's participation rate. Table 5 shows the program participation rate compared to the total number of women serving federal sentences during each of the select time periods.

Generally speaking, the MCP's participation rate decreased from its already low starting point the closer the institutions neared capacity. While the increased incarceration rate may be attributed to crime control policies, the specific way it impacts the program can be attributed to CSC's Commissioner's Directive 768, which states that "[i]nmate accommodation (single occupancy) shall have priority over the Mother-Child Program in both the long and short term" (CSC, 2007a). The combination of these policy approaches has reduced the potential success of the MCP by decreasing the available space for program participation.

Institutional Culture

Interviewees from EFS identified a change in the nature of the institutions themselves as a possible factor impeding the MCP's success. Specifically, institutions were described as becoming more punitive as opposed to having an emphasis on rehabilitation and healing. For example,

Table 5

Total Number of Women Serving Federal Sentences Compared to Number of MCP Participants

Time Period	Total number of female inmates in Canada	Total number of MCP participants
April 2003	261	3
April 2007	460	4
April 2010	490	0
April 2012	603	0

Source: CSC, 2003a; 2007b; 2010; 2014; PSC, 2012

respondent #1 indicated that "institutions were supposed to be about healing" but that policy changes and a crime and punishment agenda made institutions "much more punitive and, therefore, difficult to ensure the safety and security of children".

Perhaps the first step toward a more security-oriented approach to women's corrections occurred shortly after the federal institutions opened and relates to the security classification of the inmates. Currently, each institution is classified as a multi-level security facility (CSC, 2010a). Secure Units for women designated as maximum security opened at various times between 2003 and 2005 (CSC, 2010). The opening of the secure units meant that more intense security would be directed to women who were identified as high risk/need. This would occur through constant staff presence and an increase in the use of static security measures, which emphasizes security and control mechanisms (CSC, 2003). For example, the Secure Units would have multiple levels of containment inside (i.e. cells, pods, etc.) and an exterior containment wall (CSC, 2003). Although CSC emphasized dynamic security (i.e. staff and offender interaction and relationship development) in their plan for the Secure Units, the additional static security measures were viewed as exacerbating the power imbalance between staff members and inmates present in the institutions: "we have seen how increased restrictions (though at times necessary) and/or staff disengagement can lead to increased acting-out as offenders seek to balance the 'power' shifts" (CSC, 2003, sec. C, para. 6). CSC (2003) noted that the impact of the added security measures on the environment of the main institution should be minimal; however, it is possible that presence of the secure units themselves and the increased supervisory requirements of staff may impact on the cultural environment of the institutions in a more indirect way.

In the current study, interviewees noted that the inclusion of maximum security individuals at the institutions made the overall environment more risky and thus not conducive for children. In a study conducted by Worrall & Morris (2011), a positive relationship between prison misconduct and custody level was found with higher custody levels being associated with a greater likelihood of misconduct. Berk & de Leeuw (1999) also found an association between inmate's security classification score and inmate misconduct in California prisons. Similarly, McCorkle, Miethe & Drass (1995) found higher frequencies of both individual and collective violence in medium- and maximum-security institutions compared to those that are minimum-security. Given that the probability of misconduct increases with custody level, the addition of maximum level security units would contribute to a more dangerous environment. The heightened risk level in the correctional environment is not conducive for children.

The opening of the Secure Units is evidence that the cultural environment of the institutions may have shifted from focusing on rehabilitation and support in favour of a more security-driven control approach. One possible consequence of this shift is a decline in the use of rehabilitative programs (Phelps, 2012). Therefore, policies that contribute to a more punitive correctional environment, such as those that led to the opening of the Secure Units, may explain why the participation rate of the MCP has been declining since its full implementation.

Table 6

Change in Number of Months with MCP Participants After 2008

Institution	2001-2007		2008-2012[ii]		Change
	Months with participants / Months of data provided	%	Months with participants / Months of data provided	%	+/-
Joliette Institute	75/76	99	26/56	46	- 53
Grand Valley Institute	51/78	65	8/56	14	- 51
Okimaw Ohci	29/83	35	0/56	0	- 35
Nova Institute	6/82	7	11/56	20	+ 13
Edmonton Institute	0/76	0	0/56	0	0
Fraser Valley[i]	0/41	0	32/56	57	+ 57

i Data began in August 2004. ii Data until August.

Eligibility Changes

Perhaps the biggest factor that directly impeded the success of the MCP was the series of changes made to its eligibility criteria in 2008. Although a causal inference cannot be made, Table 6 shows a notable correlation between the MCP participation rate before and after 2008.

Three institutions had large decreases in overall participation rate. JI, which had the highest participation rate of any institution, went from having participants 99 percent of the time from 2001 to 2007 to only 46 percent of the time from 2008 until August 2012. GVI had a similar drop in participation, going from 65 percent to 14 percent. The Healing Lodge went from having participants 35 percent of the time to having zero participants after the 2008 changes. No change was seen at EIW as it never had any participants. Two institutions saw an increase in participation

rate after 2008. NI saw a small increase in participation from 7 percent to 20 percent. This increase is entirely from the full-time portion of the program as Nova did not have any part-time participants. This increase disappears, however, when one considers that NI did not have any participants until 2006. If looking strictly at months with data provided since their first participant in December 2006, the percentage of months with MCP participation drops from 46 percent before 2008 to 20 percent after 2008 (i.e. 6/13 months and 11/56 months, respectively). Lastly, the 2008 changes had a unique impact on FVI, which had zero participants prior to 2008. From January 2008 until August 2012, FVI had participants for 57 percent of the months. Unfortunately, given the nature of the data, it is impossible to determine if the increase is simply reflecting a shift from zero participants prior to 2008 to one or two long term participants after 2008 or many more participants for shorter periods of time.

It was beyond the scope of the current study to attempt to control for factors other than the 2008 policy changes that may have influenced participation in the MCP; however, it is plausible that the policy changes have negatively impacted the participation rate of the program at some institutions. An in-depth look at two of the eligibility changes provides specific evidence of this impact. The first change impacts incarcerated mothers directly by making them ineligible for the MCP based on the nature of their charges. This change involves denying women participation in the MCP based on one factor related to their incarceration (i.e. type of offence committed) which may not accurately represent their level of risk (if any) to children.

Level of risk in correctional institutions is based on seven factors including the seriousness of the offence, behaviour while incarcerated, and presence or absence of mental or physical illness or disorder (Corrections and Conditional Release Regulations (CCRR), 2013: 9). Women are classified as maximum, medium or minimum security based on the results of CSC assessments (CCRR, 2013, s. 18). Prior to the changes made in 2008, only inmates classified as minimum or medium security were eligible (CSC, 2007a). In April 2007, 50 women (representing 11 percent of the women incarcerated in federal institutions) were considered maximum security offenders (CSC, 2007b). This number increased to 58 (or 12 percent) in 2010 (CSC, 2010). Therefore, by utilizing security classification as an eligibility criterion prior to 2008, a little over 10 percent of incarcerated women would have been immediately ineligible.

In 2008, by restricting eligibility based on one factor (i.e. type of offence), Public Safety Canada created a sweeping ineligibility that significantly reduced the number of mothers eligible for the MCP. As of March 21, 2010, 333 women (or 66 percent) of women incarcerated at the federal level in Canada were serving time for violent offences (which include both first and second degree murder and other Schedule 1 offences) (CSC, 2010). Therefore, with this eligibility criterion in place, two-thirds of female federal offenders in Canada are ineligible for the MCP.

The second change in eligibility criteria worth exploring relates to the ages of children eligible for the program. Hartz-Karp points out that restrictions based on children's ages are problematic for two reasons:

> In the first instance, there is no "magic age" at which mother/child bonding is no longer important or necessary…Secondly, creating arbitrary age demarcations for infants on the basis of inadequate facilities is inappropriate given the aims of mother/infant prison [programs] (1983: 175-6).

Although the age restrictions for the Canadian MCP concern older children, the sentiment expressed by Hartz-Karp (1983) still stands. Former Minister of Public Safety Stockwell Day

indicated that the safety and security of children was the first priority and that as a result of these reforms, "the program will continue to ensure mother-child relationships are fostered without endangering the safety of a child" (PSC, 2008, para. 3). However, the relationship between this change and the desire to ensure the safety of program participants is lacking. After all, how would the safety of a six-year old participant be any different from a seven-year old? As a result, this particular change appears to suggest an underlying agenda that seeks to eliminate the MCP. Unfortunately, the data provided by CSC do not allow for a determination of how much of an impact, if any, this change had on the program participation rate.

Stockwell Day's request for CSC to review the program in February 2008 came shortly after a judgment was made in a case involving a mother from British Columbia (Bellett, 2008; Johnson, 2008; PSC, 2008). Lisa Whitford was sentenced to four years in prison after being charged with manslaughter (*R. v. Whitford,* 2008). Whitford had shot and killed her common-law partner while she was pregnant with his child (*R. v. Whitford,* 2008). Mr. Justice W. Glen Parrett, after noting Whitford's extensive criminal history, noted that "this is the history of a person with severe substance abuse problems who lacks education, conflict resolution skills, and has continuously suffered both sexual and physical abuse" (*R. v. Whitford,* 2008, para. 18). While awaiting trial, Whitford gave birth to her daughter Jordynn who resided with Whitford at the Alouette Correctional Centre for Women in B.C. (*R. v. Whitford,* 2008). The judgment noted that plans were underway to determine whether Whitford would be able to keep Jordynn with her at FVI once sentenced, a decision which was supported by the B.C. Ministry of Children and Family Development (*R. v. Whitford,* 2008). Justice Parrett expressed concern regarding the nature of the MCP program, stating:

> It is in many respects startling, to put it mildly, to consider incarcerating in a federal institution the accused's new child who is still under the age of one. The sentence, however, is for the mother, not the child. Others have the heavy burden of monitoring the best interests of the child and acting appropriately (*R. v. Whitford,* 2008, para. 23).

It was perhaps these comments combined with media coverage of the case that prompted Public Safety Canada to review the MCP.

The judgment was heard on February 6, 2008 (*R. v. Whitford,* 2008). The very next day *The Vancouver Sun*'s coverage of the case utilized the following headline: *Killer to Raise Baby in Jail* (Bellett, 2008; Johnson, 2008). Approximately four months later, Public Safety Canada announced the changes to the program which would have made Whitford ineligible based on the nature of her offence. It appears, then, that the Whitford case and the public discussion it generated spurred on the program review. The many intersecting variables of Whitford's life were described in both the judgment and media accounts of the case. According to Johnson, the case created divergent views of Whitford as either "a victim deserving of support in her role as mother or as a violent, degenerate, drug addicted criminal who was a danger to both society and her own child" (2008, pp. 50-51). The decision to review the program suggests that public and the federal government's perceptions of female offenders align with the latter view.

Straying from *Creating Choices*

A commonality exists between three main factors inhibiting the usage of the program. The three suggested factors – overcrowding, a more punitive correctional environment, and the eligibility changes – are illustrative of policies and decisions that stray from the vision and philosophies of *Creating Choices.* Recall that *Creating Choices* envisioned an idealized prison environment that emphasized serenity and tranquility, plenty of space and privacy, was rehabilitative rather than security-focused, and recognized women's particular needs (TFFSW, 1990). A closer look at these factors reveals an inconsistency between *Creating Choices'* recommended plan for female offenders and the actual implementation of this plan by CSC.

First, an institution that is overcrowded would not be able to give women adequate space and privacy. Second, since the rationale for the MCP emphasizes a rehabilitative approach to corrections, an environment that does not support or emphasize such an approach would likely not promote or utilize the MCP. Therefore, policies that contributed to a more punitive environment, such as the development of Secure Units, may explain why the participation rate of the MCP has been declining since its full implementation. Lastly, the combined eligibility changes illustrate attitudes of and approaches to female offenders that are inconsistent with those advocated in *Creating Choices.* These changes involved classifying women based on factors that do not necessarily reflect a level of risk to children. This, by extension, ignores women's needs in relation to mothering. Second, arbitrary age restrictions for children appear to suggest a lack of support for the MCP on behalf of CSC and Public Safety Canada. Finally, the reason behind the decision to review the program (i.e. the judicial comments and the media portrayal of the Lisa Whitford case) reflects attitudes of female offenders that are inconsistent with that for which *Creating Choices* advocated. Since the changes made to the program would have restricted Whitford's eligibility for the program, it seems that Whitford is viewed as an unfit mother based on her offence, rendering her ineligible for any potential benefits the MCP may have had for her and her daughter. Such views reflect disconnects between the vision of the TFFSW and the agency that governs corrections-related policy in Canada. By adopting a view of female offenders in a manner that differed from that advocated in *Creating Choices,* decisions made by Public Safety Canada directly limited the success of the MCP. Given the nature of these barriers impeding the usage of the MCP, it is plausible that the success of the program hinges on its ability to operate in a manner that is consistent with *Creating Choices.*

Recommendations

Identifying recommendations to increase the usage of the program may seem counterproductive for advocates of incarcerated women. For instance, Elizabeth Fry Societies seek to decrease the number of women who are imprisoned in Canada (CAEFS, 2005). If successful, the lack of program participants could be a positive. However, as it stands, the limited use of the program does not seem to stem from lack of interest or lack of incarcerated mothers. Instead it appears that the program usage has been low and declining because of policies and decisions that view female offenders as unfit mothers and correctional institutions as unconducive for children. Therefore, to increase the participation rate of the MCP, numerous policy changes would need to occur to alter these views and make institutional environments align with the *Creating Choices* plan.

First, an increase in the use of community sentences for both mothers and non-mothers would assist with institutional overcrowding. As a result, institutions would have more space for

mothers who do not receive community sentences. Second, CSC should emphasize support and rehabilitation instead of security; classifying women based on security-level should be discontinued. Instead, women's individual needs should be identified and effective programming should be provided. A less ideal alternative working within the confines of CSC's current policy would be to keep maximum security women at separate institutions so that static security could be decreased at the minimum and medium security institutions. This would alleviate many of the safety and security concerns associated with having children in prison. Lastly, the eligibility changes made in 2008 should be reversed: women should not be denied eligibility based solely on the nature of their offence and age restrictions should not be denying older children the opportunity to maintain ties with their mothers.

The implementation of these recommendations requires a shift in the way incarcerated mothers are viewed by government authorities and the general public. One way to approach this task is to disseminate information about MCPs and their associated benefits through various media channels. For instance, some research suggests that women who participate in mother-child programs have reduced recidivism rates (Carlson, 1998; Radosh, 2002). Furthermore, a recent judicial decision related to mother-child visitation found that the cancellation of a provincial-level program violated the mothers' fundamental *Charter* rights (*Inglis v. British Columba, 2013).* This decision is a welcome addition to the discourse surrounding MCPs as it brings a rights framework to the forefront. It is hoped that such added publicity would increase public support for MCPs to a degree necessary to influence political agendas and make these programs a priority.

Future Research

Future research should be directed toward three main areas. First, given the difficulties associated with the implementation of the above recommendations – namely, the incompatibility between the requirements of the MCP and larger political decisions and philosophies – it is crucial to continue to explore the benefits associated with mother-child visitation with the hope that politicians will eventually acknowledge the importance of maintaining bonds and ties with family. Second, more research is needed to better establish the relationships between the barriers identified by this study and the impacts they have had on the MCP. For example, the specific impact that the tough-on-crime agenda in Canada will have prison populations over time will need to be determined. Finally, this study revealed varying participation rates for the MCP across Canada with Quebec having the highest participation rate and Edmonton not ever utilizing the program. The generally low overall participation rate and the limitations associated with the data provided by CSC prevented this study from establishing the full extent of this geographical variation. Future research should seek to clearly establish the extent to which this variation exists and the reasons why the MCP may be more successful in certain areas of Canada.

About the Author

Sarah Brennan is a MA candidate at the University of Guelph in the Criminology and Criminal Justice program. Her research interests include correctional visitation and the impact incarceration can have on family dynamics. She can be reached at: brennans@uoguelph.ca

References

Acoca, L. & Raeder, M. S. (1999). Severing family ties: The plight of nonviolent female offenders and their children. *Stanford Law & Police Review, 11*(1), 133-151.

Barker, J. (2009). Coping strategies of women offenders. In J. Barker (Ed.), *Women and the criminal justice system: A Canadian perspective* (pp. 143-172). Toronto, ON: Emond Montgomery Publications Limited.

Baunach, P. J. (1985). *Mothers in prison.* New Brunswick, NJ: Transaction Books.

Belknap, J. (2007). *The invisible woman: Gender, crime, and justice*. Belmont, CA: Thomson Wadsworth.

Bellett, G. (2008). *Killer to raise baby in prison.* Vancouver Sun. Retrieved from http://www.c anada.com/vancouversun/news/story.html?id=f7bcadfe-2647-4c87-92cc-400f2f11864b

Berk, R. A. & de Leeuw, J. (1999). An evaluation of California's inmate classification system using a generalized regression discontinuity design. *Journal of the American Statistical Association, 94*(448), 1045-1052.

Booker Loper, A. L., Carlson, L. W., Levitt, L., & Scheffel, K. (2009). Parenting stress, alliance, child contact, and adjustment of imprisoned mothers and fathers. *Journal of Offender Rehabilitation, 48,* 483-500.

Canadian Association of Elizabeth Fry Societies (CAEFS). (2005). Retrieved from http://www.el izabethfry.ca/caefs_e.htm

Carlson, J. R. (1998). Evaluating the effectiveness of a live-in nursery within a women's prison. *Journal of Offender Rehabilitation, 27*(1-2), 73-85.

Celinska, K. & Siegel, J. A. (2010). Mothers in trouble: Coping with actual or pending separation from children due to incarceration. *The Prison Journal, 90*(4), 447-474.

Correctional Service Canada. (2002). Regional women's facilities: Operational plan. Retrieved from http://www.csc-scc.gc.ca/text/prgrm/fsw/fsw12/region_women_facilit_fsw12-eng.shtml#_6_3

Correctional Service Canada. (2003). Secure unit operational plan: Intensive intervention in a secure environment. Retrieved from http://www.csc-scc.gc.ca/text/prgrm/fsw/secureuni top/secure-unitop-2003-eng.shtml

Correctional Service Canada. (2003a). Women offender statistical overview. Retrieved from http://www.csc-scc.gc.ca/text/prgrm/fsw/wos14/statisticalov_wos14_e.pdf

Correctional Service Canada. (2007). Mother-child program. Retrieved from http://www.csc-scc.gc.ca/text/prgrm/fsw/pro02-5-eng.shtml

Correctional Service Canada. (2007a). Commissioner's directive number 768: Institutional mother-child program. Retrieved from http://www.csc-scc.gc.ca/text/plcy/doc/768-cd.pdf

Correctional Service Canada. (2007b). Women offender statistical overview. Retrieved from http://www.csc-scc.gc.ca/text/prgrm/fsw/wos33/docs/wos33_stat-ovrvw_2007-eng.pdf

Correctional Service Canada. (2010). Women offender statistical overview: Fiscal year 2009-2010. Retrieved from http://www.csc-scc.gc.ca/text/prgrm/fsw/wos_Stat_09_10/wos_stat_09_10-eng.pdf

Correctional Service Canada. (2010a) Institution profiles. Retrieved from http://www.csc-scc.gc.ca/text/region/inst-profil-eng.shtml

Correctional Service Canada. (2012). MC summary 2001 - 2012. Received via e-mail September 25, 2012 from the Women Offender Sector.

Corrections and Conditional Release Regulations SOR/92.620. (2012). Retrieved from http://laws-lois.justice.gc.ca/PDF/SOR-92-620.pdf

Cunningham, A. & Baker, L. (2004, December). *Invisible victims: The children of women in prison*. London, ON: Centre for Children and Families in the Justice System. Retrieved from http://www.lfcc.on.ca/Voices_Report-Invisible_Victims.pdf

DeKeseredy, W. S. (2009). Canadian crime control in the new millennium: The influence of neo-conservative US policies and practices. *Police, Practice and Research, 10*(4), 305-316.

Dressel, P. L. & Barnhill, S. K. (1994). Reframing gerontological thought and practice: The case of grandmothers with daughters in prison. *The Gerontologist, 34*(5), 685-691.

Enos, S. (2001). *Mother from the inside: Parenting in a women's prison.* Albany, NY: State University of   New York Press.

Fishman, S. H. (1983). The impact of incarceration on children of offenders. In M. Frank (Ed.), *Children of exceptional parents* (pp. 89-99). New York, NY: The Haworth Press.

Fogel, C. I. & Martin, S. L. (1992). The mental health of incarcerated women. *Western Journal of Nursing Research, 14*(1), 30-47.

Gadsden, V.L. [Ed.] (2003). *Heading home: Offender reintegration into the family.* Lanham, MD: American Correctional Association.

Gentry, P. (2003). Damage to family relationships as a collateral consequence of parental incarceration. *The Fordham Urban Law Journal, 30*(5), 1671-1684.

Greene, S., Haney, C., & Hurtado, A. (2000). Cycles of pain: Risk factors in the lives of incarcerated mothers and their children. *The Prison Journal, 80*(1), 3-23.

Hagan, J. (1996). The next generation: Children of prisoners. *Journal of the Oklahoma Criminal Justice, Research Consortium, 3,* 19-33.

Hairston, C. F. (1991). Mothers in jail: Parent-child separation and jail visitation. *Women and Social Work, 6*(2), 9-27.

Hartz-Karp, J. (1983). The impact of infants in prison on institutional life: A study of the mother/infant prison programme in Western Australia. *The Australian and New Zealand Journal of Criminology, 16*(3), 172-183.

Houck, K. D. F. & Booker Loper, A. (2002). The relationship of parenting stress to adjustment among mothers in prison. *American Journal of Orthopsychiatry, 72*(4), 548-558.

Inglis v. British Columbia (Minister of Public Safety). (2013). B.C.S.C. 2309.

Johnson, R. (2008). Mothers, babies and jail. *University of Maryland Law Journal of Race, Religion, Gender and Class, 8,* 47-70.

Johnston, D. (1995). Effects of parental incarceration. In K. Gabel & D. Johnston (Eds.), Children of incarcerated parents (pp. 59-88). New York: Lexington Books.

Johnston, D. (1995a). The care and placement of prisoners' children. In K. Gabel & D. Johnston (Eds.), *Children of incarcerated parents* (pp. 103-123). New York: Lexington Books.

Johnston, D. (1995b). Jailed mothers. In K. Gabel & D. Johnston (Eds.), *Children of incarcerated parents* (pp.41-55). New York: Lexington Books.

Kampfner, C. J. (1995). Post-traumatic stress reactions in children of imprisoned mothers. In K. Gabel & D. Johnston (Eds.), *Children of incarcerated parents* (pp. 89-100). New York: Lexington Books.

Kiser, G. C. (1991). Female inmates and their families. *Federal Probation, 58,* 56-63.

Law, V. (2009). Resistance behind bars: The struggles of incarcerated women. Oakland, CA: PM Press.

Lebrecque, R. (1995). *Study of the mother-child program* (FSW No – 24). Retrieved from http://www.csc-scc.gc.ca/text/prgrm/fsw/fsw24/toce-eng.shtml.

MacDonald, M., & Watson, L. (2001). Creating choices, changing lives: The transformation of women's corrections in Canada. *Corrections Today, February,* 70-73,127.

Mallea, P. (2010). The fear factor: Steven Harper's "tough on crime" agenda. Canadian Centre for Policy Alternatives.

McCorkle, R. C., Miethe, T. D., & Drass, K. A. (1995). The roots of prison violence: A test of the deprivation, management, and "not-so-total" institution models. *Crime & Delinquency, 41*(3), 317-331.

McGowan, B. G., & Blumenthal, K. L. (1978). *Why punish the children*? Hackensack, NJ: National Council on Crime and Delinquency.

Myers, B. J., Smarsh, T. M., Amlund-Hagen, K., & Kennon, S. (1999). Children of incarcerated mothers. *Journal of Child and Family Studies, 8*(1), 11-25.

Phelps, M. (2012). The place of punishment: Variation in the provision of inmate services staff across the punitive turn. *Journal of Criminal Justice, 40*, 248-357.

Pollack, S., Battaglia, M., & Allspach, A. (2005). Women charged with domestic violence in Toronto: The unintended consequences of mandatory charge policies. The Women Abuse Council of Toronto.

Public Safety Canada. (2008). Minister Day tightens rules for Mother-Child Program to ensure child protection. Retrieved from http://www.publicsafety.gc.ca/media/nr/2008/nr20080627-1-eng.aspx

Public Safety Canada. (2012). Corrections and conditional release statistical overview. Retrieved from http://www.publicsafety.gc.ca/res/cor/rep/2012-ccrso-eng.aspx

Radosh, P. F. (2002). Reflections on women's crime and mothers in prison: A peacemaking approach. *Crime Delinquency, 48*(2), 300-315.

R. v. Whitford. (2008). B.C.S.C. 1378.

Sharp, S. F. & Marcus-Mendoza, S. T. (2001). It's a family affair: Incarcerated women and their families. *Women & Criminal Justice, 12*(4), 21-49.

The Task Force on Federally Sentenced Women. (1990). *Creating choices.* Correctional Services Canada.

Worrall, J. L. & Morris, R. G. (2011). Inmate custody levels and prison rule violations. *The Prison Journal, 91*(2), 131-157.

Incorrigible While Incarcerated: Critically Analyzing Mainstream Canadian News Depictions of Ashley Smith

Jessi Ring
Carleton University

Ashley Smith, who is typically presented in the media as mentally ill, was nineteen years old when she died from self-strangulation in an Ontario women's prison on October 19th, 2007. In this paper, I explore how Ashley Smith's actions and death were portrayed in four mainstream Canadian newspapers (*Globe and Mail*, *Telegraph-Journal*, *Toronto Star* and *National Post*). My aims in this paper are to critically analyze depictions of mental illness presented by these news articles and connect these portrayals to labeling theories. Two variables—the timing of the news coverage and newspaper political affiliation—emerged as being influential in how newspapers depicted Ashley Smith as mentally ill, through their use of generic and/or negative terminology and vulnerability stereotypes. I also discuss 'alternative' stories of Ashley Smith and examine their potential to challenge typical conceptualizations of mental illness, gender and carceral environments.

Keywords: Ashley Smith; mental illness; labeling theory; gender; media

Ashley Smith, généralement représentée dans les médias comme une personne souffrant de maladie mentale, avant dix-neuf ans quand elle est morte d'auto strangulation dans une prison pour femmes de l'Ontario le 19 octobre 2007. Dans cette étude, j'aborderai comme les gestes et la mort de Ashley Smith ont été décrits dans quatre grands journaux publics canadiens (*Globe and Mail, Telegraph-Journal, Toronto Star* et le *National Post*). Dans cet article, mon objectif est d'analyser de manière critique la description de la maladie mentale dans les articles, et de relier ces descriptions à des théories sur les stéréotypes. Deux variables, à savoir le moment de la publication de la nouvelle et l'appartenance politique du journal, se sont révélés des facteurs d'influence sur la description faite par les journaux de la maladie mentale de Ashley Smith, tel que l'illustrent l'utilisation de terminologie générique ou négative et de stéréotypes de vulnérabilité. J'aborderai aussi des narratifs « alternatifs » de l'histoire de Ashley Smith, et étudier comment ils pourraient remettre en question les concepts répandus sur la maladie mental, le genre et les milieux carcéraux.

Mots clés: Ashley Smith; maladies mentale; théorie de l'étiquetage; sexe; média

Introduction

October 19th, 2012 marked the fifth anniversary of Ashley Smith's death. At the time of her passing, Ashley was a prisoner at Grand Valley Institution for Women—a multi-level federal penitentiary located in Kitchener, Ontario (Correctional Service of Canada, 2012). She died while under 24-hour video surveillance 'suicide watch'. Seven trained correctional officers observed and failed to intervene as she strangled herself with a cloth ligature. She was nineteen years old.

Although deaths in custody are not unique, media coverage of Ashley Smith's treatment and untimely death in corrections has helped publicize serious institutional problems in Canadian youth and women's correctional facilities. The media interest surrounding the Ashley Smith case presents an opportunity to examine how one high-profile death in custody was covered. In this

paper, I investigate how Ashley Smith has been portrayed in four mainstream Canadian newspapers (*Globe and Mail, Toronto Star, Telegraph-Journal* and *National Post*). More specifically, I explore in what ways the news coverage labels Ashley Smith as mentally ill and/or defines her behaviour and death following a rubric of mental illness stereotypes. According to labeling theories, mental illness labels are socially constructed and are rooted in stereotypical notions of race and gender. Under this theoretical framework, media depictions of mental illness perpetuate negative stereotypes of 'the mentally ill', which impact public perceptions of mental illness. In this analysis, depictions of mental illness changed depending on the timing of the news coverage, the newspaper's political affiliation, and the location of newspapers. The findings of this paper contribute to existing research that uses modified labeling theories by exposing the complexity of mental health labeling in Canadian news media.

A Critical Appraisal of Labeling Theory Trends

Ashley Smith is typically described as someone who was mentally ill. In this paper, I consider the significance of labeling Ashley Smith as mentally ill by using labeling theories as a theoretical framework. Sociological theorizing on the significance of mental health labels began in the 1950s, and has since been used to critique mental health discourses that rely on traditional medical models. Many researchers use these theoretical frameworks, labeling theories to analyze the stigmatic impacts of mental illness stereotyping in mass media sources, to reject the argument that mental illness labels are applied objectively.

T.J. Scheff's (1966, 1974) work serves as a foundation for the discourse relating to labeling theory and the construction of mental health. Scheff explains that labeling theory is a tool that can create *another* narrative about mental illness. His intention is not to supplant existing research, nor deny the material realities of individuals living with mental illness. He uses labeling theory to provide a theoretical model that is based outside the medical model (Scheff, 1974). The medical model of mental health is rooted in the 'psy' sciences—psychiatry and psychology. The major assumption of this perspective is that mental illness causality is rooted in underlying biological 'abnormalities' (McLeod, 2008). This means that symptoms of mental illness are understood as "outward signs of the inner physical disorder" (McLeod, 2008, n.p.), which are "grouped together and classified into a '**syndrome**'" (emphasis in original; McLeod, 2008, n.p.). Ultimately, the medical model assumes that "the true cause [of mental illness] can eventually be discovered and appropriate physical treatment administered" (McLeod, 2008, n.p.).

On the other hand, Scheff's non-medical model postulates that being labeled as mentally ill causes one to become 'mentally ill'; thus, individuals who are labeled mentally ill internalize stereotypical depictions of mental illness and recreate their self-concept as one who is mentally ill (Merton, 1948; Scheff, 1966). Scheff maintains that "traditional stereotypes of mental disorder are solidly entrenched in the population because they are learned in early childhood and are continuously reaffirmed in the mass media and everyday conversation" (1966, p. 84-85). Internalization of these public stigmas results in mental illness labels and diagnoses becoming a self-fulfilling prophecy: mentally ill individuals perform their illness in accordance with that particular illness's role expectations (Scheff, 1966). For example, an individual diagnosed with depression will embody and perform stereotypical understandings of what depression looks like based on depictions presented in mass media and other social institutions—attributes such as, being socially withdrawn, bedridden, apathetic, and having degraded personal hygiene. The medical model would maintain that these behaviours are symptomatic of depression and are rooted in

physiological deficiencies; however, labeling theory contends that in being labeled or diagnosed with depression—as opposed to 'sadness'—the individual identifies as being someone who is 'depressed' and performs accordingly.

Scheff's original work on labeling theory and mental health invoked harsh criticisms from other sociological theorists. As a result, Link and colleagues (1989) modified Scheff's theory (Pasman, 2011). The fundamental difference between these two theoretical approaches to mental illness is that the modified labeling theory removed indications relating to causation, such that it was no longer argued that labeling or diagnosis *causes* mental illness, but that it is related to how an individual's behaviours are understood by themselves and others. This difference means that modified labeling theorists are more interested in exploring *why* specific labels matter, as opposed to explaining *how* labels create mental illness (O'Connor, 2006). According to modified labeling theory, "diagnosis has a negative *influence* on self-concept through stigma and stigma expectations" (emphasis added; Pasman, 2011, p. 124).

Mental illness labels create a dichotomous 'us' ('normal' people) versus 'them' ('mentally ill' people) relationship. The 'mentally ill' out-group is perceived as homogenous and is socially defined as a whole by negative stereotypes (e.g., unpredictability, dangerousness, laziness) that lead to discrimination and social exclusion (Pasman, 2011). These visions of the mentally healthy/ill dichotomy and the social exclusion of mentally ill individuals are supported by research conducted by Pat Caplan (1995). According to Caplan, images of mental illness "suggest that 'they' are not as competent, human, or safe to be around as the rest of 'us'" (1995, p. 11). Furthermore, someone who is labeled as mentally ill is "someone who is out of control, out of touch with 'reality', incapable of forming a good relationship, untrustworthy, quite possibly dangerous, and probably not worth one's attention, time or energy" (Caplan, 1995, p. 11). Mental illness is labeled as a social 'problem' that requires professional intervention and treatment.

Sociological research has also challenged the notion that mental illnesses are universal across cultures, disrupting the medical model's assumption that mental illness is organic in nature (Morgan et al, 2008). Caplan (1995) maintains that mental health professionals rarely agree upon mental illness labels, diagnoses, or treatment plans. This means that people should be critical of mental illness labels. In particular, Caplan argues that we must ask "*for what purpose* they are making that judgment" (emphasis in original; 1995, p. 44), and if the intention is to 'help' someone, is there any evidence that "applying an abnormality label will actually further this intention" (1995, p. 44)? Blum (2011) maintains that people must be critical of the omnipresence of medical nomenclature in everyday life. He refers to this overreach of the medical profession as *medicalization*: "a means (almost as a tool or technology) for expanding the jurisdiction of medicine by redefining social issues as problems that require medical intervention and regulation or, at least, official consultation and use of medical expertise" (Blum, 2011, p. 170). It is through medicalization that medical practices serve as "biomedical weapons in the colonization of everyday life" (Blum, 2011, p.170), acting as tools for social control and deviance regulation. This omnipresence of medicalization in social institutions is linked to the institutionalization and marginalization of non-hegemonic identities.

'Health' and 'illness' are not natural categorizations. Instead, these labels entail "meaningful practices which raise questions of evaluation and appraisal that are [considered] fundamental [to the medical model]" (Blum, 2011, p. 118). Doucet, Letourneau and Stoppard (2010) maintain that researchers studying mental illness must move beyond medical model approaches by utilizing "a framework that facilitates the examination of how social, political, economic, ethnic, gender, and cultural factors interact to influence mental health and illness

experiences" (p. 305). In the next section, I engage with these critical discourses further as I explore how gender and race connect with mental illness labeling theories.

Women in the 'Mental Health' Turn: Labeling Theories and Gender

Betty Friedan began problematizing the notion of medicalizing gender role incongruence in her book, *The Feminine Mystique* (1963). Coining the term "the problem that has no name" (1963, p. 57), Friedan explores the widespread dissatisfaction and unhappiness (white, middle class) American suburban housewives felt post-World War II. Friedan (1963) openly critiques the medical treatment of the pressures and dissatisfaction that coincide with American femininity and argues that women should explore finding personal fulfillment outside of traditional gender roles.

Launching from this work, Phyllis Chesler (1972) explores the institutionalization of 'mad' women. She contends that stigmatic labels associated with women's mental health serve to reproduce patriarchal and class hierarchies in Canada and other 'Western' countries. Women are stereotypically labeled as 'help-seekers', and there is a wider social acceptance of behaviour displaying 'emotional distress' in women. However, there is a fine line between acceptable femininity and unacceptable femininity. It is acceptable for women to be (somewhat) needy, dependent, weak and helpless, though Chesler maintains that:

> …such female behaviour is judged as annoying, inconvenient, stubborn, childish and tyrannical. Beyond a certain point, such behaviour is 'managed' rather than rewarded: it is treated with disbelief and pity, emotional distance, physical brutality, economic and sexual deprivation, drugs, shock therapy, and long-term confinement (1972, p. 39).

As such, women who over-perform acceptable feminine behaviours are considered pitiful, childlike, and immature due to the misogynist and patriarchal undervaluation of femininity. Characteristics that define notions of femininity that can lead to punishment for over-performance include submissiveness, nurturance, sensitivity, and emotional expressiveness (Rosenfield, 2012). Rejecting femininity or over-selling femininity can each result in punitive responses.

Rigid boundaries of acceptable feminine behaviours result in more women transgressing into 'unacceptable' or 'ill' behaviour—behaviour that would be totally acceptable and 'normal' if performed by a man (Chesler, 1972). Sarah Rosenfield (1982) analyzed the influence of sex roles in societal reactions to mental illness by analyzing a random sample of 666 admissions to a New York psychiatric emergency room. She found that sex role expectations influence practitioners' decisions for hospitalization. In particular, men tended to be hospitalized for presenting more 'feminine' types of disorders (e.g., depression) and women tended to be hospitalized for presenting more 'masculine' types of disorders (e.g., drug addiction and alcoholism) (Rosenfield, 1982). Rosenfield (1982) concludes that "the same level or form of behaviour in males and females seems more visible or striking if it contradicts sex role expectations and this appears to the observer as a more problematic form of the behaviour" (p. 23).

Biological sex does not naturally predispose males and females to specific mental illnesses; rather, deviant or 'ill' behaviours are read as such by practitioners through the lens of gender performativity and societal expectations. This research consistently shows that women are susceptible to being labeled mentally ill when they fail to conform to rigid notions of femininity (Rogers & Pilgrim, 2010). Rosenfield's findings indicate that both men and women can be punitively labeled 'mentally ill' for transgressing gender expectations. However, a patriarchal

society privileges masculinity, which results in milder policing of men, as they are granted more flexibility in acceptable forms of performance.

Emerging from both Friedan and Chelser's critiques, there is a large body of contemporary work that explores the relationship between gender and mental illness from a labeling theory perspective. Though this work does not explicitly use labeling theory, it relies upon similar theoretical assumptions as those found in labeling theory. First, it is critical of medical definitions that are historically rooted in biological determinism and challenges the 'objectivity' of mental illness labels or diagnoses. Second, it supports the notion found in labeling theory that mental illness labeling is a tool used by the powerful to maintain social oppression and exclusion of the marginal.

Expanding upon the original conceptualizations of femininity, contemporary feminist researchers acknowledge that concepts of femininity intersect with race. For example, Black femininity is constructed as more flexible and interchangeable than white femininity. Black girls are socialized to embrace different aspects of femininity, including inner-strength and self-sufficiency (Rosenfield, 2012). Because of racism, Black women are excluded from rigid notions of white femininity, which means that they are less susceptible to 'traditional' mental illness stigmas (Rosenfield, 2012). However, this does not mean that black women and men do not experience psychological stressors triggered by structural oppressions, such as racism. Black individuals displaying 'ill' behaviours or stressors are less likely to be medically diagnosed as 'mentally ill'. Instead, Black bodies are more likely to be criminalized, labeled as 'violent' or 'criminal' and experience higher rates of incarceration (Jiwani, 2002; Silliman & Bhattacharjee, 2002; Davis, 2007).

The same could be argued for Aboriginal women: as opposed to being labeled as 'ill', Aboriginal women are more often associated with notions of risk and dangerousness. Like Black women, this means that Aboriginal women who do not conform to colonial expectations of the 'good Aboriginal' (submissive to and accepting of colonial power) are more likely to be criminalized than medicalized. This means that, once again, being less susceptible to mental illness labels does not mean that Aboriginal women do not encounter oppression. This is especially true for incarcerated Aboriginal women, where being labeled 'high risk' means one is not eligible for reintegration activities such as work release programs or temporary passes (Shaw and Hannah-Moffat, 2000), options which *may* be available for medication-compliant mentally ill prisoners. 'High risk' classifications are designated to 44% of federally sentenced Aboriginal women (Pollack, 2008). One of the implications of this over-classification of Aboriginal women is that maximum security classifications prevents access to cultural-specific programming like the Okimaw Ohci Healing Lodge, which only accepts minimum and medium security women (Pollack, 2008). Therefore, 44% of Aboriginal women serving a federal sentence are automatically excluded from culturally specific programs until they can 'lower' their risk through the acceptance of normalizing (or colonizing) therapeutic programs, which maintain white cultural ideals of 'normalcy'—an ideal that is itself a racialized phenomenon. 'Normalcy' assumes that there exists an ideal type of person. Moral assessments of who can be understood as 'normal' are based on white, heteronormative, middle-class values, lifestyles and experiences. This means that racialized, queer and poor individuals are often cast as 'abnormal', even when they are not labeled as 'mentally ill'. Therefore, avoiding the stigma of one label (mentally ill) does not guarantee freedom from all oppressive labels. These intersectional sites of oppression (e.g., racism and sexism) mean that criminalization labels and mental health labels operate in conjunction with one another. I now turn to explore the significance of mental health labeling in carceral spaces.

Mental Health Labels in Women's Carceral Spaces

The research discussed above shows that women who are perceived to be challenging patriarchal authority are vulnerable to mental illness labels. The same holds true for incarcerated women. There is a large body of feminist work that focuses upon traditional notions of femininity in carceral spaces. In particular, Carol Smart's book, *Women, Crime and Criminology* (1977), problematizes the medicalization and pathologizing of women prisoners' behaviour by correctional staff. Building upon this work, considered the catalyst for contemporary feminist criminology, feminist scholarly work in criminology has grown exponentially (Chesney-Lind, 2006).

Studies of prison populations intensified during the 1980s as the relationship between 'gender as performance' and mental illness was applied to prison populations. One study that builds directly from such work is Baskin, Sommers, Tessler and Steadman's (1989) exploration of gender variation in the provision of mental health services in a New York State prison. The researchers took a random sample of approximately 10% of the total inmate population (36,144), 142 of whom were women (4% of the sample) and 3,495 of whom were men (96% of the sample). These percentages reflect the gender breakdown of the overall prison population at the time of the study. Their findings reveal that women are vastly overrepresented in mental health placements: 20% of women prisoners were in mental health placements versus only 8.7% of male prisoners.

Similar to Rosenfield's (1982) study of non-prisoners, Baskin et al. (1989) conclude that there is a correlation between gender incongruence and the provision of mental health services in prison. Women who display behaviours that were perceived as aggressive or violent were significantly more likely than men exhibiting the same behaviours to be labeled as pathological and placed in mental health units. As a corollary to this finding, incarcerated men who displayed behaviour typically labeled as 'feminine' (e.g., depression) were more likely to be placed in mental health units than women prisoners displaying the same symptoms (Baskin et al., 1989).

In a 1990 study, Chunn and Menzies maintain that even though incarcerated women are labeled mentally ill more frequently than incarcerated men, these women are *not* more likely than their male counterparts to be 'troubled' or 'maladjusted'. Rather, correctional agents are more likely to pathologize incarcerated women's behaviours through assumptive theories based upon perceived inherent sex differences and notions of femininity. According to Auerhahn and Leonard (2000), mental health units in women's prisons operate under a rubric of chivalry that conceptualizes women inmates as 'sick' and in need of 'treatment'. This 'treatment' rhetoric in the criminal justice system justifies the medicalization of women prisoners' 'problem' behaviours. Auerhahn and Leonard maintain that in mental health units, women are primarily prescribed psychotropic medications, such as antidepressants and antipsychotic agents. These medications are often used in carceral spaces for non-medical purposes, as "chemical restraints" (Auerhahn & Leonard, 2000, p. 600) intended to transform non-feminine incarcerated women into docile bodies (Foucault, 1977). Stereotypical notions of femininity are enforced in carceral spaces; carceral agents value female docility because it is less threatening and easier to manage. Transgressors are labeled as pathological and drugged into submission. In addition, the stigmas associated with these labels serve to silence and discredit women who are resisting systems of patriarchal oppression.

Neve and Pate (2005) argue that at this contemporary, neoliberal moment, prisons are being restructured to serve as 'treatment centers'. They view cutbacks in public spending on mental health services in the community as having harshly affected young women with mental and cognitive disabilities in particular. Due to this clawback to government spending, women are becoming more easily trapped within the criminal justice system, as it becomes the default institution to 'help' those

who display 'problem' behaviours. Neve and Pate reinforce this point by stating that "women are the fastest-growing prison population worldwide" (2005, p. 27). Furthermore, they argue that:

> The increasing number of women in prison is clearly linked to the evisceration of health, education, and social services. The cycle of inadequate social services, criminalization, and incarceration intensifies in times of economic downturn. It is very clear where current policies are sending the people who are experiencing the brunt of the downturn in the economy. Jails are our most comprehensive homelessness initiative (Neve & Pate, 2005, p. 27-28).

With more and more psychiatric and mental health facilities closing due to a lack of resources, individuals who are labeled as mentally ill ultimately become caught in the "stickier social control net of our criminal justice system" (Neve & Pate, 2005, p. 28). Furthermore, once in prison, women tend to attract a number of psychiatric labels and be characterized as among the most difficult, high-risk prisoners to 'manage' (Neve & Pate, 2005). According to Neve and Pate, "equating mental and cognitive disabilities with risks only serves to perpetuate a social construction of persons with mental disabilities as dangerous" (2005, p. 28). Consequently, many 'difficult' women in prison experience harsh penalties, including extended sentences, prolonged isolation, forced medicalization, physical restraints, and barriers to reintegration programming (Neve & Pate, 2005).

Method

The aim of this research was to determine whether a newspaper's subjectivity—in particular its political affiliation and circulation audience—affects how Ashley Smith's story is told. To evaluate this objective, I purposefully selected newspapers from different political affiliations (liberal, conservative, and centrist) and circulation audiences (provincial or national). The four mainstream Canadian newspapers selected for analysis are: *Globe and Mail* (centrist), *National Post* (conservative), *Toronto Star* (liberal), and *Telegraph-Journal* (liberal). Two of these papers are nationally circulated (*Globe and Mail*, *National Post*), one is circulated in Ontario (*Toronto Star*), and one is based in New Brunswick (*Telegraph-Journal*).

In order to collect relevant news articles from these four newspapers, I used the online newspaper database ProQuest Newsstand. ProQuest Newsstand is the only accessible online database that archived articles from the *Telegraph-Journal.* I searched each newspaper individually, using the search parameters that I defined. Since I am not bilingual, the first parameter I set was for the database to only return results from 'English newspaper' sources. The second parameter set was the timeframe: articles that were written from October 18, 2007 until October 1, 2011. These dates were selected to ensure that the day of Ashley Smith's death (October 19, 2007) and the official cancellation date of the first inquest (September 30, 2011) were included in the search. My final parameter defined which key terms ProQuest Newsstand was to search for in the four newspapers. In the keywords search bar, "Ashley Smith" (including quotation marks) was the only term searched. This was to ensure a return of all articles that mentioned Ashley Smith, which I then filtered for relevance by previewing each article. I deleted any news stories that did not directly discuss Ashley Smith. Within these parameters, my search yielded 235 Ashley Smith news stories: 37 from the *Globe and Mail*; 20 from the *National Post*; 103 from *Telegraph-Journal*; and 75 from the *Toronto Star*.

For this research, the 235 newspaper articles that discussed the Ashley Smith case were critically read. According to Mahmood (n.d.), critical reading as a research method[1] is:

> An active approach to reading that involves an in depth examination of the text. Memorization and understanding of the text is achieved. Additionally, the text is broken down into its components and examined critically in order to achieve a meaningful understanding of the material (p. 2).

Zemliansky (2008) explains that critical reading involves questioning the face value of information. Researchers engaged in critical reading must "investigate, test, and even doubt every claim, every example, every story, and every conclusion" (Zemliansky, 2008, n.p.). However, engaging in critical reading does not mean that the reader must 'criticize' (or reject outright) the text. Instead, critical reading involves careful evaluations and analyses of a text's ideas and how they are constructed and presented (Zemliansky, 2008).

According to Mahmood (n.d.) and Zemliansky (2008) critical reading as a research method involves three key steps: previewing, writing, and critical reading. Previewing is when the researcher performs a brief screening of the text, scanning key words, headlines/titles, and references. This previewing stage allows the researcher to accomplish a general understanding of the text and form meaningful expectations from the reading (Mahmood, n.d.). The second step (writing) and third step (critical reading) occur simultaneously. Mahmood (n.d.) and Zemliansky (2008) argue that critical readers must take written notes while actively reading. Both authors suggest multiple note-taking strategies, including: underlining/highlighting key points, margin writing, divided page method, landmark/footnote method, journaling, and creating response questions. However, Mahmood (n.d.) and Zemliansky (2008) maintain that this writing step should only be done after the first reading of a text. Thus, critical reading involves multiple readings of the same text and written responses to the key arguments contained within these texts.

Following these three key steps as outlined by Mahmood (n.d.) and Zemliansky (2008), I first began my critical reading by previewing all 235 collected articles. In this previewing stage, I scanned over headlines, authors, and dates to verify their relevance to Ashley Smith and to gain an understanding as to what issues may be discussed. I then fully read each article through once and I highlighted any passages that I found salient. When I read each of these articles for a second time, I simultaneously created a reading journal in which I wrote down key arguments and my responses to those arguments. Emergent from this reading journal were three main themes: negative/generic terminology, vulnerability stereotypes, and alternative narratives. In the next section I outline in detail the implications of these themes.

Discussion

The main question guiding this research was whether stereotypical depictions of mental illness are reflected in the news articles about Ashley Smith from the four mainstream Canadian newspapers. The first theme emerging from my analysis is the reliance upon using generic references and

---

[1] Critical reading, as a method, is understood within this project as being situated in the wider methodological approach of critical discourse analysis (CDA). As such, I share the perspective that language (spoken and textual) and sociopolitical power structures share an intimate connection in either perpetrating or resisting the status quo (Fairclough, 1989).

negative labels to describe Ashley as mentally ill. The analysis discloses that liberal and centrist newspapers used generic labeling in discussing Ashley's mental illness, where the conservative newspaper used negative terminology as a stand in for these generic terms. The second theme focuses on more mainstream liberal depictions of Ashley that minimize her 'prisoner' label through gendered mental illness stereotypes. These depictions bring portrayals of Ashley back to stereotypical mental illness labels through their emphasis of vulnerability, while they simultaneously move away from portraying her as a 'resistant' (and potentially dangerous) prisoner. The final theme that emerged from these news articles is the suggestion from some journalists that Ashley was not mentally ill. Instead, it is claimed that Ashley was an intentionally resistant prisoner, and as such, her 'negative behaviour' must be understood as something more complex than pathological symptomology. This possibility is only raised in liberal and centrist newspapers, and even in those papers it is only a suggestion. However, the fact that these 'alternative' stories of Ashley Smith exist signals that her experiences of imprisonment may be more complex than what was commonly portrayed.

Generic References & Negative Labels

In the news coverage of Ashley Smith, journalists use many different terms to indicate to readers that she was mentally ill. Typically these mental illness labels are applied in the opening paragraph of the news article. A sample of some of the more frequently re-occurring mental health labels used include: "obviously troubled" (Brennan, 24 August 2010, A.9); "very troubled, desperately ill young Canadian" (Heard, 9 May 2011, A.12); "challenged young person" (McHardie, 21 November 2007, A.1); "mentally ill Moncton woman" (Linke, 21 November 2007, A.3); "an extremely troubled woman" (Linke, 20 May 2008, A.1); "a severely disturbed young woman" (Anonymous, 5 March 2009, A.6); "the emotionally disturbed 19-year-old" (Linke, 24 October 2008, A.1); "extremely challenging" (Linke, 24 October 2008, A.1); and "a mentally ill teen" (Pritchett, 9 June 2010, A.1). From this sample it is clear that in describing Ashley Smith journalists relied upon generic references (e.g., 'mentally ill') and negative terminology ('troubled', 'disturbed').

The specific terms 'disturbed' and 'troubled' are used to describe Ashley's mental illness at least once in all four newspapers. Although it may be tempting to view this trend as an attempt by journalists to be sympathetic, I argue in a later section that journalists tend to emphasize Ashley's vulnerability and helplessness to invoke audience pity. Instead of conjuring sympathy, the use of the words 'troubled' and 'disturbed' results in labeling Ashley Smith as someone who was out of control, potentially dangerous and 'out of touch' with reality. This indicates that these words reflect the negative stereotypes associated with mental illness. As argued by Wahl, Wood and Richards (2002), negative descriptors when used in conjunction with a mental illness label suggest that mentally ill individuals are "unchangeably dysfunctional and incapable of meaningful contributions to the community" (p. 25).

Wahl et al. (2002) also maintain that generic labels inaccurately present mental illness as a uniform condition which fails to acknowledge the "the varieties of disorders, symptoms and outcomes encompassed with the term mental illness" (p. 24). Even though most people diagnosed with a mental illness are neither violent nor dysfunctional, in generically describing Ashley Smith's 'problem' behaviours as a result of mental illness, readers are given the "impression that 'mental illness' is synonymous with severe disability" (Wahl et al., 2002, p. 24) and unpredictability. Only two (*Toronto Star* and *Globe and Mail*) of the four newspapers analyzed actually attempted to

specify Ashley's mental illness. Each paper published one article in which the reporters used psychiatric assessments performed on Ashley when she was fifteen to show that she was mentally ill. Interestingly, each article described Ashley as having a different mental illness. For example, the *Toronto Star* preferred "oppositional defiant disorder" (Zlomislic, 10 October 2009, A.1) while the *Globe and Mail* described her as having a "learning disorder and borderline personality disorder" (Blatchford, 1 April 2011, A.10). This variation in diagnosis supports Caplan's (1995) claim that defining or classifying 'mental illness' is subjective and that mental health professionals rarely agree upon specific diagnoses and treatment plans. Each of the diagnoses applied to Ashley Smith represents a different set of symptoms and potential outcomes which range from mild to severe. In assigning specific diagnoses, mental health professionals are shaped by social, cultural, political, economic, ethnic, and gender factors (Doucet et al., 2010).

It is interesting that one of the diagnoses assigned to Ashley Smith is borderline personality disorder (BPD). According to Shaw and Proctor (2005):

> The diagnosis of BPD is the latest manifestation of historical attempts to explain away the strategies which some women use to survive and resist oppression and abuse, by describing these strategies as symptomatic of a disturbed personality/pathology (p. 484).

The foundation of each of the two specific diagnoses applied to Ashley Smith rely upon stereotypical assumptions about gender expectations, predominately those influenced by white femininity—silence, passiveness and subordination (Shaw & Proctor, 2005). Reflective of the arguments I have made in other sections, the gendered and racialized biases of mental illness labeling means that the diagnosis of BPD is most commonly applied to white women who deviate from feminine norms (Shaw & Proctor, 2005). This is not to say that racialized women are immune from BPD diagnoses, but rather they are less likely to be understood as 'ill' and more likely to be labeled differently (e.g., aggressive, criminal) (De Genna & Feske, 2013). According to Cauffman, Lexcen, Goldweber, Shulman and Grisson (2007), incarcerated girls are more likely than incarcerated boys to be diagnosed with disruptive behaviour disorders, such as oppositional defiant disorder or conduct disorder (p. 289). According to Pollack and Kendall (2005), BPD is one of the most dominant labels attached to imprisoned women, which is not all that surprising since carceral spaces are also misogynist and patriarchal spaces. Furthermore, they contend that in this context, BPD is a "pejorative" label "both because the behaviors [sic] exhibited by those given these diagnoses are often difficult for others to deal with and because BPD has traditionally been thought to be permanent and untreatable" (2005, p. 76). Furthermore, in privileging a psycho-medical model that constructs women's 'difficult' behaviours as pathological, medical and penal systems continue to perpetuate "the invisibility of social and cultural influences" (Pollack & Kendall, 2005, p. 76), such as histories of childhood abuse and previous victimization. Therefore, diagnosing women with BPD or 'oppositional personalities' allows for the maintenance of patriarchal oppression and control through the medicalization of women's 'difficult' (e.g., resistant) behaviours.

Although all four newspapers use these two negative terms, the *National Post* is the only newspaper that uses them as primary descriptors. In this newspaper, the terms 'troubled' and 'disturbed' are used in place of generic 'mentally ill' references. From the use of these terms that relate to mental and emotional states, the reader may infer that Ashley Smith was mentally ill. This result indicates that although negative terminology is present in each newspaper, the overall frequency in the use of these terms versus more generic vocabulary is minimal. However, the

opposite is true for readers of the *National Post* since these negative terms are frequently used as the only descriptors of Ashley's mental illness. This means that the political affiliations of newspapers might affect how mental illness is depicted in news media. Though the conservative *National Post* does implicitly label Ashley Smith as mentally ill, this topic is not the primary focus of any of the articles published. In comparison, mental illness is the primary focus in approximately 12% of the *Telegraph-Journal* articles, 8% of the *Toronto Star* articles, and 3% of the *Globe and Mail* articles. So although each newspaper labels Ashley Smith as mentally ill, the newsworthiness of this topic changes based on politics. This variation suggests that labeling Ashley Smith as mentally ill in news articles holds political significance.

Ashley Smith was not a 'Hardened Criminal'

According to the literature, stereotypes associated with mental illness labels vary depending on gender. Mentally ill men are typically associated with violence and dangerousness, whereas mentally ill women tend to be portrayed as vulnerable and dependent. As such, it is not surprising that Ashley Smith's vulnerability is emphasized, even though the picture presented of her was often not one of vulnerability. Some of the behaviours displayed by Ashley Smith (e.g., spitting, cursing, aggressiveness) are typically associated with masculinity and dangerousness. Even some of the charges against Ashley—most of which were laid in an institutional setting—are typically associated with violence and dangerousness: uttering threats, assault with a weapon, assaulting a peace officer, and possession of a prohibited weapon (Cheney, 21 November 2007, A.1). Despite these allegations, readers are prompted to conceptualize Ashley Smith through the rhetoric of vulnerability associated with her mental illness: "vulnerable, lonely, utterly miserable 19-year-old girl" (Blatchford, 20 May 2011, A.7); "[…] people like Ms. Smith, unseen, utterly powerless and vulnerable" (Anonymous, 18 May 2011, A.22). News articles about Ashley Smith minimize details that associate her with dangerousness and violence by focusing on the fact that she was a mentally ill white woman. Although this lop-sided depiction of a feminized Ashley Smith provides an ideal platform to invoke public sympathy, under this rubric of vulnerability Ashley Smith's behaviours are linked to pathology rather than intention and resistance.

Feminist researchers Chesler (1972) and Rosenfield (1982) maintain that when women transgress gender expectations, medical practitioners often explain away their behaviour as a symptom of 'illness'. Shaw and Proctor (2005) contend that when women are resistant to oppressive patriarchal authority, this resistance is pathologized as irrational and deviant. This pathologizing of gender role transgression is not limited to mental health professionals. Most liberal and centrist news articles written about Ashley Smith reduce her 'negative' behaviour to a sign that she was "an extremely troubled woman" (Linke, 20 May 2008, A.1). These depictions diminish the possibility of understanding Ashley's actions outside the stereotypical rubric of female pathology. In emphasizing Ashley Smith's vulnerability, mainstream news articles from the *Toronto Star*, *Telegraph-Journal* and *Globe and Mail* eliminate the possibility of discussion of the issue of punishing women who dissent from patriarchal authority.

The use of images of vulnerability, however, is not entirely negative. Liberal and centrist (*Toronto Star*, *Telegraph-Journal*, *Globe and Mail*) newspapers used Ashley's vulnerability as a platform to highlight Ashley's humanity and to challenge typical 'prisoner' labels. Given Ashley's aggressive behaviours and that she was incarcerated at the time of her death, it is expected that newspapers would use typical 'prisoner' labels. According to modified labeling theories, these 'prisoner' labels emphasize an individual's potential for dangerousness and would legitimize

punitive actions taken against him or her by prison officials. Counter to this expectation, liberal and centrist news articles that refer to Ashley as a 'prisoner' typically challenge the validity of applying this label to her. Acknowledging that Ashley was a person *and* a prisoner has the potential to direct attention to the processes and practices that create criminality, and to facilitate recognition of the political construction of crime and criminal behaviours. Additionally, humanizing Ashley also implicitly encourages readers to focus upon the actual prison practices (e.g., long-term segregation) that may have influenced her behaviour, and thus contributed to the construction of her as mentally ill.

Unfortunately, these liberal and centrist news articles on Ashley Smith dispute her 'prisoner' label by maintaining a dichotomous relationship between Ashley and 'other' prisoners. In this dichotomy, 'offender first' language is considered acceptable for incarcerated individuals who are not mentally ill. Offender first language emphasizes the 'offender' label over any other characteristic of the individual—the primary identity ascribed to the person is that of 'offender'. Similar to Becker's concept of 'master status' (1963), offender first language also affects how incarcerated individuals come to understand themselves as 'outsiders' (Becker, 1963). Prison reform advocates, such as Pollack (2007), maintain that 'offender first' language perpetuates the notion of a reified 'offender' identity and that individual criminality is the result of a rational choice of wrongdoing. This 'offender first' language legitimates biological deterministic theories, which argue that 'offenders' are biologically different from 'law-abiding people'. Frequently, liberal and centrist news articles draw on this distinction reminding readers that Ashley was not your 'typical hardened criminal'. As stated in an article that appeared in the *Globe and Mail*: "Ashley Smith was not a killer or a hardened criminal; she was a mentally ill 19-year-old with personality disorders" (Anonymous, 10 March 2009, A.16). With the exception of the *National Post*, this depiction of Ashley Smith is consistent across time and all newspapers:

> What follows are just some of the measures to which [Ashley Smith] was subjected while in one form of custody or another in this country—and all of this, you must bear in mind, was done not *to some hardened violent criminal, but to a mentally disturbed girl* (Blatchford, *Globe and Mail*, 2 April 2011, A.2; emphasis added).

> [Even though Ashley Smith's] behaviour was rooted in conditions over which she had little, if any, control, the justice system treated her as a delinquent (Anonymous, *Telegraph-Journal*, 19 May 2011, A.8).

> I was literally in tears. They were tears of sadness, anger and frustration over how this very troubled, desperately ill young Canadian was treated like a criminal when she needed care (Heard, *Toronto Star*, 9 May 2011, A.12).

This dichotomy is also accomplished by showcasing quotes from Ashley Smith's mother—"She was treated like a criminal, not a girl who needed help" (Thanh Ha, 3 March 2009, A.1)—and non-Correctional Service of Canada professionals—"[Dr. Beaudry] said that she was treated as if she were a dangerous individual with little or no actual evidence that she was" (Makin, 3 November 2010, A.4). These portrayals of Ashley solidify a dichotomy between her and other 'prisoners', with the implication that the harsh punishments and penal practices Ashley experienced would be legitimate measures for prisoners who are not mentally ill.

Different from the other three newspapers, the *National Post* challenges these depictions of Ashley Smith by maintaining her 'prisoner' label. While the other newspapers emphasize Ashley's 'mental health' label, the *National Post* focuses upon her 'prisoner' label. Consistently throughout the articles, readers of the *National Post* are reminded that Ashley was a prisoner:

> Corrections Services of Canada yesterday fired four employees at the Grand Valley Institute for Women in Kitchener after an internal investigation into the death of inmate Ashley Smith (Anonymous, 17 January 2008, A.5).

> The inmate died in hospital of what Waterloo Regional Police called self-initiated asphyxiation after being found unconscious in her cell at the Grand Valley Institution in Kitchener, Ont. last October (Huber, 24 October 2008, A.10).

> Criminal charges have been withdrawn against four guards at the Grand Valley Institute for Women in Kitchener, in relation to the suffocation death of a 19-year-old female prisoner, the Crown attorney's office said yesterday (Crawford, 9 December 2008, A.9).

> Smith, originally from Moncton, N.B., was the youngest prisoner at the institution […] (Adam, 22 January 2010, A.5).

The articles provide no depictions that separate Ashley Smith's experience from that of 'other' prisoners. Unlike the other newspapers, news articles from the *National Post* typically label Ashley as a prisoner first, rather than as mentally ill. However, these news articles did discuss mental illness issues and implied that these details are relevant to Ashley's story because she was a woman prisoner. According to feminist literature, depicting all incarcerated women as mentally ill effectively pathologizes women's deviance and 'problem' behaviours. Women prisoners are presented as individuals who are 'sick' and in need of 'treatment'. Under this pathology discourse, resistant women prisoners are discredited and silenced. As such, these conservative depictions of Ashley Smith as a prisoner coincide with traditional assumptions of female prisoner pathology.

Was She Sick, or Incorrigible While Incarcerated?

In this final section on labeling Ashley Smith as mentally ill, I discuss an 'alternative' depiction of her story. In these stories, journalists question whether Ashley Smith should be labeled as mentally ill. These alternative perspectives only appear in the liberal and centrist newspapers (*Telegraph-Journal, Toronto Star, Globe and Mail*), and appear infrequently. However, they are worthy of analysis because they indicate that Ashley's story may be more complicated than was typically depicted.

The *Telegraph-Journal*, a local New Brunswick newspaper, was the first newspaper to publish this different perspective, raising the question as to whether or not Ashley Smith was mentally ill before her imprisonment. For example, one journalist writes that Ashley Smith was a "happy and stable young girl before her imprisonment" (Southwick , 26 November 2007, A.1). In another *Telegraph-Journal* article, a quote from Bernard Richard challenges "any one of us to spend that kind of time—two or three years—in that kind of facility and I'd be willing to bet that we'd have our rough days as well" (McHardie, 21 November 2007, A.1). Journalist Rob Linke, from the *Telegraph-Journal*, writes: "Smith's mental health was tested many times but she was not

found mentally ill" (24 October 2008, A.1). In the *Globe and Mail*, an article entitled "How Prison Only Made Her Worse" includes the observation:

> On the streets of east-end Moncton, Ms. Smith had a reputation as a bit of a tough character. "She hung out with guys who caused trouble," a former schoolmate said. "She wasn't a girlie-girl, playing with Barbies." Her family saw a softer side, a girl who liked to read, paint and paddle a kayak (Cheney, 8 December 2007, A.1).

By writing that Ashley Smith was not officially labeled mentally ill prior to or while incarcerated, journalists from these newspapers problematize the assumption that Ashley's mistreatment was because she was mentally ill. These few stories disclose that Ashley was not provided with a psychological assessment during her time in federal custody. These articles indicate that while she was incarcerated, Ashley was labeled as 'difficult to manage' and a 'problem inmate'. Additionally, as shown by Cheney's quote, this narrative describes Ashley as someone who deviated from feminine ideals (e.g., not wanting to play with dolls as a young girl; considered a 'tough character'), which suggests that she may have also been resistant to the expectations of hegemonic femininity. In line with Baskin et al.'s (1989) study, women like Ashley who display traits typically associated masculinity are often read as 'risky' and responded to with punishment. Given Ashley's long-term placement in segregation cells, forced medicalization, and experiences of physical restraint, it is suggestive within these narratives that prison officials responded to her not as a mentally ill prisoner, but as a resistant prisoner.

Unfortunately, rather than pursuing this new angle of the mistreatment of a prisoner labeled 'difficult to manage', the journalists of each of these articles argued that not diagnosing Ashley as mentally ill was the problem. In doing so, they diminish the argument that Ashley's behaviours might have been intentionally resistant and/or coping behaviours in an intolerable situation. In doing so, they minimized the potential of these stories to offer a different side of Ashley's story. For example:

> [Ashley Smith] was by all accounts a troubled young woman, but was jail the answer (Cheney, *Globe and Mail*, 8 December 2007, A.1)?

> Smith was the emotionally disturbed 19-year-old inmate from Moncton whose death on Oct. 19, 2007 in the Grand Valley Institution for Women resulted in charges of criminal negligence causing death against three guards and a supervisor, as well as the firing of two prison managers (Linke, *Telegraph-Journal*, 24 October 2008, A.1).

> Smith, who suffered from a mental illness, was not [given a choice] (Southwick, *Telegraph-Journal*, 26 November 2007, A.1).

> To think [Ashley Smith, an] already challenged young person lived through this and ended up acting up "and then being charged and charged again, perhaps over 50 times, institutional charges" (McHardie, *Telegraph-Journal*, 21 November 2007, A.1).

There is one news article published in the *Toronto* Star that directly challenges labeling Ashley Smith as mentally ill. Rosie DiManno describes Ashley Smith as being "incorrigible while incarcerated" (9 March 2009, A.2) and maintains that it was because her resistant attitude "needed

crushing" (March 2009, A.2) that she met punitive responses. DiManno depicted her as someone who was frequently combative and refused to passively accept prison authority. In this article, DiManno claims that Ashley was an "iconoclast" (9 March 2009, A.2) and challenged the notion that her behaviour was the result of a mental illness:

> In page after page of analysis, [Ashley Smith] is described as defiant, combative, unyielding to rules, refusing to conform: an obstinate and powerful personality, the proverbial square peg being forced to fit into a round hole, a juvenile iconoclast who fought tooth and nail in hanging on to a personality others deemed "oppositional" and "narcissistic" and "disrespectful".

> But the more she resisted, the further she was restricted and punished, caught in a crazy Catch-22 that had disaster written all over it.

> However disturbed, rebellious, as an adolescent, Ashley Smith was sane. It was the adults—screws and jailers and clipboard clods—who made her crazy (DiManno, 9 March 2009, A.2).

This narrative presents Ashley Smith as a woman who was defiant, aggressive, and vocal. Unlike the journalists before, DiManno does not deflect this image of Ashley with mental illness labels. This alternative depiction of Ashley as resistant supports the analysis that labeling her 'disturbed' is subjective and rooted in medicalization and patriarchal understandings.

Although this 'alternative' story is only published once and only appears in the *Toronto Star*, the fact that it exists signals that Ashley's story may be more complex than was presented in the other news articles. This alternative story that introduced Ashley as intentionally resistant prods readers to consider the repercussions of resistance for women in carceral spaces.

Conclusion

Gendered mental illness stereotypes discussed by modified labeling theorists were reflected in the news coverage on Ashley Smith. However, the stereotypes used varied depending on the political affiliation of the newspaper. Liberal and centrist newspapers (*Toronto Star*, *Telegraph-Journal*, *Globe and Mail*) tended to align with stereotypes that portrayed mentally ill women as vulnerable. On the other hand, the conservative newspaper (*National Post*) presented a less sympathetic portrayal of Ashley by using negative mental illness terminology and emphasizing her 'prisoner' label. As this analysis illustrates, mental illness labeling in the media is often more complex than has been previously discussed in the extant literature. This research contributes to modified labeling theories by lending support to their main theoretical assertion that mental illness labels are socially constructed and affected by many sociopolitical factors, while considering the influence of news coverage timing and newspaper political affiliation on the depictions of mental illness stereotypes in mainstream news media.

Acknowledgements

About the Author

Jessi Ring is completing her MA in Women and Gender Studies at Carleton University, and is beginning a PhD in Legal Studies. Her research interests include feminist criminology, penal and law reform, feminist activism and new media. She can be reached at Jessica.Ring@carleton.ca

References

Adam, B.A. (22 January 2010). Ex-supervisor found not guilty of assaulting teen prisoner; Ashley Smith Case. *National Post*; Sect. A.5.

Anonymous. (17 January 2008). Employees fired over woman's death. *National Post*; Sect. A.5.

--. (5 March 2009). Killed by indifference. *Telegraph-Journal*; Sect. A.6.

--. (10 March 2009). Shocking report a wake-up call. *Toronto Star*; Sect. A.16.

--. (18 May 2011). The need to know. *Globe and Mail*; Sect. A.22.

--. (19 May 2011). Save the next Ashley Smith. *Telegraph-Journal*; Sect. A.8.

Auerhahn, K. & Dermody Leonard, E. (2000). Docile Bodies? Criminal Restraints and the Female Inmate. *Journal of Criminal Law and Criminology*, 90(2), 599-634.

Baskin, D.R., Sommers, I., Tessler, R., & Steadman, H.J. (1989). Role Incongruence and Gender Variation in the Provision of Prison Mental Health Services. *The Journal of Health and Social Behaviour,* 30(3), 305-314.

Blatchford, C. (1 April 2011). Ashley Smith's family challenges coroner's decision to ignore videos. *Globe and Mail*; Sect. A.10.

--. (20 May 2011). If hospitals worked like this, we'd all be in serious danger. *Globe and Mail*; Sect. A.7.

--. (21 June 2011). Inquest going nowhere fast; Delays compound Ashley Smith tragedy. *National Post*; Sect. A.1.

Blum, A. (2011). *The Grey Zone of Health and Illness*: Bristol: Intellect Ltd.

Brennan, R.J. (24 August 2010). Feds to release documents on teen who took life in jail. *Toronto Star*; Sect. A.8.

Caplan, P.J. (1995). *They Say You're Crazy: How the World's Most Powerful Psychiatrists Decide Who's Normal.* Reading, MA: Addison-Wesley Publishing Company

Cauffman, E., Lexcen, F.J., Goldweber, A., Shulman, E.P., & Grisso, T. (2007). Gender Differences in Mental Health Symptoms Among Delinquent and Community Youth. *Youth Violence and Juvenile Justice*, 5(3), 287-307.

Cheney, P. (21 November 2007). Teen's death sparks prison furor. *Globe and Mail*; Sect. A.1.
--. (8 December 2007). How prison 'only made her worse'. *Globe and Mail*; Sect. A.1.

Chesler, P. (1972). *Women and Madness*. New York: Avon Books.

Chesney-Lind, M. (2006). Patriarchy, Crime, and Justice: Feminist Criminology in an Era of Backlash. *Feminist Criminology*, 1(1), 6-26.

Chunn, D.E., & Menzies, R.J. (1990). Gender, Madness and Crime: The Reproduction of Patriarchal and Class Relations in a Psychiatric Court Clinic. *The Journal of Human Justice* 1.2: 33-54.

Correctional Service of Canada. (2012). *Institutional Profiles: Grand Valley Institution for Women*. Ottawa: Correctional Service of Canada.

Crawford, T. (9 December 2008). Charges withdrawn against guards in suffocation death of teen prisoner; Ashley Smith, 19.

Davis, A. (2007). Race and Criminalization: Black Americans and the Punishment Industry. In J.F. Healey and E. O'Brien (Eds.), *Race, Ethnicity, and Gender Selected Readings*. (pp. 204-222). London: SAGE Publications Ltd.

De Genna, N.M. & Feske, U. (2013). Phenomenology of borderline personality disorder: the role of race and socioeconomic status. *The Journal of Nervous and Mental Disease,* 201(12), 1027-1034.

DiManno, R. (9 March 2009). Square peg beaten down by system. *Toronto Star*; Sect. A.2.

Doucet, S., Letourneau, N., & Stoppard, J. (2010). Contemporary paradigms of research related to women's mental health. *Health Care for Women International*, 31(4), 296-312.

Fairclough, N. (1989). *Language and Power*. London: Longman.

Foucault, M. (1977). *Discipline and Punish: The Birth of the Prison.* New York: Pantheon Books.

Friedan, B. (1963). *The Feminine Mystique*. New York: W.W. Norton & Company, Inc.

Gary, F.A. (2005). Stigma: Barrier to Mental Health Care Among Ethnic Minorities. *Issues in Mental Health Nursing*, 26, 979-999.

Huber, J. (24 October 2008). Guards 'not to enter' teen's cell even if face turns purple; Ashley Smith Report; Officers scapegoats in her self-asphyxiation case, union charges. *National Post*; Sect. A.10.

Jiwani, Y. (2002). The Criminalization of "Race", the Racialization of Crime. In W. Chan and K. Mirchandani (Eds.), *Crimes of Colour: Racialization and the Criminal Justice System of Canada* (pp. 67-101). Toronto: Broadview Press, Ltd.

Link, B.G. & Cullen, F.T. (1986). Contact with the Mentally Ill and Perceptions of How Dangerous They Are. *Journal of Health and Social Behavior*, 27, 289 – 303.

Linke, R. (21 November 2007). Teen alleged she was assaulted by jail staff; Revelations New details emerge in Ashley Smith's death. *Telegraph-Journal*; Sect. A.3.

--. (20 May 2008). National pattern of prison deaths: report; Spotlight How badly prison service responds to suicidal and life-threatening situations. *Telegraph-Journal*; Sect. A.1.

--. (24 October 2008). Her final moments; Defence Union backs guards in report on death of troubled teen Ashley Smith. *Telegraph-Journal*; Sect. A.1.

Mahmood, K. (n.d.). *Critical Reading* [PowerPoint slides]. Online: www.paklag.org/4-Critical%20Reading-Khalid.ppt.

Makin, K. (3 November 2010). Probe set to expand beyond teen's death. *Globe and Mail*; Sect. A.16.

McHardie, D. (21 November 2007). Watchdog proposes new youth centre; Idea Close youth jail create new incarceration and mental health facility. *Telegraph-Journal*; Sect. A.1.

McLeod, S. (2008). The Medical Model. *SimplyPsychology*. Online: http://www.simplypsychology.org/medical-model.html.

Morgan, C., McKenzie, K., & Fearon, P. (Eds.). (2008). *Society and Psychosis*. Cambridge: Cambridge University Press.

Neve, L. & Pate, K. (2005). Chapter 2: Challenging the Criminalization of Women Who Resist. In J. Sudbury (ed.), *Global Lockdown: Race, Gender, and the Prison-Industrial Complex* (pp. 19-35). New York: Routledge.

O'Connor, T. (2006). Labeling Theories of Crime. *MegaLinks in Criminal Justice*. Online: http://www.drtomoconnor.com/1060/1060lect07.htm.

Pasman, J. (2011). The Consequences of Labeling Mental Illness on the Self-Concept: A Review of the Literature and Future Directions. *Social Cosmos*, 2, pp. 122-127.

Pollack, S. (2007) "I'm Just Not Good in Relationships": Victimization Discourses and the Gendered Regulation of Criminalized Women. *Feminist Criminology*, 2(2), 158-174.

Pollack, S. & Kendall, K. (2005). Taming the shrew: Regulating prisoners through women-centered mental health programming. *Critical Criminology*, 13(1), 71-87.

Poussaint, A.F. (1990). Mental Health Status of Black Americans, 1983. In D.S. Ruiz (Ed.), *Handbook of Mental Health and Mental Disorder Among Black Americans* (pp. 17-55). USA: Greenwood Press.

Pritchett, J. (9 June 2010). Child advocate opposes proposed changes; Justice: Bernard Richard to appear before Commons committee to express his concerns to MPs. *Telegraph-Journal*; Sect. A.1.

Richard, B. (2008). *The Ashley Smith Report*. Fredericton: Office of the Ombudsman and Child and Youth Advocate.

Rogers, A. & Pilgrim, D. (2010). *A Sociology of Mental Health and Illness*. Fourth Edition. Berkshire: Open University Press.

Rosenfield, S. (1982). Sex Roles and Societal Reactions to Mental Illness: The Labeling of "Deviant" Deviance. *Journal of Health and Social Behavior*, 23(1), 18-24.

--. (2012). Triple Jeopardy? Mental health and the intersection of gender, race, and class. *Social Science & Medicine*, 74(11), 1791-1801.

Sapers, H. (2008). *A Preventable Death*. Ottawa: Office of the Correctional Investigator.

Scheff, T.J. (1974). The Labeling Theory of Mental Illness. *American Sociological Review* 39, no. 3, 444–452.

--. (1999). *Being Mentally Ill: A Sociological Theory*. New York: Aldine De Gruyter.

Shaw, C. & Proctor, G. (2005). Women at the Margins: A Critique of the Diagnosis of Borderline Personality Disorder, 15(4), 483- 490.

Sieff, E. (2003). Media frames of mental illnesses: The potential impact of negative frames. *Journal of Mental Health*, 12(3), 259–269.

Silliman, J. & Bhattacharjee, A. (2002). *Policing the National Body: Race, Gender, and Criminalization*. Cambridge: South End Press.

Southwick, R. (26 November 2007). Woman calls herself 'Grand Valley success story'; Prison Former inmate shows alternative view of federal women's center where Moncton teen died. *Telegraph-Journal*; Sect. A.1.

Thanh Ha, T. (3 March 2009). Instructed to curtail crushing red tape, guards watched girl die in her cell. *Globe and Mail*; Sect. A.1.

Wahl, O.F. (1995). *Media madness: Public images of mental illness.* New Brunswick: NJ: Rutgers University Press.

Wahl, O.F., Wood, A., and Richards, R. (2002). Newspaper Coverage of Mental Illness: Is It Changing ? *Psychiatric Rehabilitation Skills*, 6(1), 9–31.

Zimliansky, P. (2008). Chapter 3: Research and Critical Reading. *Methods of Discovery: A Guide to Research Writing*. Online: http://methodsofdiscovery.net/?q=node/8.

Zlomislic, D. (10 October 2009). How this generous girl became a 'caged animal'. *Toronto Star*; Sect. A.1.

A Class Action on Behalf of Federally-Sentenced Women (FSW) with Mental Health Issues

Rebecca Anne Sutton
Clerk, Ontario Court of Appeal
JD, University of Toronto Faculty of Law

The inquiry into Ashley Smith's in-custody death is playing a crucial role in opening up the typically inscrutable prison system and forcing the Correctional Service of Canada (CSC) to defend its policies and practices under intense public scrutiny. Yet there is a risk that Smith will be understood as an extreme outlier, rather than an indicator of a deeper problem. There remains a broader need for concrete and systemic reform of the prison system as it treats Federally-Sentenced Women (FSW) with mental health issues. In this analysis I will consider how civil litigation might be used in creative ways to seek remedies for this segment of the prison populations. Specifically, I will explore the viability of a class action lawsuit against CSC on behalf of FSW with mental health issues, with a sub-class of Aboriginal female prisoners. While there are admittedly a number of practical obstacles to bringing this type of lawsuit, a class action against the Crown offers an interesting combination of private and public law advantages as well as the potential for both individual recourse and systemic change.

Keywords: female prisoners; mental health; class action.

L'enquête sur le décès sous garde d'Ashley Smith joue un rôle fondamental dans la considération du système carcéral, généralement impénétrable, et force le Service Correctionnel du Canada (SCC) à défendre ses politiques et pratiques dans l'œil intéressé du grand public. Toutefois, il existe un risque que le cas Smith soit interprété comme un cas extrême plutôt que comme un indicateur d'un programme plus grave. Il demeure important de mettre en œuvre des réformes tangibles et systémiques du système carcéral et de son traitement des femmes purgeant une peine de ressort fédéral (FPPF) et souffrant de maladies mentales. Dans cette analyse, nous envisagerons comment les contentieux civils peuvent constituer un recours alternatif d'obtenir réparation pour ce segment de la population. Plus précisément, nous aborderons la viabilité d'un recours collectif contre SCC au nom des FPPF souffrant de maladie mentale en créant une sous-catégorie de prisonnières autochtones. Bien qu'il existe un nombre reconnu d'obstacles à l'introduction de telles actions, un recours collectif contre la couronne compte un agencement intéressant d'avantages découlant du droit public et d droit privé, ainsi que la possibilité de recours individuel et de changements systémiques.

Mots clés : prisonnières; santé mentale; recours collectif.

Introduction

Ashley Smith's tragic death while in federal custody has directed public attention to Canada's treatment of prisoners with mental health issues. At the close of the recent Coroner's inquest into her death, the jury described what happened to Smith as an example of how correctional and health care systems can "collectively fail to provide a mentally ill, high risk, high needs inmate with the appropriate care, treatment, and support" (Chief Coroner of Ontario, 2013). Importantly, the jury's homicide verdict dispelled the notion that Smith's death was a suicide. The inquest also established

that Smith's death was not simply the result of poor judgment by a few front-line staff, implicating decision-making processes at the highest level of the Correctional Service of Canada (CSC).

While there have been some positive developments in addressing mental health concerns for federally-sentenced women (FSW) in recent years, many of the conditions that contributed to Smith's death still prevail in Canada's prisons (Bingham and Sutton, 2012). As the jury's recommendations from the Smith inquest are not legally binding, it remains unclear whether it will galvanize any meaningful systemic reform. Something more is needed. In this paper I will propose a novel route through the courts: a class action lawsuit against CSC. This type of action offers an interesting combination of private and public law advantages, as well as the potential for both individual recourse and systemic change.

In the first section of this discussion, I will provide some background on FSW with mental health issues, and I will explain the rationale for a class action. I will then explore the legal foundation for class actions in Canada, and outline what a class action on behalf of FSW would potentially look like. While a class action against the Crown on behalf of FSW is no panacea, I will demonstrate that it should be seriously considered as a useful procedural vehicle for substantive reform.

Background on FSW with mental health issues

No single event in recent history has brought more attention to the issue of mental health in corrections than the in-custody death of Ashley Smith. In 2007, 19-year-old Ashley Smith died in a segregation cell at Grand Valley Institute for Women (OCI, 2008). She suffered from serious mental health issues, and was in segregation under suicide watch (OCI, 2008). Following orders from management, CSC staff refrained from intervening when Smith asphyxiated herself after tying a ligature around her own neck. CSC fired the warden and deputy warden after the incident, but the negligence charges that were laid against prison guards and supervisors were eventually dropped. Smith's family initiated a lawsuit against CSC for negligence, which was reportedly settled out of court for eleven million dollars (Seglins, 2011). After a number of false starts, the inquest finally proceeded with eleven months of testimony involving more than 80 witnesses, and the jury returned a verdict of homicide (Chief Coroner of Ontario, 2013). The jury made a number of recommendations, such as ensuring that all female inmates are assessed by a psychologist within the first 72 hours of admission to prison.

Now that the inquest is over, the pressing question is what can and will be done by CSC to improve the treatment of FSW with mental health issues. There are approximately 580 federally-sentenced women (FSW) currently incarcerated in Canada, and Aboriginal women make up one third of the FSW population (OCI website). While much smaller than the male prisoner population, which numbers approximately 14,000, the FSW population is increasing at a faster rate: in the ten years leading up to March 2013, there was a 60 per cent increase in the FSW population (OCI website).[1] Rather than translating into better care, the Arbour Report found that the relatively small number of female prisoners has been one of the reasons for the historic disadvantage they have suffered in the federal corrections system (Arbour Report).

---

[1] In the ten years leading up to March 2013 there was a 60 per cent increase in the FSW population (OCI, 2013) and between 2001-2012 there was a 109 per cent increase in the Aboriginal FSW population between 2001-2012 (OCI website).

Mental health care, as defined in section 85 of the Corrections and Conditional Release Act *(CCRA)*, is: "the care of a disorder of thought, mood, perception, orientation or memory that significantly impairs judgment, behavior, the capacity to recognize reality or the ability to meet the ordinary demands of life." Women in Canada's prisons are more likely than men to have mental health issues (CHRC at 5.1.2) and they are much heavier users of CSC's mental health care services (OCI, 2013). Approximately one third of FSW have a mental health diagnosis prior to their incarceration; further, 29 per cent of FSW are identified upon intake as having mental health problems (OCI, 2011). According to CSC data, 69 per cent of FSW received institutional mental health care services in 2010-2011, as compared with 45 per cent of male offenders (OCI, 2012). In 2011-2012, 75 per cent of FSW received such services (OCI, 2013).

Dealing with mental health issues in the custodial context is an incredibly complex task, and it should be recognized that CSC has made some important efforts to secure strategic and resource allocation at all levels of the system. For example, CSC has gathered stakeholder feedback and used it to develop a *Mental Health Strategy for Women Offenders ("Strategy")* which was launched in 2002 (CSC website). The *Strategy* describes the mental health needs of FSW, and outlines the treatment programs demanded by CSC legislation and the policy directives required to appropriately deal with the respective identified needs. CSC has invested approximately 90 million dollars since 2005 in order to implement the *Strategy,* and concerted efforts have been made to train front-line staff, strengthen delivery of mental health care within prisons, and to improve discharge planning for offenders with mental health issues (OCI, 2013). CSC has also been revising its approach to screening prisoners for mental health issues, and has developed a computerized mental health intake screening system (CoMHISS) for FSW (CSC website).

The concern at this juncture, however, is whether CSC's efforts are in fact translating into better conditions of confinement. The OCI and a number of advocacy organizations have identified a worrisome gap between policy and public pronouncements, on the one hand, and operational reality, on the other. With respect to the CSC's employment of qualified mental health professionals, OCI has highlighted a number of staffing, recruitment, and retention challenges (OCI, 2013).[2] Self-injury by inmates is another example here. The OCI recently assessed CSC's mental health care initiatives in relation to the implementation of the *Strategy,* finding that these measures have resulted in "little substantive progress" since Smith's death with respect to dealing with FSW who chronically self-injure (OCI, 2013b, p. 27). The OCI found that CSC responds to self-injurious behavior through a punitive or security approach—such as containment, isolation, and segregation—rather than addressing it as a mental health concern (OCI, 2013b, pp. 29-30). CSC's use of a security or punitive approach as opposed to a mental health care approach was also highlighted in the report *Cruel, Inhuman, and Degrading: Canada's Treatment of Federally-Sentenced Women with Mental Health Issues* ("IHRP Report") (Bingham and Sutton, 2012). The IHRP Report established that Canada's treatment of FSW violates international human rights law, emphasizing in particular:

- A mental health strategy that is overly focused on assessment rather than treatment, and blind to FSW's past histories of abuse;
- Security classification tools that over-classify FSW with mental health issues and

---

[2] Nearly one third of CSC's total psychological staff is either vacant or "under-filled". In the latter scenario, a position such as a psychologist position is filled by a non-licensed incumbent staff member who is unable to provide the same range of services as a licensed psychologist (OCI, 2013)

        Aboriginal women such that they are housed in more secure environments than required to manage their risk; and,

- Excessive use of administrative segregation and institutional transfers to manage FSW with serious mental health issues, without judicial oversight (pp. 1-2).

In light of the identified problems in the treatment of FSW with mental health issues, four categories of CSC practice may serve to ground a civil claim: (1) the security classification system, (2) the use of administrative segregation, (3) the use of institutional transfers, and (4) the failure to provide mental health care. The "Issues Chart" in **Figure 1** provides further details on each of these areas.

The rationale for a class action

In the words of Canada's Correctional Investigator, "Canadian correctional history is marked by a pattern of crisis and retrenchment followed by reform and progress" (OCI, 2013, p. 3). Following on the heels of the Smith inquest, a high-profile class action lawsuit could offer one novel route towards institutional reform. In this section of the paper I will review the legal framework for a class action in Canada, and discuss how this type of lawsuit might assist FSW with mental health issues moving forward.

        At the turn of the 21st century, a trilogy of Supreme Court cases greatly affected the law on class actions in Canada: *Western Canadian Shopping Centres v. Dutton,* [2001] 2 S.C.R. 534 (S.C.C.) [*Dutton*], *Rumley v. British Columbia,* [2001] 3 S.C.R. 184 (SCC) [*Rumley*], and *Hollick v. Toronto (City),* [2001] 3 S.C.R. 158 (S.C.C.) [*Hollick*]. Writing for a unanimous court in *Dutton*, Chief Justice McLachlin stated that the rise of class actions in modern litigation is undeniable and that without class actions, "the doors of justice remain closed to some plaintiffs, however strong their legal claims" (para. 26). Next, in *Rumley,* the Supreme Court allowed a claim by survivors of institutional abuse to proceed as a class action, demonstrating the potential for class actions to provide redress for vulnerable individuals impacted by systemic negligence. The legacy of *Rumley* was clear in the 2004 case of *Cloud v. Canada (Attorney General)* [2004] O.J. No. 4924, 73 O.R. (3d) 401 (Ont. CA) [*Cloud*], where the Ontario Court of Appeal unanimously certified a class action by residential school survivors who were seeking damages for negligence, breach of fiduciary duty, assault, sexual assault, battery, and infringement of Aboriginal rights. The procedural advantages of class actions were emphasized in the third case in the trilogy, *Hollick.* In *Hollick,* the Supreme Court held that courts should take a broad and generous approach when interpreting the *Ontario Class Proceedings Act*.

        The use of class actions in the U.S. context offers an important example of prisoner rights advocacy in Canada. As Douglas Elliot (2011) explains, class actions in the U.S. have empowered vulnerable groups and enabled the judiciary to hold government to account for social injustices. Class action litigation has played a particularly important role in reforming U.S. correctional institutions, including with respect to correctional mental health systems reform (Metzner, 2002, p. 19). Amy Laderberg explains how the class action lawsuit can help to enhance the credibility of vulnerable prisoners and give a sense of a systemic problem. Combining numerous complaints of sexual abuse, for example, permits characterization of the prison system as constituting a "sexualized environment" rather than a series of isolated individual incidents (Laderberg, 1998, pp. 326-327).

        Elliot (2011) contends that several factors may impede class actions in the Canadian context from delivering on the same promise of access to justice as in the U.S. These include:

Canada's use of administrative tribunals rather than the private bar for enforcing statutory rights, jurisdictional impediments that existed prior to the landmark ruling in *Canada (Attorney General) v. Telezone,* [2010] 3 S.C.R. 585, 2010 SCC 62[3], and the social barriers that Canada's marginalized groups continue to experience (Elliot, 2011). Yet he also notes that more recent cases such as *Canada v. Hislop,* [2007] S.C.J. No. 10, [2007] 1 S.C.R. 429 (S.C.C.) [*Hislop*]; *Manuge v. Canada,* [2010] S.C.J. No. 67; and *City of Vancouver v. Ward,* [2010] 2 S.C.R. 28 [*Ward*], may indicate a shift towards a more hospitable climate. Class actions can complement political lobbying by advocates for marginalized populations by adding legal pressure (Elliot, 2011) and may also provide helpful cover to government actors to do the right, even if unpopular, thing.

The liability of the Crown in tort is now well established in Canada, and the process of bringing an action against the Crown has come to resemble that of bringing one against a private defendant (Hogg and Monahan, 2011, pp .24-25).[4] That being said, the Crown's behavior as a defendant in the class actions context may differ from that of private defendants in a number of important ways (Sossin, 2011). First, the Crown has access to large amounts of funds and may not be threatened by large damage awards. Second, the Crown may be averse to settlements and more aggressive in resorting to procedural tactics to avoid liability. Third, the Crown may use retroactive legislation to avoid liability for civil damages . Fourth, the Crown may be more driven by political imperatives, which tend to engender more short-term solutions, than economic ones. These observations are highly relevant to a possible class action against CSC. It might be expected that CSC will employ all of the procedural tactics at its disposal to prevent certification from happening, bringing motions and launching appeals whenever possible (Rudin, 2013).

Model for a potential class action against the CSC

In this section of the paper I will outline a class action brought as a plaintiff's class proceeding (CPA at s.2(1)) in Ontario under the rules of this province. This could be run as a national opt-out class action out of Ontario. Through this type of action, residents of other provinces may be included in the class definition and potentially be bound by the court's judgment on common issues unless they opt-out in a prescribed manner and time.

The recent *Huronia* psychiatric facility class action offers a helpful model here. The Huronia Regional Centre was a facility located in Orillia Ontario that opened in 1876 and provided a residential program for disabled individuals until it closed in 2009. It was the first institution of its kind in Ontario, and it housed as many as 2,500 people at a time. In the late 2000's, with the assistance of litigation guardians, two former residents of Huronia brought a class action against the Ontario government to seek compensation for abuse and harm that the residents and their families suffered there. This class action was certified in July 2010, with legal claims relating to the government's negligence and breach of duty in the running of the facility. The class was defined as "all persons who resided at [Huronia] between January 1, 1945 and March 31, 2009 who were alive as of April 21, 2007" (the "Resident Class") and "all parents, spouses, children and siblings

---

[3] Prior to *Telezone*, the case of *Grenier v. Canada*, [2005] FCA 348, seemed to position public law as the primary vehicle for governmental accountability. The implication was that parties bringing an action against the Crown would first have to establish that the Crown's conduct was problematic through judicial review.

[4] In Canada, the federal statute currently governing the liability of the Crown is the *Crown Liability and Proceeding Act,* RSC 1985, c.C.50 , and the relevant Ontario legislation is the *Proceedings Against the Crown Act,* R.S.O. 1990, c. P.27.

of persons who resided at Huronia between March 31, 1978 and March 31, 2009, who were alive as of April 21, 2007" (the "Family Class"). Because this was an opt-out class action, any individual who fell into either of these categories would be a class member unless they decided to remove themselves. The common issues that were certified—for determination at the common issues trial—related to whether the government breached a duty of care and/or a fiduciary duty owed to the Resident class to protect them from actionable physical or mental harm (*Huronia Certification Order*, 2010).

Once the *Huronia* action was successfully certified, the next steps were to provide notice to the class members of certification, followed by the production of documents, examinations for discovery, and other procedural steps leading up to the determination of the substantive legal claims at the common issues trial. Rather than proceed to the common issues trial, however, *Huronia* was ultimately settled. I will return to the potential for a settlement below.

The Motion for Certification

The most significant procedural hurdle in any class action is the certification motion (Baert and Mason-Case, 2009). As stipulated in s.2(1) of Ontario's *Class Proceedings Act* (CPA), a person who commences a plaintiff's class proceeding "shall make a motion to a judge of the court for an order certifying the proceeding as a class proceeding" and appointing a representative plaintiff. This stage of the process is not intended to test the merits of the action (*Hollick*, para. 16). It is focused rather on the form of the action and the question of whether it is appropriate for the suit to be brought as a class action (*Hollick*, para. 16). In this section of the paper I will outline how the five key certification requirements enumerated in s.5 of Ontario's CPA could be addressed in a class action on behalf of FSW with mental health issues: cause of action, class definition, common issues, preferable procedure, and adequacy of representation. As affirmed by the OCA in *Cloud,* each one of these requirements must be addressed and satisfied in order for a motion for certification to succeed, although there may be issues of overlap and interdependency (*Cloud,* para. 48).

While there is no specific sub-provision in s.5 of the CPA relating to evidentiary requirements, some evidentiary basis must be shown for each of the s.5 requirements aside from the requirement that the pleadings disclose a cause of action (Watson, 2011, p.172). In *Andersen v. St. Jude Medical Inc,* [2003] O.J. No. 4314 [*Anderson*],[5] Cullity J. noted that, while evidence is not admissible for determining whether a given claim would be successful at trial, evidence might play a role in convincing a court that an issue would appropriately proceed as a class action. The evidence required in a given case will depend on the complexity of the factual and legal issues involved (Watson, 2001, p. 175). Gathering evidence in the prison setting is likely to pose serious challenges. In the context of a class action for FSW, the recent inquiry into Ashley Smith's death will likely be helpful as it has generated volumes of records relating to conditions of confinement for this segment of the prison population. Also, Lorne Sossin (2011) notes that the work of public bodies such as regulatory agencies, auditors general, and public inquiries sometimes provides a foundation and factual record upon which class action may proceed. To this end, all of the reports and commissions mentioned above, such as the *Arbour Report* and the various OCI reports might provide further evidence.

---

[5] It should be noted this case has been appealed to the Ontario Court of Appeal.

Cause of action

Section 5(1)(a) of the CPA requires that the pleadings or the notice of application discloses a cause of action. At the certification stage the inquiry is a much more superficial or cursory one. From *Abdool v. Anaheim Management Ltd.* (1995) 21 O.R. (3d) 453 (Div Ct), the principles to be applied in determining whether there is a cause of action are as follows: all allegations of fact must be accepted as proved unless patently ridiculous or incapable of proof; the defendant, in order to succeed, must show that it is plain and obvious beyond doubt that the plaintiffs could not succeed; the novelty of the cause of action will not militate against the plaintiffs; and, the statement of claim must be read as generously as possible (at p.460). Watson highlights how this approach to s.5(1)(a) has made it particularly difficult for government defendants to argue that claims in negligence are based on policy rather than operational decision-making at the certification stage (Watson, 2011).

In *Hislop*, the Certification Order outlined both *Charter* claims and claims in private law such as breach of fiduciary duty and unjust enrichment. In *Cloud*, the following causes of action were accepted by the OCA: claim for vicarious liability, claim for breach of fiduciary duty owed to members of the student class, claim for breach of fiduciary duty owed to family members and siblings, and claims for negligence. The G20 class action also combines tort and *Charter* claims, alleging systemic negligence, tort of unlawful imprisonment, and breach of a number of different *Charter* rights (G20 Class Action website).

For a class action on behalf of FSW with mental health issues, the following causes of action may apply: negligence, tort of unlawful imprisonment, breach of fiduciary duty, and a claim specific to the treatment of Aboriginal prisoners under the rubric of *R v. Gladue,* 1 S.C.R. 688.

While the focus of this paper is on civil claims, there is no impediment to including a *Charter* claim as a cause of action in this class action suit. Indeed, it may be desirable to run a *Charter* claim alongside a tort claim as was done in the *Hislop* and G20 class actions.

Class definition

Section 5(1)(b) of the *CPA* requires that there be an identifiable class of two or more persons that would be represented by the plaintiff. The purpose of the class definition is to identify those persons who have a potential claim for relief, to define the parameters of the lawsuit so as to identify who is bound by the outcome, and to describe who is entitled to notice under the CPA (*Bywater v. Toronto Transit Commission* (1999) 43 OR (3d) 36, para. 10). The proposed class can include individuals who will not ultimately have a claim against the defendant (*Bywater*). This point is significantfor the proposed class action, as some members of the class might not be found to have actually been harmed by CSC through segregation, security classification, or institutional transfer, for example.

As McLachlin C.J. stated in *Dutton* (para. 38), the proposed class must be capable of clear definition, with the members of the class being identifiable by stated, objective criteria that bear a "rational relationship" to the common issues. It is not necessary that every member of the class be named or known. McLachlin C.J. revisited these requirements in *Hollick* and confirmed that the class definition requirement is "not an onerous one" and that it cannot be defined in terms of the merits of the action (*Hollick,* para. 21). She stated that every class member does not need to share the same interest in the resolution of the common issue asserted, but the class will be found unnecessarily broad if it could be defined more narrowly "without arbitrarily excluding some people who share the same interest in the resolution of the common issue."

In *Cloud,* the OCA determined that the proposed class of former residential school survivors, which was determined by attendance at the school during the specified time period of 1922-1969, was appropriate (*Cloud,* para. 47). The court found the proposed class was "circumscribed by their defining criteria" and was not impermissibly open-ended (*Cloud,* para. 47). A rational connection to the common issues was also established because all class members claimed breach of the same duties and that they all suffered at least some harm as a result. As mentioned above, class definitions similarly based on residence in the institution during a fixed time period were also advanced in the *Rideau* and *Huronia* certification motions.

The class definition for the proposed action is: all current and future FSW with mental health issues. While the class definition may at first glance sound quite broad, this is in fact a very discrete and identifiable group: as stated at the outset of this paper, the entire population of FSW is currently less than 600 individuals. If we consider that approximately one third of female prisoners have identifiable mental health issues, we can expect the class of current FSW with mental health issues to number less than 200. While the female inmate population is growing at a faster rate than the male population, it can still be anticipated that the "future FSW with mental health issues" will be discrete and identifiable. Unique claims may also be advanced on behalf of Aboriginal women, both because of their unique experience of confinement, and because of special rights and entitlements afforded to Aboriginal prisoners in Canada's legal system. In light of this, it may be appropriate to designate a separate subclass for the action as follows: All current and future Aboriginal FSW with mental health issues.

As will be explained below in relation to the 'representative plaintiff' criteria under s.5(1)(e) of the CPA, while the class definition will not likely prove too problematic in the motion for certification, finding appropriate individuals to represent the class and subclass will be much more challenging.

Common issues

Section 5(1)(c) of the CPA requires that the claims of the class members raise common issues. A key function of this part of the certification test is to determine whether allowing the suit to proceed as a class action will help to avoid duplication of fact-finding or legal analysis (*Dutton,* paras. 39-40*)*. In *Dutton,* McLachlin C.J. stated that an issue will be common only where it is necessary to resolve it in order to resolve each class member's claim. It is not necessary that the common issues predominate over non-common issues or that the resolution of common issues would be determinative of each class member's claim (*Dutton,* paras. 39-40). McLachlin C.J. returned to this in *Hollick* and emphasized that for an issue to be common it must be a "substantial…ingredient" of each class member's claims (para. 18). Most importantly, "success for one class member must mean success for all" (*Dutton,* paras. 39-40). *Cloud* confirmed that a liberal approach is to be taken to determining commonality. In *Cloud,* the OCA followed *Hollick* in finding that it was not fatal that apart from the common issues there were numerous issues that needed to be resolved individually (*Cloud,* para. 58*)*.

In the context of a negligence claim in *Rumley,* Chief Justice McLachlin found that the issues of breach of duty of care were common to the class of former residents at a residential school for blind and deaf students because all class members "share an interest in the question of whether the appellant breached a duty of care" (*Rumley,* para. 27*)*. In the *Huronia* proceeding, Cullity J. found that the claims advanced were similar to those in *Cloud* and *Rumley* in that they were essentially systemic (*Huronia Certification Order,* paras. 162, 164). Cullity J. stated, "They are

based on the manner in which Huronia was maintained and administered by the Crown and no attempt is made to differentiate between the treatment and the claims of individuals who were resident there…"(*Huronia Certification Order,* para. 164).

In *Rumley* the Supreme Court also held that the appropriateness and amount of punitive damages could be resolved as a common issue for all class members. On the note of damages, it is crucial to include aggregate damages as a common issue in the proposed class action. One key reason for this procedurally is that it will affect the 'preferable procedure' inquiry: the potential for aggregation of damages strengthens the case that a class action is the most efficient way to go about addressing the issue.

Arguably, claims relating to vicarious liability should not be included as common issues. As Garry Watson (2011, p. 145) explains, allegations of vicarious liability will "invariably lead to a raft of individual issues and no common issues"; it is preferable to plead systemic negligence as was the case in *Rumley*. In the prison context, vicarious liability claims would make it necessary to determine for each individual in the class whether they were harmed by a prison officer. Unlike a negligence claim, assessment of common issues would not take care of the key inquiries. While McLachlin C.J. noted in *Rumley* that alleging systemic negligence might make the individual issues component of case more difficult, she agreed with the BC Court of Appeal's finding that the respondents "are entitled to restrict the grounds of negligence they wish to advance to make the case more amenable to class proceedings if they choose to do so" (Referring to *Rumley v. British Columbia* (1999), 72 B.C.L.R. (3d) 1 (C.A.), p.9).

The following common issues for the proposed action may be advanced:

For the main class (all current and future FSW with mental health issues):
- By its operation or management of federal prisons, did the defendants owe a duty of care to class members?
- What was the standard of care owed by the defendant to class members?
- Did the defendants breach those duties?
- Did the defendants owe a fiduciary duty to class members?
- Did the defendants breach this duty?
- If the court finds a breach of duty of care and/or a breach of fiduciary duty, can the court make an aggregate assessment of damages suffered by all class members as part of the common issues trial?
- If the court finds a breach of duty of care and/or a breach of fiduciary duty, are other remedies available such as aggravated or punitive damages, or potentially a declaration or injunction?
- Did the defendants commit the tort of unlawful imprisonment?

For the subclass (all current and future Aboriginal FSW with mental health issues), in addition to the common issues outlined for the main class:

- Do the defendants have responsibility to apply *Gladue* principles and uphold the Honour of the Crown in implementing the *CCRA* to members of the subclass?
- Was this obligation violated in the defendant's treatment of members of the subclass?
- Is a remedy in the form of declaration or an injunction possible?

When the claims are framed in this way, it can be argued that resolving the common issues will go some distance toward resolving all of the legal claims advanced on behalf of FSW with mental health issues. In the case of the negligence claims, for example, issues of causation and harm will have to be resolved on an individual basis, but determining whether there is a duty of care, to whom it is owed, what the standard is, and whether there has been a breach will resolve a large part of the claims. It can be expected in practice that CSC will vigorously argue that there are insufficient common issues to ground a class proceeding, so great care must be taken in framing the case in order to satisfy the s.5(1)(c) criteria.

Preferable procedure

As required by s. 5(1)(d) of the *CPA,* a class proceeding must be the preferable procedure for the resolution of the identified common issues. This criterion is often the key point of contention in a motion for certification (*Baxter v. Canada,* [2006] O.J. No.4968, 83 O.R. (3d) 481 (S.C.J), para. 24 [*Baxter*]).

  The principles relating to the preferability inquiry are outlined in *Hollick.* The analysis should be conducted through the lens of the three key advantages of a class proceeding, that is: judicial economy, access to justice, and behavioral modification (para. 27). 'Preferable' means whether a class action offers a fair, efficient and manageable option for advancing the claim, and whether a class action is preferable to other procedures for resolving the class members' claims. It is necessary to look at the common issues in context and to consider their relationship to the claims as a whole (*Markson*, para. 69).[6] Importantly, courts have been willing to consider aggregate assessment of damages as a way of addressing the preferability problems posed by individual damage claims (Watson, 2011, p. 151).

  In the certification proceeding for a class action relating to the Rideau Regional Centre in Smiths Falls, Ontario, the claimants drew attention to the fact that many class members were disabled, elderly, and physically as well as cognitively vulnerable (*Statement of Claim, Rideau,* para. 118). With respect to access to justice, they stated that certification would "ensure the class has meaningful redress in an arena where the inherent inequalities of bargaining power between these parties may be equalized in an efficient, case-managed environment" (*Statement of Claim, Rideau,* para. 119). The claimants pointed out that the legal costs of proceeding individually against an adversary such as the province of Ontario would be far in excess of the claims for damages made by individual members and thus make it impossible for them to bring the actions individually (*Statement of Claim, Rideau,* para. 118). With respect to judicial economy, the claimants also argued that if individual trials were required the class members would each have to prove the legal relationship between themselves and the Crown and the scope of the duty owed (*Statement of Claim, Rideau,* para. 128).

  There are a number of obstacles impeding FSW with mental health issues from making individual claims, including: resource issues; logistical issues associated with an individual action from prison; fear of being viewed as antagonizing the prison system in which they still live; mental health issues. While such arguments are helpful on the 'preferable procedure' front, it should be noted that these same factors add to the difficulty in identifying a representative plaintiff.

---

[6] There were questions following *Hollick* as to how the preferability analysis should be conducted but subsequent appellate level cases have consistently taken a liberal approach (Watson, 2011, p.151).

Adequacy of representation

Section 5(1)(e) of the CPA requires the identification of a representative plaintiff who: (i) would fairly and adequately represent the interests of the class; (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding; and (iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

Section 5(2) of the CPA stipulates that the subclass will require its own representative plaintiff if members of the subclass have claims that raise common issues not shared by all class members, so that "the protection of the interests of the subclass members requires that they be separately represented." As explained above, many of the FSW most adversely affected by the lack of mental health services in prison are Aboriginal. A strategic decision will have to be made as to whether there should be separate representative plaintiffs for the class and subclass, with one being non-Aboriginal and the other Aboriginal.

In *Dutton,* McLachlin C.J. stated that the proposed representative need not be typical of the class, nor the best possible representative, but "the court should be satisfied, however, that the proposed representative will vigorously and capably prosecute the interests of the class" (para. 41). To this end the court will also consider whether the representative plaintiff could bear any costs incurred to the representative in particular.

As Doug Elliot points out, one of the most challenging aspects of class action litigation is identifying a suitable representative plaintiff "willing to expose themselves to significant risks, stress and loss of privacy in exchange for little or no reward" (Elliot, 2011, p.18). He specifically mentions the prison context, where the potential plaintiff may be in an ongoing relationship of vulnerability with the defendant and thus fearful of repercussions of getting involved with playing this prominent role in a claim (Elliot, 2011, p.19). This same problem may not exist for other class members, who can remain anonymous at least until an action is successful and it is time to collect their claim (Elliot, 2011, p.19).

Ironically, the very characteristics of FSW with mental health issues that support the argument that a class action is a preferable procedure (i.e. their vulnerability) are the same characteristics that make the search for a representative plaintiff difficult. Given that one of the goals in bringing a class action is to induce systemic change at the institutional level, it is important for the court and the public to find the representative plaintiff sympathetic. This could be challenging in any type of prison litigation, especially where an FSW is in maximum security, classified as a dangerous offender, and/or has committed serious crimes. Such seemingly negative attributes could potentially engender a loss of sympathy for the representative and also make the litigation process difficult to manage, particularly where the plaintiff suffers from serious mental health issues. Yet, it is individuals in circumstances such as these who will be more likely to have experienced actual harm from segregation, lack of mental health care, security over-classification, and institutional transfers while in prison. To the extent that the court and the public find female offenders more palatable than male offenders, it may be helpful that the proposed class is all-female.

Possible Remedies for Class Members

In the event that the motion for certification is successful, the class action suit would proceed to a common issues trial where the common issues identified above would be litigated. Alternatively,

the Crown might settle, and all class members who did not opt-out will be eligible to receive financial compensation. Sossin explains that a motion for certification could yield significant leverage towards a settlement, because it involves a low standard of proof (Sossin, 2011, p.6). The Supreme Court in *Hollick* also outlined how a successful certification motion could increase pressures on a defendant to settle, specifying: the various costs associated with defending a certified class action, the defendant's enhanced exposure to damages, and the potential adverse publicity that arise in protracted class action litigation. The case of *Corless v. KPMG LLP*, [2008] O.J. No.3092, (cited in Watson, 2011, p. 164) offers an example of how class actions can work effectively through settlement where the defendant concedes early on in the process that there is a valid claim. The *Huronia* action, which resulted in a $35 million dollar settlement, offers another example here. The agreement included a formal apology by the Ontario Premier and a commitment by the provincial government to invest up to $5 million in programs to help people with developmental disabilities (*Huronia Settlement Agreement*).

It remains possible that CSC could settle an action by FSW with mental health issues following a successful motion for certification, perhaps especially if there is significant media coverage and publicity around the claim. That being said, CSC would likely only do so if it reasonably believes the plaintiff class might be able to succeed on the merits, and specifically that individual issues of causation and harm will be established. The unfortunate reality is that if CSC has serious doubts about the plaintiffs' prospects for success at trial, the pressure of the media and public scrutiny may not suffice to push it to settle.

Baxter v. Canada is an example of a class action that resulted in a large settlement but still involved lengthy court battles and complex procedural battles. This multi-jurisdictional class action relating to Indian Residential Schools generated the largest class action settlement in Canadian history, of several billion dollars (*Baxter,* para. 7). Yet the Crown settled only after extensive efforts to litigate thousands of underlying claims of individual class members. Winkler J. found that compromise settlements such as this one provide an "inadequate forum for dealing with the underlying issues" (*Baxter,* para. 11).

If the Crown does not settle and the action proceeds to trial, a successful class action may lead to a remedy of a declaration (declaring the rights of FSW with mental health issues) or an injunction (requiring CSC to do or refrain from doing something). Undoubtedly, the key offering of the class action approach, in terms of a potential remedy, is the aggregation of damages. Section 24 of the CPA addresses the issue of aggregate assessment of monetary relief. The provision states that a court may determine the aggregate or a part of a defendant's liability to class members and give judgment to that effect where: (a) monetary relief is claimed on behalf of some or all class members; (b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability; and, (c) the aggregate or a part of the defendant's liability to some or all class member can reasonably be determined without proof by individual class members.

In *Cloud,* the OCA considered s. 24 and held that claims for an aggregate assessment of damages and punitive damages are properly assessed as common issues (para. 70). The case of *Markson* also awarded aggregate damages under s.24, clarifying that it was not necessary to determine liability by the defendant to the whole class before this was done—it is about the defendant's *potential* liability to the whole class.

 The value of a damages award (or compensation through a settlement) in this context is two-fold. First, FSW with mental health issues as a group could receive some financial compensation for the way they have been treated in prison. Second, the payment of money by CSC

to individual female prisoners or FSW as a group would be a tangible indicator that the shortcomings of the prison system are very real. A judicial declaration stating that CSC has fallen short in mental health care, or the remedy of an injunction preventing CSC from resorting to certain practices—such as excessive transfers of FSW with mental health issues between institutions without proper follow-up care—could also have an important impact in this context.

Conclusion

Undeniably, there is a greater likelihood of success for one federally-sentenced woman who suffers from mental health issues in bringing a single tort claim against CSC, in comparison with a class action on behalf of all FSW with mental health issues. At the same time, the class action format, with all its attendant risks and complexities, could offer a more substantial and lasting remedy for a larger number of FSW and generate a much higher profile case. While bringing a class action on behalf of this segment of the prison population is not without its complications, this procedural vehicle should be seriously considered as a way of enforcing the rights of female prisoners with mental health issues.

About the Author

Rebecca Anne Sutton is a clerk in the Ontario Court of Appeal and holds a JD from the University of Toronto Faculty of Law. She can be reached at rebecca.a.sutton@gmail.com.

References

Abdool v. Anaheim Management Ltd. (1995) 21 O.R. (3d) 453 (Div Ct).

Anderson v. Goord, 87 CV 141 (N.D.N.Y).

Andersen v. St. Jude Medical Inc, [2003] O.J. No. 4314.

Attis v. Canada (Minister of Health) (2007), 46 C.P.C. (6th) 129, (Ont. S.C.J.).

Baert, K. and Mason-Case, S. (2009). Innovative Class Proceedings: Recent Trends. *6th Annual Symposium on Class Actions,* Toronto: Osgood Hall Law School of York University. [http://www.kmlaw.ca/upload/Innovative%20Class%20Proceedings%20-%20Recent%20Trends.pdf].

Baxter v. Canada, [2006] O.J. No.4968, 83 O.R. (3d) 481 (S.C.J).

Berryman, J. (2011). Nudge, Nudge, Wink, Wink: Behavioral Modification, Cy-Pres Distributions and Class Actions. In *Accessing Justice: Appraising Class Actions Ten Years After* Dutton, Hollick and Rumley. Toronto: Lexis Nexus.

Bisaillon v. Concordia University, [2006] 1 S.C.R. 666, 2006 SCC 19.

Bywater v. Toronto Transit Commission (1999), 43 OR (3d) 36.

Canada v. Hislop, [2007] 1 S.C.R. 429 (S.C.C.).

Canadian Association of Elizabeth Fry Societies (CAEFs) (2006). 10th Anniversary of the Arbour Commission Report. [http://www.elizabethfry.ca/abr10e.pdf].

CAEFs (2003). Submission to the Canadian Human Rights Commission for the Special Report on Discrimination on the Basis of Sex, Race and Disability Faced by Federally Sentenced Women. [http://www.elizabethfry.ca/chrc/CAEFS_SUBMISSION_TO_CHRC_INQUIRY_accountability. pdf]

Canadian Human Rights Commission (200). Backgrounder 2: Recommendations of the Special Report. [http://www.chrc-ccdp.ca/legislation_policies/fsw2-eng.aspx].

Chief Coroner of Ontario (2013). *Inquest: Touching the Death of Ashley Smith: Jury Verdict and Recommendations.*

City of Vancouver v. Ward, [2010] 2 S.C.R. 28.

Class Proceedings Act, 1992, S.O. 1992, c.6

Cloud v. Canada (Attorney General), [2004] O.J. No. 4924, 73 O.R. (3d) 401 (Ont. CA).

Commission of Inquiry into Certain Events at Kingston's Prison for Women (1996). *Public Works and Government Services Canada.* Ottawa.

Corless v. KPMG LLP, [2008] O.J. No.3092.

Corrections and Conditional Release Act, SC 1992, c 20 s 85.

Correctional Service of Canada (2010). Internal Audit of the Implementation of the Aboriginal Accountability Framework 2009/2010, 20-32.

Correctional Service of Canada (1995). Regional Facilities for Women Offenders (archived). [http://www.csc-scc.gc.ca/text/pblct/rht-drt/14-eng.shtml].

Criminal Code, RSC 1985, c. C-46.

Defazio v. Ontario (Ministry of Labour, [2007] O.J. No.902 (S.C.J.).

Department of Justice (2002). *Six Degrees from Liberation, Legal Needs of Women in Criminal and other matters.* [http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la20-rr03_aj20/p11.html#foot160].

Elliot, D. (2011). Fringe Benefits: Class Actions for Marginalized People in Canada. In *Accessing Justice: Appraising Class Actions Ten Years After Dutton, Hollick and Rumley*. Toronto: Lexus Nexus.

Eng v. Goord, 80 CV 385S (W.D.N.Y.).

G20 Class action, [www.g20classaction.ca].

Hannah-Moffatt (2009). Gridlock or mutability: Reconsidering 'gender' and risk assessment". *Journal of Criminology and Public Policy*, *8*, 209-219.

Hogg, P. and Monahan, P. (2011). *Liability of the Crown,* 4th Ed. Toronto: Carswell.

Hollick v. Toronto (City), [2001] 3 S.C.R. 158 .

Hislop Certification Order, [http://www.reolaw.ca/pdf/certification_order.pdf].

Kalajdzic, J. (2011). Accessing Justice: Appraising Class Actions Ten Years after *Dutton, Hollick & Rumley. Supreme Court Law Review*, *53*, 2d.

Laderberg, A. (1998). The "Dirty Little Secret": Why Class Actions Have Emerged as the Only Viable Option for Women Inmates Attempting to Satisfy the Subjective Prong of the Eighth Amendment in Suits for Custodial Sexual Abuse. *William and Mary Law Review, 40*, 323-363.

Linden, A. (1983). Reconsidering Tort Law as Ombudsman. In Steel and Rodgers-Magnet (Eds.) *Issues in Tort Law.* Toronto: Carswell.

Malkin, I., The Role of the Law of Negligence in Preventing Prisoner's Exposure to HIV While in Custody. [http://www.heart-intl.net/HEART/120104/GovernmentsResponsibilityin.htm].

Metzner, J. (2002). Class Action Litigation in Correctional Psychiatry. *Journal of American Psychiatry Law*, *30*, 19-29.

Monture-Angus, P. (1999). Women and Risk: Aboriginal Women, Colonialism and Corrections Practice. *Canadian Woman Studies Journal, 19*, 24-29.

Rudin, J. (2007). Aboriginal Peoples and the Criminal Justice System. [http://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/research/pdf/Rudin.pdf].

Sossin, L. (2011). Revisiting Class Actions Against the Crown: Balancing Public and Private Legal Accountability for Government Actors. *Supreme Court Law Review, 10*.

Wesley, M. (2012). Marginalized: The Aboriginal Women's Experience in Federal Corrections. *Public Safety Canada*. [http://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/mrgnlzd/index-eng.aspx].

Manuge v. Canada, [2010] S.C.J. No. 67.

Marilyn Dolmage as Litigation Guardian of Marie Slark and Jim Dolmage as Litigation Guardian of Patricia Seth v. Her Majesty the Queen in Right of the Province of Ontario, [http://www.kmlaw.ca/site_documents/080659_certorder_30jul10.pdf] ["*Huronia Certification Order*"].

Marilyn Dolmage as Litigation Guardian of Marie Slark and Jim Dolmage as Litigation Guardian of Patricia Seth v. Her Majesty the Queen in Right of the Province of Ontario, [http://www.kmlaw.ca/site_documents/080659_SettlementAgreement_17sep13.pdf] ["*Huronia Settlement Agreement*"]

Markson v MBNA Canada Bank, 2012 ONSC 5891.

Office of the Correctional Investigator (2006). Report finds evidence of systematic discrimination against Aboriginal inmates in Canada's prisons. Ottawa.

Office of the Correctional Investigator (2008). *A Preventable Death.* Ottawa.

Office of the Correctional Investigator (2009). *Annual Report of the Office of the Correctional Investigator, 2008-2009*. Ottawa.

Office of the Correctional Investigator (2010). *Annual Report of the Office of the Correctional Investigator, 2009-2010*. Ottawa.

Office of the Correctional Investigator (2011). *Annual Report of the Office of the Correctional Investigator: 2010-2011*. Ottawa.

Office of the Correctional Investigator (2012). *Annual Report of the Office of the Correctional Investigator: 2011-2012*. Ottawa.

Office of the Correctional Investigator (2013a). *Annual Report of the Office of the Correctional Investigator: 2012-2013*. Ottawa.

Office of the Correctional Investigator (2013b), *Risky Business: An Investigation of the Treatment and Management of Chronic Self-Injury Among Federally Sentenced Women,* September 30, 2013, [http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20130930-eng.pdf].

Public Safety Canada (2010). *Corrections and Conditional Release Statistical Overview.* [http://www.publicsafety.gc.ca/res/cor/rep/2010-ccrso-eng.aspx].

R v. Gladue, [1999] 1 S.C.R. 688.

Rumley v. British Columbia (1999), 72 B.C.L.R. (3d) 1 (C.A.).

Rumley v. British Columbia, [2001] S.C.J. No.67, [2001] 3 S.C.R. 184 (SCC).

Joint Submission (2013). Rights Violations Associated with Canada's Treatment of Federally-Sentenced Indigenous Women. *Joint Submission to the United Nations Special Rapporteur on the Rights of Indigenous Peoples.* [http://ihrp.law.utoronto.ca/utfl_file/count/HOME/Joint%20Submission%20to%20the%20UNSR%20Indigenous%20Rights%20Sept%202013.pdf].

Seglins, D. (May 4, 2011). Ashley Smith Family Settles $11M Suit. *CBC News.* [http://www.cbc.ca/news/canada/story/2011/05/03/ashley-smith-family-settles-suit.html].

Watson, G. (2011). Class Actions: Cases and Materials. Coursepack, University of Toronto Faculty of Law.

Western Canadian Shopping Centres v. Dutton, [2001] 2 S.C.R. 534 (S.C.C.).

Zinger, I. (2013). Mental Health in Federal Corrections: Reflections and Future Directions. *Health Law Review, 20*, 2.

Figure 1:

Issues Chart re: FSW with mental health issues

Issue	Context	All FSW with mental health issues	Aboriginal FSW with mental health issues
(1) CSC's use of segregation for FSW with mental health issues;	-For Canada to uphold its international and domestic human rights commitments there needs to be "an absolute prohibition on the practice of placing mentally ill offenders and those at risk of suicide or serious self-injury in prolonged segregation."[1]	- Disproportionate use of segregation on FSW as a way of dealing with mental health issues; - Disruption of treatment when in segregation; - Segregation for prolonged periods without judicial review; Segregation inappropriate for prisoners with mental health issues as it exacerbates symptoms.[2]	-Disproportionate use of the Management Protocol[3] or, following its disbandment, over-use and harsher terms of segregation for Aboriginal FSW identified as high risk than non-Aboriginal FSW.
(2) CSC's failure to provide adequate (mental) health care	-Canada's Correctional Investigator has stated: "…prisons are not hospitals, but some offenders are patients".[4] -K.J., an Aboriginal FSW with serious mental health issues, sees a psychologist for 20 minutes per week.[5] -Ms. Worm was unable to access treatment for her post-traumatic stress disorder while in segregation.[6]	- Lack of appropriate and available mental health care resources in prisons; Lack of integration of gender and mental health considerations across other areas of programming;[7] - Failure to recruit, hire, train, monitor, and supervise competent staff in areas of psychology and psychiatry; - Lack of continuity of mental health care while in segregation or upon institutional transfer; monitoring mental health of prisoners without treating it;[8]	- The restriction of maximum-security FSW from accessing the Aboriginal Healing lodge impedes Aboriginal FSW with mental health issues from accessing culturally-appropriate care; - Failure to take into account past histories of abuse; - Lack of Aboriginal-specific mental health care services within prisons that are culturally-appropriate.

---

[1] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator, 2011-2012* (Ottawa: Office of the Correctional Investigator, 2012) [*OCI Annual Report 2012*].

[2] See *Anderson v. Goord*, 87 CV 141 (N.D.N.Y); *Eng v. Goord*, 80 CV 385S (W.D.N.Y.) which sought injunctions requiring mental health care for individuals in the SHU's as well as alternative housing for prisoners for whom isolated confinement was "psychiatrically contraindicated".[2] Jeffrey L. Metzner also notes a general consensus among clinical psychiatrists that placement of inmates with serious mental illness in segregation units is contraindicated, "because may of these inmates' psychiatric conditions will clinically deteriorate or not improve". See Jeffrey L. Metzner, "Class Action Litigation in Correctional Psychiatry", *J Am Acad Psychiatry Law*, 2002; 30(1), pp.19-19 at p. 25 [*Metzner*].

[3] Canadian Association of Elizabeth Fry Societies, (2006). *10th Anniversary of the Arbour Commission Report*, at p.4, [http://www.elizabethfry.ca/abr10e.pdf. at 4].

[4] *OCI Annual Report 2012,* supra note 1.

[5] See Elizabeth Bingham and Rebecca Sutton, "Cruel, Inhuman, and Degrading? Canada's Treatment of Federally-Sentenced Women with Mental Health Issues", *IHRP*, June 2012, [http://media.thestar.topscms.com/acrobat/ba/55/3c47d5da4a599c0f879c56ebe3e6.pdf] [*IHRP Report*].

[6] *Ibid* at p.58.

[7] *Ibid* at p.24.

[8] See American Civil Liberties Union, "ACLU of Indiana, Indiana Protection and Advocacy Services Win U.S. District Court Decision Regarding Inhumane Treatment of Prisoners", January 3, 2013, [http://www.aclu.org/prisoners-rights/aclu-indiana-indiana-protection-and-advocacy-services-win-us-district-court].

Prison Writing / Écrits de prisonnières

This component of the issue showcases the personal writing of four federally-incarcerated women in Canada, highlighting their personal experiences of prison life.

Cette section met en valeur l'écriture personnelle de quatre femmes incarcérés au Canada, en soulignant leurs expériences personnelles de la vie carcérale.

Untitled
Ghostwriter

Please note that the editors have altered certain identifying markers to protect the identity of this author.

My name is untitled due to the repercussions I'll suffer for writing up this piece as I still have a possible 3 ½ years left to serve. I'm a thirty-something year old, fair Metis woman currently incarcerated in Grand Valley's Institution for Women out in Kitchener, Ontario. This is my 4th penitentiary I've been in during the last 5 years of my sentence. I've had a lot of struggles inside due to my looks. I'm very white looking however I'm native and I'm quite attractive and small framed so the first penn was not a good fit for me. I was a minority. However, I stood my ground and got a name for myself which caused me more challenges and I landed myself in Maximum Security for basically keeping my mouth shut and minding my own business. During my time in Max, I started to change drastically. The environment I was in quickly turned me into a paranoid explosive monster. I then developed a long assault file and it followed me everywhere I went.

To make a long story short, I ended up here at GVI's Max unit. This is sort of my last resort. I've calmed down inside immensely and grew tired of constantly trying to fight back the system. I'm so depleted now and I'm sick with a physically debilitating disease so my "war days" are done.

On a positive note, I haven't been more motivated to get out and continue with my college and university courses. I keep myself busy here by constantly cleaning and going to school. I've been waiting to start a program working with an elder for the past six months now. Sad to say, I'm currently sitting in segregation for absolutely nothing.

You are probably aware of Ashley Smith's homicide that took place here in a cell next door to me. Well there's another inmate here in the Max unit that's been attacking other inmates on camera and yet she doesn't spend one day in Seg for it. Now, this inmate tried to do the same to me but my door was locked already, otherwise, I would have knocked the crap out of her. It was in front of guards and I was the one hauled to segregation. Now this other inmate always threatens to self-harm herself if she gets locked up for her violence. And when she's got a noose around her neck, the officers can not intervene until a Correctional Manager comes to give them direction. Now that is how they stood and watched Ashley die. So, instead of having another inmate make them

look bad by killing herself, they let her beat, threaten, and terrorize anyone she pleases. Now, I'm not telling on this inmate because she does all her violence right in front of the guards and on Camera so I have no problem exposing the corruption happening over here. Seven women have been moved around in the past month because of this one inmate who's manipulating the system and making a mockery out of Ashley Smith's death.

I am at my limit here and if released from Seg, I will take actions into my own hands. Once again, becoming the monster. I've read the CSC mission statement that says their mission is to turn us into rehabilitated members of society. But I think the real mission statement should go something like "Our mission is to destroy the inmate by breaking them down hence then destroying themselves." I thought I had seen it all but I am living in a death camp and it is not the inmates that scare me.

Yours truly,
Ghostwriter

Solitary
Renee Acoby

Renee Acoby is currently serving an intermediate sentence and has been imprisoned for 14 years, to-date. She is representing "those who lost or tool their lives for us."

Many people have asked me what it was like to live in solitary confinement for years on end under the infamous "management Protocol" that CSC designed for unruly federal females. You wonder what right you have to feel angry about your confinement because it was your own actions/reactions that led to your conditions. So, you solder up and tell yourself to deal with it…until you find yourself in a tangled web of carceral politics and loopholes that rendered indefinite solitary justifiable. You submit the customary grievances and rebuttal at every thirty day segregation review, inwardly questioning if you're closet-case masochistic. Experience dictates that Regional and national levels in CSC will only regurgitate prior findings at institutional hearings, which in turn lead to frustration, anger and the millionth self-proclamation for abandoning the internal grievance system forever. Of course, you never do give up on submitting grievances because, ha ha, maybe someone will eventually listen.

Then you have those renegade days where you wake up feistier than the notorious Black Widow on a geriatric ward. Ten squares of toilet paper? Fuck you. One book for four hours? Fuck you, I have my imagination. So it goes. You push back to reclaim your so-called dignity, know it's one word with a dictionary definition, especially on the rare days you opt for a nude Mexican stand-off. Ironic how you used to attribute weakness to the heads and bug cases that used to wild out for human contact, only to find yourself on the same trip, minus the lovely baby doll attire.

Your mood fluctuates. Although some staff acknowledge that instability in mood is common for long-term degradation, most are quick to opine that mood swings are indicative of a major incident. You try to avoid the intake of endless CSC reports because the general consensus is at odds with what you and your loved ones know to be bona fide about yourself. You are categorized as a number and compared to inanimate/volatile objects, i.e., "handle her as though you are carrying a can of gasoline in one hand and a lighter in the other." The asshole aspect of you wonders if the clowns are making a double-entendre about your brief juvenile gig as a pyromaniac.

Your body bounces back and forth between healthy and unhealthy, with a dash of grey pallor to highlight your chiseled cheekbones. Your friend is quick to tell you that in medieval era; political prisoners were very gaunt and pale, likening these sickly characteristics to noble suffering?! Only a dear friend could romanticize such ugliness, and you smile at the loyalty. You spend so much time pacing your cell that you being to feel a tingling sensation that could signal restless leg syndrome or perhaps it are simply psychosomatic. Even though you know you're too slender to take on a fast, you do it anyway, why??? Because you can.

Spirituality is a swinging pendulum in solitary, especially when you're on the red road. Medicines, drums and other cultural entitlements become privileges or behavior modification instruments. At times, you question the existence of God simply because you're still breathing. You wonder if redemption will come in the form of some Dante's Inferno inspired hell. And even if you did gain access to Heaven, what if I got so angry about my mistreatment in Hell that I fuck up and get tossed back for another round of fire and brimstone? You find yourself agreeing to see the chaplain, simply to toss out these questions and gauge their level of confusion and faith.

Your mind feels like a Molotov cocktail was thrown into it. Sometimes it could be the scent of a shampoo that triggers an old memory, good or bad and sometimes both. You have tunnel vision some days, with every smile you see hiding an agenda and every tear lurks a crocodile. Anger and unbridled hostility permeate every fiber of your being like a virus…

It stays in your system longer than clarity. The proverbial goblin on one shoulder and the voice of reason on the other is a constant battlefield; traversing the minefield between "why" and "why not" becomes almost analogous to defective neurons that can't seem to fire. You joke about the smoke detector concealing a pinhead camera in your cell and tend to get overly-sensitive when the screws remove the toilet paper from the smoke detector during cell search. Everything is magnified, yet all of the solutions are so simplistic. Classic Zimbardo-ism.

You reflect on the validity of being compartmentalized as manipulative, violent, and threatening and generally as a bad seed by CSC, yet the System that claims to have zero tolerance for such unsavory traits is the first to adopt them when it suits their purpose. When you witness them use OC spray on women with ligatures around their neck over and over, your mind begins to question your logic and values. Somewhere in the back of your mind, you remember a poignant phrase you read in a Holocaust Survivor

memoir: "we speak out against torture not to complain, rather to make sure the people never forget what happened." You know you'll continue to speak out, no matter what the cost, because every inch of you believes that someone would do the same for you.

You tend to over-analyze your conversations with people and become slightly annoyed when some people pontificate how similar they were to you, but have since changed. Unsolicited advice pertaining to the battle against an "entity" like CSC is like molten lava being injected into your marrow. You feel no affinity with such despondent individuals because you and at least a million other people don't believe corrupt systems ever win. When your exterior radiates how adversity is overcome, you are met with resistance. It's almost as if by refusing to be a victim, you are rendered incorrigible. It is not related to rationalization, minimizing or reaction-formation. And while you don't feel any compelling need to reiterate this to the System, you do point out that Canada is a signatory to the Universal Declaration of Human Rights, namely: "WHERAS IT IS ESSENTIAL, IF MAN IS NOT TO BE COMPELLED TO HAVE RECOURSE, AS A LAST RESORT TO REBELLION AGAINST TYRANNY AND OPPRESSION, THAT HUMAN RIGHTS SHOULD BE PROTECTED BY THE RULE OF LAW."

When you are not intellectualizing your conditions of confinement, you rely on your television for socialization. Mind-numbing, scripted reality shows is far more appealing than the mundane queries you encounter from the undesirables that can't function in solitary without constant attention. Yeah, all you cons know who I'm talking about…you've all had your fair share of vent-whores on the range.

You become very OCD about your surroundings, noticing when (not if) your books are askew and not color-coded from the daily cell search. It becomes a perverse game between you and the guards (TO SEIZE, OR NOT TO SEIZE), and you cut your losses with a grievance or two. You are one of the lucky ones that are denied access to appliances of any kind, so in a way you are relieved of the burden of trying to iron your socks and floss-thin undergarments. Yes, the OCD can get that bad when you have little to no control over the minuscule details of life in solitary.

Since there have been no longitudinal studies conducted on the long-term effects of being in solitary for years on end (none that I'm aware of, but if so, holler at me), I can only describe what it feels like. When I was told in May 2011 that the Management Protocol was no longer an option, my first inclinations was to hide my reaction from Management. This was a way of survival for me while I was in segregation, and I found it very hard to shake.

But when I got back to my cell, I broke down in tears. I couldn't believe that after close to seven years of being held on the Protocol, the end was in sight. But that's another story for another time. I'm still alive, and that's all that matters.

Untitled

Anonymous

My first inclination is to introduce myself by my FPS number; but my indignation prevents me from demoralizing myself to digits. Consider this a feminine spin-off to the alpha-males about how club-fed is just a conservative-laced media hype...much like the hype on statistic & crime the conservatives push.

As a proud, Black, gay woman, I find imprisonment at Edmonton Institution for Women barbaric, degrading, and yes, inhumane. There is no type of support for Black women here - we are not recognized as "visible minorities with distinct needs." We are the punch line to double entendres, i.e., "do you really need to ask why your cell light needs to be turned on?"

We are the elephant in the room when the Ethnocultural policy is dusted off...we are the whispered fun in dysfunctional and the malevolent "n" word when someone decides we are too loud to live with. We are the dirt that sullies the white informant that receives witch-hazel from the Management for the bruised eye that has an uncanny resemblance to sparkled eye shadow.

I live with Attention Deficit Disorder and Bi-Polar Disorder. This combination of deficit meets chemical disorder is crippling at times. When Management converse with me, they lean on my ADD & Bipolar as though it's a comfort blanket - when I am in solitary confinement, they use it as ammo and behavior modification. It is almost as though being a visible minority is equated, or expected, to be in conjunction with some type of deficient. Weed out the undesirables and weak, the non-pure...the regime of the White Supremacists; only now, slavery is the regime in Carceral, unwritten politics.

I never expected imprisonment to be easy. No, I've been willing to do my penance. What I didn't anticipate was the thinly-veiled racism, the homophobia, and the bizarre mind-games that come with certain uniforms who play the race card long before you. I have my flaws and deficiencies - you're dame right I do. But the color of my skin is not one of them, no matter how hard they try and convince me otherwise...

Untitled

Bella

My name is Bella and I'm a 31 year old mother of a nine year old boy. I'm currently on my 6th year out of a 10 ½ year sentence for armed robbery. I'm an activist at heart and I love studying. I can't wait to get back into society and put forth in action all of my great ideas and abilities. I can't wait to be free and to find a nice beautiful wife to start a family with.

P.W's feel comfortable around me to make racial slurs about Natives assuming that I'm one of them but it enrages me like this one time when I was waiting by the door on the couch on the South range of the max unit early in the morning for the Elder to come

smudge the unit (I was one of the Elders helpers for the Max) and they were doing a big institutional smudge and I was so honored to do my part so I was watching the first Sisterhood inmate to arrive and she got patted down and I watched her explain what she was here for to the officers that were there and they had no idea and made faces at each other like they were weirded out. So the inmate left into the spirituality room or on the east range while she waited or the Elder to show and I witnessed the male officer put his hand to his mouth and mimic that 'old Indian whooowhoowhoo!" sound and then the female officer quickly did it back to him and giggled. I yelled out the door and said "I saw that!" but they did nothing and later on, the officer came and ridiculed me and said "I don't appreciate you calling me a racist". And so put it on him, he said I saw nothing. I could have filed a major complaint but in the end I am the Indian and the inmate and no one will ever believe me even though there was two cameras rolling on him. Yeah...he can easily say he was yawning right?

The warden wants me to claim my native status here. Yeah ok then. All the guards will hate me even more and where do I fit in with the inmates??? That's why I like to do it one on one with the Elder or when I am in my cell when no one knows what I'm doing. Fuck I'm more neechi that most of these bitches in here that call me white. And it fuckin makes me sick! That I can't join in and learn the drum with my sisters cause their too busy hatin' on me and then there's these PW's that make me feel uncomfortable when I do mention that I am Native. I almost feel that I instantly go on their shit list. Sometimes I just don't bother to mention it in EIFW because so many people assume I'm white anyway and it gets me out of the radar. It seems like anytime I have a meltdown or do something they immediately think something is wrong with me mentally cause they can't see a white girl having the parts – oh noooo- she must be crazy. Well that I am. But not 'that' crazy.

The guards treat me different. I'm in the hole right now for some serious shit and to top that I assaulted this female guard twice this month during movement and she still looks in my window at me with a squinted up bunny nose and smiles like I 'm a baby or something and it pisses me off. I'm sure she doesn't do that to the tanned skinned woman next to me (just sayin). I know I get treated different and chicks see it and it pisses them off but don't you see if piss me off too. I hate being in this skin that's hated so much but I'll stand up for it like the warrior that's running deep in my blood.

The PW's are nice to me yes and I'm not gonna' go out of my way to be a total bitch to them unless they have it coming but I almost resent it sometimes when they're nice to me because other inmates see that and put me on a category level under them as if I'm doin' something shady by sayin' hello back or small chit chat. "I can't help the skin I 'm in." Now if I suddenly I just told them to buzz off then they'd expect that I'm hostile or depressed or some stupid shit cause it's not normal for a white skin to just shut the fuck up and do their time. Like earlier today, I just wanted a quiet night and this friendly PW just came by my window twice and asked if I was sick once and the second time if I was ok? I totally appreciate it all but at the same time that favouritism right there singles me out and I fuckin' can't stand it. Hey, that PW is the only one that's been cool shit on

this whole management I'm on this month and I don't mean to diss her, I'm just making a point, an example of one situation where I'm always singled out. Yeah I get attention more but I'm good, I don't need it. Plus, they don't know what they're doing anyways; it's always the wrong kind. Don't you guards see the attention you're giving me is bringing bad attention from my fellow people? I want to be with my people. I feel so alone sometimes. No matter how violent I am to staff, you still come talk to me like I'm some sweet little princess. It makes me look bad, like I'm doing something. I don't like it. ...wait a minute...I'm lying a bit...I love it some days cause I'll use it to my advantage when I'm being an evil little asshole and I want to use you to get something but I'm so sick of the system now that you takin' all you can from me that I don't want any of your favors anymore. I want my recognition back. My heritage. Of who I am. Who am I?

Police Interactions with the Mentally Ill: The Role of Procedural Justice

Farzana B. Kara
Simon Fraser University School of Criminology

Police encounters with mentally ill individuals that involve the use of force by police are relatively infrequent, but sometimes quite volatile. This article discusses the use of procedural justice theory in understanding the quality and consequences of such interactions. Procedural justice theory and its specific application to the police who interact with mentally ill persons are discussed as a promising approach in improving police-citizen interactions. This paper provides an empirical basis for understanding the need for evidence-based police policy and practices when dealing with the mentally ill.

Keywords: police encounters; mentally ill persons; use of force; procedural justice.

Il est assez rare que les rencontres entre les agents de police et les personnes souffrant de maladies mentales donnent lieu à des démonstrations de force par les policiers, mais ces rencontres peuvent être volatiles. La désinstitutionalisation des personnes souffrant de maladies mentales, des services alternatifs peu financés et fragmentés dans la collectivité et les critères de plus en plus restrictifs d'engagement civil ont contribué à l'augmentation des contacts avec les forces policières. Les agents de polices doivent faire preuve de retenue dans la force employée contre les personnes souffrant de maladies mentales. Les besoins sont clairs de former les policiers à une intervention spécialisée auprès des personnes souffrant de maladie mentale. La théorie de la justice procédurale propose une méthode prometteuse pour améliorer les relations de la police avec les citoyens. Selon ce cadre, le traitement équitable d'un individu par un agent d'autorité come un policier peut influer sur la perception de la légitimité de son intervention, et de toutes les impressions qui y sont associées, ce qui est d'une importance particulière pour les interactions entre les policiers et les personnes souffrant de maladie mentale.

Mots clés: rencontres de police; les personnes souffrant de troubles mentaux; l'utilisation de la force; la justice procédurale.

Introduction

The Police and the Mentally Ill

Several explanations have been advanced from different perspectives to clarify the reasons for the increasing numbers of contacts between the police and people living with mental illness. Three major developments are often speculated to have contributed to this increase (Teplin, 1984a). The policy of deinstitutionalization from mental health facilities that has been implemented over the past four decades is a central factor that has led to an influx of mentally ill people living in the community (Lamb et al., 2002), thereby increasing the likelihood of police-mentally disordered people encounters. In addition, overly restrictive civil commitment criteria and poorly funded and fragmented community-based mental health services are all interrelated factors that have led to frequent encounters between the police and the mentally ill.

Deinstitutionalization

The treatment of mental illness has undergone a significant transformation over time, from institutionalized care in psychiatric hospitals to community-based treatment (U.S. Department of Justice, 1993). For most of the twentieth century, the treatment of people with serious mental illness was addressed through institutions like hospitals and asylums (Cook & Wright, 1995). Long-term confinement in strictly controlled environments, much like prisons, was the norm. In his seminal work on "total institutions", Goffman (1961) proffered an analysis of asylums where he described the role of the institution in forming the patient's self-identity and the patient's adjustment to life inside the mental hospital. His analysis is built on the social structure and social consequences of institutionalization, not the mental illness itself. Other sociological works were also influential in highlighting the relationship between social class, urban life and mental illness and the implications of labeling people living with mental illness (Cook & Wright, 1995). The long-term care of psychiatric patients in such institutions clearly had harmful consequences including the loss of liberty, forced dependency, and acceptance of a regimented existence. However, the lack of effective psychotropic medications precluded managing this population in any other way.

During the 1930s, psychologists began to argue against institutionalization of the mentally ill, and instead argued for community-based mental health services (Commission for Public Complaints Against the RCMP, 2010a). Advocates of community-based intervention argued that the practice of "warehousing" mental patients in asylums was inhumane and not conducive to treatment (Commission for Public Complaints Against the RCMP, 2010a). Further, by the mid 1950s, the rising costs of mental institutions were creating increasing financial burdens on governments who were looking for cost-saving alternatives. In addition, with the advent of new psychotropic medications such as Ziprasidone, Asenapine and Aripiprazole for severe mental illnesses, patients could be properly treated for their illness while living on their own in the community (Cook & Wright, 1995).

The social, economic and political conditions during the mid-1900s, discussed above, all created an environment that called for the deinstitutionalization of the mentally ill. Consequently, beginning in the 1960s, there was a worldwide trend towards moving psychiatric patients from mental hospital settings to less restricting settings in the community (Sealy & Whitehead, 2004). This resulted in drastic downsizing of institutions by eliminating hundreds of psychiatric beds which were previously meant for mentally ill people (Smyth, 2006). This shift towards community-based treatment was an approach to mental health that is geared towards the hope of recovery rather than incapacitation.

While deinstitutionalization was theoretically beneficial in keeping the mentally ill out of institutions where they were treated with little or no human dignity, in practice, the process was an abject failure. As institutions began downsizing, hundreds of vulnerable people were displaced to socially disorganized neighbourhoods such as Vancouver's notorious Downtown Eastside. Displacement resulted from the improper implementation of post-deinstitutionalization policies. A lack of community residential facilities and inadequate mechanisms to ensure the mentally ill adhered to a consistent treatment plan contributed to the failure of deinstitutionalization. Many of these people were left to "[claw] out a pitiable existence on [the] streets, in dumpsters, in filthy and dangerous skid-row hotels or in jails" (Smyth, 2006, p. b4). While there is nothing wrong with the policy of deinstitutionalization, this shift was not accompanied by the development of community-based services, an alternative that was never fully implemented. Consequently, many critics argue that deinstitutionalization has led to large numbers of people, who would once have been inpatients,

being incarcerated in jails and prisons or becoming homeless when outpatient services are not available (Lowman, Menzies & Palys, 1987).

It is important to note that deinstitutionalization is not the only reason for increased police encounters with mentally disordered persons. "Non-Institutionalization" of mentally ill individuals has been a policy that has been implemented by making the criteria for civil commitment more restrictive. However, most important is the fact that hospitalizations in the psychiatry wards of general hospitals are now fairly brief, leading to a revolving-door phenomenon in which patients are released after short periods of involuntary commitment and come into more frequent contact with the police.

Community-Based Mental Health Services

The deinstitutionalization movement and its failures was accompanied by reductions in government spending on mental health services that significantly limited the quantity of treatment programs available in the community (Commission for Public Complaints Against the RCMP, 2010a). Poorly funded and fragmented community-based mental health and social services cannot provide adequate treatment or supervision for people living with mental illness. Consequently, their condition is likely to deteriorate as their behaviour becomes more difficult to manage. Coupled with homelessness and poverty, this vulnerable group is likely to find themselves on the streets, increasing their likelihood of coming into contact with police (Commission for Public Complaints Against the RCMP, 2010a).

Civil Commitment

The current civil commitment criteria reflect the contextual changes that have occurred over the past three decades. Involuntary or civil commitment historically, limited the rights of the individual in favour of social control by compelling non-consensual isolation and treatment (Hermann, 1986). However, during the 1960s and 1970s, this raised some concern among civil libertarians and social justice advocates regarding the fairness and constitutionality of such laws. As a result, many of the reforms that followed were concerned with civil liberties and patient's rights which produced more stringent criteria governing commitment and treatment (Teplin, 1984a). Thereafter, the legal system became the arbiter of the mental health system's decisions regarding treatment and hospitalization, particularly concerning involuntary treatment and hospitalization (Hiday, 2011).

Under the old civil commitment criteria, people suffering from any type of mood disorder or depression could often be civilly committed. However, with the restrictions that have since been adopted through new legal criteria, a number of jurisdictions now require a finding of "dangerousness" to self or others and requirements that treatment should be administered in the least restrictive institutional setting as prerequisites to involuntary civil commitment (Hermann, 1986). The reform of the dangerousness standard in civil commitment law has led to frequent arrests of mentally ill persons by police (Hiday, 1992). In all other cases, the least restrictive/intrusive intervention options should be applied. This may result in police encounters with mentally disordered people who are acting out, but cannot be brought into custody under the law. The restrictions on the powers of the police to detain and convey individuals into psychiatric care have necessitated frequent police interactions without long lasting solutions. The result is that larger numbers of people with mental disorders are living in the community without effective treatment (Teplin, 1984a), which increases the likelihood of mental   health services (Verdun-

Jones & MacAlister, 2006). Under mental health legislation, most that their condition will become worse and their chances of encountering the police increase.

Mental Health Law

In Canada, each province and territory has legislation dealing with the provision provinces/territories have enacted at least two pieces of legislation: one which deals with the detention and treatment of mentally ill persons, and the other deals with issues surrounding the management of estates or personal life (Verdun-Jones & MacAlister, 2006).

Most mental health acts set out the parameters of police involvement with the mentally ill (Teplin, 1984b). The current B.C. *Mental Health Act* affords the police with the power to place mentally ill individuals into police custody, and requires them to transfer the individual to a psychiatric hospital or mental health facility (Commission for Public Complaints Against the RCMP, 2008). Under the terms of the *Act*:

> 28 (1) A police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person
> > (a) is acting in a manner likely to endanger that person's own safety or the safety of others, and
> > (b) is apparently a person with a mental disorder.
>
> (2) A person apprehended under subsection (1) must be released if a physician does not complete a medical certificate in accordance with section 22 (3) and (4)…

Mental Health Act Changes

In B.C., the current *Mental Health Act* has essentially remained unchanged since 1964. In the years since then, only minor revisions have been made to the act. While the overall differences in the commitment criteria between the pre-1964 legislation and the new act are not dramatic, some of the differences are noteworthy. Under the old *Mental Hospitals Act*, the involuntary commitment of individuals applied to persons who were certified to be "mentally ill" and requiring "care and maintenance in a mental hospital" (s. 11). The term "mentally ill person" was defined in s. 2 as:

> a person who is suffering from such a disorder of the mind as to require care, supervision, and control of his own protection or welfare or for the protection of others, and includes any person of unsound mind also any person who is a lunatic within the meaning of the Lunacy Act.

Under the current *Mental Health Act*, civil commitment is only available for those persons who are suffering from a "mental disorder" and who require "treatment in or through a designated facility", who require "care, supervision and control" in such a facility to prevent "substantial mental or physical deterioration" or for the "protection of the person or the protection of others", and who "cannot suitably be admitted as a voluntary patient" (s. 22). A "person with a mental disorder" is defined in s. 1 as:

a person who has a disorder of the mind that requires treatment and seriously impairs the person's ability
(a) to react appropriately to the person's environment or
(b) to associate with others…

As a result of these changes, police in this province who seek to bring a mentally ill person into custody, with a view to having them conveyed to a hospital for treatment, are faced with the reality that a person cannot be involuntarily admitted except in the direst of circumstances. Detention to ensure a person's welfare will no longer provide sufficient grounds upon which to justify involuntary commitment.

Legal Perspective

"The official mandate of the police includes dealing with mentally ill persons" has long been established (Bittner, 1967, p. 278). Police have a legal obligation to respond to all calls for service concerning people who are suffering from any mental-health related issues (Commission for Public Complaints Against the RCMP, 2010b). Police involvement with mentally ill persons is grounded in two common law principles: the power and responsibility of police to protect the welfare and safety of the community and their *parens patriae* duty to protect disabled citizens such as those suffering from mental illness (Ceyssens, 1994; Lamb et al., 2002; Teplin, 1984b, Teplin, 2000).

Police officers are afforded considerable discretion when dealing with the mentally ill. While the law legitimizes the power of police to intervene in situations involving mentally ill persons, it cannot dictate the "appropriate" response (Bittner, 1967, Teplin, 2000). Therefore, it is ultimately left to the discretionary judgments of the police to determine the most appropriate disposition when dealing with mentally disordered individuals, which could include transferring them to a psychiatric hospital, arresting them or informally resolving the matter (Teplin, 2000; Commission for Public Complaints Against the RCMP, 2010a).

Police are often the first responders to situations involving mentally ill persons; thus, they are essentially responsible for deciding whether a person is processed through the mental health system or via the criminal justice system (Menzies, 1987; Lamb et al., 2002), each resulting in a very different outcome. In their role as "forensic gatekeepers" or "frontline mental health workers", the disposition police officers choose is crucial and could potentially lead to criminalization (Menzies, 1987; Teplin, 2000). While Lamb (2009) argues that the criminal justice system is inappropriate for dealing with the mentally ill, the police are not entirely at fault for choosing this route, given their lack of dispositional alternatives and specialized training. Consequently, this can result in the criminalization of the mentally ill by police in many cases.

The Criminalization of Mental Illness

The criminal justice process, managed by legal agents, tends to criminalize and over-police marginalized groups such as Aboriginal peoples, the poor and racial minorities. Often, multiple sites of oppressions exist simultaneously across race, class, and gender boundaries, which can increase the likelihood of police encounters. Sadly, mentally ill individuals are no exception, and are yet another example of a marginalized group that is highly criminalized. There is widespread concern over the inappropriate use of arrest by police to resolve encounters with the mentally ill, a phenomenon referred to as the "criminalization of the mentally ill" (Abramson, 1972; Teplin,

1984a; Hiday, 1999). Many mentally ill people who were previously treated under the mental health system are now cycled through the criminal justice system instead (Teplin, 1984a), demonstrating a classic example of "net-widening". It is important to recognize that, while mentally ill persons often come into contact with police as an offender or suspect of alleged criminal behavior, there is also an increased risk of criminal victimization among persons suffering from mental illnesses, thereby increasing the likelihood of police encounters (Brink et al., 2011).

There are several social and systemic factors which may result in the mentally ill being criminalized; however, it is unclear whether this assertion can be empirically supported (Teplin, 1984a). Research in this area has yielded some mixed results. Teplin (1984b) examined police encounters with mentally ill persons paying particular attention to the decision-making rules underlying disposition options. She highlighted the relative frequency of each dispositional option available to police. Her results indicated that hospitalization and arrest were highly infrequent events, accounting for 0.5% and 16.5% of dispositions respectively. Interestingly, informal resolution was the most common disposition, being used in 71.8% of cases involving mentally disordered persons. Further, the study found that, while arrest was not a common disposition used in police encounters with the mentally ill, the arrest rate was higher in cases involving "suspects exhibiting signs of serious mental disorder than that for non-mentally ill suspects for similar types of incidents" (Teplin, 1984b, p. 165). Similarly, Hiday (1999) examined the empirical evidence of prevailing beliefs about the mentally ill and the criminal justice system, and suggests that criminalization of the mentally ill is a reality. She too found arrest and incarceration rates to be much higher for mentally ill persons than for the general population.

In her seminal work on the attitudes of Canadian police officers toward the mentally ill, Cotton (2004) found that police officers actually displayed a high degree of compassion towards people suffering from mental illness, and they exhibited a desire to provide them with the appropriate mental health services. Despite their compassion for people suffering from mental illness, this marginalized population still suffers a high rate of arrest by police. However, Cotton (2004) argues that while arrest may be more common among mentally-ill people than non-mentally-ill people, she suggests that this could be attributed to factors other than criminalization such as lack of dispositional options.

Stigmatization and False Perceptions of Mental Illness

Previous studies have estimated that approximately one in five (20%) Canadian adults will experience mental illness during the course of their life (Public Health Agency, 2002), ranging from mild to more severe forms. The serious stigma and discrimination associated with mental illness continues to be a harsh reality for those living with mental illness, and presents a barrier to seeking help (Public Health Agency, 2002). Without proper treatment, social support and community acceptance, a mentally ill individual can become extremely isolated, leading to thoughts of death or suicide.

The stigmatization and false perceptions of the mentally ill held by many people stem from a myriad of reasons including a lack of understanding or knowledge about mental illness, lack of empathy, stereotypes of mentally ill people as violent, dangerous or psychotic, and the tendency to fear (xenophobia) and exclude ("other") those who appear to be different (Public Health Agency, 2002; Teplin, 2000). Further, Teplin (2000) argues that society's tolerance for mentally ill individuals living in the community seems to be limited, with citizens often turning to the police to deal with the mentally ill. The impact of this behaviour has far-reaching consequences for the

mentally ill and the community such as increased surveillance of marginalized groups, involuntary civil commitment, or the use of incarceration. The Canadian Alliance for Mental Illness and Mental Health (CAMIMH) has identified educating the public and media about mental illness to combat any preconceived notions, stereotypes or fear as a necessary first step towards addressing this situation.

Police Use of Force

Police use of force involving the mentally ill is an issue that has caused serious concern in recent years. Several cases involving police use of force have resulted in trauma, injury and even death. However, as previously mentioned, police encounters with the mentally ill involving use of force are quite rare, but several high profile cases have elevated the importance of this issue.
Under s. 25 of the *Criminal Code*, police are granted the authority to use force including lethal force:

> 25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law…
> (b) as a peace officer or public officer…
> is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and is using as much force as is necessary for that purpose.

Subsection (1) "creates a legal justification for individuals, including police officers, to use as much force as is necessary in the administration and enforcement of the law provided their actions are required or authorized and they act on reasonable grounds" (MacAlister, 2010, p. 77). However, Blumberg (1993) notes that many changes in the statutes, administrative policies and policies pertaining to police use of force, have occurred. For instance, s. 25 of the *Criminal Code* has been supplemented by policy in various police agencies which affects police authority to use force. In B.C., these policies are created by each individual police department under the authority of the *Police Act - Use of Force Regulation*. In Vancouver, for example, police regulations authorize police officers to use force in order to forcibly take someone believed to be mentally ill to a hospital for treatment if they reasonably believe that person is incapable of making a rational decision about whether to accept or refuse medical treatment due to their mental condition (*Regulations and Procedures Manual*, c. 1.2.2).
    While the police have been granted the authority to use force in carrying out their duties, they must be careful to ensure they only use a level of force that is reasonable in the circumstances. Verdun-Jones and MacAlister (2006) have shown that police will be liable in negligence for improper use of force in bringing a mentally disordered person into their custody, and even criminal culpability for assault may follow if they use excessive force in taking a person with a mental disability into their care under mental health legislation.

Increased Police Training

In contemporary society, police interactions with the mentally ill have become part of the nature of policing. Research has suggested a high number of calls for service involving mentally ill persons in some jurisdictions (Wilson-Bates, 2008; Cotton & Coleman, 2008). The City of Vancouver reported that 31% of police incidents involved mentally ill persons, with this percentage rising to

42% in the downtown eastside (Wilson-Bates, 2008). Given the marked increase in police interactions with the mentally ill in recent years, it is imperative that police are better trained and educated in how to effectively deal with persons who are mentally ill. Cotton & Coleman (2008) suggest a substantial increase over the past several years in the level (basic and in-service) of training provided for police officers to ensure their actions are in accordance with "best practices". However, there is no universal model that has been consistently applied in police training.

Of the models that have emerged, the Crisis Intervention Team (CIT) model (premised on the Memphis model) is highly regarded as a "best practice" in the police response to the mentally ill (Griffiths, 2008; Cotton & Coleman, 2010). One of the greatest strengths of this model is that it involves collaboration between law enforcement and mental health services, thereby providing a specialized response. Developed in 1988, the CIT program provides special training for police to effectively assist them in safely responding to mentally ill persons (Compton et al., 2011). Further, this specialized training allows police to ensure that individuals living with mental illness can obtain the appropriate mental health services in the community (Compton et al., 2011). While the role of police is not the same as a mental health professional such as a psychiatrist, as first responders to incidents involving the mentally ill, it is beneficial and imperative for police officers to have a understanding of, and empathy for, the plight of the mentally ill (U.S. Department of Justice, 1993). For example, it is important for police to recognize the various forms of mental illness and the differences in symptomology which are central to such encounters.

The Vancouver Police Department (VPD) adopted the CIT model as part of a five-year development plan for new constables (Cotton & Coleman, 2010). Given the use of a systems approach coupled with comprehensive training for officers, this model has the potential to significantly improve police interactions with the mentally ill. Many police departments in the U.S. that have implemented the CIT model have reported many positive benefits and changes including quicker response times, frequent referrals to treatment, and lower arrest rates of mentally ill persons (Hails & Borum, 2003). Despite these positive developments seen elsewhere, the VPD temporarily implemented the CIT model as a pilot project and with little evaluation research conducted to measure its effectiveness, no longer offers this program to officers. The VPD has recently abandoned its intensive program of training, involving some 32 hours of instruction with respect to police encounters with mentally disordered individuals. There will now be a province-wide program of training (applicable to both the RCMP as well as the various municipal police departments). It will consist of only 8 hours of in-person training and the completion of a 2-hour on-line tutorial. This means that the VPD is no longer committed to the Memphis Model. Interestingly, research indicates that many police officers feel that they are inadequately trained in dealing with the mentally ill and additional training would be useful to avoid potentially volatile encounters (Watson & Angell, 2007).

Procedural Justice

As previously mentioned, the need for additional, specialized police training involving the mentally ill is only one facet in improving police encounters. However, understanding the nature of police interactions with mentally ill individuals requires "a well-developed and explicit theoretical understanding of [these] interactions" through the application of a procedural justice framework (Watson & Angell, 2007, p. 787). This may supplement enhanced training by changing the dynamics of police-citizen encounters in a way that increases the perception of legitimacy in the way mentally disordered people believe they are being treated.

Procedural Justice Theory

Tyler's (1990) work on legitimacy provided the basis for the notion of procedural justice. The idea that perceived fairness is essential for ensuring the perceived legitimacy of authoritative decision makers, particularly with respect to marginalized populations, has been applied to many decision-making contexts. These include civil commitment, mental-health/drug courts, treatment for mental-health patients, the placement of patients in seclusion/restraints and prison discipline, as well as encounters with the police. Legitimacy is incredibly important in these various contexts and perceived procedural justice seems to be an important element in maintaining it. It is not just a matter of ensuring compliance but goes beyond this and involves therapeutic factors that can assist in the recovery process for individuals who have been traumatized by negative experiences with authority figures in the past. In this sense, perceived procedural justice could also be associated with Therapeutic Jurisprudence, which is now a dominant framework for analysis of authoritative decision-making processes.

Procedural justice theory is essentially a theory that involves "procedural fairness for civil dispute resolution" (Solum, 2004, p. 181). The theory is premised on the notion of fairness in the way a person is treated by an authority figure, thereby shaping the process and ultimately the outcome of an encounter (Watson & Angell, 2007). When applying this perspective to police encounters with mentally ill persons, the way in which an officer treats a person suffering from mental illness is thought to affect whether the encounter results in cooperation or resistance. The legitimacy of state agents is likely determined by the fairness afforded to those with whom they came into contact, notwithstanding race, class, and gender issues. For marginalized people such as the mentally ill, who often have a fear of authority, the way in which they are treated is arguably more important than the outcome of a dispute (Watson & Angell, 2007). Given the complicated history and relationship between the subjects of such encounters and the police, applying a procedural justice framework can improve the nature of police interactions involving the mentally ill (and other marginalized groups).

Among certain groups in society, interactions with police can be quite intense, often arising from social, cultural, economic and ethnic differences. Consequently, racial minorities and other marginalized groups, such as the mentally ill, can be quite sensitive to prejudicial and disrespectful behaviour from police (Mastrofski et al., 2002). Many social scientists have argued that "disrespectful behavior from the police reduces the citizen's sense of procedural justice and fair play" (Mastrofski et al., 2002, p. 520). Further, coercive tactics used in an effort to gain compliance can potentially backfire and decrease cooperation. That is, individuals who experience inequitable treatment are less likely to assist the state or its agents and are more likely to resist, which contributes to undermining their legitimacy.

When police come into contact with individuals suffering from mental illness, if handled inappropriately, this vulnerable group's perception of police can be seriously damaged. The increase in the number of police interactions with the mentally ill over the last several decades points to the urgency of developing alternative frameworks for shaping these encounters. The application of a procedural justice model in this area can serve as a positive way to change the nature of police encounters.

Elements of Procedural Justice

Watson and Angell (2007) have identified three fundamental aspects to the procedural justice model. These include participation, dignity, and trust. Being an active participant in a dispute involves 'having a voice' by allowing one to convey their own perspective and to be heard by the decision maker. Dignity involves the respect and civility one is accorded, and having one's rights acknowledged. Trust involves the extent to which the authority figure is concerned with the welfare of the individual. If these elements are consistently applied by police when dealing with mentally ill persons, they can significantly increase the perceived legitimacy of the police. Watson & Angell (2007) further argue that, if procedural justice is applied early in an encounter, it is likely to have the greatest impact.

Research

There have been several studies published on police encounters with the mentally ill that have specifically focused on the attitudes and perceptions of police officers towards the mentally ill (Teplin, 1984b; Hiday, 1999; Cotton, 2004). Often, police officers have preconceived notions about particular groups that they encounter such as the mentally ill. In addition, these encounters between the police and the mentally ill are likely to occur in socially disorganized neighbourhood contexts which can exacerbate the situation. These neighbourhoods tend to attract people who suffer from mental illnesses and who are also likely to be unemployed and poor (Silver, 2000). Police encounters in poor, disenfranchised neighbourhoods usually involve people from a lower socio-economic stratum, and tend to occur more frequently than police encounters in more affluent neighbourhoods. How the police perceive, and subsequently treat, particular groups are often the result of multiple social and systemic factors. As well, the characteristics of mentally ill persons can also affect how they are perceived by the police.

Conversely, a paucity of research exists regarding the perceptions of people living with mental illness towards police. In their seminal work, the first of its kind from B.C., the study by Brink and his colleagues (2011) examined how people suffering from severe mental illnesses perceive police. The major goal of this study was to "improve the understanding of how people with mental illness perceive and interact with the police", guided by procedural justice theory (Brink et al., 2011, p. 7). Participants in this study were comprised of people suffering from various mental illnesses who had contact with the police. A participatory action group approach was employed as well as different methods for collecting data including interviews (n=60), surveys (n=244), and focus groups (n=28) (Brink et al., 2011).

This study produced interesting results about the nature of police interactions with the mentally ill and attitudes toward the police. The survey results indicated that people living with mental illnesses tend to have more negative views of the police compared to the general population; at the same time, people suffering from mental illness in B.C. are also more likely to come into contact with police compared to the general population (Brink et al., 2011). Overall, three-quarters of survey participants indicated that they held a positive view (attitude) of police regarding the respect and legitimacy of their role; similarly, survey participants generally indicated that they were satisfied with their police encounter, and also satisfied with how the police handled their situations, although there was some degree of variability (Brink et al., 2011).

Underlying the above mentioned findings is the relationship between procedural justice and satisfaction. Participants indicated that the more respect and dignity they received during an

interaction with police, and the greater the degree to which the process was perceived as procedurally fair, the more likely they were to be satisfied with the process (Brink et al., 2011). While not all participants in this study reported a positive experience, this study provides evidence for consistently applying a procedural justice framework to police encounters with the mentally ill, which is an obvious and essential way of improving future interactions.

The philosophy behind procedural justice theory is quite commonsensical in that one would expect state agents to always employ the elements of this framework when dealing with citizens, to elicit cooperation and compliance, regardless of race, class or gender differences. Given the power differential that exists among police and citizens, increasing the legitimacy of police would benefit the entire community.

Conclusion

The frequency of interactions between the police and mentally ill individuals has increased in recent years. These encounters have attracted considerable public and media attention, particularly when police encounters with the mentally ill result in serious injury or death. The shift from institution-based care for persons suffering from mental illness to community care has expanded the role of police in their lives (Cotton, 2004). As police officers have become first responders to incidents involving mentally ill persons, this has created a number of challenges given their inability to effectively deal with these situations. These challenges include concerns over the appropriate use of force with this population, the criminalization of the mentally ill, and the stigmatization and false perceptions police hold towards those individuals living with mental illness (Courey & McDonald, 2009).

Improving police interactions with mentally ill persons requires adhering to "best practices" in this area. The most widely cited way of improving police encounters with the mentally ill has been increased (specialized) training for police officers (Commission for Public Complaints Against the RCMP, 2010). However, increased police training involves more options for police to manage mentally ill individuals by employing the least restrictive measures, not by using more force. In addition, the use of mobile crisis teams and accessible community-based mental health and social services are also needed. Further, a collaborative approach among the criminal justice and mentally health systems would be very beneficial as police cannot be solely responsible for dealing with this issue.

Applying a procedural justice framework to police interactions with mentally ill persons (and other marginalized groups) has the potential to profoundly change the nature of these police encounters. Despite the simplicity of the theory, it highlights how police or other authorities are perceived by others based on the way in which they are treated. If mentally ill persons perceive that they were treated by the police in a procedurally fair manner with decency and respect, they are more likely to acknowledge the legitimacy of their authority which will likely produce compliance and cooperation. If, however, persons with mental illness experience a police interaction in which they were not treated in accordance with the principles of procedural justice, they are more likely to resist authority. Future research should seek to determine if the presence or absence of perceived procedural justice in an encounter between a police officer and a mentally-disordered person affects the extent to which that person is likely to cooperate with treatment personnel at a later time. Understanding police encounters involving persons suffering from mental illness is enhanced through the application of theory, which provides new ways to identify and implement effective responses.

About the Author

Farzana Kara is a Master's student at Simon Fraser in the School of Criminology. She can be reached at fbk@sfu.ca.

References

Abramson, M. (1972). The criminalization of mentally disordered behavior: Possible side effects of a new mental health law. *Hospital and Community Psychiatry*, *23*, 101-105.

Bittner, E. (1967). Police discretion in emergency apprehension of mentally ill persons. *Social Problems*, *14*, 278-292.

Blumberg, M. (1993). Controlling police use of deadly force: Assessing two decades of progress. In R.G Dunham and G.P Alpert (Eds.), *Critical Issues in Policing: Contemporary Readings* (2nd ed) (pp. 467-492). Prospect Heights: Waveland Press.

Brink, J., Livingston, J., Desmarais, S., Greaves, C., Maxwell, V., Michalak, E., Parent, R., Verdun-Jones, S., nd Weaver, C. (2011). *A Study of How People with Mental Illness Perceive and Interact with the Police*. Calgary, Alberta: Mental Health Commission of Canada. Available online at: http://www.mentalhealthcommission.ca

Carman, T. (2012). B.C. police need better training in dealing with mentally ill, survey finds. *The Vancouver Sun*. Available online at: http://www.vancouversun.com/news/police+need+better+training+dealing+with+mentally+survey+finds/6280473/story.html#ixzz1quhdEelx

Ceyssens, P. (1994). *Legal Aspects of Policing*. Toronto: Earlscourt Legal Press.

Commission for Public Complaints Against the RCMP. (2008). *Legal Analysis of Issues Pertaining to People with Mental Disorders in Contact with the Criminal Justice System: Framework Overview*. Available online at: http://www.cpc-cpp.gc.ca/prr/rep/sir/mental-police-eng.aspx

Commission for Public Complaints Against the RCMP. (2010a). *Policing Persons with Mental Illness: Issues and Trajectories*. Available online at: http://www.cpc-cpp.gc.ca/prr/rep/sir/mental-traject-eng.aspx

Commission for Public Complaints Against the RCMP. (2010b). Police Interactions with People Suffering from Mental Health-related Issues. Available online at: http://www.cpc-cpp.gc.ca/prr/rep/sir/mental-index-eng.aspx

Community Relations Service, U.S. Department of Justice. (1993). Principles of good policing: Avoiding violence between police and citizens." In R.G Dunham and G.P Alpert (Eds.), *Critical Issues in Policing: Contemporary Readings* (2nd ed) (pp. 182-207). Prospect Heights: Waveland Press.

Cook, J.A., and Wright E.R. (1995). Medical sociology and the study of severe mental illness: Reflections on past accomplishments and directions for future research. *Journal of Health and Social Behavior*, (Extra Issue): 94-114.

Compton M.T., Broussard B, Munetz M, Oliva J.R., and Watson, A.C. (2011) *The Crisis Intervention Team (CIT) Model of Collaboration between Law Enforcement and Mental Health, in Police Practices and Their Impact on Society*. New York: Nova Science Publishers, Inc.

Cotton, D. (2004). The attitudes of Canadian police officers toward the mentally ill. *International Journal of Law and Psychiatry*, *27*, 35-146.

Cotton, D., and Coleman, T.G. (2008). *A Study of Police Academy Training and Education for New Police Officers Related to Working with People with Mental Illness*. Report prepared on behalf of the Police/Mental Health Subcommittee of the Canadian Association of Chiefs of Police and the Mental Health and the Law Advisory Committee of the Mental Health Commission of Canada. Available online at: http://www.mentalhealthcommission.ca/SiteCollectionDocuments/PoliceProject/aa%20academy%20report-MHCC_FINAL.pdf

Cotton, D., and Coleman, T.G. (2010). *Police Interactions with Persons with a Mental Illness: Police Learning in the Environment of Contemporary Policing*. Report prepared for the Mental Health and the Law Advisory Committee and Mental Health Commission of Canada. Available online at: http://www.mentalhealthcommission.ca/SiteCollectionDocuments/PoliceProject/Police%20Learning%20Model_Jul%2023%20(4).pdf

Courey, L. and McDonald, D. (2009). *Mental Health Issues in Policing*. Presentation to the Canadian ssociation of Police Boards.

Criminal Code, R.S.C. 1985, c. C-46.

Goffman, E. (1961). *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates.* Garden City, N.Y.: Anchor Books.

Hails, J and Borum, R. (2003). Police training and specialized approaches to respond to people with mental illness. *Crime & Delinquency, 49(*1), 52-61.

Hermann, D.H.J. (1986). Barriers to finding effective treatment: A critique of revisions in procedural, substantive, and dispositional criteria in involuntary civil commitment. *39 Vanderbilt Law Review, 39,* 83-106. Available online at: http://heinonline.org/HOL/Page?handle=hein.journals/vanlr39&div=13&g_sent=1&collection=journals

Hiday, V.A. (1992). Civil commitment and arrests: An investigation of the criminalization thesis. *Journal of Nervous and Mental Disease, 180*, 141-214.

Hiday, V.A. (1999). Mental illness and the criminal justice system. In A. V. Horowitz and T. L. Scheid (Eds.), *A Handbook for the Study of Mental Health: Social Contexts, Theories, and Systems* (pp. 508-525). New York: Cambridge University Press.

Hiday, V.A. (2011). Community systems collide and cooperate: Control of deviance by the legal and mental health systems. In B.A. Pescosolido, J.K. Martin, J.D. McLeod, and A. Rogers (Eds.), *Handbook of the Sociology of Health, Illness, and Healing: A Blueprint for the 21st Century* (pp. 159-170). New York: Springer.

Lamb, H. R., Weinberger, L.E., and DeCuir, W.J. (2002). The police and mental health. *Psychiatric Services*, *53*, 1266-1271.

Lowman, J., Menzies, R.J., and Palys, T.S. (1987). *Transcarceration: Essays in the Sociology of Social Control.* Aldershot: Gower.

MacAlister, D. (2010). *Police-Involved Deaths: The Failure of Self-Investigation. Final Report.* Vancouver: B.C. Civil Liberties Association. Available online at: http://beta.images.theglobeandmail.com/archive/00968/B_C__Civil_Libertie_968881a.pdf

Mastrofski, S.D., Reisig, M.D., and McCluskey, J.D. (2002). Police disrespect toward the public: An encounter-based analysis. *Criminology, 40*, 519-552.

Mental Health Act, R.S.B.C. 1996, c. 288.

Mental Hospitals Act, R.S.B.C. 1948, c. 201.

Menzies, R. J. (1987). Psychiatrists in blue: Police apprehension of mental disorder and dangerousness. *Criminology*, *25*, 429-452.

Police Act - Use of Force Regulation, B.C. Reg. 211/2000.

Public Health Agency of Canada. (2002). *A Report on Mental Illnesses in Canada*. Available online at: http://www.phac-aspc.gc.ca/publicat/miic-mmac/chap_1-eng.php

Reuland, M, Schwarzfeld, M, and Draper, L. (2009). *Law Enforcement Responses to People with Mental Illnesses: A Guide to Research-Informed Policy and Practice.* New York: Council of State Governments Justice Center. Available online at: http://consensusproject.org/downloads/le-research.pdf

Regulations and Procedures Manual (n.d.). Vancouver Police Department. Available online at: http://vancouver.ca/police/assets/pdf/manuals/vpd-manual-regulations-procedures.pdf

Sealy, P. and Whitehead, P.C. (2004). Forty years of deinstitutionalization of psychiatric services in Canada: An empirical assessment. *Canadian Journal of Psychiatry, 49*, 249-256.

Silver, E. (2000). Race, neighborhood disadvantage, and violence among persons with mental disorders: The importance of contextual measurement. *Law and Human Behavior, 24,* 449-456.

Smyth, M. (2006). Deinstitutionalization deemed a failure. *The Province*. Available online at: http://www.canada.com/theprovince/news/story.html?id=24b5f60a-825b-48b4-acd8-a603e55a6068

Solum, L.B. (2004). Procedural justice. *Southern California Law Review, 78*, 181.

Sunshine, J and Tyler, T.R. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law and Society Review*, *37,* 513-548.

Teplin, L.A. (1984a). The criminalization of the mentally ill: Speculation in search of data. In L.A. Teplin (Ed.), *Mental Health and Criminal Justice* (pp. 63-85). Beverley Hills: Sage Publications.

Teplin, L.A. (1984b). Managing disorder: Police handling of the mentally ill. In L.A. Teplin (Ed.), *Mental Health and Criminal Justice* (pp. 157-175). Beverley Hills: Sage Publications.

Teplin, L.A. (2000). Keeping the peace: Police discretion and mentally ill persons. *National Institute of Justice Journal, 244*, 8-15.

Tyler, T.R. (1990). *Why people obey the law?* New Haven: Yale University Press.

Tyler, T.R., and Huo, Y.J. (2002). Procedural justice and decision acceptance. In T.R Tyler and Y.J. Huo (Eds.), *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (pp. 49-58). New York: Russell Sage Foundation.

Verdun-Jones, S and MacAlister, D. (2006). *Introduction to Criminal and Civil Law*. Toronto: Nelson.

Watson, A.C., and Angell, B. (2007). Applying procedural justice theory to law enforcement's response to persons with mental illness. *Psychiatric Services, 58*, 787-793.

Wilson-Bates, F. (2008). *Lost in Transition: How a Lack of Capacity in the Mental Health System is Failing Vancouver's Mentally Ill and Draining Police Resources*. Report prepared for the Vancouver Police Department.

Masculinity and Sport Revisited: A Review of Literature on Hegemonic Masculinity and Men's Ice Hockey in Canada

Cheryl A. MacDonald
Concordia University, Department of Social and Cultural Analysis

Ice hockey is particularly significant in Canada, since it acts as a primary site of socialization for boys and men. This form of socialization raises questions about masculinity on the public agenda in terms of the problematic nature of hypermasculinity in sport, stereotypical images of athletes, and questions of social responsibility as both men and athletes. These issues are presently relevant as Canada (and perhaps all of North America) finds itself in an era characterized by media accounts of competitive athletes' cavalier lifestyles, hazing rituals, violence, homophobia, drug addictions, and suicides. Scholars agree that these social issues can largely be attributed to problematic socialization through participation in hockey. This literature review uses secondary research to problematize masculinity in the ice hockey context by presenting the overarching claim that male hockey players embody hegemonic masculinity. The piece begins by defining R.W. Connell's (1987) concept of hegemonic masculinity and situating it in its current academic context. Next, it offers an overview of relevant literature on masculinity and sport along with a concise examination of scholarly work on the relationship between hegemonic masculinity and ice hockey in Canada. It concludes by summarising calls for further research in the field and by suggesting approaches to future studies.

Keywords: athletes; hegemonic masculinity; hockey; sport

Au Canada, le hockey sur place a une place toute particulière puisqu'il constitue un site de socialisation primaire pour les garçons et les hommes. Cette forme de socialisation soulève des questions sur la masculinité dans la perception générale, au regard de la nature problématique de l'hyper masculinité dans le sport, les stéréotypes d'athlètes et la responsabilité sociale des hommes et des athlètes. Ces questions sont d'actualité au Canada (et peut-être même dans le reste de l'Amérique du Nord) à une époque caractérisée par des images répandues de la vie insouciante des athlètes ainsi que des rituels d'initiation, de la violence, de l'homophobie, de la toxicomanie et du suicide. Une étude de la littérature se fonde sur des recherches secondaires pour cerner la problématique de la masculinité dans le contexte du hockey en présentant une hypothèse générale selon laquelle les joueurs de hockey masculins constituent des modèles de masculinité hégémonique. Le document présente d'abord la définition avancée par le sociologue australien R.W. Connell de la masculinité hégémonique (1987) avant de la situer dans un contexte académique contemporain. Ensuite, l'étude propose un survol de la littérature associée sur la masculinité et le sport, ainsi qu'un survol concis des études académiques sur le rapport entre la masculinité hégémonique et le hockey au Canada. La conclusion définit une synthèse des études à venir et propose des méthodes pour des études éventuelles sur le sujet.

Mots Clés: athletes; masculinité hégémonique; hockey; sport.

Introduction

Over the past decade, ice hockey has been approached from an increasingly critical standpoint both publicly and academically in Canada. Sport researcher Julie Stevens and historian Andrew Holman state that "until the early 1990s, only a handful of university-based scholars took the game seriously as a place where academics might find real, meaningful fodder for the study of society and culture, and the expression of power in a variety of forms, physical and psychological" (2013, p.251). Consequently, these researchers call for more work that deals directly with people involved in ice hockey. In the public domain, many eyes have turned to the men's ice hockey stage in Canada and North America. Prior to the 2012-2013 National Hockey League (NHL) lockout, mainstream media was littered with accounts of athlete hazing, violence, drug addiction, and suicide. For example, in 2009, twenty-one year old Canadian Junior hockey player Don Sanderson died after having been in a coma and on life support following a hockey fight (McGran & Vyhnak, 2009). During the same year, former captain of the NHL's Calgary Flames, Theoren Fleury, released a book outlining his battles with sexual abuse, drugs, alcohol, and gambling (CBC, 2009). In 2011, three NHL players died in just over three months, all results of suicide or drug overdose. The league vowed to look into the string of deaths and the role of the enforcer was called into question as critics became decreasingly convinced that fighting and its associated safety issues was a necessary component of ice hockey (CBC, 2011). Also in 2011, a fifteen-year old hockey player in western Canada was reportedly forced to walk around the team dressing room with water bottles tied to his genitals (Turner, 2011). Lastly, homophobia has become a popular topic of conversation, inaugurated by such events as the alleged homophobic slur voiced by Wayne Simmonds of the NHL's Philadelphia Flyers in 2011 (Johnston, 2011) and the rising notoriety of the You Can Play Project, an anti-homophobia organization founded in part by Patrick Burke, who is the son of former Toronto Maple Leafs President and General Manager, Brian Burke. The Burkes founded the organization following the death of their brother and son, Brendan Burke, who was a homosexual hockey player in the United States who sought to create awareness and acceptance of gay athletes (Shoalts, 2013).

Several scholars have pointed to hegemonic masculinity (understood as hypermasculinity or to encompass a traditional and brawny set of personality traits) in sport to explain the problematic behaviour of male athletes, while others are proponents of an increased social and cultural openness among male athletes, especially within the debate over whether or not homophobia in ice hockey is a growing concern. In light of the call for 'rinkside research' and the attention placed on harmful forms of masculine identity created by the socialization of boys and men who participate in ice hockey, the following review of literature seeks to delineate secondary research on hegemonic masculinity in order to lay groundwork for future studies of ice hockey and masculinity involving those who are closest to the game—players, coaches, officials, families, and fans.

Controversy surrounding these and other events is not altogether new. Academic literature on Canadian ice hockey shows that it has long been accused of promulgating masculine character traits to the extent that they become problematic (Robidoux, 2001, 2002; Adams, 2006, 2011; Allain, 2008, 2010, 2012; Gee, 2009; Atkinson, 2010). Since hockey is so deeply engrained in Canadian culture, it is often a primary site for the socialization of young males. This socialization becomes problematic when young men begin to embody traits of a dominant masculinity, what Connell (1987) deems 'hegemonic masculinity, a concept which will be unpacked before reviewing its relevant literature. As a consequence of this socialization, hockey players are expected to be aggressive, stoic, competitive, independent, to show little emotion, and to police the maintenance of these traits amongst themselves, especially in the context of the game. Further, they hold other

players to the same standard (Colburn, 1985; Robidoux, 2001, 2002; Allain, 2008, 2010, 2012).

The active trajectory taking place in men's ice hockey provides an opportune moment for academics to re-examine claims made in the literature on masculinity and ice hockey. This review of literature commences by examining work on masculinity and sport and subsequently channels into a review of relevant literature on hegemonic masculinity and ice hockey in Canada. The review will conclude by indicating disparities in the literature and summarising the authors' suggested ways of proceeding with further research.

Defining and Contextualizing Hegemonic Masculinity

The development of women's and gay liberation in the 1970s necessitated new ways of understanding gender and society (Connell, 1987, 2005; Messner, 1992). Connell (1987) proposed a model of four types of masculinity to signify the socially constructed hierarchical classification of masculinities in the West. This new classification would correspond to different forms of masculinity based on divisions of race, class, and sexuality, thus accommodating for societal and worldly interaction.

Although historically and socially/spatially contingent, hegemonic masculinity sits atop the hierarchy of masculinity types and refers to a normalizing ideology of gender relations involving the production, negotiation, and reproduction of male domination over women and other men (Levy, 2007). The core tenets of hegemonic masculinity can be summarized by the work of sex role researcher Robert Brannon (1976), in which he proposes four rules that men are expected to follow. The first rule, 'No Sissy Stuff,' calls for the rejection of all that is feminine; this includes traits such as openness and vulnerability. The second rule, 'The Big Wheel,' requires striving endlessly for fame, success, and social status by all means. The third, 'The Sturdy Oak,' encourages independence, confidence, strength, and toughness. The fourth and final rule, 'Give 'Em Hell,' denotes violence, aggression, bravado, and a willingness to defy authority.

Connell (1987, 2005) uses Gramsci's (1975) term "hegemony" to indicate the ways in which the characteristics in question are ideologically and institutionally perpetuated. She begins by stating that "'[h]egemony' means a social ascendency achieved in a play of social forces that extends beyond contests of brute power into the organization of private life and cultural processes"(1987, p. 184). She states that although hegemony is not based on force, the two are related. Additionally, it does not mean total control over other types of masculinity to the point of extinguishing them. There are always other categories and hegemonic masculinity can only exist in comparison to them. What is more, it can involve the creation of a set of unachievable physical and personality traits, such as the masculine identity of a film character like John Wayne or Sylvester Stallone. She emphasizes that "the most important feature of contemporary hegemonic masculinity is that it is heterosexual, being closely connected to the institution of marriage; and a key form of subordinated masculinity is homosexual." (1987, p. 186).

The other three masculinity types are complicit, subordinated, and marginalized (Connell, 2005). Individuals in the subordinated category—namely homosexuals or men with supposedly feminine characteristics—could be said to engage in practices and attitudes that are not consistent with the hegemonic category. The marginalized category is reserved for non-Caucasians, the ill, disabled, and poor who are seen as having no hope of ever attaining hegemony (Connell, 2005). Most notably, gay men, who are not considered real men, fall into the marginalized category. Lastly, the complicit category houses men who do not fully embody hegemonic masculinity but support it in order to avoid subordination. This is the largest category of the four (Levy, 2007).

Review of Literature

The concept of hegemonic masculinity has been used extensively in scholarly research and in discussions of modern sport. It is typically argued that male athletes in combative sports such as football and ice hockey demonstrate the characteristics of hegemonic masculinity; therefore it is imperative that relevant studies of gender and sport consider this type of masculinity in such a context (Bryson, 1990; Messner, 1992, 2002; Whitson, 1990; Connell & Messerschmidt, 2005; Kimmel, 2010). The following is a review of the relevant literature on the subject.

The concept of hegemonic masculinity has not developed without criticism regarding its theoretical utility. For example, Connell has been accused of subscribing to the existence of an objective position from which to view masculinity, resulting in a simplified understanding of masculinity that overlooks complex apparatuses of masculine domination (Moller, 2007). In 2005, Connell and criminologist James Messerschmidt wrote an article responding to critiques of the concept and offered an updated version of it. They argued that it was still culturally relevant in part because it was useful to disciplines such as education studies, criminology, studies of men's representation in the media, men's health studies, and organizational studies, among others. The concept did, however, require some alteration due to accepted criticisms such as its tendency to devolve into static typologies and the specificities of men's lived experiences of masculinity. Connell and Messerschmidt (2005) opted to keep the basic definition of the concept, but acknowledge that their simplistic model of social reactions attributed all masculinities to a singular global pattern of power. They also decided to work towards clarifying hegemonic masculinity as a non-fixed category. They accordingly added the geography of masculine configurations at the local, regional, and global levels (geopolitics on micro and macro levels), acknowledged the increased prominence of academic work on social embodiment and the importance of the body in social relations, and discussed dynamics of masculinities such as the possibility of positive forms of masculine hegemony.

Sociology professors Marc Lafrance (2010a, 2010b) and Anthony Synnott (2009) at Concordia University in Montreal also examine the evolving constellation of masculinity studies utilizing the concept of hegemonic masculinity. While Lafrance (2010a, 2010b) relies very much on Connell's work and agrees that hegemonic masculinity is ever present, he has noticed a recent trend in representations of men, specifically in mainstream media. He points out the image of the 'idiot male'—a portrayal of men in advertising, television and film as unintelligent and lethargic. This image opposes the classic ideals of hegemonic masculinity and Lafrance (2010a) suggests that some men have begun to feel inferior and face a loss of identity due to changing gender roles, some of which have been propelled by the increased participation of women in the workforce. Synnott (2009) has also acknowledged this change in his work on the state of contemporary masculinity, which presents a gender continuum that places men as heroes, villains, or victims. He posits that men have been pegged as "the suicide sex, the violent sex, the criminal sex, the death sex, the disposable sex—and as the enemy, misogynistic and morally inferior to women" (2009, p.1). He argues that "all these wars against men are not matters of gender so much as of power: political, economic, religious, ideological, and so forth—and of how power is exercised, by whom and for what ends, and how powers change and evolve and conflict" (2009, p. 9).

Michael Messner (1992) notes that by applying a framework that orders gender, it becomes apparent that the status of hegemonic masculinity is in crisis, as it no longer sits atop the gender hierarchy. In light of this, Connell (2005) argues that maintaining and defending the patriarchal order is quite simple, given that the men who tend to exemplify hegemonic masculinity are the ones

in charge of the state, large corporations, and cultural practices. She attributes this structural maintenance of competitive and dominant masculinity to current environmental problems, military destruction and violence, and economic inequality, among other issues. While some scholars disagree that hegemonic masculinity is structurally maintained, Connell and others agree that modern sport is a central site of the production, negotiation, and maintenance of hegemonic or dominant masculinity in Western culture (Whitson, 1990; Messner, 1992, 2007; Connell, 2005; Kimmel, 2008, 2010).

Several other scholars partially echo the work of Connell, Kimmel, and Messner by agreeing that masculine roles and perceptions are changing and that hegemonic masculinity is contemporarily ubiquitous. Michael Atkinson (2011) argues that "white masculine hegemony has been maintained in Canada for quite some time through complex interplay between male-dominated capitalist power, institutional authority, social position, and common ideology across social landscape[s]" (p. 106). Moreover, White & Young (2007) state that in particular contexts, "some types of masculinity may be ascendant over others. Some men will enjoy more access to power and influence than others" (p. 262). Pollack (1998) and Frosh, Phoenix & Pattman (2002) agree that this masculinity is learned at an early age, often in terms of social popularity, and that young boys are taught to value toughness, contention of authority on the one hand and learning, sporting ability, and fashion on the other. Pollack (1998) establishes a 'Boy Code', which is based on Brannon's (1976) four rules of masculinity and, akin to Kimmel's (2008) Guy Code, encourages emotional detachment and silence. Kimmel (2008) refers to this silence as the Guy Code while Pollack (1998) terms it the Mask of Masculinity.

Masculinity and Sport

Literature on masculinity and sport, whether depicting hegemonic masculinity or not, can be classified into three themes: interpersonal relationships of athletes, appearance, and the physicality of sport. Much of the work on the subject begins by offering a general overview of the historical connection between sport and masculinity. Eitzen (2012), Connell (1987, 1990, 2005), Messner (1989, 1990, 1992, 2002), Whitson (1990), Bryson (1990), and Kimmel (2007, 2008, 2010) establish that young boys who participate in sport are encouraged by families, friends and coaches to embody a particular type of masculinity. They are taught that skill and force will lead to sporting success, which is very important in the lives of boys and men. This importance has historical roots in the movement of women from the private to public sphere during the nineteenth and twentieth centuries. Organized sports were created as a homosocial sphere where men could enact masculine practices in a space of their own, away from the supposed threat of femininity (Messner, 1990, 2002).

Although women participate in sport more than ever, it remains an institution that perpetuates aggressive and competitive masculinity (Messner, 2002; Kimmel, 2008, 2010; Rand 2012). That said, some scholars (Messner 1989, 1990, 2002; Kimmel, 2010) suggest that the gender order within sport is quite complicated and that although there does exist a dominant masculinity, other forms of less dominant masculinity are apparent and should be considered as well. Messner (1992) posits that hegemonic masculinity is defined in relation to the other masculinities and that resistant masculinities are not successful in overcoming the hegemonic norm that is characterized by competition, aggression, physicality, and the subordination of femininity. Lower-class men and members of ethnic minorities tend to be excluded or lack resources and opportunities compared to those in the hegemonic category (Messner, 1989). In addition, David Whitson (1990) points out

that confrontational or combative games such as rugby and football especially work to maintain hegemonic masculinity while less combative or individual sports such as badminton tend to deviate from it because they lack physical contact and thus the opportunity to demonstrate body-to-body physical dominance. Finally, Connell (1990) notes that many athletes who exemplify hegemonic masculinity cannot do so all the time; they also exhibit contradictions to it. In support of this claim, she lists athletes who have limited social and romantic lives because of the demands of their training and competition regime. In other words, their lack of social lives or romantic commitments can be attributed to their athletic careers and not to their lack of personal qualities.

Other scholars weigh in similarly on the subject. Like Connell, Varda Burstyn (2004) attributes the development of sport to men's backlash to feminism and extends the explanation to the absence of working class fathers in the nineteenth century. Sport was used to replace fathers and train boys and young men for the workforce. She remarks that sport was supposed to be a site of asexuality, yet it has developed homoerotic masculine characteristics, mostly through the commercialization and worship of athletes that has come to characterize contemporary Western society.

Theberge (2000) and Young (2000) also extend the notion of hegemonic masculinity in sport by discussing its challenges. They acknowledge the continued marginalisation of women and homosexuals, but still remark on their increased participation in sport, which indicates a challenge to traditional gendered understanding of sport. Eitzen (2000) and Rees & Miracle (2000) discuss the positive and negative impacts of sport on boys. D. Stanley Eitzen (2000) agrees with Connell, Kimmel, and Messner in stating the following:

> Sport serves to control persons ideologically by reinforcing society's values among the participants [and that] sport in its organization, procedures and operation serves to promote traditional gender roles. Most importantly, sport advances male hegemony in practice and ideology by legitimating a certain dominant version of social reality (p. 373).

Eitzen points to the importance of the coach in positively shaping the male experience in sport as the coach is responsible for teaching both athletic skills and personal values. The clear consensus among these researchers is that sport has been and continues to be a male-dominated sphere that systematically socializes boys and men into hegemonic masculinity through interpersonal relationships, physicality, and most recently, physical appearance.

Studies of male athletes' relationships with others have yielded complex and sometimes conflicting results. Some research suggests that male athletes lack unity with other individuals (Messner, 1990) while others argue that the bond between athletes—especially teammates—is a very deep and unifying one (Robidoux, 2001; Pappas, McKenry & Catlett, 2004). Connell (2005) and Messner (1990) posit that sport acts as a site where male athletes can come together and support or reproduce the tenets of hegemonic masculinity by not having to show or share emotion. Furthermore, they claim that interaction is laced with competition. Kimmel (2008) agrees, but acknowledges that they do share the emotions associated with winning and losing. Michael Robidoux (2001) extends Kimmel's point by adding that some interviews with professional athletes revealed that they felt they had invaluable and close personal bonds with some of their teammates.

Messner (2002) provides a view of the internal dynamic of athletic peer groups. Very much in line with Connell's (1987) four types, Messner suggests four types of team members: the leaders, audience, marginals, and target. The target comprises the group that is feminized, ridiculed, and

victimized for not adhering to the tenets of hegemonic masculinity. The leaders are the team members with the highest status who orchestrate misogynist, homophobic and degrading attacks on the target both physically and verbally. The audience encompasses boys and men who are not leaders, but applaud their attitudes and actions. Finally, the marginals are the lower-status group who choose not to support the leaders, but nonetheless do so with their silent complicity in situations geared towards the subordination of the targets. Messner's (2002) work, which is also echoed by Kimmel's (2007) work on masculinity as homophobia, reveals that many athletes choose to remain silent in order to avoid being included in the target group.

David Coad (2008) posits that male gender roles are changing and describes the interpersonal relationships and team dynamics among athletes as 'jock culture' (Lipsyte, 2004). Such a culture is centered on hypermasculinity and mirrors the descriptions of the athletic sphere made by Connell, Messner, Robidoux, and others. Coad (2008) makes an interesting addition to jock culture by listing a preoccupation with fashion as a new aspect of jock culture. He uses Simpson's (2002) term 'metrosexual' to describe athletes who are now becoming interested in fashion and personal care and having an aesthetically pleasing and fit body. He lists athletes such as football player Joe Namath and soccer player David Beckham as examples. He states that "metrosexuality does not discriminate against homosexuality or insist on heteronormativity," (p. 17) making the phenomenon an internal challenge to hegemonic masculinity.

Media and sport researcher Garry Whannel (2002) notes the increase in body-centered research on sport as well. While physicality in a literal sense is at the forefront, appearance has also gained importance among athletes. He claims that "the growth of body culture, the popularising of personal grooming and the changing forms through which gender relations are lived have placed focus upon the appearance of men in new ways" (2002, p.71). He prefaces this discussion with the assertion that the athletic body is a necessary aspect of this phenomenon and that non-athletic bodies are marginalised.

The literature ties the physicality of sport to hegemonic masculinity by emphasizing the importance of the athletic male body and highlighting the significance of violence in the connection between sport and masculinity. Hegemonic masculinity in the context of sports has been constructed throughout Western history as physical superiority over women, femininity, and non-athletic masculinities (Connell, 1987; Messner, 2002). Sport puts men's bodies on display and emphasizes required physical characteristics such as an active, muscular body that is capable of acquiring specific skills, undergoing intense training, accepting and overcoming pain, and inflicting pain on other bodies (Connell, 1987, 2005). Messner (2002) points out that this form of masculinity is produced in opposition to other forms of physical play such as those involving equality and amusement encouraged through educational systems by mostly female educators.

Connell (2005) and Whitson (1990) state that team sports in particular perpetuate and legitimize male aggression. While most of the literature on violence in sport frames aggression and violence as problematic (Whitson, 1990; Messner 2002, 2007; Connell 2005), other sources state that violence is a necessary part of the game that acts as an outlet for aggression and builds respect for opponents (Robidoux, 2001; Pappas et al., 2004). Some research is concerned with whether or not athlete aggression in sport carries over to non-sport situations. Messner (2002) and Pappas et al. (2004) conclude that athletes who are involved in revenue-producing contact sports are most likely to use violence outside of the sport context. In addition, the objectification of women could also be linked to violence and assaults external to the sport environment. Messner (2002) specifically points to Canadian ice hockey as violent and claims that "looking at Canada, where the central sport, ice hockey, is dominated by white men, we see the vast majority of sexual assaults

by athletes are committed by white males" (p. 29). He also notes that a central point in his analysis is "the fact that the majority of male athletes do not commit acts of off-the-field violence against women or other men. Though in the numerical minority, the men at the center of the athletic group are expressing the dominant, hegemonic, most honoured form of masculinity" which is being upheld through violence and aggression (2002, p.29).

Several other scholars add to the discussion. Jamieson & Orr (2009) and Whannel (2002) list hockey violence as an issue both on and off the ice in Canada. Violent episodes can break out between players, fans, parents, and others involved with the sport. This is akin to hooliganism and soccer riots in Europe. Jamieson & Orr (2009) attribute these problems to poor management on the part of those in charge of hockey leagues and venues. Whannel (2002) and Pollack (1998) stress the importance of athletes being role models and the fact that they perpetuate violence with this social power. Along with the debated nature of interpersonal relationships between players and appearance, physicality is a third common theme in studies of male athletes. American psychologist and psychoanalyst William Pollack (1998) sums up debates over masculinity in sport rather well when he states that although sports can offer "a chance for openness, expression, and intimacy, sports can also push boys back to loneliness, shame, and vicious competition…the goal of winning at any cost, a quest for narcissistic glory at the expense of others" (p. 273).

Sport's New Relationship to Homophobia

Homophobia is a term that has recently gone viral in the North American sport world. It has been a recurring theme in scholarly literature on sport (Anderson, 2012; Eitzen, 2012; Lenskyj, 2012; McCormack, 2012; Messner, 2012) and has been equally popular outside of academia since the inception of the You Can Play Project (Bella, 2012; Burke 2013) and the National Basketball Association's Jason Collins announcing that he is the first openly gay male athlete in professional sport (Collins & Lidz, 2013). The commonly accepted definition of homophobia is 'the fear and/or hatred of homosexuality' (Palmer & Hunt, 2011; Taylor & Peter, 2011). Some also choose to designate the victimized party as LGBTQ, a term that encompasses lesbian, gay, bisexual, transsexual, and queer individuals, not just homosexuals (Taylor & Peter, 2011). Homophobia is generally acted out in the form of prejudice, discrimination, name-calling, and violence (Taylor & Peter, 2011; Lenskyj, 2012).

Literature on masculinity and sport often mentions homophobia. Mary Louise Adams (2011) argues in her work on figure skating that sport remains a site that privileges men and their bodies, in turn reinforcing cultural expressions of sexism and homophobia. Helen Lenskyj of the Ontario Institute for Studies in Education writes, "despite more accepting societal attitudes and practices in most western countries, sport remains one of the last bastions of heterosexism and homophobia" (2012, p. 8). Eitzen (2012) and Adams (2011) contend that young boys are so strongly encouraged to exhibit traditionally masculine traits associated with sport such as toughness and heterosexuality that boys often become afraid of femininity and homosexuality. These comments indicate that homophobia—or perhaps more specifically antigay sentiment—is a common tenet of hegemonic masculinity and is currently under scrutiny.

Hegemonic Masculinity in the Realm of Canadian Ice Hockey

Ice hockey is Canada's official winter sport and the NHL is largely populated by Canadian-born players (Eitzen 2012). Literature that bridges hockey and hegemonic masculinity surfaces from two key fields—men and masculinity studies and sport sociology. Moreover, it focuses on three main themes that mirror the literature on masculinity and sport in general. They include the construction of one's identity as a hockey player, the physicality of the game, and the interpersonal relationships of the players.

Identity construction is closely linked to both hegemonic masculinity and nationalism in Canada. Canadian sport is often associated with masculinity due, in part, to its promotion through the muscular morality movement (Lucyk, 2011) and, like hegemonic masculinity, sports such as ice hockey are thus said to "encourage values of dominance, physical strength, and aggression" (Lucyk, 2011, p. 71). Some of the literature (Robidoux, 2001, 2002; Adams, 2006) states that ice hockey has undergone a notable change; it has gone from a Canadian pastime to a way of life in the sense that the sport now involves family, social, educational, and economic relations in Canada ever since it was introduced to bourgeois society in the late nineteenth century.

Robidoux (2002) and Kristi Allain (2008) claim that the popularity and appeal of ice hockey are rooted in Canadian nationalism. They argue that Canada can, therefore, be viewed as representing, exemplifying, and understanding its own national identity through some tenets of hegemonic masculinity, such as physical dominance, competitiveness, and heterosexism. Additionally, Robidoux (2002) and Mary Louise Adams (2006), a professor in the Cultural Studies department at Queen's University, state that hockey has enabled Canadians to reinforce discourses of patriarchy and national belonging. They assert that hockey is a fundamental site for males to negotiate their worth as men through practices of hegemonic masculinity. In a similar vein, Gruneau & Whitson (1993) contend that although women are increasingly involved in hockey, Canadian culture is particularly centred around men's ice hockey and, as alluded to by Robidoux and Adams, Canadians place as much importance on ice hockey as they do on employment and education. According to these scholars, hockey is purposely used to promote national pride and unity in Canada. Lastly, Sarah Gee (2009), a lecturer in Sport Management at Massey University in New Zealand, analyzes media representations of hockey masculinity and lists the National Hockey League's 'Inside the Warrior' campaign (created by the NHL and aired on NBC in 2005) as a message about identity construction conveyed to North Americans. She states that it takes a particular type of aggressive, brave, proud, and driven man to play hockey and points out that this campaign was produced in spite of the increase in women's participation in hockey and the perceived 'crisis of masculinity' (e.g. Atkinson, 2011), which warns of the endangerment of hegemonic masculinity.

The next common theme in the literature is that of physicality in hockey. It, too, focuses on the body and violence, respectively. Robidoux (2001) argues that the concept of hegemonic masculinity challenges conceptions of the body in terms of hockey, because the sport privileges the body over the mind, which decidedly opposes patriarchal values (mind over body). This contradicts the work of Connell (1987, 2005), who acknowledges the importance of the mind in hockey, but places more emphasis on the body being touted as an integral part of hegemonic masculinity.

Allain states that "a hegemonically desirable Canadian hockey masculinity predicated on a hard-hitting, physically aggressive game has been ascendant in Canadian hockey practice for at least 50 years" (2008, p. 476). Most of the authors agree that the physical nature of ice hockey requires players to display a certain form of aggression and bravado that they would not require in

everyday life (Colburn, 1985; Young, 2000; Robidoux, 2001; Adams, 2006; Allain, 2010). British sport sociologist Kevin Young (2000) notes that although sport violence in Canada and the United States often technically qualifies as criminal assault, athletes are usually excused from such crimes during games. Young (2000) states that regardless of these exceptions, hockey still rates as one of the Canadian sports with the highest rate of criminal reports.

A unique aspect of hockey is the fist-fight. Robidoux (2001) discusses the importance of 'enforcers' on a hockey team—those individuals who make a point to demonstrate a physical presence, hit, and fight regularly to defend themselves and their teams. These individuals are well-respected by teammates, coaches, and fans alike for their contributions. Colburn Jr. (1985) and Pappas et al. (2004) conclude that the fist-fight has symbolic significance as a way to settle battles of dominance, restore order, release aggression, and show respect for opponents (i.e. a just way to settle a dispute). According to these researchers, the fist-fight is a legitimate act for hockey players. University of Ottawa Economics professor Marc Lavoie (2000) further investigated the fist-fighting phenomenon and discovered that hockey violence, more than quality of play, promotes high attendance rates and economic gain. In light of this, Pappas et al. (2004) note that although hockey specifically requires more aggression than everyday life, sometimes "interpersonal aggression is common in the lives of these hockey players, both on and off the ice" (2004, p. 308). This echoes Messner's (2002) argument that athletes in revenue-producing contact sports are more likely to be violent outside of the sport context because the violent nature of the sport alludes to off-ice aggression in the players' everyday lives. Atkinson (2011) weighs in on the issue, encouraging social scientists to consider the ways in which different forms of violence are deemed acceptable in ice hockey and further, to analyze young men's socialization through ice hockey into a particular set of traditional or stereotypical masculine values and practices such as aggressive behaviour.

The final theme in the literature on hockey and hegemonic masculinity encompasses matters of interpersonal relationships among teammates: debates over the closeness of the players on the team, the extent of homosocial activity among teammates, and the homogenization of players on a team. Research relating to the closeness of players on a hockey team resembles the aforementioned scholarship. These studies are divided by debates between players' lack of ability to share emotion and their claim that sport allows them to have very close and meaningful friendships with teammates. Robidoux's (2001) work shows that players feel so close to each other that they are comfortable joking around in a homosexual manner with one another by grabbing each other's private parts or making suggestive verbal jokes. His work also shows that the players believe they could not find such close friends anywhere else. This contradicts Messner's (1990) argument that sport acts as a site where emotion is unnecessary and discouraged and interpersonal relationships are limited and superficial. At the same time, Robidoux (2001) also states that the players' relationships are based on competitiveness because they need to contend for spots on the team and time on the ice. Homosociality is also a common theme in terms of interpersonal relationships among teammates. Seemingly homosexual acts and utterances are used by hockey players for friendly and joking purposes (Robidoux, 2001; Kimmel, 2008) or to feminize and victimize the group that Messner (2002) would call the target. He also notes that this practice always functions both ways insofar as men can ridicule their peers in a friendly manner, yet use the exact same words and actions to intentionally insult someone as well. Robidoux (2001) establishes that his account of players' homosexual acts, although not actual homosexual relations, calls into question hegemonic notions of heterosexual masculinity in hockey.

The homogenization of teammates is the last aspect of players' interpersonal relationships in the literature. It is discussed in terms of both hazing rituals to bring the team together and teams holding a collective worldview. Bryshun and Young (2007) and Atkinson (2011) report that knowledge of hazing in Canada is limited and more research is required on the subject as the activity continues to be increasingly problematic. These rituals involve the veteran players forcing new ones into acts of nudity, excessive alcohol consumption, feminization, and infantilization (Bryshun & Young, 2007; Robidoux, 2001; Kimmel, 2008). Atkinson (2011) adds that information on hazing may be limited since it is an activity that is quietly conducted regardless of it being formally banned by many athletic organizations. He specifies that although not all athletes are in favour of hazing practices, they are still concerning and high school and college-age males can be the cruellest when administering initiation rituals. For Atkinson, hazing refers to acts of social degradation that new players must endure in order to prove their loyalty and respect to veteran members. He adds that these rituals are particularly common in contact sports such as ice hockey and football. Robidoux (2001) also states that initiation rituals are important for a team because they quickly work to build trust and good relationships on the ice. He notes that this is especially meaningful in Junior hockey in Canada because this level of hockey represents a player's official entrance into highly competitive and career-oriented hockey. (Robidoux, 2001). Kimmel (2008) agrees that initiation has positive effects on athletic teams, but warns of the dangers caused by overstepping boundaries with initiation rituals, resulting in sexual and violent assaults. For Kimmel, such activities do not encourage team cohesion. He, like Robidoux (2001), attributes them to the fact that young men in this context are freed from parental constraints and left to create their own form of socialization that allows for harmful and degrading initiation rituals.

The homogenizing effect on a team is accelerated through initiation rituals but continues to happen throughout players' time spent together as they begin to take on a shared worldview. Robidoux (2001) and Pappas et al. (2004) argue that players begin to acquire not only a shared set of goals in relation to hockey, but a collective worldview premised on characteristics of hegemonic masculinity: aggression, preoccupation with success, a disregard and lack of respect for women, and a lack of emotion outside of that associated with winning or losing. In addition, Robidoux (2001) notes that hockey players tend to develop a violence-oriented vocabulary along with their own regional terminology.

Disparities in the Literature and Future Research

Some scholars have begun to observe behaviour and identity management that opposes hegemonic masculinity, specifically at the high school and college levels (Anderson, 2009, 2011; MacDonald, 2012). American sociologist Eric Anderson's (2011) work on college athletes in the United Kingdom revealed that young men were accepting of gay teammates and were open to non-hegemonic expressions of masculinity. This type of work has inaugurated discussions of the state of homophobia in sport in congruence with media accounts, which indicate that homosexuality, which would otherwise be unacceptable under a traditional and hegemonically masculine regime, is slowly becoming more acceptable. At the same time, however, no male hockey player has come forward as openly gay despite the NHL being the first professional league to officially sign on in support of the You Can Play Project (Shoalts, 2013). This suggests a need for further inquiry into the mechanisms of both hegemonic masculinity in Canadian ice hockey and Canadian culture. The lack of continuity between media and academic accounts of homophobia and ice hockey in Canada should be a central locus of inquiry in moving forward with future studies as the topic is current

and constitutes an opportunity to reassess hegemonic masculinity as a useful concept within the realm of masculinity and sport studies.

Lastly, there is an overemphasis on hazing and violence in ice hockey, but very little on the identity construction and interpersonal relationships that underpin them and other social contexts in sport. These are vital aspects of research that could answer the call for further understanding of how hegemonic masculinity operates among athletes. It is imperative to speak directly with these players in order to determine how they perceive their own masculinity and how those perceptions are played out in their relations with the people around them. With this in view, several scholars who work on masculinity, sport, and ice hockey propose various ways in which to proceed.

Some scholars (Connell, 1987; Messner, 1989, 2007) call for more work on the understanding of different dynamics of masculinity and how hegemonic masculinity operates. Others suggest a closer examination of the structural perpetuation of hegemonic masculinity (Connell, 1990; Messner, 1990; Connell & Messerschmidt, 2005; Atkinson, 2011) and its maintenance of racial, gender, and power norms through organized sport (Messner, 1990; Connell & Messerschmidt, 2005; Pascoe, 2005; Kimmel, 2008). Some authors call for activism such as rewarding positive forms of masculinity in sport (Whitson, 1990), launching athlete anti-binge drinking programs (Messner, 2002), and providing athletes with an environment that encourages open communication regarding violent or degrading behaviour (Messner, 2002; Anderson, 2011). Finally, some suggest that more time should be spent speaking directly with hockey players (c.f. White & Young, 2007; Stevens & Holman, 2013). At the same time, Allain (2013) argues that it is incredibly difficult to gain access to them as they are a relatively closed group and that this challenge must be overcome in order to move forward.

With regards to homophobia and ice hockey, several scholars offer hockey as an example of a site that reproduces homophobic and hypermasculine characteristics (Anderson, 2010; Atkinson, 2010; Adams, 2011; Eitzen, 2012; Rand, 2012), but the specific intersection of homophobia and ice hockey is largely absent from recent scholarly literature when compared to media accounts of the two (Johnston, 2011; Bella, 2012; Shoalts, 2012; The Canadian Press, 2012; Burke, 2013). This disparity is a useful entry point for the other gaps in the literature as it presents an opportunity to reopen the topic of hegemonic masculinity in ice hockey, update studies of hazing, violence, drug addiction, and suicide, and advance the broader intellectual conversation on the status of homophobia in ice hockey. Additionally, controversy over the 2014 Winter Olympics provides several opportunities for academic investigations of gender and sexuality as the host country, Russia, passed a law banning the promotion of non-heteronormative sexual relationships, leading some to believe that homosexual athletes will not be safe participants in the event (Lally 2013). In light of the controversy, The Sports Network (TSN) released a three-part television series that addressed athlete homosexuality and featured an in-depth discussion of ice hockey with current and former NHL players as well as league commissioner Gary Bettman (TSN 2014). This series along with the reception of the Olympic Games will undoubtedly further direct scholars' attention to both homophobia and representations of masculinity in ice hockey. This will not only move the academic discussion forward, but assist in the extension of the path towards acceptance and inclusion of male ice hockey players who do not meet the seemingly reigning standards of hegemonic masculinity.

About the Author

Cheryl MacDonald is a PhD student in the Social and Cultural Analysis program at Concordia University in Montreal, Quebec. She completed her Master's in Sociology at Concordia University as well, undertaking a SSHRC-funded study of manifestations of masculinity among Canadian Major Junior ice hockey players. Her other research interests include issues surrounding homophobia in sport and representations of masculinity in advertising.

References

Adams, M. L. (2011). *Artistic Impressions: Figure Skating, Masculinity, and the Limits of Sport*. Toronto: University of Toronto Press Inc.

Adams, M.L. (2006). The Game of Whose Lives? Gender, Race, and Entitlement in Canada's 'National' Game. In D. Whitson and R. Gruneau (Eds.) *Artificial Ice: Hockey, Culture and Commerce* (pp. 71-84). Peterborough: Broadway Press.

Allain, K. A. (2013). "What Happens in the Room": Conducting research with young men in the Canadian Hockey League. *Qualitative Research in Sport, Exercise, and Health* (pp. 1–16). Routledge.

Allain, K. A. (2010). Kid Crosby or Golden Boy: Sidney Crosby, Canadian National Identity, and the Policing of Hockey Masculinity. *International Review for the Sociology of Sport* 46(1), 3-22.

Allain, K. A. (2008). 'Real Fast and Tough': The Construction of Canadian Hockey Masculinity. *Sociology of Sport Journal* 25, 462-481.

Anderson, E. (2012). Openly Gay Athletes: Contesting Hegemonic Masculinity in a Homophobic Environment. *Gender & Society*, *16*(6), 860–877. doi:10.1177/089124302237892

Anderson, E. (2010). *Sport, Theory, and Social Problems: A Critical Introduction*. New York: Routledge

Anderson, E. (2009). *Inclusive Masculinity: The Changing Nature of Masculinities*. New York: Routledge.

Atkinson, M. (2011). *Deconstructing Men and Masculinities*. Toronto: Oxford University Press.

Atkinson, M. (2010). It's Still Part of the Game: Violence and Masculinity in Canadian Ice Hockey. In L. K. Fuller (Ed.), *Sexual Sports Rhetoric: Historical and Media Contexts of Violence* (pp. 15–30). New York: Peter Lang Publishing, Inc.

Atkinson, M. (2007). Sport, Gender and Research Method. In P. White and K. Young (Eds.) *Sport and Gender in Canada* (pp. 32-55). Toronto: Oxford University Press.

Bella, T. (2012). Hockey's New Battle Against Homophobia. *The Atlantic*. Retrieved from http://www.theatlantic.com/entertainment/archive/2012/04/hockeys-new-battle-against-homophobia/256415/

Brannon, R. (1976). The Male Sex Role: Our Culture's Blueprint of Manhood, and What it's Done for Us Lately. In D.S David and R. Brannon (Eds.) *The Forty-Nine Percent Majority: The Male Sex Role*. (pp. 1-39) Massachusetts: Addison-Wesley Publishing Company Inc.

Bryshun, J. and Young, K. (2007). Hazing as a Form of Sport and Gender Socialization. In P. White and K. Young (Eds.) *Sport and Gender in Canada* (pp. 302-327). Toronto: Oxford University Press.

Bryson, L. (1990). Challenges to Hegemony in Male Sport. In M. Messner and D. Sabo (Eds.) *Sport, Men, and the Gender Order: Critical Feminist Perspectives* (pp. 173-184). Champaign: Human Kinetics Books.

Burke, P. (2013). Jason Collins is out. But in professional sports, ignorance is still in play. *Washington Post*. Retrieved May 21, 2013, from http://articles.washingtonpost.com/2013-05-03/opinions/39006242_1_locker-national-hockey-league-player-closeted-athlete.

Burstyn, V. (2004). *The Rites of Men: Manhood, Politics, and the Culture of Sport*. Toronto: University of Toronto Press.

CBC. (2011). NHL, union vow to examine trio of deaths. *CBC Sports Online*. Retrieved November 20, 2011, from http://www.cbc.ca/sports/hockey/story/2011/09/01/spf-belak-thomson.html

CBC. (2009). Fleury tell-all book chronicles sexual abuse. *CBC Sports Online*. Retrieved November 20, 2011, from http://www.cbc.ca/sports/hockey/story/2009/10/09/sp-fleury-tell-all.html#panel0

Coad, D. (2008). *The Metrosexual: Gender, Sexuality, and Sport*. Albany: State University of New York Press.

Colburn, K. Jr. (1985). Honor, Ritual and Violence in Ice Hockey. *Canadian Journal of Sociology* 10(2):153.

Collins, J., & Lidz, F. (2013). Why NBA Center Jason Collins is Coming Out Now. *sportsillustrated.com*. Retrieved May 21, 2013, from http://sportsillustrated.cnn.com/magazine/news/20130429/jason-collins-gay-nba-player/

Connell, R.W. (2005). *Masculinities*. 2nd ed. Los Angeles: University of California Press.

Connell, R. W. (1990). An Iron Man: The Body and Some Contradictions of Hegemonic Masculinity. In M. Messner & D. Sabo (Eds.), *Sport, Men, and the Gender Order: Critical Feminist Perspectives* (pp. 83–95). Illinois: Human Kinetics Books.

Connell, R.W. (1987). *Gender and Power*. California: Stanford University Press.

Connell, R.W. and Messerschmidt, J. (2005). Hegemonic Masculinity: Rethinking the Concept. *Gender and Society* 19(6), 829-859.

Eitzen, D. S. (2012). *Fair and Foul: Beyond the Myths and Paradoxes of Sport* (5th ed.). Lanham: Rowman & Littlefield Publishers Inc.

Eitzen, S. D. (2000). Social Control and Sport. In J. Coakley and E. Dunning (Eds.) *Handbook of Sports Studies* (pp 370-381). London: SAGE Publications Ltd.

Frosh, S., Phoenix, A. and Pattman, R. (2002). *Young Masculinities*. New York: Palgrave Publishers Ltd.

Gee, S. (2009). Mediating Sport, Myth, and Masculinity: The National Hockey League's 'Inside the Warrior' Advertising Campaign. *The Journal of The British Sociological Association* 26: 578-598.

Gramsci, A. (1975). *Prison Notebooks*. New York: Columbia University Press.

Gruneau, R. and Whitson, D. (1993). *Hockey Night in Canada: Sport, Identities, and Cultural Politics*. Toronto: Garamond Press.

Jamieson, L. M. and Orr, T.J. (2009). *Sport and Violence: A Critical Examination of Sport*. Oxford: Elsevier.

Johnston, C. (2011). NHLer Wayne Simmonds escaped punishment over alleged homophobic slur. *National Post*. Retrieved from http://www.theglobeandmail.com/sports/hockey/nhler-wayne-simmonds-escapes-punishment-over-alleged-homophobic-slur/article595817/

Kimmel, M. (2010). *Misframing Men: The Politics of Contemporary Masculinities*. New Jersey: Rutgers University Press.

Kimmel, M. (2008). *Guyland*. New York: HarperCollins Publishers.

Kimmel, M. (2007). Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity. In N. Cook (Ed.) *Gender Relations in Global Perspective* (pp. 73-82). Toronto: Canadian Scholars' Press Inc.

Kimmel, M. and Messner, M. (2010). *Men's Lives*. 8th ed. Boston: Allyn & Bacon.

Lafrance, M. (2010a). *Masculinity and Funny People*. Retrieved from *askmen.com* at http://ca.askmen. com/entertainment/austin_300/342_masculinity-and-funny-people.html).

Lafrance, M. (2010b). *The New Masculinity*. Retrieved from http://ca.askmen.com/entertainment /austin_500/510_the-new-masculinity.html.

Lavoie, M. (2000). Economics of Sport. In J. Coakley & E. Dunning (Eds.), *Handbook of Sports and Society* (pp. 157–170). London: SAGE Publications Ltd.

Lenskyi, H. J. (2012). Reflections on Communication and Sport: On Heteronormativity and Gender Identities. *Communication & Sport*, *00*, 1–13.

Levy, D. (2007). *Hegemonic Masculinity*. Retrieved from http://0-www.sociologyencyclopedia.com. mercury.concordia.ca/subscriber/uid=984/tocnode?id=g9781405124331_chunk_g97814051 2433114_ss1-22.

Lipsyte, R. (2004). Surviving Jock Culture. In M. Cart (Ed.) *Rush Hour: A Journal of Contemporary Voices* (pp. 177-195). New York: Delacorte.

Lucyk, K. (2011). Don't be Gay, Dude: How the Institution of Sport Reinforces Homophobia. *Constellations*, *2*(2), 66–80.

MacDonald, C. (2012). *"That's just what people think of a hockey player, right?": Manifestations of Masculinity Among Major Junior Ice Hockey Players*. Concordia.

McCormack, M. (2012). *The Declining Significance of Homophobia: How Teenage Boys are Redefining Masculinity and Heterosexuality*. New York: Oxford University Press Inc.

McGran, K., & Vyhnak, C. (2009). Hockey player dies after fight. *thestar.com*. Retrieved November 20, 2012, from http://www.thestar.com/article/561191

Messner, M. (2012). Reflections on Communication and Sport: On Men and Masculinities. *Communication & Sport*, *00*, 1–12.

Messner, M. (2007). *Out of Play: Critical Essays on Gender and Sport*. Albany: State University of New York Press.

Messner, M. (2002). *Taking the Field: Women, Men and Sports*. Minneapolis: Regents of the University of Minnesota.

Messner, M. (1992). *Power at Play: Sports and the Problem of Masculinity*. Boston: Beacon Press.

Messner, M. (1990). Boyhood, Organized Sports, and the Construction of Masculinities. *Journal of Contemporary Ethnography* 18(4), 416-444.

Messner, M. (1989). Masculinities and Athletic Careers. *Gender & Society* 3(1), 71-88.

Moller, M. (2007). Exploiting Patterns: A Critique of Hegemonic Masculinity. *Journal of Gender Studies*, *16*(3), 263–276.

Palmer, B., & Hunt, J. (2011). *Homophobia: From Social Stigma to Hate Crimes*. Broomall: Mason Crest.

Pappas, N. T., McKenry, P and Catlett, B. (2004). Athlete Aggression on the Rink and off the Ice: Athlete Violence and Aggression in Hockey and Interpersonal Relationships. *Men and Masculinities* 6(3), 291-312.

Parker, K. (2008). *Save the Males*. New York: Random House.

Pascoe, C. J. (2005). "Dude, you're a fag": Adolescent Masculinity and the Fag Discourse. *Sexualities*, *8*(3), 329-346.

Pollack, W. (1998). *Real Boys: Rescuing Our Sons from the Myths of Boyhood*. New York: Random House.

Pronger, B. (2012). Sex and Sport. In M. FitzGerald & S. Raytag (Eds.), *Queerly Canadian: An Introductory Reader in Sexuality Studies* (pp. 389–408). Toronto: Canadian Scholars' Press Inc.

Rand, E. (2012). *Red Nails, Black Skates: Gender, Cash, and Pleasure On and Off the Ice*. Durham: Duke University Press.

Reese, C.R. and Miracle, A.W. (2000). Education and Sport. In J. Coakley and E. Dunning (Eds.) *Handbook of Sports Studies* (pp. 277-290). London: SAGE Publications Ltd.

Robidoux, M. A. (2002). Imagining a Canadian Identity through Sport: A Historical Interpretation of Lacrosse and Hockey. *Spring 115*(456), 209-225.

Robidoux, M. A. (2001). *Men At Play: A Working Understanding of Professional Hockey*. Quebec: McGill-Queen's University Press.

Shoalts, D. (2013, April 11). NHL and NHLPA For Partnership with You Can Play Project. *The Globe and Mail*. Retrieved from http://www.theglobeandmail.com/sports/hockey/nhl-and-nhlpa-form-partnership-with-you-can-play-project/article11056849/

Shoalts, D. (2012). Homophobic Slurs a Habit That's Hard to Break. *The Globe and Mail*. Retrieved May 21, 2013, from http://www.theglobeandmail.com/sports/hockey/homophobic-slurs-a-habit-thats-hard-to-break/article595803/

Simpson, M. (2002). *Meet the Metrosexual*. Retrieved from http://www.salon.com/2002/07/22/metrosexual/.

Stevens, J., & Holman, A. C. (2013). Rinkside: New scholarly studies on ice hockey and society. *Sport in Society: Cultures, Commerce, Media, Politics*, *16*(3), 251–253.

Synnott, A. (2009). *Re-Thinking Men: Heroes, Villains and Victims*. Vermont: Ashgate Publishing Company.

Taylor, C., & Peter, T. (2011). *Every Class in Every School: Final Report on the First National Climate Survey On Homophobia, Biphobia, and Transphobia in Canadian Schools*. Toronto: Egale Canada Human Rights Trust.

The Canadian Press. (2012). Patrick Burke's "You Can Play" Project: NHL Players Push to Eliminate Homophobia in Ice Hockey. *Huffington Post*. Retrieved May 21, 2013, from http://www.huffingtonpost.ca/2012/03/04/patrick-burke-you-can-play_n_1319690.html

Theberge, N. (2000). Gender and Sport. In J. Coakley and E. Dunning (Eds.) *Handbook of Sports Studies* (pp. 322-333). London: SAGE Publications Ltd.

Turner, J. (2011). No charges will be laid in Neepawa hazing incident. *The Winnipeg Sun*. Retrieved January 29, 2012, from http://www.winnipegsun.com/2011/11/28/no-charges-will-be-laid-in-neepawa-hazing-incident.

Whannel, G. (2002). *Media Sports Stars: Masculinities and Moralities*. New York: Routledge.

White, P. and Young, K. (2007). Gender, Sport, and the Injury Process. In P. White and K. Young (Eds.) *Sport and Gender in Canada* (pp. 259-278). Toronto: Oxford University Press.

Whitson, D. (1990). Sport in the Social Construction of Masculinity. In M. Messner and D. Sabo (Eds.) *Sport, Men, and the Gender Order: Critical Feminist Perspectives* (pp. 19-30). Champaign: Human Kinetics Books.

Young, K. (2000). Sport and Violence. In J. Coakley and E. Dunning *Handbook of Sports Studies* (pp. 382-407). London: SAGE Publications Ltd.

BOOK REVIEW / CRITIQUE DE LIVRE

Diane Sainsbury. (2012). *Welfare States and Immigrant Rights: The Politics of Inclusion and Exclusion*. Oxford: Oxford University Press. Pp. ix, 327: ISBN: 9780199654772

This book describes the evolution of immigrants' social rights and their economic and social inclusion throughout the post-war period in the United States, the United Kingdom, Germany, France, Sweden, and Denmark. Using the Esping-Andersen's welfare regime typology, the author divides these six countries into three sets of regimes: liberal (United States, United Kingdom), conservative corporatist (Germany, France) and social democratic (Sweden and Denmark). The main purpose of this study is to confer the policy formation of welfare states in regards to the social rights of the immigrants, and to point out the politics behind the progression of these social policies. The author criticizes the policy makers for focusing only on the impact of immigrants on the welfare states in terms of how well immigrants of different racial backgrounds are integrated in the society.

The book has two parts. In the first part she talks about the policies of the six welfare states towards immigrants' social inclusion and exclusion, and compares the expansion and contraction of the social rights of immigrants over the postwar era. She investigates the formal and substantive rights of immigrants, and also compares the immigrants' social rights with the citizens of these states. In the second part the author switches to the politics of policy reforms in regards to the immigrants' extension and contraction of rights. She looks at the political processes in the six countries and the politics behind the policy formation for the social rights of immigrants in each country. The author defines the immigrants' social rights by cross examining the boundaries between social policies and immigration policies of the welfare states.

By applying the Esping-Andersen model in this study, each welfare regime appeared to have different impact on the social rights of immigrants. The liberal regime focuses on the needs of the poor and their primary objective is to alleviate poverty. The conservative regime focuses on the 'earners' based on their work as the regime's objective is to maintain their income. The social democratic regime covers all the citizens and residents while their objective is equality and income maintenance. The study reveals that despite the fact the liberal regime focuses on poor, the immigrants are most likely to remain in poverty because of the distribution of resources being restricted only to one segment of the society. On the other hand, the targeted working group is large but the poverty does not seem to be eliminated in conservative corporatist regime. The social democratic regime covers the whole population where the immigrants are less likely to be seen in the state of poverty because of equal treatment by the states.

The author extensively highlights the issues of social, political and economic rights of the immigrants and investigates how welfare states are taking these issues into consideration as one of their main concerns. The social rights of immigrants are now being widely discussed in the world politics. The book contributes to this debate. Missing in the book are regimes from central Europe, Middle East (Saudi Arabia, Qatar, UAE) and East Asia (Taiwan and Japan). These regions contain the large number of foreign workers and many are facing issues of inequality. Sainsbury builds a strong argument around the impact of welfare state policies on social rights of the immigrants and stresses that more focus needs to be placed on this neglected issue. This book is an excellent piece of work for the researchers, policy makers, students of immigration studies, sociology and political science.

By Syed Asad Ali Shah
University of Saskatchewan